

# Virtual Mentor

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## Policy Forum

### Force-Feeding and Coercion: No Physician Complicity

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In the past 24 months, the issue of hunger strikes has discreetly yet persistently made headlines and stirred up discussions among ethicists and medical doctors alike [1]. The World Medical Association (WMA), which was created after the Second World War to ensure the independence of all physicians and to promote and achieve the highest possible standards of ethical behaviour and care, saw fit to re-examine and update its 1991 Declaration of Malta on Hunger Strikers in October 2006 [2]. There were several reasons for this review, some related to the evolving nature of hunger strikes, and others related to the way they were being managed by medical staff in certain situations. Many publications have dealt with one or another aspect of these issues. This paper will attempt to explain to physicians not overly familiar with the issue of hunger strikes how and why the WMA chose to revise and upgrade its declaration. The return to force-feeding was one of the main reasons for the WMA's taking a second look at the ethical principles that apply to voluntary fasting.

Hunger strikes, more correctly termed “voluntary protest fasting,” made headlines several times in the last two decades of the 20th century. The first time, closely watched by the media, involved prisoners in Belfast, Northern Ireland. Bobby Sands, a militant of the Irish Republican Army, and nine other Irish prisoners, all members of republican paramilitary or political organizations, starved themselves to death in 1981, to protest the nonrecognition of their status by the government of the United Kingdom. At the time, the medical staff of Northern Ireland prisons had only the WMA 1975 Declaration of Tokyo for ethical guidance. That declaration aimed principally at forbidding physician participation in torture, but contained a proviso on hunger strikes. The declaration stated that, “Where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially...” [3, 4]. The wording “artificially” here was meant to refer to the use of force in feeding a hunger striker via nasogastric tubing or intravenous administration of nutrients. The use of “artificially” instead of “forcibly” was due to imprecise word choice and did not convey clearly enough that feeding applied forcibly was what was proscribed. It further confused the issue by making it seem that any form of artificial feeding was forbidden.

Hunger strikes in Africa and Asia in the years following the 1981 Belfast strikes raised the need for more guidance for physicians. Because the Declaration of Tokyo mainly dealt with physician (non-) participation in torture, it was obvious that a new

declaration had to be drawn up exclusively on voluntary fasting outside of torture-related contexts. This process led ultimately to the Declaration of Malta.

There were other issues at stake as well. Following the Belfast hunger strikes, during which the prisoners only ingested bottled water and no nutrients whatsoever, comparison was inevitably made with politically motivated fasting among prisoners in other contexts, notably in the Middle East and Latin America. In those contexts, the fasting was very often not “total,” and “cheating” (i.e., eating on the side and “on the sly”) was a rampant phenomenon. Those bouts of fasting were often “food refusals,” rather than “voluntary total fasting,” in the sense that those who declared themselves openly “on hunger strike” had not the slightest real intention of hurting themselves in any way, counting instead on the prison doctors to take care of them [5]. Other cases involved determined fasting, but not in a very convincing way, and certainly not with the intention of “going all the way.” In all these cases, there were usually no problems for physicians, as the different types of “fasting” never went on long enough to provoke clinical concerns, let alone any ethical dilemma related to force-feeding or any other forced medical intervention.

Another major clarification was needed to differentiate hunger strikes from suicide. The Irish hunger strikers certainly did not want to die; they wanted to obtain recognition for and solutions to their demands, and they were willing to sacrifice their lives to that purpose if need be. Hunger strikers are not suicidal—as a matter of fact, detainees who are depressive or who have suicidal tendencies should be handled as medical cases and not considered to be hunger strikers [6].

From the late 1990s through 2002, hunger strikes in Turkey made headlines and added a new twist to “fasting for politically motivated reasons” [7]. The Turkish hunger strikers, it quickly became evident, did take some nourishment “on the side,” but this was only to prolong their time for negotiation. As it turned out, they died anyway, because their demands were not met, but they died from prolonged non-total fasting. Thus, fasting did not necessarily have to be total to be fatal, and the difference between those who, since Bobby Sands, were considered as “real hunger strikers” and those who engaged in “phony fasting” was no longer valid.

Whether the fasting was truly voluntary did however become an issue. The hunger strikes in Turkey were often collective, and it was not always clear whether those who were fasting were indeed volunteers, or if they were somehow “volunteered” by whatever internal prisoner hierarchy was in place.

The 1991 version of the Declaration of Malta had taken all these factors into account, notably stressing the fact that physicians should ascertain that each hunger striker was fasting voluntarily and not being coerced by other prisoners or indeed any outside party, including family. Malta did not, however, explicitly forbid force-feeding, since, at that time, force-feeding had not emerged as a major issue. In fact, after an unfortunate mishap in the Middle East in the early 1980s, which resulted in the death of two prisoners who were forcibly fed liquid nutrients unintentionally into

the trachea rather than the esophagus, force-feeding had practically disappeared from the political scene. Resuscitation of a patient was considered, whereby the physician could intervene and “feed artificially” [8] a hunger striker who was lapsing into a semicomatose state, if the physician was convinced that the hunger striker did not, in fact, want to die. In such a case, this would obviously constitute “artificial” and not “force-” feeding, as active resistance by the hunger striker was ruled out by his or her noncompetent, or unconscious, state.

The advent of force-feeding in the new century, in the context of hunger strikes that, although clearly politicized, just as clearly involved a situation of conflict and protest, made it necessary to clarify and revise the whole concept of artificial feeding and force-feeding. Inasmuch as force-feeding obviously involved coercion, and since the situations of those hunger strikers to be force-fed was already one of constraint and coercion—in some cases even of torture—the concept of force-feeding understandably came under close scrutiny and criticism from many angles. Those in charge in different countries who decided to force-feed, often justified their action by calling it “artificial feeding” and implying or outright declaring, that the prisoners in fact tacitly agreed to be fed enterally by nasogastric tubing.

A working group was constituted at the request of the WMA that elaborated a new version of Malta in 2006, explicitly forbidding force-feeding. The principle of respect for patient autonomy was found to overrule, in this case, the principle of beneficence. Hunger strikes are a “last resort” way of expressing protest or dissent in situations of coercion, and it was felt that respect for patient autonomy in such cases overruled mere beneficence. Hunger strikers should not be force-fed. The revised declaration clearly forbade the use of force-feeding, assimilating it to “inhuman and degrading treatment,” that is “never ethically acceptable,” but at the same time allowing leeway for the physician to resuscitate an individual who might have lapsed into unconsciousness. The declaration stressed, however, that artificial feeding, usually meaning intravenous fluids, (but could arguably also mean feeding by nasogastric tubing) when freely accepted by the hunger striker, was indeed a way to gain time and thus to save lives while respecting the dignity and rights of the hunger strikers involved.

The problem remains that even the new 2006 version of the Declaration of Malta is just that—a declaration, and thus part of what is called “soft law.” Although most states respect such guidance from the World Medical Association, some states refuse to abide by it on the grounds that it is not part of any “treaty” their government has signed, let alone ratified. This, of course, is beside the point. WMA declarations are not treaties; they are internationally recognized guidance on ethical principles by a respected organization with a track record dating back to the worldwide rejection of the grave violations of medical ethics during World War II. The medical associations of more than 80 countries have adhered to the World Medical Association’s guidance—including those of many of the countries whose nonmedical authorities do not accept WMA guidance on issues such as hunger strikes. It takes a strong and active national medical association to challenge such unethical behaviour and

support those physicians caught in a situation of dual loyalties—on the one hand, wanting to follow WMA recommendations; on the other, being instructed by their government to do otherwise. This in itself is very serious. Force-feeding ordered by a higher authority will, of necessity, need the participation of physicians.

The Declaration of Malta does not forbid resuscitation, which can be fully justified in certain situations. It envisages the saving of a hunger striker's life when there is doubt as to his proclaimed intentions to fast "until the end." There have been recent, highly politicized cases of hunger strikers, who, while loudly and vehemently claiming they wanted to keep fasting "to the bitter end" if necessary, had not the slightest intention of dying and were merely in a complex relationship of manipulation and a sort of "blackmail" situation. The clinical physicians taking care of these "hunger strikers" were fully convinced they did not in fact want to die, and in each case they were prepared to resuscitate if and when there was medical necessity for such treatment. In several cases, the hunger strikers simply stopped fasting once their demands had been met.

Physician participation in the actual repeated and regular force-feeding of hunger strikers who clearly refuse any nourishment as their way of protesting, be it against their living conditions or against the way they are treated, is a violation of the guidance stipulated in Malta. This could be construed as medical complicity in what Malta calls "inhuman and degrading treatment." The resort to hunger strikes has been portrayed in the media as a form of asymmetrical warfare or as "blackmail," which is not to be allowed [9]. In situations where protest fasting is clearly a detainee's way of remonstrating against mistreatment of prisoners, it raises the question of whether Tokyo rather than Malta should be applied. In Tokyo, artificial feeding was specifically prohibited so that prisoners who were being ill-treated or tortured, and protesting with the only means at hand—the hunger strike—would not be restored and reinvigorated by artificial feeding only to be sent back to their situation of torture [10]. Many states declare they do not practice torture and that, therefore, the suggestion that Tokyo applies rather than Malta is not valid. Whatever the situation, force-feeding qualifies as a form of inhuman and degrading treatment, according to the World Medical Association, and is just as illegal as torture in international law. The 2006 version of Malta also clearly states: "It is ethical to allow a determined hunger striker to die in dignity rather than submit that person to repeated interventions against his or her will" [2].

In the overwhelming majority of hunger strikes (voluntary protest fasting), the strikers do not want to die but are using the only means of protest they feel they have left to them. It could be argued that there are some hunger strikers who do want to die, seeing their situation as hopeless and wanting to make the most of their protest. It can equally be argued that submitting such strikers to weeks, or even months, of force-feeding may well be part of the overall hopeless situation they see themselves in. In such cases force-feeding is indeed a form of inhuman and degrading treatment and fuels their desperation. Physicians should not be involved in coercive procedures, as it makes them complicit in the overall situation of torture or other ill-

treatment. Inhuman and degrading treatment is, in international law, as “illegal” as torture is. There is no place for physicians in force-feeding.

### Notes and References

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3. World Medical Association. Declaration of Tokyo. <http://www.wma.net/e/policy/c18.htm>. Adopted 1975. Accessed August 27, 2007.
4. Then Article 5 of the WMA Tokyo Declaration; the declaration was also revised in 2006, and Article 5 is now Article 6. World Medical Association. Declaration of Tokyo. Adopted 1975. <http://www.wma.net/e/policy/c18.htm> Accessed August 27, 2007.
5. “Food refusal” refers to short-term fasting, that does not reach even the stage of discomfort, let alone cause adverse effects on health. See Reyes H. Medical and ethical aspects of hunger strikes in custody and the issue of torture. International Committee of the Red Cross; 1998. <http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/health-article-010198>. Accessed August 27, 2007.
6. Not any more than were Greenpeace activists who sailed their boats into an atoll in the Pacific, awaiting a nuclear explosion: they wanted to make a point, not commit suicide.
7. BBC News. Deal rejected in Turkey hunger strike. April 20, 2001. <http://news.bbc.co.uk/2/hi/europe/1287228.stm>. Accessed September 12, 2007.
8. Meaning IV fluids and nutrients, as needed.
9. US Rear Admiral H. Harris, quoted in BBC News. Guantanamo suicides ‘acts of war.’ June 11, 2006. <http://news.bbc.co.uk/go/pr/fr/-/2/hi/americas/5068606.stm>; Accessed August 28, 2007.
10. Meaning “force-feeding.” Interview in 2002 with Dr. Andre Wynen, former Secretary General of the World Medical Association, referring to the travaux preparatoires of the WMA 1975 Tokyo declaration.

### Suggested Reading

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