

Montreal 2004

Report
2nd World Congress
Against the Death Penalty

Montreal 2004

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Special thanks

*To all the reporters of the 2nd World Congress
Against the Death Penalty of Montreal,
And Simone Othmani-Lellouche, Marie-Françoise Santarelli.*

The present text, elaborated by ECPM, does not commit the speakers of the Montreal Congress. It is the result of the work of the reporters who followed the debates of the 2nd World Congress Against the Death Penalty.

*Ensemble
contre
la peine
de mort*

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9 782952 553315

ISBN : 9782952553315

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IMPRIM' AD HOC

imprimé en décembre 2006

Report 2nd World Congress Against the Death Penalty

ECPM and PRI thank all the partners of the 2nd World Congress against the death penalty, especially the governments of Canada, Quebec, Netherlands, Germany, Belgium, France, Italy, Switzerland, the Region of Basse-Normandie, the Paris Bar and the Quebec Bar, Rights and Democracy, the European Parliament, the City of Montreal, also the organizations of the civil societies of Quebec and Canada and the members of the World Coalition against the Death Penalty. Special thanks to the Embassy of Canada in France and the General Delegation of Quebec in Brussels.

Table of contents

• tribute to Ahmed Othmani by Michel Taube	7
• foreword	
• by Monique Gagnon-Tremblay Minister of International Relations of Quebec and Minister responsible for La Francophonie	9
• by Jean-Louis Roy President of Rights and Democracy	11
• Introduction	13
• État des lieux de la peine de mort dans le monde et stratégies pour l'abolition	15
1 • In Africa, a long and difficult path	16
2 • In Arab and Moslem countries: no abolitionists	18
3 • Europe is doing well	21
4 • in americas only, Cuba and United States makes exception	24
5 • Asia, preoccupying situation	27
• Looking at the death penalty from a criminal justice perspective	31
1 • A discriminatory punishment	32
2 • The death penalty and minors	36
3 • Alternative sentences and the scale of sentences	41
4 • International justice vis-à-vis terrorism and contemporary genocide	45
5 • The question of extradition and sending refugees to countries that practice the death penalty	49
• Strategies for action	55
1 • Developing regional strategies	56
2 • A new map, international law at the service of abolition	61
3 • Coordinating against the death penalty	72
4 • Argue and raise awareness	78
• Final declaration of the 2 nd World Congress Against the Death Penalty	87
• Annexes	91
• Message from Jacques Chirac President of the French Republic read by Nicole Guedj, Minister of State for Victims' Rights Attached to the Keeper of the Seals, Minister of Justice	92
• Keynote address by Mary Robinson Former President of the Republic of Ireland and the High Commissioner on Human Rights, UN, President of Ethical Globalisation Initiative (EGI), Honorary president of PRI	94
• "Montréal 2004" Agenda	100
• Notes	115

tribute to Ahmed Othmani

The Acts of the Montreal Congress are dedicated to Ahmed Othmani, founder and president of Penal Reform International, who died tragically on December 8, 2004.

Ahmed Othmani was one of the first leaders to believe in and support the creation of an international coordination for abolitionists, starting with the idea that the death penalty has become an international question and stakes. Ahmed believed in the World Coalition, created in 2002, when it was still in its infancy and fragile. His death weakened our steps but requires us to have even more perseverance and determination.

We recognize that it was due to Ahmed's willingness that PRI co-organized the 2nd World Congress Against the Death Penalty with ECPM, from October 6 to 9, 2004. In fact, we shared the strategic goal of convincing the NGOs committed to promoting human rights, that taking penal stakes into consideration (fight against crime, detention conditions for death penalty prisoners, consideration of victims...) is essential in convincing new countries to abolish the death penalty. The final Declaration of the Montreal Congress notes this.

In the Coalition, for the Montreal Congress, we worked closely with Ahmed. But in reading the numerous articles and testimonies published after his death, we can measure even more who the man was, what his life was, his career, his strength, and his greatness, yes, his greatness. Aristotle said that man shows him-

self through action. We have not been close to any man who expresses this truth more than Ahmed Othmani!

Ahmed knew how to go beyond international and sovereign boundaries in a world generally closed to all exterior observation. With the creation of Penal Reform International, Ahmed brought internationalization inside prison walls, on all five continents.

In his youth in Tunisia, Ahmed knew the French philosopher Michel Foucault. He was inspired by his work, which showed to what point prisons are the reflection of society. Ahmed pursued the philosopher's work, in all his life's action.

With Ahmed Othmani, the international cause of prisons and a more humane prison world found its spokesperson.

Michel Taube

foreword

By Monique Gagnon-Tremblay
Minister of International Relations of Quebec
and Minister responsible for La Francophonie

I am proud that the Government of Quebec was a partner in hosting the 2nd World Congress Against the Death Penalty.

No fight against terrorism, necessary though it may be, no concern for the safety of our citizens, legitimate though it may be, no compassion with regard to victims, justifies the recourse to this denial of the fundamental right to life.

In a turbulent world that, too often, calls on violence and urges vengeance, it is important to reassert loudly and clearly that life is sacred. Unacceptable as such, the death penalty is even less justifiable because it is applied unfairly. Therefore it is important always to go farther on this difficult path that leads to its universal abolition.

I am pleased to think that, if Quebec was chosen to hold this Congress, it is partly because of its tireless efforts to further human rights. To use only one example, within the limits of our ability on the subject of crime, we aim for prevention rather than repression. Thus in the case of juvenile crime, we look for a way to establish a balance between the population's safety and the protection of young people. Society would be better off if we succeed in turning our youth into responsible adults. And now, we have won the bet. Quebec has the lowest juvenile crime rate in Canada and one of the lowest rates of youth imprisonment.

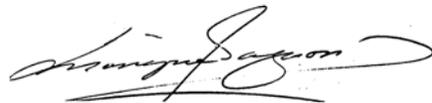
Let us add that, in 1975 the Quebec National Assembly adopted a Charter of Human Rights and Freedoms whose Article 1 reads

as follow: "Every human being has a right to life, and to personal security, inviolability and freedom." Such wording is unambiguous. It clearly shows our respect for the sacred nature of life and human rights.

The work of the 2nd Congress Against the Death Penalty, the presence of distinguished international key figures, encouraged us to continue on this path, indeed, to go even farther.

To the participants of "Montréal 2004", elected officials, legislators, militants on all continents, whose work this volume takes into account, to those who will meet in Paris in February, 2007 for the 3rd World Congress Against the Death Penalty, I would like to deliver a message of hope.

Together, we can further this cause that is dear to us, that of universal abolition of the death penalty.



foreword

By Jean-Louis Roy
President of Rights and Democracy

These proceedings of the Montreal Congress reflect the intensity and quality of debate we heard there, and I have a treasured memory of one particularly special moment: looking out over the Place des Arts, as young people from all over the world reinvented the precepts on which we fight the death penalty.

Fundamental rights, recognition of the right of everyone to basic human dignity and the rejection of barbaric revenge and lack of respect for life: the arguments came thick and fast in every language, unified by a shared commitment to the sustained effort it will take to change the world.

Such is the challenge set by the World Coalition Against the Death Penalty. Naturally, this organisation works for the universal abolition of the death penalty, but it also seeks to reposition this debate within a more just vision in which life is respected everywhere in the world regardless of circumstances. This was the vision shared by the representatives of all these new generations: those who truly control the future of humanity.

These proceedings mark another stage in the process of building this future. Next February in Paris, we will take another step towards our ultimate aim of rejecting the hatred and violence of which the death penalty is the horrific culmination. We have already made considerable progress, but we still have a long way to go. The following pages shine an uncompromising light on our individual and collective responsibilities to work together against the death penalty.

introduction

The 2nd World Congress Against the Death Penalty, organized by ECPM and Penal Reform International, was held three years after the first one in Strasbourg. International coordination was created and World Day Against the Death Penalty on October 10 each year was started, as a result of this Congress.

Montreal 2004 was held at a key moment, strategic for an international abolitionist movement still in its infancy. This Canadian and Quebecois meeting strengthened the World Congress as the regular meeting of abolitionists world wide.

The choice of Montreal aimed especially at bringing the international community's call for abolition to the North American continent, to the United States and all the Caribbean. Much remains to be done in this part of the world, but the creation of ECPM United States, with a web site in English, resulted mainly from the dynamics of the Montreal Congress.

Lastly, the main ideas included in Montreal's final Declaration are the necessity for regional approaches in areas where the death penalty is most applied, and taking the stakes of penal reform into consideration. Numerous abolition actors are working on this today.

The Montreal debates have been organised around three main lines: at first, congress participants reviewed the condition of the death penalty in different regions and discussed strategies for abolition that continue to execute. Then they analyzed and thought about the death penalty with the goal of relieving the sorrow and easing the pain that surrounds it and that it creates. Lastly, abolitionist Congress participants thought about strategies to fight against executions, making use of the full range of international strategies available, the particular areas of expertise of the different people present and the variety of arguments that can be used for abolition.

The present Acts, drawn up by ECPM, show the diversity of experiences and strategies shared by numerous attendees during the Montreal Congress.

Thank you to the writers and the many Canadian and Quebecois partners who made the Montreal Congress a success.

The next World Congress, in Paris in 2007, will begin with the publication of the works of the previous edition.

Michel Taube, ECPM
Paul English, PRI

overview of the **death** **penalty** around the world

Numerous differences characterize the application of the death penalty in the world. These differences are linked to political, cultural, religious, and social motives... Abolitionist strategies must take into account this variety, spread among the continents, in order to be effective and to reconcile the universality of the abolitionist message with numerous regional characteristics. The 2nd World Congress Against the Death Penalty brought these regional situations to light.

1 in Africa, a long and difficult path

In Africa, since the 1990s, the abolitionist movement has broken through. Supported by political leaders such as Olusegun Obasanjo (Nigeria) and Abdoulaye Wade (Senegal), the abolitionist campaign has led certain countries, especially in southern Africa, to abolish the death penalty officially during the past 10 years. Nonetheless, “the path that leads to abolition is long and difficult”, notes Sidiki Kaba, president of the International Federation of Human Rights Leagues (FIDH).

The African continent is divided into three categories: the 13 countries that have abolished the death penalty officially, the countries – more numerous – that have carried out executions in the last 10 years, and, between the two, *de facto* abolitionist countries¹, which have not pronounced this sentence for more than 10 years, without, however, taking the step to make abolition the law.

This hesitation to abolish the death sentence permanently has its source, in part, in the rigid interpretation of religion in certain countries. In fact, most of the countries in favor of the death penalty are so, not only because they are convinced of its dissuasive effect, but also because this sentence is an integral part of their religious beliefs, according to Vera Chirwa, special reporter for prisons and detention conditions for the African Commission for Human and People’s Rights (CADHP). In Nigeria, for example, the rigorous application of the Charia has recently been complemented by an emerging Christian fundamentalism, fervent defender of the Talion² law.

One finds numerous sham trials and other kinds of discrimination in these same countries, which increase death penalty decisions. In fact, police investigations often leave much to be

desired: judicial errors are frequent; legal defense for accused persons – particularly those who are destitute – is inadequate due to the small number of attorneys and their low pay, and unfair justice adds many additional factors to applying the death penalty. Thus, in Chad, the death penalty has been put back into place in the order of the day, according to Jean-Bernard Padaré, vice-president of the Chad League of Human Rights, above all as a “punishment for the poor and a weapon to get rid of certain political prisoners”. The Chad population has worked along these lines because it considers that the prison system is failing. In this country, a life sentence is the same as an acquittal, because “detention places are regular sieves”.

2 in Arab and Moslem countries: no abolitionists

At the current time, while the abolitionist movement is increasing almost everywhere in the world, no Arab or Moslem country has abolished this punishment, except Turkey in 2004 and Senegal at the end of 2004 if one takes into account that the majority of the Senegalese population is Moslem.

In this part of the world, the question of the death penalty and its abolition is delicate. To a social environment pervaded by a culture traditionally in favor of capital punishment, is added a legal environment, sometimes influenced by Islamic law, which justifies resorting to the death penalty. If, in theory, its use is limited to certain well-defined situations, in practice in these countries, crimes punishable by the death penalty are much more numerous and are cited excessively. Thus the crime of armed insurrection indirectly allows dictatorial regimes to remain in place: the death penalty for apostasy – the fact of abandoning the Moslem religion – has become a real threat for free-thinkers, philosophers, and political opponents³; likewise, if being put to death for adultery is provided for in the Koran only under such conditions that make its application quite limited, it is practiced too often, and mostly against women. The courts' non-respect for current international norms regarding justice and fair trials (quick trials, absence of attorneys...) only "strengthens" these corrupt practices. The death penalty seems to be supported more for political reasons than by religious conviction.

Beyond this generality, one sees, however, that application of the death penalty varies widely from one country to another.

Thus three countries, whose rulers have changed their stance on the use of the death penalty, made the choice to suspend all executions several years ago: Tunisia in 1991, Algeria and Morocco in 1993. Taieb Baccouche, president of the Arab Institute of Human Rights, notices a change in the attitude of elite rulers. The first international congress about the death penalty in the Arab world took place in Tunisia in 1995, at his Institute's instigation. To counteract intimidation, M. Baccouche states that "one must have courage to argue against the death penalty".

Yet, if death sentences and executions are tending to decrease in certain Arab countries, overall, in the current climate of the war against terrorism, the law tends to become more and more repressive. This is true in all Arab and Moslem countries. According to Ahmed Obeidat, former first minister and vice-president of Jordan's Royal Commission for Human Rights, if "from the official point of view, capital punishment is used as a last resort and for the most serious crimes", nonetheless, since September 11, 2001, the influence of the United States' foreign policy on the legislation of the kingdom of Jordan has led to repressive new amendments regarding national security. Likewise, explains Youssef Madad, assistant secretary-general of Moroccan Prison Observatory, the 2003 law relating to the fight against terrorism lengthened the list of crimes liable to the death penalty, which is contrary to Article 6 of the International Pact Relating to Civil and Political Rights that Morocco ratified. Moreover, three countries resumed executions in 2004: Afghanistan, Iraq, and Lebanon⁴.

Besides the war against terrorism, the repression of sexual minorities also leads to use of capital punishment. The countries involved use the argument that members of these minorities have "deviant behavior" that threatens the social and moral order. Thus, nine countries allow the death penalty against homosexuals⁵ in total violation of international norms that prohibit all discrimination for reason of sexual orientation.

The operating method of executions is variable: execution squad, decapitation, hanging, crucifixion, and stoning. This last, described by the Tunisian reporter Noura Borsali as "stone age", is currently use in countries that apply rigid Moslem law, namely Saudi Arabia, Bangladesh, the United Arab Emirates, Iran, Nigeria,

3

Europe is doing well

Pakistan, and Sudan. Yet, in theory, it seems that the Koran does not automatically make provision for this punishment. Islam's historic dictionary mentions that "stoning can be applied only if the guilty parties have confessed or there is formal testimony from four male witnesses", and in this respect, false testimony is also condemned. In reality, since these conditions are rarely fulfilled, the Koran recommends flogging or life imprisonment. Nonetheless partisans of lapidation are mentioned in a verse⁶ that should have been deleted from the Koran and whose truthfulness is brought into doubt by the encyclopedia of Islam. Today, this punishment is very controversial, even among Moslems.

In the ex-USSR and Central Asian countries, a general tendency toward abolition of the death penalty is underway. Following the dissolution of the Soviet Union in 1991, fifteen independent⁷ countries were created, more than half of which progressively abolished the death penalty for all crimes: Armenia, Azerbaijan, Estonia, Georgia, Lithuania, Moldavia, Tadjikistan, Turkmenistan, and Ukraine. Moreover, five Central Asian countries and former Soviet republics have signed the Second Optional Protocol to the United Nations International Covenant on Civil and Political Rights⁸: Azerbaijan, Estonia, Georgia, Lithuania, and Turkmenistan. Moreover, joining the European Council was the driving force for abolition in certain countries, such as Georgia in 1997 and Azerbaijan in 1998. Most of these member countries followed the requests of the European Council's Parliamentary Assembly regarding abolition in peace time, and signed Protocol 6 of the European Convention on Human Rights Relative to the Death Penalty⁹: Armenia, Latvia¹⁰. and the Ukraine have ratified it. At the European Council level, Russia remains the only country out of the 45 members not to have abolished the death penalty. However, in 1996, it instituted a moratorium on executions and death sentence. Since the Constitutional Court's decision in 1999, by law, all accused persons have the benefit of a jury with representatives of the people. Mara Polyakova, president of the Independent Council of Legal Experts of Russia, affirms that these juries "reach a verdict for acquittal or clemency much more often than professional judges, and rarely have recourse to the death sentence". Unfortunately, at this time, they treat fewer than 1% of the cases and the moratorium will expire before the jury system is widespread throughout the country. Moreover, in

Chechnya, where the moratorium was not observed between the two armed conflicts, numerous executions took place between 1996 and 1999, and setting up a jury system was postponed until 2007. Finally, in this country, discussion about the usefulness of abolition is constantly revived in the name of terrorist threats.

In Central Asia, Kirghizia and Kazakhstan have declared moratoria on executions. Kazakhstan declared a moratorium in 2003, just after its request to the European Council to be an observer, but some people wonder whether, this action is designed to appear temporarily “correct” with the goal of getting foreign aid. Therefore, Kazakhstan should be encouraged to sign, then ratify, the Second Optional Protocol Relating to the United Nations Pact for Civil and Political Rights.

Two Eurasian countries continue to condemn people to death and execute them: Uzbekistan and Beloruse. The number of sentences and executions seems to be decreasing in Belarus, according to nonofficial sources. There are around 200 executions per year in Uzbekistan according human rights activists in this country, but the numbers are often still secret. Moreover, in these two countries, application of the death penalty in general is surrounded by state “secret”, a heritage of the Soviet Union judicial administration system.

Belarus applies the death penalty under the conditions provided in the 1961 Soviet penal code. The list of crimes liable for the death penalty is around a dozen, although it is most often pronounced for murder with premeditation. In this country, if only because it is the last European country to use the death penalty, abolition takes on particular stakes. Moreover, in 2004, the Constitutional Court, relying on numbers, decided that capital punishment’s preventive and dissuasive role could not be demonstrated. Thus, it declared certain articles in the penal code incompatible with the country’s Constitution, and concluded that the moratorium, as the first step toward abolition, could be decreed by the Head of State or by the Parliament. In Uzbekistan, capital punishment is used for the same crimes as in Belarus with, in addition, the crime of terrorism. Nonetheless, in 2004, this country committed itself to establish a plan of action regard-

ing capital punishment, including commuting individual sentences. According to Tamara Chikunova of the organization Mothers against death penalty and torture, NGOs such as Amnesty International or Penal Reform International must help local organizations to make their difficulties known and accompany them through the workings of “local administrations”.

In these two countries, violations of rights are frequent, according to Didier Beaudet, representative of Amnesty International’s French section: unfair trials, confessions obtained by torture, the courts’ lack of independence because of corruption. “In this situation, the risk of judicial error is very high because of the totally faltering judicial system.” Added to this are deplorable living conditions on death row, “far from international standards”, prisoners not having the right to exercise in fresh air and often submitting to degrading treatment. Finally, the right for prisoners, and for their families, to know their date of execution is not respected: they are not informed in advance of this fatal date, nor of the place where the body will be cremated after the execution.

In spite of all these human rights violations, the region’s governments, which are abolitionist by law or in fact, authorize the extradition of prisoners to countries that practice the death penalty, which violates international agreements¹¹. Thus, persons accused of “religious extremism” in Russia were extradited to Belarus and judged there, in the non-respect of their rights. Others are considered to be “terrorists”, as shown in the case of three prisoners whom Kirghizia sent back to Uzbekistan in 1999 and who were executed barely three weeks after their judgement, contrary to international penal standards. Kazakhstan has also extradited persons belonging to the Ingouche people, who are considered as “separatists”, to China, the world champion of executions.

4

in americas only, Cuba and United States makes exception

In North America, only the United States still uses the death penalty. This country represents a true paradox by presenting itself as a defender of human rights, while continuing to use the death penalty so extensively. However, the number of people, condemned to death and the number of executions is continuing to decrease. There is also continuing attention paid to the likelihood of innocent people being sent to death row and the range of errors made in prosecuting death cases. Notable in this regard is the decision of the Republican governor of Illinois, George Ryan, who, following a report about the unavoidable risk of executing an innocent person, commuted all the death sentences in his state in 2004.

Unlike African and Moslem countries, Latin America has a long abolitionist history. A large majority of the countries, such as Venezuela (1863), Uruguay (1907) and Colombia (1910), forbid recourse to capital punishment in their Constitution. Others keep it for exceptional crimes, without, however, applying it. This is the case with El Salvador¹², Argentina¹³, Mexico¹⁴ and Chile. In El Salvador and Brazil, the death penalty is kept for serious military crimes committed in time of war. Mexico (up until 2005), Guatemala and Argentina prohibit it for political crimes.

Despite this situation of nearly general abolition, the death penalty in Latin American and in the Caribbean is too often still seen as playing a legitimate role in protecting society against crime and insecurity.

In Latin America, only two countries continue to condemn prisoners to death and to execute them: Guatemala and Cuba. In

Cuba, the death penalty seems to be used as a favored tool for repressing political opposition, and not only for crimes that threaten the country's security. Applied in a discriminating way, especially in Guatemala, capital punishment is marked by the inequality of access by prisoners to adequate, fair defense. According to Kristin Svendsen, researcher and person in charge of issues relating to the death penalty at Guatemala Institute of Comparative Studies in Penal Sciences, the poorest people, and those most on the edge, are executed more in this country because the judicial system is politicized, weak, and corrupt." Besides, there is a blatant lack of human and financial resources to assure defense for everyone, in a country where half the population does not speak Spanish. According the Guatemala Office of Public Defense Attorneys, there is a very important risk of procedural or defense error in 75% of the condemnations pronounced. Guatemala is one of the rare Latin American countries to still apply the death penalty, and executions are an anomaly among the mostly Catholic countries. However, on July 27, 2002, while welcoming Pope Jean-Paul II, President Alfonso Portillo imposed a moratorium on executions for the duration of his term, and asked the National Assembly to abolish the death penalty. An abolitionist campaign led by NGOs, mediators, judges, and attorneys is in process in this county, in order to encourage abolition via legislation and the removal of articles in the Constitution that have to do with capital punishment.

In the Caribbean, the abolitionist movement is making progress. A good part of this is due to the settlement of constitutional lawsuits that appeared between the application of internal and international rules and standards. In fact the international treaties¹⁵ adopted in the context of the Americas, as well as decisions of the Inter-American Human Rights Court, and the measures taken by the Inter-American Commission on Human Rights (IACHR), constitute an extremely efficient legal arsenal for the abolitionist fight. The IACHR, in keeping with its charter, can ask countries to adopt Medidas Cautelares, that is, to take measures in favor of persons condemned to death because of non-respect of the measures provided for by the American Convention Relating to Human Rights. Such measures could have

the effect of suspending an execution. The intervention of the Inter-American Court for Human Rights is equally important in the fight for abolition. In 2002, it condemned Trinidad and Tobago for violating the Inter-American Convention, asking countries to improve their detention conditions to conform to international standards and to amend the penal code, which had not been changed since 1925, and which stipulates that the death penalty is mandatory and must be pronounced without taking into account the circumstances of the crime or any other extenuating circumstances.

In the English-speaking Caribbean islands where the death penalty persists, the judicial procedure allows prisoners condemned to death from former English Commonwealth¹⁶ member colonies to appeal to the “Privy Council” in London as the court of last resort. Often, this Council annuls death sentences and commutes them to life sentences. In 2004 in Jamaica, the Privy Council pronounced an historic decision by considering the death penalty unconstitutional¹⁷. But, paradoxically, the same year, the Privy Council of London accepted the constitutionality of the death penalty as an obligatory punishment for homicide in Trinidad and Tobago.

The Trinidad and Tobago case arouses a lot of worry: this country withdrew from the American Convention Relating to Human Rights in 1999 in order to get around the recourse of appeal before the Inter-American Commission, but as a member of the Organization of American States, it remains subject to respecting its norms.

6 Asia, preoccupying situation

Asia is the continent where the death penalty is practiced the most, in terms of condemnations as well as executions. Since 2004, we have witnessed the resumption of executions in three countries where a de facto moratorium was implemented: India, the Philippines¹⁸, and Indonesia. Two important non-abolitionist democracies are located in this part of the world: India and Japan. China, the world champion of capital punishment, executes more than 10,000 persons per year according to certain non-official data. These executions sometimes take place in stadiums before huge, indifferent crowds. Prisoners are often transported in trucks fitted out as mobile execution rooms, according to Marie Holzman, specialist in Chinese affairs and author of numerous works about contemporary Chinese society, who fears “the multiplication of putting-to-death with these units, which can go and execute everywhere”. In this country, the list of crimes, aside from murder, that lead to death row, does not stop growing: from political crimes such as treason, to economic crimes such as fiscal fraud, and also corruption. Condemnations linked to drug trafficking, required in 95% of cases, are also rampant in the region. In Singapore, the practice is the presumption of guilt in the presence of a certain quantity of drugs. In Thailand, narcotic traffic is the main cause cited for death sentences. In these countries, summary trials and extrajudicial executions are common, sometimes substituting for legal procedures that would lead to the death penalty. Thus, in 2003, during a vast “war against drugs” campaign, around 2500 persons were shot down in the streets, testifies Dangtong Breen, member of the Union for Civil Liberty (UCL) in Thailand.

In Asia, judicial errors, arbitrary decisions, and violation of defense rights are frequent. According to Theodore Ong Te, representative of the Philippines Free Legal Assistance Group, in 72% of death sentences, a review of the judgement shows that the court made a mistake or that the death penalty did not apply in the first proceeding, and in more than half the cases, the death penalty was commuted to a life sentence. In India, judicial precedents during the last 50 years recommend capital punishment for the most rare cases, an idea that ends up in a situation where no one really knows what the concept of "rare among the most rare" means, and thus depend on the judges in charge of the affair, maintains M. Bikram Jeet Batra of Amnesty International. In China, access to the appropriate defense is very limited, and, in the case of people accused of political crimes, often non-existent, notes Liz Wickeri, in charge of Human Rights League in China. When accused persons have access to an attorney, quite often, they meet only a few hours before standing trial. Thus the pressure on these attorneys is enormous, to keep them from giving a proper defense or using political arguments. They themselves can be prosecuted. As for judges, in Singapore, for example, they have no choice: when the accused person is declared guilty in narcotics cases, the death sentence is mandatory. In Japan, accused persons do not benefit from a fair trial. They sometimes are executed before having exhausted all legal recourse, and suffer degrading, inhuman conditions in custody. Certain prisoners can spend a long time, from five to 15 years, in total isolation without knowing the date of their possible execution, the family being informed only after the hanging, which is the only form of execution practiced in this country.

Finally, the law of silence that prevails regarding the death penalty makes the road to abolition that much more difficult because, often, it goes along with a culture of fear, as in Burma and North Korea. This policy of disinformation, common in the region, does not concern only the data about the number of executions. Thus, in Japan, executions take place one or two times per year, their date coinciding with parliamentary vacations in order to avoid publicity.

Nonetheless, in spite of all these elements, certain countries in this region seem to be on the way to abolition, notably South Korea and Taiwan. Some have a moratorium, others, such as Thailand and the Philippines, continue to condemn and execute, but have started public discussion about the death penalty. At the beginning, some public opinion might show a certain openness, in spite of discouraging data: public mobilization is starting in India and in the Philippines, where an active abolitionist movement organizes meetings, petitions... in order to further the population's awareness against the death penalty. In the Philippines, very effective lobbying of Congress members could also result in the suspension of executions, reports Theodore Ong Te. Discussion is also in the judicial order, as is the case in the Philippines, where the Supreme Court decided to transfer judicial review of litigation to the court of appeal because of the great number of judicial errors. It is also in the legislative order. In fact, a group of Japanese parliamentarians wanted to present an abolitionist-type private bill during the 2004 parliament session. It was aimed at adopting a three-year moratorium and the total revision of capital punishment. It was abandoned because it had little chance of success. On the other hand, constitutional abolition does not seem to be the order of the day in Asian countries, and abolition activists ask that, at least, the numbers of crimes for which the death penalty is compulsory be reduced and that available information on the subject be disclosed.

looking at the death penalty from a **criminal justice** perspective

First and foremost the death penalty is a denial of the most basic human right - the right to life. But beyond that lie many other blatant violations of other rights that need to be demonstrated to the nations and individuals who continue to support executions.. Most notable among these is the lack of the assurance of a fair trial for people facing a death sentence. There are also other important issues regarding appropriate and proportional punishment and the need for penal reform raised by the death penalty and the question of its abolition.

1 a discriminatory punishment

Non-discrimination with respect to origin, nationality, religion, gender, or opinions is a founding principle of the United Nations, consecrated in numerous treaties and international articles. Yet discrimination is a factor that, often, cannot be dissociated from application of the death penalty.

Discrimination is often political, deeply rooted in legislation, in systems of government more or less authoritarian where the death penalty is used to suppress political opposition, civil society actors, or those who exercise their liberty of expression. In democracies, discrimination is also practiced against the poor, and against cultural, sexual, and ethnic minorities.

Discrimination exists not only in authoritarian governments such as China or Iran, but also at the heart of great democracies, notably the United States. Today, the question relating the death penalty and discrimination has been revived in current events because of its application in cases of actual or suspected terrorism.

In the United States, the government had policies adopted that are deliberately designed to treat persons accused of the same crime in a different, discriminatory way, as the situation of the Guantanamo prisoners shows. The procedures used for acts of terrorism against non-Americans differ from those for American citizens, who are not subject to military courts without the right to appeal before a civil court. According to Steven Watt of the Center for Constitutional Rights, these prisoners are hit with double discrimination. As pointed out, the procedure differs according to their nationality when they are accused of similar acts. Secondly, powerful countries close to the United States, in this case, Australia and Great Britain, are offered the possibility to negotiate more rights for their citizens who are prisoners at

Guantanamo. Mr. Watt is categorical on the subject: the committees in charge of trials do not respect the minimum international standards for imposing the death penalty. At the conclusion of these trials, the death penalty may be pronounced without respecting the guarantees provided for by a regular court. Prisoners are deprived of all independent judicial control by a civil court, and the presumption of innocence is nonexistent from then on, until the final appeal goes to the President of the United States, who has already expressed himself about their guilt.

The history of democracies is, unfortunately, equally marked with death sentences for reason of political discrimination. Robert Meeropol, director of the Rosenberg Fund for Children, explains that when he was only six years old, he was confronted with a decision that was discriminatory for political reasons. His parents, Ethel and Julius Rosenberg, were condemned to death and executed by the American government in 1953. At that time, the United States was living in the McCarthy era of anti-Communist repression, and his parents, members of the communist party, were recognized “guilty of conspiracy with the idea of participating in espionage”. Mr. Meeropol called to mind other famous executions in United States history, such as the execution of two notorious militant anarchists, Sacco and Vanzetti.

At that time, discrimination had to do with the prisoner’s skin color, and economic and social condition, aggravating circumstances that were often intermingled, as was underscored by Mr. Al Bronstein, director emeritus of the American Civil Liberties Union (ACLU)’s National Prison Project. This attorney maintains that “justice is often presented as blind and equal for all, yet it is not so in the United States, especially concerning the death penalty”. He recalls that, in a democracy, the death penalty is the greatest expression of power exercised by the State against citizens and because of this fact, should be subjected to the greatest caution. Yet, numerous American studies have shown that race, wealth, and social category are determining factors in using the death penalty. In a country where Blacks are 14% of the population, they nevertheless represent 43% of death sentences. Mr. Bronstein, who has defended death penalty prisoners for forty years, specifies that the American states where most executions

happen are former slave states in the South or those with a large immigrant population. The poor are discriminated against because they are unable to pay for private lawyers. He cites as an example of the impact of economic discrimination the case of O.J. Simpson, the former football player, who should have been condemned to death at the close of a highly mediatized trial. In fact, his fame, and above all, his financial means, which let him count on seven of the most competent and most “expensive” attorneys in America, enabled him to avoid a guilt verdict. Conversely, the least fortunate are often condemned at the end of a brief trial with an underpaid legal aid lawyer for their only defense.

Nonetheless, Mr. Al Bronstein hopes that the United States Supreme Court will end these discriminations, by denouncing the too-great differences in penal sentences pronounced for similar crimes. Taking into account the international conventions enshrining the right to life and prohibiting discrimination should help American criminal law make progress. Tracy Ullveit-Moe of Amnesty International, hopes that bringing this kind of discrimination to light will provide additional tools in the abolitionist fight.

Besides the United States, other countries condemn people to death more and more on a racial or financial basis - categories which often overlap Minorities who are generally poor, such as foreign workers in a country where they hardly speak the language, or don't speak it at all, often belong to a different religion, and do not have any political strength are particularly vulnerable when faced with an often complex penal justice system, where defense is expensive, and formidable for the weak.

In India and Jordan, persons condemned to death are mostly poor, immigrants, or members of fringe groups. Mrs. Eva Abu Halaweh, director of the NGO Mizan - Law Group for Human Rights in Jordan, and Mr. Mihir Desai, representing The Human Rights Law Network in India, explain that these prisoners cannot pay an attorney, do not know the law, and do not even understand the language in which the trial takes place.

Nonetheless, according to Mrs. Halaweh, in Jordan, the number of executions is small in relation to the number of death sentences pronounced. The proceedings notably allow intervention before the Council of Ministers or the Royal Court, which is empowered

to revise sentences or the length of execution delays. But in reality, only rich or influential people have the economic resources necessary to reach the Council or the Court, and to benefit from a more indulgent treatment or by having their sentence commuted. Another kind of flagrant discrimination exists: the principle of Diya, the legal possibility to pay compensation to the victim's family and thereby have the sentence reduced. This is available only to wealthy families. Moreover, for an accused woman, families do not use their connections and their financial means that would let the prisoner escape the death penalty. In this country, women are especially vulnerable, and run more risk of being executed than men, both because of the types of crimes liable for the death penalty, such as abortion or adultery, and by the way they are treated in the judicial system, their lives not having the same value as their male fellow countrymen. Finally, the NGO Mizan conducted a study showing that most death penalty sentences pronounced by Jordanian courts affect foreigners, in particular Iraqi refugees in Jordan or Egyptian immigrant workers.

As a defense lawyer in India, Mihir Desai encountered similar problems. Two examples illustrate his remarks about discriminatory mechanisms in his country. In the first case, a man condemned to death could not prove his innocence with a DNA test because of his extreme poverty and not having legal aid. His appeal before the Supreme Court was rejected, as was his request for pardon addressed to the President, because it was not correctly presented. The man was finally hanged. In a different state, a man known to be a member of the local mafia had raped several poor women. The women did not dare lodge a complaint against him, knowing full well that, if he were arrested, he would be freed on bail. When he was finally brought before the court, some 400 women came to lynch him, because they were convinced that the judicial system was locked and that a rich, influential man would never be convicted. They preferred to administer justice themselves. Furthermore, Mr. Desai pointed out the discriminatory role played by the caste system in applying the death penalty to the most destitute. He also denounced lengthening the list of crimes liable for this punishment, notably anti-terrorist laws, a phenomena which, finally, above all, hits India's religious minorities.

2 the death penalty and minors

Today, numerous children still incur the death penalty throughout the world. Since 1990, Amnesty International has counted 34 executions of minors in eight countries: Saudi Arabia, China, Iran, Nigeria, Pakistan, the Democratic Republic of the Congo, Yemen, and finally, the United States, which, alone, executed 19 minors. Since 2000, 14 executions have taken place in five countries: China, the Democratic Republic of the Congo, the United States, Iran, and Pakistan. In other countries such as Sudan or the Philippines, youths less than 18 years old still risk the death penalty in 2005.

Yet, at the international level, the 1999 Convention on the Rights of the Child (CRC)¹⁹ ratified by all countries except the United States and Somalia, the International Convention on Civil and Political Rights²⁰ (ICCPR), the August 12, 1949 Geneva Convention on the the Protection of Civilians in Wartime²¹, complemented by two additional protocols in 1978 relating to armed conflicts²², prohibit this practice. On the regional level, the American Convention on Human Rights²³ (1969) and the African Charter for Children's' Rights and Well-being²⁴ (1979) prohibit these executions.

However, two elements limit the scope of these standards: on the one hand, the possibility for countries to have reservations about certain articles, such as those put forward by the United States in order to let it execute delinquent minors, and on the other hand, international law cannot, in fact, see to it that the conventions are strictly applied. Thus, countries such as Iran, which signed the international treaties, disregard their agreement and execute minors. Olivier Delas, attorney and professor at Université Laval in Quebec, emphasizes that, as far as the law

is concerned, it has not played all its cards. Although the prohibition on executing minors is already a customary international rule, "what is necessary is a *jus cogens*, that is, a standard for all countries, in all circumstances, and without dispensation"²⁵. This is already accomplished for the Inter-American Commission on Human Rights. In the 2002 Domingues affair, it judged that "a standard is established in customary international law, forbidding the execution of delinquents less than 18 years old at the time of the crime" and that "this rule is recognized as being sufficiently indelible to set a *jus cogens* standard from now on". "Adherence to this standard goes beyond political and ideological boundaries, and members of the international community have firmly condemned attempts to go against it, judging such attempts as unacceptable in light of contemporary standards regarding human rights. [...] As a *jus cogens* norm, this ban applies to all countries, including the United States. One cannot legitimately dispense with it, neither in the name of a treaty nor because of an objection, persistent or not, expressed by a country."²⁶

This remarkable decision by the Inter-American court in 2002 most certainly had an influence on the historic ruling by the United States Supreme Court on March 1, 2005²⁷, declaring that the death sentence against minors is unconstitutional. This decision ended this practice, which had been used most often in Texas, Alabama, and Virginia. Some 70 minors thus left death row and saw their sentences commuted to prison for life. Yet, the challenge was a major one. Under the pretext that it had not signed the Convention for Children's Rights, the United States was, once again, at the beginning of 2005, the only country openly to claim the right to execute people who were minors at the time of their crime. The Human Rights Committee, the treaty body charged with oversight of the International Convention on Civil and Political rights, had, for a long time, urged the US to take action in this direction. In 2004, two more states, Wyoming and South Dakota, joined the camp of states having raised the age for legal execution to 18 years, which brought the total banning the execution of minors to 19 out of the 38 states that still use the death penalty.

It is important to note that this decision by the federal Supreme Court is one more measure to restrict the use of the death penalty in the United States. In 1988, the Court declared unconstitutional the execution of youths younger than 15, and in 2002, the execution of mentally retarded people. However, this decision requires caution. Five judges out of nine made the choice. Also, the decision is based less on a criticism of the death penalty than on taking into account the factors linked to minors and on scientific work proving that a minor cannot shoulder the same level of responsibility as an adult, confirming the remarks of numerous psychiatrists and children's specialists. Thus Cecile Rousseau, a Montreal psychiatrist, brought to the fore the psychological aspect of the question. "The mind of a youth less than 18 years old can be compared to an unfinished work", she explains. The level of responsibility differs from that of an adult in the sense that it is not completely developed on the emotional, intellectual, and psychological levels. Dr. Rousseau considers, moreover, that society has its part in the responsibility for crimes committed by minors in the measure where "a child's violence is the mirror of our collective violence". Applying the death penalty to these delinquent minors is denying this responsibility. She emphasized the aspect of a human being's continual development, which is all the more true for a child, whose possibilities of development are enormous, since its mind is much more malleable than that of an adult. It is a being-in-development and to condemn it to death is, in a way, to end an "unfinished project". Finally, the death penalty gives young people the idea of an over-simplified producer of violence: the death penalty does not have a dissuasive effect on young people, but instills the idea that an absolute truth exists, without any possible nuance. The talk around this theme conveys a simplistic picture of the "bad" criminal who should be executed to atone for his offence, whereas it would be judicious to show young people the moral complexity and dilemmas that exist facing criminality and penal justice.

This idea is strongly supported by Bill Pelke, founder and president of "Journey of Hope", an association of persons who are victims of a crime within their family or who have a close rel-

ative on death row. Bill Pelke, himself, lost his grandmother, killed by Paula Cooper, a girl who was 16 at the time. He campaigned in favor of commuting her sentence to life imprisonment, which was done. He emphasizes how much the death penalty extends suffering and perpetuates the cycle of violence, especially if it is applied to a minor. Today, "Paula Cooper is a completely different person". She has studied to train animals to come in aid of disabled persons, says Bill Pelke.

Without doubt, these arguments have an influence on the application of the death penalty to minors, which proves to be marginal in relation to the total number of executions in the world: two cases of minors executed in 2003 out of 1146 executions according to Amnesty International. Eric Prokosh, Amnesty International's Death Penalty coordinator, emphasizes this positive development in the progress of abolition concerning minors in recent years. Several countries have changed their laws on the subject to forbid execution of people less than 18 years old: Yemen and Zimbabwe in 1994, China in 1997, and more recently, Pakistan in 2000.

Nonetheless, the persistence of an arbitrary nature in applying capital punishment means that in some countries, such as China, certain county courts continue to condemn prisoners to death without leading an in-depth investigation to determine the defendants' age with accuracy. In December, 2001 in Pakistan, President Pervez Musharraf issued a new decree that commuted all death sentences for minors to life sentences. The decree became effective on December 13, 2001. These changes have not put an end to the death penalty for minors. In fact, the 2000 law was not retroactive, and these changes could have been applied throughout Pakistan except in the "Provincially Administrated Tribal Zones". Thus, while in the rest of the country, children are prosecuted in courts for minors, in tribal zones they are prosecuted like adults, sometimes condemned to death, and often held in prison with adults. Likewise, in 2004 in Iran, a 16-year-old girl was hanged for "acts against chastity", whereas numerous witnesses maintained that she suffered from mental problems. Yet, for four years, Iranian authorities have been examining a legal project to prohibit recourse to capital punishment

against persons less than 18 years old at the time of the charges against them.

In the past two years, the number of children executed has increased in this country. Recently, a spokesperson for the judiciary power let it be heard that the new provisions would prohibit the application of capital punishment only for certain crimes committed by minors. In fact, he explained that crimes punished as "*quisas*" ("atonement", a condemnation pronounced in cases where the accused persons are recognized as being guilty of murder) come under the private sphere, not public. The majority of executions of delinquent minors in Iran concern "*quisas*".

3 alternative sentences and the **scale** of sentences

Even if there is not an alternative sentence to the death penalty as such, this question should clearly be raised by abolitionists in order to convince death penalty supporters to change their opinion. Most often, countries choose life sentences or long prison terms as alternatives, reassuring for the public, but raising fundamental questions. From the prisoners' point of view, there is the question of the meaning of the punishment and the possibility of rehabilitation. For governments, the question concerns the pertinence and scope of legislative and penal reform. It is urgent to start thinking about this subject because life behind bars is not a solution, life imprisonment is "slow death".

In a strong position thanks to his 25 years of experience within the United Kingdom's penitentiary system, Andrew Coyle of the International Center for Prison Studies explains that, in most countries that have ended the death penalty, abolition was preceded by long negotiations and was made with compromises. Thus, the price of abolition in the United Kingdom 40 years ago, was mandatory life sentence for homicide. When it concerns replacing the death penalty, it is necessary to consider prisoners condemned to death as individual human beings. Moreover, Mr. Coyle remarked that prisoners condemned to prison for life for having committed a serious crime are often "model" prisoners with good conduct and have a good influence on others. The danger of subsequent offences is usually quite small and the possibility of rehabilitation is quite high. Even so, these prisoners-for-life are often placed in special prisons with harder living conditions (isolation, abusive treatment, humiliating living conditions...). For Mr. Coyle, that is neither necessary nor justifi-

able, even if public opinion calls for it. According to him, abolition is not the only battle. It is also necessary to fight to assure that the death penalty is not replaced by a punishment that is nothing other than a living death.

The attorney and director of Lawyers for Human Rights in South Africa, Mr. Rudolph Jansen, has worked for a long time on penal and penitentiary reforms. In South Africa, a Court decision declared the death penalty unconstitutional for common-law crimes in 1995, then for all crimes in 1997, largely due to the effort of Nelson Mandela, a resolute abolitionist. Earlier, in 1989, a moratorium on executions was declared in order to conform to international standards regarding the death penalty. In practice, many judges imposed the death sentence anyway. These sentences should automatically have gone before an appeal court which decided, as the last proceedings, to commute the death sentence to a long prison term. It was a matter of preparing for abolition and assuring that all persons that would have been condemned to death stayed in prison for the rest of their days. This is how the system of life imprisonment and long sentences, notably procedures for conditional release, were established before abolition.

At the same time, in 1997, South Africa introduced minimum prison sentences, without real debate. Many crimes that, formerly, did not call for a minimal sentence, were given this sentence from then on. The consequence was a large prison overpopulation. Other reforms changed the system of conditional release, which cannot happen before 25 years in prison for those condemned for life. "Maximum security" prisons also were set up. This example shows how heavy the price to pay for abolition can be, especially in a country with a high level of crime, and where public opinion calls for strict sentences.

Mrs. Zhemis Turmagametova, assistant director of the Internal Office of Human Rights and of the State of Law of Kazakhstan, also worked on this problem and on penal reform when a moratorium was put into place in her country. The suspension of executions in December, 2003, forced Kazakhstan to face the delicate question of defining a system to impose on the new prison population, composed of death row prisoners whose sentence

was commuted to life imprisonment. Changes to the penal code had to be made to settle the legal situation of persons condemned before the moratorium. Reforms concerning prisoners' rights also had to be made. For example, prisoners should have the right to be incarcerated near their families, to participate in the education of their children, to receive visits from their close relatives, and be rehabilitated and reintegrated into society. Prisoners should live in prisons where international standards are applied. Mrs. Turmagametova considers that it is necessary to think about the impact of long prison sentences on prisoners, and the way in which rehabilitation can work, as well as the potential danger to society in case of conditional release.

The former director of the Canadian Church Council, Rick Prashaw, observes that even after abolition in a country like Canada, it is necessary to remain watchful. In fact, there is a risk of heavier and heavier prison sentences being imposed since governments want to be seen as unyielding in face of rising crime or an increasing sense of insecurity. But Mr. Prashaw considers that imprisonment for life is even more cruel than execution, because it is a life without hope. This idea is illustrated by the case of Canadian life prisoner, Colin Davis, who committed suicide after learning that he still had to serve 20 years in addition to the 14 years that he already served. For Mr. Prashaw, the death penalty is "instantaneous" and life imprisonment is nothing but "a slow death sentence". These two sentences are one and the same, and abolitionists should be against both, which are as "cruel and unusual" the one as the other. Furthermore, he has the idea that a person cannot change, or that if he changes, no one is concerned about it because he has been offered nothing other than life in prison.

All the arguments against the death penalty are equally valid against life imprisonment, and it is important to think in terms of humane justice. In this sense, the Canadian correctional services that receive requests from victims' families to meet the murderer of their close relative, direct them to the Council of Churches, which helps organize the meeting. Without this kind of approach, crime victims would never find peace, he insists. Finally, Mr. Prashaw encourages working with communities on-

site and with people affected by the death penalty or condemned to long sentences. In this respect, the Canadian Correctional Services “Lifeline Program” offers listening and accompaniment services to long-term or life prisoners, to help them live this sentence and to view it differently. The “accompanists-to-life” are present to help prisoners to become better or to remake their life. Like Mr. Benson, who works in this service and who affirms that society must think of answers to bring to crime, the accompanists are often former prisoners. Through their example, they show that it is possible to begin a new life. These accompanists do not do anything in place of the prisoners, who must personally get involved in their process of rehabilitation.

Finally, in our society, the main theme in the sanction of the most serious crimes seems to be the need to punish and public opinion’s request for strong symbols. In this context, abolition is only the first battle. The fight continues, notably by setting up penal and penitentiary reforms, particularly to avoid having everyone in prison and to urge the government to adopt alternative punishments. So it is necessary to find a compromise between the symbol and the appropriate punishment, as, for example, the model of restorative justice that helps victims as well as the authors of crimes and society.

4 international justice vis-à-vis terrorism and contemporary genocide

Since the early 1990s the development of an international justice system has begun, most notably with the institution of the International Penal Court in 2002. This justice on a planet-wide scale has excluded recourse to the death penalty from its statutes, for all crimes without exception.

Genocides and the Death Penalty

The question of the death penalty in the case of genocide is fundamental. It was asked in the case of Rwanda. In this country, the genocide of the Tutsis and the Hutus, stopped in 1994, poses this question in abolitionism’s most absolute way, because three elements must be taken into account: the victims’ claims, the requirements for national reconciliation, and the pressure from the international community. After a *de facto* moratorium since 1982, the Rwandan government executed 22 persons in 1998, mostly in response to the population’s expectation to see a concrete change in things. Maela Bégot, student and ECPM member, talks of “demagogic executions”. However, in relation to crimes committed and the number of defendants, condemnations are still relatively rare, and it is clear that the country’s government “has not chosen the path of massive, legal putting to death as a cure for impunity”.

In fact, Rwanda illustrates a new legal split. On the one hand, Kigali is responsible for judging the genocide perpetrators with “limited” responsibility and has revised its penal code. Capital punishment from now on is applied uniquely to “planners and

important killers” and no longer to “executors”. On the other hand, the International Penal Court for Rwanda (TPIR), which sits at Arusha, is in charge of judging the highest genocide perpetrators, the “brains” of genocide, and has excluded the death sentence from its juridical arsenal. “We end up with a situation where those most responsible, judged at Arusha, will avoid death, to which individuals of less responsibility, judged at Kigali, risk to be condemned.” The negotiations between Kigali and Arusha continue, the situation of the death penalty in Rwanda is uncertain for the moment. Finally, it seems that the only criteria determining the implementation of judiciary executions is political. The context today is favorable for thinking about strategies in favor of abolishing the death penalty.

Antiterrorist Laws

After the attacks on September, 11, 2001, certain countries – among them, democracies – committed themselves to a “war” against terrorism and imposed restrictions to the international system for the defense of human rights. Antoine Bernard, executive director of the International Federation for Human Rights (IFHR), condemns what he calls “opportunistic antiterrorism”. In fact, certain countries promulgated exceptional laws under the cover of security strategy, and, at the same time, restricted fundamental liberties for the human person. This was the case in the United States, Canada, Jordan, Lebanon, Philippines, and also on the American base at Guantanamo. Morocco and Indonesia condemned to death authors of terrorist attacks. Justice at two speeds was born, threatening the international penal structure in its infancy. According to the director of the IFHR, organizations for the defense of human rights are struggling to make these rights taken into account in a context of security going adrift. This development directly compromises the protection of human rights and the fight for abolition of the death penalty. In response to these fears, Jean-Louis Roy, president of the Canadian organization Droit et Démocratie, advocates re-examining the antiterrorist laws adopted following the September 11 attacks, in the light of obligations linked to the respect of human

rights, everywhere where they were voted. “The reply that should be brought to the terrorist threat should be, first and above all, the affirmation of the common dignity of Man.” Thus, the content of these laws should be re-evaluated. The response applied by democracies such as the United States and Canada is “extraordinarily excessive”. In fact, antiterrorist laws were voted on the heels of an intense media campaign, which did not stop keeping a state of alert in peoples’ minds. The gist was that the fight against terrorism must be done at any price, even that of democratic values. Now, that is precisely what terrorists are aiming for: that democracies abandon their precepts to throw themselves on the same ground as them, and end up by wearing themselves out in endless counter-attacks.

The Attorney in International Penal Justice

Attorney Elise Groulx, founding president of the International Association of Defense Attorneys (IADA) and co-president of the International Penal Bar (IPB), recalls that, since the Nuremberg trial in 1945, international justice has progressively detached itself from the concept of justice of the winners by pursuing a goal of national reconciliation. The goal is to let opposing power groups live together again after a conflict. Not resorting to the death penalty goes in this direction. This is precisely what is called into question today. Secondly, the Canadian lawyer stresses the crucial role of the attorney in a judicial system that often is filled with vengeance. In fact, it is the attorney who must personify the rights of the individual against the arbitrary in the last legal proceedings. In a system that does not respect the rights of the accused person, the lawyer is the last guarantee of the fair nature of the trial. This role takes on even more importance because, in spite of its invaluable function, the developing international justice is proving to be cold and bureaucratized in an unsettling way. The way the situation will develop depends largely on lawyers: “We should not simply wait for the answer on the part of the countries”. A strong attorneys’ presence plays a part in the developing international penal system,

that of fair justice that removes the death penalty and all instruments and procedures of iniquity from the law.

To conclude, as, United Nations Secretary General Kofi Annan emphasized, human rights are not a luxury reserved for peace time. Certain countries, fortunately, did not take the same path of blind vengeance. In Spain, no politician asked to reinstate the death penalty after the Madrid attacks in March, 2004, which, as Attorney Groulx says, endows this country with “a remarkable image of calmness and maturity.” In order to fight the obsession with security, it is important to organize dialogs and coalitions, particularly with Southern countries.

5

the question of extradition and sending refugees to countries that practice the death penalty

September 11 and the antiterrorist measures that followed it have also made the stakes and problems of extradition worse. Today, matters regarding extradition or deportation also concern sending back persons who run the risk of torture or condemnation to death in their country of origin. Countries that have abolished the death penalty have the duty to protect the fate of accused persons or foreigners present on their soil, who could be threatened with deportation or extradition. And the ban on sending a person to a country where they risk being tortured or maltreated is a fundamental standard of international law, expressed in numerous treaties.

On the European scene, the European Convention for Human Rights (ECHR) does not accept extradition except when the deporting country receives guarantees that the death penalty will not be pronounced.

In Canada, the choice of the authority in charge of evaluating sending people to countries that practice the death penalty or torture, the criteria on which this risk is determined, and recent tendencies in the fight against terrorism, are now part of the stakes of extradition.

In the 2001 Burns and Rafay case, the Canadian Supreme Court made a reversal of opinion about the demand for extradition. It also pronounced on its right to give a verdict in this case. Remember that the extradition law in this country grants the

Minister of Justice the discretionary power to extradite anyone to countries that impose the death penalty or torture. A project to amend this law to limit the Minister's powers to extradite without previously obtaining assurance that the death penalty would not be pronounced, was rejected in 1999. It was then submitted to the Supreme Court, which pronounced on the question, going back to the 1991 Kindler precedent.

In this previous case concerning an American fugitive on Canadian soil, the Court considered the decision taken by the Minister to extradite a prisoner liable to the death penalty in the United States without requiring guarantees of non execution did not violate the 1982 Canadian Charter of Rights and Liberties, constitutional guarantor of respect of these rights on its territory. Besides, regarding ministerial discretion, it affirmed that the government was better placed than it to decide on the extradition of Mr. Kindler to the United States.

Ten years later, in the 2001 case *Burns and Rafay*, the Supreme Court relied on the evolution in international law to decide unanimously that the extradition of an individual without legal assurance that he will not be inflicted with the death penalty, goes against the Canadian Charter of Rights and Liberties, Article 7. Thus the *Burns* affair gives the Canadian minister the possibility to deport people, but only when guarantees of non execution have been obtained. Now, research shows that the guarantees are violated too often. In other respects, the *Burns* ruling opened the possibility to deport a person who risks the death penalty in exceptional circumstances, which it did not wish to specify. In the 2002 arrest of Suresh, the same Court specified that "the necessity to protect public safety and Canada's security could be reasons creating exceptional circumstances". Yet no decision made after the Suresh affair has found exceptional circumstance that justify the deportation of a person facing risks of torture in his country. What is more, a decision by the Federal Court states that, in addition to the duty of proving a serious risk to Canadian security before deporting a refugee to his country, immigration agents must consider other alternatives to replace expulsion²⁸. In spite of everything, the Court leaves it up to the Immigration Minister to use his discretion appropriately to determine whether or not "public

safety and Canada's security" are seriously threatened by a terrorist refugee²⁹. The Canadian researcher, Michel Coutu, fears that in the future, in matters of expelling accused persons or refugees to countries where they risk torture or the death penalty, where the problem is similar to that of extradition, the court will continue to rule that the government machinery is better placed to decide if the refugee is in danger in his country of origin. And this ministerial discretion is not always framed by the law.

The Canadian attorney, Mr. Julius Grey, considers that extraditions to countries practicing the death penalty or torture contribute nothing to guaranteeing Canada's national security and are contrary to international law. Moreover, he denounces the new legislative provisions against terrorism adopted by Canada the day after September 11, 2001 and deplores the Supreme Court's decisions on the matter. These provisions particularly concern the law regarding proof, the law about official secrets, and the change in the criminal code adopted in December, 2001. The Supreme Court confirmed, in particular in June, 2004, its position allowing secret cross-examinations under certain conditions, whose very existence is kept secret, and this in the name of the fight against terrorism. It is important to repeal all laws adopting secret procedures and to implement the decision of the United Nations Human Rights Commission in the *Judge* affair. In that matter, Robert Dunham, a Canadian lawyer referred a matter to the Human Rights Commission in the case of his client, Mr. Roger Judge, deported to the United States in 2003, whereas Canada had not assured that this individual would not be executed. The human rights committee developed the idea that military troops of an abolitionist country posted in foreign territory, could not put an individual found in their jurisdiction into the hands of a country that still uses the death penalty, without requiring guarantees that he will not be executed.

Thus, Europe, the United Nations, and even Canada, except in exceptional circumstances, require guarantees to allow extradition or deportation of an individual to another country.

In spite of these safeguards, the research led by Julia Hall on this subject within the organization Human Rights Watch, underscores the problem created by deportations. Her report³⁰ brings

information about cases in which governments sent a suspect away, or thought about doing so, based on formal guarantees, and raises the question of torture inflicted, in certain cases, on persons thus sent back to their countries. These guarantees, known as “diplomatic assurances”, to give fair treatment, not to resort to torture or capital punishment, are frequently violated by certain countries. It is essential to take note of the “unreliable promises often made by countries having given proof that they resort to torture”, affirms the report. Julia Hall also underscores the fact that, if human rights often come after diplomatic relations, these diplomatic assurances should not, in any case, serve to bypass the absolute obligation not to expose a person to torture. Her remarks are illustrated by the case of Maher Arar, a woman with the dual nationality Canadian and Syrian, who was deported by the United States to Syria in 2002, in spite of expressed fears of torture in Syria and requests to be sent home to Canada. Before her extradition, the United States had obtained diplomatic assurance from Syrian authorities that no act of torture would be committed. Arar was finally able to get back to Canada after 10 months of detention, repeated torturing, and with no charges made against her.

It is also essential to take into account which authority in the applicant country must - or can - assess the risk of execution or torture. This assessment cannot be confided to the administrative, executive, or diplomatic authority for obvious reasons. First, if the applicant country gives all formal assurance as to the respect of the corporal integrity of the person concerned, diplomacy cannot oppose the extradition even if it is an acknowledged fact that this country practices torture. Next, torture is a very difficult act to record since it generally is practiced in the greatest secrecy, using more and more sophisticated methods. Today, the fact that a country will not to be seen inflicting the death penalty or torture, whether it be administrative, juridical, or diplomatic, is turning out to be inadequate to provide the guarantees established in the International Convention on Civil and Political Rights, and raises an essential point: if one cannot trust the word given by a country, should one refuse all extraditions to this country?

For the attorneys cited above, it is out of the question for an abolitionist country to be an accomplice, either directly or indirectly, of a non-abolitionist country by agreeing to a required extradition when the risk of being condemned to death exists. This same reasoning holds regarding the risk of torture. They recommend that abolitionist countries have nothing to do with extradition, expulsion, or deportation of any person to a country that practices the death penalty or torture.

strategies for **action**

According to numerous Congress participants, particularly Robert Badinter (in his video message), the abolitionist struggle happens not only through the efforts of national volunteers, but also through increasing pressure on a new international order. The international community's growing intervention puts pressure on countries that execute, and supports countries that wish to abolish the death penalty. The Montreal Congress gave all those working for abolition — attorneys, legislators, students throughout the world — the opportunity to intervene to say no to the death penalty and to coordinate their efforts and strategies even more. A regional approach, halfway between national stakes and the world movement, seemed necessary to many Congress participants.

1 developing regional strategies

The Congress strongly brought to light the need and the opportunity to develop regional strategies in parts of the world where capital punishment is still practiced.

In Arab or Muslim countries

Abolition strategy should be managed on three fronts, with the goal of countering the partisan elements of capital punishment. First of all, the law stemming from religion must be reformed. Certain standards could be reviewed according to the present social environment. Reformist thinkers agree that, beyond the letter, it is fundamental to look for the spirit of the Koran, namely, clemency. Next, it is essential to break the taboo that says it is not possible to discuss the death penalty calmly, and to introduce discussion in the public opinion. This would be the responsibility of intellectuals, journalists, politicians, and various associations. The goal is to inform and, in this way, to destroy a certain number of preconceived ideas.

Lastly, it is necessary to use external pressure. In fact, if the fight for abolition should be primarily regional, in particular through the creation of an inter-Arab coalition, it is also necessary to be open to the world. Therefore, friendly economic, cultural, and political pressure by international actors seems to be a relatively effective method, while, however, avoiding any meddling.

In African countries

According to several speakers, it is necessary not only to bring specific pressure to bear on African regimes, since “Africa is a

continent that could abolish capital punishment if the governments are forced to do so”, but also to treat the evil at its root: crime is the effect of poverty. It requires “social treatment”. Thus, the creation of an “Institute of Criminal Justice” on the African continent to promote penal reform initiatives, has been suggested. The international community should also support the African Commission for Human and Peoples’ Rights so that it takes a clearly defined position in favor of abolition. It should start a regional discussion about capital punishment.

Lastly, national texts and ratified international instruments should be used appropriately. Democratic reform of the justice system and prisons aimed at eliminating extra judiciary executions, together with the fight against impunity, must be at the heart of an integral penal policy that goes with the abolition of the death penalty.

In North America

Montreal is a large North American metropolis. Numerous American abolitionists participated in the 2d World Congress Against the Death Penalty there, and participated in an international platform for American abolitionist leaders.

According to Law Professor Speedy Rice, death penalty abolition strategies in the US must take place on all fronts, notably legislative and judicial, and in all the retentionist states and at the federal level..The complexity of the American system requires the coordinated work on each of these aspects: the justice system, the problem of equality before the justice, judicial error, innocence... all must be approached jointly.

In this fight, organizations such as the American Civil Liberties Union Capital Punishment Project (ACLU), the National Coalition to Abolish the Death Penalty³¹ (NCADP), Amnesty International and Murder Victim’s Families for Reconciliation play a predominant role. By giving them a place to exchange information with the international community, the High Commission for Human Rights provided an opportunity to bring attention to the problematic question of the death penalty for minors in the United States. The collaboration of these different organizations created

international pressure that weighed in the Supreme Court's March, 2005 decision to make the death penalty for minors unconstitutional.

A number of US NGOs have formed an ad hoc committee against the death penalty, which meets several times a year. This forum provides the opportunity for a collaborative and concerted response to opportunities arising at the national level or in any of the states. For example, at the time of the decision of the New York court in June, 2004 that the death penalty law in that state was unconstitutional, US groups worked collaboratively on strategies to ensure that the legislature did not take action to change the law and thus allow capital punishment to come into effect again. In North Carolina, the discussion about the death penalty became more intense following a moratorium suggested in the Senate in 2003 and the results of studies showing that blacks and poor people are more exposed to capital punishment than whites accused of the same crimes. The legislation for the imposition of a moratorium finally was not passed in 2004 because it was election time, but the simple fact that a Southern state had considered suspending executions is already a big step forward. The American abolitionist movement is making progress, as Mr. Robert Meeropol of The Rosenberg Fund for Children emphasizes.

The Constitution Project, which emphasizes death penalty reform to meet Constitutional requirements in order to reduce its field of application, works with both abolitionists and reformists. According to Virginia Sloan, a representative of this association, this mixture gives their efforts legitimacy and silences those who accuse them of being an abolitionist group that does not dare to assert itself as such. Virginia Sloan sheds light on the existence, among the opponents to the death penalty, of "reformists" favorable to reforming the death penalty, that is, to limiting its application before thinking about abolishing it definitively. According to her, work to reform the application of the death penalty in no way harms efforts for abolition. But the organization's approach is more pragmatic and takes into consideration sociology and the way American society functions. Together, abolitionists and reformists have contributed to making the death penalty a question that reaches to the heart of American society.

In central Asia

A regional strategy is essential, directed at reinforcing the abolitionist movement, with support particularly from neighboring countries that have already adopted a moratorium or have abolished the death penalty.

Nonetheless, given that the moratoriums on executions do not mean moratoriums against imposing death sentences, as in Kirghizstan and Kazakhstan, it is necessary to work for the complete abolition of the death penalty in all countries. From this angle, support from the international community is essential, especially in thinking about putting alternative punishments into place. Lastly, because public opinion in these countries remains strongly in favor of the death penalty, it is important to have other actors, notably attorneys, judges, doctors, and religious authorities, join NGOs in information and awareness-raising campaigns. The lack of appropriate information strengthens the widespread idea that the death penalty protects against crime. Moreover, according to Mara Polyakova, "most people do not imagine that they are not safe from fabricated proofs, from torture, from the corruption of judges, or the accusatory tendency of the courts".

In Asia

Abolitionists do not have significant power. There, international pressure is not enough. As proof, the weak likelihood that Japan's status as observer, obtained from the European council in 1996, will be withdrawn, in spite of resolutions adopted along these lines since 2001.

Thus it is necessary to work out a general strategy that takes into account the linguistic and cultural diversity in the region. To this end, a regional conference could be organized by the region's countries, to which would be invited participants from other continents, for example, "major witnesses", who could bring their contributions.

Regarding China, obviously the Olympic Games represent a significant moment in time and the occasion should be seized to put international pressure on this country so that it respects its

international commitments regarding human rights. In fact, as a signer of the Convention on Civil and Political Rights, it should uphold its commitment to reserve capital punishment for the most serious crimes.

2 a new map, international law at the service of abolition

As Attorney Laurent Pettiti of the Paris Bar points out, the approach regarding human rights is inevitably global and universal, since international protection of human rights is necessarily aimed at all individuals. No matter where they are, human beings claim the right to dignity, to liberty, to justice, and naturally, the right to life without discrimination. The international community's right to react, for "the cry of a man in distress is the cry of humanity"³², has become more and more imperative in the face of an authority that no longer seems like an intolerable sanctuary for the violation of human rights. European and international human rights laws have developed on these foundations.

The Death Penalty and the Violation of International Rules Regarding Human Rights

Since its creation in 1948, the United Nations has delayed taking direct action on the question of the death penalty and its abolition, even though its concerns were set out from the beginning. In a resolution on November 20, 1959, the United Nations General Assembly asked the Economic and Social Council to make a quick study of the question of capital punishment. Since 1971, the General Assembly has asked countries to reduce the field of application of the death penalty progressively³³. In 1977, it reiterated this request in its resolution 32/61. Since 1977, the United Nations has not stopped stressing the desirable nature of abolishing the death penalty³⁴. The right to life, protected by Article 6 of the International Covenant on Civil and Political

Rights, is the basis of these institutions. Its foundation is Article 3 of the Universal Declaration of Human Rights³⁵, which sets out the right to life in absolute terms, with no limits or qualifications: “Every person has the right to life, to liberty, and to personal safety.” Reading the preparatory works for the Declaration, one notices that the subject and the intention of the right to life is to limit the practice of the death penalty, in order finally, to abolish it³⁶. The Pact’s writers undertook to write strict standards that would give effect to this “common ideal to reach”, set out in the Universal Declaration. Thus, Article 6 Paragraph 1 provides that “the right to life is a right inherent in the human person”. During the Pact’s development, the meaning of the term “inherent” was interpreted as designating a right that is not conferred on a person by society. The idea is, rather, that “society is responsible for protecting a person’s right to life”³⁷. Thus, it can be expected that the degree of protection suggested by this standard is maximal. Furthermore, the Pact’s Article 4 considers the right to life as a standard from which one cannot depart³⁸. And yet, a major departure from this right is set up by Article 6 itself. The protection of the right to life gives way before the existence of the death penalty in certain countries. The Pact’s writers worked out limitations for the death penalty, but they did not forbid it. Moreover, in the course of the Pact’s preparatory work, a great number of governmental representatives and international organizations considered the death penalty as an “anomaly” or a “necessary evil”³⁹. Abolition was, rather, an ideal to reach, from which is always possible to depart. So Paragraph 2 aims at conditions in which the death penalty could be applied in “countries where the death penalty is not abolished”. The death penalty cannot be applied except in case of “the most serious crimes”⁴⁰...

Yet the Pact does not specify what it means by “the most serious crimes”. In a 1984 resolution titled Guarantees for the Protection of the Rights of People Liable to the Death Penalty, the Economic and Social Committee tackled that deficiency and agreed on what is meant by a serious crime⁴¹. It is “at least intentional crimes having fatal consequences or other extremely serious consequences”. The Special Reporter on extrajudicial, summary, or arbitrary exe-

cutions is of the opinion that “intentional” means premeditated and refers to an act proceeding from a deliberate intention to kill⁴². The United Nations has ruled out this punishment for all non-violent crimes, such as illegal religious practices or sexual relations between consenting adults⁴³. In a resolution adopted in 1997, the United Nations Human Rights Commission also called on countries to limit the death penalty to “intentional crimes having fatal or extremely serious consequences.”

Limited but not really forbidden by international human rights standards, the death penalty is prohibited in reality by particular instruments that require an additional commitment from countries. That is the role of the additional protocols⁴⁴. Thus, of the 149 countries that are part of the International Convention on Civil and Political Rights (ICCPR), only 57 (in 2006) have ratified the optional second protocol that abolishes the death penalty. What is more, this protocol, like most abolitionist protocols, is not comprehensive, and gives countries permission to apply capital punishment in time of war, as long as they make the declaration at the moment of ratification and if their national legislation lets them do so at the time of signing. Only the European Convention on Human Rights Protocol 13, ratified by 36 countries on May 30, 2006, prohibits recourse to the death penalty in any circumstances.

Finally, in spite of good intentions and the will to eradicate the death penalty to give greater importance to the right to life, neither international treaties nor optional protocols guarantee the complete and definitive abolition of the death penalty.

Treaties also give countries the possibility to voice reservations in order to limit the scope of the clauses they contain. Unfortunately, certain countries abuse these rights. The American example proves this... Linda Carter, Professor at McGeorge School of Law in the United States, emphasizes that the United States has a tendency to have reservations about certain clauses in these treaties in order to keep its right to have recourse to the death penalty. For example, the United States expressed a reservation with ICCPR concerning the execution of delinquent minors, which let it condemn minors to death for years without risking a violation of its international commitments, up until the Supreme Court’s decision in

2005 to make the death penalty for minors unconstitutional. Also in the United States, one finds that most international treaties, particularly ICCPR, the Convention Against Torture, and the Convention on the Elimination of All Forms of Racial Discrimination (CERD) are not considered by American lawmakers as being “self-executing”. In fact, American courts do not recognize that these treaties have the power to confer additional rights to individuals. By contrast the Vienna Convention on Consular Relations⁴⁵ (VCCR) has no arrangement judged “non self-executing” by the United States, and they have not expressed any reservation about the death penalty. Consequently, this treaty should be able to be raised more easily at a national trial. Given that there are at present an important number of foreign nationals on death row⁴⁶, this Convention is important because it stipulates that any prisoner of foreign nationality has the right to be notified of the possibility to be in contact with his consulate to get help. The consulate can, in fact, help its citizens to get witnesses and documents in their country of origin. It can bring help at the time of the legal defense, and it can explain the difference between the legal systems. Three countries, Paraguay, Germany, and Mexico, have also referred to the International Court of Justice (ICJ) about this question. In two of the cases, Germany and Mexico, the ICJ decided that the demand against the United States was well-founded. Among other things, the ICJ considered that the United States should have a hearing, a “revision and a re-examination of the condemnation and the sentence” in order to conform with the ratified treaty. Since these decisions by the ICJ, an increase in lawsuits has been noticed concerning violations of the CVRC, defense attorneys are pleading for a hearing on the basis of these decisions. A federal court in Illinois even noticed that the ICJ decisions link United States courts and other courts having heard such lawsuits in the whole country. Unfortunately, in retaliation to the ICJ’s condemnation of the United States in the case of 51 Mexicans who had protested that their right to meeting with their consular representatives had been violated, in 2005 the United States renounced the treaty. In conclusion, even though the movement is slow, there is a growing effect of international standards relative to human rights

in the USA. This process will depend on educating judges, and this education requires patience, persistence, and persuasion on the part of defense attorneys. The more these attorneys raise the international standards and rights that ensue from it at the time of the trials, the more probable it is that courts will identify and accept these rules. In addition, international pressure, particularly by means of *amicus curiae* briefs⁴⁷ filed by the European Union or other courts, has a certain influence on the role of international standards in the United States.

On the African continent, the most important problem is adopting international standards relating to the protection of human rights, according to Mrs. Lilian Chenwi of the Center of Human Rights of the University of Pretoria Faculty of Law in South Africa. In fact, of the 47 countries on this continent that have ratified the PIDCP, not all have incorporated its prerogatives into their legal arsenal. The African Charter of Human and Peoples’ Rights (ACHPR)(art.7) ratified by 49 countries, and the Directives and Principles on the Right to a Fair Trial and Legal Assistance in Africa, adopted in 2003 by the African Commission of Human and Peoples’ Rights, also provides for the right to a fair trial, but most African countries practicing the death penalty do not respect international, regional, and sometimes national standards regarding fair trials. Likewise, only 21 of 53 countries have ratified the ACHPR protocol creating the African Court for Human and Peoples’ Rights. This Court has not, however, given a verdict about the death penalty. There is a discrepancy between the rights in international instruments and those in internal law. Likewise, for lack of means, it is not uncommon that a death penalty judgment is pronounced after several years of detention (the average is more than three years in Zambia). The right to legal representation is regularly flouted, mostly for lack of money. The independence and impartiality of the judicial system, which is short of personnel and/or often consists of poorly trained people, are widely questioned, particularly in the many military courts and special courts created by presidential decrees, as in Sudan.. Police criminal investigations also are ineffective, because of lack of resources. Lastly, the possibility to appeal before a superior court often is denied, as in Sierra Leone and Chad. In

the face of these recurrent violations, it is not an exaggeration to say that, in Africa, most often the death penalty is applied in an arbitrary manner and the risk of condemning innocent persons is very high. This is why concerned countries should find a solution as quickly as possible, by reforming their judiciary system and making their internal law conform with international and regional laws regarding fair trials.

Compared with the United States and a number of African countries, Europe cuts an exemplary figure in the death penalty domain. The rapid ratification of ECHR Protocol n° 13 and the almost-complete ratification of Protocol n° 6 make enlarged Europe a continent free from capital punishment⁴⁸.

Besides the adopted standards, Europe has developed original precedents in relation to the death penalty. In fact, the iniquity of the trial as well as extradition to a country that does not respect human rights and/or practices the death penalty, are considered as violations of ECHR Article 3, which stipulates that no one can be subjected to “inhuman or degrading punishment or treatment”. The European Human Rights Court was the first jurisdiction to rule on the “death row syndrome”, which it considers as inhuman treatment. In the 1989 affair *Soering vs the United Kingdom*, the Court found that, in Virginia, the average interval between trial and execution was six to eight years. This calculation was based on seven executions that took place since 1977. The Court concluded that, considering the very long time on death row, the extradition of Mr. Soering would expose him to a real risk of treatment beyond the threshold set by ECHR Article 3.

Thus the death penalty can be approached under the heading of other violations than the right to life, such as a fair trial⁴⁹ or the ban on cruel, inhuman, and degrading treatment⁵⁰. Laws that prevent torture and cruel, inhuman and degrading punishment can certainly be used to fight against the death penalty.

For these different rights to be respected, “it is necessary to reform the judiciary systems of the concerned countries in depth, and, in the long term, to educate the actors who take part in it.” The aim is to bring them into conformity with international rules and standards guaranteeing the respect of human rights, adopted by international courts everywhere in the world.

The Role of International and Regional Political and Judicial Institutions in the Abolition of the Death Penalty

Today, the respect for human life is recognized on the international level by the United Nations and also by regional authorities, and the standards they have developed.

- The United Nations

At the United Nations level, the Optional Protocol to the 2000 Convention on Children’s Rights concerning the implication of children in armed conflicts, and the 2002 Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment have been added to the Universal Declaration of Human Rights and the 1989 Second Protocol to the International Convention on Civil and Political Rights (ICCPR) with the intention to abolish the death penalty.

Several UN bodies apart from the General Assembly have worked toward limiting the death penalty’s field of application: the Human Rights Commission, which adopted a resolution in this direction in 1997; and independent experts such as the Human Rights Commission Special Rapporteur for extra-judiciary, summary, or arbitrary executions who make recommendations concerning serious violations of the right to life each year, and oversees the application of current international standards relating to guarantees and restrictions concerning the imposition of capital punishment. The United Nations Secretary General also publishes a five-year Report about the death penalty, of which the latest one (March, 2005) emphasized the general world-wide tendency toward fewer death sentences and executions.

According to Mr. Craig Mokhiber, in charge of the United Nations High Commission on Human Rights (HCHR) in New York, the next steps consist in taking action concerning the right to life, the idea of human safety, and encouraging stronger regional solidarity among countries.

- In Europe

On the European scene, the Council of Europe (46 countries) is death penalty free, since its member states abolished this pun-

ishment or, by default, instituted a moratorium on executions (the Russian Federation). Moreover, the Council of Europe has made abolishing the death penalty a condition of joining since 1994. The 25 member states of the European Union (EU) have ratified the 1985 Protocol 6 of the Convention to Safeguard Human Rights and Fundamental Liberties, concerning abolition in peacetime. This protocol lets member states keep this punishment for acts committed “in time of war or imminent danger of war”. In 2002, Protocol 13 relative to the abolition of the death penalty in all circumstances was adopted by the Council of Europe. Open to the signature of member states since May 3, 2003, it took effect July 1, 2003⁵¹.

In December 2000 in Nice, the European Union adopted the European Charter of Fundamental Rights, whose Article II.2 forbids the death penalty. Only an abolitionist country may join the Union. Countries such as Turkey, which is a candidate for membership, have abolished the death penalty for that reason. Besides the adopted standards, in 1998, the European Union member countries decided to strengthen their activities in the struggle against the death penalty and adopted the Guidelines on the Subject⁵². Since then, the European Union has also intensified its initiatives within international courts, particularly in the framework of the United Nations, where it asks countries that still use the death penalty to decree a moratorium on executions while waiting for definitive abolition.

Regional cooperation is also taking place within the Organization for Safety and Cooperation in Europe (OSCE), which has certain non-abolitionist members, such as the United States, Uzbekistan, and Belarus. In addition, the European Union works in collaboration with NGOs, particularly through the European Initiative for Democracy and Human Rights (EIDHR), whose budget of 104 million euros for 2005 and 2006 serves particularly to finance projects for abolition of the death penalty.

The EU leads two different types of action: on the one hand, diplomatic action, sometimes public, sometimes confidential, offering its services to act when the death penalty situation is unstable, for example, regarding Indonesia when the moratorium was lifted in August, 2004; on the other hand, individual

action, concerning the non-respect of the minimal standards, for example, the application of the death penalty to minors, disabled people, and pregnant women, or methods of putting to death, such as stoning. The EU also acts regarding reports concerning human rights, by encouraging countries to ratify the international instruments such as the Second Optional Protocol of the International Convention on Civil and Political Rights aimed at abolishing the death penalty, and by promoting cooperation with the goal of establishing fair judicial procedures.

- In Africa

Like its European counterpart, the African Union is an independent organization whose objective is to work for the promotion and protection of democracy, human rights, and development across Africa. Within this Union is the African Commission for Human and Peoples' Rights, composed of 11 commissioners named by heads of the member countries, who represent 53 countries of the continent. Unfortunately, it does not have the authority to impose its decisions which depend on the good will of the governments to carry them out.

However, according to Commissioner Mrs. Vera Chirwa, the African Charter for Human and Peoples' Rights, adopted in 1981, authorizes the Commission to act against arbitrary deprivation of this right by dedicating the law to the respect for life. Extra-judiciary executions and stoning are violations of this right. Since January, 2004, the African Court for Human Rights has been set up, following the ratification of the protocol by the required number of African countries. Consequently, because the two institutions, the African Commission and the African Court for Human and Peoples' Rights, are complementary, the latter can ask member countries to respect the Commission's decisions.

The African Commission as such, has not yet given a verdict in relation to the death penalty, even though the commissioners evoke it by means of missions and visits to countries where violations of rights have been noted, and plea for it in international forums. In this respect, Mrs. Chirwa deplors the African Commission's lack of financial resources, which would, for exam-

ple, let it pursue the Special Rapporteur's visits to prisons in other countries. Mrs. Chirwa, who herself was condemned to death under the dictatorship in Malawi, has not stopped visiting prisons and pleading for abolition. Her own experience on death row has led her to make the connection between abolition and the necessity to institute penal and prison reforms, and to take the initiative in this sense in east African countries (Kenya, Uganda, Tanzania and Swaziland). She affirms the importance of convincing political leaders that the death penalty perpetuates violence, does not have a dissuasive effect, and cannot represent a means to get rid of society's "bad elements". She considers that the human rights situation is making progress in Africa, particularly in Nigeria and Senegal, which have legally abolished the death penalty, and in Malawi, which has not had an execution for many years.

- The Americas

Mr. Florentin Melendez, Commissioner at the Interamerican Human Rights Court (IHRIC) based in Costa Rica, and Special Reporter for Persons deprived of liberty in the Americas reminds us that, on the American continent, the IHRIC's objective is to promote the ratification of the American Convention on Human Rights⁵³ and to watch over the human rights situation on the continent. The interAmerican human rights system concentrates its action on several issues, such as individual cases and urgent action in the case of the execution of minors and disabled persons. The Court gives advisory opinions about the death penalty. Mr. Melendez reports that it is necessary to inform people about the role of the interAmerican system in order to encourage effective use of its mechanisms.

In conclusion, emphasizes Mr. Jean-Louis Roy, president of Rights and Democracy in Canada, the national dimension of the fight in favor of abolition is important, since abolition depends on the political will in each country. Although international instruments from the United Nations have been strengthened, it is essential to encourage action by political and judicial institutions in favor of abolition in a regional framework. It is also

important to bring the work of regional institutions together with the United Nations' system, particularly bringing institutions in charge of human rights together with the General Assembly. In the same way, it is necessary to encourage bilateral cooperation and dialog, at the technical as well as at the professional level.

Lastly, it is necessary to remember the role of international courts of justice like the Interamerican Court of Justice, the European Court for Human Rights, the African Court for Human Rights or the International Criminal Court, and their significance in watching over the application of international standards concerning the death penalty. Nevertheless, it is deplorable that, sometimes, their decisions have no effect because they are not respected by the countries concerned, as is shown by the situation of the prisoners at Guantanamo. In fact, one can deplore how little attention was paid to the Interamerican Court's decision regarding these prisoners, so that their right to a fair trial be respected.

3

coordinating against the death penalty

Lors du 2nd Congrès mondial contre la peine de mort, les avocats et les parlementaires sont intervenus pour dire non à cette sentence irréversible. Ils ont souligné qu'il faut fédérer leurs efforts pour mener à bien le combat abolitionniste.

World Assembly of Attorneys Against the Death Penalty

In many respects, attorneys play an essential role at a trial where the defendants risk the death penalty. They symbolize the last defense before arbitrary decisions. In fact, it has been demonstrated on several occasions, particularly in the United States, that a well-defended prisoner at the bar often escapes the death penalty, and that the death penalty always hits the weakest and the most destitute. In fact, there are no "O.J. Simpson"s on death row, that is to say, there are no rich persons subject to execution. On the other hand, it seems incontestable that numerous innocent persons are locked up. If justice is fallible, the attorney is there to denounce these flaws and to call on the law to be restrained in its sentences.

In a special report from the Lille Bar at the Congress, Attorney Despieghelaere emphasized the fact that "all attorneys should have as a goal, the respect of human rights and fundamental liberties for all". In this respect, they should denounce violations of human rights. Their testimonies show, among other things, the deficiencies of the judiciary system in many countries, and in a general way, the pitfalls on the way to a complete and fair defense. To underline the profession's commitment, attorneys throughout the world were anxious to bring their support to

prisoners condemned to death, to those who risk this punishment, and to those who defend them. International collaboration and mutual aid are, in fact, essential.

In the United States, two lawyers noted the problems found in providing adequate legal representation.. Ms. Robin Maher, director of the Death Penalty Representation Project within the American Bar Association (ABA), whose work consists of recruiting attorneys' offices and lawyers to represent accused persons pro bono, explains how, in practice, there still are faults in the American judicial system. She regularly discovers that many attorneys do not even suspect the existence of deficiencies in the application of justice in their country. She has noticed that, in certain cases, the attorneys responsible for a case in which the defendant risked the death penalty, had never previously pleaded this kind of case. Mrs. Maher deplors the fact that cases requiring the participation of experienced lawyers are given to those who are the least talented and the least committed. Lastly, she stresses the ABA's role, which tries to assure a complete defense or to improve that of the accused persons by putting a guide of recommendations to attorneys responsible for defending persons who risk being condemned to death on its internet site⁵⁴ for free.

Mr. Robert R. Bryan, attorney-counsel for Mumia Abu-Jamal, explained his client's situation. He has been waiting to be executed on death row for 23 years. This black reporter, who, in the course of his professional activities, always denounced the flaws in the judiciary system, now has become a victim of them. Mumia Abu-Jamal does not hesitate to describe his fight against the death penalty as war against the injustice done to blacks, and is persuaded that, in the United States, executions are lodged in a system of political repression against blacks. His voice was never before been heard on a national and international level as much as it has been since he was deprived of his liberty.

In Japan, the judiciary system also has some dysfunctions, as testifies Attorney Maïko Tagusari. In this country, lawyers often do not have enough time to prepare the defense, or cross-examinations take place without the presence of the defense. She also

thinks that, after the judgment, fundamental liberties are flouted again because communications with the family, or even the lawyer, occur under the surveillance of the custody agents.

Attorney Douglas Mendes of Trinidad and Tobago calls to mind flagrant human rights violations when the death penalty is required. He affirms that, in certain Caribbean countries where the death penalty continues to exist, the Minister of the Interior sometimes asks the population to prevent defense attorneys from going into the law courts, and that in certain courts, the administration continues to harm defenders of accused persons. Sometimes hearings are scheduled in the middle of the night and the judge is not there until the morning, at the usual hearing time, leaving the attorney waiting long hours.

Now, the importance of an adequate defense resides in its capacity to guarantee the right to be given a punishment appropriate to the incriminating facts, and in certain cases, to avoid pronouncing the death penalty. Thus, attorneys in Caribbean Commonwealth member countries, who have particular links with their British colleagues, and also, all attorneys who fight against the death penalty, need the help of their foreign colleagues. It is essential to build a system of international collaboration that would help to overcome the numerous difficulties encountered in these affairs. In this sense, the judiciary program "No Execution" presented at the attorneys' assembly in Montreal by Attorney Richard Sédillot in the name of ECPM, constitutes an initiative for mobilization around death penalty prisoners and their attorneys. This program suggests actions, particularly the systemic collection of data concerning death penalty prisoners, in order to set off mechanisms for national and international alert and to involve judicial and political authorities in countries that would be on the point of executing a person. At the same time, such a program assures the presence of an attorney, appointed by the program, at the side of the condemned person's defenders, who performs inquiry missions about the obstacles to abolition and the means to reduce death sentences and executions. In cases where internal law allows it, it would be suggested to this program's partner members (bar associations, local collectives) to make a joint request before the court for non-execution

of the punishment, for a review of the trial or liberation of the prisoner. As part of this process, complaints would be made to the human rights committees of the region concerned.

World Assembly of Legislators Against the Death Penalty

At the initiative of a group of European legislators, who welcomed the 1st World Congress Against the Death Penalty to their Assembly in Strasbourg, an assembly of legislators was held in Montreal. In the meantime, in October, 2003, Belgian legislators launched the idea of a coalition of legislators against the death penalty, aiming to support their foreign colleagues who oppose the death penalty in their countries.

In Europe, Helène Flautre, president of the European Parliament Human Rights Subcommittee, launched an appeal for legislators to present concrete initiatives with the idea of better coordinating strategic efforts to abolish the death penalty in the world. The European Parliament, as well as the Parliamentary Assembly of the Council of Europe, reaffirmed their commitment in the fight against the death penalty, by means of a video message from its president, Mr. Pieter Schieder. He recalls that the Council of Europe is firmly opposed to the death penalty, even for authors of terrorist acts, who should be judged and punished but not condemned to death. In this sense, Mrs. Flautre calls for staying watchful in the months that follow September 11, faced with the reappearance of law projects suggesting restoring the death penalty, as has been asked by certain French and Finnish legislators. Finnish European Deputy, Piia-Noora Kauppi, stressed the European Parliament's numerous resolutions against countries that execute or still apply the death penalty, to ask them at least to adopt a moratorium. Its financial means let it lead inquiry missions in these countries. She emphasizes the role of the European Commission that financially supports numerous programs, particularly training programs for lawyers who defend people condemned to death. Priority is given to democracies such as the United States, India, or Japan, without forgetting other countries such as South Korea, the Philippines, or Algeria.

The Canadian Senator, Mr. Serge Joyal, suggests to Canadian legislators four paths of action to fight against the death penalty in the world. First, legislators should put pressure on the government to ratify the Second Optional Protocol of the International Pact Relative to Civil Rights and Policies (PIDCP), the only international instrument banning the death penalty. As such, he remembers that, three times in the course of his career, he himself had the occasion to reach a verdict about projects relating to the death penalty. In 1976, at the time of the abolition of this punishment in Canada; in 1998, concerning the abolition of the death penalty in all circumstances; and finally, in 1999, regarding an amendment to the extradition law whose goal was to ban sending prisoners back to countries where they risk execution. This project was supported by nine senators against 48 who opposed it. Secondly, Canada should intervene in the courts of countries that practice executions, by depositing statements of cases as *amicus curiae*, particularly in the United States. Thirdly, Mr. Joyal urges adopting a proactive approach within organizations of which Canada is a member, to ask participant countries to suspend executions. In the Commonwealth countries, 28 use the death penalty; 17 in the international French-speaking communities; 14 countries in the Association of Asian Pacific Countries (APEC); and 21 in the Organization of American States (OAS). Lastly, he recommends changing the law on extradition so guarantees are obtained before persons are sent to countries that practice the death penalty.

The Belgian deputy, Olivier Maingain, suggests a program of action to his country's legislators for the next three years, regarding their government, which systematically inserts clauses requiring respect of the standards of protection of fundamental rights and abolition of capital punishment into trade agreements. Likewise, Belgium should act within international organizations so that similar clauses are put into their trade agreements, following the example of the European Parliament, which has already placed two clauses relative to human rights into its agreements. On the other hand, he reports that there has been no opposition to constitutional amendments concerning the project of writing abolition as a principle into the Belgian consti-

tution⁵⁵. Lastly, he recalls that, in Belgium, in spite of the feelings of horror regarding the Dutroux affair, the man who admitted having raped and killed several little girls, at no moment did the population call for reinstatement of the death penalty, which was abolished in 1996.

Several other legislators mentioned initiatives implemented in their country's assemblies. Baroness Vivien Stern, member of the House of Lords in the United Kingdom – and secretary general of Penal Reform International, co-organizer of the Montreal Congress – spoke in the name of her colleagues in the two houses, to emphasize their support for universal abolition of the death penalty by encouraging initiatives that promote human rights.

Mr. Laszlo Nagy, deputy and president of the Human Rights Commission of Slovakia, reiterated his country's position on human rights and particularly on the ban of the death penalty in the 1992 Constitution. He recalls that his country ratified PIDCP's Second Optional Protocol and that it signed Protocol n° 13 of the Europe Council's European Convention for Human rights.

Mr. Joseph Ntidendereza, president of the Liberal Alliance for the Development of Burundi, reported on the fight against the death penalty in his country, emphasizing its ineffectiveness as a means to combat violence.

Mr. Alfonso Rodriguez Ochoa, Mexican legislator, transmitted a message signed by representatives of six parties in the Mexican House of Representatives, committing to present a legal project to abolish reference to the death penalty in Mexico's Constitution. Lastly, Mr. Harold Dutton, representative from Texas, let it be known in an audio message that several representatives favorable to the death penalty, were shaken by recent cases of innocent people condemned to death in Texas, thus opening a door to legal projects that he has submitted and continues to prepare, aiming at a moratorium and abolition of the death penalty in this state. All the legislators showed interest in coordinating their efforts and promoting a genuine network of international exchanges and cooperation. To this effect, they suggested a meeting of legislators at the European Parliament in 2005, in order to give concrete expression to discussions and to prepare the legislators' contribution to the 3rd World Congress Against the Death Penalty.

4

argue and raise awareness

To fight the death penalty on a global scale, standards and will are not enough. It is also necessary to argue. Because public opinion generally drives political decisions regarding the application, or not, of capital punishment, it is necessary to educate the public about the problems with the death penalty - that it is neither fair, effective or useful. sensitize it to this phenomenon so that it becomes aware that it is not useful nor necessary nor fair.

Marc Jacquand, general secretary of ECPM USA, reminds us that few thinkers have suggested a global philosophy of abolitionism, and by the same token, that society's discussion about the death penalty is almost non-existent. Nevertheless, moratoria and other temporary solutions present a real danger, since public opinion is even more favorable to the death penalty in times of trouble or crisis. Therefore, it is necessary to argue and to raise awareness because, without the population's support, the death penalty would not be applied.

Arguments in Favor of Abolition

If the death penalty is a discussion in recent society, it is partly because the history of ideas has taken it up only recently. Historically, Christianity, like political philosophy, legitimized capital punishment more than they condemned it. Partisans and adversaries of the death penalty were separated by their idea of its role in society: for the first, it served to maintain juridical and moral order thanks to its dissuasive function; for the second, it did not let persons mend their ways and excluded them from society definitively.

It is now time, on the one hand, to develop a global philosophy for abolitionism, and on the other hand, to make the death penalty a dynamic of society's discussion, by answering these specific questions: What have been the different positions taken in the course of history, and how can these changes be explained? What arguments have an impact on public opinion? Beyond that, can abolitionists let themselves develop moral or even moralistic considerations?

Certain fundamentalist ideas should be promoted and argued. As Martin Luther King wrote, injustice, wherever it happens, puts justice everywhere else in danger. The death penalty is not a right, but the expression of the war of Society against the Individual. It is essentially inhuman, it has irreversible consequences, and its dissuasive character has never been proven. There cannot be justice that kills, since the right to life is a fundamental value.

The fight of ideas is also a geopolitical fight. The two geopolitical zones that group together almost all the countries that apply the death penalty, that is, Asia and the Arab-Moslem world, have either rigid religious law or authoritarian central power, and sometimes both. The fight against the death penalty in these countries must happen through action and reflection in the religious and political fields. In a general way, religious, political, and judicial authorities have a role to play in changing mentalities.

Religious Arguments

In the United States, religion also plays an important role in applying the death penalty. Dale S. Recinella, Catholic chaplain in Florida's death rows, emphasizes the fact that the foundation of the death penalty in the United States is, above all, religious, though based on an erroneous interpretation of the texts, and this is true of all denominations. Since 2000, almost 90% of executions, as well as all executions of minors, have taken place in the "Bible Belt", the name given to slave states during the civil War. Arguments that justified slavery in former times, are used today to legitimize the death penalty, and tens of millions of well-intentioned Americans are persuaded of their validity. To

combat the death penalty in the United States, it is necessary to correct these bad interpretations of the Bible.

The religious element being inseparable from the use of the death penalty in certain countries, it turns out to be necessary to bring arguments against the death penalty, which themselves, are based on religion. Sylvie Bukari de Pontual of the French Association of Christians for the Abolition of Torture (ACAT France)⁵⁶ considers that, in spite of a tradition favorable to capital punishment, the majority of Christian churches today are against it and, even are often active in the fight to abolish it. In order to understand this change, it is necessary to review the history and to analyze the current position of different churches.

From its beginning, Christianity legitimized the death penalty by the *lex talionis*, “a life for a life, an eye for an eye, a tooth for a tooth⁵⁷”, the inheritance of a long tradition. The punishment has passed progressively from a vengeance reflex to a rational, scientific organization, a process in which politics and religion are closely linked. In the 18th century, St. Thomas Aquinas wrote that, in certain cases, it could be “laudable and beneficial to put to death in the name of the Common Good⁵⁸” and that “the death penalty can be given without sin”. This teaching would rarely be questioned in Europe for centuries and the idea of change remained totally absent. However, in the 17th century, things began to move: English Quakers were one of the first Christian communities to take a position against capital punishment. Later, publication of the work by Italian jurist Cesar Beccaria⁵⁹ called into question the idea of punishments, and found a wide echo with humanist philosophers in the Century of Light.

It is surprising that it was necessary to wait until the end of the 20th century for Christian churches to adopt a more humanistic vision. This new awareness first gained ground in Protestant churches⁶⁰ and then developed with Catholics. In fact, the position of the Catholic Church is ambiguous. Although Pope Jean-Paul II and the Vatican multiplied declarations in favor of abolition and requests for pardon, Catholic catechism did not explicitly condemn recourse to the death penalty. Lastly, Orthodox Churches did not have a unified position. In May, 1998, the patriarch of Moscow condemned the death penalty. However, historically

closely linked to an authoritarian political power, the Russian Orthodox Church is influenced by the security measures ideas of the fight against terrorism. The FIACAT hopes that the official texts will be made to conform with the Pope’s declarations.

Today, the Christian argument against the death penalty is divided into five stages. First, it does not respect the right to life, an absolute right that should be the State’s highest priority. It is not dissuasive; on the contrary, it helps make violence in the society commonplace. Moreover, it leans on a fallible justice: the risk of executing innocent persons is great, it is applied in a discriminatory way and sometimes it is used as an instrument of political repression. In other respects, because the death penalty arises from vengeance and not from judgment, it does not do justice, but denies it. What is more, it does not protect society in depth: it is an easy answer that avoids the real problem of reforming the prison system. Lastly, it does not let the guilty person make amends: the death penalty interrupts all change and social reinsertion processes. “Putting a human being to death is to do away with him, it is not to punish him.” When all is said and done, abolition is a moral choice with universal consequences that does not allow any reservations.

In his work as a researcher, Christophe Mousset analyzed the contradictory relationship between Christianity and the death penalty. His reasoning has three parts. First, the *lex talionis* should be read in an allegorical way. In fact, it is the basis of penal justice, which seeks to measure the harm done in order to substitute an equivalent harm (a fine, work in the general interest, a prison sentence...). Next, the New Testament goes farther: it replaces the *lex talionis* with the spirit of forgiveness; penal law is condemned but pardon is, nonetheless, conditional. Lastly, Paul Ricoeur, a contemporary Christian philosopher, dismantles the very principle of punishment and advocates unconditional pardon, since it is not up to man to judge his fellow man. The role of Christianity would be symbolically to reject the principle of punishment. The path he shows would be that of benevolent pardon.

One can conclude that, contrary to past centuries, where political and religious interdependence did not allow humanistic

thought about the death penalty, the modern era has seen the emergence of a refusal of capital executions, as much on the political side as religious. For all that, abolition of the death penalty does not constitute an end in itself and requires reflection to establish an alternative repressive and education system. This fight has to do with making humanity move forward by promoting human rights. In this respect, public opinion, particularly international, and the media, have a role to play.

How do we Educate Public Opinion and the Media to Support Abolition?

Abolitionists need to use all legal means to speed up the cause of universal abolition. Legal and diplomatic pressure is not enough to change the state of things. Changing people's attitudes on the subject of the death penalty is long-term work that has different steps, notably awareness-raising and mobilization. Thus it is important to develop strategies in order to reach the media and, by so doing, to benefit from their multiplier effect on the public opinion. Remember in this respect; the extraordinary mobilization at the international level against the stoning of Amina Lawal and Safya Husseini, young Nigerian women, condemned to death in 2002 for adultery. The international mobilization let their lives be spared.

Colette Berthès fights for abolition as a member of "Fight for Justice", a group created in 1996 in order to support Odell Barnes, a prisoner on death row in Texas, and to finance a counter-investigation that would prove his innocence. Mrs. Berthès committed herself for Odell Barnes, a poor black man, speaking out about his innocence, at the moment when the affair of Karla Faye Tucker broke, at the beginning of 1998. Karla was a beautiful, intelligent young woman but guilty. Media the world over talked of Karla's case, of her rehabilitation in prison where she married a pastor and made herself useful to her fellow prisoners. Appeals for clemency addressed to the governor of Texas, George Bush, poured in from all over the United States. Nevertheless, she was executed. Mrs. Berthès decided to capitalize on the emotion aroused by Karla's execution. She wrote a letter for publication

in the cultural magazine "Telarama", telling about the Barnes case. The donations received let "Fight for Justice" finance a counter-investigation that brought proofs that Barnes was innocent of the crime for which he had been convicted and that there were falsification of proofs and false testimony.

In France at the same time, at the end of 1999, the deputy and former minister Jack Lang committed himself, alongside Amnesty International, against the execution of Barnes. The date was set, with no appeal having been accepted by the Texas judicial system. It was only at this moment that the media seized the affair. Ms. Berthès attributes this sudden interest of the press to several facts: the support of the condemned man by a personality, the fact that an innocent person was going to be executed, and the start of George Bush's electoral campaign in the United States, one of whose themes was, precisely, the death penalty. The media mobilization at the international level intensified little by little as the execution date approached. All the large papers talked about the Barnes affair, around one hundred radio programs were dedicated to him. Nonetheless, Odell was executed on March 1, 2000. What lessons can be learned from the Barnes affair and in a larger context, of the media attention and public pressure on the case of a person condemned to death? First, media action and public opinion pressure, when they get organized, are clearly limited by the political will of the deciders. In spite of the scale of the national mobilization in the United States to spare Karla F. Tucker and international concerning Odell Barnes, George Bush did not grant mercy to either one of the condemned persons. It seems that a number of American political men, from the moment that public opinion is favorable, are favorable to it, too. Now public opinion is a kind of convenient folding screen that political men open when they need it, affirms Colette Berthès. Secondly, public opinion is not an autonomous entity. It is made up of a group of individuals who act in a highly emotional state. In this sense, the most important work consists of contacting each individual and bringing him food for thought, solid arguments that make him confront his fears and his beliefs. Lastly, the media has the power to inform, to educate, to be a sounding board, to spread ideas. Abolition needs the media.

Concerning the opinion that each individual could have in relation to the death penalty, Mr. Rick Halperin, militant abolitionist of "Death Penalty News and Update" in Texas, explains the situation in that state. He makes a distinction between before and after 1998, the year of the execution of the young woman, Karla F. Tucker, representing a point of rupture. The prevailing feelings before 1998 were hate, anger, and vengeance. He himself was considered a "crazy extremist" because he was against the death penalty. The majority of the press in Texas was favorable to capital punishment, the "Austin Newspaper" being the only exception. In spite of press conferences, demonstrations, and even a 10-day march covering the whole state, the media was not interested in this subject. Karla's execution gave rise to numerous questions, particularly concerning granting clemency. Today, Rick Halperin's fight is supported by numerous Texas newspapers, by means of calls for a moratorium in the state, by the ban on executing minors and disabled people when that was still authorized, and by the reform of the Texas Committee for Pardon and Parole, among others. The press has become a new ally in the abolitionist fight. Finally, Mr. Halperin affirms that the choice of words is essential, the media uses terms that are too vague such as capital punishment or death penalty. Talk of it as "extermination". He considers that certain actions come from moral obligation, like sending petitions for clemency to the governor and to the seven members of the Texas Committee for Pardon and Parole.

Alexis Rutman, Secretary General of Ensemble Contre la Peine de Mort (ECPM), explained how a small organization like ECPM, with limited resources, must use its imagination to pass the message to the media. For example, when President George Bush visited Paris in 2003, ECPM militants hung 157 cardboard human figures from the Grenelle Bridge opposite the Statue of Liberty. 157 is the number of persons executed during Bush's term as governor of Texas. Mr. Rutman also emphasized that it is time to cooperate, particularly in raising young reporters' awareness of the death penalty.

This awareness raising, done jointly by the media and NGOs, requires constant educational and informational work, empha-

sizes Colette Berthès. She cites the example of France at the moment that François Mitterrand abolished the death penalty in 1981. The French population was 42% favorable to the death penalty in 1969, a calm period without atrocious crimes. This figure rose to 53% in 1971 during a deadly hostage-taking, and reached 63% in 1972, after the execution of the hostage-takers. Twenty years later, the number of persons favorable to the death penalty has dropped to less than 50% and is stable. Thus the importance of continuing to educate, even though moratoria have been instituted.

To conclude, it should be emphasized that militant abolitionists need the media, even if no media campaign has stopped the execution of a condemned person when political will was for that execution. Their role of information in the cases of judicial error or innocent prisoners contributes to the pressure for legislative changes. Thus, in North Carolina, the fact of clearing several condemned persons speeded up the idea of instituting a moratorium, even if the law has not been passed. In Massachusetts, the attempt to reinstate capital punishment failed, thanks to media coverage of the cases of condemned innocent people. More recently, in March, 2005, at the time of the decision rendered by the United States Supreme Court that abolished the death penalty for minors, one of the judges declared that the pressure of world opinion, "a harsh reality", had been taken into account in their decision. A breach that opens in the determination of American partisans of the death penalty.

final declaration of the 2nd World Congress Against the Death Penalty

The 2nd World Congress Against the Death Penalty, organized by Ensemble contre la Peine de Mort (Together Against the Death Penalty) and Penal Reform International, with the support of the World Coalition against the death penalty, was hosted in Montreal, Canada, from 6-9 October 2004, in the presence of abolitionists from around the world. The Congress rejoices that a majority of countries have now abolished the death penalty or have renounced to carry out executions for over 10 years. The Congress congratulates Turkey, Bhutan, Samoa, and Serbia-Montenegro for having recently abolished the death penalty. It condemns the resumption of executions in Lebanon, Chad, Indonesia and India and the re-establishment of capital punishment in Afghanistan and Iraq. They deplore the retention of the

death penalty on 78 countries, notably in China, the United States, Saudi Arabia, Iran, Singapore, Guatemala and Cuba.

The Congress is concerned that the fight against the terrorism, necessary though it may be, is too often accompanied by an increasing reliance on the death penalty at a time when international penal jurisdictions are prosecuting the most serious crimes without reverting to capital punishment. Recent death sentences in Morocco and Indonesia, along with cases in the United States against alleged terrorists are both a sign of weakness and a fundamental error. The Congress supports the Spanish and Turkish people for not demanding the reestablishment of the death penalty despite the tragic attacks, which they experienced. Now more than ever, the Congress demands the immediate cessation of all executions as a step towards the universal abolition of the death penalty.

Today, the death penalty is recognized as a human rights violation and a cruel, inhumane and degrading punishment. The Congress stresses the fundamental importance of ratifying international and regional treaties that prohibit the use of the death penalty.

The Congress recalls that the unique deterrent effect of capital punishment has never been demonstrated.

The Congress denounces the racial, sexual, and economic discrimination that affects the imposition and execution of death sentences. It also denounces the increase in the number of offenses now punishable by death.

The Congress reaffirms that executions fail to address the victims' pain and suffering. It welcomes the fact that more and more victims' families are now working against the death penalty. The Congress calls on all countries to develop appropriate mechanisms to address their needs.

Sensitizing those who develop penal policies in retentionist countries is a priority. Action at the United Nations Commission on Crime Prevention and Criminal Justice should complement the efforts at the United Nations Commission on Human Rights.

Finally, abolition leads to an in-depth reflection on alternative penalties for the most serious crimes, in an effort to punish the offender while working for his or her rehabilitation.

The Congress adopts four key recommendations:

Death sentences and executions of juvenile offenders must cease. Abolition of the juvenile death penalty is an imperative norm of international law that must apply in all countries.

All members from the political, legal, business, media and sports communities are called on to encourage the Chinese authorities to suspend all executions without delay. Preparations for the 2008 Beijing Olympic Games present an opportunity for intensive and continuous international pressure.

As at the Montreal Congress, the abolitionist movement must strengthen and develop new links between American abolitionists and the international community in order to consolidate recent progress on the judicial front and broaden the debate over capital punishment.

Abolitionist countries must not deport and extradite individuals to countries where they risk being sentenced to death

In collaboration with abolitionist countries and with the support of the media, the Congress calls for:

Abolitionists from around the world to join the World Coalition against the Death Penalty, to participate with all citizens in the World Day against the Death Penalty on October 10th of each year, and to support local and national organizations and all those who are working for abolition.

Members of parliament to establish, in their assemblies, information and advocacy groups for the abolition of capital punishment. Lawyers to increase their support for colleagues who are defending death row inmates and to denounce the conditions in prison and the insufficient due process to which the prisoners have access.

The promotion of regional dynamics for abolition in Asia, the Arab and Muslim world, Latin America and Africa, through conferences and advocacy campaigns.

Cities from around the world to participate in the movement of Cities against the Death Penalty organized by Sant' Egidio by illuminating symbolic landmarks on November 30th of each year.

Abolitionists in each country to participate in the preparatory conference for the 3rd World Congress against the Death Penalty, to be organized by Together against the Death Penalty in Istanbul in June 2005.

The European Union, all abolitionist countries, and Canada and Turkey in particular, are called upon to support these initiatives. Finally, all abolitionists are encouraged to continue their relentless efforts to increase public awareness, including in abolitionist countries, of the fundamental reasons for the abolition of the death penalty.

Montreal, October 8, 2004.

annexes

message from Jacques Chirac

President of the French Republic

read by Nicole Guedj,
Minister of State for Victims' Rights
Attached to the Keeper of the Seals,
Minister of Justice,
to the Second World Congress
Against the Death Penalty

Ladies and gentlemen,

You have gathered here in Montreal today in the name of a conviction and a commitment. France shares this conviction and commitment. Human life is inviolable and sacred. In no case can killing be an act of justice.

Each day, you are taking this fight to your parliaments and to your associations, taking it to your fellow citizens and the peoples of the world to achieve the universal abolition of the death penalty. France shares this fight.

The presence of so many of you here, on the occasion of the World Day Against the Death Penalty, along with your steadfast struggle, testify to the rejection of fear and the spirit of revenge, and to the choice of justice and humanism.

Those in favour of the death penalty use considerations of equity and effectiveness in their attempt to legitimize it. There's no equity or effectiveness when it comes to the death penalty. There is no such thing as infallible justice and every execution could kill an innocent person. Capital punishment does not remedy the harm done to victims any more than it makes society safer. The death penalty is also intrinsically unfair. The defence arguments and means of appeal run out faster for the poor and minorities than for the rich.

The abolition of the death penalty is part of the progress of civilization. The combat started in the Age of Enlightenment, with Beccaria who saw in the death penalty the "end of the social contract". The combat has been going on for more than two centuries now. The cause was taken up by Condorcet, Victor Hugo, Aristide Briand and Albert Camus. It is now up to us to carry it forward today.

As of now, half the member States of the United Nations have taken this step. France did so in 1981, at the behest of President François Mitterrand. Our country also undertook the necessary procedures to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights. The European Union has included the principle of abolition in its Charter of Fundamental Rights. About forty other countries have stopped applying the death penalty. The International Criminal Court and other international courts have rejected it.

But we can also see what remains to be done. Seventy-eight countries have maintained the death penalty and continue to apply it. Several countries have resumed executions after observing a moratorium.

I am making a fresh call today for an immediate and general moratorium on all executions, the first step towards universal abolition. There are still countries where the death penalty is applied to children, teenagers and people with mental deficiencies. Let us ask these countries to stop right now. Such executions are an outrage to our consciences and there can be no debate about the fact that they are the negation of the very idea of justice.

As the world seems to be swept up in a dizzying spiral of violence, let us show our confidence in the future. Let us make a resolute choice for education and prevention. Let us show by further progress in justice and the law that we intend to fight steadfastly against contemporary scourges with the weapons of freedom and humanism.

This is the meaning of your fight and you can count on France's determination to play its full role in this struggle.

Thank you.

keynote address by Mary Robinson

Former President of the Republic of Ireland
and the High Commissioner on Human Rights, UN,
President of Ethical Globalisation Initiative (EGI),
Honorary president of PRI

7 October 2004, Montreal, Canada

I am very pleased to address this second World Congress against the death penalty, and glad that it is being held in North America. I would like to warmly thank the organizers, the Ensemble Contre la Peine de Mort ECPM and Penal Reform International PRI of which I have the honour to serve as Honorary President. I would also like to thank the city of Montreal and the government and people of Canada for being such excellent hosts.

This is an ethical and moral issue, and it deserves the attention of a World Congress. As UN High Commissioner for Human Rights I would raise this issue on visits to countries that still carried out the death penalty such as China, Iran and the United States. I would also try to prevent individual executions by writing to the relevant authorities, and speaking out publicly on the matter. I was particularly concerned about the death penalty for those who had committed crimes under the age of 18, or who were mentally retarded or where non-citizens were denied consular access as provided under Article 36 of the Vienna Convention on Consular Relations. I am confident that my distinguished successor, Louise Arbour - a native of Montreal - will use her moral voice and speak out on this issue. Her statement to this Congress was read out on her behalf yesterday.

At this World Congress we can take stock of some progress on these and other issues. Indeed, since the Strasbourg Congress there has been slow but steady progress toward abolition or

moratorium of the death penalty worldwide. This is remarkable given that the state of world peace has not made the same progress. Since 2001 6 countries have ceased use of the death penalty in whole or in part.* Each year we also see countries reducing the number of crimes punishable by death, reducing or de facto ceasing executions or adopting moratorium. World attention, education and pressure do make a difference.

I welcome Canada's leadership in the Western Hemisphere with their abolition of the civilian death penalty in 1976 and for all crimes in 1998. I also applaud Canada's insistence in recent cases on assurances that the death penalty will not be invoked in extraditions to countries which still practice the death penalty. At this conference we should call upon Canada to close the death penalty loophole in deportations and to stay any deportation where the death penalty may be used. Likewise we should call on Canada to ratify the 2nd Protocol to the ICCPR. These two things are very important in the campaign for world abolition of the death penalty. Nowhere is this more important than with Canada's neighbor and close friend, the United States. The great bond and extensive border between these two countries gives Canada the ability and responsibility to educate and persuade the US that the death penalty has no place in the 21st Century and, until such time, to bar any extradition or deportation where death is a possible punishment.

Living now in New York, I have become more aware of an encouraging trend in the United States on the death penalty. Those attending this World Congress have had the benefit of an excellent panel of experts discussing recent developments, but let me give you some of my impressions.

The moratorium movement is developing with notable leadership shown in the state of Illinois. On January 31, 2000, then Illinois Governor George Ryan declared a moratorium on further executions in Illinois pending a study on its application and fairness. On January 11, 2003, Governor Ryan changed the face and debate of the American death penalty when he commuted the death sentences of all 156 inmates on Illinois death row. His words speak to a problem with all the American states with a death penalty: "Our capital system is haunted by the demon of error: error in determining guilt and error in determining who among the guilty

deserves to die. What effect was race having? What effect was poverty having? Because of all these reasons, today I am commuting the sentences of all death row inmates.”

Governor Ryan’s commutations came at the mid point between the two World Congresses. While his courage has not yet been matched by any other American Governor, his actions have sparked a renewed debate and discussion in US political circles. Possible moratoriums are being debated in such states as North Carolina and some states, such as New York, are now considering the cost of death penalty and its value to society, with a consideration toward moratorium or abolition. Many states and the Federal Government are considering greater legal protections and adequate funding for those facing Capital charges.

These debates come in the context of growing numbers of wrongful convictions and a declining use of the death penalty. Since 1973 116 innocent people have been released from US death rows. For the last 4 years the average number of death verdicts has been 174. In 2003, there were 143 death sentences issued, the fewest since 1977. Perhaps the most recent example of the rejection of the death penalty was the recent life verdict in Oklahoma in the death penalty case of Terry Nichols for the Oklahoma City Federal Building bombing.

In the United States the use of the death penalty is historic and imbedded in American culture. It is natural to expect that progress in such an environment will be slow but clearly progress is being made and it needs to be fostered through tireless efforts and reasoned dialogue. Governor Ryan’s actions highlight the important role the moratorium movement plays in the quest for abolition of the death penalty. Without the moratorium individuals on Illinois death row would have been executed while the study necessary to support commutation was being conducted. It highlights the important social compact inherent in opposition to the death penalty; we cannot readily sacrifice individuals today as we work for a significant achievement tomorrow. Another area of progress has been the abolition of the death penalty when an individual is found to be mentally retarded. On June 20, 2002 the United States Supreme Court issued its landmark ruling ending the execution of those with mental retarda-

tion. The case, *Atkins vs Virginia*, finally brought the United States up to the accepted international standard when the Supreme Court held that executing a mentally retarded individual is a violation of the United States’ Bill of Rights Eighth Amendment ban on cruel and unusual punishment. The decision reflected the national consensus that the execution of the mentally retarded was wrong. As a result of that decision the issue still remains on a case by case basis as to who is mentally retarded. This however creates another dysfunction of the death penalty in that a few points either way on an intelligence test can mean the difference in life or death. Sadly, in the United States, this can be determined by the quality of the doctor, lawyer or bias of the judge.

The consensus to end the execution of the mentally retarded was shaped through the difficult and lengthy work by dedicated persons and groups to raise the public and governmental consciousness over many years and to effectively raise the issue in the courts. Let me pay tribute here to work done by Harold Koh and his students in Yale on this issue. Indeed the work of many dedicated people changed public opinion in the United States. It is an example and inspiration for ongoing and future efforts, especially in the area of current debate in the United States, juvenile executions.

As we meet here in Montreal, we also await oral argument and a legal decision on whether the United States will continue to execute juvenile offenders. The US Supreme Court, in a case titled *Roper vs Simmons* will hear oral arguments next week on October 13. The Court’s decision on the constitutionality of the death penalty against 16 and 17-year-old offenders, under the same cruel and unusual standard as applied for mental retardation, is expected in the first half of 2005. Their consideration of juvenile executions comes as the US is realizing that this punishment for children is unacceptable. Since 2001, the States of Indiana, South Dakota and Wyoming have abolished juvenile executions. A consistent stream of public opinion polls demonstrates that the majority of American citizens favor banning this practice. The jury decision to reject the death penalty in juvenile Lee Boyd Malvo’s case – the Washington area ‘sniper’ case - illustrates the public rejection of executing juveniles.

Since 2003, Amnesty International has documented six people executed in China, Iran and the USA, for crimes committed when they were children. Amnesty also reports that other convicted child offenders remain under sentence of death in Pakistan, the Philippines and Sudan

This information highlights that worldwide, the execution of juvenile offenders has all but ended. As we meet in Montreal the USA is the only country which openly acknowledges executing child offenders and continues to justify its actions under domestic and international law. In the last ten years, the U.S. has executed more juvenile offenders (17) than all other nations combined (9).

But the world does not agree. In 2002, the Inter-American Commission on Human Rights, in the case of *Domingues v United States*, found that the U.S. is violating a *jus cogens* norm of international law by executing juvenile offenders. Executing juveniles is clearly prohibited by the International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights, and the U.N. Convention on the Rights of the Child (CRC). The United States Supreme Court has the opportunity to declare this practice as cruel and unusual punishment under US Constitutional Law. Nobel Peace Prize Laureates, former U.S. Diplomats, senior voices in the European Union and the Bar of England and Wales have joined numerous US organizations from the fields of medicine, religion, and law in petitioning the Court to ban juvenile executions. Let us join these illustrious groups in support of a positive decision in *Roper v Simmons*.

Another development since the first World Congress is the progress made on enforcement of the Article 36 Consular Rights Provisions of the Vienna Convention on Consular Relations. At the time of the first World Congress, the US had not provided any remedy for foreign nationals on death row who were denied their rights under Article 36 of the VCCR. The US had also done a relatively poor job of insisting that local, state and federal law enforcement agencies met their obligations. The decision of the International Court of Justice in *Germany (LaGrand) v United States* had been largely dismissed as meaningless in the US domestic legal system. To its credit, the Government of Mexico has

been faithful in assisting its citizens in US capital cases and, on behalf of its citizens on US death rows, brought the VCCR Article 36 violation issue back to the International Court of Justice.

On March 31, 2004, in *Case Concerning Avena and Other Mexican Nationals (Mexico v United States of America)*, the International Court of Justice ruled that the United States had violated its obligations under Article 36 to arrested foreign nationals. The ICJ stated that the failure of the United States to provide these rights arose from the failure of the US competent authorities to inform the Mexican nationals concerned, to notify consular posts and to enable Mexico to provide consular assistance. The ICJ has placed an obligation on the US to permit review and reconsideration of the Mexican citizen cases by the US Courts.

The immediate result of this ruling can be seen in the case of Osbaldo Torres Aguilera in Oklahoma. In an unpublished legal opinion, the Oklahoma Court of Criminal Appeals ruled that Article 36 of the VCCR had been violated. The Governor of Oklahoma commuted the sentence to life without parole. The Avena decision is affecting other cases of foreign nationals and the Mexican Government deserves the credit for this important step in protecting human rights.

Let me conclude with an apt comment on how we advance our cause, which was made by Speedy Rice, one of the United States experts participating at this World Congress. "The death penalty cannot be shouted out of existence" he said "but rather it can be sung to sleep". So let us sing in harmony at this World Congress. Let our song become a best seller. Let us sing all over the world, especially on October 10th - World Day Against the Death Penalty - and let us put the death penalty to sleep!

* Per Amnesty International:

2002: CYPRUS and SERBIA AND MONTENEGRO abolished the death penalty for all crimes. TURKEY abolished the death penalty for ordinary crimes.

2003: ARMENIA abolished the death penalty for ordinary crimes.

2004: BHUTAN and SAMOA abolished the death penalty for all crimes.

“Montréal 2004” Agenda

Tuesday October 5th, 2004

- 5:00 pm • **Welcoming Cocktail for the Congress delegates**,
Theatre Maisonneuve, main bar
- 7:00 pm • **Official evening**,
Theatre Maisonneuve, Ms Stéphanie Moffatt, ECPM Canada
- 7:30 pm • **Screening of *The Empty Chair***, a documentary, followed by a
debate with the producers.

Wednesday October 6th, 2004

Théâtre Maisonneuve

- 9:00-12:30 • **Opening Ceremony**
- **Introductory Video**
- **Welcoming remarks**
 - Mr Michel Taube, President, ECPM
 - Mr Ahmed Othmani, President, PRI
- **Presentation by the Congress spokesperson and members of the Honorary Committee:**
 - Ms Bianca Jagger, Good Will Ambassador for the fight against the death penalty, Council of Europe
 - Mr Philippe Maurice, Researcher, Ecole des hautes études en science sociales, and the last French citizen to have been sentenced to death.
- **Remarks from government sponsors:**
 - H.E. Piet De Klerk, Ambassador for Human Rights, The Netherlands, country ensuring the presidency of the European Union
 - Message from Ms Louise Arbour, High Commissioner for Human Rights, read by Mr Craig Mokhiber, Officer-in
 - Charge of the New York, Office of the High Commissioner for Human Rights at the United Nations, New York

- Message from His Holiness, Pope Jean-Paul II, by Monseigneur AllanMcCormack, legal Vicar in Canada, and Representative of the Holy See.
- Message from Ms Laurette Onkelinx, Justice Minister of Belgium and interim Prime Minister, by Ms Maité de Rue, Counsellor
- M. Hartmut Scheer, Consul General of Germany in Montreal
- M. Manuel Cosio, Consul General of Mexico in Montreal
- Message from Ms Margherita Boniver, Under-Secretary of State for Foreign Affairs, Italy, by H.E. Marco Colombo, Ambassador, Embassy of Italy, Ottawa
- Message from Dr Benita Ferrero-Waldner, Foreign Affairs Minister of Austria, by H. E. Otto Ditz, Ambassador, Embassy of Austria, Ottawa
- H.E. Anton Thalmann, Ambassador, Embassy of Switzerland, Ottawa
- Message from Mr Jacques Chirac, French President, by Ms Nicole Guedj, State Secretary, Victims rights, France
- Message from Ms Aileen Carroll, Minister, International Cooperation, Canada
- Ms Monique Gagnon-Tremblay, Deputy Premier and Minister of International Relations, Québec

- **Testimonial from Mr Juan Roberto Melendez-Colon**, former death row inmate, United States
- **Speech by Mr Pierre Séguin**, Vice-President of the Centrale des Syndicats du Québec on behalf of the Canadian partners, with the participation of:
 - Ms Elise Groulx, President of the International Criminal Defense Attorneys Association (ICDAA), and of the International Penal Bar
 - Ms Anne Leahy, Director, Institut des Etudes Internationales de Montreal, Canada
 - Mr Denis Mondor, President of the Quebec Bar
 - Mr Jean-Louis Roy, President of Rights and Democracy
 - Ms Béatrice Vaugrante, President of the Amnesty International Canadian francophone section
- **Speech by Mr Michel Taube**: Strategies towards universal abolition, the contribution of the World Congress of Montreal
- **Speech by Ms Irene Khan**, Secretary General of Amnesty International: State of the death penalty around the world: Challenges and Opportunities
- **Testimonial from Mr Bud Welsh**, introduced by Mr Renny Cushing, Murder Victims Families For Reconciliation (MVFR).

- **Presentation from** Mr Denys Robiliard on behalf of the World Coalition against the death penalty, to announce the World Day on October 10th.
- **Joint presentation by** Mr Denis Mondor, President of the Quebec Bar Association, Mr Jean-Marie Burguburu, President of the Paris Bar Association, and by Mr Barry Scheck, President of the National Association of Criminal Defense Lawyers (NACDL)
- **Video message from** Mr Robert Badinter, Senator, France

11:30 • **International press conference of the Congress**

13:30 • **Plenary Session**

- Baroness Vivien Stern, Secretary General of PRI, Director of Research, Centre International des Etudes Pénitentiaires, United Kingdom
Beyond the abolition: the question of alternative to capital punishment, and The choice of penal policies

• **Plenary debate:**

How was the death penalty abolished in Canada?

President: Ms Claire L'Heureux-Dubé, Former Judge at the Supreme Court, Canada

With participation from:

- Mr Warren Allmand, Ex Solicitor General, House of Commons, Canada
- Mr David Daubney, General Counsel, Minister of Justice, Canada
- Mr Bernard Grenier, Attorney, Former judge, Canada
- Rev. Jamie Scott, Reverend, Counsel of Churches, Canada
- Dr Carolyn Strange, Associate Professor of criminology and history, University of Toronto, Canada

• **For a ratification campaign of the 2nd Optional Protocol,**
M. Brendan Scully, ECPM Canada

• **The case of** Mr Sebastian Burns et Mr Atif Rafay

- Testimonial by Mr Daniel Lapres, Canada and Ms Sarah Isaacs, Canada
- Audio message from Mr Sebastian Burns and Mr Atif Rafay

• **Main witness:** Ms Hauwa Ibrahim, Attorney, Nigeria

• **Presentation of a series of research notes prepared by students from around the world for Montreal 2004:** by Ms Gaelle Breton Le Goff, Professor at UQUAM, P.H.Din Law, Canada

4:15 pm

• **Plenary debate:**

Death Penalty: international justice in the face of terrorism and contemporary genocide

President: Ms Hélène Flautre, as Chair of the European Parliament new Subcommittee on Human Rights

Participating:

- Mr Antoine Bernard, Executive Director of International Federation of Human Rights League (FIDH), France
- Ms Maela Begot, ECPM France
- Ms Elise Groulx, President of the ICDA and President of the International Penal Bar, Canada
- Mr Speedy Rice, Professor, California Western School of Law, United States
- Mr Jean-Louis Roy, President of Rights and Democracy, Canada
- Mr Miguel Vecino, Researcher, Spain

6:00 pm

• **World coalition against the death penalty**

President: ECPM, Executive Secretary of the Coalition

Speech by Ms Florence Bellivier (FIDH), Mr Eric Prokosch (AI), Mr Mario Marazziti (Sant'Egidio), and Ms Tony McClary (AFSC)

8:00 pm

• **Official Evening: Premiere of the film Manners of Dying**

In the presence of Jeremy Peter Allen, Roy Dupuis, and Yann Martel *Manners of Dying*, a full-length film by Jeremy Peter Allen is based on a story from writer Yann Martel. This film tells the story of Kevin Barlow's (Roy Dupuis) last moments preceding his execution, and his relationship with the prison warden, Harry Parlington (Serge Houde). Parlington, who normally carries out the executions with an iron fist, sees his resolve weaken, as the last hours become a labyrinth of possible deaths.

Thursday October 7th, 2004

8:30 am • **Regional Roundtables**

Three sessions at 1h45, during which six to seven roundtables will be taking place simultaneously. Each round table is moderated by an Congress organizer, a Congress partner, or a personality. A student present at the debates will write a report, which will be used as the basis for both the general reports on Friday and the Acts of Congress.

• **Regional Roundtables**

• **Regional Strategy: how can we make Eurasia a continent without the death penalty?**

President: Ms Anne Leahy, Director of the Institut d'Etudes Internationales de l'UQAM de Montréal, Canada

Participating:

- Mr Didier Beaudet, representative from AI, will present the case of Bielorussia and Ouzbekistan
- Ms Tamara Chicunova, Mothers Against the Death Penalty and Torture, Ouzbékistan
- Mr Anarbek Ismailov, Presidential Administration, Kyrgyzstan
- Ms Polyakova Mara, President of the Independent Council of Legal Experts, Russia
- Ms Vera Tkachenko, Director, Central Asian Bureau of PRI, Kazakhstan
- Ms Dilafuz Tolibova, League of women lawyers, Tadjikistan

• **Latin America, a continent without the death penalty?**

President: Denys Robiliard, Lawyer, AI

Participating:

- Dr Helio Bicudo, Vice mayor of Sao Paulo, Brazil
- Mr José Alberto Flores, President of the Human Rights Commission, Guatemala
- Mr Florentin Melendez, Police Chief, Special Rapporteur, Inter-American Court of Human Rights
- Mr Douglas Mendes, Attorney, Trinidad and Tobago
- Ms Kristin Svendsen, Death penalty coordinator, Institute of Compared Studies in Penal Sciences, Guatemala
- M. Alfonso Rodriguez Ochoa, Senator, Mexico

• **The death penalty in the Arab and Muslim world**

Co-Presidents: Mr Ahmed Othmani, President, PRI / Mr Ahmed Obeidat, Ex-Prime Minister, National Center for Human Rights, Jordan

Participants:

- Mr Mohammed S. Ayoub, Palestinian Bar, Palestine

- Ms Noura Borsali, Journalist, Tunisia
- Mr Youssef Madad, Associated Secretary-General of OMP, Morocco
- Mr Abdul Razique Samadi, Police Chief Independent Commission of Human Rights, Afghanistan
- Mr Cem Sofuoglu, Lawyer, Turkey
- Dr Ogarit Younan, National Coalition Against the Death Penalty, Lebanon

• **The death penalty on the African continent**

Co-Presidents: Mr Sidiki Kaba, President of FIDH / Ms Vera Chirwa, Police Chief, African Commission on Human Rights, Malawi

Participants:

- Mr Ngondji Liévin, Attorney, Congo
- Mr Olawale Fapohunda, Legal Resource Consortium, Nigeria
- Mr Jean-Bernard Padaré, Vice-president of the Chadian League on Human Rights, FIDH, Chad
- Mr Alassane Seck, Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO), Senegal

• **The death penalty in Asia / What strategies can be used to abolish the death penalty in China? (With FIDH)**

President: Ms Marie Holzman, Sinologist Professor, Université Paris VII, France.

Participants:

- Mr Eric Bernard, ECPM, France
- Mr Danthong Breen, Union Civil Liberty (UCL), Thailand
- Mr Bikram Jeet Batra, Amnesty International, Legal Officer, India
- Ms Maiko Tagusari, Japan Federation of Bar Associations (JFBA), Japan / M. Etienne Jaudel, Attorney, FIDH
- Mr Theodore Ong Te, Free Legal Assistance Group, Philippines
- Ms Liz Wickeri, Human Rights League in China

• **Ethical arguments, philosophies, and religions in favor of abolition**

President: Mr Marc Jacquand, ECPM, United State

Participants:

- Mr Lew Diggs, Ethics specialist, Canada
- Mr Julius Grey, Attorney, Canada
- Mr Christophe Mousset, Researcher, France
- Mr Dale S. Recinella, Catholic chaplain, Florida's Death Row & Solitary Confinement, United States
- Ms Sylvie de Pontual, President of ACAT France, member of FIACAT, France

10:45 am • **Roundtables: Judicial Strategies and Politics**

• **The question of extradition and exporting refugees to states that use the death penalty**

President: Ms Lucie Lemonde, Professor of International Law, Université du Québec à Montréal, Canada

Participants:

- Mr Michel Coutu, Researcher, Canada
- Mr Rob Dunham, Attorney, Canada
- Ms Marie-Hélène Giroux, Attorney and Researcher, Québec, Canada
- Mr Julius Grey, Attorney, Canada
- Ms Julia Hall, Researcher, Human Rights Watch, United States

• **Minors and the Death Penalty (with Amnesty International)**

President: Ms Béatrice Vaugrante, President, AISCF, Canada

Participants:

- Mr Olivier Delas, Professor at l'Université du Québec at Montréal, Canada
- Ms Sue Gunawardena-Vaughn, Directeur of the Program to Abolish Death Penalty, United States
- Mr Bill Pelke, President of Journey of Hope, United States
- Mr Eric Prokosch, Death Penalty Coordinator, AI, England
- Dr Cécile Rousseau, Psychiatrist, Canada

• **The death penalty and the violation of international rules regarding human rights**

President: Mr Armand de Mestral, Professor, Co-director of the Institute of European Studies, McGill University, Canada

Participants:

- Ms Gaëlle Breton-Le Goff, Professor, Canada
- Ms Linda Carter, Professor at McGeorge Law School, United States
- Ms Lilian Chenwi, Centre for Human Rights, Faculty of Law, University of Pretoria, South Africa
- Mr Etienne Jaudel, Attorney, FIDH, France
- Mr Laurent Pettiti, Attorney, Paris Bar, France

• **The role of political institutions, and regional and international courts in the abolitio of the death penalty**

President: Mr Jean-Louis Roy, President, Rights and Democracy, Canada

Participants:

- Ms Vera Chirwa, Police Chief, African Commission on Human Rights, Malawi
- Mr Florentin Melendez, Police Chief, Special Rapporteur, Inter-American Court of Human Rights, Salvador

- Mr Craig Mokhiber, Officer-in-Charge of the New York Office of the Office of the High Commissioner for Human Rights at the United Nations, United States
- Ms May-Ann Ramsay, Principal Administrator, European Commission

• **Physicians against the death penalty (with Amnesty International)**

President: Mr James Welsh, Coordinator, Amnesty International, England

Participants:

- Dr Anant Bahn, Physician, India
- Dr Jonathan Groner, ER Doctor, United States
- Dr Abraham Halpern, Psychiatrist, United States
- Dr Mark Heath, Anesthesiologist, activist regarding the problems with lethal injection, United States
- Dr Richard MacLachlan, Physician and Professor, Canada

• **Capital Punishment, State Power and Political, Economic and Cultural Discrimination**

President: Mr Robert Meeropol, Executive Director, Rosenberg Fund for Children, United States

Participants:

- Mr Al Bronstein, Emeritus Director of the National Prison Project of the American Civil Liberties Union (ACLU), United States
- Mr Mihir Desai, The Human Rights Law Network, India
- Ms Eva Abu Halaweh, Director, NGO Mizan, Jordan
- Ms Mireille Mendes-France, AFPS, France
- Ms Tracy Ulltveit-Moe, Amnesty International, England
- Mr Steven Watt, Center for Constitutional Rights, United States

12:30 am • **International press conference**

- Ms Catherine Deneuve, French Actrice
- Ms Mary Robinson, Former President of the Republic of Ireland and the High Commissioner on Human Rights, UN, President of Ethical Globalisation Initiative (EGI), Honorary president of PRI
- Mrs Hauwa Ibrahim, Lawyer, Nigeria
- Ms Bianca Jagger, Good Will Ambassador for the fight against the death penalty, Council of Europe
- Mr Philippe Maurice, Researcher, Ecole des hautes études en sciences sociales, and the last French citizen to have been sentenced to death.
- Mr Ari Vatanen, Deputy, European Parliament
- Ms Elise Groulx, Lawyer, Présidente de l'AIAD et du Barreau Pénal International, Canada
- Mr Ahmed Othmani, President, PRI
- Mr Michel Taube, President, ECPM

1:30 pm • **Roundtables: Beyond Abolition**

• **The delicate issue of alternatives to capital punishment?**

President: Mr Ahmed Othmani, President, PRI

Participants:

- Mr Daniel Benson, Canadian Correctional service, Lifeline program, Canada
- Mr Andrew Coyle, Director, International Center for Prison Studies, England
- Mr Rudolp Jansen, Attorney, Director of the League of Human Rights, SouthAfrica
- Mr Rick Prashaw, Executive Director, Counsel of Churches for Justice, Canada
- Ms Zhemis Turmagambetova, Deputy Director of Kazakhstan International Bureau for Human Rights and Rule of Law, Republic of Kazakhstan

• **The role of the prison administration and the conditions of detention for those on death row**

President: Baronness Vivien Stern, PRI, England

Participants:

- Ms Lucy Mumbi Gachié, Co-Director of the Prison Authorities, Kenya
- Mr Liévin, Attorney, Democratic Republic of the Congo
- Mr Richard Sédillot, Attorney in charge of the project, “No execution”, ECPM, France
- Mr Vika Sergeeva, Director of PRI, Russia
- Mr Zakir Shuaib, Dost Welfare Foundation, Pakistan

• **Taking into consideration the victims' needs and the needs of their families**

President/Moderator: Mr Renny Cushing, MVFR, United State

Participants:

- Ms Tamara Chicunova, Mothers Against the Death Penalty, Ouzbékistan
- Ms Dolores Ladlad Pangilinan, SPDR, Philippines
- Ms Jeanette Popp, Founder of the Texas Moratorium Network and mother of a victim of a crime, United States
- Dr Rev. Melodee Smith, Restorative Justice, United States
- Mr Bud Welsh, United States

• **Which kinds of penal policy? (in partnership with the Canadian Legal Commission)** President: Mr Bernard Colas, Legal Commission, Canada

Participants:

- Mr Nils Christie, University of Oslo, Norway
- Mr David Daubney, Minister of Justice, Canada
- Ms Hélène Dumont, University of Montréal, Canada
- Mr Robert Gaucher, Criminologist, University of Ottawa, Canada

• **The death penalty and sexual identity**

President: Mr Pierre Séguin, Vice-President of the Central Unions of Québec (CSQ) and in charge of the CSQ committee for the rights of gays and lesbians, Canada

Participants:

- Mr Pierre Blain, Fondation Emergence, World Day Against Homophobia, Canada
- Mr Carol Michaud, Member of the network LGBT Amnesty International, Canada
- Mr Noël Saint Pierre, Attorney specializing in extraditions and discriminations, Canada

• **How to sensitize public opinion and the media in favor of abolition?**

President: Mr Mario Marazziti, Sant'Egidio, Italy

Participants:

- Ms Colette Berthès, Lutte Pour la Justice, France
- Ms Noura Boursali, Academic and Journalist, Tunisia
- Mr Rick Halperin, Death Penalty News and Update, United States
- Mr Alexis Rutman, attorney and General secretary of ECPM, France

3:30 pm • **Plenary Session**

- **Speech by** Mr Nobutu Hosaka, Ex-Secretary General of the League of Japanese members against the death penalty, Japan
- **Testimony:** Mr Sakae Menda, Ex death row inmate, Japan
- **Speech by** Ms Mary Robinson, Former President of the Republic of Ireland and the High Commissioner on Human Rights, UN, President of Ethical Globalisation Initiative (EGI), Honorary president of PRI.
- **Interreligious Ceremony**
- Mr Víctor Uribe, Section of Foreign Litigation, Legal Adviser's Office, Ministry of Foreign Affairs, Mexico

5:00 pm

• **Forum of Students against the death penalty**

Organized by the Université de Sherbrooke and Rights and Democracy.

With the participation of:

- Ms Jennifer Carlson, University of California at Berkeley, United States
- Mr Diego A. Martinez Castillo, Universidad Libre Colombia, Colombia
- Mr Ariel Hernán Pérez Cerviño I.E.S. N°1 “Dra. Alicia Moreau de Justo”, Argentina
- Mr Belaid Mirabti, University Paris 1 - Panthéon-Sorbonne, France
- Law faculty of the Université de Sherbrooke, Canada

8:00 pm

• **International Campaign for Mumia Abu Jamal**

Jacky Hortaut, Sam Jordan of ICFFMAB (International Concerned Friends and Family to Mumia Abu Jamal), audio message of Mumia Abu Jamal.

8:30 pm

• **Official Evening: Evening around the victims of the death penalty**

With the participation of:

- Dennis Skillicorn, has called during this evening. He is currently on death row in Missouri. His wife Paula Skillicorn, was also present
- Ms Suezann Bosler, United States
- Ms Martina Correia, United States, sister of a death row inmate
- Mr Shujaa Graham, exonerated California death row inmate, United States
- Ms Sonia Jacobs, United States, former death row inmate, released after 17 years on death row
- Mr Ray Krone, Exonerated death row, United States
- Mr Robert Meeropol, United States, son of the Rosenberg couple, executed in the United States
- Mr Juan Roberto Melendez-Colon, United States, released after 18 years on death row
- Mr Sakae Menda, ex death row inmate, Japan
- Ms Dolores Ladlad Pangilinan, Philippines, whose husband is scheduled to be executed in November
- Mr Bill Pelke, Journey of Hope... From Violence to Healing, United States
- Ms Jeannette Popp, United States
- Mr Peter Pringle, Ireland, condemned to death in 1980, then released after 15 years on death row
- Mr Dale Recinela, United States, lay Catholic Chaplain, Florida's Death Row & Solitary Confinement
- Mr Darby Tillis, Illinois, former death row inmate

And the presence of:

- Mr Renny Cushing, United States, MVFR
- Mr Sakae Menda, ex death row inmate, Japan
- Mr Philippe Maurice, ex death row inmate, France

Friday October 8th, 2004

08:15 am • **Plenary Session**

• **World Assembly of Attorneys and Legal Professionals**

Co-chaired by Maître Denis Mondor, President of the Quebec Bar, and Maître Richard Sédillot, Attorney, ECPM

Experiences in the defense of death row inmates:

- Mr Robert R. Bryan, Lead counsel for Mumia Abu-Jamal and former Chair, National Coalition To Abolish the Death penalty, San Francisco, United States
- Mr Hauwa Ibrahim, Attorney, Nigeria
- Mr Rudolph Jansen, Attorney, South Africa
- Ms Robin Maher, Director of the Death Penalty Representation Project of the American Bar Association, US
- Mr Douglas Mendes, Attorney, Trinidad and Tobago
- Ms Maïko Tagusari, JFBA, Japan
- Ms Ellen Kreitzberg, Professor of Law at Santa Clara University, United States

- Mr Richard Sédillot, Attorney, ECPM, will present the programme "No execution" Burundi

10:00 am • **Photo projection by Toshi**

10:30 am

• **International platform for the leaders of the American abolitionists**

President: Mr Mike Farrell, Death Penalty Focus, United States / Mr Marc Jacquand, ECPM, United States

Participation:

- Mme Jotaka Eaddy, National Coalition to Abolish the Death Penalty, United States
- Ms Rachel King, American Civil Liberties Union, Capital Punishment Project, United States
- Mr Speedy Rice, Professor, California Western School of Law, United States
- Mme Virginia E. Sloan, Founder and President of the Constitution Project, United States
- Mr John Terazano, Justice Project, United States

12:30 pm • **Break and Documentary**

2:00 pm • **Photo projection, Lou Jones, US photograph**

2:30 pm

• **World Assembly of Members of Parliament against the death penalty**

In presence of:

- Mr Fons Borginon, President, Justice Committee, Belgium
- Mr Jean-Pierre Charbonneau, MP, and Ex-President of the National Assembly of Québec, Canada
- Mr Giovanni Claudio Fava, It., MEP
- Ms Hélène Flautre, Fr., MEP, Chair of the new Subcommittee on Human Rights, European Parliament
- The Honorable Serge Joyal, Senator, Canada
- Ms Piiia-Noora Kauppi, MEP
- Mr Michael Hans Kavungo, National Council, Namibia
- Mr Olivier Maingain, MP, President of FDF, Belgium
- Ms Alexa McDonough, MP, Canada
- Ms Veronika Medvedova, MP, Czech Republic
- Mr Miroslav Mikolášik, MEP (SK) European Parliament
- Mr Vasalie Mois, MP, Romania
- Mr Laszlo Nagy, MP, President, Committee on Human Rights, Slovakia
- Mr Kandy H.S. Nehova, National Council Chairman, Namibia
- Mr Emilian Prichici, Senator, Romania
- Baroness Vivien Stern, House of Lords, England
- Mr Ari Vatanen, MEP (FR), European Parliament
- Mr Melchior Warhelet, Deputy, Belgium
- Video message from Mr Pieter Schieder, President of the Parliamentary Assembly of the Council of Europe
- Audio message from Mr Harold Dutton, House of Representatives, Texas, United States

• **The role of local elected bodies in the abolition of the death penalty: new actors engage in the fight against the death penalty**

With the participation of:

- Dr Helio Bicudo, Vice mayor of Sao Paulo, Brazil
- Mr Angelo Passaleva, Vice President of the Region of Tuscany, Italy
- Mr Alain Touret, Vice-President of Normandy, France

4:30 pm

• **Closing Ceremony**

Facilitator, Ms Nicole Stafford, Former General Delegate of Quebec in Brussels

Mr Pierre Pettigrew, Minister of Foreign Affairs, Canada

• **Testimonials of victims and of those on death row:**

- Ms Suezann Bosler, United States

- Ms Sonia Jacobs, United States, former death row inmate, released after 17 years on death row
- Ms Dolores Ladlad Pangilinan, Philippines, whose husband is scheduled to be executed in November
- Message of Jimmy Dennis, currently on death row, US
- Message of Ms Antoinette Chahine, Former death row inmate, Lebanon, read by Ms Simone Othmani, PRI, France
- **Tribute paid to Hauwa Ibrahim, Nigerian lawyer, involved in the fight against capital punishment**
- **Video message of Shirin Ebadi, Iran, Nobel Peace Prize, 2003**
- **Mr Sidiki Kaba, President, FIDH + Call to join the World Coalition, by Ms Wanda Mazzei (City of Mater, Italy), and Mr Youssef Madad (Observatoire Marocain des Prisons, Morocco)**
- **Montreal Declaration**
- **Closing by Gerald Tremblay, Mayor of Montreal,**

20:00 • **Concert by the Symphony Orchestra of Montreal (OSM), dedicated to the 2nd World Congress against the death penalty (for the registered Congress participants)**

Saturday October 9th, 2004

- **Booths and exhibitions** all day (Desjardins Complex)
- **Teach in** by students working with Mr Speedy Rice, Professor, California Western School of Law, United States
- **Peaceful Demonstration in the streets of Montreal**

Sunday October 10th, 2004

• **World Day against the death penalty**

Every year, on October 10, the citizens of the whole world say NO to the death penalty. 280 initiatives in 63 countries took place on 10 October 2003. The death penalty is still in force in many of these countries. The European Union, Canada and Mexico gave their official support. World Day 2004 will result from organisation of initiatives around the world and from the participation of representatives from around the world in the 2nd World Congress against the death penalty in Montreal.

- 1 *De facto* abolitionists African countries at the date of 16th september 2005: Benin, Burkina Faso, Centrafrique, Congo, Gabon, Gambia, Ghana, Kenya, Madagascar, Malawi, Mali, Mauritania, Niger, Togo.
- 2 Whose principle is, "An eye for an eye, a tooth for a tooth".
- 3 As shown by the "fatwa" (condemnation decisions issued by religious leaders) pronounced against intellectuals opposed to the official dogma, for example against Salman Rushdie, Taslima Nasreen, Naguib Mahfouz or Farag Foda.
- 4 Afghanistan had not had executions since the fall of the Talibans at the end of 2001. In Iraq, the fall of Saddam Hussein's regime in 2003 led to the suspension of the death penalty, at the request of the British, but this practice was reinstated by the provisional government as soon as it came into office in 2004. Lebanon had a *de facto* moratorium since 1998.
- 5 Iran, Saudi Arabia, Afghanistan, Mauritania, Sudan, Nigeria, Yemen, Pakistan, United Arab Emirates.
- 6 The Koran was supposed to have included a verse recognized by the Caliph Omar stating: "If an old man or an old woman fornicate, stone them to death, as a punishment of God." (Sourate Les Coalisés, 33).
- 7 Byelorussia, Moldavia, Ukraine, Estonia, Latvia, Lithuania, Armenia, Azerbaijan, Georgia, Federation of Russia, Kazakhstan, Kirghizia, Tadjikistan, Turkmenistan, and Uzbekistan.
- 8 Second optional protocol relating to the International Pact Relating to Civil and Political Rights, intended to abolish the death penalty, adopted and published by the General Assembly in its resolution 44/128 of December 15, 1989.
- 9 Protocol n°6 of April 28, 1983 at the Convention to Preserve Human Rights and Fundamental Liberties, concerning abolition of the death penalty.
- 10 Nonetheless, Latvia remains the only member county of the European Union to keep the death penalty for premeditated murder in wartime.
- 11 For the signatory countries of the United Nations Convention for Refugees (1951).
- 12 The death penalty was abolished in El Salvador with the 1983 Constitution, whose Article 27 proclaims: "The death penalty can be inflicted only in cases provided for by the military code while the country is in a state of international war"
- 13 The death penalty was abolished for ordinary crimes in 1984.
- 14 The 1917 Constitution affirms, in article 22: "The death penalty for political crimes is prohibited. This punishment can be applied only for treason in time of war, parricide, aggravated homicide, deliberately setting fire, criminal actions, piracy, and serious military crimes." Yet, the presence of such crimes in the constitution has a purely symbolic value. In fact, the death penalty cannot be imposed because it is not mentioned in any state or federal code. Theoretically, it can be pronounced by military courts. But, on April 15, 2004, the Mexican Senate approved a legal project that eliminates from the constitution the possibility for military courts to issue death sentences. Since the time of the Montreal Congress, Mexico has permanently abolished the death penalty.

- 15 Since its promulgation in San Jose in 1969, the American Convention Relating to Human Rights was signed and ratified by 27 countries out of 34. Seven others ratified the Protocol to the American Convention Relating to Human Rights Treating the Abolition of the Death Penalty, adopted in 1990 by the Organisation of American States.
- 16 Antigua and Barbuda, Barbados, Trinidad and Tobago, Belize, Jamaica, Saint Kitts and the Grenadines.
- 17 But at the same time, it was not accepted for Trinidad and Tobago.
- 18 In the meantime, the Philippines abolished capital punishment in June, 2006.
- 19 Article 37: The member states see to it that a) No child is submitted to torture or to punishment, or to treatment that is cruel, inhuman, or degrading. Neither capital punishment nor life imprisonment without possibility of release must be pronounced for offences committed by persons less than 18 years old.
- 20 Article 6-5: A death sentence cannot be imposed for crimes committed by persons less than 18 years old and cannot be carried out against pregnant women.
- 21 Article 68: [...] In no case can the death penalty be pronounced against a protected person less than 18 years old at the time of the offence.
- 22 The additional Protocol to the August 12, 1949 Geneva Convention Relative to the Protection of Victims of International Armed Conflicts (Protocol I): Article 77 - Protection of children: [...] A condemnation to death for an offence linked to armed conflict will not be carried out against persons who are not 18 years old at the time of the offence.
The additional Protocol to the August 12, 1949 Geneva Convention Relative to the Protection of Victims of Non-international Armed Conflicts (Protocol II): Article 6.4: The death penalty will not be pronounced against persons less than 18 years old at the time of the offence, and it will not be carried out against pregnant women or mothers of young children.
- 23 Article 4.5: The death penalty cannot be imposed on persons who, at the time the crime was committed, were less than 18 years old or more than 70 years old, ...
- 24 Article 5.: 1. Every child has the right to life. This right is imprescriptible. This right is protected by the law [...] 3. The death penalty is not pronounced for crimes committed by children.
- 25 International custom is restricting but offers the possibility of reservation, whereas "jus cogens" does not allow reservations.
- 26 Michael Domingues *vs* United States of America, affair 12.285, Merits, report n°62/02, October 22, 2002, §§ 84-85 and 112.
- 27 Ropers *vs* Simmons.
- 28 Sogi *vs* Canada (Minister of Citizenship and Immigration), [2004] F.C.J. No. 1080, par. 18 and 20.
- 29 "In Canada, the result of weighing the various considerations by the Minister should conform to the basic principles of justice guaranteed in Article 7 of the Charter. It follows that, insofar as where the Immigration Law does not rule out the possibility of deporting a person to a country where they risk torture, generally the Minister must refuse to deport the refugee when the proof reveals the existence of a serious risk of torture." (See the Suresh decision, par. 77).
- 30 "Empty Promises": diplomatic assurances do not protect from torture", Human Rights Watch, April, 2004.
- 31 National Coalition to Abolish the Death Penalty. The NCADP, created in 1976 and composed of local and national members, works on the assumption that the death penalty is a violation of the rights of man, and stresses different

- questions such as the racist character of this punishment, its application to the most destitute, its ineffectiveness in the fight against crime, and the high cost to implement it.
- 32 R.J. Dupuy's phrase.
- 33 U.N. General Assembly, Res. 2857 (XXVI) (1971). This resolution was confirmed by the Economic and Social Council's resolution 1754 L the same year.
- 34 See particularly the intervention of the Economic and Social Committee, which is submitted every five years by the UN Secretary General, from reports on the question, the Human Rights Commission, the Human Rights Committee.
- 35 Universal Declaration Of Human Rights, Res. 217 A (III), Doc. Off AG. NU. A/810, 3d sess., supp.n°13, Doc NU A/810 (1948).
- 36 For example, the preamble to Res. A.G. 2393 (XXIII).
- 37 Report of Mr. Bacre Waly Ndiaye, Reporter on extrajudicial, summary, or arbitrary executions, presented in application of the Human Rights Commission's resolution 1997/61 Mission in the United States of America E/CN.4/1998/68/Add.3, January 22, 1998, § 18.
- 38 Even in the case where an exceptional public danger threatens the existence of the nation. Human Rights Committee, Human Rights Committee General Observation 6(16) on Article 6 of the International Pact Relative to Civil and Political Rights, Human Rights Committee, sixteenth session, 1982.
- 39 See the individual opinion of Mr. Bertil Wennergren in the case Kindler: Joseph Kindler *vs* Canada, Communication No 470/1991 CCPR/C/48/D/470/1991. Constatations adopted November 18, 1993.
- 40 Pact Art. 6(2).
- 41 Guarantees for the Protection of Personal Rights of Persons Liable to the Death Penalty, Res. CES 1984/50, Doc Off. CES NU, 1984.
- 42 Report of M. Bacre Waly Ndiaye, *loc.cit.*, note 45, § 21.
- 43 On the other hand, the PIDCP and the CIADH provide the possibility for any person condemned to death to ask for amnesty, pardon, or commutation of the sentence.
- 44 The most well-known being CEDH Protocols 6 and 13, the Protocol of the American Convention Relative to Human Rights Dealing with Abolition of the Death Penalty, and PIDCP Protocol 2.
- 45 Drawn up in Vienna on April 24, 1963. Became effective on March 19, 1967. United Nations, Collection of Treaties, vol. 596, p. 261. Ratified by the United States.
- 46 In October, 2004, at the time of the Second World Congress Against the Death Penalty, there were 117 foreign nationals in death penalty areas in the United States, representing at least 31 different nationalities.
- 47 Piece of information brought before the Court by a person or organization that is not implicated in the case
- 48 45 countries have ratified the CEDH Protocol 6, Russia is the only European country not yet to have ratified it. 36 countries have ratified the CEDH Protocol 13 while eight countries have signed but not yet ratified: Albania, Armenia, Croatia, Spain, France, Italy, Moldavia, Poland.
- 49 CEDH Article 6.
- 50 CEDH Article 3.
- 51 See note 51.
- 52 To this date, capital punishment has been abolished in most member countries, and those that have not yet abolished it do not apply it.
- 53 Adopted in 1969 and today ratified by 27 of 34 American countries.
- 54 American Bar Association, [On line] [<http://www.abanet.org/deathpenalty/>].

- 55 February 2, 2005, Article 14 b “The Death Penalty is Abolished”, was added to the Constitution.
- 56 Association member of the International Federation of National ACAT (FIACAT) and of the World Coalition Against the Death Penalty.
- 57 Exodus 21, 23-25
- 58 Saint Thomas Aquinas, Theological Survey.
- 59 Cesar Beccaria, Treatise of Crimes and Punishments, 1764.
- 60 Declaration of the Ecumenical Council of Churches (ECC).