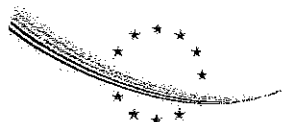




THE DEATH PENALTY ABOLITION IN EUROPE

WITH AN INTRODUCTION BY ROGER HOOD
AND A CONCLUSION BY SERGEI KOVALEV



Council of Europe Publishing
Editions du Conseil de l'Europe

7. THE UNITED NATIONS AND THE ABOLITION OF THE DEATH PENALTY

Roberto Toscano, Co-ordinator of Policy Planning Activities, Ministry of Foreign Affairs, Rome

"Why this disgusting, pointless, unnecessary insult?"
(Fyodor Dostoevsky, *The Idiot*)

Few issues are as politically delicate and ethically charged as the question of capital punishment. This is so not only because of the evident primacy of matters of life and death in moral and political discourse, but because capital punishment is not simply about death, but about death decreed and administered by the state on behalf of the entire community, and justified on the basis of the imperatives of protection of members of the community against unjust harm.

But this immediately reveals the most fundamental, most glaring contradiction – a contradiction the awareness of which, ever more widespread in contemporary society, is perhaps the main argument undermining the foundations of this ancient practice.

In fact, it would be difficult to challenge Hobbes when he wrote in 1651 that men accept the restraints that life in a society ("commonwealth") implies, because of "the foresight of their own preservation".¹ In other words, human society can be seen as a "covenant against death", a common, co-operative endeavour to resist, to postpone, the inevitable outcome of human existence. For that purpose social man has developed not only institutional mechanisms (of which the modern nation-state is but the latest instance), but also moral norms, the most fundamental of which is "Thou Shalt Not Kill". The death penalty contradicts both the basic "anti-death" function of human society and the concomitant moral principles.²

1 Thomas Hobbes, (1996) *Leviathan* Oxford/New York: Oxford University Press, p. 111

2. "It is written: 'Thou shalt not kill', and now, since someone killed, should he be killed as well? No, that's not right" (Fyodor Dostoevsky, *The Idiot*, Vol. 1, chapter 2). In the same novel, Dostoevsky paints in stark, definitive colours the unsurpassed horror – as we know, on the basis of his unique personal experience of a last-moment reprieve – entailed by that certainty of death that is the cruel lot of those who are to be executed. It seems difficult, after reading his testimony, to define the death penalty as other than "cruel and unusual punishment."

Of course, the contradiction is not specific to capital punishment, but characterises the entire range of moral and political dilemmas arising from the problem of violence. Peace is an avowed universal goal (except for aberrant theories such as Nazi ideology), and yet the goal of peace has been (and is being) used to justify sustained levels of armaments and even acts of aggression. And of course one can always find a handy item of Roman wisdom to support this: *Si vis pacem, para bellum* (If you want peace, prepare for war).

Those who uphold the need for capital punishment are motivated basically from the same ideological grounds, though they certainly would not be brave enough to formulate it as clearly, that is to say: *Si vis vitam, para mortem* (If you want life, prepare for death). Yet, the logic is exactly the same. A faulty and disingenuous logic, actually, since peace and life can be defended, must be defended, with strength that is short of war and short of death. Since one must reject the false alternative between a ferocious society on one side and a defenceless one on the other.

The parallel is of course an asymmetrical one, since the goal of achieving international security without war is made problematic (though by no means impossible) by the absence of centralised enforcement mechanisms; those mechanisms that constitute, on the other hand, the very essence of the modern nation-state – a state which must be able to ensure to its citizens protection of life without denial of life.

Why the United Nations?

If the issue of the death penalty, of its abolition or retention, is so charged with political and moral implications, then why should we not be content with addressing it within each individual society, or at the most among groupings of nations that are more homogeneous in culture and traditions, or even – as in the case of Europe – actually converging in terms of institution-building and common ethos? Does it make any sense to try a global, worldwide approach to such a controversial issue? And, in concrete terms, why should there be a United Nations role of any sort in addressing this issue?

The apparent common sense of this objection hides a very dangerous unspoken assumption: that of the impossibility of a common human endeavour in addressing common human problems. An assumption whose acceptance would make the very existence of the United Nations useless if not inconceivable.

We will try to reverse this assumption, and state that in so far as the question of capital punishment touches upon the most basic of all human rights, the right to life, saying that the United Nations has no mandate to deal with it would be tantamount to saying that the United Nations has no mandate to deal with human rights. In order to dismiss such a suggestion it is enough to read the very first lines of the preamble of the United Nations Charter. Soon after the determination "to save succeeding generations from the scourge of war" we find, in fact, as the second basic purpose of the United Nations "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person " If it is true that the charter itself did not develop either the identification of those rights or the machinery to promote and protect them, the charter did work as a premise for a subsequent substantial evolution in terms of both principles and norms.

As far as the specific issue of the death penalty is concerned, we will briefly list only the most basic steps in this evolutionary process:

- the Universal Declaration of Human Rights (1948) identified the right to life (together with the right to liberty and security of person) among the most basic human rights;
- the International Covenant on Civil and Political Rights (ICCPR) (1966) states: "Every human being has the inherent right to life," and goes on to add "no one shall be arbitrarily deprived of his life". The ICCPR – a normative, and not a simple declarative text – addresses specifically capital punishment in order to introduce a series of conditions and limitations, that is:
 - it can be imposed only for "the most serious crimes";
 - it must be the result of a "final judgment" (meaning that there should be a provision for appealing a death sentence);
 - it must be imposed by the sentence of a "competent court";
 - it must be the result of the application of a law that was in force at the moment the crime was committed;
 - it must not be imposed on persons younger than 18 years of age;
 - it must not be carried out on pregnant women;
 - the request for pardon or commutation is a right.

The Second Optional Protocol to the ICCPR (1989) goes beyond this regulatory/restrictive approach to embrace an openly abolitionist goal. Its Article 1 reads in fact: "No one within the jurisdiction of a State Party to the present Protocol shall be executed," and continues: "each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction".

Although only thirty-one states have so far ratified the protocol, it can be said that the abolitionist seed has been firmly planted in United Nations' soil, and that the question is not about whether, but only when it will bear its full fruit.

"Gallant folly" in Geneva

The soil is available and fertile (the role and normative activity of the United Nations in the field of human rights), the seed has been planted (the limitations on the application of the death penalty introduced in the ICCPR – and in later conventions; the abolitionist "window of opportunity" opened by the Second Optional Protocol to the ICCPR). And yet it has been clear for several years that there is no automatic progression to the eventual abolitionist victory, and especially that the pace of advancement of the abolitionist cause will be decided not only by cultural trends, but also by determined political action.

Several countries (especially in Europe) share the commitment to the abolitionist cause, but in the United Nations framework it was Italy that took it upon itself (greeted at the beginning by widespread if not universal scepticism, even on the part of the like-minded on the issue) to exert the role of initiator.¹

The first round of this battle took place at the 49th Session of the United Nations General Assembly, in 1994, when Italy presented a resolution with an abolitionist inspiration (though with a gradualistic approach) that was literally amended to death. A defeat, certainly, and one that was taken by critics and sceptics as evidence of the quixotic nature of Italy's attempt.

And yet the 1994 defeat set the foundations for the 1997 victory; not only because the issue was out of the closet, and some serious political thinking had been set in motion in several capitals, but also because in 1994, in New York, the issue was channelled through the Third Committee (Social, Humanitarian and Cultural) – being thus defined as a human rights issue – and not through the Sixth (Legal), as maintained by the opponents of the Italian initiative, who defined it as a merely legal issue.

The road to Geneva, and to the Commission on Human Rights, was open

1. For a detailed account of Italy's initiatives on capital punishment see: Leonardo Bencini (1997) "Le Nazioni Unite e l'abolizione della pena di morte: recenti iniziative." *La Comunità Internazionale*, No 2 p 299

On 3 April 1997, the Commission on Human Rights approved Resolution 1997/12, ("Question of the Death Penalty"), presented by Italy with 45 other countries co-sponsoring: votes in favour were 27, with 11 against and 14 abstentions.¹

The vote took place in an atmosphere of expectation and tension, especially since the opponents of the resolution tried to stop it by presenting seven different amendments that (as the Italian delegation stated in order to maintain the cohesion of the supporters of the initiative) would have, if approved, distorted and nullified the import of the resolution. The result was greeted by true surprise. It is interesting to quote here a comment published in the aftermath of the session in the newsletter of one of the most militant abolitionist NGOs, the Quakers: "No one believed that this resolution would pass. Since a similar resolution had been defeated in the General Assembly only two years before, most considered it a foolhardy mistake or a gallant but forlorn hope ... Who was the gallant fool? Italy."²

The text of the resolution combines an unabashedly abolitionist goal with a moderate, gradualist approach. It calls upon all states to abide by the existing international norms regulating and limiting the application of the death penalty; it also "calls upon all states that have not yet abolished the death penalty progressively to restrict the number of offences for which the death penalty may be imposed"; and finally it "calls upon the same states to consider suspending execution, with a view to completely abolishing the death penalty."

The combination of radical ends with moderate means proved to be a winning strategy, since it allowed Italy to enlarge (with the determinant support of its EU partners and other delegations, especially Latin American) the scope of consensus even beyond the abolitionist hard core. This chapter, however, does not intend to narrate a diplomatic history of the many negotiations (both in Geneva and in other capitals), alliances, compromises, confrontations, that lie behind the approval of the 1997 resolution, and of the one that, drafted in basically similar terms, was approved at the 1998 Convention on Human Rights³. Rather, it intends to focus on some basic political aspects whose interest goes way beyond the contingent events in Geneva.

1. *In favour*: Angola, Argentina, Austria, Belarus, Brazil, Bulgaria, Canada, Cape Verde, Chile, Colombia, Czech Republic, Denmark, Dominican Republic, Ecuador, France, Germany, Ireland, Italy, Mexico, Mozambique, Nepal, Netherlands, Nicaragua, Russian Federation, South Africa, Ukraine, Uruguay.

Against: Algeria, Bangladesh, Bhutan, China, Egypt, Indonesia, Japan, Malaysia, Pakistan, Republic of Korea, United States of America.

Abstaining: Benin, Cuba, El Salvador, Ethiopia, Gabon, Guinea, India, Madagascar, Philippines, Sri Lanka, Uganda, United Kingdom, Zaire, Zimbabwe.

2. Rachel Brett (1997) "Gallant Folly in Geneva," *The Friend*, 9 May, p. 6.

3. Resolution 1998/12 was approved at the 54th Session of the CHR on 30 March 1998.

In order to grasp fully the political essence of the debate on the death penalty, it is important to examine the basic arguments that were used both in 1997 and in 1998 by the opponents of the Italian initiative, as well as the counter-arguments with which the Italian delegation, both in its interventions at the Commission and in its bilateral lobbying in favour of the resolution, supported its stand.

Relativism

In the years after the fall of the Berlin Wall and the demise of Soviet communism we have witnessed an open ideological challenge to the universality of human rights, one consisting in the claim that the radical diversity of cultural traditions, religions, and social customs makes it arbitrary to identify (and impose) common standards in matters of human rights. The human rights debate – and controversy – has thus shifted from an east-west to a north-south dimension, and has been associated, on the part of many countries of the south, with denunciations of “cultural imperialism” and denial of the equal dignity of all peoples and all cultures

It is not surprising that the issue of the death penalty should be addressed by retentionist countries in a relativist mode, and it is significant to note that the two groups, that is Asian and Islamic countries, that held the forefront, especially at the 53rd Session of the Commission, in the battle against the Italian resolution, are the most vocal and most articulate in developing the theme of relativism in all matters pertaining to human rights. Even more specifically, if we try to identify one state in 1997 as playing a leadership role in the retentionist camp, we clearly come up with Singapore, probably the most articulate and the earliest proponent of the relativist approach

All these countries included in their arguments the complaint that the resolution proposed by Italy constituted an inadmissible attempt, on a matter as delicate as that of capital punishment, to impose views that were culturally specific and did not show sufficient respect for other traditions, also (this especially as far as the Islamic countries are concerned) of a religious nature

The Italian delegation gave special attention to this latter objection, in particular in the light of its systematic striving for a non-confrontational approach. In doing so, it divided the matter of contention into two distinct aspects, reflecting the dual nature of the resolution. As far as the call to respect existing international obligations relating to the limitations and the conditions of application of the death penalty, it could not but state – and it did so – that existing norms cannot be eluded by making reference to different cultural traditions; cultural specificities are totally irrelevant in matters of compliance with international obligations. As for the gradual abolitionist

approach, the anti-relativist rebuttal of the Italian delegation was couched in respectful, but firm language. The following quote from a 23 March 1998 intervention by the Italian delegate may suffice to give an idea of this approach:

"Some of our interlocutors have maintained that our initiative touches upon a matter, capital punishment, which has a direct connection with religious principles that no one should challenge or question. We think it is extremely important to dispel this misunderstanding. In no way would Italy, a country which has a deep respect for all religions, conceive of expressing critical judgments on any religious faith. Our starting point is definitely not one that aims at building walls or deepening cultural divides, quite the opposite. In this, as well as in any other aspect of the human rights debate, we feel on the contrary that our task is to find what we all have in common, after recognising with respect all our cultural differences. And the way we approach the issue of the death penalty is indeed on the basis of concepts which are common to all religions: the sanctity of human life, the value of human dignity, the precept of mercy, the gift of compassion. The fact that historically these principles have been applied in different degrees in different parts of the world certainly does not justify their appropriation by any one religion, nor, conversely, can their rejection be attributed to the precept of any religion."

Continuing this line of thought, it would be easy to object to the proponents of the "Asian values" thesis especially as far as the issue of capital punishment is concerned where, for instance, a major component of Asian spirituality is Buddhism, characterised by a radical, indiscriminate, respect for all life.¹ Or that, as Amartya Sen has clearly shown, the Hindu tradition comprises highly humane, non-repressive features that go against the simplistic caricature of "authoritarian Asian values."²

Sovereignty

Another argument utilised by opponents of the resolution was much wider in scope and potentially more effective than the relativist objection; I am referring to the argument of sovereignty.³ Here, indeed, not only do we

1. At the 53rd Session of the CHR, Nepal broke ranks with the other Asians in order to affirm its different views on the issue and voted in favour of the resolution.

2. Amartya Sen (1997), *Human Rights and Asian Values*, (Sixteenth Morgenthau Memorial Lecture on Ethics and Foreign Policy), (New York: Carnegie Council on Ethics and International Affairs)

3. It must be recalled that in 1997 the most dangerous challenge to the resolution came from an amendment reaffirming 'the sovereign right of states to determine the legal system appropriate to their societies'.

touch upon the very core of the issue of the death penalty, but we enter the highly charged field of the relations between the state and the individual. "Sovereignty", in this context, is used in two different meanings: non-subjection to an external jurisdiction (*superiorem non recognoscens*), and uncontrolled power of the state over its own citizens. It is remarkable that, when dealing with the issue of capital punishment, the arguments used by retentionist countries go back to absolute concepts that do not seem any longer tenable in the light of the legal and even cultural evolution that has taken place since the birth of the nation-state system and the elaboration of theories on its essence and prerogatives. And, more specifically, in the light of the half century of existence of the United Nations

Sovereignty of nation-states is still, of course, the basic foundation of the international system. And yet, several qualifications are in order:

- Sovereignty cannot be a pretext for the non-compliance with existing international norms.
- After the 1993 Vienna World Conference on Human Rights no state can pretend to declare human rights "off limits" to all external concern. The Vienna Declaration, on the contrary, specifies that "the promotion and protection of all human rights is the legitimate concern of the international community"
- As far as human life is concerned, in particular, it does not seem any longer tenable to maintain that the state has an unchallenged, uncontrolled right of life and death over its own citizens (the *jus vitae ac necis* that the paterfamilias had under Roman law). If it were so, the right to life proclaimed in a plurality of United Nations' texts as the very foundation of the entire human rights discourse would be bereft of all significance. As the Italian delegation said at the 54th Session of the Commission on Human Rights, it would be arbitrary to say that the death penalty today is illegal under international law, but it would be just as arbitrary to defend the notion that matters relating to the application of the death penalty fall invariably outside the scope of international law

The present Secretary General of the United Nations, Kofi Annan, has addressed this basic conceptual aspect with all the caution needed, but all the clarity necessary. Writing in the *International Herald Tribune*, he has rebutted the idea that the internal nature of a conflict disqualifies the United Nations from dealing with it: "Can this be right? The United Nations' Charter, after all, was issued in the name of 'the people', not the governments, of the United Nations. Its aim is not only to preserve international peace – vitally important though that is – but also 'to re-affirm faith in fundamental human rights, in the dignity and worth of the human person.' The charter protects the sovereignty of peoples. It was never meant as a license

for governments to trample on human rights and human dignity."¹ True, Annan writes here about internal conflicts, but his arguments are clearly applicable to all that pertains to "the dignity and worth of the human person", starting from the most basic issue of all: that of life or death.

Deterrence

While the previous two arguments are basically of an ideological nature, the argument concerning the need to use the death penalty in order to protect society is pragmatic, and as such can benefit from a wider margin of acceptance even among less militant retentionists. The concern for the spread of criminality is a real one in many, if not most countries, so that the idea of depriving the state of the ultimate tool of punishment (and thus, allegedly, of deterrence) strikes many as being a dangerous, if not irresponsible one. Again, a quote from an intervention by the Italian delegation can give an idea of the arguments that were used by Italy as well as by other supporters of the resolution:

"The argument of the presumed deterrent effect of the death penalty is used especially by the representatives of countries in which crime, often organised crime, threatens the peace and security of citizens in an alarming and destabilising way. We recognise the good faith of those who have this reaction to such evident social evils and threats, but we would like to stress that criminologists and statisticians have not established a self-evident connection between the application of the death penalty and the decrease of violent crime, especially murder. A sounder, more factual, correlation seems to exist, on the contrary, between the certainty of punishment (jail sentences) and the decrease of crimes in general; the real deterrent is not the level of the punishment, but its inevitability. And let me say finally, on this point, that a glance at the map of capital punishment would justify the impression of a correlation which is diametrically opposed to what is imagined by those who speak of the death penalty as a deterrent; the places which register more executions are the same that register more murders."

Those who are in favour of retaining capital punishment frequently use the argument that death administered by the state substitutes and pre-empts revenge killing, a socially disruptive event. It is an argument that can be challenged, if one just thinks of episodes such as the delegation of relatives of the victim (in Taliban-controlled areas of Afghanistan) to the actual act of execution of a death sentence pronounced by a tribunal or (a less extreme, but still revealing fact) as the presence, in some countries, of the relatives of

1. Kofi A. Annan (1998), "The United Nations should intervene before force is needed," *International Herald Tribune*, 27-28 June.

the victim at the execution of the murderer. This is what the Italian delegation had in mind when it defined capital punishment as "an act which inevitably lies on the border between justice and revenge" ¹

Finally, a moral argument used by moderate retentionists has been the classical one of self-defence, a concept that is universally recognised as supplying an unchallengeable moral and legal justification for the use of even lethal violence. This argument lies at the root of the, albeit most limited, admission of the possibility of the death penalty contained in the latest version of the Roman Catholic catechism (1997): the text states that the cases of "absolute necessity of the suppression of the culprit are now very rare, if not totally non-existent", but it recalls that the traditional teachings of the Church do not rule out capital punishment "if this were to be the only possible way to effectively defend human lives against an unjust aggressor" ² Suffice it to say, here, that the argument is basically flawed since self-defence has an intrinsically preventive function (avoiding unjust harm) and is not applicable *post factum*, so that "self-defence" is improperly used in this context. It seems interesting to note that this line of thought inspired the Statement on Capital Punishment approved in 1980 by United States Catholic bishops who, in a clearly abolitionist document, ("We believe that in the conditions of contemporary American society, the legitimate purposes of punishment do not justify the imposition of the death penalty.") stated in particular that "both in its nature as a legal penalty and in its practical consequences, capital punishment is different from the taking of life in legitimate self-defence or in defence of society."³ His Holiness, Jean Paul XXIII has gone even further in expressing himself in favour of abolition. In a recent speech in Mexico he states "There must be an end to the unnecessary recourse to the death penalty!", and again in St Louis he says:

"the new evangelisation calls for followers of Christ who are unconditionally pro-life; who will proclaim, celebrate and serve the Gospel of life in every situation. A sign of hope is the increasing recognition that the dignity of human life must never be taken away. I renew the appeal I made most recently at Christmas for a consensus to end the death penalty, which is both cruel and unnecessary."

These strong personal statements of the Pope against the death penalty thus point in the direction of a more explicit Roman Catholic Church stand on the issue.

¹ In the same spirit, in a May 1998 lecture at the *Cercle Condorcet* in Geneva, the Vice-President of the Swiss Federal Council, Madame Ruth Dreifuss, said some very strong words on the death penalty, "*cette dérive de la vengeance, cette contamination de la violence*"

² *Catechismus Catholicae Ecclesiae* (Citta' del Vaticano: Libreria Editrice Vaticana, 1997) p. 579

³ The text can be found on the Internet at: www.pbs.org/wgbh/pages/frontline/angel/pro-con/bishopstate.html.

Conclusions

If this chapter concentrates on the 53rd and the 54th Sessions of the Commission on Human Rights (and on the Italian initiative – one, let us say, of “creeping abolitionism”) it is not because the author believes that the resolutions approved in Geneva in 1997 and 1998 are definitive, historical events. Quite the contrary, the debate that took place at and around the Commission reveals that the march toward abolition will be a long and difficult one.

And yet those events in Geneva, though far from being definitive, point to trends that look comforting and promising to abolitionist eyes. That is, beyond the mere counting of votes, the different tenor of the debates and the difference of those countries’ votes between 1997 and 1998 deserves to be noted.

Most significant was the fact that the attempt to “amend the resolution to death” that seriously threatened to wreck the initiative in 1997 was not renewed in 1998, when opponents (basically Asian and Islamic, with a few African states – but not the United States) drafted a common statement, in the form of a letter to the chairman of the Commission, expressing reservations on the resolution that were of a substantially moderate – one could say, defensive and rearguard – nature supported by both relativist and sovereignty arguments. This reflects a much less militant opposition on the part of Asian and Islamic countries, revealed by the fact that at the end it was the United States’ delegation that had to take the leadership of the retentionist camp and to ask (after some meaningful seconds of silence when the chairman asked if the resolution could pass on the basis of consensus) for a vote on the resolution. In both the 1997 and 1998 sessions the United States’ delegation conducted a very intense campaign against the Italian initiative, using the following arguments:

- the resolution is a departure from the established international consensus on capital punishment, since in the past resolutions approved in the United Nations context have so far only condemned arbitrariness and discrimination in the application of the death penalty, as well as summary executions;
- at present there is, on the contrary, no international consensus on whether capital punishment should be imposed or not, and a majority of countries have laws permitting capital punishment for the most serious crimes;
- international law does not prohibit capital punishment, and offers no basis for any call for its abolition;
- the Italian-sponsored resolution ignores the rights of states to impose capital punishment in accordance with international norms and safeguards.

Thus the basic purpose of the resolution seems to be attained; while recalling existing limitations, it contributed to transplanting the seed of abolitionism (that in a European context has grown into a sturdy and fruit-laden tree) into a global, United Nations framework.

One can add that whatever the facts and arguments on present-day norms, on United Nations mandates, on legitimate questioning of the way a state deals with its own citizens, it cannot be demanded of those who oppose the death penalty that, while duly respecting the existing rules of the game, they stop advocating, and promoting, a radical eventual outcome: total abolition. The resolutions that were approved at the sessions of the Commission on Human Rights in 1997 and 1998, and the interventions of their supporters leave no doubt that the more immediate regulatory and restrictive aim (including, especially in the 1998 resolution, the explicit focus on a moratorium) is not in contradiction with the aim of total abolition.

And it can no longer be dismissed as quixotic to imagine (and hope) that one day the death penalty will be considered inadmissible both in terms of a universal ethos and cogent international norms. In other words, it will go the way ancient institutions such as slavery or torture went – after being challenged only by dissident individuals or by minority views and long defended by mainstream thought and conventional wisdom (with reference to cultural and even religious traditions)¹ and an insistence on the fact that those institutions were “perfectly legal”, stressing paramount social needs.

More specifically, and beyond the possibility of a wider acceptance of normative texts such as the Second Optional Protocol to the Covenant on Civil and Political Rights, we can imagine a time when the prohibition of the death penalty will become a part of customary international law, such as in the case of genocide, slavery, torture.²

Let us conclude, however, with a note of caution. The optimistic scenario sketched above is by no means an automatic, foregone outcome of present-

1. In the framework of late eighteenth century debate on slavery, one finds even an anti-abolitionist pamphlet with the title *Scriptural Researches on the Licitness of the Slave Trade*: quoted in Hugh Thomas, *The Slave Trade* (1997). New York; Simon and Schuster. p. 509. The nineteenth century political, ideological and legal confrontation on the slave trade is especially relevant in our context, since it is an evident case of divergence between moral belief and international legality – a divergence that tends, however, to be eventually bridged with the introduction of new legal norms. See Alfred P. Rubin (1997), *Ethics and Authority in International Law*. Cambridge University Press, in particular the chapter “The Impact of Reality on Theory,” pp. 87-137.

2. The yearly supplement to the previous five-year reports on the death penalty – the yearly report is a follow-up that is mandated by Resolution 1997/12 – reveals that abolitionism is slowly gaining ground, going from 58 to 61 fully abolitionist countries, with 90 countries, however, still in the retentionist category. See E/CN.4/1998/82.

day debates and controversy, and though one can be confident in the eventual point of arrival, the pace of this evolution is not pre-determined, nor are temporary stagnation or even regression to be ruled out.

On the contrary, if we look at the characteristics of present-day society we see more than one reason for concern that some of those characteristics might negatively impact on the abolitionist cause. We are referring to globalisation, and this from a double perspective.

In the first place, one of the most distinctive characteristics of globalisation is the fact that it brings about proximity but not homogeneity, or at least it brings about proximity well before any possible homogenising effect on the working of a global economic system. But it goes without saying that proximity plus difference spells social tension, conflict, and that it especially entails a feeling of insecurity on the part of those (the "haves") who are suddenly confronted with the threatening contiguity of the once-distant "have nots". Statistics are not ambiguous, in so far as they reveal the high percentage of crime that can be attributed to this "non-homogeneous proximity".

Secondly, the generalised trend toward "less government" that characterises our increasingly globalised world entails demonstrable benefits in terms of economic dynamism, de-bureaucratisation, individual initiative. Yet, in countries where the rule of law is weaker, the political and economic shrinking of the state has left an open door to powerful and uncontrolled organised crime, that is to the often ferocious combination of illegal economic power and a capacity to administer personal violence.

Both threats are serious and disconcerting, and citizens in their fear can become deaf to humanity and decency, and cling to (or even revert to) the ancient illusion that administering legal death is the best way to ensure social tranquillity and protection.

This is why on a global level the abolitionist cause is actually only taking its first steps. Therefore it will be important in the next few years to consolidate the results achieved in Geneva (and carry them over, successfully, to the United Nations General Assembly) while continuing within civil society¹ a cultural and moral debate that goes beyond – but, let me assure readers, lies behind – the diplomatic struggle conducted by abolitionists. Not only Italy, not only Europe, but a growing number of countries belonging to different

¹ The campaign for the abolition of capital punishment has seen, in Italy and elsewhere, a strong and very fruitful "division of roles" between government representatives and NGOs, each operating in different modes and with different languages but clearly with a common goal.

regions share a common conviction in the need to abolish this terrible exception to the most essential of all human rights: the right to life.

The views expressed in this text are exclusively those of the author and should not be interpreted as reflecting official analyses of the Italian Government.