

BETWEEN WORDS AND DEEDS
PROSPECTS FOR A SUSTAINABLE PEACE
IN THE MIDDLE EAST

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Members of the Advisory Council on International Affairs

Chair	F. Korthals Altes
Vice-chair	Professor W.J.M. van Genugten
Members	Professor J. Gupta Dr P.C. Plooij-van Gorsel Professor A. van Staden Lieutenant-General (ret.) M.L.M. Urlings Ms H.M. Verrijn Stuart Professor J.J.C. Voorhoeve
Executive Secretary	T.D.J. Oostenbrink

P.O. Box 20061
2500 EB The Hague
The Netherlands

telephone + 31 70 348 5108/6060
fax + 31 70 348 6256
aiv@minbuza.nl
www.aiv-advice.nl

Members of the Combined Middle East Committee

Chair Professor A. van Staden

Members Dr B.S.M. Berendsen
Dr N. van Dam
Professor W.J.M. van Genugten
F. Korthals Altes
Ms H.M. Verrijn Stuart

Executive Secretaries Ms A.M.C. Wester
T.D.J. Oostenbrink

Contents

Foreword

I	The Israeli-Palestinian conflict in perspective	10
	I.1 The peace process	10
	I.2 The legal framework	16
II	Changes in the regional and global context	20
	II.1 The regional context	20
	II.2 The global context	23
III	Scenarios and possibilities for rapprochement	25
IV	Actors and initiatives	31
V	The role of the Netherlands	39
VI	Summary and recommendations	44

Annexe I	Request for advice
Annexe II	Map of Israel and the occupied Palestinian territories
Annexe III	List of abbreviations

*'...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.'*¹

*'We are willing to live side by side on the land and share the promise of the future. Sharing, however, requires two partners willing to share as equals. Mutuality and reciprocity must replace domination and hostility for there to be genuine reconciliation and coexistence under international legality. Your security and ours are mutually dependent, as intertwined as the fears and nightmares of our children.'*²

1 Amos Oz in an interview on PBS *News Hour* on 23 January 2002, 'Coping with Conflict: Israeli Author Amos Oz'.

2 Haidar Abdul-Shafi, speaking on behalf of the Palestinian people at the Peace Conference in Madrid in October 1991, quoted in Avi Shlaim, *Israel and Palestine, Reappraisals, Revisions, Refutations* (London: Verso, 2010), p. 157.

Foreword

The conflict between Israel and the Palestinians, which has dragged on for decades, has been aptly described as a conflict between ‘victims and the victims of victims’.³ Let there be no misunderstanding: the Holocaust and Israel’s policy of occupation are two entirely different things. Nor can there be any doubting the Jewish people’s right to live in security within their own state. Nevertheless, the establishment of the State of Israel in 1948, justified largely on the grounds of protecting the Jewish people from further persecution, and Israel’s subsequent victory in the Six-Day War of 1967, have caused great injustices to the Palestinians. Both Jews and Palestinians invoke historical and religious rights, and both of these groups make a historical claim to a political homeland in the Holy Land – territory that has been the subject of disputes for many centuries. This gives the conflict an unmistakably tragic dimension, as the rights of one people appear to clash with those of the other.

In the recent past, various international intermediaries (representatives of international organisations and countries) have embarked on numerous efforts to arrive at a satisfactory solution to this drawn-out conflict. None of these efforts has achieved an adequate and lasting result. At times, it seemed a breakthrough was close, as in 1993 when the Israelis and Palestinians managed to reach agreement on a peace plan after secret negotiations in Oslo, and seven years later when, on the initiative (and with the active mediation) of President Bill Clinton, delegations from both sides seemed to agree on a ‘final status settlement’.⁴ The mutual distrust, the fierce resistance to any compromise from extremists on both sides, the expansion of illegal settlements on Palestinian territory and perhaps also a lack of leadership on either side ultimately proved to be insurmountable obstacles to mutual pacification. The peace process has been moribund since 2010 and, as might be expected, each party blames the other for the impasse. It is unsurprising, therefore, that those wishing to make a constructive contribution towards efforts to bridge the gap between the Israelis and Palestinians have grown disheartened.

However, it would be a great mistake for Europe, and thus also for the Netherlands, to acquiesce to the inability or refusal of the two parties to re-embark on the path to peace. Ongoing Israeli occupation of the Palestinian territories, accompanied by political repression and permanent restrictions on the Palestinians’ freedom of movement and economic opportunities (even more so in Gaza than on the West Bank), mean that the conflict is likely – sooner or later – to result in an unprecedented eruption of violence, with disastrous humanitarian and political consequences. The rapid Israeli colonisation of East Jerusalem and the West Bank (Cis-Jordan) also considerably reduces the chances of implementing a two-state solution. This makes the urgency of resuming the peace process all the greater. As we shall argue in this report, the EU in particular, which is keen to present itself as a ‘normative power’ in the world, cannot stand idly by as measures are introduced and steps taken that might block or even preclude the realisation of an independent

3 This phrase was coined by French political scientist and commentator Dominique Moïsi.

4 For a discussion of the failure of the Camp David talks, see for example Moty Cristal, ‘Camp David 2000’, in Guy Olivier Faure and Franz Cede (eds.), *Unfinished Business: Why international negotiations fail* (Athens & London: The University of Georgia Press, 2012), pp. 43-61.

state of Palestine. Europe (particularly the Netherlands) might thus lose its credibility as a guardian of international law and champion of human rights, as well as its potential to exert political influence in the Middle East. In addition, the region remains strategically important for Europe in any case, owing to its geographical location and its oil reserves.

Europe's reputation is also at stake, given the new political winds that have been blowing through the Arab region since the uprisings and reform movements that began to emerge there two years ago. A new political situation has arisen, in which the policy of Arab countries now pays more heed than in the past to the 'voice of the people'. The prevailing public opinion in these countries is generally critical of their ousted political leaders' (supposed) lack of effort in support of the Palestinian cause.

This report's point of departure is that the Netherlands and its EU partners must not ignore these facts. They must realise that the objectives of the European Neighbourhood Policy (stability, prosperity, democracy and closer political cooperation) cannot be achieved in the region in question if Europe's pronouncements in favour of a sustainable solution to the Israeli-Palestinian conflict are not accompanied by the implementation of appropriate policies.

It was against this background that the Advisory Council on International Affairs (AIV) turned its attention to the request for advice on new initiatives for the Middle East Peace Process presented by the Senate on 23 October 2012. In its request for advice⁵ the Senate asked the AIV to advise on the following questions, in the light of the changing situation in the region:

- To what extent do the changes in the regional and global political context affect the negotiating positions of the parties directly involved and the attitudes of any interested third parties?
- Given possible changes in these positions, what scenarios are conceivable for the resumption of the Middle East Peace Process? What new possibilities do these scenarios offer for rapprochement and resumption of peace talks?
- Which organisations, countries or parties are in the best position to put forward new initiatives? What would such initiatives specifically entail?
- Based on the principles of international law, how can the Netherlands help achieve progress in the Middle East Peace Process? What action can the Netherlands take independently and at European and international level?

The AIV based the present report on the above questions. After an introductory chapter which briefly examines the peace process to date and the legal framework of the Israeli-Palestinian conflict, the Senate's questions are explored in turn in individual chapters. The closing chapter contains a summary and a number of specific recommendations.

5 The request is included in appendix I.

The report was drawn up by a combined committee consisting of Professor A. van Staden (AIV, CEI, chair), Dr B.S.M. Berendsen (COS), Dr N. van Dam (CVV), Professor W.J.M. van Genugten (AIV, CMR), F. Korthals Altes (AIV) and Ms H.M. Verrijn Stuart (AIV, CMR). The executive secretaries were Ms A.M.C. Wester (CEI secretary) and T.D.J. Oostenbrink (AIV secretary). The committee was assisted by trainee A.L.M. van Nieuwland.

Prior to compiling this report the committee interviewed a number of individuals, including R.S. Serry (United Nations Special Coordinator for the Middle East Peace Process), H. van den Broek (former Minister of Foreign Affairs and former European Commissioner for External Relations), Professor J.G. de Hoop Scheffer (former Minister of Foreign Affairs and former NATO Secretary-General) and Professor J. Dugard (emeritus professor of public international law and from 2001 to 2008 Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied since 1967). The AIV is very grateful to them for their willingness to share their views with the committee.

The AIV adopted this report on 21 March 2013.

I The Israeli-Palestinian conflict in perspective

In order to be able to address the questions in the request for advice, the AIV felt it would be useful first to outline the general context in which they must be considered. This first chapter therefore briefly takes stock of the main efforts made in the past to bring about a peace process between Israel and the Palestinians. We shall then examine the legal framework in which the Israeli-Palestinian issue must be placed. The background information in this chapter will be referred to when necessary in the subsequent chapters, which look at the questions themselves.

I.1 The peace process

The term 'Middle East Peace Process' is generally used to refer to attempts made between 1991 and 2000 to arrive at a peace accord between Israel and the Palestinians (or the Arab world).⁶ Since various initiatives were undertaken prior to 1991, and also after 2000, this review will cover a slightly longer period.⁷

In the years following the Six-Day War of June 1967 several attempts were made to facilitate a rapprochement between Israel and the Palestinians. Swedish diplomat Gunnar Jarring, United Nations Special Envoy to the Middle East, and US Secretary of State William P. Rogers, played a key role in these efforts. Egypt and Jordan responded positively to their attempts at mediation, and indicated their willingness to sign a peace agreement with Israel based on an Israeli withdrawal from the occupied territories and the implementation of Security Council resolution 242.⁸ In February 1971 Egyptian president Anwar Sadat launched his own peace initiative, based on mutual security, recognition and withdrawal. However, Israel was unwilling to respond to these initiatives, mainly because of the proposed withdrawal from the occupied territories. A senior official from the US State Department would later remark: 'Israel will be considered responsible for the rejection of the best opportunity to achieve peace since the establishment of the state.'⁹

6 See for example Gregory Harms with Todd M. Ferry, *The Palestine-Israel Conflict* (London: Pluto Press, 2012), p. 168.

7 This review draws on a number of sources, particularly: Susan M. Akram and Michael Lynk, 'Arab-Israeli Conflict', entry in the *Max Planck Encyclopedia of International Law* (Oxford: Oxford University Press, 2008); Avi Shlaim, *Israel and Palestine, Reappraisals, Revisions, Refutations* (London: Verso, 2010); and Gregory Harms with Todd M. Ferry, *The Palestine-Israel Conflict* (London: Pluto Press, 2012).

8 UN Doc. S/RES/242, 22 November 1967, adopted unanimously. A minor difference between the English and French versions of this resolution gave rise to a range of interpretations. While the English version refers to 'Withdrawal of Israeli armed forces from territories occupied in the recent conflict', the French version added a definite article: 'Retrait des forces armées israéliennes des territoires occupés lors du récent conflit' (Withdrawal of Israeli armed forces from *the* territories occupied in the recent conflict).

9 These are the words of Assistant Secretary of State Joseph Sico. See Gregory Harms with Todd M. Ferry, *The Palestine-Israel Conflict* (London: Pluto Press, 2012), p. 123. However, the authors also note that the diplomatic efforts of Jarring et al were confounded by the Nixon administration, particularly National Security Advisor Henry Kissinger.

In the aftermath of the Yom Kippur War of October 1973, the then US Secretary of State Henry Kissinger was for some time actively engaged in shuttle diplomacy between Israel on the one hand and Egypt, Syria, Saudi Arabia and Jordan on the other. This led to the Sinai I and Sinai II agreements (of October 1974 and January 1975 respectively), which arranged for a limited Israeli withdrawal from Sinai and the Golan Heights in exchange for an undertaking from the Arab nations that they would refrain from violence. This was not, however, a comprehensive peace plan.

US president Jimmy Carter abandoned Kissinger's step-by-step approach in favour of multilateral talks involving the US, the Soviet Union, Israel, Jordan and Egypt. A US-Soviet communiqué of 1 October 1977, intended as the basis for an international conference, called for a solution that respected the 'legitimate rights of the Palestinian people' and for Israel's withdrawal from the territories occupied since 1967, in line with Security Council resolution 242. Though not keen, Egyptian president Anwar Sadat and other Arab states did agree to the proposal. Israel rejected it.

Anwar Sadat's visit to Jerusalem in late 1977 and Israeli prime minister Menachem Begin's reciprocal visit to Egypt improved relations, however. In July 1978 President Carter invited Sadat and Begin to Camp David. The Camp David talks that took place from 5 to 17 September 1978 eventually resulted in two agreements: a peace treaty between Egypt and Israel and a general undertaking to agree on the 'final status' of the West Bank and Gaza within five years (there was no mention of the PLO or the status of Jerusalem and the Golan Heights). The Camp David Accords were signed at a ceremony at the White House on 26 March 1979.

In the years that followed the Palestine Liberation Organization (PLO) played an increasingly prominent role.¹⁰ The situation in the region deteriorated. From 1975 to 1990 Lebanon was embroiled in a civil war; Israel invaded Lebanon in 1982. The first Palestinian uprising, or Intifada, took place from 1987 to 1991, in response to the occupation and owing to a sense of political isolation among the Palestinians. Israel struck back hard, launching Operation Iron Fist. Some 1,100 Palestinians and 144 Israelis were killed during the Intifada.¹¹

1991 saw the start of a series of initiatives to achieve a sustainable peace in the Middle East. At the 'Madrid Peace Conference' convened by US president George H.W. Bush, Egypt, Israel, Lebanon, Syria and a Jordanian-Palestinian delegation met at the Royal Palace in Madrid on 30 October 1991. The meeting was chaired by Mikhail Gorbachev, President of the Soviet Union, together with a team assembled by President

¹⁰ The Palestine Liberation Organization was established in 1964 to represent the interests of the Palestinian people, a large proportion of whom lived outside their Palestinian homeland. In 1974 the PLO was granted observer status at the UN, a status it has retained ever since. In the 1970s and 80s several countries (Israel, the US) labelled the PLO a terrorist organisation. In agreeing to the Oslo Accords in 1993 Israel recognised the PLO as the legitimate representative of the Palestinians. Several Palestinian movements are affiliated to the PLO, including Fatah, the largest group. Hamas is not part of the organisation.

¹¹ Benny Morris, *Righteous Victims, A History of the Zionist-Arab Conflict 1881-2001* (New York: Vintage Books, 2001), pp. 595-596.

Bush and Secretary of State James Baker. Security Council resolutions 242 and 338¹² and the concept of 'land for peace' formed the basis of the talks. One problem was that Israel referred only to 'autonomy' for the Palestinians, while the Palestinians wanted their own state. The PLO did not take part in the negotiations; the Palestinians were represented by a small group of intellectuals from the occupied territories, including Haidar Abdul-Shafi, a doctor from Gaza; Hanan Ashrawi, a professor of English literature from Ramallah; and Faisal al Hussein, a political activist and leader of the Intifada.

The talks continued at multilateral and bilateral level throughout 1992 and the first half of 1993, but ultimately achieved little. However, as Gregory Harms has remarked: 'The symbolic significance of the Madrid Conference far outweighed its accomplishments, which were thin indeed. However, a precedent had been set by these countries gathering face-to-face; it was also the first time Israel and the Palestinians met in open dialogue.'¹³ According to historian Avi Shlaim, the Zionists and Israeli politicians had long been able to influence international and public opinion to their advantage, but now the Palestinians were gradually gaining more support for their cause, and 'Madrid' was a decisive factor.¹⁴

From January 1993, in parallel with the 'Madrid process', Israel and the PLO held secret talks hosted by the Norwegian government. Eight months later, this resulted in the Oslo Accords. The US administration knew about the talks, but not what was discussed. The agreement was announced in the summer of 1993, and the signing ceremony, hosted by US president William J. Clinton, took place at the White House on 13 September 1993. It included the historic handshake before the eyes of the world between Israeli prime minister Yitzhak Rabin and PLO chairman Yasser Arafat.

The Oslo Accords were not a comprehensive peace treaty or final settlement. The 'Declaration of Principles on Interim Self-Government Arrangements' (DOP) provided for the establishment of a Palestinian Interim Self-Government Authority in parts of the occupied territories. Israel recognised the PLO as the legitimate representative of the Palestinians. The PLO in turn recognised the State of Israel and renounced the use of violence. Israel also agreed to a withdrawal of troops from the West Bank and Gaza. No decisions were taken on the most delicate issues in a final settlement, including the status of Jerusalem, the settlements, borders, water, security and refugees. These points would have to be agreed at a later stage, according to a fixed schedule. Nevertheless, 'Oslo' was generally regarded as highly significant. 'Oslo marked a momentous occasion where Israel and the PLO had managed not only to engage one another directly, but also produce a framework that both agreed upon; and all this

12 UN Doc. S/RES/338, 22 October 1973, adopted by a majority of 14, China abstained.

13 Gregory Harms with Todd M. Ferry, *The Palestine-Israel Conflict* (London: Pluto Press, 2012), p. 152.

14 Shlaim believes other factors that played a role in this process were Likud-led Israel's intransigence in the late 1980s over the principle of a two-state solution and the PLO's peace offensive of 1988, when the Palestinian National Council formally recognised the state of Israel, renounced terrorism, accepted the two-state solution and ratified all the relevant UN resolutions. See: Avi Shlaim, *Israel and Palestine, Reappraisals, Revisions, Refutations* (London: Verso, 2010), pp. 152-167, Chapter Fourteen, 'Changing Places: The Madrid Peace Conference.'

accomplished without external influence or guidance.’¹⁵

Israel and Jordan signed a peace agreement on 26 October 1994, and in September 1995 the Interim Agreement provided for in the DOP – also known as ‘Oslo II’ – was signed in Taba, Egypt. At the core of this agreement lay the division of the occupied Palestinian territories into three security areas during the interim period. ‘Area A’, the densely populated Palestinian towns, would be under the complete political and security control of the Palestinian Authority; ‘Area B’, smaller Palestinian communities and rural areas, would be administered by Palestinian civil authorities and Israeli security authorities; and ‘Area C’, comprising the Israeli settlements, a number of Palestinian communities and territories abutting the pre-1967 borders, would be under the full control of Israel.

In November 1995, two months after Oslo II was signed, Prime Minister Yitzhak Rabin, the leading proponent of the Oslo process in Israel, was assassinated by a Jewish right-wing extremist. In May 1996 Binyamin Netanyahu’s Likud party came to power and in 1997 the Israeli government decided to halt the transfer of territories to the Palestinians as stipulated in the Oslo agreements. This effectively brought the talks on the ‘final status’ issues to a halt.

After Ehud Barak’s government came to power in Israel in spring 1999 the stalled peace process was given a new lease of life. In July 2000 President Clinton invited Prime Minister Barak and PLO chairman Yasser Arafat to a summit at Camp David in an attempt to negotiate a final and lasting peace agreement. Clinton’s attempt ultimately failed, after two weeks of talks, mainly because of differences over the final borders, the status of Jerusalem and the issue of Palestinian refugees. A Trilateral Statement was however issued (‘Camp David II’), in which the parties endorsed a number of basic principles, including support for a key role for Security Council resolutions 242 and 338.

In December 2000, in a final attempt to bring about a peace agreement, President Clinton again invited the parties to talks based on the ‘Clinton Parameters’. These entailed a large part of Gaza and the West Bank being handed back to the Palestinians; Israel keeping its most important settlements, for which the Palestinians would receive partial compensation; the new Palestinian state being demilitarised; Jerusalem being divided along demographic lines and placed under some kind of joint sovereignty; and some of the Palestinian refugees settling in the new Palestinian state. The two parties eventually accepted all the parameters, albeit with reservations, and they formed the basis for follow-up talks in Taba in January 2001. Further progress was made at these talks, but again no agreement was reached, once more because of a lack of consensus on the final borders, Jerusalem and the Palestinian refugees.

The second Intifada broke out in September 2000, and the years that followed saw levels of violence increase, with Palestinian suicide attacks (mainly carried out by Hamas fighters), Israeli repression (including Operation Defensive Shield) and the re-occupation of the entire West Bank. In response to the escalation in violence, on 12 March 2002 the UN Security Council adopted resolution 1397, containing the first formal endorsement of a two-state solution to the problem.¹⁶

¹⁵ Gregory Harms with Todd M. Ferry, *The Palestine-Israel Conflict* (London: Pluto Press, 2012), p. 153.

¹⁶ UN Doc. S/RES/1397, 12 March 2002.

A few weeks later Saudi Arabia presented a peace proposal for the Israeli-Palestinian and Arab-Israeli conflict at a meeting of the Arab League in Beirut. The plan, which became known as the 'Arab Peace Initiative', was adopted by the Arab League on 28 March 2002. It comprised the following elements: a full Israeli withdrawal from the territories occupied since June 1967; the establishment of an independent Palestinian state in Gaza and the West Bank, with East Jerusalem as its capital; a just solution to the Palestinian refugee issue, based on General Assembly resolution 194 of 1948;¹⁷ an end to the Arab-Israeli conflict; and peace and normalisation of relations between Israel and the Arab world. Though Israel and the US showed some interest in the plan (albeit with reservations) there was little in the way of an active response.

April 2002 saw the formation of the Quartet – an ad hoc group comprising the UN, the US, the EU and Russia – with the goal of achieving lasting peace in the Middle East. The Quartet welcomed the Arab Peace Initiative, condemned terrorism and called for an end to the building of settlements and the Israeli occupation. In June 2002 US president George W. Bush called for a 'vision of two States, a secure State of Israel and a viable, peaceful, democratic Palestine',¹⁸ and launched the idea of a 'Roadmap for Peace', which was endorsed by both the Quartet and the Security Council. The Roadmap combined elements from Security Council resolutions 242, 338 and 1397 with elements of previous peace plans ('Madrid', land for peace and the Arab Peace Initiative) in a step-by-step agenda. Ultimately, however, it was barely implemented, if at all.

In June 2002 Israel, under the leadership of Prime Minister Ariel Sharon, began building a separation barrier in the northern West Bank (see next section for more on the barrier). Two years later, in 2004, Israel decided to withdraw unilaterally from the Gaza Strip and four settlements in the West Bank. The plan was put into practice in August 2005, when 17 Israeli settlements were dismantled and 8,000 settlers were evacuated to Israel and the West Bank.¹⁹

The period after 2005 was marked by new episodes of violence. The war in Lebanon in 2006 claimed over 1,000 Lebanese lives, mainly civilians, and created over a million refugees; the Israelis lost 114 military personnel and 43 civilians, and over 250,000 people were evacuated.²⁰ The growing tensions in Gaza, accompanied by an increase in rocket fire into Israeli territory, prompted Israel to launch a military operation in Gaza. Known as Operation Cast Lead, it lasted from December 2008 to January 2009. Some 1,300 Palestinians were killed – it is assumed that most were civilians – while the Israelis lost 13, all of them soldiers.²¹

17 UN Doc. A/RES/194 (III), 11 December 1948.

18 Speech by President George W. Bush on peace in the Middle East, 24 June 2002, as quoted by Susan M. Akram and Michael Lynk, 'Arab-Israeli Conflict', entry in the *Max Planck Encyclopedia of International Law* (Oxford: Oxford University Press, 2008), par. 55.

19 Susan M. Akram and Michael Lynk, 'Arab-Israeli Conflict', entry in the *Max Planck Encyclopedia of International Law* (Oxford: Oxford University Press, 2008), par. 61.

20 Ibid., par. 63.

21 Ibid., par. 66.

In 2006 Palestinian elections were held for the second time; they were won by the Islamist Hamas movement. This eventually led to a split in the Palestinian leadership, with Hamas controlling the Gaza Strip and President Mahmoud Abbas' Fatah movement controlling the West Bank. The West refused to recognise the Hamas administration because of its refusal to renounce violence and acknowledge the existence of Israel.

Despite the growing tensions and violence between the two sides, in 2007 several attempts were made to restart the peace process. The Arab League again put forward its 2002 Arab Peace Initiative, and again received little response. President Bush organised an international conference in Annapolis on 27 November 2007, at which 40 countries and international organisations were represented. The goal was '(...) to immediately launch good-faith, bilateral negotiations in order to conclude a peace treaty resolving all outstanding issues, including all core issues, without exception, as specified in previous agreements.'²² The conference achieved little, however. The talks that grew out of 'Annapolis' were short-lived. The divisions among the Palestinians and the West's boycott of Hamas (criticised in the US by former president Jimmy Carter and others)²³ were additional complications for the peace talks.

US president Barack Obama undertook a number of efforts to breathe new life into the talks during his first term (in September 2010 he invited Prime Minister Netanyahu and President Abbas and others to Washington for a series of talks), but they had little effect (see also chapters II and IV). Israel's settlement policy was a major obstacle. In April 2010, the *Financial Times* wrote in an editorial about the role of the US: 'Breakthroughs in the Middle East happen when the US feels its national interest is in play, rather than when it pretends to be a dispassionate arbiter. When deadlock comes, as it inevitably will, Mr Obama must be ready to place a US plan before the Security Council. That should be based on the (Bill) Clinton Parameters of 2000, and the Arab peace plan of 2002.'²⁴

To conclude, the past 40 years have seen a range of initiatives designed to resolve the conflict between Israel and the Palestinians. There are generally more similarities than differences between these plans, agreements and proposals.²⁵ In 2002 then UN Secretary-General Kofi Annan remarked in reference to a peace agreement in the Middle East: 'There is no conflict in the world today whose solution is so clear, so widely agreed

22 'Text of Bush's remarks at Annapolis conference,' *New York Times*, 27 November 2007.

23 In a piece for the comment page of the *New York Times* Carter wrote: 'A counterproductive Washington policy in recent years has been to boycott and punish political factions or governments that refuse to accept United States mandates. This policy makes difficult the possibility that such leaders might moderate their policies.' Jimmy Carter, 'Pariah Diplomacy,' *New York Times*, 28 April 2008.

24 'Once more into the Mideast breach,' *Financial Times*, editorial, 30 April 2010.

25 On this point, Gregory Harms has noted: '(...) with there now existing an assortment of possible templates – Clinton Plan, Geneva Accord, Road Map, Saudi Proposal – all bearing more in common than they do in distinction, what is required is (...) to authentically pursue diplomacy.' Gregory Harms with Todd M. Ferry, *The Palestine-Israel Conflict* (London: Pluto Press, 2012), p. 197.

upon, and so necessary to world peace as the Israeli-Palestinian conflict.²⁶ Ten years later, these words are just as relevant as they were in 2002.

1.2 The legal framework

Given the importance of the international legal framework to the conflict, and since the request for advice specifically asks what the Netherlands can do on the basis of the principles of international law, the AIV considers it useful to present a brief summary of the legal situation. It bases its summary on the International Court of Justice's 2004 Advisory Opinion on the Israeli barrier, or 'wall', which addresses the legal situation in broad terms and includes direct or indirect legal opinions on several issues that are currently the subject of controversy, such as the status of Jerusalem (particularly East Jerusalem), the Palestinians' right to self-determination, the settlements, the borders and the shortage of water.²⁷ The Advisory Opinion was requested by the United Nations General Assembly after a decision taken by vote, with 90 votes in favour, eight against and 74 abstentions, including the Netherlands.²⁸

In its Advisory Opinion the Court concluded, by 14 votes to one, that the construction of the Israeli wall violates international law, and that Israel should provide full compensation.²⁹ The violations of international law concern, among other things, the Palestinian people's right to self-determination (and Israel's duty to respect that right), the freedom of movement of all inhabitants of the occupied territories, the right to work, the right to health care and the right to education. The Court also stated that the wall and the settlements were helping to change the demographic composition of the occupied territories, in violation of the Fourth Geneva Convention (relative to the Protection of Civilian Persons in Time of War) and relevant UN Security Council

26 UN Press Release SG/SM/8177, 'Leading their Peoples Back from Brink is "Duty" of Israeli, Palestinian Leaders, Secretary-General Tells Arab League Summit', 27 March 2002.

27 *Advisory Opinion*, 9 July 2004, see: <<http://www.icj-cij.org/docket/files/131/1671.pdf>>, passim.

28 UN Doc. A/RES/ES-10/14, 12 December 2003, culminating in the question: 'What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?' See also: <<http://www.un.org/News/Press/docs/2003/ga10216.doc.htm>>.

29 The vote against was from US judge Thomas Buergenthal. In his 'dissenting opinion', he concluded that the Court should not have accepted the request for an opinion. In his view, though there may well be violations of international law, in order to ascertain this the Court would need to consider more information, from the Israelis in particular. However, the problem according to Buergenthal was that, given the nature of the procedure (an advisory opinion request rather than a dispute between two states), Israel was not obliged to provide that information. Source: <<http://www.icj-cij.org/docket/files/131/1687.pdf>>, par. 10. The Dutch judge Peter Kooijmans, who voted in favour, set out a 'separate opinion', expressing the fact that he had wrestled with the question as to whether the Court should give an opinion, given the risk of politicising the Court and in view of the fact that three members of the Quartet had had little or no desire to request an opinion. In Kooijmans' view, the UN General Assembly should have acknowledged the risk of politicisation when it requested the opinion. Source: <<http://www.icj-cij.org/docket/files/131/1687.pdf>>, par. 20 and 21.

resolutions. The Court also stated that it was 'not convinced that the specific course Israel has chosen for the wall was necessary to attain its security objectives'. The Court further concluded that Israel could not rely for justification on its right to self-defence as defined in international law. For this reason, too, the construction of the wall must be regarded as illegal, the Court held.

Again with 14 votes to one, the Court ruled that the UN, particularly the General Assembly and the Security Council, should explore what further action was needed to bring this illegal situation to an end. It also found that *all States* were 'under an obligation not to recognise the illegal situation (and) not to render assistance in maintaining the situation', and noted that they 'should see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end'.³⁰ After the publication of the Advisory Opinion the General Assembly called for it to be implemented in full, with 150 votes in favour (including the Netherlands), six against and 10 abstentions.³¹

Quite apart from 'the wall', there can be no doubting the fact that the Fourth Geneva Convention is applicable in the Palestinian territories, as the Advisory Committee on Issues of Public International Law (CAVV) found in its advisory report of 2002: 'In summary, the CAVV is of the opinion that the Fourth Geneva Convention has been fully applicable in the Palestinian territories occupied by Israel during all the periods in question (from 1967 to the entry into force of the Oslo Accords, subsequently to the outbreak of the second Intifada and, finally, from the outbreak of the second Intifada to the present day)'.³² The AIV would add that a recent report by the UN's International Fact-Finding Mission on Israeli Settlements to the UN Human Rights Council inferred the following compelling requirement from the Convention's applicability: 'Israel must, in compliance with article 49 of the Fourth Geneva Convention, cease all settlement activities without preconditions. In addition it must immediately initiate a process of withdrawal of all settlers from the Occupied Palestinian Territory.'³³

As indicated above, the ICJ's Advisory Opinion subjected a series of current, controversial issues to legal scrutiny. One of the major outstanding issues that it did *not* consider was the return of refugees. According to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), there are currently around five million registered refugees, including descendants, approximately a third of whom live in one of the 58 recognised refugee camps in Jordan, Lebanon, Syria, the Gaza Strip and the West Bank.³⁴

30 *Ibid.*, par. 146.

31 UN Doc. A/RES/ES-10/15, 2 August 2004. See also: <http://www.un.org/News/Press/docs/2004/ga10248.doc.htm>.

32 CAVV advisory report no. 12, *Advisory report on the applicability of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War in the occupied Palestinian territories*, 8 February 2002, p. 9.

33 See: UN Doc. A/HRC/22/63, 7 February 2013, p. 22.

34 See: <<http://www.unrwa.org/userfiles/20120317152850.pdf>>.

Their right of return is enshrined in a UN General Assembly resolution of December 1948, which states that: 'the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.'³⁵ This right was reaffirmed on many subsequent occasions, including after the Six-Day war in 1967, in Security Council resolution 242,³⁶ and during the Yom Kippur War of 1973, in Security Council resolution 338.³⁷ Both resolutions primarily addressed other issues, such as the withdrawal of Israeli forces from the occupied territories, and they are generally regarded as a comprehensive package of demands. It is currently unclear how many Palestinian refugees actually wish to return, or claim some form of compensation.³⁸ It is known that many still have their front door keys and, in some cases, the deeds to their former homes, but at the same time many others have since built lives for themselves elsewhere. Nevertheless, the *right* of return and the possibility of claiming some form of compensation as a result of that right are, in the opinion of the AIV, indisputable and require action. This applies with some urgency to the humanitarian situation still facing many refugees.

The AIV would add that the Court's Advisory Opinion and the resolutions on the right of return and other issues are part of a long series of decisions, particularly by the UN General Assembly and the UN Security Council, that make it clear that the Palestinians' case is largely supported by international law. There have been many resolutions to this effect, either couched in general terms or devoted to specific issues; the main ones – around 20 in number – were recently cited in a General Assembly resolution on the status of Palestine (about which a number of observations will be made below).³⁹

In anticipation of the final conclusions of this advisory report, the AIV believes that the moribund peace process in the Middle East cannot be resumed simply by referring to the principles of international law and resolutions passed by the General Assembly or the Security Council, or rulings by the International Court of Justice. As in the past, political factors will be of overriding importance. This does not however alter the AIV's position that the opinions handed down on this matter under international law can and must be accorded a great deal of weight. Furthermore, the Netherlands, with its tradition of working with other countries to uphold international law, has a duty to take that law extremely seriously and to apply it without double standards and without regard for expediency. The Netherlands should indeed be prepared to play the international law card consistently with nations with whom it enjoys friendly relations, like Israel and

35 UN Doc. A/RES/194 (III), 11 December 1948, par. 11.

36 UN Doc. S/RES/242, 22 November 1967, adopted unanimously.

37 UN Doc. S/RES/338, 22 October 1973, adopted by a majority of 14; China did not participate in the vote.

38 The AIV would note that there are two flows of refugees (from 1948 and 1967) and that, at the express request of the PLO, Arab countries (with the exception of Jordan) have not granted citizenship to the Palestinian refugees on their territory in order not to thus deny them the right of return.

39 UN Doc. A/67, L. 28, 26 November 2012.

Palestine, drawing as much as possible on specific knowledge of legal matters.

A recent addition to these 'legal matters' was the decision by the UN General Assembly to recognise Palestine as a 'non-member observer State'.⁴⁰ The precise implications of this decision are open to dispute, but there is no doubting the General Assembly's intentions. The resolution was clearly drafted in order to raise the status of Palestine, and it was adopted by a large majority, including 14 of the 27 EU member states (see also chapter III). Palestine's new status opens up the possibility that it will accede to UN conventions and possibly also other conventions. These could include the human rights conventions and UNCLOS.⁴¹

To recapitulate, the AIV wholeheartedly supports the position that international law must be observed and invoked where applicable. This applies both to Israel and to the Palestinians, in the most precise terms possible. The EU's Association Agreements with Israel⁴² and, at the time, the PLO⁴³ provide opportunities in this respect. Article 2 of these agreements is particularly relevant: '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.'

The Israeli settlements are illegal under international law, which means that products that come from there may not be labelled 'Made in Israel'. *Ex injuria jus non oritur*.⁴⁴ Chapter V explores what the EU and the Netherlands should do about this issue.

It may be concluded that there can be little difference of opinion over the main legal issues associated with the conflict. Israel has a duty to respect the Palestinian people's right to self-determination. The establishment of Israeli settlements on the West Bank of the River Jordan and the restriction of the Palestinians' freedom of movement in the occupied territories as a whole constitute violations of the Fourth Geneva Convention. The same applies to the construction of the barrier, in so far as it stands on Palestinian territory. Finally, both Israel and the Palestinians have a duty, in their efforts to achieve their political goals, to refrain from using any form of violence except in legitimate self-defence.

40 Ibid., par. 2.

41 United Nations Convention on the Law of the Sea.

42 L. 147/3, 21 June 2000; agreement concluded in 1995 and in force since June 2000.

See: <http://eeas.europa.eu/delegations/israel/documents/eu_israel/asso_agree_en.pdf>.

43 L. 187, 16 July 1997. See: <[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21997A0716\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21997A0716(01):EN:HTML)>.

44 'Law does not arise from injustice'.

II Changes in the regional and global context

The first question in the request for advice is: *To what extent do the changes in the regional and global political context affect the negotiating positions of the parties directly involved and the attitudes of any interested third parties?*

In addressing this question, the AIV wishes to distinguish between regional and global developments, starting with the former.

II.1 The regional context

A great deal has changed in the Middle East since the emergence of the reform movements in early 2011.⁴⁵ Several Arab countries, including Egypt, Libya, Tunisia, Yemen and Syria, have undergone radical change. These developments continue, and the changes of regime cannot be said to have led to calm and stability.⁴⁶ Though various other Arab countries have not experienced radical change, they have nevertheless come under pressure to introduce reforms. The people in the countries in question have been inspired in part by developments elsewhere in the region, which have encouraged them to demand change.

The same applies to the Arab territories occupied by Israel since 1967: the Palestinians, too, want to live in freedom and dignity. The Palestinian people rose up against the Israeli occupation long ago, including in the form of the Intifadas (see also chapter I). In the AIV's estimation, recent developments in neighbouring Arab countries have given the Palestinians extra encouragement to continue their search for a satisfactory solution unabated, despite the fact that discussions and negotiations have given them little cause for hope over the past few decades. Even without the radical changes elsewhere, however, the Palestinians would have continued their fight against the Israeli occupation and for an independent Palestinian state. After all, the alternative is a continuation of the occupation, which has already lasted over 45 years.

The coming to power of the Muslim Brotherhood in Egypt has, in the view of the AIV, given other Muslim Brotherhood movements and related groups (such as Hamas in Gaza) an extra boost in their struggle for power in their own countries. Although there has been little close cooperation between Muslim Brotherhood movements in different countries to date – each movement has tended to act independently – the Brotherhood's victory in Egypt (where, as in many other Arab countries, it used to be banned) has given

45 Many books and articles have now been published on this subject. See, *inter alia*, Jean-Pierre Fillu, *The Arab Revolution: Ten Lessons From the Democratic Uprising* (London: Hurst & Co, 2011) and Marc Lynch, *The Arab Uprising. The Unfinished Revolutions of the New Middle East* (New York: Public Affairs Books, 2012). Cf. also Nikolaos van Dam, 'De bloedige "Arabische Lente"' (The Bloody Arab Spring), *Internationale Spectator*, December 2011, pp. 629-630. The AIV has published the following reports on this subject: Advisory Report no. 75, 'Reforms in the Arab Region: Prospects for Democracy and the Rule of Law?' (The Hague, May 2011); and Advisory Report no. 79, 'The Arab Region: An Uncertain Future' (The Hague, May 2012).

46 For this reason the AIV regards it as somewhat inappropriate to use the popular metaphor 'Arab Spring' in this report.

the other movements renewed confidence and vigour, particularly in Syria and Jordan.

Iran's development of nuclear energy, and the possibility that it will enrich uranium for use in nuclear weapons, continues to cause tension in the region and further afield, particularly given the involvement of several Western actors, including the US and the EU. The potential threat emanating from the Iranian nuclear programme is a top priority in Israel's regional policy. It is possible that Israel will eventually decide to take unilateral military action against Iranian nuclear installations, even though the Israeli army leadership and the intelligence and security services have thus far rejected the idea – publicly, in fact. They undoubtedly agree that such action, quite apart from its destabilising effect on regional – and possibly global – relations, would only delay Iran's nuclear programme, without bringing an eventual comprehensive and lasting solution any nearer.⁴⁷

There is in principle no direct link between the Israeli-Palestinian conflict and the tensions with Iran, other than the fact that Iran supports several parties involved in the Arab-Israeli conflict, including Syria, Hezbollah (in Lebanon) and Hamas (in Gaza). This clearly makes Iran an indirect player in the Arab-Israeli conflict.

Elsewhere, including in Iraq and Bahrain (the home base of the US Fifth Fleet), developments have further destabilised the region. The weakening of the regime in Baghdad after the fall of Saddam Hussein in 2003 allowed Iran to strengthen its position not only in the region as a whole, but also in Iraq itself, principally through the Shiite community. In Bahrain, where a majority of the population are Shiite, opposition to the Sunni government has grown. Iran's actions in the region have also caused tension with most other Arab Gulf States. It should also be noted that 70% of the oil produced in Saudi Arabia – the region's leading oil-producing state – comes from an area inhabited by Shiites, who account for only 5% of the total population.

The bloody conflict in Syria has clearly divided the Security Council. Unlike the other members, Russia and China are not bent on the fall of President Bashar al-Assad's Ba'ath regime, preferring to keep open the option of negotiating a political solution with the regime. The differences between the US, Russia and China over this matter, each with their own strategic regional interests, somewhat resemble a renewed Cold War.

The AIV believes that the fall of the Ba'ath regime in Syria would not necessarily be beneficial for Israel. It would all depend, of course, on the regime that took over. No Syrian regime can be expected to take a positive or neutral stance on Israel. Both a new dictatorship and a more democratic regime would be likely to be highly critical of Israel. In either case, though, the Syrians are unlikely to want any renewed military conflict, as they will be keen to focus on their many problems at home. Over the past few decades it has been quiet on the Syrian-Israeli front line in the Golan Heights. Although Syria and Israel are technically at war, Damascus has adopted a pragmatic approach of not using violence on the Syrian-Israeli ceasefire line. It is likely to continue this policy.

The AIV would also point out that Turkey's position on Israel and the Arab-Israeli conflict has changed dramatically since the violent interception of the Gaza flotilla in 2010. In the intervening period Turkey, which had been a firm ally, has become highly critical

47 See on this subject AIV advisory letter no. 20, 'Iran's Nuclear Programme: Towards De-escalation of a Nuclear Crisis' (The Hague, April 2012), pp. 18-19.

of Israel. Nevertheless, following Prime Minister Netanyahu's expression of regret, on 22 March 2013, at the deaths caused by the Israeli intervention, relations can now be expected to improve.⁴⁸ This development must be regarded as positive, given the unrest in the region and the destabilising effect of the situation in Syria, for both Israel and Turkey. The latter has turned from a firm ally of the Ba'ath regime in Syria into an opponent that is supporting, and to some extent sheltering, the opposition.

The more critical attitude towards Israel adopted by the Arab countries that have experienced political revolution, like Egypt, does not necessarily, in the view of the AIV, mean that there has been any substantive change in the Arab/Palestinian-Israeli conflict in the eyes of the Arab world. It does however mean that the Arab parties in question will be less inclined than before to put aside their ideas about justice for the sake of peace.

In the past, anti-Israeli positions among Arabs were often ascribed to Arab propaganda and the abuse of the Palestinian issue for internal political ends in Arab countries (including the justification of continued dictatorship and military rule). However, the AIV believes these Arab positions in fact arose from a sense of injustice. They were also a response to widespread public indignation at the expulsion of the Palestinians from their original lands (in 1948 and 1949) and, subsequently, at Israeli actions in the territories occupied since 1967, the annexation of parts of those territories (East Jerusalem and the Golan Heights), the building of Israeli settlements and Israel's repressive occupation policies, as well as the construction of the 'wall', some of which stands behind the Green Line. Arab nationalism and the Israeli occupation of what was regarded as Arab territory also played an important role.

In the democratic West, it has generally been assumed that democracy in the Arab world would make reaching a settlement easier. However, the AIV believes a settlement will be even harder now that Arabs in countries with more democratic regimes are less inclined to set aside the principle of justice in favour of broader strategic considerations and interests. Under President Mubarak Egypt was prepared to search for constructive solutions to bring about peace between the Arabs and Israelis, in a broader context and in the interests of regional stability. Ultimately, Egypt too was able to achieve little in terms of resolving the conflict, but on several occasions it did prevent worse scenarios thanks to its constructive attitude under Mubarak. The new Egyptian government of President Mursi, dominated by the Muslim Brotherhood, has yet to fully define its position on the matter. During the violent confrontation between Israel and Hamas in Gaza in November 2012, however, it emerged that the new Egypt led by the Muslim Brotherhood could potentially play the role of mediator in the region.

The AIV believes the recent developments in the region – and many more interrelated events could be cited – have had no real impact on the Israeli-Palestinian conflict itself in terms of essentially influencing the potential for a solution, whether positively or

48 According to *The New York Times* Prime Minister Netanyahu's office issued a statement saying: 'The prime minister made it clear that the tragic results regarding the *Mavi Marmara* were unintentional and that Israel expresses regret over injuries and loss of life.' The paper says that this gesture, made during a visit to Israel by President Obama, came about at the insistence of the US, and created a win-win situation for all parties: 'Mr. Obama achieved reconciliation between two of the United States' most important allies, while Turkey and Israel won good will within the White House, important for two nations that have made ties to the United States central to their foreign policy.' Jodi Rudoren and Mark Landler, 'With Obama as Broker, Israelis and Turkey end Dispute', *New York Times*, 22 March 2013.

negatively. They do, however, make the need to resolve this conflict at least as urgent, if not more so, given the instability in the region. It is also possible that the Palestinians will continue their struggle with renewed conviction if they know they enjoy the unflagging moral support of the people of a number of countries in the region in their struggle for independence and self-determination. This new resolve might reduce their willingness to compromise if new peace initiatives that take sufficient account of Palestinian aspirations are not launched soon.

We end this section by concluding that the urgency of finding a solution to the Israeli-Palestinian conflict is as great as ever, but that developments in the region have given it a new dimension. At the same time, it should be noted that many countries in the region are still in a state of political turmoil as a result of clashes between supporters of old and new regimes, tensions between moderate and radical reformers and conflict between the different branches of Islam. This is also affecting relations between Arab countries. As a consequence, political debate in these countries is focused above all on how to achieve stability, with due regard for the wishes of the majority of the population. Despite the fact that internal political issues thus claim a large proportion of politicians' attention, no Arab government can afford to allow the flame of solidarity with the Palestinians to go out. On the contrary: the increased influence of Islamist parties, particularly in Egypt, will probably be reflected in more outspoken support for the Palestinian cause in the future.

II.2 The global context

In the AIV's view, the recent regime changes in a number of Arab countries has weakened the position of the US in the Middle East. Some traditional allies, or regimes on which the US could traditionally rely for strategic support in its Middle East policy (including Mubarak's Egypt), have now left the stage. Furthermore, its strategic cooperation with dictatorial Arab regimes that commit human rights violations in their own countries has attracted growing criticism in the West. This applies in particular to the controversial relationship with Saudi Arabia.

Unlike for Europe, which is closer to the Middle East, the geopolitical importance of the region to the US appears to be diminishing. There are signs that the strategic pivot of US foreign policy is shifting more towards East Asia while, at the same time, the US is becoming more energy self-sufficient (in oil and gas), and thus less reliant on supplies from the Middle East. Furthermore, partly as a result of the domestic political and economic situation, the US is becoming more selective when it comes to the commitment of troops and financial resources. America's reluctance to take the lead on new military action after its costly and not particularly successful military interventions in Iraq and Afghanistan became clear, for example, during the conflict in Libya ('leading from behind').

Nevertheless, this need not inhibit any new attempt at mediation by Washington. There is after all no question of military intervention in the Israeli-Palestinian conflict. Israel will however press for active US involvement in the implementation of any peace settlement, particularly in guaranteeing its security. One factor that might prompt the US administration to undertake a diplomatic initiative is its concern about the image of the US in the Muslim world. In his speech in Cairo in June 2009 President Obama raised expectations about a 'new beginning' in relations between the US and Muslims throughout the world. The President has not yet succeeded in making good this promise. A successful US attempt at mediation could substantially enhance the credibility of US intentions towards Muslim countries (see also chapter IV on the position of the US).

Over the past few years Europe, in the shape of the EU, has tried with varying degrees of success to develop from the greatest trading power and largest aid donor in the world into a fully fledged international player, a significant factor in diplomacy and security policy, too. The Treaty of Lisbon (2009) introduced a number of institutional improvements: a broadening of the mandate of the High Representative of the Union for Foreign Affairs and Security Policy (linking responsibility for political affairs with that for trade and development policy) and the establishment of the European External Action Service (EEAS). However, the EU's ability to act in relation to other regions and countries remains limited by the requirement of unanimity in decision-making and by internal divisions between member states. Furthermore, external action by the EU has also been paralysed by the crisis in the monetary union, which has monopolised the attention of Europe's political leaders. Despite these limitations, however, the EU has shown it is capable of influencing important international issues provided the larger member states can agree. The more its monetary problems are brought under control, the more the EU can be expected to show renewed ambition to help bring a resolution of the Israeli-Palestinian conflict closer.

Any wide-ranging review of shifts in global power relations must include reference to the role of the BRICS nations.⁴⁹ This group of emerging (or emerged) economies are united in their desire to enhance developing countries' influence at the international economic and financial institutions, and to reduce the influence of the US in particular. However, it is by no means certain that the BRICS nations can be regarded as an independent power player in other areas. Their mutual differences are too great.⁵⁰ At any rate, these countries have shown no sign of wishing to act as a united coalition with plans or initiatives to actively influence the Middle East Peace Process.

Nor have these countries distinguished themselves in this respect on an individual level. China appears to be primarily interested in securing its supply of oil from the Arab oil states, while India – quite apart from its limited opportunities – does not apparently feel any duty to build bridges with the countries of the Middle East, which have overwhelmingly Muslim populations. Though Russia is a member of the Quartet, its diplomatic focus is mainly on Syria, where it has long had military and economic interests. Brazil, which has no historic ties with the countries of the Middle East, has so far largely focused its efforts (along with Turkey) on arriving at an international agreement on the issue of uranium enrichment in Iran. Finally, South Africa is not (yet) positioned sufficiently firmly to profile itself as a player in the region.⁵¹

We must therefore conclude that, despite the relative decline in US power as a result of the rise of countries in the East and South, the US remains the most appropriate actor to take the initiative on a solution to the Israeli-Palestinian conflict. Europe's (the EU's) potential contribution to any such effort is explored further in chapter IV.

49 Brazil, Russia, India, China and South Africa.

50 For example, China refuses to support India's candidacy for a permanent seat on the Security Council.

51 The AIV would however note that in the past, before the abolition of apartheid, South Africa did have close relations with Israel, particularly on military matters.

III Scenarios and possibilities for rapprochement

The second question in the request for advice is: *Given possible changes in these positions, what scenarios are conceivable for the resumption of the Middle East Peace Process? What new possibilities do these scenarios offer for rapprochement and resumption of peace talks?*

As became clear in the previous chapter, the Israeli-Palestinian conflict has not, in the AIV's view, essentially been influenced by developments elsewhere in the region, but the political revolutions there might have the effect of consolidating the positions of those directly involved. Still, their fundamental political positions have remained largely the same.

The situation on the ground, however, has changed dramatically since the start of the Middle East Peace Process in the early 1990s. This has not improved the prospects of achieving a lasting resolution. Israel's settlement policies and the construction of the barrier through occupied Palestinian territory, plus the rocket attacks on Israel and the continuing threat of violence on the part of the Palestinians, have caused further polarisation and undermined the prospects of achieving a peace settlement. It should equally be noted that some of the 'achievements' of the peace process have not been judged wholly beneficial to the prospects of a lasting peace. The division of the West Bank into areas A, B and C (in accordance with the Oslo II agreements of 1995) is one example. It has been pointed out that this has in fact facilitated the consolidation of Israel's control over the occupied territories, rather than giving the Palestinians greater autonomy.⁵²

Viewed in this light, the question as to possible scenarios for the development of the Middle East Peace Process becomes somewhat ambiguous. The AIV believes that, under previous international agreements (starting with General Assembly resolution 181)⁵³ and the principles to which the parties concerned have committed themselves, the two-state solution remains the most appropriate way of ending the Israeli-Palestinian conflict. At the same time, we must recognise that over the past two decades such a solution has drifted further and further out of reach.

The AIV believes, however, that there are currently no alternative scenarios that offer the prospect of a solution that is acceptable to both parties. Continuation of the status quo – i.e. the permanent Israeli occupation of Palestinian territories and progressive expansion of the Israeli settlements, combined with the permanent threat of Palestinian violence, does not do justice to the agreements made concerning a viable Palestinian state and undermines the security and stability of Israel. In this scenario, it is likely

52 See, *inter alia*, Edward W. Said, *Peace and its Discontents: Essays on Palestine in the Middle East Peace Process* (New York: Vintage Books, 1996); and interviews with Haidar Abdul-Shafi in *Journal of Palestine Studies*, XXIII, no. 1 (Autumn 1993): 14; and XXXII, no. 1 (Autumn 2002): 28.

53 UN General Assembly resolution 181 [II] 'Future Government of Palestine' was adopted on 29 November 1947 with 33 votes in favour, 13 against and 10 abstentions. In the resolution the General Assembly endorsed the plan for the division of Palestine put forward by the Special Committee on Palestine, dividing Palestine into a Jewish and Arab state with a common economic union.

that the Palestinians would at most be able to exercise some form of local authority here and there on the West Bank, while life in the Gaza Strip would become gradually more untenable due to its isolation and declining economic prospects.⁵⁴ It takes little effort to imagine the downward spiral that this would create, causing the Palestinians to resort increasingly to violence, which would probably prompt the Israeli government to take ever harsher countermeasures. There can be little doubt that a policy of repression will increasingly be at odds with the democratic rule of law in Israel. In this connection, the AIV is concerned about attempts that right-wing nationalist parties in Israel have made in recent years to restrict the activities of Israeli human rights organisations.⁵⁵ The scenario outlined above may eventually cost both parties dear, the AIV believes, and will do nothing to create the conditions necessary for a peaceful, lasting solution to the conflict.

The creation of a binational state, in which Jews and Palestinians would live side by side on an equal footing and jointly exercise political authority, is sometimes offered as an alternative to the scenario outlined above.⁵⁶ Though this scenario may be preferable from the perspective of humanitarian idealism, in so far as the AIV can judge it would meet with insurmountable political, ideological and practical obstacles. Experience in Lebanon, Syria, Bosnia and Iraq, among other countries, has shown how difficult it is to reconcile groups that belong to different ethnic and/or religious communities, and largely derive their political identity from membership of that community, to live together peacefully in some form of state. People simply cannot be forced to build a common future together. Furthermore, and perhaps more importantly, this scenario disregards the agreements already reached concerning a two-state solution. The AIV would also recall that the EU has repeatedly stated that it will not recognise any changes to the pre-1967 borders unless they are agreed by both parties.⁵⁷

It would seem that the idea of a binational state is not currently an alternative that either party is willing to discuss. For the Palestinians, it would mean an end to their prospects of independence and self-determination. And Prime Minister Netanyahu has repeatedly stated that he does not wish to regard Israel as a binational state. The AIV would add that Israel is already a *de facto* binational state within its pre-1967 borders, with an Arab minority of just over 20% in a total population of some 7.5 million. However, Prime Minister Netanyahu's position indicates that this is not a fact he wishes to acknowledge. On the contrary, he recently expressed a wish that Israel explicitly be recognised as a Jewish state. This is a fairly new demand, which has not previously

54 See, *inter alia*, 'Gaza in 2020. A liveable place? A report by the United Nations Country Team in the occupied Palestinian territory' (August 2012).

55 See, *inter alia*, the comments in Israeli newspaper *Haaretz*, 'Persecution in place of policy', 6 January 2011, and the article by Ina Friedman, 'Democratie in gevaar' (Democracy under threat), *Trouw*, 18 December 2011.

56 See for example Anthony Loewenstein and Ahmed Moor (eds.), *After Zionism: One State for Israel and Palestine* (London: Saqi Books, 2012).

57 See the Council conclusions of the Foreign Affairs Council meetings of December 2009, December 2010, May 2011 and 14 May 2012. Par. 6 of the conclusions of 14 May 2012 states: 'The EU reiterates that it will not recognise any changes to the pre-1967 borders including with regard to Jerusalem, other than those agreed by the parties.' See: <http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/130195.pdf>.

been officially raised by the Israelis. In practice, Israel has always been widely regarded as a Jewish state; the demand for explicit recognition clearly indicates, however, that a binational state is not an acceptable prospect for Israel at the moment.

The AIV would like to make a number of remarks concerning the prospects for a two-state solution. It is now being suggested that it is the eleventh hour as far as this solution is concerned. In other words: if the peace process does not get moving soon, a two-state solution may become impossible. The AIV agrees with this view, which only increases the urgency of the problem underlined in the previous chapter. The continued building of new settlements in the West Bank and East Jerusalem, in particular, and the associated changes in the infrastructure of the occupied territories, make the prospects for a viable Palestinian state more and more problematic. Despite the fact that Israel's settlement policy contravenes international law (see chapter I and, for example, the EU Council conclusions on the matter), it has been going on, with a few interruptions, for decades.⁵⁸

The need to help revive the peace process as soon as possible has only been made more urgent by the Israeli government's recent decision to build more new settlements. On 30 November 2012, the day after the General Assembly vote on the status of Palestine, Prime Minister Netanyahu announced that work would start on plans for construction in the 'E-1 area' (bordering East Jerusalem). The Israeli government also approved the construction of 3,000 new dwellings in East Jerusalem and the West Bank. A few weeks later, on Christmas Day, the Israeli government announced that a further 1,200 dwellings would be built in the occupied territories. If these plans go ahead, the Arab residents of East Jerusalem will be entirely enclosed by Jewish residential developments, and the West Bank will effectively be split in two. The United Nations Secretary General Ban Ki-moon referred to the first of these decisions by Israel as 'an almost fatal blow to remaining chances of securing a two-state solution'.⁵⁹ The announcement of the plans does not however mean that the new settlements will be built in the near future. It generally takes quite some time for construction to actually start. There should therefore still be some scope for a new diplomatic offensive.

If the AIV regards the two-state solution as the best option for both parties, it does so in the knowledge that such a solution alone will probably not suffice, even if the parties can be persuaded to make serious efforts to achieve this goal.⁶⁰ If a peace agreement were to

58 See the Council conclusions of the Foreign Affairs Council meetings of December 2009, December 2010, May 2011 and 14 May 2012. Par. 6 of the conclusions of 14 May 2012 states: 'Settlements remain illegal under international law, irrespective of recent decisions by the government of Israel.'
See: <http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/130195.pdf>.

59 Statement by the UN Secretary-General, 2 December 2012.

60 In the past Israel has also called for the 'Jordanian option' to be used to bring an end to the conflict with the Palestinians. The reasoning was that the Palestinians actually already have their own state – Trans-Jordan – the majority of whose population is Palestinian. The West Bank would come under Jordanian control – perhaps in the form of a federation – as was the case prior to 1967. Both the Palestinians and the Jordanians have categorically rejected this option, however. The Palestinians were not keen to return to Jordanian rule (and certainly not without East Jerusalem), and the Jordanians have completely relinquished all claim to the West Bank. Although this scenario is sometimes discussed in the literature (see for example Dan Diker and Pichas Inbari, 'Re-energizing West Bank-Jordan Alliance', *The Middle East Quarterly*, spring 2006, pp. 29-36), this advisory report will not consider the Jordanian option in any further detail.

come about, it is difficult to imagine all Jewish Israelis now living in East Jerusalem (some 200,000 in total) and elsewhere on the West Bank (approximately 300,000) moving back to the original territory of Israel, i.e. the lands within the Green Line. There are however a number of options that might make this issue more manageable, including agreed land swaps. In this report the AIV will not explore what is a highly complex issue – including in terms of international law – but it would emphasise that the outcomes of any negotiations on land swaps must be fair and reasonable for both parties, and such negotiations would therefore probably have to take place under international supervision. This subject should naturally be high on the agenda at any peace talks.

A two-state solution also means that the right of return claimed by the Palestinians needs to be resolved (see chapter I). The prospects for such a settlement are not necessarily unfavourable: far fewer Palestinians are likely to exercise this right than is often assumed, and in the recent past Israel has shown a willingness to meet this Palestinian demand to some extent, particularly as regards the reunification of families that have been separated.⁶¹ The fate of the Palestinians with roots in what is currently Israeli territory also highlights the position of the Arab minority in Israel. They should enjoy the same treatment there as the Jews, and measures should be taken to stop all forms of discrimination against them.

Control of internal and external borders would also require good cooperation between the Israeli and Palestinian authorities. Given the small territorial extent of the former mandate area and the highly interwoven nature of the Palestinian and Israeli economies, the eventual creation of an Israeli-Palestinian partnership, perhaps in the form of a customs union, would be a logical step in the longer term. With such a prospect in place, a free trade area between the EU and the two states might even be a possibility. (The AIV would point out that the original plan for dividing Palestine into two states provided for the establishment of an economic union.)

The request for advice also asks where there might be new possibilities for rapprochement or for resuming the peace process. In assessing this question, the AIV would observe that the parties involved in the conflict have so far given little sign that they intend to seek a rapprochement. However, the AIV also believes it is relevant to note that by voting in favour of the UN General Assembly resolution on the UN status of Palestine in November 2012, all Arab countries reiterated their willingness in principle to recognise the State of Israel. The AIV therefore does not regard the Palestinian proposal in question and the General Assembly's decision on it as damaging to the prospects of resuming the peace process.⁶² The result of the vote has given renewed confidence to the Palestinian Authority (PA) led by Mahmoud Abbas, which relies on the support of the moderate Fatah party. Having scored this diplomatic victory in New York, the PA has been able to curb the rise in the prestige of Hamas following the recent armed confrontation with Israel in Gaza. This is a positive development, because in the past the PA has shown itself to be a willing negotiating partner in the Palestinian camp. Though the Israeli government was extremely negative in its response to the vote – as it had warned it would be – at the

61 Ehud Olmert, prime minister of Israel from 2006 to 2009, said he was willing to allow 50,000 Palestinians into Israel for the purposes of family reunification as part of a peace settlement. Source: BBC News: *Olmert: I went furthest on peace*, 24 September 2009.

62 For the Dutch government's position on this matter, see the letter from the Minister of Foreign Affairs to the House of Representatives of 15 November 2012.

same time it had to face the fact that Israel had few supporters in the UN (eight member states voted with Israel against the Palestinian proposal).⁶³

There is a chance that Israel will seek strength in isolation. On the other hand, the AIV does not rule out the possibility that, now the parliamentary elections of January 2013 are over, the Israeli people will conclude that the country cannot survive in the long term without the support of a considerable proportion of at least the Western world. Greater isolation – possibly accompanied by growing security risks – would in the opinion of the AIV certainly not be in Israel's interests.

Although the Israeli-Palestinian conflict was not one of the main issues in the run-up to the recent Israeli elections, the result shows that the more moderate groups are a significant factor. The new Israeli government does not include the ultra-orthodox parties, but does feature representatives of parties that draw their support from the liberal middle class.⁶⁴ At the same time, despite a loss of seats, the right-wing nationalist Likud party of returning prime minister Binyamin Netanyahu remains the largest party in government, and the new right-wing religious party 'The Jewish Home' (also in government) will support expansion of the settlements. There are therefore conflicting tendencies in the current Israeli government.

As regards the Palestinians, the AIV has already highlighted the fact that the political revolutions elsewhere in the region will probably give them a boost in their struggle for independence. This could make them less willing to compromise. However, the AIV believes that the division in the Palestinian camp presents a greater obstacle to a possible resumption of the talks. Some form of reconciliation between Fatah and Hamas will be needed if the Palestinians are to operate as a single party at the negotiating table.

The final point that the AIV would like to highlight in connection with possible openings for peace talks is the asymmetrical nature of the Israeli-Palestinian conflict. As the occupying power, Israel – with its military supremacy in the region – in fact holds virtually all the cards. The Palestinians have relatively few options aside from various forms of resistance (armed or otherwise) and the possibility of generating international support. Any initiatives to revive the peace process will have to take explicit account of this fact, in the opinion of the AIV. Former US Secretary of State Hillary Clinton expressed her country's position that a peace settlement would have to be agreed by the parties themselves. In principle, this is consistent with the position – supported by the Netherlands and the EU – that the parties must themselves agree to the terms. At the same time, however, the AIV believes that this does not absolve the international community of its responsibility to take an active, initiating and mediatory role in attempts to resolve the conflict. All the more so, given the fact that the international community – and the West in particular – is to a significant degree responsible for the emergence of the conflict.

63 Resolution A/RES/67/19 was adopted by the UN General Assembly on 29 November 2012, with 138 votes in favour, 41 abstentions and nine votes against (Canada, the Czech Republic, Israel, the Marshall Islands, Micronesia, Nauru, Palau, Panama, and the United States). See: <<http://www.un.org/News/Press/docs/2012/ga11317.doc.htm>>.

64 These are the new party There Is A Future, led by former TV journalist Yair Lapid, and Tzipi Livni's The Movement. Both party leaders have been given ministerial posts in the new government. It has been agreed that Livni will lead any peace talks on behalf of Israel.

Given the above, the AIV would conclude that the two-state solution is not only in the interests of both parties, but is also the only accessible path that might lead to an end to the conflict. Negotiations on this matter need to be resumed as a matter of great urgency, because implementing such a solution will become more and more difficult, and eventually impossible, the more Israel expands its settlements on the West Bank. Regardless, a two-state solution alone will not be enough. Extra terms will have to be agreed concerning land swaps (to address the settlements issue), the right of return for Palestinians who wish to go back to their former homes in Israel, economic cooperation and – not least – security.

The likelihood that those involved will themselves seek some form of rapprochement appears small in the current circumstances, not least because of the asymmetry in the conflict. It will therefore be up to third parties to actively seek opportunities to resume the peace process.

IV Actors and initiatives

The third question in the request for advice is: *Which organisations, countries or parties are in the best position to put forward new initiatives? What would such initiatives specifically entail?*

In general terms, the AIV would note that this question is related to the first, in so far as the impact of changing regional and global relations on the position of third-party stakeholders is concerned. Where necessary, therefore, reference will be made to the points presented in chapter II.

The second part of the question asks what specific initiatives might be taken. In addressing this question, the AIV will – tying in with the previous chapter – examine initiatives that might help bring about the scenario described above: a two-state solution (based on the pre-1967 borders), based on previous agreements and in line with international law. The first requirement is of course that Israel and the Palestinians must be willing to resume talks with the intention of actually concluding a peace agreement. Considered in this light, the question is also about which outside actor is best placed to persuade both parties to return to the negotiating table.

The AIV does not believe that this will require new arrangements or declarations of principle. If we consider the existing UN resolutions and declarations, the 2003 Roadmap for Peace, previous peace plans and the EU Council's conclusions and declarations, it is impossible to escape the impression that the framework for settling the conflict was created long ago. Though successive attempts to arrive at an agreement have foundered on differences about how to develop this framework into a more detailed final settlement, the general outlines of a peace settlement are clear, at least on paper. The main challenge is to ensure that such efforts do not stop at mere words, and find ways of putting the agreements reached into practice. The AIV will examine in turn the potential for the following actors to achieve this: the Quartet, the US, the countries in the Arab region and the European Union.

The Middle East Quartet, consisting of the UN, the US, the EU and Russia, was set up in April 2002 after the failure of the Oslo peace process, as violence flared up again during the second Intifada. The Quartet was welcomed as a promising diplomatic initiative that brought together the most important players in the Middle East Peace Process in an 'ingenious diplomatic experiment', in the words of Alvaro de Soto, who later became UN Special Coordinator for the Middle East Peace Process.⁶⁵ Eleven years later, however, we must observe that the Quartet has been unable to meet the initial high expectations and ambitions. The most concrete results the group has managed to achieve have been the Roadmap for Peace (drawn up in 2002-2003 and officially presented in April 2003), and the Quartet Principles, a set of conditions for supporting the Palestinian administration,

65 Alvaro de Soto, 'End of Mission Report', May 2007, p. 23, see: <<http://image.guardian.co.uk/sys-files/Guardian/documents/2007/06/12/DeSotoReprot.pdf>>. De Soto was UN Special Coordinator for the Middle East Peace Process from May 2005 to May 2006.

set out after Hamas won the election of January 2006.⁶⁶ Though the Roadmap contains a series of well-considered objectives and lines of policy, it has not proved possible to achieve them in practice. The Quartet has thus far made no tangible progress on the peace process. Nor has it been able to prevent further outbursts of violence. The Quartet did not play any significant role during the wars in Gaza in 2008-2009 and in 2012. It also remained aloof from the International Court of Justice's 2004 Advisory Opinion on the construction of the barrier (see chapter I).

While the effectiveness of the Quartet is a cause for concern to many, some believe that the Quartet has actually further frustrated efforts to find a solution to the Israeli-Palestinian conflict. A recent analysis of the Quartet's performance found that, 'Despite the widely held perception that the group's interventions have been largely positive or at worst benign, the Quartet bears substantial responsibility for the current state of affairs, including the steady erosion of the Palestinian leadership's domestic credibility and the inability to resume credible negotiations.'⁶⁷ The AIV would at any rate observe that the assumed strength of the Quartet – the combined power of the key international players – has not so far been translated into the kind of decisiveness and effectiveness that are required to bring about a lasting solution.

Of all states involved in the conflict, the US is the most obvious candidate to propose new initiatives, because it potentially has the most influence over Israel. Not only is the US the country that gives the most financial and military assistance to Israel, it is also clear that it will ultimately have to guarantee Israel's security.

Nevertheless, over the past few years the US has not proved capable of reviving the moribund peace process. President Obama's appeal to Israel during his speech in Cairo in 2009 and again in Washington in 2010 to freeze all settlement activities and negotiate on the basis of the borders prior to 5 June 1967, including possible land swaps, has so far achieved nothing. Israel has so far paid no heed to his call. Prime Minister Netanyahu even explicitly stated before a joint session of the US Senate and Congress that Israel would not respond to the proposals.

The democratic systems in the US and Israel, combined with the strong pro-Israel lobbies, make it extremely difficult – for internal political reasons – for America to persuade Israel to change its current policy. In practice, this means that Israel's policy on the occupied territories is tolerated, including the many violations of international law

66 In a statement issued by the Quartet on 30 January 2006 these conditions are worded as follows: 'The Quartet concluded that it was inevitable that future assistance to any new government would be reviewed by donors against that government's commitment to the principles of nonviolence, recognition of Israel, and acceptance of previous agreements and obligations, including the Roadmap.'

67 Khaled Elgindy, *The Middle East Quartet: A Post-Mortem*, Analysis Paper Number 25, February 2012, Washington D.C., The Saban Center for Middle East Policy at Brookings, p. 1.

that occur there.⁶⁸ At the same time, the US continues to provide Israel with financial and military support; indeed Israel is the biggest overseas recipient of US financial support.

Although in the past the US has shown itself capable of adopting a critical stance on Israel (including on its settlement policy),⁶⁹ the domestic political situation is such that it will always opt for the cautious approach. President Truman's words, spoken in 1946, have lost little of their relevance more than 60 years later: 'I'm sorry, gentlemen, but I have to answer to hundreds of thousands who are anxious for the success of Zionism; I do not have hundreds of thousands of Arabs among my constituents.'⁷⁰

However, now that President Obama has been re-elected, we cannot rule out the possibility that during this second and final term of office he might attempt to resume the peace process. As indicated above, a lot will depend on internal political relations in the US, combined with the influence of pro-Israeli lobbying groups like AIPAC⁷¹ and the Anti-Defamation League.⁷² However, it should be noted that the Jewish community in the US has recently also voiced criticism of the Israeli government's policies. For example, the religious movement Union for Reform Judaism condemned the building of extra settlements after the UN General Assembly vote, while the leaders of the Reformed Jewish community, *B'nai Beshurun*,⁷³ expressed their support for the Palestinian resolution of 29 November 2012. In addition, Rahm Emmanuel, the Jewish mayor of Chicago (and Obama's former chief of staff) expressed his opinion that Prime Minister Netanyahu's intransigence was a betrayal of America's friendship.⁷⁴

There have also been reminders in the American media that a majority of the Jewish electorate voted for Obama, and calls to heed the voice of the large group of moderate

68 On human rights violations in the occupied territories, see for example the most recent report by the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, UN Doc. A/67/379, 19 September 2012; and UNICEF, 'Children in Israeli Military Detention: Observations and Recommendations', Jerusalem, February 2013, see: <http://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf>.

69 For instance, in February 1992 President George H.W. Bush blocked a loan of USD 10 million to Israel because of its settlement policy. The loan was approved in June 1992, after Yitzhak Rabin won the election and promised to freeze the building of 'political settlements'. See Susan M. Akram and Michael Lynk, 'Arab-Israeli Conflict', entry in the *Max Planck Encyclopedia of International Law* (Oxford: Oxford University Press, 2008), par. 41.

70 William A. Eddy, *F.D.R. Meets Ibn Saud* (1954; reprint Vista, CA: Selwa Press, 2005), p. 35.

71 American Israel Public Affairs Committee.

72 On this matter, see John J. Mearsheimer and Stephen Walt, *The Israel Lobby and U.S. Foreign Policy* (New York: Farrar, Straus and Giroux, 2007).

73 On New York's Upper West Side.

74 *The Economist*, 8 December 2012, p. 41.

Jewish voters, 'the quieter friends of Israel'.⁷⁵ Just days before Obama's inauguration on 20 January 2013, leading newspaper *The Economist* wrote: 'One looming, disastrous Obama legacy could be the death of the two-state solution to the Israeli-Palestinian mess.' 'The two-state solution,' it continued, 'is not quite dead. Barack Obama, among others, must do more to revive it,' and '(...) Mr Netanyahu – or whoever governs Israel – still depends on outsiders, especially America, for material, military and moral support. He should be told, loud and clear, above all by Mr Obama, that he cannot bank on such benefits indefinitely if he abuses the goodwill of those, including this newspaper, who fiercely defend Israel's right to exist.'⁷⁶ These moderate views, which clearly reflect the urgency of the situation, will undoubtedly prove useful to the new American administration in counterbalancing the pro-Israel lobby.

President Obama's recent visit to Israel and Ramallah has at any rate created the impression that the US government is aware of the urgent need to resume the peace process. President Obama's speech to Israeli students on 21 March 2013 left no room for doubt on this score: 'I believe that peace is the only path to true security. (...) You have the opportunity to be the generation that permanently secures the Zionist dream, or you can face a growing challenge to its future,' said the President, and he went on to say: 'It is not fair that a Palestinian child cannot grow up in a state of their own. (...) Just as Israelis built a state in their homeland, Palestinians have a right to be free people in their own land'.⁷⁷ It remains to be seen, however, whether the US will accompany these words with concrete initiatives.

As regards the Arab countries in the region, the AIV would refer to the analysis of the changes and rising tensions in the region presented in chapter II. Many countries in the region, with their own domestic political problems, have more pressing priorities than facilitating the peace process between Israel and the Palestinians. Furthermore, as argued above, they will be less inclined to make concessions in terms of their principles and their sense of justice for the sake of strategic considerations and regional stability. This is more likely to hamper than foster peace initiatives from the region.

There is also another important factor at play here. It used to be possible to argue that in the context of the Arab-Israeli conflict Israel faced a number of Arab states with powerful resources which posed a threat to its existence. But the Arab-Israeli conflict has since largely developed into an Israeli-Palestinian conflict. It is still technically possible to refer to an Arab-Israeli conflict since by no means all Arab states have formally made peace with Israel. But they are hardly on a war footing anymore, certainly not since Egypt ceased to be a military opponent of Israel's after the Camp David accords of 1978 and the 1979 Egypt-Israel Peace Treaty. It can be assumed that this has reduced the urgency for the countries in the region to arrive at a comprehensive peace settlement. In addition, repeated Arab proposals to recognise Israel within its pre-1967 borders and to make peace if Israel were to withdraw behind those borders have been rejected by Israel in the past.

75 See for example Roger Cohen, 'Israel's True Friends', *The International Herald Tribune*, 8 January 2013.

76 *The Economist*, 19 January 2013, p. 10.

77 Speech given by President Obama in Jerusalem on 21 March 2013, see: <http://www.nytimes.com/2013/03/22/world/middleeast/transcript-of-obamas-speech-in-israel.html?_r=01&>.

Despite the factors outlined above, the AIV would like to underline the fact that the countries in the region could potentially play a key role in getting peace talks restarted. It would for example be useful if they were to reinstate the broader Arab Peace Initiative, if possible in collaboration with other actors like the US and the EU. This 2002 initiative – which was revived in 2007 – offers the prospect of normalising relations between Israel and the Arab world if the former withdraws from the occupied territories (see also chapter I). According to surveys, half the population of Israel would support the plan as a basis for negotiations (provided the new Egyptian government were to support it).⁷⁸ The Meretz party presented a peace plan based on the initiative in late 2012.⁷⁹ The countries of the region would do well to persuade Hamas to at least accept the Arab Peace Initiative (no recognition of Israel without peace between Israel and Palestine) and – like Israel – to forgo any further violence. The Arab region could also support the PA more actively than is currently the case, particularly in financial and economic terms.

The AIV believes that it would be very desirable at any rate if the countries in the region, particularly Egypt and Jordan (both of which have a peace agreement with Israel) were involved in the search for a solution. However, it must be remembered that both countries currently face considerable domestic problems, which restrict their capacity for diplomatic action. Although relations between Turkey and Israel are expected to stabilise now that Israel has expressed its regret at the violent interception of the Gaza flotilla, we cannot expect much in the way of mediation by Ankara at this juncture. In addition, Turkey is affected too much by other conflicts in the Middle East, including in Syria and Iraq. Qatar may be able to explore the options for negotiation with Hamas.

Having identified the potential and limitations of the Quartet, the US and the Arab region, the AIV will, finally, examine the position of the European Union. The EU's scope for helping to breathe new life into the peace process may actually be greater than is often assumed. As a result of its geographical proximity and existing economic ties, the Arab region is clearly politically and strategically important for the EU. Europe has strong trade and other ties with Israel, and the EU concluded an Association Agreement with the country in 2000 (replacing a previous cooperation agreement). In 2005 the two parties agreed an Action Plan under the European Neighbourhood Policy. This was followed by a series of initiatives designed to broaden and deepen relations between the EU and Israel.⁸⁰ Previously (in 1997), an EU-Palestinian Territories Interim Association Agreement had been concluded, and in 2012 negotiations on a revised Action Plan were completed. The Palestinian Territories received a total of €459 million in support from the EU in 2011 (this included budget support, support for UNRWA, humanitarian aid, support for government capacity-building and support for conflict prevention).

78 This finding emerged from a survey by the University of Maryland: Shibley Telhami, Steven Kull, *Israeli Public Opinion after the November 2012 Gaza War*, 20 November 2012, p. 10, see: <http://sadat.umd.edu/Israel_Nov12_rpt_FINAL.pdf>.

79 Ilan Lior, 'Meretz presents four-year path to peace based on Arab League initiative', *Haaretz*, 26 December 2012, see: <<http://www.haaretz.com/news/national/meretz-presents-four-year-path-to-peace-based-on-arab-league-initiative.premium-1.490016>>.

80 A proposal to upgrade the current Association Agreement, giving Israel special preferential status, met with resistance from the European Parliament in late 2008. The parliament objected to Israel's settlement policies, and the proposal was not considered.

Although the EU's focus to date has understandably been on US efforts in the Middle East Peace Process, the AIV believes that such a dependent position does not do justice to the interests at stake for the EU, or to its own potential to help promote a resolution to the conflict. The efforts of the US and – by extension – the Quartet have led to little tangible progress in the Middle East Peace Process over the past few decades. The EU has not put forward any independent policy on the matter, and the relatively submissive attitude of the EU and its member states in the past may have contributed to the stagnation of the peace process. The AIV therefore believes that the EU should work towards a more independent policy on the peace process, in line with American efforts where possible, but based on its own model where necessary.

In specific terms, the AIV would recommend that the EU first attempt to convey to the US at the highest political level the urgent need to revive the Middle East Peace Process. In addition – and depending partly on the effort the US is prepared to make – the EU High Representative might explore whether organising a Middle East conference with interested countries in the region might be a useful way of bringing the Israelis and Palestinians together. Of course preparations for such a conference would have to be extremely thorough if it were not to fail. Another opportunity for resuming the peace process would be to convene a special session of the Security Council, attended by Israel and the PA, to establish the parameters for a peace settlement. This would mark a departure from the approach taken in the past (in the Roadmap, for instance) of working step-by-step towards agreement on a final settlement. Disagreement between the parties on the implementation of these interim steps has hampered serious negotiations on the most difficult issues in the conflict (particularly the status of East Jerusalem and authority over the holy sites, as well as Palestinians' right of return to Israel). The Security Council route would place special responsibility on the shoulders of the United Kingdom and France, the only European countries with permanent seats on the Council. The role the Netherlands might play is explored in the next chapter.

The AIV would point out that well-meant international appeals have had little effect in the past. Given the experience of the past few decades, the AIV believes that the likelihood that Israel, in particular, will change course, would be greater if it were confronted with the political and financial consequences of its actions. This would be likely to elicit change more effectively than the policy pursued to date. That said, of course, the AIV fully appreciates Israel's demand that it be able to continue to exist in security. At the same time, however, the AIV would observe that the frustration of the Palestinians' political aspirations and the nature of Israel's occupation policy provide a fertile breeding ground for Palestinian extremism, and make embittered Palestinians more receptive to taking part in violent acts. A continuation of the current situation is more likely to increase the threat to Israel's future security than decrease it.

At the same time, the EU must make it clear to the parties concerned that there is no more time to lose when it comes to the two-state solution. This urgency is a further reason independent EU action is required, based on existing international law (including humanitarian law and human rights conventions). The AIV believes international law provides a solid basis for EU efforts on the peace process (see chapter I). By using it as a framework for assessing the conduct of the parties to the conflict and additionally developing and introducing operational policy (including on the parameters for the final status talks), the EU would not only show itself to be a reliable actor, it would also be fulfilling the normative role on the international stage for which it has been pressing. Criticism of violations of international law and human rights should be made

clear and explicit, irrespective of which party is at fault. The criticism should not be without consequences, but should serve to exert pressure on the parties concerned via appropriate EU channels.

The EU's actions should in any event take account of the following elements:

- The pre-1967 borders should be taken as the starting point, to ensure that the two-state solution remains viable. It is vital that East Jerusalem be the capital and the political and economic centre of any future Palestinian state. The EU should therefore continue to make it clear that Jerusalem is an essential part of any final settlement, and that no unilateral measures may be taken that would preclude such an arrangement.
- Israel's settlement policy and its repressive actions against the Palestinian Authority and the population on the West Bank contravene international law and significantly frustrate efforts to arrive at a peaceful solution; the EU should make it clear that this cannot be tolerated.
- Particular attention should be focused on the Israeli blockade of Gaza, because it poses risks to a peace settlement. The EU should follow up on its position ('an immediate, sustained and unconditional' end to the blockade).⁸¹
- Security Council resolution 1860, which calls for a permanent ceasefire and active measures to curb arms smuggling, must be complied with.⁸² The security of Israel is also important.
- The genuine concern that exists within the Israeli government and among the Israeli people about the continuing attacks carried out by radical Palestinian groups against Israeli citizens also warrants attention. The constant threat of violence must be brought to an end. International law offers a good basis for this, too.

Partly with a view to this final action point, the AIV believes it would be desirable for the EU to encourage talks with all relevant parties, including Hamas (which has been democratically elected). The exclusion of certain important groups directly involved in the conflict will only work to the disadvantage of a peaceful solution. The exclusion of the PLO for many years demonstrated this fact. It is important to be realistic, whether or not one is favourably inclined towards the parties concerned. The fact that Hamas still takes a radical and irreconcilable position need not rule out a *de facto* recognition of Israel under certain conditions.⁸³ All the more reason, therefore, to talk to the organisation and encourage it to adopt constructive ideas.

It is also important to help promote internal reconciliation among the Palestinians, particularly between the Palestinian Authority and Fatah, on the one hand, and Hamas on the other. Whatever one may think of the organisation, Hamas is essential for Palestinian unity. But Hamas must also be called upon to be realistic. It needs to accept that the new Palestinian government must comply with the political platform of the PLO (in accordance with the Quartet conditions).

81 See EU Council conclusions on the Middle East Peace Process of 10 December 2012, par. 7, <http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/134140.pdf>.

82 UN Doc. S/RES/1860 (2009), 8 January 2009.

83 See Ruud Hof, 'Boycot Hamas niet langer houdbaar' (Hamas boycott no longer tenable), *Internationale Spectator*, February 2013, p. 4.

In the meantime, it would be wise to give the Palestinians balance of payments support and help them strengthen their state institutions. The AIV would also urge that the EU provide legal assistance for Palestinians who have been victims of Israeli policy. In this connection, the AIV would recall that the EU Heads of Mission in Jerusalem and Ramallah have proposed several options for legal assistance in the past. It is now a matter of putting them into practice.

An EU effort of this kind (which basically involves the consistent application of international law, including its consequences – see next chapter – and support for the Palestinians where possible) could impart renewed vigour to the stalled peace process, and possibly persuade the parties to consider returning to the negotiating table – the first requirement for any resumption of the process.

In conclusion, the AIV believes that the Quartet is not the ideal formation to bring a peace settlement closer. As already indicated, of all international players the US has the most leverage with the parties embroiled in this conflict. However, in view of its pressing domestic problems (the need for ‘nation-building at home’) and Congress’s support to date for Netanyahu’s hard line, it is unclear whether President Obama is determined to use all means available to him on both parties in order to force a peace settlement. This makes the potential role of the EU even more relevant. The EU’s scope for helping to revive the peace process is greater than is often assumed. After all, the EU is Israel’s most important trading partner, and there are strong links between European countries and the state of Israel in other areas, too. At the same time, the EU is one of the Palestinians’ biggest donors. Without EU aid, the Palestinian authorities would find it difficult to continue.

The AIV believes that the EU should take a more independent line on the peace process. Where possible, it should align its efforts with any made by the Americans, because a common Western policy that enjoyed the support of the Arab region would provide the best guarantee of resuming the peace process. If necessary, however, the EU should pursue an independent policy – based on the firm foundations of international law.

V The role of the Netherlands

The fourth question in the request for advice is: *Based on the principles of international law, how can the Netherlands help achieve progress in the Middle East Peace Process? What action can the Netherlands take independently and at European and international level?*

In answer to the question of what the Netherlands can do, the AIV would firstly endorse the strategy of the current Dutch government: to take steps to foster the peace process with European partners as far as possible. The AIV regards investing in efforts to arrive at a unanimous European position as one of the key challenges for the Netherlands' Middle East policy. The more unanimous Europe is, the more the Netherlands can help the EU translate its principles into specific and effective policy. The key thing is not merely to hold principles, but also to put them into action.

The basis for EU policy as the AIV envisages it was set out in the previous chapter. Since this policy is based on international law, the AIV believes it ties in well with promoting the international legal order, as the Netherlands advocates and as laid down in its Constitution. Although it will be no easy task to achieve the kind of independent European position that the AIV is calling for, it believes that a basis has in fact already been laid in the form of all the EU declarations and Council conclusions that have been issued. It is now a matter of implementation. If the Netherlands really wants to make a meaningful contribution to the peace process in an EU context, the AIV believes it will have to invest in intensive diplomacy in the capitals of Europe, possibly in collaboration with like-minded partners. Given the difficulties that can be expected in getting all 27 EU countries to adopt the same line, the AIV would not rule out a role in promoting the peace process for European coalitions of willing states. It is mainly a matter of ensuring that the larger member states – the United Kingdom, France and Germany – reach agreement and are willing to take the lead.

Besides taking an active stance in the EU, the Netherlands could also use its own direct sphere of influence in bilateral relations with Israel and the Palestinians to revive the chances of the peace process. To this end, dialogue with both parties should be encouraged and consolidated. The AIV agrees with the Dutch government that unconditional support for either one of the two parties must be avoided. A balanced approach must be taken. As regards Israel, this means that until there is a change in the country's actions in the occupied territories, there are no grounds for the Netherlands to upgrade its bilateral relations with Israel, by establishing a bilateral Cooperation Council, for example, as the first Rutte government intended. If anything, Israel's actions in fact give cause to freeze or even restrict those relations, particularly at an economic and military level.

Not as an end in itself, but as a real contribution to resolving the problem, the Dutch government could sound out the parties to establish whether it would be worthwhile for the Netherlands to offer to attempt to get the Israelis and Palestinians back to the negotiating table. The AIV envisages a facilitating and mediatory role, as Norway and

Sweden have played in the Israeli-Palestinian conflict in the past.⁸⁴ The Hague would be a good location for talks. It would also be logical, in diplomatic contacts, to establish to what extent the Scandinavian countries still have ambitions to play the role of broker in the conflict in question. It is important at any rate to ensure that the Netherlands does not overplay its diplomatic hand, and that smaller countries do not compete with each other for this role.

If it should turn out that there is no desire for mediation as suggested here (and this is a real possibility), the AIV would recommend that the Dutch government assess the potential of second-track diplomacy in addition to direct dialogue with the two parties. This could take the form of conferences (informal or otherwise) for think tanks and civil society organisations to bring together moderate forces from the two societies. The Dutch government could play a facilitating role. Seminars and other such academic events, as well as debates between Israeli and Palestinian opinion leaders, could also be held with the official support of the Netherlands.

For the AIV, the rationale for proposing a public dialogue between the parties to the conflict is as follows. Although radical ideas often draw the most attention in terms of public opinion, we find repeatedly that large and growing groups of Palestinians and Jewish Israelis have more moderate ideas which are favourable to reconciliation. If their views were to be heard more in the public debate, it could have a positive impact on the political balance of power. The Netherlands should specifically involve these groups, which include many young people and women, in initiatives designed to get representatives of Israeli and Palestinian society talking.

In this connection, the AIV is pleased to note that the Dutch government, in its letter to parliament on the Middle East Peace Process of December 2012, alludes to the establishment of bilateral forums concerning Israel and the Palestinian Authority. This shows that it acknowledges the potential significance of bringing together representatives of various civil society organisations from Israel and the Palestinian territories to discuss issues of mutual interest.⁸⁵

The AIV also takes a positive view of the Netherlands' contribution to the EU police mission in the Palestinian territories (EUPOL COPPS) and its support for the mission of the United States Security Coordinator (USSC).⁸⁶ The AIV recommends that the Netherlands establish whether it might usefully make any additional efforts to promote the rule of law and the formation of state institutions in the Palestinian territories. Possibilities include training programmes for judges, police officials and other public officials.

An even-handed approach to the Israeli-Palestinian conflict on the part of the Netherlands might reasonably include a more active role in the field of 'water diplomacy'. We could take on such a role with growing confidence as more and more technological and economic solutions emerge. The rapid development and application of desalinisation techniques in

84 This is consistent with the 'niche policy' called for by various organisations, such as the Advisory Council on Government Policy (WRR) in its report 'Attached to the World' (Amsterdam University Press, 2010).

85 Letter to the House of Representatives of 12 December 2012, p. 7.

86 The Netherlands is also collaborating on the European Union Border Assistance Mission at the Rafah border crossing (EUBAM Rafah), which incidentally has been on stand-by since Hamas came to power in 2007.

Israel has enabled the present shift from water shortages to adequate water supplies. More widespread use of these techniques, for the benefit of the Palestinians as well as the Israelis, might demonstrate the value of combining the Netherlands' diplomatic experience in the region and its knowledge in the field of water, including as a prelude to a more wide-ranging peace process.

As regards the sensitive issue of taking specific steps against Israeli settlement policy, the AIV believes that the EU, and the Netherlands in an EU context, should do everything it can to comply with the existing treaties and Security Council resolutions and the many political statements based on them.

One particular issue that warrants the full attention of European governments concerns products made in the settlements. A recent report by 22 NGOs thoroughly documents how Israel and – via Israel – the EU is profiting from economic activity in the settlements.⁸⁷ The report also contains a (non-exhaustive) list of European companies operating in the settlements.⁸⁸ In addition, it gives a meticulous account of measures the EU could or should take, not least in view of the positions on the settlements it has repeatedly adopted in the recent past.⁸⁹

In accordance with the report, the AIV believes that the EU should engage in far more stringent monitoring than it has hitherto, despite several attempts by the European Commission, in particular, to ensure that Israel does not benefit from products made in the settlements on the basis of its Association Agreement with the EU. The agreement allows exemption from or reduction of import duties on products from Israel entering the EU. Given the fact that the EU does not recognise the settlements as part of Israel, products from those settlements may not qualify for an exemption from or reduction of import duty, as confirmed by the European Court of Justice in 2010.⁹⁰

In this connection, the AIV welcomes the Dutch government's announcement that it will lobby within the EU for prevention of 'products from the settlements being imported into the EU (...) under the preferential import tariff treatment that applies to Israeli products'.⁹¹ However, as the NGO report explains, the problem is that the responsibility for identifying products from the settlements currently lies solely with the EU. In 2005, the European customs authorities were given this responsibility, but recently the European Commission has extended the responsibility to companies that import products. The AIV agrees with the authors of the report that the responsibility for distinguishing products from the settlements should in fact lie more with Israel, as the exporting country, and that Israeli exporters can be expected to properly report the origins of products from the settlements, in accordance with EU regulations.

87 *Trading Away Peace. How Europe helps sustain illegal Israeli settlements*, October 2012. For the legal arguments, see pp. 15-16.

88 *Ibid.*, p. 25.

89 *Ibid.*, pp. 26-30.

90 *Ibid.*, p. 26. On this matter, the report remarks: '(...) by accepting imports of settlement goods designated as originating in "Israel", Europe is tacitly accepting Israel's creeping expansion of sovereignty.'

91 Letter to the House of Representatives of 12 December 2012.

Another problem with products from the occupied territories is the responsibility of retailers in the EU to clearly and properly label products for consumers. Products from the occupied territories should be labelled 'Products from the West Bank, made by Israel' (or something similar), so that consumers can make their own informed choices. In 2009 the UK drafted its own (voluntary) national labelling guidelines for products from the occupied territories, followed by Denmark in 2012. Measures were agreed on this matter in the EU in May 2012, and all member states committed themselves to them.⁹² The AIV notes with approval that the Netherlands, in the person of Prime Minister Mark Rutte, has now announced specific measures to implement these agreements.⁹³

Even if products are labelled properly, however, it is still worth asking whether the Netherlands and the EU should not infer more far-reaching implications from their acknowledgement that the Israeli settlements on occupied Palestinian territory are illegal.⁹⁴ The AIV would urge that the Netherlands not only take specific steps aimed at the correct labelling of Israeli products from the occupied territories, but also ensure that Dutch and European companies are actively discouraged from doing business with Israeli companies in the settlements.⁹⁵ As part of these measures, official contacts

92 See: EU Council conclusions on the Middle East Peace Process of 14 May 2012, par. 6: 'Settlements remain illegal under international law, irrespective of recent decisions by the government of Israel. The EU reiterates that it will not recognise any changes to the pre-1967 borders including with regard to Jerusalem, other than those agreed by the parties. The EU and its Member States reaffirm their commitment to fully and effectively implement existing EU legislation and the bilateral arrangements applicable to settlement products. The Council underlines the importance of the work being carried out together with the Commission in this regard.' On 3 March 2013 Israeli newspaper *Haaretz* referred to a recent letter from EU High Representative Catherine Ashton to the EU member states raising the matter of correct labelling of products from the settlements. See: Danielle Peled, 'Europe: Settlement products are tainted goods', *Haaretz*, 3 March 2013.

93 During the press conference following the Cabinet meeting of 8 March 2013 Prime Minister Rutte stated: '(...) that is a matter for Europe, we agreed in Europe, in May 2012, that where the settlements are being expanded, it is vital that you show on products – and the United Kingdom and Germany are doing it already – whether they come from the occupied territories or from Israel itself. There are no other sanctions attached to this, but things have to be labelled properly, so you know what you're buying. The Netherlands is obliged to translate this into national measures – that is ultimately what this is about at national level, and to that end Frans Timmermans will present a proposal to the Cabinet in the next few weeks'. See: <http://www.rijksoverheid.nl/documenten-en-publicaties/mediatekst/2013/03/08/persconferentie-na-ministerraad-8-maart-2013.html>.

94 See also: *Trading Away Peace. How Europe helps sustain illegal Israeli settlements*, October 2012, p. 29: 'While the introduction of labelling guidelines would enable consumers to choose whether they wish to buy settlement goods or not, it may not be sufficient to meet European governments' obligation to exert their influence, to the degree possible, to stop violations of international humanitarian law.' On pp. 15-16 of the report the authors explore the legal implications of trading with the settlements in the occupied territories and the obligations of European states under international law.

95 In this connection, the AIV has noted with approval the decision by Unilever to close a pretzel factory in Barkan, the industrial zone of the Jewish settlement of Ariel. This decision followed a call from the UN Human Rights Council to private companies not to do business in or with the settlements on the West Bank. See *NRC Handelsblad* newspaper, 4 February 2013.

with academic institutions in the occupied territories, like Ariel University, should also be avoided.⁹⁶

Finally, under article 215 of the EU Treaty, the EU may institute 'restrictive measures' to curb imports of products from the settlements. In May 2012 the Irish foreign minister called for an EU-wide ban on the import of products from the occupied territories.⁹⁷ Such a broad ban would not be easy to achieve in political terms, but the AIV does not regard this as a reason to rule out this option. On the contrary, in line with the consistent application of international law called for in this report, it would be only logical for the Netherlands to lobby where possible for steps in this direction. The AIV would also point out that individual member states may introduce such measures unilaterally.⁹⁸

It would need to be clear, however, that such measures are not sanctions against Israeli businesses in the settlements, but the consequences under international law of the Israeli government's policy of enabling those businesses to do what they do. By no means all inhabitants of the settlements belong to the extremist wing of the Zionist movement.⁹⁹ In view, partly, of the need for *all* concerned to cooperate on the implementation of a peace settlement, we must ensure that inhabitants with more moderate views do not resort to active resistance for purely economic reasons. Furthermore, the EU should attempt to make sure all its measures tie in with those of local groups that acknowledge the need to improve relations with the Palestinians, in order to further strengthen such groups and thus give the peace process more grassroots support.

Looking at recent developments surrounding the peace process, the AIV would conclude that what applies to the EU applies equally to the Netherlands: there is not in fact much reason to adjust official positions in order to bring a resolution of the Israeli-Palestinian issue closer. All kinds of previous EU declarations, the Roadmap for Peace and Security Council resolutions on the matter contain all the elements necessary to resolve the conflict. The problem is that these words have not been translated into deeds. It is important that all parties involved actually implement their existing positions and act accordingly. That we not simply hold our opinions and principles, but that we also put into practice and comply with our officially stated positions. This should be the guiding principle of Dutch policy.

96 Formerly known as Ariel University Center of Samaria.

97 In May 2012 foreign minister Eamon Gilmore announced that if 'matters continued to worsen' in the occupied Palestinian territories, Ireland could propose 'the exclusion from the EU of settlement products'. He added: we do not support bans or boycotts on Israel, and this is not in question, but the products of illegal settlements constitute a separate and specific matter'. House of the Oireachtas, 'Priority Questions – Middle East Peace Process', par. 103 (22 May 2012), see: <<http://debates.oireachtas.ie/dail/2012/05/22/0004.asp>>.

98 The European Commission has confirmed that a member state may take unilateral measures to restrict trade if the measures can be justified on the basis of Regulation no. 260/2009 'on the grounds of public morality, public policy or public security ... and in doing so it does not infringe EC law'. See: *Trading Away Peace. How Europe helps sustain illegal Israeli settlements*, October 2012, p. 29.

99 See for example Simon Kuper, 'Israel: perched between hope and fear', *Financial Times*, 1 February 2013.

VI Summary and recommendations

In accordance with the tenor of the request from the Senate, in this advisory report the AIV has primarily explored the question of how the peace process in the Middle East can be revived. The need to bring an end to the conflict between Israel and the Palestinians is more urgent than ever. The prospects of implementing a two-state solution are being seriously undermined by the continued expansion of Israeli settlements near East Jerusalem and on the West Bank, alongside the many other illegal Israeli settlements that have existed for years. The situation in the surrounding region is also highly unstable, and there is a great chance that the Palestinians will again resort to violence, with all its harmful repercussions.

The AIV believes that a two-state solution would still provide the best basis for a peace settlement between the two parties. The option of a binational state may be attractive from a humanitarian and idealistic point of view, but it would meet with insurmountable objections both on matters of principle and on practical grounds. The alternative of permanent Israeli occupation of the Palestinian territories, coupled with repression, restricted freedom of movement for the local population and unequal distribution of water supplies, is bound to provoke the Palestinians to renewed violence – the only question is when. Furthermore, such a scenario, leading almost inevitably to the further undermining of the civil rights of Palestinians and also of dissident Israelis, would constitute a threat to the rule of law in Israel itself. A two-state solution would however have to be supported by agreements on land swaps, the legal return of Palestinians to their original homes in Israel – in so far as they wished – and security guarantees.

Although the AIV realises that developments in the Israeli-Palestinian conflict are to a large degree determined by political factors (power relationships, political leadership, the definition of national interests and the dynamics of domestic politics in interaction with external interventions), it is important that this conflict be assessed within the generally accepted legal framework, and brought to a satisfactory end within that framework. This report has therefore devoted particular attention to relevant aspects of international law based, among other things, on peoples' right to self-determination, the rights and obligations of occupying powers and the rule of proportionality when it comes to the use of force.

In this connection, the AIV has taken as its reference point the Advisory Opinion issued by the International Court of Justice in 2004. Though this opinion was initially issued in response to questions about the legality of Israel's construction of the 'wall' (much of it on Palestinian territory), the opinion of the Court encompasses almost all legal issues associated with the conflict. The Court also considered the Israeli settlements on the West Bank in its deliberations. It concluded that Israel's settlement policy violates international law. The violations concern the Palestinian people's right to self-determination, the freedom of movement of all inhabitants of the occupied territories, and the right to work, health care and education. The Court also believes that the barrier and the settlements violate the Fourth Geneva Convention (relative to the Protection of Civilian Persons in Time of War) and Security Council resolutions on the matter, because they are helping to change the demographic profile of the occupied territories. There can be no doubt as to the applicability of the Convention in these territories. Given the fact that the AIV – as indicated below – regards it as essential that the EU take an active stance in this conflict, it would also highlight the importance of the provision in the

Association Agreements (article 2) with both Israel and the Palestinians, which refers to 'respect for human rights and democratic principles'.

The AIV has also considered the implications of the reform movements and revolutions that have been shaking large parts of the Arab world to their foundations for over two years now. It has concluded that these regional developments, which reveal complex interrelationships, have so far had no real impact on the Israeli-Palestinian conflict, in either a positive or a negative sense. Nevertheless, these developments make the need to find a solution all the more urgent, given the prevailing instability in the region. Furthermore, we cannot rule out the possibility that the increased influence of Islamist parties will translate into more overt support for the Palestinian cause. This might prompt the Palestinians to continue their struggle for an independent state with renewed conviction, potentially reducing their willingness to reach a compromise with Israel if no peace initiatives that take sufficient account of Palestinian aspirations are put forward in the near future.

Given the fact that, for all kinds of reasons, both parties will find it difficult to return to the negotiating table of their own accord, active international mediation and external pressure will most probably be essential. In the recent past, hopes have been pinned mainly on the Quartet and its efforts to make the peace process a success. However, the AIV believes that the Quartet has not been able to live up to its initial expectations and ambitions. The formal inclusion of the UN, EU and Russia in the group could not disguise the fact that every attempt at mediation depended on the efforts of the US, which thus had a key position.

Despite the relative decline in American power and the polarisation in US domestic politics, that country remains potentially the best placed to effectively influence relations between the Israelis and the Palestinians. Whether President Obama will be prepared to bring America's considerable weight to bear during his second term, and if necessary to tackle any obstructive posture on Israel's part, is uncertain, however. There are grounds to believe that the US may intervene actively in the conflict. They include America's credibility and reputation in the Muslim world and the political capital President Obama stands to gain from a successful demonstration of international statesmanship. There are also, however, factors that give reason to believe that the US will continue to distance itself from the conflict, given the severity of America's budget crisis, the strength of the pro-Israel lobby and US priorities elsewhere in the world.

The lack of certainty about US efforts in the immediate future makes it even more important to consider the potential role of the EU. The AIV believes that the EU has more scope for breathing new life into the peace process than is often assumed. The Union has close economic and other ties with Israel, and the Palestinians are heavily dependent on the EU financially. Wherever possible, the EU should tie in its efforts for peace in the Middle East with any efforts made by the Americans. This would provide the best guarantee of talks being resumed. But if the Americans fail to make adequate efforts (or if they look likely to move in the wrong direction, by being too accepting of unreasonable Israeli positions), the EU should not shrink from fulfilling its own responsibility as a mediator. Given its ambition, or claim, to be a 'normative power', it should focus on generally accepted principles of international law (including humanitarian law and human rights conventions). To lend international peace proposals broad legitimacy, it is also important that countries from the Arab region, such as Egypt and Jordan, or Qatar, be involved in the mediation process.

Of course, the chances of peace in the Middle East depend on the willingness of both parties to resume negotiations in good faith. This will happen only if a majority of Israelis and Palestinians are convinced that a peace settlement based on a two-state formula is ultimately in both sides' interests. The Palestinians need to recognise that Israel's concerns about its security, both now and in the future, are legitimate. They must be asked to cooperate fully in minimising those concerns. Such cooperation might include effective action against radical Palestinian groups that engage in violent opposition against the very existence of Israel as a Jewish state in the Arab world. This of course primarily concerns the militant groups in Gaza, an area that is effectively outside the control of the Palestinian Authority. A reconciliation between Fatah and Hamas would therefore be highly desirable. Contact with Hamas must not be avoided. Israel must be asked to introduce a radical turnaround in its settlement policy in the near future. The practice of establishing Israeli settlements far inside Palestinian territory encroaches on the land needed to create a viable Palestinian state. By ignoring repeated calls and warnings from the international community to stop expanding its settlements, the Israeli government has raised serious doubts about the sincerity of its stated desire for peace.

Should Israel prove unwilling to put an end to the growing colonisation of the occupied territories, responsible actors in the international community will have no choice but to follow up their words of protest with actual deeds. In other words, persistent violations of international law and binding Security Council resolutions must lead to consequences if the situation does not change. For the European Union, this might mean restrictions or a freeze on its relations with Israel (and at any rate no upgrading of its cooperation) and, in connection with its international legal obligations, a ban on imports of products from the Israeli settlements in the occupied territories.

Finally, the AIV would like to put forward a number of recommendations relating to possible contributions that the Netherlands might make, either directly or indirectly, to help resolve the Israeli-Palestinian conflict or at least improve the political climate between the two parties:

1. The Netherlands must 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. To achieve maximum effect, this initiative must as far as possible be undertaken in conjunction with the US. If necessary, however, the EU must itself take responsibility and make independent efforts to bring the parties together. The Netherlands must accept that the United Kingdom, France and Germany, as the larger EU countries, should take the lead, in order to maximise the effect of Europe's actions.
2. When it comes to specifying the details of any European initiative, the Netherlands should actively promote the organisation of a new Middle East conference (preceded by thorough preparations). It would be logical for stakeholder countries in the region to send delegations to the conference, alongside Israeli and Palestinian delegations. The goal of the conference should be to reach agreement on the final parameters for a peace settlement. An alternative to a conference might be a special session of the Security Council requested by the UK and France, and including representatives of the parties to the conflict. The UK and France could submit a draft resolution setting out the final parameters on behalf of the EU.
3. If the above initiative were to fail to win sufficient support, the Netherlands might consider taking the lead, 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. Depending on the needs and wishes of the parties, the Netherlands could limit its role to that of facilitator, or act as mediator.

4. The Netherlands could also make a useful contribution by actively promoting certain forms of second-track diplomacy. Besides facilitating exchanges between opinion leaders from Israel and the Palestinian territories, it is particularly important to institutionalise a dialogue in which representatives of moderate civil society organisations on both sides can discuss issues of mutual interest, with a view to seeking common solutions.
5. In the opinion of the AIV, the EU should take a stricter line on ensuring that Israel does not enjoy any benefit from its Association Agreement with the EU when it comes to products from the settlements. The AIV would also urge the Netherlands to actively discourage Dutch and European companies from doing business with Israeli companies in the settlements.
6. To aid the development of the necessary capacity and judicial legislation in a new state of Palestine, the Netherlands must redouble its efforts in the area of training police officers, judges and administrative officials.
7. The Netherlands could also usefully take a more active role in the field of 'water diplomacy'. Given the technical breakthroughs that have been made in desalination techniques, the Netherlands could bring its large stock of knowledge and experience to bear in efforts to ensure that an enhanced water supply also benefits the Palestinians.
8. Finally, in a general sense, 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.

Request for advice

Mr F. Korthals Altes
Chairman of the Advisory Council
on International Affairs
P.O. Box 20061
2500 EB The Hague

Date 23 October 2012
Re Request for advice on new initiatives for the Middle East Peace Process
Ref 151390.01u

Dear Mr Korthals Altes,

In its meeting of 2 October 2012, the Senate's Foreign Affairs, Defence and Development Cooperation Committee (BDO) discussed the Middle East Peace Process and the need for new initiatives to breathe new life into the process.

Pursuant to section 17 of the Advisory Bodies Framework Act and section 2 of the Advisory Council on International Affairs Act, I am writing to request the Advisory Council on International Affairs (AIV) to explore the scope for resuming the Middle East Peace Process, particularly in the light of recent changes in the regional and global political context. I would ask the AIV to advise on the options that exist for the Netherlands in helping to find a workable solution to the Israeli-Palestinian conflict, both independently and at European and international level. I should add that all members of the Senate of the States General, with the exception of those of the Freedom Party (PVV), support this request.

Background

New initiatives are badly needed to make headway in the Middle East Peace Process. Due in particular to developments in the region, rapprochement of any kind between the two parties directly involved in the conflict, Israel and the Palestinian Authority, has been impossible in recent years. In May 2012, the EU concluded that developments on the ground were threatening to make a two-state solution impossible. Nevertheless, the fledgling contact between the parties reinitiated in spring 2012 gives the impression that both parties are prepared to work on building mutual trust.

The idea behind the peace process remains the same: Israel has a right to security (and to preservation of its state), while the Palestinians have a right to their own state (and security) as part of the two-state solution set out in the Roadmap to Peace (see, for example, S/RES/1515 (2003)). However, the regional context has now changed significantly. The turbulent events in the Arab region have left their mark on the Middle East Peace Process. As noted by the AIV in a previous advisory report, it is quite conceivable that democratisation in the Arab region could initially have a destabilising effect on Arab-Israeli relations (AIV advisory report no. 79, 'The Arab Region, an Uncertain Future'). There is uncertainty about Israel's relations with Egypt and Iran. There are also fears that regional developments, particularly the ongoing conflict in Syria, could strengthen the position of Hezbollah and other groups with an explicitly anti-Israeli agenda. In the aforementioned advisory report on the Arab region, the AIV took the view that the Middle East Peace Process required a new approach and that fresh

initiatives were needed in the light of the changing regional context. Such an approach must of course be based on a set of principles shared widely internationally, as expressed, for example, in the advisory opinion issued by the International Court of Justice in 2004 on Israel's construction of a wall along the West Bank.

The relevant questions are:

- To what extent do the changes in the regional and global political context affect the negotiating positions of the parties directly involved and the attitudes of any interested third parties?
- Given possible changes in these positions, what scenarios are conceivable for the resumption of the Middle East Peace Process? What new possibilities do these scenarios offer for rapprochement and resumption of peace talks?
- Which organisations, countries or parties are in the best position to put forward new initiatives? What would such initiatives specifically entail?
- Based on the principles of international law, how can the Netherlands help achieve progress in the Middle East Peace Process? What action can the Netherlands take independently and at European and international level?

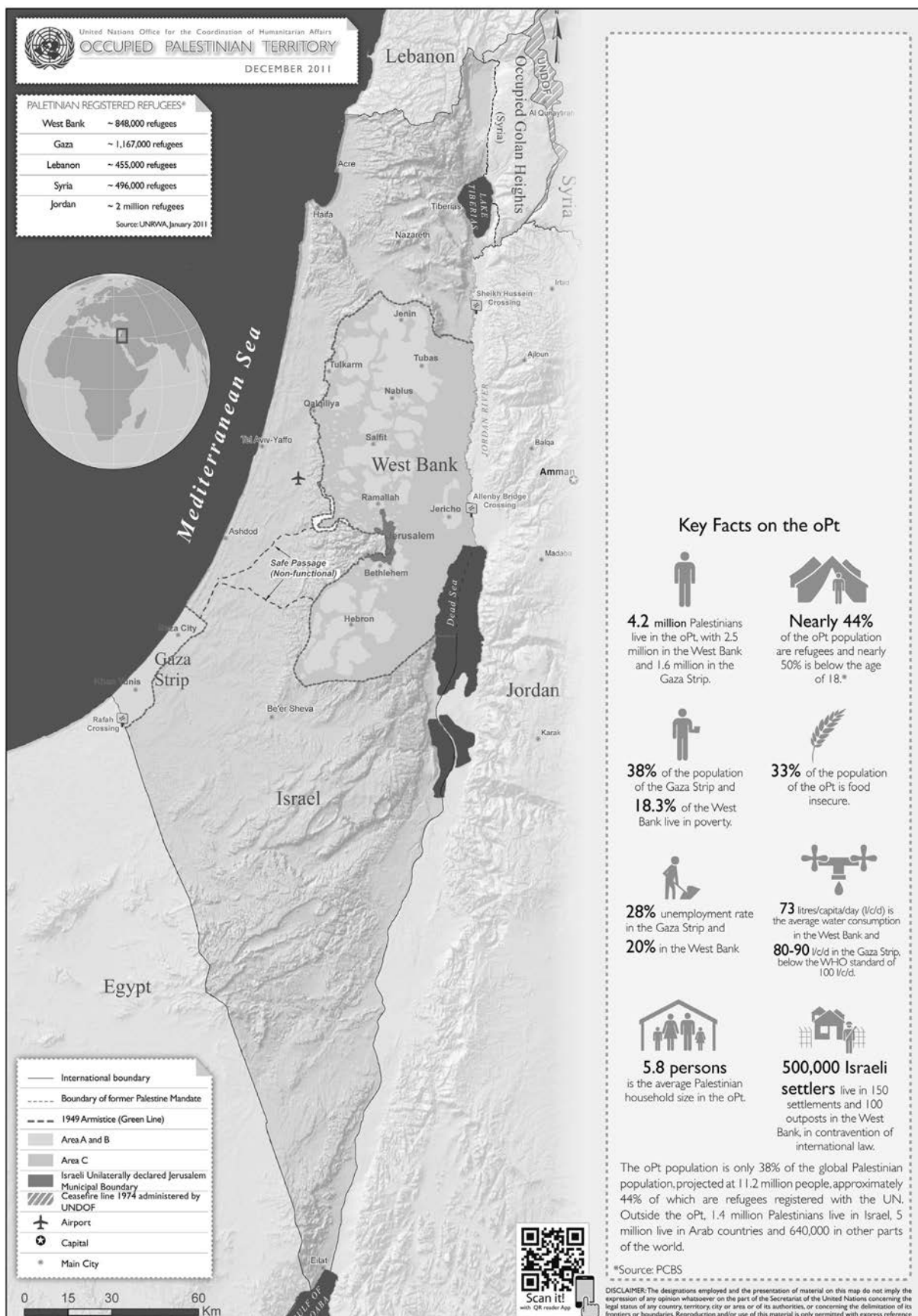
The Senate of the States General looks forward to receiving your advisory report.

Yours sincerely,

[signed]

Fred de Graaf
President of the Senate of the States General

Map of Israel and the occupied Palestinian territories (and some key facts on the occupied territories)



Source: Office for the Coordination of Humanitarian Affairs (oPt) of the United Nations, December 2011

List of abbreviations

AIPAC	American Israel Public Affairs Committee
AIV	Advisory Council on International Affairs
BRICS	Brazil, Russia, India, China and South Africa
CAVV	Advisory Committee on Issues of Public International Law
DOP	Declaration of Principles on Interim Self-Government Arrangements
EEAS	European External Action Service
EU	European Union
EUPOL COPPS	European Union Coordinating Office for Palestinian Police Support
ICJ	International Court of Justice
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organisation
PA	Palestinian Authority
PLO	Palestine Liberation Organization
UK	United Kingdom
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
US	United States
USSC	United States Security Coordinator for Israel and the Palestinian Authority

Door de Adviesraad Internationale Vraagstukken uitgebrachte adviezen*

- 1 EUROPA INCLUSIEF, *oktober 1997*
- 2 CONVENTIONELE WAPENBEHEERSING: dringende noodzaak, beperkte mogelijkheden, *april 1998*
- 3 DE DOODSTRAF EN DE RECHTEN VAN DE MENS: recente ontwikkelingen, *april 1998*
- 4 UNIVERSALITEIT VAN DE RECHTEN VAN DE MENS EN CULTURELE VERSCHIEDENHEID, *juni 1998*
- 5 EUROPA INCLUSIEF II, *november 1998*
- 6 HUMANITAIRE HULP: naar een nieuwe begrenzing, *november 1998*
- 7 COMMENTAAR OP DE CRITERIA VOOR STRUCTURELE BILATERALE HULP, *november 1998*
- 8 ASIELINFORMATIE EN DE EUROPESE UNIE, *juli 1999*
- 9 NAAR RUSTIGER VAARWATER: een advies over betrekkingen tussen Turkije en de Europese Unie, *juli 1999*
- 10 DE ONTWIKKELINGEN IN DE INTERNATIONALE VEILIGHEIDSSITUATIE IN DE JAREN NEGENTIG:
van onveilige zekerheid naar onzekere veiligheid, *september 1999*
- 11 HET FUNCTIONEREN VAN DE VN-COMMISSIE VOOR DE RECHTEN VAN DE MENS, *september 1999*
- 12 DE IGC 2000 EN DAARNA: op weg naar een Europese Unie van dertig lidstaten, *januari 2000*
- 13 HUMANITAIRE INTERVENTIE, *april 2000***
- 14 ENKELE LESSEN UIT DE FINANCIËLE CRISES VAN 1997 EN 1998, *mei 2000*
- 15 EEN EUROPEES HANDVEST VOOR GRONDRECHTEN?, *mei 2000*
- 16 DEFENSIE-ONDERZOEK EN PARLEMENTAIRE CONTROLE, *december 2000*
- 17 DE WORSTELING VAN AFRIKA: veiligheid, stabiliteit en ontwikkeling, *januari 2001*
- 18 GEWELD TEGEN VROUWEN: enkele rechtsontwikkelingen, *februari 2001*
- 19 EEN GELAAGD EUROPA: de verhouding tussen de Europese Unie en subnationale overheden, *april 2001*
- 20 EUROPESE MILITAIR-INDUSTRIËLE SAMENWERKING, *mei 2001*
- 21 REGISTRATIE VAN GEMEENSCHAPPEN OP HET GEBIED VAN GODSDIENST OF OVERTUIGING, *juni 2001*
- 22 DE WERELDCONFERENTIE TEGEN RACISME EN DE PROBLEMATIEK VAN RECHTSHERSTEL, *juni 2001*
- 23 COMMENTAAR OP DE NOTITIE MENSENRECHTEN 2001, *september 2001*
- 24 EEN CONVENTIE OF EEN CONVENTIONELE VOORBEREIDING: de Europese Unie en de IGC 2004,
november 2001
- 25 INTEGRATIE VAN GENDERGELIJKHEID: een zaak van verantwoordelijkheid, inzet en kwaliteit, *januari 2002*
- 26 NEDERLAND EN DE ORGANISATIE VOOR VEILIGHEID EN SAMENWERKING IN EUROPA IN 2003:
rol en richting, *mei 2002*
- 27 EEN BRUG TUSSEN BURGERS EN BRUSSEL: naar meer legitimiteit en slagvaardigheid voor
de Europese Unie, *mei 2002*
- 28 DE AMERIKAANSE PLANNEN VOOR RAKETVERDEDIGING NADER BEKEKEN: voors en tegens van
bouwen aan onkwetsbaarheid, *augustus 2002*
- 29 PRO-POOR GROWTH IN DE BILATERALE PARTNERLANDEN IN SUB-SAHARA AFRIKA: een analyse van
strategieën tegen armoede, *januari 2003*
- 30 EEN MENSENRECHTENBENADERING VAN ONTWIKKELINGSSAMENWERKING, *april 2003*
- 31 MILITAIRE SAMENWERKING IN EUROPA: mogelijkheden en beperkingen, *april 2003*
- 32 *Vervolgadvies* EEN BRUG TUSSEN BURGERS EN BRUSSEL: naar meer legitimiteit en
slagvaardigheid voor de Europese Unie, *april 2003*
- 33 DE RAAD VAN EUROPA: minder en (nog) beter, *oktober 2003*
- 34 NEDERLAND EN CRISISBEHEERSING: drie actuele aspecten, *maart 2004*
- 35 FALENDE STATEN: een wereldwijde verantwoordelijkheid, *mei 2004***
- 36 PREËMPTIEF OPTREDEN, *juli 2004***
- 37 TURKIJE: de weg naar het lidmaatschap van de Europese Unie, *juli 2004*
- 38 DE VERENIGDE NATIES EN DE RECHTEN VAN DE MENS, *september 2004*

- 39 DIENSTENLIBERALISERING EN ONTWIKKELINGSLANDEN: leidt openstelling tot achterstelling?, *september 2004*
- 40 DE PARLEMENTAIRE ASSEMBLEE VAN DE RAAD VAN EUROPA, *februari 2005*
- 41 DE HERVORMINGEN VAN DE VERENIGDE NATIES: het rapport Annan nader beschouwd, *mei 2005*
- 42 DE INVLOED VAN CULTUUR EN RELIGIE OP ONTWIKKELING: stimulans of stagnatie?, *juni 2005*
- 43 MIGRATIE EN ONTWIKKELINGSSAMENWERKING: de samenhang tussen twee beleidsterreinen, *juni 2005*
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