

Codes of Professional Ethics

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Amnesty International
for lawyers, health workers,
law enforcement officials and
human rights activists
everywhere

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I. Introduction: *Human Rights and the Professions*

The abuse of human rights has emerged as a systematic practice in countries of widely differing ideologies throughout the world. People are being imprisoned for the non-violent expression of their beliefs. Many are tortured. Others face execution. Often these abuses can be identified as constituting a process involving not only state agents and their victims but others in professional and public life. Torture, for example, is often furthered and supported through the complicity of doctors, lawyers, judges and other professional groups. Doctors are frequently called in not just to minister to victims but to revive them for further torture. The legal system abets it by rejecting pleas of torture as inadmissible and convicting victims on the basis of confessions extracted under torture.

Amnesty International is committed to the total eradication of torture. This is part of the organization's mandate which also includes working for the release of prisoners of conscience, for fair trials for political prisoners and an end to the death penalty.

As part of its worldwide campaign Amnesty International calls upon all professional individuals and organizations to subscribe to codes of conduct that would help prevent the perversion of their skills in the service of torture and other ill-treatment of prisoners. With the help of sympathetic governments and governmental and non-governmental organizations, Amnesty International has made suggestions to the United Nations and other bodies about the principles such codes should contain. There has now been considerable progress in elaborating the principles for the codes and a number of significant decisions have been taken by intergovernmental bodies and by international professional associations to establish ethical codes with universal effect.

Acting on a recommendation from the Fifth UN Congress on the Prevention of Crime and the Treatment of Offenders (Geneva, Switzerland, September 1975) the UN General Assembly requested in December 1975 that the UN Committee on Crime Prevention and Control elaborate a code of conduct for law enforcement officials. The code was adopted by the General Assembly on 17 December 1979 (see item IV). On the same subject the

Parliamentary Assembly of the Council of Europe at its 31st Ordinary Session adopted the Declaration on the Police on 8 May 1979 (see item V).

In August 1975 the International Council of Nurses adopted a resolution outlining the responsibility of nurses in the prevention of torture (see item VIII). In October 1975 the World Medical Association adopted a set of guidelines for doctors (see item VI). The same body adopted a resolution on Physician Participation in Capital Punishment at its 34th World Medical Assembly on 29 September 1981 (see item VII).

In 1976 the World Health Organization (WHO) invited the Council for International Organizations of Medical Sciences and the World Medical Association to elaborate a draft code of medical ethics for eventual adoption by the UN General Assembly. Principles of Medical Ethics, endorsed by WHO, were adopted by the UN General Assembly on 18 December 1982 (see item IX).

In conjunction with the International Commission of Jurists Amnesty International has drafted a code relevant to lawyers and is seeking to stimulate discussion of this code in international legal circles (see item X). It has already been adopted by the Sri Lanka Bar Association.

The two essays that follow were written by professional people with a history of commitment to Amnesty International's program against torture. Dr Herman van Geuns, Dutch physician and former member of the International Executive Committee of Amnesty International, chaired the medical commission at the Amnesty International Conference for the Abolition of Torture (Paris, December 1973), which initially formulated Amnesty International's guidelines for medical personnel in the prevention of torture. Professor Alfred Heijder, professor of criminal law at Amsterdam University and former member of the International Executive Committee of Amnesty International, delivered his paper on the subject of professional codes against torture to a seminar convened by Amnesty International at the September 1975 Fifth UN Congress on the Prevention of Crime and the Treatment of Offenders in Geneva.

These essays were first published by Amnesty International in 1976 and have since been widely circulated in the legal, medical and police professions. The principles they enunciate remain valid. The challenge now is to see these principles and the internationally established codes of conduct put into practice. That, in Amnesty International's experience, would constitute a major step forward in the fight for human rights.

II. *Codes of Professional Ethics Against Torture*

by Professor Alfred Heijder

We are privileged and burdened to live in a world in which technological developments and innovations increase rapidly and amazingly, leaving our social ingenuity and moral consciousness far behind.

This leads to the civilized barbarity which we find in many parts of the world—with bureaucratic processing of individuals in all-powerful social and economic structures—and to the institutionalized violence of contemporary times. This tendency is reinforced by the fact that human beings have a great capacity for excess, especially when in power.

It is an important issue—for the survival of some sense of humanity it is probably even vital—for research by philosophers and the behavioural sciences in order to understand how people come to use cruel violence on defenceless victims, apparently without moral restraint. Until now the dynamics of this have been poorly understood. I refer here specifically to the increasing use of torture as an accepted or at least tolerated means of making detained persons confess or give information, or of discouraging political opponents by a general climate of terror.

It is all too easy to label torturers as sadists. Although occasionally there may be some sadists among them, it is more likely that the clinical traits of sadism are manifested in such cruel behaviour rather than being the motivation itself for the behaviour.

It is all too easy to locate the evil in some psychological traits of the perpetrators, especially when they do not belong to our own group, party or nationality. Bad acts are easily identified with bad persons. Furthermore, since torture seems to be a nearly universal phenomenon, occurring in all places and countries at certain times, we cannot blame other political or economic systems *per se*—unless of course we pretend to judge world history and propose that torture in one political system reveals the very nature of that system, while declaring that in another system torture is only an ephemeral, historically necessary phase on the arduous road to salvation.

Rather than repeat the many surveys and analyses which already have

been made. I invite your attention to a strategy for the prevention of torture. On 2 November 1973 the General Assembly of the United Nations unanimously adopted a resolution (3059, XXVIII) against torture and decided to examine, as an item at a future session, the question of torture and other cruel, inhuman or degrading treatment or punishment in relation to detention and imprisonment.

On 6 November 1974 a stronger resolution (3218, XXIX) was adopted, again unanimously. In this resolution we find some practical steps to be taken in the fight against torture. First of all, member states were requested to furnish information to the Secretary General relating to the legislative, administrative and judicial measures, including remedies and sanctions, aimed at safeguarding persons within their jurisdiction from being subjected to torture and other cruel, inhuman or degrading treatment or punishment. The Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders was requested to give urgent attention to the question of the development of an international code of ethics for police and related law enforcement agencies.

The World Health Organization was invited—taking into account the various declarations on medical ethics adopted by the World Medical Association—to draft an outline of the principles of medical ethics which would be relevant to the protection of persons subjected to any form of detention or imprisonment against torture.

The development of codes of professional conduct as a strategy to prevent torture had already been strongly advocated in the recommendations of the Conference for the Abolition of Torture, convened by Amnesty International in Paris in December 1973. One of the recommendations this conference made was that codes of ethics and conduct be formulated for all those whose professional skills might be perverted in the service of torture: doctors, lawyers, prison officers, military personnel and police.

On the international level the development of codes of professional conduct for police, doctors and lawyers is required in the struggle for the abolition of torture. It is a well known fact that a tight legal definition of torture is extremely difficult. An important element in any definition of torture pertains to the *systematic* way in which it is applied: torture as part of an administrative procedure. This and other preconditions make the use of torture the almost exclusive province of the state.

This is a vital point, for it denotes that only the recognition of the unique value of each individual human being as such, irrespective of race, creed, political allegiance or nationality and above considerations of national security, power politics and ideology, can lead to the total and unconditional abolition of torture. If a state uses the individual as a means to get information or to terrorize opponents into submission, it makes an object of him. Human beings, however, resist this process and if their resistance to it is broken, humanity itself is broken.

To promote human rights is to fortify this resistance of the individual against the overwhelming powers of the state. Respect for humanity is the basic motivation of the emerging new international ethos, generated mainly by the holocaust of the Second World War.

This is the mournful and hopeful context in which we have to consider the question of codes of professional ethics.

Functions of codes of professional conduct

The regulation of professional behaviour has many sources. Most of these sources can be located in four different fields.

First, all professional bodies, and thus each individual member of the professions, work in the context of a given *political system*. This simple observation has disturbing implications in the case of professionals working in or connected with the service of the state. The values, goals and accepted means of the general political system are an important regulating force for professional behaviour. In an official document of the United Nations (A/Conf. 56/5, page 36) it is said that corruption within the police depends largely upon the influence, guidance and interest of the total society in the police. Such a statement also holds true for the attitude towards torture. The connivance of other significant persons in the political system is of crucial importance.

Second, within such an overall political system, no one works alone. The work is mostly done in *organizations and functional units*. Every professional has colleagues who exert influence by their opinion on his or her attitudes, behaviour and performance. The influence of social interaction in the professional group is pervasive and omnipresent.

Third, in general, and given certain conditions of information and publicity, *public opinion* is a regulating force too, either in a direct way or via the political system or the opinions of colleagues. In a way and to a certain degree, public opinion sets the boundaries for professional conduct. Hence the strenuous attempts to modify or manipulate public opinion.

Fourth, there are of course the *individual values*, which the professional expresses to a certain degree in his professional behaviour, too.

Each of these four fields—the political system, the professional group, public and individual opinion—can have its own value orientation and its different sets of rules of conduct. The question whether these four fields constitute a hierarchy of values is relevant only in case of conflicting values.

There are two categories of conflicts. First, there may be different values *in one field*, which under certain conditions may conflict. Thus we find in the general political system conflicts between the *raison d'Etat* and morality or between the concept of national sovereignty and individual human rights. Second, conflicts may arise between values not in one field alone but in different fields. Thus the general political system will find the preservation of national security an overriding consideration, while professionals such as doctors or lawyers defend human lives and human rights irrespective of the issue of security. In many situations the doctor, lawyer or policeman has to choose among competing values in the face of a variety of situations.

It is obvious that the professionals who are in the service of the state are most exposed to conflicting demands of allegiance. For their skills and expert knowledge are most easily perverted against their original intentions. In cases where such conflicts become manifest and a choice must be made,

the individual will look for concrete orientation points to guide his behaviour.

When the individual is part of a professional group, he will be aware of what his colleagues do in the same situation. Since not only general recognition but a prolonged specialized training is a precondition for an occupation being recognized as a profession, he will have undergone during that training a process of anticipatory socialization. He is taught not only the skills of the job but also is orientated to the professional values and norms. The generative traits of a profession call for a measure of professional autonomy against the pressures of the general political system, public opinion and sometimes even one's own value orientation. Codes of professional conduct can be seen as a formalization of the more or less diffuse colleague opinion in the professional field. Sometimes the existence of a full-fledged code is even mentioned as one of the main traits of a profession. A code of professional conduct will help the individual to cope with the problems arising from the different demands of a situation. Its influence may even reach beyond that.

Preliminary to any self-determined act of behaviour there is always a stage of examination and deliberation which we may call the definition of the situation. In many instances there is rivalry between the spontaneous definition of the situation made by someone and the definitions which others provide. The prison doctor should not see an enemy of the state on hunger-strike, he should see a patient. The defence lawyer should see a client entitled to a fair trial, not a security risk to be eliminated by judicial means. One aspect of morality is that it provides a generally accepted definition of the situation, expressed in some socially visible form.

There are several defining agencies in society. In fact, the four fields we referred to as sources for rules can be seen as harbouring several defining agencies. Institutions and professional groups offer standardized definitions of the situation, implying that the standard reaction of the individual is not only the expected, reasonable one, but the safe one too. That is why it is so important for doctors, lawyers and law enforcement personnel that their codes of professional conduct should enlarge upon the implications of Article 5 of the Universal Declaration of Human Rights, which addresses itself to "all people and all nations, every individual and every organ of society".

But will a code be an effective force? From a sociological point of view we can say that the reaction to an induced force will vary, depending, among other things, on the person's relation to the inducing agent. Rules and pressure to conform, coming from a friend or colleague, may be accepted in such a way that it acts more like one's own force. A force induced by a stranger or an enemy may be resisted and compliance may arouse conflicts and tensions. Thus a code of professional ethics can be a strong force since it is an acceptable induced force. The acceptance of an induced force sets up additional personal forces in the same direction, while rejection does the same in the opposite direction.

Once a code is established, we can expect—since attitudes and group affiliation are closely connected—that it will play its part in the process of shaping professional attitudes. In this way a code of professional ethics, as

a model pattern of behaviour, exerts influence first of all on a conceptual level and only after some time and after some enforcement mechanisms are set in motion, on an operational level. So we can be modestly optimistic about the effectiveness of such codes.

From this general and not exhaustive survey we come to the criteria on which the merits of different proposals should be judged. There are, I suggest, three points on which to focus attention.

1. Is the code more than a declaration of good intentions? Does it formulate real and detailed norms of conduct?
2. Does the code provide for the mechanisms necessary for its implementation and enforcement?
3. Does the code provide for freedom of information about its norms, reports on deviance and efforts to enforce its rules?

A medical code against torture

Since the medical profession has a long history in which concepts of medical ethics were evolved, it does not seem too difficult to explore the old principles for their relevance to the modern situation. Medicine is in general meant to be practised in the service of humanity. The doctor is in duty bound to restore bodily and mental health without distinction as to persons. He is expected to have the utmost respect for human life and human dignity. In spite of this and in flagrant conflict with the tradition and self-image of the medical profession, there are disturbing reports that doctors are involved in torture.

This serious accusation is substantiated in many instances. During a workshop on human rights organized by Amnesty International in London in 1974, former Greek torture victims, in describing their own experiences and those of others, all agreed that some military and prison doctors had been involved in the practice of torture:

- by ensuring that torture could continue;
- by deliberately neglecting sick or injured prisoners; by covering up evidence of torture;
- and sometimes even by participating themselves.

Likewise, Portuguese participants and former victims of torture stressed that the system of torture in Portugal would have been impossible without the collaboration of doctors. Doctors ensured that torture could continue, reinforced the image of the security police and helped with the systematic, scientific study of various techniques of torture.¹ And for some years increasing attention has been drawn to the frightening infringement of individual liberty widely committed in the name of psychiatric care. Such facts are embarrassing, shameful and repugnant.

The guiding principle for a medical code against torture could be the following rule from the International Code of Medical Ethics:

Under no circumstances is a doctor permitted to do anything that could weaken the physical or mental resistance of a human being,

except for strictly therapeutic or prophylactic indications imposed in the interest of the patient.

It should be generally recognized that doctors, by virtue of their profession, have special duties to humanity, which transcend considerations of national interest and security. Therefore, they should never allow authorities to make use of their skills and research knowledge for the purpose of punishment or for the control of dissenters. Such were the conclusions, which are still valid, of a Scandinavian conference on the physical and mental consequences of imprisonment and torture, held in Oslo, Norway, in October 1973, under the auspices of Amnesty International.

The draft "Declaration of Tokyo"* of the World Medical Association states in paragraph 1:

The doctor shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offence of which the victim of such procedures is suspected, accused or guilty, and whatever the victim's beliefs or motives, and in all situations, including armed conflict and civil strife.

This is a straightforward and detailed statement, the adoption of which should be applauded. It meets the first of the minimum requirements for any code. But the Declaration of Tokyo fails to meet the other two criteria. It leaves out the question of the mechanisms necessary for its implementation and it does not mention the freedom of information. To meet these points and to avoid the tacit complicity of doctors, this draft should be amended with two of the proposals submitted to the UN Congress by Amnesty International, which read:

Those covered by the code have an affirmative obligation to make publicly known, or to inform proper national and international bodies of, any activities which inflict torture or other cruel, inhuman or degrading treatment upon anyone, or which grossly violate fundamental human rights.

Any organization or body, national or international, which adopts, proposes or promulgates the code, should maintain some mechanism for hearing appeals from those covered by the code, claiming that any of its provisions have been violated.

A police code against torture

It would seem superfluous to raise the question: "Why an international code of ethics for the police?" The police and other security forces are the most prone to find their profession and expertise perverted in the service of torture. This is so obvious that it is small wonder that international efforts to create such a code for the police started more than 10 years ago. In the report of the 1963 seminar on the role of the police in the protection of

*Since adopted by the 29th World Medical Assembly, Tokyo, 10 October 1975.

human rights, which was held under the auspices of the United Nations in Canberra, Australia, with participants from most countries of the Far East region, we read:

Those who participated in the discussion considered that it was certainly desirable to have rules of ethics for the police, and they mentioned that usually there was no distinct code of ethics promulgated for the police, but in each country the territorial laws, regulations, police guides and manuals set out what could be considered as rules of ethics to be followed by policemen.

It was suggested that since the fundamental functions and responsibilities of the police did not greatly differ from country to country, universal ethical standards based upon humanity and justice could be established for the police.

There is a growing awareness of the specific and vital role that the police perform in the protection of human rights. The various United Nations resolutions on the subject, the law enforcement code of ethics adopted in 1957 by the International Association of Chiefs of Police and the recent initiative by the International Federation of Senior Police Officers within the framework of the Council of Europe, to name but three current developments, indicate clearly that there exists a consensus within the world of the police itself as well as within the international community as a whole regarding the need for and the value of an international code of ethics for the police and related law enforcement agencies.

For a police code of ethics one of the most difficult points is the plea of superior order. In only one of the available drafts and statements is this unsavoury point laid bare.

In June 1975 a seminar on an international code of police ethics was convened by Amnesty International at the Peace Palace in The Hague, Holland. Participants were members of police forces, police authorities and of national and international police organizations from eight European countries. At the end of this meeting several conclusions were unanimously reached:

Aware of the grave problems regarding the enforcement of the international rules forbidding torture or any inhuman or degrading treatment, the participants supported the creation of an international code of police ethics. This code should in their view contain at least the following requirements and basic provisions.

These have been enumerated in what is now known as the "Declaration of The Hague". I draw attention especially to point five, which reads:

Police officers and all others covered by this code have the *right* to disobey or disregard any order, instruction or command, even if lawfully made within the context of national legislation, which is in clear and significant contradiction to basic and fundamental human rights, as described in the Universal Declaration of Human Rights. They have a *duty* to disobey or disregard any order, instruction or command summarily to execute, torture or otherwise to inflict

bodily harm upon a person under their custody. They also have the *duty*, where they have carried out orders, instructions or commands which they believe to be otherwise in clear and significant contradiction to basic and fundamental human rights—such as lengthy detention without effective judicial supervision—to protest against the issuance of such order, instruction or command.

To the best of my knowledge this is the strongest, the most audacious and the most subtle statement currently available. It is strong and audacious in its direct approach to the difficult problem with its many ramifications. It is subtle in its solution which mentioned *a right to disobey* and *a duty to protest* afterwards whenever fundamental human rights are infringed upon and *a duty to disobey* whenever torture is involved. The solution is in accordance with the principles of international law laid down in the charter and judgement of the Nuremberg Tribunal.

The corroborating provision is the principle of vicarious liability, laid down in point four, which reads:

There should be established a clear chain of command responsibility whereby superior officers, civilian or military, are personally liable for acts of commission or omission in connection with acts of torture and other ill-treatment.

In paragraph seven the point about information is touched on:

Those covered by the code have an obligation to inform the proper national and international bodies of those activities which are in direct contravention of the principles and provisions of this code of ethics and in gross violation of human rights, as described in the Universal Declaration of Human Rights. If necessary as a last resort, they should make such information publicly known.

Paragraph 10 covers the implementation point in the same way as in the Amnesty International proposal for a medical code.

Any draft of a police code which does not solve these uneasy points avoids the vital issue and runs the risk of being no more than a harmless declaration of good intentions.

A lawyers' code against torture

An obtrusive feature of torture is that it is nearly always perpetrated in direct violation of national and international legislation. Torture today is not merely the occasional lapse of legal restraints in a few isolated instances. The practice often remains uncontrolled because the victims have no means to assert their legal rights or are obstructed in asserting them. Here the legal profession clearly bears a special responsibility.

As is pointed out in the Amnesty International document "Lawyers against Torture", this special responsibility reaches many functions at many levels of the state. Legislators are responsible for securing adequate safeguards, such as an unequivocal prohibition of torture, an independent judiciary and the right to immediate and unrestricted access to a lawyer

upon detention. Members of the judiciary are responsible for the due process of law, including the obligation to examine allegations of torture made during the judicial procedure and to exercise proper control over detaining authorities. Defence lawyers are responsible for disclosing acts of torture that come to their knowledge. Academic lawyers and legal bodies are responsible for assuming a leading role in improving the legal system whenever necessary and safeguarding it from potential or real abuses.

When courageous lawyers speak out against torture of their clients, many of them are victimized and penalized. The list of lawyers in prison, compiled by Amnesty International, bears witness to that and is by no means exhaustive.

Draft principles and provisions for a code of ethics for lawyers have been jointly formulated by Amnesty International and the International Commission of Jurists. In them the duties of lawyers, working in different functions, with regard to the judicial means of preventing torture, are clearly outlined. It should be amended with provisions concerning its implementation and the freedom of information.

Although UN resolution 3218 makes specific reference only to police and medical ethics, it seems quite appropriate that Amnesty International calls upon national and international legal bodies to work towards the adoption of an international code of ethics for lawyers that would be relevant to torture. For no right is guaranteed where there is no one willing to tend it.

Epilogue

Although the establishment of codes of ethics for professionals is but one strategy in the struggle for the abolition of torture and although the immediate results can only be modest, it nevertheless seems to be a realistic and promising one. It is a feasible way to prevent doctors, policemen and lawyers from becoming silent or overt accomplices in the infamous crime of torture. The professionals who met at the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, should make it abundantly clear to all states and to world opinion that torture can never be condoned and that no professional body of doctors, police or lawyers can restrict their activities to the nice technicalities of the job.

The dignity of man is at stake. Personal liberty is a beautiful but delicate flower. It needs protection against the cold, adverse winds rising from all directions.

1. The President of the Portuguese Medical Association (Ordem dos Medicos) communicated to AI in 1982 his belief that the passage cast a slur on the Portuguese medical profession. He subsequently informed AI that after the 1974 revolution one security police doctor had been tried and sentenced to five days imprisonment because of his position (but not for torture) while a second was sentenced to 15 months for not acting to prevent abuses at the security centre where he worked.

III. *The Responsibilities of the Medical Profession in Connection with Torture*

by Dr Herman van Geuns

Introduction

According to the *Amnesty International Report on Torture*:

Policemen, soldiers, doctors, scientists, judges, civil servants, politicians are involved in torture, whether in direct beating, examining victims, inventing new devices and techniques, sentencing prisoners on extorted false confessions, officially denying the existence of torture, or using torture as a means of maintaining their power. And torture is not simply an indigenous activity, it is international; foreign experts are sent from one country to another, schools of torture explain and demonstrate methods, and modern torture equipment used in torture is exported from one country to another.

It is commonplace to view our age as one of "ultra violence". Much of the mass of information we are exposed to in the West reports catastrophes, atrocities, and horrors of every description. Torture is one of these horrors, but even in an age of violence, torture stands out as a special horror for most people. Pain is a common human denominator and while few know what it is to be shot, to be burned by napalm, or even to starve, all know pain. Within every human being is the knowledge and fear of pain, the fear of helplessness before unrestrained cruelty. The deliberate infliction of pain by one human being on another to break him is a special horror. It is significant that torture is the one form of violence today that a state will always deny and never justify. The state may justify mass murder and glorify those that kill as killers, but it never justifies torture nor glorifies those that torture as torturers.

Torture can be regarded as a social cancer, both rapid and malignant in growth and it can be treated only by total eradication.

General responsibility of the medical profession

This paper deals with the responsibility and sometimes direct involvement that the medical profession may have with torture. When considering this subject one is inclined to think primarily of all those cases in which physicians are involved in the infliction of torture, directly or indirectly.

Before going into the different problems related to this aspect of involvement in torture, we must put the problem in a wider, more general perspective.

We will have to admit that the whole medical profession as such has a clear responsibility as far as the physical and mental consequences of torture are concerned. We should avoid trying to limit the problem to, or put the whole responsibility on the shoulders of, a small group of physicians such as police doctors, military doctors and prison doctors. In fact only a relatively small number of physicians ever have to face the decision whether or not to cooperate in the practice of torture. It would be wrong, therefore, to judge their conduct in isolation and to draft a code of rules for these physicians alone: we must be conscious of the fact that the whole medical profession carries responsibility as well. If we do not realize this sufficiently, a heavy load of guilt will rest upon us, too.

Wherever cruelties are committed routinely—be it at the moment of arrest, during interrogation or in prison—a real danger is posed to the mental health of the whole population concerned. Two examples which recently occurred in the Netherlands may illustrate this.

During the Second World War many Dutch people were horribly ill-treated in concentration camps. The majority of them did not survive, and a considerable number of those who did had to try, after the war, to start functioning in society again.

Recently (during the last 5-10 years) it has become clear that many of these people have developed a so-called post-concentration camp syndrome. This not only results in a greater over-all morbidity and an increased vulnerability to all kinds of stress but also in developing typical forms of neuroses and nervousness. J. Bastiaans, Leo Eitinger *et al* and Paul Thygesen have reported on these reactions. Holland has even had to build a special clinic for this type of patient. Professor Bastiaans, the founder of this clinic, produced a film about these late effects of the concentration camps which was shown on television and subsequently caused emotional turmoil among the Dutch people.

It was clearly a mass reaction which even had political consequences preventing the government from carrying out its plan to release the country's three remaining German war criminals.

There is a second observation to mention in this respect.

During the post-war decolonization period the Dutch army twice conducted a "police action" in Indonesia, mainly performed by troops consisting of conscripted soldiers. When 15-20 years afterwards the atrocities

that had been committed by the military during these police actions were made public and supplemented by a television program, we witnessed an outbreak of confessions on one side, and protest on the other, on a much larger scale than could have been explained just by the limited number of those directly involved. Again there was an emotional turmoil that lasted longer than one would have thought possible, and which had more repercussions and consequences than could have been expected.

Without pretending that what has been said constitutes conclusive scientific argument, I would maintain that such events underline the view that the commission of planned, rather than individual, cruelties may have an influence on the mental health of the population concerned for a long time to come—through the victims as well as through the executants. No one will deny the responsibility (at least partially) of the medical profession for public health in general and accordingly for public mental health. If we accept the thesis that the systematic use of torture affects public mental health, then we have thus automatically established the responsibility of the medical profession to refuse to countenance any form of torture. Quite apart from the question of the direct involvement of individual doctors in torture practices, this constitutes a collective responsibility, which especially calls for professional organizations to assume this responsibility and give it adequate expression.

Responsibility of the individual doctor

Next to the above general aspects, there is the responsibility of individual doctors when faced with the threat of getting involved in torture procedures. Generally this concerns doctors in some kind of government service who may receive the following orders in the course of their official duty:

- a) to perform medical examinations on suspects before they are subjected to forms of interrogation—which might include torture;
- b) to attend torture sessions in order to intervene, as in a boxing ring, when the victim's life is in danger;
- c) to treat the direct physical effects of torture, and often to "patch up" a seriously injured torture victim temporarily so that later on the interrogation can be continued;
- d) to develop, by means of his own techniques, methods which produce the results desired by his superiors, as when psychiatric methods are used.

In the first three of these cases the apparent motive is protection of the victim to a certain degree to ensure that he will not die as a result of the torture he has suffered. However, it is often meant much more as a protection of the torturers to keep them from outright murder. The fact that the assistance of doctors is indeed readily used to give certain forms of torture at least some semblance of acceptability was shockingly revealed by the Parker Committee report in Great Britain—officially called "Report of the Committee of Privy Councillors appointed to consider authorized procedures

for the interrogation of persons suspected of terrorism" (March 1972).

The chairman and one other member of the committee, which had been instructed to investigate whether and, if so, to what extent, torture methods used in Northern Ireland would need modification, made the following recommendation in their majority report:

We think that a doctor with some psychiatric training should be present at all times at the interrogation centre, and should be in a position to observe the course of oral interrogation. It is not suggested that he should be himself responsible for stopping the interrogation—rather that he should warn the controller if he felt that the interrogation was being pressed too far having regard to the demeanour of the detainee, leaving the decision to the controller. This should be some safeguard both for the constitutionally vulnerable detainee and at the same time for the interrogator (paragraph 42).

The third member of this committee, Lord Gardiner, however, stated in his minority report:

All our medical witnesses agreed that the variations in what people can stand in relation to both physical exhaustion and mental disorientation are very great and believe that to fix such limits is quite impracticable. We asked one group of medical specialists we saw to reconsider this and they subsequently wrote to us: "Since providing evidence to your committee we have given much thought to the question of whether it might be possible to specify reasonably precise limits for interrogation and those having charge of internees. The aim of such limits would be to define the extent of any 'ill-treatment' of suspects so that one could ensure with a high degree of probability that no lasting damage was done to the people concerned.

"After a further review of the available literature we have reluctantly come to the conclusion that no such limits can safely be specified. Any procedure such as those described in the Compton report designed to impair cerebral functions so that freedom of choice disappears is likely to be damaging to the mental health of the man. The effectiveness of the procedures in impairing willpower and the danger of mental damage are likely to go hand in hand so that no safe threshold can be set." (paragraph 20)

We must realize that the doctors who have to face the question whether or not to assist in some way when torture is being carried out will often find themselves in a serious conflict of conscience. Besides their professional oath they have made an oath of office, or they are anyway obliged to give orders, often corroborated by emergency laws, regardless of their own professional ethics. And then there is always the underlying thought: "If I refuse there is no chance whatsoever of any medical assistance for the victim." This somewhat resembles the conflict that faced a number of mayors of Dutch towns during the German occupation: "If I resign, a fascist will be

appointed who would make things even worse than they already are, while now I may still be able to do whatever is possible." In reality this very often turned out to be a false argument misused with cunning by the occupying forces.

The four points mentioned above can serve to make a rather artificial classification of the conscientious decisions that the individual doctor may have to face:

- a) Should he consent to carry out a medical examination before an interrogation that will obviously include torture?

Personally I am positively convinced that a doctor should refuse to cooperate in this. It is inadmissible that by this more or less negative selection, persons are picked out who are apparently presumed to be "fit for torture". In this connection the following remark was made in a *British Medical Journal* editorial: "Without ever becoming a participant in the interrogation a doctor could, if he were automatically required to examine every prisoner before the interrogation started, come to be regarded as a part of the process and as sanctioning it in medical terms."

- b) Should he attend torture procedures in order to indicate when the victim is pushed "too far"?

Here again a categorical refusal seems justified.

- c) Should he give medical care in the sense of treating the effects of torture?

At first sight there seems to be no pitfall here, for the doctor is trained to cure, whatever the causes of the injuries. However, there are two things to be taken into account. First, there is the fact that under normal circumstances a patient is, generally speaking, free to choose his own doctor. But what is far more important, the patient then deliberately seeks medical help for his suffering. In a torture situation it is conceivable that the victim prefers quick death to being patched up so that his ill-treatment can be continued.

This is not necessarily just a matter of narrowed consciousness under the pressure of circumstances. It may very well be a deliberate choice, for instance out of fear that at a later stage confessions might be extorted that would endanger other people's lives, ie the fear of "breaking down".

The conclusion must be that there may be some restrictions on the duty of a doctor to keep the torture victim alive.

- d) All those instances finally, in which the doctor directly or indirectly puts his technical knowhow into the service of the authorities, who by these means want to extort confessions or certain actions, are utterly unacceptable.

Consequences and conclusions

How can we reach a point where individual doctors will actually refuse to recognize any obligation to be involved in any way at all in torture? It is essential first of all that an internationally accepted code of conduct is

drafted analogous to the Geneva Conventions covering the treatment of war victims and prisoners of war. Furthermore, torture must be universally condemned and stigmatized in such a way that it becomes a matter of course that members of the medical profession utterly refuse to involve themselves in these practices. Unfortunately still far too little attention is paid to this problem. In connection with the events in Northern Ireland the *British Medical Journal* ran an editorial which stated:

The question is whether a doctor should have any relationship whatsoever to interrogation procedures however humanely conducted, and it is not necessarily an easy one to answer.

And a little further:

There is a grave dilemma here, and the Declaration of Geneva formulated by the World Medical Association in 1946 is worth calling to mind in these words from it: "I will maintain the utmost respect for human life from the time of conception; even under threat I will not use my medical knowledge contrary to the laws of humanity."

The article concludes:

The doctor's position in all this needs to be most carefully safeguarded, and his sheet anchor is the ethical tradition that has been tested over the centuries.

Summing up, we can conclude that doctors do have a great responsibility with regard to torture. Besides the individual responsibility of every doctor who as a result of circumstances has become involved in torture procedures, a much wider responsibility rests upon the whole medical profession. Only if medical organizations on a national as well as on an international level take a firm stand can the individual doctor be given the support which he has a right to expect when he refuses to assist in torturing a fellow human being.

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IV. Code of Conduct for Law Enforcement Officials

(adopted by the United Nations General Assembly, 17 December 1979)

Article 1

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Commentary:*

- a) The term "law enforcement officials" includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.
- b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by state security forces, the definition of law enforcement officials shall be regarded as including officers of such services.
- c) Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.
- d) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to the full range of prohibitions under penal statutes. It extends to conduct by persons not capable of incurring criminal liability.

* The commentaries provide information to facilitate the use of the Code within the framework of national legislation or practice. In addition, national or regional commentaries could identify specific features of the legal systems and practices of different States or regional intergovernmental organizations which would promote the application of the Code.

Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Commentary:

- a) The human rights in question are identified and protected by national and international law. Among the relevant international instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of *Apartheid*, the Convention on the Prevention and Punishment of the Crime of Genocide, the Standard Minimum Rules for the Treatment of Prisoners and the Vienna Convention on Consular Relations.
- b) National commentaries to this provision should indicate regional or national provisions identifying and protecting these rights.

Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Commentary:

- a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.
- b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.
- c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against

children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

Article 4

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Commentary:

By nature of their duties, law enforcement officials obtain information which may relate to private lives or be potentially harmful to the interests, and especially the reputation, of others. Great care should be exercised in safeguarding and using such information, which should be disclosed only in the performance of duty or to serve the needs of justice. Any disclosure of such information for other purposes is wholly improper.

Article 5

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Commentary:

- a) This prohibition derives from the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly, according to which:

"[Such an act is] an offense to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights [and other international human rights instruments]."

b) The Declaration defines torture as follows:

“... torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.”

c) The term “cruel, inhuman or degrading treatment or punishment” has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

Article 6

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Commentary:

- a) “Medical attention”, which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.
- b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgement of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.
- c) It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

Article 7

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Commentary:

- a) Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials.

The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their own agencies.

- b) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connexion with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.
- c) The expression “act of corruption” referred to above should be understood to encompass attempted corruption.

Article 8

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

Commentary:

- a) This Code shall be observed whenever it has been incorporated into national legislation or practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.
- b) The article seeks to preserve the balance between the need for internal discipline of the agency on which public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.
- c) The term “appropriate authorities or organs vested with reviewing or remedial power” refers to any authority or organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.
- d) In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph

(c) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of Article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.

- e) Law enforcement officials who comply with the provisions of this Code deserve the respect, the full support and the cooperation of the community and of the law enforcement agency in which they serve, as well as the law enforcement profession.

V. Declaration on the Police

(extract from Resolution 690 of the Parliamentary Assembly of the Council of Europe, 1979)

The Assembly

1. Considering that the full exercise of human rights and fundamental freedoms, guaranteed by the European Convention on Human Rights and other national and international instruments, has as a necessary basis the existence of a peaceful society which enjoys the advantages of order and public safety;
2. Considering that, in this respect, police play a vital role in all the member states, that they are frequently called upon to intervene in conditions which are dangerous for their members, and that their duties are made yet more difficult if the rules of conduct of their members are not sufficiently precisely defined;
3. Being of the opinion that it is inappropriate for those who have committed violations of human rights whilst members of police forces, or those who have belonged to any police force that has been disbanded on account of inhumane practices, to be employed as policemen;
4. Being of the opinion that the European system for the protection of human rights would be improved if there were generally accepted rules concerning the professional ethics of the police which take account of the principles of human rights and fundamental freedoms;
5. Considering that it is desirable that police officers have the active moral and physical support of the community they are serving;
6. Considering that police officers should enjoy status and rights comparable to those of members of the civil service;
7. Believing that it may be desirable to lay down guidelines for the behaviour of police officers in case of war and other emergency situations, and in the event of occupation by a foreign power;
8. Adopts the following Declaration on the Police, which forms an integral part of this resolution;

9. Instructs its Committee on Parliamentary and Public Relations and its Legal Affairs Committee as well as the Secretary General of the Council of Europe to give maximum publicity to the declaration.

Appendix Declaration on the Police

Ethics

1. A police officer shall fulfil the duties the law imposes upon him by protecting his fellow citizens and the community against violent, predatory and other harmful acts, as defined by law.
2. A police officer shall act with integrity, impartiality and dignity. In particular he shall refrain from and vigorously oppose all acts of corruption.
3. Summary executions, torture and other forms of inhuman or degrading treatment or punishment remain prohibited in all circumstances. A police officer is under an obligation to disobey or disregard any order or instruction involving such measures.
4. A police officer shall carry out orders properly issued by his hierarchical superior, but he shall refrain from carrying out any order he knows, or ought to know, is unlawful.
5. A police officer must oppose violations of the law. If immediate or irreparable and serious harm should result from permitting the violation to take place he shall take immediate action, to the best of his ability.
6. If no immediate or irreparable and serious harm is threatened, he must endeavour to avert the consequences of this violation, or its repetition, by reporting the matter to his superiors. If no results are obtained in that way he may report to higher authority.
7. No criminal or disciplinary action shall be taken against a police officer who has refused to carry out an unlawful order.
8. A police officer shall not cooperate in the tracing, arresting, guarding or conveying of persons who, while not being suspected of having committed an illegal act, are searched for, detained or prosecuted because of their race, religion or political belief.
9. A police officer shall be personally liable for his own acts and for acts of commission or omission he has ordered and which are unlawful.
10. There shall be a clear chain of command. It should always be possible to determine which superior may be ultimately responsible for acts or omissions of a police officer.
11. Legislation must provide for a system of legal guarantees and remedies against any damage resulting from police activities.

12. In performing his duties, a police officer shall use all necessary determination to achieve an aim which is legally required or allowed, but he may never use more force than is reasonable.

13. Police officers shall receive clear and precise instructions as to the manner and circumstances in which they should make use of arms.

14. A police officer having the custody of a person needing medical attention shall secure such attention by medical personnel and, if necessary, take measures for the preservation of the life and health of this person. He shall follow the instructions of doctors and other competent medical workers when they place a detainee under medical care.

15. A police officer shall keep secret all matters of a confidential nature coming to his attention, unless the performance of duty or legal provisions require otherwise.

16. A police officer who complies with the provisions of this declaration is entitled to the active moral and physical support of the community he is serving.

VI. Declaration of Tokyo of the World Medical Association

Guidelines for Medical Doctors

Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in relation to Detention and Imprisonment

(adopted unanimously by the 29th World Medical Assembly, Tokyo, Japan, 10 October 1975)

Preamble

It is the privilege of the medical doctor to practise medicine in the service of humanity, to preserve and restore bodily and mental health without distinction as to persons, to comfort and to ease the suffering of his or her patients. The utmost respect for human life is to be maintained even under threat, and no use made of any medical knowledge contrary to the laws of humanity.

For the purpose of this declaration, torture is defined as the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason.

Declaration

1. The doctor shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offence of which the victim of such procedures is suspected, accused or guilty, and whatever the victim's beliefs or motives, and in all situations, including armed conflict and civil strife.

2. The doctor shall not provide any premises, instruments, substances or

knowledge to facilitate the practice of torture or other forms of cruel, inhuman or degrading treatment or to diminish the ability of the victim to resist such treatment.

3. The doctor shall not be present during any procedure during which torture or other forms of cruel, inhuman or degrading treatment is used or threatened.

4. A doctor must have complete clinical independence in deciding upon the care of a person for whom he or she is medically responsible. The doctor's fundamental role is to alleviate the distress of his or her fellow men, and no motive—whether personal, collective or political—shall prevail against this higher purpose.

5. Where a prisoner refuses nourishment and is considered by the doctor as capable of forming an unimpaired and rational judgement concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially. The decision as to the capacity of the prisoner to form such a judgement should be confirmed by at least one other independent doctor. The consequences of the refusal of nourishment shall be explained by the doctor to the prisoner.

6. The World Medical Association will support and should encourage the international community, the national medical associations and fellow doctors to support the doctor and his or her family in the face of threats or reprisals resulting from a refusal to condone the use of torture or other forms of cruel, inhuman or degrading treatment.

VII. *Resolution on Physician Participation in Capital Punishment*

(adopted by the 34th World Medical Assembly of the World Medical Association, Lisbon, Portugal, 29 September 1981)

RESOLVED, that the Assembly of the World Medical Association endorses the action of the Secretary General in issuing the attached press release on behalf of the World Medical Association condemning physician participation in capital punishment.

FURTHER RESOLVED, that it is unethical for physicians to participate in capital punishment, although this does not preclude physicians certifying death.

FURTHER RESOLVED, that the Medical Ethics Committee keep this matter under active consideration.

FOR IMMEDIATE RELEASE

Ferney-Voltaire, France
September 11, 1981

The World Medical Association, Inc.

PRESS RELEASE

The first capital punishment by intravenous injection of lethal dose of drugs was decided to be carried out next week by the court of the State of Oklahoma, USA.

Regardless of the method of capital punishment a State imposes, no physician should be required to be an active participant. Physicians are dedicated to preserving life.

Acting as an executioner is not the practice of medicine and physician services are not required to carry out capital punishment even if the methodology utilizes pharmacologic agents or equipment that might otherwise be used in the practice of medicine.

A physician's only role would be to certify death once the State had carried out the capital punishment.

Dr André Wynen
Secretary General

VIII. *Role of the Nurse in the Care of Detainees and Prisoners*

(resolution adopted by the Council of National Representatives of the International Council of Nurses (ICN), Singapore, August 1975)

WHEREAS the ICN *Code for Nurses* specifically states that

1. "The fundamental responsibility of the nurse is fourfold: to promote health, to prevent illness, to restore health and to alleviate suffering.
2. "The nurse's primary responsibility is to those people who require nursing care.
3. "The nurse when acting in a professional capacity should at all times maintain standards of personal conduct which reflect credit upon the profession.
4. "The nurse takes appropriate action to safeguard the individual when his care is endangered by a co-worker or any other person," and

WHEREAS in 1973 ICN reaffirmed support for the Red Cross Rights and Duties of Nurses under the Geneva Conventions of 1949, which specifically state that, in case of armed conflict of international as well as national character (i.e. internal disorders, civil wars, armed rebellions):

1. Members of the armed forces, prisoners and persons taking no active part in the hostilities
 - a) shall be entitled to protection and care if wounded or sick,
 - b) shall be treated humanely, that is:
 - they may not be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest,
 - they shall not be wilfully left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created,

— they shall be treated humanely and cared for by the Party in conflict in whose power they may be, without adverse distinction founded on sex, race, nationality, religion, political opinion, or any other similar criteria.

2. The following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above mentioned persons:
 - a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - b) outrages upon personal dignity, in particular humiliating and degrading treatment.

WHEREAS in 1971 ICN endorsed the United Nations Universal Declaration of Human Rights and, hence, accepted that

1. "Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 2).
2. "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5);" and

WHEREAS in relation to detainees and prisoners of conscience, interrogation procedures are increasingly being employed which result in ill effects, often permanent, on the person's mental and physical health;

THEREFORE BE IT RESOLVED that ICN condemns the use of all such procedures harmful to the mental and physical health of prisoners and detainees; and

FURTHER BE IT RESOLVED that nurses having knowledge of physical or mental ill-treatment of detainees and prisoners take appropriate action including reporting the matter to appropriate national and/or international bodies; and

FURTHER BE IT RESOLVED that nurses participate in clinical research carried out on prisoners, only if the freely given consent of the patient has been secured after a complete explanation and understanding by the patient of the nature and risk of the research; and

FINALLY BE IT RESOLVED that the nurse's first responsibility is towards her patients, notwithstanding considerations of national security and interest.

IX. Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment

(adopted by the UN General Assembly, 18 December 1982)

Principle 1

Health personnel, particularly physicians, charged with the medical care of prisoners and detainees, have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.

Principle 2

It is a gross contravention of medical ethics as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.

Principle 3

It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or

detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.

Principle 4

It is a contravention of medical ethics for health personnel, particularly physicians:

- a) to apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of such prisoners or detainees and which is not in accordance with the relevant international instruments;
- b) to certify, or to participate in, the certification of the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international instruments, or to participate in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments.

Principle 5

It is a contravention of medical ethics for health personnel, particularly physicians, to participate in any procedure for restraining a prisoner or detainee unless such a procedure is determined in accordance with purely medical criteria as being necessary for the protection of the physical or mental health or the safety of the prisoner or detainee himself, of his fellow prisoners or detainees or of his guardians and it presents no hazard to his physical or mental health.

Principle 6

There may be no derogation from the foregoing principles on any ground whatsoever, including public emergency.

X. Draft Principles for a Code of Ethics for Lawyers, Relevant to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Torture of detained persons has spread rapidly around the world, in spite of the fact that it is a criminal offence in nearly every country. The practice mostly remains uncontrolled because the victims have no means to assert their legal rights or are obstructed in asserting them. Lawyers are often victimized and penalized for raising the issue of torture on behalf of their clients, or even for just defending them, for investigating allegations or evidence of torture in their capacity as prosecutors and judges, or for protesting such methods as representatives of government offices.

When torture is an institutionalized practice, lawyers may be greatly aided by the support of other lawyers in the exercise of their duty to protect individual rights. For this reason, professional associations of lawyers should adopt and circulate a code of ethics which specifies the obligations of lawyers, regarding torture and other cruel, inhuman or degrading treatment or punishment of detainees. The associations should make known to their members and to similar organizations that they will come to the full support of any lawyer who adheres to the code.

1. 1) A defence lawyer representing a person who alleges that he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment while detained by any authority and for any cause should be prepared to raise such allegations before the competent authorities, unless instructed to the contrary by his client.
- 2) If the client wishes to have such allegations raised, the lawyer must do so fully and fearlessly. He should take a detailed statement from his client and present to the court or competent authority all the evidence or information available to substantiate the allegations, and use all procedures available to obtain protection and an appropriate remedy for his client.

2. A prosecuting lawyer has a personal duty to introduce as evidence in any proceedings only those statements which he honestly believes are freely made and obtained without the use of torture or other cruel, inhuman or degrading treatment or punishment. In case of any doubt, the prosecutor must reject the statement.
3.
 - 1) A judge or other judicial authority should reject any statement made by an accused person or witness unless he is satisfied that the statement was freely made and obtained without the use of torture or other cruel, inhuman or degrading treatment or punishment.
 - 2) A judge or other judicial authority must not summarily reject allegations that an accused person or witness has been subjected to torture or other cruel, inhuman or degrading treatment or punishment. He has a duty to inquire thoroughly into such allegations and to provide the complainant with full facilities for submitting evidence in support of the allegations.
4. Lawyers in government service should do all they can in their official capacity to promote the incorporation of the Standard Minimum Rules for the Treatment of Prisoners into the law of that jurisdiction and to see that the rules and all standards relating to the treatment of detained persons are observed and enforced and that violations thereof are subject to disciplinary action or criminal prosecution.
5.
 - 1) All lawyers, both individually and through their professional associations, should give their full support to lawyers carrying out the obligations of this code.
 - 2) They should insist before the competent authorities that the code be respected and observed, and, especially at the highest level of their professional organizations, they should come to the aid of any lawyer victimized or penalized for adhering to the principles of this code.
 - 3) Those covered by the code have an obligation to inform the proper national and international bodies of those activities which are in direct contravention of the principles and provisions of this code and in gross violation of human rights, as described in the United Nations Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. If necessary as a last resort, they should make such information publicly known.
 - 4) Any organizational body, national or international, which adopts, proposes or promulgates the code should maintain some mechanism for hearing appeals from those covered by the code who claim that any of its provisions have been violated.