

REFORMING THE UNITED NATIONS
A CLOSER LOOK AT THE ANNAN REPORT

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Foreword

In April 2005 the government asked the Advisory Council on International Affairs (AIV) to produce, as quickly as possible, an advisory report on the report by the United Nations Secretary-General (UNSG) containing proposals for the reform of the United Nations (UN), entitled 'In Larger Freedom: Towards Development, Security and Human Rights for All'.¹

The reason for this request by the government was the recent series of written proposals on the reform of the UN² – more specifically, the report by the High-level Panel on Threats, Challenges and Change ('the HLP Report'), the report 'Investing in Development: a Practical Plan to Achieve the Millennium Development Goals' ('the Sachs Report') and the UNSG's response to both of these in his report 'In Larger Freedom' ('the Annan Report'). This last report will be the main topic of discussion in the preparations for the Summit of world leaders to be held in New York in mid-September 2005.

In the request for advice, the AIV was asked to give its general views on the Annan Report, and also to focus on the following three aspects:

- strengthening the role of the UN as the appropriate forum for discussing and dealing with global problems and, following on from this, strengthening the position of the UNSG as the person who calls attention to such problems and helps to determine the international agenda from the vantage point of the notion of the common interest. The AIV was asked to indicate what elements it could find in the report that were conducive to this.
- improving the effectiveness of UN development institutions. The UNSG's report makes a number of short-term recommendations. The request also referred to long-term objectives, as formulated in other UN documents.³ The AIV was asked to give its views on the matter, with reference to the UNSG's proposals in this area (in paragraph 197 of his report).
- the role of civil society and the private sector in countering current threats. The UNSG emphasises the importance of an active civil society and a dynamic private sector being involved alongside states and NGOs, but makes very little further reference to this.

In assessing these issues the AIV also refers to the advisory letter that it drew up on its own initiative concerning the Sachs Report. The letter, which has since been adopted and is entitled 'Observations on the Sachs Report: How do we attain the Millennium Development Goals?', deals mainly with a number of topics in the field of development. Those topics will therefore only be discussed in general terms in this report. The AIV is also currently working on two other advisory reports that touch on these issues or concern parts of them – more specifically, on the

1 UN Doc. A/59/2005, 21 March 2005.

2 The request, dated 19 April 2005, is reproduced in Annexe I.

3 See, in particular, the recent UNGA Resolution UN Doc. A/RES/59/250, 'The Triennial Comprehensive Policy Review of Operational Activities for Development of the United Nations System', 14 March 2005.

appropriate role for the Netherlands in the new EU, NATO and UN, and on a strategy to combat the proliferation of weapons of mass destruction combined with the role of traditional disarmament forums. It should also be noted that the AIV has to work to an extremely tight schedule. It therefore had to set priorities when drawing up this report and was unable to examine every aspect of the request in detail.

The main thrust of this report concerns what is needed in order to achieve an effective, reformed UN ('effective multilateralism'). It also looks at how the Netherlands in particular could contribute to the reforms. The report begins by broadly examining the importance of the aforementioned reports against the background of previous proposals for reform (Chapter I). Chapter II focuses on the broad definition of security adopted by the UNSG and his conflict prevention strategy. Chapter III deals with the notion of collective security and the use of force, and Chapter IV discusses a number of institutional aspects of the proposed reforms. The main recommendations are summarised in Chapter V.

The advisory report was drawn up by a specially appointed joint committee chaired by Prof. N.J. Schrijver (CMR), with members from every section of the AIV. The other members were Prof. P.R. Baehr (CMR), Prof. C. Flinterman (CMR), Prof. B. de Gaay Fortman (COS), Ms B. T. van Ginkel (CVV), A.P.R. Jacobovits de Szeged (CVV), Dr B. Knapen (CEI), Lt. Gen. (retd.) H.W.M. Satter (CVV), Ms H.M. Verrijn Stuart (CMR) and E. P. Wellenstein (CVV). The committee was able to avail itself of the knowledge and experience of several civil service liaison officers, particularly Ms K.S. Adhin (DVF/CI). Secretarial support was provided by T.D.J. Oostenbrink (CMR executive secretary) and trainees Ms M.E. van Weelden and Ms A.S. Narain.⁴

The AIV discussed this report on 20 May 2005 and instructed the specially appointed joint committee to finalise it. The report was adopted on 27 May 2005.

4 During the preparatory phase the joint committee was able to make use of texts that were then being drawn up by Ms P.J. Genee, executive secretary to the committee producing the advisory report on the appropriate role for the Netherlands in the new EU, NATO and UN.

I Introduction

In the sixty years since the United Nations was founded, it has constantly been faced with difficult challenges of various kinds. During the first few decades, the way in which it functioned was largely determined by the decolonisation process and the Cold War. Among other things, decolonisation had an impact on the composition of the UN General Assembly (UNGA) – the number of Member States more than tripled – and the functioning of other UN bodies.⁵ During the Cold War the right of veto often made it practically impossible for the Security Council to reach decisions – a stalemate that was to last until the fall of the Berlin Wall. In the 1990s the end of the Cold War gave the organisation a new impetus that was reflected in activities in the fields of peace and security, development and human rights. The debate on UN reform has resumed with renewed vigour, especially following the attacks of 11 September 2001 and the ensuing armed interventions in Afghanistan and Iraq. Since the end of the Cold War, pressure for reform within the UN has led to a large number of reports containing proposals for improvement.⁶ The UNSG's report 'In Larger Freedom', which is the subject of in this advisory report by the AIV, is the latest, as well as the most far-reaching and comprehensive, in the series.⁷

The time now seems ripe for extensive reform of the UN, and the UNSG's report appeals to Member States to rise to the challenge of new threats, lest the organisation be eroded by increasing dissension between countries and so become increasingly irrelevant. In his report, which is presented as a single package of coherent measures, the UNSG emphasises the need to focus equally on the organisation's three main goals, which are mutually reinforcing: development, peace and security, and human rights. He does so with reference to numerous proposals which he has largely classified by analogy with President Franklin D. Roosevelt's famous 'Four Freedoms' speech.⁸

5 The Security Council has been expanded just once, from eleven to fifteen members. That was in 1965, on the basis of UNGA resolution Res. 1991 A (XVIII). The Economic and Social Council (ECOSOC) has been expanded twice: from 18 to 27 members in 1965, and from 27 to 54 members in 1973. Since then, all attempts at reform have foundered.

6 These include 'Agenda for Peace' (1992, updated in 1995), 'Agenda for Development' (1994), 'Agenda for Democratisation' (1996), 'Renewing the United Nations: a programme for reform' (1997), the Brahimi Report on peace operations (2000), 'the Millennium Report, We the Peoples' (2000), 'Strengthening the United Nations: an agenda for further change' (2002), 'the High-level Report on Threats, Challenges and Change' and 'the Sachs Report' (both 2005). There have also been regular discussions – from the very outset, in fact – about UN reform, the Security Council (concerning the need to make it more representative), UN funding and the lack of military and policing resources available to the organisation.

7 For a detailed publication on the various attempts at reform, see J. Müller (ed.), 'Reforming the United Nations: New Initiatives and Past Efforts', The Hague, 1997, Vols. I-III; 'Reforming the United Nations: the Quiet Revolution', The Hague, 2001, Vol. IV.

8 In his State of the Union address on 6 January 1941, President Roosevelt referred to what he called the 'four freedoms': freedom of speech, freedom of every person to worship God in his own way, freedom from fear and freedom from want for everyone, anywhere in the world.

The chapters on freedom from want, freedom from fear and freedom to live in dignity are complemented by a chapter containing institutional proposals for the strengthening of the UN. There is no reference to freedom of religion, but in today's world there is a need for the leading religions to develop closer ties and find common ground, a view the UNSG implicitly seems to share.⁹

Faced with a combination of old and new challenges, the UN must now therefore ask itself once again how it can credibly continue to pursue the goals laid down in the UN Charter in the changed context. This advisory report by the AIV examines whether the UNSG's main proposals offer a solution to this. As indicated above, the AIV has already published a separate advisory letter on the main aspects of 'freedom from want'. The letter is a response to the earlier report by Jeffrey Sachs and is therefore, in the interests of completeness, annexed to this report in full.¹⁰

The present report examines other issues in more detail and concludes that it is important to work towards a reformed, more effective UN. In the interest of this type of 'effective multilateralism', the UNSG's proposals should be given a proper chance and as much support as possible. That is the AIV's general approach in this report, but it also makes critical comments and points out other options in certain cases, especially as regards expansion of the Security Council and the proposed Peacebuilding Commission and Human Rights Council.

9 See the UNSG's speech of 7 April 2005 in UN Doc. SG/SM/9808.

10 See AIV advisory letter 'Observations on the Sachs Report: How do we attain the Millennium Development Goals?', The Hague, April 2005, Annexe III to this report.

II A broad definition of security and a conflict prevention strategy

This chapter discusses a number of major issues associated with the broad definition of security adopted by the UNSG. As he sees it, this broad definition includes not only the traditional threats of inter-state and intra-state warfare, but also cross-border components such as the continuing proliferation of various weapons of mass destruction, international terrorism, serious environmental pollution, the spread of infectious diseases such as HIV/AIDS, as well as poverty, large-scale violations of human rights and the issue of displaced persons and refugees. The UNSG's report states that all these threats are equally important and interrelated.¹¹ Development, human rights, good governance, health and socioeconomic and environmental issues must therefore form a major part of this broad security policy, on a coherent and equal footing. The AIV endorses this view but notes that, for this to be successful, UN bodies, and especially the Security Council, will have to conform to demanding new concepts of what their work entails and the speed with which they must act.¹² The focus here must be on early intervention, but – as the UNSG rightly indicates (see also Chapter IV) – 'old' problems such as Palestine, Kashmir and Korea remain to be solved.

II.1 Prevention

Paragraphs 83 and 84 of the UNSG's report specifically and urgently call attention to prevention. Early action must be taken to ensure that the world does not continue to be the scene of conflicts and terrorist disasters. Article 1, paragraph 1 of the UN Charter mentions the great importance of prevention, and pursuing these goals is therefore in the common interest. The use of military resources should be seen as a last resort, but should not necessarily be delayed until violence actually erupts – forceful intervention at an early stage may sometimes be required in order to prevent such an eruption. The UNSG's great emphasis on development and on preventing inter-state conflict is therefore logical.¹⁴ Freedom from want is one of the UN's essential goals. Poverty reduction not only saves lives, but also makes countries better able to combat terrorism, organised crime, proliferation of weapons of mass destruction and the spread of infectious diseases. It is the principal basis for a smoothly operating collective security system, and can

11 UN Doc. A/59/2005, paragraphs 76-86.

12 See for example AIV, 'The Netherlands and crisis management: three issues of current interest', Advisory Report No. 34, The Hague, March 2004; AIV/CAVV, 'Failing States: a global responsibility', Advisory Report No. 35, The Hague, March 2004; and AIV, 'Response to the Sachs Report: how do we attain the Millennium Development Goals?', advisory letter, The Hague, April 2005.

13 Article 1, paragraph 1 of the Charter reads: 'To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.'

14 Ibid., Note 11; see also AIV/CAVV, 'Humanitarian intervention', Advisory Report No. 13, The Hague, April 2000.

prevent major problems that would otherwise have to be tackled later on, often at great expense. Over the past sixty years the UN and its specialised agencies have carried out numerous activities in the economic, social, cultural and humanitarian spheres and have often achieved impressive results. The importance of this work to the maintenance of world peace should not be underestimated. Reconstruction and development, which are vital factors in achieving lasting improvements, are extremely difficult areas in which the UN has so far been unable to achieve satisfactory results. The UNSG's proposals to develop new instruments in the fields of prevention, reconstruction and development (such as the Peacebuilding Commission discussed below) could also be extended to other fields, for example through cooperation with regional organisations and/or extensive cooperation on police and judicial matters.

II.2 Responsibility to protect

The UNSG specifically opts for the concept of 'responsibility to protect' (paragraphs 135 et seq.) This concept of collective responsibility to protect people is largely derived from the 2001 report by the International Commission on Intervention and State Sovereignty.¹⁵ The emphasis on individuals' interests leads to a new perspective on the principle of sovereignty, whereby states, and specifically national governments, are required to ensure that their people are not exposed to large-scale violence or human rights violations.¹⁶ Sovereignty must never be used by states as a pretext for oppressing their own people – one reason why there has been such considerable development of standards in this area, resulting in an extremely extensive system of human rights conventions and declarations. If a state is unable or unwilling to protect its people, the community of nations as a whole has a responsibility to protect them and to intervene if necessary. Today countries can call each other to account for their human rights records. As a result, the range of matters 'essentially' (Article 2, paragraph 7 of the Charter) within a state's domestic jurisdiction has in the years since 1945 gradually been reduced, or responsibility for such matters has been shared with other states and international organisations. This has implications for the operational capabilities that the UN needs in order to act. For this and other reasons, the AIV endorses the UNSG's recommendation of the 'responsibility to protect' principle as a new cornerstone for collective security.

II.3 Multi-track strategy to combat terrorism

The UNSG's report deals extensively (particularly in paragraphs 87-94) with the threats that terrorism poses to states and to the UN as a whole. The nature of these new, acute threats, including the operation of worldwide terrorist networks and the threatened use of nuclear, biological or chemical weapons, demands new responses. The UNSG therefore calls for the UN to adopt a coherent, comprehensive strategy of its own (paragraph 88).

15 See 'The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty', International Development Research Centre, Ottawa, Canada, December 2001. See also UN Press Release SG/SM/7136, GA/9596 (a speech by UNSG Kofi Annan to the UNGA in 1999, in which the same concept is already formulated) and AIV/CAVV, 'Humanitarian Intervention', Advisory Report No. 13, The Hague, April 2000, Chapter III.1.

16 See also De rechten van de mens in het buitenlands beleid ('Human rights in foreign policy'), House of Representatives, 1978-1979 session, 15571, Nos. 1 and 2, foreword. The foreword to this document essentially formulates the same philosophy as is set out here, especially in the passage from the Act of Abjuration of 16 July 1581 that is quoted there.

In addition to preventing and combating terrorism, with respect for human rights, the UNSG makes an appeal for a rapid consensus on a set of measures. Among other things, he calls for an unambiguous definition of terrorism, a comprehensive multilateral convention on terrorism in general and nuclear terrorism in particular, and the appointment of a Special Rapporteur on terrorism by the UN Commission on Human Rights.¹⁷ The AIV supports these proposals, but notes that it will be difficult to achieve a rapid consensus on some of these items. The appointment of a Special Rapporteur is an important first step. It is also vital to achieve a consensus on a clear definition of terrorism, failing which it will be almost impossible to reach agreement on the remaining unresolved issues in the talks on a comprehensive convention on terrorism before the September Summit.¹⁸ These issues include 'state terrorism' and the distinction between terrorism and violence in the context of peoples' legitimate struggle for self-determination. In this connection the AIV endorses the UNSG's position that, whatever noble political motives may be involved, the premeditated, deliberate killing of innocent civilians can never be justified. At the same time, there are great differences of opinion on how to combat terrorism (a comprehensive or a selective approach). The present talks have reached deadlock, and none of the parties seems open to concessions. The Netherlands, which has historically built up a tradition in this area, could and should take the initiative in talks on these matters.¹⁹ It should also be remembered that the first major post-war treaty against a specific form of terrorism was adopted at a diplomatic conference in The Hague in 1970.²⁰ In this connection the AIV recommends that the government express its agreement with recent Security Council decisions and the UNSG's statement endorsing the definition of terrorism propagated by the HLP.²¹

Changes are also needed within the UN with regards to protection against and the fight against terrorism. Action by the organisation in this area is still not sufficiently consistent or coherent. Evidence of its fragmented approach can also be seen in the large number of different treaty regimes. Furthermore, the emphasis on respect for human rights in the

17 The UNGA has since (13 April 2005) adopted a Convention on Nuclear Terrorism. On 21 April 2005 the Commission on Human Rights adopted by consensus a resolution that provides for a Special Rapporteur on terrorism.

18 See the UNSG's appeal in paragraphs 91 and 161 of the report 'In Larger Freedom'.

19 See also a recent letter to the House of Representatives containing a response by the government to the UNSG's report (DVF/CI-112/05, 26 April 2005, p. 5).

20 The 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft, which entered into force on 14 October 1971.

21 See the unanimously adopted UN resolution S/RES/1566 (2004) of 8 October 2004, which defines terrorism as follows: '...criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organisation to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and calls upon all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature.' See also the HLP report, UN Doc. A/59/565, Paragraph 164, and the Annan Report, UN Doc. A/59/2005, paragraph 91.

fight against terrorism is not yet sufficiently reflected in the work of the Counter-Terrorism Committee and the Security Council's sanctions committee.²² In particular, there are no safeguarded procedures for appeals against decisions to place individuals on sanction lists. Another issue that needs to be examined is whether, and if so how, the proposed Human Rights Council and the strengthened Office of the High Commissioner for Human Rights will be involved in this specific area.

II.4 Arms control

The UNSG's report deals extensively with a strategy to prevent the spread of nuclear, biological and chemical weapons of mass destruction (paragraphs 85 and 97-105). The AIV acknowledges the seriousness of the wide-ranging and extremely diverse issues raised by weapons of mass destruction and the need to tackle them. It has meanwhile received a request to produce a separate advisory report on this topic, and has therefore decided not to focus specifically on it in this report.

The AIV also wishes to draw attention to the issue of small arms proliferation, a subject it examined in detail back in 1998.²³ Although the UNSG devotes only limited attention to this problem, he does consider it very important.²⁴ On other occasions the UNSG and the Security Council have focused extensively on this threat to peace and security – a threat that has a major adverse impact on social and economic development and the human rights situation.²⁵ It also plays an important part in the fight against terrorism. Many of the attacks carried out so far have involved 'small arms'. To make matters worse, the period within which people trading in such arms can be prosecuted is often rather short. The AIV therefore backs the UNSG's call for the development of a number of international instruments to eliminate this problem. It is important that the issue of small arms proliferation be given a prominent place in the talks on a comprehensive arms control treaty.

II.5 Better equipped and more effective peacekeeping operations

The UNSG's report also deals with peacekeeping operations and post-conflict peacebuilding.²⁶ He attaches great importance to the development of peacekeeping forces, but also notes that a great deal can and should be improved.²⁷ He also notes that the majority of peacekeeping operations are currently taking place in Africa, and that developed countries

22 See UN resolutions S/RES/1267 (1999) and S/RES/1333 (2000) on Al-Qaida and the Taliban.

23 See AIV, 'Conventional arms control: urgent need, limited opportunities', Advisory Report No. 2, The Hague, April 1998, Chapter III.

24 See UN Doc. A/59/2005, paragraph 120. According to UN and NGO figures there are approximately 639 million small arms involved.

25 See, for example, UN Doc. S/2002/1053 of 20 September 2002, UN Doc. A/RES/57/72 of 30 December 2002 and UN Doc. A/RES/59/86 of 10 December 2004.

26 See UN Doc. A/59/2005, paragraphs 111-114, and paragraphs 114-119 on peacebuilding.

27 See also the Brahimi Report, UN Doc. A/55/305 – S/2000/809, <www.un.org>.

are increasingly reluctant to make troops available.²⁸ He therefore emphasises the need for the UN to act in cooperation with regional organisations rather than in competition with them.²⁹ In recent advisory reports the AIV has explicitly stated its views on various issues associated with peacekeeping forces.³⁰ It endorses the stated position on contribution of troops and cooperation with regional and interregional organisations, but believes this should be put into proper perspective. Our changing world has various international and regional organisations that are having difficulty adjusting to new threats and tasks – tasks they were not really set up or equipped to deal with, and for which there is so far no funding (particularly at a time of severe cuts in defence budgets all round the world). The AIV believes it would be wise for each organisation to focus initially on its strengths. Organisations could then concentrate on remedying their shortcomings and making the necessary improvements. The great emphasis that both the HLP and the UNSG have placed on prevention, conflict management, the post-conflict situation and reconstruction, as specific areas in which more should be done by the UN, is in keeping with this, and the AIV believes it deserves full support. Interregional and regional organisations such as the EU, NATO, the OSCE and the African Union could play a useful role here. The new treaty establishing the African Union seems to indicate that its predecessor's helplessness and non-interventionist stance are now things of the past. The African Union therefore deserves the full support of Western countries for its efforts to build capacity to conduct crisis management and peacekeeping operations on behalf of the UN.³¹

At the same time, the AIV takes the view that classic 'blue helmet' peacekeeping operations will continue to be an important UN task. It also recognises that many crisis management operations are becoming 'tougher'.³² Nevertheless, in some cases the UN itself may be the only organisation that can acceptably carry out such operations, and it will need well-equipped troops, modern equipment and a robust mandate if it is to cope with arduous tasks even in difficult circumstances (such as the current UN operation in eastern Congo). In principle, however, military intervention that is certain or likely to involve actual use of force should mainly be left to a suitably equipped regional or interregional organisation, with or without outside support or cooperation. 'Escalation dominance' – the ability to step up military capacity on the spot if the situation unexpectedly deteriorates – is an important factor. If more robust action is needed, it must first be examined whether the UN has the necessary resources. If not, such operations must be carried out by an organisation that can provide, and where necessary step up, the required capacity. Accordingly, the AIV does not consider it self-evident that the UN as such should have its own military capabilities for these purposes. What needs to be encouraged is a well-integrated approach, and here the Security Council and the UN Secretariat have a key role to play.

28 The High-level Panel notes that the Member States are in large part to blame for the failure of peace missions in the 1990s (UN Doc. A/59/565).

29 See UN Doc. A/59/2005, paragraph 112.

30 See note 12 above.

31 This was also emphasised in a speech by Minister Van Ardenne (The Hague, 9 May 2005) on Dutch policy goals in the field of development cooperation in connection with the September Summit.

32 See, in particular, AIV, 'The Netherlands and crisis management: three issues of current interest', Advisory Report No. 34, The Hague, March 2004.

As the HLP and the UNSG have also indicated, there is still a great deal to be done, particularly in the areas of prevention, reconstruction and development, all of which are essential for lasting improvements. These are the areas in which the UN can and should do more. In the post-conflict phase, for example, it is more important for the UN to have swift access to well-trained police units than to have military capabilities of its own. In the power vacuum that generally arises, the first priority is to restore and maintain law and order on the spot, so as to achieve and to guarantee lasting security.

II.6 Settlement of disputes and international courts

The AIV strongly endorses the UNSG's emphasis on peaceful settlement of disputes.³³ All available resources in the fields of preventive diplomacy, reconciliation and mediation should be used for this purpose. It is important here to identify and assess potential problems at an early stage by systematic investigation of the facts, and to offer protection to those who risk becoming victims of violence and/or human rights violations. A logical consequence of this is that the UNSG will need additional funding to attain this goal, and the AIV believes such funding should be provided.

The establishment and operation of the International Criminal Court (ICC) is an unprecedented development in the international rule of law. The AIV considers it vital to ensure that the Court is diverted as little as possible from its course by international politics and/or internal politics in zones of conflict. The recent Security Council decision to make the ICC responsible for prosecuting those suspected of violating international law in Darfur has established the Court more firmly within the UN system.³⁴ That even the United States, which is known to be opposed to the ICC, has – by abstaining rather than voting against the resolution – allowed it to be used in this specific situation is a development whose importance should not be underestimated. In adopting this resolution, the Security Council has sustained the broader interpretation of Chapter VII of the Charter that was initiated in the early 1990s with the establishment of the ad hoc international criminal tribunals for the former Yugoslavia and Rwanda.

The ICC very much needs the UN if it is to function well and efficiently. It is a criminal court that should confine itself to criminal investigation, prosecution and adjudication. Prevention of violent conflict, mediation and promotion of peace in conflict and post-conflict situations are not among the specific tasks and objectives of a criminal court; at most they can be indirect but welcome effects. In order for the ICC to perform its duties properly, support and appropriate policymaking by the UN will be required. This could include the aforementioned investigations in zones of conflict, protection of ICC officials and continuous coordination and exchange of information with the special rapporteurs, the new Human Rights Council and the Peacebuilding Commission.

By setting a good example, the ICC can also influence the development of the rule of law in individual states.³⁵ This is bound up with the complementary jurisdiction of the ICC, which only acts where national judicial systems are themselves unable or unwilling to

33 UN Doc. A/59/2005, paragraphs 108-113.

34 See Security Council Resolution 1593 of 31 March 2005.

35 In this connection, see also the equally interesting report by the UNSG entitled 'The rule of law and transnational justice in conflict and post-conflict societies', UN Doc. S/2004/616.

investigate and prosecute violations.³⁶ This may encourage states to enable fair trials to take place, and prosecutions by the ICC itself can set an example by showing that anyone can be prosecuted, regardless of political or military rank. Furthermore, anyone is entitled to a fair trial, whatever group of suspects they may belong to and however atrocious the acts they are suspected of committing may be.

In recent decades the International Court of Justice, which has existed for much longer and is enshrined in the Charter, has proved extremely useful in resolving border disputes between states.³⁷ In addition, its judgments on such matters as the lack of consular support for people condemned to death in the United States and its advisory opinions on the lawfulness of threatened or actual use of nuclear weapons or the construction of a barrier between Israel and the West Bank have become increasingly relevant and well-known. The AIV supports the UNSG's call for greater use of this relatively straightforward legal resource. Further simplification and greater transparency of its procedures, and increased public access to its documents, may make countries even more committed to it. This is necessary, for the functioning of the Court is hampered by capacity problems. Political and financial support from every country is needed to solve them. Whether this will lead to greater compliance with the Court's opinions and rulings is another matter.

36 See Articles 1 and 17 of the ICC Statute.

37 Examples include disputes between Libya and Chad, Botswana and Namibia, Indonesia and Malaysia, and Cameroon and Nigeria.

38 See UN Doc. A/59/2005, paragraph 139.

III Collective security and the use of force

The UNSG's report deals briefly with the politically ultra-sensitive issue of the conditions under which force can be used as a means of guaranteeing or restoring international peace and security. A striking element is the UNSG's recommendation that the Security Council adopt a resolution laying down the criteria for possible use of force, to be used by the Council as a guide when reaching decisions on the use of force under UN auspices.

The UNSG identifies three problem areas in which there is profound disagreement about the use of force: (1) preemptive action to counter imminent attack, (2) preventive action to counter latent threat, and (3) protective action on behalf of civilians in other states who are threatened with genocide or similar crimes. In the UNSG's view, preemptive action to counter imminent attack is covered by the right to self-defence as formulated in Article 51 of the UN Charter. This right can be exercised both individually and collectively. The AIV endorses this interpretation and has argued for it at length in a joint CAVV/AIV advisory report.³⁹ In principle, military action to counter purely latent threats cannot be covered by Article 51.

The AIV shares the UNSG's view that primary responsibility for maintaining international peace and security lies with the Security Council, which should shoulder that responsibility. Using a very broad interpretation of the term 'threat to the peace', the Security Council has often already done so and has taken both diplomatic and coercive measures to counter such threats. The recent referral of the situation in Darfur to the International Criminal Court is a good example.⁴⁰ As regards the third problem area, which can also be termed the 'humanitarian intervention' issue, the UNSG merely asks rhetorically whether large-scale human rights violations, genocide, ethnic cleansing and other such crimes against humanity should not also be seen as threats to the peace within the meaning of Chapter VII of the UN Charter. They certainly should, and indeed the Security Council has branded such situations threats to the peace on various occasions.⁴¹ The key question is still what should happen if the Security Council fails to act because of disagreement among its members. The response from the UNSG, and more specifically the HLP, is that the workings of the Security Council need to be improved so that this question will no longer arise: 'The task is not to find alternatives to the Security Council as a source of authority, but to make it work better.'⁴² This is a good principle, and one that the AIV fully endorses. However, given the harsh reality that the Security Council is sometimes deeply divided and paralysed in the face of humanitarian emergencies, the AIV believes that humanitarian intervention under the conditions described in earlier advisory reports should not be ruled out. In fact, previous statements by the UNSG have not ruled out this possibility. The UNSG recommends identifying the criteria under which the Security Council

39 See AIV/CAVV, 'Humanitarian intervention', Advisory Report No. 13, The Hague, April 2000, as well as AIV/CAVV, 'Preemptive action', Advisory Report No. 36, The Hague, June 2004.

40 See S/RES/1593 of 31 March 2005.

41 Examples include the former Yugoslavia, Rwanda and Darfur (Resolutions S/RES/808 of 22 February 1993, S/RES/929 of 22 June 1994 and S/RES/1564 of 18 September 2004 respectively).

42 UN Doc. A/59/2005, paragraph 126.

could, or indeed should, approve the use of force. Factors he mentions in this connection are the *seriousness* of the situation, the proper *purpose* of the proposed military action, *alternative* non-military measures, *proportionality*, and whether the proposed military action has a *reasonable chance of success*.⁴³ The AIV agrees with these criteria – as does the government – and notes that they largely correspond to those advocated by the AIV/CAVV in earlier advisory reports.⁴⁴ Drawing up such criteria would certainly make things clearer and more predictable, and would also – as the UNSG rightly indicates – help make for more transparent and hence more widely respected Security Council resolutions. In this connection, it is important that the Security Council should provide sufficient and consistent justification for its decisions on specific situations.

Nevertheless, the AIV does have some critical comments to make on the UNSG's proposals. First of all, it is the responsibility of the UNGA rather than the Security Council to adopt general resolutions on matters of this kind. Under Article 13 of the UN Charter, it is the specific task of the UNGA to encourage the development and codification of international law. The UNGA has adopted various major declarations on conditions for the use of force.⁴⁵ However, given the need to obtain as much support as possible for such a project from the United States (as well as other countries), the UNSG's proposal that the Security Council should reach agreement on this first is a wise one – assuming such agreement can be reached, which does not seem very likely. Moreover, it is important to recognise that such criteria could emerge independently even if not laid down in a resolution, providing a firm foundation for debates on authority for potential military action and a basis for evaluation in political talks on the subject. This is one more way for the Security Council to arrive at the joint position called for by the UNSG. The AIV therefore advises the government to support these criteria and to welcome the already growing consensus in principle regarding them, whatever form they may eventually take.

43 See UN Doc. A/59/2005, paragraph 126, UN Doc. A/59/565, paragraph 207 and the article by Kofi Annan in *The Economist*, 4 December 2004, pp. 23-26.

44 See AIV/CAVV, 'Humanitarian intervention', Advisory Report No. 13, The Hague, April 2000 and AIV/CAVV, 'Preemptive action', Advisory Report No. 36, The Hague, June 2004, as well as letter DVF/CI-112/05 of 26 April 2005, p. 6.

45 These include the Declaration on the Inadmissibility of Intervention in Domestic Affairs of States (A/RES/2131-XX, 1965), the Declaration on Friendly Relations and Co-operation between States (A/RES/2625-XXV, 1970) and the Definition of Aggression (A/RES/3314-XXIX, 1974).

IV Institutional reforms

IV.1 Functioning and composition of the Security Council

One important aspect of the UNSG's proposals for reform is the composition of the Security Council (paragraphs 167-181). This is not considered representative of present-day global realities, and is felt by many countries to undermine the credibility and legitimacy of Security Council resolutions. Representativeness is all the more important in that the Security Council has interpreted its mandate (including its regulatory powers) more and more broadly over the years, and may well take on additional tasks in the future – tasks that have so far not proved amenable to quasi-judicial or other supervision. Although the idea of changing the composition of the Security Council has been talked about for decades, nothing has so far been done. The UNSG does not make a choice between the two models proposed by the HLP, but does indicate a number of possible requirements. He states that changes to the composition of the Security Council must make it more representative, democratic and accountable, and must not hamper the decision-making process.⁴⁶

The AIV considers greater representativeness of the Security Council a priority issue, and notes with regret that the government no longer refers to 'greater representativeness' as a specific goal in its letters of 25 February and 26 April 2005. Such a position is hard to reconcile with the need to review the composition of the Security Council in the common interest, particularly in the light of its increasing responsibility, and as advocated by the UNSG. The grounds for considering a Member State sufficiently representative to be given a seat on the Council or to be involved in its decisions are the subject of vigorous debate. Representativeness has several elements. The HLP suggests that 'quality criteria' such as a country's number of inhabitants, the size of its economy and its contributions to the UN system and development cooperation (0.7% ODA) should be taken into account in some way. The result would be a better balance between the contributions a country makes to the UN and its say in decision-making.

The AIV agrees with this notion of quality criteria, and therefore endorses the principle of a better balance between the contributions a country makes to the UN and its say in decision-making. It also believes that this should be impressed upon members of the Security Council in anticipation of the review. Incidentally, this is entirely in line with Article 23, paragraph 1 of the Charter, which refers to the contributions members make, or can make, to maintaining peace and security and to other UN goals.

The AIV shares the government's dissatisfaction with the failure to acknowledge countries' efforts within the UN, which is ascribed to a purely rotational system within regional groups. The HLP has suggested that, when selecting a non-permanent member from among their number, regional groups should choose a country out of a 'top three'. This could lead to major contributors being given more of a say than they have at present. The converse is also true, for it is surely unacceptable for countries with permanent seats on the Security Council to make few if any specific contributions to the organisation (troops,

⁴⁶ See UN Doc. A/59/2005, paragraphs 169 and 170. See also the HLP report in UN Doc. A/59/565, paragraph 255.

funding, et cetera).⁴⁷ The AIV also endorses the view that the composition of the Security Council should be adapted to present-day political realities, and that there should be periodic reviews to determine whether further adjustments are needed.⁴⁸ This change in the size of the Security Council can logically be expected to reduce the influence of the now numerically overrepresented European (especially western European) countries. This may also have implications for the Netherlands. To help cushion the impact of this when non-permanent members are elected, the AIV believes that a serious effort should be made to work towards a Security Council seat for the EU. Since this seems unlikely to happen for the time being, it would be an interesting idea to attach a representative of the EU Council Secretariat to Germany's Council seat, should it obtain one. This would make the seat rather more European in character. The consultations with other EU Member States by EU Member States with permanent or temporary seats on the Security Council, as provided for in Article 19 of the Treaty of Amsterdam, should also be taken as seriously as possible.

To sum up, the AIV believes that it is particularly important to work towards a Security Council that is more representative of as wide a geographical range of countries as possible. If this can be achieved, the Netherlands should press for any possible consensus on the subject.

IV.2 Establishment of a Peacebuilding Commission

One of the UNSG's proposals is to set up a Peacebuilding Commission, assisted by a Support Office within the Secretariat (paragraphs 114-120). This proposal is very similar to the recommendations that the AIV/CAVV themselves made in their advisory report on Failing States in May 2004. The proposed Commission can be seen as an institutional reflection of the important 'responsibility to protect' principle mentioned earlier. At present, civilians are often left unprotected by both their national governments and the international community. All too often they are the victims of powerless or unwilling authorities, or of inoperative or poorly enforced international arrangements that were meant to put an end to conflicts. This is particularly true of fragile states, whose authorities do not have a complete monopoly on the use of force and, if only for that reason, are unable to guarantee their citizens security. More than half of the countries where war has taken place relapse into violence within five years. The UNSG notes that there is an institutional vacuum, so that countries are not given enough assistance in the transitional stage from war to peace and reconstruction. That is why, in the light of the HLP's proposals, he wants to set up a new intergovernmental commission that will undertake a series of tasks in the immediate wake of armed conflict, with assistance from a Peacebuilding Support Office within the Secretariat. His proposals on this are discussed in further detail in an explanatory note.⁴⁹

The mandate of the proposed Peacebuilding Commission includes providing assistance in drawing up and implementing comprehensive peacebuilding strategies, both generally and in country-specific situations. The Commission must see to it that:

47 See UN Doc. A/59/565: 'The contributions to the UN of some of the five permanent members are modest compared to their special status', p. 62.

48 See, for example, the letters to the House of Representatives on UN reform dated 1 June 2004, 25 February 2005 and 26 April 2005.

49 See the UNSG's Explanatory Note of 19 April 2005 on the Peacebuilding Commission.

- all relevant international players are brought together to ensure that the international community supports national authorities as effectively as possible
- the priorities set are in keeping with the realities of the country concerned
- funding is secured both for early priorities and for medium and long-term recovery
- it remains an active forum for coordination and for resolving any complications or differences of opinion during the peacebuilding process.

The Commission should also have an important part to play in monitoring the progress of demobilisation, disarmament, reintegration and reconstruction programmes.

As regards the composition of the Commission, the UNSG believes it should consist of a subgroup of Security Council members, an equal number of ECOSOC countries, countries that are leading suppliers of troops, and major donors. He envisages some fifteen to twenty members, working on the basis of consensus. In country-specific situations, the UNSG also wants to see – for example – national authorities, representatives of international financial institutions and relevant regional organisations involved.

The UNSG proposes that the new body report to both the Security Council and ECOSOC. Depending on the phase involved, the Security Council should itself determine which other players need to be involved. The AIV is broadly in favour of this, but strongly urges the government to give serious consideration to the feasibility of the earlier recommendations by the AIV that the Commission should be a subsidiary body of the Security Council (which it is hoped will by then be geographically more representative) and thus have the powers it needs.⁵⁰ After all, the whole point is to guarantee peace and security and to create conditions for reconstruction and development. However, the AIV does see a possible role for ECOSOC as tension in a given country subsides and the peacebuilding process advances. In such cases, ECOSOC could gradually take over the leading role from the Security Council.

The UNSG's proposals diverge in various other respects from those of the HLP and also from those of the AIV/CAVV. Strikingly, the UNSG's report states that the Commission should focus entirely on the post-conflict reconstruction phase and should not normally be involved in conflict prevention and early warning. In his explanatory note he does say that post-conflict peacebuilding is a key factor in preventing further conflict, but he does not want the new Commission to interfere with existing conflict prevention mechanisms and procedures. He may also be concerned about interfering prematurely in the internal affairs of countries that believe they can avoid lapsing into violence without outside assistance. However, the earlier AIV/CAVV advisory report on Failing States noted that the international community often becomes involved too late, and that conflict prevention and management are especially important in the phase of mounting tension.

The AIV therefore finds this somewhat artificial restriction of the work of the new Peacebuilding Commission to the post-conflict phase – something apparently endorsed by the Dutch government in its letters of 25 February and 26 April 2005 – unconvincing, as well as inconsistent with the strong emphasis on prevention and 'responsibility to protect'. However, early advisory activities and early administrative assistance on request do appear to be given rather more attention in the more detailed proposals set out in the UNSG's explanatory note, which states that UN Member States can request advice from

⁵⁰ See AIV/CAVV, 'Failing States: a global responsibility', Advisory Report No. 35, The Hague, March 2004, Chapter VII and p. 91.

the Commission, as well as financial assistance from a Peacebuilding Fund, at any stage. The AIV recommends that this line be pursued.

The UNSG also feels that the new fund should as far as possible be financed out of voluntary contributions, rather than the regular UN budget. The AIV has grave doubts about this, and would far prefer that the proposed fund be financed out of the regular budget. If that runs into political obstacles, at the very least a basic level of financing will need to be provided for operations in the initial phase. That financing should come from the regular budget. Furthermore, the UNSG wants to give the Commission a purely advisory role, and feels that it should operate on the basis of consensus. In view of the Commission's many important functions, the AIV does not agree. It should have decision-making powers, as well as its own funding and the other resources that it will need in order to carry out such a range of tasks.

The AIV endorses the UNSG's recommendations that the Secretariat be better equipped by providing the new Commission with the backing of a Peacebuilding Support Office and a Peacebuilding Fund. The Support Office, acting in close cooperation with the Office of the High Commissioner for Human Rights, should, in particular, work to promote the rule of law.⁵¹ The AIV sees the establishment of the rule of law at national level as an essential factor in maintaining peace and encouraging respect for human rights.

IV.3 Human Rights Council/Office of the High Commissioner for Human Rights

The UNSG's report proposes that the existing Commission on Human Rights (CHR) be replaced by a new Human Rights Council.⁵² He first presented this idea in a speech at the 61st session of the CHR on 7 April 2005, and set it forth in more detail in an explanatory note entitled 'United Nations Human Rights Council', dated April 2005.

In general terms, the AIV greatly welcomes the decision to focus more closely on human rights. When the UN was set up, principal organs were created for peace and security (the Security Council), the economic, social and cultural fields (ECOSOC) and non-self-governing territories (the Trusteeship Council), but not specifically for human rights.⁵³ The Commission on Human Rights is a functional commission of ECOSOC. Given the increased interest in human rights since 1945, the UNSG should be commended for now seeking to put human rights on the same footing as the other policy areas and to link them more closely to the Security Council. He proposes that the Human Rights Council be elected by a two-thirds majority of the UNGA. This would give the new body more prestige and authority and would make it more accountable. In order for the Council to have completely independent status, the Charter will have to be amended. The AIV feels it is important to take advantage of the existing momentum, and therefore fully supports the UNSG's proposal on this. Since amending the Charter is likely to take some considerable time, the AIV proposes that the Human Rights Council operate as a subsidiary body of the

51 See for example UN Doc. A/59/2005, paragraphs 137 and 138.

52 See, in particular, paragraph 183 of the UNSG's report.

53 See Articles 1(1) and 1(2) of the Charter for the areas in which the Security Council and the UNGA operate, and Article 1(3) (first half of the sentence) for the area in which ECOSOC operates. The second part of Article 1(3) concerns the importance of human rights.

UNGA until such time as the amendment is made, in order to respond to the serious criticism of the current situation.⁵⁴

However, one serious disadvantage of the proposed Council is that there is no guarantee it will eliminate the main objections to the present Commission on Human Rights ('politicisation', 'double standards', insufficient focus on economic, social and cultural rights, etc.). The UNSG's proposals for a 'society of the committed' do not seem well thought out, for even though the present composition of the CHR is to some extent representative of UN membership as a whole, it does not constitute what the UNSG is alluding to here. Consideration should instead be given to other criteria formulated by the AIV on earlier occasions. Even then it is doubtful whether serious violators of human rights could be excluded from such institutions.⁵⁵

The UNSG proposes that the Human Rights Council be smaller than the present CHR, and implicitly suggests a return to the original number of members, which is eighteen. The AIV has no particular preference regarding the exact number of members, provided that minimum standards of representativeness, credibility and decision-making effectiveness are met. In that case, it is likely that between 24 and 35 members would be realistic. The UNSG makes no proposals as to how members will be elected, but it seems inevitable that this will again be done on a 'regional basis', with all the drawbacks that that entails.

The UNSG has made some comments about the role and function of the proposed Human Rights Council. The most important of these is that each Member State should be periodically screened for its observance of human rights, using a peer review system. However, it is not a good idea for a political body such as the Council to carry out peer reviews independently. Since peer reviews are meant to yield objective findings, use should instead be made of the knowledge and experience of the existing treaty committees and the Special Rapporteurs. Nor should peer review be voluntary. This proposal by the UNSG would make it easy for notorious and serious violators of human rights to escape punishment, which the AIV feels cannot be the intention. Another drawback is that a great deal of time and energy would be wasted discussing situations in countries where there are few human rights problems. The UNSG also proposes that scope be created for the discussion of urgent crises, but he does not indicate who exactly will decide what an urgent crisis is. In practice, such choices will always be made in a political context, and it is questionable whether such a system could avoid the politicisation and selectiveness that have already aroused such serious criticism.

The UNSG assumes that the Human Rights Council will be located in Geneva. The advantage of this is that Geneva will continue to be the main centre for UN human rights activities. However, it does not solve the problem, already mentioned in earlier advisory reports by the AIV, that the Council will not be able to exert much influence on the political decision-making centre in New York. Although it is proposed that the Council should be able to decide for itself where meetings will be held, in all likelihood – if only for financial

54 If a decision is made to establish a Human Rights Council (in whatever form), it will eventually also be necessary to consider how this will affect the UNGA Third Committee.

55 See AIV, 'The United Nations and Human Rights', Advisory Report No. 38, The Hague, September 2004, page 20, and the government's response to it (DMV/MR-043/05) of 1 March 2005. See also alternative models such as are used by the Forum for Indigenous Peoples (indigenous experts elected by governments and government representatives) or the ILO.

reasons – this will seldom be outside the place where the Council has its headquarters.⁵⁶

This location is also important because of the need for the Council to work with the Office of the High Commissioner for Human Rights (whose position must in any case be strengthened) and other human rights mechanisms. The AIV naturally endorses the UNSG's comments on improved communication and cooperation, and feels that the High Commissioner should make periodic reports to the Council, particularly on the situation in the countries under discussion. At the same time, the AIV is concerned about the fact that scarcely any mention is made of the special procedures of the present Commission on Human Rights, which over the years have developed into the 'eyes and ears' of the system and are the backbone of analysis and monitoring.⁵⁷ It would be most regrettable if the reforms were to weaken or even eliminate this monitoring system. The AIV feels that this must not be permitted to happen, and that vigorous efforts should be made to ensure satisfactory division of tasks and cooperation between the proposed new Council and other bodies (a view the government apparently shares, judging by its letter of 26 April 2005 to the House of Representatives). At the same time, the UNSG's proposals fail to make clear what will happen to the existing Sub-Commission, and what the role of NGOs will be. The AIV believes there is much to be said for preserving the Sub-Commission, at least for the time being, since it basically consists of experts.

Despite these uncertainties (which will have to be discussed in negotiations), the AIV believes that an upgraded Human Rights Council, more capable of effective decision-making, may be more successful in mainstreaming human rights into all UN activities in the future, as well as into the two principal political organs (the UNGA and the Security Council). However, the AIV considers that the government should only agree to the new arrangement if the special procedures are maintained and NGOs are actively involved.

The UNSG also discusses the role of the Office of the High Commissioner for Human Rights (OHCHR).⁵⁸ In this context, among other things, he requests the Commissioner to draw up, within sixty days, an action plan to strengthen the OHCHR's activities. The AIV is aware that this plan has now been submitted to the UNSG, but it has not yet been made public, so the AIV cannot comment on it. The AIV has itself emphasised various aspects of the High Commissioner's role above. It also sees a particularly vital role for the High Commissioner in 'mainstreaming' human rights throughout the UN system.⁵⁹ The AIV considers it obvious that the OHCHR should have more funding and staff (including field staff) for this purpose, and has emphasised this in many of its advisory reports. The AIV very much welcomes the involvement of the OHCHR in Security Council discussions and negotiations. Monitoring and encouraging compliance with the resolutions that are adopted is a logical extension of this. A hitherto somewhat neglected part of that task is monitoring the UN's own compliance with human rights obligations. The AIV also feels that this

56 If, as at present, there is not enough funding and the UNGA Fifth Committee continues to use its power to prevent enough from becoming available, there is little hope of flexibility.

57 The UNSG did mention the importance of these procedures in his speech to the Commission on Human Rights on 7 April 2005, but there is scarcely any reference to them in his report 'In Larger Freedom'.

58 See UN Doc. A/59/2005, particularly paragraphs 142, 144, 145 and 146.

59 See AIV, 'A human rights based approach to development cooperation', Advisory Report No. 30, The Hague, April 2003, and AIV, 'The United Nations and Human Rights', Advisory Report No. 38, The Hague, September 2004.

is clearly a task for the OHCHR. The same applies to gathering information on violations of international humanitarian law and accumulating and making available expertise on investigation of violations of international human rights law and humanitarian law. In this way the OHCHR can also make a meaningful contribution to the work of the International Criminal Court (ICC).

IV.4 The UNSG's powers and staff

The UNSG's report also discusses proposals to strengthen the Secretariat (particularly in paragraphs 184-193). As the senior UN official, under the terms of the UN Charter (Articles 97-102), the UNSG is the organisation's guardian and motivator and is effectively also the protector of the common interest, which it is his task to promote. The proposals to strengthen the UN must therefore be seen in this light, and in drawing up this report the AIV has also used this idea as a guide when assessing the specific proposals. In practice, despite his senior position, the UNSG currently has very limited political and operational latitude to make his organisation work effectively. Much depends on the person that occupies the post. Earlier comments by Kofi Annan, as well as by other senior UN officials, point to an organisational structure in which all decisions, however small, must be reached by consensus, there is too little funding for the work to be done, and conflicting mandates are issued.⁶⁰ Although various steps have been taken in the field of management since Annan took office, the organisation still suffers from a lack of transparency, accountability, independence and integrity.⁶¹ More generally, there is a great discrepancy between people's expectations of the UN system and the funds that are made available to it. The present financing system is partly to blame for this. The UN's substantial dependence on voluntary contributions (and its lack of fixed income) make it almost impossible for the organisation to attain ambitious goals in any area. If this tendency towards insufficient financial commitment by Member States and imbalance between voluntary and fixed contributions is not reversed, the organisation's authority and credibility will be undermined. What makes things worse, of course, is that the UN is usually called upon to help in situations in which states can no longer solve their own problems. In such a complex context, it often proves difficult to find funding for new commitments.

The UNSG's specific proposals for a more effective organisation should help solve the existing problems. His wish to create a UN staff with a new level of commitment and capability is therefore logical, and justifies a decision to approve the necessary funding. The AIV advises the government to support the proposals to review all mandates that are more than five years old, to 'renew' part of the staff and to review personnel budgets and administrative systems, provided that these proposals are well substantiated.

The UNSG has since made a number of decisions based on his proposal to establish a cabinet-style decision-making system (paragraph 191). A twelve-member Policy Committee will meet weekly to discuss the more strategic decisions, and a seven-member Management Committee will meet monthly to examine internal organisation and management issues. The new committees will replace a number of existing ones, will begin operating immediately and will fall under the UNSG. A Management Performance Board has also

60 See, for example, Kofi Annan's speech at the World Economic Forum in Davos in 1998, as well as the speech by Deputy UNSG Louise Fréchette at the University of Waterloo on 3 April 2005.

61 Recent examples include the scandals surrounding the oil-for-food programme and the publicised cases of sexual abuse by UN troops in Congo and Angola.

been set up under Deputy UNSG Fréchette to supervise senior staff. It remains to be seen whether these organisational measures will bear fruit, but it is clear that the UNSG is out to achieve changes in the organisation's internal management as soon as possible. The AIV supports him in this.

IV.5 The role of civil society

The request for advice included a specific question on the role of civil society and the private sector. The importance of an active civil society and a dynamic private sector alongside states and NGOs was emphasised with reference to the UNSG's report. In view of the need to complete this report in good time, the AIV will only discuss this topic in broad terms. However, it is so important that it merits a separate report.

The AIV has already made explicit statements on various occasions on the importance and role of NGOs,⁶² noting that they have made substantial contributions in many areas, such as development, the environment and human rights, including the development of normative frameworks. It is therefore concerned about the lack of emphasis on the role and status of NGOs in the proposals. The present Commission on Human Rights has created plenty of room for the involvement of NGOs, and there is a risk that countries will take the opportunity to undermine what they see as the NGOs' privileged position.⁶³ This is something the AIV believes should be prevented from happening, for in its view the input from these organisations in recent decades has been considerable and mainly positive. NGOs will continue to play an important role in the further development of the UN, and one that should not be underestimated. The AIV calls on the government to continue paying sufficient attention to this during the reform process.

The UNSG's report envisages an important role for business in attaining the UN's goals. This is in line with the 1998 Global Compact and also with the detailed discussion of this topic in the UN report on the relationship between the UN and civil society, drawn up by a panel chaired by Fernando Cardoso of Brazil and published in June 2004.⁶⁴ The report discusses in detail how important NGOs and the private sector are to the legitimacy and future functioning of the UN in all areas.⁶⁵ The UNSG also discusses this at various points. For instance, he emphasises that developing countries have a share of responsibility for their development (see for example paragraph 37), and in this connection he shows great confidence in the power of the private sector (see paragraph 39). He adds that the Millennium Goals will never be realised without the support of these sectors of society.

62 See, for example, AIV, 'The functioning of the United Nations Commission on Human Rights', Advisory Report No. 11, The Hague, September 1999, and AIV, 'The United Nations and Human Rights', Advisory Report No. 38, The Hague, September 2004.

63 For some critical comments on the role of NGOs, see also AIV, 'The United Nations and Human Rights', Advisory Report No. 38, The Hague, September 2004, section II.4.

64 See UN Doc. A/58/817, 'We the peoples: civil society, the United Nations and global governance', 11 June 2004.

65 An important part can also be played here by the national human rights institutes set up in many countries on the basis of the Paris Principles.

The AIV agrees that the private sector has an important part to play, and is encouraged by the large number of partnership agreements signed in recent years in pursuance of the commitments made at the 2002 World Summit on Sustainable Development in Johannesburg. Paragraph 6 of the advisory letter written in response to the Sachs Report, which is mentioned in the introduction and annexed to this report, specifically discusses the link between development and security and the private sector. The AIV re-emphasises the importance of that link and the need to strengthen it in order to tackle the problems in many of the world's developing countries effectively.

IV.6 Coherence of the UN system

One major implication of the adoption of a broad definition of security is the need to coordinate the various parts of the UN properly. Much progress can be made here. Many organisations in the development field, as well as many other areas in which the UN operates, still have their own agendas, powers and funding arrangements. Moreover, the countries that play an important part in decision-making vary from organisation to organisation. The same critical analysis has been made by former UNSG Boutros Boutros-Ghali.⁶⁶ Admittedly, there is increasing coordination between the various organisations in the development field, but a central system to ensure coherence within the UN does not yet exist.⁶⁷

The UNSG addresses this at length in paragraphs 193-213 of his report, but does not make enough specific or long-term proposals.

In the request for the advisory report, the government refers to the more detailed recommendations contained in the already adopted but not yet implemented UNGA resolution on the Triennial Comprehensive Policy Review of Operational Activities for Development of the United Nations System,⁶⁸ recommendations that are in line with proposals on the subject by the Netherlands and like-minded countries. However, the AIV was unable to provide substantiated, well-considered advice on this complex issue in the brief time allotted for the production of this report.

The AIV notes that the UNSG's specific recommendations for improving the effectiveness of the UN's development institutions focus on strengthening local UN missions and on the national level. There is also a proposal to set up a Council of Development Advisers, but no very clear evidence as to what the actual value of this would be. This calls to mind earlier, problematic advisory bodies such as the Committee on Development Planning and the High-Level Advisory Board on Sustainable Development. The AIV considers that the proposals on humanitarian aid, which are mainly aimed at improved staffing and funding and protection of internally displaced persons, deserve support.

66 See the speech by Boutros Boutros-Ghali, 'The United Nations Crisis and Its Reform' at the Habitat Centre, New Delhi, on 10 February 2005.

67 For instance, development work is now carried by organisations including UNDP, UNICEF, UNFPA, WFP, UNHCR, UNEP and by specialised agencies such as FAO, WHO, ILO and UNESCO, as well as by multilateral financial institutions such as the World Bank and the IMF.

68 See UN Doc. A/RES/59/250 of 14 March 2005.

As regards system-wide coherence in the field of the environment, the UNSG proposes creating a better-integrated structure, particularly given the current complexity of international environmental agreements involving monitoring mechanisms and institutions such as UNEP, UNDP, FAO, UN-Habitat, UNESCO and UNICEF. The government considers these proposals important but too limited,⁶⁹ a view shared by the AIV.

⁶⁹ In fact, France, Sweden and a number of other countries have proposed that a World Environment Organisation be set up to give this goal of system-wide coherence greater political stature.

V Summary

The AIV's conclusion is that it is important to work towards a reformed, more effective UN. To encourage this type of 'effective multilateralism', the UNSG's proposals should be given a proper chance and as much support as possible. That has been the AIV's general approach in this report, but it has also made comments and pointed out other options in certain cases. In doing so, it has looked at how the Netherlands in particular could contribute to the reforms.

Broad definition of security

In line with its earlier advisory reports, the AIV welcomes the UNSG's decision to adopt a broad definition of security. For this decision to be successful, however, UN bodies, and especially the Security Council, will have to conform to demanding new concepts of what their work entails and the speed with which they must act. The UNSG's proposals to develop new instruments in the areas of prevention, reconstruction, human rights monitoring and development therefore deserve support.

Responsibility to protect

The UNSG has opted for the concept of collective 'responsibility to protect'. If a state is unable or unwilling to protect its citizens, the community of nations as a whole has a responsibility to protect them and to intervene if necessary. This has implications for the operational capabilities that the UN needs in order to act. For this and other reasons, the AIV endorses this principle as a new cornerstone for collective security.

Terrorism: definition and strategy

The AIV supports the recommendation to adopt a coherent, comprehensive strategy for preventing and fighting terrorism, with respect for human rights. Organisationally too, there is room for improvement within the UN. Although it may be difficult to achieve quick results, the AIV urges the Dutch government to take the initiative in talks on these matters. In particular, the AIV recommends that the government express its agreement with recent Security Council decisions and the UNSG's statement endorsing the definition of terrorism propagated by the HLP.

Weapons of mass destruction

The AIV acknowledges the seriousness of the wide-ranging and extremely diverse issues raised by weapons of mass destruction and the need to tackle them, and will discuss this in a separate report. It also supports the UNSG's appeal for new international agreements to curb international trade in small arms.

Peacekeeping operations/peacebuilding

The AIV supports the focus on peacekeeping operations and post-conflict peacebuilding, and refers to a number of recent advisory reports specifically dealing with these topics. It endorses the stated position on contribution of troops and cooperation with regional and interregional organisations, but believes this should be put into proper perspective. The AIV believes it would be wise for each organisation to focus initially on its strengths. Regional organisations, particularly the African Union, also deserve the full support of Western countries for their efforts to build capacity to conduct crisis management and peacekeeping operations on behalf of the UN.

The AIV takes the view that classic 'blue helmet' peacekeeping operations will continue to be an important UN task, if only because the UN is in some cases the only organisation

that can carry out such operations. The troops involved need to be equipped as well as possible and given 'robust' mandates. In principle, military intervention that is certain or likely to involve actual use of force should mainly be left to a suitably equipped regional or interregional organisation, with or without outside support or cooperation. Accordingly, the AIV does not consider it self-evident that the UN should have its own military capabilities for such purposes. What needs to be encouraged is a well-integrated approach. There is still a great deal to be done, particularly in the areas of prevention, reconstruction and development, which are essential for lasting improvements.

Settlement of disputes

The AIV strongly endorses the emphasis on peaceful settlement of disputes. All available resources in the fields of preventive diplomacy, reconciliation and mediation should be used for this purpose. It is logical that this will require additional funding.

The establishment and operation of the International Criminal Court (ICC) is an unprecedented development, and the AIV considers it vital to ensure that the Court is diverted as little as possible from its course by international politics and/or internal politics in zones of conflict. The ICC should confine itself to criminal investigation, prosecution and adjudication. In order for it to perform its duties properly, effective cooperation with the Security Council as well as support and appropriate policymaking by the UN will be required.

The AIV supports the UNSG's appeal to make fuller use of the International Court of Justice. Further simplification and greater transparency of its procedures, and increased public access to its documents, may make countries even more committed to it. This is necessary, for the functioning of the Court is hampered by capacity problems. Political and financial support from every country is needed to solve them.

Use of force

As regards use of force, the AIV agrees with the UNSG's interpretation that preemptive action against imminent attack is covered by the right to self-defence as set forth in Article 51 of the UN Charter. The AIV/CAVV presented detailed arguments for this view in a recent advisory report.

The AIV also believes that primary responsibility for maintaining international peace and security lies with the Security Council, which should shoulder that responsibility. Using a very broad interpretation of the term 'threats to the peace', the Security Council has often already done so and has taken both diplomatic and coercive measures to counter such threats. The AIV agrees with the recommendation to draw up criteria for possible use of force under the auspices of the Security Council. Even if not laid down in a resolution, such criteria may emerge independently, and the AIV therefore advises the government to support them.

As regards humanitarian intervention, the key question is still what should happen if the Security Council fails to act because of disagreement among its members. The AIV fully endorses the view that the workings of the Security Council need to be improved so that this question will no longer arise. However, given the harsh reality that the Security Council is sometimes deeply divided and paralysed in the face of humanitarian emergencies, the AIV believes that humanitarian intervention under the conditions described in earlier advisory reports should not be ruled out.

Institutional reforms/expansion of the Security Council

The AIV agrees that the composition of the Security Council needs to change, and considers it important to work towards a Security Council that is more representative of as wide a geographical range of countries as possible. If this can be achieved, the Netherlands should press for any possible consensus on the subject. The AIV notes with regret that the government no longer refers to 'greater representativeness' as a specific goal. Such a position is hard to reconcile with the need to review the composition of the Security Council in the common interest. The AIV feels that there should be a better balance between the contributions a country makes to the UN and its say in decision-making, and also believes that this should be impressed upon members of the Security Council in anticipation of the review. Incidentally, this is entirely in line with Article 23, paragraph 1 of the Charter. The AIV shares the government's dissatisfaction with the failure to acknowledge countries' efforts within the UN, which is ascribed to a purely rotational system within regional groups. The upcoming change in the size of the Security Council can logically be expected to reduce the influence of the now numerically overrepresented European (especially western European) countries. This will also have implications for the Netherlands. To help cushion the impact of this when non-permanent members are elected, the AIV believes that a serious effort should be made to apply quality criteria (such as contributions to international peacekeeping and development cooperation) and to work towards a Security Council seat for the EU. Since this seems unlikely to happen for the time being, it would be an interesting idea to attach a representative of the EU Council Secretariat to Germany's Council seat, should it obtain one. The consultations with other EU Member States by EU Member States with permanent or temporary seats on the Security Council, as provided for in Article 19 of the Treaty of Amsterdam, should be taken as seriously as possible.

Peacebuilding Commission

The proposals to set up a Peacebuilding Commission, assisted by a Support Office within the Secretariat, are very similar to the recommendations that the AIV/CAVV themselves made in their advisory report on Failing States back in May 2004. However, the UNSG writes that the Commission should focus entirely on the post-conflict reconstruction phase and should not normally be involved in conflict prevention and early warning. In contrast, the AIV/CAVV report noted that the international community often becomes involved too late, and that conflict prevention and management are especially important in the phase of mounting tension. The AIV therefore finds this somewhat artificial restriction totally unconvincing. It would also far prefer that the proposed fund be financed out of the regular budget. If that runs into political obstacles, at the very least a basic level of financing will need to be provided for operations in the initial phase. That financing should come from the regular budget. The AIV believes that the Commission should not be limited to a purely advisory role or to operating on the basis of consensus. In this connection the AIV also emphasises that the Commission should be an subsidiary body of the Security Council, so that it has the necessary powers. ECOSOC could then play a larger role during the reconstruction phase. On the other hand, the AIV supports the recommendations to make the Secretariat better equipped.

Human Rights Council

The AIV supports the proposal to set up a new Human Rights Council. To put human rights on the same footing as other policy areas, the Charter will have to be amended. Since this is likely to take some considerable time, the AIV proposes that the Human Rights Council operate as a subsidiary body of the UNGA until such time as the amendment is made. As regards membership, the UNSG is aiming for a 'society of the committed'. The AIV feels that this proposal is not well thought out, and that consideration

should instead be given to other criteria formulated by the AIV on earlier occasions. Even then it is doubtful whether serious violators of human rights could be excluded from such institutions. As for the exact number of members, the AIV has no particular preference, provided that minimum standards of representativeness, credibility and decision-making effectiveness are met.

The AIV has doubts about parts of the proposal concerning the role and purpose of the new Council. The idea of a peer review system raises the question of whether a political body, such as the Human Rights Council, could perform this task independently. The AIV is concerned about the fact that scarcely any mention is made of the existing special procedures and treaty mechanisms in this area. It would be most regrettable if the reforms were to weaken or even eliminate this monitoring system; this must not be permitted to happen. Moreover, peer review would be voluntary, and it is not clear what information it would be based on. Such an arrangement would make it easy for notorious and serious violators of human rights to escape punishment, which cannot be the intention.

The UNSG assumes that the Council will be located in Geneva, as this is the main centre for UN human rights activities and also because of the need for it to work with the Office of the High Commissioner for Human Rights (OHCHR), which has a key part to play in mainstreaming human rights throughout the UN system. The AIV very much welcomes the involvement of the OHCHR in Security Council discussions and negotiations. A hitherto somewhat neglected part of that task is monitoring the UN's own compliance with human rights obligations. This should be remedied. The same applies to gathering information on violations of international humanitarian law and accumulating and making available expertise on investigation of violations of international human rights law and humanitarian law. The AIV also supports the proposals for improved communication and cooperation, and considers it obvious that the OHCHR should have more funding and staff (including field staff) for this purpose.

All things considered, the AIV believes that an upgraded Human Rights Council, more capable of effective decision-making, may be more successful in mainstreaming human rights into all UN activities in the future. The UNSG's proposals on the subject therefore deserve support, and the AIV advises the government to press for the establishment of the Council, while preserving the role of specific human rights procedures and retaining NGO involvement.

UN Secretariat

Under the terms of the UN Charter, the UNSG is the organisation's guardian and motivator. He is effectively the protector of the common interest, and it is his task to promote that common interest. His proposals for a more effective organisation should help solve the existing problems. His wish to create a UN staff with a new level of commitment and capability is logical, and justifies a decision to approve the necessary funding. The AIV advises the government to support proposals regarding internal management, provided that these are well substantiated. The steps already taken by the UNSG to establish a cabinet-style decision-making system should eventually bear fruit, and are therefore supported by the AIV.

NGOs and the private sector

The AIV has already made explicit statements on various occasions, as well as earlier in this report, on the importance and role of NGOs and the private sector, noting that they have made a substantial contribution in many areas, including the development of standards. The role of NGOs in the further development of the UN therefore should not be

underestimated. The AIV calls on the government to continue paying sufficient attention to this during the reform process, especially as there is a risk that countries will take the opportunity to undermine what they see as the NGOs' privileged position – something the AIV believes should be prevented from happening.

The UNSG also envisages an important role for business in attaining the UN's goals. The AIV acknowledges the importance of the private sector here. It discussed this topic at length in a recent advisory letter on the subject with observations on the Sachs Report (see Annexe III). The letter specifically discusses the link between development and security and the private sector. The AIV re-emphasises the importance of that link and the need to strengthen it in order to tackle the problems in many of the world's developing countries effectively.

Coherence and effectiveness

One major implication of the adoption of a broad definition of security is the need to coordinate the various parts of the UN properly. Much progress can be made here. The UNSG's report addresses this at length, but does not make enough specific or long-term proposals.

Finally, the AIV notes that the recommendations for improving the effectiveness of the UN's development institutions focus on strengthening local UN missions. The AIV supports this. There is also a proposal to set up a Council of Development Advisers, but no very clear evidence as to what the actual value of this would be. The AIV considers that the proposals on humanitarian aid deserve support. As regards system-wide coherence in the field of the environment, the UNSG proposes creating a better-integrated structure. The government considers these proposals important but too limited, a view shared by the AIV.

Conclusion

The AIV emphasises the need to make optimum use of the new momentum for reform. The organisation's sixtieth anniversary, the Secretary-General's political stature and the quality of the proposals in his report 'In Larger Freedom' provide a unique opportunity for this. In a world confronted by new threats as well as great challenges, there is now a chance to pursue a more resolute, coherent strategy in all UN activities, in which development, peace and security and human rights will go hand in hand. This is the true value of the UNSG's proposals, which deserve to be put into practice. They represent a new chance for the United Nations.

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Date 19 April 2005
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Encl.
Re UN reforms
Cc

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The Minister of Defence, the Minister for Development Cooperation and I are contacting you about the topic of UN reforms, which is included in the work programme of the Advisory Council on International Affairs for 2005. As stated in your work programme, “[i]n early 2005, the UN Secretary-General is expected to select some of the recommendations in the High-Level Panel report which will be submitted to him in late 2004 and to make preparations with a view to decision-making by the General Assembly in 2005. A timely advisory report or letter is required from the AIV, before summer 2005, indicating which of the elements chosen by the UN Secretary-General will have long-term significance for the Dutch multilateral approach and how those elements can be enshrined in UN and in Dutch and EU policy.”

The United Nations Secretary-General’s report – “In larger freedom: towards development, security and human rights for all” – was issued on 21 March 2005. With a view to the above request, I am asking for the Council’s advice on the report, and in particular the three subjects below. Your advisory report might also touch on the Dutch government’s response to the report from the High-Level Panel, “A more secure world: our shared responsibility”, and the report of the UN Millennium Project Team, “Investing in Development – a Practical Plan to Achieve the Millennium Development Goals”, which was submitted to the House of Representatives on 25 February 2005. I am aware that, at its own initiative, the Council is already studying the latter report.

The Council is also studying two requests for advice related to the questions at issue, namely “The Position of the Netherlands in the new EU, NATO and the UN” and “The traditional disarmament fora and the strategy for preventing proliferation of weapons of mass destruction”.

In your advisory report, I would request that you pay particular attention to:

1. strengthening the role of the UN as the appropriate forum for discussion and dealing with world-wide problems and, following on from this, strengthening the position of the Secretary-General as the person who calls attention to such problems and helps to determine the relevant international agenda from the vantage point of the public interest. What indicators does the Council see in the report which might further develop this point?

2. improving the effectiveness of the UN's development agencies. In his report, the Secretary-General makes several recommendations for the shorter term which are less far-reaching than what is called for in the UN General Assembly resolution on the *Triennial Comprehensive Policy Review of Operational Activities for Development of the United Nations System* (A/RES/59/250) and accord with the proposals of the Netherlands and like-minded countries on this point. For the longer term, radical reforms have been proposed, in particular, grouping the various agencies into "tightly managed entities", dealing respectively with development, the environment and humanitarian action (para. 197 of the Secretary-General's report). I would be interested in having the Council's opinion of this.
3. the role of civil society and the private sector. Within the context of the need for collective action to deal with current threats, the Secretary-General stresses the importance of an active civil society and a dynamic private sector to complement the role of states and inter-governmental organisations without, however, going into further detail. I would be interested in having the Council's opinion on this topic also.

With a view to the Summit to be held from 14 to 16 September before the 60th United Nations General Assembly, it would be appreciated if the Council could submit its advisory report as soon as possible, before the summer, as set out in the work programme. In connection with the meeting between government ministers and the relevant parliamentary committee in June 2005, the House of Representatives has asked to be informed about the Netherlands' preparations for the Summit by 1 June at the latest.

The Minister of Defence, the Minister for Development Cooperation and I look forward to receiving your advisory report in the very near future.

I am sending a copy of this letter to the President of the House of Representatives and the President of the Senate.

Yours sincerely,
(signed)

Bernard Bot

List of abbreviations

AIV	(Dutch) Advisory Council on International Affairs
CAVV	(Dutch) Advisory Committee on Issues of Public International Law
CEI	AIV European Integration Committee
CHR	United Nations Commission on Human Rights
CMR	AIV Human Rights Committee
COS	AIV Development Cooperation Committee
CVV	AIV Peace and Security Committee
DVF/CI	United Nations and International Financial Institutions Department, Coordination and Institutional Affairs Division, Ministry of Foreign Affairs of the Netherlands
ECOSOC	United Nations Economic and Social Council
EU	European Union
FAO	Food and Agriculture Organisation
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
HLP	High-Level Panel on Threats, Challenges and Change
ICC	International Criminal Court
NATO	North Atlantic Treaty Organisation
NGO	Non-governmental organisation
ODA	Official Development Assistance
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organisation for Security and Cooperation in Europe
UN	United Nations
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNGA	United Nations General Assembly
UNICEF	United Nations Children's Fund
UNSG	United Nations Secretary-General
US	United States of America

Advisory Letter**OBSERVATIONS ON THE SACHS REPORT: How do we attain the Millennium Development Goals?**

April 2005

Foreword

In January 2005 the UN Millennium Project Team published the report *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals*, also known as the Sachs report after the team chairman, Dr Jeffrey Sachs.¹ The UN Secretary-General considers this report and that of the High level Panel as important starting points for the recommendations he will be making to the UN summit of Heads of State and Government in New York in September 2005.² All three reports are likely to be influential, both at the preparatory stage and during the Summit itself. The Advisory Council on International Affairs (AIV) therefore notes with interest the Dutch government's response to both the Sachs report and the HLP report.³

This advisory letter focuses on the Sachs report and is being published to coincide with preparations for the forthcoming parliamentary debates on the subject. It is however provisional in nature since the AIV is also drafting a separate response to the Secretary-General's report, which will contain a more detailed examination of aspects relating to the Millennium Development Goals.

The working party which compiled this advisory report consisted of members of the AIV's Development Cooperation Committee. It was chaired by H.A.J. Kruijssen. The other members were F.D. van Loon, G.H.O van Maanen, Professor L.B.M. Mennes, Ms A.N. Papma, Dr L. Schulpen and Professor S. van Wijnbergen. Ms J.A. Nederlof provided editorial support.

1. General assessment

The AIV greatly values the enthusiasm and energy with which the report has been written. The MDGs were not after all carved in stone five years ago simply to become the object of studies and conferences, but to be pursued vigorously and creatively and to be attained within the foreseeable future. The report was written in this spirit. It makes a passionate plea to governments to create the right political climate for a range of actions designed to make an effective contribution to reducing poverty. In fact, it goes further: based on the assumption that some political prophecies are 'self-fulfilling' if they strike the right note, the report not only claims that the political framework is already in place and that the necessary funding can be generated relatively cost-effectively, but also that

1 The full text of the report can be found at <http://unmp.forumone.com/eng_full_report/MainReportComplete-lowres.pdf>. The points made in this advisory letter refer to the full text of the Sachs report and to the corresponding pages in the Overview.

2 High level Panel on Threats, Challenges and Change: *A more secure world: our shared responsibility*. A/59/565 29 November 2004. See: <<http://www.un.org/secureworld/report.pdf>>. Report of the Secretary-General of the United Nations: *In larger freedom: towards development, security and human rights for all*. A/59/2005, 21 March 2005. See: <<http://www.un.org/largerfreedom/report-largerfreedom.pdf>>.

3 Parliamentary Papers 26150, no. 17 of 25 February 2005.

most proposals can be implemented within a relatively short space of time⁴. This is encouraging. However, the AIV wishes to point out that the MDGs themselves are not final goals, merely interim targets. They are a yardstick for measuring how far the international community is genuinely moving towards a structural reduction of poverty in general, and of inequalities within and between countries in particular. The MDGs and their associated programmes are an excellent way of gauging how well countries are managing to uphold fundamental human rights. A progress review will be conducted in 2015: if by then a substantial proportion of the world's population is still living in poverty and being denied the chance to lead a dignified existence, extra global measures will continue to be necessary. After all, even if we attain the MDGs, we will still only have eradicated half the world's poverty and hunger by 2015. What is more, any presentation of global poverty figures must be relativised. The strong economic growth of China and India, for example, partially conceals the economic stagnation of Sub-Saharan Africa. In addition, it is doubtful whether the improvement in income among some impoverished groups from one dollar a day (extreme poverty) to two dollars a day has made any real difference.⁵ In short, then, while there has been some improvement in global terms, this is counterbalanced by deepening poverty in the more disadvantaged parts of the world, such as Sub-Saharan Africa.

The writers of the report have clearly struggled with a number of dilemmas. For example, they strongly urge developing countries and the international donor community to take up their responsibilities. Yet they are not always clear about how this should relate to the external targeting of development processes which the report also advocates. The AIV believes it is important to point out that local ownership and sustainable development are inseparably linked and that donors should not simply 'jump in' if they feel that things are not moving fast enough. Development only has a national support base if the private sector and civil society are also fully involved. The Sachs report addresses the former but gives insufficient attention to the latter.

A second dilemma is the need to set priorities despite the wide-ranging nature of the poverty problem. The report describes a wealth of instruments but fails to indicate which choices would make the biggest contribution to achieving the MDGs in the short term. The recommendation relating to 'quick wins' and 'fast track countries' suggests that rapid results can be achieved, yet underestimates the complexity of the problems.

A third dilemma involves financing. An increase in ODA funding is urgently needed and the international community needs to meet its commitment to set aside 0.7% of GNP as soon as possible. The Sachs report explicitly calls for this, yet after advocating an initial funding boost in 2006 it recommends a lower growth rate in the years leading up to 2015. It is also clear that the MDGs will only be realised if the level of domestic savings and foreign investment goes up. The AIV therefore feels that Official Development Aid should be used partly to boost capacity in developing countries by acting as a lever to

4 The Secretary-General outlines the current situation in the summary to his report. He notes that little headway has been made so far in realising the agreements made in Monterrey and Johannesburg: '...this has been promised but not delivered. That failure is measured in the rolls of the dead – and on it are written millions of new names each year'. Paragraph 32, p. 12.

5 S. Chen and M. Ravallion: *How have the world's poorest fared since the early 1980s?* in: Policy Research Paper 3341, World Bank, Washington DC, 2004, p. 23. The authors concluded that although approximately 390 million people had boosted their income from 1 dollar a day to 2 dollars a day between 1984 and 2001, '... they are still poor by the standards of middle-income developing countries'

encourage domestic savings and foreign investment.⁶

In the sections below, the AIV will look more closely at those aspects of the Sachs report which are particularly vital for successful poverty reduction. It will relate these aspects to Dutch government policy as described in the policy document *Mutual interests, mutual responsibilities: Dutch development cooperation en route to 2015* and in the government report on the eighth Millennium Development Goal.⁷ The AIV will focus on issues requiring the most urgent global attention in conjunction with current Dutch policy.

2. Good governance and security

In previous advisory reports, the AIV has indicated how it sees the relationship between good governance, security and development.⁸ It feels that an integrated approach is needed, since in a complex field of this kind the various elements are interdependent. The AIV believes it is unnecessary to categorise these elements and link them to separate funds, and that this makes an integrated approach more difficult to achieve.

The Sachs report is written from the perspective of poverty reduction and cites good governance and security as fundamental prerequisites for development. The AIV appreciates this, but notes that this approach could also compromise flexibility. After all, imposing conditions on developing countries could prevent many of them from qualifying for international aid. Even worse, it could accelerate the downward spiral of these countries, giving rise to huge regional, global security and hence development risks. The AIV wishes to make one or two remarks in this regard.

The Sachs report recommends that aid should prioritise countries that are pursuing good governance.⁹ Those that have not yet managed to achieve this due to lack of financial or other resources should be offered funding for programmes to improve the quality of governance, administration of justice, human rights and private sector development. The report argues against making substantial investments in poverty reduction in these

6 In his report, the UN Secretary-General makes the following comment: 'In the follow-up to the March 2005 Paris High-level Forum on Aid Effectiveness, donor countries should set, by September 2005, timetables and monitorable targets for aligning their aid delivery mechanisms with partner countries' Millennium Development Goals-based national strategies'. Paragraph 53, p. 17.

The World Bank's *Global Monitoring Report 2005*, published on 12 April 2005, includes an analysis of absorption capacity for aid. This concluded that Sub-Saharan Africa compared unfavourably with Asia. Whereas the five biggest Asian countries were able to absorb a doubling of aid straightaway, the report said of those in Sub-Saharan Africa that 'Overall (they) were found to have the capacity to use additional aid productively if they continued and strengthened their reforms'. <<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/GLOBALMONITORINGEXT/0,,contentMDK:20445926~pagePK:64022011~piPK:292245~the-SitePK:278515,00.html>>

7 Parliamentary Papers: 29234, no. 1, October 2003 and Parliamentary Papers 040182, 25 May 2004, with appendix. The eighth Millennium Development Goal is to 'develop a global partnership for development'.

8 AIV advisory report no. 30: *A human rights-based approach to development cooperation*, April 2003; AIV advisory report no. 34: *The Netherlands and crisis management: three issues of current interest*, March 2004 and AIV/CAVV advisory report no. 35: *Failing States: a global responsibility*, May 2004.

9 Sachs report, p. 110. Overview p. 35. See also the report of the UN Secretary-General, paragraph 36, p. 13: '...the Millennium Development Goals will not work in practice unless supported by States with transparent, accountable systems of governance, grounded in the rule of law, encompassing civil and political as well as economic and social rights, and underpinned by accountable and efficient public administration'.

countries until these improvements have been made. According to the report, the impact of aid on poverty reduction in general terms depends largely on the degree to which it stimulates economic growth. Recent studies have shown that aid is more effective in countries where there is already good governance. The studies also found that aid is more effective in stimulating economic growth in countries where it has first been used to improve local policy and achieve stability. In addition, aid significantly boosts the quality of local policy if measures have been taken to strengthen security and respect for human rights. The AIV feels that the Sachs report's recommendation to invest in a number of 'fast track' countries (i.e. those with a particularly strong commitment to achieving the MDGs) can therefore only apply to those that meet the criterion of good governance or are pursuing an objectively verifiable policy to improve their governance. In countries without these policies, such development financing will have little detectable effect on poverty reduction. Donors should therefore take measures to ensure that the aid they are providing is genuinely helping to improve governance, and that the conditions for an effective approach to the poverty problem are being satisfied. This specifically includes creating the necessary infrastructure and taking measures to further economic development and attract foreign investment.

The Sachs report assumes that development aid can make a significant contribution to conflict prevention, conflict management and post-conflict reconstruction. It concludes, among other things, that swift action and positive incentives in the form of more aid are more effective than sanctions. Yet research has shown that aid for poverty reduction is only effective in post-conflict situations, and then only if very large amounts are given for periods of between four and seven years.¹⁰ The AIV therefore feels that this recommendation needs to be qualified. Aid that is specifically designated for poverty reduction may not immediately be effective in countries with high levels of political instability and economic vulnerability, but under specific circumstances, and provided it is highly targeted, it can help to encourage better conditions for stability and future economic growth. The AIV recommends that certain funds should therefore be used to complement ODA expenditure which is dedicated to attaining the MDGs, especially where donors fail to satisfy the ODA norm.

3. Priority for Africa

The Sachs report devotes special attention to Africa, a focus which is endorsed by the recent report of the Commission for Africa, set up by the British government.¹¹ Sachs suggests various reasons why Africa is lagging behind, but does not see lack of good governance as a primary cause. The AIV is not convinced by these arguments.¹² To begin with, studies have shown that the factors cited in the report are not unique to Africa and therefore do not explain why it is so far behind the rest of the world.¹³ Nor are these factors

10 P. Collier and A. Hoeffler: Conflicts, in: B. Lomborg (ed), Global Crises, Global Solutions, Cambridge University Press, UK, 2004, pp. 129-156. This study is based on an analysis of civil wars in low-income countries between 1965 and 1999.

11 Report of the Commission for Africa: *Our common interest*. March 2005. See <<http://www.commissionforafrica.org/english/report/thereport/cfafullreport.pdf>>. See also the specific focus on Sub-Saharan Africa in the report of the UN Secretary-General, notably in relation to the fight against HIV/AIDS, box 4, pp. 23 and 24.

12 In this context, see also AIV advisory report no. 17: *Africa's struggle: security, stability and development*, January 2001, and AIV/CAVV advisory report no. 35: *Failing States: a global responsibility*, May 2004.

13 Sachs report p. 148 et seq. Overview p. 32. Five causes are cited: 'very high transport costs and small markets; low-productivity agriculture; very high disease burden; a history of adverse geopolitics; very slow diffusion of technology from abroad'.

relatively more important than lack of good governance. The AIV therefore feels that Africa's situation is more probably due to a combination of factors and that good governance and stability should be given far more emphasis as key factors for success or failure.¹⁴

Of the other causes of stagnation mentioned in the report, the AIV feels that HIV/AIDS should be given urgent and specific attention. Failure to put in place, or to recognise the need for, adequate programmes to prevent infection, treat victims and tackle the social and economic consequences of this poverty-related disease is threatening to put Africa back several decades. Unless Africa's AIDS epidemic is contained, any progress towards attaining the MDGs there will be short-lived. The AIV regards the HIV/AIDS situation in Africa as so serious that failure to launch sufficiently coherent programmes to fight the disease must, in its view, be a negative indicator for good governance. It therefore calls on developing countries to give far higher priority to the fight against HIV/AIDS, in conjunction with measures to promote good governance. Initiatives such as those put forward by the Netherlands during its EU presidency should be given strong international backing.

4. Increasing the flow of capital to developing countries

The key message of the Sachs report is that poverty can be eradicated provided sufficient funding is set aside for large-scale investment in, for example, capacity building, infrastructure, education and health care. However, the report assumes that the political willingness to implement the proposed changes exists and does not appear to acknowledge that both this and the capacity of countries in the South to absorb such investment are fundamental prerequisites for success. The AIV wishes to make a number of remarks in this regard.

One of the key aspects examined by the report is funding and how to generate it. The report correctly takes its cue from the conclusions reached by the Monterrey consensus, one of which is that the starting point must be to increase the capacity of developing economies to use their domestic savings more productively. Not only are domestic savings the main source of investment, even in the poorest countries, but national measures geared towards a more effective deployment of these savings are a basic requirement for the productive absorption of investment from abroad.¹⁵ A whole range of national barriers to foreign investment will also need to be lifted. The AIV feels that these aspects should be given specific attention in international talks over the coming months. The report assumes an increase in the domestic savings available for investment of 4% of GNP. The AIV however feels that this is an unrealistic target for a number of countries.¹⁶ Nor should it be forgotten that external aid can sometimes have a negative impact on domestic savings, especially in countries receiving a relatively large volume of aid.

14 The Commission for Africa report states that 'Africa's history over the last fifty years has been blighted by two areas of weakness. These have been capacity – the ability to design and deliver policies; and accountability – how well a state answers to its people.' (p. 12). The report also stresses the need to improve education and healthcare systems, provide aid for children, create better irrigation systems, encourage more trade throughout the continent and realise major infrastructure projects. Donors should at least double the volume of aid they provide, cancel the debts of developing countries, lift trade restrictions (notably on cotton and sugar), increase investments in higher education and in the fight against HIV/AIDS, and set aside an annual USD three billion for security (e.g. peacekeeping missions).

15 The Netherlands' initiative to encourage public-private partnerships for the growth of the financial sector within development cooperation ties in with this.

16 In footnote 6 of its *Global Monitoring Report 2005*, the World Bank notes that Sub-Saharan Africa will need to double its growth to 7% to attain the MDGs. It is thought unlikely that the region will even get close to achieving such a growth rate.

The Sachs report devotes considerable attention to the public sector and hence to the need to boost tax revenue and reallocate priorities within national budgets.¹⁷ At least as important, however, is the need to make better use of savings in the private sector. This is also specifically addressed by the report, thereby effectively underlining the fact that the private sector has an important role in driving development. The report however argues that only ODA grants should be used to meet outstanding financing needs after optimal use of domestic savings, since the poorest countries cannot afford to run up debts.¹⁸ This appears to overlook the fact that there is more than one route by which external savings can reach poor countries and contribute to their development. While it is true that direct investment by foreign companies (Foreign Direct Investment, FDI) is more useful to middle-income countries than to the poorest developing countries, it should still be encouraged since it stimulates direct productive investment and strengthens the tax base of recipient countries without weakening their debt position.¹⁹

There have been various proposals in recent years for new ways to fund increased ODA. One of these is the International Financing Facility (IFF), proposed by the UK government. This is a plan to use the international capital markets to mortgage future ODA contributions from rich countries. The system will enable a far larger volume of ODA to be made available more quickly. The report sees this as a better option than introducing new global taxes.²⁰ Nevertheless, the AIV sees major drawbacks to the IFF, such as interest and other operationalisation costs and the fact that it would reduce the stability of future ODA funding flows. In effect, the increase would be illusory. The AIV also expects Eurostat to raise serious objections to the scheme.

Funding requirement

The report calculates the level of ODA funding that will be needed to achieve the MDGs.²¹ Specific investments in MDG-related measures will require an increase in funding from 0.23% of GNP in 2002 to 0.44% by 2006 and 0.54% by 2015. Within the 0.7% norm, 0.16% will need to be earmarked for activities that are not directly related to achieving the MDGs, such as safety and the environment in the Clean Development Mechanism. The AIV questions these calculations since it feels that juggling with figures and working with averages compromises the international community's firm commitment to allocate 0.7% of GNP to ODA.²² Compartmentalising ODA will also stand in the way of an integrated approach to security and development.

17 The United Kingdom and the G-7's proposals for relieving debts to multilateral financial institutions fall into this category.

18 While the assertion that the poorest countries cannot afford to incur debt is theoretically sound, this would effectively involve the withholding of credit. Such a stance would be a death sentence for economic growth. One of the aims of a development policy should therefore be to take steps to restore the creditworthiness of these countries.

19 World Bank *Global Monitoring Report 2005* (footnote 6): 'For most Sub-Saharan countries, the prospects of attracting FDI are constrained. Costs as a share of lost sales are two to three times larger in Kenya, Tanzania and Zambia than in China and Brazil.'

20 The UN Secretary-General's report also acknowledges the positive aspects of the IFF as a way of boosting ODA in the near future, but points out that other additional and structural measures are needed. Paragraph 31, p. 17.

21 Sachs report, p. 251; Overview, p. 57. Similar figures appear in the UN Secretary-General's report. Paragraph 48, p. 16.

22 In footnote 6 of its *Global Monitoring Report 2005*, the World Bank notes that despite all the commitments that have been made so far, the volume of aid for 2010 is still below 0.32%, which is less than it was in the early 1990s.

The individual EU Member States will need to adjust their ODA commitments in the context of the Barcelona Agreements by increasing the minimum norm agreed for each country from 0.39% in 2006 to 0.44% in 2006 for MDG-related activities.²³

5. The multilateral channel

The Sachs report contains some harsh criticisms of what it sees as the low quality of bilateral and multilateral aid.²⁴ Various studies have been carried out in the Netherlands to gauge the effectiveness of Dutch development aid on poverty reduction. These studies have concluded that some International Financial Institutions (IFIs), notably the World Bank and certain regional development banks, are doing comparatively well.²⁵ Yet although *Mutual interests, mutual responsibilities* describes the benefits of channelling aid through the IFIs and other multilateral institutions, the volume of Dutch aid via these institutions is declining (partly as a result of the Ferrier motion). The AIV regrets this trend and advises the Dutch government to consider increasing funding to the IFIs. Additional funding for other UN bodies should only be considered once they have shown that they can improve the quality and effectiveness of their performance.

The report also makes various suggestions for improving coordination within the UN, for example by encouraging greater cooperation from the UN General Secretariat (UN Development Group). The AIV will be returning to this in its response to the UN Secretary-General's report. However, it urges the UN to avoid any increase in bureaucracy since this rarely improves output. To promote local ownership and a more effective use of funding, the AIV would prefer to see coordination and cooperation take place at individual country level and not, or at least far less, within the head offices of the multilateral institutions.

The heavy burden imposed on developing countries by inadequately coordinated donor actions must also be reduced as quickly as possible. The common practice of dialogue between bilateral donors with little input from multilateral organisations must stop. A more inclusive dialogue should also involve the private sector and private donors. Obviously, such talks should respect the individual input of each actor and lead to shared implementation.

6. Non State Actors

Governments are given considerable attention in the Sachs report due to its emphasis on the importance of good governance. Civil society, by contrast, is somewhat neglected. The report states that civil society is making a positive contribution to development by acting as a 'countervailing power' in achieving, enforcing and upholding respect for human rights.²⁶ However, this contribution is not explored any further. The AIV holds the opinion that civil society in fact plays a far more diverse role in working towards and securing the

23 See also the European Commission memorandum of 12 April 2005 (COM(2005) 133 final (<http://europa.eu.int/comm/development/body/tmp_docs/communication_mdgs_financing_for_development_12_04_2005_en.pdf#zoom=100>)), which calls on each Member State to raise its ODA allocation from 0.44% in 2006 to 0.51% in 2010, and to 0.7% in 2015.

24 Sachs report, p. 196 et seq. Overview, p. 38 et seq.

25 Interministerial Policy Review: *The effectiveness and coherence of development cooperation*, no. 1. The Hague, 2003, pp. 45-46.

26 The UN Secretary-General's report states: 'Not only is civil society an indispensable partner in delivering services to the poor at the scope required by the Millennium Development Goals but it can also catalyse action within countries on pressing development concerns, mobilising broad-based movements and creating grass-roots pressure to hold leaders accountable for their commitments'. Paragraph 38, p. 13.

MDGs than is suggested by the report. Long before the Copenhagen Social Summit in 1995, for example, civil society organisations were already keeping aspects of the MDGs²⁷ on the political agenda through a series of national and international campaigns.

Civil society organisations also make a direct contribution to the MDGs by implementing aid programmes in weak or failing states or in countries that are unwilling or unable to prioritise serious problems such as HIV/AIDS. They work at local level to help build and strengthen institutions in countries in the South where government-to-government dialogue is not possible. This improves the chances of a more equitable distribution of public funding.

The private sector also receives attention in several places in the report. The AIV sees this as crucial, given that poverty reduction is largely a matter of creating opportunities for people to generate an adequate income in both the formal and informal sectors. The AIV wishes to draw attention to a well-documented practice which highlights the importance of expansion of both the formal and informal sectors as drivers of economic growth. The Sachs report persuasively argues that the problems of rural and urban areas alike can only be resolved through substantial investments in infrastructure, middle-management training and good governance. Without this investment, the 'market' cannot make a structural contribution to resolving problems. This analysis appears to assume that recipient governments, guided and supported by the international donor community and large amounts of ODA, will be capable of making the necessary investments and carrying through the appropriate measures. However, it is difficult to find examples of countries where this formula has proved successful. By contrast, countries such as China, India and Ghana – where the government has given the private sector sufficient scope to attract capital and enterprise, which has in turn strengthened the public sector – have been far more successful. The World Bank's *Global Monitoring Report 2004* also calls for priority to be given to improving the business climate.²⁸

The Sachs report makes no mention of the informal sector. Yet it is here that the bulk of the poverty being targeted by the MDGs is concentrated. Nor does it address the issue of microcredit or microfinancing, even though their effectiveness for the informal sector is now widely acknowledged. So much so, in fact, that the UN and UNDP, the initiators of the Millennium Project, have declared 2005 the International Year of Microcredit. The AIV sees this omission as a painful example of lack of coordination within the UN.

7. Recommendations

1. The Millennium Development Goals provide specific benchmarks by which to gauge poverty reduction measures based on universally recognised human rights. Progress should therefore be monitored not just at the global macro-level but above all at the level of individual countries and target groups. Conclusions must be drawn for the relevant actors at each of these levels: international, national, local, government, civil society and the private sector.

27 Such as the eradication of child labour and the need for education, reproductive rights, affordable medicines, debt relief, sufficient funding for aid and fair trade.

28 Paragraph 37, p. 13 of the UN Secretary-General's report states that '...without dynamic, growth-oriented economic policies supporting a healthy private sector capable of generating jobs, income and tax revenues over time, sustainable economic growth will not be achieved'.

2. Drafting national plans and creating implementing capacity are essential for achieving the MDGs at national level. Allocating (additional) ODA funding to the MDGs will only be effective if this condition is met.
3. Higher priority must be given to the growth of the financial sector. ODA must therefore be used partly as a lever to improve the business climate in developing countries.
4. The ODA norm (0.7% of GNP) must be fully upheld. The targets for an MDG-related increase in ODA, as laid down in the Sachs report, should be adopted both by the EU as a whole and by individual member states as a minimum norm. Recent proposals by the European Commission on this point should be tightened. National development cooperation budgets should be aligned to the MDGs so that progress can easily be monitored and discussions on other development-relevant activities can be matched to clear financial parameters.
5. Government-to-government ODA for the MDGs will only be effective if the developing country concerned is sufficiently stable and pursuing a policy of good governance. Where this is not the case, assistance can be given in the form of emergency aid and support through NGOs. Activities aimed at conflict prevention or conflict management can create the right conditions to attain the MDGs.
6. Clearer priority should be given to Africa and especially to the need for good governance and the fight against HIV/AIDS. In this context, the AIV wishes to propose an additional criterion for good governance, namely the degree to which a government is able and willing to tackle the HIV/AIDS epidemic within its own borders. Priority for Africa should, however, not be translated into a fixed percentage of ODA for the continent.
7. International donor coordination and cooperation should preferably be concentrated at country level and not at the level of the head offices of multilateral institutions.

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