

## Report

### « The Struggle Against The Death Penalty: Achievements and Setbacks »

Report on the FES-Side Event at the 60<sup>th</sup> Session of the UN-Commission on Human Rights

Geneva, Switzerland, 15 April 2004

#### Executive Summary

*“The fight against the death penalty is universal one like human rights are universal.”  
Claudia Roth, MP, German Commissioner for Human Rights Policy*

On April 15, FES-Geneva organized a panel discussion to the 60<sup>th</sup> session of the UN-Commission on Human Rights on “The struggle against the death penalty” with the participation of representative experts. There was general agreement among the panellists that already a lot had been achieved in the fight against the death penalty but that still further action has to be taken. It became clear that the road to an abolition of the death penalty was not a one-way track to success, but that setbacks and reactionary developments to this regard, i.e. the reintroduction of the capital punishment, were a permanent danger. Both **Eric Sottas**, OMCT director, and **Claudia Roth**, German Commissioner for Human Rights, warned that such evolutions went into the false direction and specifically criticized countries like the Chad and Cuba, inter alia, for reintroduction and execution.

The event’s key speaker, Ms Roth, asked for a strengthening of the state and democracy since strong states and strong democracies did not need the death penalty. **Ahmet Altan**, a Turkish novelist and political journalist, argued that the state by nature was savage, guided by people who still bear the feeling to kill and for revenge inside. In order to domesticate the imperfect human being and to civilize its socio-political entity, the state, supranational organisations had to be strengthened. Both agreed on the importance of the European Union and its activities in the fight against the death penalty. They were seconded by **Elizabetta Zamparutti** from Hands Off Cain (Italy) who asked for more international intervention by democracies and more involvement of international organisations. In her view it had been decisive for the fight against the death penalty that human rights had come to the centre of international law. This way it was not possible any more for states to declare the death penalty a domestic issue. Like other panellists she called for an immediate moratorium. In her statement that the capital punishment was devaluating the idea of human rights, **Jotaka L. Eaddy** from the US National Coalition to Abolish the Death Penalty summarized the guiding persuasion of the anti-death-penalty activists.

## 1. Background and objective

During its 60<sup>th</sup> session the UN-Commission on Human Rights (CHR) dealt both under Agenda Item 11 ([d] “Civil and political rights – Independence of the judiciary, administration of justice, impunity”, subject of the juvenile death penalty) and Item 17 (“Protection and promotion of human rights”) with the question of the death penalty.<sup>1</sup> Since human rights constitute an important pillar of FES-activities, FES-Geneva organised a discussion meeting on April 15 on “*The Struggle against the Death Penalty: Achievements and Setbacks*” as a side event to the 60th session of the UN-Commission on Human Rights. The intention was to give a theatre to various individuals and organisations being active in the fight against the capital punishment to table their activities, share their experiences and inform the audience about ongoing initiatives and the next steps planned in their commitment to contribute to the abolishment of the death penalty.

FES-Geneva prepared the event in close coordination with Ms Claudia Roth, Member of the German Parliament and Commissioner for Human Rights Policy and Humanitarian Aid of the Federal Government of Germany.

## 2. Panellists and participants

Moderation:

- *Eric Sottas*, Director World Organisation against Torture (Organisation Mondiale contre la Torture, OMCT)

Keynote Address:

- *Claudia Roth*, MP, Commissioner for Human Rights Policy and Humanitarian Aid of the Federal Government of Germany

Panellists:

- *Ahmet Altan*, Author, Turkey
- *Jotaka L. Eaddy*, National Coalition to Abolish the Death Penalty (NCADP), USA
- *Elisabetta Zamparutti*, Hands Off Cain, Italy

The former governor of the US-federal state of Illinois, *George H. Ryan*, joined the event and made a short statement.

The event was attended by 100 participants approx., deriving from NGOs based in Geneva and from abroad, staff from international organisations (UNHCHR etc.) and also members of CHR-state delegations, among others the Federal Republic of Germany.

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<sup>1</sup> On April 21 the CHR approved the resolution for a moratorium on executions, with view to complete abolishment of the death penalty. The resolution has been co-sponsored by a record number of 76 countries, among which for the first time are Iraq, Samoa and Kiribati. The resolution for a moratorium on executions was first presented and approved in 1997 and has been given the sponsorship of 92 countries so far.

### 3. Main findings of the statements<sup>2</sup>

**Eric Sottas** introduced into the subject by stating that the fight against the death penalty was always and at any time a topic. A lot had been achieved but still a lot had to be done. The most fundamental human right, the right to life, had to be addressed always. The progress made in this respect had to be defended and preserved since it was always in danger. Setbacks and reactionary developments had to be confronted. Sottas exemplified this statement with current developments in Iraq where people raise their voices more and more for a reintroduction of the death penalty in face of the ever growing violence and chaos. *“One has to stand up and fight against developments like in Iraq”*, Sottas concluded.

The keynote address of the event was delivered by **Ms Claudia Roth** who has been an activist against the capital punishment for long. She warned that the fight against the death penalty was long away from being won. The fight against the death penalty was a universal one like human rights. With view to the well-known discussion about the universality of human rights and the critiques raised against this concept she vehemently stressed that *“this is not an idea of the ‘Western imperialism’ but an issue of everyone”*. In the following, she made a “black-white”-confrontation of states which still continue to execute the capital punishment with states having introduced a moratorium or even wiped out the death penalty from their penal code. One of the countries giving reason for high concern remained to be The People’s Republic of China. Though there were no official figures available, there were rumours about more than 10,000 legally sanctioned executions according to recent press reports. Experts estimated that 84 % of all executions worldwide would occur in China, Iran, the USA and Vietnam.

With the reintroduction of the capital punishment in Chad, the Philippines, Lebanon and Cuba the struggle against it had experienced a setback. Ms Roth deplored this unpleasant development but said that this should not de-motivate but encourage instead for keeping on fighting.

On the other hand there had been some encouraging and positive development: Due to ongoing campaigning and lobbying from anti-death-penalty activists, both states, NGOs and individuals, a variety of countries had made progress: Albania had abolished the death penalty recently, Bhutan would do so in the course of 2004, Kazakhstan and Turkey (the latter with a moratorium since 1984) had declared to abolish the capital punishment (with the exception for war times or immediate war peril), Estonia had signed the 2<sup>nd</sup> Optional Protocol of the International Covenant on Civil and Political Rights which calls for the abolishment of the death penalty.

In Ms Roth’s point of view, the use of the death penalty was neither morally nor legally justifiable. There was broad consensus on that point back in Germany. The universal abolition of the death penalty was a main goal of the European Union and constituted an integral part of EU policy. Therefore, the EU executed pressure on states which still do execute the capital punishment in order to restrict the use in the short run, to proceed to a moratorium in the medium term and to abolish the death penalty in the long run. For

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<sup>2</sup> For complete statement of Mr. Altan please see homepage of FES-Geneva, “Events 2004 – Death Penalty”.

Ms Roth this threefold concept was one of the most important elements in EU's Common Foreign and Security Policy. She exemplified this guiding principle by highlighting that the EU continued its critical dialogue with the US on the subject, issuing a lot of demarches to call on the US to halt execution of the death penalty. Germany itself had even lodged a claim against the US with the International Court of Justice when in 1999 the US sentenced the two German citizens Karl and Walter LaGrand to death, denying them any consular assistance. Germany was the first state to lodge a claim against the US in conjunction with the death penalty, bringing back this subject to the attention of the international public and, doing so, fuelling the discussion on the legal practice of executing the death penalty in (most of the federal states of) the US.

The German government's Commissioner said that it was important that a country did not extradite people to countries where the capital punishment was executed. Countries that had abandoned that lethal form of punishment should abstain from becoming the companion of countries with the death penalty in practice. That would also be one way to counter the death penalty.

Moreover, Ms Roth acknowledged the valuable work the Council of Europe (CoE) had done in this field, pointing to the important protocols of the CoE in fighting the death penalty. The most recent protocol of the CoE to this respect even contains the demand for the abolition of the death penalty in times of war and of an imminent war peril.

For Claudia Roth both achievements and setbacks in the struggle against the death penalty were incentives to continue that fight and to give up never. She showed herself convinced that a strong state, a strong democracy did not need the death penalty and that it therefore would be of utmost importance to strengthen the state by strengthening democracy. Ms Roth closed her address with an inviting appeal to the audience to continue to struggle for the abolition of the death penalty: "Let's fight together in this subject."

### *"Future and life versus Past and Death" (Ahmet Altan)*

**Ahmet Altan**, the Turkish novelist, political journalist and anti-death penalty activist, started considering the anthropological reasons which underlay the problem of the death penalty. According to him there were two characteristics that distinguish mankind from all other creatures of nature: intelligence and an innate conscience. While the first had entailed the foundation of the sciences the latter had been the condition for the foundation of justice and law. But despite of these two characteristics the feeling to kill other people still existed. To this respect evolution had failed since some people still could not leave that feeling of killing and vengeance behind.

Altan said that this savage of nature materialized in the existence of states and in their relationships which mainly would turn around wars, savagery and torture. In order to domesticate and civilize savage states it would need important supranational organisations like the EU to calm the savagery of states. Yet, Altan conceded that it was more difficult to domesticate states than a savage animal. In his negative view of the state as such, its characteristics – power politics, nationalism and egoism – did prevent a successful domestication. He proposed his vision of how to tackle these negative characteristics and to get a more peaceful world declaring that state barriers were not

necessary. Turning back to his initial anthropological remarks he stated that animals did define their barriers themselves too. In order to eradicate the feeling of vengeance and the basic instinct of nature that wants to kill, people had to put the power of intelligence against. In other words: The execution of the death penalty is not only a form of an atavistic behaviour but also the expression of a lack of education and well-reasoned behaviour of mankind.

Next, the Turkish author raised the issue of the purpose of punishment saying that there was no question whether someone who had killed deserved a punishment. Yet, he doubted vigorously that the purpose of punishment was revenge. He queried if that meant justice. In his conclusion, any murder was tantamount with going millions of years back in the evolution of mankind. Therefore it was time to educate the states and to head for the day when people were able to live without the socio-political construct called "state". He contrasted the two options: or "Future and Life" or "Past and Death". Altan concluded his intervention by declaring that *"People are more important than anything and future is more important than the past."*

*"The use of the death penalty devaluates the idea of human rights" (Jotaka L. Eaddy)*

**Jotaka L. Eaddy** focused her statement on the situation in the United States. She criticized that the US had always claimed the role of a model nation, setting themselves away from the rest of the world. But in her mind the execution of the death penalty could not be a model for others. She highlighted that in that very moment of the discussion two prisoners were awaiting their execution within the next 12 and 24 hours in South and North Carolina respectively. *"The death penalty is unjust indeed"*, Eaddy stated and added that the use of that penalty devaluated the idea of human rights. True, 113 people had been released from the death cell since 1976. This was a positive sign and also an encouraging result of the pressure from the abolition movement to reconsider the legal cases of the convicted. But nevertheless there was great injustice since those people had spent years in jail, waiting for their execution and some of them had just been released in last minute. Often there had neither been any apologies nor compensation given from the US-government for this unjust treatment.

Eaddy came back to the case of the LaGrand-brothers mentioned by Ms Roth and criticized the fact that the US would even execute other countries' citizens without giving those states the possibility to take care for their fellow nationals.

Considering the disproportionate high number of coloured people sentenced to death in the US, she strongly criticized the apparently racist character of the death penalty in the US. One could query whether there existed a different value of life in America, all the more so since the Southern US-states, the former slave states, were the most problematic zones to this respect. That system of injustice in the Southern states was aggravated by the fact of what she called the *"sleeping lawyers"*, attorneys being designated by court as defenders of the indicted who often turned out to be members of the racist Ku-Klux-Clan.

Another point of strong criticism of Ms Eaddy was the execution of the death penalty among juveniles which would represent an absolute unbearable fact. The rhetorical climax of her intervention was embodied in the question of *"why do we kill people to show people that killing is wrong?"* and put in contrast that *"a better world, a much*

*better world is possible*". She concluded with the appeal to go on fighting for the abolition of the death penalty – *"not only in the US but worldwide"*.

*"The death penalty is a global problem that needs a global solution" (E. Zamparutti)*

For **Elisabetta Zamparutti** it remained necessary to tackle the capital punishment on a global level since "the death penalty is a global problem that needs a global solution". A first step and imminent goal for Hands Off Cain on that way was a stop of all executions, a general moratorium. For Ms Zamparutti one of the reasons why it had taken so long to raise effectively the voice against the death penalty had laid in the system and character of international law and relationship of states. These had functioned so far on the basis of non-interference in the domestic issues of other countries, human rights issues had long been seen as a national issue rather than an international and universal one. With regard to the death penalty this had been seen too long as an issue of domestic jurisdiction being the reason for missing international interventions in such cases. But the underlying principle of international law and the relationship of states were succumb to a fundamental change putting human rights issues in the center of political action – at least the democratic states claim that. For Ms Zamparutti there was no doubt that the death penalty was a human rights issue and that human rights were universal. And in this logic the international intervention of democracies was needed.

On the other hand there were still democracies executing the death penalty but she showed confident saying that a real democracy could find a solution. She recognized that since states and political systems were of different character any of the states must find an individual way to abolish the death penalty. True, that could not be achieved within one day but as an immediate first step the states should impose on a moratorium. Answering her question of how that process could be fuelled she said that the involvement of international organisations and bodies was needed and mentioned the approval of a CHR-resolution against the death penalty in 1997 as well as the EU which had been given a new impetus to fight the capital punishment under the latest German presidency in 1999. Nevertheless, in her view the EU and other international organisations had too bureaucratic an approach and that was why human rights NGOs had to go on fighting.

In his short statement, **George H. Ryan**, the former Governor of the Federal State of Illinois (1999-2003)<sup>3</sup>, underlined the necessity to stop executions when the judicial system was in a shape that had to be reconsidered. That had been the case when he took office and therefore the very first thing of his mandate was to impose a moratorium for both a necessary overhaul of the whole judicial system and for educating people. In his mind the judicial system in a lot of states worldwide were in an unacceptable and deplorable shape. Since the execution of the capital punishment was illegitimate within those circumstances a moratorium was an absolute necessity. The definite abolition of the capital punishment remained the final objective and Ryan asked the audience to keep on fighting for this sake.

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<sup>3</sup> Ryan (Republican), originally believed "that the death penalty is a proper societal response for crimes that shock sensibility" (see <http://www.state.il.us/gov/press/00/Jan/morat.htm>). But confronted with the deplorable judicial system in his federal state he more and more became a critic of the death penalty, imposing a moratorium.