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TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT

Draft Code of Medical Ethics

Report of the Secretary-General

Addendum

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* A/36/50.

I. REPLIES RECEIVED FROM GOVERNMENTS

BAHRAIN

/Original: English/

/12 March 1981/

The Government of Bahrain has no comments to make at present on the draft Code of Medical Ethics.

CUBA

/Original: Spanish/

/13 March 1981/

1. After studying the document in question, the Government of Cuba notes that none of the proposed principles condemns torture and other cruel, inhuman or degrading treatment or punishment. In fact, this should be the first of all the principles of medical ethics and consequently Cuba proposes that a first paragraph should be added as follows:

"By its very nature and on humanitarian grounds, medical ethics is opposed to any form of torture, or cruel, inhuman or degrading treatment or punishment."

2. Principle II states:

"It is a gross contravention of medical ethics for physicians to participate actively or passively in any form of torture as defined in article 1 of the Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment."

3. This principle would be more fully expressed if the words "or cruel, inhuman or degrading treatment or punishment" were added after the word "torture" so that the paragraph would read as follows:

"It is a gross contravention of medical ethics for physicians to participate actively or passively in any form of torture or cruel, inhuman or degrading treatment or punishment as defined ..."

4. Principle VI states:

"There may be no derogation from the foregoing principles in case of public emergency or for whatever reason. However, in situations in which physicians may be compelled under duress to contravene the letter of the foregoing principles their actions should be determined by the will to protect

/...

the prisoner or detainee and to minimize noxious effects to health of any cruel, inhuman or degrading treatment or punishment that they may be powerless to prevent."

This draft principle is confused and complicated. It might be interpreted as implying that physicians participating in tortures under duress and because of supposedly humanitarian considerations are not subject to moral condemnation. Obviously, a principle thus conceived would have very little moral force.

MEXICO

/Original: Spanish/
/18 March 1981/

The competent Mexican authorities consider that the draft is interesting and reasonable and the Government of Mexico has no comments to make on the subject and on the proposals themselves.

SPAIN

/Original: Spanish/
/27 March 1981/

1. Taking into account the background information to which the documentation refers, the Government of Spain has no comment to make on the draft, with which Spanish legislation fully conforms.
2. However, we would like to stress that article 15 of the Spanish Constitution states that no one may be subjected to torture or inhuman or degrading punishment or treatment.
3. Article 204 bis of the Penal Code, supplemented by Law No. 31/1978 of 17 July, defines the crime of torture in sufficiently broad terms to cover those cases where, during the investigation of the offence, interrogated persons might be subjected to procedures or conditions which intimidate them or undermine their willpower (psychological torture).
4. Similarly, attention should be drawn to Organic Law No. 1/1979 concerning the general question of imprisonment, especially article 45, which restricts the use of coercive measures to the exceptions established therein, in conformity with the Standard Minimum Rules for the Treatment of Prisoners and the International Covenant on Civil and Political Rights.
5. The question as to whether principle V of the Tokyo Declaration is acceptable or not is another matter. Although the problem is complex, it must be admitted that Spain's constitutional principles and article 489 bis concerning failure to perform the duty of assistance might be contrary to the principle in question in the sense that the conscious and unhindered exercise of freedom is preferable to the right to life.

II. REPLIES RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

AMNESTY INTERNATIONAL

Original: English

1 April 1981

6. Amnesty International considers the World Health Organization draft important because (a) it is intended to confirm the authority of the World Medical Association's Declaration of Tokyo; (b) it assists in guiding doctors in their treatment of prisoners where the latter are subject to cruel, inhuman or degrading treatment or punishment not falling within the definition of torture contained in article 1 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

7. While Amnesty International considers that principles III and IV of the World Health Organization draft together prohibit the infliction by physicians of any form of punishment that may adversely affect physical or mental health, Amnesty International suggests that this could be made explicit by the insertions of the words "participate in inflicting or" between the words "to" and "certify" in principle IV. Principle IV would thus read 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 participate in inflicting or certify prisoners or detainees as fit for any form of punishment that may adversely affect physical or mental health."

8. Amnesty International considers that the "Explanation of proposed principles" in Part I of the World Health Organization draft should be adopted as an integral part of the proposed principles. This applies particularly to paragraph 6 of the explanation.

9. Amnesty International considers that any code of professional ethical principles should contain measures for monitoring compliance and for protecting those who are adversely treated for their compliance with the principles.

INTERNATIONAL SOCIETY AND FEDERATION OF CARDIOLOGY

Original: English

25 March 1981

The International Society and Federation of Cardiology has nothing to add to the draft Code of Medical Ethics.
