

# The Hague Strategic Note

**Military Intervention Decision Making Revisited:  
Getting A (Constitutional) Grip On 21st Century Wars**



## Dutch Military Intervention Decision Making Revisited:

### Getting A (Constitutional) Grip On 21<sup>st</sup> Century Wars

#### **Table of Contents**

Introduction .....	1
The Netherlands and Modern Military Interventions .....	2
Military Interventions and the Dutch Constitution .....	3
Military Intervention Decision Making in the Netherlands .....	4
Conclusion .....	7
Appendix A – Dutch Military Intervention Decision making in the Post Cold War Era .....	8



## Introduction

Definitions of national security and how it should be defended have changed radically over the past two decades. Interpretations have been stretched from a narrow conception of territorial defence of the borders of the homeland to encompass defence against instability far from these borders. States now regularly dispatch their military forces in instances in which vital interests in the traditional meaning don't seem to be at stake. The number of peace-support and nation building missions has almost quintupled since 1989.<sup>1</sup> Initially spurred by the desire to protect human rights, it were the events of September 11, 2001 that gave renewed momentum to the concept of peace-support and nation-building missions, as it provided these missions with a strategic in addition to a humanitarian rationale.<sup>2</sup> In this new strategic landscape, “wars of choice” and “wars of necessity” find themselves at a continuous spectrum and the question as to when states should decide to dispatch military forces and with what objectives has therefore resurfaced once again.

Western democracies have been struggling to come to terms with this altered environment. The discourse surrounding the dispatch of military forces revolves around issues of effectiveness versus democratic accountability, in addition to the reasons that justify the use of military force. The investigations in the UK and the Netherlands into the decision making process to contribute to the US led war against Iraq may come to mind, but perhaps the nearly pan European discussion on the role of parliaments in decision making both *ad en in bello* in Afghanistan are more relevant in this regard. The establishment of NATO's Rapid Reaction Forces and EU Battle Groups that may become active at a moment's notice are also noteworthy as they underscore the urgency of this debate.

These democracies have been seeking to strike a new balance between the degree of executive power and democratic control in matters of military intervention decision making. In France, for instance, the Sarkozy government issued a White Paper that proposed the establishment of a national security council, and the strengthening of the role of parliament in military intervention decision making procedures.<sup>3</sup> In the United Kingdom, both the House of Lords and the Brown

---

<sup>1</sup> See <http://www.un.org/Depts/dpko/dpko/list.shtml>, last visited October 2, 2009.

<sup>2</sup> The number of troops operating under UN mandate has grown sevenfold since 1999, from 12,700 to over 95,000. See <http://www.un.org/Depts/dpko/dpko/chart.pdf>, last visited October 2, 2009.

<sup>3</sup> The French White Paper on Defence and National Security (2008), esp. p. 244. See



Government endorsed a stronger role for the parliament in matters of war and peace.<sup>4</sup> All parties argue that the institutional makeup of their parliamentary democracies – and the relationship between the executive and the legislative powers – have not been designed to deal with the challenges posed by the current strategic landscape.<sup>5</sup>

Amongst the parliamentary democracies of Western Europe, a range of small and medium powers exist, with Belgium and Denmark on one side of the spectrum, and France, Germany, and the UK on the other side, with the Netherlands, although a small power, somewhere in the middle.<sup>6</sup> Also in the Netherlands, successive governments have been faced with the complexities of military intervention decision making and the relationship between the executive and legislative branch of government in a wide variety of cases.

### **The Netherlands and Modern Military Interventions**

Over the course of the 1990s and into the first decade of the twenty-first century, the Netherlands has disproportionately contributed to a large number of peacekeeping and peace enforcement missions despite the fact that the Dutch military establishment had suffered heavily from successive cuts in the defence budget.<sup>7</sup> Between 1990 and 2009, the Netherlands participated in military missions to, among other countries, Cambodia (UNMIC & UNTAC), Iraq (Desert Storm & Provide Comfort), Haiti (UNMIH), Bosnia Herzegovina (UNPROFOR/IFOR/SFOR/EUFOR), the Federal Republic of Yugoslavia (Allied Force), Kosovo (KFOR), Cyprus (UNFICYP), Ethiopia and Eritrea (UNMEE), Afghanistan (ISAF & Operation Enduring Freedom), Macedonia (Essential Harvest & Amber Fox) and Iraq (SFIR).<sup>8</sup> In 2000, with the exception of the US and the UK, the Netherlands had the highest percentage of soldiers serving abroad of all the NATO and EU member states relative to the size of its military.<sup>9</sup>

---

<sup>4</sup>The governance of Britain (2007), Presented to Parliament by the Secretary of State for Justice and Lord Chancellor by Command of Her Majesty July 2007, see

<http://www.official-documents.gov.uk/document/cm71/7170/7170.pdf>, last visited October 2, 2009; “Waging War: Parliament's role and responsibility” published by the House of Lords in 2006, see <http://www.publications.parliament.uk/pa/ld200506/ldselect/ldconst/236/236i.pdf>, last visited October 2, 2009.

<sup>5</sup> For more information on the current nature of the relationship between European governments and parliaments in matters of war and peace, see Sandra Dieterich, Hartwig Hummel and Stefan Marschall, ‘Strengthening Parliamentary “War Powers” in Europe: Lessons from 25 National Parliaments’, DCAF, 2008.

<sup>6</sup> See Tim Sweijjs, *The Role of Small Powers in the Outbreak of Great Power war* (forthcoming)

<sup>7</sup> Duco Hellema, *Buitenlandse politiek van Nederland: De Nederlandse rol in de wereldpolitiek* (Spectrum 2006), p.407.

<sup>8</sup> [www.nimh.nl/korea\\_tot\\_kabul/index.html](http://www.nimh.nl/korea_tot_kabul/index.html), accessed July 30, 2006; Tweede Kamer, vergaderjaar 1999–2000, 26 454, nr.7–8.

<sup>9</sup> Hellema(2006), p.405.



Small and medium powers, even more than great powers, operate within structural constraints imposed by the international system. As a result, strategic decision-making in the capitals of small and medium powers depends on a series of considerations. Apart from the impact of particular histories of national foreign policy, domestic opinion and constitutional frameworks, these considerations consist of the desire to exert influence on the international stage from a position of limited power, a longing for international prestige and a perceived need to strengthen ties with allies. As such, they play a significant role in the deliberation to participate in a military intervention. Before turning to an analysis of how the Dutch government has sought to deal with this issue over the past two decades, some basic background of the Dutch constitution vis-à-vis military interventions may be in order.

### **Military Interventions and the Dutch Constitution**

The Netherlands, with its small geographic size and modest population of sixteen million inhabitants, does not seem to be a power to be reckoned with in the international arena and may be characterised as a small power. It is unable to engage in military interventions independently. Since its last failed attempt to regain its former possessions in the East Indies through unilateral intervention after WWII, the Netherlands has only participated in multilateral missions under the umbrella of the UN or a regional security organisation.<sup>10</sup> The foreign policy of the Netherlands, in accordance with the title of a book by former Defence Minister Joris Voorhoeve, may be characterised as a mix of peace, profits and principles.<sup>11</sup> Operating from a position of limited military power, the Dutch believe in the desirability of the rule of international law. Indeed, Article 90 of the Dutch constitution reads that the government will promote the development of international law. Since 2000, Article 97 states that the purpose of the armed forces is not only “the defence and protection of the interests of the Kingdom”, but also “maintain[ing] and promote[ing] the international legal order.”<sup>12</sup> Article 100, furthermore, asserts the government’s duty to inform parliament if it dispatches military forces to promote international law before their actual deployment, but makes a caveat for circumstances in which that would be impossible.<sup>13</sup>

---

<sup>10</sup> Hellema(2006).

<sup>11</sup> Joris Voorhoeve, *Peace, profits and principles. A study of Dutch foreign policy* (The Hague 1979).

<sup>12</sup> Grondwet voor het Koninkrijk der Nederlanden 2002, vijfde gewijzigde druk (‘Constitution of the Kingdom of the Netherlands’, 5th edition),pp.22-23.

<sup>13</sup> Ibid, p. 24.



The firm belief in international law might be explained by a widespread Calvinist-influenced worldview, but at the same time this belief also conveniently serves the interest of a state which stands powerless vis-à-vis the great powers and whose economy is heavily dependent upon international trade. Small and medium powers, even more than great powers, operate within structural constraints imposed by the international system. As a result, strategic decision-making in the capitals of small and medium powers depends on a series of considerations. Apart from the impact of particular histories of national foreign policy, domestic opinion and constitutional frameworks, these considerations consist of the desire to exert influence on the international stage from a position of limited power, a longing for international prestige and a perceived need to strengthen ties with allies. As such, they play a significant role in the deliberation to participate in a military intervention as asserted by several observers. Duco Hellema, for instance, writes in his review of Dutch foreign policy in the twentieth century that at the Ministry of Foreign Affairs it is “considered that Dutch contributions to the UN raised Dutch stature, both within the UN and within NATO.”<sup>14</sup> Likewise, with respect to decision making surrounding the mission to Srebrenica in the 1990s, Jan Willem Honig observes the existence of a dominant belief at the Ministry of Foreign Affairs that sending combat units “would improve the ‘visibility’ of Dutch foreign policy.(..) Combat units might open the doors of international diplomacy.”<sup>15</sup>

### **Military Intervention Decision Making in the Netherlands**

The new complexities of military decision making in the modern age have stirred heated debates in the Netherlands about on the one hand the circumstances justifying the dispatch of military forces abroad, and on the other hand whether the prerogative of war making powers falls with the government or with parliament. It was for these reasons that the Dutch government ordered a review framework (“toetsingskader”) to be drawn up in the mid-1990s following the essentially broken decision making procedures that ultimately culminated in the dispatch of a poorly armed Dutch battalion to protect the Srebrenica enclave.<sup>14</sup>

The review framework listed the reasons and circumstances that would legitimise a decision to dispatch a military intervention force. The review framework was updated in 1999 and 2001 and is up for revision in October 2009.<sup>15</sup> The review framework comprises considerations that touch

---

<sup>14</sup> Honig, Jan Willem & Booth Norbert, *Srebrenica Record of a War Crime*, New York: Penguin Books (1997)

<sup>15</sup> Tweede Kamer, vergaderjaar 1994–1995, 23 591, nr.5.

Tweede Kamer, vergaderjaar 1999–2000, 26 454, nrs.7–8.



on the grand strategic level as well as ones that are concerned with operational aspects and the feasibility of the mission at hand. On the grand strategic level these consist of – but aren't limited to – the promotion of international law and the countering of threats to international stability; the international credibility and reputation of the Netherlands, and the need to be perceived as a stable coalition partner or trustworthy ally. On the operational level these touch upon whether the Netherlands is part of the international body where the decision-making takes place, the amount of influence that can be exercised on the mandate and the conduct and the length of the operation through the contribution of forces. Central to every decision is the question whether there is the presence of a clear mandate based on a resolution of the UN Security Council (Chapter VI or Chapter VII) or a decision of a regional security organisation.<sup>16</sup>

Foreign policy objectives, however, need to be attainable in reality and here is where considerations of a military nature come in. In other words, does the armed intervention contribute to the attainment of peace and a political solution to a conflict? The key criterion is whether the aims stated in the mission statement are within operational reach. This is determined by a risk assessment which shows the dangers to Dutch military forces while also shedding light on the suitability of the Dutch military forces for the task at hand. It is mandatory that the forces should have the proper military capabilities, including logistical support, and fitting rules of engagement with an emphasis on force protection. The command structures in the theatre of operations have to be clear, and since the Srebrenica massacre in 1995, it is explicitly mentioned that 'dual key' command structures – separated lines of command from different international organisations – should be avoided at all times. Dutch forces should only operate with 'full command' retained by the Chief of the Defence Staff under the political responsibility of the Defence Minister.<sup>17</sup> The time of the deployment should be fixed – no open-ended commitments – and a replacement of any military mission should be arranged beforehand.<sup>18</sup> These guidelines are broad but serve as a general checklist for the parties that are involved in the decision to dispatch a military intervention force. It also requires the government to provide parliament with information on these issues in concordance with its obligations under Article 100 of the Dutch constitution. The 2009 update of the review framework adds a number of additional topics that the government will take into account in the decision making process, which include issues

---

Tweede Kamer, vergaderjaar 2000–2001, 23 591&26 454, nr.7.

<sup>16</sup> The current government decided in 2007 that only a UN mandate would suffice to legitimise a Dutch contribution to military intervention.

<sup>17</sup> Tweede Kamer, vergaderjaar 2000–2001, 26 454, nr.18.

<sup>18</sup> Tweede Kamer, vergaderjaar 2000–2001, 23 591 en 26 454, nr.7.



relating to gender, human security and the prospects of economic development of the area in question.

While the successive review frameworks have injected a greater degree of transparency and clarity as to why and how the Netherlands participates in military interventions, the actual implementation of the review framework in practice has led to multiple standoffs between government and parliament. These standoffs evolve around the question of whether the government needs the consent of parliament – as advised by the parliamentary taskforce on the NATO Response Force<sup>19</sup> – or whether the government merely needs to inform parliament – as is stipulated in the constitution. The fact it has become sort of standard practice over the last decades that the government asks the consent of parliament – makes matters even more complicated.

Regrettably, the government does not solve this problem in its 2009 update of the review framework and in its prior communication to parliament. Instead of either accepting or explicitly rejecting the request of parliament to formalise its role in the decision making process, the government deems current practices as not having posed any insurmountable problems and contends: ‘if it ain’t broke, don’t fix it’.<sup>20</sup> The government asserts that the proposed constitutional adjustment that would give parliament an executive role would render the existing constitutional balance obsolete and raise a series of complex political and judicial questions. Dutch contributions to NATO Rapid Response force and EU Battle Groups, and the fact that Dutch military forces may be dispatched within a very short notice, do not require any procedural changes according to the government. Rather, the government holds that parliament will be informed prior to the moment that decision making in the relevant international bodies takes place. However, it specifically excludes the possibility of parliamentary “opt outs” as that may hurt Dutch international standing and perceived reliability and in that respect it does strengthen the executive’s hand in military intervention decision making. Appendix A provides a detailed overview of the substance and evolution of the successive review frameworks between 1995 and 2009.

---

<sup>19</sup> Tweede Kamer, vergaderjaar 2005-2006, 30162, nr. 3.

<sup>20</sup> Tweede Kamer, vergaderjaar 2007-2008, 30 162, nr. 10, p. 4.



## Conclusion

The new strategic environment and the ever fading difference between “wars of necessity” and “wars of choice” have raised a series of questions about the circumstances that legitimise the use of the military instrument in addition to pressuring governments and parliaments to reflect upon the relationship between the executive and legislative branches of government around Europe.

The review of the case of the Netherlands shows how successive governments have sought to come to terms with these two issues through the introduction of a review framework which has been updated regularly. The review also illustrates how international prestige, the desire to exert influence on the international stage from a position of relatively limited power, and the perceived need to strengthen ties with allies all play a significant role. If a small power engages in negotiations about contributing forces to a military intervention mission, its space of maneuver and perhaps the opportunity for democratic control, is constrained. It appears however that the matter of executive versus legislative control will not be settled satisfactorily in the latest 2009 update.

This paper does not seek to take a stance in this debate since there are plenty of arguments supporting both views and there is no room to do full justice to the trust of their respective arguments. This paper does want to stress, however, that the fact that this issue will not be settled is a troubling prospect. It implies that future military intervention decision making processes will be dominated by the exact same problems as the ones that prompted the entire debate on executive versus legislative control.

The real question that needs to be addressed is whether there is indeed a trade-off between the effectiveness and efficiency associated with the prerogative of executive governmental power and the legitimacy and democratic control provided by parliamentary involvement. Perhaps there is no trade-off and the two can in fact co-exist. It is clear, however, that the Dutch government and parliament need to acknowledge that the uneasy relationship poses a recurring problem to modern military intervention decision making, before we can start and devise new ways of combining effectiveness with democratic control.

Tim Sweijts, The Hague, October 2009.



## Appendix A – Dutch Military Intervention Decision making in the Post Cold War Era<sup>21</sup>

The drastically changed strategic environment following the end of the Cold War prompted a debate on the reasons that legitimise the dispatch of Dutch military forces and the role of parliament in the decision-making process in multilateral military interventions ensued.

In early 1994, the Dutch government formally acknowledges the importance to formally restructure the role of the Dutch parliament within the decision making process with regard to the deployment of Dutch military forces in international crisis management operations. After the failed Srebrenica mission of the 1990s, Dutch Ministers Van Mierlo (Foreign Affairs) and Voorhoeve (Defence) draw up a checklist to guide the decision making process dealing with the employment of the Dutch military forces.<sup>22</sup>

“Het toetsingskader” or the review framework touches both on the political desirability and the military feasibility of the military intervention decided upon. It is only used in cases of military deployment on a voluntary basis, that is, not forthcoming from Alliance obligations. The core features of the review framework are listed below:

### Desirability

With regard to the desirability of the deployment of Dutch military forces, the review framework obliges the government to address specific objectives: the Dutch military forces may be deployed to maintain international peace and security; to maintain and secure the international legal order and the rule of law; and/or to protect vital national, European, or NATO interests. Considerations of international solidarity, credibility, and shared responsibility may also play a role. In principle, the government decides to deploy military forces only when the military intervention is supported by a broad international coalition, and with broad domestic parliamentary support for the mission.

### Feasibility

Aside from the above-mentioned political considerations, the review framework reserves specific attention for considerations regarding the military feasibility of the operation. The political mandate must be translated into a clear military assignment, which identifies a set of feasible military objectives. Furthermore, the burdens of the operation should be shared amongst a broad international coalition. The decision to deploy military units should not compromise other obligations toward peacekeeping- or peace enforcement operations. A clear command structure should be in place. In addition, the government should provide parliament with a clear risk-assessment addressing the potential exposure of the respectively deployed military units to dangerous and potential life-threatening situations. Finally, the government should not decide upon open-ended military commitments.

On 21 December 1994, the Dutch Parliament applied to formally strengthen its role within the decision making process with regard to the deployment of Dutch military forces in international crisis management operations and requested the formal right to either approve or disapprove of any governmental decision in these matters. The request to formalise the role of parliament within the decision making process, was rejected by the government.

**2000** – The review framework was adjusted after recommendations of the “Provisional Commission Decision-making Employment Dutch Armed Forces” (“Tijdelijke Commissie Besluitvorming Uitzendingen”). The main recommendations of the commission were:

- The government should make explicit the motivations to dispatch Dutch armed forces
- All aspects of the military intervention should be addressed in a single letter to parliament
- The feasibility of operation as well as the feasibility of military objectives must be clear
- The government should specifically explain which military units are most suitable to attain the listed military objectives
- A clear exit-strategy should be formulated *ex ante*

---

<sup>21</sup> The author thanks Djörn Eversteijn for his research assistance in preparing this overview.

<sup>22</sup> Kamerbrief Betrokkenheid van het parlement bij de uitzending van militaire eenheden (TK 23 591, nr. 5, vergaderjaar 1994-1995).



**2001** – These recommendations were adopted in a new review framework in 2001.<sup>23</sup> The 2001 review framework also contained the following provisions:

The Dutch government should provide the parliament with:

- Sufficient background of the political context of the conflict (including the aims, motives and stance of different parties participating in the conflict)
- A characterisation of the conflict, including an assessment of potential risks of spill-over effects
- An overview of previous negotiations, agreements, international intervention or attempts to mediate
- A political risk analysis that addresses potential future developments
- An assessment of the role of the military operation within the political process
- Information on the broader economic and humanitarian situation including the number of refugees, and the perspectives of disarmament, reconstruction, and the return of the rule of law.

**2009** - The review framework will be adjusted again in 2009<sup>24</sup>, as a response to a report that was issued by the Taskforce 'NATO Response Force', headed by the parliamentarian H. Van Baalen (VVD) in 2006. This update requires the Dutch government to pay specific attention to the comprehensive approach in military interventions decision making processes. The update specifically emphasises:

- Issues of development and reconstruction if the mission is intended to provide a foundation for either of these processes;
- Support for public administration on the local, national and/or regional level;
- Support for education, health care programmes and economic development;
- Support for Security Sector Reform and disarmament related efforts (DDR);
- Specific attention for the position of refugees and women within the theatre of operations, as well as to their access to food and resources to provide in the population's basic daily needs;
- Support for various social sectors, like education and health care, as well as the economic sector.

In mid-2006 a working group of the parliamentary commissions for foreign affairs and defence presented a report to parliament. The report examined the role of parliament in military intervention decision making vis-à-vis Dutch contributions to the NATO Response Force or EU-Battlegroups.

#### **Core recommendations and conclusions of the Taskforce NATO Response Force<sup>25</sup>**

- In military intervention decision making on the deployment of Dutch military forces in multilateral military interventions, a custom has evolved that implicitly provides parliament with the right to approve or disapprove the government's decision to deploy Dutch forces. This custom should be formalised.
- This requires a constitutional change and an adjustment of Article 100 of the Dutch Constitution, providing parliament with the right to explicitly approve or disapprove a decision to deploy Dutch military forces abroad before the decision is formally made.
- Members of parliament should formulate a provisional bill that addresses these intended formal and legally binding adjustments of the constitution.
- The current Article 100 procedure should include *all* foreign military operations in which the Dutch military forces will be deployed, including operations forthcoming from Alliance obligations (Article 5, NRF / EU-Battlegroup), in addition to other international crisis management operations.

After the Working Group NATO Response Force presented its report, the government requested the Advisory Council on International Affairs to further examine the feasibility and desirability to formalise parliament's role in the decision making process. Based on two reports of the Advisory Council, the government presented its reaction to the NRF report in April 2008.

---

<sup>23</sup> Kamerbrief Betrokkenheid van het parlement bij de uitzending van militaire eenheden (TK 23 591, nr. 7, vergaderjaar 2000-2001).

<sup>24</sup> Toetsingskader 2009.

[http://www.eerstekamer.nl/id/vi6z9vonn9si/document\\_extern/w30162tk11bijl/f=/vi6z9w74aemf.pdf](http://www.eerstekamer.nl/id/vi6z9vonn9si/document_extern/w30162tk11bijl/f=/vi6z9w74aemf.pdf), last visited October 2, 2009.

<sup>25</sup> Rapport Onderzoek NATO Response Force (TK 30162, nr. 3, vergaderjaar 2005-2006).



**Core arguments Government Response to NRF report<sup>26</sup>**

- The government proposes to actualise and broaden the review framework of 2001.
- The government refers to a report of the Advisory Council on International Affairs (AIV) that concluded that the current decision making procedure (Article 100) safeguards the intimate (“and adequate”) involvement of parliament with respect to deployment of Dutch armed forces in international crisis management operations. The current procedure, which allows for an intensive discussion between government and parliament before any formal decision is made, contributes to the quality and accuracy of the decision making process.
- Moreover, according to the government, the current procedure has proven its value and need not be formally adjusted. No insurmountable problems have surfaced in the decision making process. It therefore perceives no need to adjust current procedures.
- Article 100 does not provide parliament with a formal right to approve or disapprove with the government’s decision to deploy the Dutch military in international crisis management operations.
- The government’s obligation to inform parliament merely deals with the deployment of Dutch military forces in operations intended to secure and maintain the international order.
- The role of parliament within the decision-making process has been strengthened throughout the past 20 years. The proposed constitutional adjustment would render the existing constitutional balance obsolete and raise a series of complex political and judicial questions.
- The proposed adjustment of the existing decision making process would seriously hamper the government’s position and would only lead to an increased invocation of the exception clause (Article 100, clause 2).
- The government concurs with the adagium ‘de regering regeert, het parlement controleert’ (‘government reigns, parliament checks’)
- With regard to the deployment of military units to the NATO Rapid Response Force or EU-Battlegroup, a distinction should be made between the allocation (‘toewijzing’) of military units and the actual deployment (‘inzet’) of the military units as part of the NRF or EUBG respectively. The allocation of military units to the NATO Rapid Response Forces or EU Battle Groups is not subject to the review framework or the Article 100 procedure. At this stage it is still unknown whether the actual deployment requires these procedures to be followed. The government acknowledges that in various cases when Dutch military forces have been allocated to these Rapid Response entities, several elements of the review framework may be presented to parliament.
- Opt-outs are only justified in cases that the allocated forces are immediately required to counter an urgent threat to the Netherland’s vital national interests.
- The government will inform parliament about the deployment of military units as part of the NATO Rapid Response Forces or EU Battle Groups before a North Atlantic Council (NATO) or General Affairs and External Relations Commission (EU) decision to employ these rapid response forces.

---

<sup>26</sup> Onderzoek NATO Response Force (TK 30162, nr. 9, vergaderjaar 2007-2008).

