The medical profession and torture

Gregorio Martirena  Montevideo, Uruguay,

For those who live in the Third World, the subject we are going to discuss constitutes a brutal and indelible experience.

Those people in the modern world who think of torture as being a simple instrument of power evolved by ambitious groups of the elite in our communities are making a big mistake. Torture is a deliberate and anonymous act of authoritarianism by the state, carried out to maintain its total domination and to attain through foul means the realisation of its ideology for the country, without allowing the various sectors of the society as a whole to express their opinions.

During the 40s, Latin America was unable to escape the division of the world into two great ideological blocks, and this led to the development of various key events such as the creation of the Inter-American Defence Council in 1942 and the School of the Americas in Panama in 1946. Through these events 'security' was transformed into the very essence of life for the poor countries and led to the founding of the Doctrine of National Security, whose claimed objectives were to consolidate and maintain the adherence of the population to its democratic and republican ideals, and to restore internal order thus affording security to national development. These events, which appear not to be relevant, constitute, to the surprise of many, the real epicentre of the military coups suffered by our countries over the last 30 years, and made political terror the fundamental tool to subjugate the people. Disappearances, exile, murder and torture grieved our families every day.

Torture is intentional, because whoever practises it is afraid of those who, through democratic means, threaten to expose the real reason for their subjection, and because its result leads to the weakening of the individual without causing him/her death, more than to the obtaining of information about him/her. The torturer is anonymous and selective, his practice in various methods is consistent. He seeks to avoid leaving traces and losing the legal validity of his case and thus it is inevitable that in effecting his plans he requires the participation of professional doctors.

Today, torture constitutes the only illness created by man for man, and in its creation the military doctor plays an essential role as protagonist in its methods, application and its objectives. The doctor is active or passive in many ways: in the examination of the prisoner when he comes in, by noting the physical or mental weaknesses which will later be used as part of the torturers' strategy; in his neglect of direct assistance to the sick prisoner; in the falsification of cause of death to conceal the use of torture; in direct participation in interrogations; in conducting constant psychological harassment in the prisons in order to destroy the personality of the prisoners; in his instruction, based on scientific knowledge, of the various technical forms of applying modern torture.

For the Medical Association of Uruguay these facts are irrefutable today. During the ten years of military dictatorship, medical responsibility in cases of torture was severely undermined by two doctors, Walter Ravena and Justo Alonso Leguizamo, who successively held the office of Minister of Defence during this period. Despite public denunciation by the medical association and parliament in 1972 of deaths being caused by torture in our military barracks, as well as of their inordinate obedience to commands and their silence and lack of investigation, these two individuals contributed to the barracks and prisons becoming an empire of torture and death for all those long, sad years.

However, it is of critical importance to point out that the health service of the armed forces at the beginning of the dictatorship comprised, for the most part, doctors of civilian status, and that, on the authority of the ‘Organic Law’ (law stipulated by the military regime) of the Armed Forces (No 14157) and article 50 of the decree 783/73, the majority opted to give up the exercise of their rights and the fulfilment of their association obligations to the armed forces, and the practice of their profession to military authorities alien to all ethical, medical, and universally accepted values.

The Medical Union of Uruguay adheres strictly to the convention that every doctor is bound by his professional duty, which identifies him with the preservation of health of other people. His obligations take precedence over the impositions of established officialdom and may never separate him from fulfilling his professional obligations without this being a serious transgression of medical ethics. A military doctor does not relinquish his ethical responsibilities by serving in the armed forces. Rather, this merely defines further
his primary status as man and doctor – a status he can never abandon.

In view of these events and the risks to the universal, ethical principles of the medical profession, the Seventh National Medical Convention (convened under the dictatorical government in July, 1984), created, by unanimous vote by the more than 1000 participating doctors, in consideration of the lack of a compulsory medical college, the National Commission of Medical Ethics. The primary objective of this commission was to investigate the ethical compromises made by the doctors participating in the torture of Uruguayan political prisoners. Today, we are most regrettably obliged to give public notice that the commission adjudges there to have been, with various degrees of responsibility, according to the universal rules of medical ethics, serious omissions of ethical conduct committed by various Uruguayan military doctors: Eduardo Saiz Pedrini, Nelson Tornos Vera, Vladimir Bracco, Hugo Díaz Agrelo, Nelson Marabotto, Arturo Dini, Mario Sarasúa, José A Mautone.

However, this is not the occasion to recount facts and painful truths regarding those irrefutable events which have affected our lives. Our contribution is to try to see the future of the world community in a more positive light.

May, 1990: the countries of Latin America appear to the world as free and democratic. Yet, for those of us who live there, the democratic regime is so protected that the authoritarian leaders can maintain their organisation and armed forces. Over the last few years, those possessed by the gift of power, who violated and mutilated human rights, have begun to show traces of legality: impunity, lapses in the punitive power of the state, just obedience, amnesty, reprieves. To those people in our societies who are still dreaming of justice and equality, it remains only for us to repeat for the thousandth time the thought, directed towards the town hall on the 18th of November 1815, of Uruguay’s greatest hero, Don José Gervasio Artigas that: ‘We shall never see our happiness progress if wickedness is perpetrated in the shadow of innocence. The time is ripe for the triumph of virtue. The evil shall no longer mingle with the good’.

I share the view of my colleague, Dr Vesti, that the question everyone is asking himself today is: ‘Why aren’t the torturers ever convicted?’ This is a question which, with regard to the doctors, implicates all of us, and which points to the absolute and inescapable necessity of finding the solution to returning the medical profession to an honourable status, and of succeeding in sanctioning a group of ethical norms which stipulate certain obligations for the doctor in practising his profession, in his relations to the society he lives in, and towards the government to which he is bound. Dr Rodolfo Schurmann Pacheco, distinguished jurist and member of The National Commission of Uruguayan Medical Ethics, has stated: ‘By virtue of the profession they practise, doctors have unavoidable obligations towards humanity which override considerations of personal, financial, administrative or political interest, as well as matters of “national security”’. And, with regard to the military doctors and the practices attributed to them – on many occasions proven – certain problems are created which have to be resolved in accordance with the general principles of the penal code, bearing in mind the flexibility and fluency of ethical norms.

Such as that of due obedience, referring to the doctors making up units of the military health service who had to carry out their orders, bearing in mind their roles as doctors, the importance of their services, their culture and, logically, the relevance, or transgression, of the order given. In this sense, the carrying out of orders involving the violation of the duties and obligations imposed by their profession constituted undue obedience.

Such as that of ethical responsibility, which will have to be resolved paying attention to every specific case individually, since there is a significant chance of false testimony.

Such as that of the participation in events sanctioned by medical ethics, which will have to be resolved bearing in mind material and subjective elements of every type of behaviour ie whether a doctor wilfully participated in the event conscientiously and voluntarily.

Such as the problem of administrative deficiencies and impositions which will have to be resolved by analysing the conduct of every doctor in relation to the named problem. Here, the question of responsibility focuses on the conduct of the doctors in relation to the system. Excuses that the irregularities and omissions of assistance, or that the cruel, inhuman treatment by those who participated, are not attributable to them, but to the military authority supervising them, will not be accepted. They will have to prove, in such cases, their chain towards the system, their efforts to overcome its lack of institutionalised assistance, and/ or, their denunciation of particularly serious incidents.

Although we do not demand that a doctor displays heroism, we do demand his opposition to, and complete uninvolvimento, practices which damage, or worsen, the physical or mental health of prisoners. Even under the state of duress as defined by the penal code, which exempts the subject from responsibility for defending his life or integrity, it is demanded that the applicable right is less than, or equal to, the right being defended, and that the subject does not have the legal obligation to face the wrong he is threatened with.

What can we say then, when concerned with ethics, when we are faced with a doctor, who, despite bearing the unavoidable responsibility of humanitarian obligations, participates in, tolerates, encourages, or abets cruel practices, such as those mentioned, and when the wrong which is threatening him is less significant and of a different nature than the wrong he is practising, and when he has the ethical obligation to confront it?
Ethics exceeds the bounds of legal/penal concepts, especially medical ethics, and demands acts of real abnegation, the unfulfilling fulfilment of professional obligations, the constant practice of altruism, and the promotion of love for one's neighbour—even when this involves the sacrifice of one's own possessions and interests—and this does not happen under the penal code. Medical ethics represents a discipline which ranks human rights and the conservation of personal integrity above all else.

Despite the indisputable participation of doctors in the torturing of our peoples and the universal character of ethical judgement and the norms relating to respect, our failure to take drastic measures is obvious. This failure is directly related to the current decline of the global union movement, given that the World Medical Association has changed into a mere bureaucratic organisation which avoids tackling the real crux of these matters, and that the world political organisations, combined into one supreme institution, the United Nations, despite its excellent judgement and objectives, does not express the real opinions of its peoples, but rather dictates on the basis of the authorities in the respective countries.

It is doubtless due to all this that the World Medical Association finds itself at risk and is obliged to pioneer efforts to eradicate social injustices and torture using educational, organisational and politico-juridical means.

**Educational**: A universal code of ethics must be established to group together the guidelines relating to the ethical and professional conduct of workers in the health service, and to establish norms of compulsory instruction in the medical schools and the various other occupations concerning health. This is the only way to succeed in making professional workers realise their duties and obligations towards their peoples and the world community.

**Organisational**: The associations, unions, colleges, federations and other kinds of organisations of the medical profession have the responsibility to watch over, investigate, judge and penalise those doctors who transgress ethical norms. To this end, they must remain completely autonomous and independent of the state in order to ensure complete freedom to exercise their authority.

Among the primary objectives to find a rapid solution as to how to act to defend human rights are:

a) the demobilisation of military doctors, ie the restoration of civilian status for military doctors practising their profession in the armed forces;
b) the creation of permanent information and distribution systems for ethical norms, especially for professional ethics and the code of human rights;
c) the establishment of courts to investigate accusations and to judge and sanction those doctors accused of contravening ethical standards and human rights;
d) the international diffusion of information compiled on the doctors who participated in torture so that they are prevented from exercising their profession in any part of the world;
e) the assurance of protection of, and adequate assistance to, those doctors who may be at risk for their activities in defending human rights and the immediate carrying out of appropriate action;
f) the creation of an international juridical framework to permit the attainment of these objectives.

**Politico-juridical**: The definitive and universally organic sanctioning of a group of norms which doctors will be obliged to follow in practising their profession, and in their relations with the community and the government to which they are bound: an act of vital importance in a world shaken by violence and the permanent subjugation of human rights, which, through its action, must involve all doctors for success throughout the United Nations.

In view of this proposal, which is critically important for the success of our objective and constitutes the very core of our contribution to the future of the medical profession, and guided by the determination within us not to permit, whatever the circumstances, however extraordinary, the existence of statutes, prisons, or high-ranking officials which defend ignominy and barbarism, once again, Uruguayan doctors are formally handing over to the World Medical Association a document which we consider fundamental for current, universal legislation in the defence of human rights: The Project of the Uruguayan College of Lawyers, October, 1987, with reference to Crimes against Humanity.

Gregorio Martirena, MD, is Secretary General of the Uruguayan Medical Association, Minas, Uruguay.