

**THE UN HUMAN RIGHTS TREATY SYSTEM**  
**STRENGTHENING THE SYSTEM STEP BY STEP**  
**IN A POLITICALLY CHARGED CONTEXT**

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## Foreword

On 3 July 2006 the Minister of Foreign Affairs asked the Advisory Council on International Affairs (AIV) for an advisory report on developments in the human rights treaty system of the United Nations (UN). He requested particular consideration for the plans for the treaty mechanisms and the proposed system of Universal Periodic Review (for the request for advice see Annexe I).

This report was prepared by the AIV's Human Rights Committee in its entirety (CMR). The following persons took part: Dr K.C.J.M. Arts, Professor T.C. van Boven, T. Ety, Professor R. Fernhout, Professor C. Flinterman (chair), Professor W.J.M. van Genugten, Professor J.E. Goldschmidt, Ms C. Hak, R. Herrmann, T.P. Hofstee, Professor M.T. Kamminga, F. Kuitenbrouwer, Dr B.M. Oomen, Professor N.J. Schrijver, Professor W.M.E. Thomassen, Ms H.M. Verrijn Stuart and Ms J.M. Verspaget. The executive secretary was T.D.J. Oostenbrink (secretary to the CMR), who was assisted by trainees Ms E. Jansen, Ms M. Suijkerbuijk and T. Schut. During the preparation of the report the AIV was able to draw on the knowledge and experience of J.J.H. Geeven and Ms S. van der Meer of the Human Rights Division, Human Rights and Peacebuilding Department, who acted as civil service liaison officers.

The request refers to the United Nations reform agenda proposed in 2002 by the then Secretary-General Kofi Annan, the newly established UN Human Rights Council and the proposals of the Office of the High Commissioner for Human Rights (OHCHR) for reform of the treaty mechanisms. It mentions in particular the Concept Paper on the High Commissioner's Proposal for a Unified Treaty Body, which was presented on 14 March 2006.<sup>1</sup> The paper recommends the amalgamation as far as possible of the existing treaty bodies. It notes that this is an initial proposal that leaves much to be fleshed out in more detail.

The request also stresses the importance of ensuring that reform of the system of UN treaty bodies does not lag behind, particularly since they are an important instrument in implementing international human rights standards nationally. It is also thought vital to consider the relationship between the new Human Rights Council and the existing system of treaty bodies and the connection between the reporting by the various treaty bodies and the mechanism of the Universal Periodic Review as envisaged by the new Human Rights Council. The Government emphasises that such sweeping changes to the system of treaty bodies are bound to have far-reaching consequences. It points out that improved cohesion between the different bodies should not be achieved at the expense of valuable elements of individual treaty bodies.

The Minister of Foreign Affairs requests the AIV specifically to formulate its views on the reform of the system of treaty bodies and puts the following five questions:

1. What problems do both the treaty bodies and the reporting states encounter in relation to the principal objective of the human rights treaty body system, namely to monitor implementation of international human rights standards?
2. To what extent do the current initiatives (better coordination of work, regular consultation between the chairpersons etc.) succeed in addressing the problems facing treaty bodies?

1 UN Doc. HRI/MC/2006/CPR.1.

3. What options exist for more far-reaching reform, and what are the respective advantages and disadvantages of the options that have been identified? In your view which option would be preferable and why? What would be the best way of implementing your preferred option? Can a distinction be made between short-term and long-term options? (The more far-reaching options require more time, but that should not automatically rule them out.)
4. Please give particular consideration to the advantages and disadvantages of establishing a Unified Standing Treaty Body as proposed by the UN HCHR.
5. How does the Advisory Council view the relationship between the treaty bodies (in their present form and in the form to be proposed by the Advisory Council) and the new Human Rights Council, especially in the context of the Universal Periodic Review?

The Minister indicates that as extensive documentation is already available, brief answers to questions 1 and 2 will suffice. He states that he would welcome a more detailed answer to questions 3 to 5. Shortly after receipt of the request by the Advisory Council, the UN changed its timetable for addressing this problem. As this meant that the preparation of the advisory report largely ceased to be a matter of urgency, the AIV decided to give priority to two other requests.

Chapter I of this report first of all describes the context in which the UN treaty system operates. It goes on to outline the present problems of this system. Chapter II examines the treaty system and indicates what earlier attempts have been made to change it. Chapter III sets out the available options for reform. The AIV gives its opinion on current initiatives, new proposals, challenges and alternatives and explores the scope for implementation. Chapter IV deals mainly with the relationship between the treaty bodies and the Human Rights Council, particularly with regard to implementation of the proposals for the Universal Periodic Review, which have now been adopted. The report concludes with a summary and a number of conclusions and recommendations.

The AIV adopted the report on 6 July 2007.

# I Context

As explained in the foreword, the Government put five questions to the AIV. The first two relate to the existing treaty mechanisms and the proposals that have been made to date for reforms. Question 3 seeks an opinion on the available options and question 4 requests special consideration for one of the proposals, namely the Unified Standing Treaty Body. Finally, question 5 relates to the treaty bodies' 'foreign policy', in particular their relationship with the Human Rights Council and the Universal Periodic Review that is to be established.

The AIV realises that there is a risk that advice on strengthening existing treaty mechanisms may result in either rehashing and discussing previous proposals or in presenting other 'technical solutions' that have the merit of being new, but may also be predicted not to have the desired effect.<sup>2</sup> This is why it seems advisable to the AIV to provide an outline in this chapter of the complex context in which the treaty mechanisms operate and of how this context influences the functioning of the mechanisms themselves, before making recommendations for short and long-term changes. This introduction also provides a framework for discussion of the relationship between the treaty bodies and the Human Rights Council and the problems that must be addressed in this connection. One issue that will be covered in discussing this last matter is the states that cannot be monitored by the treaty bodies because they have chosen *not* to be a party to the main human rights treaties.

In recent decades the Dutch Government has worked, in general resolutely and with full conviction, to establish and strengthen human rights treaty mechanisms.<sup>3</sup> Successive human rights memoranda have given as the reason, 'Human rights are (...) universal, they apply to everyone, in all places and at all times. It has also gradually become clearer over the years that, precisely because of their universality, human rights are a legitimate concern of the international community.'<sup>4</sup> The motive of these efforts to strengthen the treaty mechanisms could be summarised as a wish for a gradual switch to a system in which compliance with human rights obligations is monitored by treaty bodies consisting of independent experts, thereby scaling back the political component of the monitoring and

2 Previous advisory reports on this subject include: Advisory Committee on Human Rights and Foreign Policy (ACM), *Mensenrechtenverdragen onder VN-toezicht* (Human rights treaties under UN supervision), Advisory Report no. 7, The Hague, July 1988 and ACM, *VN Toezicht op mensenrechten* (UN supervision of human rights), Advisory Report no. 22, The Hague, October 1996. See also AIV, *The functioning of the United Nations Commission on Human Rights*, Advisory Report no. 11, The Hague, September 1999 and AIV, *The United Nations and human rights*, Advisory Report no. 38, The Hague, September 2004.

3 See for example Hilde Reiding: *The Netherlands and the Development of International Human Rights Instruments*, Antwerp, Intersentia, March 2007.

4 Ministry of Foreign Affairs, *2001 Memorandum on Human Rights Policy*.

supervision system.<sup>5</sup> The AIV would observe at the outset that while this is the correct approach, it realises that complications arise when putting it into practice. Monitoring by treaty bodies of compliance with human rights obligations is complementary to political (and other) procedures and instruments, such as those of the Human Rights Council.

An important achievement in recent decades has been that human rights standards have largely crystallised. This more exact definition of the standards can be attributed to a core group of states that decided at a given moment to undertake the drafting of a convention (whether or not they were followed later by other states), to pressure from NGOs and to the treaty bodies with their 'jurisprudence' and 'General Comments'. However, the application of human rights treaties in specific cases is not a simple matter of syllogistics. There are always reasons why states take the view that certain standards should be interpreted differently from what would seem to have been agreed. For example, the prohibition of torture would seem at odds with the imposition of extreme forms of corporal punishment such as amputation, and the prohibition of discrimination against women with the application of, say, Islamic law. Similarly, states may invoke the public interest to justify a limitation of freedom of expression. It would be too easy to dismiss such issues as matters of application. They go to the root of the treaty system, and mean that national political systems and views interfere with the judicial or semi-judicial application of international treaties to which this advisory report relates. Thinking about the interaction between the systems of standards under treaty law and national practices and about further adjustments to the systems to meet the latest challenges is, by definition, a never-ending process. This is one of the treaty bodies' essential functions. This is one reason why some treaty states, when nominating people to sit on the committees, pay little if any heed to the exacting requirements that the members are theoretically required to fulfil – such as 'high moral character' and 'recognised competence in the field of human rights' (article 28 (2) of the International Covenant on Civil and Political Rights (ICCPR)) – but are instead guided by the issue of how these committee members can best serve national interests.

#### *Ratifications and complaints procedures*

Many states have now become party to international human rights treaties, in some cases subject to far-reaching reservations or declarations. However, a small number of states have not even chosen the latter course of action and have avoided any commitment. The numbers of ratifications of the different human rights treaties in fact vary considerably. The International Convention on the Protection of the Rights of All Migrant Workers and Their Families has hitherto been ratified by only 37 states, none of which are Western states. By contrast, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights have been ratified by 156 and 160 states respectively. The number of ratifications of the Convention on the Rights of the Child

5 This concerns not only the UN Covenants on Economic, Social and Cultural Rights and Civil and Political Rights (ICESCR and ICCPR, 1966) but also the International Conventions on the Elimination of All Forms of Racial Discrimination (CERD, 1965) and the Elimination of All Forms of Discrimination against Women (CEDAW, 1979), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984), the Convention on the Rights of the Child (CRC, 2002) and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW, 1990). A new Subcommittee on Prevention of Torture has also recently been set up under the Protocol to the Convention Against Torture. Two new treaties were added to this Protocol by the UN General Assembly in December 2006: the Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006, and the Convention for the Protection of All Persons from Enforced or Involuntary Disappearances, adopted on 20 December 2006.



and the Convention on the Elimination of Forms of Discrimination against Women (193 and 185 respectively) is particularly impressive. However, the question arises of what these numbers actually signify, how compliance is monitored and what changes can be made or have already been made as a result of the treaties and their ratification. Some states have, after all, become a party only due to international pressure or as a form of window dressing; moreover, many states have not accepted the individual complaints procedures (see Annex II for further information).

There is also the problem of the lack of awareness on the part of the general public. Even where states have recognised individual complaints procedures, only limited use is made of them. For example, the individual complaints procedure of the ICCPR has been used about 1,550 times<sup>6</sup> during the 31 years of its existence, which amounts to some 50 complaints a year. Even these numbers compare favourably with those of the procedure under, say, the Convention on the Elimination of Racial Discrimination: in total 35 complaints over a period of 24 years. Whatever the causes of this relatively limited use to date (certainly in comparison with, for example, the individual complaints procedure under the European Convention on Human Rights and Fundamental Freedoms), the potential of these procedures to remedy the numerous violations against which they could theoretically be used is clearly not yet recognised globally. It is striking, for example, that not even one complaint has yet been received from 28 of the 109 countries that have recognised the individual right of complaint under the ICCPR.<sup>7</sup> The explanation could be that nothing occurs in those countries that could warrant an international complaint of a violation, but this is unlikely. Instead, factors that would seem to play a role are unfamiliarity with the complaint procedures, the fact that the 'rulings' of treaty bodies are not legally binding and the relatively high costs of lodging a complaint.

There is also the danger that Western countries, which are accustomed to thinking in terms of 'getting justice' through legal proceedings, will automatically reason that this approach can be used throughout the world. This approach in fact underlies the wish for a steady increase in the number of states that have accepted the individual complaint procedures. This reasoning is in itself correct. At the same time, its significance should, in the opinion of the AIV, be put in perspective until there is a systematic assessment of the practical significance of this 'access to the law'. What does access to a complaints procedure signify for someone without money – or for someone who is, at best, a client in a patronage network and therefore vulnerable and dependent – without legal knowledge or assistance and in a country which pays lip service to the complaints procedure but thwarts its application in practice? How does such an international complaints procedure operate in states such as Azerbaijan, Burkina Faso or Guinea, always assuming that they have recognised the procedure? In a country like the Netherlands people take it for granted that individuals are independent, have access to well-trained lawyers and can, if necessary, institute legal proceedings to enforce a right. Whereas it is recognised here that application to an international court or quasi-court must be possible and may sometimes result in unwelcome judgments, such recognition is largely absent in many states. Human rights are often regarded by the citizens of such states as an ideal to be achieved rather than as a viable legal instrument.

6 This number includes pending proceedings.

7 It should be noted that by no means all Western countries have yet recognised the individual right of complaint under the ICCPR. Notable exceptions include the United States and the United Kingdom.

### *Reporting obligations*

The aim of ideas for improving the existing treaty mechanisms should, in the AIV's view, be to ensure that violations of human rights can be tackled at the day-to-day level where they occur, or in other words to help achieve human rights, ultimately for 'all the world's people'. A problem here is that usually the same states that cause the human rights problems have to report on them and answer to the international monitoring committees, and states are reluctant to accept any limitation of their sovereignty. In this connection, states have often initially invoked Article 2 (7) of the Charter of the United Nations, which prohibits the UN from intervening 'in matters which are essentially within the domestic jurisdiction of any State'. From this perspective it is hardly surprising that states have tried to withhold essential information and have argued that certain cases, although objectively relevant to assessment of the human rights situation, were political in character and should not therefore be subjected to the scrutiny of the monitoring body.

Major changes have been made in recent decades to repair these defects in the reporting system. For example, the treaty bodies now unofficially consult national and international NGOs, which also publish shadow reports and supply other relevant information. Over the years the reporting system has evolved into a much more meaningful instrument than originally thought (for more about this, see chapter II).

Other examples are the inquiry procedures in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which provide the two treaty monitoring bodies concerned with the possibility of asking a state – on the basis of reliable information of grave or systematic violations of human rights by the State Party – for an explanation or statement and of designating one or more members to initiate a confidential investigation. In recent years some other treaty bodies have decided in urgent cases to initiate a special investigation and have in a few cases delegated one or more of their members to visit the country concerned, with its consent, even though the relevant treaty does not provide for such a mandate. However, enhanced monitoring capacity of this kind also means that international law comes even closer to many states, which then feel threatened and respond more sharply, arguing that a case is 'too political' to be dealt with by a treaty body or that the margin of appreciation is wider than the treaty bodies appear to allow. A state occasionally responds by denouncing a treaty<sup>8</sup> or, more frequently, by hindering the treaty bodies in their work, for example by meeting their reporting obligations late or failing to submit reports altogether. In this way, each action produces an even stronger reaction. It is therefore up to the states that wish to strengthen the treaty mechanisms to put forward proposals for dealing with these problems. Meanwhile debates are under way in the background on such issues and notions as the need for more recognition of the universality of human rights and the right of national and international NGOs to intervene in matters of policy and practice.<sup>9</sup> These aspects are not covered in detail in this advisory report, but they do play a background role in the formulation of the more specific recommendations.

8 Discussions sometimes occur in the Netherlands too about denouncing treaties that are seen as obstructing the formulation of new policy. So far, however, no such steps have been taken in practice.

9 On this point see also: AIV, *The role of NGOs and the Private Sector in international relations*, Advisory Report no. 51, The Hague, October 2006.

Quite apart from the political and related obstacles preventing strengthening of the treaty mechanisms, it is important to realise that some of the problems connected with the mechanisms have other causes. For example, it is a given that in recent decades the human rights treaties have been concluded independently of one another, that each treaty body imposes its own requirements and that only slow progress has been made with organisational and substantive coordination between the different treaty bodies. Many problems have serious practical causes: for example, states are expected to report regularly even if they do not have specialists in all the fields covered by the human rights treaties; the consideration of reports in plenary sessions takes up much of the already limited time for meetings; the support provided by the Office of the High Commissioner for Human Rights (OHCHR) is too limited; and the overlap between different treaty bodies results in duplication of reports. Practical problems of this kind have been under consideration for some time, as is evident from the discussion of better coordination between the different treaty bodies. The AIV too will make a number of suggestions on these matters in this report.

#### *Achievement at national level*

In the opinion of the AIV, it is of great importance to remember that human rights must be safeguarded at national level and that the operation of the treaty mechanisms must be assessed first and foremost in terms of the extent to which they contribute to this. The AIV believes that it is necessary to keep track of the entire reporting cycle, ideally broken down by treaty and by country under review. The following are some of the points it regards as relevant:

- Does the treaty concerned have effect in the national legal order, namely at constitutional level and, more importantly, in day-to-day legal practice? Can it be invoked directly, and are there signs that this is being thwarted? And if transposition legislation is necessary under the constitution of the state concerned, has it been introduced and, if so, what gaps and obstacles may exist?
- Through which channels is provision made at national level for actual access to the law, including the standards in the relevant treaty? Do the victims have direct access or access through lawyers, paralegals, churches, NGOs, trade unions or women's groups? What is effective in view of the local culture and the local political, social and economic situation?
- What interaction occurs between the state and the international monitoring body? Does the state welcome or reject advice? What internal communication exists with the various ministries concerned and with the parliament? From the perspective of victims or the prevention of violations, is there a need for technical advice and the provision of more equipment, or is there instead a need for reprimands?
- How are the findings and recommendations of the treaty bodies followed up? What can be done to ensure that states that have just submitted a periodic report do not get the feeling that they can rest on their laurels for a good many years to come? Are the authorities of the state concerned required to account for their policies to parliament and civil society actors such as NGOs and national human rights bodies and what is their response to criticism of the implementation of the treaty bodies' recommendations?

#### *Interaction with non-treaty mechanisms*

The situation described above becomes even more complicated when one takes the fact into account that over the years the UN Commission on Human Rights (now the Human Rights Council) introduced a large number of special procedures or mechanisms on the basis of a mandate dating from 1967 and contained in ECOSOC Resolution 1235 (XLII). The

working groups and rapporteurs created on the basis of this mandate focus either on the human rights situation in a specific country (country rapporteurs) or on specific practices that occur in many countries and must be regarded as serious violations of human rights (thematic rapporteurs). These public procedures were supplemented in 1970 by the introduction of the confidential procedure under ECOSOC Resolution 1503 (XLVIII). In addition, the UN Sub-Commission itself played a role in this field for many years.<sup>10</sup> Quite apart from this, the UN has many other actors that are active in or are of great relevance to human rights. For example, the UN Secretariat and, in particular, the OHCHR do much work in this field. Other examples are the Security Council, UN agencies such as the UN Children's Fund (UNICEF) and the Development Programme (UNDP), and specialised agencies such as the International Labour Organisation (ILO), the UN Educational, Scientific and Cultural Organisation (UNESCO), the World Health Organisation (WHO) and the international financial institutions, the special criminal tribunals and the permanent International Criminal Court. Their activities affect human rights in numerous ways.<sup>11</sup>

10 For more details about these procedures see also two advisory reports of the (then) Advisory Committee on Human Rights and Foreign Policy (ACM), *De rol van de Sub-Commissie ter Voorkoming van Discriminatie en Bescherming van Minderheden* (The role of the Sub-Commission on Prevention of Discrimination and Protection of Minorities), advisory report no. 20, The Hague, 1996 and ACM, *VN-Toezicht op Mensenrechten* (UN Supervision of Human Rights), advisory report no. 22, The Hague 1996. See also recent decisions by the Human Rights Council on the establishment of a Human Rights Council Advisory Committee (UN Doc. A/HCR/5, L.2 of 18 June 2007).

11 See Theo van Boven, 'Urgent Appeals on Behalf of Torture Victims', in *Mélanges en hommage au Doyen Gérard Cohen-Jonathan*, Brussels, Bruylant, 2004, pp. 1637-1652. He wrote: '...the United Nations system comes across like a quagmire of standards, procedures and mechanisms developed in an incremental way in order to respond to political aspirations and socio-humanitarian needs rather than resulting from a coherent vision and planned strategy. The United Nations approach comes across like a roadmap through a land full of hilly obstacles and unexpected ravines'.

## II The system on closer examination

The previous chapter briefly considered the reporting obligation of states as contained in all human rights treaties, i.e. the obligation to report periodically to the relevant treaty body. This reporting obligation has clearly helped strengthen the national and international accountability of a large number of states for observance of human rights, to reinforce the focus on human rights at national level and within the UN and to enhance the development of an international framework of standards. Above all, the improved quality of the treaty bodies' concluding observations and recommendations has played a role here. In many cases they have had a direct influence on the development of new legislation, policy and programmes. In this sense, the reporting system fulfills a number of interrelated functions:<sup>12</sup>

- *initial review* of national legislation and practices;
- *monitoring* of relevant developments at both national level and the level of the monitoring committees;
- *formulation of policy measures* needed to implement treaty obligations;
- *public scrutiny* – the accountability of a state to its own citizens, civil society stakeholders and the international community as represented in the treaty bodies;
- *evaluation* of developments since previous reports and of success or failure in reaching goals;
- *acknowledging deficiencies and problems* needing to be addressed;
- *gathering and exchanging information* that enables treaty parties, civil society actors and monitoring bodies to engage in a learning process.

The primary aim of the reporting obligations under the treaty system is to help enhance the protection and promotion of human rights at national level by means of a constructive dialogue with states in a non-politicised manner. The effectiveness of the reporting system therefore depends on a fruitful interaction between the national and international levels. If the international monitoring is superficial, late or inadequate, the political incentive to invest much time and energy in preparing the reports will be absent at national level. Conversely, if the reports at national level are the result of a perfunctory bureaucratic procedure, there is little basis for a constructive dialogue at international level.

In practice, the present treaty system can be seen to have gained in influence at national level, particularly due to the periodic nature of the monitoring and the stronger checks on the follow-up. States are thus actively encouraged to honour – and promote compliance with – their obligations in the field of human rights and fundamental freedoms and find themselves on the defensive if they fail to fulfil their reporting obligations. The reporting process also contributes to the national debates at governmental and non-governmental level. The process provides NGOs, national human rights institutions and other civil society actors with a forum in which to draw attention to their interests and has also promoted the public accountability of governments in the field of human rights.

<sup>12</sup> See for example Philip Alston, 'The Purposes of Reporting', in the *Manual on Human Rights Reporting*, New York, 1991, pp. 13-16, and UN Doc. HRI/MC/2007/2, *Report of a brainstorming meeting on reform of the Human Rights Treaty Bodies*, Liechtenstein, Triesenberg, July 2006.

Where states have recognised the individual right of complaint, the monitoring carried out by treaty bodies, although not legally binding, has also resulted in individual cases in various forms of redress for people whose rights have been violated. The quasi-jurisprudence of the treaty bodies, which is increasingly used by national courts and tribunals, has also helped develop an international framework of standards.

On the other hand, the treaty system, particularly the reporting procedures under the human rights treaties, is under great pressure. Some of the causes have been described above in chapter I, such as the large backlog of mandatory reports, the overlapping of reporting obligations and the different working methods of the various treaty bodies. Various other causes can also be identified, for example the increase in the number of monitoring bodies,<sup>13</sup> their increased pressure of work as a consequence of the sharp rise in the number of treaty parties, the effects of this pressure on the work of OHCHR in staffing and financial terms and the system's lack of public profile. The latter can be attributed to the fact that knowledge of the treaty system is mainly confined to governments, specialised lawyers and NGOs. As both the AIV and the former Advisory Committee on Human Rights and Foreign Policy (ACM) have advised at length on this matter and on other strengths and weaknesses, the AIV has chosen in this report merely to identify the above-mentioned aspects and not to discuss them in more detail.

#### *Reform initiatives*

The call for reforms is not new.<sup>14</sup> As long ago as 1988 Philip Alston, the independent expert appointed by the UN Secretary-General, stated that the UN treaty system had reached a critical point.<sup>15</sup> He concluded that the system in its present form would in due course prove untenable and he formulated a large number of (mainly technical) recommendations for improvement. Since then attempts have been made to improve the operation of the system by means of small incremental reforms and adjustments. For example, an attempt has been made to rationalise the reports at national and international level without compromising their quality. This involves:

- cross-referencing in the states' reports under various treaties;
- structural coordination measures within national civil services;
- better coordination between treaty bodies and between these bodies and specialised agencies and other institutions;
- the possible introduction of a single report for each country covering all treaties rather than the issuance of a series of reports under individual treaties.

In his 2002 report entitled 'Strengthening the United Nations', the UN Secretary-General proposed that the different reporting obligations of states under human rights treaties should be combined in the form of a single report for discussion by the different treaty bodies. This suggestion encouraged the debate on further harmonisation of the bodies' work. However, during a meeting in Liechtenstein in 2003 (where the desirability of a single comprehensive report for each country was discussed at length) it became clear that no political majority could be obtained for such a proposal.<sup>16</sup> Although harmonisation was

<sup>13</sup> In 1970 there was only one treaty body; soon there will be ten.

<sup>14</sup> See for example UN Doc. A/50/170, 26 February 1996, par. 7 and Amnesty International, *United Nations: proposals to strengthen the Human Rights Treaty Body System*, London, September 2003.

<sup>15</sup> See UN Doc. A/44/668.

<sup>16</sup> See UN Doc. HRI/ICM/2003/6, report of Malbun Meeting, Liechtenstein, May 2003.

viewed favourably, it was felt that the specificity of the various treaties should not be lost. It was therefore considered undesirable to consolidate the reporting procedures, let alone the treaty bodies themselves. The UN Secretary-General then sought new ways of improving reporting. In 2005 he launched two strategies: one for the medium term aimed at harmonisation, greater involvement of the countries concerned and streamlined reports, and the other for the longer term based on the idea of a Unified Treaty Bodies System.<sup>17</sup> The latter idea was elaborated in the HCHR's Strategic Management Plan 2006-2007 and in her proposals for the establishment of a Single Unified Standing Treaty Body.<sup>18</sup> These proposals are discussed in greater detail in the next chapter.

<sup>17</sup> See UN Doc. A/59/2005, *In Larger Freedom: Towards Development, Security and Human Rights for All*, March 2005, par. 147.

<sup>18</sup> See UN Doc. HRI/MC/2006/CRP.1 of 14 March 2006, pp. 13-17. See also UN Doc. A/59/2005/Add.3.

### III Options for revision of the UN treaty system

Clearly, in 2007 the treaty bodies, as they have developed over the years on an ad hoc basis, still by no means function as an effective, integrated and indivisible system. Some problems identified as long ago as the 1990s are still as pressing as ever. All the attempts to date to substantially improve and strengthen the UN treaty system have proved insufficient. Even the discussions on the HCHR's proposals in this field are proving difficult, which is in fact hardly surprising in view of the priority given to setting up the Human Rights Council. There is a pressing need to take measures, because, in the AIV's view, *doing nothing* is not an option. In considering the various options more closely, the AIV will first of all take the long term as the starting point and focus on the proposal to establish a single Unified Standing Treaty Body.

#### *Long term*

The HCHR made her proposal to establish a Single Unified Standing Treaty Body instead of the present treaty bodies in March 2006. Her proposal emphasises that from the point of view of human rights it is imperative for reform of the treaty system to enhance its quality, effectiveness and authority and prevent the system's collapsing under the pressure of work. To consolidate and strengthen the system, the HCHR proposes the establishment of a unified treaty body that could operate in different forms. The most far-reaching variant is a single unified body. Other variants are also conceivable, for example a single body with 'chambers' that can carry out the separate functions of the various treaty bodies.<sup>19</sup>

Besides the reasons given by the HCHR, advocates of a single treaty body make various other arguments. For example, a single treaty body could have the merit of allowing the human rights situation in a given country to be assessed in a coherent manner by reference to integrated reports. This would also make possible a consistent approach to interpreting existing treaty standards. If a form is chosen in which the members of the single treaty body are appointed on a permanent, full-time basis, this would create a high-quality body that is always available and can take action at any desired moment in the event of serious violations. Another argument is that a single treaty body to monitor observance of all human rights would have greater visibility and authority and would facilitate access for rights-holders. Moreover, a higher public profile could increase the chances of a meaningful dialogue between the treaty body and the state parties concerned and offer NGOs and other organisations opportunities to make more substantial contributions to discussions on compliance with treaty obligations. This is also true of possible cooperation with other UN human rights bodies and institutions and, for example, with specialised agencies. This cooperation is at present fragmented and relatively unstructured and thus makes too small a contribution to efficient monitoring.

However, there are also some serious objections to the proposal. Here we mention a few of them.

The first objection is of a general nature, namely the current political climate. The recently concluded negotiations on the procedure and methods of the newly instituted Human Rights Council have shown that there is a major risk that past achievements may easily be lost in the current international political situation. Above all, the recent debates on the

<sup>19</sup> The HCHR's proposal talks of Chambers along 'functional lines', along 'treaty lines', along 'thematic lines' and along 'regional lines'.



Universal Periodic Review (see chapter IV), the code of conduct for rapporteurs and the agreements about country resolutions give cause for concern.

As regards the treaty bodies, it is also unclear whether the proposed amalgamation of the existing seven (and in the future ten) treaty bodies to form a single body would indeed provide a solution to the problems in practice. A third consideration concerns the diversity and specificity of human rights as expressed in the current treaty system. To do justice to the specific interests, needs and circumstances of particular groups of rights-holders, it has been decided over the years to conclude different treaties (on racial discrimination, discrimination against women, the rights of children and so forth). It would be exceptionally difficult, if not impossible, to cover all relevant issues adequately in a single treaty body. Naturally, the establishment and operation of a single treaty body would also be a complex and expensive task (for the HCHR), but this also applies to the support provided for the present treaty structure, which will become even more complicated in the future (after the recent acceptance of two new treaties with their own monitoring mechanisms).<sup>20</sup>

In the opinion of the AIV, the legal complications of a single treaty body will be the chief obstacle. The present treaty bodies are for the most part independent and autonomous in the exercise of their monitoring duties; their mandate is based on the treaty under which they have been established. (Only the Committee on Economic, Social and Cultural Rights was founded on the basis of a resolution.) Although they report to the UN General Assembly, it does not have the power to instruct or correct the treaty bodies on matters of substance. In legal terms, the treaty committees are not subordinate to the General Assembly but are *sui generis*. One of the HCHR's proposals is to examine whether amendments to the present treaties are possible. If such amendments are found to be impossible, consideration could be given to introducing additional protocols to the existing human rights treaties. However, the AIV believes that either legal route would prove difficult, uncertain and in any event time-consuming. Considerable risks are also anticipated in the negotiations on changes to treaties because a number of states would aim for what would inevitably be a long review period. The laborious negotiations and decision-making on the reform agenda of the Human Rights Council serve as a serious warning in this connection. Moreover, the reactions of many state parties, treaty bodies, NGOs and experts to the HCHR's proposal have hitherto been mainly negative; it is therefore very doubtful whether there is at present sufficient political will to introduce measures to strengthen the system.

In summary, the AIV concludes that the proposal to create a single Unified Standing Treaty Body is not desirable even in the long term, always assuming it were feasible. It would be unrealistic to expect far-reaching results on this matter, mainly for political, practical and legal reasons. This is why the AIV believes it is important in the short and medium term to examine how more far-reaching and improved cooperation between the existing treaty bodies can be achieved.

#### *Short and medium term*

Given the conclusion that a single treaty body would be problematic or undesirable even in the long term owing to the practical, political and legal objections and the concern about the loss of specificity, it would be worth considering a number of less far-reaching amalgamation options which could perhaps be feasible and also represent an improvement.

<sup>20</sup> During the second session of the Human Rights Council in November 2006, Canada submitted a resolution for analysis of the strengths and weaknesses of the various proposals (UN Doc. A/HRC/2/L.40/Rev.1). When the results of this study will be published is not yet known.

An example could be the amalgamation of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights. This would reflect the indivisibility of all human rights at the institutional level. Another possibility would be to merge the Human Rights Committee with the Committee Against Torture. Clearly, the mandate of the Committee Against Torture partly coincides with that of the Human Rights Committee. Here too legal and other complications would arise, but they would be less far-reaching than in the case of the creation of a single treaty body. In this way ECOSOC could authorise the Human Rights Committee, on the basis of the provisions of the ICESCR, to monitor compliance with the Covenant.

Another proposal concerns the complaints procedures. From 2008, when all treaty bodies will meet in Geneva, all complaints under the existing complaints procedures will be received by OHCHR. In this sense OHCHR will act as a joint 'post-box' and secretariat of all the treaty bodies. The possibility should be examined of having the working groups within the different treaty bodies which are involved in dealing with complaints meet in the same period in order to maximise the mutual benefit. As the number of complaints submitted to date has been relatively limited, it would be interesting to see whether such a procedure and more emphasis on publicity for OHCHR as a joint post-box could help to raise the system's profile, provide greater clarity for complainants, improve the handling of complaints and result in clearer 'jurisprudence'. In the long term this could even lead to the establishment of a joint 'complaints chamber'.<sup>21</sup>

The present treaty bodies could also intensify their efforts to harmonise, coordinate and integrate the different aspects of their mandates, while maintaining the specificity of their respective functions. This could be done first of all by harmonising, wherever possible, the treaty procedures (reporting, individual complaints and investigation) as such. This is a question not just of working methods but also of coordinated and mutually inspired interpretations of human rights standards.

To do their job properly the treaty bodies should manage their agendas strictly. This would make it possible to prevent the problems caused by the ever growing backlog in processing country reports. A solution must be found for this undesirable situation which does insufficient justice to states that strictly comply with their treaty obligations and benefits other states that fail to submit reports or submit them much too late. As the scope and complexity of this problem will increase in the future owing to the ever larger number of treaties requiring reports, it is urgently necessary to continue the processes already set in motion by the treaty bodies to streamline reporting procedures. In this connection the AIV refers to the guidelines recently agreed by the treaty bodies for a common core document containing basic information to be included by reporting states about the country and information about compliance with equivalent provisions in different human rights treaties; states should then add shorter reports dealing with specific treaties to this common core document. This could lighten the reporting burden of states, but it would then be important for states to comply with the new guidelines.<sup>22</sup> If there is a need for assistance in this area,

21 Lessons could be learned here from how the supervision of compliance with other conventions is structured and works in practice. Examples would be the conventions of the International Labour Organisation and those concluded in the context of international environmental law. See for example Anne F. Bayefsky, *The UN Human Rights Treaty System in the 21st Century*, Kluwer Law International, The Hague/London/Boston, 2000.

22 See also W.J.A. Vandenhoele, 'Versterking van de VN-Comités voor de mensenrechten' (Strengthening UN human rights bodies), in *NJCM-Bulletin*, vol. 32, number 4, June/July 2007, pp. 442-458.

the OHCHR could provide advisory services using, for example, the expertise of the treaty bodies. Organising training meetings on reporting, providing direct assistance to some treaty parties and harmonising guidelines could also help to improve the system. In order to enhance the internal coherence of the treaty system, it is also necessary to achieve far-reaching organisational and substantive coordination between the treaty bodies.<sup>23</sup> They are still too often inclined to work at cross-purposes, each body going very far in applying its own methods, thereby causing demonstrable overlap and a lack of coherence.

Another part of the solution would be to increase the number of chairpersons' meetings. At present they meet only once a year. Such meetings should be arranged more often, for example to coincide with the regular sessions of the Human Rights Council. These meetings could play a more important role than at present in relation to both substantive matters (for example, by making common General Comments and recommendations and by making joint use of the urgent appeals system) and procedural matters. If this forum were to be strengthened its administrative support unit might in the long term play a role in promoting the harmonisation and integration of the work of the different treaty committees.

To implement these last suggestions it would be necessary to strengthen OHCHR still further.<sup>24</sup> Providing adequate secretarial and financial support for the activities of the treaty mechanisms should be a core function. An alert and properly functioning OHCHR could be expected to identify discrepancies in the work of the treaty bodies and bring them to the attention of the chairpersons of these bodies. There is also a major role for OHCHR in strengthening cooperation with other relevant actors such as the specialised agencies and UN organisations such as the Security Council, national human rights institutions and NGOs.<sup>25</sup> The role of NGOs in relation to the treaty bodies is of crucial importance, for example through the publication of shadow reports and the provision of relevant information. Although most treaties do not formally provide for consultations with national and international NGOs, all treaty bodies operate in this way in practice; many people see this as positive since it broadens the knowledge and information of the treaty bodies' members.<sup>26</sup>

Finally, it is important for efforts to be made to develop an effective relationship with the newly established Human Rights Council. Intensive use will have to be made of the possibilities for raising subjects relating to the treaty bodies during the Human Rights Council. This could be done, for example, by arranging for substantial use to be made of the separate treaty bodies' information in the Council's activities in general and the new Universal Periodic Review System in particular (see the next chapter). For example,

23 The same problem in fact occurs in relation to the cooperation between the country and thematic rapporteurs and the treaty bodies. Information exchange and coordination is sometimes present and at other times completely absent.

24 See for example Sir Nigel Rodley, 'United Nations Human Rights Treaty Bodies and Special Procedures of the Commission on Human Rights - Complementary or Competition', *Human Rights Quarterly* 25 (2003), pp. 882-908.

25 Bertrand G. Ramcharan, *The United Nations High Commissioner for Human Rights: The Challenges of International Protection*, Martinus Nijhoff, The Hague/London/New York, 2002.

26 It is a formal practice of the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child and the CEDAW Committee to hold hearings in advance. The Human Rights Committee and the Committee on the Elimination of Racial Discrimination do so informally.

reporting could take the form of a compilation of reports and recommendations of Special Rapporteurs, working groups, treaty bodies and NGOs.<sup>27</sup> Such a compilation would have to be assembled by OHCHR.

Promoting cooperation in this way would draw the present treaty bodies increasingly close together in the future as regards both their working methods and their interpretation and application of human rights standards. Although this might to some extent limit their individual profiles, it would enhance the quality, effectiveness and authority of the treaty system as a whole. The AIV believes that this could only help to improve observance of human rights at national level, which is, as already stated, the fundamental goal of international monitoring.

<sup>27</sup> OHCHR started making compilations of this kind some years ago.

## **IV The relationship between the treaty system and the Human Rights Council**

The request for advice includes a specific question about the relationship between the treaty bodies and the new Human Rights Council, especially in the context of the Universal Periodic Review system. The AIV deals briefly with this relationship in this chapter.

### *The Universal Periodic Review System*

The UN General Assembly resolution establishing the Human Rights Council in 2006 provided that the Human Rights Council

'... shall (...) undertake a Universal Periodic Review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies (...).'<sup>28</sup>

It was left to the Human Rights Council to develop a mechanism for Universal Periodic Review (UPR) during its first year. After laborious negotiations, the Council managed this at the very last moment, on 18 June 2007, when it adopted by consensus Resolution A/HCR/5/L.2 entitled 'Institution-building of the United Nations Human Rights Council'. The principles and modalities of the UPR mechanism are set out in an annexe to this resolution. Some important aspects of this are briefly explained and discussed here.

The UPR will be conducted on a very broad normative basis and cover the entire spectrum of civil and political rights and economic, social and cultural rights, including the right to development. The human rights review of states will be based on the Charter of the United Nations, the Universal Declaration of Human Rights, the human rights instruments to which a state is a party, unilateral declarations (such as the pledges made when presenting their candidature for election to the Human Rights Council) and commitments resulting from international humanitarian law. It follows that the same criteria cannot or will not be applied in all cases: the ratification pattern of human rights conventions differs from state to state. The AIV will return to this point later.

The UPR will be based on dialogue and cooperation. It will be a 'cooperative mechanism' based on 'an interactive dialogue' and 'full involvement of the country concerned'. In addition, the UPR must complement the existing human rights mechanisms (such as the treaty bodies), not diminish the Human Rights Council's capacity to respond to urgent human rights situations and ensure participation of all relevant stakeholders, including NGOs and national human rights institutions. An important objective of the UPR is to improve the human rights situation on the ground. All UN member states, starting with the members of the Human Rights Council, are eligible for an 'inspection' under the UPR.<sup>29</sup>

<sup>28</sup> UN Doc. A/RES/60/251, 3 April 2006.

<sup>29</sup> A 4-year cycle has been introduced for the time being. This means that 48 states must be reviewed annually (given that the UN has 192 members).

The UPR will be based on information prepared by the state concerned. OHCHR will also prepare compilations of information contained, for example, in the reports of treaty bodies on the relevant state and of information supplied by NGOs. The Human Rights Council has decided to have the UPR conducted by a Working Group consisting of all members of the Council; a group of three rapporteurs, selected from among the Council's members, will prepare each review by the Working Group. It is important to emphasise here that the review will be conducted by a country's peers, in other words representatives of other states.

The results of the review will be presented to the Human Rights Council for further action. The report adopted by the Human Rights Council may include recommendations to the country under review, indicating which recommendations the state concerned accepts. The state's comments on the other recommendations will be noted. Finally, provision is made for certain follow-up measures, with the country under review being primarily responsible for implementing the recommendations adopted.

The AIV has decided not to comment in detail on the UPR mechanism that has now been agreed. In the light of the deeply divided views on the design of the UPR system expressed in the Human Rights Council in the past year, the system that has been created would appear in theory to be reasonably effective; but clearly its implementation will in practice cause many political and other headaches (given that it concerns 192 very different states). Generally speaking, the AIV considers that the fact that in principle each member state of the UN must submit to a human rights review by other states is a major step forwards, although it would have liked there to have been a role for independent experts and/or leading NGOs in the assessment stage. The AIV notes with regret, however, that this proved unfeasible.

In view of the request for advice, the AIV will deal in this advisory report only with the relationship between the treaty bodies and the UPR. As outlined above, the reports of the treaty bodies, in particular their concluding observations, General Comments and recommendations, will be included in the documentation on the country under review in the UPR system. This is very important, but it does not mean that the same quantity of information can be supplied for all countries, as not all countries have ratified all the treaties.

In the context of the UPR dialogue with a state and in the light of the above information, the Working Group or the Human Rights Council should in any event put the following questions (as appropriate) to the country under review: why has the state concerned not ratified certain UN human rights treaties; why has it entered and/or maintained reservations; why has it not fulfilled its reporting obligations; what measures has it taken to implement the concluding observations; why has it not yet accepted certain optional monitoring procedures (such as the individual complaints procedure and the investigation procedure); what arrangements has it made to comply with the decisions by treaty bodies on individual complaints, etc.? The UPR dialogue with states, in particular monitoring by independent experts of the observance of human rights, provides a unique opportunity to strengthen the treaty system. It can for example promote universal ratification of UN human rights treaties and universal acceptance of individual complaints procedures and other monitoring procedures, thereby doing justice to the calls by the UN General Assembly and important international conferences such as the World Conference on Human Rights (Vienna, 1993).

While the AIV realises that states with a poor ratification record will thus be put on the defensive, it wonders whether the UPR system will be able to bring about any real and substantial change in this situation. The UN Charter and the Universal Declaration of

Human Rights will serve as the main normative basis for the assessment of such states, and in some cases the findings of the non-treaty mechanisms such as Special thematic and country Rapporteurs can be used as a source of factual information about violations. For these and other reasons, the AIV concludes that it is of great importance for the Netherlands to maintain its offer to be one of the first countries to undergo the UPR. This can also create a precedent for future discussions in this context.

*Treaty bodies and the Human Rights Council: other aspects*

The Human Rights Council will be the main political UN forum in which human rights across the board can be discussed in the years ahead. It is therefore of the utmost importance for the treaty bodies to have optimal access to the Human Rights Council. Earlier in this advisory report the AIV advocated that treaty bodies should work towards a more integrated and harmonised system. The rotating chair of the meeting of chairpersons of treaty bodies should have the opportunity at least once a year to debate with the Human Rights Council on problems and matters affecting all treaty bodies. In addition, the AIV recommends that the chairpersons of the various treaty bodies should also have the opportunity once a year to debate with the Human Rights Council about matters that are of special importance to them in the light of their specific mandate.

Finally, the AIV emphasises the desirability of working to achieve better cooperation and synergy between the treaty bodies and the Human Rights Council's thematic rapporteurs and country rapporteurs. In many cases the rapporteurs have mandates that partially overlap with those of one or more treaty bodies. They could therefore lend added weight to calls on states to comply with the treaty bodies' concluding observations or their decisions in individual cases. Conversely, the information gathered by the rapporteurs and their analyses of this information are of direct importance to the treaty monitoring bodies and hence also to the UPR.

## V Summary, conclusions and recommendations

In this advisory report the AIV has considered five questions put by the Government about the UN human rights treaty system.

### *Identification of the problems*

The first question concerns problems that face both the treaty bodies and the reporting countries in relation to the main objective of the treaty bodies, namely monitoring observance by states of international human rights standards. Chapter I outlines the UN human rights treaty system and its weaknesses. On the basis of these observations the AIV makes several recommendations and draws several conclusions. The main ones are:

- It is important to constantly study the interaction between the systems of standards under treaty law and national practices, as well as the need for further adjustments to the system of standards to meet the challenges of our time.
- An important question is how compliance is monitored and what changes can be made or have already been made as a result of the treaties. Some states have become parties to the treaties due to international pressure rather than as expression of their political will. Often states have not accepted the right of individual complaint, and even where it has been accepted little use is made of it. This is partly due to lack of public awareness, the fact that decisions of treaty bodies are not legally binding and the relatively high costs of lodging a complaint.
- It is states themselves that cause the human rights problems on which they have to report and answer to the international monitoring bodies. In consequence, states are sometimes unwilling to report (thereby causing large reporting backlogs), try to withhold essential information and argue that certain cases, although extremely relevant to the assessment of the human rights situation, are of a political nature and therefore need not be submitted to the monitoring body for assessment. Shadow reports by NGOs are an important counterbalance in this respect.
- Human rights treaties have been concluded independently of each other in recent decades; the various treaty bodies each make their own demands. Organisational and substantive coordination among the different bodies should be strengthened.
- Many problems have serious practical causes: the large number of reports expected of the states, shortage of meeting time and excessive pressure of work of many treaty bodies, insufficient support from OHCHR and overlaps between different treaty bodies causing duplication and late submission of reports. Moreover, the plenary discussion of reports sometimes detracts from the effectiveness of the procedure.
- The AIV believes it is of great importance to remember that human rights must be safeguarded at national level. The operation of the treaty mechanisms must be assessed first and foremost in terms of the extent to which they contribute to this.

### *Reform initiatives*

After identifying these problems within the current system, the AIV considered the question of the extent to which the proposals made to date provide a viable solution.

To answer this question the AIV briefly described the original objectives of the UN treaty system and examined the strengths and weaknesses of the current mechanisms. It then summarised the initiatives to improve the system. It referred in this connection to the 2002 report of the UN Secretary-General entitled *Strengthening the United Nations*, which proposed combining the various reporting obligations of the states under the human rights treaties into a single report for discussion by the different treaty bodies. In 2005 the UN



Secretary-General launched two strategies: one for the medium term aimed at harmonisation, greater involvement of the countries concerned and streamlined reports, and the other for the longer term based on the idea of a Unified Treaty Bodies System.

The HCHR elaborated these proposals and suggested in 2006 the adoption of a system of a Single Unified Standing Treaty Body. The discussions on these proposals are proving very laborious and some problems in the treaty system remain unresolved. The AIV concludes that the current initiatives have not yet contributed substantially to resolving the treaty system's problems.

#### *A single treaty body?*

The third question considered by the AIV is what options exist for far-reaching reforms and what would be their advantages and disadvantages.

The AIV concludes that doing nothing is not an option. In discussing the possible options in this report, the AIV takes the long term as the starting point.

#### *Long term*

The most far-reaching proposal is for a single standing treaty body. Different variants of this are conceivable, for example a single body with 'chambers'. A single treaty body could have the merit of allowing the human rights situation in a given country to be assessed in a coherent manner by reference to integrated reports. This would also allow the adoption of a consistent approach to interpreting of existing treaty standards. If the members of the treaty body were appointed on a permanent, full-time basis, this would create a high-quality body that would always be available and could take action at any desired moment in the event of serious violations. It would also increase the body's visibility and authority and make it more accessible to rights-holders. This higher public profile would increase the chance of intensive dialogue among the treaty body, the states parties, NGOs and other UN bodies. This is necessary because cooperation is at present fragmented and relatively unstructured and inefficient.

The AIV considers that the present international political climate gives cause for great concern. The initial reactions to the HCHR's proposals were negative and the recently concluded negotiations on the procedure and methods of the newly instituted Human Rights Council have shown that there is a real risk that past achievements could easily be lost in the current international political situation. Nor is it at all certain whether the proposed amalgamation of the existing seven (and in the future ten) treaty bodies to form a single body would indeed provide a solution to the problems in practice. It is also unclear whether the specific interests and circumstances of the different groups of rights-holders (such as women, children and people with disabilities) would continue to be safeguarded if a single treaty body were to be established. Moreover, it would be very difficult to do justice to all relevant issues in a single system.

In summary, the AIV concludes that the proposal to create a single Unified Standing Treaty Body is not desirable even in the long term, always assuming it were feasible. This is why the AIV believes it is important to examine how more far-reaching and improved cooperation among the existing treaty bodies can be achieved in the short and medium term.

#### *Short and medium term*

The AIV considers that a number of changes should be considered in the short and medium term. The present treaty bodies should intensify their efforts to harmonise, coordinate and integrate the different aspects of their mandates. Consideration can also

be given to the following measures: pursuing the highest possible degree of expertise, commitment and independence of the treaty bodies' members; harmonising the bodies' procedures and working methods; increasing the number of chairpersons' meetings; developing an effective relationship with the Human Rights Council and strengthening cooperation with other relevant actors through OHCHR. Two more far-reaching proposals for the complaints procedures can also be considered. These are:

- Amalgamating of the Human Rights Committee with the Committee on Economic, Social and Cultural Rights. This could reflect the indivisibility of all human rights at the institutional level. Another possibility would be to merge the Human Rights Committee with the Committee against Torture. Clearly, the mandate of the Committee Against Torture partly coincides with that of the Human Rights Committee. Although legal and other complications are admittedly bound to arise in both cases, they would be less far-reaching than if a single treaty body were to be created.
- From 2008, when all treaty bodies will meet in Geneva, all complaints under the existing complaints procedures will be received by OHCHR. In this sense OHCHR will act as a joint 'post-box' and as secretariat of all the treaty bodies. The possibility should be examined of having the working groups within the different treaty bodies which are involved in dealing with complaints meet in the same period in order to maximise the mutual benefit. As the number of complaints submitted to date has been relatively limited, it would be interesting to see whether such a procedure and more emphasis on publicity for OHCHR as a joint post-box could help raise the system's profile, provide greater clarity for complainants, improve the handling of complaints and result in clearer case law. In the long term this could even lead to the establishment of a joint 'complaints chamber'.

#### *The Universal Periodic Review System*

Finally, the AIV deals with the relationship between the new Human Rights Council and the Universal Periodic Review system, about which a decision was taken on 18 June 2007. The AIV has decided not to comment in detail at this stage on the UPR mechanism that has now been agreed. However, it does deal with a few important aspects of it, focusing on the relationship between the treaty bodies and this new mechanism.

The UPR will be conducted on a very broad normative basis and cover the entire spectrum of civil and political rights and economic, social and cultural rights, including the right to development, unilateral declarations (such as the pledges made when presenting candidature for election to the Human Rights Council) and commitments resulting from international humanitarian law. However, this choice of a normative basis does not mean that the same criteria can or will be applied in all cases: the ratification pattern of human rights conventions differs from state to state.

The UPR will be based on the information supplied by the country under review. In addition, OHCHR will make two compilations of information contained, for example, in reports by treaty bodies and by NGOs and national human rights institutions. The UPR will be conducted by a working group consisting of all members of the Human Rights Council and prepared by a group of three rapporteurs selected from the Council's members. The results of the review will be presented to the Human Rights Council for further action. The report adopted by the Council may contain recommendations to the state concerned, indicating which recommendations the state concerned accepts. The state's comments on the other recommendations will be noted. Provision is also made for certain follow-up measures, with the country under review being primarily responsible for implementing the recommendations adopted.

In the light of the deeply divided views on the design of the UPR system expressed in the Human Rights Council in the past year, the system that has been created would appear in theory to be reasonably effective, but clearly its implementation will in practice cause many political and other headaches (given that the 192 states are very different). Generally speaking, the AIV considers that the fact that in principle each member state of the UN must submit to a human rights review by other states is a major step forwards, although it would have liked there to have been a modest role for independent experts and/or leading NGOs in the assessment stage. The AIV notes with regret, however, that this proved unfeasible.

The AIV believes that serious account should be taken in the UPR system of the reports of the treaty bodies, in particular the concluding observations and General Comments or recommendations. This is important, but it does not mean that the same quantity of information can be supplied for all countries as not all countries have ratified all treaties. This is why the Working Group should in any event put the following questions, where relevant, to the country under review in the course of the UPR dialogue: why has the state concerned not ratified certain UN human rights treaties; why has it made and/or maintained reservations; why has it not fulfilled its reporting obligations; what measures has it taken to implement the concluding observations; why has it not yet accepted certain optional monitoring procedures (such as the individual complaints procedure and the investigation procedure); what arrangements has it made to comply with the decisions by treaty bodies on individual complaints, etc.? The UPR dialogue with states can in this way provide a unique opportunity for strengthening the human rights treaty system.

While the AIV also realises that states with a poor ratification record will thus be put on the defensive, it wonders whether the UPR system will be able to bring about any real and substantial change in this situation. The UN Charter and the Universal Declaration of Human Rights will serve as the main normative basis for the assessment of such states, and in some cases the findings of the non-treaty mechanisms such as special thematic and country rapporteurs can be used as a source of factual information about violations. For these and other reasons, the AIV concludes that it is of great importance for the Netherlands to maintain its offer to be one of the first countries to undergo the UPR. This can also create a precedent for future discussions in this context.

#### *Treaty bodies and the Human Rights Council: final observations*

The Human Rights Council will be the main political UN forum in which human rights across the board can be discussed in the years ahead. It is therefore of the utmost importance for the treaty bodies to have optimal access to the Human Rights Council. In an integrated and harmonised system, the rotating chair of the meeting of chairpersons of treaty bodies should have the opportunity at least once a year to debate with the Human Rights Council on problems and matters affecting all treaty bodies. In addition, the AIV recommends that the chairpersons of the various treaty bodies should also have the opportunity once a year to debate with the Human Rights Council about matters that are of special importance to them in the light of their specific mandate.

Finally, the AIV emphasises the desirability of working to achieve better cooperation and synergy between the treaty bodies and the Human Rights Council's thematic rapporteurs. In many cases the thematic rapporteurs have mandates that partially overlap with those of one or more treaty bodies. They could lend added weight to the calls on states to comply with the treaty bodies' concluding observations or their decisions in individual cases. Conversely, the information gathered by the rapporteurs and their analyses of this information are of direct importance to the treaty monitoring bodies and hence also to the UPR described above.

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3 July 2006

The United Nations reform agenda proposed in 2002 by Secretary-General Kofi Annan is steadily taking shape, and the first session of the Human Rights Council provided for in that agenda took place on 19 June 2006 in Geneva. It is therefore essential for the other United Nations human rights instruments to be adapted to the new reality and, where possible, strengthened. It is of paramount importance that the reform of the system of United Nations treaty bodies should not lag behind, particularly since these are an important instrument in relation to the implementation at national level of international human rights standards. It is also vital to consider the relationship between the new Human Rights Council and the existing system of treaty bodies. Specific attention should be focused on the connection between the reporting by the various treaty bodies and the mechanism of the Universal Periodic Review as envisaged by the Human Rights Council.

In the light of this, the Office of the High Commissioner for Human Rights presented its *Concept paper on the High Commissioner's Proposal for a Unified Standing Treaty Body* (HRI/MC/2006/CPR.1) at an informal meeting on 4 April 2006. The paper recommends the amalgamation as far as possible of the existing treaty bodies. However, such sweeping changes to the system would have far-reaching consequences. Although the Netherlands supports every effort made towards greater efficiency, it is concerned that improved cohesion should not be achieved at the expense of valuable elements of individual treaty bodies.

The problems confronting the individual treaty bodies are well known – and they themselves acknowledge them. In practice, they have insufficient capacity and are administratively under-resourced, which delays the reporting process. Moreover, because of the complex and overlapping reporting obligations, many states submit reports after considerable delay. The result is a reporting backlog which actually undermines the effectiveness of the instruments. There is a clear need for more substantive collaboration and better organisational coordination. Individual treaty bodies have their own methods and tend to duplicate each other's work. This creates the double risk of overlap and lack of cohesion.

For several years, the treaty bodies themselves have been working on practical improvements. However, the progress to date has failed to provide lasting solutions to the problems. This gives sufficient cause for additional efforts to make the system more efficient and effective. The question is: what form should such efforts take? Reference has already been made to the concept paper published by OHCHR, which sets out the option of a unified standing treaty body. Although this is an initial proposal, leaving much that needs fleshing out in more detail, the basic outline is clear.

The member states of the United Nations endorse the importance of reforming the system within which the seven treaty bodies currently operate. Nevertheless, the OHCHR's paper initially received a cautious welcome and is for the time being likely mainly to provoke questions. OHCHR has been urgently requested to draw up alternative approaches, and has agreed to produce supplementary studies on other options. The paper has been submitted to the Legal Advisor in New York for examination of its legal implications.

Within the EU context, the Netherlands will shortly have to develop its views on the reform of the system of treaty bodies. In this light, I would like to put the following questions to the Advisory Council:

1. What problems do both the treaty bodies and the reporting states encounter in relation to the principal objective of the human rights treaty body system, namely to monitor implementation of international human rights standards?
2. To what extent do the current initiatives (better coordination of work, regular consultation between the chairpersons etc.) succeed in addressing the problems facing treaty bodies?
3. What options exist for more far-reaching reform, and what are the respective advantages and disadvantages of the options that have been identified? In your view which option would be preferable and why? What would be the best way of implementing your preferred option? Can a distinction be made between short-term and long-term options? (The more far-reaching options require more time, but that should not automatically rule them out.)
4. Please give particular consideration to the advantages and disadvantages of establishing a unified standing treaty body as described in section V of the OHCHR's paper.
5. How does the Advisory Council view the relationship between the treaty bodies (in their present form and in the form to be proposed by the Advisory Council) and the new Human Rights Council, especially in the context of the universal periodic review?

In view of the documentation already available,<sup>1</sup> brief answers to questions 1 and 2 will suffice. However, I would welcome more detail in your answers to questions 3 to 5. Member states may possibly be asked for their response at an intergovernmental meeting between 4 and 8 December. I would therefore appreciate your reply by 1 November 2006.

(signed)

Bernard Bot  
Minister of Foreign Affairs

1 In this connection, the Advisory Council is referred to the Report of the Expert Workshop on Reform of United Nations Human Rights Treaty Monitoring Bodies, Nottingham, February 2006.

## Overview of ratifications and complaint procedures

Treaty parties and numbers of late reports

Treaties	27 June 2007		21 October 1996		June 1988	
	Treaty parties	Late reports	Treaty parties	Late reports	Treaty parties	Late reports
International Covenant on Economic, Social and Cultural Rights	156	213	135	124	91	169
International Covenant on Civil and Political Rights	160	89	135	126	87	54
International Convention on the Elimination of All Forms of Racial Discrimination	173	485	148	415	124	170
Convention on the Elimination of All Forms of Discrimination against Women	185	247	154	197	94	57
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	144	170	99	82	37	n/a
Convention on the Rights of the Child	193	103	187	73	n/a	n/a
Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	37	27	7	unknown	n/a	n/a
<b>Total</b>	<b>1048</b>	<b>1334</b>	<b>865</b>	<b>1017</b>	<b>433</b>	<b>450</b>

*Individual right of complaint and number of decisions by each treaty body*

Optional Protocols	Treaty parties		Total number of decisions		Admissible		Inadmissible	
	1996	2007	1996	2007	1996	2007	1996	2007
First Optional Protocol to the International Covenant on Civil and Political Rights	89	109	418 <sup>1</sup>	1042	207	572	211	470
Second Optional Protocol to the International Covenant on Civil and Political Rights	29	60	–	1	–	1	–	–
International Convention on the Elimination of All Forms of Racial Discrimination (article 14 declaration)	23	51	5	35	4	21	1	13
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (article 22 declaration)	37	61	13 <sup>2</sup>	196	4	141	9	55
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	n/a	88	n/a	13	n/a	7	n/a	6
<b>Total</b>	<b>178</b>	<b>369</b>	<b>436</b>	<b>1287</b>	<b>215</b>	<b>742</b>	<b>221</b>	<b>544</b>

1 Data in April 1996.

2 Data in May 1995.

**List of abbreviations**

<b>ACM</b>	Dutch Advisory Committee on Human Rights and Foreign Policy
<b>AIV</b>	Dutch Advisory Council on International Affairs
<b>CAT</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>CEDAW</b>	International Convention on the Elimination of All Forms of Discrimination against Women
<b>CERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>CMR</b>	Human Rights Committee of the AIV
<b>CMW</b>	Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
<b>CRC</b>	Convention on the Rights of the Child
<b>ECOSOC</b>	Economic and Social Council of the United Nations
<b>HCHR</b>	High Commissioner for Human Rights
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ILO</b>	International Labour Organisation
<b>NGOs</b>	Non-Governmental Organisations
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>UN</b>	United Nations
<b>UNDP</b>	United Nations Development Programme
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organisation
<b>UNICEF</b>	United Nations International Children's Emergency Fund
<b>UPR</b>	Universal Periodic Review
<b>WHO</b>	World Health Organisation



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