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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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BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

[Original: Russian]

[7 September 1982]

1. Principle 1

This principle defines the rights of prisoners and detainees and does not actually deal with questions of medical ethics. Therefore, this principle needs to be redrafted accordingly.

2. Principle 2

This principle should be worded in such a way as to indicate clearly that it is not only a contravention of medical ethics but also a crime for health personnel to engage in any form of torture or other cruel treatment of prisoners and detainees.

3. Principle 3

This principle should contain a more precise formulation of the concept that the exclusive purpose of any relationship of health personnel with prisoners and detainees is the protection or improvement of the health of the prisoner or detainee.

4. Principle 4

The following wording is suggested for subparagraph (a): "To apply their knowledge and skills in order to assist in the interrogation of prisoners or detainees by adversely affecting their physical or mental condition;". It is proposed that the words "sostoyanie zdorovya" should be replaced by the word "zdorovye" (subparagraph (b) of the Russian text).

5. Principle 5

In the Russian text of this principle, the words "protsedura usmireniya" should be replaced by the words "protsedura smiritelnogo kharaktera". Apart from the above comments, it is our opinion that the revised draft principles should also include provisions to the effect that health personnel, in particular physicians,

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SWITZERLAND

[Original: French]

[16 August 1982]

1. The Swiss authorities wish to note that they attach great importance to the fate of all persons deprived of their liberty. Indeed, whatever the circumstances in which an individual is deprived of liberty and whatever the reasons for his arrest, he is still a human being whose fundamental rights must be respected: he must be protected from arbitrary action on the part of the authorities in whose power he is held and, from the time of his arrest until that of his release, he must be treated humanely and, in particular, be judged fairly by an independent and impartial court, be held in conditions which do not endanger his physical health and mental stability and be allowed to maintain regular contacts with the outside world, and more particularly with his family and close associates.
2. In accordance with this attitude of principle, the Swiss authorities support the work of the United Nations relating to the prohibition of torture, protection against summary justice, arbitrary acts and maltreatment and also the conditions of detention of persons deprived of their liberty.
3. In the areas just mentioned, the Swiss authorities believe that certain international instruments such as the United Nations Standard Minimum Rules for the Treatment of Prisoners of 1955 or the United Nations Code of Conduct for Law Enforcement Officials of 1979, although they have no binding force, are of an importance which should not be underestimated. The United Nations minimum rules constitute a basis which can be referred to in action taken on behalf of prisoners, and in particular political prisoners.
4. For this reason, and in the hope that a frame of reference can be established on the subject, Switzerland is striving for these instruments to be observed by the community of States as a whole and applied uniformly to all prisoners.
5. In the view of the Swiss authorities, the draft Code of Medical Ethics drawn up in January 1979 by the Executive Board of WHO is an important aspect of the protection of persons deprived of their liberty since it contains principles of medical ethics applicable to health personnel, including physicians, which should help to provide better protection for prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment.
6. In this respect, the equality of rights in respect of the protection of health and the treatment of disease established for prisoners and detainees, on the one hand, and persons who are not deprived of their liberty, on the other, (principle 1) is a fundamental principle, as is the clause of absolute non-derogation (principle 6). Similarly, the definition of contravention - and of gross contravention - of medical ethics (principles 2-5) seems adequate; however, the term "restraining" prisoners or detainees (principle 5) should be clarified. This question is of some importance since "restraining" can be considered compatible with medical ethics under certain conditions defined in principle 5.

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UNION OF SOVIET SOCIALIST REPUBLICS

[Original: Russian]

[27 August 1982]

1. Further to the comments made in 1980 on the draft Code of Medical Ethics, the following remarks and suggestions relate to the revised draft.

2. Principle 1

This principle needs to be reformulated since in its present form it defines the rights of prisoners and detainees and bears virtually no relation to the problems of medical ethics.

3. Principle 2

In this principle it should be stressed that health personnel who engage in any form of torture or other cruel treatment of prisoners or detainees are not only contravening medical ethics but also committing a crime. As a matter of drafting, it would be advisable to replace the phrase "clinical responsibility for" by the more appropriate term "responsibility for the health of".

In the Russian text of this principle and of principles 3, 4, and 5, a change is needed in the wording of the phrase "in particular physicians" so as to indicate more clearly the special role of physicians as compared with other health workers in ensuring compliance with the principles of medical ethics. In the footnote to this principle it should be made clear that the concept of "torture" should be defined in accordance with article 1 of the 1975 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A correction should also be made in the Russian translation of the definition of the concept of "torture" so as to bring it into line with article 1 of the Declaration.

4. Principle 3

The proposed formulation makes it difficult to understand the principle correctly; it should be redrafted so as to clarify the idea that the purpose of the relationship of health personnel with prisoners and detainees is solely to protect them or to improve their health.

5. Principle 4

Subparagraph (a) of this principle should be worded as follows: "To apply their knowledge and skills in order to assist in the interrogation of prisoners or detainees by adversely affecting their physical or mental condition;". In the Russian text of subparagraph (b) of the principle, the words "sostoyanie zdorovya" should be replaced by the word "zdorovye".

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6. Principle 5

In the Russian text of this principle, the words "protsedura usmireniya" should be replaced by the words "protsedura smiritelnogo kharaktera".

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[Original: English]

[24 September 1982]

1. The United Kingdom would like to offer the following comments on the draft Principles of Medical Ethics, attached to resolution 36/61 subject, however, to the considerations expressed by the United Kingdom in paragraphs 1 and 2 of its comments of 8 April 1981 contained in document A/36/140/Add.2.

Principle I

2. The United Kingdom continues to endorse this draft Principle, subject to the understanding that it does not imply that prisoners are to be regarded as having unrestricted freedom to be treated by a medical attendant of their own choice.

Principle II

3. To avoid appearing to derogate from the comprehensive first guideline of the Declaration of Tokyo the United Kingdom suggests that the words "having clinical responsibility for prisoners or detainees" should be deleted from this draft Principle.

Principle III

4. The United Kingdom maintains the view that, as drafted, this Principle appears to exclude the possibility of a legitimate non-medical relationship. It should make clear that a legitimate and proper relationship, which would be recognized as such if it were to occur outside the prison environment, is not to be regarded as excluded.

Principle IV

5. The United Kingdom's views on this remain as previously stated, namely that this draft Principle exemplifies the difficulty inherent in this draft Code that, in seeking to define medical ethics in the context of torture, it has embraced wider questions concerning the general relationship between medical practitioners and persons deprived of their liberty. The assertion that physicians should not certify prisoners or detainees as fit for any form of punishment that may adversely affect physical or mental health takes this draft Principle outside the field of torture and raises questions about its compatibility with the United Nations Standard Minimum Rules for the Treatment of Prisoners.

6. In addition, while the United Kingdom considers that draft Principles III and IV together aim to prohibit the infliction by physicians of any form of punishment that may adversely affect physical or mental health, it agrees with Amnesty International that this could be made explicit along the lines of their suggested amendment contained in paragraph 7 of A/36/140/Add.1.

Principle V

7. The United Kingdom supports this draft Principle.

Principle VI

8. The United Kingdom welcomes this text as redrafted.

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