



# Reconsidering crime and death penalty after WWII: the formation of transnational networks among jurists and criminologists (1945-1980)

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**Abstract : *Reconsidering crime and death penalty after WWII: the formation of transnational networks among jurists and criminologists***

My aim is to show through this paper how a transnational approach can bring new elements to a human rights history. After WWII, great international associations of jurists and criminologists were created (or formed again), like the International Society for Criminology or the International Society of Social Defense. Based on the study of their publications, this paper intends to consider how these associations took part in the formation of an intellectual network of people sharing the same hope of a radical penal and penitentiary reform. Besides, other political, religious and professional relations came to reinforce the links between those experts, who often worked together in the UN-lead organizations. An analysis of these networks will highlight the transfers of ideas and people between different countries, and how these ideas are adapted in national contexts. The traumatic episode of the war disqualified the authoritarian doctrines of the 1930's – those considering the individual as insignificant compared to the well-being of the society. The after-war networks spread a new approach of the criminality emphasizing the rehabilitation of offenders and a social treatment of crime. These jurists and criminologists defended the absolute respect for individual rights and human dignity, condemning the death penalty. The new representations sustained the abolitionist debates in Europe and in North America, whose argumentations interacted between the different countries. These actors worked at the building of a new international law, especially in Europe. They became sometimes engaged in a militant activity, contributing to the rise of some great human rights associations like Amnesty International or the FIDH.

## **Résumé :**

Après la Seconde Guerre Mondiale, de grandes associations internationales de juristes et de criminologues se forment ou se reforment comme l'Association internationale de droit pénal, la Fondation internationale pénitentiaire et pénale, la Société internationale de criminologie, la Société internationale de Défense sociale. En étudiant leurs publications, cette communication cherche à montrer comment ces associations contribuent à la formation d'un réseau intellectuel de personnes favorables à de profondes réformes des systèmes judiciaires. D'autres liens politiques religieux et professionnels viennent renforcer les liens entre ces spécialistes amenés à travailler ensemble dans les organisations de l'ONU. L'analyse de ce réseau nous permettra de comprendre comment les idées et les hommes circulent d'un pays à l'autre et s'acclimatent dans des contextes particuliers. L'épisode traumatique de la guerre a disqualifié les doctrines juridiques autoritaires des années 1930, où l'individu était considéré comme une quantité négligeable devant le bien-être supposé de la communauté. Les réseaux d'après-guerre diffusent des conceptions sur le respect absolu des droits individuels et de l'intégrité humaine, ainsi qu'une nouvelle approche de la criminalité mettant l'accent sur le traitement social et la réinsertion. Ces réflexions alimentent les débats abolitionnistes en Europe et en Amérique du Nord, qui connaissent de nombreuses interactions. Ces acteurs franchissent parfois le pas vers un engagement militant et vont contribuer à l'essor d'associations de promotion des droits de l'homme comme la Fédération internationale des Droits de l'Homme ou Amnesty International. Mon objectif est ainsi de montrer l'apport de l'approche transnationale à l'histoire des droits de l'homme (et parmi eux l'abolition).

## **Reconsidering crime and death penalty after WWII: the formation of transnational networks among jurists and criminologists (1945-1980)**

My topic of research is about death penalty in France in the 20<sup>th</sup> century. My study was first limited to the national frame, but many mentions of foreign experiences and thinkers, as well as the exchanges of ideas and strategies beyond the borders, led me to work on a transnational approach. I'll focus in this presentation on the period after WW2.<sup>1</sup> I'll study here the consequences of the development of transnational networks among jurists and criminologists on the issue of the death penalty. I'll wonder how the establishment of international associations devoted to juridical and criminal questions has impacted academic communities, international organizations and human rights movements. For this research I mainly used specialized reviews published by these associations, conference proceedings, United Nations and Council of Europe reports, and some inner bulletins of human rights associations (especially Amnesty International). Fully researching these relations was too ambitious, so I'll only focus on main points.

In a first part, I'll present the creation or re-instatement of four associations of criminologists and jurists (later known as the “big four”<sup>2</sup>), their international recognition and their composition. Then I'll consider the rise of new juridical theories and how they were broadcast among jurists and criminologists, as well as their bearing on the issue of capital punishment. In a third part, I'll consider how international organizations and human rights associations have regarded these new theories.

### **I) The rise of the “Big Four”**

#### **1) The (re)instatement of international associations of criminologists and jurists in the post-war period.**

The (re)instatement of international associations of criminologists and jurists after WW2 was an indication of the vitality of the exchanges and debates around legal and criminal issues. Among all these associations, four later achieved some influence: the International

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<sup>1</sup> As William A. SCHABAS stressed it, « International norms addressing the limitation and the abolition of the death penalty are essentially a post-Second World War phenomenon. », in W. A. SCHABAS, *The Abolition of the Death Penalty in International Law*, Cambridge University Press, 3<sup>rd</sup> ed., 2002, p. 1.

<sup>2</sup> Comité consultatif spécial d'experts, *Mémoire* présenté par les secrétaires généraux de la FIPP, de l'AIDP, de la SIC et de la SIDS, New-York, 5-15 mai 1958, p. 9.

Association of Penal Law (IAPL), the International Penal and Penitentiary Foundation (IPPF), the International Society of Criminology (ISC) and the International Society of Social Defence (ISSD). Transnational networks, as well as a need for better international cooperation in matters of law, were not new in 1945. Since the end of the XIX<sup>th</sup> century, intellectuals and scientific and philanthropic societies had exchanged their points of view about crime fighting and the treatment of offenders. Positivism had been predominant in Western countries, with the shared belief that science could solve any problem, including crime. Scholars had been fond of great international scientific congresses – and criminologists and jurists participated in this movement. Actually, three of the four big post-war associations were the continuation of former ones dissolved during WW2.

The International Association of Penal Law was first founded in 1924 in Paris and was the heir of the former International Union of Penal Law. This late organization had been founded in Vienne in 1889 by the jurists Franz Von Lizst, Gerard Van Hamel and Adolphe Prins, and dissolved during WW1. The IAPL organized several congresses between 1926 and 1937.<sup>3</sup> It published the *Revue internationale de droit comparé/ International Review of Penal Law* and disappeared at the beginning of WW2. In 1946, Henri Donnedieu de Vabres, funding member of the IAPL and judge at the International Military Tribunal of Nuremberg, took advantage of the concentration of international magistrates and lawyers in this city to re-establish the IAPL.<sup>4</sup> The IAPL would consider any penal law issue, including of course criminal law.

Founded in 1938 in Rome at the I<sup>st</sup> International Congress of criminology, the International Society of Criminology fell dormant during the war. In 1947, the first Pan-American Conference in Rio de Janeiro expressed a wish for establishing a second International Congress of Criminology and a new association. This Congress was held in Paris in 1950, organized by Henri Donnedieu de Vabres and Piprot d'Alleaume. This Congress had the support of the French government which sent some officials (among them the Minister of Education), as well as the great international organizations (United Nations, UNESCO, International Labour Organization, World Health Organization...) Jurists, penitentiary workers, policemen, psychiatrists and physicians were brought together to talk

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<sup>3</sup> *Revue internationale de droit pénal*, 1948, p. 391.

<sup>4</sup> Luis ARROYO ZAPATERO, « Soixantième anniversaire de la Société Internationale de Défense Sociale, 1949-2009 », *Cahiers de défense sociale*, n° extraordinaire, 2010, p. 5.

about scientific research on crime and criminals and the elaboration of new methods in the penitentiary treatment. The ISC was re-established along the lines of this program.<sup>5</sup>

The International Penitentiary and Penal Foundation is a Swiss-based foundation created in July 1951 to manage the legacy of the late International Penal and Penitentiary Commission. The Commission was founded in 1872, when representatives of several European countries decided to combine their penitentiary policies, and therefore to discuss common standards for the treatment of offenders. It later became a body depending on the League of Nations, in charge of preparing conferences on these questions. The new IFFP aimed at encouraging scientific research, publishing and teaching in the matters of crime fighting and the rehabilitation of offenders.

The International Society of Social Defence is the only one to be entirely new. It was created during the II<sup>nd</sup> International Congress of Social Defence held in October 1949 in Liege (Belgium): “Its creation was decided by the participants. They wished to have a stable structure for a better coordination of their initiatives in order to enforce a better defence of society [against criminals].”<sup>6</sup> The International Centre for the Social Defence of Genoa, created in 1945 by Count Filipo Gramatica organized a first congress in San Remo in 1947, and Gramatica became the new president of the ISSD. At the difference of the ISC which aimed at scientific objectivity, the ISDS was rather involved in the diffusion of new ideas on criminal policy, embodied in a “minimum programme”.<sup>7</sup> Their members intended to influence governments and international organisations by advocating their solutions to solve crime problems and “defend society”.

These non-governmental associations were quickly granted a consultative status with the Social and Economic Council of the United Nations. The Social and Economic Council created a Section of Social Defence meant to develop an international program for the “Prevention of Crime and the Treatment of Offenders.” The “big four” encountered other NGOs interested in juridical and penitentiary questions in UN-led meetings, such as the Howard League for Penal Reform, the International Commission of Jurists, the International Law Association, the International Federation of Women Lawyers... They also worked with the International Academy of Comparative Law, the Inter-Parliamentary Union, the Carnegie

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<sup>5</sup> *Bulletin du II<sup>e</sup> Congrès international de criminologie*, n° 1, 1950.

<sup>6</sup> Simone ROZES, « La création de la SIDS et son objectif : participer à un véritable humanisme juridique », *Cahiers de défense sociale*, n° extraordinaire, 2010, p. 2.

<sup>7</sup> *Bulletin de la Société internationale de Défense sociale*, n°1, 1955, p. 5-7.

Foundation, the Federal Committee of European Cooperation, the International Commission for the Protection of Children, the Centre for Studies on Juvenile Delinquency...<sup>8</sup> During a conference of consultative NGOs held in New York in May 1948, the IAPL advocated the constitution of a World Federation of Juridical Organizations which would gather together all these NGOs.<sup>9</sup> They worked in close collaboration to produce a great amount of the expertise required by the UN on issues of crime and justice.

## **2) The composition of these associations and the making of networks**

These associations recruited in the high ranks in universities and the areas of justice and administration. Their members were university professors of law and medicine, magistrates, top civil servants in police or penitentiary system or lawyers... The meeting which re-established the IAPL in Nuremberg brought together the most brilliant jurists of the times.<sup>10</sup> They often held concurrently multiple academic and administrative functions, and they were sometimes directly employed by the UN or other international organizations.<sup>11</sup> The executives of these associations were invited to official meetings.

Their number was at first quite low – for example the ISC had 223 members (physical people) in 1951.<sup>12</sup> However memberships increased quickly: for the year 1960, the ISC admitted 122 members.<sup>13</sup> They sometimes had multiple memberships as the various societies were not exclusive to one another.<sup>14</sup> The “poly-members” could ease the cooperation around common interests. The study of publications shows that it was this minority of individuals who monopolized a large part of publishing, public interventions and official positions in

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<sup>8</sup> *Revue internationale de droit pénal*, 1948, vol. 3 et 4, p. 354.

<sup>9</sup> *Revue internationale de droit pénal*, 1948, vol. 3 et 4, p. 319.

<sup>10</sup> Luis ARROYO ZAPATERO, *op. cit.*, p. 5 : “Thanks to the reading of the minutes, we can perfectly well see this sunny day of the German spring. The light was radiant on the ruins of Nuremberg and on this group of key figures of the penal science: besides Donnedieu de Vabres, the Romanian Vespasiano Pella, general secretary of the International Office for Unification of Criminal Law; Jean Graven, the old Swiss patriarch of penal law; Professor Rapoport, president of the Supreme Court of Poland, recently released from a long detention; the young general secretary of the Association, Pierre Bouzat. They were in company of penal specialists from countries outside the traditional area of the former association, but that the war had finally brought together: the American judge Francis Biddel, the English judge David Maxwell-Fyfe, the Lord Justice Lawrence, head of the International Military Tribunal, the Soviet general and judge Nikitchenko, and the Soviet professor Tranine.”

<sup>11</sup> As an example, Marc Ancel was the president of the ISSD in the 1960s, at the same time he was also the president of the European Committee on Criminal Issues of the Council of Europe, and he received a mission from the UN to establish a report on death penalty in the world.

<sup>12</sup> *Bulletin de la Société Internationale de Criminologie*, 1951, p. 33.

<sup>13</sup> *Bulletin de la Société Internationale de Criminologie*, 1962, p. 251-254.

<sup>14</sup> For example : Thorsten Sellin, Jean Pinatel, Paul Cornil...

international meetings. They were the core of this international network and they determined a large part of its theoretical orientations.

The recruitment was transnational but reflected the troubles of the post-war world; such as the divide between victorious countries and defeated countries, East and West, colonizers and colonies, North and South... All these conflicts shaped the geographical dispersion of these networks. For example, in 1948, people from Western European democracies (except defeated countries) were predominant in the IAPL, accompanied by some Northern Americans and Eastern and Southern Europeans (USSR is represented). There were no representatives from the rest of world.<sup>15</sup> Members of the ISSD represented mainly continental Western Europe and South America. In 1963 there was still no mention of African and Asian countries (except Japan and Syria) or Eastern Europe (except Yugoslavia).<sup>16</sup>

Members from the ISC came from a larger geographical area: if Western Europeans still outnumbered the rest, Southern Americans were quite well represented. There were also members from Middle-Eastern countries (Turkey, Iraq, Iran, Lebanon, Egypt...) and a few Indians in 1951-1952.<sup>17</sup> But they were in any case members of still-colonized countries. The situation didn't really change ten years later, except for a large arrival of Northern Americans (especially Canadians)) and a few Japanese.<sup>18</sup> A few members of newly-independent countries appeared during the 1960s.<sup>19</sup> It also seems that the executive staffs of these associations were first dominated by people coming from codified law countries (especially Latin ones), as opposed to common law countries.<sup>20</sup>

### 3) Intellectual exchanges

A lot of exchanges took place in national sections, where debates were organized on a regular basis. Transnational exchanges were more indirect. International reviews allowed a large diffusion of new ideas and theories. Each association had its own publication: the IAPL had the *Revue internationale de droit comparé*, the ISC had the *Bulletin de la Société*

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<sup>15</sup> *Revue internationale de droit pénal*, 1948.

<sup>16</sup> *Bulletin de la Société Internationale de Défense sociale*, 1963.

<sup>17</sup> *Bulletin de la Société internationale de criminologie*, 1951, p. 33-34 ; 1952, n°2, p. 34-35.

<sup>18</sup> *Bulletin de la Société internationale de criminologie*, 1962, p. 589-590.

<sup>19</sup> *Bulletin de la Société internationale de criminologie*, 1970, p. 332-335.

<sup>20</sup> For example, the president of the IAPL during the 50s was a Belgian, Paul Cornil, the general secretaries were at the same time the French J.A. Roux and Pierre Bouzat. The general secretary of the ISC was the French Jean Pinatel, however the two first presidents were Anglo-Saxon: Dennis Carrol and Thorsten Sellin. First headed by the Italian Filippo Gramatica, the ISSD was led by the French Marc Ancel after 1966. See also the composition of the board of directors of the ISSD, *Bulletin de la Société internationale de défense sociale*, 1955, n°1, p. 3-4.



*internationale de criminologie* (which later became the *International Annals of Criminology*) and the ISSD the *Bulletin de Défense sociale*. The published articles were in French, English and Spanish. The most important moments of debate on doctrinal issues were Congresses, organized on a more or less regular basis. From 1945 to 1965 the main issues of all these associations concerned crime prevention and the different penitentiary methods to obtain a social rehabilitation of offenders. The main associations aimed at cooperating with each other on an international scale.<sup>21</sup> The “exchange of professors and students, the creation of scholarships and prizes, and the organization of lectures and courses” were another way to improve the transnational dimension of criminology.<sup>22</sup> However the “big four” regretted the lack of support of the UN in the establishment of international research centres and the fact that the international scientific cooperation relied mainly on individual initiatives.<sup>23</sup>

## **II) Diffusion of a new paradigm: the “New Social Defence”**

### **1) The rejection of authoritarian theories of law**

The rise of totalitarianism in the 1930s had led to more repressive legislations against criminals, including in democratic countries. The old classical theories of law resting on ideas of retribution and expiation had come back in favour. Moreover, there had been a totalitarian use of ideas in the first Social Defence. This juridical movement of ideas was born at the beginning of the XX<sup>th</sup> century. The emphasis was on the utilitarian function of penalty to defend society, following the path opened by Beccaria in his essay *On Crimes and Punishments*. This movement advocated the development of a criminal policy enlightened by newly-arrived criminology. With the rise of ideologies asserting the predominance of community rights over individual rights, a part of the Social Defence encouraged the development of administrative measures of internment for people guilty of “antisocial” activities. They also accompanied the wave of eugenics. Death penalty was considered as a way of elimination and intimidation against “degenerate” criminals, who threatened good racial health.

A deep rejection of all these ideas and a return to humanistic tradition in Western countries were the result of the collapse of Nazism and fascism. Human rights became the

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<sup>21</sup> “The Society shall co-ordinate its activities with that of other international associations concerned with the prevention of crime and the counteraction of criminality”, *Bulletin de la Société internationale de criminologie*, 1952, n°1, p. 61.

<sup>22</sup> *Bulletin de la Société internationale de criminologie*, 1952, n°1, p. 61.

<sup>23</sup> Comité consultatif spécial d’experts, *op. cit.*, p. 8.

new motto. Of course, the Charter establishing the International Military Tribunal of Nuremberg planned an application of death penalty for war criminals. But in some political circles and among jurists, the respect of the dignity and liberty of any individual was from this moment an absolute necessity. The establishment of the Universal Declaration of Human Rights in 1948 interested jurists from all over the world (and of course the IAPL). This declaration proclaimed in article 3 the “right to life” but still didn’t forbid capital punishment, in spite of pressures from some countries.<sup>24</sup> In Europe, the European Convention on Human Rights was created in 1950, explicitly authorizing death penalty as a limitation to the right to life.

## 2) Thinking a New Social Defence

After WW2, supporters of a criminal policy enlightened by criminology and with a whole new ambition focused on issues of juvenile delinquency on the one hand and penitentiary reform on the other hand. They wanted to clear criminology and law of any “totalitarian” remains left behind by the preceding period. In 1949, during the II<sup>nd</sup> International Congress of Criminology, a minority which still advocated eugenic measures was defeated.<sup>25</sup> The partisans of Social Defence were at time devoted to “the protection of the individual against society”.<sup>26</sup>

The followers of the new juridical ideas put the emphasis on the treatment of criminals by a “systematic action of rehabilitation” which should “aim at giving back the control of their own lives to offenders.”<sup>27</sup> Social reforms were meant to prevent crime by eliminating poverty and the consequences of life trials. The partisans of this new scheme wanted to

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<sup>24</sup> William. A. SCHABAS, *op. cit.*, p. 6: “Central to the preoccupations of these drafters was the issue of the death penalty. The post-war context had sensitized them to the terrible abuses of the death penalty prior to and ruining the armed conflict. Furthermore, they were conscious of giving effect to an abolitionist movement that had been gaining support, albeit with sporadic reversals, for the past two centuries.”; *Ibid.*, p. 24: “The debates in the Commission on Human Rights, in its Drafting Committee, and in the Third Committee of the General Assembly respecting adoption of the Universal Declaration indicate that the issue of abolition of the death penalty was crucial in the drafting of article 3.”

<sup>25</sup> *Bulletin du II<sup>e</sup> Congrès international de criminologie*, n° 1, 1950.

<sup>26</sup> “This Congress of Social Defence was worrying a lot of people, when a positivist, totalitarian society, a society of concentration camps, considered that human rights and dignity can be give up for its own interests. Thanks to the action, the elevation, the sense of justice, the respect of the individual of all the participants, this Congress for social defence was finally a “Congress for human defence” against Society. Belgium gave us the most remarkable demonstration of this “progressive” spirit, human, wise and Christian, of this manner of realizing a just “Social Defence”, Pierre BOUZAT, Jean GRAVEN, « Le II<sup>e</sup> Congrès international de défense sociale », *Revue internationale du droit pénal*, 1950, n°1, p. 83.

<sup>27</sup> Marc ANCEL, *La Nouvelle Défense sociale, (Un mouvement de politique criminelle humaniste)*, Ed. Cujas, Paris, 1954, p. 35 and 107.

“replace the *neutralization* of offenders by their *reintegration* into society each time it was possible [...] The offender shouldn’t be regarded as an irreducible enemy of society or a dangerous degenerate, but as an individual in conflict with its environment, and that people should try to understand.”<sup>28</sup> New Social Defence was presented as the heir of both the revolutionary tradition of human rights and the Christian tradition of charity and redemption, and as a product of “modern humanism born from chaos.”<sup>29</sup> The development of large Christian-democratic movements in post-war Europe influenced this evolution. The defence of society was now linked to the defence of human rights.

This new moral and intellectual climate influenced how the problem of death penalty was reconsidered after 1945. The works of Thorsten Sellin in the United States and of the Royal Commission on Capital Punishment in Great Britain had confirmed the inefficiency of death penalty.<sup>30</sup> This issue was mentioned in the first International Congress of Social Defence in San Remo in 1947. The Congress passed a resolution in favour of abolition, following the conclusions of Belgian lawyer Théo Collignon.<sup>31</sup> Jean Pinatel asserted in 1953 that “someone who admits death penalty cannot pretend to be a criminologist, because the purpose of criminology is the social rehabilitation of offenders. When you devote yourself to this cause, how can you support a system which denies it?”<sup>32</sup>

Abolitionism spread among jurists and criminologists with the ideas of New Social Defence. The essay of the French jurist Marc Ancel, entitled *The New Social Defence* was translated in several languages. Besides Congresses, the broadcasting of new ideas took place in international law reviews, dominated by these reformists. Networks of jurists and criminologists contributed to the formation of a new “epistemic community” defending a new paradigm on a transnational scale.<sup>33</sup> However the international associations remained divided on New Social Defence. If the ISSD unanimously followed these ideas, the situation was more disparate in the IAPL and the ISC, classical jurists and criminologists maintaining some

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<sup>28</sup> Jacques BORÉE, *Notice sur la vie et les travaux de Marc Ancel*, Académie des sciences morales et politiques, 1993, p. 15-16.

<sup>29</sup> Marc ANCEL, *op. cit.*, p.163.

<sup>30</sup> Thorsten SELLIN, « Murder and the Penalty of Death », *Annals of the American Academy of Political and Social Science* (Philadelphia), n° 284, p. 1-166, November 1952; Royal Commission on Capital Punishment, *Report*, London, HMSO, 1953.

<sup>31</sup> Théo COLLIGNON, *Faut-il supprimer la peine de mort ?*, Liège, 1947. Review published in *Revue internationale de droit pénal*, 1948, p. 115-118.

<sup>32</sup> « La peine de mort », *Bulletin de la Société internationale de criminologie*, 1953, p. 62.

<sup>33</sup> About the notion of “epistemic community”, cf. the analysis of Stéphane ENGUÉLÉGUÉLÉ, « Les communautés épistémiques pénales et la production législative en matière criminelle », *Droits et société* n° 40, 1998, p. 571.

of their beliefs. The death penalty debate continued to divide, but the trend was in favour of abolitionism.

### **3) Transnational death penalty debates?**

The rise of New Social Defence ideas on crime and punishment accompanied the development of national public opinions which were more receptive to foreign influences. Comparing oneself to other countries was traditional in abolitionist arguments. Italy and West Germany abolished the death penalty soon after the war, with limited debates. A large part of European countries, from Portugal to Sweden, had already abolished it. The death penalty issue was more debated in Great Britain and Canada. It also received more interest in other countries, (especially in France, which became after the British abolition in 1969 the last democratic country in Western Europe to apply death penalty).<sup>34</sup> Works and essays published during these debates were translated and transposed in other national frames. Some cases of people sentenced to death (like the Rosenbergs, Marwood, and Caryl Chessman) also received an international coverage, and movements of sympathy from all over the world. Abolitionist intellectuals developed cooperation through national borders: Arthur Koestler and Albert Camus published together in 1957 their *Reflexions sur la peine capitale/ Reflections on death penalty*. However, contacts between abolitionist workers during the 1950s remained mostly unorganized and individual.

### **III) What influence on international organizations and human rights associations?**

#### **1) The rise of abolitionism in the UN and the Council of Europe**

In matters of criminal policy, international organizations were first interested in issues of penitentiary methods and a larger international cooperation against organized crime. The death penalty wasn't really a front-burner matter. In 1955, the first UN Congress on the Prevention of Crime and the Treatment of Offenders focused on establishing minimum standards in prisons ensuring the proper recruitment and education of penitentiary employees and dealing with the issue of "open institutions".<sup>35</sup> In 1960 the second Congress focused on juvenile delinquency, the development of crime in underdeveloped countries and penitentiary

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<sup>34</sup> Julie LE QUANG SANG, *La loi et le bourreau. La peine de mort en débats (1870-1985)*, Paris, L'Harmattan, 2001, p. 116-118.

<sup>35</sup> Rapports du premier Congrès des Nations Unies en matière de prévention du crime et de traitement des délinquants, Genève, 1955.

labour.<sup>36</sup> However the UN Section of Social Defence included a subject matter entitled “capital and corporal punishment” in its program of research in 1951. USSR and Byelorussia representatives criticized some of the items suggested for study as being domestic rather than international questions.<sup>37</sup>

On November 20<sup>th</sup>, 1959, the General Assembly of the UN established resolution 1396, which required the Economic and Social Council to launch a study about death penalty. The Council entrusted the vice-president of the ISSD, Marc Ancel, for this study. At the same time, the Council of Europe ordered a similar study on the situation in European countries. Marc Ancel used his usual associative and academic networks for the occasion <sup>38</sup> as well as the means offered by both international organizations. In spite of the deliberately neutral aspects of his descriptive reports,<sup>39</sup> the conclusion was implicitly drawn: “An examination of the statistical data existing on this issue demonstrated that for these European countries, there was no positive indication of a deterrent effect of capital punishment”, “the positive examination of facts gives to death penalty [...] the nature of a historical relic, sometimes precarious, and apparently in danger.”<sup>40</sup> He also wrote: “We note that among the key figures in matter of penal science, the partisans of abolition outnumber the partisans of retention.” <sup>41</sup> These reports summed up the works of jurists and criminologists since 1945 and were used to weaken the last arguments of criminal policy which could justify the preservation of capital punishment.

During the 1960s, the UN became more and more concerned with death penalty. However, the Commission on Human Rights was now the leading committee in the matter of draft resolutions and conventions, no longer the Prevention Crime and Criminal Justice Branch (which had replaced the Section of Social Defence).<sup>42</sup> Death penalty moved from a criminal policy issue to a human rights question. Scientific societies of jurists and

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<sup>36</sup> United Nations, *Second United Nations Congress on the Prevention of Crime and the Treatment of Offenders* (London, 8-19 August 1960). Report prepared by the Secretariat, New York, 1961.

<sup>37</sup> Roger Stenson CLARK, *The United Nations Crime prevention and Criminal Justice Program. Formulation of Standards and Efforts at their Implementation*, Philadelphia, University of Pennsylvania Press 1994, p. 15.

<sup>38</sup> Marc ANCEL., *La peine de mort dans les pays européens*, Conseil de l'Europe, Comité européen pour les problèmes criminels, Strasbourg, 1962, p. 3.

<sup>39</sup> “In this first study and in the present report, the philosophical, moral and theological aspect was intentionally left aside; this inquiry was only about pure positive law and not about the abolition or the retention of death penalty.” *Ibid.*, p. 45.

<sup>40</sup> *Ibid.*, p. 54 and p. 64.

<sup>41</sup> Marc ANCEL, *La peine capitale*, New-York, département des Affaires économiques et sociales des Nations Unies, 1962, p. 54.

<sup>42</sup> William A. SCHABAS, *op. cit.*, p. 45-91.

criminologists were challenged by human rights associations to deal with this problem. In 1966, the UN established the International Covenant on Civil and Political Rights. Article 6 stipulated that “no one shall be arbitrarily deprived of his life” and that “in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes.” Resolution 2393 (XXIII) of November 26<sup>th</sup>, 1968, invited the members to narrow the application of this penalty and “to ensure the most careful legal procedures and the greatest possible safeguards for the accused in capital cases”. In 1971, the General Assembly of the United Nations passed a new resolution declaring that “in order fully to guarantee the rights to life provided for in article 3 of the Universal Declaration of Human Rights, the main objective to be pursued is that of progressively restricting the number of offences for which capital punishment may be imposed, with a view to desirability of abolishing the punishment in all countries” and inviting “Member States which have not yet done so to inform the Secretary-General of [...] their attitude to possible further restriction of the use of the death penalty or its total abolition.”<sup>43</sup> This resolution was consolidated by another one, December 8<sup>th</sup>, 1977 (32/71), and the Economic and Social Council was in charge of reporting on the matter every five years.<sup>44</sup>

The Council of Europe followed the same path to move death penalty from criminal policy to a human rights issue. In 1966, the Committee of Ministers decided to discontinue any further study of the consequences of abolition led by the European Committee on Criminal Problems. When the debate resumed in 1973, the Parliamentary Assembly of the Council of Europe turned to the Committee on Legal Affairs.<sup>45</sup> The draft works of the Committee led to the adoption of a resolution in April 1980 recommending the abolition to the Member States.<sup>46</sup> In April 1983 Protocol n° 6 to the European Convention of Human Rights forbade the use of capital punishment in peace time. France was the last Western European country to abolish death penalty in 1981. In this region of the world, the abolition

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<sup>43</sup> Resolution 2857 (XXVI), 20 December 1971, in United Nations, *Resolutions adopted by the General Assembly during its twenty-sixth session*, New York, 1972, p. 94.

<sup>44</sup> Cécile TOQUÉ-PICHON, *L'abolition de la peine de mort en France. La loi Badinter*, Ed. du Panthéon, Paris, 2006, p. 42.

<sup>45</sup> William A. SCHABAS, *op. cit.*, p. 280.

<sup>46</sup> Julie LE QUANG SANG, *op. cit.*, p. 141 ; Cécile TOQUÉ-PICHON, *op. cit.*, p. 43.

became a part of the “set of standards” expected by all the citizens, an “infrastructure of civilization”, a “constitutive element of the central consensus” established in Europe.<sup>47</sup>

If the societies of jurists and criminologists have produced studies allowing to set aside classical objections against abolition, their action was not decisive in the progress of international law. The pressure of other bodies (human rights NGOs or inner Committees in the international organizations), with axiological motivations rather than scientific ones, was more determining.

## **2) Jurists and criminologists took over by human rights associations?**

Were the NGOs of jurists and criminologists a springboard for abolitionist human rights NGOs? The answer seems to be negative, as well in terms of organizations as in terms of memberships. Of course, some jurists and criminologists were involved in abolitionist associations. But (and even if this analysis should be deepened), it seems they were a tiny minority compared to other categories: lawyers, teachers or religious figures. For example Amnesty International was founded in 1961 mostly by lawyers, and despite its nondenominational statutes, brought together a great amount of protestant, Quaker, catholic and Jewish clergymen. The French Association Against the Death Penalty, created in 1959, comprised a lot of intellectual and religious figures but few jurists and criminologists.<sup>48</sup>

In fact, militant associations had very different strategies from former juridical associations. They recruited openly and massively and militant figures became more influent than theoreticians. They put the emphasis on ethics and religious values rather than on scientific arguments. The means of action were also different. According to militant associations, the strategy of influence relied on the use of media and public opinion to exert pressures on governments, when the former associations wanted to be councillors addressing leaders directly. The rise of Amnesty International in particular deeply changed militant strategies during the 1960s and the 1970s. It developed a transnational approach right away with the rule advocating that a national section could only sponsor prisoners in foreign

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<sup>47</sup> Jean CLAM, « La peine de mort : une perspective sociologique » in Ioannis PAPADOUPOULOS, Jacques-Henri ROBERT (dirs.), *La peine de mort : droit, histoire, anthropologie, philosophie, Actes du colloque, 24 et 25 avril 1998*, Panthéon-Assas, 2000, p. 139.

<sup>48</sup> For example, Jean Graven and Dr Piedelièvre, two distinguished members of the ISC, were in the Honor Committee of the French Association Against Death Penalty. (*Contre la peine de mort*, réunion d'information organisée par l'Association, Palais de Justice, 10 mai 1966, Association française contre la peine de mort, Paris, 1966, p. 2).

countries. AI had a strategy of mobilizing public opinion in the whole world. This NGO received in 1977 the Nobel Peace Prize, which had a great bearing on the 1980 campaign for the abolition of the death penalty. A new mass activist transnational abolitionism, which acted according to a “bottom-up” strategy of influence, replaced the traditional international abolitionism supported by a few specialists, which acted according to a “top-down” principle.

Links between the two categories of NGOs were quite sparse between associations, as well as between individual members. There were two independent series of networks, with few interactions. Other NGOs could occasionally use juridical associations as “think tanks”, but their fields remained largely disconnected. As Hood and Hoyle stressed it: “Among the factors that have promoted this new wave of abolition has been the political movement to transform consideration of capital punishment from an issue to be decided solely or mainly as an aspect of national criminal justice policy to the status of a fundamental violation of human rights.”<sup>49</sup>

## **Conclusion**

The great international associations of criminologists and jurists (re)established after WW2 were a way to develop transnational relations among law professionals. They contributed to spread new theories about the treatment of criminals, New Social Defence ideas refusing to consider them as monsters doomed to be eliminated. These associations remained however divided on those questions, as they were not monolithic groups. Moreover, the death penalty was not an absolute priority; it was only an issue among many others. But they developed a new manner of considering possibilities for the rehabilitation of criminals, and they proved the non-existence of the deterrent effect of capital punishment by their researches. By doing this, they made the establishment of international conventions restricting or forbidding the death penalty easier. Jurists and criminologists removed an obstacle but their role was not conclusive compared to human rights activist actions as the death penalty had moved from criminal policy to the field of human rights.

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<sup>49</sup> Roger HOOD, Carolyn HOYLE, *The Death Penalty. A Worldwide Perspective*, Oxford University Press, 2008 (4<sup>th</sup> ed.), p. 19.