

**32 623-299 Government response to the joint advisory report of the Advisory Council on International Affairs and the Advisory Committee on Issues of Public International Law on the provision and funding of non-lethal assistance to non-state armed groups abroad**

**no. List of questions and answers**

*Adopted (will be completed by the registry once the answers are received)*

The Permanent Parliamentary Committee on Foreign Affairs has submitted a number of questions to the Minister of Foreign Affairs about his letter of 31 August 2020 setting out **the government response to the joint advisory report of the Advisory Council on International Affairs (AIV) and the Advisory Committee on Issues of Public International Law (CAVV) on the provision and funding of non-lethal assistance to non-state armed groups abroad (32 623, no. 299)**.

The Minister's answers have been inserted after each question.

Chair of the Permanent Committee, Pia Dijkstra

Registrar of the Permanent Committee, Theo van Toor

Full list of factual questions about the government response to the joint advisory report of the Advisory Council on International Affairs and the Advisory Committee on Issues of Public International Law on the provision and funding of non-lethal assistance to non-state armed groups abroad (32 623, no. 299)

1. If thorough analysis of the nature and conduct of non-state armed groups reveals that they cooperate with combatant groups or organisations on national or international lists of terrorist organisations, is that a reason for the Netherlands to refuse to provide assistance?

**The government would never intentionally provide assistance, even indirectly, to non-state armed groups that are on national or international lists of terrorist organisations. For example, in the NLA programme, operational cooperation with extremist groups was a sufficient reason to exclude groups. If in the future an exceptional situation occurs in which consideration is given to providing NLA, strict monitoring will be important. The Minister of Foreign Affairs has already indicated in previous debates and in his answers to factual questions that the monitoring of the groups during the NLA programme should have been more thorough, with more frequent contact with them (Parliamentary Paper 32 623, no. 229, question 369).**

**Moreover, as indicated in its response, the government attaches much weight to the elements proposed by the AIV and CAVV for an assessment framework. It endorses the conclusion in the advisory report that when non-lethal assistance is provided to armed groups it is necessary to assess the particular situation, including a political and strategic assessment of the international situation. In keeping with the advice of the AIV and CAVV, the decision on whether to provide NLA should be assessed in the light of the geopolitical context, any ensuing objections to remaining on the sidelines, and the advantages and disadvantages of the particular course of action.**

2. To what extent does the assessment of non-state armed groups include checking whether (and, if so, to what extent) they receive material or financial assistance from unfree countries whose human rights policy is not so very different from that of the dictatorial regimes against which the armed groups intend to use the assistance?

**The assessment of non-state armed groups in connection with NLA programmes is not a standard or regular practice carried out within an existing framework. In keeping with the advice of the AIV and CAVV, this should be done, for example, in the light of the geopolitical context, any ensuing objections there may be to remaining on the sidelines, and the advantages and disadvantages of the particular course of action.**

3. Is the nature and conduct of non-state armed groups analysed solely on the basis of information from the Dutch intelligence and security services, or is the Netherlands partly reliant on information from other countries?

**See the answer to question 2.**

4. Is it true that the internal legal advice provided within the Ministry of Foreign Affairs identified a tension between the NLA programme and the principle of non-intervention? If so, why did the Minister not seek the advice of the External Adviser on International Law (EVA) since in this situation the Netherlands might be in danger of violating international law?

**The internal legal advice described the legal risks that provision of assistance to the armed opposition in Syria might entail. One of these risks was connected with the principle of non-intervention. Following the publication of the External Adviser's 2013 advisory report on 'The supply of arms to Syria', the government was familiar with the External Adviser's broader views on the provision of assistance (armed and otherwise) to the Syrian opposition, for example in relation to the principle of non-intervention. These views, together with numerous other relevant sources of international law, were taken into account when the internal legal advice was formulated. The risks described in**

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**the internal legal advice were considered when the political decisions on the NLA programme were taken.**

5. Did the Dutch government provide logistical assistance to Syrian rebels under the NLA programme in the context of the armed struggle against the Assad regime? If not, how would the government categorise the delivery of over 300 vehicles?

**The programme's main aims were to offer an alternative to extremism and prevent the moderate opposition from being squeezed out between the Assad regime and extremist groups. This was an attempt to provide a foothold for the opposition in support of the political process under the direction of the UN. The assistance, which was provided in the form of non-controlled, non-military goods to the moderate armed opposition, was also intended to help create more favourable conditions for moderate governance and stabilisation projects in Syria. The programme in southern Syria helped to strengthen the stability of Jordan and Israel, both of which benefit from a stable border area. For example, groups along the border prevented smuggling and stopped ISIS fighters from illegally crossing the border (Parliamentary Paper 32 623, no. 200, Annexe to Proceedings, House of Representatives 2017/18, no. 2725).**

6. Do you share the view of the AIV and CAVV that the relevant legal frameworks require states to take appropriate measures to prevent facilitation of violations of international humanitarian law and human rights, and that it is therefore essential that support for armed groups participating in an armed conflict should involve thorough analysis of the nature and conduct of those groups? Do you consider that adequate measures were taken in the case of the NLA programme? What lessons are you willing to draw from this?

**Vetting procedures, monitoring and cooperation with implementing organisations and partners that have a good knowledge of the situation in the field mitigated as far as possible the risks associated with the provision of NLA (e.g. possible fraud or the risk of goods falling into the wrong hands) (Parliamentary Paper 32 623, no. 229, question 76). During the debate on 2 October 2018, the Minister of Foreign Affairs indicated that in hindsight the monitoring during the programme should have been more thorough and should have involved more frequent contacts (Proceedings of the House of Representatives, 2018-2019 session, 32 623, no. 247, item 35, 2018-2019, no. 7, item 26, Parliamentary Paper 32 623, no. 229, question 369).**

7. Is the provision of non-lethal assistance to Syrian rebel groups that are classified by the Public Prosecution Service as terrorist organisations contrary to international law? If not, why not?

**No. There is no internationally recognised definition of terrorism. A variety of criteria are applied to determine whether armed groups should be classified as terrorist. The Ministry of Foreign Affairs primarily bases its assessment on international (UN and EU) lists of terrorist organisations. Different criteria are applied when determining whether a person can be prosecuted for participating in a terrorist organisation (article 140a of the Criminal Code). Charges brought by the Public Prosecution Service specify conduct in a given period and given place. Another important factor is the identity of the organisation to which a suspect belonged. Once the identity of the organisation and the part of it to which a suspect belonged has been established, a check is made by reference to the contents of the dossier and open sources to determine whether *that* part of *that* combatant group could be regarded as an organisation with terrorist aims in *that* period. The Public Prosecution Service does not make general pronouncements about armed groups, if only because their composition has always been subject to rapid change in the jihadist conflict zone. Whether an organisation has been placed on a**

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**sanctions list by the UN, the EU or the Netherlands plays no role in the assessment by the Public Prosecution Service.**

8. What protocols exist for communicating information to the House of Representatives about the provision of NLA in Syria? Can they be shared with the House? If not, why not?

**At the start of the NLA programme, there was widespread support in the House of Representatives for assisting the moderate armed opposition in Syria. The government's broad policy aims in Syria were discussed with the House in various debates, for example on the subject of article 100 letters on the deployment of the armed forces, signed by the Minister of Foreign Affairs, the Minister of Defence, the Minister for Foreign Trade and Development Cooperation and the Minister of Justice and Security (Parliamentary Paper 27 925, no. 612).**

**As parts of the NLA programme were classified as state secret, the access to documents provided for inspection to the members of the Permanent Parliamentary Committee on Foreign Affairs was granted in accordance with the procedures of the Permanent Parliamentary Committee on the Intelligence and Security Services (CIVD) and subject to the signing of a confidentiality declaration (Parliamentary Paper 2018Z16137 / 2015D44696).**

9. Why was it decided to share only very cursory information about the NLA programme with the House?

**From the start of the NLA programme in 2015, the government classified the names of the groups supported by the Netherlands and information about their locations as secret because: 1. people's lives were at stake, 2. the Netherlands had obligations to its allies, and 3. intelligence services were involved (Parliamentary Paper 32 623, no. 229, questions 235, 239 and 250). The notion that the information was 'very cursory' is incorrect. Substantial access to secret documents was provided on a confidential basis.**

10. What exactly was the policy that applied to the provision of information to the House about NLA in Syria? How did this policy come about?

**See answers 8 and 9.**

11. Do you consider that the internal arrangements for the provision of advice to you on international law issues are in keeping with the recommendations of the Committee of Inquiry on Iraq (the Davids Committee)?

**Yes. The measures taken to strengthen the position of the internal adviser on international law, enabling the adviser or deputy adviser to bring international law issues directly to the attention of the Minister on his or her own initiative, have implemented the recommendations of the Davids Committee on the provision of advice on international law.**

12. Do you consider that this change of policy concerning external advice on international law is in keeping with the Davids Committee's recommendations?

**The Davids Committee's recommendations related to the provision of internal, not external advice on international law. In 2011, the CAVV put questions to my predecessor**

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**about the proposal to establish the position of External Adviser on International Law, partly in the light of the Davids Committee's recommendations. The CAVV took the view that the creation of the new position would fulfil the recommendations and underlying intentions of the Davids Committee only to a very limited extent. It recommended that it should be possible for the Ministry's legal adviser to bring issues of international law to the Minister's attention directly on his or her own initiative. It also requested the Minister to take the CAVV's own role into account in his considerations on the provision of advice on international law.**

13. What disadvantages might there be to abandoning the system of having a single External Adviser on International Law?

**The government does not see any disadvantages, since advice on international law could still be sought not only from the CAVV or another external group of international law experts but also from Professor Nollkaemper or another individual expert.**

14. What happens if the members of the group of international law experts disagree among themselves? In the absence of consensus, do you accept one of the views?

**It is up to the members of an independent group of international law advisers of this kind to adopt their own procedures, including how they will resolve and report any differences of opinion between them.**

15. If one member of a group of international law experts concludes that a particular course of action by the Netherlands is incompatible with international law, would this be treated as sufficiently compelling advice to decide against such action?

**How the views of an expert will be taken into account and how the government will deal with the advice of a group of international law experts must be assessed on a case-by-case basis.**

16. Is it true that it takes longer to obtain advice from a group of international law experts than from an individual expert?

**The time factor is usually taken into account when deciding who should provide the external advice on international law. It has been seen in the past that a group of experts is also capable of providing prompt advice.**

17. Is it true that you initially excluded the External Adviser on International Law from advising on the NLA programme in Syria?

**No, following publication of the External Adviser's 2013 report on 'The supply of arms to Syria', the government was familiar with his broader views on the issue of the provision of armed and other assistance to the Syrian opposition, including in relation to the principle of non-intervention (see also the answer to question 4). These views, together with those obtained from numerous other relevant international law sources, were taken into account when the internal legal advice on the NLA programme was formulated.**

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18. Does the government consider that the NLA provided in Syria qualified as one of the very exceptional situations in which such assistance is lawful, taking into account, for example, the obligation to respect international humanitarian law?

**The decision to provide civil non-lethal assistance such as medicines, food parcels and clothing was taken at a time when millions of people were living under the yoke of ISIS while at the same time fearing the Assad regime, which was causing intense humanitarian suffering among its own people by its use of barrel bombs and poison gas. Large numbers of people were fleeing to neighbouring countries or to Europe. In addition, Russian vetoes in the UN Security Council put severe constraints on the international legal framework within which the international community could operate. In an EU Regulation of 10 April 2013 (No. 325/2013), the EU member states were authorised – by way of exception to the restrictive measures against Syria – to supply the Syrian opposition with non-lethal goods if they were intended for the protection of civilians (Parliamentary Paper 32 623, no. 2476, question 1). Moreover, there was widespread political support in the Netherlands for action to improve the situation in Syria. That is why the government examined the options available within the boundaries of international law. The internal legal advice identified legal risks, some of which were connected with the principle of non-intervention (see also the answers to questions 4 and 78). By providing civil non-lethal assistance and setting conditions for its use, the government did everything possible to mitigate the risks under international law.**

19. Can the government explain what it means by 'recent practice of other states' when referring to the support for the more flexible interpretation? Is the Dutch NLA programme itself part of the recent state practice to which the government refers? To what other states is the government referring?

**As the AIV and CAVV state in their advisory report, the Dutch NLA programme was part of a wider practice in which a number of states provided lethal and non-lethal assistance to Syrian non-state armed groups. In an EU Regulation of 10 April 2013 (no. 325/2013), the EU member states were authorised – by way of exception to the restrictive measures against Syria – to supply the Syrian opposition with non-lethal goods if they were intended for the protection of civilians (Parliamentary Paper 32 623, no. 2476, question 1). To the government's knowledge, the United States, the United Kingdom, France, Germany and Turkey have provided non-lethal assistance to groups in Syria (Parliamentary Paper 32 623, no. 229, question 10). The Dutch NLA programme can be viewed as part of this state practice.**

20. Can the government explain why it asserts that the assistance provided to Syrian armed opposition groups by other states, including Western states, shows that there is no state practice that would create derived responsibility for such assistance? What is the relevance of the phrase 'including Western states' in establishing whether or not a state practice exists?

**The AIV and CAVV believe there to be a rule of customary international law under which, in certain circumstances, the provision of aid and assistance to a non-state actor may lead to derived responsibility on the part of the state. The existence of a rule of customary international law requires, among other things, extensive state practice and the absence of any significant conflicting practice. For legal purposes, it is irrelevant whether the state practice is that of Western countries.**

21. Before providing NLA in future, will the government arrange for an international law adviser or group of international law advisers to assess whether it is compatible with international law?

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**The government will arrange for an internal assessment in advance of whether a national programme of this kind is compatible with international law, before considering whether it would be desirable to obtain supplementary external advice on this issue. The government expects that, in future, the provision of non-lethal assistance by the Netherlands to moderate armed groups will only be considered in exceptional situations.**

22. If the state wishes to obtain advice from an external adviser on whether a programme that is classified as state secret is compatible with international law prior to its implementation, would not submitting the issue to a group of experts entail an additional risk and thus create an obstacle to such submission?

**There are rules governing access to classified information for both internal and external advisers. It makes no difference whether it concerns one person or a group of persons. Classified information is never divulged to staff or advisers unless they have the appropriate clearance.**

23. What reasons do you have for abolishing the position of External Adviser on International Law (EVA), given that the study by the CAVV has not shown this to be necessary?

**The government considers it important for the arrangements for the provision of advice on international law to be collective and, where relevant, interdisciplinary. External advice on international law should preferably be given by a group of experts, including international experts, with a wide range of international law expertise and, where relevant, interdisciplinary skills. Examples are the establishment of the expert group on political support for the use of force between states and humanitarian intervention, or a joint advisory report by the AIV and CAVV. The Ministry only calls on individual experts in special cases to supplement its expertise.**

**In 2011, the CAVV put questions to my predecessor about the proposal to establish the position of External Adviser on International Law, partly in the light of the Davids Committee's recommendations. The CAVV considered that the creation of the new position would fulfil the recommendations and underlying intentions of the Davids Committee only to a very limited extent. It recommended that it should be possible for the Ministry's legal adviser to bring international law matters to the attention of the Minister directly on his or her own initiative. The CAVV also requested the Minister to take its own role into account in his considerations on the provision of advice on international law.**

24. In the light of this advisory report, how does the government view the media reports by *Nieuwsuur* and *Trouw* of 10 September 2018 claiming that the Netherlands had assisted 'armed terrorist groups'?

**None of the armed groups assisted by the Netherlands was on the EU or UN list of terrorist organisations. The government does not see any reason to view the *Nieuwsuur* and *Trouw* reports differently in the light of the advisory report of the AIV and the CAVV.**

25. Does the government consider that this advisory report still leaves sufficient scope to provide assistance for democratic movements, as for example in Belarus?

**Yes. The advisory report of the AIV and CAVV has no bearing on such assistance, which must be assessed on its own merits in each case.**

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26. To what limitations will future Dutch foreign policy be subject under a strict interpretation of the advisory report?

**The government interprets the advisory report of the AIV and CAVV strictly to the extent that it attaches much weight to the elements they propose for an assessment framework.**

**According to the advisory report, a strict interpretation of the principle of non-intervention implies that a state should not grant any assistance whatever during an armed conflict without the consent of the state in which the assistance is to be provided, even if the assistance is not directly related to the armed struggle.**

**However, like the AIV and CAVV, the government considers that the principle of non-intervention is not yet fully crystallised. It believes that, in very exceptional situations, the principle of non-intervention can be interpreted in such a way that a decision to provide NLA to a non-state armed group is justifiable, especially where it concerns the provision of NLA goods and services to a non-state armed group that exercises effective control in part of a state.**

27. Is it still possible, according to the advisory report, to provide assistance to foreign NGOs and civil society organisations if they are critical of the ruling power in the country where they operate?

**See the answer to question 25.**

28. Does the government position influence the Dutch stance on cooperation in a European context, for example with regard to assisting civil society organisations in third countries?

**The government position may influence how the Netherlands approaches cooperation in a European context, depending on the nature of such cooperation. It will, of course, have an influence if the cooperation involves the provision of non-lethal assistance to armed groups. That will not be the case where it involves the provision of assistance to civil society organisations in third countries, since this is not a subject on which the advisory report of the AIV and the CAVV has any bearing.**

**For the record, the government would note that the provision of assistance to state military actors through the medium of the European Peace Facility (EPF) is the subject of ongoing negotiations. Such assistance must always be in accordance with international law.**

29. Does the government believe that advice on international law provided collectively by several international law experts is of greater value than advice given by a single international law expert?

**Yes, see the answer to question 23.**

30. How much importance does the government attach to the right of veto of the permanent members of the UN Security Council in the light of the legal criteria for the provision of non-lethal assistance?

**The question of the extent to which the right of veto is likely to be exercised by permanent members of the UN Security Council in relation to the creation of a basis in international law for intervening in a state may be relevant in classifying a situation as exceptional.**

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31. Do comparable Western countries use an assessment framework when providing non-lethal assistance?

**The government does not know whether comparable Western countries use an assessment framework when providing non-lethal assistance. Nor does it know whether and, if so, how comparable Western countries distinguish between lethal and non-lethal assistance.**

32. Do comparable Western countries distinguish between lethal and non-lethal assistance, and if so, how?

**See the answer to question 31.**

33. Is the provision of non-lethal assistance a subject of debate in comparable Western countries and, if so, what is the nature of the debate?

**To the government's knowledge, the following Western countries have provided non-lethal assistance to groups in Syria: the United States, the United Kingdom, France, Germany and Turkey (Parliamentary Paper 32 623, no. 229, questions 10, 27, 96, 308, 315 and 363). The provision of this assistance has not been the subject of public debate in any of these countries.**

34. Why do you yourself not propose elements for an assessment framework other than those put forward by the AIV and CAVV, which mainly concern aspects of international law? Would you yourself still be prepared to draw up an assessment framework? If not, why not?

**The government attaches much weight to the elements proposed by the AIV and CAVV for an assessment framework. As the subject of the possible funding or provision of non-lethal assistance could arise in a great variety of different circumstances, the government considers that defining other elements would not do justice to all these different situations. It endorses the conclusion in the advisory report that when non-lethal assistance is provided to armed groups it is necessary to assess the particular situation, including a political and strategic assessment of the international situation. The government also expects that the provision of non-lethal assistance by the Netherlands to moderate armed groups will, in future, only be considered in exceptional situations. In keeping with the advice of the AIV and CAVV, this should be done, for example, in the light of the geopolitical context, any ensuing objections to remaining on the sidelines, and the advantages and disadvantages of the particular course of action.**

35. How do you assess the dangers of conflict escalation and setting a precedent, which the AIV and CAVV consider may result from the provision of assistance to rebel groups, and their plea in their advisory report (p. 9) for the utmost caution? And how do you assess their recommendation, in keeping with previous advisory reports on humanitarian intervention and R2P, that caution should be exercised when considering the idea of creating or contributing to new legal grounds for intervention. Why are you nonetheless arguing for a flexible interpretation of the principle of non-intervention, and even legitimising the provision of logistical assistance to rebels engaged in the armed struggle, as occurred in the case of the NLA programme?

**The decision to provide civil non-lethal assistance was taken at a time when millions of people were living under the yoke of ISIS while at the same time fearing the Assad regime, which was causing intense humanitarian suffering among its population by its use of barrel bombs and poison gas. Large numbers of people were fleeing to neighbouring countries or to Europe. Moreover, Russian vetoes in the UN Security**

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**Council put severe constraints on the international legal framework within which the international community could operate. Another factor was the existence of widespread political support in the Netherlands for action to improve the situation in Syria. That is why the government examined the options available within the limits of international law. By providing civil non-lethal assistance and setting conditions for its use, the government did everything possible to mitigate the risks under international law.**

36. Do you agree with the recommendation of the AIV and CAVV that caution should be exercised when considering the idea of creating or contributing to new legal grounds for intervention? If so, why are you nonetheless contributing to the creation of such grounds? Will the world be safer and more stable if countries such as Russia, China and Turkey also claim the right to provide NLA to rebels?

**The government is aware of the risk that a more flexible interpretation of the principle of non-intervention would be open to abuse. That is one reason why the government considers it very important to establish a framework for the principle in the manner described by the AIV and CAVV. This framework would also apply to assistance provided by other states.**

37. How do you assess and answer the question raised by the AIV and CAVV on page 8 of their advisory report: 'The question arises as to whether the Dutch NLA programme means that the Netherlands favours a new interpretation of the rule of customary international law on the principle of non-intervention'?

**The government believes that, in very exceptional situations, the principle of non-intervention can be interpreted in such a way that a decision to provide NLA to a non-state armed group is justifiable, especially where it concerns the provision of goods and services to a non-state armed group that exercises effective control in part of a state. In the government's view, the interpretation of the principle of non-intervention is evolving in this direction.**

38. Do you share the view that it follows from the ruling in the *Nicaragua* case that 'assistance in the assumption of public duties such as border control or maintenance of public order by an armed group that intends to overthrow the sitting government constitutes a violation of the sovereignty of the state, as border control and maintenance of public order would appear to be matters over which a state may freely decide'.

**In its judgment in the *Nicaragua* case, the International Court of Justice (ICJ) held that the principle of non-intervention forbids states to intervene directly or indirectly in internal or external affairs of other states. Examples of the internal affairs of a state given by the ICJ were the choice of a political, economic, social and cultural system, and the formulation of foreign policy. The ICJ did not explicitly mention border control or the maintenance of public order as examples of a state's internal affairs, nor was it asked to rule on them.**

**The government would note that the judgment in the *Nicaragua* case dates back more than 35 years, and that the ICJ based its ruling on the state of customary international law at that time in the light of the specific circumstances of the case. A rule of customary international law such as the principle of non-intervention is formed on the basis of state practice and the acceptance by states of such practice as law (*opinio juris*). Such a rule (and its interpretation) may evolve or change over time as a result of changes in state practice and *opinio juris*.**

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39. Are you aware of other countries that interpret the principle of non-intervention as flexibly as the Netherlands does? If so, which countries? If not, why are you invoking the fact that customary law is evolving?

**As other countries have also provided non-lethal (and lethal) assistance to armed opposition groups in Syria, it follows that they too believe that the principle of non-intervention can be interpreted as meaning that the decision to support a non-state armed group can be justified, in any event in very exceptional situations such as the civil war in Syria. In an EU Regulation of 10 April 2013 (No. 325/2013), the EU member states were authorised – by way of exception to the restrictive measures against Syria – to supply the Syrian opposition with non-lethal goods if they were intended for the protection of civilians (Parliamentary Paper 32 623, no. 2476, question 1).**

40. In your opinion, can the decision to provide NLA to a non-state armed group be justified if the group 'exercises effective control' purely on the basis of Islamic legislation?

**The government believes that, in very exceptional situations, the principle of non-intervention can be interpreted in such a way that a decision to provide NLA to a non-state armed group is justifiable, especially where it concerns the provision of goods and services to a non-state armed group that exercises effective control in part of a state. The exercise of effective control by a non-state armed group is not in itself sufficient to warrant the conclusion that an exceptional situation of this kind exists. Whether there is effective control is a question of fact, and not dependent on the ideology of the group in question. See also the answer to question 36.**

41. Do you recollect the position taken by Professor Nollkaemper when he was also External Adviser on International Law to the Minister of Foreign Affairs, namely that the nature of the goods supplied to assist armed activities by rebels was irrelevant? And that the general principles formulated by the ICJ in the *Nicaragua* case undoubtedly applied to the NLA programme? Do you share this view? If so, does this mean that you acknowledge that the crucial factor in determining whether the principle of non-intervention was violated was not the civil nature of the goods supplied but whether they were used in the context of armed activities? (Position paper submitted by André Nollkaemper, Professor of Public International Law and Dean of the Faculty of Law of the University of Amsterdam, for the roundtable discussion of the Permanent Parliamentary Committee on Foreign Affairs on the provision of Dutch assistance to the armed opposition in Syria, 27 September 2018.)

**I do recollect the position taken by Professor Nollkaemper. I also remember the position he took in his unsolicited advisory report of 17 June 2013 on arms supplies to Syria. On the subject of other forms of assistance, he noted as follows: 'There seems to be a gap between this principle [non-intervention] on the one hand and the practice (of Western states) on the other. I would observe that, strictly speaking, the principle of non-intervention prohibits not only arms supplies but also other forms of assistance. As various forms of assistance have clearly already been provided to the opposition in Syria, it can be concluded that the principle of non-intervention is no longer applied in absolute terms in this situation.'**

**The NLA programme involved the provision of civil non-lethal and non-controlled assistance to moderate armed groups, subject to conditions governing the use of the goods. By limiting the supply of goods to civil non-lethal assistance and imposing conditions on their use, the government did everything possible to mitigate the risks under international law. See also the answers to questions 18 and 37.**

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42. Do you agree with the AIV and CAVV that the 'key question' in determining whether certain assistance is prohibited is 'whether the equipment and intelligence are used as part of the armed activities and whether the assistance influences the hostilities'?

**In the government's view, the question of whether assistance is provided as part of armed activities and/or influences the hostilities is an important factor in determining whether certain assistance is permitted. Another important factor is whether the assistance is used to protect civilians from serious breaches of human rights or international humanitarian law committed by a dictatorial regime.**

43. How do you think this position relates to the NLA programme, under which the Dutch government provided Syrian rebels with goods used in the course of the armed struggle in Syria, including over 300 vehicles (some partially armoured), which were even used to reinforce the front line, as well as machine gun vests and laptops that were used to select military targets?

**The civil non-lethal assistance was not provided for offensive purposes, as is apparent from the transfer certificates previously released. Instead, it was of a civil and non-controlled nature. The government did not supply armoured (or partially armoured) vehicles. In view of the nature of the conflict, the government never excluded the possibility that the goods it supplied would also be used offensively, i.e. outside the framework of the programme and despite any agreements made and recorded in this regard (Parliamentary Paper 32 623, no. 247, questions 1 and 135, and Parliamentary Paper 32 623, no. 229, question 213).**

44. Is it in any event correct that part of the NLA provided to the Syrian rebels, such as the more than 300 vehicles, was used as part of armed activities and/or did this assistance influence the hostilities?

**See the answer to question 43.**

45. Do you share the view of the AIV and CAVV that a more flexible interpretation of the principle of non-intervention should be adopted in which the coercion threshold is a situation in which a state provides assistance for armed activities against a foreign state? How can this threshold be reconciled with the NLA programme in Syria, since this involved, among other things, the supply of more than 300 vehicles which were even intended to reinforce the front line, as well as machine gun vests and laptops that were used for selecting military targets?

**The coercion threshold referred to by the AIV and CAVV is in keeping with Dutch practice on the provision of assistance to armed groups abroad. See also the answer to question 43.**

46. Do you share the view of the AIV and CAVV that in the case of a more flexible interpretation of the principle of non-intervention the coercion threshold is a situation in which a state provides assistance for armed activities against a foreign state? Did the NLA programme involve the provision of assistance for armed activities against the Assad regime in Syria?

**See the answers to questions 43 and 45.**

47. Do you exclude the possibility that NLA provided by the Netherlands to armed groups in Syria was used as part of armed activities or that this influenced hostilities? If so, on what basis do you do so?

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**In previous answers to factual questions (Parliamentary Paper 32 623, no. 247, questions 1 and 135 and Parliamentary Paper 32 623, no. 229, question 213) and during the plenary debates about the NLA programme, the government indicated that it was not possible to establish a watertight monitoring system in a conflict zone. The possibility that certain types of assistance, such as vehicles or communication equipment, might be used by the moderate armed groups during offensive actions and hence in violation of the agreements made and recorded could not therefore be entirely excluded. The civil non-lethal assistance was not provided for offensive purposes, as is apparent from the transfer certificates previously released.**

48. If you exclude the possibility that NLA supplied by the Netherlands was used as part of armed activities or that this influenced hostilities, how can this be established independently by an organisation other than the government itself?

**See the answer to question 47.**

49. Can you confirm that the AIV and CAVV do not exclude the possibility that NLA provided by the Netherlands to armed groups in Syria was used as part of armed activities or that this influenced hostilities? If so, why have they not excluded this possibility?

**The AIV and CAVV make no pronouncements about this. A retrospective fact-finding investigation does not come within the remit of either body. The advisory report therefore notes that the AIV and CAVV are not equipped to carry out fact-finding. It follows that the AIV and CAVV do not apply the elements of the assessment framework they identify in their report to the Dutch NLA programme in Syria. The chairs of the AIV and CAVV discussed this with the Permanent Parliamentary Committee on Foreign Affairs before submission of the request for advice (government response to the CAVV/AIV report, Parliamentary Paper 32 623, no. 299). See also the answers to questions 43 and 47.**

50. Do you agree that there is no *opinio juris* that supports a flexible interpretation of the principle of non-intervention? If not, why not?

**See the answer to question 37.**

51. Do you share the view of the AIV and CAVV that there is currently no *opinio juris* that supports a flexible interpretation of the principle of non-intervention and that the recent practice of states is inconsistent? If not, why not? If so, why are you invoking flexible interpretation of the principle to justify the NLA programme and be able to provide NLA again in the future?

**See the answer to question 37.**

52. If, as the government expects, the provision of non-lethal assistance by the Netherlands to armed groups will still be considered only in exceptional situations in the future, how can state practice and hence a rule of customary law evolve, particularly as there is no *opinio juris* that supports a flexible interpretation of the principle of non-intervention, the AIV and CAVV describe state practice as 'inconsistent' and the great majority of countries have ended their support for the rebels in Syria?

**General state practice and acceptance of such practice as law (*opinio juris*) are required to create or change a rule of customary international law. This concerns state practice**

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**as a whole. It is not easy to determine in any particular case whether there is sufficient state practice to be able to speak of general state practice. Corroboration of this should be provided by an agreement between states, for example in the form of a treaty or a resolution of the United Nations General Assembly (UNGA), or by a judgment of an international court.**

**In the government's opinion, the principle of non-intervention has not yet fully crystallised. This means that different interpretations are possible, especially in cases in which non-state actors exercise effective control over part of a state's territory and the protection of civilians is at stake. The government believes that, in very exceptional situations, the principle of non-intervention can be interpreted in such a way that a decision to provide civil non-lethal assistance to a non-state armed group is justifiable, especially where it concerns the provision of goods and services to a non-state armed group that exercises effective control in part of a state.**

53. What countries currently meet the condition of being ruled by 'dictatorial regimes guilty of serious breaches of human rights and international humanitarian law, as verified by international bodies'? Can you supply a list of them?

**As the government is not currently considering funding or providing non-lethal assistance, supplying a list of such regimes would not, in its view, serve any useful purpose. Moreover, in all likelihood any such list would have to be revised in the near future.**

54. Why does the assessment framework not include a condition that assistance provided to non-state armed groups must be in the interests of the Netherlands?

**The interests of the Netherlands are taken into account in all policy decisions made by the government.**

55. Why do you consider that the provision of non-lethal assistance by the Netherlands to Syrian rebels is in conformity with international law, but that the provision of such assistance by Russia to separatists in Ukraine is in breach of international law?

**The situation in Ukraine is not one in which groups are fighting against a dictatorial regime that has committed serious violations of human rights and international humanitarian law, as verified by international bodies.**

56. Do you consider it would be worthwhile investigating whether there are grounds on which the Netherlands could be held responsible for violations of international law in connection with the provision of NLA to non-state armed groups in Syria? If not, why not? If this has already been investigated, can you share the findings with the House?

**No, the government believes that the NLA programme was carried out within the limits of international law.**

57. Can you please explain in what very exceptional situations the principle of non-intervention can, in your view, be interpreted in such a way as to justify the decision to provide NLA to a non-state armed group?

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**The government believes that, in very exceptional situations, the principle of non-intervention can be interpreted in such a way that a decision to provide civil non-lethal assistance to a non-state armed group is justifiable, especially where it concerns the provision of goods and services to a non-state armed group that exercises effective control in part of a state. It would be impossible to describe, in the abstract, precisely what very exceptional situations this concerns. This must be assessed on a case-by-case basis, depending on the precise circumstances. The three conditions mentioned by the AIV and CAVV will in any event play an important role in this.**

58. Do you share the view of the AIV and CAVV that recent state practice on the provision of NLA to non-state armed groups is inconsistent? Why do you share or not share this view? How can you reconcile this with your conclusion that international law provides scope for a flexible interpretation of the principle of non-intervention 'taking into account the recent practice of other states'? Does this mean that you do in fact consider recent state practice to be consistent? If so, please explain.

**The government shares the view of the AIV and CAVV that recent state practice on the provision of civil non-lethal assistance to non-state armed groups is not entirely consistent. However, the government considers that state practice provides sufficient grounds for concluding that, in very exceptional situations, the principle of non-intervention can be interpreted in such a way that a decision to provide NLA to a non-state armed group is justifiable, especially where it concerns the provision of goods and services to a non-state armed group that exercises effective control in part of a state. See also the answer to question 52.**

59. Can you please explain the following observation: 'The AIV and CAVV have examined this state practice and noted that a rule may possibly be evolving that permits the provision of certain forms of assistance in specific circumstances, (...)'? Do you recognise that this is actually an acknowledgement by the AIV and CAVV that a rule of customary law of this kind does not yet exist? And that it is therefore uncertain whether such a rule – and hence the flexible interpretation of the principle of non-intervention – is evolving?

**The AIV and CAVV consider that the recent practice of various states that have provided lethal and non-lethal assistance to Syrian non-state armed groups is leading to the formation of new customary international law on the provision of assistance to non-state armed groups. The AIV and CAVV also acknowledge, however, that there is uncertainty about the contours and content of the principle of non-intervention. In the government's view, state practice already provides sufficient grounds for concluding that, in very exceptional situations, the principle of non-intervention can be interpreted in such a way that a decision to provide non-lethal civil assistance to a non-state armed group is justifiable, especially where it concerns the provision of goods and services to a non-state armed group that exercises effective control in part of a state.**

60. Do you share the view of the AIV and CAVV that if a new rule were to evolve, under which certain forms of assistance are permissible in specific circumstances and only to specific armed opposition groups, it would be of the utmost importance to ensure that strict parameters are set for any such expansion of what is permissible, on the basis of the following three conditions:

- only in situations in which armed groups are fighting against dictatorial regimes that have committed serious violations of human rights and international humanitarian law, as verified by international bodies;
- only to those armed opposition groups that are capable of protecting the civilian population from such violations;

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- only for the benefit of the civilian population, including in any event assistance of a humanitarian nature, as well as the provision of assistance in maintaining public order in those areas where the group exercises control, carrying out border surveillance, and possibly also guarding prisoners, provided that respect for human rights is guaranteed?

Can you please explain in detail why you think the NLA programme complied with the conditions formulated by the AIV and CAVV, particularly the third condition? Did the supply to Syrian rebels of more than 300 vehicles and other equipment used as part of the armed struggle against the Assad regime comply with the conditions, or did it actually go far beyond maintaining public order and border surveillance?

**The NLA programme involved the provision of civil non-lethal assistance to moderate armed groups, including medicines, food parcels and winter clothing. This therefore qualifies as 'assistance for the benefit of the civilian population, including in any event assistance of a humanitarian nature, as well the provision of assistance in maintaining public order in those areas where the group exercises control'.**

61. How do you view the third condition proposed by the AIV and CAVV for the provision of NLA to rebels if a rule evolves that certain forms of assistance are deemed permissible: namely that the assistance should only be 'for the benefit of the civilian population, including in any event assistance of a humanitarian nature, as well as the provision of assistance in maintaining public order in those areas where the group exercises control, carrying out border surveillance, and possibly also guarding prisoners, provided that respect for human rights is guaranteed'? Do you share the view that such a rule does not yet exist and that even if it were to evolve, the provision of logistical assistance to armed rebel groups in the fight against the Assad regime – and hence also major parts of the NLA programme – would fall far outside the scope of this condition and therefore be contrary to the principle of non-intervention?

**The government believes that, in very exceptional situations, the principle of non-intervention can be interpreted in such a way that a decision to provide non-lethal civil assistance to a non-state armed group is justifiable, especially where it concerns the provision of goods and services to a non-state armed group that exercises effective control in part of a state. It would be impossible to describe, in the abstract, precisely what very exceptional situations this concerns. This must be assessed on a case-by-case basis, depending on the precise circumstances. The three conditions mentioned by the AIV and CAVV will in any event play an important role in this. The government would point out that the AIV and CAVV do not provide an exhaustive list in their advisory report of what is meant by assistance for the civilian population. The government does not exclude the possibility that it may include certain forms of logistical assistance to armed opposition groups.**

62. Was the government aware at the time of the NLA programme that rebel groups in receipt of the assistance were engaged in unlawful acts? If so, do you acknowledge that the Netherlands may be responsible and/or be held responsible under international law?

**Reports of possible violations of international humanitarian law or human rights were part of the vetting procedure and raised in contacts with the groups. Action was taken when abuses were reported. See also Parliamentary Paper 32 623, no. 184. Unlike the AIV and CAVV, the government considers that there is no rule of customary international law under which the provision of aid and assistance to non-state armed groups may lead to derived responsibility.**

63. Do you acknowledge that even if a flexible interpretation of the principle of non-intervention were to evolve, it would allow no scope for the provision of logistical assistance to rebels as part of

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armed struggle against a government? If not, why do you disagree in this respect with the AIV and CAVV, which stipulate as a strict condition that assistance would be permissible only for the benefit of the civilian population, including in any event assistance of a humanitarian nature, as well as assistance in maintaining public order in those areas where the group exercises control, carrying out border surveillance, and possibly also guarding prisoners, provided that respect for human rights is guaranteed?

**See the answer to question 61.**

64. As the AIV and CAVV have indicated that a retrospective fact-finding investigation is not within the remit of either body and the advisory report states that they are not equipped for this purpose, would you be prepared to have an external study carried out to determine whether the NLA programme remained within the boundaries of international law? To what extent are you prepared to implement the motion submitted by MP Pieter Omtzigt and others (Parliamentary Paper 32 623, no. 231), who requested an external study in the following terms: 'requests the CAVV and the AIV, as a basis for the report, to study the NLA programme in Syria and include the facts and findings of that study when formulating the assessment framework'?

**The government does not consider that the advisory report and the elements of an assessment framework proposed in it by the AIV and CAVV necessitate modification of its opinion that the NLA programme remained within the limits of international law. An external study is therefore not needed.**

65. As you contend, based in part on the recent practice of other states, that international law offers scope for a more flexible interpretation, would you be prepared to ascertain to what extent UN member states consider NLA, as provided in Syria, to be an acceptable or unacceptable practice? If not, why not?

**No. It is up to other states themselves to decide whether or not to express an opinion on the interpretation of the principle of non-intervention and how this relates to specific actions by another country.**

66. Since the AIV and CAVV have not applied the elements of the assessment framework to the Dutch NLA programme in Syria, would you consider it desirable for other organisations or researchers to consider this instead? If not, why not?

**The elements of the AIV/CAVV advisory report are in keeping with the conditions set by the Netherlands for the NLA in Syria. See also the answers to questions 64 and 67.**

67. Can you please explain why you state that no assessment framework existed at the time it was decided to provide NLA to moderate armed groups in Syria? Does this amount to an acknowledgement that the NLA programme did not comply with the assessment framework now proposed? Did the NLA programme fall completely within the assessment framework proposed by the AIV and CAVV? Can you explain precisely why it did or did not do so?

**At the time when the decision on the programme was taken, no framework was in place for assessing the provision of NLA to moderate armed groups in Syria because the Netherlands had not previously provided such assistance. During the course of the NLA programme, the government took the decision to provide NLA to moderate armed groups on the basis of the following criteria: no operational cooperation with extremist groups, pursuit of an inclusive political solution and commitment to international humanitarian law. The conditions that were attached to the NLA programme broadly correspond to the assessment framework described in the AIV and CAVV advisory**

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**report. According to that assessment framework, only certain forms of support may be granted in certain situations to certain armed opposition groups.**

68. Can you please explain the following observation: 'The risks, including legal risks, associated with providing assistance of this kind in a context as complex and fluid as in Syria were taken into account by the government at the time'? Do you acknowledge that, in doing so, the government consciously took the risk that the NLA programme would exceed the limits of international law?

**The government believes that the NLA programme was carried out within the limits of international law (see also government response to the CAVV/AIV report, Parliamentary Paper 32 623, no. 299). Carrying out major stabilisation projects in a conflict zone is, by definition, risky. This was especially true in the case of Syria because of the complex and fluid situation. This was precisely why the risks of the activities in Syria were identified and assessed in advance. To mitigate these risks as much as possible, the government cooperated with allies and organisations that were best placed to assess the situation in the field (Parliamentary Paper 32 623, no. 229, question 310). See also the answer to question 18.**

69. Do you have any indications that one or more armed groups supported by the Netherlands in Syria are now also active outside Syria, for example in Libya? If so, what information about this can you share with the House?

**The government cannot make any public statements about this because the information could possibly be traced back to the groups supported by the Netherlands in the past.**

70. Is it true that the international law advice provided internally by the Legal Affairs Department (DJZ) of the Ministry of Foreign Affairs identified a possible tension between the provision of NLA and the principle of non-intervention? In this exceptional situation, in which a highly controversial programme may have exceeded the limits of international law, would you be prepared to disclose this advice to the House of Representatives? If not, why not? How can the House check the adequacy of the decision-making within the Ministry of Foreign Affairs and within the government?

**The crux of the internal legal advice was shared with the House (Parliamentary Paper 32 623, no. 230). As disclosed, the internal legal advice outlined the legal risks which the provision of assistance to the armed opposition in Syria might entail, for example in relation to the principle of non-intervention. The conclusion was that the legal risk was limited since it the proposal was to provide civil non-lethal assistance.**

**The usual procedure within the Ministry is for decision-making memorandums setting out all relevant considerations to be submitted to the Minister. Passages that are of a legal nature or have legal implications are drafted by or agreed with the Legal Affairs Department. The internal legal advice was included in its entirety in the decision-making memorandums on the NLA programme.**

**In the special case of the NLA programme, the House was also given confidential access, by way of exception, to the relevant decision-making memorandums.**

71. Would you be prepared now to disclose the international law advice provided internally by the Legal Affairs Department of the Ministry of Foreign Affairs on the NLA programme, which identified the tension between the principle of non-intervention and the provision of non-lethal assistance to armed opposition groups in Syria (Parliamentary Paper 35000-V, no. 73, p. 3)? If not, why not?

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**See the answer to question 70. The government considers it very important that civil servants are able to advise their ministers freely and to brainstorm among themselves and with the minister before a decision is taken. Confidentiality is essential for this purpose, among other reasons to ensure that, where necessary, civil servants dare to put opposing arguments to their superiors internally. The disclosure of internal advice can disrupt the proper functioning of the ministries, the ministers and the internal decision-making process.**

**This affects essential elements of our system of government, including the principle of ministerial responsibility and the coherence of government policy.**

72. Why do you still insist that the NLA programme remained within the limits of international law?

**The government does not consider that the elements of an assessment framework proposed by the AIV and CAVV necessitate modification of its opinion that the NLA programme remained within the limits of international law.**

73. How can people other than yourself check whether the NLA programme did remain within the limits of international law?

**The extensive information about the NLA programme provided to your House enables others to form an opinion.**

74. Since lawyers have raised serious doubts as to whether the NLA programme remained within the limits of international law, would you be prepared to allow a number of independent lawyers to have access to relevant material so that existing doubts about legality can be studied in more depth? If not, why not?

**The AIV and CAVV would have obtained access to all relevant material on request. The advisory report and the elements of an assessment framework proposed in it by the AIV and CAVV do not necessitate any modification of the government's opinion that the NLA programme remained within the limits of international law. The government does not therefore consider that such a study would serve any useful purpose.**

75. Now that the elements of an assessment framework have been formulated, how will the decision-making be different if it becomes necessary again in the future to consider whether or not to provide NLA?

**If a situation arises again in the future in which the provision of NLA to non-state armed groups is under consideration, the elements of the assessment framework set out by the AIV and CAVV in their advisory report will be duly taken into account. As noted in the advisory report, that decision-making will also depend on the geopolitical context and an assessment of the situation, which cannot be anticipated at present.**

76. As the elements of an assessment framework have now been formulated, how will the communication of information to the House be different if it becomes necessary again in the future to consider whether or not to provide NLA?

**If the provision of NLA to non-state armed groups is under consideration again in the future, the elements of the assessment framework set out in the advisory report will be**

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**duly taken into account in the decision-making and in how information is communicated to the House.**

77. Can you please provide an exhaustive list of the conditions that had to be met by the NLA, by the use to which the goods would be put and by the moderate armed groups that received the assistance?

**The moderate armed groups had to meet three conditions: no operational cooperation with extremist groups, pursuit of an inclusive political solution and commitment to compliance with international humanitarian law. The assistance provided in Syria was civil and non-controlled. The civil non-lethal nature of the assistance was emphasised to both the implementing organisations and the recipients, and provisions were included in the terms and conditions of delivery to limit the use of the goods and stress the non-offensive objectives of the programme (see Parliamentary Paper 32 623, no. 247).**

78. Are you able to provide a list of the legal risks associated with the provision of assistance of this kind in a context as complex and fluid as in Syria, which were taken into account by the government at the time? If not, why not?

**The crux of the internal legal advice was shared with the House (Parliamentary Paper 32 623, no. 230). The internal legal advice outlined the legal risks that provision of assistance to the armed opposition in Syria could entail. These risks were connected with:**

- **the prohibition of the threat or use of force against a state (article 2 (4) of the UN Charter);**
- **the principle of non-intervention (customary international law);**
- **the duty under international humanitarian law to comply with the law of armed conflict and to ensure that it is complied with by others;**
- **arms export controls (EU arms export directives and the UN Arms Trade Treaty).**

**The various forms of assistance that could be provided within the framework of international law were assessed as follows:**

- **the supply of arms and provision of lethal assistance would be in breach of the prohibition on the use of force, the principle of non-intervention, the duty of compliance under international humanitarian law, EU rules on arms exports and the Arms Trade Treaty;**
- **military training would be contrary to the prohibition on the use of force, the principle of non-intervention and the duty of compliance under international humanitarian law;**
- **whether other forms of training might be compatible with international law was said to depend on the nature of the training;**
- **humanitarian, civil or medical assistance would probably comply with international law;**
- **the conclusion about non-lethal assistance was that it was not possible to determine in advance whether it would be compatible with international law; each part of the assistance would have to be assessed separately.**

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**The internal legal advice concluded that the legal risk was limited since the proposal was to provide civil non-lethal assistance.**

79. What was the internal advice provided by the Legal Affairs Department of the Ministry of Foreign Affairs on the NLA programme? Is it true that it identified a tension between the provision of NLA and the principle of non-intervention? Was the internal legal advice taken seriously and considered when the decisions were taken by the then Prime Minister, Deputy Prime Minister, and the Ministers of Foreign Affairs and Defence, as well as by the cabinet?

**See the answer to question 78. The risks described in the internal legal advice were taken into account when the political decisions on the NLA programme were taken.**

80. Did the system for the provision of advice on international law, which was set up following the report of the Davids Committee on the decision-making connected with political support for the war in Iraq, function properly? Do you share the view of Professor Nollkaemper, who concluded in September 2018 that 'the system conceived by the Davids Committee did not function properly in this case' (<https://nos.nl/nieuwsuur/artikel/2252234-volkenrecht-mogelijk-geschonden-door-steun-aan-syrische-rebellen.html>). If not, why not?

**Yes, the system for the provision of advice on international law did function properly. The recommendations of the Davids Committee related to the provision of internal, not external advice on international law. Internal advice on international law was provided on various occasions both in the run-up to and during the NLA programme. The internal legal advice was included in the various decision-making memorandums on the NLA programme.**

81. Do you recall that on 17 June 2013 the External Adviser on International Law gave unsolicited advice on his own initiative to the then Minister of Foreign Affairs on the international law aspects of the possible supply of arms to the Syrian opposition? (<https://zoek.officielebekendmakingen.nl/kst-32623-99.html>). Do you consider this unsolicited advice to be valuable, bearing in mind that the then Minister of Foreign Affairs advised against a motion requesting this advice? If so, why are you not only proposing to dispense with the position of External Adviser on International Law but also unwilling to reintroduce arrangements for the provision of unsolicited external advice on international law?

**Yes, the advice was valuable. The government attaches much importance to the provision of external advice on international law, particularly by a group of experts and, in special cases, individual experts. The CAVV is a body that consists of external experts on international law empowered to provide the government and parliament with advice, both solicited and unsolicited.**

82. If, as you say, you have 'great appreciation' for the manner in which Professor Nollkaemper has discharged the duties of External Adviser on International Law, why are you abolishing the position rather than looking for a suitable successor? Why abolish a position that has proven its worth, including for the House of Representatives?

**See the answers to questions 23 and 81. The House is of course free to invite Professor Nollkaemper to give advice in a personal capacity, as it has done on various occasions in the past.**

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83. Do you recall your letter of 6 May 2019 (Parliamentary Paper 35000V, no. 70), in which you stated as follows: 'Professor Nollkaemper's contract ended on 30 April 2019. When the subject of a possible renewal of this contract was discussed, Professor Nollkaemper indicated that he would like to terminate his contract at that juncture. He added that if the Minister of Foreign Affairs so wished, he would be prepared to stay on until publication of the advisory report of the Advisory Council on International Affairs (AIV) and the Advisory Committee on Issues of Public International Affairs (CAVV) drawn up in response to the motion submitted by MP Pieter Omtzigt and others concerning a joint AIV/CAVV advisory report on an assessment framework (Parliamentary Paper 32 623, no. 231). In this motion, the AIV and the CAVV were requested to include in their report the role of advice on international law, including the extent to which it is made public and the scope for taking account of dissenting views. I made grateful use of Professor Nollkaemper's offer.'

What role did Professor Nollkaemper play in the period from 30 April 2019 until the publication of the AIV/CAVV advisory report? Did you seek any advice from him in that period? Was he involved in the provision of advice on the NLA programme or on the government position in response to the CAVV/AIV report? If not, why not and why then did you, as you say, make 'grateful use' of his offer to stay on as External Adviser on International Law?

**Professor Nollkaemper provided me with legal advice during the period concerned. This took the form of an advisory report on the establishment of an ISIS International Tribunal. This report, together with the government response, was shared with the House. There was no need for advice on the NLA programme during that period because Professor Nollkaemper's views on this issue were already known and the programme had already been completed.**

84. Has there been an evaluation of the position of External Adviser on International Law? If so, would you be prepared to send it to the House? If not, why not and how can this be reconciled with the abolition of the position?

**There has been no evaluation of the position of External Adviser on International. When drawing up its response, however, the government took into account the preference for collective and, where relevant, interdisciplinary arrangements for the provision of external advice on issues of international law. External advice on international law should preferably be given by a group of experts, including international experts, with a wide range of international law expertise and, where relevant, interdisciplinary skills. Examples are the establishment of the expert group on political support for the use of force between states and humanitarian intervention, and also a joint advisory report from the AIV and CAVV. Only in special cases does the Ministry call on individual experts to supplement its expertise. There is therefore no real need for a permanent external expert on international law.**

85. What do you think of the view expressed by the former president of the Supreme Court, Willibrord Davids, who is sometimes described as the 'spiritual father' of the position of External Adviser on International Law? He has said that abolishing the position 'poses a risk'. In his words, 'You need a single authoritative individual who is able to provide advice quickly. A group is much less capable of doing this.' (<https://nos.nl/l/2347187>)

**The Davids Committee's recommendation related to the internal arrangements for the provision of advice on international law. This recommendation has been implemented since 25 May 2011. Acting on his or her own initiative, the internal adviser on international law and his or her deputy can bring international law issues directly to the attention of the Minister.**

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86. To what extent has the criticism of the NLA programme expressed by Professor Nollkaemper as External Adviser on International Law played a role in the decision to abolish the position?

**The criticism he has expressed has played no role in the decision as I attach great importance to critical advice.**

87. Is it true that you are not appointing a new External Adviser on International Law? If so, why not? Or will the position be left vacant only temporarily?

**Yes, this is the position for the time being, pending the dialogue with the House, as proposed in the government response, on the arrangements for the provision of advice on international law.**

88. Is it true that you wish to replace the position of External Adviser on International Law by a group of legal advisers? If so, why? What form will that take?

**There is no question of replacement since external advice on international law can already be obtained from a group of experts and is a worthwhile option. This applies to both the CAVV and the possibility of asking a group of experts for ad hoc advice. In 2011, the CAVV put questions to my predecessor about the proposal to establish the position of External Adviser on International Law, partly in the light of the Davids Committee's recommendations. The CAVV was of the opinion that the recommendations and underlying intentions of the Davids Committee would be fulfilled only to a very limited extent by the creation of the new position. The CAVV advised the Minister to make it possible for the Ministry's legal adviser to bring international law matters to his attention directly on his or her own initiative. It also requested the Minister to take the CAVV's own role into account in his considerations on the provision of advice on international law.**

89. Do you think that replacing the position of External Adviser on International Law by a group of legal advisers entails risks? If so, what risks?

**No.**

90. Can you supply the House with internal memos, advisory reports, etc. about legal aspects of the NLA programme in Syria, if necessary in an anonymised form? If not, why not?

**See the answers to questions 70 and 71.**