

SUMMARY

I.1 Formation of the Committee

In the night of 18-19 March 2003, following the rejection of six motions on the question of war in Iraq, the speaker closed the assembly of the Lower House of Parliament. Thus ended a series of debates and an exchange of documents dealing with a possible armed attack on Iraq by the us and the position that the Netherlands should adopt in relation to it, which had started in early September 2002. The attack was launched on 20 March.¹ The issue of Iraq did not then disappear from the agenda. However, as the Minister of Foreign Affairs put it, the reality of ‘the military offensive by a coalition led by the us’ did change the way the issue was addressed.² Once that offensive began, Parliament was no longer concerned with the definition of Dutch policy on the Iraq question but with the government’s accountability for the adopted policy and its consistent application. Parliamentary debate was accompanied by public debate, in the media and amongst experts in various fields, such as public international law, international relations and national and international security. This report concerns the political and public debate, which continues to this day.

For nearly six years, successive administrations – Balkenende I (then outgoing), II, III and IV – opposed an independent (i.e. non-governmental) inquiry. However, on Monday 2 February 2009, objections were withdrawn. On that day, the Prime Minister and the government ministers most directly concerned, namely the Minister of Foreign Affairs, the Minister of Defence and the Minister of the Interior and Kingdom Relations, sent identical written statements to the speakers of the Upper and Lower Houses of Parliament.³ On the same day, the Prime Minister held a press conference, at which he announced his intention to form a committee chaired by W.J.M. Davids, former President of the Supreme Court of the Netherlands. The committee’s remit would be to investigate decision-making concerning Dutch policy on Iraq in the period from summer 2002 to summer 2003. The Prime Minister sought parliamentary approval before proceeding to set up the committee.

In his written statement, the Prime Minister explained his proposal as follows. In the preceding weeks, parliament had announced a large number of further questions regarding the decision-making concerning the political support for the 2003 Iraq War given by the Netherlands. The government⁴ had previously accounted for its decision-making in some detail, in written statements, in answers to questions and in a series of parliamentary debates. A majority of members of Parliament had supported the government’s policy, as evidenced by, for example, the voting on ten motions. However, it seemed that answering parliamentary questions was no longer sufficient. Furthermore, the financial and economic crisis was demanding the administration’s full attention. With these considerations in mind, the administration was proposing to instruct an independent com-

1 Written statement from Minister of Foreign Affairs to the Lower House, dated 26 March 2009, *Parliamentary Documents II*, 2002/03, 23 432 nr. 103. The date of the invasion is sometimes given as 19 March 2003, which was the date in the American time zones when the attack began. The dates cited throughout this report are those valid in the Netherlands’ time zone.

2 The written statement referred to in note 1.

3 *Parliamentary Documents II*, 2008/09, 31847 nr. 1; *Parliamentary Documents I*, 2008/09, 31847, nr. A.

4 Although a constitutional difference exists between the government and the administration, the two terms are used interchangeably, without any intention to make a constitutional point.

mittee to investigate the preparation of and decision-making concerning the Netherlands' political support for the invasion of Iraq.

The Prime Minister was certainly right to say in his written statements that numerous questions concerning the us invasion of Iraq had been posed or announced. Nor can it be denied that the government had already provided a great deal of information on the subject in written statements and in parliamentary debates. However, the written statements of 2 February 2009 did not immediately dampen parliamentary interest in the 'Iraq question', as the administration had hoped. There was an immediate debate in the Lower House, in the context of which the Prime Minister was asked seven questions. Thus, in the first twenty-four hours, the effect of the written statement was the opposite of what was sought. The Prime Minister answered the questions raised in the debate in a written statement dated 3 February. His response to the question of whether ministerial responsibility applied to all earlier questions was a simple 'Yes'. In reply to the other questions, the Prime Minister essentially confined himself to referring to his written statement of the previous day.

On 4 February 2009, the House considered the proposal to establish a committee.⁵ A motion calling for the preparation of a parliamentary inquiry was rejected. The outcome of the debate was that sufficient support for the government's proposal was secured. After consulting the Prime Minister, the prospective committee chairman accordingly turned his attention to the composition of the committee and other preparations.

The committee was formally established by the Decree Establishing a Committee to Investigate Decision-Making concerning Iraq, of 6 March 2009. The decree was amended by a further decree on 28 October 2009.⁶

1.2 The call for a (parliamentary) inquiry

As the Prime Minister indicated in his written statements, Parliament has repeatedly called the government to account regarding the Netherlands' Iraq policy and related matters, by posing questions, by calling interpellation debates and in the context of oral debates. Questions about the implementation of Dutch policy were first asked by MPs within a week of the invasion itself, namely on 25 March 2003. Many more followed subsequently.

Between 19 March 2003 and 2 February 2009, the Netherlands' Iraq policy was the subject of a general debate in the Lower House or standing house committees on fourteen occasions; in the context of those debates, several motions calling for a parliamentary inquiry were put forward, and were all rejected. The Upper House too has repeatedly considered the Netherlands' Iraq policy. Thus, there has been no lack of parliamentary consideration of the subject. The repeated and prolonged refusal of successive administrations, each supported by a parliamentary majority, to allow an inquiry, is regarded by the Committee as obstinate. Considerable dissatisfaction, both inside and outside the political arena, could have been prevented by a more timely inquiry. Examination of the matter would also have been more straightforward at an earlier stage than

5 *Proceedings II*, 2008/09, 50-41914, February 2009.

6 The establishment decree and the associated amendment decree (Decree nr. 3084260, *Stt.* (=Government Gazette) 16447, 30 October 2009) are both appended to this report, together with explanatory notes (Appendix A).

it has been nearly seven years after the events in question. The recollections of the individuals concerned have inevitably been impaired by the passage of time and coloured by the (unfortunate) course of events in Iraq since the spring of 2003. Furthermore, recollections have been influenced by leaks from important sources and by the suggestion – nurtured by the resistance to an inquiry – that the government was unprepared to reveal crucial information. All things considered, it would have been better if an inquiry had taken place at an earlier stage.

I.3 Appointment of the members and staff of the Committee

On the recommendation of the prospective chairman,⁷ the establishment decree appointed the following persons to the Committee:

- W.J.M. Davids, LL.M., chairman
- Prof. Dr. M.G.W. den Boer
- Prof. Dr. C. Fasseur
- Dr. T. Koopmans
- Prof. Dr. N.J. Schrijver
- Prof. Dr. M.J. Schwegman
- A.P. van Walsum, LL.M.

The Committee's staff was made up of:

- Dr. J.J.G. van der Bruggen, Secretary
- H.T. Bos-Ollermann, LL.M., first Deputy Secretary
- M. Lignac, MA, second Deputy Secretary

At a later stage, the Committee's staff was supplemented (in the capacity of researcher) by:

- Colonel (rtd) Dr. D.C.L. Schoonoord (RNLMC)

The Committee appointed Prof. Dr. Schwegman as its vice-chairman.

I.4 Remit

The establishment decree stated that the Committee was to be independent. Its remit was to investigate preparations and decision-making in the period from summer 2002 to summer 2003 with regard to the Netherlands' political support for the invasion of Iraq in general, and with regard to matters pertinent to international law, to intelligence and information provision and to alleged military involvement in particular.

Within the time frame that was allotted and to the extent the Committee was able to do so, it perceived its task as one of fact-finding and therefore it sought to determine the relevant facts and to produce a maximally complete reconstruction of the preparations and the decision-making process concerning the Iraq question.

⁷ At a press conference on 25 February, the prospective chairman had already announced the names that he had recommended to the Prime Minister.

I.5 General structure and content of the report

The Committee's terms of reference indicate that it was to investigate and report on a subject that has many different aspects: national and international, political and legal, historical and social, military and diplomatic, ethical and economic. There are various forms that the Committee's report might reasonably have taken; all such forms would imply a particular subject or substrate of facts coming to the fore at more than one point and would necessitate cross-referencing between parts of the report.

In the presentation of its findings, the Committee has opted to work from the general to the particular. Chapter 2, in which the Committee describes its methodology, is followed by a number of Chapters (3 to 6) describing the various facets of the context in which the Iraq question and the associated decision-making processes must be considered. Chapters 7 to 11 elaborate on the themes and aspects referred to earlier and provide further analysis. Finally, in Chapter 12, the inquiry's findings are summarized in forty-nine conclusions. Appended to the report are several formal documents, plus certain items whose content has played a central role in the inquiry. The maps in this report are derived from *De Wereld Bosatlas* (Wolters-Noordhoff Atlasproducties of Groningen, 2004). The Committee thanks the publisher for giving its consent to the use of the material and for its support with the adaptation of the maps.

A more specific summary of the topics and questions dealt with in each of the Chapters 3 to 11 is presented below.

The events surrounding the invasion of 20 March 2003 were not historically isolated, on either the national or international stages. The background to those events is therefore described in Chapter 3, starting with the Iraqi conquest of Kuwait on 2 August 1990. When the president of Iraq, Saddam Hussein, refused to withdraw his forces from Kuwait, Operation Desert Storm – an air and ground offensive against Iraq, led by the US and the UK – was launched on 16 January 1991. In 1990, the Netherlands demonstrated its willingness to take an active part in the conflict with Iraq by making one or more frigates available. Desert Storm was instigated and authorized by the UN Security Council. Following Iraq's defeat, a major disarmament programme was started in 1991, under the auspices of the UN. Consideration is given to the way that this programme was implemented by Iraq, the specially created inspection body, UNSCOM, and the IAEA. The steps taken to protect threatened sections of population of Iraq, such as the Shiites and Kurds, are also examined. With a view to forcing Iraq to cooperate with the various UN resolutions, the US and the UK (and initially France) carried out repeated air strikes on the country. Among other issues, this background Chapter discusses the stance taken by the Dutch government (the Lubbers III, Kok I and Kok II administrations) and the Lower House in relation to these attacks and the last major air strike (Operation Desert Fox) in December 1998, which took place without explicit authorisation by the UN Security Council.

In Chapter 4, the central issue is the social context within which debate about Iraq took place in the Netherlands. First, the turbulent political situation prevailing in the Netherlands in spring 2003 is described. In its decision of 18 March 2003 to give political support but not military support for the invasion of Iraq, the government made explicit reference to public support, which is why the Committee considers the social context as important. The government's reasoning was influenced by public opinion to a significant extent. Accordingly the Committee felt it appropriate to describe public opinion on Iraq in the Netherlands (and elsewhere) and to consider the extent to which the government used public opinion research to shape its policy.

Chapter 5 deals with the political decision-making in The Hague. The first question examined is how the government arrived at its position on the Iraqi conflict and what role the Ministry of Foreign Affairs played in that regard. What course did the preparation by civil servants, the formulation of a government stance, the cabinet discussions and the parliamentary debates take? And when and how were the Prime Minister and the Minister of Defence involved in the discussions and the debates in the House? The international dimension in the Dutch decision-making is also examined, for instance the response to Security Council Resolution 1441 in the Netherlands. Matters such as British contacts with the Prime Minister and us requests for political and military support are addressed as well. Another topic covered in this Chapter is the political debate surrounding two important decisions taken prior to the invasion, namely to make Patriots (together with Dutch military personnel) available to Turkey and to provide Host Nation Support to the us for equipment and troop movements (through the port of Rotterdam, for example). Of significance in this regard is the decision-making process of the government that led to the March 2003 decision to give political support but no further military support to the imminent us-British invasion of Iraq.

In Chapter 6, the Committee examines the extent to which decision-making on Iraq influenced the attempts to form a coalition between the CDA (Christian Democratic Party) and the PvdA (Labour Party) in spring 2003. The Committee also analyses the value of a claim, often expressed since the House debate of 18 March 2003, namely that the Dutch position on the invasion of Iraq revealed at the time, was allegedly the result of a 'deal' between the CDA and the PvdA in the context of negotiations on a feasible government coalition. Furthermore, the Committee deals with the question of whether after the elections of 22 January 2003 political decision-making within the government was strongly affected by the coalition-shaping process.

Chapter 7 outlines the international dynamics surrounding the Iraq dossier, against the background of the post-9/11 security policy of the us. How did the Bush administration exert pressure on Saddam Hussein's regime in the months preceding the invasion? How did the European partners respond to the us security strategy? One important topic addressed in this Chapter is how the Netherlands charted a course between divergent Atlantic and European positions on Iraq. The Netherlands made a straightforward choice for the former. Could the Netherlands then act as an intermediary in an increasingly divided Europe? The Netherlands' role within NATO – particularly in relation to the stationing of Patriot missile defence systems in Turkey – is also examined. Considerable attention is devoted to the weapons inspection process and to the administration's use of the reports prepared by UNSCOM and UNMOVIC. Before the Committee commenced its inquiry, several people raised the question whether Dutch political support for the us-British invasion was motivated by economic interests, in particular oil interests. It has also been suggested that the appointment of De Hoop Scheffer as NATO Secretary-General was a factor. Both matters are dealt with in this Chapter.

In Chapter 8, the Committee considers the basis in international law for military intervention in Iraq. To that end, applicable international law on the use of force is discussed, with particular attention given to the law and practice of the UN Security Council. The resolutions on Iraq passed by the Security Council in the 1990s are examined and the Committee assesses questions such as whether the mandate for the use of force contained in Resolution 678 (1990) was still valid in the period 2002-2003, if it was determined that Iraq had not met its disarmament obligations and was therefore guilty of a material breach of the conditions of the ceasefire negotiated in 1991. The Committee also looks at the consequences of the difficulties encountered with the collective sanction regime imposed on Iraq

after 1990 (collective sanctions being the most serious coercive measure short of the use of military force open to the Security Council). During the period covered by the inquiry, Resolution 1441 of 8 November 2002 was very important. This resolution gave Iraq one last chance to meet its disarmament obligations and threatened serious consequences if it did not. Dutch political debate concerning the legal basis for military intervention is reviewed in some detail by the Committee. From the outset, the administration took the view that a new Security Council mandate for the use of force was politically desirable, but not legally indispensable. The basis for this stance was the so-called 'corpus theory': the belief that, taken as a body, the various Security Council resolutions on Iraq passed since 1990 constituted a mandate for the use of force, which was still valid in March 2003. How did the Ministry of Foreign Affairs and the Ministry of Defence arrive at their interpretation of international law, and how did the administration arrive at its view of the situation? Particular attention is given to decision-making within the Dutch cabinet and the parliamentary debate on this issue. Finally, the Committee examines the legal basis for the military support that the Netherlands provided with a view to promoting the stability and reconstruction of Iraq following the us-British military intervention in the summer of 2003. In this Chapter of the report, the Committee gives one of its members, A.P. van Walsum, the opportunity to make a separate statement setting out his views on the implications of the absence of a mandate in international law for military action against Iraq.

In Chapter 9, the Committee examines the role of the Dutch intelligence services, the AIVD and the MIVD in the decision-making process. What sources and information regarding Iraq's WMD programme did the two services have access to and how were those sources and that information assessed? Particular attention is given to the AIVD's and MIVD's handling of (public) information about WMD from the UK and the US. The Ministry of General Affairs, the Ministry of Foreign Affairs and the Ministry of Defence regularly received reports from both services. The Committee investigated how the ministries used these reports and what influence they ultimately had on the government's decision to give political support for the Iraq War. The way that the government accounted to Parliament for this decision is also described. Another matter examined in this Chapter by the Committee is the provision of information by the AIVD and the MIVD to the combatant nations.

Chapter 10 deals with the question of military involvement. On 15 November 2002, the Netherlands was one of numerous countries that were asked by the US to contribute to the mobilization, albeit then only in the planning phase, of a military force against Iraq. Questions have arisen concerning the nature of this request. In this context, the Committee considers whether contributing to military *preparation* could have been expected to lead to participation in military *action* in Iraq. The content of the request made by the US on 15 November was largely withheld from Parliament by the Dutch government. What were the reasons for this course of action? This Chapter also considers how the Netherlands responded to the request for Host Nation Support and how its response compared with the response of other countries. The deployment of Patriot missiles at the request of the Turkish government also gave rise to questions that require further examination. The Netherlands ultimately declined the second part of the US request, which related primarily to the possible use of offensive weapons. From the outset, the government stated there could be no offensive contribution to the US plans by The Netherlands, unless our country was able to independently verify whether there had been any (further) material breach by Iraq of the obligations placed upon it by the various Security Council resolutions. How should this position be interpreted? The Nether-

lands ultimately decided to give political support to the us-British attack on Iraq, but not military support. How this decision should be viewed internationally is one of the central questions to this inquiry, which is addressed in this Chapter and elsewhere in this report. In the years since the invasion, it has repeatedly been asserted inside and outside Parliament that, despite the government's decision not to provide active military support, Dutch military personnel participated in military action in, around or over Iraq prior to or during the invasion. The Committee's findings in relation to these assertions are presented in this Chapter.

Chapter 11 begins with an analysis of object and significance of Article 100 of the Constitution and of the Assessment Framework 2001 for the commitment of Dutch military forces, as may be deduced from the origins of those instruments. On the basis of that analysis, the Committee considers which of the government's decisions concerning Iraq are governed by the provisions in question, and whether the government adhered to them properly. The government justified the deployment of Patriots by reference to the Netherlands' NATO obligations. Is that argument consistent with Article 100 and its origins? The Committee also considered whether the statements made by the ministers who spoke for the government on this topic were complete and clear with regard to matters such as the House's voting rights.