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# Strengthening torture prevention mechanisms in Europe

**Report**[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Jean-Charles GARDETTO, Monaco, Group of the European People's Party (EPP/CD)

*Summary*

The Committee on Legal Affairs and Human Rights stresses the paramount importance of the prohibition of torture and inhuman and degrading treatment (Article 3 of the European Convention on Human Rights) and congratulates the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on the high quality of work undertaken for over twenty years.

To carry out their difficult task, members of the CPT must possess high professional qualifications and personal merits. The election of CPT members by the Parliamentary Assembly would vest them with enhanced democratic legitimacy and authority.

The public statements which the CPT adopts by a two-thirds majority in the event of a shortfall in co-operation by the authorities of a state party are of special importance due to their exceptional character. These infrequent cries of alarm should, as a matter of course, prompt a debate in the competent organs of the Council of Europe and within the member states concerned.

The principle of confidentiality of the CPT's work facilitates its close co-operation with national authorities. But the speedy systematic publication of final reports, following CPT visits, together with the authorities' comments, is to be strongly encouraged.

The committee regrets that the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT) has not yet been ratified by all Council of Europe member states. The national preventive mechanisms (NPMs) foreseen in the OPCAT constitute a major innovation in the direction of subsidiarity. NPMs should be fully independent and provided with adequate resources, including the legal, medical and other expertise crucial to the tasks of on-site prevention and monitoring.

The committee welcomes the efforts made within the Council of Europe to create synergies between the CPT on the one hand and the OPCAT-based mechanisms on the other, and to pool their relevant experience.

1. 2011 - Second part-session

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## A. Draft resolution[2]

1. The Parliamentary Assembly, recalling its Resolution 1248 (2001) on the European Committee for the Prevention of Torture (CPT): composition and Resolution 1540 (2007) on improving selection procedures for CPT members, stresses the paramount importance among fundamental rights of the prohibition of torture and inhuman and degrading treatment (Article 3 of the European Convention on Human Rights (ETS No. 5)).

2. It congratulates the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its action of high quality, sustained by faultless dedication for over twenty years. The CPT constitutes one of the Council of Europe's greatest successes.

3. To carry out their difficult task, the members of the CPT must have high professional qualifications and personal merits. The election of the CPT members by the Assembly would vest them with enhanced democratic legitimacy and authority, with the outcome that the candidates on the lists forwarded by the national delegations would henceforth be evaluated in the same body as the one making the final choice.

4. In the meantime, it is expedient to further improve the procedures for shortlisting candidates at national level, in line with the indications contained in Resolution 1540 (2007).

5. The public statements which the CPT adopts by a two-thirds majority in the event of a shortfall in co-operation by the authorities of a state party are of very special importance due to their exceptional character. These infrequent cries of alarm should, as a matter of course, prompt a debate in the Committee of Ministers and the national parliament concerned. The Assembly's Sub-Committee on Human Rights is also invited to enter into a dialogue with the national delegation in question and to seize, if necessary, the Committee on Legal Affairs and Human Rights.

6. The principle of the confidentiality of the CPT's work aids its close co-operation with the national authorities. But the final reports following the CPT's visits would gain by speedy systematic publication, together with the authorities' comments. Virtually all states parties ask for the publication of this information after varying intervals, but publication allows timely commencement of the public debate on the problems noted and the ways to solve them. The Russian Federation alone is still reluctant to do so.

7. The Assembly regrets that the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) has not yet been ratified by all Council of Europe member states, and that not all the member states which have ratified it have as yet actuated the national preventive mechanisms (NPMs) prescribed by that instrument.

8. National preventive mechanisms constitute a major innovation in the direction of subsidiarity. They should be fully independent and provided with adequate resources, including the legal, medical and other expertise crucial to the tasks of on-site prevention and monitoring.

9. The Assembly welcomes the efforts made within the Council of Europe to create synergies between the CPT on the one hand and the OPCAT-based mechanisms on the other, and to pool their relevant experience.

10. A similar approach, avoiding overlaps and wastage of limited resources, is also imperative in the links between the CPT and the activities envisaged by the European Union concerning the actions which the latter contemplates to improve the conditions of detention in its member states.

11. The Assembly therefore invites:

11.1. the Council of Europe member states which have not yet done so to sign and ratify the OPCAT and to designate an independent and adequately resourced national preventive mechanisms as soon as possible;

11.2. the states parties to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126) to:

11.2.1. amend the Convention, via the Committee of Ministers, to allow:

11.2.1.1. the election of CPT members by the Parliamentary Assembly;

11.2.1.2. automatic publication of the visit reports, and of the comments of the parties concerned, providing the possibility for each party to request a postponement of publication for up to six months following transmission;

2. Draft resolution adopted unanimously by the committee on 8 March 2011.

11.2.2. make a general request for future CPT visit reports to be published as early as possible upon transmission, except in special cases where the party concerned objects;

11.3. the national delegations to the Assembly to make the procedures for selecting candidates to the CPT more transparent and better suited to the needs of the CPT, according to the indications in Resolution 1540 (2007);

11.4. the parliaments of the States Parties to the Convention concerned to appeal to their governments with regard to the public statements adopted by the CPT under Article 10 of the Convention in case of shortfall in co-operation or refusal to improve matters in the light of the CPT's recommendations;

11.5. the Council of Europe Commissioner for Human Rights to acquaint himself with the action taken on the findings of the CPT on the occasion of the Commissioner's visits to the state concerned, and to keep a watchful eye on the CPT's public statements;

11.6. the CPT to continue its co-operation based on seeking synergies and pooling experiences with the mechanisms prescribed by the OPCAT, particularly assistance in the development of national preventive mechanisms;

11.7. the competent European Union institutions to make reference to the CPT's attainments and to use its know-how to create synergies and avert overlaps in developing their actions to improve conditions of detention in the member states of the European Union.

**B. Draft recommendation[3]**

1. The Parliamentary Assembly refers to its Resolution … (2011) on strengthening torture prevention mechanisms in Europe and invites the Committee of Ministers to:

1.1. set in motion the process of amending the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126) to permit:

1.1.1. the election by the Parliamentary Assembly of members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT);

1.1.2. the automatic publication of the visit reports and of the comments of the parties concerned, providing the possibility for each party to request postponement of publication for up to six months after transmission;

1.2. place on its agenda and discuss as a matter of urgency any public statement adopted by the CPT under Article 10 of the Convention, and to adopt a resolution on it as appropriate.

3. Draft recommendation adopted unanimously by the committee on 8 March 2011.

## C. Explanatory memorandum by Mr Gardetto, rapporteur

### 1. Introduction

1. On 29 May 2009, the Parliamentary Assembly decided to refer to the Committee on Legal Affairs and Human Rights, for one report, the two motions on "20th anniversary of the European Committee against Torture: time to take stock" and "The need to establish effective, independent national mechanisms for monitoring places of detention".[4] At its meeting on 23 June 2009, the committee appointed me rapporteur.

2. At its meeting on 17 November 2010, the committee discussed an introductory memorandum and decided on the more concise new title of this report.

3. At its meeting on 27 January 2011, the committee held an exchange of views with the following persons:

– Ms Silvia Casale, former Chairperson of the CPT and of the United Nations Sub-Committee on the Prevention of Torture (United Kingdom);

– Ms Renate Kicker, former Vice-Chairperson of the CPT, Professor at the University of Graz, Austria;

– Mr Andres Lehtmets, former Vice-Chairperson of the CPT, Psychiatrist (Estonia).

### 2. Recapitulation of the purposes of this report

4. This report aims to achieve three main purposes:

– the first concerns the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT): To increase awareness of the CPT's excellent work and to make concrete proposals for further improvements, some of which would require modifications of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the convention") and others not;

– the second relates to the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT): To promote the ratification of the OPCAT by all Council of Europe member states and encourage them to set up effective national mechanisms for monitoring places of detention;

– the third purpose of this report is to explore means of achieving the greatest possible synergy between the Council of Europe and the United Nations mechanisms, in order to improve the situation of detainees throughout Europe, in accordance with the principle of subsidiarity: leaving the day-to-day responsibility for the protection of detainees to the national protection mechanisms created under the OPCAT, while relying on the experience and authority of the CPT to ensure the spread of "best practices" and the application of basic common European standards.

5. Where the CPT's activities are concerned, reference should be made to its website.[5] The annual reports especially give an excellent overview. Document AS/Jur/Inf (2011) 5, by the Committee on Legal Affairs and Human Rights, on the main Council of Europe human rights mechanisms and institutions, also provides a good survey. As to the OPCAT, the informative site of the Office of the United Nations High Commissioner for Human Rights[6] gives all necessary particulars.

### 3. Strengthening the CPT

#### *3.1. Improving the selection procedures for CPT members*

6. The Assembly has always supported the important work of the CPT, whose success depends to a great extent on the professional skills, experience and independence of its members. Under the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), the Assembly participates in the selection of the CPT's members by submitting a proposal to the Committee of

4. Doc. 11906 and Doc. 11874, Reference 3570.
5. www.cpt.coe.int/en/default.htm.
6. www2.ohchr.org/english/bodies/cat/opcat/.

Ministers based on the selection from shortlisted candidates made by its Sub-Committee on Human Rights. Resolution 1540 (2007) on improving selection procedures for CPT members introduced some improvements in the existing selection procedure.

7. But in order to further strengthen their legitimacy and independence, the members of the CPT should be elected by the Assembly, after a suitable interview procedure. Such a change would require the convention to be amended. In light of the hearing with the experts, I propose that the Assembly now take the initiative of such an amendment to the convention.

8. Given the limited resources and time available to the Sub-Committee on Human Rights, priority should be given to improving the selection procedures at the national level. The recommendations in Resolution 1540 (2007) onimproving selection procedures for CPT membersshould be implemented more thoroughly and may need to be further strengthened.

9. For that purpose, the panel members who participated in the hearing on 27 January 2011 suggested setting up a group of experts with instructions to advise the national delegations on the quality of the shortlisted candidates in relation to the needs of the CPT, in line with the recent alteration of the procedure for electing judges to the European Court of Human Rights. In my opinion, introducing a new advisory body would needlessly encumber the election procedure. Our efforts would be better centred on changing the entity responsible for the election of the CPT's members: as soon as we have achieved the necessary amendment of the convention, the Sub-Committee on Human Rights will itself be able to devote greater efforts to optimum selection of the CPT's members. Meanwhile, the Bureau of the CPT can freely provide the sub-committee, informally, with information as to whether the candidatures put forward by the national delegations match the current needs of the CPT, and it is warmly invited to do so.

10. Given the efforts to improve the selectionprocedures, it is worthwhile recalling that the selection criteria should relate to the tasks to be performed by the members of the CPT and to the qualifications needed for their performance.[7]

10.1. Tasks of a CPT member:

– carrying out on-site inspections in a challenging environment;

– talking with different types of detainees, such as suspected and convicted criminals, psychiatric patients, foreigners detained under the aliens legislation, elderly and/or disabled persons accommodated in social care homes, etc.;

– working with interpreters and in a team composed of persons of different nationalities and professional backgrounds;

– working long hours per day, sometimes including part of the night, and usually for two weeks in a periodic visit with travelling on an almost daily basis;

– contributing, at the end of each visit, to immediate feedback to the authorities and providing detailed written notes as input for the CPT's report;

– in addition to on-site work, a CPT member needs to study all the draft reports and to contribute to the discussions in the three plenary sessions per year. CPT members are asked also to engage in several internal working groups and the discussion of standards and working methods.

10.2. Skills and qualities required of a CPT member:

10.3. 10.3.1. In addition to the criteria laid down in the convention, the following skills and qualities are crucial for carrying out the tasks of a CPT member as described above:

10.3.2.
– relevant professional knowledge;

– motivation to carry out a challenging task;

– negotiation skills in discussions with the authorities;

7. I owe the following passage to the contribution made by Ms Renate Kicker, Professor at the University of Graz and former Austrian member and Vice-Chairperson of the CPT, and one of the experts who took part in the exchange of views on 27 January 2011.

– ability to communicate; this means excellent command of one of the Council of Europe official languages (English or French) which enables the CPT member to work with an interpreter and to draft notes and reports in this language. A good command of the second Council of Europe official language is also required for communication with other members and experts who work in this second language, and to be able to read their notes. Knowledge of a further language is of high value for the CPT;

– ability to work in a team;

– ability to bear the emotional strain of very demanding situations;

– being in good health and, as far as possible, old enough to be recognised as an authority exercising significant responsibilities in the member states, but not too old to bear the bodily and mental constraints of the mission;

– being available and ready to devote a lot of (partly unpaid) time to the CPT's work;

– being loyal to the CPT and discreet, so as to abide by the principle of confidentiality.

10.3.3. This impressive catalogue of required skills and qualities shows how important it is to ensure the best possible selection process at the national level, excluding any politicisation whatsoever.

10.4. A specific need of the CPT is for members with specialist medical expertise to detect signs of torture and assess the quality of the medical services available to persons in detention during visits to psychiatric hospitals and other medical institutions.

### *3.2. Ensuring appropriate follow-up to public statements of the CPT*

11. The continued success of the CPT's work also depends on the political support it receives from the Council of Europe and its member states.

12. A public statement may be made by the CPT if a state party fails to co-operate or refuses to improve the situation in light of the CPT's recommendations.[8] The decision on a public statement requires a majority of two thirds of its members and a procedure whereby the state concerned is given the opportunity to make its views known. A public statement is the ultimate means of alerting the public that a state party is violating the legal obligation, which it incurred under the convention, to co-operate with the CPT. So far the CPT has issued five public statements vis-à-vis only two states, Turkey and the Russian Federation.[9] However, there are other states in respect of which the public statement procedure has been opened in the past or currently. Practice has shown that the threat of a public statement often motivates states to engage more in dialogue with the CPT and to implement long-standing recommendations. Once this threat has failed and a public statement is finally made, it has often been revealed as a rather toothless instrument – unless other Council of Europe bodies follow it up properly by putting pressure on the state party concerned aimed at the proper fulfilment of its duties under the convention.

13. The Assembly has already deplored the lack of follow-up so far given by the Committee of Ministers to the CPT's three public statements concerning the situation in the Chechen Republic of the Russian Federation. The CPT itself, in its 19th annual report published on 20 October 2009,[10] deplores the fact that such statements are not "at the very least" put on the agenda of the relevant Council of Europe bodies.

14. Also in light of the experts' comments on the matter, I propose that the Assembly request the Committee of Ministers to react to any public statement issued by the CPT by placing it on its agenda and discussing the situation. This discussion could lead in particular to the adoption of a resolution asking the state concerned to meet its legal obligations under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and to co-operate with the CPT.

15. Apart from the Committee of Ministers, the Assembly itself and the Council of Europe's Commissioner for Human Rights should provide appropriate follow-up to public statements issued by the CPT. The Assembly should be able to hold its own debate on the issues raised by the public statements, and should consistently decide to request the national delegation of the state concerned to raise this issue in its national parliament in order to discuss the information contained in the statement and report back to it within a certain period of time.

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8. Article 10, paragraph 2, of the convention.
9. Since the adoption of this report, the CPT has issued a 6th public statement concerning Greece (15 March 2011), http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=6449.
10. www.cpt.coe.int/en/annual/rep-19.pdf (paragraph 12).

The Sub-Committee on Human Rights could play a special role in this respect by inviting the leader of the national delegation concerned by a public statement to an exchange of views with its members. The Commissioner for Human Rights should also be requested to acquaint himself with the action taken on the findings of the CPT on the occasion of a visit to the state concerned.

### *3.3. Ensuring systematic and timely publication of the CPT's final reports*

16. The convention stipulates that the information gathered by the CPT in relation to a visit, its reports and its consultations with the party concerned shall be confidential. This general rule is modified by the provision that the committee shall publish its report, together with any comments of the party concerned, whenever requested to do so by that party. As of 26 August 2010, 241 CPT visit reports, out of the 291 reports sent, have been authorised for publication. These figures show that the great majority of states authorise ("request") the publication of the CPT reports, and lifting the confidentiality of the reports has become the general practice. There is just one state party that can be described as a persistent objector to this practice: the Russian Federation. The other state party mentioned in paragraph 5 of the first motion for a resolution, Azerbaijan, meanwhile (in November 2009) authorised the publication of the December 2008 visit report, which is a positive development, though the delay of almost one full year is unnecessarily long.

17. The automatic publication of a CPT visit report without requesting the prior authorisation of the state concerned – also necessitating an amendment to the convention – would bring the findings and recommendations of the CPT into the public domain in good time, thus speeding up the requisite public debate, consultation of all players concerned and, so it is hoped, prompt remedial measures.

18. But, as the experts recalled at the hearing on 27 January 2011, the state party should be given the possibility of postponing the publication of a CPT report for six months after the date of its transmission to that state. In this way the state will not be denied the possibility of reacting to and if possible correcting the shortcomings noted by the CPT before the public is informed of the CPT's findings; the state can thus make public its position, as well as measures already taken to remedy the deficiencies found, at the same time.

19. Until the necessary amendment to the convention comes into force, the parliamentarians should urge their respective governments to call for the earliest possible publication of the reports under the existing rules, as Belgium, Georgia, the Netherlands and several Nordic countries do in an exemplary fashion.

20. It should be recalled that the final reports are only the "tip of the iceberg" of the information available to the CPT and of the correspondence with member states. Confidentiality of the ongoing co-operation between the CPT and the competent authorities is indeed indispensable for the CPT's work and should therefore not be called into question.

## 4. Promoting the implementation of the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment

### *4.1. Spurring all Council of Europe member states to ratification*

21. Since April 2009, when the second motion underlying this report was drafted, the number of European states ratifying the OPCAT has already increased. As of 4 October 2010, 28 of the 47 member states of the Council of Europe had ratified the OPCAT and 21 had instituted national preventive mechanisms (NPMs) for monitoring the situation of detainees, particularly by means of on-site visits. The successful implementation of the strategy of creating synergies and establishing closer co-operation and co-ordination between the different levels of monitoring mechanisms will very much depend on the existence of national mechanisms in all Council of Europe member states. Those which have not already done so[11] should be encouraged to ratify the OPCAT and establish national preventive mechanisms.

### *4.2. Need to establish effective national protection/prevention mechanisms (NPMs)*

22. In line with the principle of subsidiarity, the bulk of the work of protecting detainees from human rights abuses should be carried out at the national level, and this requires effective and independent national prevention mechanisms (NPMs).

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11. Austria, Belgium, Bulgaria, Finland, Iceland, Ireland, Italy, Norway, Portugal, Turkey (countries which have signed the protocol but not yet ratified it); Andorra, Greece, Hungary, Latvia, Lithuania, Monaco, Russian Federation, San Marino, Slovak Republic, (who have not yet signed the protocol), according to the list updated on 4 October 2010, published by the Association for the Prevention of Torture, www.apt.ch.

23. There are different models among the 21 designated NPMs, but in the majority of member states existing bodies, often the ombudsperson offices or national human rights institutions, have been responsible for keeping watch on detainees at national level. This state of affairs raises the question whether these existing institutions fully meet the criteria of independence, particularly financial, in keeping with the "Paris Principles".[12] According to the assessment made by Manfred Nowak, the United Nations Special Rapporteur on Torture, in most countries the available financial resources are totally insufficient, and often NPMs do not live up to the requirements of independence and pluralism that follow from the Paris Principles.[13]

24. It appears that problems arise when NPMs are set up within the existing ombudsperson institutions. The NPMs' role, which is preventive by nature, is often new for the ombudsperson's offices, which have so far focused mainly on the handling (ex post) of complaints, by staff who are mainly jurists. The challenge for such NPMs is therefore to combine the reactive with the preventive role and incorporate the necessary medical expertise. Certain arrangements may enhance the effectiveness of the NPMs' preventive activities. The NPM should be established at the very least as a separate and independent unit within the ombudsperson's office. Staff assigned to this unit need to be specially recruited/selected and trained to carry out on-site monitoring. A clear concept needs to be developed of how the preventive monitoring team reacts to and processes complaints which it receives during inspections.

25. The work in connection with NPMs also benefits from a co-ordination mechanism at the level of the Council of Europe. The European NPM project[14] has led to the creation of an active network of national preventive mechanisms and provides a forum for pooling experience. By organising thematic workshops and on-site visits, the project offers support in capacity building relating to the preventive monitoring tasks of the NPMs. Experienced present and past members and experts of the CPT and of the Sub-Committee on Prevention of Torture set up under OPCAT are involved in these activities, which provide a useful informal link between the protective/preventive mechanisms operating at different levels.

26. At the hearing on 27 January 2011, the experts also suggested setting up an advisory medical council which would be at the disposal of the NPMs to provide the medical expertise sorely lacking in most NPMs. Some committee members involved in the discussion were somewhat sceptical considering the limited financial resources available for the purpose.

### *4.3. Creating synergies between the CPT and the OPCAT mechanisms and the future European Union measures*

27. The action of the well-established body that is the CPT of the Council of Europe on the one hand and that of the mechanism prescribed by the OPCAT on the other hand, once it is up and running in all member states, should be co-ordinated in such a way that it achieves the greatest combined impact in favour of the protection of detainees throughout Europe, making the best possible use of the invariably scarce resources.

28. The Sub-Committee on Prevention of Torture welcomes the CPT's involvement in the development of NPMs in Europe. The sub-committee includes some NPMs in its (infrequent) on-site visits. The CPT should be able to do likewise in order to share its know-how and its findings with the NPMs, within the limits of their ability to preserve the confidentiality of this information. As to the substantive standards, the sub-committee intends to apply the *pro homine* principle by relying on the regional standard where more stringent (that is, in Europe, the *acquis* of the CPT). This presupposes regular exchange of information, itself also complicated by the principle of confidentiality applying to the CPT's work.

29. Creating synergies between the Sub-Committee on Prevention of Torture and the CPT and promoting NPMs was the topic of the conference held in Strasbourg on 6 November 2009 on "New partnerships for torture prevention in Europe" with the participation of members of the CPT, of the Sub-Committee on Prevention of Torture and of different European NPMs. Our committee was represented by Mrs Marie-Louise Bemelmans-Videc (The Netherlands, EPP/CD), who delivered a well-received keynote speech. The proceedings of the conference were published in July 2010.[15] The existence of separate torture prevention

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12. See Article 18 of the OPCAT which refers to the "Principles relating to the status and functioning of national institutions for protection and promotion of human rights", United Nations General Assembly Resolution A/RES/48/134 (Annex) of 20 December 1993 ("Paris Principles"); the "Paris Principles" are available at: www2.ohchr.org/english/law/parisprinciples.htm.

13. See Manfred Nowak, summing up of the discussion at the conference held in Strasbourg on 6 November 2009 on "New Partnerships for Torture Prevention in Europe" (proceedings of the conference, p. 111, available at: www.cpt.coe.int/en/documents/cpt-apt-proceedings.pdf).

14. This programme is funded by a Joint European Union-Council of Europe Project called "Peer-to-Peer II Project", with co-funding from the Human Rights Trust Fund.

bodies mandated at the national, European and United Nations levels raises certain significant problems but also affords a unique opportunity for further increasing the effectiveness of action to prevent ill-treatment in Europe. The participation of representatives of both bodies, of Council of Europe member states and of civil society in the conference were the occasion for a rewarding exchange of experiences and ideas relating to two main subjects of discussion: 1. promoting and assisting information exchange between the prevention bodies and 2. ensuring the effective implementation of the prevention bodies' recommendations.

30. As regards the European Union, it would appear to be more interested in the conditions of detention in its member states as a major requirement for successful development of mutual judicial assistance and mutual recognition of judicial rulings.[16] The European Commissioner for Justice, Viviane Reding, announced at a round table on 25 January 2011 on conditions of detention in the European Union that in 2011 a Green Paper on the subject would be presented. She distinctly referred in her address to the European Convention on Human Rights, but clearly it should also be ensured that what the CPT has achieved receives full consideration in the future drafting of the European Union rules on conditions of detention. In the interests of productive use of the scant resources available for this task, it is important that the European Union's future activities in this field should generate synergies, not overlaps, with the CPT.

## 5. Conclusions

31. The prime importance among fundamental rights of the prohibition of torture and inhuman and degrading treatment (Article 3 of the European Convention on Human Rights) can only be emphasised, and the CPT commended for its action of outstanding quality sustained by over twenty years of faultless dedication. The CPT indubitably constitutes one of the Council of Europe's greatest successes.

32. To carry out their difficult task, the members of the CPT must have established qualifications and unimpeachable personal merits. The election of the CPT members by the Assembly would vest them with enhanced democratic legitimacy and would have the outcome that the candidates on the lists forwarded by the national delegations would be evaluated in the same body as the one making the final choice.

33. Meanwhile, it is expedient to improve further the procedures for shortlisting at national level, in line with the indications in Resolution 1540 (2007).

34. The public statements which the CPT adopts by a two-thirds majority in the event of a shortfall in co-operation by the authorities of a state party are of very special importance due to their exceptional character. These infrequent cries of alarm should, as a matter of course, prompt a debate in the Committee of Ministers, the Parliamentary Assembly and the national parliament concerned.

35. The principle of confidentiality should remain an asset to the CPT's close co-operation with the national authorities, especially in highly sensitive situations. However, the tangible implementation of the CPT's recommendations calls for more transparency in order that all players concerned contribute towards bettering the situation of detainees. Virtually all states parties request publication of the CPT report, together their comments thereon, after intervals which vary but allow timely commencement of the public debate on the problems noted and the ways to solve them. The Russian Federation alone still shows reluctance to do so.

36. The Assembly regrets that the Protocol to the United Nations Convention against Torture has not yet been ratified by all Council of Europe member states, and that not all the member states which have ratified it have as yet actuated the national preventive mechanisms (NPMs) prescribed by that instrument.

37. NPMs constitute a major innovation in the direction of subsidiarity. They should be fully independent and provided with adequate resources, including the legal, medical and other expertise crucial to the tasks of on-site prevention and monitoring.

38. The Assembly welcomes the efforts made within the Council of Europe to create synergies between the CPT on the one hand and the OPCAT-based mechanisms on the other, and to pool relevant experience.

39. A similar approach, avoiding overlaps and wastage of limited resources, is also imperative in the links between the CPT and the actions envisaged by the European Union to improve the conditions of detention in the member states.

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15. www.cpt.coe.int/en/documents/cpt-apt-proceedings.pdf.
16. http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/11/45&format=HTML&aged=0&language=EN&guiLanguage=en.

40. On the basis of these conclusions, in the draft resolution and recommendation, I have put forward a number of precise appeals to the Council of Europe member states, to the states parties to the convention, to the CPT itself and to the Committee of Ministers and the competent institutions of the European Union.