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TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT

Draft Code of Medical Ethics

Report by the Secretary-General

Addendum

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I. REPLIES RECEIVED FROM GOVERNMENTS

AUSTRIA

/Original: English/

/8 September 1980/

1. The Federal Government of Austria is in favour of a Code of Medical Ethics concerning the role of health personnel to protect persons against torture and other cruel, inhuman or degrading treatment or punishment. The principles proposed by the Council of International Organizations of Medical Sciences (CIOMS) to complete the Declaration of Tokyo of 1975 seem to be quite adequate. The abstract nature of these principles calls however for their concretization. Certain inadmissible practices could be mentioned as examples in the commentary accompanying the principles.

2. Principles I (prisoners and detainees have the same rights as regards the protection of health and the treatment of diseases as free citizens) and III (principle of an exclusively medical relationship between the physician and the prisoner "that would also be accepted as such outside the prison environment") can be accepted, but might require some restrictive interpretation of their wording. Under conditions of imprisonment, the principle of "free choice of a physician" will certainly be limited; this should, however, not contradict principle I. The standard basic principles of the United Nations concerning the treatment of prisoners do not grant the free choice of a physician to the prisoners. As regards principle III, it should be clarified that a particular relationship between the physician and the prisoner established in view of the conditions of detention or arrest (e.g., artificial feeding as far as admissible according to point 5 of the Declaration of Tokyo, or in the case mentioned in principle V) is not incompatible with the proposed principles, even if a comparable relation between the physician and the detainee outside the prison environment would not be conceivable.

3. The Austrian Federal Government would welcome the inclusion of the aforementioned clarifications into the commentary to the principles.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

/Original: Russian/

/15 September 1980/

1. The Byelorussian SSR considers that the subject of medical ethics and the principles thereof cover a wide range of ethical problems, including questions of the relationships between medical personnel and patients: experiments on human beings; the place and role of medical personnel in the campaign for environmental protection; the attitudes of medical personnel to torture and other cruel, inhuman or degrading treatment or punishment, etc.

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2. The legislation of the Byelorussian SSR totally excludes the possibility of the subjection of any person whatsoever to torture and other cruel, inhuman or degrading treatment or punishment, and contains all the necessary legal guarantees in this respect. Article 56 of the Constitution of the Byelorussian SSR states that acts by officials that contravene the law or exceed their powers and infringe the rights of citizens may be appealed against in a court in the manner prescribed by law.

3. With regard to the specific principles of the draft Code, the following comments and proposals may be made:

Principle I

4. This principle should be formulated in such a way as to include the requirement that medical personnel in the institutions concerned must treat prisoners or detainees as having the same rights to the protection of health and the treatment of disease as free citizens.

Principle II

5. The wording of this principle should be brought into line with that of article 7 of the 1975 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which regards as offences "all acts of torture" and "acts which constitute participation in, complicity in, incitement to or an attempt to commit torture".

Principle III

6. The provisions of this principle should apply not only to physicians but to all medical personnel. The definition of a contravention of medical ethics contained in this principle should be accepted as such not only "outside the prison environment" but also in correctional institutions.

7. /Proposal applies to Russian text only/.

Principle IV

8. The following wording is proposed for this principle: "... it is a contravention of medical ethics for a physician to certify prisoners or detainees as fit to undergo torture or other measures of coercion whose use is contrary to the provisions of the 1975 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment."

Principle V

9. In this principle the term "medical criteria" should be made more precise by inserting after it the qualifying phrase "which present no hazard to the health of prisoners or detainees". /Rest of paragraph applies to Russian text only/

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Principle VI

10. The following wording is suggested for this principle: "Infringement of the foregoing principles by medical personnel is unacceptable in any circumstances, including an emergency. Medical personnel must not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading treatment and must actively oppose their use in any circumstances. The State must take measures to oppose any attempt to subject medical personnel and members of their families to threats or reprisals resulting from a refusal by medical personnel to condone the use of torture or other forms of cruel, inhuman or degrading treatment or punishment."

11. The draft Code should also contain a provision prohibiting medical personnel from conducting medical and biological experiments on prisoners and detainees.

ITALY

/Original: French/

/25 August 1980/

1. The principles set forth in the draft Code of Medical Ethics prepared by the World Health Organization (WHO) are, in the opinion of the Italian Government, acceptable as regards their content and drafting, with the exception of principle IV the text of which reads as follows:

"It follows that it is a contravention of medical ethics for physicians to apply their knowledge and skills in order to assist in methods of interrogation or to certify prisoners or detainees as fit for any form of punishment that may adversely affect physical or mental health."

2. It is not clear whether the last phrase - "that may adversely affect physical or mental health" - refers only to the certification of prisoners or detainees 'as fit for any form of punishment', or whether it applies also to "methods of interrogation". If the phrase refers to "methods of interrogation" as well as to "any form of punishment", the prohibition of assistance by physicians in methods of interrogation would be limited to cases in which the use of such methods might adversely affect the physical or mental health of the prisoner.

3. If that were so, certain methods of interrogation which in the opinion of the Italian Government constitute a clear and unquestionable violation of human rights would be excluded from the prohibition. One example would be the extortion of statements by administering pharmacological substances such as pentothal which do not cause any physical or mental damage. If on the other hand the phrase relates only to the ban on certifying prisoners or detainees as fit for any form of punishment, the objections would be all the stronger, since this would imply an unacceptable tolerance of collaboration in methods of interrogation which may cause physical or mental damage.

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4. The Italian Government therefore considers that principle IV should be re-examined and drafted in a more satisfactory manner.

NETHERLANDS

/Original: English/

/24 September 1980/

1. We highly appreciate the work undertaken by the World Health Organization and the Council for International Organizations of Medical Sciences in response to the invitation by the United Nations General Assembly to draft an outline of the principles of medical ethics which may be relevant to the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment. We consider the document submitted by CIOMS to WHO a valuable basis for discussion. We strongly hope that, starting from that document and taking into account the comments received from Governments and organizations, a final version can be prepared in the near future which may be accepted by the General Assembly.
2. A first question to be raised concerns the relationship between the proposed Principles of Medical Ethics, on the one hand, and the Declaration of Tokyo, on the other hand. According to the first paragraph of part I, the Declaration should be "supplemented" by the principles. Clearly, this cannot be understood in a literal sense, since the principles cover largely the same ground as the Declaration. At the same time, we assume that the principles are not meant to replace the Declaration, which should retain its important value as an expression of the medical profession itself about the norms to be observed by doctors concerning torture and other cruel, inhuman or degrading treatment or punishment in relation to detention and imprisonment.
3. The principles, which deal with the same area of problems in a different formulation, would derive their special character from being endorsed by Governments, presumably in the form of a resolution of the General Assembly. While the principles address themselves to physicians and other health personnel who should observe them, the endorsement of the principles by Governments would imply a commitment of Governments to respect their observance. This means for instance that Governments should never compel physicians or other health personnel to act in contravention of the principles. This might be spelled out explicitly in the relevant General Assembly resolution.
4. We fully agree with principle I, on the understanding that this principle does not imply that prisoners and detainees, while having the same rights to the protection of health and treatment of disease as free citizens, would also have a freedom of choice of physicians to the same extent as free citizens may have.
5. As regards principle II, we think it correct that for the definition of torture, the principle should refer to the 1975 Declaration on Torture of the General Assembly.

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6. Questions might arise as to the scope of the concept of "passive participation" mentioned in principle II. At any rate it should be made clear that any relationship referred to in the principles III, IV and V would constitute participation (active or passive) in the sense of principle II.

7. We assume that principles III, IV and V refer solely to situations outside the field of torture. We understand principles IV and V as specifications or examples of the general statement contained in principle III. This implies that it would be a gross contravention of medical ethics under principle II if physicians would apply their knowledge and skills in order to assist in methods of interrogation that would constitute torture, or to certify prisoners or detainees as fit for any form of punishment that would constitute torture, or to participate in any procedure for restraining prisoners or detainees that would constitute torture.

8. We fully agree with the first sentence of principle VI, which would seem to apply both to torture and to the other situations dealt with in principles III, IV and V.

9. The second sentence seems to apply only to situations outside the field of torture. We appreciate the intention underlying this sentence but nevertheless recommend its deletion. In our opinion there is a serious risk that physicians, when placed under duress to lend their assistance to some kind of cruel, inhuman or degrading treatment or punishment of prisoners or detainees, might too easily find an excuse for yielding to such pressure in the thought that by doing so they would be in a position to minimize obnoxious effects. Moreover, this sentence may spread doubts with respect to the validity of the principles underlying article 16 of the First Additional Protocol of 1977 to the Geneva Red Cross Conventions and article 10 of the Second Additional Protocol thereto.

10. On the other hand, as already indicated in our comments in paragraphs 2 and 3 above, it would seem advisable to include, in the text of the resolution by which the General Assembly would eventually endorse the Principles of Medical Ethics, a separate phrase stating that Governments should never compel physicians or other health personnel to act in contravention of these principles, in the same vein as the above-mentioned articles of the two Additional Protocols of 1977.

11. With regard to the "Explanation of proposed principles", we should like to make the following observations.

12. An important question is whether it is intended to include explanations in the text of the document on Principles of Medical Ethics to be endorsed by the General Assembly, as has been the case, for instance, in the Code of Conduct for Law Enforcement Officials adopted by the General Assembly in its resolution 34/169. In that case, very careful attention should, of course, be given to the drafting of these explanations.

13. Such explanations might cover some of the questions raised in the above comments, for instance with regard to the scope of principles III, IV and V.

14. We can generally agree with paragraph 1 of the "Explanation". As we understand this explanatory paragraph it implies that, in case persons would be deprived of their liberty by confining them in hospitals or mental asylums for other than strictly medical reasons, they would be "detainees" in the sense of the principles.
15. As for paragraph 2 of the "Explanation", we have no problem with the first sentence and the last two sentences. However, we have misgivings about the remainder of the paragraph, in particular its second sentence (referring, inter alia, to "political contexts"), which in our opinion could give rise to confusion and undermine the firm guidance that the principles are meant to provide.
16. We have misgivings of a similar nature with regard to paragraph 5 of the "Explanation" and would strongly recommend not to include such a passage in the final document.
17. With regard to paragraph 6 of the "Explanation", we cannot subscribe to the present wording of the first sentence. At the least the word "guidance" should be replaced by "sufficient guidance". As for the second sentence, we think that the words "The six principles proposed above" should read "The principles III, IV and V above", since principle I is of a general character, principle II refers exclusively to torture, and principle VI contains, on the one hand, a general statement and, on the other hand, a statement which we prefer to see deleted.

NORWAY

/Original: English/

/22 August 1980/

1. Norway basically is in agreement with the "Draft Code of Medical Ethics", adopted by the General Assembly on 17 December 1979. Two specific reservations must, however, be made.
2. As regards principle I, Norwegian law has explicit provisions to the effect that prisoners and detainees have the same right to the protection of health and the treatment of disease as free citizens. The prisoners or detainees cannot, however, demand to be examined by a medical doctor of their own choice, but are obliged to be examined by a medical doctor provided by the authorities.
3. As regards principle III, it should be noted that medical doctors employed by the Norwegian prison authorities are obliged to carry out tasks which, in a sense, may not be regarded as having as its principal purpose to improve the health of the prisoners or detainees, i.e., to examine whether prisoners or detainees have bodily hidden narcotics or drugs. Such examinations can, according to Norwegian law, only be undertaken by medical personnel, and the possibility to carry out examinations of this kind is regarded as necessary to prevent the illegal entry of narcotics into penitentiaries and to maintain law and order in such institutions. To carry out such examinations without assistance of medical personnel will, in the judgement of the Norwegian authorities, be a step backwards, and principle III must not be interpreted in such a way that it may hamper health personnel to continue to carry out such functions.

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RWANDA

/Original: French/
/1 August 1980/

1. The Government of Rwanda has no special comments to make on the draft Code of Medical Ethics submitted for its attention in accordance with General Assembly resolution 34/168.
2. The Government of Rwanda considers that the various clauses of the draft in no way contravene the rights of the patient in his relations with his physician and fully conform to the requirements of medical ethics.

SWEDEN

/Original: English/
/8 September 1980/

1. There seems to be a certain inconsistency between the heading and the actual contents of the principles. According to the heading, the principles apply to "health personnel", whereas the text only deals with "physicians".
2. Moreover, the heading refers to torture as well as to other cruel, inhuman or degrading treatment or punishment. Principle II prohibits the participation of physicians in torture, but there is no corresponding prohibition of their participation in other cruel, inhuman or degrading treatment or punishment. Indirectly, however, such a prohibition can be said to follow from principle III.
3. Principle II refers to torture within the meaning of the 1975 Declaration on Torture. According to the definition contained in that Declaration, torture shall not include pain or suffering arising from lawful sanctions. This must not be interpreted so as to make it permissible for physicians to participate in the execution of lawful sanctions of a cruel kind. Even if such participation would not be a direct violation of principle II, it would, however, almost certainly be incompatible with principle III.
4. Principle III, which is a very important part of the draft Code, gives rise to one problem. As it requires the relationship between physicians and prisoners or detainees to be aimed exclusively at protecting or improving the health of the prisoner or the detainee, it would make it doubtful whether operations such as abortions or sterilizations could be carried out on prisoners or detainees at their request. At the same time, it appears from paragraph 2 of the "Explanation of proposed principles" that the intention has not been to take a stand on practices of this kind, which may be accepted in some societies and rejected in others. This apparent contradiction between principle III and paragraph 2 of the "Explanation" ought to be removed.

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UNITED STATES OF AMERICA

/Original: English/

/15 September 1980/

1. The Government of the United States has fully supported the efforts of the United Nations to improve the treatment of prisoners throughout the world beginning with the Standard Minimum Rules for the Treatment of Prisoners, adopted in 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, approved by the Economic and Social Council and recommended for implementation by Member States in General Assembly resolution 2858 (XXVI). During the thirty-fifth session of the General Assembly, the Government of the United States looks forward to the formulation of a final body of principles for the protection of all persons under any form of detention or imprisonment.

2. The Government of the United States particularly welcomes the efforts of the United Nations to deal with the problem of torture and has consistently supported efforts to complete the drafting of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is now under consideration before the Commission on Human Rights. With regard to the torture or other mistreatment of persons subjected to any form of detention or imprisonment, the Government of the United States fully endorses resolution 34/168 of 17 December 1979 calling for consideration of the draft Code of Medical Ethics during the thirty-fifth session of the General Assembly.

3. The Government of the United States has welcomed the further efforts of the United Nations to address the problems of involvement of medical personnel in torture. During the sixty-third session of the World Health Organization's Executive Board, the United States representative fully supported the principles of medical ethics as proposed by the Council for International Organizations of Medical Sciences (CIOMS) at the request of WHO. The principles were designed to supplement the World Medical Assembly's Declaration of Tokyo (1965) and the Standard Minimum Rules for the Treatment of Prisoners, and were endorsed by the WHO Executive Board without change.

4. The Government of the United States recognizes that the proposed principles of medical ethics are based, in large part, on the Declaration of Tokyo and that, when endorsed by the United Nations General Assembly, they can be regarded as representing an international consensus relating to the involvement of medical personnel in torture.

5. With regard to the scope of the proposed principles of medical ethics, the Government of the United States agrees with the suggestion in paragraph 1 of the "Explanation of Proposed Principles" (A/34/273, annex, p. 5) that they be made applicable also to health personnel other than physicians having clinical responsibility for prisoners or detainees. In many nations throughout the world, significant health care responsibilities are increasingly being entrusted to physicians' assistants, paramedics, nurse practitioners and other health personnel

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not licensed as physicians. If the proposed principles of medical ethics are to be fully meaningful, they must apply to such personnel. This can be accomplished by substituting the phrase "physicians or any other health personnel" wherever the word "physician" appears in the proposed principles. Use of this phrase will also make the language of the proposed principles more consistent with the title of the principles, which refers to "the role of health personnel".

6. The Government of the United States approves the Principles of Medical Ethics on the understanding that they are to be recommended by the General Assembly as guidelines for Governments, for the purpose of enabling them to deal more effectively with the involvement of physicians and other health personnel having clinical responsibility for prisoners or detainees in activities constituting torture.

II. REPLIES RECEIVED FROM SPECIALIZED AGENCIES

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

/Original: French/

/25 August 1980/

1. UNESCO certainly subscribes to the "Principles of medical ethics relevant to the role of health personnel in the protection of persons against torture and other cruel, inhuman or degrading treatment or punishment" drafted by the Council for International Organizations of Medical Sciences (CIOMS). These principles provide a valuable supplement to the Declaration of Tokyo adopted by the World Health Assembly at Tokyo in October 1975, and also to the United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was likewise adopted in 1975.

2. UNESCO considers that the draft Code in question bears comparison with the best instruments of this kind.

3. However, it would be highly desirable to supplement the six principles of the draft Code with specific provisions forbidding physicians and health personnel from participating in any way in the confinement of any individual for reasons other than strictly medical reasons.

4. Furthermore, wherever necessary, the words "or other health personnel" should be added after the word "physician" since the sponsors of these principles of medical ethics themselves say that, although the principles apply mainly to medical personnel, they "might also provide guidance for other health personnel having clinical responsibility for prisoners and detainees".