

**THE ROLE OF NGOS AND THE PRIVATE SECTOR  
IN INTERNATIONAL RELATIONS**

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## Foreword

In 2005 the Advisory Council on International Affairs (AIV) published an advisory report on the UN Secretary-General's proposed reform of the United Nations.<sup>1</sup> In it, the AIV briefly examined the UN's relationship with civil society and the private sector, and indicated its wish to explore this relationship more fully. In its response, the government agreed that NGOs and the private sector played a crucial role in many areas within the United Nations. At the same time, it noted that the debate on the role of civil society organisations within the UN was making little headway and appeared to be focusing on accreditation procedures. An opportunity to highlight the important role of civil society in the global arena was thus being missed. The government therefore asked the AIV to proceed with its proposed report. Since both the government and the AIV agreed on the need for such a report, no separate request for advice was issued. Instead, the report took as its starting point the minister's previous request for advice:

'The UN Secretary-General stresses the importance of an active civil society and a dynamic private sector to complement the role of states and intergovernmental organisations, without however going into further detail. I would be interested in having the Council's opinion on this topic also.'

The open nature of the request and the absence of the usual subsidiary questions has resulted in a somewhat reflective, exploratory report on the role of civil society in the work of international organisations.

In May 2006 the President of the United Nations General Assembly (UNGA) appointed two special advisors to examine more closely the relationship between the General Assembly and civil society organisations. In the summer, the AIV was asked to expedite its report so that they could incorporate it into their deliberations.

This advisory report was compiled by an ad hoc subcommittee which consisted of Dr A. Bloed (CVV), T. Ety (CMR), Professor W.J.M. van Genugten (CMR, subcommittee chair), Ms C. Hak (CMR), Professor M.T. Kamminga, H. Kruijssen (COS) and Dr B.M. Oomen (CMR). Professor P.R. Baehr (CMR member until 31 December 2005) provided advice and editorial comments. The subcommittee was able to refer to numerous international documents, and could draw on the specialist knowledge and experience of Ms K. Adhin (civil service liaison officer at DVF/PJ). The AIV is grateful for permission to consult a preliminary study by Dr Nicola Jägers of the University of Tilburg. The executive secretary was T.D.J. Oostenbrink (CMR secretary), who was assisted by Ms M. Suijkerbuijk, trainee.

The report is arranged as follows. Chapter I gives an introductory outline of the significance of civil society organisations in the work of international organisations and explains some of the terms used. Chapter II looks more closely at the significance – both existing and potential – of NGOs and the private sector in a number of selected international organisations. It focuses mainly on the UN as

1 AIV, *Reforming the United Nations: a closer look at the Annan Report*, advisory report No. 41, The Hague, May 2005.

the largest international organisation but also covers the World Bank, International Monetary Fund and World Trade Organisation. Two other key organisations for the Netherlands are also discussed: the European Union (EU) and the Council of Europe. Chapter III considers some of the problems aired in the current debate on the role of civil society organisations, such as lack of representativeness, legitimacy and accountability. Finally, chapter IV makes a number of general observations and draws specific conclusions.

The AIV adopted this report on 13 October 2006.

# I Introduction and definitions

## *Non-governmental organisations (NGOs)*

The proliferation of non-state actors and their networks and the growth of their involvement in international organisations is part of a wider development often referred to as 'multi-layered governance'. The Commission on Global Governance defines governance as:

'The sum of the many ways that individuals and institutions, public and private, manage their common affairs...is a continuing process through which conflicting or diverse interests may be accommodated and cooperative action may be taken... It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions either have agreed to, or perceive to be, in their interest.'<sup>2</sup>

The expanding role of NGOs in international organisations reflects this international paradigm shift in power and influence. The role of NGOs in supplying information and expertise, and occasionally participating in monitoring procedures, is increasingly accepted by many governments. The differences between the various international organisations – and between the policy areas they address – are, however, considerable. Broadly speaking, NGO participation is most advanced in places where organisations are working in, or alongside, the field of human rights, and least advanced in the spheres of economics, finance and security.

NGOs are now a firmly established part of the international order. However, it should be remembered that NGOs from many countries find it difficult to play an international role. Many governments are still reluctant to accept NGO activity within their own borders, let alone encourage or allow them to operate internationally, in human rights or any other sphere. Such governments seize any opportunity (a prime example being the September 2001 terrorist attacks and their aftermath)<sup>3</sup> to rein in their civil society organisations and prevent them from playing a role in global governance.

NGOs also sometimes attract criticism through their own actions. This is partly due to their lack of representativeness and legitimacy (see chapter III) and partly due to the way they operate in international fora. Experience shows that NGOs regularly pursue eccentric agendas, make lengthy interventions at meetings, are of poor calibre, or adopt aggressive tactics.<sup>4</sup>

The UN has granted formal consultative status to over 2,700 NGOs, from Amnesty International to the National Rifle Association of America. However, there are thought

2 See: *Report of the Commission on Global Governance, Our Global Neighbourhood*, Oxford: Oxford University Press, 1995, p. 2.

3 See: International Council on Human Rights Policy, *Human rights implications of September 11<sup>th</sup>*, Geneva, 2002.

4 A much-publicised example of aggression is the practice used by some NGOs opposed to genetic engineering to bombard their opponents with e-mails and threats.

to be between several thousand and many tens of thousands more, depending on the definitions applied. A report published in 2002 by the UN Secretary-General estimated that there were over 37,000 NGOs worldwide at the turn of the century.<sup>5</sup> In 2004, the Union of International Organisations came up with a total figure of 51,509 NGOs.<sup>6</sup> The number of NGOs has risen sharply since the Second World War, especially since the 1990s. Explanatory factors include the end of the Cold War, which created more scope for civil society organisations, the 'discovery' of development opportunities in Africa and Latin America and the influence of the mass media and the Internet. The geographical coverage and proliferation of NGOs is therefore a recent phenomenon.<sup>7</sup>

The expanding role of NGOs in the UN has been especially noticeable in the series of global conferences that have taken place since the 1990s: the Earth Summit in Rio de Janeiro (1992), the United Nations World Conference on Human Rights (1993), the Fourth World Conference on Women (1995), the United Nations Conference on Human Settlements (1996), the Fourth International Conference to Ban Landmines (1997) and the World Summit on Sustainable Development (2002). As well as playing a major role in the talks themselves, NGOs also influenced their outcome, both directly by putting forward specific proposals and indirectly by exerting pressure on governments. They were even sometimes included in national delegations. NGOs were frequently treated as negotiating partners.

NGOs were also involved in talks to establish the Statute of the International Criminal Court (ICC) and their influence is reflected in its content. Article 15 (2) of the ICC Statute expressly cites NGOs as a potential source of information for the prosecutor, along with governments and intergovernmental organisations. NGOs can also sometimes play an instrumental role, for instance when the court is addressing ongoing conflict situations. Experience has already shown that in such situations, NGOs form a vital link between the various court agencies and victims and witnesses in countries where an investigation or prosecution is taking place (for example, in Darfur in western Sudan). In such cases, the court seems to be becoming progressively more reliant on NGOs. This raises the question of whether the transparency and verifiability required of the parties in criminal proceedings in the interests of a fair trial can be similarly guaranteed for the role of NGOs.

There have been many attempts to come up with an exact definition of an NGO. The European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations offers the following:

'(...) associations, foundations and other private institutions which satisfy the following conditions: a) have a non-profit-making aim of international utility; b) have been established by an instrument governed by the internal law of a Party; c) carry on their activities with effect in at least two States; and d) have their statutory

5 UN Doc. A/57/387, *Strengthening the United Nations: an agenda for further change*, 9 September 2002.

6 Yearbook of International Organisations (2005/2006). The database can be viewed at: <<http://www.uia.org/statistics/organizations/types-2004.pdf>>.

7 NGOs were first established about 200 years ago. The first NGO is usually taken to be the Abolitionist Society in Great Britain, which was opposed to slavery.



office in the territory of a Party and the central management and control in the territory of that Party or of another Party.’<sup>8</sup>

This is a useful definition but it need not be systematically applied in foreign policy. The generic term NGO will suffice since it is internationally generally understood. However, the AIV advises that the following aspects be kept in mind when using the term ‘NGO’ since this will make references to their role clearer and more accurate. NGOs essentially fulfil two main roles:<sup>9</sup>

- Assisting in standardsetting (contributing to the normative framework). Many key international instruments would not have come into being without the contribution of NGOs.
- Urging compliance with international rules and campaigning against breaches of those rules. A distinction can be made between (i) NGOs working at grassroots level and (ii) NGOs taking part in monitoring procedures.

NGOs can be further divided into:

- self-interest organisations (such as membership organisations representing specific interests or groups, including private sector and professional bodies);
- altruistic organisations (such as organisations committed to achieving broad humanitarian aid, human rights, environmental and development goals).

To these must be added a large number of influential religious and academic organisations, social movements and campaign networks. As well as true NGOs, there are many quasi-NGOs operating internationally. They include government-operated NGOs (GONGOs), which have been established by and on behalf of governments,<sup>10</sup> quasi non-governmental organisations (QUANGOs) and hybrid organisations such as the International Red Cross, organisations of indigenous peoples and institutions like the Inter-Parliamentary Union. These organisations are located as it were between NGOs and governments. There are also Business-Operated NGOs (BONGOs) representing the interests of specific enterprises.

The distinction between these various NGOs and quasi-NGOs is usually clear. On the other hand, the diversity of interests they represent regularly causes problems. It is therefore important to be aware of the background to all these organisations. This is discussed more fully in chapter III.

Finally, the AIV wishes to draw attention to an interesting development in the role of NGOs. Many NGOs originally established to deal exclusively with development and/or aid issues (such as OXFAM and Médecins sans Frontières) have recently found

8 For the full text of the convention, see: <<http://conventions.coe.int/Treaty/EN/Treaties/Html/124.htm>>.

9 For a more detailed subdivision, see: IOB, *Evaluation of nine non-governmental human rights organisations*, part-study by Tod Landman and Meghna Abraham in the context of the evaluation of Dutch human rights policy, 2006. Also: M. Glasius, M. Kaldor and H. Anheier, *Global civil society 2005/6*, London-Thousand Oaks-New Delhi: Sage Publications, 2006.

10 The AIV has already commented on the dubious role of these organisations. See: AIV, *Commentary on the 2001 memorandum on Human Rights policy*, advisory report No. 23, The Hague, September 2001, pp. 13 and 14, and AIV, *The United Nations and Human Rights*, advisory report No. 38, The Hague, September 2004, p. 23.

themselves having to take action against wrongs they encounter in their work in the field. This is compromising their original neutrality.

#### *The private sector*

The private sector has become increasingly international in scope and is having a growing impact on international relations and organisations. Media publicity initially concentrated on the negative aspects of this role (environmental damage, human rights violations (this is discussed in chapter III)) and to some extent still does. The compilers of the ILO and OECD codes of conduct, however, have adopted a more positive stance. Government ministries and international organisations now increasingly underline the positive role that companies can play in meeting the targets they have set, for instance by generating the employment and prosperity needed to reach economic and development targets. Companies also support development processes through the supply of knowledge and resources. This more positive attitude to companies can be seen in the recent Global Compact (see below) and in the role companies have been asked to play in helping to realise the Millennium Development Goals ('partnerships'). The emphasis on private sector involvement in fact conveys a dual message: first, that without the efforts of the business community the Millennium Development Goals will not be realised, and second, that it is not realistic to rely solely on governments and international organisations to solve the world's development problems.

The term 'private sector' is extremely wide-ranging. In this advisory report, it includes national and multinational companies and the employers' and employees' organisations who represent them. The word 'companies' denotes both national and international private enterprises.<sup>11</sup>

For the sake of convenience, many documents and discussions use the phrases 'civil society organisations' or civil society, without distinguishing between NGOs and the private sector. The AIV however prefers to keep the two components separate. This advisory report therefore uses the terms 'NGOs' (which includes informal networks with no legal status) and the 'private sector', 'companies' or 'enterprises'. Only occasionally will the broader terms 'civil society' and 'civil society organisations' be used. This report does not address the role of national parliaments in scrutinising the actions of their governments in the international organisations discussed.

<sup>11</sup> It also includes the mass media, private foundations such as the Bill and Melinda Gates Foundation, the Cruyff Foundation, the Van Leer Foundation and pension funds.

## **II The role of NGOs and the private sector in international relations**

This chapter looks at the following international organisations: 1) the United Nations; 2) the World Trade Organisation; 3) the World Bank and the International Monetary Fund. It also considers the role of NGOs and the private sector in the European Union and Council of Europe.

### **II.1 The United Nations**

#### *II.1.1 NGOs*

In June 2004, a seminal report was published on the relationship between civil society and the United Nations: *We the Peoples: civil society, the United Nations and global governance*.<sup>12</sup> Better known as the Cardoso Report, it was named after the former Brazilian President Fernando Cardoso, under whose chairmanship it was written. The report and the UN Secretary-General's response<sup>13</sup> were used as a guide in preparing this advisory report, in particular the section on the UN.

The Cardoso Report is predicated on a new form of multilateralism based on the inclusion of non-governmental actors (referred to as 'constituencies') in discussions previously reserved for states alone. The report maintains that in the light of globalisation, strengthening the participation of civil society will help the UN to respond more effectively to the wishes of its citizens and attract more public support for its activities.

The report warns that there is still a long way to go before this happens and notes that there have been serious tensions between the UN and civil society over the years. Relations between them are beset by practical difficulties, such as the lack of proper accommodation and facilities for the growing number of NGOs attending large international conferences, and the restrictive conditions under which NGOs have been forced to work following the tightening of security measures since 11 September 2001. The report adds that in addition to these practical problems there is also growing opposition among member states to the involvement of non-governmental organisations. For their part, NGOs are – almost by definition, given the role they play – disappointed by the limited influence they have.

Nevertheless, NGOs have made a huge contribution to the UN's normative framework over the past 60 years. The AIV has several times acknowledged the important contribution they have made to development, the environment and human rights,<sup>14</sup> of which there are countless examples. NGOs have been responsible for including provisions on human rights in the UN Charter, they have played a key role in the

<sup>12</sup> See: UN Doc. A/58/817, 11 June 2004.

<sup>13</sup> See: UN Doc. A/59/354, *Report of the Secretary-General in response to the report of the panel of eminent persons on United Nations-civil society relations*, 13 September 2004.

<sup>14</sup> See e.g. AIV, *The functioning of the United Nations Commission on Human Rights*, advisory report No. 11, The Hague, September 1999, and AIV, advisory report No. 38, op. cit.

creation of the post of High Commissioner for Human Rights, they have contributed to the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction and they have helped to establish the International Criminal Court.

Many NGOs have now been granted consultative status by the UN and other international and regional organisations. Consequently, the question now is not so much whether NGOs are officially recognised and allowed to lobby – although they still have considerable ground to gain in this regard, especially in international financial and economic organisations – but whether they should also be permitted to play a role in monitoring procedures.

NGOs now play a fairly important role in the UN's monitoring procedures, especially in the sphere of human rights.<sup>15</sup> When discussing periodic government reports on human rights, the bodies that monitor compliance with human rights conventions increasingly use information they have obtained from shadow reports written by NGOs. These reports check the accuracy and completeness of information provided by member states. Such verification is vital for the ongoing implementation and enforcement of the conventions, not least because governments are often late in submitting their reports. As well as using the shadow reports, supervisory bodies ask NGOs for information and occasionally invite them to give them a briefing. At national level, NGOs often also play an important role in following up the recommendations that conclude the reporting cycle.

Some human rights conventions afford NGOs an even more highly developed role. For instance, one or two international conventions allow them to represent victims in individual complaint procedures. Others provide for an investigations procedure that allows the supervisory body to launch an investigation if it receives reliable information indicating serious or systematic infringements of the conventions. Many such investigations have been launched on the basis of information supplied by NGOs, during which they continue to provide the committees with information.<sup>16</sup> The monitoring procedures based on the UN Charter (the 1503 procedure, working groups, thematic rapporteurs and country rapporteurs) often use information from non-governmental sources.

Some of these NGO roles have a formal basis. Others have developed through practice and been formalised later. NGOs tend mainly, though not exclusively, to fulfil these roles in the sphere of human rights. An example from another policy area is the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.<sup>17</sup> As the name suggests, the convention gives NGOs the right to information and a say in decision-making, as well as the right to go to court on environmental matters.

15 See: Ineke Boerefijn, Alex van Gans and Rolanda Oostland, *De rol van niet-gouvernementele organisaties in de toezichtprocedures op basis van UN mensenrechtenverdragen*, in: C. Flinterman and W. van Genugten (eds), *Niet-statelijke actoren en de rechten van de mens; gevestigde waarden, nieuwe wegen*, The Hague: Boom Juridische Uitgevers, 2003, pp. 121-133.

16 Ibid, pp. 130-132.

17 Convention of 25 June 1998.

### *Economic and Social Council (ECOSOC)*

Formal participation by NGOs in the UN is based on Article 71 of the UN Charter, which states that:

‘the Economic and Social Council may make appropriate arrangements for consultations with Non-Governmental Organisations which are concerned with matters within its competence’.<sup>18</sup>

This Article is developed further in Resolution 1996/31, which specifies the required organisational structure of NGOs. To qualify for consultative status, an NGO must have a ‘democratically adopted constitution’ and a ‘representative structure and [...] appropriate mechanisms of accountability’.

Formal permission for NGOs to contribute to the work of the UN therefore only applies to ECOSOC and ten functional and five regional subsidiary bodies. Moreover, it only covers NGOs operating in ECOSOC’s area of operations (international economic, social and cultural issues, including education, health care and human rights).<sup>19</sup> These NGOs are divided into three categories. The first group addresses all the ECOSOC themes. Most are international NGOs with a broad geographical coverage. Not only are they allowed to circulate written statements, they can also make oral presentations and propose agenda items. The second category is a special group whose work is confined to a limited number of ECOSOC policy areas. These organisations may only distribute written documents. The third category (known as the Roster) is reserved for technical organisations with a limited sphere of activities. These organisations cannot circulate statements without permission and can attend meetings only as observers. They may, however, be invited to make a contribution. However, unlike the first two categories, this group is not obliged to submit a report every four years detailing its activities on behalf of the UN.<sup>20</sup>

Lack of a generally accepted alternative means that Article 71 of the UN Charter is often seen as the basis for NGO involvement in international relations in general. While many NGOs regard ECOSOC’s method of nominating NGOs for consultative status as overly political, Article 71 is the only provision in the Charter on which NGO participation can currently be based.

NGO participation on the basis of ECOSOC-rules reached its peak under the former Commission on Human Rights. Despite pressure from some governments to reduce NGO involvement, they have so far been allowed to retain these consultative powers under the new Human Rights Council. However, these rights are far from inalienable. NGO participation is still regularly called into question. In particular, there is growing

<sup>18</sup> In addition to permanent consultative status, the UN also permits ad hoc involvement (e.g. for global conferences).

<sup>19</sup> The right to participate is not the same as a partnership with the UN’s Department for Public Information (DPI), which applies to NGOs that are authorised to provide information about the work of the UN. There are currently 1,533 NGOs attached to the DPI.

<sup>20</sup> For a more detailed account of the role and position of NGOs, see also: Leon Gordenker and Thomas G. Weiss, *NGOs, the UN and global governance*, Third World Quarterly, Journal of Emerging Areas, Vol. 16, No. 3, September 1993, pp. 357-579.

pressure from some governments to have the consultative status of the more critical NGOs suspended for several years.<sup>21</sup> In fact the AIV feels the time is right to examine ways of deepening NGO participation. NGOs could, for example, be included in the interactive dialogue with the special rapporteurs, who could use the knowledge they provide (as they do now) and reopen certain issues with the Human Rights Council on their behalf. The AIV feels that NGOs should also be consistently and systematically involved in the annual peer review on human rights in the member states.

#### *United Nations General Assembly*

The UN General Assembly (UNGA) does not grant consultative status to NGOs, with the exception of one or two hybrid organisations like the International Red Cross, which has observer status. The question of whether the UNGA should set up a formal consultative forum with NGOs is regularly re-examined.<sup>22</sup>

The Cardoso Report maintains that existing UN accreditation procedures for NGOs could be improved by replacing them with a single generic procedure. Applications would then be assessed by the UN General Assembly rather than by ECOSOC. The AIV agrees that 'there is little logic for the United Nations to recognise civil society input into the Economic and Social Council but resist similar input to the UNGA committees that discuss the same subjects'. Under the new system, NGOs would be recommended for accreditation by the UN Secretariat following a practical evaluation of their work. The AIV believes that an evaluation by the UN Secretariat based on the procedure used by the Council of Europe would be an especially positive development, in that it would re-emphasise the fact that the NGO contribution is not confined to ECOSOC issues. The generic procedure would therefore also be used to admit NGOs to UN organisations other than ECOSOC.<sup>23</sup> The AIV is aware that the EU also wants the UNGA to simplify and strengthen the accreditation process, and urges the government to continue to vigorously press for this.

Independently of the accreditation issue, the Cardoso Report makes recommendations on the provision of input by the non-governmental sector to the work of the UN General Assembly (UNGA). It urges UNGA to regularly invite input from 'actors besides central governments' and 'high-level independent experts'. It also recommends that UNGA conclude participation arrangements 'in collaboration with the relevant constituency networks'.<sup>24</sup> In fact, UNGA and its committees already invite NGOs, the private sector and independent academic experts to make – formal and informal – contributions to

21 See e.g.: M. Kamminga, *What makes an NGO 'legitimate' in the eyes of states?*, to be published in: A. Vedder (ed.), *Legitimising NGO involvement in international policymaking and politics*. Examples include the complaints brought by the United States against the International Lesbian and Gay Organisation (1994), by Sudan against Christian Solidarity International (1999) and by Cuba against the International Council for the Associations for Peace in the Continents (2000). These complaints led to the suspension of the consultative status of the organisations concerned.

22 It was, for example, proposed by the Commission on Global Governance in 1995.

23 This is also accepted by the Cardoso Report, *op. cit.* See e.g. paragraph 122 and proposal No. 19.

24 *Ibid*, proposal No. 6.

their decision-making processes<sup>25</sup> in the form of panels, round table discussions, meetings to prepare for international conferences, special sessions and the UNGA's high-level dialogue. In his response to the Cardoso Report, the UN Secretary-General postponed a decision on whether to admit NGOs to the UNGA's plenary sessions. Instead, he suggested only accrediting them to the main committees, and added that hearings should be organised for NGOs with specific expertise in the issues that were to be discussed, prior to major conferences. This, too, is already being done. The AIV is in favour of such initiatives provided they do not slow progress towards closer participation. Until agreement is reached on how to formalise the role of NGOs, proposals to step up informal contacts, including hearings, between them and UNGA and its committees should be supported.

In May 2006 the President of the UNGA appointed two special advisors to examine more closely the relationship between the UNGA and civil society organisations. They concluded that immediate changes should only be made in the context of the existing framework, but that more formal links could be established in the longer term. The short-term improvements could include periodic meetings between civil society organisations and the chairs of the main General Assembly committees within the existing informal consultative process. Another of their recommendations was that the President of the UNGA should give a public briefing just before the start of important sessions like the annual meeting of the UNGA. This would be a key role for the President, working closely with the UN Secretary General. The two advisors also suggested creating an official post to assist the President in his contacts with civil society organisations. Although there is opposition among UN member states to the idea of appointing an NGO contact at the Secretariat, at Deputy Secretary-General level, the AIV feels that such a post would be vital for coordination and for demonstrating the value the UN attaches to contacts with NGOs and the private sector. Against that background, funding for the UN Non-Governmental Liaison Service (NGLS), which is held in high esteem by civil society groups, must be guaranteed. Hearings should also be included in the working programmes of the committees, for which guidelines will have to be drafted, partly to ensure a balanced representation of NGOs from developing countries. Finally, sufficient time and resources must be set aside to encourage active participation in these hearings.<sup>26</sup>

#### *UN Security Council*

Unlike the issues addressed by ECOSOC, the themes for which the UN Security Council is responsible have long been regarded as the exclusive preserve of national governments. The Security Council's contacts with NGOs are therefore informal and its meetings are open only to delegations from the member states. Nevertheless, informal contacts between the Security Council and civil society have risen sharply since the end of the Cold War. This is because the Security Council is now dealing with different

25 These hearings precede high-level meetings. The first was held in June 2005 prior to the high-level summit of September 2005, when 200 organisations and a thousand observers came together to discuss the UN Secretary-General's report on the proposed reform of the UN, *In Larger Freedom*. Since then there have also been hearings on HIV/Aids, international migration and development and the Least Developed Countries.

26 See: Johna L. Løvald and Rezlan Ishar Jenie, *United Nations: the relationship between member states and civil society, including non-governmental organisations*. Report to the President of the 60th General Assembly, 5 July 2006.

types of conflicts and threats and is therefore engaged in different activities. This requires more knowledge of local communities and cultures, vulnerable groups and so on – all areas in which NGOs can provide important information. The Security Council recognises this.

Various developments have caused the UN Security Council to intensify its contacts with NGOs since 1990. To begin with, it is now holding many more meetings and addressing many more issues. This has greatly increased the workload of its ten elected members, many of which operate only small delegations. Informal partnerships and close cooperation with NGOs have helped to create a counterweight to the Security Council's permanent members. Recognition of the important role played by NGOs in the international community has also greatly increased. NGOs are often already active on the ground when UN representatives arrive in an area and remain so after they have gone. NGOs are also increasingly playing a crucial public information role. Finally, the Security Council, with its system of permanent members and vetos, faces a problem of legitimacy. Criticism of its growing tendency to hold meetings behind closed doors and of the dominance of some of its permanent members has fostered a belief that interaction with NGOs could help it to strengthen its legitimacy and effectiveness. The AIV considers it self-evident that NGOs' roles and responsibilities are quite distinct from those of the Security Council.<sup>27</sup>

Informal contacts between the Security Council and NGOs have, as mentioned, intensified over the past decade. Most of these NGOs address human rights and humanitarian issues,<sup>28</sup> peace and security<sup>29</sup> and general Security Council policy.<sup>30</sup> In 1992, the first Arria Formula meetings were held. Named after the former Venezuelan ambassador who came up with the idea, these are informal meetings at which one Security Council member can invite others to attend a briefing on a specific topic by an external organisation or individual. Despite their initial objections, the five permanent members now also attend these meetings. Arria Formula meetings are held roughly once a month and often attract high-level attendance and support. The Secretariat takes note of forthcoming meetings, as a result of which they can constitute an interesting mix of formality and informality. While not originally intended to promote

27 See also: AIV, *Counterterrorism from an International and European perspective*, advisory report No. 49, The Hague, September 2006, chapter III.

28 The Security Council maintains contacts with Amnesty International, Human Rights Watch and Oxfam, among others. In April 2005, Amnesty International attended a Security Council meeting on the human rights situation in Haiti.

29 In September 2005 the Security Council held an open debate on the role of civil society in conflict prevention and the peaceful settlement of disputes, which was addressed by two representatives from the Global Partnership for the Prevention of Armed Conflict (GPPAC). For specific examples, see: GPPAC, Reader, UN, *Regional organisations and civil society organisations* and Conference Report: *From reaction to prevention: civil society forging partnerships to prevent violent conflict and building peace*, 19-21 July, UN Headquarters, New York. See also the account of the meeting of 5 September 2006, *Getting the Peacebuilding Commission off the ground: how to include civil society on the ground*, Friedrich-Ebert-Stiftung and GPPAC, New York, 2006.

30 In 1995, the NGO Working Group on the Security Council was established. It meets four times a month on average and is a key point of contact between the Security Council and NGOs.



NGO participation, they have nevertheless had that effect, and have made the Security Council somewhat more open.<sup>31</sup> It now holds more direct and indirect talks with NGOs to discuss humanitarian crises, and encourages contacts with civil society and missions in the field.<sup>32</sup> Many NGOs are clearly disappointed that the huge efforts they invest in such meetings do not lead to greater results, but the AIV feels that this risk is inherent in such processes.

#### *Peacebuilding Commission*

One of the Secretary-General's proposed reforms to mark the 60th anniversary of the United Nations was to establish a Peacebuilding Commission.<sup>33</sup> However, unlike the resolution for the new Human Rights Council,<sup>34</sup> the General Assembly resolution for the Peacebuilding Commission contained no provision for NGO participation. This weaker formulation was due to the specific constitution of the Peacebuilding Commission. Negotiations on the establishment and functioning of the new commission raised objections from many member states, which feared that it might undermine their sovereignty. This made it impossible to give it a more robust mandate – including the ability to intervene in the early stages of a conflict, which the AIV had vigorously advocated – or to achieve a strong position for NGOs. Nevertheless, the AIV believes that if it is to remain effective in post-conflict peacebuilding situations, the Commission must work closely with NGOs since they have the practical knowledge and experience that it requires.<sup>35</sup>

The AIV feels that the relationship between NGOs and the UN Security Council should be given a more formal basis and be strengthened. This would be a logical development given the growing emphasis within the Security Council – and the UN as a whole – on conflict prevention and peacebuilding, areas where civil society organisations have considerable expertise and can play a significant role. Moreover, the Security Council is increasingly addressing not just narrow peace and security issues but the protection of human rights in general. This is increasing both its workload and its need for specific expertise, and calls for structural rather than ad hoc input. The AIV therefore supports the Cardoso Report's proposal to tighten links between the Security Council and civil society by widening and further facilitating NGO participation in the Arria Formula

31 In 1996 the Security Council held a meeting to which NGOs and representatives of other UN agencies, such as ECOSOC, were invited (this was known as the Somavia Formula, named after the Chilean ambassador who launched the idea). The initiative was heavily criticised, however, and has not been repeated.

32 See e.g. UN Doc. S/RES/1325 of 31 October 2000 concerning discussions on the position of women during armed conflicts; UN Doc. S/2006/507 of 19 July 2006 and the presentation by the actor George Clooney and Nobel laureate Elie Wiesel on Sudan (Darfur) at the recent Security Council session of 14 September 2006.

33 See: AIV, advisory report No. 41, op. cit., paragraph IV.2.

34 See: UN Doc. A/RES/60/180, 30 December 2005: '...encourages the Commission to consult with civil society, including women's organisations and the private sector engaged in peacebuilding activities as appropriate'.

35 See e.g.: AIV, *Failing states, a global responsibility*, advisory report No. 35, The Hague, May 2004, p. 45 and footnote 28.

meetings (see above).<sup>36</sup> The role of NGOs as participants in monitoring procedures could be further strengthened through the Secretary-General's proposal to involve NGOs in the ex-post evaluation of peace missions.

#### *International Labour Organisation (ILO)*

The ILO, founded in 1919, is often cited as a classic model of combined state and non-state participation in an international organisation. Its tripartite structure puts employers' and trade union organisations on an equal footing with national governments. Article 24 of the ILO Constitution states that these organisations can register complaints concerning non-compliance with ILO Conventions. They thus play an important role in monitoring these conventions. While the ILO Constitution does not award formal status to NGOs, it does allow them to make informal representation to the member states and the social partners. Although this restriction has been criticised,<sup>37</sup> cooperation with NGOs working in the areas where the ILO is active is growing. The ILO has compiled a list of approximately 150 NGOs which now have access to all or some of its discussion fora. More generally, it has already been noted that NGO participation in monitoring procedures at international level is growing, especially in the sphere of human rights. Although the ILO does not make formal provision for NGO involvement, such participation is possible. In addition to Article 24, Article 26 of the ILO Constitution also allows member states to object to violations of a convention by another member state, provided both are signatories to that convention. The investigation committee that is convened hears representations from both employers' and trade union organisations. The Committee on Freedom of Association and the Right to Collective Bargaining also hears complaints from the social partners against states, even if they are not signatories to the conventions concerned. Trade unions in particular use this opportunity to defend specific interests such as human rights, in a supervision procedure that is not open to regular NGOs.

#### *II.1.2 The private sector*

The Cardoso Report also discusses the importance of the private sector and companies for the UN, arguing that partnerships with companies can help it to meet its goals. The UN itself is increasingly aware of both the positive and negative aspects of the role of the private sector. It has, for example, looked in detail into the question of the responsibility of companies with regard to human rights violations.<sup>38</sup> Now,

36 Five NGOs attended the official inaugural meeting on behalf of the Secretary-General.

37 E.g. by Virginia Leary, *The ILO: a model for non-state participation?*, in: T.C. van Boven (eds), *The legitimacy of the United Nations: towards an enhanced legal status of non-state actors*, Utrecht: SIM, 1997; Menno T. Kamminga, *The evolving status of NGOs under international law: a threat to the inter-state system?*, in: Philip Alston (ed), *Non-State Actors and Human Rights*, Oxford: Oxford University Press, 2005, pp. 100-101.

38 See e.g.: *Norms on the responsibility of transnational corporations and other enterprises with regard to human rights*, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003) and *Report of the High Commissioner on Human Rights on the responsibilities of transnational corporations and related business enterprises with regard to human rights*, UN Doc. E/CN.4/2005/91, 15 February 2005.

however, it is increasingly focusing on how businesses can help it meet its goals.<sup>39</sup> As mentioned, there is now a greater awareness that the prosperity and employment generated by companies is vital for global development.<sup>40</sup> The AIV has already drawn attention to the importance of companies in helping to meet the Millennium Development Goals.<sup>41</sup> The UN has since concluded numerous partnerships with companies to help small enterprises in developing countries, promote foreign investment and improve the quality of the environment and health care.<sup>42</sup>

In 2000, the UN established the Global Compact to encourage companies (and NGOs) to work with UN agencies on a voluntary basis to promote ten principles relating to human rights, labour, the environment and the fight against corruption.<sup>43</sup> As well as encouraging them to integrate these principles into their activities, the initiative is designed to persuade companies to launch activities that will help the UN meet its goals. When the Global Compact was launched, there were 50 companies involved. There are now over 3,000 participants, 2,500 of them companies.

The non-binding nature of the Global Compact and its commitment to constructive cooperation makes it attractive for companies to sign up to. However, its voluntary approach has also been widely criticised. Some of the companies taking part have a poor reputation on human rights and the environment. In 2005 the UN therefore drew up a series of integrity rules to prevent the Global Compact from being used simply for PR purposes. Companies that fail to submit regular reports on the progress they have made towards achieving the ten principles are placed on a public blacklist. There are currently 912 companies on the list.<sup>44</sup>

39 See the website 'The UN & Business', <<http://www.UN.org/partners/business/index.asp> and <http://www.UN.org/unfip>>. The UN has also published numerous documents on the positive aspects of partnerships between it and the private sector. They include: *Towards global partnership*, UN Doc. A/Res/22/215, 6 March 2001; *Cooperation between the United Nations and all relevant partners, in particular the private sector*, UN Doc. A/56/323, 9 October 2001; *In Larger Freedom: towards development, security and human rights for all, report of the Secretary-General*, UN Doc. A/59/2005, 21 March 2005. In April 2005, the American John Ruggie was appointed Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. Mr Ruggie's mandate gives him responsibility for identifying the international human rights standards to which private enterprises are bound. In his interim report (UN Doc. E/CN.4/2006/97 of 20 February 2006), he strongly emphasises the responsibilities of states in upholding human rights. Here, too, there is a clear a shift of focus towards the more positive contribution that companies can make.

40 See also: AIV, *Private sector development and poverty reduction*, advisory report No. 50, The Hague, October 2006.

41 See the advisory letter from the AIV, *Observations on the Sachs Report: how do we attain the Millennium Development Goals?*, advisory letter No. 9, The Hague, April 2005.

42 See the website of the United Nations Fund for International Partnerships, <<http://www.UN.org/unfip>>, for more examples.

43 See: <<http://www.globalcompact.org>>.

44 See: <[http://www.globalcompact.org/ParticipantsAndStakeholders/non\\_communicating.html](http://www.globalcompact.org/ParticipantsAndStakeholders/non_communicating.html)>. (figures dated 14 September 2006). Small and medium-sized enterprises and companies that lack the capacity to meet the reporting requirement may be exempted.

## II.2 The World Trade Organisation (WTO)

The World Trade Organisation (WTO) is a classic intergovernmental organisation. It was originally a collection of trade agreements between the member states and, unlike some other international organisations, did not pursue an independent policy. The Uruguay Round effectively transformed the WTO from a diplomatic negotiating platform into an organisation with legal powers. This is chiefly reflected in the fact that member states can no longer block its rulings. Whereas they once had the right to veto WTO decisions, they can now only prevent a ruling by the Dispute Settlement Body by a unanimous vote. This has also made it more likely that a WTO panel or the Dispute Settlement Body will be confronted with arguments that fall outside the strict scope of WTO law, such as those based on internationally recognised human rights or the need to protect the environment, since a WTO member state will seize every opportunity to defend itself. WTO law is also becoming increasingly intertwined with other aspects of international law. The WTO is not a self-contained regime. The settlement of trade disputes can have a far-reaching impact on other policy areas, such as food safety and workers' and trade union rights. This, too, makes it vital for the WTO to harness the specific expertise of NGOs on human rights and other areas, both in its negotiations and in its settlement of disputes.

The Agreement establishing the WTO does provide for an independent relationship between the WTO and NGOs:

'The General Council may make appropriate arrangements for consultation and cooperation with non-governmental organisations concerned with matters related to those of the WTO.'<sup>45</sup>

In principle, this provision goes further than Article 71 of the UN Charter, which is similar except that it refers only to 'consultation', whereas the WTO Article also provides for cooperation.

Although strictly speaking, non-state actors are not afforded access to the WTO dispute settlement system,<sup>46</sup> it is known that companies do have substantial indirect access to the WTO and that many cases are brought before the courts by member states both for and at the instigation of individual enterprises.<sup>47</sup>

The decision by the Appellate Body to allow WTO panels and the Appellate Body itself to receive *amicus curiae* briefs by NGOs is a further step towards increased participation by NGOs. The opportunity to offer their expertise or to intervene in other ways is taken up chiefly by NGOs working in the environmental sphere or lobbying on

45 See: Article V, paragraph 2.

46 See: Guidelines for arrangements on relations with non-governmental organisations (Doc/WT/L/162, 1996), which states that 'there is currently a broadly held view that it would not be possible for NGOs to be directly involved in the work of the WTO or its meetings' (paragraph VI).

47 A well-known example was the Banana Dispute (WT/DS27), in which the United States and others challenged the EU's import policy for bananas on behalf of the multinational Chiquita. For an overview of such cases, see: Gregory C. Shaffer, *Defending interests: public-private partnerships in WTO litigation*, Washington DC: Brookings Institution Press, 2003.

behalf of corporate interests, but also increasingly by those working in the field of human rights. NGOs could be given a bigger role in the WTO Trade Policy Review Mechanism, which evaluates the trade policies of member states. At the very least NGOs should be permitted to submit shadow reports in order to supply the WTO with extra information, by analogy with the reporting procedures laid down by human rights conventions.

The EU supported the idea of *amicus curiae* interventions by NGOs during the Doha Round, and recently submitted a proposal to include an article to this effect in the WTO Agreement. The African Group and India replied with counterproposals aimed at banning the acceptance of *amicus curiae* interventions.<sup>48</sup> The two sides have not yet reached agreement, and the stagnation of the Doha Round means that this discussion has also been suspended. For the time being, NGOs will be able to continue to provide *amicus curiae* briefs, but a decision on whether they will be accepted remains arbitrary. Experience suggests that they are unlikely to have any real influence.

Finally, in recent years the WTO has responded to calls from NGOs for more democratic accountability<sup>49</sup> and transparency by making a number of key improvements. For example, it has launched a detailed website on which the WTO Secretariat presents position papers by NGOs, and NGOs may now attend an annual symposium and the Ministerial Conferences which are held every two years. They have also been given permission to organise parallel conferences if they are not already part of a national delegation.

### **II.3 The World Bank and the International Monetary Fund (IMF)**

In recent years, the World Bank and the IMF have seen their responsibilities grow far beyond their original mandates. The huge impact these institutions have on the policies of developing countries and on countries in transition – for example, in the form of IMF macroeconomic advice and conditions – and their decision-making procedures, which are still dominated by the west, even after the reforms agreed in Singapore on 17 September 2006, have attracted sharp criticism from NGOs. These criticisms have been further fuelled by the fact that at the Annual Meeting in Singapore, the host government effectively barred NGOs from taking part.<sup>50</sup>

However, since the early 1980s and the 1990s in particular, the World Bank has established many forms of participation with NGOs and the private sector. It has championed public-private partnerships aimed at achieving socioeconomic targets, especially the Millennium Development Goals. Contacts with NGOs and private enterprises have further intensified as a result. The World Bank often also plays an enabling role by providing financial support to NGOs working in the areas in which it is

48 For the EU proposal, see: EU/TN/DS/W/1. For the proposals tabled by the African Group and India, see: TN/DS/W/15 and TN/DS/W/18.

49 The WTO is currently working on the establishment of a Parliamentary Assembly made up of parliamentarians from the member states, to strengthen democratic accountability.

50 However, see also: John Vandaele, *Het recht van de rijkste, hebben andersglobalisten gelijk?*, Antwerp: Houtekiet, 2005, pp. 319-326. This discusses the paradox that the more democratic an international organisation, the less important it is regarded as being (and vice versa).

also active. Finally, NGOs (and companies) play a role within the World Bank itself in the context of consultation and dialogue. Since 1995, the Bank has been engaged in a fairly intensive dialogue with NGOs as part of the IMF/WB Highly Indebted Poor Countries Initiative for Debt Relief. In 1999, the World Bank and the IMF introduced Poverty Reduction Strategy Papers (PRSPs). PRSPs are often drawn up by the governments of developing countries following broad consultation with national civil society and international donors such as the IMF and the World Bank, but it is by no means always clear how the choices made during this process are arrived at. What is more, such consultations are not primarily intended to be held directly with the World Bank and IMF themselves, but between civil society and the governments of the countries concerned.<sup>51</sup>

Compared with other international economic organisations, the World Bank has therefore made significant efforts to intensify NGO participation.<sup>52</sup> Much of this is due to its recent focus on poverty, gender and the environment, areas in which NGOs have long been active and have built up specific expertise. By 2003, 72% of World Bank projects involved NGOs, compared with 21% in 1990.<sup>53</sup> Consultation and cooperation with NGOs, which is based not on a provision in the World Bank Articles of Agreement but on a series of internal policy documents, has led to a number of institutional reforms and improvements in the quality of contacts with NGOs.<sup>54</sup>

NGOs also play a role in the Bank's monitoring procedures. In 1993 the Inspection Panel (IP) was established to allow two or more people to register a complaint if they believe they are suffering or will suffer harm caused by World Bank activities. These activities must be shown to conflict with World Bank policy. Complaints can also be lodged by NGOs on behalf of alleged victims. In establishing the IP, the World Bank is the first international economic organisation to create a role for NGOs in its monitoring procedures.<sup>55</sup>

Compared with the World Bank, the IMF's links with civil society actors are still underdeveloped. The IMF Articles of Agreement make no provision for contacts with either NGOs or companies. The organisation's official line is that primary responsibility for contacts with civil society lies with the member states. Nevertheless, it has taken

51 See also: AIV, *Pro-poor growth in the bilateral partner countries in Sub-Saharan Africa: an analysis of poverty reduction strategies*, advisory report No. 29, The Hague, January 2003.

52 For an overview of these activities, see the World Bank's website: <<http://www.worldbank.org>>.

53 See the 'background note' on the relationship between the World Bank and civil society on the website <<http://www.worldbank.org/civilsociety>>.

54 The documents dealing with NGO participation ('operational policies', 'bank procedures' and 'good practices') always relate to specific activities. The point of contact within the World Bank is the 'civil society team', which consists of seven officers. The first formal contacts were made in 1981, when the Bank established a committee to discuss its policy with NGOs. These contacts have been stepped up since 1995.

55 See most recently: Maartje van Putten, *Policing the world; accountability mechanisms for multilateral financial institutions and private financial institutions*, Tilburg/Montreal: Tilburg University & McGill University, 2006.

steps to improve its relationship with NGOs and the private sector in recent years, and has significantly expanded the instruments it uses to do so.<sup>56</sup>

The IMF has become increasingly involved in social and economic development and in the regulation of financial markets. However, its efforts to alleviate debt through the Structural Adjustment Programmes and its intervention in major financial crises have attracted considerable criticism and intensified calls for involvement by non-state actors. There is still no permanent discussion forum for NGOs, despite the increase in informal ad hoc contacts, particularly since the 1990s. Pressure from NGOs has, however, led to greater transparency within the organisation, with the result that many of its documents are now made public and an External Relations Department has been established with a designated NGO liaison officer. In 2001, the Independent Evaluation Office (IEO) was set up to conduct systematic independent evaluations of IMF policy. The IMF has occasionally consulted civil society, mainly in the form of economic research institutes, to check information from member states and to increase understanding of, and support for, the Fund.<sup>57</sup>

NGOs do not play a role in the IMF's monitoring procedures. While the IMF has stepped up its own evaluation of policy, it does not have a system of accountability and supervision to which NGOs can make a contribution (unlike the World Bank). More generally, NGO focus on the work of the IMF is still limited compared to the attention they devote to other international organisations, partly due to a lack of capacity and expertise.<sup>58</sup>

## **II.4 The EU and other relevant organisations**

The Netherlands has relations with many international organisations and fora, among them the EU, OECD, OSCE, Benelux, WEU, NATO, Council of Europe and G8, as well as less formal links with regional organisations in other parts of the world. This advisory report will not be covering all these organisations, not least because they share many of the same developments. It will concentrate instead on the EU and the Council of Europe.

### *II.4.1 The European Union (EU)*

Although the European Union has no general legal framework for the formal consultation of NGOs and the private sector, the influence of these organisations is nevertheless considerable. The EU receives input from civil society through formal structures such as the European Parliament intergroups (Welfare, Ageing, Health, Friends of Israel, Friends of Tibet, et cetera)<sup>59</sup> and through intensive and lively

<sup>56</sup> IMF contacts with civil society are governed by the Guide for Staff Relations with Civil Society, 2003. The IMF maintains its closest contacts with economic research centres and the private sector, especially banks.

<sup>57</sup> Jan Aart Scholte, *Civil society voices and the International Monetary Fund*, Ottawa: North-South Institute, 2002, pp. 36-37.

<sup>58</sup> Jan Aart Scholte, op. cit., pp. 13-14.

<sup>59</sup> This formalisation is shown by the fact that the European Parliament makes available meeting rooms and interpreters for these groups.

dialogue with NGOs and private enterprises – often referred to within the EU as ‘lobby groups’.<sup>60</sup> This social dialogue enables organisations like UNICE (European employers), ETUC (the European Trade Union Confederation) and COPA-COCECA (Committee of Professional Agricultural Organisations in the European Union) to raise issues of concern to them at EU level and get them incorporated into EU law. In addition to the intensive lobbying done by the private sector, there has been a surge in participation by networks of NGOs throughout Europe representing a broad range of interests. Examples include CONCORD (European NGO Confederation for Relief and Development), the ‘Social Platform’ (an alliance of representative NGOs active in the social sector), BEUC (the European Consumers’ Organisation) and the Civil Society Contact Group (an NGO network bringing together the environment, social development, women, culture, human rights and public health sectors).<sup>61</sup> Such coalitions are vital, both for their combined strength and effectiveness and for their increased legitimacy.

The Treaty of Nice strengthened the role of the European Economic and Social Committee (EESC), an advisory body that serves as a bridge between the EU and organised civil society. As well as working through the EESC, NGOs have many other contacts with the EU institutions. Formal and informal dialogue with the European Commission has got off to a good start, prompting it to launch the Partnership for European Renewal.<sup>62</sup> The policy on participation by civil society organisations has also been taken a step further in various documents<sup>63</sup> and via the general principles and minimum standards for consultation of interested parties by the Commission, which provide a general frame of reference for consultation.<sup>64</sup> These principles and minimum standards – which are not binding – are applied to key policy proposals for which an impact assessment is required, and to Green Papers. The Commission Services are also encouraged to apply them to other forms of consultation.<sup>65</sup>

The Commission Services have developed various forms of contact with NGOs. The Directorate-General for Employment, Social Affairs and Equal Opportunities, for example, meets with NGO representatives every two years. An extensive dialogue has also grown up between civil society and the Directorate-General for Trade. In 1999,

60 That is, individuals and organisations whose aim is to influence the policies and decisions of EU institutions on behalf of a wide range of organisations such as public consultancies, legal firms, NGOs, study centres, corporate lobbying groups and professional associations.

61 See: <<http://www.concordeurope.org>>; <<http://www.socialplatform.org>>; <<http://www.beuc.org>> and <[http://eurostep.antenna.nl/detail\\_page.phtml?page=about\\_others\\_cscg](http://eurostep.antenna.nl/detail_page.phtml?page=about_others_cscg)>.

62 See: COM (2005) 12.

63 See e.g.: *Plan D: democracy, dialogue and debate*, October 2005; European Transparency Initiative, November 2005; *White Paper on Communication Policy*, February 2006.

64 The General principles and minimum standards for consultation are: participation, openness, accountability, efficiency and cohesion. Essentially, it is a matter of ensuring that the Commission consults widely and that these consultations are transparent, efficient and coherent. The five minimum standards apply to various aspects of the consultation process: clarity regarding the issue, target groups, publication, deadlines, confirmation of receipt and feedback. See: COM(2002) 704.

65 Since 2003, they have been applied to over a hundred proposals and 26 Green Papers.



representatives of civil society organisations were invited to join the EU delegation at the WTO ministerial meeting in Seattle, and were also included in national delegations. This practice was repeated in Doha (2001), Cancún (2003) and Hong Kong (2005).

Initial steps have been taken to increase the transparency of Commission policy and input from non-state actors.<sup>66</sup> The Commission does not apply a system of accreditation but does operate a voluntary database containing information on civil society organisations (CONECCS). This shows precisely which organisations and individuals are trying to influence Commission policy. One of the Commission's aims in its contacts with stakeholders is to encourage self-regulation.<sup>67</sup> In its Green Paper on the European Transparency Initiative, the Commission proposes the introduction of a registration system for lobbyists and lobbying organisations. As an incentive to register, the lobbyist can, after registering, be automatically notified of any issues that may interest him or her. A joint code of practice or common set of minimum regulations for lobbyists must also be developed.<sup>68</sup> The Commission also calls for a stricter system of self-regulatory monitoring and disciplinary measures for incorrect registration and/or infringements of the code of practice. The AIV feels these initiatives should be encouraged, provided, as the Commission advocates, that registration is voluntary and the codes/regulations are drawn up by the stakeholders themselves. The Commission has already indicated that if this does not prove sufficiently workable, it may be necessary to consider introducing legislation.

The European Parliament is of course especially keen to receive contributions from non-state actors. Unlike the Commission, it operates an accreditation system<sup>69</sup> and applies a code of conduct that is binding on all applicants. Infringements of the code can lead to the withdrawal of accreditation.<sup>70</sup>

Civil society contacts with the European Commission and European Parliament contrast sharply with the limited access afforded to NGOs by the Council. Civil society organisations have occasionally been invited to attend meetings of the Council, but there is no framework for such contacts.

66 See: Regulation (EC) No. 1049/2001, which establishes the framework for access to the unpublished documents of EU institutions and agencies, the opening up of databases containing information on advisory bodies and expert groups advising the Commission, and the consultation of stakeholders prior to the launch of legislative proposals. In November 2005, the European Transparency Initiative (ETI) was launched (SEC(2005)1300). The ETI re-examines in detail the approach to transparency. It covers a wide range of topics (see the Green Paper on the European Transparency Initiative COM(2006)194), of which the evaluation of regulations governing access to documents is particularly relevant to this advisory report.

67 Green Paper on the European Transparency Initiative (ETI), op. cit., p. 9.

68 Ibid, p. 10.

69 Anyone who requires physical access to the institution for more than five days per year can apply for a pass. The names of accredited lobbyists are recorded in a register, which does not give any further information about the organisations they represent.

70 Article 3, annexe IX to the Rules of Procedure of the European Parliament.

The EU provides considerable opportunities for NGO participation in its monitoring procedures, at least on paper. Under Article 230 (4) of the EC Treaty, for example, NGOs can bring cases to the European Court of Justice (ECJ) against the European Commission, the Council of the European Union, the European Parliament and the European Central Bank. Article 232 (3) of the EC Treaty allows NGOs to complain to the ECJ against failure by an EU institution to take a decision. However, these routes are only open to NGOs that have been directly and individually affected by a particular action or omission. This will rarely be the case since the Court gives a very strict interpretation of individual interest.<sup>71</sup>

A third way for NGOs to play an active role within the EU is to intervene in cases before the Court (Article 40 of the ECJ Statute). This right goes further than an *amicus curiae* intervention. It entitles NGOs to receive written documentation, give verbal briefings, submit relevant evidence and view case documents. This right is afforded to any NGO that establishes an interest in the Court's decision. The Court interprets this right, which can also cover general interests represented by NGOs, fairly broadly. It is confined to actions between private citizens and EU institutions.

Both NGOs and the private sector play a substantial role in drafting EU policy. However, levels of access to the various institutions are extremely varied and fragmented. Civil society organisations have expressed a desire for more structured cooperation with all the EU institutions through a legal framework for dialogue.<sup>72</sup> Such cooperation would have been achieved by the Treaty establishing a Constitution for Europe, which envisaged a significant role for civil society. Title VI, Article I-47 of the draft Constitution acknowledge the importance of participatory democracy:

1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.
2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.
3. The Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.
4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal in matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Constitution. European laws shall determine the provisions for the procedures and conditions required for such a citizens' initiative, including the minimum number of Member States from which such citizens must come.

This provision can be seen as a milestone in the development towards participatory democracy within the EU. However, since the future of the EU Constitution is now unclear, further steps towards participatory democracy are also uncertain.

71 See: ECJ 15 July 1963, *Plaumann & Co. vs the European Commission*, No. 25/62, ECJ case law, 1963, (205) 232. See also *Greenpeace vs the European Commission*, C-321/95 P (1998) ECR I-1651. This strict interpretation is often criticised. See e.g. the conclusions of the Advocate General in case C-50/00 *P. Unión de Pequeños Agricultores* of 21 March 2002.

72 See e.g. the *act4europe* campaign <[www.act4europe.org](http://www.act4europe.org)>.

#### II.4.2 The Council of Europe

The Council of Europe has long recognised the importance of an active civil society. NGOs have made substantial contributions to the development of the normative framework, have been extensively involved in the practical implementation of projects and play a key role in the monitoring procedures of the European Court of Human Rights, the European Social Charter (ESC) and the European Commission against Racism and Intolerance (ECRI). NGO involvement ranges from consultation to close cooperation and can, the AIV believes, serve as an example of good practice. The accreditation procedure, whereby the Council of Europe Secretariat conducts an initial investigation and then proposes NGOs for admission, can serve as a non-politicised model for other organisations such as the UN. The value that the Council of Europe attaches to NGO participation was again demonstrated in 2003, when the consultative status of international NGOs – established in 1952 – was replaced by that of participant.<sup>73</sup> Over 400 organisations now hold participant status. National NGOs were granted partnership status in 2003.<sup>74</sup> Various programmes have been set up since the 1990s to support civil society organisations in the new member states.

NGO participation within the Council of Europe has also acquired a far-reaching legal form. Article 34 of the European Convention on Human Rights states that the European Court of Human Rights in Strasbourg may receive applications from ‘any person, non-governmental organisation or group of individuals’ claiming to be the victim of a violation by one of the contracting parties of the rights set forth in the Convention or its protocols. NGOs can also submit *amicus curiae* briefs.<sup>75</sup>

The European Social Charter has had a collective complaints procedure since 1995. As well as employers’ and trade union organisations, international NGOs can also submit complaints regarding non-compliance with the Charter, provided they appear on a special list compiled by the ESC Secretariat. These NGOs have thus been afforded a right of complaint that does not require them (as human rights conventions usually do) to have been affected by an infringement of one or more Articles in the Charter. By mid-2006, there were over 60 NGOs on the list, in addition to employers’ and trade union organisations from the various member states. As well as giving them the right to lodge collective complaints, the ESC also gives employers’ and trade union organisations a particular role regarding the reports on the progress states have made in implementing the Charter provisions. In these mandatory reports, states must include the response of national organisations affiliated to international employers’ and trade union organisations.<sup>76</sup>

The developments within the Council of Europe exemplify NGOs’ greatly expanding role in procedures, especially in the field of human rights. Similar progress has been made in the context of the American Convention on Human Rights, where NGOs also have

73 Committee of Ministers, Resolution (2003)8.

74 Committee of Ministers, Resolution (2003)9.

75 Article 36(2) of the ECHR and Article 61 (3)-(5) of the Rules of the Court.

76 Article 23 of the ESC.

access to the complaints procedure<sup>77</sup> and where they bring the vast proportion of cases. The new African Court of Human Rights<sup>78</sup> and the Human Rights Committee of the African Union can also hear complaints from NGOs,<sup>79</sup> which again account for most of the cases.

The value ascribed to NGO participation by the Council of Europe is also reflected in the steps it has taken to strengthen the legal status of NGOs. It is currently the only international organisation to adopt a legally binding instrument on NGOs (the aforementioned European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations). Although the Netherlands has signed this convention, the ratification process is not yet complete.<sup>80</sup> In May 2006 the Council presented a draft recommendation on the legal status of NGOs and their management, liability and transparency.<sup>81</sup> This is a revision of the Fundamental Principles on the Status of NGOs dating from 2002, and is intended as a guide for governments wanting – or in the Council’s view, needing – to update their national laws on NGOs.

77 ‘Any person or group of persons, or any non-governmental entity legally recognised in one or more member states of the Organisation, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party’ (Article 44).

78 Provided their authority is recognised by states.

79 See: Article 5 paragraph 3 of the Protocol establishing the Court: ‘The Court may entitle relevant Non-Governmental Organisations (NGOs) with observer status before the Commission (...) to institute cases directly before it (...).’

80 The House of Representatives of the States General approved the Convention on 20 June 2006. The government is now taking steps to conclude the debate in the Senate by November 2006.

81 Preliminary Draft Recommendation on the Legal Status of Non-Governmental Organisations in Europe, 30 May 2006, CJ-S-ONG (2006) 1, rev.

### III Problems

The growing role of non-state actors is creating more responsibilities and generating more criticism. Governments, the private sector and NGOs are fundamentally different entities, and their roles and functions differ accordingly. It is ultimately the responsibility of governments and the bodies that monitor them (such as parliaments) to guide complex and often far-reaching international decision-making processes to a satisfactory conclusion. NGOs and companies can play a key role in identifying trends and providing information. They cannot, however, take part in the decision-making process itself. This is because these organisations lack democratic legitimacy and their underlying goals are not always clear. In that sense, they are not always committed to bringing negotiations to a successful conclusion. State players, however, must work towards consensus. What is more, they are accountable for the results they achieve. A bigger role for NGOs in international relations and international organisations therefore causes some governments to periodically (and increasingly) question their legitimacy and that of their activities. This prompted the AIV to consider whether some NGOs might be bringing a number of these problems on themselves, and to look at various aspects of NGO participation in more detail.

#### *Criticisms*

As soon as they move on to playing a bigger role than simply supplying background information, quite a few NGOs lack the capacity to adequately weigh up different interests, according to state players. Consequently, if these organisations play too prominent a role in international relations and international organisations, they could by definition run into problems of legitimacy and overestimate their abilities. Since, unlike political or governmental bodies, NGOs and the private sector are not required to include all relevant interests in their decision-making processes and assess them from a general standpoint, they should be cautious about making pronouncements that transcend their areas of expertise.

The AIV acknowledges this problem. At the same time, it recognises that an approach of this kind by NGOs could lead to positive cross-fertilisation between different systems of standards and organisations, and hence ultimately to better decisions. Such processes can be seen in the spheres of development, environment, human rights and economic liberalisation. Moreover, the risk of NGOs becoming overconfident may be exaggerated. After all, they know that their 'peers' will be quick to correct any errors they make. And for NGOs, accurate data and credible arguments are still vital if they are to operate effectively.

Then there is the question of legitimacy of purpose: on whose behalf are NGOs acting?<sup>82</sup> Most cannot claim legitimacy on the grounds that they represent all or some of the population or that they have been granted an alternative form of democratic mandate. Since most NGOs cannot claim legitimacy on the grounds of representativeness, the AIV feels that the fundamental question of legitimacy is best approached on the basis that NGOs represent certain values or interests rather than certain (groups of) individuals. These values or interests may well represent a broad

82 Some NGOs consist of little more than a single individual with a good computer network, while others enjoy substantial grassroots support.

swathe of opinion, in which case the NGO may attract wide public support. Conversely, if the approach taken cannot generate substantial support, this could undermine the NGOs legitimacy in putting forward and promoting its ideas. NGOs are to some extent self-legitimising.<sup>83</sup> By approaching the issue of legitimacy in this way, the AIV believes it is possible in specific cases to see whether a form of NGO involvement in, and contribution to, international decision-making strengthens or weakens the legitimacy of the international organisations themselves.

Another problem of legitimacy is the uneven global distribution of NGOs. Most NGOs are based in the West, while a large proportion of those originating in poor countries (far fewer in number) can only function thanks to funding from the wealthy North. Figures also show that NGOs from developing countries experience particular difficulties in working within international organisations.<sup>84</sup> On the other hand, many NGOs originating in the West or North have now developed into fully-fledged international organisations, partly as a result of technological progress. Although many have their headquarters in Western countries, their activities reach across the globe. Nevertheless, it is a fact – and a problem – that organisations from developing countries take relatively little part in international consultative structures and have too little opportunity to contribute their specific knowledge and views. This prompted the Cardoso Panel to call for the creation of a fund ‘to enhance the capacity of civil society in developing countries to engage in United Nations processes and partnerships’.<sup>85</sup> This involves much more than merely providing financial assistance – the Cardoso Report also mentions briefings, training courses and the development of networks and other forms of support. In his response to the Cardoso Report, the UN Secretary-General said it was also important to broaden the dialogue with civil society at local level. Work is now under way on his proposal to encourage NGO participation in the field through a fund to boost local NGO capacity.<sup>86</sup> It is expected that this will increase international participation by NGOs from developing countries while at the same time helping to neutralise another key criticism of NGOs. At the moment, very many NGOs are directly or indirectly financed by governments or other organisations in the West. This makes them inherently less trustworthy to many leaders in developing countries, and undermines their legitimacy.

The growing role of companies in the international order also raises questions of legitimacy. These questions have less to do with the three points discussed above in relation to NGOs and more to do with the primary goal of companies, which is to generate a profit. They hinge on how far companies should be allowed to continue pursuing profits to the detriment of wider interests, such as environmental

83 For more on this and other aspects of legitimacy, see: W.J.M. van Genugten, R.A.J. van Gestel, J.E.J. Prins and A.H. Vedder, *NGOs als ‘nieuwe toezichhouders’ op de naleving van mensenrechten door multinationale ondernemingen*, The Hague: Boom Juridische Uitgevers, 2004.

84 In 2004, 11% of African NGOs had consultative status with ECOSOC, compared with 4% in 1996. Some 30% of NGOs with consultative status are now based in developing countries. Asia in particular is underrepresented. UN Doc. A/59/354, op. cit., paragraph 20.

85 UN Doc. A/58/817, op. cit., proposal 27.

86 UN Doc. A/59/354, op. cit., paragraph 47 and UN Doc. A/61/1, *Report of the Secretary-General on the work of the organisation*, 16 August 2006, paragraph 208.

sustainability or internationally accepted human rights, including the fundamental labour rights of the ILO. They also hinge on the extent to which companies should be expected to make additional investments in the society in which they operate, over and above their core activities (such as creating employment, etc.). This is not the place to discuss this issue in detail. The AIV will therefore confine itself to briefly mentioning the concept of corporate social responsibility, which asserts that companies cannot restrict themselves simply to their commercial operations but must also address wider issues such as sustainability, development, the environment and respect for human rights. Some companies look on corporate social responsibility as simply a matter of complying with local laws. The AIV feels that this is not always enough, especially if local laws conflict with international standards, there are major gaps in national legislation or supervision of compliance is poor or non-existent.

It has become increasingly clear over the years that companies cannot evade their international human rights obligations. Initially, companies argued that they were at liberty to decide whether to abide by these legal standards, which they claimed were primarily directed at states. It is now accepted that no such freedom exists,<sup>87</sup> especially where the standards concerned are a matter of peremptory international law.<sup>88</sup> As the late H. Schermers says:

‘International public law has evolved in such a way as to bring human rights under the category of peremptory norms (*jus cogens*). In other words, they have become general legal principles which must be upheld everywhere and by everyone, including private enterprises.’<sup>89</sup>

This development is reflected both in the ILO’s Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy and in the OECD’s Guidelines for Multinational Enterprises, which state that companies ‘should (...) respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments’.<sup>90</sup> The Global Compact also explicitly refers to the Universal Declaration of Human Rights, much of which is based on customary international law. Finally, a growing number of International Framework Agreements have been concluded in recent years between companies and international trade union sector organisations (chemicals, construction, metalworking, etc.). Direct involvement by the private sector and companies in upholding human rights within such frameworks (ILO, OECD and the Global Compact) thus assumes a dual form. Companies are keen to engage in corporate social responsibility, but they should not cherry-pick. Instead, they must endorse and uphold all the aforementioned codes and declarations, together with all the relevant provisions on human rights.

87 See: P. Muchlinkski, *Human rights and multinationals*, International Affairs 2001, pp. 31-47.

88 See e.g.: Nicola Jägers, *Corporate human rights obligations: in search of accountability*, Antwerp/Oxford/New York: Intersentia, 2002; and W.J.M. van Genugten, *The status of transnational corporations in international public law*, in: Asbjørn Eide, Helge Ole Bergesen and Pia Rudolfson Goyer (eds), *Human rights and the oil industry*, Antwerp/Groningen/Oxford: Intersentia, 2000, pp. 71-89.

89 H.G. Schermers, *Onderneming en mensenrechten*, *Civis Mundi*, volume 41, No. 1, January 2002 (issue on the theme ‘international dimensions of corporate social responsibility’), p. 44.

90 See: <[www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines)>.

### *Accountability and (self-)regulation*

The growing role of NGOs in international organisations also raises questions concerning their accountability, for example in the event of actual or alleged misconduct. Examples include the severe disruption caused by some NGOs during meetings of the WTO and IMF, and the practice of putting forward inadequately verified claims. Generally speaking, the more important NGOs have become, the higher the standards of integrity and accountability they are expected to meet.<sup>91</sup>

The UN Secretary-General has endorsed a proposal by the Cardoso Panel that member states should draw up a code of conduct to encourage NGOs to commit themselves to UN goals.<sup>92</sup> Similar arguments could be – and have been – put forward concerning reliability of information, the use of non-violent means and so on. In recent years, NGOs have themselves been engaged in a process of self-reflection and self-regulation.<sup>93</sup> Eleven of the biggest human rights, development and environmental organisations recently signed the International Non-Governmental Organisations Accountability Charter, which contains agreements on reporting and transparency.<sup>94</sup> Within the EU, the policy of self-regulation encouraged by the European Commission has led various EU umbrella organisations to adopt voluntary codes of practice. So far, however, these codes only cover a small proportion of EU lobbying organisations.<sup>95</sup>

The emphasis on self-regulation and the rejection or prohibition of top-down regulation is crucial for keeping the process of non-governmental input as transparent as possible. NGOs can thus be encouraged to adopt codes of practice in a range of different areas without restriction. However, there is no role for governments or international organisations to act as watchdogs. On the other hand, governments may well have to intervene if the system of self-regulation proves inadequate. One option might be to withdraw consultative status from NGOs or deny them access to meetings.

The AIV feels that companies should also practise self-regulation. The proliferation of voluntary codes of conduct reveals a marked trend in this direction.<sup>96</sup> On the other hand, experience has shown that relying exclusively on the mechanism of self-regulation

91 See e.g. the stance taken by Greenpeace in relation to the Brent Spar oil platform and criticisms of the working method of Foster Parents Plan in the Netherlands.

92 UN Doc. A/59/354, op. cit., paragraph 34.

93 See: Hugo Slim, *By what authority? The legitimacy and authority of non-governmental organisations*, The Journal of Humanitarian Assistance, 10 March 2002, <http://www.jha.ac/articles/a082.htm>; V.C. Collingwood and H.L.C. Logister, *State of the art: addressing the NGO 'legitimacy deficit'*, Political Studies Review, Vol. 3, 2005, pp. 175-192.

94 See: <[http://www.oxfam.org/en/files/INGO\\_accountability\\_charter\\_0606](http://www.oxfam.org/en/files/INGO_accountability_charter_0606)>.

95 ETI Green Paper, op. cit, p. 9.

96 For a summary of human rights-related initiatives, see: <<http://www.business-humanrights.org>>. See e.g. John G. Ruggie, *Human rights policies and management practices of Fortune Global 500 firms: results of a survey*, 1 September 2006.



is not always effective.<sup>97</sup> However, UN initiatives to encourage a more binding form of corporate regulation<sup>98</sup> have met with fierce opposition from governments and the private sector and have not yet yielded further results.

Why, then, does the AIV believe that self-regulation is sufficient for NGOs, yet feels that for the private sector it should be backed up by binding legislation? Essentially, the distinction lies in the question of whether the market mechanisms described in this report are enough to correct violations of international law by NGOs and companies. The AIV is not aware of any situation in which the corrective impact of the Internet, the threat of falling membership or the risk of diminished credibility would not act as a deterrent to NGOs. Applying external regulations to NGOs would moreover play into the hands of governments determined to do all they can to undermine the work of organisations active in their countries. The AIV therefore believes it would be wrong to burden NGOs with the constant threat of intervention from above. Any deficiencies in the aforementioned mechanisms for self-regulation would be preferable to the risks posed by legalised state intervention. In any case, there are sufficient opportunities, even in the existing situation, to apply extra measures based on agreed criteria, such as temporary withdrawal of accreditation.

This line of argument also largely applies to companies, but only up to a point. Enterprises are better placed than NGOs to exploit their positions of dominance without attracting effective countermeasures. Such companies may not need to rely on consumers for their income, or they may operate within failing states or in regions to which NGOs have little or no access. Also, many adopt self-regulatory codes that refer to respect for human rights but are often couched in vague terms that say little or nothing about specific rights. In seeking to maximise their profits, some companies seek to push legality to the limits, employing child labour, outlawing trade unions, using unregulated security services or applying unequal treatment to different groups of workers. These limits are not necessarily those defined by the relevant supervisory bodies or international courts. In order, therefore, to prevent companies from taking refuge in the grey area between standards based on self-regulation and those prescribed by prevailing national and international statute law, customary law and case law, it may be necessary to insist on additional binding legislation. This can be applied if and when self-regulation falls short.

97 Jägers, *op. cit.*, 2002, pp. 132-136.

98 See note 37 above.

## IV General observations and specific recommendations

This chapter begins with a number of general observations. These are intended as a frame of reference. The AIV then goes on to indicate how the Dutch government could help to strengthen the role of NGOs and the private sector in each of the international organisations covered in this report.

- The growing role of non-state actors is creating more responsibilities and generating more criticism. Governments, the private sector and NGOs are fundamentally different entities, and their roles and functions differ accordingly. It is the responsibility of governments and the bodies that oversee them (such as parliaments) to guide complex and often far-reaching international decision-making processes to a satisfactory conclusion. NGOs and companies can play a key role in identifying trends and providing information. They cannot, however, take part in the decision-making process itself.
- The organisations discussed in this report have seen the scope of their activities widen considerably over the years. New social developments have forced many to address issues that go beyond their original, already broad, remit. To achieve these many and varied goals, they have become increasingly reliant on the additional knowledge and/or resources of NGOs and private enterprises. Many governments have now come to recognise this.
- While there are few obligations in international law for organisations to consult or include NGOs and other civil society organisations in decision-making processes, there does seem to be a trend in that direction. As a result, the image of international organisations as a framework for intergovernmental negotiation is being replaced by one in which different actors compete and cooperate. It is clear, for example, that NGOs are fully involved in the debate on human rights and the environment, while their share in financial and economic development and security is relatively small, yet growing.
- Far from undermining international organisations, the expertise of NGOs, the private sector and individual companies can actually strengthen them. Positive input by non-governmental organisations increases and improves the output of governments.
- Involvement by NGOs and companies in international decision-making processes can help to further increase the legitimacy of international organisations by reducing the gap between citizens and government and by helping to generate popular support for decision-making. The added value of NGOs for international organisations lies chiefly in their ability to supply additional knowledge, make international relations more transparent, promote values that transcend the interests of individual states and provide specific assistance in monitoring compliance with international law. The latter could be regarded as a full and final recognition of the countervailing power that NGOs have been trying to apply to policy-making for decades.
- As their position strengthens, NGOs increasingly find their legitimacy being questioned, especially in countries governed by dictatorships, where the authorities do all they can to undermine their work. At the same time, it is important to recognise that not all NGOs working within international organisations are behaving responsibly. To boost their credibility and public support and thereby increase their legitimacy, NGOs should join forces more often, rather than acting unilaterally.<sup>99</sup> NGOs themselves increasingly recognise the need to encourage such coalitions.

<sup>99</sup> See also the Cardoso Report, proposal 23 op. cit.

- It is sometimes argued that giving NGOs a role in international organisations could undermine national democratic processes.<sup>100</sup> According to this line of reasoning NGOs should instead lobby their own national governments to represent their interests. However, national governments have their own agendas. If a given issue is not a priority at national level, it is unlikely to be given sufficient recognition at international level. The AIV therefore feels that influential NGOs should be entitled to promote their own interests.
- This report concentrates on two of the roles of NGOs: their contribution to the development of standards and values and their role in implementing and supervising compliance with international rules. NGOs tend to have close links with human rights bodies, but far less access to other bodies and policy areas. This close relationship with human rights bodies is partly due to the specific nature of human rights. After all, promoting and protecting human rights is fundamentally unthinkable without the active participation of groups of individuals who uphold these rights vis-à-vis the governments that have established the relevant standards. Similar views are gaining currency in other policy areas in which NGOs figure prominently, such as international environmental protection. In this report, the AIV has explained why NGOs and, in certain cases, the private sector should be given access to areas other than human rights and the environment. The AIV believes that NGOs and companies could, for example, make a valuable contribution to the work of international financial and economic institutions and the UN Security Council.
- The Cardoso Report on UN-civil society relations acknowledges the importance of non-state actors in upholding the international order. However, the report has been sharply criticised by NGOs, partly because it refers to coalitions and partnerships without specifically indicating which organisations are meant. The AIV endorses this criticism and feels that a clear distinction should be maintained between NGOs and the private sector in view of their largely divergent goals and tasks. Moreover, too free a use of the term ‘partnership governance’ – as in the Cardoso Report – carries with it the risk that the expectations placed on NGOs and companies could deflect attention from the obligations and responsibilities of the state. The AIV feels that this risk should be taken seriously. In calling for a bigger role for NGOs and the private sector, this advisory report is not advocating a commensurate reduction in the responsibilities of the state as the primary actors in the international legal order.

Proceeding from these general observations the AIV makes the following specific recommendations relating to the international organisations covered by this report.

#### **IV.1 The United Nations**

- The government should ensure that existing and future UN reforms (e.g. those relating to the Human Rights Council) include measures to maintain and, wherever possible, strengthen NGO participation. This means providing a counterweight to states that are opposed to civil society involvement, and ensuring that removing practical obstacles to NGO participation, does not radically curtail their powers. While NGO participation in the UN system is formally not at risk, it is not yet firmly established.

<sup>100</sup> This has been posited by John Bolton, the current US ambassador to the UN: John R. Bolton, *Should we take global governance seriously?*, Chicago Journal of International Law, Vol. 1, No. 2, Fall 2000.

- The Cardoso Report stresses the UN's networking character over its role as a creator and standardsetting and monitoring. The AIV feels that this view could weaken the organisation. If anything, the UN's role as guardian of international law should be strengthened. This calls for greater self-awareness as an independent organisation than a label like 'network manager' would suggest.
- The role of NGOs is most highly developed within the Economic and Social Council (ECOSOC). However, there is growing criticism of the decision-making procedure that governs the consultative status of NGOs and the accreditation process. The Cardoso Report suggests various ways to improve the situation. The AIV supports the most important of these, namely reducing existing UN procedures to a single overall procedure administered by the General Assembly (UNGA). This new procedure would entail a practical assessment of the work of NGOs by the UN Secretariat. The AIV feels that this procedure, which would be similar to the one used by the Council of Europe, would make a real difference. The EU is in favour of this step, and the AIV urges the government to promote it energetically.
- The AIV acknowledges the need for closer cooperation between the UNGA and the non-governmental sector. The UNGA and its committees have in the past sought and received input from NGOs and independent experts within academia. This should be continued. In his response to the Cardoso Report, the UN Secretary-General argues that NGOs should be accredited to the main UN committees and invited to attend informal hearings prior to the main meetings. The AIV supports such initiatives, provided they do not slow progress towards full participation. Until agreement is reached, proposals to intensify informal contacts between NGOs and the UNGA and its committees should be supported.
- The AIV notes that so far the response to the Cardoso Report appears to be concentrating mainly on the procedural aspects of NGO participation. The AIV sees this as a missed opportunity. After all, the value of NGOs for UN agencies lies chiefly in their practical experience. This applies equally to any complex issues involving the UN Security Council, such as the restoration of the rule of law and reconstruction in general. So while procedural improvements are always welcome, the key is to maximise the practical potential of NGOs.
- The recently established Human Rights Council could help to boost NGO involvement. NGOs could, for example, do more to assist the special rapporteurs and the annual human rights survey in the member states.
- The relationship between NGOs and the UN Security Council should be strengthened in fundamental ways. NGOs can play a particularly important role in conflict prevention and peacebuilding, two areas with which the UN Security Council is increasingly concerned. The Security Council is now also more involved with human rights issues; this is increasing its workload as well as its need for specific expertise. The AIV supports the Cardoso Report's recommendation that the UN Security Council strengthen its links to civil society by extending and further facilitating participation in the informal meetings of the Arria Formula. The role of NGOs in promoting peace and security can also be amplified by means of the UN Security Council proposal to include NGOs in ex-post evaluations of peace missions.
- The government should press for NGOs to be given a key role in the work of the Peacebuilding Commission. This is especially important in view of their experience in post-conflict regions and the establishment or re-establishment of the rule of law there. Sufficient scope should be given to community representatives in post-conflict regions and to an independent analysis of conflicts. The Commission would also be well advised to send out field missions early on, in order to involve local community representatives in the peacebuilding process.

- The UN as a whole should improve its links with civil society through a single dedicated agency. The AIV supports the idea of appointing a designated NGO contact at the Secretariat, at Deputy Secretary-General level. Such a post would be crucial, both for improving coordination and for underscoring the importance that the UN attaches to maintaining contact with civil society. Funding for the United Nations Non-Governmental Liaison Service (NGLS), which is held in high esteem by NGOs, must be guaranteed.
- In its recent reports and documents, the UN discusses ways of encouraging companies to help it meet its goals. The AIV fully supports these efforts. The importance of guarding against overlapping responsibilities is obvious, but it still bears repeating. It should also be remembered that companies do not always help to further UN goals, despite its claimed commitment to corporate social responsibility and voluntary codes of conduct. It is therefore important to ensure that initiatives such as the Global Compact are not simply used for PR purposes. Companies must be encouraged to practice self-regulation. If this does not work, binding regulations may be required, even if they are only applied to companies beyond the critical reach of the internet and the countervailing power of consumers and their organisations.
- Cooperation between traditional International Labour Organisation (ILO) players and general NGOs can be further enhanced. Employers' organisations and trade unions are already active throughout the ILO and account for a large proportion of civil society input. Nevertheless, cooperation with NGOs can be further improved and strengthened, especially with regard to ILO-related activities, some or all of which fall outside the traditional scope of trade unions and employers' organisations.

#### **IV.2 The WTO**

- The World Trade Organisation (WTO), with its highly effective, coercive sanctions mechanism, occupies a special place in international law. At the same time, recent developments surrounding the various systems for settling disputes have made it more likely that a WTO panel or the Dispute Settlement Body will be confronted with arguments that fall outside the strict scope of WTO law, such as those based on internationally recognised human rights or the need to protect the environment. WTO law is also becoming increasingly intertwined with other aspects of international law. The AIV feels that this makes cooperation with specialised NGOs even more desirable and necessary.
- The settlement of trade disputes can also have a far-reaching impact on other policy areas, such as food safety and workers' and trade union rights. This, too, makes it vital for the WTO to harness the specific expertise of NGOs on human rights and other areas, both in its negotiations and in its settlement of disputes. This will also make the organisation more transparent and familiar to a wider public. The AIV therefore advises the Dutch government to press for the formal adoption of *amicus curiae* briefs to enable NGOs to participate in the WTO dispute settlement system. Based on a procedure to be determined, a list can be drawn up of carefully selected NGOs that could assist the WTO in dispute settlement procedures. The relevant organs of the WTO courts should then be encouraged to consult these organisations.
- The Dutch government should continue to work with the EU to ensure more openness within the WTO. Meetings of WTO panels and the Appellate Body should as a rule be open to the public, with only sensitive cases being heard behind closed doors.

- Finally, the AIV would like to see NGOs given a bigger role in the WTO Trade Policy Review Mechanism. At the very least NGOs should be permitted to submit shadow reports in order to supply the WTO with extra information, by analogy with the reporting procedures governing human rights conventions.

#### **IV.3 The World Bank and the IMF**

- In the 1980s, the World Bank and the IMF began consulting NGOs through general discussion fora, the IMF/WB Highly Indebted Poor Countries Initiative for Debt Relief and similar bodies. However, many of these consultations are not held directly with the World Bank and IMF themselves, but between civil society and the governments of the countries concerned. The AIV feels that this needs to gradually change and urges the government to take appropriate steps.
- Compared with other international economic organisations, including the IMF, the World Bank has made significant efforts to further NGO participation. Much of this is due to its recent focus on poverty, gender and the environment, areas in which NGOs have always had specific expertise. The Bank has also stepped up cooperation with business and industry, partly to help it meet its share of the Millennium Development Goals. Another key development is that NGOs are now involved in the World Bank's monitoring procedures, notably the Inspection Panel. Compared with the World Bank, the IMF's links with civil society and the private sector are underdeveloped, though it has taken steps to improve them in recent years. Although these contacts became closer in the 1990s, there is still no permanent discussion forum. Pressure from NGOs has led to greater transparency within the IMF, with the result that many of its documents are now made public and an External Relations Department has been established with a designated NGO contact. The government should press the IMF to continue this trend over the coming years.
- The AIV notes that the participation of NGOs at the annual meetings of the World Bank and the IMF is becoming increasingly difficult, thanks in part to the actions of some of their own representatives. Inaccessible locations, strict security requirements and the allocation of separate meeting rooms to NGOs are severely obstructing even the participation of genuine NGOs. The problems experienced at the meeting in Singapore in September 2006 were typical. The government should therefore continue to insist on free access for NGOs to the annual meetings of both financial institutions.
- Finally, the IMF operates an Independent Evaluation Office which occasionally invites economic research institutes to verify information, but rarely consults NGOs. The AIV advises the government to find ways to improve matters, based on the recommendations contained in this advisory report.

#### **IV.4 The EU**

- The AIV feels that civil society can play a key role in linking national and European interests. Conditions for participation by non-governmental actors within the EU are favourable, partly because one of the EU's Strategic Objectives for 2005-2009 is to give stakeholders more opportunities to actively co-determine EU policy. The Dutch government must help to ensure that these good intentions are fully met.
- The European Commission has proposed introducing a registration system for lobbyists and lobbying organisations. A joint code of practice or common set of minimum regulations for lobbyists must also be developed. The Commission is calling for a stricter system of self-regulatory monitoring and disciplinary measures

for incorrect registration and/or infringements of the code of practice. The AIV advises the government to support this two-pronged approach.

- Involvement in the democratic process within the EU should be encouraged more generally through the introduction of a legal framework for non-state participation. Since the future of the EU Constitution is now unclear following the 'no' votes by France and the Netherlands, further steps towards participatory democracy may also be uncertain. The AIV therefore advises the government to examine what it can do to move this issue forward independently.

#### **IV.5 The Council of Europe**

- The AIV is satisfied with the measures the Council of Europe has taken so far to expand NGO participation, and with the corresponding efforts of the Dutch government. After much delay the Netherlands has now adopted the collective complaints procedure under the European Social Charter. The Council of Europe is currently the only international organisation to adopt a legally binding instrument recognising NGOs as legal persons. Although the Netherlands has signed this convention, the ratification process is not yet complete. However, the AIV takes note of the government's intention to debate the Fundamental Principles on the Status of Non-governmental Organisations in the Senate by 22 November 2006 and is confident that the procedure will be brought to a satisfactory conclusion.

#### *Concluding remark*

It is important for international organisations to remain outward looking. NGOs, companies and the private sector can play a crucial role in this process, partly by helping them to identify key issues, warning them when they risk becoming too esoteric or introspective in addressing certain problems, and denouncing unnecessary red tape. NGOs, companies and the private sector are also vital links between the wider, global political perspective and everyday local and regional concerns.

**List of Abbreviations**

<b>AIV</b>	Advisory Council on International Affairs
<b>Benelux</b>	Economic union between Belgium, the Netherlands and Luxembourg
<b>BEUC</b>	Bureau Européen des Unions de Consommateurs (European Consumers' Organisation)
<b>BONGO</b>	Business-Operated Non-Governmental Organisation
<b>CMR</b>	AIV Human Rights Committee
<b>CONCORD</b>	European NGO Confederation for Relief and Development
<b>CONECCS</b>	Consultation, the European Commission and Civil Society
<b>COPA-COCEGE</b>	Committee of Professional Agricultural Organisations in the European Union-General Confederation of Agricultural Cooperatives in the European Union
<b>COS</b>	AIV Development Cooperation Committee
<b>CVV</b>	AIV Peace and Security Committee
<b>DPI</b>	Department for Public Information
<b>DVF/PJ</b>	United Nations and International Financial Institutions Department/Political and Legal Affairs Division, Dutch Ministry of Foreign Affairs
<b>EC</b>	European Community
<b>ECHR</b>	European Convention on Human Rights
<b>ECJ</b>	European Court of Justice
<b>ECOSOC</b>	Economic and Social Council of the United Nations
<b>ECRI</b>	European Commission against Racism and Intolerance
<b>EESC</b>	European Economic and Social Committee
<b>ESC</b>	European Social Charter
<b>ETUC</b>	European Trade Union Confederation
<b>EU</b>	European Union
<b>G8</b>	Group of Eight
<b>GONGO</b>	Government-Operated Non-Governmental Organisation
<b>GPPAC</b>	Global Partnership for the Prevention of Armed Conflict ETI Green Paper/Green Paper on the European Transparency Initiative
<b>ICC</b>	International Criminal Court
<b>IEO</b>	Independent Evaluation Office
<b>ILO</b>	International Labour Organisation
<b>IMF</b>	International Monetary Fund
<b>IOB</b>	Policy and Operations Evaluation Department, Dutch Ministry of Foreign Affairs



<b>IP</b>	World Bank Inspection Panel
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>NATO</b>	North Atlantic Treaty Organisation
<b>NGLS</b>	Non-Governmental Liaison Service
<b>NGO</b>	Non-Governmental Organisation
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>OSCE</b>	Organisation for Security and Cooperation in Europe
<b>PRSP</b>	Poverty Reduction Strategy Paper
<b>UN</b>	United Nations
<b>UNGA</b>	United Nations General Assembly
<b>UNICE</b>	Union des Industries de la Communauté européenne
<b>UNICEF</b>	United Nations Children's Fund
<b>WB</b>	World Bank
<b>WEU</b>	Western European Union
<b>WTO</b>	World Trade Organisation

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