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WORKING GROUP I

THE NEED FOR A CODE OF CONDUCT REGARDING TORTURE FOR THE MILITARY
PROFESSION

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"Torture can be regarded as a social cancer, both rapid and malignant in growth and it can be treated only by total eradication." (1)

Introduction

The case against torture and other forms of maltreatment has been made again and again. Manifold declarations and resolutions have been adopted both by national governments and by international bodies, outlawing the use of torture. The Universal Declaration of Human Rights of 1948 was the first of a series of noble and well-intentioned statements in which the use of torture was explicitly forbidden. In recent years the General Assembly of the United Nations and other governmental as well as nongovernmental international organizations have dealt with the issue. Reading those statements one would almost have to conclude that there cannot be any sane or well-intentioned person in the world, who would not share the views expressed in those declarations.

Yet, according to reliable reports issued by such bodies as Amnesty International and the International Commission of Jurists, torture has by no means vanished from this earth. On the contrary: evidence has been adduced that it is continuously on the increase. Whether in Argentina, or in Northern Ireland, the Philippines or - according to a recent report issued by Amnesty International - in Nicaragua, almost anywhere in the world cases of torture are reported.

Various reasons have been mentioned for the recurrence of this phenomenon. It is not the purpose of this paper to discuss these reasons. (2) Let it suffice to state that there are recurrent social and political situations in which powerholders find it apparently necessary to degrade their political opponents by the use of physical or psychological violence. Human degradation and intimidation would seem to be a much more important purpose of torture, rather than the obtainment of information for which prisoners ostensibly are subjected to torture. The reliability of information obtained under duress is - as has often been pointed out - extremely dubious. Regimes that lack sufficient popular support and that feel themselves threatened by political opposition, are likely to make use of the practice of torture.

The use of the term "regimes" in the previous paragraph suggests an almost impersonal, de-humanized organ that orders the use of torture. We should not forget, however, that all acts of torture are both ordered and performed by ordinary human beings. Both the highest official in charge and the lower-ranking policeman or soldier who performs the actual torture. In some cases he may be free to order or to perform torture, or not to do so. This is where the matter of professional codes of conduct becomes relevant.

Importance of Professional Codes of Conduct

A professional code of conduct implies that there are specific norms or rules of behaviour that apply only or mainly to the particular professional group concerned. The group may consider itself to be "different" from the rest of society or realize that, due to the nature of its professional activities, its members may have to face situations which non-members may never encounter and which therefore call for special written or unwritten codes of behaviour. Well-known examples of such professional codes are those of medical doctors and lawyers. Such codes may have mainly the character of a strong recommendation; in some countries they may receive a legal basis, which means that they can be enforced through their respective professional organizations. A medical doctor in the Netherlands for example, who has transgressed the medical code, may be called before a disciplinary court which has the power to revoke his right to practise medicine.

In this paper we are concerned with those professional codes that relate specifically to torture. (Such codes can be limited in their application to one or several national states or they may apply on a regional or even a world-wide scale). These codes are important, not so much because they guarantee that no acts of torture are going to take place, but because they establish certain standards which may be of help to an individual in his decision not to torture. As Professor Alfred Heijder has aptly phrased: "A code of professional conduct will help the individual to cope with the problems arising from different demands of a situation. Its influence may even reach beyond that." (3)

Most of us in our professional lives will probably never come in a situation which may demand a decision for or against torture. It is clear that certain professional groups are more likely to encounter "torture related" situations than others. Professions that come to mind in this regard are those of medical doctors, lawyers, judges, nurses, psychiatrists, policemen, military personnel and a few others. Doctors may be called upon to witness torture and to examine the victim so that he may survive his ordeal and be subjected to fresh rounds of

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torture. Lawyers and judges may be asked to suppress or to ignore evidence of torture. Nurses and psychiatrists may have to assist in the execution of torture; the same may be true of policemen or military personnel. Sometimes, some of the above mentioned categories may overlap, as in the case of police doctors or military judges. It may be easy for a Western European intellectual, from his safe armchair, to admonish a police doctor in Argentina or a military lawyer in South Africa not to participate in torture; it may be less easy for the persons in question indeed to refuse to do so. The existence of a code of conduct developed by the national professional organization to which the individual in question belongs, or by a world-wide professional body, may help him to withstand social or political pressure by his superiors or colleagues to torture. Internationally, codes against torture have so far been developed for medical doctors, for nurses, for lawyers and for social workers. The International Union of Psychological Science adopted in 1976 a resolution which requested each member-society to enact a code of ethics and "to take those actions required by its code against any member guilty of such abuses against human rights." (4) Even more recently, the International Congress of Psychiatrists adopted the "Declaration of Hawaii", a professional code of ethics for psychiatrists.

Efforts have also been made to develop anti-torture codes of behaviour for law enforcement officers. Their situation with regard to torture is the more difficult as they usually are in a hierarchical position which makes it difficult for them to refuse to obey "superior orders". Nevertheless, an international seminar of police-officers, which took place in 1975 in The Hague, reached the conclusion that an international code of police ethics should be developed. The members of the seminar, who came from eight Western European countries agreed that such a code should give police-officers 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 also should have the duty "to disobey or disregard any order, instruction or command to summarily execute, torture, or otherwise inflict bodily harm upon a person under their custody." (5) Heijder was right in calling this "Declaration of The Hague" "... the strongest, the most audacious and the most subtle statement currently available." (6) One should hope that the Seventh United Nations Conference on the Prevention of Crime and the Treatment of Offenders, which is to be convened in Australia in 1980, will adopt such a code of ethics for police officers.

One may conclude that at least a small opening has been made to curb the role of the police in the practice of torture, although much remains to be done. With regard to the military, less has been achieved, so far. The remainder of this paper deals more specifically with the role of military personnel in relation to torture and the need for a code of ethics of military personnel similar to the one proposed in the "Declaration of The Hague".

Torture and the Military

Next to the police, the military may well be the professional group that has the greatest risk of becoming involved in torture. Practices such as performed by members of the British army in Northern Ireland immediately come to one's mind. A soldier or officer may in the performance of his duties get into situations which may lead to the use of torture.

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In a thoughtful article a Dutch naval officer, captain J.D. Backer, has listed the following reasons why military may get involved in torture:

- they use and have access to tools and weapon technology which can be used for torture;
- they are part of a hierarchical structure which has clearly authoritarian elements;
- they receive their training in relative isolation from the rest of society, which means that their sense of equity and justice may not be sufficiently in tune with that of the rest of society;
- they may become interested in the collection of vital information;
- they are professionally trained in riot control;
- they are professionally trained in adapting themselves and may thus easily be led to accept an increasing use of violence.(7)

One may add that in certain cases military personnel is also trained in how to undergo torture. The Parker committee, which was set up by the British Government to look into procedures authorized for the interrogation of suspected terrorists, has commented on the technique of "interrogation in depth" and the training to resist such interrogation (8). It has been alleged but never satisfactorily demonstrated that people who have been taught how to withstand torture, may be more prone to apply torture. If true, this would mean that this type of training, such as exists for example in the United States airforce and in the British army - albeit on a strictly voluntary basis - should be abandoned.

So far, there does not seem to exist anywhere a specific code of ethics regarding torture for the military. The four Geneva conventions are more universal in scope and refer specifically to situations of war. A code of ethics regarding torture for the military would be a logical extension of these conventions. The "Code of the U.S. Fighting Man" is an example of a more general military code. It does not contain any reference to a prohibition of torture or other maltreatment of prisoners. This code, issued in 1955 by President Eisenhower as an executive order, contains six articles in the form of an oath, which set the standard of conduct of United States servicemen. Article 6 of that code states rather vaguely:

"I will never forget that I am an American fighting man, responsible for my actions, and dedicated to the principles which made my country free. I will trust in my God and in the United States of America."

A more specific reference to torture in this code, which is given to all American soldiers, might not be superfluous (9).

Torture is a subject that should be of some concern to military people - something which they either may be forced to apply or which they may have to undergo. It is the contention of this paper that the idea of drafting a code of ethics for military personnel with special reference to torture should be discussed with all military authorities that make themselves available. The actual debating and drafting of the code should be left to the military themselves. They are in a far better position than civilians to judge the repercussions of various proposed codes. They know sometimes from practical experience the type of problems with which they may be faced

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in combat situations. Moreover, a code of ethics drawn up by military for the military stands a far greater chance of actual adoption than the same text proposed by civilians.

Amnesty International and the Military in the Netherlands

In December 1973 Amnesty International organized an international conference on torture in Paris. Among the more than one hundred conclusions of that conference was the recommendation to further a dialogue with governments, police, military and prison authorities "... in order to ban every form of torture and to attain full exercise of human rights." In order to implement this conclusion, the Dutch section of Amnesty International approached the Ministry of Defence with the request for a periodic contact between Amnesty and the armed forces. Amnesty's representatives stressed that this request did not imply that any form of torture or maltreatment on the part of the Dutch armed forces existed. The purpose was to initiate a discussion with and within the armed forces on the subject of torture and also to discuss cases of torture performed by military personnel in other countries. The right time to start such a discussion was, when no actual torture was taking place in the Dutch forces. Furthermore, it was pointed out that torture was a phenomenon not confined to far-away places such as Chile, South Africa and the USSR. The acts of torture performed by members of the British army in Northern Ireland were a case in point. The Dutch army was, after all, not that much different from the British army. Events that had happened in Great Britain could also happen in the Netherlands.

The ministry thereupon approved a series of preliminary talks at various levels. These talks resulted in a letter in which senior officers of the army and the airforce were designated as regular "conversation partners" for Amnesty International. These officers would have the "support" of the Minister of Defence, but would speak on a personal basis; their views could but must not necessarily reflect those of the Ministry. A little earlier, the commander-in-chief of the navy had agreed that four naval officers would act in a similar capacity.

The conversations started in the beginning of 1977 between the four naval officers and three members of Amnesty International. The officers of the army and airforce joined these talks later. The meetings take place at intervals of six to eight weeks. Subjects covered or touched upon have so far included the teaching of human rights in military schools and officers' training courses, publication of human rights' related subjects in military journals, the role of military doctors, interrogation and treatment of prisoners of war, the reports of Amnesty International on Northern Ireland and Greece, and the development of a professional code for military personnel. As a direct result of these conversations two full days at the Royal Military Academy, the officers' training school, will be devoted to the subject of torture.

The activities mentioned clearly range far beyond the subject of a code of conduct for military personnel. It deserves treatment here, because the contacts thus developed can create the kind of atmosphere in which military officers may be prepared to devote part of their time and energy to think about situations in which the subject of torture might come up. The existence of a professional code of conduct might help to provide them with the right answer (i.e. torture should not be allowed under any circumstance). It cannot be sufficiently emphasized, however, that it must be the military themselves, who should develop such a code, in order to make it both realistic and effective. Organizations such as

Amnesty International may provide them with useful information and material for that purpose.

Conclusion

It has been contended in this paper that the development of professional codes of conduct plays an important role in the world-wide struggle against torture. Police and military personnel are among the most important professional groups affected. With reference to the police an initiative to develop such a professional code has been the "Declaration of The Hague" of 1975. So far, no such code has been developed applying to military personnel.

In order to start thinking on this subject, the recently developed contacts between Amnesty International and the military in the Netherlands may be a useful precedent.

A professional code of conduct for military personnel should include at least (1) the right to disobey orders which are in violation of basic human rights, (2) the duty to disobey orders to torture and (3) the duty to protest against the issuance of such orders. (10) The "Declaration of The Hague" of 1975, applying to law enforcement officers, which is attached in an annex to this paper, could be a useful document, also for the military.

Heemstede (the Netherlands), September 1977

NOTES

- *) I want to thank Dam Backer, Herman van Geuns, Alfred Heijder, Herbert Ruitenbergh and George Siemensma for their critical comments on an earlier version of this paper.
- 1) Herman van Geuns, "The Responsibilities of the Medical Profession in Connection with Torture" in: Alfred Heijder and Herman van Geuns (eds.), Professional Codes of Ethics (London: Amnesty International, 1976), p.17.
- 2) See: Amnesty International, Report on Torture (London: Duckworth, rev. ed., 1975).
- 3) Alfred Heijder, "Professional Codes of Ethics against Torture", in: Heijder and Van Geuns, op.cit., p.10.
- 4) J.E. Hueting, "Mogelijke Misbruiken van de Psychologie: N.I.P./ I.U.P.S. en het 21e Internationale Psychologencongres," De Psycholoog vol. XII: 7 (1977), pp. 359-371.
- 5) See Annex below.
- 6) Heijder, op.cit., p.13.
- 7) J.D. Backer, "Martelingen", Militair Rechtelijk Tijdschrift, vol. LXVII: 7 (1974), pp. 405-406; see also Report on Torture, p.23.
- 8) Report of the Committee of Privy Counsellors appointed to consider authorised procedures for the interrogation of persons suspected of terrorism (London: Her Majesty's Stationery Office, 1972).
- 9) According to Article 5 of the code, American soldiers, who have become prisoners of war, are bound to give only name, rank, service number and date of birth (in accordance with article 17 of the third Geneva convention). They should also "... evade answering further questions to the utmost of (their) ability." In theory at least, these soldiers should refuse to provide any further information, even if subjected to torture. However, a recent report by a code review committee of the American Ministry of Defence has termed this assumption "unrealistic" and "unworkable"; it has recommended to change the wording of the article. (See: International Herald Tribune, 19 July 1977).
- 10) Both the result of the Neurenberg trials of German war criminals and the four Geneva conventions could serve as useful precedents.

ANNEX

DECLARATION OF THE HAGUE

On 19 and 20 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. The following countries were represented: Austria, Belgium, France, Ireland, Luxemburg, the Netherlands, Norway and the United Kingdom.

At the end of this meeting the following conclusions were 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.

1. The police function is the provision of a public, essentially civilian service, created by and responsible only to the properly constituted government under law. It is obliged by law to prevent violations of the law, apprehend and prosecute law-breakers and maintain order and public security under the law.

This obligation includes the duty to maintain and promote human rights, as described in the Universal Declaration of Human Rights, in the principles of which police officers should receive proper education and training.

2. A police code of ethics should apply to all those individuals and organizations, including secret services, military police, armed forces or militia acting in policing capacities, or others engaged in enforcing the law, investigating violations, maintaining public order, or preserving state security.
3. Summary executions, torture and other cruel, inhuman or degrading treatment or punishment, and in general every violent act against the physical or mental integrity of the individual are prohibited under any and all circumstances, including the greatest emergencies of civil strife or war.
4. 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.
5. Police officers and all others covered by this code have the right to disobey or disregard any order, instruction or command, even if

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6. Police and other officials who are detaining persons should follow the instructions of doctors or other competent medical workers when, for the preservation of the good health of a detainee, the doctor or medical worker places the detainee under medical care.
7. 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.
8. No officer or other person covered by the code should suffer administrative or other penalties as a result of action taken to resist or protest against orders, instructions or commands inconsistent with the principles or provisions of this code of ethics.
9. Given article 23 (4) of the Universal Declaration of Human Rights, there should be a personal and corporate duty upon all officers and other professionals or persons covered by the provisions of the code, and their professional workers' trade union or other employees' organizations, to offer support to all those who are in need of such as a result of their adherence to the principles and provisions of the code.
10. 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.
11. The police officer or any other person covered by this code who complies with the code deserves and is entitled to the active moral and physical support of the community in which he/she performs his/her duty.