

# International Efforts to Combat Torture and Inhuman Treatment: Have the New Mechanisms Improved Protection?

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## I. Introduction

During the last decade, the United Nations and the Council of Europe have increased their efforts to combat torture and other forms of inhuman treatment through the introduction of special mechanisms. In 1985, the UN Commission on Human Rights appointed a Special Rapporteur on Torture to take account of and investigate reports of torture. With an eye to efficiency, the conditions of appointment leave the Special Rapporteur unhindered by set procedures. In 1987, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) entered into force and was simultaneously backed up by the establishment of the Committee against Torture (CAT), a task force set up to oversee implementation of the Convention. In 1989, member states of the Council of Europe, acting through the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT), established the Committee for the Prevention of Torture (CPT) and assigned it the task of visiting states parties and inspecting places of detention.<sup>1</sup>

Given that these organs have been in operation for at least seven, and as many as eleven years, the question arises as to whether they have led to increased protection for detainees and, if so, which among them have contributed more significantly to

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<sup>1</sup> Another regional convention entered into force in 1987 when the Organization of American States enacted the Inter-American Convention to Prevent and Punish Torture, with the aim of imposing substantive obligations on member states very similar to those enshrined in the UNCAT. However, since the American Convention neither makes provision for a specialized body to pursue implementation nor introduces any novel procedures, it will not be taken into consideration in this article.

this end. In order to answer these questions, it will be necessary to (i) examine the legal and operational parameters within which (or in spite of which) the various agencies seek to achieve practical results; and (ii) compare the performance of the various agencies in those countries where each has been active. Examination of these issues will also take account of the activities of the already existing agencies, especially those working in relation to the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR). In this way, we may gain an idea of whether and, if so, the extent to which the work of the various agencies overlap. This accomplished, the article will examine whether progress has been made through the activities of the new agencies (and which in particular), and conclusions will be drawn as to how improvements in the overall effectiveness of the agencies' work can be achieved.

## II. The Procedures: Parallels and Differences in Legal Structures and Practice

Under the ICCPR states parties are obliged to report regularly on their efforts to implement the substantive provisions of the Covenant (Article 40). These reports are then discussed by the Human Rights Committee (HRC) with representatives of the governments concerned. In addition, the ICCPR provides for procedures for examining complaints submitted by states parties (Article 41) or, in the framework of an Optional Protocol, by individuals.<sup>2</sup>

The same procedures are contained in the UNCAT (Articles 19, 21 and 22). As with the ICCPR, the state reporting procedure is compulsory, while the complaint procedures are optional. In addition, however, the UNCAT is equipped with an entirely new inquiry provision (Article 20), which permits the CAT to conduct an inquiry whenever it receives 'well-founded indications that torture is being systematically practised in the territory of a State Party'. On condition of the state party's consent, the inquiry may include a visit to its territory (Article 20, para. 3). States parties, however, may opt out of Article 20.

The Special Rapporteur on Torture has established three procedures for responding to information received on alleged cases of torture. First, the Special Rapporteur sends a letter to the government of the country concerned. Second, an urgent appeal is submitted by the Special Rapporteur to the government when well-founded information comes to hand that certain individuals are in danger of being subjected to torture. While these two procedures were restricted to individual cases during the

<sup>2</sup> A comprehensive analysis of the HRC's work is given by D. McGoldrick, *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights* (1991); cf. also Opsahl, 'The Human Rights Committee', in P. Alston (ed.), *The United Nations and Human Rights. A Critical Appraisal* (1992) 369. It is especially interesting to note the criticism levelled by former HRC member Opsahl against the procedures for selecting HRC members, *ibid.*, at 374.

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first years of his mandate, the Special Rapporteur has since enlarged their field of application with the aim of making a greater impact in those countries where the practice of torture is thought to be more pervasive.<sup>3</sup> Third, the Special Rapporteur conducts visits to the countries against which allegations have been made, if their governments extend an invitation. The purpose of the visit is to examine the situation *in loco* and to discuss specific measures for improving the situation.

At the European level, the ECHR provides for the examination of and binding decisions on complaints submitted by states or individuals. In contrast, the ECPT makes no provisions for judicial decisions, relying instead on its CPT to conduct fact-finding missions, including the inspection of places of detention, and to issue recommendations as a means of improving conditions for the prevention of torture and inhuman or degrading treatment.<sup>4</sup>

As procedures for state complaints have thus far not been relevant in the practice of the HRC and CAT,<sup>5</sup> no further consideration is needed in their regard. The remaining mechanisms may be roughly divided into two categories: procedures based on a country-oriented approach and procedures related to individual cases.<sup>6</sup>

A country-oriented approach is inherent in the visiting procedures of both the ECPT and the Special Rapporteur as well as in the inquiry procedure contained in Article 20 UNCAT. The reporting procedures of ICCPR and UNCAT are also based on this approach. In addition, the Special Rapporteur may address problems concerning individual countries by means of correspondence with and urgent appeals to their governments. Although these procedures may be regulated by different rules, they share the aim of promoting improvements through an assessment of the legal structures and everyday realities of specific countries. Individual cases are relevant

3 For instance, urgent appeals were submitted to the government of Peru after a declaration of amnesty for human rights violators, to the government of Israel in reaction to a legislative proposal concerning the implementation of the UNCAT and to the government of Lebanon concerning the situation of certain prisoners. See E/CN.4/1996/35, para. 4.

4 The ECPT has been of great interest to researchers. See, in particular, Evans and Morgan, 'Inspecting Prisons - The View from Strasbourg', 34 *British Journal of Criminology* (Special Issue 1994) 141; Kaiser, 'Detention in Europe and the European Committee for the Prevention of Torture', 3 *European Journal on Crime, Criminal Law and Criminal Justice* (1995) 2; Murdoch, 'The Work of the Council of Europe's Torture Committee', 5 *EJIL* (1994) 220; and D. Rouget, *La Convention européenne pour la prévention de la torture et des peines ou traitements inhumains ou dégradants* (1995).

5 This irrelevance may be due to some extent to the complicated design of the procedures. Of more importance it would seem is the problem that potential complainants refrain from applying to one of the organs because of diplomatic considerations. Similarly, a state complaint within the ECHR is considered an 'unfriendly act' (see M.E. Villiger, *Handbuch der Europäischen Menschenrechtskonvention* (1993), at 110). However, the ten complaints which have been examined under the respective provisions of the ECHR show that interests, including those concerning minorities, might overrule such diplomatic courtesies.

6 However, the different groups might influence each other in respect of thematic interpretation of certain terms and of standards applied. Of particular interest is the relation between the CPT on the one hand and the organs of the ECHR on the other. For instance, the CPT has designated some situations as 'inhuman and degrading treatment', which probably would not have been subsumed under Article 3 ECHR by the Commission or the Court. For details see R. Bank, *Die internationale Bekämpfung von Folter* (1996), at 222 f.

to these procedures only to the extent that they figure in the evaluation of the general situation.

Separate mechanisms for processing individual complaints have been introduced by the ECHR, the Optional Protocol of the ICCPR and the UNCAT. Similarly, procedures relating to letter writing and urgent appeals to governments are used mostly to secure protection and redress for individuals, although they may also influence overall conditions.

#### A. Procedures for Individual Cases

A comparison of the procedures dealing with individual cases shows that the activities of the Special Rapporteur are complementary to the formal complaint procedures conducted by the HRC, CAT and the European Commission and Court. The Special Rapporteur's procedures, characterized by informality and rapidity, aim at encouraging local authorities to investigate accusations and to prosecute those responsible. The Special Rapporteur uses the 'urgent appeal' to address governments on a preventive, humanitarian basis in order to secure the protection of endangered persons. In contrast, the complaint procedures provide for formal review by an international body whose rulings are to be implemented by local authorities.

The UNCAT's formal complaint procedure is almost identical to that of the ICCPR's Optional Protocol,<sup>7</sup> but differs significantly from that of the ECHR. Duplication is avoided by UNCAT<sup>8</sup> and ECHR<sup>9</sup> regulations which make inadmissible any complaints that are or have been pending before another international organ. In contrast, the ICCPR's Optional Protocol rules complaints as inadmissible only if they are currently pending before another international organ,<sup>10</sup> with the result that the same case may be considered by the HRC after having been considered by the CAT or organs of the ECHR.<sup>11</sup>

A growing number of individual complaints have been addressed to each of these organs, although the CAT's procedure, applied in only 43 cases during nine years of operation, seems to have remained less well known.<sup>12</sup> Furthermore, almost all of these complaints were directed against states of the Western world, the majority of

7 For an analysis of the differences see Nowak, 'The Implementation Functions of the UN Committee against Torture', in M. Nowak, D. Streurer and H. Treter (eds.), *Fortschritt im Bewusstsein der Grund- und Menschenrechte. Festschrift für Felix Ermacora* (1988), 493.

8 Article 22, para. 5(a) UNCAT.

9 Article 27(1)(b) ECHR. Cf. Villiger, *supra* note 5, at 59. ECHR organs do not consider the non-binding character of the decisions of other international organs as an obstacle to rejecting complaints. See also D. Harris, M. O'Boyle and C. Warbrick, *Law of the European Convention on Human Rights* (1995), at 626 f.

10 Article 5, para. 2 Optional Protocol.

11 Most states parties to the ECHR have avoided concurrence between ECHR procedures and the ICCPR's Optional Protocol by formulating reservations with respect to the Optional Protocol; see Pettiti, Decaux and Imbert, *La Convention Européenne des droits de l'homme* (1995), at 630.

12 As of May 1996. Cf. A/51/44 (Annual Report of the CAT), para. 229.

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them claiming a violation of Article 3 UNCAT, which forbids the expulsion of persons in danger of being tortured to their country of origin.<sup>13</sup> This situation may be partly explained by the fact that the states that have accepted the procedure for individual complaints tend to be more democratic.<sup>14</sup>

### B. Procedures with a Country-oriented Approach

The international organs are aided in making informed recommendations by the procedures that include the possibility of fact-finding missions. However, there are substantial differences in relation to the preconditions for visits to a state in general, and to specific places of detention in particular. Further differences can be seen in rules concerning confidentiality.

Whereas states parties to the ECPT are obliged to accept visits by the CPT at almost any time and to any place where people are being detained by a public authority,<sup>15</sup> the Special Rapporteur and the CAT are dependent on an invitation from the state concerned. However, based on Article 20 UNCAT, the CAT may carry out and conclude an inquiry without conducting a visit, and the Special Rapporteur may communicate analyses of situations in specific countries together with recommendations for improvements to the governments concerned by means of an urgent appeal.

Article 20 UNCAT, however, stipulates further conditions that must be met in order to initiate an inquiry. In particular, the CAT must have before it reliable information indicating the systematic practice of torture.<sup>16</sup> Although action on the part of the Special Rapporteur does not formally depend on such conditions, he will clearly first need to establish that the practice of torture is resorted to with a certain degree of consistency before actively seeking a country's approval for a visit. Of course, such situations would be of particular relevance for the CPT within its regional limits. However, to date, there has not been verification of situations displaying a degree of severity such as to warrant a visit in accordance with one of the UN mechanisms for most of the states parties to the ECPT. The only exception in this regard is Turkey, to which visits have been conducted by each of the three organs.<sup>17</sup>

13 For a comparison of the jurisdiction of the ECHR organs on Article 3 ECHR and of the practice of the UNCAT on Article 3 UNCAT see Suntinger (1995), 'The Principle of Non-Refoulement: Looking to Geneva Rather Than to Strasbourg?', 49 *Austrian Journal of Public and International Law* (1995) 203.

14 However, some of the states that have recognized the competence of the CAT under Article 22 of the Convention (e.g. Algeria and Turkey) are known for tolerating a widespread practice of torture.

15 Exceptions may be based on Article 9 ECPT. Despite fears expressed at the time the Convention entered into force, problems have not as yet arisen of states misusing these exceptions for the purpose of obstructing the work of the CPT.

16 For the criteria according to which torture qualifies as 'systematic', see A/51/44 (Annual Report of the CAT), para. 214.

17 One new potential candidate for which visiting procedures may be initiated is Russia. Russia is a state party to the UNCAT, has been the subject of a Special Rapporteur's visit, and has signed the ECPT. The Special Rapporteur's report indicates that there are enormous problems in Russia, in particular with regard to conditions of detention. Cf. E/CN.4/1995/34/Add.1 (Report of the Special

Significant differences among the procedures can be observed with respect to the publication of actions taken or planned. The Special Rapporteur may publicly announce a forthcoming visit and publish the resulting report in its entirety, as his mandate is based on the public 1235 procedure of the UN Commission on Human Rights. The CAT and CPT, on the other hand, have only limited options at their disposal. The CAT is bound to confidentiality for the entire duration of an inquiry, and may only publish a summary of the results in its annual report following the inquiry's conclusion,<sup>18</sup> at which point consent of the respective government is no longer required. The CPT may give public announcement of a planned visit, and may publish names of the specific places that are inspected during the course of a visit, but the consent of the government is required in order to publish the actual visit report. Only under certain conditions - as an *ultima ratio* in the case of an uncooperative state party<sup>19</sup> - may it resort to a 'public statement'.<sup>20</sup>

These regulations also reflect differences in state party obligations for cooperation. While the CAT and the Special Rapporteur must rely on the willingness of governments to cooperate during the early stages of the procedures (invitation for and conduct of a visit), the CPT has far-reaching powers during this phase in line with states parties' firm obligation to cooperate. In further contrast, the ECPT's post-visit procedure aims to promote improvements through 'quiet' cooperation, while the freedom accorded to the Special Rapporteur and the CAT to publish reports without the government's consent opens up the option of increasing pressure through public opinion.

These different operative elements lead to the conclusion that the UN mechanisms would qualify as complementary to the CPT procedure, even in the case of visits to one and the same country. This is true at least until such time as the CPT report is published. In addition, one could expect the pressure on governments to increase with visits by both the CPT and one of the UN agencies, as such multiple visits express concern about a specific situation at different levels of the international community. On the contrary, it is difficult to imagine how the CAT and Special Rapporteur visits to the same country might be viewed as complementary. Their procedures seem different because of contrasting confidentiality regulations and formal aspects. The procedure conducted by the Special Rapporteur is public and of

Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights Resolution 1994/37. Addendum. Visit by the Special Rapporteur to the Russian Federation. Geneva, 1995).

- 18 Article 20, para. 5 UNCAT specifies that the committee must consult the respective state party before publication. However, the committee is not bound by a negative response, and has, in fact, published summary accounts of its report without the consent of the states involved.
- 19 The other situation in which the CPT is empowered to make a public statement - the failure of a state to improve the situation in the light of the committee's recommendations (cf. Article 10 ECPT) - may be considered as a special case of lack of cooperation.
- 20 This measure has only been taken twice (December 1992 and December 1996) in relation to the situation in Turkey, in both cases because of a failure to improve the situation. However, the Committee recently indicated that an excessive delay in providing an interim response as an official reply to a CPT report could lead the Committee to make a public statement under Article 10, para. 2 ECPT (CPT, Sixth General Report (CPT/Inf (96) 21, para 10)).

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a consultative nature. The CAT's inquiry procedure is confidential until its conclusion and serves to determine whether or not torture in a particular state is practised systematically.<sup>21</sup> In fact, however, visits by both organs to a certain country during the same period would prove redundant. Both agencies are bound by government approval for any investigative measure taken in the course of an inquiry. And differences with respect to confidentiality are less significant, given that the CAT may abandon the confidentiality rule at the conclusion of an inquiry.

However, this question has proved to be largely academic as far as visits are concerned. The CAT has managed to conduct no more than one visit (Turkey) in nine years of operation. In contrast, the Special Rapporteur has conducted 18 visits as of December 1996.<sup>22</sup> The CAT's lack of success cannot be explained by the argument that the countries visited by the Special Rapporteur were not accessible to the CAT, since the majority of these countries were states parties to UNCAT and had not opted out of Article 20. Instead, the reason may be found in the unfortunate combination of highly problematic preconditions for the initiation of an inquiry and the stigmatizing effects it produces. These factors result in many target states maintaining a strong interest in hindering the course of an inquiry. The burden of having to seek the target state's cooperation at every stage of the procedure opens the way to obstruction. However, one positive new development can be seen in the inquiry into the situation in Egypt, which was formally concluded in May 1996 after several failed attempts to receive approval for a visit.<sup>23</sup> In this case, it was mainly NGO information that formed the basis for the Committee's conclusion that torture was being practised systematically. This approach, which is completely in line with UNCAT regulations, allows the Committee greater independence from the state party.

The UNCAT's state reporting procedure is notably similar to that of the ICCPR, which results in important overlaps from a procedural point of view. The most important advance in the formulation of the UNCAT was the express provision for the Committee to make 'general comments' on each specific state report (Article 19, para. 3). In contrast, the HRC has interpreted the respective regulations in the ICCPR (Article 40, para. 4) as permitting 'general comments' only when these are directed to all parties to the Covenant. Despite strong criticism, the HRC has not taken the initiative of drawing up its 'own reports' on specific state reports. Thus, the CAT

21 This distinction has been put forward as an argument against the charge of procedural overlap by the former Special Rapporteur Kooijmans; see Kooijmans, 'The Role and Action of the UN Special Rapporteur on Torture', in A. Cassese (ed.), *The International Fight against Torture* (1991) 56, at 71.

22 Visits have been conducted to Argentina, Colombia and Uruguay (1987), Peru, Turkey and Republic of Korea (1988), Guatemala and Honduras (1989), Zaire and the Philippines (1990), Indonesia and East Timor (1991), former Yugoslavia (1992, together with the country rapporteur), Rwanda (together with the country rapporteur), the Russian Federation and Colombia (joint mission with the Special Rapporteur on extralegal, summary and arbitrary executions) (1994), Chile (1995), Pakistan and Venezuela (1996).

23 The report was published as a part of the Annual Report. See Summary account of the results of the proceedings concerning the inquiry on Egypt. A/51/44 (Annual Report of the CAT), at 30-36.

was more likely to be the first UN body to react with specific comments on each and every state report.<sup>24</sup>

Nonetheless, developments in the committees' practices have been similar. In the beginning, individual members of the HRC voiced their concern about a state party at the end of each discussion. The CAT, too, restricted itself to single comments made by individual members and refrained from making collective evaluations. For both committees practice has since tended in the direction of concrete criticism issued by the committee as a whole. Indeed, this tendency has led to the introduction of a system whereby the committees issue a single evaluation of each state report debate. This system allows for remarks pertaining to diverse categories, including positive aspects; factors and difficulties impeding the application of the provisions of the Convention (or the Covenant); issues of concern; and recommendations. This dynamic interpretation of the Convention and the Covenant is likely to breathe new life into state reporting procedures, particularly by paving the way for concrete recommendations by the organs.<sup>25</sup>

### III. Activities of the Organs in Specific Countries

Since only European countries fall within each of the organs' regional scope, a comparison must be limited to those countries. Accordingly, Germany, Austria, United Kingdom and France shall serve as examples of states parties that have been visited by the CPT and discussed by the CAT and the HRC in the context of their state report procedures. Since the activities of the Special Rapporteur remain marginal in these countries, a comparison of the visiting procedures of the CPT, CAT and the Special Rapporteur shall be made for the case of Turkey.

Specifically, the comparative analysis will examine the issues of overlap and effectiveness. The latter will be analysed from three perspectives: Were the most important problems addressed in the countries examined? What was the quality of discussions held? How did the governments cooperate and what results ensued?

24 Cf. Nowak, *supra* note 7, at 525.

25 This new system has made the state reporting procedure a source of information, offering a survey of the problems in a particular state in a separate context to that of the complicated Summary Records. The decision to make state reports available in cases of urgency constitutes a further positive innovation, as demonstrated by the HRC for the first time in the case of the former Yugoslavia in 1992; see Boerefijn, 'Towards a Strong System of Supervision: The Human Rights Committee's Role in Reforming the Reporting Procedure under Article 40 of the Covenant on Civil and Political Rights', 17 *Human Rights Quarterly* (1995) 766. The CAT has not yet introduced such a practice.



## A. Comparing the State Reporting Procedures of the HRC and CAT and the Visiting Activities of the CPT

### 1. Germany

Germany was the object of CPT visits in 1991 and 1996; HRC state reporting procedures in 1978, 1986, 1990 and 1996; and of one CAT state report procedure in 1992. For comparative purposes, the following analysis shall mainly concentrate on procedures conducted between 1990 and 1992.<sup>26</sup>

The procedures undertaken in this period display several points of interest. In its third state reporting procedure on Germany carried out in 1990, in relation to ICCPR Articles 7, 9 and 10,<sup>27</sup> the HRC focused its attention on questions concerning the treatment of suspected and convicted terrorists. In particular, the inquiry concentrated on measures involving solitary confinement, and, to a lesser extent, the length of pre-trial detention. In contrast, during its first visit in 1991, the CPT focused primarily on conditions of detention in the prisons visited and safeguards against the ill-treatment of suspects in police custody.<sup>28</sup> Conditions and safeguards in relation to solitary confinement<sup>29</sup> and the lack of activities of a therapeutic nature in prison units for prisoners with mental disorders were the subject of criticism.<sup>30</sup> One point of concern shared, but handled differently, by the CPT and CAT concerned the consequences of Germany's unification. The CAT posed questions relating to the prosecution of human rights violations committed by former GDR officials, while the CPT pursued the issue of substandard conditions of detention in East German prisons during the period of transition.<sup>31</sup> Another issue that attracted much attention on the part of CAT members was the prohibition and criminalization of torture.<sup>32</sup> This matter was barely touched upon by the other committees.

The work carried out by the different committees warrants no serious criticism for the manner in which this country's most serious problems were addressed and discussed. In retrospect, this comment may seem surprising, considering that the three areas which have received the most attention during the last decade in Germany are the treatment of suspected and convicted terrorists,<sup>33</sup> problematic detention conditions for foreigners awaiting deportation,<sup>34</sup> and the ill-treatment of foreigners

26 The report of the CPT on its second visit to Germany (1996) had not been published at the time of writing.

27 CCPR/C/52/Add.3 and CCPR/C/SR.963-964.

28 CPT Report, Germany (CPT/Inf (93) 13).

29 *Ibid.*, paras. 72 ff., 216.

30 *Ibid.*, para. 124 ff.

31 CAT/C/SR.128, paras. 24, 30, 31, 37; CPT Report, Germany, paras. 9 ff., 107 ff., 118 ff.

32 Cf. CAT/C/12/Add.1 and CAT/C/SR.128-129.

33 Cf. Amnesty International, *Jahresbericht* (1986), at 357 f.; *Id.* (1987) 391 f.; *Id.* (1989) 429 f.; *Id.* (1991) 120 f.

34 Main subjects of criticism include the duration of such detention (maximum 18 months), absence of efforts to overcome language barriers, the splitting up of families in different centres (see *Süd-*

by the police.<sup>35</sup> In fact, the HRC was the only committee to raise the issue of the isolation of detainees suspected of belonging to terrorist groups, and the CPT was the only committee to examine the conditions in a detention centre for foreigners, an inquiry which did not bring to light any disturbing irregularities. An explanation for this seemingly surprising conclusion can be found in the timing of the committees' investigations. The issue of isolating terrorist suspects had largely disappeared from the human rights agenda by the beginning of the 1990s,<sup>36</sup> while the issues relating to the treatment of foreigners in detention have only gained visibility since 1994 as a result of investigative work by the media and non-governmental organizations. Thus, it is to be expected that the committees would not have addressed these issues in the first years of the 1990s. Moreover, it may be seen that the committees have indeed turned their attention to these issues more recently. The CPT visited two detention centres for foreigners in 1996,<sup>37</sup> and the HRC discussed the ill-treatment of persons in police custody, particularly in relation to foreigners, in its recent state report.<sup>38</sup>

Regarding the quality of investigations, only the CPT succeeded in conducting a thorough analysis of the legal and practical situation in Germany and was the only committee to deliver clear recommendations, comments and requests for further information. The procedure followed by the CPT in response to a complaint of ill-treatment is the only area of its work requiring criticism. The Committee omitted to inform the authorities about this complaint until months later in its formal report. The delay allegedly rendered it impossible for the authorities to investigate the allegations.<sup>39</sup> In contrast, oral inquiries carried out by the HRC and CAT were deficient in various ways. For instance, the HRC failed to pick up on the fact that government

*deutsche Zeitung* 10/11 December 1994), substandard material conditions and the high risk of suicide (see Deutscher Caritasverband, *Erfahrungsbericht zur Situation von Asylsuchenden und Flüchtlingen in Deutschland* (1994), at 13 ff.; Pro Asyl, *Weggesperrt zum Abtransport. Abschiebehaft in Deutschland* (1995). Both court officials and police officers have described detention conditions as inhuman on several occasions (see Bank, *supra* note 6, at 244, notes 66–68).

- 35 See Amnesty International, *Federal Republic of Germany: Failed by the System - Police Ill-treatment of Foreigners* (1995); Amnesty International, *Federal Republic of Germany - The Alleged Ill-treatment of Foreigners - An Update to the May 1995 Report* (1996); and Human Rights Watch/Helsinki: 'Deutschland den Deutschen'. *Fremdenhaß und rassistische Gewalt in Deutschland* (1995). An analysis of the problem from a police officer's point of view is provided by M. Bornwasser and R. Eckert, *Belastungen und Gefährdungen von Polizeibeamtinnen und -beamten im täglichen Umgang mit Fremden* (1995).
- 36 Cf. J. Feest and C. Wolters, *Verhütung von Folter und unmenschlicher Behandlung oder Strafe - Ergebnisse einer Bestandsaufnahme und zugleich Einschätzung des Berichtes des CPT über seinen ersten Besuch in Deutschland und der dazu vorliegenden Stellungnahme der Bundesregierung* (1994), at 20, 24.
- 37 The Federal Border Police Station at Berlin-Tegel Airport and the Detention Centre for Foreigners in Berlin-Köpenick were visited. The latter was a 'follow-up visit', as this centre has replaced a centre in Berlin-Tiergarten that had been subject of an inspection during the first visit. It remains to be seen whether the CPT observations and recommendations in 1991 have had any influence on the organization of the new centre in Köpenick.
- 38 Cf. *Süddeutsche Zeitung* of 5 November 1996, at 6 and *Idem*, 6 November 1996, at 5. (The Summary Records of the discussion had not yet been made available at the time this article was written.)
- 39 *Stellungnahme der Bundesregierung* (CPT/Inf (93) 14), at 62 f.

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delegations gave incorrect answers at times.<sup>40</sup> In their questioning on the treatment of terrorist suspects, HRC members did not insist that government delegates give exhaustive responses. For instance, three specific complaints were rejected without any substantiation,<sup>41</sup> and another complaint was met with irrelevant explanations.<sup>42</sup>

Each of the three procedures produced few tangible results in terms of government responses. Even the CPT report provoked little positive action on the part of the German authorities: two cells criticized by the CPT were removed from service;<sup>43</sup> a prison visiting area was refurbished; the ventilation systems of certain prison cells were examined; and assurances were given that greater respect would be shown for the dignity of psychiatric hospital patients.<sup>44</sup> Although the German government did not explicitly respond to the CPT's demand for the right of prisoners to address complaints to the President of the CPT, this issue was taken up in the government's proposals for amendments to the Criminal Procedures Act. More indirectly, however, the CPT report played an important role in providing prison administrations with a persuasive argument in their appeals to government for increased funding.<sup>45</sup> Also not mentioned in the government response, and likely owing to the CPT's sharp criticism, was the transfer of the chief of Straubing prison's psychiatric department to another post.<sup>46</sup>

While the German delegation to the HRC procedure promised no concrete responses, the delegation to the CAT inquiry agreed to improve the training of border personnel in identification techniques for torture victims. In addition, it was declared that the question of introducing specific anti-torture legislation into German law would be reviewed,<sup>47</sup> although at present the prospects for improvements in this area are not encouraging.

40 See CAT/C/SR.129, para. 19. A German delegate claimed that the police were not empowered to refuse a detainee's request to inform a third person upon arrest, whereas the law makes room for such refusal so long as it is vital to the purpose of the investigation, cf. § 163 c para. 2 StPO. Also, during discussions with the HRC, a member of the German delegation stated that there were no compulsory HIV tests in German prisons, see CCPR/C/SR.964 paras. 32 and 47. The CPT report revealed that this was not true for Bavaria; see CPT Report, Germany, para. 144.

41 CCPR/C/SR.964, paras. 35 and 48. In contrast, the Special Rapporteur always demands that responses to allegations be substantiated. A list of the items of information requested by the Special Rapporteur is set out in his 1996 Annual Report; see E/CN.4/1996/35, para. 200.

42 In response to complaints relating to strip searches following contact with fellow inmates, government delegates explained that the practice was necessary as a means of detecting contraband from the outside world, see CCPR/C/SR.964, paras. 32 and 47. The questioning technique had improved since the second state reporting procedure, when the HRC restricted itself to discussing the sensitive issue of how to treat suspected and convicted terrorists in extremely vague terms, cf. CCPR/C/SR.665, para. 3. In particular, this discussion contained no information about what conditions would have to be met for segregating detainees without violating Article 7 ICCPR.

43 See *Stellungnahme der Bundesregierung*, at 62 and 64.

44 See *Stellungnahme der Bundesregierung*, at 53, 70, 77. Regarding the last aspect, the CPT delegation had criticized an incident in which a corpse had been left on the veranda of a psychiatric hospital; see CPT Report, Germany, para. 196.

45 This point was emphasized by a member of Berlin's prison administration in an interview with the author.

46 Cf. Feest and Wolters, *supra* note 36, at 63.

47 CAT/C/SR.129, paras. 23, 26.

## 2. Austria

Austria was visited by the CPT in May 1990 and October 1994. The main issues addressed in the first report were the ill-treatment of detainees in police custody, gaps in safeguards against such treatment and poor detention conditions in police jails. The Committee identified a considerable risk of ill-treatment for people in police custody.<sup>48</sup> Despite some improvements, this conclusion was reaffirmed in the CPT's second report,<sup>49</sup> with criticism expressed for the lack of substantial improvement in conditions in police jails. In contrast, little attention was given to these points by the CAT in its discussion of Austria's state report in April 1989.<sup>50</sup> Instead, the Committee focused on encouraging the Austrian government to draft legislation to criminalize torture. The HRC, in its second state-reporting procedure in October 1991, centred its discussion of Articles 7 and 10 ICCPR on the issue of ill-treatment by police forces, clearly picking up on the already released CPT report.<sup>51</sup> Thus, larger thematic overlaps can only be observed between the CPT and HRC.

The lack of attention given by the CAT to the issue of police maltreatment is an important point of criticism of its work. The Committee did not touch upon the most important concern relating to implementation of the Convention in Austria, although NGOs had already reported on the issue.<sup>52</sup>

The quality of the various committees' discussions differed significantly. The CPT presented recommendations on the basis of a well-structured analysis in both reports, while the CAT and HRC reports lacked cohesion. For instance, the HRC addressed questions to the Austrian delegation on the basis of some of the CPT's recommendations, but, for no apparent reason, left other CPT recommendations unmentioned. Furthermore, the HRC failed to take account of some finer points, such as the different rights of access to a lawyer for *Verwaltungsstrafatzen* and *Kriminalstrafatzen*.<sup>53</sup> In addition, there was considerable repetition in questions asked.<sup>54</sup> A lack of depth and cohesion was also apparent in the CAT's inquiry, exemplified by its failure to examine the root causes of certain problems. For instance, the Committee raised questions about press reports which had revealed low rates of subsequently upheld complaints of ill-treatment. Yet, despite the fact that no satisfactory answers were received on the subject, it elected not to extend its inquiry.<sup>55</sup> In this context, the CAT made no mention of structural problems, including the possibility of counter proceedings against detainees who lodge complaints of ill-treatment and the lack of independence on the part of Austrian authorities responsible for conducting such inquiries.

48 CPT Report, Austria (CPT/Inf (91)10), para. 48.

49 CPT Report, Austria (visit 1994), (CPT/Inf (96)28), para. 19. Some of the allegations relate to ill-treatment verging on torture; see para. 14 ff.

50 CAT/C/5/Add.10 and CAT/C/SR.18-19.

51 CCPR/C/51/Add.2 and CCPR/C/SR.1098-1099.

52 See Amnesty International, *Annual Report* (1988), at 420 ff.

53 This point is clearly analyzed by the CPT, see CPT Report, Austria, paras. 14, 60.

54 For instance, CCPR/C/SR.1099, paras. 16(c), 30, 48.

55 CAT/C/SR.18, para. 30. In contrast, see CPT Report, Austria, paras. 95-97.

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The Austrian authorities have displayed formal cooperation in response to the committees' reports, but have introduced few concrete measures as a result. The Austrian government response to the first CPT report contained no measures pursuant to specific recommendations or comments, declaring only its intention to take the report into consideration when formulating legal reforms.<sup>56</sup> In fact, minor legislative amendments in 1993 did lead to some expansion of the rights accorded to people in police custody. Among these, the express obligation for police officers to inform an arrested person of his or her rights would appear to be the most important. Further improvements can be seen with the introduction of guidelines for interrogations (also with respect to electronic recording devices) and the development of a comprehensive custody register.<sup>57</sup> As these reforms were in line with CPT recommendations, it may be argued that the first CPT report did exert a certain influence. Despite the reforms, however, the Committee's second visit report expressed several concerns about safeguards in police custody.<sup>58</sup> In particular, the reforms were criticized for failing to guarantee fundamental safeguards, such as the right of access to a lawyer and the right to a medical examination by a doctor of the detainee's choice. Furthermore, the Committee noted some reluctance on the part of police staff concerning the practical application of the new regulations.<sup>59</sup> In general, the CPT's second visit confirmed that the most serious problems identified in the first report (ill-treatment by the police and conditions in police jails) remained unsolved. It did, however, note with satisfaction the improved quality of detention conditions in police stations, including the provision of mattresses and blankets and the provision of meals to arrested persons.<sup>60</sup>

Comments issued by the HRC and CAT did not produce any promises on the part of the government delegation to introduce any measures. However, one important result of Austria's ratification of the UNCAT, specifically Article 15, deserves mention. Austrian law has been amended so as to make evidence obtained by torture inadmissible.<sup>61</sup> This point is particularly remarkable, given that the HRC had unsuccessfully recommended the inadmissibility of such evidence for several years prior to the ratification.<sup>62</sup>

### 3. United Kingdom

The United Kingdom has been the subject of several procedures by the different committees. The HRC discussed state reports in 1978/79, 1985, 1991 and 1995, as did the CAT in 1991 and 1995. All of these discussions deal jointly with Great Bri-

56 Response of the Austrian Government (CPT/Inf (91)11), 11.

57 CPT Report, Austria (visit 1994), paras. 50, 53.

58 *Ibid.*, paras. 40, 42, 44, 48, 50.

59 *Ibid.*, paras. 51, 53.

60 *Ibid.*, paras. 32, 36.

61 For details of the implementation of this principle in Austrian law, see A. Netzer, *Anhaltungsbedingungen in Österreich* (1994), at 18 ff.

62 HRC General Comment 7 (Article 7) (Sixteenth Session 1982), para. 1.

tain and Northern Ireland. The CPT paid visits to Great Britain in 1990 and 1994, while the situation in Northern Ireland was examined during an ad-hoc visit in 1993.

Thematic overlaps can be observed in the procedures conducted between 1990 and 1993, especially with respect to police brutality in Northern Ireland and safeguards against such treatment. These problems were treated at length in both the CAT and the CPT reports on Northern Ireland. The CAT raised questions about specific cases known from Amnesty International reports and also inquired into governmental statistics. For its part, the CPT presented an analysis of the consistency of allegations, without treating single cases.<sup>63</sup> Regarding safeguards against police maltreatment, the committees examined many of the same issues, such as the maximum length of police custody, the right to inform a third person of one's detention, the right to access to a lawyer and to examination by an independent doctor. In contrast, the HRC barely touched on the problem of ill-treatment, concentrating its examination of the situation in Northern Ireland instead on the right to life (Article 6 ICCPR).

The CPT report on its 1990 visit to England dealt in particular with the severely inadequate conditions in British prisons. The Committee designated the combination of overcrowding, lack of hygiene and poor regime as inhuman and degrading treatment.<sup>64</sup> Further aspects which met with strong criticism by the Committee were the harsh treatment of dangerous prisoners and the lack of psychiatric care.<sup>65</sup> The HRC, on the other hand, showed no awareness of these problems in its discussion, and the CAT requested only general information on the implementation of the UN Standard Minimum Rules and the sanitary standards in prisons.<sup>66</sup> Considering the serious nature of these two main areas of concern, the CAT and HRC may be criticized for failing to address them.

The quality of discussions varied considerably. In many instances, the CPT analysed issues more profoundly and argued more convincingly. For instance, regarding safeguards against ill-treatment, the CPT, in contrast to the CAT and HRC, always distinguished between regulations for terrorist suspects and those for ordinary criminals. Furthermore, in criticizing delays in access to a physician of the detainee's choice, a criticism also made by the CAT, the CPT had the wherewithal to reinforce its argumentation by pointing out that examinations by the detainee's own doctor must be carried out in the presence of police medical personnel, thereby removing *fear of collusion* as a justification for deferring the exercise of a detainee's right.<sup>67</sup> In contrast, a telling CAT exchange involved one committee member criticizing the lack of efforts to introduce a training programme for medical personnel in the recog-

63 CAT/C/SR.91, paras. 23, 34, 47 and CPT Report, Northern Ireland, paras. 26-36.

64 CPT Report, UK (CPT/Inf (91)15), para. 57.

65 *Ibid.*, paras. 86 ff., 154, 159, 165.

66 CAT/C/SR.91, para. 48.

67 CPT Report, Northern Ireland (CPT/Inf (94)17), para. 67 and CAT/C/SR.91, para. 29. The presence of police personnel during medical examinations is actually contrary to the usual demands of the CPT, which emphasize the need for confidentiality. Cf. CPT Second General Report (CPT/Inf (92) 3), para. 38.

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dition of torture victims, followed by a second committee member describing the government's counter argumentation as 'encouraging'. The government delegation had argued that such efforts were superfluous, given the absence of complaints.<sup>68</sup> Furthermore, the CAT's discussion also suffered from repetition. For instance, not less than six committee members asked the government representatives to cite the text and contents of Article 134 of the Criminal Justice Act, which penalizes acts of torture.

Few examples can be reported of specific government actions taken in response to the committees' recommendations and comments. In its response to the CPT report on England, the government hinted that many measures had already been initiated independently of the report.<sup>69</sup> These measures were largely due to the recommendations of an inquiry commission appointed to investigate the English prison system following a series of riots in 1990. The commission issued conclusions and recommendations similar to those found in the CPT report.<sup>70</sup> Nevertheless, the activities of the CPT do not seem superfluous as they have been successfully called upon by the prison administration to mobilize funding for improvements.<sup>71</sup> In addition to this outcome, three recommendations and two comments were met with positive action by the government. These measures relate to the storage of body-belts outside the silent-cell area, the transfer of juvenile prisoners from Leeds to another prison, the expressed intention to encourage prison governors to avoid the 'uprooting' of remand prisoners after court appearances, the organization of groups for cleaning certain sanitary installations and the introduction of a programme to combat cockroach infestation in a women's prison.<sup>72</sup> It should be added, however, that the status of some of these positive responses remains vague. For instance, regarding the transfer of juvenile prisoners, nothing was said about whether the measure constituted an improvement.

The CPT's recommendations in its report on Northern Ireland met with a reserved government response, particularly concerning improved safeguards for the protection of terrorist suspects. In this area, the government promised only that a review of the emergency legislation would be undertaken. Only two measures, both related to individual aspects of the prisoners' day-to-day treatment, were introduced in response to the CPT report. Prisoners in the 'assessment unit' in Belfast were granted one hour of outdoor exercise, and steps were taken to guarantee confidentiality in cases of HIV infection.<sup>73</sup>

68 CAT/C/SR.91, paras. 38 and 46.

69 Response of the UK Government (CPT/Inf (91)16).

70 Woolf and Tumin (1991), *Prison Disturbances April 1990*. Report of an Inquiry by The Rt. Hon. Lord Justice Woolf (Parts I and II) and His Honour Judge Stephine Tumin (Part II). For an analysis of the conducting of the inquiry, see Morgan, 'Woolf: In Retrospect and Prospect', 54 *The Modern Law Review* (1991) 713.

71 This was stated by Andrew Coyle, Governor of Brixton Prison, at the Seminar on the Implementation of the ECPT, Strasbourg, 5-7 December 1994.

72 Response of the UK Government, at 10, paras. 93, 66, 100 and 123.

73 Response of the UK Government to the CPT Report on Northern Ireland (CPT/Inf (94)18), para. 44 f.

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Apart from the CPT procedures, only the CAT's discussion of the state report might have led to specific measures. The government delegation promised to review arrangements for the training of medical personnel for the purpose of detecting symptoms of torture.<sup>74</sup>

A 'second round' of activities took place in 1994 and 1995. Reports submitted by the government of the United Kingdom were discussed by the HRC in July 1995 and by the CAT in November 1995. These procedures exhibited significant overlap as both committees focused their attention on Northern Ireland and the problems of emergency legislation. Another common point of investigation was the treatment of foreigners awaiting deportation. In the course of discussing these two areas of concern, some individual cases were examined by both committees and their concluding remarks and recommendations contain many similarities.<sup>75</sup>

In contrast, during its visit to England and Scotland in 1994, the CPT again examined the conditions of detention in several British prisons, including two inspections of a 'follow-up' nature. The CPT also visited police stations, a psychiatric hospital and immigration authority detention facilities. The Committee was highly critical of practices associated with the detention of prisoners - on remand or convicted - in police stations and the lack of medical treatment for patients in a psychiatric hospital. Comprehensive investigations of the conditions in detention facilities operated by the immigration authority revealed no problems that were not already being addressed. In the prisons visited in Scotland, the CPT expressed particular concern about solitary confinement. The other committees restricted themselves to acknowledging the progress made in building new prisons and refurbishing old ones.<sup>76</sup> Additionally, all the organs expressed their concern about the disturbing problem of prison suicide<sup>77</sup> and their interest in the recent appointment of a 'prison ombudsman'.<sup>78</sup> Nonetheless, these aspects only represent overlaps in certain details, whereas the main points of concern differ between the CPT and the other committees.

Keeping in mind a larger picture of detention-related problems in the United Kingdom, it is surprising that the HRC and CAT barely raised the issue of prison conditions. Indeed, it seems a simplification to merely praise the government for its efforts in modernizing the 'hardware' of the prison system, without taking a careful look at the remaining human problems. In particular, some attempt could have been made to take account of available statistical reports which suggest that efforts to reduce overcrowding by building new prisons will be countered by the growing number of inmates.<sup>79</sup> The construction of new prisons may be a necessary condition for

74 CAT/C/SR.92, para. 23.

75 A/50/40 (Annual Report of the HRC), para. 418 ff. and CAT/C/SR.235, para. 57.

76 CAT/C/SR.234, 34; SR.235, 57 (E.7); A/50/40 (Annual Report of the HRC), 415.

77 CPT Report, UK (1994), 90; A/50/40 (Annual Report of the HRC), 419; CAT/C/SR.234, 34, SR.235, 57 (D.3).

78 CPT Report, UK (1994), para. 124; CCPR/C/SR.1433, para. 51(h); CAT/C/SR. 234, para. 35.

79 Cf. CPT Report, UK (visit 1994), para. 75 ff.



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combating overcrowding, but it is by no means sufficient in itself. Clearly, penal policy will also have to be part of the solution.<sup>80</sup>

In contrast, each of the committees satisfactorily examined the 'new' issue of the treatment of foreigners awaiting deportation. The same applies to the examination of problems specific to Northern Ireland. In its 1995 procedure, the HRC also discussed the situation in Northern Ireland in terms of ill-treatment, although the problem was still examined more in the light of Article 6 ICCPR.

An analysis of the quality of the committees' inquiries favours the CPT. The HRC, for instance, requested information on safeguards for prisoners detained in police stations, without further inquiring into the actual conditions of detention for these inmates. Even without taking the problem of overcrowding into consideration, it is evident that police stations can hardly be adequately equipped to handle longer stays. The CPT, in contrast, discussed these aspects in detail.<sup>81</sup> At times, individual CAT members did not hold themselves to the Committee's thematic mandate. For instance, one member, who criticized the attitude of judges and other penal prosecution authorities as racist, failed to draw a link between a possible violation of the right to equality in judicial proceedings and the rights protected by the UNCAT.<sup>82</sup> Similarly, restriction of the right of accused people to remain silent was described as 'entirely contrary to the rule of law',<sup>83</sup> but the point was not made that it was indeed contrary to the Convention. Besides the usual repetition of questions in the state report discussions, further examples of attention deficit can be observed in the CAT and HRC discussions. For instance, one CAT member requested information on the range of penal sanctions provided for by the law in cases of torture immediately after a colleague explicitly criticized the existing sanction of life sentences for such infractions.<sup>84</sup> Similarly, an HRC member first criticized the provision which denies terrorist suspects the right to contact a lawyer during the first 48 hours of detention and then asked whether such a provision indeed existed.<sup>85</sup>

The procedures carried out in 1994 and 1995 may allow an assessment of the impact of those conducted in the preceding years. Whereas in the state reporting procedures no positive effects could be detected and almost no references were made to former reports, part of the CPT's visit was dedicated to a follow-up inspection of certain prisons. The report showed that, despite the government's efforts, alarming problems continued to prevail. In addition, the follow-up visit revealed two instances where the situation had not improved, even though the government had explicitly stated its intention to implement corrective measures in response to the first report. These instances concerned substandard hygienic

80 This has also been indicated by the CPT, see *Ibid.*, para. 79 and CPT Report Portugal (visit 1995) (CPT/Inf (96) 32), para. 98.

81 CCPR/C/SR.1433, para. 51(f); CPT Report, UK (visit 1994), para. 25 ff.

82 CAT/C/SR.234, para. 57.

83 *Ibid.*, para. 69. Similarly, *id.*, para. 66.

84 *Ibid.*, paras. 76 and 79.

85 CCPR/C/SR.1433, 72 f.

conditions and the 'uprooting' of remand prisoners after their appearance in court.<sup>86</sup>

Government reactions to the CPT report on the 1994 visit again hint in many respects at measures already initiated. However, in contrast to the first visiting procedure, the government declared that it had taken measures on the CPT report in twelve cases (ten recommendations and two comments). This action mainly concerned material improvements in individual institutions, such as renovation measures and the removal from service of heavily criticized cells.<sup>87</sup> Two further recommendations were complied with through management instructions, namely assuring access to sanitary facilities and forbidding the triple occupation of single cells.<sup>88</sup> Smaller modifications of a structural nature were initiated in three instances, including the introduction of an information sheet for systematic distribution to arrested persons in Scotland,<sup>89</sup> the introduction of a separate register for the use of the 'silent cell' in a Scottish prison,<sup>90</sup> and the introduction of confidentiality guarantees for medical consultations for newly arrived prisoners.<sup>91</sup>

#### 4. France

France was the subject of ICCPR state reporting procedures in 1983 and 1988 and of one UNCAT state reporting procedure in 1989. The CPT carried out two regular visits in 1991 and 1996 and two ad-hoc visits in July 1994 (Martinique and Paris). The CPT produced a lengthy report on its visit in 1991, analysing in particular the treatment of persons apprehended by the police and detention conditions in the *maisons d'arrêt*, prisons, administrative detention centres for foreigners and psychiatric hospitals visited. The HRC and CAT devoted little attention to the problems prevailing in France in their discussions carried out in 1988/89, with CAT covering only the penalization of torture in some detail. This Committee came to the remarkable conclusion that 'legislation, judicial practice and preventive machinery in France could usefully serve as a model to other countries in efforts to combat torture'.<sup>92</sup> This is not only surprising after such a brief discussion, but also in light of the CPT's 1991 findings. After having criticized gaps in safeguards as well as the large number of cases of alleged brutality, the CPT concluded that persons arrested by the police in

86 CPT Report, UK (visit 1994), paras. 95 and 125.

87 Final Response of the UK Government (visit 1994) (CPT/Inf (96)12), at 11, 23, 26, 53, 66. In detail, the measures concerned the installation of showers at a police station and an intercom system in a prison visiting area, the removal from service of certain extremely small cells and particular 'silent-cells', the removal of dangerous equipment in certain cells for violent prisoners, the improvement in material conditions in segregation cells at a psychiatric institution and the repainting of a room where body searches are conducted.

88 *Ibid.*, at 69 f.

89 However, the government failed to clarify its view concerning the need to translate the information sheet. See Final Response of the UK Government (visit 1994), at 59; CPT Report, UK (visit 1994), para. 296.

90 Final Response of the UK Government (visit 1994), at 71; CPT Report, UK (visit 1994), para. 354.

91 Final Response of the UK Government (visit 1994), at 37; CPT Report, UK (visit 1994), para. 162.

92 CAT/CSR.27, 36.

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France ran a non-negligible risk of being ill-treated.<sup>93</sup> In addition, several other aspects met with strong criticism by the CPT. Conditions of detention in some stations run by the police or the *gendarmerie* left much to be desired and administrative detention of foreigners was marked by substandard hygiene and the absence of facilities for detainee occupation.<sup>94</sup> Other practices, such as the handcuffing of pregnant prisoners to their beds in a civil hospital prior to delivery and the lack of provision of activities for prisoners held for 23 hours a day in an overcrowded cell, were designated as 'inhuman treatment'.<sup>95</sup> In addition, the CPT noted a constant threat of inhuman treatment in one psychiatric institution, where therapeutic initiatives and safeguards for the application of physical restraints were missing.<sup>96</sup>

Owing to the brevity of the discussions conducted by the CAT and HRC, little thematic overlap may be observed between their procedures. Nevertheless, bearing in mind the CPT's strong criticism, the CAT and HRC obviously failed to take account of a whole range of important problems. What is more, in the light of the CPT's exposure of important gaps in the safeguards against ill-treatment, CAT's presentation of France as a 'model' state seems particularly dubious.

As regards the quality of discussions, the small number of questions posed by the HRC and CAT scarcely permit analysis. In contrast, the CPT report provides detailed analyses of all the issues examined. Questions posed by the HRC were often put forward in an overly generalized manner, even in cases where information had already been provided in the state report.<sup>97</sup> Once again, the CAT's discussion lacked cohesion, even in the matter of the criminalization of torture. Further unevenness was in evidence when one member pursued a line of questioning relating to legal amendments pursuant to the introduction of the European Convention in France,<sup>98</sup> although this Convention does not require implementation by states parties.

Whereas the discussions of the state reports did not lead to any promises by the government delegations, the French government claimed to have reacted with specific measures to nine CPT recommendations and ten comments. Some of these measures related to material improvements in connection with renovation programmes.<sup>99</sup> Other measures aimed at improving the quality of work through the hiring of addi-

93 CPT Rapport, France (CPT/Inf (93)2), para. 11.

94 *Ibid.*, paras. 211 f., 214.

95 *Ibid.*, paras. 90, 97.

96 *Ibid.*, para. 227.

97 For instance, after having received some information on police custody and detention on remand in the report (CCPR/C/46/Add.2, paras. 168, 171, 188), committee members asked for information on 'law and practice concerning preventive detention' (while intending to say '*détention provisoire*'); CCPR/C/SR.802, note 1(a).

98 CAT /C/SR.26, para. 46.

99 Réponse du Gouvernement de la République Française (CPT/Inf (93)2), paras. 266 f., 382, 331 and Rapport de suivi du Gouvernement Français, para. 160. These measures concerned the installation of a call-system for prison cells and a laundry room. Other renovation measures were promised in Réponse du Gouvernement de la République Française, paras. 434, 458, 460 and Rapport de suivi du Gouvernement Français, paras. 164, 175, and provisions were said to have been agreed upon to avoid a worsening of conditions in the detention centre for foreigners in Nice; see Réponse du Gouvernement de la République Française, para. 188.

tional personnel<sup>100</sup> and increasing personnel sensitivity with regard to confinement of psychiatric patients, the quality and distribution of food, and respect for personal intimacy during body searches.<sup>101</sup> Particularly forthright was the reaction of the French government to the CPT's criticism of the practice of handcuffing female prisoners to their beds before giving birth in a civil hospital. The result was the building of a special room for these prisoners and the abolishment of the practice. This measure was accompanied by the establishment of a commission with a mandate to eliminate similar practices in other hospitals.<sup>102</sup> And finally, one 'immediate observation' on the part of the CPT led to the prompt removal of certain police cells. However, some of the positive answers given by the government do not specify measures to be taken. Moreover, few positive reactions can be found to requests for structural changes. In particular, safeguards against ill-treatment by the police have not been improved. While certain positive amendments to the *Code de Procédure Pénale* were made at the time of the government's response, these were withdrawn shortly afterwards. Measures of a more structural nature included the introduction of certain safeguards governing disciplinary procedures,<sup>103</sup> the granting of the right for prisoners to address informal complaints to the President of the CPT and the granting of access to a doctor and to telephones for detainees in a detention centre for foreigners in Paris.<sup>104</sup>

Some of the positive reactions on the part of the French government were cast into doubt with the publication of the CPT report following its 1994 visit to Paris. This visit, a follow-up mission, was designed to review the measures taken by the French authorities in response to the severe criticism expressed by the Committee during its first visit of conditions for arrested persons and, in particular, for foreigners in administrative detention at the *Dépot de la préfecture de la police*. In the course of the follow-up inquiries, the delegation noted that some minor improvements had been introduced, but that substantial changes had not yet been realized.<sup>105</sup> In particular, conditions affecting the health of detainees, such as the provision of natural light in the cells, had not been bettered at all. The CPT observed that promised measures had not materialized.<sup>106</sup> For instance, assurance had been given that foreign detainees would be given access to a medical examination and that arrested persons would be provided with food by the police. The follow-up visit revealed that these promises had not been fulfilled.<sup>107</sup>

100 Réponse du Gouvernement de la République Française, para. 439.

101 *Ibid.*, paras. 531, 434 f., 456, 86 (However, these measures were only promised in the 'Réponse'; the 'Rapport de suivi' was silent on this question).

102 Réponse du Gouvernement de la République Française, para. 251 and Rapport de suivi du Gouvernement Français, paras. 132-146.

103 The duration of a possible prolongation of detention in connection with disciplinary sentences was regulated; see Réponse du Gouvernement de la République Française, para. 342.

104 *Ibid.*, paras. 161, 187.

105 CPT Rapport, France (ad-hoc visit 1994), paras. 9, 16 f.

106 Réponse du Gouvernement de la République Française, paras. 187, 71-74 and 28-36.

107 CPT Rapport, France (ad-hoc visit 1994), CPT/Inf (96)2, paras. 23-26 and 34. For further analysis of the present situation in France see A. Ganoux, *Prevention of Ill-treatment: Report on the Con-*

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### 5. Summary

This analysis reveals little thematic overlap between the reporting procedures of the CAT and HRC and the visit reports produced by the CPT. While the CAT concentrated on questions relating to the criminalization of acts of torture and the HRC discussed only a few issues, the CPT examined conditions of detention and preventive safeguards. This stands in contrast to the procedures followed in the case of the United Kingdom, where all the committees undertook extensive inquiries into the treatment of terrorist suspects in Northern Ireland. Another exception may be seen in the case of Austria where several matters included in the CPT report were taken up by the HRC.

The evidence suggests that only the CAT and HRC failed to exhaustively investigate the most important problems in each state. The quality of discussions of the CAT and HRC was characterized by a lack of cohesion and insufficient preparation on the part of individual committee members. In contrast, the CPT reports contained information of a particularly high standard. These differences in quality may influence the quality of government responses. For instance, vaguely formulated questions in state report discussions may be taken by government delegations as an invitation to reply with overly generalized answers. In contrast, government responses to CPT reports sometimes provided valuable and as yet unpublished material.<sup>108</sup> While government responses to CPT reports still suffered several deficiencies, these were rarely the result of CPT deficiencies.

Tangible results were almost exclusively to be observed in government reactions to the work of the CPT. However, even the contribution of this Committee scarcely inspired governments to undertake structural changes, particularly in the area of safeguards for persons under police arrest.<sup>109</sup> And finally, even where governments have committed themselves to taking action, real improvements may still be a long time coming. There is clearly good cause for continued monitoring.

### B. Comparing Visiting Activities of the CAT, the Special Rapporteur and the CPT

#### 1. Turkey

Turkey was visited by the CPT in 1990, 1991, 1992, 1994 and 1996 (twice), by the CAT in 1990 and by the Special Rapporteur in 1988. Published documents<sup>110</sup> reveal

*ditions of Detention and Treatment of Persons Deprived of Liberty in France* (extracts, full report available in French, 1996).

108 For instance, the German government published numbers on procedures initiated against police and prison officers for 'assault' (§§ 340 and 343 StGB). Statistics in Germany usually do not reveal the professional origin of perpetrators.

109 For an analysis of the reasons given by governments for the rejection of CPT recommendations and comments, see Bank, *supra* note 6, at 359 ff.

110 CPT Public Statement on Turkey (CPT/Inf (93)1); CPT Second Public Statement on Turkey (issued on 6 December 1996); CAT, Summary Account of the Proceedings concerning the Inquiry on Turkey, A/48/44/Add.1; Special Rapporteur on Torture, E/CN.4/1989/15.

parallels in the manner in which the various agencies conducted their visits, including their meetings with government and NGO representatives and detainees and their inspections of places of detention. However, the CPT distinguished itself as superior through the number of visits conducted, the size of delegations sent and the access to detention facilities gained. Further parallels between the different committees can be seen in their concentration on the issues of torture and maltreatment in police custody. However, while the agencies often agreed in their criticisms of gaps in the safeguards, their recommendations sometimes differed in matters of degree. For instance, whereas the CAT recommended the abolition of the 30-day period of 'incommunicado' detention in cases involving terrorists, the CPT demanded legal reforms to reduce the 8- and 15-day periods of 'incommunicado' detention for other cases.<sup>111</sup>

Not surprisingly, CPT observations at times showed greater subtlety. In particular, the CAT seemed to assume that the problem of torture related only to terrorist suspects, and neglected to analyse the position of ordinary suspects. The CPT pointed out that the problem also affected the latter group. The Special Rapporteur restricted himself to selected recommendations on a small number of issues.<sup>112</sup>

As far as can be judged from published documents, only the efforts of the CPT have led to any, albeit few, improvements. These include the introduction of regulations covering the conduct of interrogations, improved access to a lawyer, and shortening of the maximum length of stay in police custody. In addition, the Turkish government has issued circulars and training programmes on human rights education.<sup>113</sup> However, the deepest concerns have not been met with positive action. Thus, for instance, the regulations for suspects tried by state security courts remained outside the reform measures.<sup>114</sup> And, according to CPT's experience, notwithstanding injunctions issued at the highest political level, those measures are in practice being ignored.<sup>115</sup> It is therefore no surprise that the steady flow of complaints about torture in Turkey continue unabated.<sup>116</sup>

111 CAT, A/48/44/Add.1, para. 25; CPT, Public Statement on Turkey, paras. 29, 30, 32. The Special Rapporteur did not recommend any measure in this field, but criticized the maximum duration, see E/CN.4/1989/15, para. 213.

112 For instance, regarding 'incommunicado' detention, the Special Rapporteur only recommended that the access to a lawyer be guaranteed, see E/CN.4/1989/15, para. 233 (a).

113 CPT Second Public Statement on Turkey, para. 2.

114 CPT, Public Statement on Turkey, para. 30. A bill recently submitted to the Turkish Grand National Assembly by the government provides for the maximum period of police custody to be reduced for collective offences from fifteen to four days and in regions where a state of emergency is in force from thirty to seven days, in both cases with possibilities for extension of, respectively, seven to ten days in accordance with judicial discretion. Although this would be a 'step in the right direction' (CPT Second Public Statement on Turkey, para. 8), it cannot be considered sufficient.

115 CPT Second Public Statement on Turkey, para. 4.

116 M. Özden, *Dossier Turquie - Torture et impunité: quelles réactions?* (1995) and *Id., Torture and Prisons: From Bad to Worse* (1996). CPT Second Public Statement on Turkey, para. 2 f. In addition, it is interesting to note that Denmark has recently submitted an ECHR state complaint against Turkey for a violation of Article 3 ECHR.

#### IV. Conclusions and Recommendations

The introduction of the ECPT and the creation of the UN Special Rapporteur on Torture have substantially improved the quality of international efforts to combat torture and other forms of inhuman treatment. The procedure of the CPT - conducting visits to places of detention independent of the consent of the host state - is without precedent in the fight for human rights. The Committee and its staff have managed to implement a highly efficient system and have produced many impressive reports. Although not invested with comparable powers, the Special Rapporteur has succeeded in implementing procedures that were lacking when his mandate was first established. In particular, he has carried out many visits to states where torture is frequently practised, and he has set up an 'urgent action' procedure, enabling him to intervene on behalf of individuals as soon as alarming information comes to hand.

In contrast, the introduction of the UNCAT has only slightly improved existing protection offered by the ICCPR. In particular, the most striking step forward in the UNCAT as regards procedural powers - the inquiry procedure of Article 20 UNCAT - proved to be ineffective on a large scale. Only once in nine years did a state give its consent to an inquiry mission on its territory and in only one further case was the Committee able to belatedly publish a statement on an inquiry conducted *in absentia*. The other procedures foreseen in the UNCAT are virtually identical to those of the ICCPR with its Optional Protocol. Only a few of the substantive regulations in the UNCAT compare favourably to the ICCPR regulations and HRC's general comments. This said, it should be pointed out that the UNCAT does distinguish itself for more thorough discussions of substantive issues related to the struggle against torture.

The fear of overlapping procedures among the new mechanisms has proved unfounded. The visiting procedures of the CPT and the Special Rapporteur rely on different elements. The CPT does not depend on the consent of a state for a visit and is required to keep information confidential. The Special Rapporteur works within the framework of a public procedure and carries out visits only on the invitation of the state concerned. In addition to the difference in the levels represented by these organs (UN and Council of Europe), the CPT follows a policy of influencing situations through 'quiet diplomacy' until the publication of a report, while the Special Rapporteur delivers information at once for international public debate.

The effectiveness of the organs' activities could be enhanced in several respects. The UN-level organs would be well advised to take notice of the standards set by the CPT. Particularly with regard to reporting procedures, both the CAT and HRC should formulate their recommendations as concretely as possible, so as to clarify the minimum standards they expect. Furthermore, each organ should take careful notice of the activities of the other organs in order to avoid duplications. In the case of reports submitted by states which are also parties to the UNCAT, the HRC should restrict its examination under the ICCPR to issues in which the protection provided

by the ICCPR goes beyond that covered by the UNCAT.<sup>117</sup> Finally, the UN treaty bodies should rejuvenate their systems of discussing state reports with the aim of raising the level of debate and creating greater cohesion, especially by keeping to a structured agenda.

It is evident that the quality of work also depends on resources, including resources to adequately staff the respective secretariats. The UN bodies are clearly under-resourced. In particular, the CAT has the formidable task of supervising the implementation of the Convention throughout the world within two two-week sessions per year, and that with no more than a half-time staff member as secretary. The Special Rapporteur is only slightly better equipped, with one full-time and one three-quarter-time staff member,<sup>118</sup> and with financial provision for three one-week stays in Geneva and for two fact-finding missions of one to two weeks. Obviously, increased funding is one of the most important steps to improving the quality of work. Even the successful work of the CPT is threatened due to staffing shortages,<sup>119</sup> a problem which has clearly produced negative repercussions. Some visits have had to be postponed, and the original aim of paying one regular visit to each Member State every two years has had to be abandoned. In addition, the 'ongoing dialogue' with governments may soon be endangered if the secretariat is not supplemented. The issue seems of particular relevance in light of the new challenges for the Committee coinciding with the possible ratification of the ECPT by Russia, which would more than double the geographical area as well as the number of prisoners within the scope of the Convention. These challenges can only be met with significant staffing increases.

A problem faced by all the international organs is the often quite limited impact of their work. This is even true for the CPT, which is sometimes confronted by obstructive government reactions. In particular, recommendations for structural changes are rarely met with positive responses. In addition, governments sometimes make promises to abide by recommendations but do not hold to them. While the CPT's work often has a direct impact on non-structural issues, it is to be hoped that a steady pursuit of structural changes will also succeed in the long run.

The crucial point for enhancing impact can be found in concerted follow-up procedures. Governments will not be very impressed by the recommendations of international bodies in the absence of subsequent efforts to pressure them into implementing the recommendations. Thus, for instance, the new procedure at the end of discussing a state report will only produce effects if the measures taken by the states are monitored in some way. Of course, the most effective results could be

117 This concerns all areas in which protection from 'inhuman and degrading treatment' is not provided for in UNCAT, whose provisions are partly limited to 'torture'. In particular, under the ICCPR, protection from expulsion where this entails the risk of inhuman or degrading treatment and the inadmissibility of evidence obtained through such treatment is to be guaranteed. In contrast, see Articles 3 and 15 UNCAT.

118 One of whom is an intern paid by the British government.

119 For the criticism of the committee on this issue see CPT Fifth General Report, para. 28.



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produced with the help of an international control network representing the international bodies themselves. The CPT seems to have succeeded up to now in establishing an ongoing dialogue with governments, which also includes the possibility, not only of making follow-up observations in the course of the next regular visit, but also of carrying out ad-hoc visits of a purely follow-up nature.

In contrast, follow-up procedures seem to be underdeveloped in the framework of the UN treaty bodies, especially regarding state reporting procedures. Fact-finding mechanisms for follow-up purposes have been established only as a means of supervising the implementation of final views submitted by the HRC at the end of individual complaints procedures.<sup>120</sup> In one case the HRC was even invited for a follow-up visit, during which it checked the measures initiated on the basis of final views in the procedure for individual complaints.<sup>121</sup> Similarly, there have been proposals for offering follow-up visits within the framework of the ICCPR state reporting procedure,<sup>122</sup> though unfortunately no action has as yet been taken. This is clearly an area in which improvements can be made. In particular, follow-up visits would constitute an effective monitoring tool.<sup>123</sup>

Nevertheless, none of the organs – including the CPT – are in a position to provide close and continuous monitoring of new developments. Thus, one solution might be to make better use of the contribution of NGOs. For instance, as soon as the results of any procedure have been published they could be transmitted to international NGOs, who could then ask their local partners to monitor implementation *in loco* and to report on any relevant developments. To some extent, this approach is already used by the Special Rapporteur.

Furthermore, the prospects for effective protection against torture and inhuman treatment of individuals, not only in the member states of the Council of Europe, but throughout the world, will depend on the introduction of a global system of visits. The elaboration of the Draft Optional Protocol to the UNCAT therefore deserves particular attention. The example of UNCAT's ineffective inquiry procedure may serve as a reminder against watering down the functional elements of a global visiting procedure. Instead, the structures of the ECPT and the successful work of its Committee should serve as a guide for the further drafting process.

120 A/50/40 (Annual report of the HRC), para. 550 ff.

121 *Ibid.*, para. 557 ff.

122 A/48/40 (Annual report of the HRC), para. 18 and Annex X, para. 8.

123 One could imagine a further tool inhering in the practice of expressing support for the recommendations of international organs through a political body. In this sense, the Council of Europe's Committee of Ministers has invited the member states to comply with the guidelines on police custody as laid down in the CPT's Second General Report (cf. CPT 6th General Report (CPT/Inf (96)21), para. 14). Although far from constituting a prompt reaction, such a declaration might be useful in exceptional cases. If applied more often, however, it could run the risk of undermining the authority of the expert body.