CAPITAL PUNISHMENT

Part I. Report, 1960

Part II. Developments, 1961 to 1965

UNITED NATIONS

THE "MARC ANCEL"'s REPORT

A mi gran Amigo

Luis Arroyo Zapatero,

Vuestro Presidente de la Sociedad Internacional de Defensa Social, Digno Successor del grande Marc Ancel y de Simone Rozes, con toda mi estima y afecto

Madrid, 11 de Noviembre 2009

Department of Economic and Social Affairs

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New York, 1968

NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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Part I
CAPITAL PUNISHMENT TO 1960

FOREWORD

On 20 November 1959, during its fourteenth session, the General Assembly adopted resolution 1396 (XIV) by which it invited the Economic and Social Council to initiate a study of the question of capital punishment, of the laws and practices relating thereto, and of the effects of capital punishment, and the abolition thereof, on the rate of criminality.

After considering this resolution, the Economic and Social Council adopted on 6 April 1960 resolution 747 (XXIX) entitled " Procedure for the study of the question of capital punishment ", in which it expressed the opinion that the Council should be provided with a factual review of the various aspects of the question of capital punishment and requested the Secretary-General to prepare such a review, consulting, as he deemed appropriate, the *ad hoc* Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders set up under General Assembly resolution 415 (V). It has since been decided that the review in question would be submitted to the *ad hoc* Advisory Committee of Experts at its meeting in January 1963, and to the Economic and Social Council at its thirty-fifth session in April 1963.

The present report on capital punishment has been prepared by Mr. Marc Ancel, a Justice of the French Supreme Court (Conseiller à la Cour de Cassation) and Director of the Criminal Science Section of the Institute of Comparative Law of Paris.

With a view to obtaining the necessary data for the preparation of the study on capital punishment, the Secretary-General addressed to all States Members of the United Nations and to certain non-member States a questionnaire requesting information on the laws, regulations and practices in force. A second questionnaire, requesting information on the deterrent effect of the death penalty and on the consequences of its abolition, was sent to the national correspondents in the field of the prevention of crime and the treatment of offenders, and also to certain non-governmental organizations.

The author has accordingly based the present report on the replies to these two United Nations questionnaires and on the information which he himself has been able to assemble.

In addition, the Council of Europe has kindly given the author permission to use the documentation which he had received as rapporteur of a special sub-committee of the European Committee on Crime Problems when that sub-committee carried out a review of the question of capital punishment in the countries members of the Council of Europe. The Council has published the results of this review in 1962 in a study prepared by Mr. Ancel, and entitled *The death penalty in European countries.*

The governments of the following countries replied to the United Nations questionnaire:

Member States. — Afghanistan, Argentina, Australia (information concerning the Commonwealth of Australia and its six States and two territories), Austria, Burma, Cambodia, Canada, Central African Republic, Ceylon, Chad, Chile, China, Colombia, Congo (Leopoldville), Czechoslovakia, Dahomey, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Ghana, Greece, Guatemala, Iceland, India, Indonesia, Iran, Iraq, Italy, Ivory Coast, Japan, Laos, Lebanon, Luxembourg, Federation of Malaya, Morocco, Netherlands (information concerning metropolitan Netherlands and Netherlands New Guinea,* Surinam and Netherlands Antilles), New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Philippines, Poland, Portugal, Senegal, Somalia, Republic of South Africa, Spain, Sudan, Sweden, Syria, Tanganyika, Thailand, Togo, Turkey, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom (information relating to England and Wales, Northern Ireland and Scotland and to the following territories for the administration of which the United Kingdom is responsible: Aden, Antigua, Bahamas, Barbados, Bermuda, North Borneo, Brunei, Dominica, Fiji, Gambia, Gibraltar, Grenada, British Guiana, Hong-Kong, Jamaica, Kenya, Malta, Mauritius, Montserrat, New Hebrides, Nyasaland, Northern Rhodesia, St. Vincent, Seychelles, Singapore, Swaziland, Uganda, Western Pacific Islands, Zanzibar), United States of America (information on the federal system, the 50 States of the Union and the District of Columbia), Venezuela, Yugoslavia.

States non-members of the United Nations. — Federal Republic of Germany, Holy See, San Marino, Switzerland, Republic of Viet-Nam.

Replies to the second United Nations questionnaire were received from the following national correspondents of the Secretariat in the field of the prevention of crime and the treatment of offenders and from the non-governmental organizations mentioned below:

National correspondents. — Mr. J. Carlos García Basalo, Inspector-General of Penitentiaries, Buenos Aires, *Argentina*; Mr. Jorge Eduardo Coll, Office of the Under-Secretary of State for Justice, Buenos Aires, *Argentina*; Mr. J. A. Morony, Controller-General of Prisons, Sydney, *Australia*; Mr. John H. McClemens, Judge, Supreme Court, Sydney, *Australia*; Mr. H. R. H. Snelling, Solicitor-General of New South Wales, Sydney, *Australia*; Mr. J. H. Allen, Sheriff and Controller of Prisons, Adelaide, *Australia*; Mr. Norval Morris, Dean of the Law School, University of Adelaide, *Australia*; Sir John Vincent Barry, Justice of the Supreme Court of Victoria, Melbourne, *Australia*; Mr. A. Whatmore, Director-General,

* Territory designated, after receipt of this reply, as West New Guinea (West Irian) in the agreement between the Republic of Indonesia and the Kingdom of the Netherlands, dated 15 August 1962.

Prisons and Penitentaries Department, Melbourne, *Australia*; Mr. R. Grassberger, Professor of Penal Law, Director of the Institute of Criminology, University of Vienna, *Austria*; Mr. Paul Cornil, Secretary-General, Ministry of Justice, Brussels, *Belgium*; Mr. Jean Dupréel, Director-General of the Prison Administration, Ministry of Justice, Brussels, *Belgium*; Mr. Séverin-Carlos Versele, Judge, Court of First Instance, Brussels, *Belgium*; Mr. Manuel Durán P., Faculty of Law, University of Chuquisaca, *Bolivia*; Dr. José Medrano Ossio, Professor of Criminal Law, Potosí, *Bolivia*; Dr. Cesar Salgado, Attorney-General of the State of São Paulo, *Brazil*; Mr. J. Gabriel de Lemos Britto, Rio de Janeiro, *Brazil*; Mr. Hector Beeche Luján, Secretary-General, National Council for Social Defence, San José, *Costa Rica*; Mr. V. Boas, Permanent Under-Secretary, Ministry of Justice, Copenhagen, *Denmark*; Mr. C. Ludvigsen, Judge, Court of Appeal for Eastern Denmark, Virum, *Denmark*; Mr. Knud Waaben, Professor of Law, Copenhagen, *Denmark*; Mr. Valentin Soine, Director-General of the Prison Administration, Ministry of Justice, Helsinki, *Finland*; Mr. Pierre Orvain, Director, Prison Administration, Ministry of Justice, Paris, *France*; Mr. A. Touren, Director of Criminal Affairs and Pardons, Ministry of Justice, Paris, *France*; Mr. Hans-Heinrich Jescheck, Professor of Criminal Law, University of Freiburg, *Federal Republic of Germany*; Dr. Josef Schafheutle, Chief of the Penal Law Division, Federal Ministry of Justice, Bonn, *Federal Republic of Germany*; Mr. Rudolf Sieverts, Rector of the University of Hamburg, *Federal Republic of Germany*; Mr. Dimitrios Caranicas, Professor of Criminal Law, University of Salonika, *Greece*; Mr. Gonzalo Menéndez de la Riva, Professor of Penal Law, Faculty of Legal and Social Sciences, University of Guatemala, *Guatemala*; Mr. Giuseppe Altavista, Appeals Court Judge, serving with the Ministry of Justice, Rome, *Italy*; Dr. Nicola Reale, President of Division, Supreme Court of Cassation, Ministry of Justice, Rome, *Italy*; Dr. Alfonso Garofalo, Appeals Court Judge serving with the Ministry of Justice, Director-General of Establishments for the Prevention of Crime and the Punishment of Offenders, Rome, *Italy*; Dr. Girolamo Tartaglione, Appeals Court Judge serving with the Ministry of Justice, in the office of the Director-General of Establishments for the Prevention of Crime and the Punishment of Offenders, Rome, *Italy*; Mr. Ichiro Osawa, Office of the Delinquency Department, Ministry of Justice, Tokyo, *Japan*; Mr. Juhei Takeuchi, Director, Office of Criminal Affairs, Ministry of Justice, Tokyo, *Japan*; Mr. Otman Ben Amer, Assistant Director, Ministry of Labour and Social Affairs, Tripoli, *Libya*; Mr. Dato' Murad bin Ahmad, Commissioner of Prisons, Taiping, *Federation of Malaya*; Mr. Alfonso Quiroz Guarón, Lawyer, *Mexico*; Mr. Roberto Solis Quiroga, Director, Service for the Supervision of Minors, *Mexico*; Mr. E. A. M. Lamers, Director-General, Prison Administration, Ministry of Justice, The Hague, *Netherlands*; Mr. J. L. Robson, Secretary for Justice, Department of Justice, Wellington, *New Zealand*; Mr. Andreas Aulie, Attorney-General of the Kingdom of Norway, Ministry of Justice, Oslo, *Norway*; Mr. Johannes Halvorsen, Chief of the Prison Administration, Ministry of Justice, Oslo, *Norway*;

Mr. Rana Dad Khan, Inspector General of Prisons, Lahore, *Pakistan*; Dr. Clara González de Behringer, Juvenile Court Judge, Ministry of the Interior and Justice, *Panama*; Mr. Raul Cornejo, San Salvador, *El Salvador*; Mr. V. R. Verster, Commissioner of Prisons, Pretoria, Transvaal, *Republic of South Africa*; Mr. Federico Castejón y Martínez de Arizala, Justice, Supreme Court, Madrid, Spain; Mr. Torsten Eriksson, Director-General, Swedish National Prisons Board, Department of Justice, Stockholm, *Sweden*; Mr. Björn Kjellin, President of the Court of Appeal for Scania and Blekinge, Malmö, *Sweden*; Mr. François Clerc, Professor of Penal Law at the Universities of Fribourg and Neuchâtel, *Switzerland*; Mr. Resat Tesal, Istanbul, *Turkey*; Mr. A. W. Peterson, Chairman of the Prison Commission for England and Wales, London, *United Kingdom*; Mr. Sanford Bates, Consultant in Public Administration, New Jersey, *United States of America*; Mr. Thorsten Sellin, Director of the Department of Sociology, University of Pennsylvania, Philadelphia, *United States of America*; Mr. Juan B. Carballa, Professor of Criminal Law at the Faculty of Law and Social Sciences, Montevideo, *Uruguay*; Dr. Uros Jekic, Professor of Psychiatry, Faculty of Medicine, Belgrade, *Yugoslavia*; Mr. Nikola Srzentic, Under-Secretary for Judicial Affairs with the Federal Executive Council, Belgrade, *Yugoslavia*.

Non-governmental organizations. — World Young Women's Christian Association (United States of America); *International Federation of Women Lawyers* (Argentina, Australia, China, India, Italy, Libya, Federation of Malaya, New Zealand, Philippines, Sweden, Thailand, Turkey, United Kingdom, United States of America); *Friends World Committee for Consultation; Howard League for Penal Reform* (United Kingdom); *International Criminal Police Organization* (Secretariat, France); *International Society for Criminology*, Mr. Barry (Australia), Mr. Grassberger (Austria), Mr. Mc Grath (Canada), Mr. Uribe-Cualla (Colombia), Mr. Martínez-Viademonte (Cuba), Mrs. Anttila (Finland), Miss Marx and the Rev. Father Vernet (France), Mr. Kasémi (Iran), Mr. Caranikas (Greece), Mr. van Bemmelen (Netherlands), Mr. Würtenberger (Federal Republic of Germany), Dr. Thélin (Switzerland), Mr. Donmezer (Turkey), Mr. vaz Ferreira (Uruguay); *World Union of Catholic Women's Organizations* (French and United States sections). Mr. H. Bedau, Carnegie Fellow in Law and Philosophy, Cambridge, Mass., United States of America, was also invited to reply to the second questionnaire.

A number of governments and national correspondents answered both questionnaires; in the case of the latter, however, only their replies to the questionnaire specifically addressed to them has been taken into account.

The fact that some of the replies received by the United Nations have not been used in preparing the report is not due to an omission, but to their having arrived after the expiry of the time limit.

INTRODUCTION

A. — General remarks

1. For a long time, the problem of capital punishment was regarded as a purely academic question: everything that could be said appeared to have been said on a question which Beccaria had brilliantly brought to public notice in the second half of the eighteenth century but which had been exhausted by subsequent controversy. In the period between the first and second world wars, however, the emergence of authoritarian systems of penal law raised once more the problem of capital punishment in a particularly acute manner. At the end of the second world war, there was a renewed upsurge of those humanitarian tendencies which, like the desire to safeguard human rights and human dignity, had been the mainspring of the movement for the abolition of the death penalty. In the United Kingdom, the Royal Commission on Capital Punishment carried out an exhaustive inquiry (1949-1953), which had a considerable impact throughout the world. The great Penal Law Commission, set up in the Federal Republic of Germany to reform the Penal Code, devoted one volume of its report to capital punishment (1959). A number of other countries, such as Canada and certain states of the United States of America, have also set up commissions or carried out inquiries on the problem of the death penalty, which has been the subject of a remarkable issue of the *Annals of the American Academy of Political and Social Science*.[1] *La Revue de criminologie et de police technique* of Geneva has similarly devoted a special number to the subject; [2] the majority of criminological reviews have taken up the problem and stressed its topical interest; in the USSR, the discussion on capital punishment was also revived between the 1954 reform and that of 1958-1960. In 1959, a seminar was organized at Athens by the Panthios Institute, and many national seminars such as that of Royaumont in France (1961), soon followed. As soon as the European Committee on Crime Problems of the Council of Europe had been established, it placed on its programme of work the study of " The Present Position regarding Capital Punishment in Europe ". These are but a few, necessarily incomplete, examples but they will suffice to show that the problem is at present engaging the attention of experts in penal science and criminology and receiving a good deal of public notice in the various countries. The extensive recent literature on the subject, especially in English, also bears witness to that concern.

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[1] Thorsten Sellin (ed.), " Murder and the Penalty of Death ", *Annals of the American Academy of Political and Social Science* (Philadelphia), 284: 1-166, November, 1952.

[2] Jean Graven, " Le problème de la peine de mort et sa réapparition en Suisse " [The problem of the penalty of death and its reappearance in Switzerland], *Revue de criminologie et de police technique* (Geneva), No. 1: 1-124, January-March, 1952.

2. On the basis of the material received in response to the two United Nations questionnaires, it has been possible to prepare a comprehensive report dealing with the three types of problems raised today by the existence or non-existence of the death penalty.[1] The problems in the first group are legal: in what cases and in what manner can the sentence of death be passed and carried out? And, as regards the abolitionist countries, what are the rules governing the substitute penalty? The second type of problem concerns the practical application of the penalty and is considered in the light mainly of statistical data and of the experience gained in the various countries. The third type of problem is sociological and criminological: it is concerned with the deterrent effect of the death penalty, the reasons for maintaining or abolishing it and the views at present held on the subject.

3. These three types of questions provide the natural outline for this study. However, before they are discussed successively, it is essential to make a few preliminary remarks.

4. In the first place, this report is based essentially on the system in force in the various countries. The problem of capital punishment can no longer be considered solely from a somewhat philosophical angle: it is essential to consider the facts. Yet the facts are less easy to ascertain than was supposed, even though very full official replies from the governments concerned were available. There are several reasons for this situation:

(*a*) Inevitably, the replies received are not homogeneous. Not all governments focus attention on the same points, because not all countries adopt the same approach. This is even more true of the replies of individual correspondents and non-governmental organizations.

(*b*) As in all matters of comparative law, there are formidable terminological difficulties, which hamper any attempt to establish a catalogue of the offences punishable with death or to determine precisely which courts have jurisdiction to pass a sentence of death and what are the appellate remedies against such a sentence. In this context as in others, one has to beware of deceptive resemblances, as also of purely external differences.

(*c*) This subject reflects, perhaps more than any other, differences in national institutions and traditions. Other problems arise from the great difficulty in comparing statistical data on a truly international level; in particular, it is hard to determine the frequency of death sentences and executions, to discover how the procedure of the pardon operates in practice, and to find out how much time elapses between the offence, the sentence and the execution. And as regards criminological questions, many differences of opinion between specialists and in the public opinion of the various

[1] See the foreword for the list of replies.

countries are to be noted. As sociologists have not failed to observe, the abolition or the maintenance of the death penalty depends, in the final analysis, on a large number of often interconnected circumstances.

5. The present report is therefore confined to general indications. Errors of interpretation are inevitable, by reason of the diversity of the contents of the replies received. Specialists in comparative law often refer to the "equivalence of institutions" as between one legal system and another, but, in the present context, it is also necessary to make allowance for the non-equivalence of terms and forms. In many cases, the replies sent to the United Nations Secretariat are based on national techniques or traditional customs. To elicit more complete or more explicit replies, the questionnaires would have had to ask for much fuller or more specific particulars, with the consequence that the survey might well have taken a number of years.

6. The present report is limited in scope, and hence cannot take into consideration all the details supplied, particularly since many details, even the most interesting ones, do not always relate to the same points; accordingly, even if it had been found possible to take into account all the information supplied, the resulting account would have suffered from unevenness.

B. — General list of countries and territories in which the death penalty exists, and in which it does not exist[1]

7. First, one must draw what might be termed the geographical map of the death penalty, showing which countries and territories apply it and which have abolished it. Even this poses some problems of interpretation.

8. *The countries and territories which have kept the death penalty* are, in alphabetical order, the following: Afghanistan, Australia (except two states), Burma, Canada, Cambodia, Central African Republic, Ceylon, Chile, China (Taiwan), Cuba, Czechoslovakia, Dahomey, El Salvador, France, Gambia, Ghana, Gibraltar, Greece, Guatemala, Hong Kong, India, Indonesia, Iran, Iraq, Ireland, Ivory Coast, Japan, Laos, Lebanon, Liberia, Federation of Malaya, Mauritius, Mexico (four states out of 29—i.e., the states of Morelos, Oaxaca, San Luis Potosí and Tabasco), Morocco, Netherlands New Guinea, Nigeria, Northern Rhodesia, Nyasaland, Pakistan, Philippines, Poland, Senegal, Seychelles, Somalia (Northern), Somalia (Central and Southern), Spain, Republic of South Africa, Sudan, Surinam, Tanganyika, Thailand, Togo, Turkey, United Arab Republic,

[1] The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country or territory or of its authorities, or concerning the delimitation of its frontiers.

Union of Soviet Socialist Republics, United Kingdom, United States of America (in principle, 42 states out of 50, the District of Columbia and the federal system), Republic of Viet-Nam, Western Pacific Islands,[1] Yugoslavia, Zanzibar.

9. *The countries and territories which have abolished the death penalty* are divided into three categories: first, those in which the death penalty has been abolished by an express constitutional or legislative provision (abolitionist *de jure*); second, those whose positive law (penal code or special statutes) makes provision for the death penalty and where sentences of death are passed but in which such sentences are never carried out by virtue of an established custom (abolitionist *de facto*); third, those in which the death penalty is laid down only for offences committed in certain exceptional circumstances and in which capital punishment has, in fact, virtually disappeared (almost completely abolitionist).

10. *Abolitionist* de jure.[2] — Argentina (1922), Australia (Queensland), Austria[3] (1945), Brazil (1889), Colombia (1910), Costa Rica (1882), Denmark (1930), Dominican Republic (1924), Ecuador (1897), Federal Republic of Germany (1949), Finland (1949), Greenland (1954), Iceland (1940), Italy (1944), Mexico (25 states out of 29 and the federal territory (Constitution, 1931)), Norway (1905), Netherlands (1870), Netherlands Antilles (1957), New Zealand (1961), Portugal (1867), Republic of San Marino (1865), Sweden (1921), Switzerland (1937), United States of America (six states: Alaska (1957), Delaware (1958), Hawaii (1957), Maine (1887), Minnesota (1911), Wisconsin (1853), Uruguay (1907), Venezuela (1863).

11. *Abolitionist* de facto. — Belgium (1867), Liechtenstein (1798), Luxembourg, Vatican City State.[4]

12. *Almost completely abolitionist.* — Australia; New South Wales, where the death penalty is abolished for murder but not for treason or piracy; it is not, however, applied in fact. United States of America: Michigan (1847), North Dakota (1915), Rhode Island (1852); these three

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[1] In view of the similarity of their legislation, the Fiji Islands, the British Solomon Islands and the Gilbert and Ellis Islands are grouped throughout the report under the general heading of " Western Pacific Islands ", except where statistical data are given.

[2] The date of abolition is given in each case. In cases where the death penalty was reintroduced after having been previously abolished, the date given is that of the final abolition, which is reflected in the existing law.

[3] Except in the event of the proclamation of a state of emergency.

[4] To these countries which are certainly abolitionist *de facto* could be added, to some extent at least, those in which an experiment in abolition appears to be in progress, the last executions having been carried out on the dates indicated below. The exact scope of these experiments is, however, debatable. *Australia:* (Victoria 1951). *United States of America:* (Massachusetts (1947), New Hampshire (1939), New Jersey (1956)). *Guatemala* (1956). In the Principality of Monaco, the death penalty is provided for in the Penal Code of 1874, but no sentence of death has ever been passed under that statute.

states have abolished the death penalty, except in the state of Michigan, for treason, in the state of North Dakota for treason (for which the death sentence is mandatory) and murder in the first degree committed by a prisoner already serving a sentence for murder in the first degree, and in the state of Rhode Island, for murder committed by a prisoner under sentence of life imprisonment. Nicaragua: the death penalty is applicable only if the crime is committed with one or more aggravating circumstances.

CHAPTER I

LEGAL PROBLEMS

Section I. — Countries and territories in which the death penalty is applied

A. — The Death Penalty in the System of Penalties

I. *The Death Penalty as a Mandatory or as a Discretionary Penalty*

13. The question whether the death penalty provided for by the criminal law in force in a country is mandatory for the judge or whether he has discretion to replace it by a lesser penalty would seem at first sight an easy one to answer by mere reference to the legislative provisions. Yet it is not so, for often the criminal law in force makes provision only for particular capital crimes: the death penalty then has the appearance of being mandatory; but it is necessary to take into account the operation of general principles which will often permit a mitigation of penalty not expressly contemplated in the special provisions of the code. The difficulties in this respect are even greater where the law is not codified.

14. In general, the modern tendency is more and more to drop the mandatory character of the death penalty. It is provided only as the ultimate punishment, but replaceable by another penalty. In many legal systems, the death sentence is mandatory only for certain specific crimes or in certain special courts; for example, the military courts.

15. As one analyses the cases in which the death penalty is mandatory, one notices that, in Europe, it remains so in the United Kingdom only for the five cases of capital murder specified in the Homicide Act, 1957. In Spain, an Act of 18 April 1947 on the punishment of banditry and terrorism also makes the death penalty mandatory, but in this case the competent courts are the military courts. In Greece, one case where the death penalty is mandatory is provided for in article 138 of the Penal Code (for crimes against national integrity). As regards North America, the death penalty is mandatory in Canada in the event of conviction for capital murder or piracy and also in the military courts for certain crimes against national defence and for treason in time of war. In the United States of America, according to the reply of the Federal Government, the death penalty, which exists in 42 states, can, in 20 of these states, and in federal law, always be replaced by a lesser penalty. In the countries of Latin America

it is sometimes mandatory and sometimes discretionary, but an enumeration of the relevant legislative provisions yields little guidance from the point of view of comparative law. In Australia, under the federal law, the death penalty is mandatory for treason; under the legislation of the various constituent states of Australia, it is generally mandatory for murder and treason (this is so in Tasmania, South Australia, Western Australia and Victoria). Under the laws in force in the Western Pacific Islands, it is in principle mandatory for murder.

16. In Africa, it may be said that in general there is no substitute penalty; however, particularly in the countries which have a French legal tradition, it is generally open to the court to allow the accused the benefit of extenuating circumstances. The death penalty appears in any case to be mandatory in Somalia (northern) and Gambia, at least for certain capital crimes. In Northern Rhodesia, it is mandatory only for murder, and in the Sudan, only in the case of a murder committed by a prisoner serving a life sentence. In the Republic of South Africa, it is mandatory for murder only.

17. As regards Asia, the death penalty is mandatory in India, Pakistan and Burma for a murder committed by a convict serving a life or long-term sentence; in Burma, for murder committed in the course of the commission of another crime; in Burma, in the Federation of Malaya, in Hong Kong and in Ceylon for aggravated forms of murder. It is mandatory in Japan for crimes against the security of the State in certain cases, such as assistance to an enemy using armed force; it is also mandatory in Pakistan for participation in an insurrection. In the Middle East, the law of Iran, Iraq and Lebanon prescribes the death penalty as mandatory in certain cases, though in Lebanon the rule is probably qualified by allowance for extenuating circumstances.

18. In the USSR, Poland and Yugoslavia, the death penalty is never laid down as mandatory; rather, it is one of a whole range of penalties from among which the judge dealing with the case can choose.

19. From the foregoing, it may be concluded that the death penalty is now mandatory only in exceptional cases: as a general rule, only in cases of capital murder or of crimes against the external security or the integrity of the State.

II. *Grounds of Exclusion of the Death Penalty specified by Law and Judicial Interpretation*

20. The grounds of exclusion under discussion relate to the passing of the sentence, and not to the carrying out of the penalty of death. Most of them are of a general character, in the sense that they do not apply only to offences punishable by death. Some of them, however, such as

insanity or diminished responsibility, take the form in certain legal systems, particularly those derived from the common law, of a defence against a capital charge. In the Roman law systems, or more precisely those which were influenced in the nineteenth century by French law, the plea of extenuating circumstances is admissible in the case of any offence but, in the case of a capital crime, the admission of such circumstances has the effect of barring a sentence of death. Lastly, apart from extenuating circumstances, there often exist certain "statutory defences"; these are exhaustively specified by the law and, in certain cases or in respect of certain persons, will bar a death sentence. A report concerning the strictly legal aspects would have to draw a sharper distinction between these defences, which may be either full or partial defences, extenuating circumstances proper, and the effect of insanity or mental disorder on the accused's responsibility. In the present account, however, it is realistic not to over-emphasize purely theoretical distinctions. Besides, in the replies received and the information gathered, it is often difficult to draw a technical distinction between a "statutory defence" and what elsewhere constitutes an extenuating circumstance.

1. *Physical or Mental Condition of the Accused*

21. First, the question of the age of the accused deserves separate notice. The laws of virtually all civilized countries recognize a period of total absence of responsibility for the purposes of the criminal law on the part of the person described in Roman law by the term *infans*. As regards persons who, though no longer children, are minors for the purposes of the criminal law but who have not yet attained the age of majority, most of the various legal systems draw some line of demarcation, in that sentence of death may be passed only above a certain age (mostly the age of 16 years). This question will be mentioned again below in connexion with the often overlapping question of exemption from execution. It will be sufficient to note here that in most legal systems an accused who is a minor, even if a penalty can be applied to him, cannot as a general rule be sentenced to death unless he has reached a specified age. Certain legal systems, particularly in Latin America, have also retained the criterion of "discernment"; under these systems a minor may not be sentenced to any penalty whatsoever unless he is held to have acted with full discernment.

22. Minority thus operates as mitigating statutory defence, having the effect that the penalty of death is replaced by one involving deprivation of freedom for a variable term. Another defence, comparable to that of minority, is that of provocation, which is recognized in most legal systems by virtue of the general principles of criminal law. In many of these systems provocation is admitted as a (partial) defence in the case of certain crimes which are normally punishable by death, such as murder committed in certain special circumstances, in particular by a husband who discovers his wife in the act of adultery. In some cases, the same is true of castration

followed by death, if this crime was provoked by an indecent assault with violence. Mention should also be made of self-defence which, though technically distinct from, resembles provocation in some respects and in respect of which the law sometimes raises certain presumptions, particularly in the case of the killing of a person who forcibly enters or climbs into inhabited premises by night.

23. Even more important in practice is the case of insanity or psychic disturbance. Ever since modern penal law found its classic expression early in the nineteenth century, the basic rule has been that a person suffering from insanity cannot be held criminally liable. Article 64 of the French Penal Code of 1810 lays down the principle in strict and clear terms, which have since been repeated in most of the legal systems of the "continental" type. The common law system, for its part, arrived at the same result by allowing the acquittal of a person who is held "guilty but insane". This common law rule was embodied in the famous MacNaghten Rules of 1843, which are at the basis of the so-called "Anglo-American" criminal law in this matter. It may be noted that the MacNaghten Rules in fact arrive at the same formula as article 64 of the Napoleonic Penal Code.

24. In the course of the nineteenth century, however, the various systems of criminal law underwent a certain evolution in this respect (though this is not the context for inquiring into the historical circumstances). The legal systems of the continental type tended to make allowance not only for insanity, but also for mental disturbance which deprives the accused of the full awareness of the implications of his act. The legal systems derived from the common law began to differentiate between the person who is unfit for trial and the person who was insane at the actual time when he committed the act. Under the law of some countries (e.g., the state of Tasmania, Australia) it is even possible to order a re-trial if insanity supervenes after conviction. And in the United States in particular, some judicial decisions have admitted the notion of irresistible impulse, which is placed on a par, as far as criminal liability is concerned, with mental disturbance.

25. The problem in practice is how the case for non-liability under the criminal law is to be substantiated. Almost everywhere the accused is presumed to be of sound mind. It is therefore for the defence to plead insanity or mental disturbance, both of which conditions can only be established by means of a mental examination. The tendency of modern legislation is therefore to require such a mental examination in all cases of serious offences, in particular capital crimes. This is the case, for example, in the United States, Canada, France, Ivory Coast, Nyasaland, the Western Pacific Islands and New Zealand.

26. In many other legal systems, either a special application or a court order is required for the purpose of a mental examination. This is the rule applied in a number of African countries (Dahomey, Sudan, Northern Somalia, Northern Rhodesia and the Republic of South Africa),

in Chile, Guatemala, India, Pakistan, Thailand, the Republic of Viet-Nam, Indonesia, Japan, Australia and certain countries of the Middle East. Little information was supplied concerning the manner in which the mental examination is actually conducted. In many cases, the law itself specifies that an examination by a psychiatrist is compulsory. Sometimes, only a general medical examination is required. Under the law of a very few countries, an examination of the personality of the accused, in conformity with the demands of modern criminology, is prescribed.

27. It would have been interesting to discover to what extent insanity or mental disturbance in reality barred death sentences. In the United States of America, apparently, this defence has often been admitted. In Canada, it is reported that between 1951 and 1958, 41 persons out of 308 accused of murder were held to be insane. A number of countries of Africa report that in the case of capital crimes mental retardation, ethyl-alcoholism and hereditary syphilis are often diagnosed. From Chile it is reported that in two-thirds of the expert examinations the conclusion is reached that the accused is not responsible for his acts. In Ceylon, insanity, though rarely pleaded, is said to have been admitted in most of the cases in which it was pleaded, whereas in the Republic of Viet-Nam the insanity plea is reported to have been generally dismissed. In New Zealand, out of 34 persons accused of capital crimes between 1951 and 1957, seven were held to be insane.

2. *Diminished Responsibility*

28. Diminished responsibility is in many respects but a modern extension of irresponsibility (for the purposes of the criminal law) by reason of mental disturbance. As was noted above, in the common law system, as expressed in the MacNaghten Rules, and in the Roman law system of the Napoleonic Code, insanity was the only effective defence against a capital charge. In the course of the nineteenth century, it came to be admitted that the court could mitigate the penalty in the case of recognized psychic deficiency. This conception differs from the previous one, under which insanity is a complete defence and consequently calls for an acquittal. The doctrine of diminished responsibility accordingly makes it possible for the judge dealing with a capital crime to sentence the accused to a penalty, but to a penalty less than death.

29. In only a minority of countries, however, does the law make provision for diminished responsibility. The notion is not recognized in most of the countries of Africa, in the United States (except for the District of Columbia, by virtue of the ruling in the famous *Durham case*, and New Hampshire, where diminished responsibility has received statutory recognition), in Australia, New Zealand or most of the countries of Asia. Diminished responsibility is recognized, on the other hand, in certain European codes, such as the Swiss Penal Code of 1937 and the English Homicide Act, 1957. Other countries (Japan, China and Greece), following

the precedent of earlier European legislation, enacted provisions in 1950 admitting the plea of diminished responsibility in the case of deaf-mutes and feeble-minded persons.

30. It might at first sight appear strange that this institution of diminished responsibility, although at present the subject of scientific debate, should not play a more important part in connexion with the application of the death penalty. The replies to the questionnaire even suggest that *a priori* it plays little or no part in the matter. Here, two important considerations have to be taken into account.

31. In the first place, the usefulness of diminished responsibility is less than one might suppose, because the modern law tends to reduce the number of capital crimes. A distinction is now drawn between capital murder (or first degree murder) and other murders, and this alone will often make it unnecessary to plead diminished responsibility.

32. In the second place, under the law of many countries, extenuating circumstances may be taken into account in various ways, and these have the effect of mitigating the penalty by reason of the proved existence of certain facts. It is precisely by means of the rules concerning extenuating circumstances that, in the majority of legal systems of the continental type, it has been possible to apply a doctrine of diminished responsibility not officially acknowledged by the law.

3. *Extenuating Circumstances*

33. As has just been said, if a judge admits extenuating circumstances, it becomes mandatory for him to pass a sentence lighter than that normally specified for the offence. In the case of a capital charge, the result will be to replace the penalty of death by one involving deprivation of liberty in perpetuity or for a specified term.

34. While it is not necessary to stress here a point of special interest to the comparative lawyer, it should be noted that two systems of extenuating circumstances are known to the law: that of the so-called "judicial" extenuating circumstances and that of the "statutory" extenuating circumstances. Extenuating circumstances are said to be "judicial" if the judge has absolute discretion to take them into account. In these cases, the judge can, if he so desires and without having to give any explanations, admit the existence of "extenuating circumstances", in which event they will automatically operate as a bar to the sentence of death. This is the system introduced in France by the 1832 revision of the Penal Code. It is also the system applied in Morocco, the United Arab Republic, the Netherlands Antilles, the Philippines, Thailand, the Republic of Viet-Nam, Japan, the Chinese Code of 1935, in Laos, Iran, Lebanon, Iraq and, to a large extent at least, in Switzerland. In some countries (e.g., Zanzibar and Ceylon) the law is more restrictive and only authorizes the judge to make a recommendation for mercy.

35. Another system which has developed in statute law since the second half of the nineteenth century is that of " statutory " extenuating circumstances, to be found in most of the countries of Latin America, in Greece and in the USSR. Examples of this type of extenuating circumstance are, particularly in the case of capital crimes: spontaneous confession, active repentance and, in the case of participation in a crime or of a crime committed by several persons, the fact that the accused concerned played a minor part in the commission of the offence.

36. Under yet another system the plea of extenuating circumstances is restricted not only to certain occurrences but also to certain specific crimes; this is the position in India and Australia.

37. It should be reiterated that the plea of extenuating circumstances — like that of a defence in mitigation of the offence — will have its full meaning only in cases where in principle the death penalty is mandatory; for where an alternative penalty exists, it is always open to the judge to sentence the accused to a lighter penalty. Again, the plea of extenuating circumstances may be combined with that of a defence in mitigation of the offence, such as minority or provocation: in that event, the sentence passed will be reduced by more than one stage in the scale of penalties. There is, however, no need to enter into any greater detail on this particular question because either the defence or the extenuating circumstance will suffice to bar the death sentence.

B. — The Passing of the Sentence of Death in Positive Law

1. *Competent Court*

38. This question seems easy to elucidate. In reality there is grave danger of error in the study of comparative law, because the courts which have jurisdiction very often differ considerably from one system or one country to another. Both in the systems of Latin origin and in the Anglo-American system, the names given to these courts are often not an infallible guide, for they cover different realities. Accordingly, and with the object of avoiding as far as possible even purely terminological confusion, the passages which follow are deliberately limited in scope; they leave out of account certain data which, in the form in which they were supplied, conveyed little notion of the true nature of the institutions in question.

39. In some countries of Europe, Latin America, the Middle East and Asia, the death sentence may be passed by the ordinary criminal courts. This is the case in El Salvador, Guatemala, Chile, the Netherlands Antilles, the Philippines, Thailand, Japan, the Republic of Viet-Nam, Indonesia, India, Cambodia, China, Lebanon, Iraq, Netherlands New Guinea, Turkey and Spain.

40. In many other countries and territories, on the other hand, the most serious offences, and in particular those for which capital punishment is laid down, come within the jurisdiction of courts which, although ordinary

judicial bodies, are none the less of a special character. They are generally termed " assize courts " or " high courts "; in some cases, capital punishment may only be ordered by the supreme court. This system exists in Canada, the United States, Australia, New Zealand, Ceylon, Hong Kong, Iran, Mauritius, Seychelles, Zanzibar, the United Kingdom and France.

41. Where the competent criminal court is termed an " assize court ", it generally includes a jury which may either be the traditional jury of twelve members of the English type, which retires to decide freely on its verdict as to the guilt of the accused, or a jury consisting of a varying number of jurors, sitting jointly with the judges, as is the case in France and Pakistan. This second formula is not very different from that of *échevinage*, which combines lay jurors with professional judges on the same bench. The pure jury system had often been considered in the nineteenth century as one of the essential safeguards of the defence and had even been expressly provided for in certain constitutions. Its importance is tending to decrease nowadays, and in countries in which the ordinary criminal courts have power to pass the death sentence (e.g., Turkey, Spain and Greece) the presence of jurors is *ipso facto* dispensed with.[1]

42. Little information has been supplied concerning the procedural peculiarities relating to the passing of the sentence of death. In reality, uniform rules of criminal procedure are invariably laid down for all the offences within the jurisdiction of a particular court and no special precautions are generally taken to strengthen, or to modify, procedural safeguards in those cases in which the death penalty may be applied. Yet manifestly, in these cases, the procedural forms and the safeguards relating to the rights of the defence which are laid down by law in the country concerned are all-important.

43. In some countries, however, the law provides that the death penalty may not be imposed except by a court composed of a number of judges greater than that required to pass a lighter sentence. This is the case in Spain, where the ordinary criminal courts have jurisdiction, but five judges instead of three are required to pass a sentence of death.

2. *Accessory Penalties*

44. In the systems of law existing before the end of the eighteenth century there were sometimes several degrees of capital punishment, and in the ordinary European law of the time a distinction was drawn between ordinary and aggravated forms of execution. With the abolition of torture, this graduation of the death penalty disappeared. The same evolution of ideas likewise led to the disappearance of the accessory ignominious penalties which formerly attended the penalty of death, such as the exposition

[1] The case in which, particularly in time of war or pursuant to the Code of Military Justice, courts martial (or military courts) have exceptional jurisdiction to pass sentence of death is disregarded in this study.

of the convict or enforced public confession of guilt, and of pecuniary penalties, such as the forfeiture of property, against which such strong protests were raised in the " age of enlightenment ". If the penalty of death is to be regarded as the ultimate sanction consisting of the deprivation of life, and no more, then surely it should not be attended by any additional penalty.

45. This point of view is adopted by a large number of legal systems all over the globe, including those of Gambia, Nyasaland, Northern Rhodesia, Ghana, the Republic of South Africa, Mauritius, Seychelles, Zanzibar, the United States, Afghanistan, Burma, India, Pakistan, Thailand, Indonesia, Japan, Ceylon, Hong Kong, Gibraltar, Australia, New Zealand, the Western Pacific Islands, the United Kingdom and Turkey.

46. Under the law in force in the early nineteenth century, however, the death penalty — as indeed all very serious penalties — was generally accompanied by a certain *capitis diminutio* in the form of deprivation of public rights and honours. This idea still survives in many countries of Europe, such as France and Greece, and also in Morocco, Ivory Coast, Greece, Dahomey, Canada, El Salvador, Chile, Laos, China (Taiwan), Iran.

47. To these penalties under public law are often added statutory disabilities, such as deprivation of family rights and of the capacity to dispose of property or to receive gifts. These accessory penalties only acquire their full significance in cases where the death penalty is commuted. They take the form of civil disabilities in the countries which have just been mentioned, as well as Somalia (central and southern) and the Philippines, where it is specified that the civil disability is to last for thirty years in the case of the reprieve of a person sentenced to death. Nineteenth century law even made provision for " civil death " (as opposed to physical death) which meant that the criminal ceased to be a subject of the law. This " civil death " has practically everywhere disappeared at a more or less recent date; it was abolished in the state of Victoria as late as 1958. It should be noted that under the law of some countries and territories (e.g., Guatemala, Netherlands Antilles and Netherlands New Guinea) certain discretionary penalties, involving the loss of certain rights, *may* be ordered by the judge who passes a sentence of death.

48. The forfeiture of property, which takes effect even after the execution of the criminal, was formerly a traditional consequence of the death penalty, as also of the penalties for all major crimes. It fell into disuse early in the nineteenth century as contrary to the principle of individual punishment, for it actually affected more the family of the criminal than the criminal himself. In the twentieth century, however, forfeiture has reappeared, particularly in political cases or, if one prefers, in cases of crime against the security of the State committed either in time of war or of a particularly grave or dangerous situation. This is the case in France, Morocco, Dahomey and the USSR. In Yugoslavia, forfeiture may also be ordered not only in respect of crimes against the people but also for crimes

against the State or against humanity. As a rule, however, this type of general forfeiture is not automatic and always requires an express court order.

3. *Remedies (Appeal, Review, etc.)*

49. In the matter of remedies against the sentence one must likewise beware of deceptive analogies. The terms used in the various statutes and in the replies of correspondents and governments have not always the same meaning. It is often difficult to determine with precision whether a particular remedy mentioned represents an application for " cassation " in the technical sense or simply an appeal from the sentence. Subject to this general remark, it may be said that the remedies include *appeal*, which involves the retrial of the case by another (generally higher) court ; *cassation*, which in principle is concerned with errors of law; and *review*, applicable in cases where, after a decision has become final and hence is no longer open to appeal (having often been carried out), new facts come to light disclosing a miscarriage of justice which it is intended to set aside by means of an exceptional procedure. In addition, there exist special re-examination procedures peculiar to certain legal systems.

50. The law of the great majority of States makes provision for appeal from a sentence of death. It is not possible to enumerate these States here, or to indicate in each case the court which has jurisdiction to hear the appeal. The relevant terminology is particularly misleading, since such terms as " high court ", " superior court " or " supreme court " do not mean the same thing in all legal systems. By way of example, however, it may be indicated that, in the United States, for example, an appeal — the form of which varies from state to state — is often limited to questions of law, to the exclusion of questions of fact, and that in this respect it seems to correspond broadly to what is elsewhere termed an application for cassation. In certain states of the Union, the appeal is also automatic in the sense that every death sentence must be examined by the higher appellate court. The system in force in Guatemala also appears to provide for mandatory referral to an appellate court. Elsewhere, by contrast (e.g., in the United Kingdom), an appeal is often subject to special leave to be given by the sentencing court or possibly by some other court. In some countries (e.g., Australia), the appeal may be followed by a second appeal, with the consequence that it can happen that three courts deal with the case. In the common law system, where a distinction is drawn between *conviction* and *sentence*, an appeal lies as a rule only from the conviction—i.e., the jury's decision. In the traditional English system, a verdict of " guilty " (on a capital charge) automatically carries with it the sentence of death. This system still exists in some of the Commonwealth countries (e.g., Canada). It should be noted that in Chile appeals (from a conviction on a capital charge) go to the court having ordinary second degree jurisdiction (the court of appeal), but that court may pass a death sentence only by unanimous decision.

51. On the other hand, an appeal is not admissible in a number of legal systems, mostly those of the countries of the Middle East, France, Spain and Greece. Certain other countries go even further and debar all reconsideration of a death sentence; this is the case in Somalia (central and southern) and Austria in the exceptional cases in which capital punishment is applied in that country.

52. The true basis of the bar on appeals in countries such as France is the idea that the assize court is sovereign, in that the jury is deemed to represent the nation itself. The jury's decision is therefore not subject to any supervision and the decision as to the guilt of the accused is a matter solely for the conscience of the free citizens who sit as jurors. This conception has not, however, prevented England from instituting at the beginning of the twentieth century a court of criminal appeal. But the conception has, curiously enough, persisted in France, even though the traditional jurors have now become lay judges. In the other countries which have been mentioned and in which no appeal is permitted, the prevailing idea seems to be the desire not to reopen the discussion on a question of guilt relating to grave matters and to permit in such cases the reconsideration of the decision on points of law only.

53. The reconsideration of points of law normally takes the form of an application for the cassation (or quashing) of the death sentence. This remedy is provided for by the law of a large number of countries, as diverse as the United Arab Republic, Morocco, Ivory Coast, Dahomey, the Central African Republic, El Salvador, the Republic of Viet-Nam, Indonesia, Japan, Lebanon, Iran, Spain, France, Greece and the USSR. In Spain, where a sentence of death may be passed only by a bench of five judges instead of the three who normally sit on criminal cases, an application for the quashing of a capital sentence must be examined by seven judges instead of the normal five.[1]

54. An application for review presupposes, as noted above, the discovery, subsequent to the sentence, of a new fact which reveals that a miscarriage of justice has occurred. One would think that such a procedure should be generally available. In actual fact, this is not the case, for some countries prefer to follow strictly the principle *res judicata pro veritate habetur* and do not wish, on grounds of public interest or of criminal policy, to reopen the issue of a capital sentence. The possibility of review exists, however, in a great many countries, including Morocco, the Ivory Coast, Dahomey, Somalia, Togo, El Salvador, the Netherlands Antilles, the Republic of Viet-Nam, Japan, Lebanon, Iran, Iraq, France and Yugoslavia.

55. In some States, a capital sentence must be *confirmed* by an authority which is not necessarily a judicial authority. This is the case in the

[1] It has already been pointed out that in the Anglo-American systems, a multiplicity of remedies may exist, comparable partly to appeal and partly to cassation. The large number of these remedies is, indeed, one of the features of criminal procedure peculiar to the United States.

Philippines, Thailand and Iraq, in which a sentence of death must be confirmed by the supreme court. This requirement maybe regarded as a variant of the automatic application for cassation. In certain other countries, such as Somalia (northern) and Sudan, a capital sentence is subject to confirmation either by the Council of Ministers or by the Ministry of Justice. In these cases, however, it is arguable that the remedy is tantamount to a petition for mercy. In Hong Kong, for example, a sentence of death passed by a court martial must be confirmed by a high commanding officer.

56. As a rule, confirmation of the sentence represents a supplementary safeguard for the convicted person. It should be noted, however, that in the state of Victoria, in principle at least, the full high court may, in the case of high treason, substitute the death penalty for a lesser sentence imposed by the appeal court. The review procedure is likewise usually made available for the purpose of enabling a convicted person to establish his innocence. However, the position appears to be different in countries like the USSR and Yugoslavia, where the prosecution has very wide powers which enable it to request a heavier penalty (even death) than that ordered by the courts of first and second instance.

C. — The Execution

I. *Legislative Provisions relating to the Execution*

1. *Mode of Execution*

57. In earlier times, a great variety of methods of execution was known to the law, the carrying out of a sentence of death being sometimes attended by cruel forms of torture intended in certain cases to aggravate the suffering. On grounds of humanity and of the respect due to the human person the modern law has in general dropped these practices. The death penalty means, nowadays, simply the deprivation of life. The differences which today exist regarding the methods of carrying out the death sentence are attributable to the efforts made to render death quicker and less painful. New methods have been adopted, and certain other methods have been rejected as inhuman. For example, hanging has generally been abandoned in the United States, and in Yugoslavia it was abolished in 1950; in 1929, Greece abolished decapitation.

58. The general remark should also be made that in the great majority of countries there are two methods of carrying out a death sentence: one for crimes tried by the ordinary courts, and the other in military cases; the latter method is nearly always execution by a firing squad.

59. Hanging remains the most frequent method in use. It is the traditional method in the United Kingdom [1] and generally throughout the Commonwealth. It is to be found in the United States, where it is losing ground, since only six states still practice it, compared with seventeen in 1930; hanging is still used in Canada, but the Attorney-General or the Governor may substitute for it execution by the firing squad in cases of treason or crimes against national defence. In Somalia (northern and southern), hanging, which is the normal method, may likewise be replaced by execution by the firing squad. Hanging is also in use in the following countries and territories: Sudan, Gambia, Northern Rhodesia, Nyasaland, Ghana, Nigeria, Tanganyika, the Republic of South Africa, Mauritius, Seychelles, Zanzibar, Netherlands Antilles, Afghanistan, Burma, India, Pakistan, Japan, Ceylon, Hong Kong, Iran, Lebanon, Iraq, Australia, Austria, Czechoslovakia and Turkey.

60. As already mentioned, in the case of death sentences for military offences, hanging is often automatically replaced by the firing squad. This method is naturally in use in those countries and territories where capital punishment exists only under the code of military justice. As far as crimes tried by the ordinary courts are concerned, execution by a firing squad is practised by the following countries: Morocco, Ivory Coast, Central African Republic, Togo, El Salvador, Chile, Guatemala, Thailand, Indonesia, Cambodia, Greece, Netherlands New Guinea, USSR and Yugoslavia. Decapitation remains the traditional method of carrying out capital punishment for ordinary crimes in France since the Revolution of 1789 and is in use elsewhere, for example in Dahomey, the Republic of Viet-Nam and Laos (though in Laos it may be replaced by the firing squad.)

61. In the United States, 24 states have adopted the method of electrocution. This method is also practised in the Philippines and in China, where provision is, however, made for hanging if the necessary equipment for electrocution is not available.

62. The gas chamber is used to carry out sentences of death in eleven states of the United States. In Spain, the method used is strangulation. In the state of Utah, the person sentenced to death has the choice between hanging and the firing squad.

2. *Execution in Public and Otherwise*

63. An execution in public was for long considered as the outward manifestation of the deterrent effect, even more than of the idea of retributive justice, of the death penalty. Some of the replies to the questionnaire show that this view still persists in certain States; however, as a general rule,

[1] Although the term "hanging" has been retained in the United Kingdom, the method involved is not the traditional form of hanging in use on the Continent in earlier times, but the abrupt and, it is claimed, immediate severance of the cervical vertebrae.

since the second half of the nineteenth century, executions have progressively ceased to be carried out publicly. Only in a few countries is provision made by the law for public execution. This is the case in the Central African Republic and El Salvador (where it is even specified that the execution should, if possible, take place in the locality where the crime was committed) and in Iran, Laos, Cambodia and Chile. In the last two countries, however, the public character of the execution is more theoretical than real for the public is kept at a distance by the police and, in Chile, the execution is deemed to have been public if thirty persons are present.

64. In other countries, executions are not required by law to take place in public, but may do so in certain cases. In Morocco, an execution may be ordered to take place in public in exceptional cases, by direction of the Ministry of Justice. In Afghanistan, executions are not required, nor are they forbidden, to be in public, and the same is true of the Philippines and South Australia (where a public execution may be ordered by the Governor).[1] In Argentina, where the death penalty exists only in military matters, execution *may* be public. In the United States, the law of some states makes provision for the admission of a limited number of persons, apart from those who must be present at the execution by reason of their office, and the number varies between three persons in Connecticut and twenty in South Carolina. This would seem to represent a symbolic attendance of the citizenry at the death of the offender.

65. Naturally, it is invariably provided that certain persons must attend the execution, such as the governor of the prison, a minister of religion (if so requested by the offender), a doctor, certain representatives of the prosecution and in some cases judges and often also the defence lawyers. In twenty-seven of the states of the United States, relatives and friends of the offender may be authorized to attend his execution.

66. The attendance of journalists presents the most delicate problem. For a long time, journalists were allowed, before the execution, to visit the offender and take down his statements, and then to attend the execution and report fully thereon. The progressive abolition of public executions has led to journalists being excluded form the execution and often even being forbidden to describe it in detail. In the vast majority of cases, the replies of governments state that journalists may neither attend an execution nor converse beforehand with the offender to be executed. However, the presence of journalists is sometimes permitted by special authorization — for example, in the United Arab Republic, Guatemala, China, Iraq, the Northern Territory of Australia, the state of Victoria, and in New Zealand. Some of the states of the United States also permit visits by journalists to a person under sentence of death; the law in nine of these states expressly permits the attendance of journalists at the execution. In Canada, the sheriff

[1] This power does not appear to have been exercised since 1862.

may authorize journalists to be present, but in practice this power does not appear to be exercised. In El Salvador, it is always possible for journalists to attend executions.

67. The press may report an execution in detail in the United Arab Republic, Ghana, Sudan, Thailand, the Republic of Viet-Nam and in some states of the United States. By contrast, all press reports of executions are forbidden in the following countries: Gambia, Nyasaland, Northern Rhodesia, Republic of South Africa, Mauritius, Seychelles, Zanzibar, Liberia, Tanganyika, Ivory Coast, Dahomey, Togo, Somalia (central and southern), Netherlands Antilles, India, Indonesia, Ceylon, Lebanon, Western Pacific Islands, Turkey, United Kingdom, Canada, France and in a number of states of the United States, three of which permit only a bare announcement of the execution. In Austria, where the death penalty is applied in vary exceptional cases only, all publicity of an execution is prohibited so strictly that it is not even announced officially.

II. *Cases of Exemption from Execution*

1. *Cases specified by Law*

68. Great care has been taken to check the information given in this section. However, a distinction has not always been made in the replies received between the statutory provisions which preclude the passing of a death sentence and those which preclude actual execution, so that in some cases there may be some overlapping.

69. In most cases, there is a traditional exemption in favour of pregnant women. This exists in France, the United Kingdom, Czechoslovakia, Yugoslavia, USSR, Australia, Netherlands New Guinea, Laos, China, Cambodia, the Central African Republic, and Morocco, but this list is not exhaustive. Frequently, the law provides only for the postponement of the execution for a period which varies according to whether the woman sentenced to death breast-feeds her child or not. The statutory period of postponement is three months in Iran but two years in case of breast-feeding; in Greece the period specified is 30 days, and six months in case of breast-feeding. In practice, the postponement of the execution nearly always leads to a subsequent commutation of the death sentence.[1]

70. A second statutory exemption concerns minors, or at least some minors. It operates almost automatically for all minors on whom no sentence may be passed. It applies also to those older youths who may be sentenced to penalties, whether in exceptional cases or not, but who may not be sentenced to death: the determining age is 15 years in Finland, 16 in France and

[1] The cases referred to here are those of exemption specified by law; it will be seen in chapter II that, in this matter, actual practice is much more liberal.

Burma, 17 or 18 in the United Kingdom, Spain, Czechoslovakia, Ghana, Nigeria and Philippines, and 20 in Austria.

71. Under the law of some countries, a person may not be executed if he is insane, whether at the time of the sentence or at the time when it is to be carried out; this is the case, for example, in the Central African Republic, China, Iraq, Greece and Yugoslavia. In Greece, furthermore, if the sentence is not carried out within five years, the execution is barred by statute. In El Salvador, the following system is practised in the case of a sentence of death passed on several persons: according to the number of persons simultaneously sentenced, the number of those actually executed varies and only those at the head of the list are in fact put to death.

2. *Pardon*

72. Pardon is to some extent a case of statutory exemption from execution, since it exists by virtue of the law; however, pardon goes much further than actual exemption because it affects the legal position of the convicted person, whose sentence in the majority of cases will be commuted; in certain exceptional cases, the penalty may be remitted altogether. Even in modern times, the pardon has broadly retained its ancient characteristics of a royal prerogative by virtue of which the king, from whom all justice emanated, had the natural right to exempt one of his subjects from the imposition of a penalty ordered in the king's name.

73. It follows that the authority competent to pardon is generally the king in monarchies; elsewhere, it is the president of the republic or the head of State. In certain cases, it is the head of the government or the governor of the province or of the component state of a federal union. In many constitutional monarchies, such as the United Kingdom, the government or a minister (Home Secretary) is competent to take a decision in the name of the Sovereign. More rarely, the pardon is within the power of a collegiate body; this is the case, however, in the USSR where it is a matter for the Praesidium of the Supreme Soviet, and in El Salvador and Turkey, where it is a matter for the Legislative Assembly.

74. In practically all cases, moreover, the competent authority takes its decision on the advice of a commission. Where such a commission is not provided for by the law, the competent authority always has the papers in the case examined before taking a decision. In many countries, however, the advice of a special commission is mandatory, for example, in Morocco, Nyasaland, the United States (where the commission is termed " Board of Pardon " or " Board of Parole "), the Philippines, the Republic of Viet-Nam, the Federation of Malaya, Cambodia, Lebanon and Greece. In France, the President of the Republic is under a duty to seek the advice of the Supreme Council of the Judiciary (Conseil supérieur de la magistrature). The advice of the government is required in Sudan, Cambodia, China and Japan (where it is given on the report of a special commission).

Similarly, in the Republic of South Africa, Mauritius, Canada and Hong Kong, the executive council must be consulted.

75. In some countries, the law expressly provides that the court which passed the death sentence must also decide on the possibility of a pardon. This is the case, for example, in Chile, Ceylon and to some extent apparently in South Australia. In El Salvador and Spain, the advice of the Supreme Court must be obtained, and this is the case also in certain states of the United States. In many countries which have the institution of the jury, there exists a customary practice under which the jurors will express spontaneously, but usually unofficially, their wish to see the penalty of death commuted; under the Canadian Act of 1961, a special question on that point must be addressed to the jury.

76. There is little to be said on the effects of a pardon. Being traditionally a royal prerogative, the pardon may carry with it the commutation of the penalty or its complete remission; naturally, however, complete remission, even where legally possible, is so exceptional as to be practically unknown. As a general rule, the penalty of death will be replaced by another penalty, usually deprivation of liberty for the longest term specified in the criminal law concerned.

77. In view of the discretionary character of the right to pardon there is naturally little information about the circumstances in which it is in fact generally granted. However, the practice existing in many countries of not executing women should be noted. A sentence of death passed on a woman is thus very frequently commuted, sometimes by virtue of an almost binding custom. The same is often true in the case of aged persons; the law of the Philippines actually contains a specific provision to the effect that persons over the age of 70 years may not be executed. In other countries (e.g., Pakistan) a practice has grown up of pardoning persons under 18 and those over 60 years of age. In Northern Rhodesia, it is traditional to commute sentences of death passed in respect of rape; in this case, it is the nature of the offence and not the personality of the offender which is taken into account.

78. Lastly, it should be stressed that the abolition of the death penalty in certain countries has not been the result of legislative action but of a constant and deliberate practice of pardoning condemned persons. This has been the case, in particular, in Belgium and Luxembourg.

3. *Amnesty*

79. In law, an amnesty differs from a pardon in that it does not merely operate as a bar to the carrying out of the sentence but actually annuls the sentence itself. Another distinction, at least in the traditional doctrine, is that a pardon is an individual measure, whereas an amnesty is in principle general in character. An amnesty measure covers a whole series of offences which, it is thought, should be forgotten for reasons of higher policy.

This explains why an amnesty cannot as a rule be granted otherwise than by statute or by an equivalent legislative act, such as a dahir in Morocco. The legislator is free to determine, and to specify in the amnesty law, the circumstances, conditions and limits of its application. In some countries, as in Somalia (northern), the power of amnesty may be vested in the president of the republic by special delegation of the legislative power. In Japan and Greece, an amnesty may also be ordered in certain exceptional cases by the emperor or king.

80. The power of amnesty is, in some countries, limited in scope. In Dahomey, for example, an amnesty can only apply to penalties involving deprivation of freedom and to fines. In fact, the amnesty operates in this manner in practically all countries which admit it, even in the absence of any specific legislative provisions on the subject.

81. In other countries (e.g., El Salvador, Guatemala and Greece) an amnesty is possible only in respect of political and similar crimes. And it should be noted that amnesty is an institution unknown to the law of many countries, in particular the United States and the Commonwealth countries.

82. Reference has been made here to amnesty for the sake of completeness only and in order to take into account the replies received on this point. Because it requires legislation, or at least some form of regulations, an amnesty can hardly be thought of as capable of saving a person sentenced to death from execution, except in cases in which, as a result of internal upheavals, an amnesty is ordered for political reasons at a time when a number of death sentences have not yet been carried out. The machinery of amnesty renders it practically inapplicable to a sentence of death. Besides, as stated above, if a legislator grants an amnesty in respect of certain offences he does so as a general rule only for those of medium gravity and in respect of comparatively light sentences. Accordingly, and by reason of what might almost be called considerations of political psychology, amnesty plays practically no role in the matter of capital punishment.

Section II. — Countries and territories in which the death penalty is not applied

A. — Abolition of the Death Penalty

83. The first cases of the total abolition of the death penalty by statute date from the late eighteenth century; in 1786, Leopold II of Tuscany promulgated his celebrated code, under the direct inspiration of Beccaria, and this was followed in the next year by the penal code of Joseph II of Austria. It should be noted that, not many years after these decidedly epoch-making enactments, the death penalty was reintroduced. In France, the Convention nationale declared that capital punishment would be

abolished as from the date of the restoration of peace; but when the peace came the death penalty was in fact restored. The abolistionists then concentrated, as is shown by the famous example of Sir Samuel Romilly, not on the total abolition of capital punishment but on the reduction of the number of offences for which the penalty was death. It is a notorious fact that in 1800 more than 200 offences were punishable by death in England. By 1863, on three capital crimes remained, of which only one, murder, involved in practice the application of the penalty of death.

84. It has thus been possible to speak of partial abolition in lieu of total abolition, which would hardly have been acceptable either to rulers or to legislators, or even to public opinion. This may be said to have been abolitionist policy in the nineteenth century, which was also aimed at preventing executions in the ever fewer cases in which the death penalty still applied. Yet, as from the middle of the nineteenth century, and particularly since the Italian Code of 1889, total abolition was once more demanded, and this tendency appears to have become more marked in the twentieth century.

85. A glance at table I will show, however, that capital crimes are still relatively numerous.[1] But it is also evident from the table that the number of countries in which offences other than murder are punishable by death is declining, though this remark should be qualified by a reference to one of the outstanding features of the legal sociology of the last thirty years: the reapparance of the death penalty for political crimes. The trend towards an authoritarian system of criminal law which characterized the first half of the twentieth century has checked the slow movement towards gradual abolition that was becoming almost universal. As a result of a variety of circumstances, many but not all of which are due to the influence of this authoritarian trend, the death penalty has sometimes reappeared in a more or less permanent manner in countries where it had once been abolished, and in certain other countries its application has been extended to new cases.

86. There are practically no countries where the death penalty has never existed, with the exception of certain territories, which have recently become states, such as Alaska and Hawaii. In fact, the death penalty existed even in these territories before they became states.

87. Abolition in law has very often been preceded by abolition *de facto*. A few examples will suffice. In Portugal the last execution took place in 1848 and the death penalty was formally abolished in 1867. In Denmark, the last execution took place in 1842; the 1866 code provided for the death penalty but the penalty was never applied, and hence the 1930 code can hardly be said to have abolished capital punishment, but merely to have dropped an obsolete penalty. In the state of Delaware, capital punishment

[1] See annexes, table I.

was abolished in pursuance of the conclusions of a special commission which met in 1958, but no executions had taken place in the period between 1949 and 1958, compared to twelve executions in the period between 1930 and 1949.

88. In certain other cases, the death penalty was first limited to certain exceptional cases before being finally abolished. In Brazil, at the time of the proclamation of independence in 1822, some 40 offences were punishable with death. Only three capital crimes remained thereafter: murder, robbery and insurrection of slaves. On the proclamation of the Republic in 1889, the new Brazilian constitution abolished the death penalty. Similarly, in Ecuador, a steady trend towards restricting the cases of application of the death penalty had, since 1852, prepared for total abolition, which was effected by the 1897 constitution. In some cases, the abolition came by gradual stages: first, the death penalty ceased to be applied for political crimes and then the abolition was extended to ordinary crimes. In Portugal, for example, abolition took place in two stages: first, by the Constitutional Act of 1826 and then by the Penal Code of 1867. Similarly, in Venezuela, the death penalty was abolished for political crimes in 1857 and for ordinary crimes in 1863. The abolition of the death penalty for political crimes has not always led to its subsequent abolition for ordinary crimes; in France, for example, political crimes ceased to be punishable by death in 1848, but none of the proposals for total abolition has ever been successful. Indeed, ordinances enacted in 1960 have to some extent restored in France the penalty of death for certain political crimes. One more example may be cited: in New South Wales almost complete abolition was achieved in 1955, treason and piracy alone being retained as capital crimes, but no executions have been carried out since 1939.

89. It would be interesting, although not always easy, to discover for what reasons the death penalty was abolished in the abolitionist countries. From the replies to the questionnaire, it seems that in most of the cases the reasons officially given are the following: (1) the value of the death penalty as a deterrent is not proved or is debatable; (2) a large number of capital crimes are in fact committed by persons of unsound mind, many of whom, precisely because of their mental condition, are not liable to the supreme penalty; (3) there is someting shocking in the uneven way in which the law is applied in the matter of the death penalty, either in that different courts apply different standards of severity, or in that the application of the law is influenced by economic and sociological considerations; offenders lacking financial means and consequently less capable of presenting their defence are in greater danger of being sentenced to death; (4) the death penalty hampers the normal administration of criminal justice, not only because of the unevenness mentioned but also because the courts which would be responsible for passing sentence of death will be reluctant to convict on a capital charge; (5) whatever precautions are taken, the possibility of judicial error undoubtedly exists; in certain countries, the death penalty was abolished after doubts had been expressed as to the guilt

of persons who had been executed (this was the case, for example, in the states of Rhode Island, Wisconsin and Maine); (6) the feelings to which the passing of a death sentence and its execution give rise seem so unwholesome that certain observers go so far as to refer to the criminogenous character of capital punishment; (7) in so far as the object of capital punishment is the effective protection of society, it is noted that life imprisonment is sufficient for this purpose; this idea has prevailed particularly in the abolitionist countries of Latin America; (8) the combined efforts of individual abolitionists and of leagues organized for the purpose of pressing for the abolition of the death penalty have also had an influence on the decision to abolish capital punishment; (9) public opinion in certain countries has come round to the view that the death penalty is both useless and odious. The unevenness in the application of the death penalty may be a factor tending to support this evolution of ideas, for it makes the death penalty appear as a somewhat sinister lottery, whereas by definition it is supposed to be an absolute penalty; (10) it has also been argued in certain abolitionist countries that a criminal, even if he has committed the most heinous crimes, cannot be considered to be utterly irreclaimable; (11) the fact that executions are rare has also often been cited by the legislator as a reason for abolishing capital punishment, particularly in Portugal and in Latin America; having become in fact most exceptional, the death penalty ceased to be a deterrent and also to guarantee equality in the application of penalties; (12) the desire to avoid the possible utilization of capital punishment for political ends was another of the considerations advanced in favour of abolition, particularly, again, in Latin America; (13) the abuse of the death penalty, both as regards the number of executions and as regards the number of capital crimes, has also been mentioned (e.g., in 1959 in the Federal Republic of Germany); (14) the abolition (and sometimes also the reintroduction) of the death penalty has been sometimes due to the coming to power of a party whose electoral programme included a promise to abolish (or, as the case may be, to restore) the death penalty; this happened in New Zealand, for example; (15) in certain countries, and in particular in a number of Latin American countries, the law — sometimes even the constitution — proclaims in absolute terms that human life is inviolable; where this is so, the death penalty is *ipso facto* excluded.

90. As is well known, the abolition of capital punishment has sometimes been provisional. If one looks merely at the record of the last three-quarters of a century, one will see that in Spain, for example, the death penalty was abolished in 1932 and then restored for certain crimes in 1934 before its restoration was confirmed in 1938; it heads the list of penalties in the 1944 code. In Austria, the death penalty was abolished in 1919, re-established in 1934 and abolished again in 1945 with effect as from 1950. In Italy, the 1889 code made no provision for the death penalty but the fascist régime introduced it in 1928, subsequently incorporating it into the 1930 code; capital punishment was again abolished by a legislative decree of 10 August 1944. In Switzerland, it was abolished by the 1874 constitution,

but the 1879 revision of the constitution permitted the individual cantons to re-establish it; the penal code of 1937, which entered into force in 1942, abolished the death penalty definitively. In the United States, nine states which had abolished the death penalty subsequently restored it. It may be noted in this connexion that in Kansas it remained abolished for over forty-five years, from 1887 to 1935, and in South Dakota for twenty-four years, from 1915 to 1939. In New Zealand the death penalty was abolished in 1919, restored in 1951 and then abolished again in 1961. In the USSR, it was abolished by a decree of 26 May 1947 but restored on 12 July 1950 for traitors, spies and saboteurs and extended on 30 April 1954 to serious cases of premeditated murder. The Fundamental Principles of Criminal Law, 1958, prescribe the death penalty for a number of offences, and that enumeration is reproduced in article 23 of the 1960 code of the RSFSR. In addition, several legislative provisions adopted in 1960 and 1961 prescribe the death penalty for some further offences of an economic nature and certain offences against the public peace.

B. — Substitute Penalty

91. As already indicated, the question of the substitute penalty cannot be fully examined without a complete study of positive penology, a study which would be outside the scope of the present report.

92. The penalty substituted for the death penalty is invariably one involving deprivation of liberty. Mostly, at least for the most serious crimes, the substitute penalty is the severest possible form of deprivation of liberty, variously designated in the different countries: hard labour (travaux forcés) in Belgium and the Federal Republic of Germany, *ergastolo* in Italy, rigorous life imprisonment in Austria, Switzerland, Argentina and Ecuador, and life imprisonment in Denmark, Finland, the Netherlands, Norway, Sweden, Australia (Queensland and New South Wales) and New Zealand.

93. In some countries, however, life terms are not imposed. For example, in Portugal, where the death penalty had been replaced by life imprisonment in 1867, life sentences were abolished in 1884. Accordingly, under the provisions of a legislative decree of 1936, as amended in 1954, the penalty which now takes the place of the death penalty in Portugal is imprisonment for a term of not less than 20 and not more than 24 years. The position is similar in San Marino, the Dominican Republic, Uruguay, Brazil and Venezuela. The decree of 1947 which had abolished the death penalty in the USSR had replaced it by imprisonment for twenty-five years.

94. It should be added that, in the countries where the substitute penalty is in principle a life sentence, mitigating circumstances may lead to the application of a penalty involving deprivation of liberty for a specified term, which may also take the place of capital punishment for certain offences that previously constituted capital crimes (e.g., in Belgium).

95. It is hardly necessary to inquire into this question in greater detail. It is well known that life terms, even where possible under the law, are no longer served in practice, as can be seen from modern penological studies. Although under the law of some countries (e.g., the Federal Republic of Germany and the state of Queensland (Australia)) a convict serving a life sentence cannot in principle qualify for conditional release, such a sentence can be commuted by means of a pardon (where this institution exists) into one of a specified term, in which event the customary rules concerning release before completion of the sentence becomes applicable.

96. This release before completion of the term is expressly recognized as a possibility in Austria, Denmark (if the prisoner has served two-thirds of his term or if at least nine years have elapsed since the conviction), Luxembourg, Norway and Sweden (where it is similarly required that at least nine years must have elapsed in the case of a penalty which is in principle a life term), and the Netherlands (where conditional release may be granted if the prisoner has served two-thirds of his sentence).

97. Naturally, in the countries in which the death penalty is applied, the problems of the substitute penalty and of a possible conditional release will arise if a person sentenced to death is not executed because the sentence is commuted. In this case, too, if the law prohibits conditional release, whether in the event of the commutation of a death sentence or in the event of a life sentence — and, as was pointed out above, the consequence of commutation is generally life imprisonment — a subsequent (or second) pardon may enable the prisoner to obtain his conditional release in that the life sentence is replaced by one for a specified term.

CHAPTER II

PROBLEMS OF PRACTICAL APPLICATION

98. In discussing these problems, the present report will deal only with the countries in which the death penalty exists. As far as the abolitionist countries are concerned, the essential question is that of the substitute penalty — how it operates and as from what point a person sentenced to the substitute penalty may be released. As was said before, a thorough study of this question would necessitate a general inquiry into the rules governing penalties involving deprivation of liberty and conditional release and parole. The problem of imprisonment is really quite distinct from that of capital punishment even if, in fact, the persons imprisoned might, in other circumstances, have been liable to the penalty of death. Since the present study must be limited to capital punishment, which of itself raises a great many issues, this chapter will deal only with the problems of practical application which arise in those countries where the death penalty exists.

99. These problems fall into three categories. First, which crimes are at present punishable with death? Second, what statistical data are obtainable, and what conclusions may be drawn from them, concerning the practical operation of capital punishment during a given period, which may be limited to the last five years? Third, in the light of these facts, what are the conditions under which the death penalty is carried out?

A. — Capital Crimes in the Various Legal Systems

100. Subject to the terminological difficulties mentioned earlier, it may be said that, in present practice, the crimes punishable by death are divisible into several categories, the first of which includes crimes against the person and in particular against life. These are by far the most numerous among the capital crimes, and until a recent date, it could be said that there was a tendency in positive law to consider murder as the only capital crime. However, other offences have remained capital crimes, either in obedience to ancient tradition or because sociological or demographic conditions in the countries concerned require that they should be so treated. In addition, because in some countries economic crimes are regarded as extremely serious matters, these have, in certain cases, been made punishable with death; and whereas the liberal law of the nineteenth century had led to the abolition of capital punishment for political offences, these offences

have in the twentieth century law of certain countries taken on once more the character of what was formerly described as a " crime de lèse-majesté " or " odious crime " jeopardizing the security of the State.

101. Subject to these preliminary remarks, the crimes which, in the various countries, are at present punishable with death are classified below; this classification is supplemented by the tables annexed to this report, where these crimes are tabulated under the names of the countries and territories in which they are regarded as capital crimes.

1. *Crimes against the Person*

102. (*a*) *Crimes against life.* — These can take various forms:

103. *Murder.* — This is by far the commonest capital crime and is punishable with death in the following countries: Afghanistan, Australia (Federal Capital Territory, Western Australia, South Australia, Northern Territory, Tasmania and Victoria), Belgium,[1] Burma, Canada, the Central African Republic, Ceylon, Chile, China, Czechoslovakia, Dahomey, El Salvador, France, Gambia, Ghana, Gibraltar, Greece, Guatemala, Hong Kong, India, Iran, Iraq, Ivory Coast, Japan, Laos, Lebanon, Liberia, Luxembourg, Federation of Malaya, Mauritius, Morocco, Netherlands New Guinea, Nicaragua, Nigeria, Northern Rhodesia, Nyasaland, Pakistan, Philippines, Poland, Seychelles, Somalia (northern), the Republic of South Africa, Spain, Sudan, Surinam, Tanganyika, Thailand, Togo, Turkey, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom, United States (federal law, and Alabama, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming), the Republic of Viet-Nam, Western Pacific Islands, Yugoslavia, Zanzibar.

104. *Wilful homicide.* — Gambia, Ghana, India, Federation of Malaya, Netherlands New Guinea, Nigeria, Northern Rhodesia, Nyasaland, Pakistan, Philippines, Poland, Seychelles, Republic of South Africa, Somalia (northern), Sudan, Tanganyika, Thailand, Zanzibar.

105. To these cases may be added *killing in a duel*, which is a capital crime in the following states of the United States: Arkansas, Florida, Georgia, Indiana, Iowa, Massachusetts, Mississipi, Nebraska, Nevada, North Carolina, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Wyoming.

[1] Belgium and Luxembourg are *de facto* abolitionist but the death penalty is provided for in their penal codes; a sentence of death may therefore be passed, but is in fact never carried out.

106. Another crime punishable with death is *lynching* in the following states of the United States: Alabama, Arkansas, Georgia, Indiana, Kansas, Kentucky, Pennsylvania, South Carolina, Virginia, West Virginia.

107. *Poisoning.* — This is really a form of aggravated and premeditated murder: Belgium, Central African Republic, Dahomey, France, Guatemala, Iraq, Ivory Coast, Japan (poisoning of drinking-water causing death), Laos, Luxembourg, Mauritius, Morocco, Togo, United Arab Republic, Republic of Viet-Nam.

108. *Parricide, infanticide.* — Belgium, Chile, China, Dahomey, El Salvador, France, Guatemala, Iraq, Ivory Coast, Japan, Laos, Lebanon, Luxembourg, Mauritius, Morocco, Nicaragua, Philippines, Spain, Thailand, Togo, Turkey.

109. *Homicide accompanied or followed by another crime* (robbery, highway robbery, piracy). — Australia, Belgium, Burma, Canada, Central African Republic, Chile, China, Dahomey, El Salvador, France, Gibraltar, Guatemala, Hong Kong, India, Iraq, Ivory Coast, Japan, Lebanon, Luxembourg, Nicaragua, Nyasaland, Pakistan, Philippines, Spain, Seychelles, Sudan, Surinam, Thailand, Togo, Turkey, United Arab Republic, United Kingdom, Republic of Viet-Nam, Western Pacific Islands.

110. *Killing of a policeman or of an official on duty* (often also assault causing death of such a person). — Burma, Dahomey, Gibraltar, India (attempt also similarly punishable), Iraq, Ivory Coast, Laos (attempt also similarly punishable), Pakistan (under martial law), Somalia (northern) (attempt also similarly punishable), Sudan (attempt also similarly punishable), Thailand, United Kingdom.

111. To this crime may be assimilated the crime of *homicide or assault committed by a prisoner under sentence*, even against a fellow prisoner: United States (Arizona, California, North Dakota, Rhode Island).

112. *Aggravated assault causing the death of a child.* — Central African Republic, Dahomey, France, Ivory Coast, Morocco, Togo, Republic of Viet-Nam.

113. *Arson or destruction of various kinds, causing death.* — Belgium, Central African Republic, Chile, China, Dahomey, France, Gibraltar, Guatemala, Iran, Iraq, Ivory Coast, Japan, Mauritius, Morocco, United Arab Republic, Somalia (northern), Togo, Turkey, United Kingdom, United States (Alabama, Arkansas, Georgia, Illinois, Indiana, Kansas, Mississippi, Missouri, North Carolina, Vermont, Virginia), Yugoslavia.

114. *Aiding in the suicide of a child or a person under the influence of drink or of unsound mind.* — Ceylon (for all persons), United States (Arkansas for aiding in a suicide in all cases), India, Somalia (northern), Sudan.

115. *Killing a woman by abortion.* — This crime is punishable with death in some states of the United States (Illinois, Kentucky and West Virginia); foeticide, or simple abortion, is similarly punishable in Georgia.

116. (*b*) *Offences against the integrity of the person.*

117. *Rape.* — Either *followed by death:* Japan, Philippines, Turkey; or *rape:* China, Northern Rhodesia, Nyasaland, Republic of South Africa, United States of America (Alabama, Arkansas, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia.)

118. *Castration followed by death.* — Central African Republic, Dahomey, Ivory Coast, Laos, Mauritius, Morocco, Togo and in the United States, in Georgia, apparently in all cases of castration.

119. *Traffic in narcotics in certain particularly serious cases.* — China, Iran, Turkey and the United States (under federal law).

120. *Kidnapping.* — Either if *followed by death:* Central African Republic, France, Ivory Coast, Republic of Viet-Nam and Togo; or if *attended by aggravating circumstances,* in particular kidnapping for ransom: Chile, United States (Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma. South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming) and in still more general terms in Dahomey, Federation of Malaya, Philippines and under United States federal law.

121. *Arbitrary detention with torture.* — China, Czechoslovakia, Dahomey, France, Guatemala, Iran, Laos (mutilation by witchcraft), Philippines, Togo.

122. (*c*) *Other offences which may affect the person: cumulative offences.*

123. *Perjury (false witness) leading to another person's being sentenced to death or unlawfully imprisoned in serious cases.* — Ceylon, Dahomey, France, India, Iraq, Ivory Coast, Luxembourg, Morocco, Somalia (northern, central and southern), Sudan, Togo, Turkey, United Arab Republic, United States (Arizona, California, Colorado, Georgia, Idaho, Illinois, Missouri, Montana, Nebraska, Nevada, Vermont, West Virginia).

124. *Recidivism after sentence to the longest term of deprivation of liberty: commission of more than one offence punishable with such a penalty.* — Chile, China, Dahomey, Iraq, Morocco, Somalia (central and southern), Togo, Turkey, USSR.

125. *Train robbery, train wrecking.* — United States of America (Alabama, Arizona, California, District of Columbia, Florida, Georgia, Idaho, Indiana, Kentucky, Maryland, Montana, Nebraska, Nevada, New Mexico, Ohio, Oregon, Pennsylvania, Virginia, West Virginia, Wyoming).

2. *Crimes against Property, and Economic Crimes*

126. (*a*) *Aggravated robbery (in particular, armed robbery).* — Dahomey, France, Greece, Ivory Coast, Netherlands New Guinea, Republic of South Africa, Togo, United States (under federal law, armed bank robbery; Alabama, North Carolina, Kentucky, Mississippi, Missouri, Texas, Virginia).

127. (*b*) *Piracy with violence.* — Australia (Federal Capital Territory, Western Australia, South Australia, New South Wales, Northern Territory), Canada, Chile, Gibraltar, Guatemala, Hong Kong, Nyasaland, Philippines, Seychelles, Spain, Western Pacific Islands.

128. (*c*) *Hoarding or unlawful and serious raising of prices; misappropriation of public funds.* — China, Republic of Viet-Nam, Spain, Yugoslavia.

129. (*d*) *Counterfeiting currency; currency speculation.* — Poland, USSR.

130. (*e*) *Serious crimes against socialized property.* — Poland, USSR, Yugoslavia.

3. *Crimes against the State, and Political Offences*

131. (*a*) *Crimes against the external security of the State.*

132. *Treason.* — Australia (Federal Capital Territory and states), Belgium, Burma, Canada, Central African Republic, Ceylon, Chile, China, Czechoslovakia, Dahomey, El Salvador, Federation of Malaya, France, Gambia, Ghana, Gibraltar, Greece, Guatemala, Hong Kong, Indonesia, India, Iran, Iraq, Ivory Coast, Japan, Lebanon, Liberia, Luxembourg, Mauritius, Morocco, Netherlands Antilles, New Zealand, Nigeria, Northern Rhodesia, Pakistan, Philippines, Poland, Republic of Viet-Nam, Seychelles, Somalia (central and southern), South Africa, Spain, Tanganyika, Thailand, Togo, Turkey, USSR, United Arab Republic, United Kingdom, United States (federal law, Alabama, Arizona, Arkansas, California, Connecticut, Georgia, Illinois, Indiana, Kansas, Louisiana, Maryland, Michigan, Mississipi, Missouri, Montana, Nevada, New Jersey, New York, North Dakota, Oregon, Texas, Vermont, Virginia, Washington, West Virginia), Western Pacific Islands, Yugoslavia, Zanzibar.

133. *Spying.* — Central African Republic, Czechoslovakia, China, Dahomey, El Salvador, France, Greece, Iran, Luxembourg, Morocco, Poland, Republic of Viet-Nam, Somalia (central and southern), Spain, Togo, Turkey, USSR, United Arab Republic, United States (federal law), Yugoslavia.

134. *Assistance to, or collaboration with, the enemy.* — Australia, Belgium, Canada, Central African Republic, China, Indonesia, Iran, Iraq, Japan, Lebanon, Luxembourg, Netherlands Antilles, New Zealand, Pakistan,

Philippines, Surinam, Turkey, United Kingdom, Western Pacific Islands, Yugoslavia.

135. *Crimes against the integrity and independence of the country.* — Australia, China, France, Greece, Iraq, Japan, Luxembourg, Northern Rhodesia, Poland, Somalia (central and southern), Spain, Surinam, Yugoslavia, Zanzibar.

136. (*b*) *Crimes against the internal security of the State.*

137. *Armed rebellion; insurrection; conspiracy against the State.* — Australia, Burma, Central African Republic, China, Czechoslovakia, France, Ghana, Guatemala, India, Iran, Iraq, Japan, Laos, Mauritius, Morocco, New Zealand, Pakistan, Poland, Somalia (northern, central and southern), Spain, Sudan, Turkey, USSR, Yugoslavia.

138. *Homicide in a riot or insurrection.* — United States (Colorado, Georgia, Kentucky, Oklahoma).

139. (*a*) *Crimes against the internal peace.*

140. *Attempts on the life of the head of State.* — Australia, Belgium, Greece, Guatemala, Indonesia, Iran, Laos, Luxembourg, Morocco, Netherlands New Guinea, New Zealand, Spain, Surinam, Thailand, Turkey, United States (Connecticut, New Jersey, Ohio), Yugoslavia. It should be noted in this connexion that very frequently, a crime against certain important personages (variously defined in different countries), is deemed to be a crime against the head of State. The following may be mentioned as examples: Connecticut (attempt to kill a foreign ambassador accredited to the United States Government); New Jersey (assault on the Vice-President of the United States or the Governor of the State); Ohio (taking life of Vice-President, cabinet officer, Governor or Lieutenant-Governor); Turkey (wilful homicide of a member of Parliament); Yugoslavia (murder of a representative of the people or of a social organ).

141. *Mutiny; incitement to mutiny, if followed by mutiny.* — Ceylon, Ghana, India, Indonesia, Iran, Iraq, Mauritius, Netherlands Antilles, Pakistan, Somalia (northern), Sudan, Surinam, United Kingdom.

142. *Looting; massacre; devastation; diversionism.*[1] — Central African Republic, China, Czechoslovakia, France, Greece, Iraq, Laos, Lebanon, Poland, Somalia (central and southern), Spain, USSR, Western Pacific Islands, Yugoslavia.

143. In addition, it should be noted that in Afghanistan *adultery* is punishable with death, in Chile the crime of *assaulting a minister of religion*, and in Dahomey the *removal outside the country for financial gain of a person of unsound mind, or of a minor without the consent of his parents.* In the United States of America (state of Tennessee), *assaulting a person*

[1] See footnote 5 to table I in the annex.

with a deadly weapon while in disguise and (in Arkansas) *killing by colliding while in charge of a steamboat*, unnecessarily killing a person who resists when caught in the act of committing a felony and killing a prisoner by exceeding the bounds of moderation while executing a sentence, are capital crimes.

B. — Statistical Data and Conclusions

1. *Statistics of Sentences and Executions during the Most Recent Five-year Period*

144. The first point to note is that no sentence of death has been passed during this period (and even before) in a number of countries and territories where capital punishment nevertheless exists in law. This is the position in El Salvador, Guatemala (where the last execution took place on 1 December 1956), the Netherlands Antilles (where the last execution appears to have taken place in 1870), Laos (where no sentence of death has been passed since the country's accession to independence in 1949), Gibraltar and Netherlands New Guinea. Elsewhere, sentences of death have been passed in the last five years but have not been carried out. In this respect, the following figures are available: in Ivory Coast, 16 death sentences were passed and all of them were commuted; in Dahomey, 3 death sentences were passed, one *in absentia*; one of the other two sentences was commuted and in the third case, the convicted person escaped; in Togo there was one sentence of death but it was quashed by the court of cassation; in Gambia, two sentences of death were passed but both prisoners were pardoned and no execution has taken place in the last 30 years; in Australia, 8 sentences of death have been passed in Victoria since 1951, but none of them has actually been carried out; in Tasmania, 4 sentences of death have been passed since 1946 but none of them has been carried out; the position is similar in the Western Pacific Islands.

145. As regards the countries where executions have taken place, it will be noted that only the Chinese reply mentions an equal number of death sentences and of executions: in the most recent five-year period, 15 sentences of death were passed and the 15 convicted persons were executed.

146. In a number of countries and territories, the number of executions is higher than 50 per cent of the death sentences. This is the case in the United Arab Republic (103 sentences; 66 executions), Sudan (547 sentences; 354 executions), Somalia (15 sentences; 8 executions), Northern Rhodesia (49 sentences; 26 executions), Republic of South Africa (592 sentences; 392 executions), Federation of Malaya (85 sentences; 56 executions), Japan (126 executions but only 118 death sentences; the explanation is that a number of persons executed during the five-year period had been sentenced before), Hong Kong (30 sentences; 26 executions), Yugoslavia (38 sentences; 31 executions), New Zealand (10 sentences; 7 executions,

during the period 1953 to 1957), Fiji Islands (14 sentences; 7 executions), Turkey (33 sentences, 32 executions during the period 1959 to 1961).

147. The countries and territories in which less than 50 per cent of death sentences were actually carried out form the largest group. In Mauritius, the proportion is exactly 50 per cent for the period under reference: there were four death sentences followed by two executions.

148. In the following list, the number of executions is less than one half of the death sentences passed: Morocco, 14 out of 43; Nyasaland, 9 out of 25; Zanzibar, 5 out of 14; Ghana, 54 out of 179; Nigeria, 251 out of 590; Tanganyika, 144 out of 289; Canada, 16 out of 59; South Australia, 2 out of 9; Western Australia, 1 out of 8; Chile, 2 out of 12; Thailand, 14 out of 27; Ceylon, 48 out of 451 from 1955 to 1959 (executions were suspended from April 1956 to September 1959); Lebanon, 4 out of 30 (however, 22 sentences are awaiting examination by the court of cassation); Spain, 8 out of 33; France, 11 out of 33; United Kingdom, 28 out of 100 (from 1954 to 1958).

2. *Comparative Statistics concerning Prosecutions, Sentences and Executions*

149. It is unfortunately difficult to determine accurately to what extent proceedings for capital offences lead to death sentences and to what extent these sentences are subsequently carried out, the information obtained on that point being very incomplete. The concept of " proceedings " or " prosecution " is somewhat vague in certain cases and does not always coincide with that of a capital charge. Some countries (e.g., Morocco) report that it is impossible to supply the information in question, because the exact nature of the penalty finally requested from the court by the prosecution does not always appear from the files and is not recorded in the statistics. In addition, in many cases, the crime with which the accused is charged is often reduced, particularly in the countries following the Anglo-American system, in which a charge of " murder " is frequently reduced to one of " manslaughter ". The percentage of convictions is rarely indicated with any precision, except in the Chinese reply, which mentions that 60 per cent of capital charges resulted in convictions.

150. The crimes involved are practically always murder in some form. The following data may be noted, as regards the countries and territories which have replied to this question (the three figures following each country relate respectively to the number of capital charges, death sentences and executions): Canada, 208, 111, 51; South Australia, 27, 9, 2; Western Australia, 24, 8, 1; Northern Territory of Australia, 57, 4, 2; New Zealand, 21, 10, 7; Fiji Islands, 42, 14, 7; Japan, 385, 124; [1] Hong Kong, 73, 30, 23; Nyasaland, 159, 25, 9; Northern Rhodesia, 174, 49, 26; Mauritius, 41, 4, 2.

[1] The number of executions was not given.

151. It would also be interesting to know the number of cases in which a sentence of death was not carried out, and the reasons. The information given on this point is also quite fragmentary. However, it may be of interest to mention the following figures: age and sex appear to have been the reason for not carrying out death sentences in Canada where, from 1956 to 1960, no person below the age of 18 or of the female sex was executed. In New Zealand, only one woman was executed during the same period.

152. It is reported that many capital charges end in an acquittal. For example, in Canada, from 1954 to 1958, out of 324 persons prosecuted on a capital charge, 70 were acquitted; in Western Australia, from 1956 to 1960, 4 out of 24 were acquitted; in the Northern Territory of Australia, from 1944 to 1955, 1 out of 57; in New Zealand from 1953 to 1957, 3 out of 21; in Ghana, from 1956 to 1960, 14 out of 132; in Tanganyika, from 1957 to 1961, 17 out of 289.

153. In other cases, the accused tried on a capital charge was sentenced to a penalty less than death. The figures given for the period under reference are: in Canada, lighter sentences were imposed on 154 out of 342 persons tried on a capital charge; in Western Australia, 5 out of 24; in New Zealand, 3 out of 21; in the state of Victoria, one person held guilty of murder was sentenced to death in 1959 but with a recommendation for mercy; an appeal by the accused led to a retrial and he was then sentenced to life imprisonment; in Ghana, out of 132 persons tried on a capital charge, 15 were sentenced to a lighter sentence; and in Tanganyika, 65 out of 289.[1]

154. It may be also of interest to ascertain the specific offences for which death sentences have been passed. In that respect, the following information is available:

155. *Murder.* — Somalia, from 1956, 15 death sentences, all of them for murder; Sudan, during the most recent five-year period, 547, all for murder; Gambia, 2, both for murder; Nyasaland 25, all for murder; Northern Rhodesia 49, all for murder; Japan, 16 death sentences for murder out of a total of 118; Ceylon, from 1954 to 1959 all death sentences were for murder, and the same was true in Hong Kong and in China; Lebanon, from 1959 to September 1961, 30 death sentences, all for murder; Greece, since 1953, 39 death sentences for wilful homicide out of a total of 45; state of Victoria from 1957 to 1961, 8 death sentences, all for murder; Tasmania, from 1957 to 1961, 4, all for murder; Western Australia, from 1956 to 1960, 8, all for murder; South Australia, from 1956 to 1960, 9, all for murder; Yugoslavia, 38 death sentences, 20 for murder; New Zealand, from 1951 to 1957, 12 death sentences, all for murder (in 1961 the death penalty for murder was abolished). In the Fiji Islands, all the death sentences

[1] The special cases of countries such as Norway, the Netherlands and Belgium, which provisionally reintroduced executions for the crime of collaboration with the enemy at the end of the second world war, have been disregarded.

were for murder; in the Western Pacific Islands, only one death sentence was passed, for murder; Ivory Coast [1] and Dahomey, 1 death sentence out of 3 was for murder.

156. *Murder in conjunction with another offence.* — Ivory Coast, murder and attempted robbery; Dahomey, out of 3 death sentences one was for murder with castration; Thailand, out of 14 death sentences carried out 2 were for murder with torture and 7 for premeditated murder; Yugoslavia, in 4 cases out of 38 death sentences carried out other offences had also been committed; an unspecified number of cases in Chile.

157. *Parricide.* — Ivory Coast; in Chile, from 1957 to 1960, the majority of the 12 death sentences passed were for parricide; in Japan, out of 118 death sentences, 2 were for murder of ascendants.

158. *Highway robbery* (with homicide) accounted for 6 out of a total of 45 death sentences in Greece.

159. *Robbery.* — Thailand, 3 out of 14; Republic of South Africa, 19 out of 592.

160. *Aggravated robbery.* — Dahomey, 1 out of 3 death sentences.

161. *Robbery with violence causing death.* — Japan, 100 out of 118 death sentences.

162. *Rape.* — Republic of South Africa, 33 out of 592 death sentences; United States for 1960, 46 out of 303 death sentences under federal law and the laws of the 42 states which have not abolished capital punishment (in the case of sentences passed by courts-martial, 52 out of 159 executions).

163. The question relating to judicial error or miscarriage of justice elicited in many cases a categorical reply to the effect that none had occurred in the country concerned; it would no doubt be more accurate to say that no such cases were proved in those countries. Certain countries, on the other hand, admit that cases of judicial error have occurred.

164. One last question should be considered under this heading: In how many cases was the death sentence passed on first offenders and in how many on habitual criminals? The following particulars have been supplied concerning this point.

165. *First offenders.* — Republic of South Africa, from 1956 to 1960, 44 out of 592; United States, no statistics available but it is estimated that professional killers are not numerous among the persons sentenced to death; Guatemala, no definite statistics, but 3 first offenders were sentenced to death in 1951; Pakistan, statistics incomplete but the majority were first offenders; Japan, from 1945 to 1955, out of 250 convicted persons executed 134 — i.e., 53.4 per cent — were first offenders; Austria, from 1947 to 1950, 12 first offenders were executed as against 8 habitual criminals.

[1] No figures are available for the Ivory Coast.

Spain, the number of first offenders sentenced to death is greater than that of recidivists; state of Victoria, Australia, from 1959 to 1961 inclusive, out of 9 persons sentenced to death, 5 were first offenders; New Zealand, no statistics available, but most of the persons sentenced to death were first offenders.

166. By contrast, habitual criminals account for the majority of the death sentences passed in the United Arab Republic, in Cuba (where first offenders are not sentenced to death except for political offences) and in Guatemala, where a number of the persons sentenced for robbery with homicide are recidivists. In the United Kingdom, from 1957 to 1960, out of 28 persons sentenced to death, 16 were recidivists.

167. These indications support the experts who always held that, contrary to popular opinion, the crimes which carry the death penalty are more often than not committed by first offenders.

C. — Conditions under which the Death Penalty is carried out

1. *Interval between the Offence, the Charge, the Sentence and the Execution*

168. The period which usually elapses between the offence and the prosecution, or more accurately the indictment of the accused before the trial court, varies a great deal and only averages can be given here. The following are the figures which it has been possible to collect. In some countries and territories, the average interval appears to be less than six months: Dahomey, 4 months 19 days; Somalia (northern), 12 to 14 weeks; Nyasaland, 1²/₃ months; Northern Rhodesia, 2 months; Nigeria, 6 months; Mauritius, 5 months 4 days; Seychelles, 8 to 12 weeks; United Kingdom, 3 months; Fiji Islands, 84 days. In other countries, the average interval varies between 6 months and one year: Sudan, 7 months 22 days; Republic of Viet-Nam, six months to 1 year; Chile, 1 year, this being also apparently the time interval in Lebanon. In yet other countries, it usually exceeds one year (about 14 months in Japan, for example).

169. The interval between sentence and execution is less than six months in the following countries and territories: Togo, 3 to 4 months; Sudan, 51 days; Somalia (northern), 3 to 4 months; Nyasaland, 4½ months; Northern Rhodesia, 5 months; Tanganyika, 3 to 4 months; Mauritius, 24 days; Seychelles (in the absence of an appeal), 3 weeks; Zanzibar, 4 months; Canada, 2 to 3 months; Ceylon, 2 to 3 months; Hong Kong, 129 days; China, 14 to 18 days; Iraq, 3 months; France, 5 months 12 days; United Kingdom, 18 to 25 days; Austria, 2 hours;[1] South Australia, 1 month (however, for the various states and territories of Australia, it

[1] The penalty of death may be applied only in the event of the proclamation of a state of emergency.

varies between 28 days and 8 to 9 months); New Zealand, 4 to 5 weeks; Fiji Islands, 161 days.

170. It varies between six months and one year in the following countries: Morocco, an average of 9 months; Dahomey, 7 months 17 days; Ghana, about 6 months; Nigeria, 8 months; Chile, 7 or 8 months; Thailand, 195 days — i.e., 6½ months; Greece, 6 months 4 days. It exceeds one year in the following countries: United Arab Republic, 15 months 22 days; United States in 1960, 40 executions out of 57 took place between 13 months and 4 years after the sentence (there is a great diversity in the United States; in 1960 the two extremes were 36 days in the state of Washington, and 11 years 10 months in California); Republic of Viet-Nam, 18 months. It should be noted that the long interval which sometimes occurs between sentence and execution in some countries (e. g., the United States) is explained by the existence of a large number of appellate remedies.

2. *Determination of the Date of Execution and Treatment of the Sentenced Prisoner between the Sentence and the Execution*

171. In many countries, it is expressly provided that an execution may not take place on an official holiday or even on a religious festival (according to the religion of the sentenced person); this is so in the United Arab Republic, Dahomey, Central African Republic.

172. The date for the execution is fixed in various ways: in Chile, three days after the papers have been sent back to the court of first instance; in Guatemala, 24 hours after the notification of the decision ordering the execution; in Thailand, 60 days after the sentence has become final; in Iraq and the Republic of Viet-Nam, 24 hours; and in Japan, a maximum of six months after the sentence has become final.

173. In most countries and territories, furthermore, a prisoner under sentence of death must be kept in solitary confinement. Generally, this means complete isolation under special surveillance, with certain privileges for the prisoner, particularly with regard to food. The tendency is, without any relaxation of surveillance, to make the condemned person's last few days as bearable as possible. Naturally, in nearly all countries the services of a minister of his religion are readily available to the prisoner. The following particulars may be noted in this connexion: *isolation under strict guard, with special treatment*, exists in Ghana, Nigeria, Tanganyika, Morocco, Ivory Coast, Dahomey, Somalia (northern), Togo, Gambia, Nyasaland, Chile, Netherlands Antilles, Burma, Pakistan, Thailand, Republic of Viet-Nam, Indonesia, Japan, Ceylon, Hong Kong, Lebanon, France, United Kingdom, Australia, El Salvador.

174. In other countries, the main concern appears to be to isolate the prisoner and keep him under constant surveillance day and night; this is so in Canada, the Republic of South Africa, Chile, Guatemala, India, Iraq and Iran (where the condemned prisoner is in fact segregated

from other prisoners although this is not strictly required by law). In yet other countries, a prisoner under sentence of death remains subject to the *usual treatment of prisoners*; this is the case, for example, in Yugoslavia and Western Australia. In many countries (e.g., the United States) he is isolated in a special prison block, where surveillance is stricter and where, at the same time, he enjoys certain comforts.

175. As regards the date of the sentence, special attention should be drawn to the traditional English practice, generally followed in the United States and in the Commonwealth countries, of telling the convicted person, on the day of the sentence, the precise date of his execution. This practice, which is based on moral or religious considerations is, however, barred for humanitarian reasons in many other legal systems, the intention being not to deprive the prisoner of the hope of obtaining his pardon until the end.

176. Under both systems, however, the sentenced person is expecting to die and either prepares for death or refuses to do so. In this respect, it has been noted that it is by no means rare for a convicted person who knows that he is liable to the death penalty to accept it in a sense in advance at the trial stage, for a variety of reasons which are not always easy to determine. This phenomenon is reported to be quite common in the United Arab Republic, Japan, Iran and the United States, where sometimes persons accused of a capital crime plead guilty, and others, when sentenced to death, refuse to have the sentence commuted.

177. Not surprisingly, this attitude is not, however, the most common one. The material received from the United States indicates that, as a rule, a criminal who incurs capital punishment tries to avoid it. United States experts add that the death sentence is still regarded as something exceptional and that there is therefore a chance that the criminal will not be executed. It is reported that, out of 1,300 murders committed in the United States of America in 1960, some 1,250 will not result in an execution.

178. In certain countries, ranging from Canada to Japan, it has been observed that the person sentenced to death generally does not accept the sentence and often sincerely considers it unjust. The exercise of the right to appeal, which is generally automatic in the event of a sentence of death, thus rests not only on the natural desire of the criminal to escape death but also on his inner conviction that his criminal act had some deep-seated justification.

179. In the very few countries of Latin America which have maintained the death penalty, and also in certain European countries, it has been noted on the contrary that the first reaction of an accused, and also of a sentenced person, is to ask for mercy by pleading every possible exonerating or mitigating circumstance.

180. Once the sentence of death has been passed, the accused will not infrequently experience an apparently sincere feeling of repentance, which may go so far as to accept atonement voluntarily. This case is different

from that of the criminal (referred to above) who, in a certain sense, refuses to defend himself and craves for death, so much so that some criminologists speak of crimes committed with the object of achieving "suicide by operation of law"; the case here concerns an offender who has defended himself by every means open to him by law and by juridical practice. Upon the sentence of death being passed, the offender, by a process of self-examination, will accept his fate and desire the execution for which he morally prepares himself. Several cases of this kind have been reported from Pakistan and some have occurred in Europe and in the United States.

181. This attitude is, however, exceptional, and it is stressed that the psychology of the sentenced person must not be confused with that of the offender in general. As a general rule, a criminal who commits a capital crime does so in such a state of excitement that he does not realise the possible consequences of his act. The psychology of a *person under sentence* of death, alone with his thoughts in his cell in a special block, is a much more complex matter.

3. *Proportion of Death Sentences which have been quashed or which have not been followed by an Execution*

182. Under this heading a distinction must be drawn between two different situations. First, a sentence may be quashed on appeal. The information available on the average results of appellate proceedings is scanty and fragmentary. Nevertheless, the following particulars can be given for the most recent five-year period: Morocco, in 10 cases the death sentence was quashed or the penalty commuted or the prisoner acquitted; Ivory Coast, 3 sentences quashed, 1 acquittal, 2 commutations; Sudan, 139 death sentences reversed, lighter penalties being substituted; Republic of South Africa, 57 sentences quashed or reversed; Burma, 62 cases from 1 January 1960 to 11 October 1961; Hong Kong, 1 death sentence reversed during the last five years; Yugoslavia, from 1956 to 1960, 42 death sentences quashed out of 80; South Australia, 2 death sentences out of 9 from 1956 to 1960.

183. In some cases, on the other hand, the sentence is not followed by execution because the offender is pardoned. Though the information available on this point is also very incomplete, it appears that in some countries a pardon is granted in fewer than 50 per cent of the cases, as the following figures illustrate: Morocco, 17 out of 43 death sentence during the last five years; Canada, from 1951 to 1958 inclusive, 111 death sentences, 50 pardons — i.e., a proportion of 45 per cent. In Dahomey, the proportion is 50 per cent (1 pardon out of 2 death sentences in five years). Elsewhere, a pardon was granted in more than 50 per cent of the cases: Western Australia, from 1956 to 1960, 8 death sentences, 7 pardons; South Australia, from 1956 to 1960, 9 death sentences, 5 pardons. There are no precise statistics for France, but commutations are frequent. In the United Kingdom, pardons were granted in about 50 per cent of cases

before 1957; they have fallen slightly below that figure since the Homicide Act. In Spain, from 1950 to 1959, 42 persons out of 76 convicted on a capital charge were pardoned. In Turkey, the proportion is about 3 per cent over the last 20 years and would appear to be similar in Greece for recent years.

184. It should be mentioned at this stage that in Belgium and in Luxembourg 100 per cent of the death sentences are commuted, because these countries are abolitionist in fact and not in law. Similarly, it is reported that in the State of Victoria all 8 sentences of death passed during the period between 1957 and 1961 were followed by the granting of a pardon and that the same happened in Tasmania in the case of the 4 sentences of death passed between 1956 and 1960.

4. Postponement of Execution (Reprieve)

185. The information supplied in reply to the question concerning reprieve duplicates to some extent that given concerning cases of exemption from the application of the death penalty by virtue of the law. In the following countries and territories a pregnant woman may not in principle be executed until after delivery: Netherlands Antilles, Afghanistan, Burma, Ivory Coast, Dahomey, United States (the laws of 25 states expressly provide that a pregnant woman must not be executed until after delivery; other states which apply the death penalty follow the same practice by virtue of the principles of the Common Law; in 23 states, there is express statutory provision for a medical examination to ascertain whether the woman concerned is pregnant), Central African Republic, France, India, Nigeria, Northern Rhodesia, Pakistan, Philippines, Somalia, Republic of South Africa, Sudan, Surinam, Thailand, Togo, United Arab Republic. In Chile, the law prescribes that the sentence of death must not be notified until 40 days have elapsed after childbirth. The Republic of Viet-Nam states that the question is of no practical importance, because capital punishment is not in fact carried out in the case of a woman; actually, the position is much the same in the vast majority of the countries which still apply the death penalty.

186. In other countries and territories, a person under sentence of death may obtain at least a provisional stay of execution on grounds of illness. This is the position in Togo and Somalia (where the sentence can be carried out after recovery); in the Republic of South Africa (though there is no statutory provision on the subject, the Executive Council may defer an execution on grounds of illness); in Zanzibar; in the United States of America (except if the illness is of short duration); in India; in Pakistan; in Iraq, upon medical examination; in the Fiji Islands (where the execution may in practice be deferred). In other countries the law expressly provides that the execution must not take place in the event of insanity or mental disease supervening after the sentence; this is the position in Ghana,

Nigeria, Seychelles, the United States (in 27 states the sentenced person is committed to a psychiatric hospital and may be executed after recovery), El Salvador, Guatemala, Netherlands Antilles, Philippines, Thailand, Japan.

187. In a number of countries, the execution may be stayed for other and varying reasons; thus, in El Salvador the judge responsible for the carrying out of penalties may order an execution to be referred by a maximum of 9 days as from the moment when the sentence became final, to enable the sentenced person to settle his affairs. In the Philippines, a three-year stay of execution is possible in the case of a woman sentenced to death. In certain states of the United States, an execution may be deferred if the institution in which it is to take place does not possess the necessary equipment. In the Republic of Viet-Nam, the law expressly provides that if the sentenced person is accused of another crime, his execution may be deferred at his request by reason of these new proceedings or pending trial.

188. In yet other countries, the authority competent to grant a pardon sometimes grants only a stay of execution. This happens quite often in the United States, where the execution is then deferred for only a short period. The position is similar (although the average period of the reprieve is not indicated) in Canada, Gambia, Nyasaland, Northern Rhodesia, Nigeria, Zanzibar, Ceylon and Netherlands New Guinea.

5. *The Rights of the Family where Judicial Error is proved*

189. Most of the countries and territories report that no claims in respect of judicial error have been put forward and that there are no specific legislative provisions on the subject. This is the reply of Somalia, Sudan, Gambia, Nyasaland, Nigeria (where a settlement is apparently possible with the relatives of the victim), the Republic of South Africa, Mauritius (where the granting of an indemnity appears to be possible), Seychelles, Zanzibar, Canada (where no case has occurred, but where the possibility of compensation exists), United States (where no recent examples exist, but it is pointed out that Congress may adopt a measure granting compensation), Chile, Netherlands Antilles, Thailand, Ceylon, Hong Kong, Australia and New Zealand (where a " posthumous " pardon appears to be possible), Western Pacific Islands, Netherlands New Guinea, and Iraq and Iran, two countries where an application for review may be made and is the only remedy available. In other countries and territories, on the other hand, provision is made for a procedure of rehabilitation to exonerate a sentenced person even after his execution, at the request of his family or sometimes even of an authority, the office of the Public Prosecutor in the USSR and Poland, for example. The countries concerned are the following: Ivory Coast, Togo, Tanganyika, Guatemala, Poland, Republic of Viet-Nam, Indonesia, Lebanon, USSR. In some countries and territories such a rehabilitation may give the family or close relatives of the person executed the right to obtain damages. It goes without saying that the position is the same

in the case of a sentenced person who has not been executed and who establishes his innocence. Express provisions for the granting of an indemnity (damages) exist in Morocco, Ivory Coast, Dahomey, Togo, Northern Rhodesia, El Salvador, Afghanistan, the Republic of Viet-Nam, Japan, China, Lebanon, France, the Netherlands, Sweden, Switzerland and Yugoslavia.

CHAPTER III

SOCIOLOGICAL AND CRIMINOLOGICAL PROBLEMS

190. These are the problems which have given rise to the most abundant literature in various parts of the world. They are also the subject of a large number of replies, for the special questionnaire addressed to correspondents and to non-governmental organizations dealt in large part with these problems. Unfortunately, as explained earlier, most of these replies arrived at the very end of the specific time-limit and some of them even after the analysis of the material had been completed and when the present report was being written. To the author's great regret, it has therefore not been possible to take these answers into account, just as it has not been possible to discuss in this report all the books, pamphlets and articles which have been consulted. These publications are very valuable but this field has been much more thoroughly explored than those dealt with in the previous chapters. Moreover, it was impossible to choose between several equally authorititive opinions; since it was not feasible, owing to limitations of space, to quote all the specialists in the field, the author has preferred to quote none. He decided to treat these problems under four broad headings.

A. — The Problem of the Effects of the Death Penalty

1. *Objective Data Available at Present*

191. The purpose here was to gather, for purposes of comparison, positive indications regarding the death penalty. It is, however, very difficult to obtain data of that type which are complete and, above all, objective. There are numerous gaps in this respect in the material, and many of the replies are silent on the question. There is also a great diversity from one country to another regarding the points on which exact data were supplied.

192. Subject to these remarks, the first point to be noted is that the information assembled confirms the now generally held opinion that the abolition or (which is perhaps even more significant) the suspension of the death penalty does not have the immediate effect of appreciably increasing the incidence of crime. This point is stressed by the abolitionist countries where abolition *de jure* was preceded by a period of *de facto* suspension. Likewise, some countries which have maintained the death penalty have experienced periods during which it was not applied, or at

least not carried out, and in these the fact that there were no executions was well known to the general public and therefore to possible offenders. This was the case in France early in the twentieth century under President Fallières and in the United Kingdom in the period preceding the Homicide Act, 1957. No noticeable increase in crime resulted in either case.

193. The replies received from many abolitionist countries, in particular the Scandinavian countries, Austria and certain Latin American countries, take this consideration as the basis for the view that the deterrent effect of the death penalty is, to say the least, not demonstrated. And even a number of countries which have maintained the death penalty query its value as a deterrent in their official replies. This is true of the replies of Spain, Greece, Turkey, and in particular of the United Kingdom, and also (with qualifications) Japan.

194. Many other government replies, however, state that no final opinion can be expressed as to whether the death penalty has a deterrent effect or not. This is the view of Austria and Yugoslavia.

195. In the United States, many studies have been carried out on the deterrent effect of the death penalty on the basis of crime statistics, but these studies are largely the work of private specialists and there is no government reply on this specific point.

2. *The Abolition of the Death Penalty, and the Criminality Curve*

196. A distinction can be drawn between partial abolition and total abolition. Partial abolition consists of the removal of certain offences from the list of capital crimes. It is therefore possible to study in this connexion, with perhaps greater accuracy than in other contexts, the effect of the removal of an offence from the list of capital crimes on the frequency with which it is committed after it ceased to be punishable with death.

197. All the information available appears to confirm that such a removal has, in fact, never been followed by a notable rise in the incidence of the crime no longer punishable with death. This observation, moreover, confirms the nineteenth century experience with respect to such offences as theft and even robbery, forgery and counterfeiting currency, which have progressively ceased to be punishable with death: indeed, these crimes, so far from increasing, actually decreased after partial abolition. The same has been true of infanticide, which was formerly punishable as murder but which has progressively received more lenient treatment. It is even reported from Greece that banditry in fact decreased after it ceased to be punishable with death, though the report adds that more efficient preventive action by the police also accounts for the decline in this offence. In Canada, rape ceased to be punishable with death in 1954: it is reported that there were 37 convictions for rape in 1950, 44 in 1953 and only 27 in 1954, the year of abolition; from 1957 to 1959 a steady decrease in convictions was noted

(from 56 to 44), while in the same period the population of Canada increased by 27 per cent.[1] In England, there has been since 1957 no increase in the crimes which ceased to be capital murders under the Homicide Act of that year. And Yugoslavia reports that the reduction in the number of capital crimes by the successive reforms of 1950 and 1960 did not result in any increase in the crimes previously punishable with death, despite an appreciable increase in the population.

198. The same general observation can usually be made regarding the total abolition of the death penalty. In this respect, it is particularly instructive to look at the experience of States which at one time abolished and then later restored the death penalty. In the United States, for example, the state of Arizona did not apply the penalty of death from 1916 to 1918; capital murder accounted for 20 per cent of all crime before abolition; the percentage rose to 23 per cent during the period of abolition and remained at 22.5 per cent after the re-establishment of the death penalty. In Colorado, where abolition lasted from 1897 to 1901, the figures are 16.3 per cent before, 18 per cent during the period of abolition and 19 per cent after re-establishment. In the state of Iowa, where abolition lasted from 1872 to 1878, the figures were 2.6 per cent before, 8 per cent during abolition and 13.1 per cent after re-establishment. Kansas experienced a comparatively long abolition period (1887 to 1935); capital murder accounted for 6.5 per cent of all crime during the abolition period and for 3.8 per cent after re-establishment. In Australia, the state of Queensland abolished the penalty of death in 1923. In the period 1903 to 1907 the proportion of capital crime to total crime per 100,000 inhabitants was 3.6 per cent; in 1923, the abolition year, it was 1.6 per cent; it rose to 3.2 per cent for the period from 1924 to 1928, but for the period 1929 to 1949, also during abolition, it fell from 1.7 to 1.1 per cent. In New South Wales, the death penalty was abolished in 1955 and there were 10 convictions for murder in 1951, 12 in 1952, 10 in 1957, 12 in 1959, and 14 in 1960; though these figures seem to indicate a slight increase in the incidence of murder in the most recent period, allowance should be made for the considerable population growth. New Zealand experienced *de facto* abolition from 1935 to 1941, *de jure* abolition from 1941 to 1950, the restoration of capital punishment by statute in 1951 and actual application of the death penalty from 1957. For the period 1935 to 1961 there were, on an average, two to three convictions for murder annually, except for 1955 and 1956 when the figures were 6 and 8. In Argentina, capital punishment was abolished in 1922; yet, despite the constant increase in population, the number of murders of the kind previously punishable with death declined steadily in the decade which followed.

199. The data reported from the Federal Republic of Germany point in the same direction. Capital punishment was abolished in 1949, and there

[1] It should, however, be pointed out with regard to this particular case that, before 1954, sentances of death for rape were very rarely carried out and also that in 1961, the number of convictions for rape was 63.

were 521 capital murders in 1948, 301 in 1950 and 355 in 1960, figures which reflect a considerable decrease.[1] Austria, where the penalty of death was reintroduced in 1934 and then abolished again in 1945 (abolition becoming effective in 1950), also reports a decrease in murder since abolition: the figures for the most recent five-year period are the lowest ever recorded in that country. The same observation is generally made in the Scandinavian countries, particularly Finland, where a steady decrease in murder has been noted since the abolition of the penalty of death. Crimes which were formerly considered capital crimes fell in number from 137 in 1950 to 79 in 1959. In Norway, too, subject to allowance for the population increase, a steady decrease is noted since 1875, in the occurrence of crimes formerly punishable with death. The same has been true of Sweden since *de facto* abolition in 1910 and *de jure* abolition in 1921, as also of the Netherlands, Denmark and Belgium. In the United Kingdom, in spite of alternating periods of severity and virtual *de facto* abolition, the figures have remained constant from 1930 to 1960.

3. *Comparison of the Number of Executions with Trends in Crime*

200. This is the subject where statistical data would have been most instructive: unfortunately, such data are generally lacking. The figures usually given are those for sentences or for capital crimes, rather than those for actual executions. However, the following interesting observations may be made.

201. In Canada from 1951 to 1958, the average annual number of executions was six, though there were 12 in 1952 and 11 in 1953; however, the criminality curve remained more or less at a constant level throughout the period. In Western Australia and in South Australia, the average number of executions has been two annually since 1935. During the most recent five-year period there have been no executions, but no appreciable effect has been noted on the criminality curve.

202. Austria reports even that the restoration of the penalty of death in 1934 was followed by an increase in crime. At that time, this penalty was more often applied in political cases; but experience shows that practically everywhere executions for political crimes generally lead to an increase in the number of political offences. This happened in the Federation of Malaya, after the introduction in 1949 of the death penalty for terrorist crimes. It has, however, been pointed out that the observation was true of Austria after 1934 even for ordinary crimes, although to a lesser extent.

B. — The Death Penalty and Public Opinion

1. *General Trend of Public Opinion*

203. It is reported that in certain countries, particularly in Africa (e.g., Liberia) there has never been any serious demand for the abolition

[1] It will, however, be observed that in the years preceding abolition, the high rate of capital crime was largely attributable to war and post-war conditions.

of the penalty of death by any sector of public opinion. Several countries apparently wish to retain the death penalty, despite the pressure of individuals or of groups for its abolition. In general, in the countries of Europe which have maintained it, such as France, the United Kingdom, Greece, Turkey and Spain, as well as the Union of Soviet Socialist Republics, public opinion as a whole apparently favours the retention of the death penalty. In some countries (e.g., Australia), public opinion seems prepared to leave the matter to the government and to specialists; occasionally, however, in Europe and in certain states of the United States, the pardoning of a criminal (less often the refusal to pardon) gives rise to controversy and criticism of the responsible executive authorities. In a few abolitionist countries, there is sometimes public support, although variable in extent, for the restoration of the penalty of death. Such support seems to be broad in the Federal Republic of Germany, less in Austria and quite weak in Belgium.

204. According to the information obtained, some States remain resolutely abolitionist; this is the case, for example, of Argentina and the other abolitionist countries of Latin America, the Scandinavian countries, the Netherlands, Italy and, very largely at least, Switzerland. In Guatemala, although the penalty of death is still known to the law, there appears to be a strong current of opinion in favour of its abolition, which even succeeded in securing the addition of a clause providing for abolition in a preliminary draft of the new Penal Code of 1960.

205. Pressure for the abolition of the death penalty was particularly strong in the United Kingdom during and after the work of the Royal Commission on Capital Punishment and before the enactment of the Homicide Act, in 1957, a statute which is considered by some as a first step towards abolition. The same was true in Canada in connexion with the Act of 1961. A fairly strong abolitionist movement is also reported from Cuba and from some of the states of the United States where the death penalty exists (e.g., California). In the state of Delaware, the abolition of the death penalty in 1958 met with the approval of public opinion: the sponsors of the reform used it as an argument during the elections and were re-elected by the voters. The abolitionist movement is reported to be making progress in the state of Massachusetts, where it has been developing with some continuity since the execution of Sacco and Vanzetti in 1927; a sort of *de facto* abolition appears to be in force in this state since 1947. In New Hampshire, there appear to have been no executions since 1939. In France, the abolitionist movement manifests itself in various ways and has just led to the submission of a Bill to Parliament for the abolition of capital punishment.[1]

206. While it would have been interesting to have on this point the result of public opinion polls, such polls have, notoriously, to be used

[1] It will be recalled that in the United Kingdom, the House of Commons voted in 1948 in favour of the suspension of capital punishment for murder, and in 1956, of total abolition.

with extreme caution, for they never cover more than a fraction of the population. Nevertheless, it may be noted that in the Federal Republic of Germany poll results indicate that public opinion favoured capital punishment to the extent of 55 per cent in 1952, 72 per cent in 1957 and 75 per cent in 1958. In Canada in 1947-1950, 68 per cent of the persons consulted favoured the penalty of death. In the United States, a poll conducted by the American Institute of Public Opinion in 1955 yielded the same percentage of 68 but a poll conducted in 1958 by Public Pulse indicated that 42 per cent favoured the penalty of death, 50 per cent were against it and 8 per cent has no opinion. In 1949-1960, a poll limited to the state of Texas showed that 49 per cent of the persons consulted favoured capital punishment and 50 per cent opposed it. In Australia, according to information given by a correspondent, the most recent Gallup polls indicate that the supporters of abolition are making some slight headway.

207. In Japan, in 1956, 65 per cent of the persons consulted favoured the penalty of death and 18 per cent opposed it; the remainder stated that they had no firm opinion. In Finland in 1948, 58 per cent favoured the death penalty, 68 per cent did so in 1953, but only 46 per cent in 1960. In Sweden, a recent poll gave 28 per cent in favour and 55 per cent against capital punishment. In Norway a recent poll gave 15 per cent in favour and 70 per cent against the penalty of death, the remaining 15 per cent being uncertain.

2. *Reaction of Public Opinion to Executions*

208. In connexion with this subject of the state of public opinion, it would be interesting to examine the public's reaction to executions. Unfortunately, it is difficult to obtain precise information on this point, apart from the personal views of certain authors.

209. However, the progressive abandonment of public executions indicates a tendency to distrust the reactions of public opinion. There have been cases recently in which certain journalists have rejoiced noisily, and sometimes somewhat shockingly, at the passing of a sentence of death on certain criminals who were considered particularly odious. At the time of execution, however, and to the extent that the press is permitted to report on the subject, the dominant feeling is mostly that of pity.

210. In cases where subsequent doubt arose concerning the guilt of the person sentenced to death and executed, as has happened recently in the United Kingdom and the United States, veritable waves of opinion have been set in motion and these have sometimes provided the abolitionist movements with additional supporters and fresh arguments. Occasionally, the reaction of public opinion has taken the form merely of a protest against the execution of a paticular individual.

211. It is reported that in Canada, public opinion was greatly aroused by a clumsily carried out execution which subjected the sentenced person

to prolonged agony. Conversely, some countries (e.g., Spain and the USSR) appear to admit that public opinion approves wide publicity for the execution of persons convicted of particularly heinous crimes.

212. A more complete sociological study on this point certainly seems desirable.

3. *Present State of the General Controversy*

213. A theoretical controversy on the problem of capital punishment has been going on at least since Beccaria. George Fox had raised the issue as early as 1651 in his letters to the judges and in particular in his pamphlet *To the Parliament and Commonwealth of England* published in 1659, submitting 59 proposals for reforms, one of which was the proposal, then a very bold one, that henceforth the penalty of death should be applied only to murder. The British colonies of America had, before their independence, accepted the sama ideas. There is no need to recall here the opinions expressed at the end of the eighteenth century and during the humanitarian and liberal period of the twentieth century. Whether one desires it or not, the controversy has once more become very topical in the last twenty years. Accordingly, in a comprehensive report on the problem as it stands today, one can hardly avoid giving an account of the two opposing views in the matter.

214. It is not the intention of the author to repeat here the reasons which were officially given in each of the countries concerned at the time of abolition or to analyse the respective positions of the various countries and national schools of thought; rather, he means to catalogue and briefly describe the reasons usually put forward today, for the guidance of public opinion, for retaining and for abolishing capital punishment.

215. *In favour of the death penalty*, the idea most commonly accepted is that of its deterrent effect—i.e., the protection of society from the risk of a second offence by a criminal who is not executed and who may subsequently be released or who may escape. Similarly, it is argued, the State has the right to protect itself. Many speak of the concept of self-defence and some even regard the death penalty as a necessity and the public authority as the representative in this regard of God on earth.

216. A related argument which is often advanced is that based on the idea of atonement: the death penalty (it is said) is the only just punishment for the gravest of crimes, or the only one capable of effacing an unpardonable crime. Some add that even if, from the philosophical point of view, the death penalty may be of doubtful legitimacy, it represents a political necessity for the protection not merely of society but of the social order itself. Similarly, it is contended that, since the death penalty is the only means of eliminating the offender altogether, this penalty is necessary, at least provisionally, when the public peace is endangered by certain particularly dangerous forms of crime. This view is based on concepts

largely derived from the doctrine of *pericolosità* and of the irredeemability of certain offenders; on the basis of these ideas, capital punishment represents the extreme security measure of elimination. Some claim that, on this basis, it is legitimate to do away with "social monsters". This purely utilitarian idea is sometimes linked with the other idea that the State has a duty to impose inflexible rules of social conduct.

217. An analogous notion is that based on what is sometimes termed realism in the prevention of crime. The supporters of this view argue that a particularly potent weapon is needed for dealing with dangerous criminals and individuals. This is the reasoning of those who say that capital punishment is needed not only for the protection of human life and of certain cultural values but even to safeguard certain social property which is placed under the protection of the law.

218. Yet others argue that public opinion remains generally favourable to the death penalty and that the public as a whole, and particularly the police and prison officials, believe in its effectiveness. It is urged that this sincere belief should be respected and also that possible victims should be protected by maintaining the penalty of death. In the Middle East and in Africa, its value as a deterrent appears to be recognized in principle; even if its deterrent effect should be debatable, many claim that it ought to be regarded as genuine, or that, for reasons of public safety, those concerned ought to be encouraged to believe in it.

219. A somewhat similar idea is put forward by many who claim that the death penalty should be retained because it is virtually impossible to find another penalty to replace it; imprisonment, even for a long term, is said to be inadequate and its effects are moreover minimized by the practice of anticipated release. It is further argued that, if imprisonment in these cases were really to be a solitary confinement for life, it would be more cruel than death; and besides, imprisonment in perpetuity leaves no hope to the offender and does not encourage him to repentance in the same way as the immediate prospect of the supreme penalty.

220. Another, equally very utilitarian, view held in some countries is that the execution of the condemned person represents a saving of public funds and hence a saving for the taxpayer, who is not called upon to pay for the maintenance of anti-social criminals for an indefinite, or at least very long, period. And it is further said that an execution avoids certain popular reactions which must be expected in cases of heinous crimes if an over-excited public opinion were not aware that the criminal can be sentenced to death.

221. Against these arguments for the retention of the death penalty, the abolitionists advance the following considerations.

222. Their main argument is that based on the sanctity of human life; since it is wrong to kill, the State should set the example and should be the first to respect human life. Some go so far as to say that an execution

is a self-mutilation of the State: though the State has admittedly the capacity to defend itself and to command, it is not empowered to eliminate a citizen, and in doing so the State does not erase the crime but repeats it.

223. It is further argued that the penalty of death can only be justified under the aspect of collective vengeance, of atonement, or of absolute retribution. But the modern tendency is to regard penalties as having no object other than prevention and punishment, and this object can be achieved by means other than the taking of life. The abolitionists refer in this connexion to the abuses frequently committed in the past, even in a recent past, when the death penalty was applied frequently and indiscriminately, and point out that its retention involves dangers of this kind. In Latin America, in particular, it is stressed that capital punishment might be used for political purposes.

224. Furthermore, it is said, the *lex talionis* is obsolete and hence an execution is a sort of judicial or legal murder; also, the existence of the penalty of death debases justice. For some years now, in America and Europe, it has been strenuously contended that the mere presence of capital punishment in the catalogue of penalties falsifies criminal proceedings, which take on the character of a sinister tragi-comedy; the existence of this penalty renders criminal justice uncertain. Recent works on sociology and judicial psychology indicate the extreme relativity of capital sentences.

225. Another argument used by the abolitionists is that the penalty of death rests in reality on a somewhat metaphysical concept of human freedom, whereas the social sciences show that an offender does not generally enjoy complete freedom. Absolute justice is therefore an illusion, and full atonement a fiction. Besides, how can human justice evaluate individual responsibility in absolute terms? The condemned person is in reality paying for other people or suffering for the sake of the example. His execution then appears to have no moral foundation.

226. Nor does the death penalty have the deterrent effect attributed to it: indeed, it is said, the statistics of crime show that its abolition does not lead to any increase in crime, and consequently capital punishment loses its basic traditional justification.

227. Moreover, the penalty of death is a form of cruelty and inhumanity unworthy of a civilization which claims to be humane; doctors report that even the most efficient methods do not result in instantaneous and painless death. Above all, the chief defect of the death penalty is that it is irrevocable, and in spite of all the official statements, sometimes repeated with complacency, judicial error is always possible, and a few have certainly occurred recently. In such cases, the penalty of death appears as a unpardonable crime committed by society.

228. In any event, society can protect itself by other means, and the death penalty is no more than a lazy answer, which hinders the search for effective means of curbing crime and for a rational system of prevention.

In addition, the death penalty is unjust in that, whatever may be claimed to the contrary, it affects not only the criminal himself but also his close relatives and brands the whole family with the mark of infamy. It is, moreover, paradoxical to claim that the death penalty alone makes repentance possible; it certainly totally precludes the rehabilitation of the human being concerned. The finality of the death penalty makes it impossible to adapt it to the gravity of the offence committed; all the attempts to draw a distinction between capital murder and other forms of homicide have proved arbitrary. In a progressive society, the death penalty appears on reflection as being the opposite of true atonement.

229. A further argument advanced by the abolitionists is that there is a contradiction in claiming that the death penalty has a deterrent effect and, at the same time, surrounding the execution with secrecy. The curiosity aroused by an execution is notoriously morbid, and it is increasingly realized that the penalty of death may itself have criminogenous effects, particularly upon those abnormal individuals who, in spite of all legal and judicial precautions, are often executed. And in some countries (it is added) the death penalty is applied most unequally, both from the social and from the racial points of view; some persons have not sufficient financial means to defend themselves or are morally unable to do so. The conclusion reached is, therefore, that this penalty, which should be the expression of absolute justice, often leads in practice to injustices against individuals.

230. These are the reasons generally given for and against capital punishment. Most of them have no doubt been stated over and over again. However, since the controversy has recently been revived and has even become heated, the author felt that he could hardly refrain from mentioning the arguments briefly in the present report.

C. — Position taken by Specialists and by Qualified Organizations

1. *Position taken by Learned Authors*

231. In the first place, it will be noted that, among the leading authorities in penal science, the supporters of abolition appreciably outnumber those who favour the retention of capital punishment. The specialists of the social sciences, criminologists, sociologists, penologists, psychologists, doctors and writers on social science and criminology are, in their great majority, abolitionists. The supporters of capital punishment, apart from a number of political figures and persons holding high public office, are generally jurists with a traditional training and judges.

232. With regard to the position taken by these supporters of capital punishment, two special remarks may be added here. The first is that they do not generally ask for its extension to additional offences. They only state that certain particularly odious crimes, or certain crimes especially

dangerous to society, should be punishable with death, and in the final analysis, they say, the raison d'être of the death penalty is precisely its exceptional character.

233. Secondly, a number of specialists take a view that might be described as intermediate, if not empirical; they admit the death penalty solely because it exists in fact. If it had been abolished in their own legal system, they would not advocate its re-establishment. They hesitate, however, to call for its abolition so long as they are not fully satisfied that it does not, after all, perform a useful social function.

234. A view close to this intermediate opinion is that held by those who style themselves supporters of partial abolition. Some of them point to the position in Austria, an abolitionist country where the death penalty has nevertheless been retained for application in the event of the proclamation of a state of emergency. A number of specialists espouse in this connexion—though under different forms—Beccaria's own idea; though a firm supporter of abolition, he nevertheless admitted the possibility of applying the death penalty in certain exceptional circumstances. The majority of specialists do not fail to oberve that in case of war or revolution, as also in the case of offences punishable under the military code, the penalty of death can be justified from the point of view of legal ethics, and that, in any event, from the point of view of factual sociology, its temporary introduction becomes in certain cases unavoidable: total and unconditional abolition therefore appears to them as illusory or utopian.

235. The majority of the specialists consulted, however, prefer to consider the problem from the standpoint of normal conditions and in respect of ordinary crimes, or of what may be called pure political crimes, to the exclusion of such offences as treason in time of war. They thus reach the conclusion that in principle capital punishment should be abolished.

236. The adoption of this view leads on to the controversy as to the substitute penalty, a controversy to which it is unnecessary to revert here. It will be sufficient to note that some criminologists and penologists propose the introduction of a truly perpetual penalty—i.e., one the perpetuity of which would be in a sense guaranteed; others merely propose that the law should prohibit any anticipated release before a long mandatory term of imprisonment has actually been served. Yet other writers, basing themselves on the experience of Belgium, say that a particularly serious problem arises in the case of abnormal criminals or criminals showing recognized pathological characteristics. Even in countries where the death penalty exists, such persons are not generally executed; and yet these are the individuals who are the most direct danger to society and to the possible victims of crimes against the person. Experience shows that, all too often perhaps, these very individuals are released more readily than the normal criminals who can be re-educated.

237. This observation is interesting not only from the penological point of view but also from that of penal philosophy, for it shows that,

inevitably, the problem of the death penalty and of its replacement by another penalty cannot be solved solely on the basis of the concept of individual moral responsibility. If one ascribes to the death penalty, or to the substitute penalty, the essential function of protecting society and the human person, then one realizes that in many cases this function will be better discharged by what is conventionally known as a security measure rather than by a penalty properly so-called, the afflictive character of which cannot in any case be maintained absolutely and without qualification in the present stage of our civilization.

238. In the light of this last consideration many specialists conclude that the substitute penalty should be a form of deprivation of liberty for a specified term. To deny to the State the right to take the life of a member of the community means by the same token, it is maintained, that the individual, even an offender, should not be deprived of all hope and should be able to aspire to recover his freedom some day. All that should be imposed is a period of trial, as specified by law, for the term ordered by the court and under the control of the prison services. This idea has often been expressed by the penologists and criminologists of the Scandinavian countries, the Netherlands, Latin America, the United States and some of those of the Commonwealth. Nothing further will be said on this point because the problem is one of penology and hence, as mentioned earlier, distinct from the problem of capital punishment. Nevertheless, it is clear that, where abolitionist action is taken, the abolition of the death penalty necessarily presupposes a thorough study of the penalty which is to take ts place, in the light of the teachings of modern penology.

2. *Action of the Churches and of Specialized Associations*

239. In the churches, a controversy has been going on for centuries, mainly among Christians. It has sometimes been claimed that the majority of Catholics favour the penalty of death, which is also said to be supported more by Calvinists than by members of the other Protestant Churches. The truth is that both opinions find support among members of these various churches; the abolitionists point out in particular that the murder of Abel was not punished with death (Genesis IV, 2 and 15), and in the Gospels they cite the Sermon on the Mount (Luke VI, 35; Matthew V, 44) and the pardon of the woman taken in adultery, a crime then punishable with death. In this connexion, the views of St. Augustine and St. Thomas Aquinas have sometimes been contrasted, the latter having put forward a defence of the penalty of death.

240. In reality, the Catholic Church has consistently refrained from taking a direct stand on this question, which is traditionally reserved to the temporal power. It seems, however, that abolitionist views are gaining ground within the Church.

241. On the other hand, observers have not failed to point to the position adopted by the Quakers in the former British colonies of America and later in the United States, and to the movement launched in the Netherlands in the sixteenth and seventeenth centuries by the early pioneers of penitentiary reform, who held that the object of punishment should be reform, not atonement. For more than a century, the abolitionist view has been finding increasing acceptance among many Protestant sects, particularly in the United Kingdom and in the Commonwealth. Special mention should be made of the resolution adopted in April 1962 by the British Council of Churches calling for the abolition, or at least for the suspension for a sufficiently long period, of the death penalty and its replacement by a carefully studied substitute penalty.

242. The Greek Orthodox Church seems, in principle, opposed to the death penalty, and refuses to admit that the penalty is justified on religious grounds, although it recognizes that the State may consider it necessary.

243. The abolitionist movement has received considerable assistance from the work of societies and groups set up to propagate the idea. As regards the United States, it is sufficient to mention the remarkable activity of the Society of Friends against Capital Punishment, founded as long ago as 1651. With the encouragement of that society, the American League to Abolish Capital Punishment was formed in New York in 1925 (its headquarters were transferred to Brookline, Massachusetts, in 1946), whose establishment was followed by that of other associations and committees which now exist in at least thirty-four states of the Union. These associations appear even to have multiplied recently and there are at present, for example, three in the state of New Jersey.

244. In Britain, the National Council for the Abolition of Capital Punishment was set up in 1925 under the auspices of the Howard League for Penal Reform which, although having broader objects, has at all times been firmly abolitionist. The 1925 Council was merged in 1948 with the Howard League itself which, in 1955, sponsored the National Campaign for the Abolition of Capital Punishment. The example of Britain was widely followed in the Commonwealth, particularly in Australia and New Zealand. In Northern Ireland, the Association for the Reform of the Law on Capital Punishment was set up in 1961. This action led to the somewhat rare occurrence of the formation of a rival association advocating the maintenance of capital punishment. Nor should one overlook the action of important groups such as the International Association of Women Lawyers, which has also broader objects but which has adopted, at several of its sessions and at many meetings of its national branches, resolutions urging the abolition of capital punishment.

245. The activity of these associations has been both continuous and manifold: meetings have been held, articles have appeared in the daily press and in magazines, propaganda pamphlets have been published, lectures and press conferences have been given, seminars and public debates

have been organized and radio and television broadcasts have been widely used. In many countries, including France, films advocating abolitionist ideas have been shown.

246. While the abolitionist campaign described above has been conducted mainly in the Anglo-American countries, it is not unknown elsewhere, particularly in the countries of Europe and America which have retained the death penalty, and in Japan. The Association française contre la peine de mort, for example, organized a seminar at Royaumont in 1961. Naturally, the importance, the effectiveness and the representative character of these associations, some of which are the outcome of purely private initiative, vary considerably.

D. — Present Proposals relating to the Death Penalty

247. Proposals for both the abolition and the restoration of the death penalty have at all times been comparatively numerous, or perhaps it would be more accurate to say that they are more or less constant. In most of the countries where the death penalty exists, proposals for its abolition are submitted regularly and constantly renewed. Proposals for its restoration are much rarer in the abolitionist countries; they exist, however, and are becoming more frequent either because certain particularly odious crimes have aroused public opinion or because of special political circumstances. In a number of countries (e.g., New Zealand and Australia) the abolition or the restoration of the death penalty has often been the result of some change in the majority of Parliament or of the coming to power of a party which advocates the abolition of the death penalty or, on the contrary, favours that penalty.

248. At the present time, it is true to say that in a good many countries no amendment of the law is seriously contemplated. This is so in the countries in which the death penalty exists: the majority of African countries, the United Arab Republic, the Federation of Malaya, Spain, Greece and Turkey. Similarly, the Scandinavian countries, Italy, the Netherlands and the great majority of the countries of Latin America in which the death penalty no longer exists do not contemplate its restoration. There has been some discussion of the question in Costa Rica. In Argentina, where the death penalty was abolished in 1922, no serious attempt to reintroduce it has been made: a single proposal for its reintroduction was put forward in 1933 and was immediately rejected: nor does the penalty of death appear in the most recent draft for a revised Penal Code, the "Soler draft" published in 1960.

249. To conclude this discussion of proposals for the reintroduction of the death penalty, it may be noted that two such proposals put forward in Sweden were rejected in 1950 and 1953 respectively; in Switzerland, a proposal made to that effect in 1952 received a good deal of publicity and even some support from serious authors, but was nevertheless rejected.

250. As already indicated, the proposals for the abolition of the death penalty are the most numerous and are increasingly put forward or re-submitted in the countries which retain capital punishment. In France, a draft for the reform of the law put forward in 1906 had attracted much interest and wide support but was nevertheless rejected in 1908. About a dozen more proposals for abolition were put forward in the period between the two wars, and several more have been made since 1945. More recently, in July 1962, another bill was introduced by a private Member of Parliament for the abolition of the death penalty. In India, a proposal for abolition was rejected on 8 September 1961. In Japan, abolition was proposed in 1956 and although the proposal was rejected, it gave rise to much discussion. The Commission on the Reform of the Penal Code, which is at present sitting in Japan, although it does not support actual abolition, has just proposed that the number of capital crimes should be reduced from thirteen to five. Yugoslavia, too, reports a tendency to reduce the number of capital crimes.

251. Several other proposals have also been made, not for direct and total abolition, but for the suspension of the application of the death penalty for a number of years. A proposal to that effect has, as is well known, attracted considerable interest in the United Kingdom in recent years. In Ceylon, a proposal for suspension was rejected in 1956 but was reintroduced in 1958 and adopted; in 1959, however, the measure was repealed.

252. As a matter of fact, suspension may be affected by a government decision; it will then be tantamount to *de facto* provisional abolition. This happened in England at the time when the conclusions of the Royal Commission were under consideration and before the enactment of the Homicide Act, 1957. This is the present position in the state of Victoria (Australia) where, since 1951, all sentences of death have been systematically commuted, even though no official proposal for abolition or suspension has been submitted and even though the government authorities have not apparently transformed this practice into an official rule, as has happened in Belgium, for example. This seems to be a limited experiment in abolition, analogous to that going on in Guatemala since 1956.

253. The special and somewhat complex position in the United States has been left for discussion at the end of this study. Between 1950 and 1960 proposals either for the abolition or for the restriction of the scope of the death penalty have been made in at least half of the legislatures of the states where it exists. Abolition was achieved only in the state of Delaware, by a law of 2 April 1958. Proposals along the same lines have been made with regard to federal law, and in 1960 a Commission of the House of Representatives undertook a special inquiry into the question. Proposals for the reintroduction of the death penalty, at least with limited scope, have also been made in certain abolitionist states, but in the last ten years none of them has, as a rule, survived examination by the Legislative Commissions to which they had been referred.

254. The year 1961 was marked in the United States by renewed efforts to change the situation as regards capital punishment. Altogether thirty-six proposals for legislation were submitted, twenty-three of them for the abolition of the death penalty, two for the extension of its scope, four for the amendment of the relevant legislative provisions, three calling for an inquiry into the subject and two calling for a referendum. Twenty-four of these proposals were rejected by the competent legislatures, some despite a favourable report by a legislative commission and a few by very narrow majorities. In California, for example, a proposal for the suspension of the death penalty, for four years led to a tie in the first vote taken, when there were 40 votes for and 40 against the proposal. A second vote was taken, and the proposal was rejected by 41 votes to 36. It should be added that limited and no doubt empirical experiments in *de facto* abolition appear to be in progress, or to have been made, in some of the states of the United States, notably in Massachusetts, New Jersey and New Hampshire.

255. In some countries, the consideration of proposals for the reform of the law may encounter a variety of obstacles. For example, in the Federal Republic of Germany, although there appears to be a strong current of opinion in favour of the restoration of capital punishment, no proposal to that effect has actually been submitted because such a reform would involve the amendment of the Constitution, for which a majority of two-thirds is needed.

ANNEXES

Traffic in narcotics (aggravated)	
	CRIMES AGAINST PROPERTY AND ECONOMIC CRIMES
Robbery (armed burglary)	
Piracy (aggravated)	
Aggravated hoarding; unlawful raising of prices, misappropriation of public funds	
Counterfeiting currency; currency speculation	
Grave crimes against Socialized property	
	CRIMES AGAINST THE SECURITY OF THE STATE
Attempt on the life of the sovereign or of the Head of State	
Treason	
Spying; disclosure of national defence secrets	
Assisting the enemy (collaboration)	
Crimes against the country's integrity and independence	
Mutiny; incitement to mutiny, if followed by mutiny	
Armed rebellion; insurrection; conspiracy against the State	
Looting; massacre; sabotage; devastation; diversionism (e)	

NOTE — The indication "A. C." means that the crime is punishable with death only if committed with aggravating circumstances.

The countries are listed in the French alphabetical order.

(a) For Australia and the United States, only the provisions of federal law are taken into account; for capital crimes under the legislation of each component state, see tables II and III.

(b) Belgium and Luxembourg have abolished the death penalty de facto but the penalty continues to appear in their penal codes.

(c) The list of capital crimes is incomplete or has not been supplied at all.

(d) In Nicaragua, the death penalty is applicable only in the very exceptional cases of the most odious crimes committed with aggravating circumstances.

(e) The term "diversionism" has been adopted by Soviet authors to describe a counter-revolutionary act of sabotage which in their eyes constitutes a "diversionist manoeuvre", precisely in that it seriously hampers efforts to build socialism (translator's note under article 68 of the Penal Code of the Russian Soviet Federative Socialist Republic in Réforme Pénale soviétique, published by the Centre français de Droit comparé, Paris, 1962).

CRIMES AGAINST THE PERSON

	Murder	Wilful homicide	Poisoning	Parricide; infanticide	Homicide accompanied by another crime (robbery; highway robbery; piracy)	Killing of a policeman or of an official on duty	Kidnapping of a minor: Simple	Kidnapping of a minor: Followed by death	Aggravated assault causing death of a child	Wrongful detention with torture	Perjury (false witness) or unlawful arrest, causing sentence of death and execution	Recidivism after sentence to hard labour for life; commission of more than one offence punishable with hard labour for life	Castration followed by death	Rape: Simple	Rape: Followed by death	Aiding in the suicide of a child or of a person of unsound mind or under the influence of drink	Arson, wilful inundation, sabotage, dynamiting causing death	[illegible]
AFGHANISTAN	+																	
NETHERLANDS ANTILLES																		
WESTERN PACIFIC ISLANDS	+				+													
AUSTRALIA (a)																		
BELGIUM (b)	+		+	+	+												+	
BURMA	+				+	+												
CAMBODIA (c)																		
CANADA	+				+													
CEYLON	+										+					+		
CHILE	+			+	+		+					+					+	
CHINA (TAIWAN)	+			+	+					+		+		+			+	+
IVORY COAST	+		+	+	+	+		+	+		+		+				+	
CUBA (c)																		
DAHOMEY	+		+	+	+	+	+		+	+	+	+	+				+	
SPAIN	+			+	+													
UNITED STATES OF AMERICA	+						+							+			+	+
FEDERATION OF MALAYA	+	+					+											
FRANCE	+		+	+	+			+	+	+	+						+	
GAMBIA	+	+																
GHANA	+	+																
GIBRALTAR	+				+	+											+	
GREECE	+																	
GUATEMALA	+		+	+	+					+							+	
HONG KONG	+				+													
MAURITIUS	+		+	+									+				+	
INDIA	+	+			+	+					+					+		
INDONESIA																		
IRAQ	+		+	+	+	+					+	+					+	
IRAN	+									+							+	+
JAPAN	+		+	+	+										+		+	
LAOS	+		+	+		+				+			+					
LEBANON	+			+	+													
LIBERIA	+																	
LUXEMBOURG (b)	+		+	+	+						+							
MOROCCO	+		+	+				+	+		+	+	+				+	
MEXICO (c)																		
NICARAGUA (d)	+			+	+													
NIGERIA	+	+																
NETHERLANDS NEW GUINEA	+	+																
NEW ZEALAND																		
NYASALAND	+	+			+									+				
PAKISTAN	+	+			+	+												
PHILIPPINES	+	+		+	+		+			+					+			
POLAND	+	+																
UNITED ARAB REPUBLIC	+		+		+						+						+	
CENTRAL AFRICAN REPUBLIC	+		+		+			+	+				+				+	
REPUBLIC OF VIET-NAM	+		+		+			+	+									
REPUBLIC OF SOUTH AFRICA	+	+												+				
NORTHERN RHODESIA	+	+												+				
UNITED KINGDOM	+				+	+											+	
EL SALVADOR	+			+	+													
SENEGAL (c)																		
SEYCHELLES	+	+			+													
SOMALIA (Northern)	+	+				+					+					+	+	
SOMALIA (Central and Southern)											+	+						
SUDAN	+	+			+	+					+					+		
SURINAM (c)	+				+													
TANGANYIKA	+	+																
CZECHOSLOVAKIA	+									+								
THAILAND	+	+		+	+	+												
TOGO	+		+	+	+			+	+	+	+	+	+				+	
TURKEY	+			+	+						+	+			+		+	+
USSR (e)	+											+						
YUGOSLAVIA	+																+	
ZANZIBAR	+	+																

Table II

Table

Capital crimes in the

	Alabama	Arizona	Arkansas	California	Colorado	Connecticut	District of Columbia	Florida	Georgia	Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky	Louisiana
Murder	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Killing in a duel	.	.	+	.	.	.	.	+	+	.	.	+	+	.	.	.
Lynching	+	.	+	.	.	.	.	.	+	.	.	+	.	+	+	.
Killing a woman by abortion	.	.	.	.	.	.	.	.	.	.	+	.	.	.	+	.
Killing or serious injury inflicted by a prisoner	.	+	.	+	.	.	.	.	.	.	.	.	.	.	.	.
Perjury or corruption of a witness causing death sentence and execution	.	+	.	+	+	.	.	.	+	+	+	.	.	.	.	.
Rape	+	.	+	.	.	.	+	+	+	.	.	.	.	.	+	+
Kidnapping of a minor (for ransom in most cases)	+	+	+	+	+	+	.	+	+	+	+	+	+	.	+	+
Train robbery; train wrecking	+	+	.	+	.	.	+	+	+	+	.	+	.	.	+	.
Dynamiting causing death or creating danger of death	+	.	.	.	.	.	.	.	+	.	+	.	+	.	.	.
Arson causing death	+	.	+	.	.	.	.	.	+	.	.	+	.	.	.	.
Aggravated robbery; armed robbery	+	.	.	.	.	.	.	.	.	.	.	.	.	.	+	.
Treason	+	+	+	+	.	+	.	.	+	.	+	+	.	+	.	+
Homicide during a riot or insurrection	.	.	.	.	+	.	.	.	+	.	.	.	.	.	+	.
Attempt to kill the President or Vice-President of the United States, the governor or lieutenant-governor of the state	.	.	.	.	.	+	.	.	.	.	.	.	.	.	.	.

[1] The following states have abolished the death penalty: Alaska, Delaware, Hawaii, Maine, Minnesota and Wisconsin

...ited States of America [1]

Maryland	Massachusetts	Michigan	Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio	Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina	South Dakota	Tennessee	Texas	Utah	Vermont	Virginia	Washington	West Virginia	Wyoming
+	+	.	+	+	+	+	+	+	+	+	+	+	.	+	+	+	+	.	+	+	+	+	+	+	+	+	+	+
.	+	.	+	.	.	+	+	.	.	.	.	+	.	.	+	.	.	.	+	+	.	+	+	.	+	.	+	+
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+	.	.	+	+	+	+	+	.	+	+	+	.	.	+	+	.	.	.	+	+	+	+	+	+	+	+	+	+
+	.	.	.	.	+	+	+	.	.	+	.	.	.	+	.	+	+	.	.	.	.	.	.	.	+	.	+	+
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.	.	.	.	.	.	.	.	.	+	.	.	.	+	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.

Table III

Capital crimes in Australia [1]

	Murder	Piracy with violence	Treason [2]
Federal Capital Territory	+	+	+
Western Australia	+	+	+
South Australia	+	+	+
Northern Territory	+	+	+
New South Wales	.	+	+
Tasmania	+	.	+
Victoria	+	.	+

[1] Capital punishment has been abolished in the state of Queensland.

[2] Treason is a capital crime both under federal law and under the law of the various states and territories. Though mentioned here for the sake of completeness, treason is in fact apparently only punished at the federal level.

Part II
DEVELOPMENTS, 1961-1965

INTRODUCTION

1. The General Assembly, during its eighteenth session, adopted a resolution (1918 (XVIII)) in which it requested the Secretary-General to present a report, through the Economic and Social Council, "on new developments with respect to the law and practice concerning the death penalty and new contributions of the criminal sciences in the matter". The present report, prepared pursuant to the above-mentioned resolution, is designed both to bring up to date and to supplement the information appearing in the report entitled *Capital Punishment*,[1] which was requested by the General Assembly in its resolution 1396 (XIV) of 20 November 1959, and written by Marc Ancel, Conseiller à la Cour de Cassation of France and Director of the Criminal Science Section of the Institute of Comparative Law of Paris.

2. The Ancel report presented data on capital punishment for the years 1956 to 1960; this present report gives data for the years 1961 to 1965 and was prepared by Norval Morris, Professor of Law and Criminology and Director of the Center for Studies in Criminal Justice, University of Chicago,[2] in collaboration with Charles C. Marson and Douglas F. Fuson.

3. In order to obtain the data necessary for the compilation of this report, the Secretary-General addressed to all States Members of the United Nations and to certain non-member States a questionnaire relating to laws and practices regarding capital punishment. A questionnaire was also sent to national correspondents in the field of the prevention of crime and the treatment of offenders and to certain non-governmental organizations, requesting their opinion on the deterrent effect of the death penalty and on the consequences of its abolition. This procedure was similar to that used in the compilation of data for the Ancel report. The replies to these two sets of questionnaires, as well as such information and opinion as were available from other sources, form the basis for this report.

4. The Governments of the following countries had replied in full or in part to the questionnaire addressed to them:

Member States. — Afghanistan, Algeria, Australia, Austria, Brazil, Central African Republic, China, Colombia, Cyprus, Czechoslovakia, Dahomey, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Gabon, Gambia, Ghana, Greece, Israel, Italy, Ivory Coast, Jamaica, Japan, Kuwait, Laos, Luxembourg, Malawi, Malaysia, Malta, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Poland, Portugal, Singapore, Somalia, Sweden, Syrian Arab Republic, Trinidad and Tobago, Tunisia, Turkey, Ukrainian SSR, United Arab Republic, United States of America, Upper Volta, Venezuela, Zambia, United Kingdom (information relating to England and Wales, Northern Ireland and Scotland and to the following territories for the administration of which the

[1] United Nations publication, Sales No.: 62.IV.2.

[2] A bibliography of books and articles in English, French, German, Italian and Spanish may be obtained without charge on application to the Center for Studies in Criminal Justice, 1111 East 60 St., Chicago, Ill. 60637, U.S.A.

United Kingdom is responsible: Aden, Antigua, Bahamas, Barbados, Bermuda, Dominica, Granada, Montserrat, New Hebrides, St. Vincent, Fiji, Gibraltar, Hong Kong, Mauritius, Seychelles, Western Pacific).

Non-member States. — Federal Republic of Germany, Monaco, San Marino, Switzerland, Republic of Viet-Nam.

5. The national correspondents and non-governmental organizations listed below had replied by the time of the preparation of this report to the questionnaire addressed to them:

National correspondents. — *Australia:* Mr. John McClemens, Judge, Supreme Court, Sydney; Mr. H. R. H. Snelling, Solicitor-General, New South Wales, Sydney; Mr. S. Kerr; Mr. R. Heairfield; Mr. S. W. Johnson; Sir John Vincent Barry, Justice of the Supreme Court of Victoria, Melbourne; Mr. A. Whatmore, Director-General, Prisons and Penitentiaries Department, Melbourne. *Belgium:* Mr. Jean Dupréel, Director-General of Prisons Administration, Brussels; Mr. M. S. Versele, Judge, Court of First Instance, Brussels. *Costa Rica:* Mr. V. M. Obando. *Dahomey:* Mr. G. Gbenou. *Denmark:* Mr. V. Boas, Permanent Under-Secretary, Ministry of Justice, Copenhagen; Mr. S. Horwitz; Mr. L. Nielsen; Mr. H. Tetens; Mr. K. Waaben, Professor of Law, Copenhagen. *France:* Mr. J. Ledoux; Mr. P. Pageand; Mr. P. Ceccaldi; Mr. M. Damour; Mr. R. Morice. *Greece:* Mr. D. Caranicas. *India:* Mr. S. P. Verma. *Italy:* Dr. Nicola Reale, President of Division, Supreme Court of Cassation, Ministry of Justice, Rome; Mr. G. Altavista, Appeals Court Judge; Mr. P. Manca; Dr. A. Garofalo, Appeals Court Judge; Dr. G. Tartaglione, Appeals Court Judge. *Nigeria:* Mrs. W. McEwen; Mr. Akinkugbe. *Norway:* Mr. J. Halvorsen, Chief of the Prison Administration, Ministry of Justice, Oslo. *Panama:* Mr. A. Jaen. *Philippines:* Mr. A. Bunye; Mr. J. Alcantara. *Senegal:* Mr. A. Diop. *Somalia:* Mr. Ismail. *Sweden:* Mr. H. Romnander. *Thailand:* Mr. N. Panditya. *Uganda:* Mr. Joseph Kawuki. *United States of America:* Mr. F. Rector; Mr. E. P. Sharpe. *Federal Republic of Germany:* Mr. Schafhentle; Mr. Jeseheck. *Switzerland:* Mr. F. Clerc.

Non-governmental organizations. — International Federation of Women Lawyers (Federal Republic of Germany, Finland, Ceylon, Dominican Republic, Taiwan, Australia — Miss A. Viola Smith); International Academy of Legal and Social Medicine; International Penal and Penitentiary Foundation.

6. The present report brings the material presented in the Ancel report up to date and also provides information with regard to additional areas of concern. In accordance with the request made by the Economic and Social Council in its resolution 934 (XXXV) and endorsed by the General Assembly in its resolution 1918 (XVIII), to the effect that the studies on capital punishment should be broadened to include some considerations of "the differences between civil and military tribunals and the policy of the latter with regard to the death penalty", information on the role of capital punishment in systems of

military law is given in the annexes to this study. Moreover, the *Ad hoc* Advisory Committee of Experts on the Prevention of Crime and Treatment of Offenders which had examined the Ancel report early in 1963 had recommended that the next United Nations report on capital punishment should include any new contributions from the criminal sciences on this question; in accordance with that recommendation, some of the more pertinent studies and results appear in chapter III below. The Advisory Committee's interest in alternative sanctions, that is, the disposition of offenders found guilty of a capital offence but not executed, led to a special section on that topic in the questionnaires and in this report.

7. This report also includes information pertinent to six points suggested by the Advisory Committee as meriting particular attention:

(*a*) The trend towards the limitation of categories of offences for which capital punishment is imposed;

(*b*) The trend towards the limitation of categories of offenders subject to capital punishment;

(*c*) The practice of limiting the imposition of capital punishment because of extenuating circumstances;

(*d*) The trend towards the limitation of publicity concerning the details of execution;

(*e*) The relationship between the law and actual practice concerning capital punishment;

(*f*) Substitute or alternative penalties.

8. Although the present report attempts to round out the inquiry begun in the Ancel report, there are limitations which should be noted as bearing upon its completeness and accuracy: first, many replies were incomplete and the answers in some cases were lacking in clarity. Secondly, the terminology used both in the various replies and by authors of material available from other sources sometimes differs, either in meaning or in nuance; this makes categorization difficult, particularly in cataloguing capitally punishable offences and in defining the nature of available appellate remedies. Thirdly, gaps in the statistical data sometimes made generalization difficult; in so far as possible generalizations have been avoided when they appeared debatable or have been carefully qualified.

9. The report may be of more interest to the reader if its highlights are summarized. They are, of course, impressionistic and not definitive and cover the points which, to the authors, seem to be of particular significance. The sequence follows that of the report itself; the period summarized is the same as that dealt with in the entire report (1961-1965, inclusive).

(*a*) There is an over-all tendency in the world towards fewer execu-

tions. This is the result of less frequent use of the death penalty in those States whose statutes provide for that penalty, and of a steady movement towards legislative abolition of capital punishment.

(*b*) There is a slight but perceptible contrary tendency in the world towards legislative provision for and actual application of the death penalty for certain economic and political crimes.

(*c*) Where it is used, capital punishment is increasingly a discretionary rather than a mandatory sanction.

(*d*) Almost all countries have provision for the exclusion of certain offenders from capital punishment because of their mental and physical condition, extenuating circumstances, age and sex; the scope of the categories of offenders thus exempted is broadening.

(*e*) A growing number of offenders who are sentenced to death are spared through judicial processes or by executive clemency.

(*f*) There is a great disparity between the legal provisions for capital punishment and the actual application of those provisions.

(*g*) With increasing frequency, an offender who is sentenced to death is confined, while awaiting execution, in conditions similar to those of other prisoners. Execution, if it takes place, is likely to be accomplished by shooting or hanging and accompanied by a minimum of publicity.

(*h*) The tendency with regard to offenders who are subject to capital punishment but who have been accorded another penalty is to confine them in conditions similar to those of other prisoners and to provide mechanisms for their eventual release.

(*i*) With respect to the influence of the abolition of capital punishment upon the incidence of murder, all of the available data suggest that where the murder rate is increasing, abolition does not appear to hasten the increase; where the rate is decreasing, abolition does not appear to interrupt the decrease; where the rate is stable, the presence of or absence of capital punishment does not appear to affect it.

CHAPTER I

THE PRACTICE OF CAPITAL PUNISHMENT

A. — THE TREND TO ABOLITION

1. De jure *retentionist and abolitionist countries: recent changes*

10. It is appropriate first to list those countries whose laws provide for capital punishment and those whose laws do not. It should be emphasized that the following list of States whose laws provide for capital punishment includes several States where capital punishment is not, in actual practice, used and several where capital punishment is prescribed only for rare offences, such as treason. In an investigation of the practice of capital punishment, this list is therefore only a starting point.

11. The countries and territories whose laws provide for the death penalty at all, whether it is used in practice or not, are: Afghanistan, Australia (except Queensland), Belgium, Burma, Cameroon, Canada, Central African Republic, Ceylon, Chad, Chile, China (Taiwan), Cyprus, Czechoslovakia, Dahomey, Denmark, El Salvador, France, Gambia, Ghana, Gibraltar, Greece, Guatemala, Hong Kong, India, Indonesia, Iran, Iraq, Israel, Ivory Coast, Japan, Laos, Lebanon, Liberia, Luxembourg, Madagascar, Malawi, Malaysia, Mauritius, Mexico (five states out of twenty-nine: Morelos, Nuevo León, Oaxaca, San Luis Potosí and Sonora), Morocco, Netherlands Antilles, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Philippines, Poland, Portugal, Republic of Viet-Nam, Seychelles, Singapore, Somalia, South Africa, Spain, Sudan, Surinam, Sweden, Switzerland, Tanzania, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Union of Soviet Socialist Republics, United Kingdom, United States of America (federal system, District of Columbia, and forty-one states of fifty: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington and Wyoming), United Arab Republic, Western Pacific Islands, Yugoslavia and Zambia.

12. The countries and territories whose laws do not provide for the

death penalty for any offence are: Argentina, Australia (Queensland), Austria, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, Federal Republic of Germany, Finland, Greenland, Iceland, Italy, Mexico (twenty-four out of twenty-nine states, the federal district and both territories), Monaco, San Marino, United States of America (nine out of fifty states: Alaska, Hawaii, Iowa, Maine, Michigan, Minnesota, Oregon, West Virginia and Wisconsin), Uruguay, Venezuela.

13. In the period under study, the death penalty was abolished in two of the states of Mexico (Hidalgo and Tabasco), in Monaco and in four of the states of the United States of America (Iowa, Michigan, Oregon and West Virginia). With the exception of the state of Delaware, which restored the death penalty in 1961 after three years of abolition, nowhere was capital punishment reinstated where it had been abolished.

14. Since most actual executions are of those convicted of murder (see paragraph 69 below), a less theoretical and more practical "map" of capital punishment can be drawn by separating countries according to the punishments which their civil codes prescribe for the crime of murder.

15. The countries and territories whose civil laws provide for the death penalty for some form of murder are: Afghanistan, Australia (in addition to the federal territories, four states: South Australia, Tasmania, Victoria and Western Australia), Belgium, Burma, Cameroon, Canada, Central African Republic, Ceylon, Chile, Chad, China (Taiwan), Cyprus, Czechoslovakia, Dahomey, El Salvador, France, Gambia, Ghana, Gibraltar, Greece, Guatemala, Hong Kong, India, Iran, Iraq, Ivory Coast, Japan, Laos, Lebanon, Liberia, Luxembourg, Madagascar, Malawi, Malaysia, Mauritius, Mexico (five states of twenty-nine: Morelos, Nuevo León, Oaxaca, San Luis Potosí and Sonora), Morocco, Netherlands, New Guinea, Nicaragua, Nigeria, Pakistan, Philippines, Poland, Republic of Viet-Nam, Seychelles, Singapore, Somalia, South Africa, Spain, Sudan, Surinam, Tanzania, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Union of Soviet Socialist Republics, United States of America (federal system, District of Columbia and forty-one states out of fifty: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, Missouri, Montana, Nevada, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington and Wyoming), United Arab Republic, Western Pacific Islands, Yugoslavia, Zambia.

16. The countries and territories whose civil laws do not provide for the death penalty for any form of murder are: Argentina, Australia (two states of six: New South Wales and Queensland), Austria, Brazil, Colombia, Costa Rica, Denmark, Dominican Republic, Ecuador, Fed-

eral Republic of Germany, Finland, Greenland, Iceland, Indonesia, Italy, Mexico (twenty-four states of twenty-nine and the federal district), Monaco, Netherlands, Netherlands Antilles, New Zealand, Norway, Portugal, San Marino, Sweden, Switzerland, United Kingdom, United States of America (nine states of fifty: Alaska, Hawaii, Iowa, Maine, Michigan, Minnesota, Oregon, West Virginia and Wisconsin), Uruguay, Venezuela.

17. The preceding two paragraphs reflect the law at the end of the period studied (1961-1965, inclusive); they do not reveal legislative amendments during that period, which are set out here in paragraphs 21 and 22. As will be seen, the tendency of these amendments is to reduce the applicability of capital punishment to murder and to narrow the types of murder to which it is applicable.

2. *The* de facto *aspects of abolition*

18. Actual utilization of capital punishment as an instrument of public policy is an issue of fact which must be addressed quite apart from the existence or non-existence of legal provisions for the death penalty. When capital punishment may be one of the prescribed sanctions — or even the only prescribed sanction — for a crime, it is frequently the case that in practice, no person guilty of that crime is sentenced to death. Often, even those who are sentenced to death are not in fact executed, owing to post-sentence intervention by judicial or executive authority. This disparity between legal provisions for capital punishment and actual practice is great; the crucial difference is further explored in paragraphs 66 to 73 below.

B. — The trend to limiting the categories of offences to which the death penalty may be applied

19. In the period under study, capital punishment was abolished in several countries as the penalty for the commission of various crimes. During the same period, several countries established new "capital" crimes or adopted the death penalty for offences not previously punishable by death. An interesting pattern emerges: in general, the categories of offences from which the death penalty was removed are those, particularly homicide, to which it has traditionally been applied; whereas the categories for which it was newly invoked are economic and political crimes that are seen as involving a threat to social order or governmental stability.

20. During the period under study, capital punishment was abolished for the following offences:

(*a*) In Australia (the state of Western Australia), for murder (although the death penalty was retained for "wilful murder");

(*b*) In Ireland, for piracy with violence, wilful killing of a person

protected by the Geneva conventions of 1949, and for all homicides except "capital murder" which includes murder of a police or prison officer in the course of his duty, murder in the course of one of several offences against the state or in the course of activities of an unlawful organization and "political" murder;

(*c*) In Northern Ireland, for murder;

(*d*) In Pakistan, for violating any of several Martial Law Regulations which were repealed in 1962. Those Regulations prescribed the death penalty for: intentionally assisting the recalcitrants or impeding operations of Pakistani forces; joining or attempting to join the recalcitrants; wilfully damaging public property or supplies of the armed forces or the civilian population; dacoity; harbouring, aiding or supplying a recalcitrant; attacking, resisting or injuring any member of the armed forces or any civil official; damaging or interfering with various means of transport and communication; refusing to give evidence or giving false evidence at any trial held under the Martial Law Regulations; smuggling; assisting smugglers or knowingly possessing smuggled goods; kidnapping of children or abduction of women;

(*e*) In the United Kingdom, for capital murder (the residual capitally punishable category of homicide since the 1957 Homicide Act);

(*f*) In the United States of America: in Illinois, for causing death by dynamiting a munitions plant; in New York, for all offences except the killing of a peace officer in the exercise of his duty and the killing of a prison guard or inmate by a prisoner serving a life sentence; in Nevada, for trainwrecking; and in Vermont, for all offences except the first degree murder of a law enforcement or correctional officer in the performance of his duties and an "unrelated" murder by a person previously convicted of first degree murder;

(*g*) In Zambia, for rape.

21. Capital punishment was newly prescribed as a mandatory or discretionary punishment for the following offences:

(*a*) In Cambodia, for sabotage of the economic or financial organization of the nation;

(*b*) In China (Taiwan), for the commission by a public official of any of the following offences: selling, converting or stealing government food-stuffs; using authority or false pretences to extort; taking bribes or gifts or engaging in other corrupt acts while involved in construction, purchasing or supply; using government transport to smuggle or carry contraband; taking or soliciting a bribe for a breach of duty;

(*c*) In Nigeria, for committing any one of extensively defined "offences against public order", i.e., offences which relate to acts committed in furtherance of civil disturbances;

(*d*) In the Republic of Viet-Nam, for these offences: illicit speculation or other action tending to upset the economy and finances of the state; active corruption and traffic in influence when the value offered is more than 100,000 piastres; communist association or communist entente for bearing arms against the state; physical violence against agents of the public force during the exercise of their functions;

(*e*) In Singapore, for committing or consorting with anyone who commits the offence of unlawfully carrying or possessing firearms, ammunition or explosives in a security area;

(*f*) In the United States of America (under federal law), for assassination or kidnapping (causing death) of the President, President-elect, Vice-President, or, if there is no Vice-President, the officer next in succession.

22. The foregoing survey of recent changes in the categories of offences to which the death penalty may be applied is necessarily incomplete: the broad revision of civil or military codes, as opposed to change in a few categories, has made meaningful comparison impossible in several cases. These are Algeria, France (in regard to military law), Gabon, Madagascar, Malawi (military law), Somalia, Trinidad and Tobago (military law), and Zambia. The categories of offences in military law to which the death penalty may be applied are given in the annexes to this study.

23. In systems for which capital punishment is mandatory for certain crimes, the judge must pass the sentence of death whenever there is a capital conviction. Where the death penalty is a discretionary sanction, the option of imposing either capital punishment or an alternative penalty may be vested in the judge, in the jury or in the judge upon a recommendation by the jury. The general legislative trend, which was noted in the Ancel report (see paragraph 14) and which continues today, is towards making capital punishment a discretionary rather than a mandatory penalty.

24. Even when a mandatory death sentence is prescribed by law for a particular crime, provisions exist by which the sentence may be avoided. In some countries, particularly France, liberal findings of extenuating circumstances by the courts frequently preclude an otherwise mandatory death sentence. In other systems, particularly in the United States of America, the availability of different degrees of offences, especially of homicide, serves a similar function, that of reducing the crime to non-capital status.

25. The Ancel report concluded that where capital punishment was mandatory it was chiefly so in cases of capital murder and of crimes against the external security or the integrity of the State; this conclusion is equally valid at present. Since the Ancel report, the only crimes for which the death penalty has been newly established as mandatory appear in the codes of Singapore and the Republic of Viet-Nam (see paragraph 22 above), and involve solely political and economic offences.

C. — THE TREND TO LIMITING THE CATEGORIES OF OFFENDERS TO WHICH THE DEATH PENALTY MAY BE APPLIED

1. *Exclusion by reason of mental condition*

(a) *Insanity*

26. All reporting countries whose laws provide for capital punishment recognize an exclusion from that sentence in favour of the insane. This basic principle rests on a moral judgement that it is not fair to punish the sick for the consequences of their illness. In addition to the recognition of insanity as a defence to criminal liability for the commission of a forbidden act, most systems also recognize both insanity which renders an offender unfit to comprehend a trial or to assist in his own defence, and insanity which renders an offender unfit for punishment.

27. The normal consequence of a finding of insanity is commitment of the offender. In France and a few other countries, a pre-trial finding by psychiatric examiners that the accused is insane operates to remove the accused from the criminal process; he then becomes subject to psychiatric treatment and control under the normal civil mental health powers of the state. In most other countries, such a finding requires the trial court to commit the offender to psychiatric custody either within the prison or the mental health systems; in a few, such commitment is a matter within the discretion of the court.

28. In a very few countries a finding of insanity, whether made at or before trial, operates not to replace punishment with medical treatment but only to exclude capital punishment or to reduce the duration of the prison term. This is the case in Trinidad and Tobago, where an insane offender must receive a lighter sentence, and in China (Taiwan), where a finding of insanity apparently allows the sentencing authority discretion to impose a lesser penalty. In nearly all other countries, however, insanity of the offender is regarded as removing him entirely from the penal process, or at least to psychiatric facilities maintained by the penal system; he is considered not responsible and, therefore, more appropriately the subject of medical treatment than of imprisonment. Such an attitude naturally precludes imposition of the death penalty.

29. Since the accused is in almost every country presumed to be of sound mind, he has the option of raising the issue and the burden of adducing evidence of insanity. In recent years, however, a desire for broader control of the mentally ill and an increasing humanitarian concern for the proper classification of offenders have created a tendency to allow introduction of this issue by the court, the prosecution or both. This is true in the United Kingdom and, to a less extent, in some of the jurisdictions of the United States of America.

30. Inquiry into the mental health of the offender is aided by provisions in the laws of many countries for a mandatory mental examina-

tion of one accused of a serious (or, in some countries, capital) crime, and for state financial facilities for this purpose, as is the case in Canada, France, the Ivory Coast, Malawi, New Zealand, the United States, the Western Pacific Islands, as well as in many other countries. In Australia, Chile, Dahomey, Guatemala, India, Japan, Pakistan, the Republic of Viet-Nam, South Africa, the Sudan, Thailand, the United Arab Republic, Zambia and in some of the countries of the Middle East, an examination of the mental state of the accused is obtainable only upon the granting of a special application or a court order.

31. Little detailed information is available concerning the nature of the mental examination. In several countries the law requires that a psychiatrist perform the examination; in others a general medical examination is deemed sufficient.

32. Variation is noticeable in relation to the frequency with which those accused of capital crimes successfully maintain the defence of insanity. In some countries the defence of insanity was successful, during the period under study, nearly every time it was made. This was the case, for example, in the Central African Republic, Malawi, Trinidad and Tobago and in Scotland (where out of a total of fifty-two cases of murder between 1961 and 1964, nineteen defendants were found insane). In a few other countries, however, insanity is rarely pleaded or rarely successful. During the past five years, this was the case, for example, in Australia (where the defence of insanity was introduced in four capital trials and failed in each), Cyprus, the Republic of Viet-Nam and the United Arab Republic.

33. An important movement may be noticed concerning the test for determining insanity for the purposes of criminal responsibility. The traditional rules were articulated as early as 1810 in Article 64 of the Napoleonic Penal Code and in 1843 in the well-known M'Naghten Rules enunciated in England at the request of the House of Lords. These two tests, which form the basis for nearly every formula in continental and common law systems, differ little. The M'Naghten Rules require that, in order to be found insane and therefore not criminally responsible, the accused must have been "labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act" that is, not to know that the act was wrong. This formula, coupled in many of the states in the United States of America with the irresistible impulse test, is undergoing a process of erosion which, as in other systems of law, is resulting in significantly wider definitions of legal insanity in many of the jurisdictions of the common law world. Northern Ireland in 1966 greatly expanded the scope of the M'Naghten Rules by statute. In Australia, Canada, England and New Zealand there is growing pressure for abandonment, or at least expansion, of the M'Naghten formula. In the United States of America in 1954, the much discussed Durham ruling by an appellate court in the District of Columbia was thought by some to have provided a replacement for M'Naghten. The Durham test inquired simply whether the act

of the accused "was the product of mental disease or mental defect". Difficulties with both M'Naghten and Durham, however, prompted the American Law Institute to propose in its Model Penal Code a major modification of the M'Naghten formula which is rapidly gaining proponents. The Model Penal Code provides:

> A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacked substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

Since its promulgation this formula has been adopted, with minor changes, in at least three of the federal circuits and three of the states of the United States of America, and has influenced legislation and decision in several others. It will be noted that in every jurisdiction in which the traditional formula is called into question, the suggested substitutes have a significantly broader scope.

34. While it is difficult to generalize concerning the determination of legal insanity in countries not part of the common law system, the trend is to broaden the concept of legal insanity to include a greater range of conduct. Of all reporting countries, a narrowing of the exclusion from capital punishment due to insanity has been reported only by China (Taiwan) and the Republic of Viet-Nam.

(b) *Mental disturbance or defect short of insanity: diminished responsibility*

35. One of many difficulties with the concept of legal insanity has been its failure to recognize degrees of mental disturbance and to relate them to criminal responsibility. In response to the demand for recognition of partial mental disturbance, laws have been enacted in several countries allowing a defence of diminished responsibility. A finding of diminished responsibility operates to preclude capital punishment and to lessen the duration of the prison term. It does not, however, necessarily result in the provision of medical or psychiatric treatment.

36. The defence of diminished responsibility is established by the laws of a sizable minority of countries, including France, the Ivory Coast, Pakistan, Switzerland, the United Kingdom and Upper Volta. Usually the determination of diminished responsibility is made by the same authority which would make a finding of insanity — judge, jury, lay assessors or psychiatrists.

37. The trend is toward expansion both of the use of the plea of diminished responsibility and in the number of countries whose courts will entertain it. In the United Kingdom, for example, there were twenty-three successful pleas of diminished responsibility in capital cases between 1961 and 1964. Northern Ireland created such a defence by statute in 1966. The new Penal Code of Somalia makes extended provisions for diminished responsibility.

38. In addition, the laws of many countries that do not provide for diminished responsibility generally recognize the concept in relation to specific classes of offenders. The defence of diminished responsibility is available, for example, to deaf-mutes and the feeble-minded in countries such as China (Taiwan), Greece and Japan.

39. In a majority of countries the defence of diminished responsibility is not recognized. It should be noted, however, that similar results — reduction of the severity of the sentence and the consequent exclusion of capital punishment — are frequently accomplished by a broad application of the concept of insanity as well as of the principle of extenuating circumstances.

2. *Exclusion by reason of extenuating circumstances*

40. Circumstances which lessen the moral culpability of the offender — for example, extreme provocation — are recognized by most legal systems. The consequence of such recognition is either to lessen the sentence which may be imposed or to affect the category of crime for which the offender may be convicted.

41. As noted in the Ancel report, the systems for consideration of extenuating circumstances may be classified as "judicial" or "statutory". In the first, the judge or jury has absolute discretion in considering or refusing to consider extenuating circumstances. This is the more common system in China (Taiwan), France, Iran, Iraq, Japan, Laos, Lebanon, Morocco, the Netherlands Antilles, the Republic of Viet-Nam, and in many of the states of the United States of America.

42. "Statutory" extenuating circumstances are factual situations described in positive law, such as provocation, drunkenness, active repentance and spontaneous confession. Such descriptions are found in the laws of Greece, the Union of the Soviet Socialist Republics and most of the nations of Latin America. In Australia and India, the possibility of the lessening of punishment due to extenuating circumstances is restricted to certain crimes. The new Penal Code of Somalia on the other hand, appears to use both "statutory" and judicial approaches to extenuating circumstances.

43. Almost universally, an affirmative finding of extenuating circumstances is a precondition to conviction of the lesser offence or to the lesser sentence. Only in Luxembourg is the usual procedure reversed: there the offender receives the benefit of extenuating circumstances as a matter of course unless the court finds circumstances which make the offence one of special gravity. In Cyprus, the Ivory Coast (where extenuating circumstances may not be considered in relation to offences within the jurisdiction of the newly created Court of State Security) and Trinidad and Tobago, there are no provisions for extenuating circumstances.

44. There is a close relationship among the concepts of extenuating circumstances, discretionary sentences, categories of crime and diminished responsibility. In France, for example, there are several crimes for which the death sentence is mandatory; however, the use of the concept of extenuating circumstances appears to be so broad that it amounts to discretionary sentencing. In Israel, a person found guilty of an offence for which the death sentence is mandatory may receive a lesser sentence if the court finds certain extenuating circumstances described by statute. In others, statutes provide that in certain circumstances the degree of the crime is lessened (e.g., in many of the states of the United States of America), or that the act is treated as a lesser offence (e.g., in Zambia, an act which would otherwise be murder is in certain circumstances treated as manslaughter). In yet others, such as Luxembourg, factors which might well be considered extenuating circumstances form a part of the determination of diminished responsibility. The functional result of each of these practices is the same: discretion is given to judge, jury or lay assessors to impose a lighter sentence, even where capital punishment is mandatory for the offence in question. Careful separation of these methods, though meaningful for study, is thus less important in practice.

3. *Exclusion by reason of age*

45. For purposes both of criminal responsibility and of liability to capital punishment, the age of the offender is universally determined as that of the date of the commission of the crime, not of the date of trial or punishment.

46. There continues to be recognized in almost every legal system a period of total absence of criminal responsibility due to age during which imposition of the death penalty is, of course, precluded. Even those very few systems which do not provide for such exclusion from criminal responsibility due to age (for example, the federal law of the United States of America) conform, in fact, to this practice with respect to very young children.

47. In several countries a person below a specified age may be criminally responsible only on demonstration that he meets the requirement of discernment; that is, that he fully appreciated the moral quality of his act. This is the case throughout the common law world, in Israel, where such a showing is required in relation to offenders between nine and twelve, and in several of the nations of South and Central America.

48. The laws of many countries also recognize an age period in which a young person, though criminally responsible, may not be subjected to a sentence of death, although he may be eligible for imprisonment. The new Penal Code of Somalia, for example, provides such treatment for children between the ages of fourteen and eighteen; in Cyprus similar provisions exist for those under sixteen; and in the United Arab Republic for those under seventeen.

4. *Exclusion by reason of sex*

49. No country reports that its law exempts women from the death penalty. As will be seen, the courts of most countries do not in practice sentence women to death; the remainder impose the death sentence on a very few women, while fewer still are executed.

50. The laws of the majority of nations do make special provisions concerning pregnant women. In some countries these provisions foresee only a postponement of execution, although commutation of the sentence nearly always follows such a postponement. In several, however, the law requires that a pregnant woman not be sentenced to death — rather, that she be sentenced to imprisonment. This is the case in, among others, Cyprus, Trinidad and Tobago and Zambia.

D. — The trend away from actual application of the death penalty

1. *The availability of judicial remedies*

51. All criminal law systems allow recourse to a higher court for persons convicted of capital crimes: in some systems this procedure is automatic; in others it is available only with the permission of the appellate tribunal. This report does not present an exhaustive analysis of appellate procedures in capital cases; it presents only a broad outline of the differences in these procedures which emerge from the replies of the reporting countries, in so far as they relate the role of appellate tribunals to the actual application of capital punishment. As remarked in the Ancel report, the terminology used in the various statutes and replies relating to appellate remedies is often imprecise and therefore difficult to interpret; however, the term "appeal" usually refers to an appellate proceeding in which questions of fact and/or law may be considered, and the term "cassation" normally involves an appellate remedy confined to questions of law, though there are variations in usage which complicate analysis.

52. All of the reporting countries provide some appellate remedy for a person convicted of a capital crime. England and many Commonwealth jurisdictions allow an application to a higher court for leave to appeal. Under the 1964 Somalia Penal Code, which applies to the entire country, an appeal may be raised to the Court of Appeals on questions of law or fact; a further appeal to the Supreme Court is available upon questions of law only. This procedure significantly alters the position of the southern regions, where, as the Ancel report noted, there previously could be no judicial reconsideration of a death sentence. Certain countries provide for an automatic appeal in the event of a death sentence. Such is the case in Canada, where the automatic appeal to the Provisional Court of Appeals may be followed by a further appeal at the discretion of the Supreme Court. Under the 1965 Israeli

criminal procedure law, an appeal from a capital sentence is automatically available on questions of fact or law.

53. Many countries do not have procedures for the reconsideration of questions of fact by a higher tribunal on the theory that, as is the case in France, the assize court is sovereign in its evidentiary judgements. Such is the position of those countries which allow an application for cassation, but not an appeal on questions of fact. Among these countries are Cameroon, the Central African Republic, Dahomey, El Salvador, France, Greece, the Ivory Coast, Japan, Luxembourg, Madagascar, the Republic of Viet-Nam and the United Arab Republic.

54. In Iraq, Pakistan, the Philippines and Thailand, as the Ancel report noted, all capital sentences must be confirmed by a higher court. This is to provide an automatic application for cassation in all cases involving capital sentences.

55. Under the criminal procedure laws of numerous States, particularly in common law countries and in most of the United States of America, a decision by the trial court to allow a new trial is possible in the case of procedural error and, in some instances, when perjury or previously unavailable evidence is discovered. Such provisions allow reconsideration of certain aspects of a case by the trial judge; if, upon hearing the arguments, he decides that except for the error the jury might have decided differently, he orders a new trial, and the entire body of the case is heard over as though the first trial had never occurred.

56. "Review" or revision is an extraordinary appellate remedy allowing reconsideration of a case to prevent a miscarriage of justice. Examples of such circumstances are the discovery of new material evidence, the confession of another person to the crime involved and the discovery that the conviction depended in part on perjury. Even though the United States of America and England are the only countries reporting erroneous convictions, it is interesting to note that nearly all reporting countries which allow only an application for cassation and no reconsideration of fact provide for an extraordinary review remedy. Although the Ancel report stated that such a remedy is not generally available, review or its equivalent through an executive reopening of a case, as in the United Kingdom, appears to be possible in most of the reporting countries. A further consideration, pertinent to the United States, is that appellate reconsideration of a case may be possible on the basis of subsequent Supreme Court decisions regarding the constitutionality of investigative and trial processes.

57. Although the data are sparse, it appears that appellate remedies have a significant effect on the number of death sentences actually carried out. In the Ivory Coast, eighteen of twenty death sentences were commuted on appeal. In Pakistan, of seventy persons sentenced to death, twenty-seven were acquitted and twenty had their sentences commuted by a higher court. In Nigeria, of the 261 death sentences pronounced

during the period, successful appeals resulted in thirty-three acquittals and thirty-two commutations of sentence. In Canada, fourteen of the fifty-five persons sentenced to death received grants of new trials while one sentence was commuted by an appellate tribunal; furthermore, an additional thirteen persons were awaiting appeal at the time of the reply. In these and other countries appellate remedies greatly reduce the number both of final death sentences and of executions.

2. *The incidence of executive clemency: pardon and amnesty*

58. The use of the power of pardon plays an important role in reducing the number of actual executions. Although in some countries a pardon may completely exonerate the condemned person, its most frequent use is as a device for commutation of the sentence. The power of pardon is most often vested either, by tradition, in the chief executive of a nation or, by delegation, in a person or group under him, such as the cabinet, the Minister of Justice or the Minister of the Interior. In many countries pardons are granted upon the advice of an appointed commission, usually composed of prison officials, lawyers or judges, social workers and government representatives; parole boards frequently act in this advisory capacity. In a few countries the power of pardon is vested in a political collegiate body: the Praesidium of the Supreme Soviet in the Union of Soviet Socialist Republics and the legislative assemblies of Turkey and El Salvador.

59. The laws in Afghanistan, Cameroon, France, the Ivory Coast, Madagascar, the Sudan and the United Arab Republic have provision that all death sentences must be reviewed by the authority with the power of pardon; that authority must affirmatively refuse a pardon before an execution can take place.

60. Data on the incidence of pardons are fragmentary, but the following figures are available: in Australia during the reporting period, 8 of 10 death sentences were commuted by pardon; in Malawi, 25 of 57; in France, 17 of 34; in Canada, 24 of 55; in the Central African Republic, 2 of 3; in Upper Volta, the three death sentences passed were commuted by pardon, as were the two sentences passed in Malta. Information on the penalties substituted for the death penalty by appellate commutations and pardons is presented in chapter II below.

61. As discussed in the Ancel report, amnesty differs from pardon in that amnesty generally applies to a category of offences or offenders, rather than to particular individuals, and is usually limited to crimes of medium gravity which carry relatively light sentences. An exception to this general practice occurred in Malawi in 1965 when all life sentences were commuted to ten years by a general amnesty.

62. The power to grant amnesty is usually vested in the legislature or, in systems, in the authority which holds the power of pardon. As the Ancel report noted, however, the use of amnesty is often specifically

limited: in Dahomey, amnesty can apply only to offences involving the penalties of either deprivation of liberty or fines; in Greece and El Salvador, amnesty is possible only for political and similar crimes; and in Somalia, no amnesty can apply to recidivists. Furthermore, the laws of many countries make no provisions for amnesty; this is particularly, but not exclusively, true in the common law countries. Owing to the various limitations placed upon its use, the institution of amnesty appears to have little effect upon the incidence of executions; no country reports that any executions have been prevented by the granting of an amnesty for certain crimes or offenders.

3. *The application of capital punishment*

63. There is great diversity among the reporting countries concerning the frequency with which persons sentenced to death by the courts are actually executed. At one extreme, the Ivory Coast reports twenty death sentences but no executions; in Canada there were fifty-five death sentences and four executions. At the other end of the spectrum, China (Taiwan) reports an equal number of death sentences and executions (twenty-five each). In addition, many countries which maintain the death penalty in law have passed no death sentence during the period under study: this is true, for example, of the Central African Republic, Dahomey, Gabon, the Netherlands Antilles (where the last execution took place in 1870), Laos (where no death sentence has been pronounced since that country became independent in 1949) and New Zealand (where the death penalty for murder was abolished in 1961).

64. There was a total of 2,066 death sentences imposed and 1,033 executions during the reporting period. The ratio is similar to that in the Ancel report which reported a total of 3,108 death sentences and 1,647 executions. An absence of complete overlap in reporting countries is only partially responsible for the difference in the total number of death sentences and executions recorded in the two reports; in the countries furnishing data on death sentences and executions for both reports there has been an over-all decrease in the absolute numbers both of death sentences and of executions, as can be seen in the following table.

65. For purposes of comparison the Ancel report was structured so as to indicate the countries in which the number of executions was less than half and those in which it was more than half of the number of death sentences. It appears in the Ancel report that of those countries which had passed death sentences and had executed some persons during the reporting period, executions had taken place for fewer than 50 per cent of the sentences passed in fifteen countries, had equalled 50 per cent of the number of sentences passed in two countries, and had numbered more than 50 per cent of the sentences passed in thirteen countries. Of countries giving data for the present report, nine report that the number

Table 1

Number of death sentences and executions in countries furnishing these data for both reports

Country	1956-1960 Ancel report		1961-1965	
	Death sentences	Executions	Death sentences	Executions
Australia[a]	8	1	5	2
Canada	59	16	55	4
China (Taiwan)	15	15	25	25
France	33	11	34	6
Ivory Coast	16	0	20	0
Japan	118	126[b]	106	48
New Zealand	10	7	0	0
Nigeria	590	291	261	191
Somalia	15	8	7	3
United Kingdom	100	28	22	12
United States of America	—[c]	219	491	132

[a] Figures for the State of Western Australia only.
[b] The greater number of executions than of death sentences is explained by the inclusion in the former of persons convicted earlier than the period reported on.
[c] The National Prisoner Statistics did not state the number of death sentences passed until 1960 (although it is presumed that this number was approximately 113).

of executions has been higher than 50 per cent of the number of death sentences, and sixteen report a ratio of less than 50 per cent. Of countries giving these data for both reports, four (France, Japan, New Zealand, Somalia) have reported a change from a greater than 50 per cent ratio to one of less than 50 per cent, and two (Nigeria, the United Kingdom) have reported a change in the opposite direction.

66. As was true at the time of the Ancel report, nearly all the crimes which result in actual execution are murder in some form, whether assassination, premeditated murder or felony murder. In fact, of the 1,033 reported executions, some 929 appear to have been for murder. The United States of America reports twenty executions for rape, two for kidnapping, one for assault by a life prisoner, and one for armed robbery during the period. Other crimes for which executions have taken place are theft under certain aggravating circumstances in Chad and France; theft and indecent assault in the Republic of Viet-Nam; and crimes under the Nazis and Nazi Collaborators Law in Israel.

67. Very few women are sentenced to death for the commission of capital crimes and even fewer are executed. Even though women commit fewer capital crimes than do men, nevertheless, there does exist a systematic and disproportionate exclusion of women from capital punishment in nearly all countries. Of the 2,052 persons reported to have been sentenced to death, only twenty-seven were women; of the 552 executions reported, seven were of women. Four of these executions took

place in Nigeria, one in Pakistan, two in South Africa, one in the United States of America (California) and one in Yugoslavia. At least six of the seven executions were for murder.

68. Although conclusions concerning the ages of persons sentenced to death and of persons actually executed are difficult to draw without comparative data on the ages of persons who commit capital crimes, particularly murder, one fact is evident: nearly one half of all male persons sentenced to death and of those executed are between the ages of twenty-five and thirty-five years. This figure includes a number of countries which reported averages above and below this range: In Trinidad and Tobago, twenty-seven of the forty-nine persons sentenced to death were under twenty-five years of age; in the United Kingdom, twelve of twenty-two were under age twenty-five. On the other hand, in Malawi thirty-two of the forty-seven persons sentenced to death were over the age of thirty-five, as were eleven of the seventeen persons executed. The data indicate that some three fourths of the men executed during the period were less than thirty-six years old; in contrast, all of the women executed were over thirty-five years of age.

69. Whether members of minority groups — racial, religious, caste or class — are discriminated against, either in terms of the proportion of death sentences received to the number of capital crimes committed or in terms of the proportion of actual executions to the number of death sentences received, is an important but difficult question and was a subject of some comment in the Economic and Social Council's debates on the Ancel report. Although the data are rare, there is evidence that, in the United States of America and undoubtedly elsewhere, the death penalty is imposed upon members of racial and religious minorities with a frequency out of proportion to the capital crimes committed by members of such minorities.

70. Data concerning military executions and death sentences pronounced by military courts are extremely sparse. During the reporting period there have been no capital prosecutions in the military courts of El Salvador and Zambia and no capital convictions in Somalia. Further, many military courts, including those of Australia, Israel, Luxembourg, Malawi, New Zealand, South Africa, Trinidad and Tobago, have pronounced no death sentences during the period. One death sentence was imposed but commuted in France and one imposed and then commuted in the United Kingdom. Six countries reported executions following death sentences imposed by military courts: Cambodia stated that one soldier had been executed for treason, and that certain unenumerated civilians and foreigners had also been sentenced to death under military law; Poland executed one of two soldiers sentenced to die for wilful homicide. In the United States of America one soldier was executed. Four of nine soldiers sentenced to death for murder were executed in Pakistan; China (Taiwan) reported 219 military death sentences and executions; Yugoslavia reported one military death sentence and execution.

E. — The execution

1. *The conditions and duration of incarceration between the sentence and the execution*

71. As was true during the period of time covered by the Ancel report, the prevailing practice is to keep condemned prisoners in solitary confinement and under heavy surveillance, but to allow them special privileges. Among the countries reporting, this practice is followed in Australia (except Western Australia), Dahomey, El Salvador, France, Gambia, Israel, Ivory Coast, Japan, Luxembourg, Madagascar, Netherlands Antilles, Nigeria, Pakistan, the Republic of Viet-Nam, the United Kingdom and Zambia. Such special privileges usually consist of provisions for increased numbers of visits by relatives, attorneys and ministers, greater choice of food, extra tobacco, more mail and reading material, etc.

72. Australia (Western Australia) and Chad report that condemned prisoners are subject to the common régime of the prison, but, in the case of Chad, a "last cigarette" visit by the family of the condemned is permitted. Afghanistan and Cyprus state that condemned prisoners receive special treatment. The United Arab Republic indicates that condemned persons are subject to solitary confinement and receive no special privileges.

73. The existence of a special prison block — "death row" — for condemned prisoners in the United States of America is as much myth as reality. Rarely are condemned prisoners segregated from other high security prisoners until a few days, or often only one, immediately preceding the day of execution. This practice is of some importance in view of the length of incarceration between initial sentencing and execution.

74. Procedures for determining the date of execution vary according to the nature of the remedies available to the condemned man and whether the courts or prison officials have responsibility for setting the date of execution. In a number of countries the date is set at the time of sentencing and later changed as a result of appellate delays and reprieves. Further, the date of an execution is often affected by particular legal provisions and customs: in the Central African Republic, the United Arab Republic, and Dahomey the law expressly provides that an execution may not take place on an official holiday or on the day of a religious festival; in the Republic of Viet-Nam, the execution is to take place within twenty-four hours after the death sentence becomes final; Japanese law provides that the order for execution must be issued within six months after the sentence has been made final. In Cyprus the execution must take place no less than eight weeks and no more than nine weeks after the sentence has become final.

75. In certain countries, in the United Kingdom, and generally in the United States of America and the Commonwealth countries, the

condemned man is informed of the date of his impending execution, while in others that is not the practice. The varying practices appear to be based much more on tradition than on psychological theory or empirical research.

76. The Ancel report included data concerning the average length of time between the commission of the offence and the indictment for the crime in various countires. Such data, as well as information regarding the length of time between indictment and sentencing, would be of value in this study, since the offender is incarcerated during these periods as well as after sentencing. Unfortunately, so little material was reported on this topic that it is not possible to do more than assert its relevance to a consideration of capital punishment. More frequently reported, however, are data on post-sentencing – pre-execution incarceration.

77. The average length of time that a condemned prisoner is confined between the imposition of the death sentence by the trial court and the execution varies so greatly not only from country to country but also within countries due to appellate and similar processes that few generalizations are possible. This period of incarceration was briefest in Chad (eight days, one execution) and in China (Taiwan) (average fourteen to eighteen days, twenty-five executions), and longest in Japan (average four years and nine months, forty-eight executions). In the United States of America the median length of post-sentence – pre-execution incarceration ranged from sixteen to twenty and one half months for the reporting years, the shortest period being one month in Texas on two occasions, the longest in Illinois — seven years two months in one instance. In a large number of reporting countries this period of incarceration ranged from three to nine months. It must be remembered that these figures include only persons who have been executed during the reporting period. There are, in addition, persons still awaiting execution who were initially sentenced to death during or prior to the period dealt with in this report: for example, the fate of one man sentenced to death in 1955 in Illinois has not yet been determined.

78. The considerable variation which characterizes this time lapse is largely due to the availability to the condemned man of both appellate and executive remedies. In many countries there are additional practices, whether established by law or tradition, which may operate to postpone executions and thereby increase the interim length of incarceration.

2. *Postponement for reasons other than appellate review*

79. The practice of postponing the execution of pregnant women until after childbirth is nearly universal. As has been noted in paragraph 50 above, there are countries in which pregnant women are exempted from execution. In all other countries reporting, pregnancy leads to

a postponement; furthermore, in some countries the postponement continues for a specified length of time following parturition. In fact, however, postponement because of pregnancy is not a highly significant issue, since very few women are sentenced to death whether or not there is pregnancy, and still fewer are executed.

80. There are provisions in the laws of many countries which allow the postponement of an execution in the event of either serious physical illness or insanity which appears after sentencing; the execution then takes place when the condemned man is in good health. Ironically, this practice sometimes results in the fact that the state expends considerable effort and funds to save the life of the man it will then proceed to kill. However, such provisions for postponement may often lead to commutation of the sentence by the executive.

81. Many countries have provisions under which either the court or the executive may postpone an execution; they operate when the circumstances discussed above (pregnancy, serious illness or intervening insanity) are involved, and are often used so that adequate time is available for appellate review and for the consideration of petitions for pardon. Whether the power to postpone is exercised by the judiciary or the executive may be simply a matter of policy or can depend upon the function that such postponement serves; e.g., whether it is for judicial reconsideration of a case or for the consideration of a petition for clemency.

3. *Methods of execution*

82. The history of execution, as indicated by the Ancel report, is one of gradual diminution of the infliction of pain and degradation and of increasing insistence upon speedier and more painless methods. The example of the United Kingdom is instructive in this regard: execution there evolved from a system of various protracted and symbolic cruelties to simple strangulation by hanging, then to a method of hanging which caused abrupt severance of the cervical vertebrae, causing immediate death. Before the death penalty for murder was abolished, the Royal Commission on Capital Punishment (1949-1953) had given some consideration to the possibility of employing lethal injections. The history of execution in other countries parallels that of the United Kingdom: the trend over the years has been towards reducing the suffering of the person executed.

(a) *Execution for civil offences*

83. Hanging is the most widely used method of execution for civil offences. It is the prescribed method in Afghanistan, Australia, Burma, Cyprus, Czechoslovakia, Gambia, Ghana, India, Iran, Iraq, Israel, Japan, Lebanon, Malawi, New Zealand, Nigeria, Poland, Singapore, South Africa, the Sudan, Trinidad and Tobago, Turkey, the United Arab Republic, the United Kingdom, and Zambia. The number of its adher-

ents is, however, diminishing. In Somalia, where hanging was the normal method of execution and shooting the alternative, the new Penal Code provides only for shooting. While seventeen of the states of the United States of America used hanging in 1930, it is still retained in only six. Afghanistan, where hanging is prescribed, reports that other methods are under consideration. In addition, in two jurisdictions hanging is one of two available methods: in Canada, the alternative at the discretion of the sheriff is shooting; in the state of Utah in the United States of America, the condemned has the choice of death by hanging or shooting.

84. Several nations prescribe shooting as the method of executing civil offenders. These nations include Algeria, Cambodia, Cameroon, Central African Republic, Chile, El Salvador, Greece, Guatemala, Indonesia, Ivory Coast, Morocco, Togo, Union of Soviet Socialist Republics and Yugoslavia. In certain countries, execution by shooting includes specific ritual elements: in Somalia the condemned man either faces his executioner or kneels with his back to him, depending on the nature of the offence; in Thailand, a blanket hangs between the condemned man and the executioner who fires at a cross-shaped target on the blanket; in certain countries which use a firing squad, some of the guns contain blank ammunition so that it will not be known which man performed the execution.

85. Electrocution is practised in the Philippines, in twenty-four states of the United States of America and in China (Taiwan) where the offender may be hanged if the equipment necessary for electrocution is not available. Eleven states of the United States of America use the gas chamber to inflict the death penalty. Decapitation has been the traditional means of execution in France since 1789, and is also practised in Dahomey, the Republic of Viet-Nam and Laos (where it may be replaced by shooting). Garrotting survives as the means of execution only in Spain.

(b) *Execution for military offences*

86. In contrast to the provisions for execution in civil law, most military codes provide that those sentenced to death for military offences be shot. These countries include Brazil, Cambodia, China (Taiwan), Denmark, France, Israel, Italy, Luxembourg, Poland, the Republic of Viet-Nam, Somalia, South Africa, Switzerland and the United States of America.

87. In the remainder of countries whose laws stipulate the execution of military offenders, the method employed is hanging, which is used, for example, in Cyprus, Nigeria, Trinidad and Tobago and Zambia. Either shooting or hanging is permissible in New Zealand, Pakistan, the Philippines and the United Kingdom.

88. The fact that capital punishment is frequently provided for in special emergency or military legislation yet either rarely or never used has led to uncertainties concerning methods of execution. Australia and

Singapore report that the method of execution of military offenders is "presumed" to be hanging, a presumption based on the practice regarding civil offenders. In Denmark a legislative act of 1952 made certain acts committed in time of war or enemy occupation capitally punishable; a method of execution was to be prescribed by Royal Ordinance; however, no such prescription has been made. In Sweden a legislative act of 1948 provided that the method of execution of military offenders be pronounced by the King-in-Council but no such pronouncement has been issued.

4. *Control of publicity concerning the execution*

89. Historically, executions were carried out in public on the theory that, considering the relatively low levels of literacy, the spectacle of a public hanging would bring the widest possible publicity and therefore deter the largest possible group of potential offenders. In the last century, however, most nations have abandoned public executions and have imposed limitations on the publicity attending executions, pre-trial and trial proceedings in capital cases.

90. The laws of a very few countries, such as Cambodia, the Central African Republic, Chile, El Salvador, Iran and Laos, provided for public executions. In some other countries, public executions are not required but may be held, usually, on the order of the responsible executive. This is true of Afghanistan, Argentina, Malawi, Morocco, the Philippines, and the Republic of Viet-Nam. It should be noted that the power, where it exists, to order public executions is rarely exercised.

91. In the large majority of countries, executions are not held in public view and attendance is carefully limited and controlled. Certain states of the United States of America allow a few members of the public to attend — the number varies between three and twenty — in an apparently symbolic capacity as representatives of society-at-large; in some jurisdictions the newspaper reporters attending the execution serve in this capacity. Generally, however, attendance is limited to a few officials, e.g., the person in charge of the prison, a doctor, a minister of religion, representatives of the prosecution, or the defence, or both, and occasionally members of the condemned man's family.

92. The particular problem of the presence of journalists at executions merits attention. The trend in most countries now is increasingly to exclude them from attendance. In some countries, including Australia (Northern Territory of Victoria), Canada, China (Taiwan), Guatemala, Iraq, New Zealand, United Arab Republic and Zambia, the presence of journalists is permitted only upon special authorization. In nine of the states of the United States of America, journalists are expressly permitted by statute to attend executions; in other states, and in El Salvador, journalists are allowed as a matter of established practice.

93. Limitations on the publicity which may be given to executions

are frequent, although practices in this regard vary too much to permit easy generalizations. No limits on such publicity are reported to exist in Ghana, Republic of Viet-Nam, Sudan, Thailand, United Arab Republic and in some states of the United States of America. Limitations may be imposed, however, by executive action in some of these countries, e.g., the United Arab Republic. In most countries publicity relating to executions is either forbidden or limited to a simple announcement. These countries include Canada, Ceylon, Cyprus, Dahomey, France, Gambia, India, Israel, Ivory Coast, Lebanon, Liberia, Malawi, Mauritius, Netherlands Antilles, Nigeria, Seychelles, Somalia, South Africa, Tanzania, Togo, Trinidad and Tobago, Turkey, United Kingdom, Western Pacific Islands and Zambia; similar limitations are imposed by some of the states of the United States. In Austria even official announcement of an execution is prohibited.

94. Some closely related regulations deserve mention: there is a tendency to limit publicity relating to criminal trials in which the death penalty may be imposed as well as to criminal trials in general. In the United States of America, a recent decision of the Supreme Court reversed a criminal conviction because of the prejudicial effect of publicity before and during the trial. In Israel, a court has broad power to order a cessation of certain types of news coverage, or to accomplish the same result by holding closed hearings. In addition, all publicity which is calculated to influence the course or the outcome of the trial is prohibited. Similar avenues of regulation exist in the United Arab Republic and a few other countries.

F. — Accessory penalties and liabilities

95. As indicated in the Ancel report, many systems impose no additional or accessory penalties on a condemned man; this policy is based on the view that the death penalty itself is the ultimate sanction, to which it would be inappropriate to add any further sanction. The laws of certain countries, however, provide for the deprivation of public rights and honours, a survival from the nineteenth century concept *capitis diminutio*. The laws of still other countries provide for the "civil death" — as contrasted with the physical death — of the condemned man; this penalty frequently deprives the condemned man of the right to dispose of his property, the right to sue and similar rights. "Civil death", also a survival from the nineteenth century, has been generally abandoned, although some systems have retained a discretionary power in the court to impose it. The practice of forfeiture of the condemned man's property to the state has also been abandoned in most systems because of the hardships it created for the criminal's family; a few countries maintain forfeiture as an accessory penalty for certain political and economic crimes.

96. A number of countries specify, in their present replies, accessory penalties, in addition to those described in the Ancel report. In Israel

an heir may not inherit from a person whose death he has been convicted of causing or attempting to cause; similar prohibitions regarding inheritance exist in many systems. In the Ivory Coast the Court of State Security, created in 1963, is empowered to include as part of a sentence the total or partial confiscation of the offender's goods, and to strip him of public honours. In Madagascar a person sentenced to death is deprived of all civil rights except the right to counsel, and cannot receive gifts or dispose of his property; after the execution his estate is treated as if he had died intestate.

97. The laws of many countries allow a condemned person the right to dispose of his property. In El Salvador a reprieve from the execution may be granted for a maximum of nine days so that the condemned man may settle his affairs. In Zambia the prisoner is given notice three days prior to his execution so that he may dispose of his property. Similar provisions exist in countries which do not impose accessory penalties.

98. Most legal systems allow the dependants of a murdered person to seek financial compensation in a civil suit from the murderer's estate. This has been an efficient technique of arranging compensation for a variety of reasons, not the least being the frequent poverty of the murderer. Therefore, considerable attention has recently been devoted to other methods of compensating the deceased's family. State compensation of the victim and his dependants has emerged in the United Kingdom and New Zealand; under both plans the state is subrogated to the victim's right to a separate civil action against the offender. In California the victim is compensated from welfare funds which are supplemented by fines levied against offenders. There is a trend towards experimentation in victim compensation along both of these patterns and of their variations in many countries and states.

CHAPTER II

THE ALTERNATIVE SANCTION

A. — The nature and duration of the sentence

99. Courts and juries, when allowed a sentencing discretion in capital cases, often elect not to impose the death penalty; further, as has been discussed in paragraphs 63 and 64 above, fewer than half of the death sentences imposed at trial during this reporting period resulted in executions. This section concerns the practices of different countries regarding the disposition of these persons who might have been but were not executed. For purposes of comparison we have also included certain data on the sentencing practices of non-capital punishment states for crimes which are typically capital, e.g., murder, in countries which maintain the death penalty.

100. An "alternative sanction", as discussed in this report, is the sentence imposed or carried out with respect to persons convicted of offences for which capital punishment might have been imposed by law, but who are not executed because either (*a*) the court or the jury has a discretion in imposing capital punishment and chooses a different penalty or (*b*) the court or jury imposed a sentence which was subsequently commuted by executive clemency to a different penalty. There exist additional mechanisms through which a lesser penalty may be substituted for death; as noted in paragraphs 54-60 above, the laws of many countries provide for the commutation of a death sentence by the appellate tribunals. In many common law countries which maintain capital punishment the trial court may make a recommendation of mercy to the executive when it imposes a mandatory death sentence; in other countries, including China (Taiwan), Dahomey, France and the Republic of Viet-Nam, the finding of extenuating circumstances in a capital case avoids an otherwise mandatory death sentence. Under the new Somalia Penal Code the permissible alternative penalties vary with the number of extenuating circumstances established, while the laws of Malta provide that if a jury verdict is not unanimous in a capital case, the judge may impose a lesser sanction.

101. As noted in the Ancel report, the alternative sanction in nearly all countries is the most severe form of deprivation of liberty. This statement must be qualified, however, for countries such as Somalia, which impose the alternative sanction according to the nature of the extenuating circumstances and for countries which provide a variety of

possible alternative penalties. It must be further qualified in view of actual practices, since prisoners rarely serve the entire term of punishment imposed at trial.

102. The penalty of "hard labour for life" (also designated as "rigorous life imprisonment" and "forced labour for life") exists as an alternative to death in Trinidad and Tobago and Upper Volta, and, with the additional option "or for a term of years", in the Ivory Coast, Laos, Malta (not more than twelve years) and Luxembourg (fifteen to twenty years). The penalty imposed as an alternative to death is imprisonment for life in Australia (New South Wales and Queensland), Chad, Gambia, Malawi, Nigeria, South Africa, the United Kingdom and Zambia (where the alternative of hard labour for life also exists). Other systems provide that the penalty shall be imprisonment for life or for a specified term of years; these include the Central African Republic, China (Taiwan) (twelve to fifteen years), France, Japan and the Netherlands Antilles (up to twenty years). Pakistan terms its alternative sanction "transportation for life", which is understood to mean imprisonment. One should not be misled by the use of the term "hard labour for life", for in nearly all systems this sentence effectively means "life imprisonment", and does not entail the particularly rigorous work-régime implied by the nomenclature.

103. A similar variety of punishment exists in countries which are *de jure* or *de facto* abolitionist for crimes which are typically capital in death penalty states: the laws of Austria, Ecuador, the Federal Republic of Germany and Switzerland, provide the penalty of hard labour for life; in the Netherlands, Norway and Sweden, the penalty is life imprisonment, as it is in regard to murder in New Zealand and the United Kingdom.

B. — Special rules concerning conditions of imprisonment

104. In nearly all of the reporting countries an offender imprisoned under an alternative penalty is subject to the same régime as are other long-term prisoners. This practice is in accord with the recommendation of the *ad hoc* Committee of Experts on the Prevention of Crime and Treatment of Offenders which commented upon the Ancel report that "the conditions of such imprisonment should not be different from, or more arduous than, those which obtain for other types of prisoners in each country . . .". Variations between countries reporting on the treatment of offenders subject to alternative sanctions seem to reflect not the application of special practices to this group but rather the régime generally imposed upon long-term prisoners. Thus in Australia, Luxembourg and the United Kingdom, it is specifically provided that prisoners subject to an alternative sanction may be confined in open institutions and, in the Netherlands Antilles, that these prisoners receive the same treatment as do all life prisoners.

105. Countries which report affirmatively that persons under an alternative penalty of imprisonment are subject to the same régime as are other prisoners include Afghanistan, Chad, China (Taiwan), the Ivory Coast, Malawi, Northern Ireland, Pakistan, Poland, the Republic of Viet-Nam, Senegal, Singapore, Somalia, South Africa, Trinidad and Tobago, Upper Volta and the United States. Countries which do not report any difference in the conditions of imprisonment include the Central African Republic, Cyprus, Dahomey, El Salvador, France, Gabon, Gambia, Greece, Malaysia, Monaco, New Zealand, Nigeria, the United Arab Republic and Zambia.

106. The practices of the reporting countries indicate that the concern is not whether the long-term prisoner is incarcerated as an alternative to being executed, but that he is a long-term prisoner, *per se*, and that, therefore, there are certain requirements relating to security measures and other considerations that are pertinent to all long-term prisoners. Japan reports that for such prisoners special emphasis is put upon productive work and mental stabilization in order to facilitate their eventual return to society. In general terms, current thinking tends towards increasing appreciation of the degenerative effects of protracted imprisonment on the prisoner, and the trend is towards developing penal systems whose purpose is to minimize such effects.

C. — Provisions for release

107. This section is concerned with the actual length of confinement of persons alternatively sentenced to prison terms, and with the types of provisions which exist relating to their release. It must be stressed that the period of incarceration imposed as an alternative penalty, whether for "life" or for a term of years, is rarely fully served. In most systems the sentence of "life imprisonment" is viewed as an indeterminate sentence to which release provisions are applicable; procedures for release prior to the expiration of the term are also generally applicable to sentences of a specific term of years.

108. Regarding the actual length of confinement, it is interesting to note the average and median lengths of imprisonment and the maximum and minimum periods served in the fifteen countries which supplied information on this question. These data may be presented in table form.

109. The significance of the data in the table would be greatly enhanced were corresponding data available on the ages of persons committed to prisons under an alternative sanction and the average life expectancy in the reporting countries. Of further interest would be the number of instances in which the term of imprisonment ended because of the prisoner's death. However, since such data are not available, it must suffice to state that in these countries the most frequent median length

Table 2

Actual length of incarceration of prisoners subject to an alternative sanction (in years)

Country	Average	Median	Minimum	Maximum
Afghanistan	15-20	—	—	—
Australia	15-16	—	—	—
Central African Republic	—	15[a]	10	20
Chad	20	10	5	20
Cyprus	11.5	20	—	20
Ivory Coast	14	20	5	natural life
Japan	13.9	10[b]	9.1	23.5
Malawi	10	10	10	15
Malta	14	—	—	—
Nigeria	14	12	12	16
Republic of Viet-Nam	—	—	2	10
Trinidad	13.25	13	10.8	16.75
United Kingdom	8.7	9	.2	22
Upper Volta	15	20	15	25

[a] This is the median length for "temporary forced labour"; for "perpetual forced labour" the median length is twenty-five years.

[b] The Japanese figure excludes offenders receiving an alternative penalty by virtue of their age; for that group the median length is seven years.

of imprisonment appears to be ten to fifteen years and that the average length of imprisonment is approximately fourteen years. It is clear that in many countries persons sentenced to life imprisonment or to a long term of years usually are released prior to the expiration of the assigned term.

110. A number of factors are significant in determining whether a prisoner under an alternative sanction will be released prior to the expiration of his sentence. Nearly all countries allow for some remission of sentence upon good behaviour by the prisoner. Often the determination of the date of release is based on an assessment of the relative merits of continued imprisonment (including public safety and public opinion) vis-à-vis the possible degenerative effect that such further incarceration might have upon the prisoner. Often the time at which release is possible is prescribed by law which states the minimum time which the prisoner must serve. A few countries, notably Denmark, the Federal Republic of Germany and the Netherlands Antilles, allow no release from a life term unless it has been commuted by the executive to a specific term of years. In nearly all countries the time of release is determined by the Minister of Justice, a board of commissioners or a parole board.

111. Release may be "conditional", in which case the freed man is released subject to certain restriction under which he must act, but generally without post-release supervision. "Parole" differs from conditional release in that there exists a prescribed supervisory agency to whom the released man is responsible and to whom he must report. Whether released on parole or conditionally, the offender may be returned to prison, usually for the unexpired portion of his assigned term, if he violates a condition of his release.

112. Afghanistan allows conditional release after fifteen years of a life sentence have been served; in Norway and Sweden the period is nine years. In Somalia conditional release from a life sentence is possible after twenty-five years, although in the case of other long-term sentences, first offenders may be released after one half of the term has been served, and recidivists after three fourths of the term has been served.

113. Australia, Cambodia, the Central African Republic, France, Japan, Luxembourg, the Republic of Viet-Nam, South Africa, Trinidad and Tobago, the United Kingdom, the United States and Zambia generally allow the release of prisoners subject to alternative penalties on a parole basis, after a certain term has been served, with supervision for a specified length of time after release. The period of supervision varies, ranging from about three years in the United Kingdom to twenty years in the Republic of Viet-Nam, while a number of countries provide for supervision for the entire remaining time of the sentence. The agency responsible for such supervision may be a parole board or other commission or, in some countries, the police.

114. Alternative sanctions under military law appear to be quite similar to provisions under the civil penal code of a given country: e.g., in China (Taiwan), France, the Republic of Viet-Nam and Somalia the courts-martial can impose an alternative sanction only if extenuating circumstances are found. In all countries reporting on this topic, the conditions of imprisonment are the same for military offenders subject to an alternative penalty as for other serious military offenders. Release before the expiration of the sentence is generally available.

115. The greatest differences between military and civil alternative penalty practices appear in the following areas: in the military courts of some countries, e.g., Malawi and Singapore, there appears to be a greater variety of alternative penalties available than in the civil criminal systems of those countries, since field courts-martial often have no power to impose a death sentence except by unanimous vote of the judges (see annex III) and thus tend frequently to impose an alternative penalty; further, in some countries, particularly those which utilize separate military prisons, the power to grant release prior to the expiration of the term may be vested in the commanding military authority.

D. — Experts' and non-governmental organizations' assessments of the alternative sanction

116. The *Ad hoc* Advisory Committee of Experts on the Prevention of Crime and Treatment of Offenders, commenting on the Ancel report, made the following recommendations concerning alternative sanctions:

> The Committee devoted considerable attention to the question of a substitute penalty, viewing it as a most important problem. It was recognized that extended imprisonment constitutes the generally accepted legal alternative to capital punishment, and that the period of such imprisonment should not be so long that the offender would lose hope of ultimately rejoining the outside community. The Committee was firmly of the opinion that the conditions of such imprisonment should not be different from, or more arduous than, those which obtain for other types of prisoners in each country, so that the full facilities of the penal system can be made available for their treatment and that such prisoners can be classified and treated by the prison authorities in accordance with their custodial and training needs. It was further agreed that there should be periodic review of the cases of all such prisoners after they have served whatever is regarded in each country as the necessary minimum penalty for their particular crime. It was also agreed that when the prisoner is released he should, at least for a considerable period, be subject to supervision and possible reimprisonment if this should prove to be necessary.

117. Seventeen national correspondents, scholars and non-governmental organizations replying stated that the alternative to the death penalty should be life imprisonment with the possibility of release by parole or similar provisions; of these seventeen, twelve were of the view that the sentence should be indeterminate, that is, with no prescribed minimum or maximum periods of incarceration. One reply suggested imprisonment for "life" or for a specific term of years; four suggested prescribed periods of imprisonment.

118. Eleven correspondents were of the opinion that there should be no maximum length of imprisonment prescribed when an alternative sanction is imposed; two recommended that there should be no maximum term prescribed by law but that the sentencing court should have the power to decide a maximum length; on the other hand, five correspondents specifically advised the use of a maximum limit in the imposition of sentence. Only one of those reporting suggested a specific term of years, namely fifteen, as an advisable maximum; in addition, one correspondent recommended a minimum of seven years imprisonment before release would be possible for any prisoner subject to an alternative sanction.

119. Concerning conditions of imprisonment, fourteen correspondents suggested that conditions should be the same for alternatively imprisoned offenders as for other long-term offenders; four suggested that the régime should be stricter for prisoners under an alternative sanction; and four suggested that such prisoners, who are usually mur-

derers, should receive special treatment, such as additional psychological counselling.

120. On the question of who should hold the power of early release from an alternative penalty, ten correspondents advised vesting such authority in an independent parole board or board of experts; eight suggested that the power should lie in the executive upon the advice of the parole board, a board of experts or a mixed board of experts and laymen. Two correspondents stated that the power should be vested in the prison authorities, and two suggested a judicial body. Only one correspondent indicated that there was no need for an advisory board when the release power was not vested in the board itself. The composition suggested for the advisory boards varied: the correspondents who felt that the parole board or other expert board should hold the power of release usually suggested that the advisory committee be of mixed composition, e.g., a judge, some professionals and some laymen; the correspondents who suggested that the release power be vested in the executive or in the prison officials proposed an expert advisory board.

121. Eighteen correspondents held the view that post-release supervision of persons under prison sentence as an alternative to death should be the same as for other long-term prisoners; of these a few noted expressly that the circumstances surrounding the particular offence should be given special attention. Five correspondents suggested that post-release supervision of these prisoners should be stricter than for others.

CHAPTER III

THE CONTROVERSY

122. In a large number of countries capital punishment has been the subject of heated debate for many years; in others the controversy has only recently developed. The mandate for this study indicates that the modern world is taking increasing interest in questions relating to laws and practices regarding capital punishment. The earlier chapters of this report have been devoted to an analysis of existing laws and practices concerning the use of the death penalty and its alternatives; this chapter concerns the controversy surrounding the wisdom of capital punishment as an instrument of public policy.

123. Express consideration of theological issues has been omitted from this presentation owing to their multiplicity and complexity.

124. The arguments for and against capital punishment are many; although some consist of little more than emotional appeals, others reflect considerable effort to collect and analyse the relevant empirical evidence. Therefore, it is necessary to separate the rational from the irrational and evidence from firm belief.

125. It is often suggested that punishment of any sort involves at least one of four aspects: deterrence, retribution, education and rehabilitation. These four elements may be viewed as possible goals of a system of punishments, and, as such, they are often at the heart of the controversy concerning capital punishment. In most of the recent legislative debates on the question of abolition versus retention, however, the greatest emphasis has been placed both by witnesses and in the commission reports on the goal of deterrence. We shall therefore begin the discussion of the controversy with an analysis of deterrence and shall then proceed to consider the other points of contention.

A. — THE DETERRENT EFFECT

126. The question most basic to the capital punishment controversy is whether the deterrent effect of capital punishment is superior to that of the obvious alternative, protracted imprisonment. Two kinds of deterrence — general and special — must be separated. The theory of general deterrence is that, in punishing one offender, the likelihood that those who have analogous tendencies towards committing the same or a similar offence is reduced while the theory of special deterrence involves prevention of recidivism.

1. *General deterrence*

127. Retentionists maintain that man is a morally free agent and acts according to his view of his own best self-interest; therefore, since life is *a priori* the most valuable possession a man has, the threat that his life will be taken if he does certain acts is the best possible deterrent against the commission of those acts. Abolitionists counter that man never acts in a decision-making vacuum, that the pressures and exigencies of the moment determine certain types of behaviour more often than does rational thought. The crime for which the greatest number of actual executions takes place is murder. Most murders, abolitionists argue, are committed in the heat of passion or on the spur of the moment, without premeditation; murders are very rarely coldly calculated acts in which the possible gain is balanced against the possible penalty before the decision to kill is made. Abolitionists further maintain that it is the threat of capture and punishment, *per se*, rather than fear of death that acts as a deterrent when such possibilities are considered. Furthermore, the inability of the human mind to conceptualize death may make such a penalty peculiarly abstract even to a criminal.

128. Abolitionists affirm that all of the available data support the position that the death penalty is no greater deterrent to murder than other severe punishments.

129. Retentionists maintain that the police need the protection of capital punishment in carrying out their work. They argue that a criminal who faces only life imprisonment for murder will not hesitate to kill to avoid capture when discovered during the perpetration of a felony because the punishment for murder will not be much greater than for the felony itself if he is captured. Abolitionists rejoin that murder during the commission of a felony is nearly always committed without forethought and occurs almost as a reflex response when the criminal believes himself in danger. The deterrent theory advanced by the retentionists necessarily presupposes a conscious recognition by the criminal of the existence of a choice between death (if caught after killing) and long-term imprisonment (if caught during the felony), as well as a rational, utilitarian decision to the effect that certain imprisonment is preferable to the possible death sentence that would be imposed if the criminal were apprehended after the murder.

2. *The available data*

130. The gathering of evidence to demonstrate the presence or absence of the unique deterrent effect of the death penalty has proceeded over a long period of years; in consequence, the data are voluminous; only a sampling is presented here.

131. There are three standard methods by which the deterrent effect of the death penalty may be tested. First, the commission of capital

crimes such as murder may be measured in a given jurisdiction before and after the abolition or reintroduction of capital punishment. Secondly, the rates of crime of two or more jurisdictions — similar except that at least one has abolished the death penalty — may be compared. Thirdly, the commission of a crime such as murder within a single jurisdiction may be measured before and after widely publicized executions of murderers. Reference to the product of each of these methods is made below.

132. Examination of the number of murders committed before and after the abolition or reintroduction of the death penalty does not support the theory that capital punishment has a unique deterrent effect. Nowhere has abolition been followed by an otherwise inexplicable rise in the murder rate; nowhere has reintroduction been followed by an otherwise inexplicable decline in the murder rate.

133. In several countries, such as Austria, Finland, Norway and Sweden, abolition of the death penalty has been followed by a steady decline in the murder rate. In the state of Colorado, capital punishment was abolished in 1897 and reintroduced in 1901. The average annual number of convictions for murder from 1891 to 1896 was 16.3; the average number during the period of abolition rose to eighteen, and in the four years immediately after the reintroduction of the death penalty the average rose again to nineteen. The experience of the state of Iowa was similar: during the seven years immediately preceding the abolition of the death penalty in 1872, the average annual number of convictions for murder was 2.6. During abolition (1872-1878) the average was 8.8; in the seven years following the reintroduction of capital punishment the average rose to 13.1. A study recently released by the national correspondent of Mexico reveals that the same principles apply to the experience of the Mexican states, most of which have abolished capital punishment: where the murder rate is increasing, abolition does not appear to hasten the increase; where the rate is decreasing, abolition does not appear to interrupt the decrease; where the rate is stable, the presence or absence of capital punishment does not appear to affect it.

134. Comparison of the murder rates of abolitionist and retentionist jurisdictions which are geographically, economically, and culturally similar also fails to demonstrate that capital punishment has a deterrent effect superior to that of lengthy imprisonment. Differences among countries frequently make comparison difficult, but where similar jurisdictions can be compared, the murder rates of abolitionist jurisdictions are indistinguishable from those of retentionist jurisdictions. Owing to the relative similarity of cultural, geographic, and economic factors, the experience of certain states of the United States of America is particularly instructive in this regard. The homicide rate of Maine (abolitionist) is very similar to those of New Hampshire and Vermont (retentionist); the homicide rate during the abolitionist period of Kansas was somewhat lower than those of the retentionist states of Colorado and Missouri. From 1950 to 1964 the average homicide rate per

100,000 population in Illinois (retentionist) was 5.3; for that same period in neighboring Michigan (abolitionist), the rate was 4.0. While comparison between nations is more difficult, all the available data suggest that the absence of the death penalty does not affect the homicide rate.

135. Data concerning the incidence of murder before and after the execution of a murderer are sparse. Studies of highly publicized executions in Philadelphia, Pennsylvania, and in Chicago, Illinois, however, indicate that the execution of a murderer has no demonstrable effect upon the murder rate.

136. Information concerning the effect of capital punishment on the rate of killings of police is similarly limited. None of the presently available data indicates any correlation between the rate of killings of police and the presence or absence of capital punishment.

3. *Special deterrence*

137. Retentionists of capital punishment argue, with undoubted accuracy, that the death penalty precludes the possibility that a convicted and punished capital offender, such as a murderer, will kill again, and that there is no alternative sanction which provides this assurance. Abolitionists reply that the countries which have abolished capital punishment have found imprisonment a sufficient protection for the community.

138. Retentionists argue that imprisonment is not a satisfactory alternative since it mixes the most desperate offenders with those guilty of less serious crimes and thus causes a strain on the morale, discipline and security of prisons. Abolitionists disagree, pointing out that capital offenders, such as murderers, are usually the most conforming of prisoners since they do not share the delinquent value system of many other prisoners and, further, that their indefinite presence in prison is far less disruptive than their presence while awaiting execution.

139. Retentionists claim that if life imprisonment is the maximum penalty for a crime such as murder, an offender who is serving a life sentence cannot then be deterred from murdering a fellow inmate or a prison officer. Abolitionists counter by pointing out that a life prisoner may kill even when the death penalty is applicable; and that the data concerning murders in prison show that the existence or non-existence of the death penalty does not appear to affect the rate of murders in prison.

140. Retentionists argue that, under present practices, even offenders such as murderers, who have been sentenced to life imprisonment may be released after a certain number of years; and that they may well be recidivous. Abolitionists reply that every effort must be made to devise release systems protective to the community and that, in any event, under present release practices the number of murders committed by

persons who were convicted of murder and then released is infinitesimal, and that it certainly is smaller than the number of post-release murders committed by persons who were convicted of other crimes such as armed robbery. If danger upon release is the applicable criterion, it would be wiser then to execute armed robbers than murderers; yet no one would defend such a scheme.

4. *The available data*

141. In order to assist in understanding the nature of the crime of murder — the crime for which capital punishment is most frequently imposed — national correspondents and non-governmental organizations were asked to determine the number of those sentenced to death who were first offenders, and of those who were habitual or professional criminals. The data contained in the replies dictate the conclusion that the large majority of murderers are first offenders. The statistics for Ceylon are representative: from 1962 through 1965, of 182 persons sentenced to death — nearly all for murder — 156 were first offenders.

142. National correspondents and non-governmental organizations were also asked to determine the relative frequency of various motives for murder. The data supplied clearly confirm the currently accepted belief that murder is usually committed spontaneously due to anger at an insult, a domestic quarrel, jealousy or desire for revenge. Premeditation is relatively infrequent; murder for remuneration is even more rare.[3]

143. There are very few data indicating whether homicides in prison are committed by those already imprisoned for murder and, if so, whether the existence of the death penalty affects the rate of homicides in prison. However, a recent study of homicides during 1964 in the prisons of forty-two jurisdictions in the United States[4] yielded these results: of a total of twenty-six homicides, twenty-four occurred in prisons of states which have retained the death penalty. Only five of the twenty-six homicides were committed by persons already convicted of murder or manslaughter.

144. More data are available concerning the conduct of murderers who have been released or paroled after a term of imprisonment.[5] The data consistently show that murderers as a group are better behaved and less likely to resume criminal conduct than any other category of released or paroled prisoners. The number of murders committed by released or paroled murderers is statistically insignificant.

[3] Marvin E. Wolfgang, *Patterns of Criminal Homicide*, 1958 (Philadelphia, University of Pennsylvania Press; London, Bombay and Karachi, Oxford University Press) is helpful in a study of motives for murder.

[4] Thorsten Sellin, "Homicides and Assaults in American Prisons, 1964", *Acta Criminologiae et Medicinae Legalis Japonica*, 31 (4): 1-5, 1965.

[5] United Kingdom, *Report of the Royal Commission on Capital Punishment* (1949-1953), Cmd 8932 (London).

5. *Deterrence of economic crimes*

145. The use of capital punishment for offences of an economic or politico-economic nature merits separate consideration in connexion with deterrence.

146. Those who favour the death penalty for certain economic crimes argue that the characteristics of those crimes render those who might commit them more "deterrable" than those who might commit crimes such as murder. Economic crimes, it is said, usually involve planning and deliberation, whereas murder is generally an impulsive act. The premeditation necessary for an economic crime allows consideration not only of the possible penalty, but also of the severity of the penalty. Thus the gravest of punishments is most successful in deterring those who contemplate such crimes.

147. Abolitionists object firmly to the application of the death penalty to economic crimes; they contend that crimes against property are not of sufficient gravity to merit the death penalty. They agree that economic crimes usually involve planning and deliberation, but argue that such planning is devoted to schemes for avoiding detection. The commission of such a crime itself indicates that the offender thought he was likely to escape detection. Here it is especially true that the swiftness and certainty of detection are more effective deterrents than the severity of punishment. To the extent that a potential offender considers the severity of punishment rather than its possibility, it is quite unlikely that he would differentiate between life imprisonment and the death penalty. To support these arguments, abolitionists frequently point to the fact that, in the United Kingdom, the incidence of many crimes against property actually decreased after those crimes were removed from the list of capital offences.

B. — Other considerations

1. *The reprobative, educational function*

148. Retentionists argue that the existence of capital punishment for crimes such as murder emphasizes society's abhorrence of the offence and reaffirms belief in the sanctity of human life. This position derives from the role of the law as a socializing institution whose prescriptions and proscriptions and the penalties accompanying their violation instill in the members of the society a scale of normative values; that the penalty for murder is the death of the offender, the retentionists maintain, establishes human life as one of the most important values in the society, the penalty for its violation being the greatest.

149. Abolitionists maintain that the killing of criminals by the state tends to lessen society's appreciation of human life, that this value would

be better supported by the state's refusal to take a life even the life of one who has, himself, killed. The abolitionists further argued that it is the position of the sanction on the scale of penalties, rather than its absolute severity, that is supportive of the community's abhorrence of the crime for which it is imposed. It is pointed out that at one time disembowelling alive and drawing and quartering were thought necessary to emphasize the gravity of the offence, but that these have been abandoned as unnecessary, and it is argued that capital punishment should undergo the same fate. It is noted that if the existence of capital punishment were more supportive of the high value of human life than were that of an alternative penalty of imprisonment, it should result in lower murder rates in capital punishment states than in comparable abolition states; in fact, there is no correlation between the existence of capital punishment and murder rates.

150. Abolitionists also contend that the symbolic function of having capital punishment in a society's penalty system affects the entire law enforcement and penal apparatus in a negative way: the existence of such an ultimate negative sanction makes it difficult to orient the remainder of the system of criminal justice, notably the area of penal practice, in the positive direction of maintaining rehabilitation as an important goal.

2. *Retribution, moral law, discrimination*

151. Retentionists contend that the death penalty, particularly for murder, is morally correct, that *lex talionis* is a just rule on which to base penalties. That punishment should be in just proportion to the crime demands that where someone takes a life, that person must also forfeit his life. It is often added that too little attention is paid to the victims of murder, that the consideration is for the offender, who did not consider his victim.

152. Abolitionists argue that retribution should not be used to justify modern penal practices, and that where the death penalty is involved the more constructive goal of rehabilitation is completely impossible. They regard *lex talionis* as a limiting principle meant to describe not the necessarily appropriate punishment but the maximum appropriate punishment; they argue that the principles themselves were formulated in response to political exigencies which no longer exist, and that abolitionist countries in the modern world have dispensed with *lex talionis* with great success. It is added that the retentionists' support of the principle of *lex talionis* is limited to murder and that they do not apply this principle to any other crime. Furthermore, the retentionists apply the principle only selectively to certain types of killings, excluding what have become known as "second degree murder", "manslaughter" and "murder under extenuating circumstances", which comprise the large majority of homicides. Some abolitionists also maintain that the

processes of pre-execution imprisonment, the condemned man's knowledge of the date of his impending death and the ritualistic, formal means of execution often combine to make the taking of the criminal's life by the state a more cruel and inhumane killing than that committed by the condemned man, thereby exceeding the limits of *lex talionis*. Finally, it is argued that modern plans for compensating victims of violent crime or their families indicate that greater and more humane concern is being shown for such victims.

153. There is a dispute whether the death penalty is or has been used in a discriminatory fashion against members of racial or religious minorities. Retentionists argue that the data do not support such a statement. Abolitionists not only regard the data as valid, but also argue that the death penalty, especially since it is so frequently a discretionary sanction, carries such potential for discrimination that its abolition should not be postponed until more evidence of unequal application is gathered.

3. *Alternative sanctions*

154. Retentionists maintain that there is no adequate substitute for the death penalty either as a deterrent or, in some cases, simply as retribution. At the same time, some retentionists argue that imprisonment for life would be more humane than the death penalty. Abolitionists reply that most persons sentenced to death and executed are murderers who have extremely low recidivism rates and tend to be model prisoners; in addition, they contend that society is amply protected by the imprisonment of the offender for an indefinite period of years even with release possible. It is argued that all of the available data show no greater deterrent effect from capital punishment than from long-term imprisonment. Abolitionists further maintain that retribution should not be the basis for modern punishment practices and that society's abhorrence for crime can be demonstrated by the comparative severity of the penalties imposed; they stress that capital punishment entirely precludes any possibility of achieving a valuable goal in the rehabilitation of the offender. Finally, it is argued that retentionists are not consistent in claiming that imprisonment for life is a more cruel and inhumane punishment than execution: if this were clearly so, the prospect of the death penalty would not have the unique deterrent effect which retentionists insist that it has.

4. *Administration of the law*

155. To the abolitionist argument that the death penalty precludes any correction of a miscarriage of justice the retentionists rejoin that the requirement of guilt beyond a reasonable doubt, the availability of appellate review and of executive commutation of a death sentence and the many procedural safeguards afforded the accused in capital cases make the chances of an erroneous conviction and execution minimal. The

abolitionists deny this assertion, noting the many established cases of the conviction of innocent persons in England, Europe and the United States of America.

156. The retentionists continue that in most systems the need to establish the defendant's fitness to plead as well as the availability of a defence of insanity to the accused make it very unlikely that an insane person will be executed. The abolitionists maintain that in most systems the defence of insanity is too narrow and that in many countries psychiatric services are too inadequate to give any such assurance.

157. The abolitionists add that, in spite of retentionists' assertions to the contrary, the existence of capital punishment makes murder trials protracted and sensational, focuses public attention on undesirable aspects of human behaviour and distorts the administration of justice by rendering impartial examination of the evidence more difficult.

158. Retentionists assert that the existence of capital punishment (regardless of its application) enhances the bargaining power of the prosecutor in some systems to obtain a guilty plea in exchange for a charge of less than capital, or first degree, murder, thereby yielding benefits of time, convenience and economy. Abolitionists rejoin that, assuming some bargaining power to be functional in a criminal law system, the life of the accused man is too high a stake with which to play and that the over-all effect is disruptive of the administration of criminal justice.

5. *The burden of proof*

159. It is generally agreed between the retentionists and abolitionists, whatever their opinions about the validity of comparative studies of deterrence, that the data which now exist show no correlation between the existence of capital punishment and lower rates of capital crime. This agreement does not conclude the argument on deterrence, however, for the retentionists insist that the abolitionists must positively prove that the death penalty has no unique deterrent effect; they argue that to abolish capital punishment without such positive proof would bring risk to the lives of innocent people in the event that such a unique deterrent effect did exist. Abolitionists argue that the ultimate value endorsed by both sides is the sanctity of human life and that the retentionists must positively demonstrate a unique deterrent effect in capital punishment before the state itself should be allowed to derogate this value by the execution of criminals.

6. *Expense*

160. It is often argued by retentionists that the expense of maintaining murderers in prison for life is an unnecessary strain on the finances of a country or state. The abolitionists meet this argument at

two levels: they argue first that the unusually high expense of capital trials and appeals in many countries exceeds that of maintaining a life prisoner for the remainder of his natural life — an average of about thirty years. The abolitionists refer to the few studies that have been made in this area for clear support. It is added that the strain and demoralization which executions create in prisons is a cost factor, immeasurable in money terms, which is never taken into account by the retentionists.

161. Secondly, abolitionists argue that the fate of a man should not, in any case, be determined by economic motives. Rather, they think it strange to advocate execution on economic grounds if prison conditions have not been created so that prisoners might be self-supporting. They add that a man's life is of greater worth than any economy resulting from execution — especially so since both sides in abolition-retention controversy place such value on human life.

C. — Public opinion, qualified group and specialist opinion

162. The over-all trends of public opinion concerning the death penalty remain as they were described in the Ancel report. The abolitionist movement in the United Kingdom has been successful; on the other hand, in the United States of America, public opinion has varied: Delaware largely supported the reintroduction of capital punishment, possibly because of the commission of three especially heinous murders; abolition in Oregon was accomplished in a referendum by a 60 per cent vote; and the issue of capital punishment was to be submitted to the voters of Colorado in November 1966. Strong abolitionist movements are present in Canada and France; by contrast a widespread movement for reintroduction of the death penalty is present in the Federal Republic of Germany. In general, however, public opinion appears to accord with public policy: the abolitionist states of South America, Central America and Europe remain resolutely so, while in the retentionist countries of Asia and Africa there is little pressure for abolition.

163. No significant change has taken place in the opinions held by qualified groups and by specialists since those opinions were described in the Ancel report (paras. 231-238). Among leading authorities in the penal and social sciences, the large majority favours the abolition of capital punishment. Support for capital punishment comes primarily from politicians, judges and law enforcement agencies.

ANNEXES

W = capital puni
w = capital puni
P = capital puni
p = capital puni

	AUSTRALIA	BRAZIL	CAMBODIA	CENTRAL AFRICAN REPUBLIC	CHINA	COLOMBIA	CYPRUS	CZECHOSLOVAKIA	DAHOMEY	DENMARK	DOMINICAN REPUBLIC	ECUADOR	EL SALVADOR	FRANCE	GAMBIA	GERMANY (Fed. Rep. of)	ISRAEL	ITALY	IVORY COAST	JAPAN
Treason		w	wp				WP	wp		W			WP	WP				w		
Espionage; delivering military secrets to the enemy		w	wp		WP		WP	wp		W			W				w	w		
Assisting the enemy	w	w			W					W							w			
Voluntarily aiding or assisting the enemy while a prisoner of war		w															w	w		
Sheltering, concealing, giving aid and comfort to the enemy																	w			
Communicating with the enemy																	w			
Mutiny; incitement to mutiny	wp	w																		
Failure to report or suppress a mutiny																				
Revolt; insurrection; incitement to revolt or insurrection		w	wp		WP		WP						W	WP						
Use of violence against a superior		w			wp															
Refusal to obey orders (in face of enemy)					W		W						W	W						
Self-mutilation (in face of enemy)			w											W						
Desertion; desertion to the enemy		w	wp		WP		WP						W	WP				w		
Abandonment; failure to hold assigned post or position		w			WP		WP							WP			w	w		
Voluntary abandonment or loss of ship or airplane		w												WP						
Capitulation; casting aside arms or ammunition		w	w		W		W							W				w		
Cowardice before the enemy																		w		
Misbehaviour—sleeping, intoxication etc.—of sentinel or sentry																				
Negligent failure to execute orders or mission					W													w		
Falsification or distortion of a message or signal; misuse of a flag of truce					WP												w	w		
Murder		w																		
Rape; rape leading to death		w			WP															
Theft or destruction of military equipment, property or supplies		w	wp		WP									WP				w		
Pillage		w			WP			wp						WP						

NOTE— Insufficient data were received from Afghanistan, Algeria, Chad, Ghana, Malta, Syria, United Arab Republic, Yugoslavia

ANNEX I

ilitary offences

shment is mandatory in wartime.
shment is discretionary in wartime.
shment is mandatory in peacetime.
shment is discretionary in peacetime.

	LAOS	LUXEMBOURG	MADAGASCAR	MALAWI	MONACO	NETHERLANDS (including Surinam)	NETHERLANDS ANTILLES	NEW ZEALAND	NIGERIA	NORWAY	PAKISTAN	PHILIPPINES	POLAND	PORTUGAL	REPUBLIC OF VIET-NAM	SAN MARINO	SINGAPORE	SOMALIA	SOUTH AFRICA	SWEDEN	SWITZERLAND	TRINIDAD and TOBAGO	TUNISIA	UNITED KINGDOM	UNITED STATES OF AMERICA	UPPER VOLTA	VENEZUELA	ZAMBIA
	WP	WP	W									WP		W	WP		wp			w	wp	wp		wp	WP			WP
		WP	W	WP				wp		W		WP		W	WP		w	WP	w		wp		wp	wp	W			
	W			w				w	w	W	w	w					w		w		w			w	w			w
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		WP	W								w		P	W	WP		w	WP			wp				wp			
			W					w		W	wp	wp	P	W						w	w		w		w			
	W	W	W	W		w				W	w		W	W					w	w	W		w		w			
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	W							w		W	w	w					w		w		w				w			
			P								wp	w					WP					WP				w			WP
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	WP		W									W	P		WP													
																		WP										

Annex II

ADDITIONAL MILITARY OFFENCES

W = capital punishment is mandatory in wartime

w = capital punishment is discretionary in wartime

P = capital punishment is mandatory in peacetime

p = capital punishment is discretionary in peacetime

1. *Australia.* Civil offences punishable by death under the civil law (w/p).

2. *Brazil.* Conspiring to oblige a commanding officer to retreat or surrender (w); going over to the enemy and enticing others to do so (w); allowing prisoners to escape (w); causing a rout (w); causing panic and rout among the troops (w); fleeing or inciting others to flee in the face of the enemy (w); insubordination (w); exposing a force or position to danger (w); the obtaining by a commanding officer for himself, in the event of capitulation, of treatment different from that given to other officers and men (w); robbery or extortion (w); poisoning (w); endangering the lives of fellow members of the armed forces (w).

3. *Cambodia.* Inciting desertion to enemy or rebels (w/p); refusing to march against enemy or rebels (w/p); committing violence followed by stripping a wounded or sick soldier (w/p).

4. *China (Taiwan).* Inciting a crowd to revolt, using violence against the public authority (W/P); inciting a crowd with the intention of causing a revolt, to take by force arms, munitions, boats, airplanes or other military equipment (W/P); obliging a commander to give himself to the enemy (W); seizing or liberating captured boats or prisoners of war with a view to giving them to the enemy (W); damaging, destroying or blocking a road, canal, bridge, lighthouse or signpost or impeding military traffic in any other way (W/P); abstention by military commander from making his military formation command the position assigned to him or, without authorization, removal of the formation from the zone of military operation (W/P); provoking the dispersion or rout of a military formation or preventing the formation from re-establishing contact or regrouping (W); knowingly making an attempt on arms, stockpiles, munitions, provisions, clothes or other military objects (W/P); admitting bandits without authorization to a military formation, thus troubling the peace or the public order (W/P); commander's giving troops or place confided to his keeping or command to the enemy in contempt of his duty, or beating a retreat in face of the enemy, in contempt of his duty, or refusing to march against the enemy without good cause and in contempt of his duty (W); commander's permitting the troops he commands to cause grave damage to the local

population (W/P); commander's giving aid and assistance to or permitting the escape of bandits bent on pillaging the local population (W/P); refusing without good reason to occupy assigned position or quitting post without authorization, thus exercising an unfavourable influence on the conduct of military operations (W); obliging the local population to cultivate poppies with a view to the extraction of opium (W/P); abandonment of post by sentinel without good reason and in the presence of the enemy (W); commander's using troops he commands for his own protection and refusing to obey an order of the commander-in-chief concerning operations (W); instigating a group of soldiers to violate orders received or to refuse to obey in the presence of the enemy (W); instigating in the presence of the enemy a group of soldiers to use or threaten to use violence on superiors (W); stealing arms or munitions in order to sell them to bandits (W/P); causing unjustified destruction by fire (W/P); instigating in the presence of the enemy a group of soldiers to abandon their post without good reason or to refuse without good reason to take a post assigned to them and to take their arms, horses and other important military effects with them (W); installation by technical personnel of a wrong part in a mechanism or neglecting to point out a known technical defect, thus causing loss of human life (W/P); commander's giving troops he commands to or provoking their surrender to the rebels (W/P); slowing down, without good reason, the carrying out of an order to march, to the prejudice of the conduct of the war (W); giving false information on the subject of the enemy or rebels which affects the decisions of the general staff, to the prejudice of the conduct of the war (W); failing to take account of enemy or rebel activities and neglecting to take appropriate precautions, to the prejudice of the conduct of the war (W); making false reports concerning military operations or failing to give account of reverses undergone in the course of military operations, to the prejudice of the conduct of the war (W); concealing or altering information concerning the outcome of a military operation, to the prejudice of the conduct of the war (W); abandoning at the front arms, munitions, provisions, vehicles, motor fuel or other military effects it is one's duty to safeguard, to the prejudice of the conduct of the war (W); failing one's duty of surveillance and maintenance in an armed zone of arms, munitions, provisions, vehicles, motor fuel or other important military effects and allowing them to be lost, damaged or destroyed, thus engendering a scarcity, to the prejudice of the conduct of the war (W); moving an administrative office in the armed zone without the authorization of the local military chief, to the prejudice of the conduct of the war (W); commander's leaving without authorization his post of command and, by this absence, provoking a serious agitation in the troops which he commands or a situation prejudicial to the conduct of the war (W); gathering a crowd to incite it to violent insurrection against the public authority (w/p); acting in the interest of the enemy and counter to the military interests of the Republic (w); embezzling more than 4,000 yuan from the funds set aside for military wages (w/p); intentionally slowing down the paying

of wages for more than a month and provoking a grave agitation in the troops (w/p); falsifying the amount paid for arms, munitions or other military effects by overvaluing it by more than 5,000 yuan (w/p); falsifying the amount of pay for a military unit by more than 100 rightful claimants with a view to obtaining the funds for personal use (w/p); using a boat, airplane or military vehicle to transport opium or one of its substitutes (w/p); permitting or protecting the illicit manufacture, transport or sale of opium or one of its substitutes (w/p); quitting post or failing without good reason to go to assigned post by a sentinel, patroller, scout or any other person having guard or courier duties (w/p); failing in duties without good reason in a military operation or a region under martial law by anyone charged with transmitting orders, messages or military reports, to the detriment of the conduct of the war (w); failing in duties without good reason in a military operation or a region under martial law by anyone charged with the furnishing or transporting of arms, munitions, provisions, clothes or other military effects, to the detriment of the conduct of the war (w); commander's neglecting to do his utmost to repress banditism and allowing numerous thefts and kidnappings with the intention of extorting ransom, thereby causing grave disorder in the region which he commands (w/p); agreeing with bandits with a view to committing acts of intimidation or extortion with regard to the local population (w/p); illicitly manufacturing arms and munitions (w/p); theft (w/p); instigating a military group to abandon its post without good reason or to fail to take its assigned post in the presence of the enemy (w); abandoning post without good reason or failing to take assigned post in the presence of the enemy and taking away arms, horses or other important military effects (w).

5. *Cyprus.* Giving up place entrusted (W/P); injuring means of communication (W/P); aiding spies (W/P); aiding and abetting the act of desertion (W/P); leading unauthorized operations against a foreign army resulting in the declaration of war (W/P); leading prolonged operations against the terms of armistice (W/P); leading rebellion by prisoners of war (W/P); liberating prisoners of war on condition of their taking part in operations (W/P).

6. *Czechoslovakia.* Using prohibited means of warfare (w); committing cruelty in war (w).

7. *Italy.* Enlistment in enemy forces (w); forcibly hindering a member of the armed forces from performing his duties (w); committing violence against a sentry, guard, or look-out, using weapons and thereby jeopardizing the safety of the port, vessel, or aircraft (w); obstructing the bearers of military orders (w); non-fulfilment of commitments and fraud in connexion with military supplies (w); offences against the rules and practices of war (W); unlawful acts against private persons on the enemy side or damage to enemy property (W); dereliction of duty towards the sick, wounded, shipwrecked or dead or towards medical personnel (W).

8. *Laos.* Using aggravating violence on a sick or wounded soldier for purposes of looting (W/P); instigating a group to pillage (W/P); pillaging by persons of superior rank (W/P); betraying to the enemy troops, territories, cities, fortresses or munitions (W); provoking treason (W/P); provoking the assisting of the enemy (W); provoking communication with the enemy (W); commander's striking the flag or abandoning his command during defence (W); commander's voluntarily failing to be the last to abandon a lost ship (W/P); striking the flag of a vessel during combat and without authorization (W); capitulation by Governor or commander without having done everything possible in defence (W); capitulation by general officers in charge of troops in order to deceive them, or failing to preserve honour in surrender (W); inciting another to join the enemy (W); attempting to demoralize troops in order to harm national defence (W); naval commandant's separating himself voluntarily from his commander (W); inciting a naval commandant to separate himself from his commander (W).

9. *Luxembourg.* Commander's capitulating or abandoning his post without having exhausted means of defence and insisting on all that is required by duty and honour (W); inciting others to flee during combat (W); murdering a superior (W/P).

10. *Madagascar.* Torturing or committing other barbarous acts (W/P); aggravating by violence the state of a wounded or sick soldier or shipwrecked person in order to loot his person (W/P); being insubordinate to officer in presence of the enemy (W); abandoning command in perilous circumstances (W); provoking anyone to cease fighting on board a war boat or military airplane (W); commander's failing to maintain his boat or airplane at his combat post (W); voluntarily failing to accomplish a wartime mission (W); captain's voluntarily losing a commercial boat being convoyed in wartime or a civil airplane being escorted in wartime (W).

11. *Netherlands (including Surinam).* Commission by a member of the armed forces of an offence punishable under ordinary law by life imprisonment (w/p).

12. *New Zealand.* Committing any act intentionally imperilling the success of the armed forces (w/p).

13. *Norway.* Inducing mutiny or desertion to the enemy (w); spreading enemy calls among troops (w); failing in one's duty to take measures for the employment of troops against the enemy or for their security or maintenance (w); releasing enemy prisoners of war (w); commander's surrendering a fortress, post, fleet or warship to the enemy without having exhausted all means of defence (w); officer's surrendering himself and his men in the field although there were prospects of relief or defence (w); escape by a prisoner of war while on parole or violation by a prisoner of war of the conditions of his release (w); killing an enemy who has surrendered or is incapable of opposition (w);

mutilating dead persons (w); blackmailing under aggravating circumstances (w).

14. *Pakistan.* Compelling or inducing any military person to abstain from acting against the enemy (w); intentionally occasioning a false alarm or spreading reports calculated to create alarm or despondence (w/p); knowingly committing any act calculated to imperil the success of the armed forces (w); endeavouring to seduce any military person from his duty or allegiance to the Government (w/p); commander's surrendering his ship, vessel or establishment to the enemy when it was capable of being successfully defended or destroyed (w); commander's failing to pursue an enemy when it was his duty to pursue (w); commander's failing to encourage the persons under his command to fight courageously (w); failing to do one's utmost to carry out the lawful orders of a superior (w); wilfully delaying an action which has been ordered (w/p).

15. *Philippines.* Advising or aiding another to desert (w); disobedience to any lawful command of a superior (w/p); endangering by misconduct, disobedience or neglect the safety of any fort, post, camp, guard or any command which it is one's duty to defend (w); inducing others to misbehave before or run away from the enemy or to endanger by misconduct, disobedience or neglect the safety of any fort, post, camp guard or any command which it is their duty to defend (w); occasioning a false alarm in camp, garrison or quarters (w/p); compelling or attempting to compel any commander of any garrison, post, fort, camp or guard to give it up to the enemy or to abandon it (w/p); forcing a safeguard (w).

16. *Poland.* Failure to report for duty during a time of mobilization by a person who is under obligation of military service but who intends to evade service (w/p); soldier's transgressing or abusing his power, taking advantage of his post or failing to perform his duty, if such action causes or might have caused harmful effects (w); violation by air force personnel of the prescribed principles of flight, if damage is or might have been caused (w); violation by a soldier driving a motor vehicle of the prescribed principles of motor driving, if damage is or might have been caused (w); embezzling money, supplies or other military effects (w); soldier's seizing property or extorting money by threat of violence (w); oppression of the population (w).

17. *Portugal.* Committing murder while in the commission of another serious crime (W); using violence against a wounded person for ulterior motives (W); aiding in the escape of a prisoner of war (W).

18. *Republic of Viet-Nam.* Using violence in order to strip a wounded or sick soldier (W/P); embezzling more than 2 million piastres from public funds (W/P).

19. *Singapore.* Committing any act calculated to imperil the success of the armed forces (w).

20. *Somalia.* Making an attempt against the integrity, independence or unity of the state (W/P); making an attempt against the order established by the constitution (W/P); making an attempt against the constitutional organs (W/P); commander's committing hostile acts against a foreign state, causing war (W/P); losing or causing to be captured a ship or aircraft due to the fault of the commander (W/P); commander's failing, where death of subordinate occurs, to be the last to leave a ship, aircraft or post in case of danger (W/P); usurping command where it endangers the success of a military operation (W); committing sabotage or destruction where it endangers military organization or the efficiency of the state (W/P); committing violence against an inferior, causing death (W/P).

21. *South Africa.* Treacherously makes known the parole, watchword or countersign to any person not entitled to receive it (w); knowingly commits any act calculated to imperil the success or safety of the South African Defence Force or any forces co-operating with the South African Defence Force or any part of any such forces (w).

22. *Sweden.* Using or threatening to use violence against a serviceman (w); undermining the will to fight (w); neglecting war preparation (w); committing combat neglect (w); committing a crime against international law (w).

23. *Switzerland.* Committing hostile acts against the enemy (w/p).

24. *United Kingdom (England and Wales).* Committing acts of misconduct in action (w); obstructing operations (w/p).

25. *United States of America.* Endangering, in the presence of the enemy and through disobedience, neglect or intentional misconduct, the safety of any command, unit, place or military property (w); causing false alarms in any command, unit or place under control of the armed forces (w); wilfully failing to do one's utmost to encounter, engage, capture or destroy any enemy troops, combatants, vessels, aircraft or any other thing which it is one's duty so to encounter, engage, capture or destroy (w); failing to afford all practicable relief and assistance to any United States or allied troops, combatants, vessels or aircraft when engaged in battle (w).

Annex III

Military tribunals

1. Countries with separate systems of military and civilian law almost invariably maintain separate courts for the adjudication of questions arising under military law. Only in a few countries — e.g., Denmark — do civil courts deal with military law; even then provisions are made for military tribunals in emergency conditions during the war.

2. Several countries have more than one type of military tribunal. distinction is usually made between the "general" court-martial and "summary" court-martial: the latter is a court of limited competence igned to operate in the field or under emergency conditions. Its mem- ship is usually smaller than that of the general court-martial and procedures more abbreviated. There are frequently other limitations the power of a summary court-martial: the summary courts-martial Singapore and the United States of America, for example, may not ose sentences above a certain level of gravity.

3. The general court-martial, however, is the primary, and in many ntries the only tribunal competent to try those accused of capitally iishable violations of military law. The number of members varies m three (in Cyprus, Luxembourg, Poland, Somalia, and in some es, China (Taiwan), Israel and Yugoslavia) to a maximum of nine Australia, Pakistan and the naval courts-martial of the United King- n). The most commonly required number of members is five. It is ally required that a member be an officer; it is also usually required t the presiding officer be of higher rank than other members. Enlisted n may be members of a court-martial only under the laws of Israel, land, Switzerland and the United States of America (where enlisted n may serve only at the request of a defendant who is also an en- ed man). In no country may a defendant be tried by a soldier of ver rank.

4. It is frequently required that an officer who serves on a court rtial have held his commission for a certain period of time. This is e in Zambia, where the required time is two years, and in New Zea- d, Pakistan, Singapore, South Africa and the United Kingdom, ere in each case the required time is three years.

5. The laws of some countries require that civilians participate as mbers of the court-martial. In El Salvador two government officials members of the court; in France a civil magistrate and an assistant gistrate participate in courts-martial convened during peacetime and French soil; in Luxembourg one civil magistrate serves at the trial el, while two are members of the appellate court; in Sweden two ilians serve as lay assessors; in Tunisia the presiding official must be a ilian.

6. No country reports a significant variation in procedure between civil and military tribunals. As is frequently the case in civil tribunals, arger than simple majority vote is often required for the imposition of e death penalty. A unanimous vote is required of nearly all summary urts-martial and in the general courts-martial of the Philippines, the ited Kingdom, the United States of America and Zambia. A vote of of seven judges is required by the military law of Switzerland. A two- rds vote is required of the general courts-martial of Pakistan, Singa- re and New Zealand for those offences for which the death penalty is ndatory; if it is discretionary, all must concur.

7. Legal experience is furnished to courts-martial in one of two ways; either a legal officer or judge advocate is required to advise the court on questions of law or at least one member of the court is required to have legal competence. The former system is used for example, in Australia, Canada, Nigeria, Pakistan, South Africa, the United Kingdom, the United States of America and Zambia; the latter in China (Taiwan), Cyprus, France, Israel, Italy, Luxembourg, Poland, the Republic of Viet-Nam, Somalia (where all members of the court are legal officers), Sweden, Switzerland and Tunisia.

8. In a few of the reporting countries, the decision of a court-martial is subject to review by a higher military tribunal. This is the case in China (Taiwan), Somalia, the United States of America and Yugoslavia. In a few others, a decision is subject to review by the same court which reviews decisions of the civil courts. This is true of Cyprus, France and in some cases, the Republic of Viet-Nam. In Luxembourg the decision of a court-martial may be subject to review by military and civil higher courts; the same practice prevails to some extent in the United States of America.

9. In some of the countries whose military legal systems provide for judicial review and in most of the countries whose systems do not, the decision of a court-martial is subject to administrative review. This function is usually performed by the defendant's commanding officer or by an executive such as a Governor. The officer responsible for reviewing decisions of courts-martial usually has broad power to commute, shorten or even suspend a sentence. In China (Taiwan), however, the reviewing officer may only order a re-examination by the trial court.

10. Occasionally it is required that the sentence imposed by a court-martial be confirmed by the reviewing authority. A death sentence may not be carried out until it is confirmed in Israel, Pakistan, the Philippines, Singapore and Trinidad and Tobago.

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