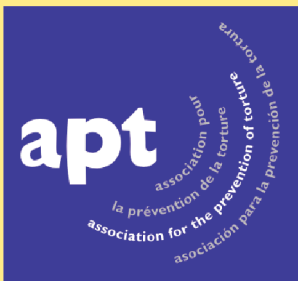
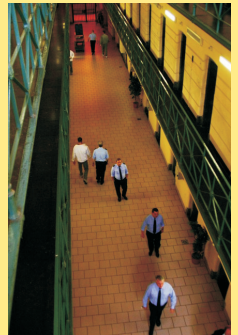


# New partnerships for torture prevention in Europe

Proceedings of the Conference  
Strasbourg, 6 November 2009





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# Foreword







**O**n the occasion of its 20th anniversary, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), together with the Association for the Prevention of Torture (APT), brought together all of the key and emerging actors in torture prevention in Europe to discuss possible “New Partnerships”. This conference, which took place in Strasbourg, France, on 6 November 2009, was an opportunity to take stock of the progress made over the previous two decades and to focus attention on the challenges ahead. It represented the first significant step towards a coordinated approach to the question of torture prevention by the various bodies working in the field.

The entry into force of the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment (OPCAT) in 2006, has led to the creation of the UN Subcommittee on Prevention of Torture (SPT) and to National Preventive Mechanisms (NPMs) in States Parties to the Protocol. The existence of separate bodies with a torture prevention mandate at the national, European and United Nations levels raises some significant issues but also creates an unique opportunity to further strengthen the effectiveness of action to prevent ill-treatment within Europe. The participation at the conference of representatives of each of these bodies, together with representatives from member States of the Council of Europe and members of civil society, provided for a rich exchange of experiences and ideas on the three discussion topics:

- ◆ Promoting the sharing of information between the preventive bodies
- ◆ Facilitating the coherence of standards, and
- ◆ Ensuring the effective implementation of the recommendations of the preventive bodies.

These conference proceedings bring together the presentations from the standpoint of the different bodies, whether at the national, European or United Nations level. They highlight the various aspects of the debate about how the work to prevent ill-treatment can be most effectively carried out. With more actors on the stage, there is a greater need for coordination and to share information about what each body is doing, how they are going about their tasks and what they are finding. It is also important that the preventive bodies do not develop contradic-

tory and diverging standards but instead ensure a degree of coherence. Such coherence is particularly important as concerns the substantive standards of torture prevention but there should equally be exchanges on working methods and “best practices”.

The discussions often raised more questions than answers, and participants felt that more focused discussion groups bringing together representatives from the different preventive bodies should be organised in the future, to examine the concrete building blocks for developing a coherent and mutually reinforcing partnership between the actors involved. Preventing torture and inhuman or degrading treatment or punishment in Europe remains a significant challenge. It is for the bodies charged with this “prevention” responsibility to ensure maximum coordination and cooperation so as to pursue the goal of putting an end to torture by the most effective means possible.

We hope that the proceedings will serve as a useful reference in the ongoing discussions on strengthening torture prevention in Europe. We would like to thank all the participants who contributed to the Conference, with a special word of gratitude to our Rapporteurs and general Rapporteur who were able to bring both their wisdom and a long-term perspective to the conference debates.

Strong partnerships are crucial to the future success of all of our endeavours in the prevention of torture, and this Conference should be seen as only the first step towards better cooperation and information sharing between all of the preventive bodies.

Mark Thomson

Secretary General  
Association for the  
Prevention of Torture

Trevor Stevens

Executive Secretary  
European Committee for the  
Prevention of Torture

# Plenary Opening Session

## Keynote presentations







## Maud de Boer-Buquicchio

*Deputy Secretary General, Council of Europe*

**M**y thanks to the Chair and good morning to everyone.

I recently wrote to the Minister of Justice of a Council of Europe member State to welcome the fact that all prisoners in that country had been given access to in-cell sanitary facilities and no longer had to resort to the use of buckets. For people unfamiliar with what it means to be imprisoned, this may seem like a minor detail, but it is not. Not for the human dignity of the people concerned, nor for the reputation of the country involved. The change was a direct consequence of the work of the Council of Europe Committee for the Prevention of Torture, and I believe it is a very good illustration of what the Committee for the Prevention of Torture (CPT) does and has been doing over the past 20 years.

The establishment of the CPT by the member States of the Council of Europe was an extraordinary and courageous act. For the first time ever, a group of sovereign countries agreed to throw open the doors of their police stations, prisons and psychiatric hospitals to independent international supervision. They granted the CPT the unprecedented right to enter their territory at any time and to visit, free from any impediment, all places where persons are deprived of their liberty by a public authority. And this right was accompanied by the all-important power to interview detained persons in private. This initiative by the Council's member States was proof of their belief in human rights and, more specifically, in the absolute prohibition of torture and inhuman or degrading treatment or punishment.

At the first meeting of the CPT held almost 20 years ago to this day, Catherine Lalumière, Secretary General of the Council of Europe at the time, said that the CPT must be a success. According to her, “failure would be a most serious matter from the standpoint of human rights protection in Europe, and the repercussions of such a failure might well also be felt far beyond the frontiers of our member States”. She was no doubt alluding to the draft Optional Protocol to the United Nations Convention against Torture (OPCAT), which provides for a universal system of visits to detention places, which had been pending before the United Nations’ Commission on Human Rights for years. This Commission had made it clear that before considering the draft Protocol it would “be advisable to take note of the experience of the European Convention for the Prevention of Torture”.

Over the last two decades, the CPT has organised literally hundreds of monitoring visits, and has gradually achieved acceptance by States as a professional, independent and objective interlocutor. The Committee has played an important part in overcoming the widespread practice of resort to ill-treatment found in certain countries. Through the development of a corpus of standards covering deprivation of liberty in all its forms, the CPT has been a source of pressure for reforms, and has lent legitimacy to policy initiatives. It has contributed to the protection of the human dignity of prisoners, mentally ill people, irregular immigrants, and children in detention throughout Europe.

Concerning children in detention, I should like to share with you my conviction that children have no place in prison. Children simply do not have the maturity to face the harshness of detention or to grasp the sense of it. Their vulnerability prevents them from understanding why they are in prison and what they are supposed to learn from it. It is my sincere hope that the CPT will succeed in persuading member States that children should no longer be imprisoned.

I started my speech by giving you one example of an improvement achieved as a result of the CPT’s work. There are many more and range from the strengthening of safeguards against ill-treatment to the closing down of substandard detention facilities, better health-care for detained persons and more purposeful activities for prisoners. It is well known that the European Court of Human Rights increasingly uses CPT reports when reaching its conclusions about the situation in a particular prison or detention centre. Without a doubt, in its 20 years of activity, the CPT has shown that independent international on-

site monitoring of places of detention is both viable and useful; that such a mechanism can work well and indeed have teeth.

However, there are no grounds for complacency. Acts of torture still occur in Europe, and the conditions under which persons are deprived of their liberty can often legitimately be described as inhuman and degrading. It is clear that the prevention of torture and other forms of serious ill-treatment requires continuous efforts by many actors. In particular, the CPT has consistently advocated, as a fundamental safeguard against ill-treatment, that all places where persons are deprived of their liberty should be subject to constant oversight by independent bodies at the national level.

I would also encourage all member States to systematically and without exception agree to the publication of CPT reports. As long as there are exceptions to the established practice of publication, the public will be deprived of the knowledge of not only problems, but also of the progress which has been achieved, and I do not think that this is in anyone's interest.

Three years ago, the long-awaited machinery of a universal character for the prevention of torture and other forms of serious ill-treatment finally became a reality, with the entry into force of the Optional Protocol to the United Nations Convention against Torture. In addition to the setting up of the Subcommittee on Prevention of Torture, the "SPT", States adhering to this Protocol are obliged to create National Preventive Mechanisms which possess extensive monitoring powers in relation to places of detention.

And this is why you are all here today. Under the same roof, we have the CPT, the SPT and representatives of the nascent National Preventive Mechanisms in Europe, as well as officials from States which have ratified the Convention establishing the CPT. Our goal is to develop new partnerships for torture prevention in Europe and above all to establish a close relationship between the preventive bodies at national, regional and universal level. Co-operation and complementarity must be the hallmarks of the relationship between those bodies if we are to successfully combat torture and other forms of serious ill treatment throughout our continent.

I wish you every success in your work.







## Mauro Palma

*President, European Committee for the Prevention of Torture*

**M**adam Deputy Secretary General, Distinguished Ladies and Gentlemen,

Allow me to thank you very much for your attendance at this Conference on the occasion of the 20 years of activity of the European Committee for the Prevention of Torture, which I presently have the privilege to chair.

This Conference is not intended to be a celebration; it is intended to be a reflection on how to increase the effectiveness of the absolute ban on torture and any form of inhuman or degrading treatment, which constitutes one of the pillars of our democracies. This gathering is aimed at finding together, from the different perspectives of our respective bodies, better synergy and common action in order to achieve a shared goal. This goal is to build a society based upon the recognition and effective enjoyment of the fundamental rights of every person, regardless of his/her legal status: free or deprived of liberty, regular or irregular migrant, citizen or foreign national.

In opening this Conference, I would like to express the sense that a new chapter in prevention of ill-treatment is beginning in Europe. The CPT can look back with satisfaction on the past twenty years of its constant monitoring of various types of places of deprivation of liberty: in the European context, the CPT was until recently the only body empowered by treaty to enter any place of deprivation of liberty, including those in which a person can be held for a very short period of time. With the entry into force of the OPCAT, the SPT enjoys similar powers in 24 European states out of the 47 member states of the Council of Europe

and, moreover, a new actor – the National Preventive Mechanism – has begun to emerge with similar powers of access and the potential to contribute greatly to the common goal of prevention of ill-treatment by virtue of being on the spot. In Europe, we are witnessing the emergence of a unique system of preventive visiting at the United Nations, regional and national levels.

The CPT's activity has not been limited to visiting places; the visits are not only an objective in themselves, they are the basis for the continuous elaboration of a system of standards aimed at: diminishing the risk of ill-treatment; identifying detention conditions possibly resulting in situations which do not respect the dignity of the persons concerned; extending the protection of vulnerable persons and developing the culture of law enforcement agencies towards the absolute respect of any person. By virtue of its twenty years of intensive preventive visiting, the CPT is in a unique position to distil, from its empirical findings in 47 states and the recommendations flowing from those findings, a body of standards for the region. Therefore the CPT is and remains the key standard setting body in respect of prevention of all forms of ill-treatment of persons deprived of their liberty in Europe.

While expressing the CPT's satisfaction about its twenty years of activity and important achievements, I want to express the Committee's awareness and concern for the new challenges it is facing and for the persistent significant gap between what is solemnly affirmed in declarations and conventions and what is actually implemented. In particular, two areas of concern have become more and more significant in our watchdog activity. First, the tendency towards less transparent procedures, operations and detentions in the context of the international fight against terrorism. The implied message is that more opacity might result in more effective investigations. This subliminal culture hinders the development and improvement of law enforcement officers' awareness and their positive responsibility; they perform a difficult job and they need a different message. It has to be made clear that transparency and proper safeguards are not merely the basic requirement of a State governed by the Rule of Law, but they are also the most appropriate instruments to give effectiveness to any investigation. Moreover the credibility of work to prevent ill treatment and torture is undermined each time allegations of ill-treatment are not properly investigated and those responsible are not held to account

for their actions. I take this opportunity to call on all the States Parties to the European Convention on the Prevention of Torture to take effective measures to end the practice of impunity for law enforcement officials suspected of perpetrating acts of ill-treatment – a problem encountered by the CPT in many countries.

The second area of concern is the difficulty policy makers have in reconciling society's demand for security and the positive integration of people coming from the poorest regions of the planet. This difficulty may often result in laws, decisions and practices which are not in line with the absolute commitment to safeguard the fundamental rights, dignity and safety of every person.

These challenges require constant attention, monitoring and the ability to develop good practices. For the CPT this means the ability to continuously review its set of standards in order to ensure protection in a situation which is constantly evolving. In its 19th General Report, published a few days ago, the Committee examined the fundamental safeguards to be afforded to irregular migrants, when intercepted at borders, when deprived of their liberty and when removed from the territory. I would like to recall that very often they constitute a new category of vulnerable people in need of assistance and support rather than detention.

In this context, the CPT has proved to be a unique and effective mechanism. The total eradication of ill-treatment and torture in the European continent may never come to pass, but it can certainly be combated successfully and reduced to a marginal phenomenon. The CPT will continue to play its part working with the relevant actors in the countries its visits.

The CPT's peculiarity lies in its dual profile: not only a monitoring body, but also a standard-setting body. A standard-setting body which bases its evolving standards on direct experience in the field and on continuous monitoring of the implementation of the standards.

For this reason its body of standards constitutes an incomparable and continuing legacy that must be taken into account by other monitoring bodies, including those recently established in a number of European countries.

Distinguished ladies and gentlemen, we now have more instruments for our common action. All of us are aware of the risk of duplication for an increased number of bodies operating in the field of preventive visiting. However, all of us are firmly determined to coordinate our efforts in order to maximise effectiveness, while ensuring that no person deprived of their liberty falls through the gaps in the system of protection. This will be the achievement of this conference.

Thank you.



## Victor Rodriguez Rescia

*Chairperson, United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*

**A**s Chairman of the United Nations Subcommittee on Prevention of Torture, I wish to thank Ms de Boer, my fellow colleagues at this table, and especially you – my colleagues in the task of torture prevention. I also wish to welcome Mr Manfred Nowak, another courageous individual in the field of torture prevention. I am also pleased with the attendance of many of my colleagues at the Subcommittee on Prevention of Torture, and wish to tell you that it is very moving to be here at the Council of Europe for the first time, together with the CPT, our elder brother and our partner and colleague in the prevention of torture.

We are all gathered here to talk and deal with a subject that is shared, regional, universal. It is a subject that is related to all areas: economic and cultural, as well as to structural problems. We work together on the same issue in diverse regions with common and with different problems, and we, as partners in global torture prevention, face great difficulties and challenges.

If torture were understood by all of us the way it should be understood – as forbidden, an absolutely prohibited practice – then we wouldn't be here today. But that is not the case. It is hard to understand certain countries, but it can be so instilled in certain cultures that the victims of torture don't even know they are victims of torture. In many cases, individuals deprived of their liberty and victims of torture believe that the beatings, the ill treatment, are part of the sentence; they don't even report them.

We cannot, by speaking, prevent torture, if we don't focus on the issues raised by the big, structural problems related to education and culture. Changing cultures takes time. We cannot continue applying the reactive recipe *ex post facto*; combating human

rights violations based on visions which are not integral, not holistic.

I therefore welcome the CPT's work over the past 20 years. I applaud it because it has taught us lessons that we at the SPT have to learn with great humility. The CPT has carried out over 200 visits, while we have only conducted 7 in the past 3 years. We are struggling to have the United Nations provide us with a budget enabling us to carry out at least 8 yearly visits. But prevention cannot be effected by visits alone; it requires education and work aimed at creating innovative visiting bodies.

In a way, what the OPCAT makes possible is for the United Nations to become aware of the problems at the root of torture that the States themselves face. In this sense, the vision of the States when creating the OPCAT was not so much to create the SPT, but rather to create an innovative mechanism – the national mechanisms for the prevention of torture (NPMs). These are mechanisms not specifically established by the treaty that created the CPT, but which the CPT envisioned from the beginning. NPMs are the ones who are in the field – the ones who know the country's problems, who are exposed to higher risks, who every day face the challenge of combating torture through prevention. Thus, I am extremely pleased that one of this conference's core aims is to create strategic alliances with NPMs. Unfortunately, I must contradict those who stated that the OPCAT's cherry on the pie – or its jewel in its crown – is the SPT. The cherries on the pie are the NPMs.

One of the OPCAT's great deficiencies is its lack of resources. Art. 11(b) specifically stipulates – as an international mandate and highlighted as one of the SPT's duties and responsibilities – the support for States in the creation of NPMs. We have zero dollars to fulfil this task. We have no support but we constantly receive demands from States for support in the creation of their NPMs. On the other hand, it is our duty to provide training to NPMs. Also for this we lack the needed resources. And it is not only a question of resources, but also of being creative. Somehow, we should re-think what we are doing to strengthen NPMs.

I wish to say here that the issues of torture and prevention are in no way the sole responsibility of committees, subcommittees or universal or regional torture prevention bodies. I believe that, in order to prevent torture, it is necessary to work with civil society, with victims and potential victims. In this sense, the OPCAT's particular nature has forced us to speak with civil soci-

ety, to open our doors. A support group – the OPCAT Contact Group – was spontaneously created by international organisations with which we have had practical sessions and will continue organising parallel meetings in order to debate the main issues in the field of torture prevention. In fact, we are seated here today with the organisation at the origin of both bodies, the APT. The APT's work, I must highlight, has been impeccable, serious, responsible, but other international organisations are also working with the APT on this global issue.

I wish to close by drawing your attention to the construction of synergies between the CPT, the SPT, the United Nations Special Rapporteur on Torture, the Committee against Torture. Torture is fought against in several fronts, and one of these is the OPCAT. Considering so many fronts, how can we avoid duplicating our work? This is where the issue of cooperation comes in. Obligatory cooperation, logical cooperation, cooperation to avoid making mistakes along the same lines, cooperation to avoid duplicating visits, cooperation to converge on the main and fundamental issues of torture prevention.

It is not easy to speak about torture prevention. It is not easy because defining torture prevention may lead us into a labyrinth where we can't find our way out. I believe that we must speak about how to characterise torture prevention rather than seek a definition for it. In this sense, the learning takes place every day. Indeed, we at the SPT are trying to build a working methodology for torture prevention. We have invited all of civil society to work with us and will continue this debate on the characterisation of torture prevention.

We also believe that cooperation is the key to torture prevention, as we have attempted to generate trust by being proactive and involving the States. But creating trust in the field of torture prevention does not mean making things easy for States. It is necessary to be tough and severe when identifying structural problems, but also to make constructive proposals.

We have to offer diagnoses which I call assessments – free consultancies for States aimed at finding simple ways to identify the main problems in torture prevention. We identify the risks of torture. Our work is not to identify concrete cases and to raise petitions; we work in identifying that which generates risks – the causes of torture. We offer concrete, integral proposals for prevention based on the normative framework and an assessment of public policy on the prevention of torture. In this sense, I am

grateful for this forum which enables us to speak about these issues and challenges. And I hope that we will come out of these three Panels today with some innovative and creative options to pursue our work with a common agenda.

Thank you very much.





## Thomas Hammarberg

*Commissioner for Human Rights, Council of Europe*

I would like to voice my support for both Maud de Boer-Buquichio and Trevor Stevens, as I believe congratulations are justified, even though this does not prevent us from being self-critical at the same time.

We have achieved a great deal over the years we have been fighting for the total abolition of torture, but we have to recognise that a lot remains to be done. We have been reminded by the response to September 11, that we need to ensure full respect for the universal ban on torture.

A couple of days ago the Parliament in Lithuania decided to set up a serious investigation into the information that has come to light about the existence of a secret interrogation centre in that country in 2004 or 2005. I visited Lithuania very recently and I understand the problems involved in such an initiative. People knew that if they embarked on such an investigation with a strong intent, it might irritate other security agencies – not least the CIA in Washington. I think this is a major problem today. We have done things in the past few years in combating terrorism which require us to look back to ensure that all the basic facts about what happened, including torture, become public knowledge, enabling further discussion to be based on knowledge of what actually happened. The argument that truth seeking might irritate, or damage cooperation between, security agencies has been used in many other cases as well.

The other day a court in Italy decided to proceed with judgments against CIA agents working in Italy despite warnings from the Italian Government that it might damage relations with

Washington. In Sweden, there was a case where two Egyptians were handed over to the CIA at a Swedish airport and sent to Cairo where they were tortured. The Government, even under scrutiny by the Parliament, refused to release the full facts of the case. Later on, when the facts came out through journalism, it was explained that the Government had not wanted to do so because this might have irritated the security agency in the USA.

It is absolutely important that such cases – and there are more now in Europe – be clarified in order for us to start again and build even stronger protection against these very serious human rights violations. I have had a discussion with the Government in Skopje, for instance, about the absolute need for them to investigate what really happened in the case of El-Masri who came from Germany. These things must be done. It does require political will from governments to look through these cases. It is also necessary to clarify that this is not done in order to irritate another government, but rather to ensure that these types of human rights violations will never happen again.

I said that much has been achieved. In Europe, the real start for a serious discussion about methods to combat torture came in the 1970s when we received reports about torture by the then military dictatorship in Greece and even earlier about what happened after the military coup in Turkey. At that time we also still had fascist-like authoritarian governments in Spain and Portugal. In all of these countries there was torture. One major step forward was the discussion in the Council of Europe, and in the Human Rights Commission, of the case of Greece. This made torture a very central part of the Council's work. What started then was a more systematic approach to the prevention of torture. Legal and other safeguards were made more precise to make it almost impossible that torture would take place in police cells and other places of detention. Moreover, it was necessary to ensure that when torture did happen there would be a clear judicial response – that is prosecution of those responsible – not only of the torturers or physicians who were there and facilitated torture, but also of those who gave the orders: the chain of command. That was an important step forward along with compensation and rehabilitation, which actually have a preventive dimension.

So we began to build a system with a serious approach to the various aspects of preventing torture and not simply reacting when we hear reports in the media about these horrible crimes. Of course the CPT when it was created became a very important

actor and I do not need to echo others' congratulations here. The CPT has been absolutely crucial when it comes to setting standards. I would also like to praise the quality of the Committee's reporting and the seriousness of its approach. I have noticed during my three-and-a-half years as Commissioner what a tremendous impact the CPT has had in the member states of the Council of Europe when it comes to reform of the situation in prisons – something which must be said on a day like this.

I think the Optional Protocol to the UN Convention against torture (OPCAT) is a step forward. It is a very interesting international treaty and the encouragement of national preventative mechanisms (NPMs) is a very positive signal. In Europe we now have decisions at the national level to establish such mechanisms in many of the member states, although many others remain to be set up. Often they are not new mechanisms, rather a clearer task has been given to existing bodies, such as the Ombudsman, commissioners or councils and, in some cases, non governmental structures. All of that is positive and should be encouraged, and one of the major purposes of this conference, I believe, is to secure the fullest support from the European and international level for the first steps of these mechanisms.

In my work, I have noticed that there are still problems although we have all these standards and agreements and no government in the world today would admit that they accept torture. Of course in the USA there was an extremely unfortunate discussion about redefining torture, which was probably attractive to some other governments as well, but fortunately that discussion has now stopped and we are going back to the original definition of torture. If this issue comes back, there is a need for active participation in the discussion to make it clear how absolutely crucial it is that we have zero tolerance when it comes to torture. All talk of various "ticking bomb" scenarios must be countered strongly from our side at an early stage.

I was in Moldova soon after the events in early April this year. During the violent post-election demonstrations, the police totally lost control and there were many very severe beatings of demonstrators and others who were arrested at that time. Even afterwards it was difficult for the authorities to acknowledge that things had really gone very wrong, and that there was a need for strong remedial action – including prosecution of those who were responsible. I hope that this will start with the decision to set up an Investigation Commission within the Parliament.

Moldova is not a unique case. I think the risk is always there, when it comes to tense, difficult situations in an atmosphere of crisis. We cannot be sure that the safeguards we have created are totally effective in any European country. This means that we have to continue to be vigilant and be prepared to send missions to situations of crisis. Close cooperation with local initiatives and bodies, including the NPMs now being created, is of course necessary.

The three main points of today's agenda are the key for continued work on building a system which will go as far as possible towards reducing the risk of torture. Coordination, or synergy, as Victor Rodriguez put it, is key, as is cooperation with civil society. It is also crucial to ensure that we cooperate rather than compete in a negative sense now that we have the UN Subcommittee on the prevention of torture and the CPT operating in Europe along with the national mechanisms. We should support one another, learn from one another, and see the several structures as an asset rather than a problem for coordination, because coordination is possible if the good will is there. The need to ensure we have the same standards when there are different actors is another very important point, because we know that authorities, when under pressure, tend to play one international actor against the other. It is important that we speak with the same voice and have the same standards. By and large, I think the standards set by the CPT could be a good model for others in this field. Finally, the point about implementation – that is what it is all about. That is the *raison d'être* for these structures and for our conference, so that is obviously where the focus should be.

Thank you.

## Thematic Panel 1

# Promoting the sharing of information between the preventive bodies





**I**would like to say that before we start to discuss the cooperation between NPMs and other structures, we need to improve the mechanisms which exist today, because all of them have positive and negative aspects. The more work we do, the more problems emerge, and the difficulties are increasing.

I am going to start by talking about the NPM in Moldova, which has existed for two years and is part of the Ombudsman's office. The NPM is a form of "Ombudsman Plus." There is a legal declaration on its situation which describes the role of the Ombudsman as a preventive mechanism. There are also 10 members of civil society in this organisation. So far the State has not made money available for the work of the NPM, and people are carrying out visits to places of detention with their own money and on their own time. Having no money available from the State makes for a complicated situation. If people come to the NPM and ask for help, they do not get the support they need. I believe that the NPM needs to be able to act as counsel and provide support.

We have problems with our legislation on NPMs and on the Ombudsman in Moldova, because changes in the law were brought in following the country's ratification of the OPCAT but it is still not clear who the NPM is, which rights the NPM has, how it is supposed to work etc, and the reports which the NPM is supposed to produce have not yet been incorporated into the legislation. These reports are meant to be inclusive in nature, and members of the NPM can submit information. However, the Ombudsman and the politicians take them and interpret them as they see fit, so the situation in Moldova is not easy. In addition, we believe the Ombudsman to be a political figure.

So once again, the NPM in Moldova works under difficult circumstances. Organisations such as the SPT want reports from the NPM in Moldova, and the last one which was submitted was not prepared by all of the members together. This is not how the

NPM is supposed to function. Those members of the NPM who represent NGOs take a critical approach to torture and are very critical in their reports. The Ombudsman, on the other hand, has a different approach – his reports are much softer in nature and fail to address all the problems which exist.

All of you will be aware of the recent political events in Moldova. Following these events, the NPM was not in a position to write a good, objective report. The report submitted by the Ombudsman was a weak one which did not really address the problems which exist. Members of civil society are members of the NPM, and they produced their own separate report which was radically different from that of the Ombudsman.

I would like to express my gratitude to the CPT – in particular the members who came to visit us in Moldova and who have worked very closely with the civil society members of the NPM. I personally took part in the relevant meetings and I hope the information we passed on was valuable. We hope that the reports which we passed on had some influence on your work. We are part of civil society, and in this role we try to influence the situation in Moldova and the way in which the NPM works. When there are internal problems within the NPM this makes our work more difficult. When one is talking about changes to the legislation and changes to the way in which the Ombudsman works, it really is a difficult situation, and it makes our work all the harder.

Last week a recommendation of the UN Committee Against Torture (CAT) was published, and information was presented about the NPM. There is a decent amount of information available with regard to both the Ombudsman and the NPM in the recommendations. Next week there is going to be a hearing on Moldova at the CAT, and the NPM is going to present its report – but only the Ombudsman's report. I would reiterate that the Ombudsman's report is a weak one which was not objective and did not uphold the standards of Human Rights or the protection of people against torture. This was why a shadow report was written by the civil society members, and in this report you can find information which I believe should have been in the NPM's report, but is not.

When the Ombudsman represents the NPM in various meetings/briefings, in particular when he presents information to the State, he makes sure that the civil society members are not present. There are also issues with the election of Ombudsmen



in Moldova – this is not a democratic process. I think that NGOs which work in Moldova, even those which are not NPM members, deal with issues which should be dealt with by the NPM. You could say that some of this NGO work is stronger and more effective than the work of the NPM itself.

I would also like to say that, in future, I hope we will arrive at a point where all States which have ratified the OPCAT will not only change their legislation, but also look at the way in which NPMs function. There are not many countries yet with NPMs, but already all have their own different approach to issues. I believe we all need to increase our efforts to look at the way in which NPMs work. I think it will be a good day when the way in which NPMs produce reports becomes a lot easier and more effective. For this reason we need to strengthen our NGOs and remove the political element of the NPMs.

I am speaking from the Moldovan point of view, but the NPM reports are written there by the Ombudsman, and the other members are not able to make their contribution. From my personal contacts I know that the NPM has not put together reports as it should – that it has been influenced by Government Ministries. As the NPM is made up of more than one person, when international organisations work with it they need to share their information with, and send their documents to, every member – not just one. We need to think of the NPMs and NGOs on a national level, and when it comes to writing reports we will produce more democratic ones, reflecting the views of the whole NPM rather than merely those of one person.

I know there is much to discuss, so I would like to finish there.

Thank you.



All of us at this conference agree that there is a need for prevention of torture and other forms of ill-treatment in the wider European region made up of the 47 member states of the Council of Europe. The work of prevention is costly, especially when preventive visiting is involved. We know that there are scarce resources for prevention, even though, compared with some other regions of the world, Europe might appear well resourced. Therefore we need to make best use of the resources available for this work, by coordinating, avoiding duplication and limiting any overlap to useful reinforcement to ensure protection. A prerequisite for doing this effectively is sharing information.

The SPT, CPT and NPM exist within an international framework. Whether we are new or old bodies, we all need to cooperate to form a network of bodies interlocking in such a way as to plug the gaps in the mesh of safeguards for people deprived of liberty. In this way we will maximise our potential to reduce to an absolute minimum the risks of ill-treatment. Article 31 of the OPCAT encourages the SPT and the bodies established under regional conventions instituting a system of visits to places of deprivation of liberty to cooperate with a view to avoiding duplication and to preventing ill-treatment.<sup>1</sup> The European Convention on the Prevention of Torture (ECPT) is not explicit on this, since the SPT and the NPMs did not exist when it was drafted, but cooperation is a key principle of the ECPT. In my view, all bodies involved in prevention of ill-treatment should cooperate in practice.

The Background Paper points to the principle of confidentiality which guides both the CPT and the SPT. NPM information is considered “privileged” under the OPCAT (Article 21.2), in addition to the general obligation to respect the confidential nature of personal data. The fact that all sensitive information

1. Article 31 of the OPCAT.

should be handled with care by all actors involved in preventing ill-treatment does not preclude exchange of information under conditions tailored to the varying degrees of sensitivity, and concomitant need to preserve the confidentiality of the data. In this panel we are exploring how we can maximise useful exchange of information while respecting the confidentiality or sensitivity of information.

Since both the CPT and the SPT are bound by similar provisions regarding confidentiality, they could share a great deal of information with each other, on a more or less confidential basis as dictated by the nature of the data: substantive as well as methodological information and generic information (e.g. about system shortcomings) as well as specific information (e.g. particular risks of ill-treatment).

As far as coordinating plans for visits between the CPT and SPT is concerned, it is not difficult to see how the two treaty bodies might share information enabling them to plan their visiting programmes strategically. Since the CPT has more capacity to visit frequently and intensively, but only in Europe, sharing of information for planning purposes would allow the SPT to concentrate its limited resources on areas where preventive visiting is lacking and on supporting the development of the NPMs, a phenomenon currently more widespread and advanced in Europe than in other regions.

As for sharing substantive information about a state which is party to both conventions, both treaty bodies could do so within the confines of the confidentiality principle, and the Background Paper refers to the CPT's long-standing proposal to that effect. So far the Council of Europe has not given a formal response to the proposal for confidentially shared information, perhaps because not all European states are party to the OPCAT. In the interim, the CPT and the SPT could jointly address their 24 common States Parties on the matter of the two treaty bodies sharing information on a strictly confidential basis. It is hard to see how a State Party to both conventions could argue that, having ratified both instruments, it does not want one preventive body to know what the other knows or share information about which issues are currently of most interest or urgency and where attention needs to be focused.

However, objections about information exchange may have less to do with substance and more to do with a perceived difference in the two treaty bodies and their practices surrounding confi-

dentiality. The CPT has never had a leak of confidential information from its side in 20 years of visiting, a fact at least partly attributable to the high level of continuity of the dedicated expert staff in the CPT Secretariat, who form a specific unit within the Council of Europe specialising in the CPT's mandate. Unless it is shared under controlled conditions, CPT information remains within the unit, which has over time developed sophisticated systems to ensure confidentiality. It may be that, for effective exchange of information, the SPT and its Secretariat need to develop a similar approach.

Since the OPCAT expressly recognises the right of NPMs to have contacts with the SPT, to send it information and to meet with it (Article 20, 7), there is no obstacle to NPMs' sharing their information with the SPT. I would argue that, since the NPMs are operating within the international framework for prevention of torture, the NPMs should likewise be encouraged to share information with the CPT. The maximum benefit of an international visit is likely to result if the NPM is willing and able to provide information about countries on the list to be visited well in advance of a visit by an international body, so that the treaty bodies could take that information into account when determining the issues on which to focus and the individual places to be visited within the country. In fact, NGOs and NHRIs already provide much helpful information about places of deprivation of liberty and issues of particular concern before and at the beginning of CPT and SPT visits.

An obvious vehicle for sharing of NPM information widely, not only with the CPT and the SPT, but with others including civil society, are the annual reports which all NPMs are obliged to publish<sup>2</sup>. There is no reason why annual reports should not contain case studies and analysis of the substantive issues encountered during empirical work, as well as details of the methods developed by the NPMs. If the annual reports of the NPMs are recognised and used as a means of communicating substantive issues and specific information, rather than, as is often the case, somewhat bland general information about the institution, they will be of major value in terms of sharing information about the risks of and safeguards against various forms of ill-treatment and about preventive methodology.

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2. Under the OPCAT States undertake to publish and disseminate the annual reports of the NPMs.

As to the sharing of confidential CPT or SPT information with NPMs, the positions of the CPT and SPT differ, since the NPM was not envisaged when the ECPT was adopted. The SPT has the possibility, under Article 16 (1), to communicate its recommendations and observations confidentially to the State Party and, if relevant, to the NPM. It is hard to see in what sense information contained in SPT visit reports would not be relevant to the NPM. However, it is not entirely clear whether the provision for sharing recommendations and observations with the NPMs implies an obligation on the part of the NPM to keep the information confidential. I would argue that, since the NPMs are all working within the international framework, they are bound to treat the information confidentially. One might, however, foresee concerns, particularly if the SPT or CPT were not confident of the independence and reliability of a particular NPM.

Sharing of sensitive information could be useful in relation to the risk of reprisals. If, for example, the international visiting body is told by prisoners that they were warned before the visit against speaking about ill-treatment occurring at the prison, it would be important to follow-up on that situation, in order to ensure, as far as possible, that no harm came to the prisoners who spoke with the visiting delegation, as well as to check on whether allegations of ill-treatment continued to be made. The NPM is in a good position to carry out follow-up work, if it is provided with information about the risks at the prison. If the relationship between the international body and the national body has developed into one of trust, sensitive information might be communicated in confidence.

Exchange of information needs to proceed incrementally, so that the relationships between international and national bodies can develop as the capacity of the individual mechanisms evolve and the confidence between them builds.

**I**would like to begin by identifying certain issues related to coordination in torture prevention. There are several treaty instruments that are different or complementary, as well as numerous general human rights bodies working specifically on torture prevention and elimination, international bodies, NGOs, governments and National Preventive Mechanisms (NPMs).

This raises the question of how to work in a cooperative way and without duplicating efforts, having so many international treaties in all countries, torture criminalisation standards and torture prevention standards, and so many actors with different or complementary mandates.

The question is how to proceed in order to cooperate in torture prevention when the very concept is unclear. There are mandates to fulfil, but there are also ways put these mandates into practice in an organised manner. In this sense, we must cooperate in the conceptual field, in characterising prevention and understanding how to use the instruments based on an interpretation that is favourable to torture victims, or rather to potential torture victims. In any case, we are all potential victims of ill-treatment.

We must speak the same language, share the same approach, and then we can concur in important conceptual debates. When presenting this year's annual report, we stated that we considered the Istanbul Protocol to be a soft law instrument. Others disagree. This issue, which is perhaps theoretical, is extremely important. How do we unify certain criteria when we don't agree on important conceptual bases for torture prevention? This is the first task when building an organised cooperation.

The fact is that prevention starts with what is likely to come, with proactivity, with what can happen. Anticipating the event of torture. And for this we have prevention tools. It is very important to cooperate with the working methods we have, that is, how to share these among the SPT, the CPT, the CAT, the

Special Rapporteur. Carrying out visits in certain places but not in others, etc. How to coordinate this task and these methods based on the following proposal: to send out together a message to governments, a torture prevention message based on cooperation.

We will find that the OPCAT and the SPT have tools to work on prevention: regular visits to places of detention, drafting a briefing before the visit (which the CPT also does) and conducting interviews. After the visit, we draft a confidential report, the content of which is not condemning but rather proactive and preventive, identifying the risks of torture and formulating conclusions and recommendations.

The OPCAT has a special fund to help States fulfil the recommendations. This is extremely innovative. It is the first UN treaty – and I believe also regional treaty – that establishes a specific mechanism in a fund to help fulfil the SPT's recommendations. This is important because it is part of the cooperation that we will discuss.

We are mandated to provide advice to States on the creation of NPMs. This is the theory, but, as explained earlier, we lack the material facilities to perform this role. We have a direct and clear relationship with NPMs, and communicating with them is an international obligation for us. We carry out follow-up activities, which we share with NPMs and international bodies working in the field of torture in order to complement the work in this field.

Based on this, we will find that we must work together cooperatively and with a proactive approach: we don't work ex-post facto, carrying out visits as a reaction to something happening in a country. This is the reason why we have a programme, based on various criteria that we have developed, and our work is not limited to countries that have a specific problem with torture.

We are building a programme that is more structured in terms of prevention, always identifying the causes of torture, the normative framework, whether or not torture is characterised as a crime (or if it's simply incorrectly characterised), whether there is a lack of conformity with international treaties and norms, whether there is a lack of prevention policies, etc, and also identifying the diverse practices in the field of torture prevention in order to improve them on the basis of our report.



In this sense, we will discover that this cooperation must be adapted according to the actor. Regarding the United Nations, we find a direct, implicit and obligatory relationship with the CAT. The OPCAT establishes certain cooperation lines: we can share information confidentially, we submit an annual report to the CAT, we organise a joint session in November and share an agenda of visits (or rather use their reports), and we officially submit our budget to the UN system through the CAT. The CAT, in turn, provides great support to us with recommendations for OPCAT ratifications. This is part of the work that requires coordination and cooperation from us. The CAT's mandate also includes prevention, but it mainly works on country reports and individual cases. We don't deal with concrete cases; we complement its work.

With the Special Rapporteur on Torture, Manfred Nowak, we have much in common when it comes to visits. The Rapporteur's task mainly consists of visits to places. So does our work. We must also manage confidential information and coordinate our agendas so as not to duplicate visits, coordinate our interview work, the way to carry out follow-up activities, etc.

Regarding cooperation with the CAT and the CPT, I believe we could all work on a more cooperative line in the next two years: we should ask ourselves how we can generate information for them and how they can provide us with preparatory information in return. This is linked to the issues of trust and confidentiality. The problem with the confidentiality established by the treaty is that it forces us to work with the State on a direct line and in a confidential manner, based upon the report. Our report is confidential unless the State makes it public. In our reports, we always recommend governments make them public. However, only two countries have done so: Sweden and the Maldives. I believe that the faster these reports are made public, the more effective they are in preventing torture. How can you prevent torture if the information is not public? How can torture be prevented if one insists on the terms of confidentiality?

We shall respect confidentiality in its terms. But how can we avoid interpreting confidentiality beyond the requirements of the treaty? That is, let us not state more than what is stated in the treaty. However, we will find a difficulty in this sense, when we communicate with NPMs we can see an asymmetric situation, as explained in the Background Paper. The asymmetry lies in that we receive information from the NPMs and we prepare

our report, our agenda, while they provide suggestions. But there is no reciprocity, that is, it is one-way communication only.

Therefore, the question is how to provide feedback while respecting confidentiality. And, in this sense, we may identify some important lines of work. The SPT should consider whether the NPM can be qualified as independent and impartial, if it was set up in the way established by the OPCAT, whether or not it complies with the Paris Principles, etc. As a mark of our trust, we could provide NPMs with our complete reports while making clear that they must be kept confidential, or we could send only the parts of the report relevant to the NPMs.

We continue debating this issue, and this is highly important because if we consider that the NPM fails to comply fully with the OPCAT's requirements, how can we convince it of this fact and encourage it to improve? Compliance is a condition required by the OPCAT. Apart from comments in our reports, we include in the general agenda subjective processes for improvement and to strengthen the NPM in order for it to improve torture prevention.

Also, we don't think that we need to create a model for NPMs, as it is not possible to make universally applicable models. There will be 3 or 4 important options that are currently being worked on. Each country – within its own dynamic and with civil society's participation in the overall policy – will know which mechanism will comply with these standards. There is an office in United Nations working on the issue of national human rights institutions. But we should be careful in this sense! Setting up NPMs does not mean automatic designation of Ombudsman offices to transform them into NPMs or "Ombudsman plus". This is not the best solution for every country.

We must share mandates with other regional as well as universal bodies, such as the International Committee of the Red Cross. Some countries have asked us: why don't you apply confidentiality as the ICRC does? I understand the issue of confidentiality and the importance it has, but we will try to use it in a less restrictive way in favour of torture victims. Regarding the CPT, we share agendas of visits, work methods, training: what we are doing now is a typical example of cooperation. The Inter-American Commission in Washington and the African Commission have Special Rapporteurs on the rights of persons deprived of their liberty. They have drafted guidelines on this issue, and we also work with them.

There is no clear doctrine on torture prevention. We have to share and learn. If our reports are confidential it will be difficult to cooperate in the construction of the doctrine on prevention, because we don't know it – it is not accessible.

We have a very interesting relationship with civil society; in particular, with NGOs, a group has been set up spontaneously: the NGO contact group. We have parallel agendas, work together, debate issues and carry out capacity building. They have their own accountability agenda and sometimes send us important messages that we take into account respectfully. With national NGOs we have extremely important channels of communication. When we carry out a visit, we meet 2 different countries: the country of the NGO and the official country. During interviews, we are told the official story about torture, prevention and all that the Government is doing; sometimes it seems as if they are telling the story of another country. It is very important to be aware of these divergent scenarios when carrying out visits.

There are also cross-cutting issues in the work with NPMs, great strength in lobby activities, in the OPCAT's ratification and in the advice to States on the creation of the NPMs. Regarding cooperation with NPMs, quite frankly, we are behind in fulfilling our mandate; we are incapable of fulfilling it satisfactorily. We should provide assessment of the creation and training of NPMs. We should support and contribute to the overall, prior preparations, interview the NPMs, exchange ideas. This term, exchange, we should use it with caution, because actually there is no real exchange: they provide information but we send practically no information to them. There is a big question: would it be possible to carry out a joint visit with the NPM? I will not respond to this here. The report is confidential. This is important: we need to empower the NPM through our recommendations.

There are other questions I will not respond to, such as whether or not we should advise on NPMs. For instance, this would mean whether or not it would be appropriate, as SPT, to carry out an appraisal of the objective characteristics of every country's NPM, similar to the existing accreditation system for National Human Rights Institutions. This is an important question.

These issues are open to debate, and I await your reactions.

Thank you.





## Françoise Tulkens

*Judge at the European Court of Human Rights,  
President of the Second Section*

**B**efore summarising the Panel 1 reports and discussions, I should like to convey to you a message from the European Court of Human Rights, which it is my honour to represent. In the Court's view, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is, more than ever, a unique and vital partner. There are many reasons for this, but there are two in particular.

Firstly, the CPT's reports are very often valuable resources for us, not only when we are establishing the facts of cases raising complaints about establishments visited by the Committee, but also in the development of the standards progressively being drawn up by the Committee, and which we are careful to adhere to on such matters as cell size. In both these respects, the work of the CPT is truly indispensable when we are dealing with the numerous applications made to the Court. In this context, we apologise if we sometimes misuse your reports and make a few mistakes. I admire the keen vigilance of Trevor Stevens who brings us back into line.

And, even more crucially, the partnership between the CPT and the Court reflects, albeit only symbolically, the fundamental nature of Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment or punishment, necessitating greater efficiency from the early stage (prevention) through to the later stage (trial). Now more than ever before, every possible means of enforcing the prohibition of torture must be used, and in this respect the CPT and the Court of course play eminently complementary roles.

The anniversary which has brought us together today is, in accordance with the organisers' wishes, a non-anniversary. This is something that I understand, for there is no cause to celebrate

in the human rights field, since nothing is ever achieved once and for all. Fundamental rights require constant individual and collective vigilance. I nevertheless regard an anniversary as an opportunity to take stock and to look to the future. This is what today is all about for me.

One thing that is now certain is that the bodies set up to prevent torture and inhuman or degrading treatment or punishment are increasing in number and expanding, nationally (national preventive mechanisms), regionally (the CPT) and globally (the SPT). This development may be an asset, but also entails some risk. It will be an asset if it fosters the effective gradual building up of an integrated common system of prevention of torture everywhere, in all places where the temptation to use torture might arise. But it will bring with it a risk if it is disorganised and gives rise to a kind of frantic proliferation of documents and practices, with jumbled jargon resulting in trivialisation. Rather than being intelligible to the persons concerned, such profusion might also cause confusion, dilution and even indifference. Another risk for the bodies concerned is that of mutual ignorance, compartmentalisation, divergences, inconsistency, even neutralisation.

This makes it important to note that all these different instruments exist and to develop a creative strategy. Despite, or rather because of, their specific nature, these systems in practice cut across each other at many points, bringing us back to the complementarity model (the official line) or to the model of complexity (not everything can be done via one route) or to the model of synergy and interaction, in which everyone has a part to play. This last one certainly seems to me to be the right one to adopt. When it comes to preventing torture and inhuman or degrading treatment or punishment, everyone has a part to play, and, in some cases, it is even possible to see how one instrument, one system, carries another along with it. A true added value is derived here from the increasing number of preventive instruments and bodies. But interaction imposes its own requirements: those involved must treat each other as true partners, on an equal footing. The first condition for this partnership is therefore, quite clearly, the sharing of information among the various preventive bodies.

This was the appropriate theme chosen for our working group, and it gave rise to an abundance of reports and discussions. Forgive me if I do not faithfully reflect the rich variety of all your addresses, all that has been said and all the exchanges of opinion.

Our panel did not, of course, come up with answers to all the questions raised. With all due modesty, perhaps I may just remind you of Bachelard's wonderful comment that knowledge progresses not simply through answering questions, but also through determining the meaning of those questions. That is something that we have certainly done.

I have decided to make a three-part report on the work of the panel. Firstly, I shall look back at the fundamentals, the items on which there was a consensus (1). Next, I shall point to the difficult questions, those which raise problems in respect of the practical sharing of information (2). And finally, I shall consider what one member of the panel referred to as good practice in this field (3).

### **1. The fundamentals**

All participants manifestly agree about one thing, which could even be described as a matter of true consensus: access to information is essential precisely because torture is not something which "shows its face". It is by definition something which remains hidden, kept in the dark. Thus access to information is vital because of the very nature of our subject. It was Mrs Casale who very appropriately described access to information as the most valuable resource of all. Without access to information, all other considerations are theoretical.

The new aspect added to the debate is the fact that, whereas initially the CPT merely confined itself to seeking and receiving information, the multiplication of preventive agencies today means that information is no longer just sought and received, but also provided. In other words, the process of giving information must henceforth be viewed in terms of reciprocity.

Thus a new situation emerges, very closely connected with the first: one in which information is shared. As the chair of the panel recalled, a veritable information-sharing policy is needed. Why is this so? As one panel member quite rightly pointed out, the development of this kind of information-sharing policy is necessary because the various preventive agencies share the same goal. The example that he gave was significant: it is precisely because they do not share the same goals that secret services do not share information.

Clearly, in this kind of context, agreement is also needed on what is meant by prevention and what is meant by torture. In

this respect, there are obvious close links between the subjects being dealt with by the various panels today.

Both aspects of access to information, i.e. the receiving and passing on of information, and a proactive policy directed to one and the same goal, are the fundamentals in terms of information.

I shall now come to the sensitive issues.

## **2. The sensitive issues**

For the moment, I can see four such issues: the huge quantity of information, the confidentiality of information, information-sharing arrangements and subsidiarity.

Firstly, the **huge quantity of information**. There are now numerous sources of information relating to the prevention of torture. First and foremost, of course, information provided by the national, regional and global preventive mechanisms. But at every one of these levels, there are also numerous parties involved. One speaker, for instance, pointed out that, in the context of UN bodies, exchanges of information need to be developed with the Special Rapporteur on Torture and the members of the Working Group on Arbitrary Detention. So, while significant information exchanges take place internally, exchanges are also necessary with all the bodies set up by the treaties, particularly the Human Rights Committee and the High Commissioner for Human Rights.

Thus information needs to be exchanged not only within the CPT/SPT/national mechanisms triangle, but also, more widely, with all the other players with a direct or indirect involvement in the question of torture and inhuman or degrading treatment.

In addition, a new player has now joined in, namely the European Union. The member of the European Commission told us that there was shortly to be a discussion on detention conditions in Union member States, mainly in the context of a draft framework decision on the transfer of prisoners, obviously creating a problem for certain States in terms of compliance with the prohibition of torture and inhuman or degrading treatment.

We therefore need to take a broad view of information exchange in the context of a plethora of bodies, institutions and systems, all, in one way or another, using different means of action, playing a part in the prevention of torture and inhuman or degrading treatment or punishment.



The second sensitive issue, you may not be surprised to hear, is that of **confidentiality**. Briefly, the confidentiality condition, or rather requirement, is awkward because it is at one and the same time necessary and problematic. It was dealt with astutely and very subtly by our panel. “In confidence” is not the same as “secret”, or, to put it differently, confidence does not necessarily imply secrecy. Our conception of confidentiality, which is central to the mechanisms of both the SPT and the CPT, must be in line with the reasons for which it was introduced. Effectively, these reasons are to allow, in relations with States, the development of scope for negotiation, for dialogue, and hence for change. It is thus in relation to this justification for confidentiality that the subject and extent of that confidentiality need to be determined. There was a time when people said that of course confidentiality should remain. But is it still the cornerstone of the work of the preventive agencies? Although nobody has fundamentally called confidentiality into question, I believe that many have come to think that it should be interpreted more flexibly, meaning in the context of the purposes that it serves.

Two questions in particular have emerged regarding this issue of confidentiality. Confidentiality is a matter of confidence. The confidentiality/confidence link is of course one which was speedily cited, and very rightly so. More specifically in respect of relations with national preventive mechanisms, which play a vital part in following up the CPT’s recommendations, another question then arises which will certainly need further discussion. When secrets are shared, or rather (I shall stop using the word “secret” now) when confidences are shared with national preventive mechanisms, there are cases in which, for certain kinds of information, a guarantee is clearly needed of those mechanisms’ independence, not only of the State concerned, but also of civil society. It is vital to be sure that national preventive mechanisms are independent on both of these fronts. But how can this be done?

Various methods have been suggested: recommending that a kind of audit of these mechanisms should be carried out; drawing up a table of fundamental criteria which these mechanisms should be able to meet; having guidelines for the setting up of such mechanisms. So, where the requirement for confidence in national preventive mechanisms is concerned, thought needs to be given beforehand to their independence of the State and of civil society.

The other question arising about the concept of confidentiality is: confidentiality in relation to what? The panel discussed information itself: what is information? What kind of information is meant? There is a whole range of different kinds. There is of course the essential basic information that we need about, for example, who we should be talking to, who the appropriate people are within national governments, which NGOs are familiar with the subject, which are the areas at risk. This is what someone termed “raw material”, preliminary information which in itself clearly poses no real problem of confidentiality. But there is as well, of course, information which is more sensitive, deriving from CPT observations, in respect of which the issue needs to be interpreted in the light of the *raison d'être* of confidentiality, which might possibly be applied more flexibly in some cases. Finally, there is information which is far more significant, of much greater sensitivity. The question of medical confidentiality was raised, but requires a different approach, although in some cases it may be necessary, in quite specific circumstances, to accept a degree of “easing” of medical confidentiality in order to ensure that people are protected. One matter which we did not tackle, amazingly, is that of consent to the provision of information.

I now come to the **information-sharing arrangements**. In this context, one which I perhaps emphasise because I am still rather sensitive to the informal aspect, we need to consider whether the arrangements for exchanging or sharing information should be based on treaties, conventions, protocols or other formal systems. The answer seems to be no. Someone suggested that pragmatic, gradual action is needed, and that informal agreements are sometimes better than formal ones, which hold everyone back and ultimately achieve little. In the current situation, some people therefore proposed avoiding too much formality, because the greater the level of formality, the greater the risk of difficulties arising. Let us therefore move forward pragmatically in an atmosphere of confidence among all concerned.

And finally, a few words about **subsidiarity**. In terms of information, we must establish which is the most appropriate body to take action first. We should avoid duplicating everything, doing everything twice. Agreeing to the subsidiarity principle and to action being taken at the appropriate level means accepting that others may act before us, and that our action is the final link in the chain.

### **3. Good practice**

It was a member of the panel who used this term, a most appropriate one.

Firstly, there is a starting point for good practice: nobody has a monopoly over human rights or the prevention of torture. We all know this, but it needs to be restated. It is a fact that invites us to show a certain degree of modesty.

Secondly, press releases, annual reports, forthcoming visits, plans, programmes of visits, everything that goes to make up the functioning of the SPT and CPT, all the information that is exchanged must of course be spread as widely as is possible. Our questionnaire contained some far more specific questions in this respect. We did not answer point by point, but in general terms.

Thirdly, the most difficult point: we must decide what we can share, without destabilising our relationship with the other party. This is a crucial point in my opinion. It is not just a matter of conviction (“the information must be shared”), but also one of accepting responsibility, for example in order to avoid the risk of reprisals, requiring us to be very careful. Deciding what can be shared without causing difficulty for, or jeopardising, the work of the other party, while respecting the aims of confidentiality. For who, in fact, is the other party? It is the State, and the key to the situation is in the hands of that State. And it is to the State that we must of course address ourselves. We must decide what information can be given, without placing the State in a situation which would make any kind of progress impossible. The CPT gave an interesting example relating to Moldova, which agreed to partial publication of the preliminary remarks and/or final talks. You seemed to say that this had effectively been done, and had been accepted by both parties.

Fourthly, still in the context of the State: yes, we must be able to avoid endangering the State, which we need so that the situation can be improved. But, as Mr Rodriguez Rescia said, we need to be able to put an end to the fear of the State. This is my final point. States must not be afraid. To ensure that they are not, we must act in general terms and, as has already been said this morning, we must find the underlying individual and collective causes of, and reasons for, torture, because torture is always there, haunting both individuals and systems.

It therefore seems absolutely vital to track down the underlying individual and collective causes of torture. This is why I believe that we need to establish in every country a proper culture of respect for human rights. All the human rights texts that exist, however splendid they may be, and all the judgments of the European Court of Human Rights are as nothing compared to a culture of fundamental rights truly capable of having an effect on governments and citizens at every level.

Thank you.

## Thematic Panel 2

# Facilitating the coherence of standards





**M**y perspective is that of someone whose day to day work involves monitoring and inspecting places of detention in the UK. That is where I am starting from. I am the head of an inspectorate that has responsibility for inspecting all prisons and young offenders' institutions in England and Wales, all places of immigration detention throughout the UK; police custody in England and Wales most recently, and a recent addition to our portfolio is military detention, which is a very interesting area.

In addition to that, we are now the coordinating body for the UK's National Preventive Mechanism. The UK always does things differently from everyone else and so our NPM consists of 18 different bodies operating already in these areas across the four nations that comprise the UK, so we have a coordinating and coherence issue of our own, let alone the issues already referred to.

The Inspectorate of Prisons has been doing this work for about 28 years; I have been doing this work for about eight, so in those terms, I am relatively new to it. We publish about 90 reports every year, and each report contains recommendations for action by the inspected bodies and we also do thematic work on systemic issues such as healthcare in prisons, issues around women and children, race and disability.

In the course of our history we have developed our own standards for inspecting places of detention – we call them Expectations. They are our criteria for inspection and we have different Expectations for the different kinds of places of detention that we inspect, whether they be immigration, prison, juvenile or police facilities. There are more than 500 of these criteria for prisons and they are very detailed, because they reflect everything that happens in the institution from the moment of reception to the moment of release, including healthcare, education, segregation and everything else that goes on in the establishment. But when we have inspected against these detailed crite-

ria, we put them together and we assess the establishment under four tests of what we call a “healthy prison” or a “healthy custodial environment”. They are much the same for each of the places we go to and the tests are these: that all prisoners are held safely, that all detainees and prisoners are treated with respect for their human dignity, that they can engage in purposeful activity and that they are prepared for release, resettlement or whatever is going to happen to them next. And if an institution can satisfy us on those four tests which we assess by gathering together the information from our criteria, then we will assess it as performing effectively.

Our methodology includes regular visits to all places of detention and what is important is that it includes the ability to turn up without warning (unannounced), and it also includes following up our recommendations, because if we were not able to follow up what we do and make a difference this would be to reduce our task to penal voyeurism. We have an established set of standards and methods. I am not suggesting for a moment that they can or should be transferred en bloc anywhere else, but what I am going to suggest is that, when we do this work, we need standards that are consistent, independent, human rights based and that are focused on outcomes and on the prisoner or detainee him- or herself. We already have the benefit that all of our criteria are referenced against international human rights standards, whether they come from the UN, the Council of Europe, or from the CPT itself whose standards are incredibly important and so we make sure that all of our criteria are referenced against those standards that already exist.

Standards are needed for various reasons. They are needed for the facilities to be inspected, because the authorities need to know what we are looking for. Inspection is not just about shock and awe, about turning up and demanding things; it is about trying to improve the inherent performance of those institutions, to internalise those standards, because after all, those people will be running those places after we have left and we will only be there for short periods. It is also important for the bodies that we inspect for us to demonstrate consistency, thoroughness and transparency, because in the end our credibility depends upon the strength of our evidence and the coherence of our approach. Standards are also important for society and the Government because in the end they must own the process of detention and the places where people are detained.



Why do standards need to be independent? That has been controversial, certainly in my country. Why, it has been said, do you not just inspect by the standards that are laid down for the prison service or police or immigration? I have a number of answers to that. The first is, as I said earlier, about the focus on outcome. Many targets and standards by which agencies work are focused on process or output – those are the easy things to measure. It is all too tempting to measure what is measurable rather than what is important. Our standards must be based on outcome not process, on quality not quantity. I am much less interested in how many prisoners, for example, have a sentence plan, than I am in whether it is any use and whether it is operated. It is not a box-ticking exercise. We are also, as bodies committed to international human rights, interested in best practice rather than compliance with minimum standards. We may be seeking things that are not yet achievable.

In my country for example, as in many others, we have overcrowded prisons – that means we have more people sharing a cell than the cell was designed for. The people running our prisons do not want to run prisons in that way, but they have no choice just now. If, as an Inspectorate, we were to say simply that 'that is the way things are,' then the risk would be that what has become normal in my country would become normative – and that seems to me to be a key function of what we are doing. We are still indeed 'slopping out' – not having integral sanitation in cells – which was mentioned by Deputy Secretary de Boer Buquicchio in the earlier session. I still visit prisons where prisoners, including young men, have to use buckets and sometimes throw their contents out of the window. I will continue to insist that this should not happen. It is rare in our country, but it does happen.

In the CPT standards it says prisoners should be held close to home. In overcrowded systems this often does not happen and prisoners are moved around all over the place. We will continue to say that that should not be happening. Another reason for independence is that in any institution good people can stop seeing things that are wrong because they become normalised. It is all too easy in a place of detention to use security as a catch-all excuse for doing or not doing anything – it is more like a security blanket at times for those who run prisons because all institutions have a tendency to revert to institutional convenience if there are no barriers to it. That became apparent to us every time we inspected new places.

We have only recently started to inspect police cells, for example, and to put to people running them that there are things that they have accepted that, actually, are not right. For example the law in terms of police cells defines a child, a juvenile, as someone under 17, not under 18. This means that 17 year-olds held in our prisons do not get the protection that they should get under the Children Act, or under the Convention on the Rights of the Child. They do not get access to an appropriate adult for example. There is no central recording in police stations of the number of times and the mechanisms by which force is used on individuals, whether that is use of Tasers or incapacitating sprays or handcuffs. There is no central record, so there is no way of monitoring whether force is over-used in relation to particular people, by particular officers, or in particular police stations. Those things had been accepted as part of normality and, coming in from outside, you can bring a new perspective. You can also sometimes bring a perspective that is counter-intuitive, and mention was made earlier of the need for different ways of treating children in prisons.

Our prisons are basically constructed around adult men. Trying to make things centred around a child can be counter-intuitive to those who have worked in prisons for a long time. I also remember the time I inspected a military detention centre, when we said there should be a confidential complaints procedure, and those running the centre said that they had one. We said "What is it?" They said "We march all the detainees on the parade ground and an officer comes out and asks anyone with a complaint to step forward". They said it was confidential because they did not know what the complaint was. There is now a confidential complaints procedure in that centre. These were not bad people, but they had been conditioned by certain ways of thinking.

M. Delarue, my counterpart in France, made a very good point regarding police stations, which we have also made, about the risk aversion that can undermine human dignity. In France, this includes taking away women's bras and everyone's glasses for safety. In our case, we have come across detainees in police stations not being allowed toilet paper in case they should choke on it. You have to challenge these things, particularly in circumstances of financial restraint, where we are dealing with issues and people that are not popular. We have to be encouraging institutions to aim for the best, to move onwards and to keep learning.

There are also new issues around diversity and disability, which my country is facing, and which we have to grasp. Standards need to be human rights-based for a variety of reasons which I touched on earlier. First of all it gives legitimacy. These are not things we have simply developed at the whim of the chief inspector, or because somebody thought it might be a good idea. The detail will be different in different countries, I have no doubt about that, but there must be the non-negotiable base which is human rights standards, that is the anchor, that is what prevents the drift. In places of detention, the power will always lie with the custodian – not with the detainee – and there will be particular issues where you are dealing with an unpopular cause, for example immigrants, who are not a popular group in most countries, or extreme circumstances – terrorism has already been mentioned. It is in those circumstances that things will tend to regress.

Human rights are also about culture. This is not just about performance and targets, it is about what someone in the UK called the 'moral performance' of a place of detention. That is centred on relationships, on checking that staff running these institutions are asking the question why, as well as the question how. That is a crucial thing for inspectorates to build on, and that is why our healthy prison test focuses on this. I think it is very important in terms of the mandate we all have that we recognize that this mandate is to prevent torture and inhuman and degrading treatment and not to chronicle it or monitor it. We have essentially failed if we are monitoring torture. That is why, in my view, we have to pitch our tent and standards not on article three of the ECHR but on article eight, which is about the respect for the dignity of the human person, because it is there that things start to go wrong.

Let me give you an example of what I mean about dignity. I recently had to publicise the fact that before two of my inspections of London prisons, the Governors of those prisons had taken a collective decision to move prisoners between the two prisons so that they would not be there at the time the inspectors were. A small number of prisoners, only 5 or 6, were moved from one prison to the other and back and vice-versa. For two of those prisoners, the effects were pretty catastrophic; they were both denied the opportunity for medical appointments the following week. One of them took an overdose of tablets and had to be rushed to the hospital and the other tried to hang himself and had to be cut down. He cut himself, and he was taken in hand-

cuffs, covered in blood, dressed only in his underwear, to the reception of the prison to be moved forcibly to the other prison for the duration of the inspection. Those actions come pretty close, in my book, to inhuman and degrading treatment. But they stemmed from the initial action, which was to see prisoners not as people but as pieces that could be moved around the board to try to improve the reputation of the prison. That is how it happened and that's why, when we are looking at human rights standards, we need to be examining whether prisons are dealing with individuals as individuals and with respect for human dignity.

My final point, and it is crucial to the NPM, is that it is absolutely right that the fundamentally important thing is being there – that is what is crucial. Other bodies can develop policies, or provide baseline standards, but it is being there that makes human rights real and concrete. It is part of the essential methodology; it is part of shining a light on hidden places. When I first started doing this job, I developed the theory of something I call the “virtual prison” which was the one that sometimes ran in the governor's office and found its way all the way up to the Minister's desk. It is our job to identify the actual prison and to communicate that outside. Sometimes, literally, we are shining a light in some dark places.

I really welcome these partnerships (with the other bodies represented at this conference), because they are a chance to learn from each other, to reinforce the standards that we all believe in, to get the support, training and help that we need and to develop that coherence and focus. How we do it may be different, but why we do it has to be the same. That has to be based upon our common humanity that says “How would I feel if it were my son, my mother or my spouse who was in this place?”

Thank you.

**G**ood afternoon, everyone. I should like to speak first about our understanding of standards, then of what it means for them to be coherent and how coherence may be facilitated.

### **Standards**

Standards are generally understood as desirable levels of quality; something that is good and appropriate.

By standards related to deprivation of liberty we understand desirable level of quality of life of detainees, good, decent material conditions, provision of proper care corresponding with their justifiable needs and correct manner and regime of organising their detention. There is also the imposition of just and strictly necessary restrictions that meet the nature and purpose of deprivation of liberty and are proportionate to reasonable interests of good organisation and functioning of the detention places and establishments and securing safety and good order.

By standards we also understand appropriate safeguards and guarantees against all abuses of physical, mental and moral nature, as well as taking all possible measures to minimise the detrimental effects of deprivation of liberty.

Of course this is not definitive and the list is far from exhaustive.

Such basic standards as the absolute ban on torture and other cruel, inhuman or degrading treatment or punishment, the right to a decent life, respect for human dignity and physical, mental and moral integrity of detainees are protected by international and regional charters, treaties and covenants and by national constitutions and laws, and are confirmed by case law of relevant courts. These standards must be applied always and universally, across all different detention settings worldwide.

More detailed standards are described in numerous recommendations and other soft law documents adopted by international and regional authorities. These standards come out of generally

recognised perceptions of good treatment of persons deprived of their liberty, refer to various types of detention and set out in deeper detail appropriate rules for deprivation of liberty and provisions on correct behaviour and attitude of staff and organisation of living conditions for detainees. These standards are not directly legally binding and not all of them are capable of direct application in all places and at all times throughout the world and in all particular regions taking into account great variety of legal, social, geographical and other conditions and their constant development.

The most detailed standards related to persons deprived of their liberty have been developed in the course of activities of mechanisms engaged in the field of prevention of torture and other forms of ill treatment by the bodies that are mandated to have direct access to detention facilities and to detainees.

The European CPT and, after adoption of the OPCAT, also the international SPT and the NPMs at the national level, are endowed with the most extensive mandates. The rights of unlimited access to all information, independent visiting of places of detention and private interviews with detainees and other persons enable them to directly recognise and assess the real situation in different establishments and analyse which facts and circumstances present, or could present, a risk of ill-treatment.

This sort of concrete knowledge allows for the making of an appropriate evaluation as to what can be considered good practice and what should be improved and changed from the perspective of prevention.

The CPT in 20 years of its existence has developed precise evaluation criteria and its own standards. Specific standards are tailored to concrete situations and facts encountered in places and establishments visited and are contained in visit reports addressed to authorities of respective States parties.

Beyond the specific recommendations the CPT has created a set of more general criteria for treatment of detainees integrating basic aspects of the standards for various types of detention, different groups of detainees and other special issues in substantive parts of a number of its annual reports. The SPT and the NPMs based on the same concept of prevention will certainly follow the same (or similar) practice as the CPT. They will also deliver

recommendations to authorities and thus develop their own standards.

These recommendations are not legally binding, however, bearing in mind the principle of cooperation, the States parties are obliged to take the observations and recommendations into serious consideration, enter into dialogue on possible implementation measures and implement them as far as possible.

### **Coherence of standards**

The OPCAT's objective is, on the basis of cooperation among all relevant actors, further to strengthen the protection of persons against torture and ill treatment. In relation to persons deprived of liberty, the OPCAT encourages the SPT and regional bodies that are mandated to visit places of detention by regional covenants to consult and cooperate so as to avoid duplication and promote the objectives in an effective way.

In the European region, the SPT will cooperate with the CPT. Although it is not expressly mentioned in the OPCAT, it is obvious that the European NPMs should follow the same approach.

All of the preventive bodies have to adopt uniform prevention policy as well as a harmonious approach towards controversial and problematic issues such as new antiterrorist provisions, diplomatic assurances, extraordinary renditions, access to military bases located on foreign territories etc, but they must also be coherent in setting concrete rules and standards promoted in recommendations in their visit reports and in dialogue with the States parties.

Bearing in mind the many different possible bases and purposes of deprivation of liberty, diversity of types of places of detention and also special needs of detainees in regard to their gender, age, vulnerability, ethnic origin etc, achieving general coherence of the standards promoted by the individual bodies could be rather challenging. Appropriate attention must also be paid to diversities between particular regions and countries caused by different legal traditions and historical, cultural and religious experience, customs and habits, as well as variety in geography and demography. Although some good examples could serve others as inspiration for changes, it will not be possible to unify all the specific types of standards and import them from one region to another. On the other hand the recognised basic legal and procedural safeguards as those developed by the CPT should generally be promoted worldwide in all regions and countries.

Another challenge is presented by the search for a coherent approach towards differently developed countries and their unequal economic situation. It will be difficult in some of these countries to implement some preventive recommendations, especially those related to improvement of material conditions. Taking that into account, all the preventive bodies should deliver to the States parties meaningful and realistic recommendations, and should be ready to assist States Parties in setting priorities and timetables for the implementation measures.

At this point it should be underlined that no reasons or circumstances can justify setting double or different standards. There is also no doubt that the differing approaches of some bodies and the promotion of confusing, diverging or even contradictory rules and standards would have serious detrimental effects and would undermine the authority and credibility of the actors in question.

### **Facilitating the coherence of standards**

Crucial preconditions for promoting coherent standards are synergy and cooperation between the CPT, SPT and NPMs. It is desirable that all the actors consistently apply appropriate methodologies for visiting places of detention and for assessing concrete facts and situations, and that they coherently and consistently evaluate the needs of detainees and measures necessary for strengthening their protection.

All of the bodies should mutually benefit from their individual and common knowledge and most useful experience and, if needed, advise and assist each other and offer training, workshops and technical assistance. It is important that they support and inspire each other and exchange their views and share information as much as possible.

A certain synergy has already been established between the SPT and the CPT in the strategic planning of visits. Both of these bodies are bound by the principle of confidentiality, but European States Parties are generally used to requesting publication of reports soon after their delivery. Immediate sharing of information could also be facilitated by the approval of States Parties of mutual confidential exchange of reports between the SPT and the CPT.

The SPT should maintain direct contact with NPMs and can communicate, if relevant, on a confidential basis, its recommendations and observations to the NPMs concerned, and in turn



they should make their reports and other information available to the SPT. It is necessary that closer relations also be developed between the CPT and NPMs. The CPT's published reports should serve as an important source of information and methodology for NPMs. From this point of view the CPT should play a significant integrating role within the European region as the SPT does globally.

All of the bodies should complement and coordinate their work, and consider and utilise all follow-up possibilities for their recommendations. They should also develop coherent methodology of contacts and of establishing constructive dialogue with the States parties on the introduction and maintenance of good standards in practice.

In conclusion, promoting and strengthening effective and equal partnerships between the national NPMs, the regional CPT and the international SPT will make a decisive contribution to the protection of persons deprived of their liberty against torture and ill-treatment.

Thank you.



### **1. Background on the standards which the CPT has developed over the past twenty years**

**T**he European Convention for the Prevention of Torture does not itself establish the legal substantive standards which the Committee follows as it carries out its mandate. The Convention left it to the CPT to establish those standards.

However, in its preamble the ECPT mentions the European Convention on Human Rights, and in particular Article 3 (of that Convention) which prohibits torture and other forms of inhuman or degrading treatment or punishment. On this basis the CPT considers that it should respect the standards which result from judgments of the European Court of Human Rights on breaches of Article 3. However, within the general framework of those court judgments the recommendations of the CPT go far beyond, because essentially CPT standards are aimed at preventing ill-treatment. So strictly speaking, although a given scenario might not itself amount to a breach of Article 3, the CPT would consider it from the perspective of the risk of ill-treatment, and as such CPT standards go far beyond the case-law of the court.

Over the years the CPT had to develop its own standards from a preventative point of view.

The CPT has also enriched its standards through its turn-over of elected members (themselves reflecting professional skills and expertise in a spectrum of relevant areas), and through the input given by different “experts” who accompany delegations during visits.

Broadly speaking the CPT’s accumulated standards are to be found in three sources:

#### **Published**

- ◆ The visit reports: more or less about 85% of the CPTs reports are now published (some 223 visit reports out of over 262).

- ◆ Thematic chapters which outline standards in relation to specific areas falling under its mandate. These are published in Annual General Reports.

### **Unpublished**

- ◆ Internally the CPT keeps track of standards in respect of issues examined during visits, through an ongoing analysis of adopted visit reports and general reports. Relevant extracts are updated on a regular basis in its “Source Book”. This has developed into a compendium of its jurisprudence.

To-date the Committee has not published its “Source Book” for a number of reasons. The Committee adopts an empirical approach based on its findings on the spot in very specific situations. Whilst statements and recommendations are valid in a particular scenario they would need to be re-examined whenever the scenario is different; discrepancies would indeed be occasioned by different circumstances observed on the field. Moreover, the Source Book is updated every four months, and in addition it is often the case that a number of extracts originate from unpublished reports which are still covered by the rule of confidentiality.

### **2. A triangle of actors (CPT, SPT, NPMs), with a similar mandate – the need to ensure (a) effectiveness and (b) coherence of standards**

This Conference groups together a triangle of actors – the CPT, the SPT and a number of NPMs – all of whom share a similar mandate: the prevention of ill-treatment in places of deprivation of liberty. Coherence of standards is imperative for two principle reasons:

- ◆ From the perspective of effectiveness, it is not in the interest of any one actor to duplicate efforts, to “re-invent the wheel”. On the contrary, the common mandate – the prevention of ill-treatment – implies that each actor should be building on each other’s accumulated experience.
- ◆ From the perspective of coherence, when the same authorities are dealing with different actors, it is important that their recommendations are consistent. Different standards would hardly bring about improved standards against ill-treatment. Worst still, authorities would be tempted to resort to “forum-shopping”, relying on less onerous standards, and quoting them as justifications for not implementing more rigorous safeguards.

To date, at least in the European context, the risk of different or contradictory standards between national monitoring mechanisms (including recently designated NPMs) and the CPT appear to be more theoretical than real. So far common sense has prevailed, and relevant bodies have generally sought to rely on the same standards.

Nevertheless, in the interest of both effectiveness and coherence, this risk cannot be ignored, especially when more than one body is visiting and commenting on the same establishment or on the same country.

The Conference background paper lists a number of very specific situations which could give rise to different standards. I shall limit myself to two: (i) the SPT carries out its work with reference to the norms of the United Nations, whilst the CPT is expected to have special regard to Article 3 of the ECHR; (ii) progressively one will have to assess the extent to which NPMs will be guided by standards set out in national legislation.

### **3. Possible ways to facilitate the coherence of standards**

The structures which have been developed to date on a European level (the CPT), on a global level (the SPT), and at national levels (designated NPMs and other national monitoring bodies) are an achievement in themselves. The logical next step, in line with the theme of this Conference, is to develop ways to facilitate sharing of these standards, thereby ensure coherence and further effectiveness. How can this be achieved?

As already indicated, the vast majority of CPT reports are already in the public domain. But publication is not static; it is an ongoing process. Visit reports are adopted on a regular basis. There is always a time-lag between their adoption and their publication. Publication is not automatic, but requires the request of the State party to the Convention. Meanwhile, unpublished reports are covered by the rule of confidentiality.

Within existing structures, designated NPMs and other monitoring bodies could put pressure on their national authorities, to receive copies of unpublished CPT reports under confidentiality. The CPT might itself decide to encourage the national authorities to transmit copies of its reports to these bodies. This is not a foolproof approach, because much would depend on the attitude adopted by national authorities.

But a visit report only deals with issues which were examined during the visit. Actors in the field could from time to time be interested to know whether standards have already been developed to address a particular scenario. Access to CPT standards from a thematic approach is available via the CPT's database through its website. This is the closest the CPT has to offer at the moment, short of publication of its Source Book.

Progressively we need to ascertain, through appropriate feedback from outside users, whether the CPT database is user-friendly, and whether it is a sufficiently helpful tool to access standards on a particular subject.

I have referred extensively to the standards which have been developed and are available from the CPT. I have done so to underscore the CPT's commitment to share its standards. I should also say that the CPT is equally interested to be the recipient of standards developed by other bodies with which it shares the same mandate; as a matter of fact, this is already the case with various international bodies which monitor the same areas of interest. And finally, as scenarios become more sophisticated, the CPT continues to explore new areas for proper safeguards; and certainly we should be heading to a time, in a true spirit of partnership, when two bodies or more team up together to develop appropriate safeguards for specific challenging scenarios.



## Malcolm Evans

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Torture and other Cruel, Inhuman and Degrading  
Treatment or Punishment*

I am grateful to you for the introduction and I am particularly grateful to a number of people in this room. The first is the Chair of Working Group which met this morning. She gave a masterful summing up of the discussion at its conclusion and I am only sorry that everyone did not have the benefit of hearing it. It certainly made my task in preparing a few thoughts and reflections on that session considerably easier than it would otherwise have been. I am also very grateful to the Co-Chairs of this session for their wisdom in calling for a synthesised approach to the presentation of the Reports from the three working Groups. Many of the issues which I will be touching on in this Report have already been rehearsed in the Report from the first Working Group and this goes a long way to show just how interconnected these various topics actually are. This provides an excellent starting point for this Report, although it is very daunting to lead a discussion on the concept of coherence, since it rather enjoins one to try to be so oneself and this always presents a challenge.

The first issue which the Working Group considered was why it should be thought so important that there be coherence of standards from a global perspective. Certainly, it is very important that within a particular functioning unit that there is an internal coherence, not only in order to help ensure that its work is undertaken in an efficient and effective fashion but also to ensure that its work has credibility and to enhance its legitimacy and the authority with one's interlocutors and others who draw upon it. This is particularly so when that work feeds into reflections and recommendations: as many in the Working Group pointed out, like it or not – and many people will not like it – whenever one makes a recommendation it will be received as if it is a form of judgement on what has been seen or considered. Even if it is not couched in the language of a judgment and is not intended to be one, the recipient of any recommendation will

almost inevitably perceive 'the feel of judgment' behind what is said; and therefore such recommendations will have greater credibility, legitimacy and authority if they can be traced back to a coherent set of standards or to a coherent underlying approach.

Nevertheless, there is a certain oddity in our being quite so concerned about ensuring that there is a degree (or at least, a very high degree) of coherence between the standards of the various bodies that have been discussed at this meeting, though this is something which should please and excite us. Everybody, every country, every operational unit, every institution, every organisation is always working within its own institutional parameters and there is never going to be complete coherence of operation between any range of organisations. If I can ask for the forgiveness of many in the room and take the organs of government by way of example, perfect coherence within and between both the policies and the day to day operation of government activity is clearly something all strive for, but is not always achieved – indeed, rarely, if ever, is it so. This is more of a fact than a criticism, and it is the belief that there should be coherence at that systemic level which is at least as (if not more) important than whether there is. In a sense, the very idea that a number of discrete international regimes – for that is what are being discussed today – operating out of discrete institutional contexts feel that it is so important to strive for a degree of coherence and coordination across their activities, is, I think, significant in and of itself since it underlines the extent to which it reflects a realisation that they are all engaged in a common enterprise and that if this common enterprise is to be successful it needs to have the credibility, legitimacy and authority that flows from the striving for coherence.

At a more practical level, it was often stressed within the Working Group, that it is very important that a body or an institution which is to be visited has a clear idea of what is going to be expected of them by those undertaking the visit. It is clearly very important to those who are involved in the process of evaluation and inspection to have a clear idea of what that they are seeking to achieve and means by which they intend to seek to achieve it. It is equally important, for broader society and more general interlocutors to understand something about the approaches to be used and the standards to be applied in order to give the process and its outcomes the aura of legitimacy (this also being linked to important and more general questions of transpar-



ency). In sum, then, we can say that whilst the idea that there should be coherence of standards within this area should not simply be assumed (and the lack of coherence should not automatically be seen as a failing), we should appreciate the significance of its being taken as the natural starting point for these discussions, and seek to respond to the challenges and opportunities which this presents.

A further issue raised within the Working Group concerned what, precisely, is meant by 'standards'. Though much is said about the need for coherent standards, there is work to be done in teasing out different layers of what is meant by that term. It can be an all-encompassing word but the group identified a number of different strands in its discussion. For example, 'standards' can relate to the operating processes or methodologies of the bodies concerned. These are very important issues yet whilst they raise interesting and important comparative and practical questions they ought not to be considered alongside and 'in the same pot,' as questions of coherence in relation to what might be called the substantive standards which inform the work and the recommendations. This is not to say that procedural and methodological issues are less important than questions concerning substantive standards, but it is important to understand that there are different dynamics surrounding these two different sets of issues.

There are further complexities when one turns to national preventive mechanisms. For example, there is the additional question of the extent to which there is a coherent approach to the construction and designation of national preventive mechanisms and how they are to operate, not only within their own particular national context but also as actors on the international stage. This is in addition to the question of the substantive standards which the national preventive mechanisms will be drawing on in their own work within their domestic setting. In the main, it has been feared about there being disparate approaches to substantive standards – not merely between the SPT and the CPT but also between those bodies and national preventive mechanisms and between national preventive mechanisms themselves – which has fuelled much of the debate and concern around the generation of a coherent approach. It is certainly true that there is potential for considerable diversity between the substantive standards of the CPT, SPT and NPMs and this is something which does need to be thought about and grappled with.

At the same time, one of the points which figured prominently in the group discussion was that the focus should be on facilitating the coherence of standards as opposed to the generation of common standards. To my mind, things 'cohere' when they come together, making a richer whole than would have been the case if they had not. To that extent, I do not see coherence as being the same as commonality or, indeed, convergence. However, I think it is difficult if not impossible to achieve coherence if the core values which are reflected in the work of the various bodies are fundamentally at odds with each other. The sense within the Working Group was that there was a real need to strive for convergence in our understanding of the key underpinning principles that guide the work of the different bodies. If they share a common underpinning, then there can be a coherence which embraces a diversity of different focuses and, indeed, potential approaches. Coherence in this sense implies that there be a shared goal and outcome, which in this case is the working towards the prevention of torture and ill-treatment. It does not necessarily mean that everyone involved in achieving that shared goal and outcome is doing the same thing, or doing to same thing in the same way or, perhaps more controversially, even applying exactly the same standards at one and the same time. Indeed, in a sense, they cannot, and there is always going to be a difference in standards. In an earlier intervention, Manfred Nowak pointed out the blunt truth that there are different statements of standards which are currently in operation. We work with them. The fact that there are differences in different contexts is, to borrow Manfred Nowak's words, 'not a catastrophe'. It may be less than ideal: it may even be undesirable; it may be something which we should work towards reducing or even eliminating – but it is a fact. Rather than lament it, we should accept that there is always going to be a degree of difference and focus on the more important question, which is how we work with that.

It is equally important to remember that standards evolve over time. They are not static. As a result, there will be a continuing process of evolution around our understanding of standards and this inevitably means that at different times and in different places there will be different perceptions of what is called for. Once again, this is something which ought to be seen as a positive rather than a negative, since it means that our approach to standards can be more responsive than might otherwise be the case.

Nevertheless, there is a difficult and critical question which cannot be avoided, and this concerns appropriate level of specificity for standards around which we should be seeking a degree of commonality. For example, should there more focus on setting out core standards in a more general fashion, thus enhancing the possibility of projecting them as common underlying values, rather than continuing to add greater specificity to the standards that we currently have? Further specificity may be useful for grounding more precise recommendations by particular bodies but it may also inhibit the forging of a common approach. On the other hand, it is vital to maintain a high degree of ambition in the articulation of standards, even if it is recognised that such ambitions are precisely that: ambitious. There is a very real danger in becoming acclimatised to those things which have become normal within the system and it is necessary not to lose sight of the importance of maintaining the sense of challenge that the presentation of ambitious standards is meant to achieve in the context of mechanisms of this nature. So the desire to maintain a degree of ambition in the articulation of a coherent set of standards in the form of core and common values is something which needs to be borne in mind. That being said, it is also important to remind ourselves that the common core value which we are all currently working to realise – the eradication of torture – is hardly an unambitious project.

Having said a few things about standards and a few things about understanding what is meant by coherence, the key question for the Working Group was how to facilitate coherence, so understood. Although the points made contain few surprises, they are all important and very clearly map onto the points made by the First Working Group, the Report of which is set out above.

The first point concerns knowledge. Discussions about the availability of the statement of standards which currently exist featured extensively in the presentations and discussions within the Working Group, particularly as regards the CPT. Although there is a considerable amount of material concerning the standards of the CPT which is in the public domain, it remains the case that the CPT is known to have a so-called 'Source Book', which is a private source of information. The mere knowledge of this additional, private, source of information concerning standards is sufficient to trigger both interest and concern and there is a question concerning whether or not something needs to be done to try to ensure that more of the background jurisprudence can be brought into the public domain. Against this, it can reasona-

bly be argued that there is already sufficient in the public domain to make it fairly predictable what the general approach of the CPT is going to be in most situations, and that there is certainly sufficient in the public domain to facilitate the more general coherence of standards.

A second important point concerns language. The need to ensure that standards are set out and articulated in a fashion which is readily understandable is often overlooked. It is important to ensure that the languages used can be readily understood by the members of the local communities and those working within them. It is all very well to have things readily available in the working languages of official bodies but if these are the only languages in which they are available, this clearly inhibits their being picked up in media at a local level. The issue of language is of even greater importance now that national preventive mechanisms also need to be able to have access to these standards. However, it is not just a matter of 'what language': the use of 'accessible' language is equally important. Though often technical, standards need to be articulated in a way which is comprehensible to those who are to work with them. The use of obscure or difficult terminology and phraseology (once gloriously described by an English Judge as 'gratuitous philological exhibitionism') is another inhibiting and limiting factor.

Knowing about each other's standards and approaches and placing this knowledge in the public arena is one thing, but this is not the same thing as having an exchange of knowledge and understanding. Making the information available does not necessarily mean that people are learning from it or engaging with it as they should. This is unlikely to just 'happen'. For example, much CPT material is readily available but is this known by those working with detainees, and by the national preventive mechanisms? Experience suggests that it is not. Many newly designated NPMs are working hard to familiarise themselves with international standards and approaches to preventive visiting but there is a long way to go and ensuring the appropriate dissemination of relevant materials remains an important and challenging task. But there is more to be done than just 'giving out' material. This needs to be complemented by the receiving back of information from other bodies, both international and national. What is needed is not so much an 'outreach', designed to inform others of one's own approaches and standards but a process which 'reaches into' the experience of others and draws out of it what is of value in the quest to find those levels of

shared experience and knowledge. What is needed is not merely a transfer of knowledge but the bringing together and sharing of knowledge.

It is important to remember that the OPCAT does not create a hierarchy of NPMs and SPT; it creates a partnership of NPMs with the SPT and, indeed, with others engaged in torture prevention. This must not be lost sight of, and it is important to ensure that the CAT, the Special Rapporteur on Torture, the CPT and many others are drawn into that partnership in order to facilitate and deepen the impact of resulting exchanges of views on the methodologies, the underlying values and principles and the substantive standards drawn on in operational contexts in order to commence the process of facilitating coherence between the various approaches and practices.

Believing that this ought to happen is one thing, its actually happening is quite another. If there is a need for a more focused exchange in order to promote these outcomes, then such an exchange needs to be properly structured and supported. Therefore, the key recommendation from the Working Group is that thought should be given to establishing processes for such exchanges which would be focused, sharp and capable of delivering outcomes within a meaningful timeframe. Such processes might also inform thinking regarding whether there is a case for a more formal and authoritative articulation of any common standards which may emerge, even, perhaps, looking to the international treaty-making arena.

Finally, and to bring these reflections to a close, I would like to offer a short reflection arising from the discussion within the Working Group. It bears repeating that we should be using all possible channels to further each other's work. But, building on this, should we also be seeking to identify those areas where each particular actor has the greatest capacity to make the greatest impact and allow that appreciation to inform our thinking on how best to create a system which coheres better than perhaps it might otherwise do? Tied in with this is the question of whether it is better to ensure that each of the various actors do what they do as well as possible, even if this means that they do rather less than would otherwise be the case? The argument in favour of such an approach is that it is better to do less, but to do what is done as well as it can be since this will invest it with more authority and enable it to have a greater systemic impact over time than would be the case if one did more, but not so well. In short, 'less is more.' If this is so, and in the spirit of avoiding

unproductive duplication and the optimal use of resources, are some bodies are better suited than others to engage with particular levels of specificity of the standards they use in their work? This brings us back to the point made at the outset, which is the need to see all these mechanisms and their outputs as a part of a common system which operates across the national, regional and international divide but which may function in a variety of different fashions, and which are most relevant given their particular context. If we keep this idea at the forefront of our thinking many of the concerns about disparities of approaches and a lack of commonality may appear less worrisome -and this may be a far more productive means of engaging with divergence than by indulging in excessive degrees of academic angst.

Thank you very much.

## Thematic Panel 3

# Ensuring effective implementation of recommendations







**G**ood afternoon.

The Chancellor of Justice of the Republic of Estonia has been the National Preventive Mechanism (NPM) under Article 3 of the Optional Protocol against Torture (OPCAT) since 18 February 2007. Nevertheless, this date was not a starting point for our monitoring and inspecting activities. The institution of the Chancellor of Justice had already been inspecting places of detention for years.<sup>3</sup>

This is intended to be a short overview of our practice – what means we have used in order to achieve implementation of the recommendations of the Chancellor of Justice. So it will be more practical than theoretical. Moreover, I do not concentrate on question of implementation of recommendations when legislative amendments are needed. The Chancellor of Justice has been given power to turn to the Supreme Court in order to declare the legislation unconstitutional.<sup>4</sup> So, there is usually clear “coercive” mechanism to achieve the aim.

I agree with what has been written in the background paper of this conference<sup>5</sup> – that in order to achieve effective implementa-

3. Estonia acceded to the UN Convention against Torture (10 December 1984) on 26 September 1991; the Convention came into effect in respect of Estonia on 20 November 1991. Estonia signed the OPCAT (18 December 2002) on 21 September 2004 and ratified on 18 October 2006; the Protocol came into effect in respect of Estonia on 27 November 2006. On 18 February 2007, an amendment to the Chancellor of Justice Act entered into effect, giving the Chancellor the function of the national preventive mechanism established under Art 3 of the OPCAT.
4. Chancellor of Justice Act § 18 (1): “If a body which passed legislation of general application has not brought the legislation or a provision thereof into conformity with the Constitution or the law within twenty days after the date of receipt of a proposal of the Chancellor of Justice, the Chancellor of Justice shall propose to the Supreme Court that the legislation of general application or a provision thereof be repealed.”

tion of recommendations of NPMs or the SPT, the reasons States give for not implementing them need to be analysed. For example, the UN High Commissioner on Human Rights has in his/her practice defined four “implementation gaps”: knowledge (need for an analysis of combination of law, regulation and policy), capacity (lack of human, financial or other resources), commitment (State pursues a course of action that violates its human rights obligations or admits the infringements but fails to do anything) and security (leaders deliberately pursue policies directly threatening personal security through armed conflicts).<sup>6</sup> Our starting point in the Office of the Chancellor of Justice has also been a simple presumption: officials working in closed institutions are generally not bad. In almost 90% of cases they do not violate the rights of persons deprived of their liberty intentionally. The reason for doing so lies generally either in lack of knowledge or in lack of resources. This simple presumption – officials are not usually bad – is directly connected to the question which methods can and should be used in order to influence officials to implement our recommendations (achieve effective implementation of recommendations of the NPM) and thus fight against ill-treatment.

In those cases which make up the 90%, the principle of cooperation stipulated in OPCAT can and should be put into practice. The whole methodology of the visit should be based on the principle of cooperation and not on the NPM showing all the powers it has. The aim should be to demonstrate clearly to the institution that the NPM is not a sanctioning and punishing coercive body, but rather an adviser to help the institution to make things better. We all know that readiness and the will to do something depends on how the obligation is put before you. There is a difference when somebody says to you “Do it!” or “Please be kind and do it as it is necessary because of this or that reason”.<sup>7</sup>

5. CPT – APT Conference “New partnerships on Torture Prevention in Europe”, Background paper, 6 November 2009, p.15.
6. See: UN High Commissioner on Human Rights. The OHCHR Plan of Action: Protection and Empowerment. Geneva, May 2005. The APT has brought out the following reasons for shortcomings: 1) national legislation does not correspond to international standards; 2) standards are not applied or applied only partly, because they are not sufficiently developed, the staff’s training is deficient or lack of human or material resources. See: APT. Monitoring Places of Detention. A practical Guide. Geneva 2004, p. 64.
7. This aim – being an adviser – should be borne in mind in every phase of the visit: firstly preparing the visit, secondly conducting the visit and thirdly – which is the most important – making the report.

However, by being an adviser I do not mean being an amicable friend. A proper distance between the NPM and closed institution must be always maintained, and the independence of the NPM emphasised in Art. 18 of OPCAT should not be undermined. The proper balance between building mutual trust and a relationship of cooperation and becoming too friendly is hard to describe in abstract terms, but it can be felt in practice.<sup>8</sup>

So, what are the things we have tried in our practice in order to achieve cooperation and through this implementation of our recommendations?

Firstly, contact (written and oral) with closed institutions should start with an explanation of the role of the NPM and building a positive atmosphere. As I emphasised, the perception of the NPM as an adviser rather than an enemy helps to generate a positive, cooperative attitude and increases the readiness of the institution to implement recommendations. Any person feels uncomfortable and under pressure when his/her work is controlled. This tension can and should be mitigated with small things. For example, when you enter a closed institution for the first time, you should establish contact with officials with a smile. I would also cite an example from the practice of the Chancellor of Justice concerning use of mobile phones and cameras in prisons and arrest-houses. We always seek permission from the management of the place to bring them in before normal announced visits, despite the fact that an NPM has the right.<sup>9</sup> This is done because it shows respect towards the institution and its activity. This is a very minor detail, but details matter in order to create a positive, cooperative atmosphere.

Secondly, in written communication<sup>10</sup> between the NPM and places of deprivation there is a strong need to pay attention to the wording and content of documents – from questionnaires sent prior the visit to the place of detention to the visit report itself.

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8. See also: R. Murray. National Preventive Mechanism under the Optional Protocol to the Convention: One Size does not fit all. – Netherlands Quarterly of Human Rights 2008, Vol. 26/4, p 500.

9. According to OPCAT, members of the SPT and NPMs have such privileges and immunities as are necessary for the independent exercise of their functions.

10. See also: APT. Monitoring Places of Detention. A Practical Guide. Geneva 2004, p 87.

- ◆ The language should not be accusatory. The work done in closed institutions is physically and emotionally hard and often (literally) dirty. That is why we always acknowledge the efforts made by the staff – only then do we go on to say “but there is room for improvement and that is why I make the following recommendations”. This shows that we as NPM are aware of the difficulties encountered by the officials in their everyday work. In addition, if there are some activities that could be considered as an example of good/best practice that should be followed by other similar institutions, this is always mentioned in the report;
- ◆ Recommendations should always be clear in order for the official to understand what he/she should do:<sup>11</sup>
  - use bold highlighting and sub-headings (emphasising each point);
  - gather the recommendations at the beginning or in the conclusion in order to give a general overview;
  - suggest possible solutions to resolve the problem, bearing in mind at the same time that the use of concrete solutions is at the discretion of the authority;
  - be careful with language. Often people writing the reports are lawyers. I am a lawyer. But legal language is difficult and an ordinary official working in, for example, a social care home may not be able to follow all the nuances of bureaucratic legalistic text. So, not only in letters sent to people should the principles of simple/plain language be followed but in some cases also in letters sent to closed institutions.
- ◆ Recommendations should always be reasoned, and, if possible, it is always good to bring out the benefit for the institution of fulfilling each one. For example, it is not enough to say that windows of the arrest-house with so called “white glass” should be changed to ordinary glass in order for the detainee to be able to see outside because such a thing is ‘inhuman.’ Saying that it is inhuman is not enough, because the officials will automatically argue that there is enough light to read and there is always the possibility to turn the light on. The NPM should be able to explain relying on objective arguments why this is inhuman – in our example the explanation could be that not seeing the sky for weeks or even for months has a detrimental effect on the psychological state of the detainee. Another example: we all know that an obligatory medical

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11. See also: APT. Briefing No. 1 “Making Effective Recommendations”.

health check upon arrival at the closed institution is one of the core safeguards against ill-treatment. However, simply to demand this be done may not lead to the desired outcome, as there are always other things to spend money on. The NPM should provide reasons to the authority as to why medical health checks are necessary, including that they can play a role in protecting the institution itself (it might be good evidence to prove later on that officials have not violated the rights of the person).

Recommendations made by the NPM must be realisable – the NPM must have a clear vision or understanding that there is a reasonable, effective alternative way of doing things.

There is an Estonian film in which a teacher says to a student “If you are not able to study the whole lesson, do half of it. But do it well.” In Estonia there is lack of possibilities in arrest-houses to have every day a one-hour walk outside.<sup>12</sup> This is caused by a lack of staff and the consequent security risks – in most cases there are walking/exercise yards, but not enough staff to keep an eye on the detained persons. It would have been easiest for us to say “You have to provide it!” I am sure that the result would have been nil. The police would have simply said that “We do not have money!” and persons deprived of their liberty still would not have the possibility to walk. Now, during the economic crisis it is almost impossible to get extra money for anything – especially to improve the conditions of possible criminals. The Chancellor of Justice, emphasising the importance of the right to spend at least one hour a day in the open air and that it would be highly desirable that all people have the possibility, recommended that the arrest-house should work out internal rules. These rules should prescribe firstly that at least the most vulnerable groups be provided with the opportunity to have an open-air walk and describe objective criteria for selection of those persons in order to avoid misuse – juveniles, people with medical problems, women etc. Secondly, these internal rules should say how and who decides on it. So, in some cases a step-by-step solution might be necessary to achieve the ultimate end.

Perhaps the major problem for most former Soviet countries is simply living conditions in places of detention. The problem might be intensified by overcrowding. In order to resolve the question there is basically only one solution – new buildings.

12. Imprisonment Act § 93 (5), Regulation No. 3 of the Minister of the Interior of 8 January 2008 “Internal Rules of Detention House” § 31 (4).

When we go to an overcrowded place, officials say right away “You see the conditions in which we work and we can’t do anything.” Through this they want to get rid of their responsibility. No, they do not decide on strategic questions like building a new house. However, there is always a possibility to divide shortcomings into two categories: those requiring large-scale investment for improvement (e.g. constructing new buildings) and those which can be improved relatively easily, including in a short-term perspective. Doing nothing in the latter case is not justified. In Estonia we call a syndrome of officials like that “learned helplessness”. This must be avoided.

Next, recommendations must be directed to the right institutions. Finding money for a new Police arrest-house is not in the competence of the head of the local Police department. This can be done at the Ministerial level and the Minister of Interior Affairs is the right person. Finding the right addressee is especially important in cases where the problem falls under the competence of several institutions. For example, on the basis of visits the Chancellor of Justice came to the conclusion that there are major shortcomings in the medical examination of the detained person admitted to the arrest-house. We organised a roundtable with the representatives from the Ministry of Internal Affairs, the Ministry of Social Affairs, the Health Care Board and the Police Board. As a result of the roundtable, the Chancellor asked the relevant authorities to draw up a precise procedure for the provision of health services to individuals detained in police facilities, including reaching an agreement on the extent of provision of health services and, if necessary, amending relevant legislation. A method like this helps to bring several parties around one table, obliging them to discuss the matter, divide tasks and – most importantly – check whether they really do what they have promised to do.

As mentioned previously, in 90% of cases the rights of persons are not violated intentionally. Most of the advice above concerns only these cases. But what is to be done in the case of the other 10% where officials intentionally or with serious negligence disregard recommendations of NPMs and the rights of persons? How does one deal with that?

In practice it depends on the powers and status and image of the NPM. The means that we have used in our practice to date are:

- ◆ making the problem public (using the help of the media and public pressure)<sup>13</sup>;

- ◆ turning to the Parliament to encourage the Minister to bear as much responsibility as possible;
- ◆ using international help.

But these are *ultima ratio* means.

A psychologist once said to us during interviewing training that making a good interview is an art. Influencing officials and through this ensuring effective implementation of an NPMs recommendations is also an art – you must know how to press the right buttons and make officials in closed institutions want to fulfil them. I claim that often it is more a question of psychology than of money or law.

Thank you.

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13. See OPCAT art 16 (4): “If the State Party refuses to cooperate with the Subcommittee on Prevention according to Articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.”





## Jean-Pierre Restellini

*Member, European Committee for the Prevention of Torture  
President of the National Commission for Torture Prevention (NPM for Switzerland)*

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I first wish to thank the organisers for holding this conference and giving me the possibility to take an active part in it, especially since, as the Chair of the SPT already said, this third panel undoubtedly deals with the most important issue. We can have our ideas perfectly straight about fostering the sharing of information between the mechanisms, we can have ideal consistency of standards, but if the recommendations are not implemented, all the rest is just talk.

### **The Current Climate**

First I will make a few rather general observations on the current climate, which I think can be considered relevant to the three types of mechanisms which we gathered here around this table represent.

My impression is that the current climate is rather stormy. The storm clouds are clearly building over what is referred to as “old Europe”, where the penalties handed down today are increasingly heavy and increasingly “exemplary”. A tangible example of this is my own recent experience in my home country, where I was involved in selecting an architectural project for a detention centre for juveniles between the ages of ten and fifteen. The Minister of Justice, who is in charge of the project, made it clear that the aim was to “build a prison not a holiday camp”. This was for children aged ten to fifteen!

My feeling is that, at least in our part of the world, for about the last ten years a tendency to reject the “Other” has gradually been emerging, in particular with regard to foreigners and people outside mainstream society. Often, these people are designated in a very defamatory way – I note in particular the term “scum” that is used here and there.

Naturally, the same trend can be observed on the political scene, where talk about “clamping down on crime” and “all-out secu-

city” pays at election time. Both right and left wing parties tend to attempt to win over voters with extremely populist arguments, which are unfortunately playing a big part in the growth of the storm clouds I am talking about here. We all know where this attitude leads – to a constantly expanding prison population, with the many problems this entails, which are merely exacerbated by the economic crisis we have been experiencing for over a year now.

### **Some Beams of Sunshine**

So should we give up the struggle and resign ourselves to pessimism? I do not think so, because I have the impression – and the previous speakers have already pointed this out – that the clouds are fortunately being pierced by some beams of sunshine. I shall mention just a few.

#### **1. The end of anti-terrorist hysteria**

Mr Hammarberg already referred to the fact that we are gradually emerging from a state of what I, somewhat provocatively, call anti-terrorist hysteria. The dramatic events of 11 September had terrible consequences in terms of their impact on many procedures in the fields of criminal and administrative law and led to a number of excesses, including in Council of Europe member States. Fortunately, things now seem to be gradually calming down.

#### **2. Awareness of the universal, timeless nature of the risk of torture**

A second ray of light, which is very paradoxical, is what I term the “Abu Ghraib effect”.

You of course all have in mind the images of the widespread tortures perpetrated by members of the American armed forces in Abu Ghraib prison, not to mention what also happened at Guantánamo. These acts of torture were carried out by citizens of a law based, democratic state, a country among the most wealthy and the most civilised in the world. What happened at Abu Ghraib in a way brought us to our senses, making us realise that torture is not the sole preserve of dictatorial regimes – the Third Reich, Pol Pot’s Khmer Rouge and other caricatural examples – but can take place anywhere and at any time.

#### **3. New legislation specifically prohibiting torture**

Naturally, one cause for optimism which I think it important to mention is the fact that states are now introducing very explicit

legislation banning torture. I shall come back to this matter later with an example drawn from a visit I made for the CPT a few months ago.

#### **4. The steadily growing professionalism of the various anti-torture mechanisms**

Some thirty years ago when visiting a prison or a psychiatric hospital, one simply needed to apply a mix of common sense, listening and charity. Nowadays, methodologies have been developed, statistical instruments are available and the inspectors are increasingly genuine experts. Huge progress has therefore been made, at what can almost be described as a scientific level, in the work of visiting and inspecting places where people are deprived of their liberty.

#### **5. Speed of transmission of information denouncing torture**

Lastly, nowadays, largely thanks to the Internet, information on cases of abuse, inhuman and degrading treatment and, even worse, torture, is instantaneously circulated. This possibility of being informed within minutes or hours of unacceptable situations, even on the other side of the world, is extremely important.

#### **Who should be the preferred targets of our mechanisms?**

I believe we should single out two targets: the authorities of the States concerned – that goes without saying – but also those who are really in front-line positions, such as members of the police, prison staff and so on. I am all the more sure of this for having participated for a number of years now in my country's training scheme for prison guards and the police. I am now convinced that the best means of preventing torture is to take action at this level. Ensuring that there is no impunity for those who have imprisoned and tortured others is important, but if I myself had to say what was the best way of preventing inhuman or degrading treatment, my answer would indeed be that the staff concerned must receive appropriate training.

#### **What are the best strategies for ensuring that our recommendations are implemented?**

In this context, we must first bear in mind that there are two sets of protagonists.

Firstly, those who issue recommendations, in other words the mechanisms to which we belong, and, secondly, those who receive them.

Concerning the prevention mechanisms themselves:

1. As already mentioned, the recommendations must first and foremost be coordinated. We therefore need to avoid the kind of situation I came across six or seven years ago when I was invited to participate in a meeting of the EuroCOP association (a kind of international police union with some 60,000 members). The Chairman, himself a British police officer, very diplomatically but with a little smile said to me “Mr Restellini, we are convinced of the importance of the CPT’s work, but let me describe where things stand in my own police station: this year we received visits from five different mechanisms, including the CPT, and the five mechanisms issued different recommendations to us. We need your help, doctor, to identify which are the right recommendations.”

2. Our recommendations must be comprehensible. On one or two occasions recommendations issued by the CPT have been misinterpreted or misunderstood, with a completely unsatisfactory, sometimes even comic, outcome, simply because they were not framed in sufficiently clear terms.

3. Recommendations must not be too demanding or premature. In some cases it is necessary to allow things to take their time. It is not possible to change a country’s age-old customs of torture in just one year. Sometimes, if you aim to foster new attitudes, you have to make up your mind to be patient until a change of generation takes place.

4. The credibility of the issuer, that is to say the mechanism, is also very important. Here, I have to admit that I think the CPT is at a slight advantage. As you know, the CPT is twenty years old; it has unquestionably come of age. Its recommendations are now regarded as well-founded in the vast majority of cases.

5. The issuer’s authority also comes into play. Here, I would say the advantage lies with the SPT. It goes without saying that if you represent the United Nations when you visit an establishment where persons are deprived of their liberty people are impressed!

6. The possibility for a mechanism to bring tangible pressure to bear, which in practice will allow it to harden its “soft law”. As you know, recommendations, whether issued by the CPT, the sub-committee or a national mechanism, remain recommendations, in other words they are not legally binding. Here too, I

might mention a slight advantage for the CPT since, for a number of years now, the European Court of Human Rights has often drawn on our reports in deciding cases. Thanks to the Court's subsequent action, some of our recommendations can acquire a form of indisputable authority.

**Concerning those receiving the recommendations:**

1. What is it that in the end makes a State and/or those in front-line positions in situations of deprivation of liberty renounce the use of torture? Is it because human beings are fundamentally good and they finally realise that it is inhuman to inflict such suffering on others who are in their hands? Is it due to the pressure of public opinion? Is it because the State in question understands that to benefit from certain economic advantages, for instance within the European Union, it is clearly in its interest to act upon recommendations issued by the Council of Europe and the CPT? The question remains outstanding, and I hope we will discuss it further in this panel.

On this subject, I wish to tell you an anecdote based on my own experience a few years ago. The CPT delegation to which I belonged had returned, some years after a first visit, to a police unit responsible for combating terrorism which had a reputation, not only throughout the country concerned but also at the level of the CPT, for making substantial use of torture. I could hardly believe my ears when the detainees themselves told me that the acts of torture had all but ceased over a period of two or three years. During a private exchange I had the opportunity to hold with the team of police officers concerned, who numbered about twenty, I couldn't resist asking them: "You remember what you used to do a few years ago?" They all said yes with a smirk on their faces. I then said "I'd be interested to know why you don't use torture any more." Their reply, which I must admit shook me a little, was immediate: "We don't want to lose our jobs, and the government has passed new legislation clearly providing for the dismissal of police officers who make use of torture." This was the only reason why they had changed their behaviour. I must admit that their confession rid me of some of my innocence: I was naively expecting them to advance reasons that were a little more morally superior.

2. The authorities must really grasp the cost not only of depriving people of their liberty, but also of recidivism. These are convincing arguments!

3. Lastly, the advances made in psychiatric and psychological knowledge of fields in which little research had formerly taken place need to be better known.

There is, for instance, a need for better knowledge of post-traumatic stress syndromes and, above all, personality disorders that can in many cases lead to the commission of sometimes very serious offences. This is because this immediately raises the question of the liability of those suffering from these problems and whether they are acting of their own free will. Once they are aware of these issues, police and prison officers will inevitably change their attitude towards such detainees, whom they come to regard more as ill persons in need of treatment than criminals to be punished. I consider that such new awareness to a large extent helps to prevent ill-treatment.

Thank you for your attention.

**T**his conference on new partnerships for prevention of torture is dealing with three difficult issues – all of them very important for the SPT and for our relations with the CPT and other regional and national bodies for the prevention of torture.

The following expresses my present opinion from my perspective as an SPT member.

The preventive work within the framework of the OPCAT is building on – first of all – visits by the SPT and the NPMs to places where people are deprived of their liberty, i.e. verification of the situations of persons deprived of their liberty and the implementation of the legal framework. Hereafter, the dialogue with the Government and authorities begins through the formulation of recommendations for necessary changes in order to protect better the rights of the persons deprived of their liberty, which must be implemented by the government.

Although visits and examination of legislation form the basis for our recommendations, important information may also come from sources other than these, underlining that skilful cooperation with other actors is important to achieve synergy in the protection of persons deprived of their liberty as stated in the OPCAT.

An efficient implementation of the recommendation requires more than just good faith on the part of the Government; the process must include observations of factually necessary changes to feed into a continuous dialogue.

The OPCAT gives the SPT the possibility – if considered appropriate – to propose a short follow-up visit after a regular visit. With the present capacity and budget of the SPT, follow up visits are likely to be rare, and we haven't yet done any such visits. However, the article underlines the importance of follow-up on findings and recommendations.

The natural partner of the SPT is the NPM. It is operating on the spot, can do follow-up, and has the possibility to keep all actors informed about the Government's fulfilment of its obligations, to nourish a public discourse and to encourage feedback from civil society.

However, we must realise that it will take some years to have established NPMs in many countries and that some NPMs will not live up to the requirements of the OPCAT which underlines the necessity for capacity building.

Other partners for the SPT are regional bodies like the CPT, other UN organs and mechanisms; as well as national institutions and organisations.

The necessity for cooperation is underlined by the fact that information collected during the visits to institutions by national and international bodies will only give an incomplete picture of the conditions under which persons deprived of their liberty are living, since it can be assumed that the individual institution will only be visited once every one or two years once the NPM is up and running, and much more rarely by international and regional bodies.

Therefore the observations – in particular of changes – made by other actors such as NGOs working on a daily basis with problems related to closed institutions can make an important contribution to the work of the two OPCAT bodies. The stream of information between NGOs and the SPT is, however, one way. The findings from the visit and the dialogue between the SPT and the government are confidential if the Government so wishes.

The SPT may share its observations and recommendations with the NPM, when relevant. My personal view is that it is always relevant, provided that the NPM is operating in accordance with the OPCAT. In my view the exchange of information between the SPT and the NPM is the spirit of the OPCAT. Lack of that exchange will impede the follow-up of the NPM to the recommendations.

One way to exchange information immediately after a visit is to encourage the State to invite the NPM to the debriefing after the visit where the most important observations and recommendations are delivered. It would seem natural after an SPT visit, but maybe it is also a possibility for the CPT.



The possible problem of the exchange of findings and recommendations between the SPT and the NPM is the way in which the NPM uses the information. It is still confidential material and it should be treated as such. But it gives the NPM clues as to the priorities for follow-up, and enables it to verify that recommendations are implemented – particularly in the most problematic institutions – and report back to the SPT. In this context, the prevention of reprisals to those who have given interviews to the SPT is a particular challenge that deserves an analytical approach in line with the three issues of this conference.

Discussions about any problem in the legislation between visiting bodies and other actors may be carried out without restrictions since legislation is a public matter. The NPM should take the lead as the one that has the best knowledge of the local situation and make sure that the other bodies are informed and invited to contribute to analyses of current problems in legislation.

With other bodies the SPT may share some information, e.g. relevant information collected from sources that are available in the public domain; the timing of a planned visit and the names of the institutions actually visited. We have to cooperate to coordinate the planning of visits to achieve complementarity and avoid duplication. As to disclosure of the names of institutions visited, the SPT publishes the list immediately after the visit and in its annual report.

The APT mentions in its background paper the necessity for visiting bodies to make consistent recommendations to avoid a situation in which States receive conflicting messages. In my view it is not a problem that different bodies have slight differences in their focus, given the extension of the field in which they operate. It may well be that one body goes into more detail in relation to a particular issue than another body and is more radical in its recommendations, but I would argue that that reflects complementarity. More problematic is the content of the recommendations. Here we need to work with one of the other issues of this conference: coherence of standards.

Moreover, in many countries we cannot expect to solve all problems in a very short time; rather we will have to ensure that authorities are moving in the right direction and at an acceptable pace.

The SPT has an obligation to maintain direct contact with the NPMs and offer them training and technical assistance with a view to strengthening their capacities. This capacity building should ideally include the issue of standards in preventive work.

In the context of implementing recommendations for preventing torture, the possibility of the NPM to publish its views may be utilised, e.g. by publishing thematic reports on general prison conditions and problems in the judicial process in order to raise awareness in society generally of important problems. In this way the possible argument of authorities that the public opinion does not accept costly changes may to some extent be counter-balanced since – most often – the general population would not know much about those problems and conditions.

Changes in attitudes of the population are probably the most fundamental challenge in preventive work. It is hard for me to see a key role of the SPT and the CPT in this context, given their obligations of confidentiality and their sporadic presence in each country. It would thus seem to be an issue for the NPM, but here there is a great overlap with the mandate of the National Human Rights Institution (NHRI) and cooperation between these two bodies could bring synergy into the efforts. Again, the coherence of standards is an important issue. The NPM should be open to cooperation, and local strategies to approach the press could be developed jointly with the NHRI.

The NPM should strive to include civil society and encourage it to contribute information and ideas to make the preventive work more efficient. This should extend to a proactive attitude towards other actors and the NPM should ensure that their reports are readily available in all national languages, distributed to all key actors and that their homepage and street address are easily accessible to the general public in order to enhance the understanding for the necessity for change and in that way put pressure on the authorities to implement change.

To achieve complementarity and avoid duplication, all possibilities for exchange of relevant information should be utilised in the planning of visits, and to the extent possible also of observations and recommendations.

In the region of the Council of Europe most States Parties publish the visit reports of the CPT, indicating good faith and transparency in cooperation on prevention. States Parties should be encouraged to publish the reports of the SPT and to permit

exchange of all sorts of information between the two bodies, including preliminary observations and recommendations from a visit. The possibility of the NPM to publish their findings and recommendations should be utilised skilfully as one of many tools when considered appropriate in the dialogue with authorities.

Some recommendations will have considerable financial implications. The Council of Europe offers some possibilities which I shall not deal with. Under the OPCAT a voluntary fund has been established. Until now only very limited contributions have been made, and no applications to the fund have been submitted. It remains to be seen how the Board of the Fund will deal with the issue of confidentiality if the State Party wishes to maintain it. However, to me it seems unlikely that the Fund in the foreseeable future will have resources that can match the needs for costly changes or reconstruction of closed institutions.

In conclusion, the efficient OPCAT-compliant NPM is the key actor in the effective implementation of necessary recommendations to protect persons deprived of their liberty. It is on the spot, has the most up-to-date knowledge of the situation in the country and has the capacity to perform regular and follow-up visits to places of detention to assess conditions and treatment and verify whether recommendations are implemented (both those of the SPT and those of the CPT). The NPM is better placed than any other body to have a continuous dialogue with authorities, to include the civil society at the national level in the prevention of torture and to cooperate with other national actors to influence public opinion.

Assisting an NPM in achieving efficiency and building a cooperative network around the NPM will require some effort in many countries. To this end, development workshops with the participation of both the SPT and the CPT could strengthen the links between actors, bring impetus to the preventive work and ensure a minimum of coherence of standards and complementarity. Creative ways to facilitate the exchange of essential information respecting the requirements of confidentiality should also be sought.

Thank you.





## **Krassimir Kanev**

*Director, Bulgarian Helsinki Committee  
Chairperson of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture*

**T**he discussion in panel three was on ensuring the effective implementation of the recommendations of preventive bodies – both national and international.

My approach to reporting on the session will be to first sum up the presentations of the speakers and then the general discussion by theme.

Before I begin I would also like to say we benefited a lot from the moderation of Mr Jean Marie Delarue, who very skilfully summed up the major points of the contributors and was also able to contribute much to the discussion himself.

### **Speaker 1**

Our first speaker, Ms Nele Parrest, is the Deputy Chancellor of Justice of Estonia. Her approach to answering the question of how best to implement the recommendations of international and national preventive mechanisms was to start from certain presumptions. The first of these is that the officials working in the institutions are not “bad” in themselves – they usually abuse prisoners because of lack of knowledge and/or resources. Ms Parrest (speaking in her capacity as representative of the Estonian NPM) also said that the role of an NPM should be that of an advisor rather than an accuser.

So how does one influence officials to implement recommendations? We should use language which is not accusatory and recommendations which are clear and reasoned, as well as “realisable”. We did not talk about what this actually means, but since we are talking about human rights, can we really talk about partial implementation? Perhaps we could discuss this here in the plenary too. According to Ms Parrest, we should address the

media or Parliamentarians only in exceptional cases – maybe 10% of serious abuse cases. We should all learn how best to do this. The media can alert them to the serious problems, and the Parliamentarians can exercise some control over the Executive.

## **Speaker 2**

Our second speaker was Jean-Pierre Restellini, a member of the European Committee for the Prevention of Torture (CPT), and his major point was to sum up some positive and negative tendencies over the years and to show the effect of the recommendations on both the bodies which make them and the recipients. He mentioned several positive and negative tendencies over the course of the past several years, the negative being the growth of the prison population and the negative effects of economic issues on the criminal justice system, including not only more inmates per prison but also increasingly poor conditions.

Among the positive effects he mentioned were the gradual exit from what he called “anti terrorist hysteria” and the negative effects it produced in its first years. The “Abu Ghraib” effect had both negative and positive effects – one positive effect was to show that even democracies – countries bound by the rule of law – are not immune from the risk of torture and that they can also show bad examples of abuse. Another positive tendency was the increasing professionalism of those working on the prevention of torture, as well as the role of the internet in distributing information about cases of torture worldwide.

What is the role of recommendation-makers in making the implementation process more efficient? Dr Restellini spoke of the need for comprehensive, coordinated and “non excessive” recommendations (echoing Ms Parrest). He spoke also of the credibility of the inspecting mechanisms and the possibility of hardening the soft law – for example through the European Court of Human Rights. I will come back to this point when I discuss the role of the other international bodies, but the European Court was mentioned in this context as a body which could contribute to turning recommendations of preventive bodies into law.

Dr Restellini then turned to the recipients of the recommendations and also addressed the question “are people good?”, questioning the premise of the first speaker. He gave the example of a police unit which used to torture a lot, but ceased at some point. The reason why they ceased, though, was that they were afraid they would lose their jobs – because an appropriate legislative

framework was put in place which threatened their jobs for this sort of conduct. In his view, then, it is not the question whether people are good or bad, but the conditions we put them under so that they exercise their professional functions appropriately.

He pointed out the necessity of highlighting the cost of imprisonment and recidivism to the recipients of the recommendations, as well as the problem with psychiatric disorders in places of deprivation of liberty, in explaining the circumstances in which torture and other ill-treatment can take place.

### **Speaker 3**

Our third speaker was Hans Draminsky-Petersen, the Vice-Chairperson of the Subcommittee on Prevention of Torture (SPT). His major point was that the National Preventive Mechanisms (NPMs) have a key role in implementation, and that they should be the key domestic actors as regards implementation of recommendations of international bodies. He said they should be invited to the meetings of international bodies during visits and gave a number of other examples of possibilities for cooperation between NPMs and international bodies with a view to better implementation. He also pointed out the need to ensure complementarity and to avoid duplication in recommendations, visits and standards.

Dr Petersen talked about the possible roles of NGOs in implementation. Translation of the reports of international bodies was one example, but we can think of many others – this was highlighted in the subsequent discussion. He also mentioned the need to influence public opinion, and in this context he highlighted the role of NGOs and other civil society actors.

Finally, he stressed the role of the OPCAT Special Fund in funding training and other activities to implement the recommendations of the SPT, and the need to contribute to it.

### **Open Discussion**

Now to the discussion; by topic. One of the major topics was the role of international bodies in the implementation of recommendations. In this regard we talked about the need for follow-up at the level of the Committee of Ministers in the Parliamentary Assembly of the Council of Europe. The European Convention for the Prevention of Torture does not envisage such a role, so maybe we need to change it, or add a Protocol to entrust these bodies with implementation of recommendations. There was a feeling amongst the CPT members present that the CPT

sometimes feels a bit alone; a bit isolated from the other Council of Europe bodies, hence the need for follow-up from the Committee of Ministers.

Of course we are aware of the challenges in implementing decisions of other Council of Europe bodies, including the judgments of the European Court of Human Rights and the difficult role in that regard of the Committee of Ministers, but in the same way that the Committee has already taken a stronger role in the implementation of judgments, it should take a stronger role in relation to CPT recommendations.

We spoke of the role of the other UN mechanisms – the UPR was mentioned, but also other mechanisms such as the treaty bodies. I already spoke a bit about the European Court of Human Rights, but this court has already played a role in implementing some of the CPT standards, and there could perhaps be some sort of formalisation of cooperation between these two bodies.

I would also like to mention something that was mentioned by a number of participants in our group – the role of the ad hoc visits of the monitoring bodies. A number of participants mentioned that these visits actually have a much better effect in relation to implementation, that they are more efficient, and that they should be made on a more regular basis than ordinary visits.

The role of local bodies was another theme in our discussions. Who are the actors at the local level? NPMs of course, because they have a permanent presence, but also NHRIs, NGOs (in training and enhancing cultural change), the media, professional groups, trade unions and lawyers. The chair made the point that a multiplicity of actors is better than a monopoly.

A number of participants spoke of the role of persuasion in implementation and the ability to go public. This, it was said, was something which everyone involved in implementation needed to be able to do.

We discussed the need to give examples of best practice, which I thought was a good point, as well as the need to build the capacity of local actors and the role of the international players in doing this.



Another theme was the issue of the distribution of reports of the CPT and other international bodies. We spoke of the negative effects of delays in publication. Encouraging States to publish is sometimes very difficult, so one participant suggested the need to amend the Convention to allow for publication without the consent of the State in question, or at least parts of it (e.g. the recommendations). This was not comprehensively discussed in the panel, but perhaps we might give it some more attention here in the general debate. However, one participant did raise the possibility of using freedom of information legislation to facilitate the early publication of reports, and this is something which we might consider. I personally think that the effects of delays in CPT and other reports merits very serious consideration and is one of the major impediments to the good effects that the reports can otherwise have.

Lastly I would like to highlight some other themes which weren't sufficiently discussed in our group, but which could be further explored here in the plenary debate. One of these is how to achieve legislative change. Also how do we ensure the financial viability of monitoring bodies at both the international and national levels? We discussed this earlier today, but I think we need to discuss it further. Last but not least, how do we verify the implementation of recommendations? What formal and/or informal mechanisms and what roles do various actors have?

I think that was about all from our group – I am sure I have not managed to cover everyone's points, but I'm sure we will do the best we can in the general discussion to come.

Thank you.



# Plenary Session

## Summing up of the conference discussion







## Manfred Nowak

*UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*

I wish to extend my sincere gratitude to the Council of Europe and the APT for having organised this conference on torture prevention in Europe and for bringing all main actors in this field together – above all the CPT, SPT and NPMs from different European countries. I am also honoured to have been invited to serve as General Rapporteur although, strictly speaking, my mandate is more investigatory than preventive. Reality shows, however, that our methods are not that different, and by visiting detention facilities, we all carry out monitoring, investigatory, preventive and cooperative functions.

We spent most of the time during this conference in three parallel Panels, and we just heard and discussed three excellent and comprehensive reports, submitted by Françoise Tulkens, Malcolm Evans and Krassimir Kanev. Although my task, according to the programme, would be “Summing up of the Conference discussions”, I will not bore you with another summary of the summaries of our fruitful discussions today.

Allow me instead a few personal remarks about this conference and where we stand in the fight against torture and its prevention today. In order to understand how far we have come, I have to go back a little into history. In 1973, Amnesty International for the first time published a global report about torture, and arrived at the conclusion that torture was practised systematically in some 60 countries of the world, most notably in the then military dictatorships of Greece, Latin America, and other regions. The UN reacted fairly swiftly by adopting a Declaration against Torture in 1975, and by starting to draft a special Convention against Torture (CAT), which was finally adopted in 1984.

The main focus of the CAT is on the fight against impunity and the obligation of States parties to criminalise torture, to establish comprehensive jurisdictions in relation to torture, including universal jurisdiction, and swiftly to bring perpetrators of torture to justice. In reality, this important element of the global fight against torture failed. The majority of the present 146 States Parties, including many European countries, did not even implement the obligation under Article 4 to make torture, as defined in Article 1, a criminal offence with adequate penalties, taking into account the gravity of this crime. Only a few perpetrators of torture have actually been brought to justice and sentenced to the punishment they deserve. Successful cases of universal jurisdiction applied for the crime of torture are extremely rare.

The second aim of the CAT is to provide victims of torture with an effective remedy and reparation, including compensation and adequate medical, psychological, social and legal rehabilitation. Again, it failed. There are quite a number of torture rehabilitation centres around the world, and many of them are members of the International Council of Torture Rehabilitation Centres in Copenhagen (IRCT), but they are usually run by NGOs with little or no support from Governments. Most Governments that systematically practice torture do not even allow torture rehabilitation centres to operate in their territory, which means that the victims can only receive proper rehabilitation if they seek asylum abroad. But with the increasing xenophobia in Europe, the US, Australia and other traditional asylum countries, traumatised torture victims and asylum seekers are more often put in detention and subjected to another police procedure than actually provided with urgently needed medical and psychological rehabilitation treatment. Recently, even the European Commission decided to stop financing torture rehabilitation centres in Europe, as this would be a responsibility of national Governments. However, in reality, European and other Governments do not recognise this obligation; many torture rehabilitation centres are having to reduce or close down their services, and the victims are left with another right without proper implementation, which often leads to re-victimisation.

The third goal of the CAT is the prevention of torture by establishing State obligations to train law enforcement officials; to keep under systematic review and improve interrogation measures and prison rules; to refrain from deporting persons to countries where they face a high risk of being subjected to torture; not to use in any proceedings information extracted by tor-

ture and to take similar legislative, administrative and political measures aimed at preventing torture and ill-treatment.

During the early days of drafting the CAT in the late 1970s, Jean-Jacques Gauthier, a banker and philanthropist from Geneva, developed a much more far-reaching method of preventing torture borrowed from the ICRC: preventive visits to places of detention by an independent international body of experts. He founded and funded the Swiss Committee against Torture (now APT), where well-known Swiss experts, such as Hans Haug, Stefan Trechsel, Giorgio Malinverni or Walter Kälin as well as Secretary General Francois de Vargas, lobbied for an Optional Protocol to the CAT (OPCAT), a first draft of which was submitted to the UN Human Rights Commission in 1980 by Costa Rica. With the help of the Swiss, we also founded an Austrian Committee against Torture under the chair of Konrad Ginther, and Renate Kicker, who is today (30 years later) sitting on this Panel next to me, served for many years as its Secretary General. The third NGO that strongly lobbied for OPCAT was the International Commission of Jurists (ICJ) under its energetic Secretary General Niall McDermot.

However, the United Nations were not interested in Jean-Jacques Gauthier's revolutionary idea. It would strongly interfere with the holy principle of State sovereignty to empower an international body, without asking explicit authorisation by the government concerned, to inspect prisons, police lock-ups, psychiatric institutions, military and other detention facilities. Secondly, such a body, should it have any deterrent effect, would have to visit every State on a regular basis, which would simply exceed the financial possibilities of the world organisation. Niall McDermot seemed convinced by these arguments and strongly advocated a regional approach. Much energy during the 1980s was invested into convincing the Council of Europe, the OAS, OAU and other regional and sub-regional organisations to create regional treaties and bodies aimed at conducting preventive visits to detention facilities. Others, like Walter Kälin and myself, were not convinced about the exclusively regional approach and spent much time on preparing several drafts for a universal OPCAT.

But at least in Europe, the regional approach was successful, with the adoption of the European Convention on the Prevention of Torture (ECPT) in 1987. I still remember well when the newly created CPT carried out its first ever mission to Austria in May 1990. Everything needed to be highly confidential, and I felt

very honoured that, even before meeting our distinguished Ministers, the CPT wished to be briefed by me and a few other NGO activists and academics in a discreet hotel on the outskirts of Vienna. We told them which police detention facilities they should visit, and in its first report, the CPT concluded that people arrested by the Austrian police had a not insignificant risk of being subjected to beatings and other forms of ill-treatment. Amnesty International and others had already raised similar accusations for years, but their criticism had been flatly rejected by the Government. When the CPT repeated these allegations, Austria engaged in a major police reform which culminated in the creation, on the explicit recommendation of the CPT, of a Human Rights Advisory Board with six independent Police Visiting Commissions in 1999. Its present chairperson, Gerhart Wielinger, is among us today, and I have been serving as the chair of one Visiting Commission in Vienna since its establishment in 2000. In other words: in Austria, as in many other European countries, the CPT has been a success story.

There are still cases of torture and ill-treatment by the Austrian police and the situation of police custody, particularly for illegal migrants and asylum seekers, leaves much to be desired. However, the risk of being subjected to ill-treatment – at least for white Austrian citizens – has significantly decreased during the last two decades, and this is primarily the result of CPT activities and recommendations. As Trevor Stevens, the long-time Secretary of the CPT, whom I met for the first time during this historic first CPT mission to Austria almost 20 years ago, rightly reminded us this morning: there is reason to celebrate the 20th anniversary of the ECPT, but there is certainly no reason for complacency, and much still remains to be done.

The success of the CPT and the failure of our efforts to convince the OAS or the OAU to create a similar regional body stimulated a new discussion in the UN Human Rights Commission to draft the OPCAT on the basis of a revised draft submitted by Costa Rica. I was actively involved in submitting compromise drafts, but the discussions were soon at a stalemate. Europe wanted to use the CPT as the only model for a global system, and the South insisted that this interference with State sovereignty was unacceptable. Then Mexico invented an alternative strategy. Preventive visits to places of detention should not be carried out by a UN body of experts, but by national bodies. Originally, the Europeans and most NGOs strongly objected, but finally we reached a compromise: the primary responsibility for conducting visits



rests with independent National Preventive Mechanisms (NPMs), but there shall also be a UN Subcommittee (of the Committee against Torture) for the Prevention of Torture (SPT) with a double function: to assist NPMs and to carry out preventive missions. In retrospect, we have to say that this was an ingenious “compromise”, because the system of the OPCAT ultimately is far better than its ECPT model.

We should also thank the Chairperson of the Working Group of the Commission that drafted the OPCAT, the former Minister of Justice of Costa Rica Elizabeth Odio Benito, for her diplomatic skills in achieving this solution. Since Costa Rica, in addition to Switzerland, was the main governmental driving force behind the OPCAT, I am also pleased to see my friend Victor Rodriguez from Costa Rica in the chair of the Subcommittee. Again, there is no reason for complacency because the Subcommittee, whose membership will soon increase from 10 to 25, is still in its formative phase, and the UN High Commissioner for Human Rights has so far not equipped it with the financial and personnel resources that are absolutely necessary to carry out its double function of visiting countries and places of detention and at the same time assisting and training NPMs and establishing a sustainable cooperation with Governments. The budget of the Subcommittee should not be spent on long sessions of its members in Geneva, but on its regular field work in as many countries as possible.

With the entry into force of the OPCAT in 2006, States parties undertook the obligation to establish professional, independent and pluralistic NPMs in line with the requirements of the Paris Principles. 26 of the 47 member States of the Council of Europe have so far ratified the OPCAT, and 20 have designated or established an NPM. In fact, most Governments simply designated one or more of their existing bodies, often Ombuds institutions or National Human Rights Institutions, as NPMs. In most countries, the financial resources made available are totally insufficient, and often NPMs do not live up to the requirements of independence and pluralism under the Paris Principles. Unfortunately, we seem to be confronted with more “bad practices” from Europe than “good practices” to be followed by governments in other regions. Much needs to be done by the SPT, APT, CPT and others to remind Governments of their obligations under the OPCAT, to raise the necessary awareness among all stakeholders, and to train and assist NPMs. Again, there is no reason for complacency.

On the other hand, we have come a long way during the last thirty years to realise Jean-Jacques Gauthier's idea of preventive and unannounced visits to places of detention, which I consider to be the most effective measure to prevent torture and at the same time improve prison conditions on the international, national and, at least in Europe, on a regional level. The conference raised the question of how these different actors should best cooperate in order to complement each other's work rather than to duplicate it. I think it is fair to say that the conference raised more questions than it answered, and there is consensus among the participants that it was a very useful start to cooperation and networking which should be followed by a number of more focused meetings aimed at discussing issues of mutual concern and creating synergies. Let me just finish with a few remarks in relation to the topics discussed in the three Panels this morning.

Panel 1 dealt with the controversial issue of sharing of information, taking into account the different rules on confidentiality. One of my distinguished predecessors, Sir Nigel Rodley, once said that in order to prevent torture and improve prison conditions, we must shift from the paradigm of opacity to the paradigm of transparency. This is also one of my key recommendations in my last report to the General Assembly if we wish to eradicate the phenomenon of the "forgotten prisoners". But should this paradigm shift not also apply to the bodies entrusted with the task of monitoring detention facilities? I know there are the provisions of Article 11 ECPT and Article 16 OPCAT. But are they sacrosanct? Has the time not come, at least in Europe, to change this provision by means of an amendment or at least an Additional Protocol?

The Russian Federation and Azerbaijan seem to be the only Council of Europe member States which still resist the publication of CPT's reports. Should the Committee of Ministers and/or the Parliamentary Assembly of the Council of Europe not put stronger pressure on these governments to change their practice of opacity? But perhaps the CPT might also be a bit more courageous and innovative in interpreting and applying Article 11 by making extensive public statements on the situation in States whose Governments are not willing to cooperate in a spirit of transparency. After all, as Françoise Tulkens reminded us in her excellent report, confidentiality should not be confused with secrecy. The sharing of confidential information with similar bodies might well be possible on the basis of mutual trust and

confidence. In any case, the fact that NPMs are not bound by any confidentiality requirements, apart from the privacy of the individuals concerned, is a very promising sign that we are moving in the right direction towards transparency in the fight against torture and inhuman prison conditions. In this respect, Europe and the CPT should follow the model of the UN and not stick to models of opacity dating from the Cold War.

Panel 2 dealt with how to facilitate coherence of standards. As Malcolm Evans, in his excellent and to some extent innovative summary of our discussions, reminded us, coherence should not be mixed up with convergence and homogeneity. It means that different bodies should be based on the same values, learn from each other and send, in principle, the same message to Governments and other stakeholders. But we should not be obsessed by the need for strict coherence or even convergence. Secondly, it was not quite clear to all participants what the term “standards” means. We identified at least four types of standards where more exchanges of experience would be needed in future conferences in order to learn from each other and facilitate coherence.

First, there is a need to discuss the different procedural standards, i.e. the methodology of how to conduct unannounced visits to places of detention and confidential interviews with detainees. Secondly, what are the substantive standards that the different visiting bodies should respect when carrying out visits? Thirdly, and this was primarily discussed in the Panel, what are the substantive standards of torture prevention and of minimum prison conditions that States should respect, and which the visiting bodies should further develop and specify as a result of their visits, assessments and recommendations? The CPT has certainly achieved a lot in developing such minimum standards for European detention facilities, but are they also applicable at the universal level, taking also into account that many European countries are far from applying CPT standards in practice? Finally, further standards should be developed, above all by the SPT, but in close cooperation with CPT and other stakeholders such as the CAT-Committee, the Human Rights Committee and the UN Special Rapporteur on Torture, on well-functioning NPMs, including their independence, pluralism and financial viability. But NPMs do not have to look the same in every country of the world. There is certainly room for national and regional particularities.

Panel 3 dealt with the difficult question of how all these standards and recommendations of visiting bodies should best be

implemented in practice. As we all know, there is a huge gap between hard and soft law standards for prevention of torture and humane prison conditions on the one hand, and the sad reality of systematic torture and inhuman prison conditions in many countries of the world, including in Europe. The participants agreed that only concerted efforts by many different stakeholders, including Governments, NPMs, NHRIs, courts, media and civil society at the domestic level, and also by all relevant political bodies at the regional and universal level can make a difference. For Europe, this means, above all, the Council of Ministers and the Parliamentary Assembly of the Council of Europe as well as various EU bodies. Members of CPT complained that sometimes they feel left alone with their recommendations, without appropriate follow up by States and the political bodies of international organisations.

Another important aspect is development assistance and cooperation by UNDP, EU, relevant bilateral development agencies, and others. Again, it is important to move from opacity to transparency, to openly address all relevant problems, obstacles and challenges, and to make concerted effort to implement the absolute prohibition of torture and the right of detainees to live in prison in accordance with their right to dignity, integrity, privacy and many other human rights, including the rights to an adequate standard of living, with the rights to food, water, adequate accommodation, hygiene, health care, education and recreation as its main ingredients.

Thank you.

# Appendix 1

## Programme





**New partnerships for torture prevention in Europe  
Strasbourg, 6 November 2009**

- 9:15-10:15**      **Opening session in plenary**
- Chairpersons:
- ◆ Mr Mark Thomson, Secretary General, APT
  - ◆ Mr Trevor Stevens, Executive Secretary, CPT
- 10:15-10:30**      Coffee break
- 10:30-13:00**      **Thematic panels**
- Panel 1 : Promoting the sharing of information between the preventive bodies**
- Moderator: Mr Markus Jaeger, Head of the Cooperation with National Human Rights Structures Unit, Council of Europe
- Presentations by:
- ◆ Mr Vanu Jereghi, Executive Director of the Moldovan Institute for Human Rights
  - ◆ Ms Silvia Casale, member of the CPT
  - ◆ Mr Victor Rodriguez Rescia, SPT
- Chairperson
- Debate
- Panel 2: Facilitating the coherence of standards**
- Moderator: Ms Marie-Louise Bemelmans-Videc, Vice-Chairperson of the Sub-Committee on Human Rights of the Parliamentary Assembly of the Council of Europe
- Presentations by:
- ◆ Ms Anne Owers, Her Majesty's Chief Inspector of Prisons in England and Wales
  - ◆ Mr Mario Felice, member of the CPT
  - ◆ Mr Zdeněk Hájek, member of the SPT
- Debate

**Panel 3: Ensuring the effective implementation of the recommendations of the preventive bodies**

Moderator: Mr Jean-Marie Delarue, General Inspector for Places of Deprivation of Liberty, France

Presentations by:

- ◆ Ms Nele Parrest, Deputy Chancellor of Justice of Estonia
- ◆ Mr Jean-Pierre Restellini, member of the CPT
- ◆ Mr Hans Draminsky Petersen, SPT Vice-Chairperson

Debate

**13:00-14:30**

Lunch

**14:30-17:30**

**Plenary session**

Chairpersons:

- ◆ Ms Martine Brunschwig Graf, President of the APT
- ◆ Ms Renate Kicker, 1st Vice-President of the CPT

**14:30-16:30**

**Rapporteur presentations and debate**

- ◆ Rapporteur Panel 1: Ms Françoise Tulkens, Judge at the European Court of Human Rights
- ◆ Rapporteur Panel 2: Mr Malcolm Evans, Dean of the Faculty of Social Sciences and Law, Bristol University
- ◆ Rapporteur Panel 3: Mr Krassimir Kanev, Director of the Bulgarian Helsinki Committee

Coffee break

**16:45-17:15**

**Summing up of the Conference discussions**

Mr Manfred Nowak, UN Special Rapporteur on Torture

**17:15-17:30**

**Concluding remarks from the chair**



## Appendix 2

# Background document





## I. Introduction

Today, torture is recognised by the international community as one of the most brutal attacks on human dignity which has to be forcefully condemned whenever and wherever it arises. The universal prohibition of torture occurred in the immediate aftermath of World War II, during which untold barbarities were committed in pursuit of intolerable ideologies. Numerous international instruments have since been adopted in the fight to put an end to acts of torture, the most prominent being the Convention against Torture<sup>14</sup>, at the United Nations level, and the European Convention on Human Rights<sup>15</sup> and the European Convention for the Prevention of Torture<sup>16</sup>, at the European level. The prohibition of torture and inhuman or degrading treatment is one of those few human rights which do not permit any derogation. Nevertheless, in too many States the risk of torture and other forms of ill-treatment by State officials remains all too prevalent.

Finding out whether a person is exposed to, or has suffered from, an act of ill-treatment while deprived of his/her liberty is not always easy. Firstly, such acts usually occur in isolated places of detention by officials who believe they will not have to account for their actions. Secondly, people exposed to acts of ill-treatment do not always want to talk about their experiences, let alone confront the responsible people/organisation with their allegations. Thirdly, the physical scars (if any) may not be in evidence by the time any complaint is made. Fourthly, independent structures enabling complaints about ill-treatment to be submitted, which result in an effective investigation, may not exist. Moreover, judicial procedures are often very long and pose many obstacles during which the individual has to re-live his/her experiences of the ill-treatment.

For these reasons, and others, much emphasis has been given to establishing mechanisms for preventing acts of torture before they occur rather than waiting to deal with their consequences.

14. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Entry into force: 26 June 1987.

15. European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome, 4.XI.1950 (see [www.echr.coe.int](http://www.echr.coe.int))

16. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT/Inf/C (2002) 1, adopted in Strasbourg, 26.XI.1987.

At the national and international level, the establishment of professional bodies charged with inspecting and monitoring places of detention has proven to be one of the most effective means to prevent torture and other forms of ill-treatment. These proactive approaches complement the reactive judicial processes in place to sanction severely acts of ill-treatment by State officials, and together they should combine to prevent acts of torture and the emergence of a culture of impunity developing within law enforcement and other State agencies. In a number of countries, the law enforcement and other State agencies have themselves welcomed the additional scrutiny and accountability imposed on them to back up the declared policies of zero tolerance against ill-treatment.

The architecture within Europe for independent monitoring bodies is now composed of the European Committee for the Prevention of Torture (CPT), the United Nations Subcommittee on the Prevention of Torture (SPT) and national preventive mechanisms (NPMs) of varying forms. In addition, many European States have an active civil society carrying out some sort of monitoring role. Further, internal controls over the acts of State officials exist to one degree or another and, in some instances, specialised independent complaints bodies have also been established.

The sections below focus on the CPT, SPT and NPMs – the focus of the Conference on new partnerships for torture prevention in Europe.

## **II. The European Committee for the Prevention of Torture (CPT)**

The inspiration for the CPT was drawn from the work of the International Committee of the Red Cross, which pioneered the notion of protecting detained persons through a system of visits to places of detention by an expert and impartial body. The proposal for a European treaty was made by the Consultative Assembly of the Council of Europe, based on a draft of a European Convention elaborated by the International Commission of Jurists and the Swiss Committee against Torture<sup>17</sup> (now renamed Association for the Prevention of Torture).

The CPT was established in 1989, following the ratification of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) by seven member States of the Council of Europe. Today all 47

member States are bound by the Convention, and one of the conditions for any new member State invited to join the Council of Europe is to become a Party to this Convention.

As the CPT stated in its first General Report, its duty is broader than merely reporting on the allegations of torture or inhuman and degrading treatment; “rather, it must look into the general conditions surrounding the alleged abuses and, if need be, suggest ways of both stopping the abuses in the immediate and of preventing their reoccurrence in the future”. In order to carry out its work effectively, the CPT has been granted extensive powers to visit any place within a State’s jurisdiction where a person is deprived of his/her liberty, at any time, and to be granted access to information it requires to carry out its task. Further, it may interview in private persons deprived of their liberty.

As of 25 October 2009, the CPT had carried out 277 visits, 168 of a periodic nature and 109 ad hoc visits (i.e. those visits required by the circumstances). On the basis of 18 to 20 visits per year, the CPT attempts to ensure that a periodic visit is carried out to most States Parties on average every four years. Following a visit, a report is drafted and submitted to the State with recommendations, comments and requests for information, and the State is given either three or six months to respond<sup>18</sup>. The CPT’s visit report remains confidential, unless the State concerned authorises its publication. However, it should be noted that a practice has developed whereby the vast majority of States authorise the publication of the visit report, usually together with the response of the authorities to that report. As of 25 October 2009, 222 CPT visits reports and their responses have been published.

In 1989, *“the making of the Convention and the establishment of the CPT were revolutionary steps for the international community. For the first time a group of States has set up an international body of independent experts (...) granted the*

17. It was Jean-Jacques Gautier, a retired Swiss banker, who had the idea of a visit-based mechanism to assist States in preventing ill-treatment in places of detention. Through the Swiss Committee Against Torture he campaigned tirelessly for such a mechanism to be established at the United Nations level, and when the process stalled attention turned to the European level.

18. In general, ad hoc visit reports request a response within three months and periodic visit reports a response within six months.

*unprecedented right to enter the territory of sovereign States and visit all places where persons are deprived of their liberty by a public authority”<sup>19</sup>.*

Twenty years later, the idea that places of deprivation of liberty are opened to outside scrutiny by independent international and national bodies is no longer a revolutionary concept. Instead, it is considered as part of the normal democratic accountability and transparency process in the functioning of a State’s system of detention.

### **III. The United Nations Subcommittee on Prevention of Torture (SPT)**

The long-awaited entry into force of the United Nations Optional Protocol to the Convention against Torture (OPCAT),<sup>20</sup> on 22 June 2006, represents another significant breakthrough in the “normalisation” process of independent monitoring regimes.

The OPCAT establishes for the first time a “system of regular visits” undertaken by both international and national preventive bodies. The international aspect is covered by the newly-established United Nations Subcommittee on Prevention of Torture (SPT), which was set up in December 2006 and currently comprises ten independent experts.<sup>21</sup>

The SPT has two broad aspects of its preventive mandate. In the first place, the SPT is mandated to monitor regularly all places of detention and is granted with extensive powers. Like the CPT, the SPT can hold interviews in private without witnesses with both persons deprived of their liberty and others. Following its visits, the SPT makes recommendations to the relevant authorities for improvements in the conditions of detention and treatment of detained persons, as well as on the functioning of the places of detention. These recommendations are the basis for establishing and maintaining a cooperative dialogue with the relevant authorities. In addition to its “operational function”, the OPCAT grants the SPT an “orientation” function. The SPT is therefore mandated to not only provide advice on the interpreta-

19. See First General report on the CPT’s activities covering the period November 1989 to December 1990, CPT/Inf (91) 3, 20 February 1991, CPT(91)3, paragraph 97.

20. Adopted by the UN General Assembly in A/RES/57/199 of 18 December 2002.

21. This number shall rise to 25 independent experts in October 2010.

tion of the OPCAT, but also to furnish assistance and advice regarding an NPM's designation, establishment and functioning.

Since its establishment, the SPT has carried out seven in-country visits to different continents and one in-country engagement with the Estonian NPM. To date, Sweden is the only European country to have been visited by the SPT (March 2008); the report on that visit together with the State's response was published in September 2008.<sup>22</sup> As is the case with the CPT, a visit report by the SPT may only be published with the authorisation of the State Party concerned.

#### **IV. National Preventive Mechanisms (NPMs)**

At the national level, States Parties acquire the obligation upon ratification of the OPCAT to maintain, designate or establish one or several national preventive bodies, also called National Preventive Mechanisms (NPMs). NPMs have a mandate to monitor all places of detention regularly and to propose recommendations and observations to prevent torture and other ill-treatment. They also have a mandate to submit proposals and observations concerning existing or draft legislation.

It should be recalled that OPCAT sets out basic requirements for the establishment of NPMs by a State Party. To begin with, an NPM must be independent of the Government, including functional independence. This means that the NPM must not be under the authority of any government ministry or other institution and should be established by its own organic law or constitutional provision. The personnel employed by the NPM must be independent; they should not work for the government. Further, an NPM's membership must include professionally competent experts, have a reasonable gender balance and include representatives of ethnic and minority groups. An NPM must also be adequately funded. Lastly, the NPMs should be granted the necessary powers and guarantees to carry out their preventive mandate, namely to have access to all places of detention, relevant information and all persons deprived of their liberty. The States should also give due consideration to the 1990 United Nations Principles relating to the status of national institutions for the promotion and protection of human rights – known as the Paris Principles<sup>23</sup> – when establishing the NPM.

22. See CAT/OP/SWE/1, 10 September 2008, available at [www.ohchr.org](http://www.ohchr.org). Subsequently, the CPT carried out its 4th visit to Sweden in June 2009. (See [www.cpt.coe.int/en/states/swe.htm](http://www.cpt.coe.int/en/states/swe.htm)).

The visits to places of detention conducted by NPMs are by nature more regular and frequent than the visits carried out by international preventive bodies. Although NPMs are not bound by strict confidentiality rules such as those pertaining to the CPT and SPT, they may choose not to publish all of their reports as part of their strategy to maintain a cooperative dialogue with the authorities. At present, NPMs in different countries have adopted varying approaches towards the publication of their reports although States Parties have the obligation under the OPCAT to publish and disseminate the NPM annual reports. The NPMs are clearly the main novelty of the OPCAT, and are likely to develop into key interlocutors for the State Party and for the CPT, in addition to the SPT. NPMs represent the main added value for the States Parties to both ECPT and OPCAT.

#### **V. The challenge of multiple bodies, at different levels, monitoring places of detention**

To date, 26 Member States of the Council of Europe have ratified both OPCAT<sup>24</sup> and ECPT. For these countries, places of deprivation of liberty will be visited on a regular basis by the National Preventive Mechanism (NPM),<sup>25</sup> and on a periodic basis by delegations of the CPT and SPT.

In that context, a number of challenges arise from the existence of several bodies in the European region charged with monitoring places of detention with a view to preventing ill-treatment: for example, in terms of cooperation, exchange of information, implementation of recommendations, overlap and duplication of work, and coherence of standards. From the challenges of this unprecedented situation arises a unique opportunity to build new partnerships to strengthen the effectiveness of torture prevention in the European region.

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23. The “Paris Principles” were designed for general purpose human rights organisations such as National Human Rights Commissions but they include measures to safeguard the independence of institutions. See UN General Assembly resolution A/RES/48/134 (Annex) of 20 December 1993.

24. To date, a further 11 European States parties to the European Convention for the Prevention of Torture have signed the OPCAT, namely: Austria, Belgium, Finland, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal and Turkey.

25. As far as the APT is aware, only 19 States from the 26 States Parties to the OPCAT and the ECPT have designated their NPM. See appendix for further information.



The OPCAT responds partially to some of these challenges and establishes a basis for cooperation between the various levels of monitoring bodies (United Nations, European and national). Firstly, it envisages a strong and direct relationship between the SPT and NPMs.<sup>26</sup> Secondly, the SPT should “*cooperate, for the prevention of torture in general, with (...) the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment*”.<sup>27</sup> Further, OPCAT also encourages the SPT and regional bodies “*to consult and cooperate with a view to avoiding duplication*”.<sup>28</sup>

For its part, the CPT has regularly mentioned its readiness to cooperate with the SPT and has also recognised that “*the national preventive mechanisms operating under the Optional Protocol will be among the CPT’s most important interlocutors*.”<sup>29</sup>

One additional response to the number of challenges that arise from the existence of several bodies in the European region charged with monitoring places of detention, is the implementation of a European NPM project<sup>30</sup> specifically aimed at providing intensive on-site training and exchanges of best practice for the staff of NPMs. The project also aims to organise thematic workshops geared towards specific NPM common concerns, and to foster the creation of an active network of European NPMs, thereby creating a forum for peer exchange (the *European NPM Project*). The overall objective of the European NPM Project is to strengthen the prevention of torture at the domestic level in all Council of Europe member States and to help contribute to a greater understanding of uniform standards in preventive work in this area. The context of the European NPM Project will be discussed in Strasbourg on 5<sup>th</sup> November 2009, at the first meeting of the Heads of the European NPM network.

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26. See OPCAT, Articles 11 (b), 12 (c), 16 (1), 20 (f).

27. See OPCAT, Article 11(c).

28. See OPCAT, Article 31.

29. See 16th General Report on CPT’s activities covering the period 1 August 2005 to 31 July 2006, CPT/Inf (2006) 35, preface.

30. The project will cover the years 2010 and 2011, lasting until Spring 2012. It will be funded under a joint European Union – Council of Europe project as well as by the Human Rights Trust Fund.

## **VI. The Conference on new partnerships**

The Conference on “New Partnerships for Torture Prevention in Europe” is being organised to mark the occasion of the 20<sup>th</sup> anniversary of the entry into force of the ECPT. It will gather for the first time representatives from the Council of Europe Member States, the CPT, the SPT, European NPMs, other international bodies and civil society to exchange views on how to address these new challenges and develop new partnerships.

The sections below attempt to provide some guidance on the three main topics which have been identified for discussion during the plenary sessions and in the thematic working groups of the Conference. For each of the three topics, namely, the sharing of information, the coherence of standards and the effective implementation of recommendations, a number of issues and considerations are laid out below. The discussion below is complemented by a list of topics and questions which may be debated during the various sessions of the Conference (see Appendix I).

This section focuses on the three main actors involved in torture prevention at the European level, namely the CPT, the SPT and NPMs, but the potential role of other actors is not to be underestimated, and may be further discussed during the Conference.

### **1. Promoting the sharing of information between the preventive bodies**

One of the challenges facing the CPT, SPT and NPMs in carrying out their monitoring work is related to the sharing of information.

Access to information is absolutely essential if these preventive bodies are to carry out their mandates effectively. This fundamental requirement is reflected in the Conventions establishing the CPT and SPT.

The ECPT, under Article 8, paragraph 2 (b), (c) and (d) and paragraph 4, states that a Party will provide the CPT with the following rights of access:

2. (b) full information on the places where persons deprived of their liberty are being held;
- (c) unlimited access to any place where persons are deprived of their liberty, including the right to move inside such places without restriction;
- (d) other information available to the Party which is necessary for the Committee to carry out its task. In

seeking such information, the Committee shall have regard to applicable rules of national law and professional ethics.

4. The Committee may communicate freely with any person whom it believes can supply relevant information.

The OPCAT, under Article 12, paragraph (b), and Article 14, paragraphs (a) and (b), provides for State Parties to grant the SPT the following access:

- 12.(b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- 14.(a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in Article 4, as well as the number of places and their location;
  - (b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention.

The OPCAT, under Article 20, paragraphs (a) and (b), also provides for States Parties to grant national preventive mechanisms with:

- 20.(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in Article 4, as well as the number of places and their location;
  - (b) Access to all information referring to the treatment of those persons as well as their conditions of detention.

Therefore, each of the preventive bodies is entitled to receive all relevant information from the States Parties.<sup>31</sup>

In the course of visits to States Parties, the monitoring bodies (CPT, SPT and NPMs) often come across or are provided with information of a sensitive nature concerning individual persons deprived of their liberty. The ECPT and the OPCAT therefore provide for the protection of such sensitive data as both instruments state that the information gathered by the preventive

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31. Establishment and Designation of National Preventive Mechanisms, APT, 2006, p 58.

bodies should remain confidential and no personal data should be published without the consent of the person concerned.<sup>32</sup>

The information gathered by the preventive bodies, whether through visits or via correspondence, forms the raw data from which visit reports are drafted, and various recommendations formulated. It also feeds into annual reports.

Is the sharing of information between the SPT, CPT and NPMs essential to guarantee an effective system of prevention of torture in the Council of Europe region and to avoid possible gaps and duplication?

Considered in the context of the confidentiality issue, this represents a challenge for the SPT and CPT. Article 11 of the ECPT states: “*the information gathered by the Committee*<sup>33</sup> *in relation to a visit, its report and its consultations with the Party concerned shall be confidential*” (art. 11). Article 2(3) of the OPCAT provides that the “*the Subcommittee on Prevention shall be guided by the principle of confidentiality (...)*”. The principle of confidentiality has been strictly observed both by the CPT and the SPT in their work, and this creates difficulties in terms of the information sharing possibilities between the two bodies. But are they insurmountable?

Sharing of information should also include consultation and coordination regarding strategies and planning, in particular the programme of visits. It is worth mentioning that the SPT and the CPT are already exploring means to share information and harmonise practices. The fact that some SPT members are also CPT members may facilitate the sharing of information between the two preventive bodies.<sup>34</sup> Frequent contacts were also established between the CPT’s Bureau and the SPT’s Chairperson on questions of mutual interest. Further, the Secretary of the SPT held detailed practical discussions over two days with members of the CPT’s Secretariat in Strasbourg<sup>35</sup> in July 2008.

32. See OPCAT Article 11 (1), (3), ECPT and Articles 16 (2) and 21 (2).

33. This “may consist of facts it has itself observed, information which it has obtained from external sources and information which it has itself collected”. Explanatory report of the ECPT.

34. Current SPT members Marija Definis Gojanovic and Emilio Ginés are also CPT members, while Zdeněk Hájek is a former CPT member. Former SPT Chairperson Silvia Casale was previously President of the CPT and remained a member of CPT during her SPT mandate. Leopoldo Torres Boursault was also a former CPT member.

Ways of establishing a structured and regular dialogue between the CPT and the SPT on common topical issues related to the prevention of torture (diplomatic assurances, unlimited detention, access to military bases in an extraterritorial context) could also be explored.<sup>36</sup>

The main challenge, however, arises in relation to the sharing of substantial information, in particular visit reports. As we have seen, there is an exception to the principle of confidentiality both in the ECPT<sup>37</sup> and the OPCAT<sup>38</sup> – i.e. where a State Party authorises the publication of the visit report. This has become standard practice, with one or two exceptions, at the European level<sup>39</sup> and two out of seven SPT reports have been published so far.<sup>40</sup> It is likely that European States visited by the SPT will adopt a similar practice of authorising publication of visit reports. However, publication may not be immediate, as States Parties are consulted on the content of the report. Ways should therefore be explored by the CPT and the SPT to forward to each other their confidential reports.

The CPT proposed as early as 1993 that States bound by both treaties agree that visit reports drawn up by the CPT in respect of their countries, and their responses to such reports, be immediately and systematically forwarded to the SPT on a confidential basis. The CPT is of the view that implementation of this measure should not require an amendment to the ECPT, as both bodies are bound by the same rule of confidentiality.<sup>41</sup> The SPT met the CPT to discuss this issue,<sup>42</sup> though to date this procedure has not been implemented.

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35. See CPT/Inf (2008) 25, 18th General Report on the CPT's activities covering the period 1 August 2007 to 31 July 2008, Para 22.

36. See "Issues raised by the CPT's representatives at the meeting with the UN Subcommittee on Prevention established under the OPCAT", CPT (2007)23.

37. See ECPT Article 11 (2)

38. See OPCAT Article 16 (4)

39. As of 25 October 2009, 222 CPT reports have been published.

40. See SPT Report to Sweden, CAT/OP/SWE/1, 10 September 2008 and SPT report to the Maldives, CAT/OP/MDV/1, 26 February 2009, available at: [www.ohchr.org](http://www.ohchr.org)

41. See Appendix of CPT 3rd annual report on activities, CPT/Inf(93)12; 13th General Report, CPT/Inf(200)35, paragraph 22; and 16th General Report, CPT/Inf (2006) 35, Preface.

42. See CAT/C/40/2, 25 April 2008, Para 37, and CAT/C/42/2, 7 April 2009 available at [www.ohchr.org](http://www.ohchr.org)

The transmission of SPT reports to the CPT seems for the moment of a more theoretical nature, considering that few European countries may be visited. However the same procedure of systematic transmission of reports on a confidential basis might be considered.

Further, the SPT and CPT should establish mechanisms to exchange information on the programme of visits. Of course, given that the SPT is likely to carry out only a very few visits in the European region in any given year, the onus should perhaps be more on it to ensure it does not carry out a general visit to a country in the same period as the CPT. The CPT could also provide the SPT with a list of the periodic countries it has decided to visit for the following year a little earlier than the date on which they are published, which is usually early December. As for the ad hoc visits carried out by the CPT, they are usually in reaction to a particular circumstance or part of a targeted follow-up to a previous visit and there would appear to be less necessity for them to be communicated to the SPT in advance.

The sharing of information between the two international bodies and the NPM represents a different kind of challenge. NPMs, which are not bound by the principle of confidentiality under the OPCAT (with the exception of the publication of personal data) can provide invaluable information to the SPT and the CPT. This may include general information about places of detention, persons deprived of their liberty, systemic analysis of the detention regime and any information related to torture prevention, including NPM visit reports.

The challenge lies in reciprocity: if NPMs constitute a source of information for the international bodies, it is only reasonable that they will expect information in return. This issue of confidentiality mentioned above then comes into play.

Transmission of confidential SPT reports to NPMs is an issue that remains to be settled. Article 16 (1) of the OPCAT provides that the SPT “*shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the NPM*”. Reading this article in conjunction with Article 11 (1)(b)(ii) of the OPCAT, which states that the SPT shall “*maintain direct, if necessary confidential, contact with the national preventive mechanisms*”, one can infer that the SPT can send its in-country visit report to the NPM of the concerned country, or at least the specific part of the report related to the NPM. To be implemented, such a procedure would require an evolution of

current SPT practice. However, the transmission of SPT reports to the NPMs concerned would contribute to the implementation and follow-up of SPT recommendations, as well as NPM functioning.

As regards the CPT, it is true to say that, to date, CPT delegations visiting States Parties will meet with national preventive mechanisms and that, although there will be an exchange of views on particular topics, the flow of information will tend to be in one direction – towards the CPT. Thereafter, until a CPT report is made public the NPM will not receive any official feedback on a visit or the contents of the visit report. Of course, with the entry into force of OPCAT and the establishment of designated NPMS, the transmission of confidential CPT reports to the NPM of the concerned State has not been explored. It does however at first glance seem rather difficult to implement as the ECPT does not contain any provision regarding the transmission of information to national bodies. Furthermore, the non-confidential nature of the NPM work represents a challenge that the CPT might need to address in the near future. It can be noted that in some countries, the State Party itself has transmitted the CPT report to the NPM on a confidential basis. In other countries, the CPT report is made public by the State authorities immediately upon being received without waiting until a response to the report has been drawn up.

## **2. Facilitating the coherence of standards**

Considering the multiplicity of actors, the issue of the standards to be applied and eventually developed is crucial. Facilitating their coherence is essential for the credibility and effectiveness of the preventive bodies and especially for the authorities that have to implement the recommendations.

In the CPT's mandate, there is no reference to a legal framework for the CPT's work, although the Preamble of the ECPT mentions the European Convention on Human Rights and its Article 3 prohibiting torture and other forms of ill-treatment. In contrast, the OPCAT provides that the SPT shall be guided by "*the norms of the United Nations concerning the treatment of people deprived of their liberty*" (art. 2.2). It also states that NPMs should make recommendations to the authorities "*taking into account the relevant norms of the United Nations*" (art. 19(b)).

In its visit reports, the CPT has had to develop its own standards to analyse the situation from a preventive point of view. Further-

more, since its second General Report of Activities in 1991, the CPT has started to develop general substantive standards related to deprivation of liberty. Over the years, the CPT has produced a comprehensive set of standards<sup>43</sup> covering:

- ◆ police custody
- ◆ imprisonment
- ◆ health care services in prisons
- ◆ foreign nationals detained under aliens legislation
- ◆ involuntary placement in psychiatric establishments
- ◆ juveniles deprived of their liberty
- ◆ women deprived of their liberty
- ◆ training of law enforcement personnel
- ◆ combating impunity
- ◆ means of restraints in psychiatric establishments for adults
- ◆ deportation by air and forced return of foreign nationals and, in the recently published 19<sup>th</sup> General Report:
- ◆ safeguards for irregular migrants deprived of their liberty.

Some CPT standards have been used and referred to (directly or indirectly) by other bodies, such as the European Court of Human Rights<sup>44</sup> and the UN Committee Against Torture.<sup>45</sup> The revised European Prison Rules<sup>46</sup> draw heavily on the CPT standards – as the preamble specifically acknowledges:

*“... Having regard also to the work carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and in particular the standards it has developed in its general reports...”*

In Europe, these standards have really become a reference and will most probably also be used and applied by European NPMs in their reports and recommendations. The risk of different or contradictory standards between NPMs and the CPT would appear to be more theoretical than real.

As we know, the SPT’s mandate extends far beyond Europe, and ensuring coherence in the application of standards to countries in different continents will present a greater challenge. In view

43. See: <http://www.cpt.coe.int/en/documents/eng-standards.pdf>

44. See, for example, *Nevmerzhitsky v. Ukraine*, application 54825/00, judgment of 5 April 2005.

45. See, for example, *Saadia Ali v. Tunisia*, Communication 291/2006

46. Appendix to Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules, available at: <https://wcd.coe.int/ViewDoc.jsp?id=955747>.



of this, a differentiation between the various types of standards might be considered. For example, should standards regarding material conditions be different? Are CPT standards applicable to countries outside of the European region? Is there not a set of basic material conditions that all persons deprived of their liberty, in no matter what country that may be, should enjoy? Even within the European region there are vast differences in the material conditions in which persons deprived of their liberty are held. In every country the CPT visits, it is mindful of the general (historical, social, economic) context as it explained in its 1<sup>st</sup> General Report and no doubt the SPT will also have to take such matters into consideration.

Other types of standards such as legal or procedural safeguards might be more universally applicable. In this regard, it is interesting to look at the example of the three fundamental safeguards during police custody (notification of a third party, access to a lawyer and access to a doctor) developed by the CPT in its 2<sup>nd</sup> annual report. These safeguards have also been adopted or promoted in/by the:

- ◆ UN Committee Against Torture<sup>47</sup>
- ◆ UN Human Rights Committee<sup>48</sup>
- ◆ African Commission on Human and People's Rights<sup>49</sup>
- ◆ Inter-American Commission on Human Rights,<sup>50</sup>
- ◆ and SPT.<sup>51</sup>

Nevertheless, it is clear that there will need to be a degree of coherence between the recommendations being put forward by the SPT and CPT in respect of the European countries that both bodies visit or comment upon.

The issue of the standards applicable to assess NPMs should be examined separately. The SPT has the mandate "to make recom-

47. See CAT General Comment 2 of 24 January 2008, paragraph 13

48. See HRC General Comment 20 of 10 March 1992, paragraph 11

49. Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa "Robben Island Guidelines", Article 20.

50. See SPT Visit Report on the Maldives, available at: <http://www2.ohchr.org/english/bodies/cat/opcat/docs/visit/FinalMaldivesReport.doc>

51. In the Commission's *Principles and best Practices on the Protection of Persons Deprived of Liberty in the Americas*, available at: <http://www.cidh.org/Basicos/English/Basic21.a.Principles%20and%20Best%20Practices%20PDL.htm>. See in particular principles V and IX(3).

*mendations and observations to the States Parties with a view to strengthening the capacity and mandate” of NPMs.*<sup>52</sup> Hence, an important part of each SPT visit report is devoted to an analysis of the NPM. It is expected that the SPT will develop some standards to assess NPM’s compliance with OPCAT requirements and NPM effective functioning.<sup>53</sup>

The CPT is not mandated to make recommendations on NPMs but it has consistently recommended the establishment of independent monitoring bodies to regularly visit not only prisons,<sup>54</sup> but also juvenile detention centres,<sup>55</sup> psychiatric institutions<sup>56</sup> etc. Since the entry into force of the OPCAT, the CPT has included the OPCAT dimension in some of its recommendations to the States Parties, such as in Albania<sup>57</sup> (impact of the NPM work for persons deprived of their liberty), Czech Republic<sup>58</sup> (impact of the recommendations of the NPM), France<sup>59</sup> (scope of places of detention to be visited by the eventual NPM), and Switzerland<sup>60</sup> (process of selection of NPM members). The question of risk of contradictory recommendations regarding NPMs should be discussed.

In this context, it should be noted that the European NPM Project’s “First Meeting of the European NPM Network”, to be held on 5 November 2009, aims to mobilise experts (including former CPT members and Secretariat staff), SPT members and their Secretariat, the APT and NPMs to work together, within a forum of peer exchange, to contribute to a greater understanding of uniform standards in preventive work regarding ill-treatment within places of deprivation of liberty. The Project is composed of a series of modules for the gradual capacity build-

52. See OPCAT Article 11 (b)(iv).

53. In its first annual report, the SPT developed “Preliminary Guidelines for the ongoing development of national preventive mechanisms”, CAT/C/42/2, para.28.

54. See CPT second general annual report, CPT/Inf (92) 3 13 April 1992, paragraph 54.

55. See 9th General Report on the CPT’s activities, covering the period 1 January to 31 December 1998, CPT/Inf (99) 12, Para 36, 30 August 1999, paragraph 36.

56. See 8th General Report on the CPT’s activities covering the period 1 January to 31 December 1997, CPT/Inf (98) 12, 31 August 1998, paragraph 55,

57. See CPT/Inf (2009) 6, 21 January 2009, paragraph 17.

58. See CPT/Inf (2007) 32, 12 July 2007, paragraph 24.

59. See CPT/Inf (2007) 44, 10 December 2007, paragraph 136.

60. See CPT/Inf (2008) 33, 13 November 2008, paragraph 54.

ing of individual NPMs. The majority of these will focus on the methodologies for monitoring different types of places of detention. The modules target teams of practitioners and involve the teams carrying out monitoring visits within the context of on-site exchanges of best practices. In addition, the Project will develop specific monitoring tools for each category of place of detention. It will also promote awareness-raising activities and peer exchange.

### **3. Ensuring and monitoring the effective implementation of the recommendations of the preventive bodies**

After each visit, the SPT, CPT and national preventive mechanisms are required to draw up a report based upon the facts found during the visit and transmit it, along with any recommendations and observations they consider necessary, to the authorities of the States Parties.<sup>61</sup> The recommendations contained within the reports are designed to be preventive in nature and put forward measures to be taken by States Parties to strengthen the protection of persons deprived of their liberty from the risks of torture and other forms of ill-treatment.

The recommendations of the monitoring bodies lie at the heart of the preventive approach. In its second annual report, the SPT said of the importance of their recommendations in the case of safeguards: “*it is the role of preventive mechanisms (...) to make recommendations to improve the system of safeguards, both in law and in practice, and thereby the situation of people deprived of their liberty*”<sup>62</sup>

The recommendations of the preventive bodies are, by definition, not legally binding. It is the responsibility of the State to take the necessary steps to implement those recommendations.

Under the ECPT, one of the defining principles governing the application of the Convention is cooperation between “*the Committee and the competent national authorities of the State concerned*” (Article 3). The CPT has reiterated in numerous visit reports that the principle of cooperation does not just extend to the facilitation of visits to a country but more fundamentally to the action taken to improve the situation in the light of the recommendations put forward by the CPT.

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61. See OPCAT Article 16 as concerns the SPT and Article 19 (b) as concerns NPMs; and ECPT, Article 10, paragraph 1.

62. See CAT/C/42/2, 7 April 2009, paragraph 13.

In terms of implementing recommendations, the OPCAT goes beyond Article 10, paragraph 1 of the ECPT by placing more stringent obligations on States Parties in relation to prevention; that is, they are under a duty to examine the recommendations of the SPT and the NPMs and to enter into dialogue with them on possible implementation measures.<sup>63</sup>

In case of a failure to cooperate or a refusal to improve the situation in the light of the CPT's recommendations, the CPT may decide to make a public statement.<sup>64</sup> It is however not a measure to which the CPT has had to in past or would like to in the future resort to frequently, as it is evidence of a breakdown in cooperation with the State Party. A similar provision for issuing a public statement is to be found in the OPCAT<sup>65</sup> and it is to be seen how the SPT will approach this subject.

Over its 20 years of work, the CPT has produced numerous recommendations to States and many have been implemented. However, the CPT has also faced "*situations where key recommendations repeated after multiple visits remain unimplemented. Yet another visit or the issuing of a public statement are not necessarily the best tools with which to make progress*".<sup>66</sup> The CPT tends to adopt a more proactive strategy vis-à-vis implementation of its recommendations, through more intense dialogue and high-level talks between the Committee and the Government concerned.

Reasons for not implementing recommendations may vary and it would be important to analyse these reasons in order to adopt the best strategy to address them.

One reason is however linked to the difficult economic situations when it comes to the implementation of recommendations with important financial implications (infrastructure, etc.). The CPT is conscious that certain recommendations may require capital injections and a pilot project was commissioned to conduct a study in three chosen countries in order to assess their needs as regards the implementation of the Committee's recommendations, to identify concrete areas and proposals for outside assistance and to seek external financing.<sup>67</sup> Further, with the widening of the mandate of the Council of Europe Development

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63. See OPCAT Articles 12 (d) and 22.

64. See ECPT Article 10 (2).

65. See OPCAT Article 16 (4).

66. See CPT's 15th General Report, CPT/Inf(2005)17, paragraph 23.

Bank in June 2006 to include financing *infrastructure of administrative and judicial public services*, several proposals have been submitted by States for assistance in financing the construction of prisons and police stations.

The OPCAT, as opposed to the ECPT, provides for the establishment of a specific mechanism to facilitate the implementation of the SPT recommendations, namely the OPCAT Special Fund. This Fund intends “*to help finance the implementation of the recommendations made by the SPT after a visit to a State Party, as well as education programmes of the NPM*”.<sup>68</sup> Possibilities of synergies between the Special Fund and the implementation of CPT recommendations could be explored.<sup>69</sup> European States and other relevant bodies may also be interested in contributing financially to this Special Fund in order to facilitate the implementation of the SPT recommendations in the Council of Europe region.

However, over and above the very real problem of implementing recommendations which may have a considerable financial implication, it should be noted that many recommendations do not require enormous expenditure. More often than not recommendations aimed at preventing ill-treatment require changing the prevailing attitudes of law enforcement officials (and other State officials) towards the issue of the use of force against persons deprived of their liberty, which comprises a mixture of measures related to recruitment, training, education, clear administrative and legal rules, effective internal controls and a determination by the authorities to hold officials to account for their actions. As the CPT has witnessed, building a new prison without addressing issues such as management, staffing and regime will not resolve the fundamental issues linked to preventing ill-treatment. More likely than not, the new infrastructure will degrade far quicker than it ought to.

An essential aspect of ensuring the implementation of the recommendations produced by the preventive bodies is developing partnerships. The SPT could potentially contribute to the effec-

67. Pilot project on the implementation of CPT’s recommendations: call for tenders. CPT(2006)16. The three countries selected for the project were: Albania, Georgia and Moldova.

68. See OPCAT Article 26.

69. Added value of the Optional Protocol for States Parties to the European Convention for the Prevention of Torture, APT position paper, March 2003, p.4, available at [www.ap.t.ch](http://www.ap.t.ch).

tive implementation of the CPT recommendations, using them as a basis for their own recommendations. For instance, the SPT visited Sweden in 2008 and reportedly took into consideration the CPT recommendations in their in-country visit report, more particularly regarding the practice of imposing restrictions. The SPT shared the CPT views on that issue and stated: “As the Swedish Government is currently studying the need for legislative change and not all recommendations of the CPT are reflected in the legislation in force, some of the recommendations of the SPT below are similar to those made by that regional treaty body.”<sup>70</sup>

However, the main partners in this regard are the NPMs. They are ideally placed to monitor and follow-up on the implementation at the national level of recommendations issued by the international bodies. The NPMs have not only frequent and regular access to all places of detention at the national level, they also have the mandate “to submit proposals and observations concerning existing or draft legislation” (art. 19(c) OPCAT). In addition, NPMs and the relevant authorities maintain a constructive and permanent dialogue. As mentioned in section 2, ways should be explored by the SPT and the CPT to communicate their recommendations to the NPM, on a confidential basis if necessary.

Finally, the OPCAT empowers the SPT to offer NPMs “training and other technical assistance with a view to strengthening their capacities.”<sup>71</sup> This possibility could also be used to strengthen the capacity of NPM to follow-up on the implementation of recommendations issued by the different preventive bodies.

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70. CAT/OP/SWE/1,10 September 2008, paragraph 121. Available at [www.ohchr.org](http://www.ohchr.org).

71. See OPCAT Article 11 (b)(ii).

## Appendix 3

# List of discussion questions and topics (non-exhaustive)

**New partnerships  
for torture prevention  
in Europe**







## Panel 1

### *Promoting the sharing of information between the preventive bodies*

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- ◆ To what degree is confidentiality a foundation block of the Conventions establishing the CPT and SPT, and hence of their relationships with NPMs?
  - What are the obstacles to sharing written visit reports between the CPT and SPT? (CPT ? SPT and SPT ? CPT)
  - Should State Parties be encouraged to transmit the visit reports drawn up by the CPT and SPT to the NPM? Is a NPM bound by confidentiality if it receives a report or is that an issue for the national authorities to determine?
- ◆ Should the CPT and SPT consult prior to adopting their respective visit programmes for the following year? Does it matter if a European country is visited by both the CPT and SPT in the same year? Is there a means of predicting (approximately) which countries in Europe will be visited in the future by the CPT and SPT in any given year?
- ◆ Should there be an annual exchange of views between the CPT and SPT – perhaps a hearing of the CPT President before the SPT and of the SPT Chairperson before the CPT on a rotational basis? What would be the purpose of such a hearing? Should it be on a thematic basis?
- ◆ How can the sharing of information between the international bodies and the NPMs be improved?
  - Should NPMs be briefed orally/in writing about the findings of SPT and CPT delegations following a visit, and at what stage: preliminary observations; written report; oral exchange?
  - Can sensitive case information on individuals be shared between the CPT and SPT, between the CPT and NPMs and between the SPT and NPMs? Does it require the express consent of the individual concerned (written/oral)?
  - Should individual letters addressed to the CPT and SPT raising issues of concern in relation to a practice or par-

particular treatment an individual has alleged to have suffered be transmitted to the relevant NPM?

- ◆ Can NPMs forward their annual reports to the CPT at the same time they send them to the SPT? Can NPM reports on visits to places of detention be sent directly to the SPT or CPT if the NPM considers it appropriate?
- ◆ The publication of CPT and SPT visit reports and Government responses in the national language of the country concerned can maximise their impact. Can more be done to promote publication? What role can the NPMs play in this process? (this point might also be considered under panels 2 & 3)

- ◆ Might the CPT and SPT find themselves advocating different standards? The CPT is not bound by any one Convention although it should have special regard to Article 3 of the ECHR. The SPT carries out its work with reference to the norms of the United Nations. Conflict of approaches may occur particularly as regards new developments in law enforcement such as the introduction of electro-shock weapons (i.e. Tasers).
  - When assessing the situation in their respective countries, to what extent are the NPMs guided by the standards set in national legislation and regulations? For example, in some countries, the surface area per prisoner set in law is 2.5 or 3 m<sup>2</sup>, whereas the CPT applies the standard of at least 4 m<sup>2</sup> per prisoner in multi-occupancy cells. Further, the CPT has recommended that cells measuring less than 6 m<sup>2</sup> be taken out of service as prisoner accommodation.
  - An essential part of the mandate of the SPT is to ensure that NPMs function in an independent and efficient manner. In some of its visit reports, the CPT has also made recommendations on the effectiveness of national inspection and complaints mechanisms. In the future, the CPT might consider it necessary to comment on NPMs. Is there perhaps a risk of contradictory recommendations concerning NPMs or is all (valid) constructive criticism to be welcomed?
- ◆ Coherence of standards is not only about being able to communicate reports or referring to basic texts (European or UN or even from other international bodies such as the Inter-American Commission on Human Rights), but also about the knowledge-sharing of existing standards. For example, each NPM setting up similar databases in which would be included not only NPM visit reports but those of the SPT and CPT, as well as the substantive standards each body has adopted, in the national language of the country.

- ◆ Is there a contextual assessment as to whether a situation might be considered inhuman or degrading<sup>72</sup>: for example, the treatment afforded to prisoners sentenced to life imprisonment in different jurisdictions or the holding of irregular migrants in poor conditions in police stations for extended periods of time. Might a NPM take a different position from the CPT (or SPT)?

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72. Where the European Court of Human Rights has delivered a judgment under Article 3 of ECHR on a particular issue/set of circumstances, preventive bodies in Europe should follow its assessment.

## Panel 3

### *Ensuring the effective implementation of the recommendations of the preventive bodies*

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- ◆ The effective implementation of recommendations implies that different preventive bodies “speak the same language”, i.e. make recommendations which are consistent. Otherwise States will receive “conflicting messages”. What can be done to avoid such a situation and to ensure that preventive bodies work in harmony?
- ◆ How to ensure that recommendations which require legislative changes are implemented? For example, amendments to the legislation concerning the right of access to a lawyer from the very outset of deprivation of liberty by the police, or the right to be medically examined during police custody?
- ◆ In certain countries there may be a lack of clear vision or strategic approach on the purpose and organisation of imprisonment or psychiatric care. Addressing findings from a visit to improve a particular establishment will not address the systemic problems. Are NPMs in a position to push for systemic change? Is the CPT or SPT? Should there be a coordinated response when such a situation arises, involving other actors such as the Council of Europe Human Rights Commissioner?
- ◆ In some countries, failure to implement recommendations is explained by the “lack of readiness of public opinion to accept change”. For example, this is given as the reason for holding prisoners serving life sentences separately from other prisoners, under much more restrictive regimes or having a tough detention policy towards irregular migrants. Is this a valid response even if accurate? What should the reaction of the preventive bodies be in such circumstances?
- ◆ How to ensure the translation into practice of recommendations which require considerable financial resources (especially at times of economic hardship)? External financing is provided by a number of organisations, but sometimes there is a duplication of effort. What can be done to channel the available resources towards issues addressed by the recommendations of preventive bodies? For example, to use the OPCAT Special Fund? Provide assistance in preparation of proposals to the

Council of Europe Development Bank, bilateral donors, the European Commission, etc.?

- ◆ When Government responses to CPT (and SPT) reports indicate that certain recommendations have been implemented (e.g. closing down of substandard cells), it is not always easy for the CPT or SPT to verify this information. Is there a role to be played by NPMs in systematically checking the implementation of recommendations and giving feedback to the CPT/SPT?
- ◆ The most difficult recommendations to implement are ones requiring a change of attitude. In such situations it is more an educational approach to change “cultural” perceptions that is required. Should implementation of such recommendations be pushed to a wider audience and involve addressing the recommendation through support on various levels – legislative change; training courses; educational programmes (school and beyond), intense monitoring and sanctions for digression?

## Appendix 4

# **Optional Protocol to the UN Convention against Torture: status of ratifications, signatures and NPM designations in the Council of Europe – as of May 2010**







**51 States Parties  
and 32 NPM  
designated  
worldwide; 27  
and 21 in  
Europe**

<b>Country</b>	<b>Date of Ratifications</b>	<b>NPM designated</b>
	<b>27 States Parties</b>	<b>21 NPMS</b>
Albania	1 October 2003	People's Advocate
Armenia	14 September 2006	Human Rights Defender's Office
Azerbaijan	28 January 2009	Commissioner for Human Rights
Bosnia and Herzegovina	24 October 2008	
Croatia	25 April 2005	
Cyprus	29 April 2009	Commissioner of Administration / Ombudsman
Czech Republic	10 July 2006	Public Defender of Rights
Denmark	25 June 2004	Parliamentary Commissioner for Civil and Military Administration
Estonia	18 December 2006	Chancellor of Justice
"The Former Yugoslav Republic of Macedonia"	13 February 2009	Ombudsman possibly with NGOs
France	11 November 2008	General Inspector of places of deprivation of liberty
Georgia	9 August 2005	Public Defender

<b>Country</b>	<b>Date of Ratifications</b>	<b>NPM designated</b>
Germany	4 December 2008	Federal Agency for the prevention of torture and National Commission of the Länder
Liechtenstein	3 November 2006	Corrections Commission
Luxembourg	19 May 2010	Ombudsman
Malta	24 September 2003	Board of Visitors for Detained Persons and Board of Visitors of the Prison
Montenegro	6 March 2009	
Poland	14 September 2005	Commissioner for Civil Rights Protection
Republic of Moldova	24 July 2006	National Centre for Human Rights and Consultative Council
Romania	2 July 2009	
Serbia	26 September 2006	
Slovenia	23 January 2007	Human Rights Ombudsperson with 3 NGOs
Spain	4 April 2006	Ombudsperson's Office
Sweden	14 September 2005	Parliamentary Ombudsman and Chancellor of Justice
Switzerland	24 September 2009	Commission for the prevention of torture

Country	Date of Ratifications	NPM designated
Ukraine	19 September 2006	
United Kingdom	10 December 2003	18 Bodies were designated as part the UK NPM, coordinated by Her Majesty's Inspectorate of Prisons for England and Wales

**22 States  
signatories  
worldwide;  
10 in Europe**

Country	Date of signature
Austria	25 September 2003
Belgium	24 October 2005
Finland	23 September 2003
Iceland	24 September 2003
Ireland	2 October 2007
Italy	20 August 2003
Netherlands	3 June 2005
Norway	24 September 2003
Portugal	15 February 2006
Turkey	14 September 2005



## Appendix 5

# List of participants





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GILLIBERT Patrice	Secretary

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## **Association for the Prevention of Torture (APT)**

The Association for the Prevention of Torture (APT) is an independent non-governmental organisation based in Geneva. It was founded by the Swiss banker and lawyer, Jean-Jacques Gautier, in 1977.

The APT envisions a world in which no one is subjected to torture or cruel, inhuman or degrading treatment or punishment, as promised by the Universal Declaration of Human Rights.

The APT focuses on the prevention of torture, rather than denunciations of individual cases or the rehabilitation of victims. This strategic focus on prevention enables the APT to collaborate with state authorities, police services, the judiciary, national institutions, academics and NGOs that are committed to institutional reform and changing practices.

To prevent torture, the APT focuses on three integrated objectives:

### **1. Transparency in institutions**

To promote outside scrutiny and accountability of institutions where people are deprived of their liberty, through independent visiting and other monitoring mechanisms.

### **2. Effective legal frameworks**

To ensure that international, regional and national legal norms for the prevention of torture and other ill-treatment are universally promoted, respected and implemented.

### **3. Capacity strengthening**

To strengthen the capacity of national and international actors concerned with persons deprived of their liberty by increasing their knowledge and commitment to prevention practices.

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## **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)**

The CPT organises visits to places of detention, in order to assess how persons deprived of their liberty are treated. These places include prisons, juvenile detention centres, police stations, holding centres for immigration detainees, psychiatric hospitals, social care homes, etc.

CPT delegations have unlimited access to places of detention, and the right to move inside such places without restriction. They interview persons deprived of their liberty in private, and communicate freely with anyone who can provide information.

After each visit, the CPT sends a detailed report to the State concerned. This report includes the CPT's findings, and its recommendations, comments and requests for information. The CPT also requests a detailed response to the issues raised in its report. These reports and responses form part of the ongoing dialogue with the States concerned.

The CPT was set up by the Council of Europe's "European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment", which came into force in 1989. It carries out visits in the 47 member States of the Council of Europe.

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On the occasion of its 20th anniversary, the European Committee for the Prevention of Torture (CPT), together with the Association for the Prevention of Torture (APT), convened for the first time all of the key and emerging actors in torture prevention in Europe to discuss possible “New Partnerships”. This conference, which took place in Strasbourg, France, on 6 November 2009, was an occasion not so much to celebrate the past but to look at the future and discuss possible sensible and practical ways to respond to the challenges that lie ahead.

Since the advent of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, the CPT has been joined in its preventive work by the UN Subcommittee on Prevention of Torture (SPT), and also by National Preventive Mechanisms (NPMs) in a number of European States Parties to the Protocol. The proliferation of preventive bodies raises some significant challenges but also creates a unique opportunity to strengthen the effectiveness of torture prevention in the Europe region. The participation of representatives of each of these bodies, together with members of civil society, provided for rich debates, exchanges of experiences and ideas around the three topics for discussion:

1. Promoting the sharing of information between the preventive bodies,
2. Facilitating the coherence of Standards, and
3. Ensuring the effective implementation of the recommendations of the preventive bodies.

These proceedings compile the relevant papers presented at the Conference, namely the background document, keynote speeches and presentations made in the three panels. The richness of the discussion in the panels is reflected in the texts of the Rapporteurs and the General Rapporteur.