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Towards a new direction for the Netherlands in the Israeli-Palestinian conflict

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To the Minister of Foreign Affairs
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PO Box 20061
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Date

23 October 2024

Subject

Advisory Letter: Towards a new direction for the Netherlands in the Israeli-Palestinian conflict

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Dear Minister,

With the escalation of the Israeli-Palestinian conflict in the Gaza Strip and the international response to it, new lows have been reached this past year in humanitarian, political, and moral terms, and in terms of international law. The large-scale human suffering, the situation in the West Bank, which has deteriorated further, and the polarising impact on our own society have prompted the Advisory Council on International Affairs (*Adviesraad Internationale Vraagstukken*, AIV) to prepare this Advisory Letter for you. The further regional escalations in Lebanon, and between Iran and Israel, as well as the geopolitical consequences of the course this conflict is taking, have only added to the urgency behind this Advisory Letter.

It has now become clear that external international pressure is required in order to bring about de-escalation and conflict resolution, but thus far such pressure has, for the most part, been lacking. In this Advisory Letter, the AIV considers how the Netherlands, with the relatively modest resources it has available for this purpose, might recalibrate its policy so that it can contribute effectively to de-escalation and conflict resolution, and to efforts to contain the current spiral of violence, including at the regional level, and can counter the violations of international law, including international humanitarian law (IHL), and human rights that have been associated with this conflict.

To this end, the AIV is proposing a recalibration of the strategic policy considerations on this issue, and is making specific recommendations with a view to achieving a more effective policy at the national and European Union (EU) levels, to creating a regional context that is stable over the long term, to ensuring consistent compliance with international law, and to taking steps that will revitalise the process towards a two-state solution.

1. Rationale for this Advisory Letter

The historically rooted Israeli-Palestinian conflict has reached new lows in the past year. It has now been more than a year since the terrorist attack by Hamas and other groups, such as Palestinian Islamic Jihad, brutally murdered around 1,200 Israelis and other civilians on 7 October 2023. There was widespread violence, rape, and torture. Even now, a large number of Israelis are being held hostage in the Gaza Strip, the level of insecurity in Israel is still high, and the situation in the West Bank is deteriorating. The conflict is increasingly taking on the character of a regional war, now that Israeli military operations

have expanded into Lebanon and Iran has fired ballistic missiles at Israel. Moreover, the risk of further escalation between Iran and Israel is still high.



According to the UN, Israel's large-scale response to the 7 October 2023 attack has now already claimed the lives of an estimated 41,400 Palestinians in Gaza, including about 11,300 children.¹ The number of people who have suffered life-changing injuries, both physical and mental, is many times higher. As a result of this dramatic escalation in the decades-long Israeli-Palestinian conflict, the acute humanitarian situation in the Gaza Strip has now become so dire that, while the violence of the war² continues, nearly 68 percent of Gaza's agricultural land has been destroyed, widespread hunger is imminent, and there are fears about the spread of severely contagious diseases. Other numbers also speak volumes, and give us a sense of the enormous efforts that will be required for the social and physical reconstruction of Gaza: 85 percent of Gaza's school buildings have been directly hit in Israeli attacks, and more than 60 percent of all residential housing, as well as 86 percent of the road system, have been destroyed or damaged.³

The historical traumas associated with the Israeli-Palestinian conflict simply cannot be overstated. The events of the past year have torn open wounds that had never healed in the first place, and inflicted new mental injuries. Among other things, Israelis refer to the time of the pogroms and the Holocaust, in which six million Jews were murdered. For their part, Palestinians often refer to the time of Al-Nakba ('the catastrophe') in 1948, when they were chased off their land in large numbers and their land and property were seized. Over time, traumas have deepened— on the Israeli side due to the lack of security in a high-risk environment; on the Palestinian side due to the ongoing occupation and the denial of statehood and of the restitution of land and rights.

Over a decade ago, at the request of the First Chamber (the Dutch Senate), the AIV issued an Advisory Report on the Middle East Peace Process.⁴ That report began with a quote from the Israeli writer Amos Oz, who has since passed away, in which he characterised as follows the crux of the Israeli-Palestinian conflict in all of its historical complexity: 'My definition of a tragedy is a clash between right and right. And in this respect, the Israeli-Palestinian conflict has been a tragedy, a clash between one very powerful, very convincing, very painful claim over this land and another no less powerful, no less convincing claim.'⁵ Oz points in this connection to the underlying core of the conflict and, by implication, to the only possible avenue for resolution: the state of Israel has the right to a secure existence within secure borders, and the Palestinian people equally have the right to their own secure state.

Unequal power relations between the parties, lingering trauma, and decades of negligence in addressing this underlying, fundamental clash of rights in a way that would be acceptable to both sides, have now culminated in the deeply problematic situation in the here and now, which is unacceptable from a foreign-policy and moral perspective, and from the standpoint of international law. Over the years, the conflict has only grown more complex: there are now some 700,000 Israelis living in illegal settlements on Palestinian land;⁶ Hamas, an organisation that was founded in 1987 as a resistance movement, but that has been defined as a terrorist organisation in EU decisions for years, has been in power in the Gaza Strip since 2007; and in Israel, at least with the current government of Benjamin Netanyahu, in which religious-extremist ministers are having a significant impact, Israel's own character as a democracy in which the rule of law obtains is, it seems, increasingly on the line and itself becoming part of the political debate. At the regional level, the Lebanese organisation Hezbollah has been going from strength to strength, while escalations in other parts of the region mean that the conflict is losing any clear lines of demarcation. Currently, there is no clear 'day-after' moment in sight. While analysis and recommendations obviously need to be contextualised and require constant readjustment—the situation is, after all, fluid—escalation can also distract from the basic underlying causes of the Israeli-Palestinian conflict. However, that does not change them.



An analysis of historical and recent trends and developments regarding the Israeli-Palestinian conflict can sometimes bring on a sense of despondency and powerlessness. Running through possible future scenarios can quickly lead to a high degree of pessimism. That said, the stakes are too high to simply stand on the sidelines. The escalation, in terms of its intensity, the amount of damage it has caused, and its geographical scope, continues to increase, thus indicating that the conflict will not stop just like that. Israeli historian Yuval Noah Harari has recently described the current situation for Israelis and Palestinians as follows: '[Y]our mind is so full of your own pain that any attempt to even draw your attention to the pain of somebody else feels like a betrayal.... [I]n a moment like this, we entrust the possibility of peace to outsiders.... We cannot hold it right now, but we hope that outsiders hold it for us and help de-escalate the current situation'.⁷

So far, however, 'outsiders' have not made sufficient efforts to de-escalate the situation. International diplomacy and pressure are not being used effectively and in combination, and this is resulting in the regionalisation of the Gaza war. At the moment, then, escalation is not followed by de-escalation, considerable humanitarian suffering is not mitigated, and conflict resolution is given little chance. The UN is as good as out of touch, the United States (US) is currently viewing the conflict partly through the lens of the upcoming US elections, and the EU is operating in a divided fashion—and all of this even as there are strategic European interests at stake in addition to the large-scale humanitarian consequences.

There is growing awareness in our societies that the current situation is at least partly also due to decades looking the other way too often, and to negligence by key international players, including the US, neighbouring and other Arab countries, but also the Netherlands and other European countries. This Advisory Letter thus focuses in part on how the Netherlands, with the relatively limited resources it has available for that purpose, especially as an EU member state, can recalibrate its policy so that it can contribute more effectively to de-escalation and conflict resolution and so that it does not make itself complicit in the continuation of the current violence and violations of international law, including IHL, and human rights that are associated with the conflict.

Such a new direction is both necessary and urgent. It is the view of the AIV that the relatively low priority that is now being, and that has recently been, accorded to working towards a lasting solution to the Israeli-Palestinian conflict is not at all commensurate with the human suffering and the regional strategic as well as material interests involved, including as regards international law. Divided European policy is eroding the Union's credibility. It would appear that double standards regarding the insistence on compliance with international law are fuelling social polarisation, both in the Netherlands and elsewhere in the world. The current approach, and the way in which the Israeli-Palestinian conflict has been dealt with in recent years, are not achieving outcomes that many countries, including the Netherlands, stand for, whether we look at the short or the long term. At the moment, and for the short term, this involves achieving a sustainable ceasefire, increasing humanitarian access, and de-escalating tensions in Israel, in the Palestinian territories, and in the wider Middle East region. In the longer term, it will involve achieving a lasting peace between Israel and an independent, viable Palestinian state, based on mutual recognition and security guarantees. The road to peace will be complicated but it is necessary all the same. It requires external engagement, with diplomacy and pressure working hand in hand.

Back in December 2023, UN Secretary-General António Guterres took the extraordinary step of invoking Article 99 of the UN Charter to call for a humanitarian ceasefire,⁸ but the response suggested that the UN's political role in de-escalating this conflict remains limited. Yet after a period of fruitless negotiations, which saw significant efforts by US President Joe Biden on that score, binding UN Security Council Resolution 2735 was adopted, with a phased proposal for a sustainable ceasefire. However, at the time of



writing, the warring parties have still not managed to agree on a ceasefire as a first step towards de-escalation and a more structural solution to the conflict. In the meantime, extreme violence persists, the positions of the parties to the conflict are hardening, and the risk of strategic miscalculation in practice leads to regional escalation that is difficult to control, with the risk of further radicalisation and terror also remaining high. Whereas Israel has the right to defend itself against the terror wrought by Hamas and Hezbollah, and the Palestinians have the right to self-determination and to resistance, neither proportionality nor legality, nor yet compliance with binding resolutions, seems to play any meaningful role here anymore.

The AIV notes with great concern that it is precisely civilians who are disproportionately hit by rockets raining down and by heavy bombardments that do not spare hospitals, shelters, and schools. In 2018, the Netherlands initiated a UN Security Council resolution on the criminality of using starvation as a weapon of war. Prime Minister Benjamin Netanyahu's government now stands accused of doing just that. In addition, protests and violence are also flaring up in the West Bank, now also involving the Israeli army alongside extremist Israeli settlers—a developing situation in which international law and human rights are being frequently violated. The continuation of the conflict is fuelling the popularity of more-extreme parties and views, while the increasing dehumanisation of the 'other' is widely propagated on social media.⁹ This in turn brings with it a risk of further radicalisation and terror.

In recent months, the intensification of violence has also caused the conflict to become even more intertwined with wider tensions in the region, particularly between Israel and Hezbollah, and Israel and Iran. These developments are putting the Middle East region on edge and create the risk that the US, with Europe in its wake, will become embroiled in another war in the Middle East.¹⁰

The continuation of armed conflict is, first and foremost, having a traumatic and long-lasting impact on local populations, and it is this human suffering that should prompt policymakers to try to contribute as best they can to de-escalation and conflict resolution. In addition, the conflict is also affecting significant interests elsewhere, including in Europe and the Netherlands. The regional instability is creating the context for greater flows of refugees, for growing maritime insecurity, and for international terrorist threats. The AIV is also deeply concerned about the repercussions of the conflict here in the Netherlands. Polarisation and a lack of mutual respect in the much-needed democratic debate on the issue are all too often prevalent. There is an alarming rise in anti-Semitism, and it is simply unacceptable that many Jews feel unsafe in the Netherlands. At the same time, Islamophobia is on the rise, as is a sense of insecurity in the country.¹¹

Against this backdrop, the AIV has decided to take the initiative, in line with its mandate, and present this Advisory Letter to the Dutch government and parliament. This Advisory Letter builds on the Advisory Report from 2013: the analysis, conclusions, and recommendations from that report still hold for the most part. The purpose of the present Advisory Letter is to update those recommendations, while taking into account their many and significant limitations, so as to help create concrete, balanced, and effective steps that will help contribute to de-escalation, to stabilisation, and to a process leading to a long-term sustainable solution to the Israeli-Palestinian conflict.

2. A recalibration at the national and European policy levels



On paper, actively promoting a solution to the lingering conflict in Israel and the Palestinian territories has been defined for years as a major priority of European foreign and security policy. Starting in the 1990s, EU member states showed a high degree of consensus on 'the Palestinian issue', and were actively involved in negotiations. The EU and its member states also have influential policy tools at their disposal in their dealings with both Israel and the Palestinians, and these can be used as part of an effective carrot-and-stick approach. The Netherlands often sees itself as a 'friend' to both Israel and the Palestinians, having built historically good ties with both sides. Within the EU, the Netherlands also wants to play the role of a 'bridge builder'. The EU, as a geopolitical player, *could* thus make a serious contribution to resolving the Israeli-Palestinian conflict, both in the short and long term, and the Netherlands *can* play an important role in this.

However, EU member states, including the Netherlands, have often chosen not to actually prioritise this conflict. The Netherlands has not been able to sufficiently harness the friendships on both sides to help achieve the short- and long-term goals set out above. The AIV therefore argues that the Netherlands should use its self-appointed position to be both a real and a critical friend to both Israel and the Palestinians. The international community's excessive passivity towards the Israeli-Palestinian conflict—incidentally, not only in the EU but certainly also in the US and the Arab world—has contributed to the fact that developments in recent years have not been positive for any party. For the state of Israel and the Israeli people, the security situation has worsened, even as the country has continued to expand the occupation with illegal settlements. In the Palestinian territories, governance in both Gaza and the West Bank is either corrupted or militarised, the appeal of extremist groups that use their own populations as shields is growing and, with each day that passes, the likelihood of a viable, democratic Palestinian state based on the 1967 borders is shrinking. For European states themselves, this negligence has meant that the EU has largely lost its place at the decision-making table on this issue and is now struggling with an image in which 'looking the other way' and applying 'double standards' have become common reproaches.

In the policy recalibration being proposed here, the Netherlands, in the European context, will be committed to (1) forming effective coalitions where EU consensus fails to materialise; (2) pursuing a more autonomous and complementary policy with respect to the US, the main external actor; and (3) using available policy tools more effectively both to counter violations of international law and human rights, and to move the situation towards agreed policy goals.

2.1 Building effective coalitions where EU consensus is lacking

In recent years, the EU's relevance has largely and increasingly been confined to issuing statements reaffirming the general consensus among member states regarding the ultimate policy goals in the Israeli-Palestinian conflict. However, in the flurry of developments triggered by the 7 October 2023 terrorist attack by Hamas and other groups such as Hezbollah that, based on EU decision-making, are defined as terrorist, the underlying disagreements among member states on the path towards these policy goals have come to the fore. There is no clear vision or prospect for action on the relations in the Middle East, beset as these are with risks, while the US, the main external actor, is increasingly preoccupied with the upcoming elections at home. There are also some member states, such as Hungary under Prime Minister Viktor Orbán, that are currently trying to prevent further consensus. There has been disagreement, first on the nature of a ceasefire and a humanitarian pause and on voting on certain resolutions in the UN Security Council and the UN General Assembly (UNGA), with the Netherlands abstaining on several occasions. And opinions have also been divided on whether to support or oppose proceedings at the International Court of Justice (ICJ) and the International Criminal Court (ICC), both in The Hague, on a review of the Association Agreement

with Israel, on whether to continue to provide support in the form of weapons, and on the utility or risk of recognising a Palestinian state at this time. However, this has not yet resulted in effective diplomacy or in actual influence on the parties, or even in a serious identification of means of pressure that might be more effective. This is in contrast to most of the conflicts that the EU engages on. As long as the parties can assume that the threat of pressure from the EU remains a paper tiger, their behaviour will obviously not change, and the risks of escalation will also increase regionally. Pressure and diplomacy are two sides of the same coin.

It is now clear that getting consensus on a number of concrete issues within the EU is not going to work, at least for now. Just as on other issues, it is thus important that the Netherlands not limit itself to agreeing to an in-practice often diluted compromise by 27 countries. The AIV wishes to emphasise that, especially given the scale of the conflict, the urgency involved, and the potential for escalation, such a compromise would be undesirable and unwise. The Netherlands always has its own responsibilities, too, and should actively use a potentially bridging position to seek coalitions of like-minded actors to actually bring about real change. This could include, where effective, working with countries within the EU, such as France, and outside the EU's borders, including the United Kingdom (UK) and countries in the Middle East region itself. The Netherlands can also work to bring along reluctant member states, such as its neighbour Germany, when it comes to measures that it deems necessary. In this regard, the AIV would underline the importance of shaking up the entrenched dynamics within the EU, so that Europe can be taken more seriously by allies such as the US, by influential states in the region, by the warring parties, and perhaps more often by the member states themselves.

2.2 Formulating a more independent, complementary policy vis-à-vis the US

Despite the geographical proximity of the conflict—it is only an hour by plane from Cyprus to Tel Aviv—and despite their own interests in the region, the EU and many of its member states have largely left it to the US to set strategic policies on the Israeli-Palestinian conflict. Undeniably, as a key player, the US potentially has the greatest external influence on the parties as well as on the accomplishment of the goals of de-escalation, conflict resolution, and the establishment of structurally sustainable relations between and among the parties in the Middle East.

The reflex to limit the EU's role to supporting US initiatives was already evident in the cabinet response to the 2013 AIV Advisory Report. That report was written at the time of the so-called 'Kerry Initiative', in which, between July 2013 and April 2014, the US Secretary of State at the time, John Kerry, made a (relatively brief) attempt to restart peace negotiations between the parties. Given the low probability that these negotiations would succeed, the AIV recommended that the government 'focus its efforts on convincing the EU member states of the need, in the near future, to launch a joint initiative to move towards a two-state solution'. It added that, if needs be, the 'EU must itself take responsibility and make independent efforts to bring the parties together' and that, if such an initiative did not gain sufficient support, the Netherlands could consider 'following the example of Norway in the early 1990s, by offering to bring the parties to the negotiating table in this country (either openly or behind closed doors), based on the principles of international law.' However, the Dutch government of the day felt that Kerry's efforts offered the only realistic prospect of progress, and that the EU's responsibility lay mainly in increasing international momentum in favour of the Kerry Initiative.¹² The Netherlands did play a proactive role at the Paris summit in January 2017, but the results of that meeting were quite modest, partly because of the change in government in the US.

Even in the current phase of the Israeli-Palestinian conflict, the EU has failed to define a significant mediating or other clearly relevant role for itself, including in relation to the US. The AIV regrets that, in its many discussions with a wide range of experts and stakeholders in recent months, there was general consensus that the political role and



position of European states in the Middle East conflict have now been weakened to the point of irrelevance. In contrast, the US has defined a clearer and, above all, a more security-policy-oriented role for itself. In that context, bilateral defence cooperation with the US is an essential component for Israel, giving it the sense of security that is created by having military superiority in the region. US-Israeli defence cooperation is enshrined in several bilateral defence treaties, including a Mutual Defense Assistance Agreement (1952), a General Security of Information Agreement (1982), a Mutual Logistics Support Agreement (1991), and a Status of Forces Agreement (1994). Between 1948 and 2023, the US provided, among other things, \$130 billion in bilateral aid, most of it unconditionally, to modernise Israel's armed forces.¹³ The investments, like the bond established between Israel and NATO, for example, were partly aimed at maintaining a strong, reliable ally for the West in the Middle East. Explicit bilateral security guarantees for Israel and others in the region are a recurring topic of discussion.

The AIV agrees that the US, as Israel's staunchest ally, plays a key role with regard to the Israeli-Palestinian conflict. However, the interests that the US pursues with its own policy with regard to the Israeli-Palestinian conflict—where, naturally enough, US domestic politics also exert considerable influence—do not always overlap with Europe's interests. The AIV would also note here that, while US influence will still be structural and central in the region, that influence is no longer as strong as it was a decade or so ago, and that Europe must also factor these changes in regional power relations into its policy choices.

Particularly when it comes to potential refugee flows, regional instability, maritime security, and growing extremism, as well as the relationship with international law and human rights, the EU and its member states may have considerations that differ from those of the US, and they could also translate these into strategic policies that could deviate in some respects from the US line or, by contrast, reinforce it. The AIV considers it advisable to have a more independent policy, which it sees as a more effective basis for cooperation with the US. The AIV also sees scope for more Transatlantic cooperation and consultations aimed at countering extremism and terrorism in the region, especially when it comes to policy towards Iran, where much greater vigilance and deterrence—in view, too, of that country's cooperation with Russia—should, wherever possible, be coupled with the urgent search for de-escalation opportunities, renewed diplomacy, and negotiations on a new nuclear deal—especially given that the current escalation could potentially be a reason for the US to seek a military rather than a diplomatic solution to the threat posed by Iranian nuclear capabilities, and to try to involve Europe in such a solution.

2.3 Using and combining available policy instruments more effectively

The EU has historically been able to build strong ties with both the Palestinian Authority and Israel. The EU has no ties with Hamas because of the 'no-contact' policy that has been instituted, and because of the designation of Hamas as a terrorist organisation. It does maintain intensive relations with third countries that do talk to Hamas, such as Qatar, Egypt, and Turkey. EU policy towards the Palestinian Authority and Israel is, with exceptions, based mainly on positive measures and on dialogue. The AIV agrees that positive measures can be essential to the diplomatic resolution of deep conflicts, but it would note that, on both the Israeli and the Palestinian sides, as in other violent conflicts around the world, such a one-sided approach has proven to be ineffectual for the most part. The AIV therefore takes the view that the direct and indirect positive as well as negative means of applying pressure that are available at the European and national levels should be combined more intelligently, and in concert, with effective diplomacy and dialogue to contribute as a matter of urgency to the chances of a sustainable ceasefire, to de-escalation, to conflict resolution in the region, and to respect for international law and human rights.

Europe currently has economic, political, and other tools. In what follows, the AIV takes stock of some of these tools. How these tools can best be used will be discussed in more detail later in this Advisory Letter.



- Europe is one of Israel's main trading partners.¹⁴ In 2022, 25.6% of Israel's exports went to the EU, while 31.9% of its imports came from there. The total value of the trade between the EU and Israel was €46.8 billion in 2022.¹⁵ That being said, Israel is a much less important trading partner for the EU: only 0.8% of the EU's total trade in goods came from Israel in 2022, for instance. Since 2000, the EU-Israel Association Agreement has served as the primary legal framework for bilateral relations between the EU and Israel.¹⁶ The Agreement sets the parameters for, among other things, economic cooperation, the free movement of capital flows, the liberalisation of services, and the facilitation of political dialogue at the ministerial level in an Association Council. Article 2 of the Agreement stipulates that 'relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which guides their internal and international policy and constitutes an essential element of this Agreement.'¹⁷ Based on this Article and on the initiative of Spain and Ireland, a discussion on the EU-Israel Association Treaty was called for in February 2024 and an initiative to convene the EU-Israel Association Council followed in May 2024. Since then, there has been too little specific follow-up on these initiatives. In view of this, the AIV would argue that there should now be follow-up, with concrete measures attached to the initiatives, and that this should be designated as a priority for the incoming European Commission.
- Under the EU-Israel Association Agreement, trade with illegal Israeli settlements is prohibited. In 2019, the European Court of Justice ordered member states to label products from illegal settlements. In May 2023, the EU adopted a new rule whereby, in order to qualify for trade benefits, products from Israel must carry a new label to show that the products *do not* come from illegal Israeli settlements. However, the system has not proved watertight, monitoring and enforcement are inadequate, and the number of illegal settlements and settlers has actually grown significantly (see below). Applying the EU's 'differentiation policy' is certainly the right approach, but it must be implemented more clearly and more strictly.
- After the 1993 Oslo Accords, Europe also took the lion's share of responsibility for supporting capacity-building for the Palestinian Authority. From the beginning, this included a focus on good governance, preparations for state-building, anti-corruption, and democratic anchoring. The Netherlands, along with other European countries, is also committed to strengthening the Palestinian security sector, including through a contribution to the *United States Security Coordinator for Israel and the Palestinian Authorities* (USSC) in Jerusalem and Ramallah and to EUPOL COPPS, an EU mission that helps strengthen the Palestinian police. Viewed collectively, the EU member states remain the largest external donor to the Palestinians, a position that, with the right pre-conditions placed on Israel and the Palestinian Authority, should also make it possible for the EU to guide how the Palestinian Authority, among others, positions itself, especially given that the US has amended the Foreign Assistance Act and can thus no longer provide direct support to the Palestinian Authority. However, there has never been any serious discussion about corruption, human rights violations, and authoritarian tendencies within the Palestinian Authority. There has been an insufficient push for new elections, which are sorely needed. The Palestinian Authority has now lost much of its legitimacy among the Palestinian population, not only in Gaza but also in the West Bank, with the result that alternatives such as Hamas have become more attractive in both territories. The AIV therefore welcomes the conditionality associated with the necessary short-term emergency financial assistance that was pledged in July 2024 to the Palestinian Authority, and that requires the Palestinian Authority to take steps to implement its reform agenda.¹⁸ The AIV would stress that this conditionality should be effectively maintained and accompanied by active diplomacy aimed at reforming the Palestinian leadership.



- The EU does not have relations with Hamas or Palestinian Islamic Jihad, given that the groups are on the EU list of terrorist organisations. Under current rules, the EU may impose sanctions on organisations and individuals who support these groups, whether materially or financially, or who facilitate their violent actions in any way. The effectiveness and the knock-on effects of these measures are essential.
- The EU and its member states are among the major donors to the United Nations Relief and Works Agency for Palestine Refugees (UNRWA). In 2023, the Netherlands was the eighth-largest donor to UNRWA.¹⁹ At the moment, UNRWA is, in effect, the only organisation in the Gaza Strip that can make significant contributions to the provision of education, healthcare, and social facilities, among other things. It is thus a lifeline for a large part of the population in the Gaza Strip. The AIV takes the view that, now that the investigation into the involvement of some staff members in the 7 October 2023 terrorist attack has been concluded, there is no longer any reason to stop urgent additional funding to UNRWA in addition to the regular contribution. This must naturally involve ensuring that the new agreements to which UNRWA has committed are strictly adhered to.
- Defence cooperation with Israel is substantial within the EU, and Israel is partly integrated into Western military structures, from jointly conducting R&D, such as in NATO's Science for Peace and Security (SPS) Programme, and indirectly through a number of projects in the EU's Horizon research programme. In February 2024, the European Union's human rights and international humanitarian law due diligence policy on security sector support to third parties was adopted. Partly due to the developments of the past year, these collaborations are being scrutinised by individual member states. France, for example, informed the Israeli defence industry that it would not be welcome at a major arms fair, French President Emmanuel Macron is calling for an arms embargo, and in early September 2024 the new UK government decided to rescind, with immediate effect, 30 of its 350 arms-export licences with Israel on the grounds that the products in question could be used in such a way as to violate IHL. Dutch defence exports to Israel are relatively small-scale. However, the F-35 parts transit case is in play, summary proceedings have been initiated against the Dutch state, the aim being to stop the direct or indirect export of weapons, parts for weapons, and dual-use goods to Israel, and the Dutch Senate is currently considering a bilateral defence treaty with Israel. Given the current situation, the precautionary principle holds that the Netherlands, too, should recalibrate its policy towards Israel and other countries in the region in such a way that military cooperation cannot in any way contribute to risks of violations of international law, including IHL and human rights.
- The EU also has two civilian missions in the region. Much attention has recently been focused once again on the EUBAM Rafah mission. This mission was set up in November 2005, shortly after the Palestinian Authority and the Israeli government signed an Agreement on Movement and Access, in which they endorsed principles for bringing the Rafah border crossing, between Gaza and Egypt, into operation. The mission has been suspended since 2007, the year in which Hamas took over administration of the Gaza Strip. Serious discussions are underway at the moment about reactivating this mission. The EU has also been actively involved since 2006 with the aforementioned EUPOL COPPS in the Palestinian Territories, which aims to advise the Palestinian police and help build the Palestinian justice system. A new EU military mission, EUNAVFOR ASPIDES, has also been operating in the Red Sea and part of the Indian Ocean since February 2024, with a defensive mandate to help restore safe passage for merchant vessels there. The mission has been set up because Houthi rebels in Yemen have been targeting commercial ships in the region. The UN also has missions in the region to which EU member states contribute, including UNIFIL in southern Lebanon and UNDOF in the Golan Heights. In both missions, military observers have been operating as part of the United Nations Truce Supervision Organization (UNTSO), which was established in 1948. Consideration should be given to reforming and strengthening these missions in the context of the

current situation and given the potential they have to contribute to de-escalation and a sustainable ceasefire.

- The EU and individual member states have a large number of policy programmes aimed at so-called people-to-people contacts, including, for example, the Horizon research programme and the Erasmus+ programme, which enables academic-level exchanges with Israel. Provided, of course, that doing so falls within international law, the AIV favours the continuation and possible expansion of such civilian partnerships, including with Palestinian universities where possible, since such positive human interaction is precisely what is important for the cultivation and broadening of mutual understanding between and among the various parties. It is important, however, that these forms of cooperation and the funds associated with them do not benefit entities with links to extremism and terrorism on the one hand, or illegal Israeli settlements on the other, or about which it can be stated with reasonable certainty that the research involved is contributing to the occupation, the persistence of illegal settlements, or other forms of violation defined by the International Court of Justice (see below). The AIV would suggest that the same logic should be applied to national partnerships and the allocation of research funds.
- And finally, at the more 'negative' end of the spectrum of policy instruments, there is the EU Global Human Rights Sanctions Regime, which can be used as a tool to punish individuals and organisations that are responsible for human rights violations through travel bans and asset freezes. In January 2024, the European Council set up a special framework for holding accountable individuals and entities that support, facilitate, or otherwise enable actions by Hamas and Palestinian Islamic Jihad.²⁰ In addition, the AIV also welcomes the imposition of sanctions on various individuals and entities within the Israeli settler movement under this regime, as happened for the first time in July 2024, and also sees scope for a more frequent and more consistent application of this regime.

The Netherlands should make diplomatic efforts so that the EU, or a coalition of EU member states, should EU consensus be lacking, uses the existing political, economic, and other policy instruments mentioned above more effectively to de-escalate the situation. In addition, the Netherlands will also have to come up with new initiatives focused on both parties (see below in this Advisory Letter). Exerting positive and negative pressure on the parties to the conflict from an EU perspective should ideally be combined with pressure from other external quarters, especially from concerned Arab states and, where possible, the US. The AIV would stress in this connection that the influential policy tools available should be applied consistently but should still remain flexible, and that, once the situation changes, their use should be reviewed so that they can start contributing to a long-term solution to the conflict.

3. Policymaking with a view to promoting wider regional security

The Israeli-Palestinian conflict is part of a changing regional and international context. Ultimately, a lasting solution to it must be part and parcel of a broader regional-security architecture that provides real security for Israelis and Palestinians alike.

First, there is a clear link to other ongoing conflicts, notably between Iran and Israel and between Israel and Hezbollah in Lebanon. The escalation with Iran, an ally and backer of Hezbollah in Lebanon, where this group constitutes 'a state within a state', requires attention as a matter of priority and a return to active diplomacy focused on de-escalation and compliance with the relevant UN resolutions.

In addition, the diplomatic dynamics in the region have changed significantly in recent years: an increased number of Arab states have decided to normalise relations with Israel. That trend has played a role in the escalation of the Israeli-Palestinian conflict, but it also



has the potential to contribute to a lasting solution. Third, for about ten years now, there has been a discussion about the possible consequences of the waning role of the US in the region, as successive administrations have focused their attention more closely on Asia, a change in priority that has been accompanied by a shift in the balance of power in the Middle East.

The Middle East is looking into the abyss of ongoing and intensified regional conflict and instability, with Israel being threatened by Iran, while none of the parties has any interest in a full-scale war. That said, mutual tit-for-tat attacks can easily lead to that undesirable outcome. The AIV would underline how important it is for Europe to take clear positions and pursue them actively, and to implement policies that contribute to de-escalation and the creation of the right regional context for coming to a long-term solution to the Israeli-Palestinian conflict and to overall regional stability. The focus should first and foremost be on (a) effectively containing Iran's negative influence in the region, combined, where possible, with a renewed search for opportunities for diplomacy and the negotiation of a nuclear deal; (b) further encouraging regional normalisation with Israel, linked to the achievement of the two-state solution; (c) strengthening political and economic European partnerships with the region; and (d) working together to countering extremism and radicalisation, as well as its complex root causes, effectively.

3.1 Containing Iran's negative influence in the region

The position and the behaviour of the Islamic Republic of Iran are of considerable importance for Israel's security and for its relations in the region. Since the Islamic Revolution of 1979, Israel has viewed Iran as an existential threat. Iran does not recognise Israel's right to exist, sees it as its greatest enemy, and is openly anti-Semitic. The conflict between the two states is ideological, with a strong power-politics dimension: the two countries do not share a border, and there are no territorial claims involved. There is mutual support between and among Iran's Islamic Revolutionary Guard Corps, Hezbollah in Lebanon, the Houthis in Yemen, and the Islamic Resistance in Iraq, although all these parties also have their own grievances against both Israel and others in the region. Over the past few decades, Tehran has relied heavily on a strategy of 'forward defence/offensive defence' and 'strategic patience', in which—partly in response to escalating tensions with the US and to the US withdrawal from the *Joint Comprehensive Plan of Action* in 2018—it has invested heavily in these armed regional organisations in surrounding countries and territories. Iran has been able to roll out its own vision across the region, with these non-state actors representing, to varying degrees, its interests there, in addition to their own.

Hezbollah in Lebanon is seen in this connection as the most loyal and influential ally of Iran, and this gives Iran a key role where de-escalation is concerned, for example in Lebanon. Since October 2023, an estimated 60,000 Israeli civilians have been evacuated from northern Israel, and the Israeli response has now led to massive refugee flows within Lebanon and towards Syria.

Iran also has great influence over the Houthis in Yemen, who are currently severely hampering shipping in the region. For Palestinian factions such as Hamas and Palestinian Islamic Jihad, Iran has also acted increasingly as a partner and sponsor, becoming a major arms supplier and militia trainer for these Palestinian factions, among other things training them on how to produce weapons locally. Israel's current strategy is aimed at radically weakening the clout of these groups and sowing turmoil in loyalties between them and Iran. This may succeed, but it can also lead to further fragmentation and radicalisation. The US has also pointed out the risks involved here. After all, Hezbollah was created in part by the way the Israeli ground war and bombing of Lebanon escalated in 1982, and it is very unlikely that the ideologies of parties such as Hamas and Hezbollah will disappear as such. 'Bodies fall, but ideas endure.' This quote from renowned Palestinian writer Ghassan Kanafani (1936–1972) is once again being cited frequently.



Containing Iran's influence in the region and de-escalating the conflict between Israel and Iran, and Israel and Hezbollah, will play an important part in settling the Israeli-Palestinian conflict permanently, ensuring Israel's security and maintaining a degree of stability in the region. In addition, further escalation also runs the risk that the US, and in the process probably Europe, will become directly involved in another war in the Middle East. The AIV would underline the importance of preventing such a scenario, and would stress the need to contribute diplomatically, to the degree possible, to de-escalation also at the regional level through a combination of pressure and dialogue and, where possible, to seek openings for dialogue with Iran, given, too, how important nuclear non-proliferation is. A ceasefire remains essential for civilian populations on all sides, as does implementation of UN Resolution 1701 (2006), which envisages an end to the war between Israel and Lebanon. This is where all European initiatives should be actively focused.

The AIV would emphasise that the escalation of the Israeli-Palestinian conflict remains a constant trigger in many of these regional developments. This is another reason why pressure must be increased to achieve a ceasefire in Gaza, and now Lebanon.

3.2 Encouraging regional normalisation with Israel and the importance of the two-state solution

In recent years, diplomatic relations in the region have changed with the further normalisation of relations between Israel and a number of Arab states. For a long time, Egypt and Jordan were the only states in the region that had peace agreements with Israel, but in 2020, with the signing of the bilateral Abraham Accords, the United Arab Emirates (UAE), Bahrain and, a little later, Morocco and Sudan joined them. As with the 1978 Camp David Accords, which formed the basis for the normalisation of relations between Egypt and Israel, there was an underlying idea that 'security is enhanced by a relationship of peace and by cooperation between nations which enjoy normal relations.'

²¹ In principle, the Abraham Accords brokered by the Donald Trump administration were aimed at finding an overarching new vision for the Middle East (Trump's 'Peace for Prosperity' vision). Resolving the protracted Israeli-Palestinian conflict was named as a key aim of that vision, though incidentally, it was accompanied by the simultaneous recognition of Jerusalem as the capital of Israel and the controversial relocation of the US embassy to that city, which the Palestinians also consider their capital, and which is home to some of the most important religious sites for Judaism, Christianity, and Islam. In the years that followed the Abraham Accords, there was little constructive action on the 'Palestinian question', and the focus was mainly on further, and more publicly, building security cooperation and trade relations with Israel.

The centrepiece of the US vision for peace in the Middle East still remains the normalisation of relations between Israel and Saudi Arabia. This would give Israel's security and position in the region an additional pillar of support, while promoting official cooperation between Iran's two biggest adversaries in the region. Saudi Arabia and Israel are already cooperating in various areas, and trilateral negotiations on such normalisation continue, the current conflict notwithstanding. The US is willing to offer certain security guarantees to Saudi Arabia, to offer cooperation on a civilian nuclear programme, and to make economic investments in technological sectors in exchange for Saudi Arabia's normalisation of relations with Israel. Negotiations on the matter, which have become even more controversial in Saudi society in the light of developments over the past year, have run aground on the more recent Saudi demand that Israel commit to a two-state solution, with the Saudi crown prince declaring in September 2024 that he would not sign an agreement with Israel until there is a Palestinian state. The AIV favours pushing for further conditioned normalisation with Israel, given that the two-state solution and support for building a Palestinian state with secure borders are seen as essential for long-term regional stability.



3.3 Targeted cooperation with countries in the Arab region

Opinions are divided on the role the Abraham Accords have played in either improving or worsening the Palestinian position and the chances of a two-state solution. What is certain is that the new political and economic ties and contacts established in the region in recent years are important in the current international context, in which solutions to the conflict are being sought. Regional states have increased their diplomatic and economic footprint in the region. The activities of Qatar, the UAE, and Saudi Arabia stand out the most. The influence in terms of power politics that these states accrue is partly at the expense of countries such as Egypt and Jordan, for example, but certainly at the expense, too, of the already limited influence of European countries and the EU. Given this reality, it is also up to Europe not only to strengthen its own role, but to engage in targeted forms of political and economic cooperation and to join forces with regional states to find short- and long-term solutions to the Israeli-Palestinian conflict. The criteria used by the EU in these partnerships serve as a guide in this context.

Targeted collaborations seem opportune first and foremost when it comes to the planning and implementation of a 'day-after' scenario in Gaza, however difficult this may be. Indeed, there seems to be sufficient international consensus around a number of guiding principles at the level of the UN Security Council and of the G7 that make such cooperation both possible and advisable. The following are among these internationally formulated principles: that there will be no expulsion of Palestinians from Gaza, no terrorist or other violent attacks from Gaza, no ongoing occupation of Gaza, no reduction of territory, and no attempt to blockade or besiege Gaza. In addition, there seems to be consensus on putting the aspirations of the Palestinian people at the centre of post-war governance in Gaza, on the need to reunite the Gaza Strip with the West Bank under the Palestinian Authority, and on the charting of a path towards a situation in which Israelis and Palestinians can live side by side in their own states, with equal levels of security, freedom, opportunity, and dignity. The escalation of the Israeli-Palestinian conflict has also increased the diplomatic consensus within the Arab League. This has been demonstrated, for example, by the Bahrain Declaration, which was signed by the members of the League in May 2024, and which, among other things, calls for the 'deployment of international protection and peacekeeping forces under the aegis of the United Nations in the Occupied Palestinian Territory until the two-State solution has been implemented'.²² In discussions on a temporary international force in the Gaza Strip, Egypt and the UAE indicated their willingness, in principle, to contribute to such a force.

In practice, however, there are major hurdles to clear before a 'day after' can be planned for: Israel wants to maintain a strategic presence in Gaza (including in the Philadelphi Corridor), the Palestinian Authority's legitimacy is hanging by a thread, and external actors such as Egypt and the UAE are making their own demands for participation in a force in Gaza. In early September 2024, the UAE said it was unwilling in this connection to play a role in a post-war Gaza if a Palestinian state is not established.

In the AIV's view, the EU and the Netherlands should actively contribute to planning for future scenarios in the Gaza Strip, cooperating where possible with key regional states, as well as with organisations and entities such as the Islamic Development Bank, the Arab Coordination Group, and the Arab League. This would also be in line with the EU's Joint Communication on a Strategic Partnership with the Gulf, which was published in 2022 and which names the Islamic Development Bank, for example, as a crucial cooperation partner. Such collaborations should be based on a clear common goal, on a good understanding of each other's motivations, and on agreements regarding the principles and methods the parties might employ to achieve these goals. The Gulf states can exert significant diplomatic, and especially financial, influence when it comes to helping achieve a lasting ceasefire, the delivery of humanitarian assistance, and the reconstruction of Gaza that should follow.



3.4 Joint action against extremism and international terrorism

Extremism and international terrorism continue to pose major threats to societies around the world. The Pact for the Future, which the UN adopted in September 2024, indicates as one of its global actions that member states will 'pursue a future free of terrorism' and that the UN and its member states will work to address the root causes of extremism, and seek both to prevent and combat terrorism. Allowing the Israeli-Palestinian conflict to further escalate and expand (just like other conflicts and unlawful situations) will complicate these efforts. The longer the conflict continues, the greater the risk of radicalising a new young generation in their struggle for self-determination and other rights, not only in Israel and the Occupied Territories, but elsewhere too.

A briefing by the International Centre for Counterterrorism in April 2024 showed that, while a direct link to recruitment for terrorist organisations cannot necessarily be established yet, the conflict is already being exploited by terrorist groups. Among other things, new collaboration, based on a fight against Israel as a common enemy, has been seen between Islamic State (IS) and groups affiliated with al-Qaeda. Once again there has been a marked increase in the number of terrorist attacks in the region, including the killing by IS of Hezbollah fighters in Syria in September 2024, which illustrates the transnational nature of international terrorism. The IS Khorasan branch has also become more active again in Europe in the past year.

The conflict is also fuelling further polarisation at the local, European, and geopolitical levels. There has been an increase in anti-Semitic, anti-Palestinian, and anti-Islamist hate speech on social media. There is also an increased risk that the Western Balkans route, for instance, will once again be used for terrorist infiltration into Europe. In the Netherlands, the General Intelligence and Security Service (AIVD) raised the Terrorism Threat Level to 'substantial' in 2023, also referring to the situation in the Gaza Strip. These trends and developments call for the continuation of an effective counterterrorism policy at the national and international levels, which is aimed at combatting growing extremism, radicalisation, and international terrorism and its complex causes, including root causes. This should include a close look at how the escalation of the Israeli-Palestinian conflict finds its way into recruitment narratives that are promoted by extremist and terrorist organisations.

4. Consistent compliance with international law

The Netherlands has, over the course of its history, built a reputation when it comes to issues of international law. As the host country of the ICJ and the ICC, the Netherlands is also expected to play an active role in promoting and complying with international law. This role is also enshrined in our Constitution, the underlying rationale being that this is also a matter of direct concern to the Netherlands. It is also emphasised in the Security Strategy for the Kingdom of the Netherlands (2023). The Netherlands made an additional €3 million available in 2024 to strengthen the ICC's investigative capacities. As already indicated in the AIV's 2013 Advisory Report, international law is of considerable importance for stabilisation and de-escalation of the Israeli-Palestinian conflict, and for coming to an eventual solution.

IHL applies to all parties to an armed conflict, including those that are not considered states and that are not parties to the relevant treaties. In this particular case, IHL also applies to Hamas and Islamic Jihad, which seriously violated it and committed war crimes on 7 October in killing some 1,200 Israelis and others and kidnapping about 200 people. It has been established time and again that both sides in the Israeli-Palestinian conflict have for decades committed gross violations of, and failed on an ongoing basis to comply with, international law, including IHL.²³ Violations that have taken place in the past year have also been systematically recorded, including by the 'Independent International

Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel', which reports violations on both sides.²⁴ The AIV would point out that these reports should not suffer the same fate as the many previous reports written over decades.



Hamas, which has built up a political, military, and paramilitary structure and identity, is also classified in legal terms as a terrorist organisation by the US, the EU, the UK, Australia, Japan, and Canada, among others, so that offering it any support, including material support, is a criminal offence in those countries. Argentina declared in July 2024 that it would henceforth consider Hamas a terrorist organisation. Attempts to condemn Hamas's actions in the UN Security Council have so far been unsuccessful. The AIV believes that Europe and the Netherlands could make more efforts in this area.

In addition to IHL, international human rights law, international law on occupation, the right to self-defence, and international regulations on the trade in arms are also relevant. The promotion and monitoring of compliance with this body of law and regulations are still required, and are an essential factor in the strategies and efforts undertaken to resolve the conflict.

4.1 Endorsement of recent legal developments

The 2013 AIV Advisory Report dealt extensively with the legal context around the Israeli-Palestinian conflict. And in the past year, the United Nations, UN special rapporteurs, international human rights organisations, and many individuals living close to the conflict, have documented violations of international law, including IHL, and failures to meet human rights obligations on the part of both Israel and Hamas.²⁵ Moreover, since 7 October 2023, there have been legal developments that the AIV believes should guide how the international community, including the Netherlands, should deal with the Israeli-Palestinian conflict. The AIV would, in this connection, draw attention to the following key developments:

- a. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (1948) in the Gaza Strip (South Africa v. Israel), ICJ (Provisional Measures, 26 January 2024).*

In December 2023, South Africa brought a case against Israel at the UN's highest judicial body, the ICJ. The charge concerns violations by Israel of its obligations under the Genocide Convention with regard to the Palestinian population in the Gaza Strip. In its January 2024 ruling on provisional measures in this case, the ICJ decided that South Africa's claims are *prima facie* within the scope of the Genocide Convention and that the issuance of provisional measures was appropriate and moreover, given the situation, urgent.²⁶ The ICJ instructed Israel to (a) take all necessary and effective measures to ensure, without delay, in full co-operation with the United Nations, the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance, including food, water, electricity, fuel, shelter, clothing, hygiene and sanitation requirements, as well as medical supplies and medical care to Palestinians throughout Gaza, including by increasing the capacity and number of land crossing points and maintaining them open for as long as necessary; and (b) ensure with immediate effect that its military does not commit acts which constitute a violation of any of the rights of the Palestinians in Gaza as a protected group under the Genocide Convention, including by preventing, through any action, the delivery of urgently needed humanitarian assistance.²⁷

ICJ rulings are legally binding on the states involved in a dispute. The Genocide Convention is binding on all States Parties, including the Netherlands. States Parties have thus undertaken to 'prevent and punish' genocide.²⁸ In response to a question from parliament, the Dutch government said it would respect the ruling and call on the parties to comply with it, including in bilateral dealings.²⁹ In February 2024, the foreign ministers of all EU member states except Hungary called on Israel not to proceed with a military

campaign in Rafah, with member states, including the Netherlands, stressing that the ICJ ruling must be complied with.³⁰ The conclusions reached in a Note dated 27 June 2024 by the European Council include the following statement: ‘The European Council stresses the importance of respecting and implementing the orders of the International Court of Justice (ICJ), which are legally binding.’³¹ This also signals a commitment by the EU itself to the importance of the framework of international law to the conflict. Three EU member states—Belgium, Ireland, and Spain—have now joined the case brought by South Africa.

- b. *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, ICJ, Advisory Opinion of 19 July 2024.*

On 19 July 2024 the ICJ published an Advisory Opinion on the legal consequences arising from Israel’s policies and practices in the occupied Palestinian territories, including East Jerusalem.³² The Advisory Opinion had been requested in a resolution adopted by the UNGA in December 2022, well before the 7 October 2023 terrorist attack on Israel.³³ In its Advisory Opinion, the ICJ stated that Israel’s continued presence in the occupied Palestinian territories is unlawful, and that it is obliged to end it as soon as possible. Israel, it said, must, in that connection, immediately stop building new settlements and dismantle existing ones. The settlement policy and the activities related to it are unlawful. The Israeli state is also responsible for compensating the Palestinian population—including in the form of restitution—for damage to land, property, and cultural items such as archives and documents.³⁴ The ICJ also finds that Israel is violating obligations that come with the legal status of an occupying power in the occupied Palestinian territories. Israel is violating rights that should be enjoyed by the population under Israeli occupation, for example the right to access water. It is also guilty of violating the prohibition under general international law against annexing and expropriating land and property. Finally, the Court concludes that the Palestinians’ right to self-determination, including the right to their own sovereign state, is being violated.

The ICJ’s recent Advisory Opinion builds on its Advisory Opinion of 9 July 2004, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, which was covered in detail in the 2013 AIV Advisory Report. Significantly, in both the 2004 and 2024 Advisory Opinions, the ICJ also places responsibility on other (‘third’) states, which, it says, should at all times refrain from contributing to Israeli violations or perpetuate the ‘unlawful situation’. While ICJ Advisory Opinions are not legally binding in the manner of rulings in disputes between states, it is generally recognised by the international community that, drafted as they are by the highest legal body of the United Nations, they constitute the most authoritative determinations of international law, and that they have the same legal weight and authority as rulings the ICJ hands down in disputes.

In both cases, the Netherlands abstained from the votes on the resolutions by which the UNGA asked the ICJ for these Advisory Opinions. In a written response in 2003, the Netherlands concluded that it would be better if the ICJ used its discretion *not* to issue an opinion.³⁵ In the proceedings for the recent Advisory Opinion, the Netherlands gave an oral statement on 20 February 2024 with multiple references to the 2004 Wall Opinion.³⁶ At the request of Parliament, the Dutch government articulated in a letter, dated 10 September 2024, its views on the recent Advisory Opinion, stating that it intends to analyse further in the coming period whether there is ‘a reason to adjust the current policy framework based on the Court’s Advisory Opinion’. The AIV would emphasise here the obligations incumbent on third states in this context, which are set out in subsection 4.2 of this Advisory Letter.

- c. *Request by the ICC for the issuance of arrest warrants for three Hamas leaders—Yahya Sinwar, Mohammed Diab Ibrahim Al-Masri (‘Deif’), and Ismail Haniyeh—the Israeli Prime Minister, Benjamin Netanyahu, and the Israeli Defence Minister, Yoav Gallant.*



In May 2024, the Prosecutor of the ICC requested the issuance of arrest warrants against five leaders in the Gaza armed conflict between Israel and Hamas. Israel, like the US, is not a member of the ICC, though it is a member of the ICJ. By contrast, Palestine has been a party to the Rome Statute of the ICC since 1 April 2015, and does accept its jurisdiction.

The Netherlands has stressed that the ICC functions as a court of last resort, investigating and prosecuting international crimes committed by individuals on the basis of the 'complementarity principle'—that is, only when national authorities cannot or will not prosecute.³⁷ This is clearly the case for Hamas, regardless of whether one locates 'national authorities' in 'Palestine' or in 'Israel'. As for members of the Israeli government, the Netherlands argues that, because international criminal law is applied nationally, it is first up to Israel to investigate violations and potentially prosecute. Only if it appears that Israel is unable or unwilling to conduct such investigations could the court proceed to prosecution.

At the time of writing, two of the three Hamas leaders named by the ICC were no longer alive. Ismail Haniyeh was killed by Israel in the Iranian capital, Tehran, on 31 July 2024, while Mohammed Deif was, according to Israeli sources, killed in an Israeli attack in Rafah in the Gaza Strip the same month. Should the arrest warrants be issued, more than 120 countries, including all European countries, would be obliged, should the politicians enter their territory, to arrest them and hand them over to the ICC for trial.

4.2 Recognising the obligations of third states

In its recent ruling on Israel's 'continued presence in the Palestinian Occupied Territories', the ICJ also addressed the obligations of third states in relation to Israel's unlawful occupation of the occupied Palestinian territories along the lines of the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA). The ICJ states that third states are under an obligation (a) not to aid or assist in the maintenance of the unlawful situation, (b) not to recognise the situation that has arisen as a result of the violations of international law, and (c) to work for the cessation of the violations, individually and together within the UN framework. This ruling is not just about international law: serious human rights violations and the violation of the right to self-determination are also relevant in relation to third states, for which obligations also arise, according to the ICJ. The same is certainly true of its finding that Israel is in violation of Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).³⁸

The AIV wishes to stress that, in the context of the conflict in Gaza, just as in the other occupied territories, the rules of international law, including IHL, must be respected both by third states and by non-state actors acting within such states. That is, the Netherlands and organisations based here have an obligation not to contribute in any way to the financing and maintenance of the occupation, to the maintenance of and (economic) cooperation with the settlements, and the violations of international law and of human rights associated with the settlement policy, and the Netherlands must endeavour to end or prevent violations of international law, including IHL, by the parties to the conflict. The ban on arms supplies to a state that commits violations is a particular example of this obligation that third states bear. Moreover, the Arms Trade Treaty also prohibits arms exports where there is a risk that the weapons will be used in acts that violate IHL, human rights, or both.³⁹ Therefore, the continued provision by the Netherlands of military supplies to one of the warring parties raises questions of state liability.

All things considered, the AIV sees a growing risk of political and legal 'complicity' on the part of the Netherlands, as evidenced, too, by the ongoing national and international court cases, including the lawsuit over the F-35 fighter-jet parts produced in the Netherlands and the question of whether they could still end up in Israel through the global pool of spare parts that the Netherlands contributes to. The cabinet stated in August 2024 in response to parliamentary questions that it was 'not likely' that these parts would end up

in Israel, basing that conclusion on confidential data.⁴⁰ The AIV takes the view that the only correct approach is one that would be in line with the UK's recent decision to immediately revoke permits for arms exports to Israel in cases where there is a clear risk that these weapons could be used in acts that violate international law, including IHL, and human rights. This applies, not to potential supplies for air defence, for instance, but to the strict and consistent application of the criteria for arms exports.



4.3 Preventing unbalanced enforcement

The AIV would underscore the risks associated with applying double standards in promoting respect for human rights and compliance with international law in general. The inconsistent invocation and application of rules of international law contribute significantly to the undermining and politicisation of that body of law, and undercut the overarching idea that international law applies, and is applied equally, to all states. Over the past year, inconsistency in the invocation and application of international law by Europe and European states has been repeatedly raised in the international political arena, including by UN Secretary-General António Guterres. The efforts that the Netherlands and Europe have made to create accountability mechanisms in the war in Ukraine, for example, find no equivalent when it comes to the Israeli-Palestinian conflict. Unbalanced enforcement fuels anti-Europeanism and anti-Americanism in many countries of the Global South.

The key premise here for the AIV is that all civilian casualties, on whatever side, are equally deplorable. The primary concern should be to protect people without discrimination. In 2013, too, the AIV recommended to the government that 'the Netherlands should join forces with like-minded countries to ensure that the two parties comply with their obligations under international law and, if necessary, help to enforce this. Historical ties and solidarity with Israel must not preclude calling it to account for violating the law.' In response to that recommendation, the Dutch Cabinet at the time indicated that it calls on both parties to meet their responsibilities and obligations under international law, and that compliance with international law, including IHL and human rights, 'is a standard part of the regular dialogue that the Netherlands conducts with Israel and the Palestinian Authority. Also in the EU context, the responsibilities and obligations of both sides are addressed in the bilateral dialogue.'

However, the AIV believes that the international community, including the EU and the Netherlands, *has not exerted sufficient pressure* on the parties to comply with international law. Thus, they have not adequately addressed violations of international law, including humanitarian law, of human rights, and of the law governing the protection of the population in occupied territory, as well as of the right to self-determination. The AIV takes the view not only that such protections, and respect for international law, are more necessary than ever for the realisation of the two-state solution, but also that they are a geopolitical necessity.

4.4 Responding to the policy on illegal settlements

Perhaps the best example of Dutch and European negligence has been, and still is, the relatively passive response to the further expansion of illegal Israeli settlements in the West Bank. The illegality of these settlements has been repeatedly confirmed, including by the UN Security Council in Resolution 2334 and by the ICJ, which condemned the annexation of Palestinian territory in general terms (see above). The continuation of the illegal-settlement policy significantly reduces the chances of a lasting solution to the Israeli-Palestinian conflict. The EU itself has been issuing statements for years labelling the settlements as in fact 'illegal' and calling on Israel to stop expanding.⁴¹ Despite holding Israel accountable for violating the rights of Palestinians and the negative impact of these settlements on Palestinians' economy, security and daily life, little concrete action has been taken. Between 2012 and 2022, the number of registered settlers in illegal settlements in the West Bank and East Jerusalem grew from 520,000 to 700,000.⁴² The latest annual report on Israeli settlements by the United Nations High Commissioner



for Human Rights once again indicates that there has been a marked increase.⁴³ It also reported that Israel has already planned and approved some 24,300 houses, and that the size of settlements, which are often built in strategic locations, is growing at the fastest rate since monitoring began in 2017. Israel is thus violating international law. And the number of incidents involving violent settlers is increasing in the process. The human rights violations linked to the settlements and to their expansion have been extensively documented by human rights organisations around the world but also in Israel, just as they have in the aforementioned UN reports.⁴⁴ In the area where these settlements are being built, more than 3 million Palestinians live under Israeli control, and actions Israel has taken make clear that the settlements are not 'temporary' in nature. International criticism of the illegal settlement policy has clearly had little impact on Israel, which has consistently taken too little actual action to comply with international law and resulting obligations.

The AIV would emphasise that progress towards a long-term solution can be achieved only if international law and human rights are actually respected.

5. From short-term crisis management to a long-term solution

Using available means of pressure more effectively, contributing to a more responsive regional context, and consistent compliance with international law can first move the parties towards short-term goals, starting with a ceasefire and the provision of unhindered humanitarian access. However, given the historical patterns of the Israeli-Palestinian conflict, it is evident that it will continue to flare up until a situation is possible in which Israel does not have to reason and operate from a constant existential threat and in which Palestinians can live their lives without an occupying power, in a sovereign state of their own.

The AIV believes that the current precarious situation is at least partly the result of years of neglect, including by the international community, of the importance of a genuine Middle East Peace Process taking concrete steps towards a locally, regionally, and internationally accepted long-term solution. Internationally, the US may hold, or may once have held, most of the cards, without, however, being willing or able to use them effectively. But Europe and the Netherlands have also done too little to work towards a lasting solution to this deep-rooted conflict. As a result of this negligence, the conflict has kept coming back like a boomerang over the years, in bigger and more violent forms.

It is quite tempting to get stuck in short-term crisis management and look for some temporary solution. However, given the significant likelihood that another war will then break out, the AIV advocates using the current situation to offer a longer-term perspective, both to the Palestinian people in the form of statehood, and to Israel in the form of international and regional security guarantees. Clearly, such a situation will not arise on its own, if third parties and international organisations do not take the initiative, especially with the current leadership in Israel, the West Bank, and Gaza. To help make the context ripe for new peace negotiations, the Netherlands should push, including through the EU, for a process: (a) that leads to a return of moderate, legitimate political forces to the centre of political power; (b) in which the many lessons learned from previous attempts in the so-called Middle East Peace Process are taken to heart, and (c) in which concrete steps are taken to realise the two-state solution as a desirable political solution under international law.

5.1 Promoting moderate and legitimate political forces

One of the biggest obstacles to discussing an acceptable long-term solution is that more-radical perspectives, admittedly in different forms and on different scales in both Israel and the Palestinian territories, have gained and continue to gain ground in the current situation of trauma and violence. Prime Minister Benjamin Netanyahu currently has to lean heavily on a number of smaller, conservative religious parties for his political survival. The discontent at domestic policy that this is prompting became clear when, months before

the atrocities the country faced on 7 October 2023, the largest street protests in Israel's history took place. These were prompted by new cabinet plans for legal reforms that were seen as eroding the democratic rule of law in Israel.



The current Israeli government and the parties that make it up are also propagating an extremist narrative aimed at the Palestinian population, in which they deny, not only the right of a Palestinian state to exist, but, increasingly, the very existence of a Palestinian people. In 2018, for example, Israel passed a new law, in violation of decades of UN resolutions, declaring that the right to self-determination applies only to the Jewish population and that the development of Jewish settlements is seen as of national value.⁴⁵ In December 2022, just before the formation of the sixth, most recent government under Netanyahu, the incoming coalition published a number of guiding principles, including an explicit reference to the Jewish people's exclusive and indisputable right over 'all parts of Israel's Land', including the West Bank (Judea and Samaria) and the Syrian Golan Heights.⁴⁶ This goes against rulings under international law on the right of the Palestinian people to self-determination (see also above).

On the Palestinian side, the political situation has become more extreme in recent years, and terrorism has gained influence. Hamas won the Palestinian elections in 2006, and that eventually led to a split between the Gaza and West Bank administrations. In the West Bank, too, the Fatah-dominated Palestinian Authority has now lost virtually all legitimacy. It is perceived as corrupt and autocratic, and it is losing authority, especially in the north, where extremist organisations are gaining a foothold. The constant postponement or cancellation by President Mahmoud Abbas ('Abu Mazen') of potential elections, most recently in April 2021, has further heightened mistrust in the Palestinian Authority. Currently, the 87-year-old President Abbas leads the PLO, and the Palestinian Authority, and the Fatah party. Given his age and unpopularity, the possibility of a succession crisis is real. Support for Hamas on the eve of the October 7 attack was fairly low, but the combination of distrust in the Palestinian Authority and of Israel's response increases the risk of further growth in the belief that there is no solution for the Palestinians other than to engage in armed struggle.⁴⁷ In polls taken in July 2024, only 8 percent of those polled in the Gaza Strip blamed Hamas for their woes, almost two-thirds blamed Israel, and the rest blamed the US. At the same time, by contrast with the trend in Gaza, Hamas's popularity has grown in the West Bank.

The AIV would underline that progress towards a long-term solution can be achieved only if the more moderate and democratically legitimate forces are brought back to the centre of political power. In 2013, the AIV recommended that the government make a useful contribution by organising what it called 'track-2' diplomatic initiatives, where dialogue is established between representatives of both sides to discuss issues of mutual interest with a view to seeking common solutions. The Netherlands has supported various civil-society organisations and initiatives in recent years. In the current context, however, the AIV would advocate a stronger focus on initiatives and dialogues that have a more direct impact on local politics. To that end, political and civil-society initiatives from various politically moderate quarters can be actively supported so as to create, too, the space for more effective and sustainable peace negotiations and to encourage buy-in on all sides. This should become an essential element of policy.

5.2 Drawing lessons from the Middle East Peace Process

In 2013, the AIV advised the government that the international community should play an active, initiating, and mediatory role in attempts to resolve the conflict, and all the more so given the fact that the international community, and 'the West in particular, may also feel responsible to a significant degree for the emergence of the conflict'.⁴⁸ The last major international effort to resolve the Middle East conflict since the Oslo Accords came from the 'Middle East Quartet' (made up of the UN, the US, the EU, and Russia), which was set up in 2002, and from the associated Roadmap for Peace. In a concurrent 'Arab



Peace Initiative' led by Saudi Arabia and welcomed by the Arab League, parameters for a final status were outlined. The Quartet itself, plagued among other things by geopolitical tensions because of Russian aggression in Ukraine, issued its last substantive report in 2016. In it, it called for urgent action to prevent the reality of a one-state situation in which permanent occupation and conflict would become the norm. In that report, the Quartet cited a number of key obstacles: the ongoing violence, the continuing illegal settlement policy, the designation of land for exclusive Israeli use and the denial of Palestinian development, illegal arms production and militant activities, the continuing lack of Palestinian unity, and the dire humanitarian situation in Gaza.⁴⁹

The lessons to be learned since the failure of the Oslo process have been widely analysed and documented. In addition to the points mentioned in the Quartet report, for example, the widely held view is that no clear joint outcome was specified, and that there was little attempt to correct for the power imbalance between Israel and the Palestinians, for example when it came to the mechanisms around water distribution and the collection and disbursement of tax revenues in the Palestinian territories. There was also no clear timeline, and no accountability mechanism within which to monitor the behaviour of the parties or to counter the impunity for war crimes. In addition, since the failure of the Quartet initiatives, there has been no clear international coordination mechanism. As a result, many of the international discussions on the conflict are now held in the UNGA and the UN Security Council. In particular, the clout of the latter is greatly reduced by the competition for power between the members that have a veto.

There has been little authoritative initiative in recent years to help create the right context for linking short-term crisis management to long-term strategies for resolving the Israeli-Palestinian conflict. The AIV takes the view that Europe can and should also take a more independent diplomatic role in this regard. Given its history and the long-standing habit of looking the other way, which also erodes the credibility of Europe itself, it is important first of all to show that Europe can put its money where its mouth is by actually daring to use the instruments of power it has at its disposal, or by threatening to do so. The 'Peace Day Effort' initiative that was launched in September 2023, and that was supported by the EU, Saudi Arabia, and the Arab League, in cooperation with Egypt and Jordan, with the aim of reviving the Middle East Peace Process, was a step in that direction, but it clearly came too late to be effective because of the deteriorating situation in the region. The initiative was launched at a ministerial-level meeting around the time of the UNGA in September 2023, which was attended by nearly 50 ministers. Only weeks later, Hamas and other armed groups attacked Israel, and the initiative lost a lot of traction. However, the AIV believes that this initiative is a step in the right direction and that, with the additional weight of the events of the past year, follow-up steps should be taken within a broader carrot-and-stick approach.

5.3 Taking steps to bring about the two-state solution

In Resolution 2735, which it adopted on 10 June 2024, the UN Security Council reiterated 'its unwavering commitment to the vision of the two-State solution where two democratic States, Israel and Palestine, live side by side in peace within secure and recognized borders, consistent with international law and relevant UN resolutions, and in this regard stresses the importance of unifying the Gaza Strip with the West Bank under the Palestinian Authority'. The AIV shares the conclusion that a two-state solution remains the best arrangement for ensuring a lasting peace as well as Israel's security. But at the same time, the mantra of the two-state solution that has found its way into declaration after declaration in recent decades has been bandied about and misused so much that it has been emptied of any real meaning.

The AIV would therefore advocate stepping up and reprioritising the process towards a two-state solution, first of all by making a number of proposals in the recommendations regarding the future of the Gaza Strip and the security of both Palestinians and Israelis. It also views the recognition of a Palestinian state as a meaningful option to keep the

idea of a two-state solution alive and to make clear to Israel that this is still the desired outcome. Recognition, while preferably the outcome of a peace agreement, is therefore, and as the Dutch government stated in late 2014, emphatically not dependent on such an agreement. It is essential, though, to factor in the need for a newly elected and widely supported Palestinian leadership, the disarmament of Hamas, and recognition of the State of Israel. Putting off recognition is thus not a desirable option, especially when the viability of the two-state solution is explicitly at stake. The AIV also welcomes the initiative for a global coalition for the two-state solution launched in late September by the EU, Norway, and Saudi Arabia, with the first two meetings of this new coalition to be held in Riyadh and in Brussels.

Within the UN, 146 countries have now recognised Palestine as a state (considerably more than, for example, Kosovo, which was recognised by the Netherlands without a peace agreement). Sweden recognised the Palestinian state in 2014 in the hope of reviving the peace process. Ireland, Spain, Slovenia, and Norway followed in the past year, responding to the war in Gaza and hoping to secure a two-state solution. The Norwegian prime minister explained that 'only a two-state solution can provide security, prosperity, and hope for the people of both Israel and Palestine', and declared that 'there will be no peace in the Middle East without a two-state solution. And there can be no two-state solution without a Palestinian state. In other words, a Palestinian state is a prerequisite for achieving lasting peace in the Middle East.'⁵⁰

UN resolutions have for decades recognised the Palestinians' right to self-determination, and the right to their own state has also been well established. In May 2024, the UNGA adopted a resolution in which it 'Determines that the State of Palestine is qualified for membership in the United Nations in accordance with Article 4 of the Charter of the United Nations and should therefore be admitted to membership in the United Nations.'⁵¹ The Netherlands abstained, but it did vote in favour of a resolution by the UN Human Rights Council on 5 April 2024 in which it reaffirmed the Palestinian people's right to self-determination, including the right to 'their independent State of Palestine'. Especially on this last legal point, the AIV believes that recognising a Palestinian state cannot be dismissed as symbolic politics, even if it does not create an effective difference on the battlefield in the short term.

6. Recalibration of policies and recommendations

The AIV concludes that current Dutch policy towards the Israeli-Palestinian conflict does not do enough to make a real contribution to the short- and long-term policy goals desired. More than a year after the extremely violent 7 October 2023 attack by Hamas and other groups ushered in yet another extremely deadly escalation in the historically deep-rooted conflict, a ceasefire has yet to materialise, and the humanitarian suffering has for months been taking on unacceptable proportions, the long-term traumatic effects of which are significant and will undoubtedly contribute to further radicalisation and extremism. Regional escalation has already proved substantial, and the risk of a wider regional war is still with us and is still unacceptably high. At stake, of course, are essential European and Dutch interests, which have been set out in detail in this Advisory Letter. The war in Gaza, for example, has also caused a dramatic increase in anti-Semitism in the Netherlands, with a large number of Dutch Jews feeling unsafe and discriminated against. Polarisation and Islamophobia are on the rise, and divisions in society are becoming sharper.

As the foregoing analysis has argued, without the necessary combination of external pressure and dialogue aimed at de-escalation and conflict resolution, the current situation will deteriorate even further, with all the humanitarian, security-political and moral consequences that that will entail. Finding mutually acceptable formulas for a sustainable ceasefire, de-escalation, and conflict resolution remains an urgent and high-priority policy

objective. In the current circumstances, it cannot possibly be left to the parties themselves to get closer to that objective, given that the local leadership is failing and the positions of power of the various parties are diverging—a trend that is set to continue, certainly in Israel as long as Benjamin Netanyahu’s government sticks to its policies, in the West Bank as long as the Palestinian Authority lacks legitimacy, and in the Gaza Strip as long as Hamas retains control. External pressure and external assistance will be required to move the parties towards de-escalation and conflict resolution.



In the AIV’s proposed recalibration of Dutch policy, the short- and long-term objectives regarding the Israeli-Palestinian conflict remain unchanged:

- The short-term goals are to achieve a sustainable ceasefire, reduce human suffering, get the hostages released, and reduce tensions in Israel, the Palestinian territories, Lebanon, and the rest of the Middle East region, as well as to reduce tensions with Iran.
- The medium- and long-term goals concern the effective promotion of a post-war plan for the Gaza Strip, as well as a two-state solution where two democratic states, Israel and Palestine, live peacefully side by side within secure and recognised borders, in accordance with international law and the relevant UN resolutions, so that a peaceful resolution of this deep-seated conflict also has a positive impact on the overall stability of the region.

The proposed new direction, which is described more extensively and in more detail in this advisory letter, focuses on how to achieve these objectives. In this connection the AIV proposes the following overarching policy principles:

- a. Commit to more-effective policies at the national and EU levels: Actively seek out coalitions of like-minded partners wherever EU consensus fails to materialise, identify the important regional interests at stake, work in a complementary but also autonomous fashion with regard to the important role of the US, and use the available positive and negative policy instruments at the EU and national levels more consistently and effectively, with respect for international law and human rights playing key benchmark roles.
- b. Help create a supportive regional context: Contribute to diplomatic initiatives aimed at a ceasefire both in Gaza and Lebanon, contain Iran’s negative influence in the region and, in parallel, seek an opening for a renewed ‘nuclear’ dialogue wherever possible. Encourage the regional normalisation of ties with Israel, linked to the realisation of the two-state solution coupled with security guarantees for Israel and a Palestinian state, and contribute to this as much as possible on your own initiative. Also engage in targeted economic and political cooperation with regional states on the basis of EU criteria, work with others to prevent a possible resurgence of international terrorism and to counter extremism and its complex causes.
- c. Comply consistently with international law and the obligations arising from it: In addition, encourage other states and non-governmental entities to do the same, endorse the recent rulings of the International Court of Justice, adjust Dutch voting behaviour in the UN accordingly, and act in line with the obligations on ‘third states’.
- d. Take steps to revitalise the process towards a genuine two-state solution: Commit to strengthening the moderate and legitimate political forces in the region, including by providing a credible and achievable long-term solution, take to heart the lessons learned from previous attempts in the Middle East Peace Process, and take sensible steps towards a two-state solution.

In this connection, then, the AIV is putting forward the following set of recommendations to put this proposed policy recalibration into action through active diplomacy, preferably along with like-minded partners:

1. **Preferably in a European framework and with like-minded partners, make real contributions to preventing the risk of a regional war in the Middle East on the one hand and, on the other, to creating lasting stability. Also highlight in this connection the major stakes for the EU in terms of strategy, politics, and international law, including IHL. In doing so, recognise the importance of effectively combining pressure and diplomacy where possible in cooperation with the US and the region and as set out in this Advisory Letter. Emphasise, too, the need to implement, first and foremost, UN resolutions to achieve a ceasefire in Gaza and Lebanon.**
 - a. Highlight the strategic importance of de-escalating tensions between Iran and Israel, prioritising in the process the sustainable and effective containment of Iran's negative influence in the region. In addition, urge the US to do everything it can to encourage de-escalation of the conflict, both on the part of Israel and in the wider region. In view of the high risks of further nuclear proliferation, actively explore the possibilities for renegotiating with Iran in this area.
 - b. Actively push for the establishment of conflict-prevention tools such as institutionalising hotlines and, where possible and where it would be effective, an enhanced role for existing international missions in the region. Include political and socio-economic developments in Jordan, Iraq, and Lebanon from a conflict-prevention and human rights perspective.
 - c. Commit strongly to a joint approach to stop an upsurge in the activities of international terrorist groups, including IS, al-Qaeda, and affiliates. Internationally, argue that this should be taken up within existing relevant structures, such as the *Global Coalition Against Daesh* and the *Global Counterterrorism Forum*, and that, at the European and national levels, there should be a strong push for additional resources to counter radicalisation and its complex causes.
 - d. Provide adequate assistance and protection to the refugee flows that have started, supporting relevant UN agencies politically and financially in the process.

2. **Through a policy of diplomacy and pressure, urgently push for a ceasefire in Gaza, for de-escalation and humanitarian access, and make every effort to promote a sustainable two-state solution.**
 - a. In addition, actively seek coalitions of like-minded partners within and, where appropriate, outside the EU, including with the UK, to generate a critical mass for the following steps:
 - Convene the EU-Israel Association Council as soon as possible. Be prepared, on the basis of a violation of Article 2 of the EU-Israel Association Treaty, to suspend that treaty in whole or in part for as long as violations continue.
 - Based on the EU Global Human Rights Sanctions Regime, sanction individuals, organisations, and companies that continue to support either Hamas or Palestinian Islamic Jihad and put effective pressure on countries that implicitly or openly support Hamas or Hezbollah.
 - On that same basis, sanction individuals and entities involved in the maintenance or expansion of illegal Israeli settlements.
 - In supporting the Palestinian Authority, impose more conditions than now obtain regarding good governance, transparency, and accountability, but also regarding that body's democratic character. Express a willingness to extend that support if the stated conditions are met, and support and promote internal Palestinian reforms and new leadership.
 - Ensure that EU and national funds for research and scientific cooperation are used primarily to expand people-to-people contacts and that, as stipulated by the ICJ, they do not benefit entities that commit violations of international law or human rights abuses.
 - Set up a more effective monitoring mechanism to counter economic and other forms of cooperation with illegal Israeli settlements and exclude

European companies and investors that contribute in any way to illegal settlement policies from certain procurement processes. Also set conditions in the European Travel Information and Authorisation System, which will be implemented in 2025, so that visas can be denied to settlers living in illegal settlements or to those playing an active role in the settler movement.

- b. Stop bilateral military cooperation with, and the delivery of supplies to, Israel, where they are used for acts that violate international humanitarian law, and ensure strict compliance with arms-export criteria. Make it clear that this does not cover any supplies of air-defence and other defence systems. Link arms imports and the potential ratification of the bilateral defence treaty to the same criteria and to respect for rulings of the ICJ and the ICC. Put this into practice in the form of clear policies, and include the need for an immediate and sustainable ceasefire.
- 3. Advocate both at home and abroad for compliance with obligations under international law that arise from the recent Advisory Opinion by the ICJ (19 July 2024), among other things, and recognise that complying with and protecting international law are also of geopolitical importance.**
- a. Recognise the obligation for the Netherlands, as a 'third state', not to contribute in any way to perpetuating the conflict. Commit all possible resources to ending and/or preventing violations of international law, including IHL, by the parties to the conflict, and work to establish accountability mechanisms for any such violations.
 - b. Recognise the danger posed by double standards, both to the legitimacy and the force of international law, and to the position of Europe and the Netherlands in the world, push for corrective policy changes, and adjust voting behaviour in the UN accordingly.
 - c. Endorse the idea that the Netherlands has a special position in terms of compliance with international law, given its role as the host country of the International Court of Justice and the International Criminal Court, and given the provision enshrined in the Dutch Constitution that the government should promote the international legal order.
- 4. Wherever possible, contribute constructively to monitoring any ceasefire, to 'early recovery', to reconstruction in the Gaza strip, and to the reunification of Gaza and the West Bank.**
- a. Remain committed to getting the necessary humanitarian aid to the people in need in Gaza and Lebanon as soon as possible. To this end, support the responsible UN missions, call for respect for the UN Security Council resolution on the criminality of starvation as a weapon of war, and push for unhindered access on the part of aid workers, as well as journalists and forensic and other investigators.
 - b. Offer political support for an international stabilisation mission in the Gaza Strip, for which reuniting Gaza and the West Bank under a functioning Palestinian Authority is a key objective. In this connection, consider participating in a high-profile monitoring and advisory body made up of respected diplomats and generals from countries that have good relations with both Israel and the Palestinian Authority.
 - c. Offer support for reviving the European Union Border Assistance Mission for the Rafah Crossing Point, known as EUBAM Rafah, mission on the basis of a responsible plan for the Gaza Strip after a ceasefire, commit to a strong and, if possible, extended mandate based on a request from the Palestinian Authority, to helping ensure the provision of sufficient financial and human resources, to controlling illegal arms flows, and to generating sufficient critical mass. Contribute actively and comprehensively to EUPOL COPPS and USSC.
 - d. Offer support for 'early recovery' and for reconstruction in the form of technical expertise, such as in financial policy (together with the IMF and the World Bank)



- and in water management and water diplomacy, including through public-private partnerships.
- e. Strengthen targeted cooperation with states in the region, including Gulf states, the Islamic Development Bank, the Arab Coordination Group, and the Arab League, so that the most effective and efficient combination of expertise, financial resources and political support can be deployed. Call, too, for a proportionate contribution from other external states, including the US and Gulf states.
 - f. Increase the support given to UNRWA, and oversee strict compliance with the new agreements to which it has committed.
- 5. Proceed with recognition of the Palestinian state as soon as possible, preferably in an initiative with other countries. Highlight in this connection the importance of such recognition for sustaining the two-state solution. Do not make such recognition conditional on a peace deal, but set conditions, namely a newly elected and broadly supported Palestinian leadership, disarmament of Hamas, and recognition of the state of Israel.**
- a. Seek alignment with the new international coalition for the two-state solution, launched partly on behalf of the EU in September.
 - b. Come up with proposals to guarantee the security of Israel and a new Palestinian state. Actively explore, in this connection, cooperation within NATO and with the region.
 - c. Invest in a broad-based 'track-1.5 and/or track-2 dialogue' with official and unofficial government and opposition representatives (including those of a younger generation) to help identify and promote more moderate political views in both the Palestinian territories and Israel, and actively support political and civil-society initiatives from different moderate political quarters to create, too, the space for more-effective sustainable peace negotiations and to encourage buy-in on all sides.
 - d. Move the Dutch embassy to Jerusalem as soon as a two-state solution has been realised and the status of the city of Jerusalem has been clarified in this context.
- 6. Make every effort as a government to counter the negative consequences of the conflict for our own country, as also described in this Advisory Letter, not least the alarming growth of anti-Semitism, polarisation and Islamophobia. To this end, present a comprehensive and nationwide action plan that address these issues both in the short and the longer term.**

Sincerely,

Bert Koenders
Council Chair

This opinion has been prepared by Council members Professor Bert Koenders, Professor Janne Nijman, Professor Paul Scheffer, Bram van Ojik MA, Henne Schuwer, Lieutenant-General (ret.) Jan Broeks, Dr Dorette Corbey, Tanya van Gool, Professor Annelies Zoomers, and committee members Yannick du Pont MA, Wilbert-Jan van Hövell LL.M, Professor Tanja Aalberts, Dr Margaretha Wewerinke-Singh, Simone Filippini MA, Professor Ronald de Jong, Dr Gulnaz Sibgatullina, and Dr Anna-Alexandra Marhold. The members were supported in their work by Dr Saskia van Genugten. The members of the Council are grateful for the many valuable discussions they were able to have with experts and policymakers during this advisory process, and for the input provided by members of the Advisory Committee on Public International Law.

Endnotes



- ¹ United Nations Office for the Coordination of Humanitarian Affairs (OCHA), *Reported Impact Snapshot for the Gaza Strip*, 25 September 2024.
- ² In this report, the term 'war' is used in a general sense. It does not refer here to the technical-legal category of an interstate armed conflict, with the implications that would have with respect to international law. It should be noted that, if the process of forming/constituting a Palestinian state were to continue, the classic international-law framework that is set out in the UN Charter (including the right to self-defence under Article 51) might be relevant in the near future, in addition to, for example, the humanitarian-law and human rights frameworks that are applicable in any case.
- ³ OCHA, *Reported Impact Snapshot for the Gaza Strip*, 11 September 2024.
- ⁴ 'Between Words and Deeds: Prospects for a Sustainable Peace in the Middle East', *AIV Advisory Report 83*, 21 March 2013.
- ⁵ Amos Oz in an interview on 23 January 2002 on *PBS Newshour*, 'Coping with Conflict: Israeli Author Amos Oz'.
- ⁶ 'Human Rights Council Hears that 700,000 Israeli Settlers are Living Illegally in the Occupied West Bank – Meeting Summary (Excerpts)', UN website [last visited on 25 September 2024].
- ⁷ 'Yuval Noah Harari backs critique of leftist 'indifference' to Hamas atrocities', *The Guardian*, 24 October 2023.
- ⁸ Letter from the UN Secretary-General to the President of the UN Security Council, 6 December 2023. This has been explicitly invoked only three times before in history, in regard to the Congo (1960), Iran (1979), and Lebanon (1989).
- ⁹ See, for example, 'The worst 45-minute film you will ever see', *Time Magazine*, 23 January 2024; 'Israel says investigation underway in Palestinian prisoner abuse case', *Reuters*, 18 August 2024; 'Israel troops continue posting abuse footage despite pledge to act', *BBC*, 17 May 2024.
- ¹⁰ See, for example, 'Staying the Guns of August: Avoiding All-out Regional War in the Middle East', *International Crisis Group*, 2 August 2024.
- ¹¹ See, for example, 'UN experts warn Islamophobia rising to 'alarming levels'', 15 March 2024.
- ¹² TK 23432 no. 348, Cabinet Response to AIV Advisory Report 83, 'Between Words and Deeds: Prospects for a Sustainable Peace in the Middle East', 22 July 2013.
- ¹³ 'U.S. Security Cooperation with Israel', *US Department of State Factsheet*, 19 October 2023.
- ¹⁴ 'EU trade relations with Israel: Facts, figures and latest developments', European Commission website [last visited on 5 July 2024].
- ¹⁵ 'EU trade relations with Israel: Facts, figures and latest developments', European Commission website [last visited on 5 July 2024].
- ¹⁶ Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, 21 June 2000.
- ¹⁷ Euro-Mediterranean Agreement, *op.cit.*, Article 2.
- ¹⁸ 'The European Commission and the Palestinian Authority agree on emergency financial support and the principles for a recovery and resilience program', *DG NEAR*, 19 July 2024.
- ¹⁹ '2023 Confirmed Pledges to UNRWA's Programmes (Cash and In-kind) – Overall Donor Ranking', *UNRWA*, 31 December 2023.
- ²⁰ Sanctions against terrorism, website of the EU [last visited on 17 September 2024].
- ²¹ 'The Camp David Accords: A framework for peace in the Middle East', September 1978.
- ²² 'The Bahrain Declaration adopted on 16 May 2024 by Their Majesties, Excellencies and Highnesses the leaders of the Arab States members of the League of Arab States', UN website, 16 May 2024 [last visited on 15 August 2024].

- ²³ See, for example, [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory](#), ICJ website [last visited on 17 September 2024], 'UN Human Rights Council Releases Report on Israel-Hamas War International Law Violations', *Lawfare*, 12 June 2024, and various reports by Amnesty International.
- ²⁴ 'Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel', UN, 12 June 2024.
- ²⁵ See, for example, the [Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel](#), 27 May 2024 (published 12 June 2024), reports by Amnesty International and by Human Rights Watch, and many individual social-media posts.
- ²⁶ ICJ Order, 26 January 2024, paragraphs 30 and 54. See also the orders of March and May 2024.
- ²⁷ [Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip \(South Africa v. Israel\): Provisional Measures](#), ICJ website, 24 May 2024.
- ²⁸ [Convention on the Prevention and Punishment of the Crime of Genocide](#), UN, 1948.
- ²⁹ 'Reactie op de uitspraak van het Internationaal Gerechtshof in de zaak tussen Zuid-Afrika en Israël inzake vermeende genocide in de Gazastrook' ('Response to the International Court of Justice ruling in the case between South Africa and Israel on alleged genocide in the Gaza Strip'), letter to the Dutch Parliament, 21 February 2024.
- ³⁰ [Israel/Palestine: Statement by the Foreign Ministers of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden](#), 19 February 2024.
- ³¹ [European Council meeting \(27 June 2024\) – Conclusions](#).
- ³² [Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem](#), ICJ Advisory Opinion of 19 July 2024.
- ³³ [Article 18 of A/RES/77/247, Resolution on Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem](#), adopted 20 December 2022.
- ³⁴ ICJ Advisory Opinion of 19 July 2024.
- ³⁵ [Written response from the Netherlands](#), dated 30 January 2004, to the ICJ's Advisory Opinion of 9 July 2004, [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory](#). The Netherlands abstained from the vote on UNGA Resolution A/RES/ES-10/14, dated 8 December 2003.
- ³⁶ 'Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem', CR 2024/5, pp. 41–52.
- ³⁷ Articles 17 to 19 of the Rome Statute.
- ³⁸ See paragraphs 223 to 229. Article 3 of the ICERD reads: 'States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.'
- ³⁹ See Article 7(1) of the Arms Trade Treaty.
- ⁴⁰ 'Antwoord van de minister op vragen van het lid Dobbe (SP) aan de Minister voor Buitenlandse Handel en Ontwikkelingssamenwerking over het bericht dat er een nieuwe rechtszaak komt over het exportverbod voor F-35 onderdelen naar Israël ('Minister's reply to questions that the Dutch MP Sarah Dobbe of the Socialist Party had put to the Minister for Foreign Trade and Development' on the report that there will be a new court case over the ban on the exports of F-35 parts to Israel'), letter to the Dutch Parliament, dated 27 August 2024.
- ⁴¹ See, for example, 'Israel/Palestine: Statement by the High Representative on new illegal settlement plans', European External Action Service, 12 May 2022; 'EU adopts resolution criticising Israeli settlement activity', *The Guardian*, 18 January 2016; and Council conclusions on the Middle East Peace Process, 3166th FOREIGN AFFAIRS Council meeting, Brussels, 14 May 2012.



- ⁴² 'Human Rights Council Hears that 700,000 Israeli Settlers are Living Illegally in the Occupied West Bank', UN, 28 March 2024.
- ⁴³ Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan – Report of the United Nations High Commissioner for Human Rights A/HRC/55/72, 1 February 2024.
- ⁴⁴ See, for example, 'Israel's misappropriation of land in the West Bank through settler violence', *Btselem*, November 2021.
- ⁴⁵ 'Final text of Jewish nation-state law approved by the Knesset early on July 19', *The Times of Israel*, 18 July 2018.
- ⁴⁶ 'Judicial reform, boosting Jewish identity: The new coalition's policy guidelines', *The Times of Israel*, 28 December 2022.
- ⁴⁷ Public Opinion Poll No 92, Palestinian Center for Policy and Survey Research, 12 June 2024.
- ⁴⁸ AIV Advisory Report 2013; 'Incidentally, it is not only the West that should feel jointly responsible: many Jews also emigrated to Israel from Tsarist Russia because of pogroms.'
- ⁴⁹ Report of the Middle East Quartet, 7 July 2016.
- ⁵⁰ Jonas Gahr Støre, 'Norway's PM: Why we recognized the state of Palestine', *POLITICO*, 30 May 2024.
- ⁵¹ UNGA Resolution A/ES-10/L.30/Rev.1, 'Admission of new Members to the United Nations', 9 May 2024.