Under Pressure
Counter-terrorism in the Netherlands

1 LAW OF CRIMINAL INTENT

From a Dutch viewpoint, it was quite a rare phenomenon: a number of judges abandoned the ivory towers of jurisprudence to express their concern about the energy the Balkenende cabinet was displaying in applying criminal law to combat terrorism. Geert Corstens, Justice at the Supreme Court, the highest court of justice in the Netherlands, called the proposed measures ‘a very dangerous package’ because ‘there has been serious tampering with the structure of criminal procedure, which is going to cause destabilisation of the entire construction’. In his opinion, the measures will make little or no contribution to the solution of the problem, while in the meantime ‘there is a considerable sacrifice of individual freedom’. But there has been hardly any expression of criticism or differentiation, said Corstens. ‘It seems as if there’s something about this subject that really gets politicians going. I find the image of war completely inappropriate. Have you seen a real social debate about this matter – in politics, journalism or even in academia? It does seem as if everyone has to toe the same line.’
Corstens is afraid that this atmosphere will also cause an increase of political pressure on legal power. What happens, for example, if there is a terrorism case in which is prominent in public debate and a judge lets the suspects go free because he finds the evidence submitted too flimsy? ‘Then probably a few journalists will make a fuss. And some politicians will attack the judge. The cry will go up that he isn’t in touch with reality in society and that he lets terrorists go free. In the picture I sketched, you can already see the tendency of politicians who have little respect for legal decisions. If those people are in the political majority, then there is a threat that the judge will be marginalised’.
This concern was shared by Frans Bauduin, vice-president of the Amsterdam court of law. He fears that politicians will reproach judges that they do not appreciate the seriousness of the situation. ‘I must be able to continue to do my work. That boils down to the following: that when I weigh things up I must be able to monitor the arguments of all parties: the suspect, the Public Prosecution department and possibly the Algemene Inlichtigingen- en Veiligheidsdienst [General Intelligence and Security Service] (AIVD). Under the present proposals this balance is upset.’
The reaction of the politicians was curt: there is nothing wrong with the proposed legislation – and as a matter of fact, why are the judges poking their noses in? In fact, this immediately proved the judges were correct in their position: it is hardly possible to make any criticism of the anti-terror legislation of the Balkenende cabinet. In any case, extraordinary times demand extraordinary measures. That seemed to be the mentality that was prevailing in the Dutch Parliament.

This is not completely incomprehensible. With the attack in Madrid, the threat of terror came physically much closer to home; the murder of Theo van Gogh literally brought terror from the radical Islamic position onto the Dutch doorstep. The general opinion was that it was time for the Netherlands to set aside its naivety. The Netherlands with its soft legislation, sensitive judges and bureaucratic police and justice system, was threatening to become the cesspit of Europe. This could be heard not just in the cafes but it also seemed to have become an established conviction in The Hague politics. It is therefore not surprising that in the meantime the cabinet introduced an impressive series of laws. A

mere tightening up of legislation soon gave the impression of decisive leadership and that was what people were demanding.
Nevertheless, bringing criminal law to bear against terrorism is a tricky business. In the first instance, criminal law is intended to be deployed *after* an offence has been committed. In the last ten years, there has been a lot of tinkering with that premise. Police and the judiciary, for example, can instigate exploratory investigations into (suspected) perpetrator groups before any punishable offences have been committed, what is known as 'proactive investigations'.
Criminal law, however, is now, as it were, being pushed even more to the forefront. It must also be possible for criminal procedure to take place before a terrorist action occurs. That is also understandable: it's preferable to have the suspects arrested before a train is blown up rather than to begin the hunt for the perpetrators after the attack. But at the same time, that's when the problems loom: how can the judiciary know what potential suspects are planning to do and how can they provide the convincing legal evidence that is necessary for a conviction? In any case, how can the judiciary know who the 'potential suspects' are?
The judiciary is trying to solve that problem by making it possible to instigate faster-working investigative powers and to create descriptions of the offence that are quite vague and broadly formulated, as we shall see below. And that is precisely what is worrying the above-mentioned judges and others. The culture of intelligence work is beginning to percolate into criminal law.

CRIMES OF TERRORISM ACT

An initial, significant proposal is the Crimes of Terrorism Act now in operation. This act is the Dutch translation of a European framework decision, in which terrorism is defined and made punishable. In this manner, the same definitions and punishments for terrorism apply in all European Member States. Criticism of this framework decision came from all sides. The framework decision is in fact superfluous, because terrorism is already punishable in all the Member States, they can already proceed against organisations with criminal objectives and acts of preparation are already punishable. In short, 'ordinary' criminal law is adequate in order to proceed against terrorism and it is not necessary to set up separate legislation for that.
'There are few matters that you can classify under "terrorism" that are not punishable in the member states', asserted Gert Vermeulen, Ghent University, in the *Staatscourant.* In the same article, Harmen van der Wilt, University of Amsterdam, indicated the large number of treaties that already exist in Europe and worldwide to combat terrorism. 'There is a threat of too many measures. More and more new initiatives will only lead to disintegration and a loss of clarity'.
Moreover, critics point out that the definition proposed by the European Commission is on the broad side. According to the European Commission, terrorism consists of 'deeds with the intention of intimidating countries, their institution or population, of changing or destroying the political, economic and social structures of a country.' This definition is broad enough to include trade union demonstrations or other demonstrations in which stones might be thrown under the name of 'terrorism'. This was a fear that turned out to be not entirely groundless when, soon afterwards, Spain made a proposal to improve the

exchange of information about terrorism and subsequently also had the anti-globalisation movement in its sights. Furthermore, Spain referred emphatically to the definition in the framework decision.

During a hearing in the Second Chamber of the Dutch parliament, Britta Böhler, a criminal lawyer, also pointed out this danger. 'There is no unequivocal, standard definition of terrorism. That is because "terrorism" originated in a political concept. It is a political choice which actions we qualify as terrorism and which actions we qualify as campaigns, freedom fights or other forms of political expression. The definition is so broad that all forms of activism, political, economic, religious or otherwise fall into that category.'

Professor of Criminal Law, Ybo Buruma, also pointed to this problem, which applies even more strongly because, in converting the framework decision, the Netherlands adapted the text to some extent. Thus, for one thing, it is no longer required that there must be a case of illegal actions and for another, there is also a question of terrorism if 'a section of the population' is intimidated. Buruma: 'This means that the minister has made it possible that trade union actions and campaigns of action groups are brought under the scope of the terrorism definition. We all know that this is not what the minister intended, but the judge can only make use of legal history at the moment at which he has something to interpret and he doesn't have to interpret the word 'illegal' any more because that has been removed.' Moreover, it is thanks to an amendment of the Socialist Party (SP) that the concept 'illegal' has still been included in the wording of the Act.

The minister came in for even more criticism with his plan in the same legislative proposal to make conspiracy punishable, linked to the terrorist motive. During the hearing in the Second Chamber, various experts stated that these were two vague concepts that were difficult to prove and which were still a long way from the actual acts of preparation for a terrorist attack. Conspiracy, in fact, does not necessarily lead to an actual execution of plans or agreements and it is difficult to establish whether or not the plans were seriously intended.

'How can we be sure that these are not just the macho plans of hot-headed adolescents that were never seriously intended?' asked criminal law scholar, Harmen van der Wilt. He is particularly concerned about linking 'conspiracy' with 'motive'. You just don't know what's going on inside people's heads. In the opinion of Van der Wilt, that increases the chance of miscarriages of justice. 'My greatest fear concerns that linking of the terrorist motive to legal concepts in the periphery of liability under criminal law' said Van der Wilt at the hearing. 'Acts of preparation, participation in a criminal organisation and conspiracy: what we are concerned with here are procedures that are quite distant from the offence and which may actually be of an everyday, innocent, nature. I consider that there's a real chance that these procedures will be interpreted in the light of the presumed terrorist motive. That increases the risk of legal errors considerably.'

Van der Wilt was referring to article 46 of the proposal, in which it is deemed punishable to have certain goods at one's disposal that are evidently intended for committing a crime. 'You are introducing the terrorist motive and you are going to apply it to activities that are still a long way from the crime itself. Then there is quite a large risk that you do

in fact have a strong inclination to interpret those activities in such a way, while it may still be quite feasible that they are innocent activities.'

Ybo Buruma, professor of Criminal Law at the University of Nijmegen, also made some critical comments about the extension of article 140, the article that makes membership of a criminal organisation punishable by law. In the current article, there is the assumption of a particular intention: a person is aware that his actions are in the context of a crime or the preparations for a crime. The extensions proposed by Donner remove the notion of 'intention'.
Buruma: 'Does that mean that every café manager who rents out a room to the Kurdish Socialist Party (PKK) will be viewed as a member of a terrorist organisation? Thanks to the extension of articles 140 and 140a that is the case. The third paragraph is really exclusively so that people who have had someone to stay with them who turned out to be a terrorist or, for example, people who have made a donation to some Chechen resistance group can be convicted, without any need to prove the intention of that support.'
Buruma anticipated a comparable problem in making recruitment punishable. We are now going to call everything criminal, according to Buruma, and just leave it to the Public Prosecutor as to when he convicts. Because you can also generate support for a 'respectable' liberation movement, that is now immediately penalised as being 'terrorist'. Buruma puts this criticism in a broader context: there are more 'umbrella conditions' in criminal law, whereby the gamble is that the Public Prosecutions Department will use discretion in prosecuting. As an example, Buruma quotes the fact that according to Dutch law it is illegal as a seventeen-year-old to have sex with a fifteen-year-old. 'If that's your girlfriend and if the Public Prosecution Officer hears that the fifteen-year-old gave her complete consent then as a seventeen-year-old you just hope that there will be no reason to prosecute you'.

Britta Böhler also refers to these problems. She argues that the inclusion of 'conspiracy' leads primarily to a shifting of the problems of proof. Is it difficult to prove membership of a criminal organisation? Then in future we'll simply make conspiracy a criminal offence. 'I don't see the relevance of conspiracy in any other way than that you are actually making things punishable that are pure and simply playing a part in the heads of people and in this case are discussed by two people. The more you stretch the penalisation of the completed crime into the preparatory acts, the less tangible is the proof. You have no body, no pistol but you continue to go further. That increases the risk of mistakes.'
There is an increasing tendency to penalising thinking, concluded the legal scholar, André Klip, later in *NRC Handelsblad*. A sort of criminal law of intention has come into being: it is no longer a case of concrete preparatory actions but of intentions, resolutions and thoughts.
In a cynical column in *Justitie Magazine,* the lawyer, Dian Brouwer, described the potential consequences of penalising conspiracy. In this respect she referred to a number of recent miscarriages of justice, such as the Schiedam park murder and the Putten murder case. It turned out that DNA finally provided the evidence that the Public Prosecution Department and the judiciary had got it completely wrong. However, terrorism suspects should not pin their hopes on this. 'An offence such as conspiracy does

not require any outward manifestation whatsoever: just one appointment with another person is enough for a conviction. That can be proven by a single report from the AIVD, of course without any acknowledgement of source, and by a single anonymous statement of evidence. For those persons who will be unjustly convicted there is not even the hope that forensic evidence such as DNA will prove their innocence. But hey – why am I getting worked up? I'm a 'kaaskop' (literally: cheese head – Belgian nickname for a Dutchman). I'm not in the target group. I won't be bothered by the Dutch Guantanamo criminal law…'

POLITICAL PRESSURE

Buruma has already referred to the umbrella conditions of criminal law: the decision whether and to what extent there should be prosecution becomes more and more dependent on the wisdom of the Public Prosecution Department. The tendency seems to be to have the actions of investigative powers and means of coercion take place quickly and then later to see whether that was actually lawful or not. That represents quite a shift in criminal law mentality. With the idea that the behaviour of police and judiciary makes deep inroads into people's personal lives, there are conditions associated with that behaviour: there must be a well-grounded and reasonable presumption that there is something wrong before action is undertaken. The terrorist laws make it easier to introduce the use of forcible means.
The lawyer, Böhler: 'I do not think that the idea is that you apply forcible means when afterwards, in ninety percent of cases, you have to say: sorry, mistake, that was not the intention, you have done absolutely nothing wrong. That is not the aim of the use of means of coercion.'
In the Dutch context, there are known examples of the creative application of means of coercion. For example, the Amsterdam triangle during the 1997 European Summit had wholesale arrests of demonstrators in accordance with article 140: membership of a forbidden organisation. When asked what the presumption was actually based on, the Amsterdam Public Prosecution Department stated that the arrests were needed precisely at that time in order to investigate whether the presumption was correct. This course of action was later fiercely criticised by the ombudsman among others: the triangle was taken to account with the reproach of misuse of power.

The danger of misuse of authority is looming as soon as great political pressure comes into being. Perhaps it is pertinent to refer to the totally derailed investigative methods that came to light with the Interregionale Rechercheteams [Interregional Criminal Investigation Teams] (IRT) scandal. The police turned out to have really succeeded in pioneering, under the obvious motto 'what is not expressly forbidden is allowed'. The fact that also the Ministry of Public Prosecution – that was officially in charge of the investigation - and the judiciary were wrong-footed didn't matter. Nearly all the main parties involved in the IRT affair later stated that in their approach they had felt supported by the then minister of Justice, Ernst Hirsch Ballin, who had declared war on organised crime and had proclaimed it a 'threat for domestic security'. War or the enemy on the home front: they incite the police to adopt reckless investigative methods.

The Chair of the Dutch Lawyers Association, J.W. Fokkens, warned about this climate in his annual report. Fokkens denounced the picture presented by Donner, among others, namely of potential suspects of serious crimes being treated with great restraint in the Netherlands. 'The picture of a criminal procedure with scarcely adequate competencies to act is just not correct', said Fokkens. He drew attention to the effects of this incorrect presentation of affairs: criminal lawyers who are thinking critically about it are depicted as people who do not appreciate the gravity of the situation and as a result cannot be taken seriously as discussion partners. Parliamentarians go beserk, in Fokkens' opinion. He quoted the CDA party leader, Maxime Verhagan, in a debate about the attacks in Madrid of April 2004. 'The iron rules of criminal law, better ten guilty people at liberty than one innocent person in a cell, do not apply to terrorism (…). The Minister of Justice has ensured that quite a few legal taboos have been broken. That doesn't mean to say that that is where we are now. We will have to persevere. That also indicates that we shouldn't be too preoccupied with legal spectres on the horizon.' However, meticulous proceedings and meticulous weighing up of interests have nothing to do with legal holy cows, but with the actual interests of the state under rule of law, in Fokkens' opinion. 'Does Verhagen really mean that we are combating terrorism in the right way by finding ten to twenty percent of suspects innocent? Probably not.' But, continued Fokkens, such arguments do create a climate in which there is a risk that investigating officers are going to put results first, ahead of meticulousness. Fokkens referred to English blunders in combating the IRA, such as the Birmingham Six and the Guildford Four. It was a history of maltreatment during police interrogations, manipulated statements, exculpatory material that was withheld, the falsifying of test results. 'It's precisely in these sorts of cases that publicity generates a social pressure to achieve results, and consequently the danger of errors and of convicting innocent persons can be increased', according to Fokkens.
Furthermore, he was also able to add a French example. Moussa Kraouche, spokesman of the Algerian Brethren in France and representative of the Algerian fundamentalist opposition movement, FIS, was under house arrest for six years on the basis of evidence constructed by the French police. According the Parisian judge, Roger Le Lore, who set him free, the police wanted him locked up at any price in order to give the 'appearance of success' to the fight against Islamic terrorism. In 1993, during what was known as the 'Chrysanthemum Operation', a hundred supporters of the FIS were arrested in France; only four, including Kraouche, were held in custody. In their homes documents were found that made their involvement in terrorism evident. It turned out later that the police themselves had planted the documents.

EXTENDING POLICE POWERS

The danger indicated by Fokkens became more immediate as a result of legislative proposals that made it easier for the police to deploy investigative powers against suspects. In a letter of 10 September 2004, Donner, Minister of Justice, announced proposals for the fight against terrorism. Whereas at that time it was still necessary to have a 'reasonable suspicion' that someone had committed a crime or was intending to do so, the proposal was that henceforth numerous extraordinary investigative methods could be applied on the basis of 'indications'. The legislative proposal, extending police powers

in terrorism cases was submitted to the Second Chamber in June 2005. Previously, it had been allowed that criminal civilian infiltrators could be deployed in the investigation of terrorist crimes – a practice that was actually fundamentally inappropriate after the IRT period, in view of the notorious unreliability of such civilian infiltrators. An even more far-reaching step was that persons who were public servants of a foreign state, e.g. American officers, should obtain the same powers as Dutch investigative officers and could operate in this country.

According to criminal law scholar, Ties Prakke, this meant that the police were acquiring almost the same powers as the Algemene Inlichtigingen- en Veiligheidsdienst [General Intelligence and Security Service] (AIVD), because the degree of objectivity on the basis of which investigative powers could be deployed was being drastically reduced. Prakke stated that this was unnecessary because there was also a legislative proposal to allow AIVD information as evidence in court. 'The proposals cited for extra powers for the police will make the department concerned of the Korps Landelijke Politiediensten [National Police forces] (KLPD) a sort of shadow secret service and that seems to be neither necessary nor desirable'.

Moreover, the concept of 'investigation' has been extended. Under the Special Powers of Investigation Act, that had already happened, from 'the investigation into the presumptive criminal acts committed' to 'the devising of very serious acts in an organised context'. The definition of investigation has now become: 'the examination in connection with punishable facts under the authority of the public prosecutor with the aim of making decisions of criminal proceedings'.

According to Prakke, the concept of investigation has thereby become almost boundless. The police can go and investigate on the basis of 'indications', whatever they may be. In addition, in the 'exploratory examination' the police may link data banks to terrorist crimes. The exploratory examination is already possible now, but without the relevant powers of investigation being used: the police can just keep their eyes and ears open.

'Linking databases is a far-reaching power that makes the police seem more like the AIVD', said Prakke. 'If we take seriously the philosophy of separate information circuits for police forces and secret services, then the use of AIVD information for the evidence in criminal proceedings is questionable, but providing extended powers to the police for fishing expeditions in the supposed terrorist pond is at least as debatable: that is work for the intelligence services.'

The previously quoted Justice, Corstens, points to the same danger. The AIVD has more scope and its information can be used more easily. At the same time, it is also being made easier for the police and judiciary, on the basis of very flimsy indications to proceed with AIVD means such as infiltration or wiretapping. 'That brings to light a key question: do we want a government that adequately guarantees individual liberty? Or do we want a government that can relatively easily restrict that liberty?'

All new measures incur the inherent risk that the spotlights are focused on people who may well be behaving in a suspicious manner, but who ultimately turn out to be blameless. Or it can happen that information from the AIVD, although collected with the best of intentions, turns out to be flawed but still turns up as evidence in the law of criminal procedure. 'In their enthusiasm, the police or the AIVD, with the best of

intentions, can also make gross errors of assessment to the detriment of the individual. We must always take care to avoid our Premier being in the position of Tony Blair, who this week had to apologise because a number of people had been wrongfully imprisoned for a number of years because of bomb attacks', said Corstens. Bauduin also provided a hypothetical example. 'Suppose that my daughter is interested in Iran and goes there for a few months and I send some money now and then. With all the current possibilities for data mining something abnormal is discovered in my financial behaviour. Later on, my daughter has a Moroccan boyfriend who once happened to go to a suspected mosque that was once bugged by a foreign intelligence service. Finally, all in all, a curious picture can emerge and one can't bear to think what the consequences would be if that information unexpectedly turned up in a criminal investigation. People often think: well, I'm doing nothing wrong, so I have nothing to hide. But it's not always as simple as that. And moreover: is there still such a thing as the right to privacy? Do we want a government that is going to control this sort of thing 'increasingly?

The government is also proposing the option of extending the possibility of locking up suspected terrorists earlier; suspicion alone is enough for this. Moreover, they can be remanded in custody for a maximum of two years without their case being heard by a judge at a court hearing and during those two years the full case file does not have to be given to the defence. In Prakke's opinion, this evokes the 'horror story scenario' of secret political processes preceded by investigation either by the secret services or by the police with practically unlimited powers, in which the review by the court is drastically reduced and the defence is sidelined.

Prakke also sets her sights on two other proposals: the possibility of stop and search actions is to be extended, with areas being indicated not by the mayor, but by the public prosecutor.. In certain high-risk areas, such as stations and airports, the police have always had the power of preventive searching, without a warrant from the public prosecutor. Prakke quite understands that in crisis situations it must be possible to conduct a stop and search action in a particular area. Nevertheless, she says, you should then place that power with the Minister, then at least someone in politics bears the responsibility. 'If every public prosecutor can do this, there is a considerable danger that such a fundamental power could be deployed far too easily. Permanent stop and search powers for the police in particular places seems to be unacceptable, because there is no guarantee whatsoever that this power will be applied primarily for the investigation of terrorism, on the contrary, such an arbitrary power will more likely lead to improper use.'

The second proposal is that it is not only an offence to hide someone who is being convicted or prosecuted but also to hide someone who is wanted by the police. In view of the popularity of secret investigation, this brings everyone under criminal law that has visitors in whom the police are interested, said Prakke. Each citizen should therefore first interrogate a prospective visitor in detail before offering him/her hospitality, because you never know. 'The State seems to want to put the whole of society at the service of the security concept of the government', concluded Prakke. 'Grassing becomes a virtue, hospitality and solidarity a crime. I will have to put off my planned guests in order not to cause problems for my friends. You never know, certainly not with the scope of the investigation once the new proposals have come into force'.

The College Bescherming Persoonsgegevens [Dutch Data Protection Authority] (CBP) is also critical of the new proposals. The CBP points out that human rights conventions require that government acts are sufficiently specific, so that it can be anticipated by citizens in which cases and under what circumstances intervening authorities can be brought in. Besides, it is a safeguard against arbitrariness. According to the CBP, the concept of 'indications' is far too vague, because an indication does not have to be based on facts or circumstances. It is precisely those facts and circumstances that are relatively open to objectification and are therefore verifiable, say the CBP. The facts and circumstances should be 'hard'. A tip from an eye-witness, for example, is more concrete than the tip from someone who does not state his reasons for knowledge. Moreover, the tip from a vindictive informer who in the past has delivered incorrect information is in general a poorer indication than that of an impartial outsider. In addition, the facts and circumstances must be indicative of the offence that is suspected. The fact that someone is running very quickly round a corner at night-time is less indicative of a burglary than someone climbing out of a window with a computer under his arm. All this is missing in the legislative proposal; only the unspecified concept 'indications' is cited there.
The CBP also points to a phrase in which there is a reference to 'the citizen who arouses suspicion'. In practice, however, it doesn't work like that says the CBP: it is not through treating or neglecting citizens that suspicion is aroused, but on the contrary, it is the perception the environment has of the citizen that will arouse suspicion. 'It is precisely in the requirement of a reasonable suspicion that it is implicit that this perception must first be objectively justified in order to justify governmental procedure.'
The CBP also points out that because of the vagueness of the concept 'indications' the scope of the investigation will also be greater and the circle of people that will be implicated because of vague indications will also be greater.

The authority specifies another important question: are the proposed measures actually necessary? The legislative proposal envisages assigning competences comparable to those the AIVD already has to the police and the judiciary. Cooperation and the sharing of information is in any case crucial, and 'a sharp but artificial delineation of tasks is counterproductive', according to the cabinet. In the opinion of the CBP, the question should not be: are the proposed broader powers necessary for adequate anti-terrorist measures, but: is it necessary that such powers are assigned not only to the AIVD but also to the police? In the opinion of the CBP, the proposed broadening of the concept of investigation will lead to the police and the judiciary embarking on the preliminary stage, which at present is the terrain of the AIVD.
According to the C BP, the division between AIVD and police/judiciary is not in the least artificial. 'It is precisely in the current divided execution of tasks stimulating cooperation that there is a strong safeguard that only data that include a reasonable suspicion become available for the execution of the police task'.

Furthermore, the CBP points to a large number of laws that have been introduced in recent years, which give the police and judiciary much more scope. For example, the possibility for the police to build up 'theme registers': data of citizens may be kept for a long period, even if no real suspicion of involvement in terrorist activities has been firmly established. In combination with the broader powers that the cabinet now wants to assign

to police and judiciary, and as a result of which the Korps Landelijke Politiediensten [National Police forces] (KLPD) will indeed become the shadow secret service that Pakke warned of, the CBP foresees a 'considerable processing of soft data'.
The CBP is against these theme registers, but if they are introduced in any case then extraordinarily strong conditions must apply, because in these registers there is information about citizens who are above suspicion that the police has been able to collect on the basis of the vague concept of 'indications'. These data must be strongly protected and safeguarded, according to the CBP, and a ban must be imposed on 'processing and distribution that deviate from purpose'.

CT-INFOBOX

This is what happened: the information circuits of the investigation services and intelligence services were separated and should also remain separated. However, the establishment of what is known as the Counter-terrorism-infobox (CT-infobox) is going in precisely the opposite direction. This box houses a collection of all the information about the 'group of 150': a group of radical Muslims (whose number varies, but fluctuates around 150) which according to the AIVD poses a potential threat to state security. The AIVD, the Public Prosecutions Department, the police and the Immigration and Naturalisation Service (IND) are all involved with the CT-infobox. All these services furnish information and examine in what way it can best be dealt with. The CT-infobox should bring an end to the difficult information exchange in the past, particularly between AIVD and KLPD (which includes the National Criminal Investigation Service, commanding a special anti-terrorism unit). According to the Havermans commission, which was investigating the AIVD, this project was very promising. Relevant information is immediately analysed by specialists of the bodies involved. As a result, information about a person is available sooner and in a more complete form. In addition, various follow-up steps can be taken whether in criminal proceedings, information gathering, law concerning aliens or managerial. 'The creation and method of operation of the CT-infobox fits in well with the fluid nature of radical Islamic networks', according to the final report.
Elsewhere, the box can count on fewer endorsements. According to Minister Donner the infobox doesn't focus on persons who present an acute danger or about whom there are concrete suspicions of involvement in terrorism: 'As a rule, it is not a case of concrete indications, but of collecting data from a large number of sources or of looking for patterns, differences or striking anomalies in data collections'. It is ususally persons who 'are under current investigation by the AIVD and the police and at some point came forward as possible links in terrorist networks'. A well-founded suspicion is therefore no longer necessary. According to Donner, it should be possible to 'observe and shadow people who have aroused suspicion, in order to establish whether the suspicion is justified or not'.
In a reaction, the CBP states that the necessity of the extension of powers to collect information has not been demonstrated. In any case, the cabinet has already implemented many amendments of acts that make it possible for powers of criminal investigation to be deployed without there being any question of a suspicion. The CT-infobox also worries the CBP: 'It seems like a licence for the unlimited exchange of information between the

security services and the police. This means that investigation on the grounds of vague suspicions and assumptions will be shared on a large scale. Thus, it seems that information about citizens above suspicion in the files of the security forces will land in the police registers'. The question is who can guarantee that citizens who end up in the CT-infobox unjustly will also be swiftly withdrawn from there.

AIVD EVIDENCE IN CRIMINAL PROCEEDINGS

The AIVD has no investigative powers. This specification provides clear legal protection for citizens, to prevent a supreme government from investigating criminal offences by making use of the powers of an intelligence service. In any case, there is little control on the work of the intelligence service. The parliament has a separate commission (known as the 'Stealth commission') which gets to see secret information from the intelligence service and on the basis of this exercises control for the parliament. Since the new Wet op de Inlichtingen- en Veiligheidsdiensten [Intelligence and Security Act] (WIV) came into force in 2002, a Supervisory Committee has also come into being, but this too does not report in public to the Second Chamber on a regular basis.
In the Netherlands, the AIVD is one of the first services to come across information about potential terrorists. This might be through its own investigation, through a tip or through information from a sister service abroad. In its own investigation, the service is allowed to use nearly all available means: monitoring, observing etc. In the first instance, the information that the AIVD collects is used for its own mission: the protection of national security.
The AIVD may pass on information to the police, but is not obliged to do so. As early as 1992, Hirsch Ballin, in a note to the Second Chamber (TK 22463, no. 4, 1991-1992) wrote that information originating from the Binnenlandse Veiligheidsdienst [Dutch National Security Service] (BVD) could be used in three ways in criminal proceedings: first, it could provide the reason for a criminal investigations, second, it could provide grounds for reasonable suspicion and third, it could serve as legal evidence.
The national officer for combating terrorism plays a key role in passing on information from the AIVD. This public prosecutor receives an official message from the AIVD with the relevant information. He can then find out about the background of the information. The national officer for combating terrorism may not make this underlying information public without permission from the minister. After that, police and the judiciary can use the AIVD official message as a starting point for a criminal investigation.

Immediately after the attacks of 11 September 2001 it was evident that the AIVD had information about terrorist suspects in the Netherlands. On 13 September of that year, there was a raid on the Kempenaerstraat in Rotterdam. Four men were arrested on suspicion of plotting an attack. The suspicion turned out to be based on information from the AIVD (then the BVD). In an official report, the service stated that the group was part of an extreme Muslim cell and that it maintained contact with an international terrorist network. According to the AIVD, the former professional footballer, Nizar Trabelsi, was also a member of the group. He was alleged to have prepared an attack in Europe and the others were alleged to have supported him. Four men were arrested In the Netherlands and Trabelsi was put behind bars in Belgium.

After a lengthy criminal investigation by the police, the legal proceedings took place in December 2002. The men were charged with being involved in carrying out an attack on the American Embassy in Paris or on an American army base in Belgium. The court in Rotterdam acquitted the men. In fact, the court found that the Public Prosecutions Department had deemed them suspects simply and purely on the grounds of the official report from the AIVD. 'With the lack of any results from the criminal investigation, it must be established that the suspect is deemed 'suspect' on unsatisfactory grounds'. The Public Prosecutions Department should not have subsequently conducted a search of the premises. Thus the material obtained thereby could not carry any weight in the furnishing of proof.

Because the Rotterdam court recognised the delicacy of the judgement, just to be sure they stated that 'if the court had come to another decision about the start of the criminal investigation and if it had come to a judgement of the evidence collected against the suspects in the court case, then the court would not have arrived at a judicial finding of fact of what the suspects have been charged under fact 1'.

In other words, even if the AIVD tip had been enough to nail the four men as suspects, the court would have acquitted them. The Public Prosecutions Department, and many politicians, reacted furiously to this decision. In particular, the court came in for severe criticism as regards the AIVD information. The main point in the commentaries was not being able to use that information in court cases. The judgement itself in fact had little or nothing to do with it. Under discussion was the admissibility of the information from the AIVD. Had the Public Prosecutions Department taken made more effort to monitor the AIVD information, and had it collected other information to substantiate the suspicion, there would have been nothing wrong with the suspicion. On the basis of the evidence supplied there would still have been an acquittal.

THE RECRUITERS

In the meantime, there was a following case, in which the AIVD had played a greater role. In this instance also, two official reports of the AIVD gave rise to the investigation. The first appeared on 22 April 2002 and the second on 27 August of that year. According to the AIVD, a number of people were involved in supporting, spreading information and recruiting for the violent jihad. Finally, they were summoned to appear in court because of membership of a criminal organisation and helping the enemy in times of war. During the court case, which took place before the court of Rotterdam in May 2003, it turned out that there had been closer cooperation between police and AIVD than in the first case. During the police investigation, the AIVD had passed on information a number of times and in order to support its official reports provided a CD-ROM containing tapped telephone calls.

This second case against potential terrorists in the Netherlands also led to an acquittal. The major consideration of the court was the lack of evidence. The court found it 'alarming, the manner in which conclusions were drawn and the fact that the public prosecutor dissociated himself from a number of these conclusions'. In addition, team leaders in the police could no longer substantiate their conclusions.

The court made three different decisions about the AIVD material. In the first place, they were now of the opinion that the AIVD information was sufficient for a suspicion. In

fact, the court found that 'the judicial authorities should in principle be able to proceed on the lawful acquisition of information provided by the BVD/AIVD; only if it is a question of information obtained with (gross) violations of fundamental rights, should there be any deviation from the principle of legitimate expectations that should exist between the judiciary and the BVD/AIVD with relation to the test of the legitimacy of the information collected by the BVD/AIVD.

In other words, the test that the Public Prosecutor has to implement into the background of the AIVD material is only very limited. Because the AIVD is already monitored in other ways, the Public Prosecutor may take the principle of confidentiality for granted, as is the case in international legal assistance. In this case, therefore, the court deemed that an official report from the AIVD may be the immediate reason to consider people as suspects and to instigate investigative powers.

The second decision concerned the immediate use of the AIVD official reports as evidence. Public Prosecutor, Valente, considered that on the basis of article 344 of the Code of Criminal Procedure that this was permitted. The defence argued that that it would constitute a violation of article 6 of the European Convention on Human Rights (EVRM). In any case, the AIVD refused to come and give evidence at the trial. 'Now that the head and the acting head of the AIVD in their questioning in front of the examining magistrate and at the court hearing, invoking their pledge of secrecy on the grounds of articles 85 and 86 WIV 2002 and the national public prosecutor of counter-terrorism also invoking the same pledge of secrecy, refused to explain the origin of the information, obtained in the above-mentioned official reports and furthermore the ministers of the Interior and Kingdom Relations and of Justice, according to their decision of 2 May 2003, did not relieve the head and the acting head of AIVD of their pledge of secrecy should they be examined as witnesses in this court case, the court is of the opinion that the defence has not been possible, in spite of its efforts to test in an effective manner the information of the official reports on its origin and factual authenticity.'

A final decision on the material originating from the BVD concerned the tapping reports that the service had added to the official report of 22 April 2002. On 2 July 2002, the BVD once again sent the recorded conversations on a CD-ROM. In spite of the fact that BVD could not demonstrate any special mandate for the phone-tapping, the court assumed that 'the phone taps passed on to the Ministry of Public Prosecution by the BVD/AIVD were tapped and recorded in accordance with the stipulations in Article 139c, second paragraph, under 3e, (old) Criminal Code and that also that a special mandate for the phone-tapping was issued each time'.

The phone taps were therefore made lawfully in every case. As the phone-tap reports were included in the dossier and the suspects were able to listen to the taps with their lawyers, the court saw no reason to exclude the phone-tap reports as evidence.

Already during the court case, the Procurator General, De Wijckersloot, had again initiated the discussion about new legislation. In the *Algemeen Dagblad* of 17 May 2002, he advocated a separate penal system. 'The question is always: how much information can you collect? In a terrorism case like this we had the AIVD data pushed at us. You can't then say: we'll take our time to sort it out. There are too many risks involved: soon an attack might take place. Terrorism is an example of a new phenomenon to which our penal law is not geared. AIVD information is not admitted by the judge. For the

prosecution of terrorism, you would need a separate penal system, in which that information could be used.'

Right from the beginning, the lawyers had said that Minister Donner had wanted to use the case primarily as a crowbar to break open public discussion about the use of AIVD information in criminal proceedings. While the court, even more clearly than in the first case, considered the collected evidence too marginal for a conviction, there was fierce indignation about the fact that the AIVD information could not serve as evidence. Nobody said anything about the bungling of police and judiciary, something that was rather more obvious. Britta Böhler, one of the lawyers, concluded therefore that 'the Rotterdam cases were used as a pretext in order to realise a political objective that was unconnected with these legal proceedings. This political objective is obviously the adjustment of the legislation with respect to the use of AIVD information in the criminal proceedings'.

A NEW RULING

That objective was indeed immediately introduced in the memorandum *Terrorism and society,* which appeared at the end of June of that year. As well as adding to the legislative proposal Crimes of Terrorism the concept 'conspiracy' and the 'ban on recruiting for the jihad', Minister Donner announced that 'legislation in the matter of use of AIVD information in criminal proceedings would not be excluded'. He did make it known that he wanted to await ongoing proceedings in which an appeal had been lodged.

According to *de Volkskrant* (Dutch daily newspaper) of 20 June 2003, Donner was under great pressure from his own officials and the VVD party. 'Lawyers in Donner's own department found that the legislation didn't go far enough. They dubbed it token legislation. In the course of the previous week, the VVD asked for clarification. Prime Minister Balkenende also sent back an initial legislative proposal. Not until late last night did the Ministry of Justice produce the latest adjusted version of the document, which, according to reports, can count on a majority on the ministerial board.'

The pressure exerted by the VVD party, moreover, translated into acceleration in submitting the legislative proposal. During the parliamentary debate on Donner's proposal, a majority of the Second Chamber, headed by Geert Wilders (at that time still in the VVD), demanded a memorandum on the use of AIVD information in criminal proceedings. However, nothing came of it. On 29 October 2003, Donner indicated that he didn't want to work against the court and that he wanted to await the judgements. He only gave the Chamber an overview of existing possibilities and themes to be handled in the memorandum yet to be written.

In the debate at the beginning of December 2003 on the legislative proposal Crimes of Terrorism, the pressure on Minister Donner to submit a legislative proposal as soon as possible about the use of AIVD material in criminal proceedings was further increased. On the initiative of Wilders once again, a motion was passed in which the Second Chamber wanted to see such a legislative proposal submitted within six weeks. A consequence of this demand for acceleration was that the promised memorandum, which included a comparison with other countries, was definitely abandoned. In the event, it wasn't until the beginning of September 2004 that the legislative proposal was finally submitted.

In the meantime, there had been developments in the first Rotterdam case, the Eik case. The Public Prosecutors department had appealed against the acquittal of December 2002. The appeal came up before the court in The Hague and what is significant here is an interlocutory judgement of 25 April 2003. Then the court tackled the request of the lawyers to question the head of the AIVD and to acquire the telephone conversations tapped by the AIVD.
The court specifically examined the fact that the requests primarily 'had the aim of putting to the test the manner in which the BVD had obtained the information submitted to the Public Prosecutions Department.' Subsequently, the court argued that this test did not have to be submitted to a court of law. The responsibilities and powers of the AIVD and the police are clearly separated by law; one is responsible for the promotion of national security and the other is responsible for detection. The explanatory memorandum on the WIV 2002 states that the Ministry of Public Prosecutions, in the person of the national officer combating terrorism, can gain right of perusal of the documents of the official reports produced by the AIVD, but that this does entail an obligation of confidentiality. Based on the WIV 2002, the AIVD has a legal duty to maintain secrecy of sources and operational methods, according to the court. Moreover, the AIVD comes under its own regime of (political) control, there is a parliamentary commission that monitors the AIVD and with the WIV 2002 a supervisory commission was also set up.

What was important was the conclusion of the court that 'The court is of the opinion that a test of the legitimacy of the acquisition of information supplied by the AIVD to the judiciary can only ever be very limited. In fact, it should remain limited to the cases in which there are strong indications that information has been obtained with (gross) violation of fundamental rights. To that extent, in the opinion of the court, a principle of trust should also apply in the relation between (currently) the AIVD and the judiciary in the same way as that which applies in extradition law and in international legal cooperation in criminal proceedings, which means that judicial authorities may take for granted in each case that information delivered by BVD/AIVD has been obtained lawfully.'
With this judgement, the court gave an omen of the definitive decision of 21 June 2005, in which the suspects were sentenced to six years. This principle also reappears in the proposed law.
While the Rotterdam court considered a tip from the AIVD insufficient for suspicion, The Hague court stated that 'it was not able to recognise that in the present case the information delivered by the BVD via the KLPD in August and September 2001 and recorded in official reports did not legitimate the searches carried out on 13 September of that year, nor that the official reports, in connection with the results of those searches, would not be able to justify the arrest and continued deprivation of liberty of the suspect on the grounds of serious accusations against him.'
In other words: a tip from the AIVD is quite sufficient for suspicion. The court stated quite explicitly that the official reports of the AIVD were not included in the evidence. 'The question, in a general sense, under what conditions that information should be available for use as evidence is not relevant to the court because it does not consider it necessary to make use of that information for the evidence, partly on the grounds of the

circumstance that that information, to the extent that it is relevant and except to the extent that it is not purely of a factual nature also of other evidence,' according to the court.

PROTECTED WITNESSES

On the basis of this jurisprudence it is therefore possible for police and judiciary to use AIVD material as preliminary information and immediately to indicate people as suspects. After an AIVD tip in the form of an official report, police and judiciary may proceed immediately with phone-tapping, arresting people or carrying out house searches. The information discovered in this way may be introduced as lawful evidence in the court-room.
Politicians, however, wanted to go a step further. They also wanted information from the AIVD to be used as evidence in the courts, something that at this point judges do not allow. On 8 September 2004, Donner, Minister of Justice, submitted a legislative proposal putting forward a number of amendments in the Penal Code that would make it possible to use AIVD information in court cases. Donner describes the objectives of the Protected Witnesses (TK 29743) as follows: ' the creation of better and more transparent conditions under which information and material from information and security services can be used for prosecution, so that in the consideration of the interests for which they are in place these services can go ahead more frequently.' The procedure that should be followed in this respect is that of examination as a protected witness. 'This facility aims to advance so that with the help of witness statements evidence from information and security services can be further substantiated and can be tested in a reliable manner.'

The construction that is proposed is that the examining magistrate may monitor the information produced by the AIVD for lawfulness, reliability and soundness. To this end, he examines an AIVD employee, who has the status of 'protected witness'. The examining magistrate can stipulate therefore that the identity of this witness, i.e. an AIVD employee, should remain secret. The examining magistrate may also decide that the Ministry of Public Prosecutions, the defence and the suspect may not be present during the examination. All this is for reasons of state security. The Ministry of Public Prosecutions may if necessary put questions to the protected witness in writing or by telephone.
The report of the examination of the protected AIVD employee and the conclusions on the basis of the examination that the examining magistrate draws as to the reliability of the AIVD information is then added to the criminal file. During the court case, the Ministry of Public Prosecutions, the defence or the judges themselves may not ask any more questions or examine the protected AIVD employee; they have to depend on the conclusions in the report of the examining magistrate. At least, that is to say, if the report is added, because in the organisation of the law the protected AIVD employee is given a right of veto: if he considers the information in the report damaging to state security he can demand that the report is not added to criminal proceedings. In that case, in the criminal records it is only stated that an examination of an AIVD employee has taken place, but that the AIVD has not allowed the report to be included. 'In other words, the ruling is constructed in such a way that ultimately the security service determines

whether the importance of confidentiality is at variance with the issuing and publishing of other data', according to Minister Donner.
The majority in the Second Chamber agreed to the legislative proposal. The large parties lined themselves up behind the viewpoint that the interests of state security should take precedence over those of the law of criminal procedure. Furthermore, it is striking that Minister Donner, in answer to the written questions, predicted that use would only be made of this ruling 'in exceptional cases'. In his opinion, a suspect could not be sentenced 'exclusively and not even to a decisive degree' on the evidence of a protected witness. There must be supporting evidence from another source. But Donner also said that it was 'not unthinkable' that a suspect should be sentenced on the basis of an official report in combination with the statement of a protected AIVD employee and an incriminating statement from a threatened witness: 'An example which could apply would be an incriminating passage of a phone tap report that is included in the official report. A protected witness is examined about the realisation and the reliability of this phone-tapping report and a threatened witness then confirms the incriminating information. In this instance, it is a question of in each case the rational evidence of the phone-tapping with the supporting evidence by reason of something else, that is to say the evidence of the threatened witness.'
Donner also confirmed that the legislative proposal had been set up 'in close cooperation' with AIVD. 'Because the practical application of the new procedure depends on the willingness of the intelligence and security services to supply further data under protected circumstances about the background of the information supplied, explicit attention is paid to the conditions that these services impose with a view to the protection of the interests of state security.'
In the course of his William of Orange lecture on 9 June 2005, the head of the AIVD, Sybrand van Hulst, warned of the possible consequences of a too rapid exchange of information between the AIVD and the judiciary. According to Van Hulst, the AIVD has exchanged much information with the judiciary recently. 'The consequences of this have been that human sources have become known or threatened to become known and had to be brought into immediate security. Vulnerable information positions, built up over the years had to be given up and operational working methods became known. This led to serious damage to the adroitness of the AIVD, while moreover the environment that the AIVD had to monitor and chart became more alert and they adjusted their working methods.

POWER TO THE SERVICE

Lawyers, scholars and researchers have expressed severe criticism of the introduction of AIVD information as evidence in criminal proceedings. In particular, the infringement of the principle that a suspect has access to all the information used in a court case is a thorn in the flesh for lawyers. Michiel Pestman, a lawyer in the second Rotterdam terrorist case, wrote in *de Volkskrant* of June 2004 that 'the use of AIVD material in criminal proceedings is in conflict with rules of evidence and is therefore inappropriate in a democracy.' In Pestman's opinion, the terrorist case showed clearly that the security services can also sometimes be wide of the mark. 'With or without AIVD material, a conviction never transpired in Rotterdam.'

According to Pestman, the problem arises from Strasburg, at the European Court of Human Rights. 'The law of precedence of this court is that information in criminal proceedings may be used for evidence only if the defence (and also the judge) have been able to test its reliability. And with information from intelligence sources that is just not possible.' Pestman stated that nobody monitored either the background or the reliability of AIVD intelligence. Professor Th.A. de Roos also noted its incompatibility with the Europees Verdrag van de Rechten van de Mens [European Convention on Human Rights] (EVRM). In a lecture at a symposium marking 20 years of De Roos & Pen, on 19 April 2004 in Amsterdam, De Roos made it clear that a reliability text was necessary for judge and defence according to article 6 paragraphs 1 and 3 of the EVRM. 'Of course, it is not excluded that Het Europese Hof voor de Rechten van de Mens [the European Court of Human Rights] (EHRM) 'accommodates' and still allows that in particular extreme cases the defence can be further limited in the rights of interrogation without compensation. But in any case it can be established that to date the fight against terrorism has not justified any infringement of article 6', said Roos.

Ybo Buruma and Erwin Muller, director of the Institute for Security and Crisis Management, described the problems of providing evidence through the AIVD in the *Nederlands Juristen Blad* of 14 November 2003. To start with, they stated the problem of a gigantic increase of the amount of information that is collected by intelligence services. It will be difficult to extract useful information from it. It will become increasingly difficult to make responsible threat and risk analyses from this hotchpotch.'

Like Pestman and De Roos, Buruma and Muller are opponents of the use of AIVD information as evidence in criminal procedure. They argue that the AIVD collects a lot of raw information, either via agents [Human-source Intelligence] (HUMINT), technological operations [Signals Intelligence] (SIGINT) or because other services pass on information. According to Buruma and Muller, intelligence services should make assessments, more so now than in the past. 'Intelligence is more the policy relevant product, not only of the collection, but also of the evaluation, analysis and communication of data.' Sometimes the services prevent an attack, sometimes they are off the mark. But Buruma and Muller maintain that 'a criminal judge does not have the power at his disposal for the level of interpretation necessary to put someone in prison.' Intelligence has another role; it can and must be used, for example, to put an end to certain preparatory operations. 'The AIVD has a different function than that of tracking and prosecuting criminal offences. The debate for the coming period will be of what manner a "disturbance" – the breaking up of the intended action –can and may take place within our criminal law system and whether any adjustments would be necessary for that.'

More or less the same conclusion was reached by Louis Sèvèke of the Nijmegen Onderzoeksburo Inlichtingen- en Veiligheidsdiensten [Intelligence and Security Services Research Agency] (OBIV). In the *NRC Handelsblad* of 24 November 2003, he wrote that the information from the AIVD was primarily lacking in reliability. In Sèvèke's opinion, extraordinary vigilance is essential at the point at which human sources are mined: informers and officers. It may also be a case of criminal citizen agents. Sèvèke contended that such agents not infrequently have their own agenda. 'In the seventies and eighties of the previous century the efforts of the citizen agents, whether or not criminal, regularly

caused great upset in the Dutch secret services. Various agents, under the direction of the service, turned out to have been guilty of a whole range of criminal offences; from committing or inciting vandalism to peddling arms and explosives and preparing and participating in bombings.'

How realistically this problem has been assessed is apparent from the fact that in his annual lecture on 11 June 2004 for the Dutch Association of Lawyers, the above-mentioned Professor J.W. Fokkens, Advocate General at the Supreme Court in The Hague and also professor of criminal law at the Free University, Amsterdam, expressed his concern about the manner in which criminal law was deployed to combat terrorism. Among other things, Fokkens was worried about the lawfulness of the use of AIVD information in criminal proceedings. 'I can see problems relating to the role of what is known in criminal law as an agent provocateur. Just as in combating organised crime, infiltration is also a means used in countering terrorism to gain insight into the activities of the groups under suspicion. In the Penal Code it is specifically stipulated that the infiltrator may not bring another person to criminal offences other than those on which his intention was already focused. (Art. 126h paragraph 2 and 126p paragraph 2 Penal Code).'
Fokkens referred to a judgement of the EHRM concerning entrapment, the Teixera de Castro case. In that case, the court ruled that his sentence was in conflict with the right to a fair trial because he had been persuaded by officers of the American Drug Enforcement Agency (DEA) to supply a large quantity of heroine, although there was nothing established about any previously existing readiness to do this or prior involvement in that trade. Fokkens referred to this example because in his opinion it illustrates that, partly because of the international dimension, monitoring of material supplied by intelligence services will not be superfluous if the Netherlands wants to maintain the right to a fair trial. In combination with the extension of liability under criminal law to conspiracy to a number of terrorist crimes, Fokkens wonders whether the situation is in fact acceptable.
'There is criminal conspiracy to commit terrorism as soon as two or more persons meet to commit such a crime. Any other act in preparation of the crime is not required. What is then the situation when the agreement has been made between an infiltrator and the suspect? Is it acceptable that in that situation there are only limited possibilities for the defence to question the infiltrator or that the examination into the question of whether there is any reason to doubt whether the infiltrator had complied with all the rules is largely conducted in secrecy by the examining magistrate?'

According to the lawyer, Britta Böhler, an examination like this, conducted only by the examining magistrate, is far from satisfactory. In her opinion, judges can only assess the degree of truthfulness of information and the reliability of evidence with the contribution of all parties to the proceedings, thus also the lawyers and the public prosecutor. With a simple example in her book *Crisis in the state under rule of law,* Böhler makes it clear where things go wrong. 'Just imagine that it is stated in an official report that someone is planning to commit an attack on Rotterdam the following month. The lawyer and the suspect receive this official report, but no background information. Only the court subsequently gets to hear from the AIVD that the source of the official report is an undercover agent who monitored a telephone conversation of the suspect in which the

suspect said to an unknown third party that he was going to attend a match in Rotterdam the following month. According to the AIVD the term “match” is the usual codeword for “attack”. The undercover agent confirms the telephone conversation before the judge. With additional information from the AIVD, the judge will consider this report reliable. However, what the judge will not get to know, because he may not divulge the additional information to the suspect, is that the suspect was planning to go a Feyenoord football match the following month. The suspect would also have been able to prove that because his brother had already bought the tickets. The judge therefore comes to a wrong decision about the reliability and the truthfulness of the information of the AIVD material because he only has information available from one side. The suspect runs the risk of being convicted because the judge has not been fully informed.’

In the end, the critics got to hear that there were problems about the reliability of AIVD information from the Public Prosecutions Department itself. In an interview in *NRC Handelsblad* on 7 October 2004, the national Public Prosecutors, Marc van den Erve and Bart Nieuwenhuizen announced that the national public prosecutor’s office of the Public Prosecutions department wanted to adopt a less dependent attitude with relation to the information coming from the AIVD. The Public Prosecutions Department wants to do more of its own investigations and to extend its capacity in order to investigate proactively itself. One of the reasons they gave was that it was ‘very difficult to assess the origin and the credibility of the information that you get in official reports.’
The lawyer, Michiel Pestman, reacted immediately. On 15 October 2004, he wrote in the *NRC*: ‘This most recent pronouncement is surprising, because it is the first time that the Public Prosecutions Department, in the form of two grey-haired public prosecutors, has admitted that AIVD information is not holy. Of course, the Public Prosecutions Department has no idea of how reliable the information is that is supplied by the AIVD. Probably the AIVD has no idea either, because the security is dependent on human sources, with all the inherent shortcomings.’
Remarkably enough, the Public Prosecutors Board turned against the proposed legislation to allow AIVD information in criminal cases. According to the board, this would neutralise the strict division between information collection and investigation. ‘With the examining magistrate offering the possibility of hearing officials of the AIVD as witnesses the dividing line between the function of intelligence and the function of prosecution becomes blurred. That may certainly have advantages, but it is not without risks. In any case, the officials of the AIVD are more involved in criminal procedures than is the case at the moment, and they will have to take into account more than at present that they will be called as witnesses.’
The board was also worried that the examining magistrate had been landed with an ‘almost impossible assignment’, because how could an examining magistrate determine whether or not state security was at issue? He is entirely dependent on what the AIVD official tells him and has no way of monitoring that. Or, as the board itself said: ’If it is a question of tangible, technical evidence from the AIVD, does the examining magistrate have adequate insight into the operational methods of the AIVD in order to establish that the evidence in question has been lawfully obtained?’
The board also indicated other problems with AIVD information. Frequently, this information would be vague, comparable with tips from criminal information units.

These tips were never used as evidence in a criminal case, but merely as ‘relevant information’ for the investigation. However, vague AIVD information would in fact come into the case as evidence via the suggested construction. ‘It is not inconceivable that an official report from the AIVD contains information that is extremely incriminating for a suspect, but which, for security reasons is not in any way substantiated. For example, you can think of the information that the suspect had benefited from a terrorist training camp in Afghanistan or that he is probably involved in previous attacks (…). Then the question is whether it wouldn’t be wise to limit the nature of the evidence obtainable from the AIVD to hard technical evidence, such as reports of phone-tap conversations, intercepted letters, emails etc.’ The board further pointed out that the concept of ‘state security’ was crucial in the legislative proposal, but that nowhere was there a definition of what state security was and that also in legal literature there is no ‘standard crystallised concept’.

While the Second Chamber was still tackling the avalanche of new legislative proposals, in a letter of 26 January 2005, the cabinet once again proposed even more far-reaching measures. A legislative proposal would be submitted to make ‘apologetics’ punishable by law: glorifying or justifying serious crimes, geared towards terrorism. Anyone therefore who declared that Van Gogh got his just deserts, was liable to punishment. And what about someone who did not think it was a just punishment but was of the opinion that Van Gogh was asking for the murder? Is that also justifying and therefore punishable?
In addition, people who incite violence or hate would be more likely to be banned from their profession; the cabinet had in mind particularly people working in education, religious occupations and youth work. Furthermore, for persons who ‘on the basis of contacts, activities or other indications, which in themselves are insufficient grounds for criminal proceedings, but yet are of such a nature that measures are justified’ a couple of measures came into force: the obligation to report periodically to the police station, or an injunction against being in the proximity of certain persons or objects. According to the cabinet it might be a case of ‘a pattern or system of behaviours and activities, such as visiting a foreign terrorist training camp and hanging around certain locations in a suspicious manner’.

DEVIL’S DILEMMA

Traditional criminal law and the intelligence world are beginning become entwined in various ways. On the one hand, the police have gained powers that until recently were reserved for the intelligence services. On the basis of ‘indications’, radical investigative powers are implemented, data bases coupled and ploughed through and data on citizens kept for a long time, also when they are innocent or above suspicion. At the same time ‘conspiracy’ linked with a ‘terrorist motive’ has been declared a punishable offence. These are two vague concepts that are a long way from the actual preparation or execution of an act. The chance of accidents in the court is thereby increased, certainly in view of the political and social pressure exerted on investigative services, intelligence services and the judiciary.
At the same time it has become possible to allow AIVD information to be used in the court, although the defence and judiciary scarcely have any opportunity to test adequately

the reliability of the AIVD information. Moreover, suspects of terrorism can be placed in pre-trial detention for years without ever hearing what the suspicion is based on and without it ever coming to a trial.
Many critics think that this is a bridge too far and that it damages the essence of criminal law. The question that then arises is whether criminal law is the most suitable instrument for combating terrorism. Corstens put it like this: 'There is a hole in the dike, the flood waters are rising, the hole is getting bigger all the time. What will be swept away with it?' In any case, the purpose of criminal law is to be able to investigate and prosecute the perpetrators after an offence. However, criminal law now has the primary task of preventing attacks.

In an article in the *Nederlands Juristen Blad,* Ties Pakke tried to find a way out of the 'devil's dilemma': the state not only has to defend its citizens, but also itself. Then soon there are authorities coming into the picture making radical infringements of values, which, particularly in a democratic state under rule of law, are elementary, including the basic rights of the citizen.
Pakke observed that the authorities in the Netherlands do not really seem to be suffering under this devil's dilemma. 'On the contrary, they give the impression that they are seizing this opportunity to take far-reaching measures that also strengthen the state's control of its citizens, also outside the terrorist context and that, to put it mildly, they do not regret it.'
Prakke referred to the work of Michael Ignatieff in order to assess the devil's dilemma. Ignatieff stated that emergency measures in which rights are overridden can be necessary, but only when they are really essential, when they leave the democratic and lawful control in place, when they are temporary and are only applied in those cases in which it is really necessary for the purpose stated.
According to Prakke, what is attractive about Ignatieff's views is that he offers scope for special measures provided that they are strictly necessary, but on strict condition that they are recognized as 'evil' and are temporary. Ignatieff made the assumption that emergency powers would most probably lead to abuse of power. That is why such special measures must be recognised as 'evil' and norms should be set up to test them. Ignatieff suggested five criteria on which emergency measures should be tested. The dignity test opposes cruelty and unorthodox punishments, torture, extradition of suspects to countries that violate human rights and suchlike. The conservative test questions whether the measures are really necessary and whether they damage institutional inheritance, as does detention without access to the court. The effectiveness test examines whether political support for the state will increase or decrease. The last resort test asks whether less coercive measures have been tried and failed. The test of open adversarial review examines monitoring by legislative and judicial bodies either at the time or as soon as necessity allows. Pakke thinks that these thoughts offer us the possibility of critical evaluation of the anti-terrorist measures that are hitting us at high speed. It will not cause any surprise that on the basis of Ignatieff's criteria Pakke came to the conclusion that Donner's legislative proposals and laws could not stand the test of criticism.

Pakke also points to another interesting phenomenon. One of the dilemmas in the criminal law governing anti-terrorism is the question of whether that should be enacted in

the form of special emergency measures or customary criminal law. The argument for 'emergency criminal law' is that regular criminal law will not become as quickly infected; the argument for customary criminal law is that there are more guarantees for the maintenance of state of law safeguards. However, according to Pakke, the current legislation accommodates both evils and is therefore not consistent.

Sometimes laws, which focus particularly on terrorism, are constructed in the form of universal legislation, such as the extension of the liability to punishment of preparatory acts (art. 46 Sr [Penal Code]), the readapted definition of 'detecting' (art.132a Sv [Code of Criminal Procedure]), the proposed extension of stop and search actions and the penalisation of the harbouring of anyone who is the subject of ongoing detection (art. 189 Sr).

What happens then is that normal criminal law is not applied to the suspects of terrorist offences, but that special anti-terrorist measures are put into operation against the entire population was Prakke's conclusion. 'Anyhow, that is unacceptable. In this case it looks as if, to use Ignatieff's words, our institutional inheritance is being severely damaged. Minister Donner's view that, in investigating terrorism, actions can be taken on the basis of outward characteristics and ideas espoused, is not at all reassuring in this field. Then it becomes not the legislation of the necessary evil, but of authoritarian policy objectives generally recommended by the government, which should be assessed not on their qualities with a view to combating terrorism, but with a view to their acceptability from the viewpoint of how the state deals with its regular citizens under regular circumstances. Criminal law of intent, unrestricted investigation merely to gratify police curiosity and random es on a large scale are inappropriate in a country calling itself a state under rule of law'.

Conversely, there are stipulations, such as those on terrorist crimes and most of the special powers to investigate them, which have been specifically created for, and in their implementation limited to, suspects of terrorist activities. The danger of this is on the one hand that accepting special measures perhaps becomes too easy and does not even offer minimal legal protection to this category of suspects and on the other hand that special legal precedents are going to develop, according to Prakke.

In her opinion, neither is the dilemma, in its general or particular aspects, easy to solve. As far as she is concerned, separate terrorism judges are fundamentally wrong. The same applies to a separate procedure, as proposed regarding the extended pre-trial detention and the corresponding holding back of procedural documents for far too long.

'On the one hand, in the explanatory memorandum one cannot state that the major function of criminal law in terrorist crimes is the prevention of attacks and at the same time deprive the suspect, once detained and therefore restrained from his possible intentions, of his fundamental legal protection and to do it for two years. The question here is whether the dignity directive is being fulfilled and it is also not clear whether these drastic infringements of the legal protection of a suspect of terrorism once apprehended are really necessary.'

Separate investigative powers are in principle possible, according to Prakke, because with that there would be more emphasis on the character of 'necessary evil'. Then a convincing argument must take place as to why these powers are necessary in addition to the work of the intelligence services. 'The proposals already made are in any case unacceptable insofar as they are inconsistent and under the heading of countering

terrorism they create powers with a general application. Here too, our institutional inheritance (what a nice term that is, but a pity that it is only introduced with its abolition!) is engaged being unnecessarily frittered away.'
A big advantage of special measures and powers for countering terrorism in Prakke's opinion is the possibility of only introducing them temporarily as long as the threat is serious. That forces evaluation after the expiry of the period of validity, after which parliament can better express the opinion for or against the extension of it on better grounds that it could pass judgement on the original necessity. 'In the entire legislative exercise of the moment I didn't come across the suggestion anywhere to introduce these far-reaching measures. Yet that is one of the best guarantees for the limitation of the necessary evil. It is also one of the few safety valves against destruction of rule of law and democratic values'.

OIL SLICK EFFECT

Prakke draws attention to the ambiguous nature of the current legislative proposals, in which combating terrorism legitimises far-reaching modification of laws, but at the same time defines legislative proposals in such a way that they become applicable in a general sense in criminal law. Geert Corstens also draws attention in another way to this danger of the oil slick effect. He mentions two 'rules of experience'. The first is that the government and therefore also the police generally have the tendency to stretch the limits of powers. The second rule of experience is that powers introduced for special circumstances are generalised after a period of time.
The blending of combating terrorism and combating crime is clearly visible at European level. Take the introduction of the European arrest warrant. It was sold to the public as an important measure in the fight against terrorism. Persons under arrest could be more easily extradited to other European countries, without any unduly long procedures at court and without much examination of the charge. The fact that someone is suspected of terrorism is enough to warrant granting of the extradition request. Whether this is really the case is scarcely checked. But the European arrest warrant covers far more than just terrorism. There are 32 offences on the list of to which it applies, varying from terrorism, murder and manslaughter to art theft, fraud and computer crime. The introduction of the European arrest warrant, therefore, means a quiet revolution in European criminal law cooperation.
In nearly every European policy document, terrorism and organised crime are bracketed together. A complicating factor is that there are more and more references to the connections between the two. Terrorists are alleged to finance their acts from drug-dealing, brand piracy or credit card fraud. Weapons and explosives were procured from 'mainstream' criminals. Money-laundering facilities for organised crime were also used by terrorists. There are no hard facts to support this hypothesis but the suppositions are not completely unfounded either. The same applies to the problems of 'failed states', countries in which there is scarcely any central power and in which local warlords rule the roost: ideal environment for both organised crime and terrorist networks. The difference between terrorism and organised crime is therefore fluctuating, as a result of which the special measures, which are specifically appropriate in combating terrorism, trickle through into the total investigation and prosecution procedure.

Perhaps even more important is the fact that there is a series of laws in the making – or in the meantime enacted – which apply to the entire population – both suspects and non-suspects. The main point of this is to acquire as much data information about citizens as possible and making these data easily accessible for investigatory and intelligence services.
A first example of the above is the Act on the authority to collect data. It is about the access that investigatory and intelligence services have to information about citizens that is stored in institutions. It may be the details of banks, insurance companies, car-hire firms, mail order companies, universities, telecom businesses, supermarkets, libraries or travel agents. Police and the judiciary could also request these data in the past, but institutions and businesses were not compelled to cooperate. They were expected to consider, assessing for example whether cooperation with the police and judiciary would involve a violation of their obligation of privacy towards their clients.
That dilemma has now been solved by obliging businesses and institutions to comply with a request from police and judiciary. The latter may only use this power in a specific criminal investigation, but as we have already seen, the concept of 'investigation' is increasingly extended and action may already be taken on the basis of 'indications'.
There is another snag in the law: police and judiciary may also request the data from the circle of people around the suspect, i.e. citizens above suspicion. The only criterion is that it is 'necessary' for the investigation. For police and the judiciary this opens the possibility of exposing networks or of investigating whether a friend/acquaintance of the suspect was perhaps aiding and abetting. The citizens above suspicion who in this way land up in the trawler net of the investigation and intelligence services just have to trust that their data will be destroyed once it turns out that they have nothing to do with the offences. However, it can also happen that during such a trawling expedition facts pop up that have nothing to do with the original investigation, but 'by accident' bring another misdemeanour to light. Police and judiciary will of course make use of these data. In this manner the existing rules are also extended, which after all state that there must be a definite suspicion if police and judiciary want to have permission to carry out investigation procedures.

A multi-stage model has been adopted in law: to the extent that the data requested become more sensitive – health, sexual preference, membership of political parties or trade unions – the higher the threshold to request them. Instead of a public prosecutor, it is a presiding magistrate who has to grant permission. In an article in the *Nederlandse Juristen Blad* (Dutch Lawyers' Journal), a number of academics pointed out that in practice this stipulation could be a dead letter. Because it's not always clear whether or not requested data are 'sensitive'. A public prosecutor might request data from a video shop, after which information might emerge about someone's sexual preference; data retrieved from a supermarket could bring to light the purchase of sugar-free products, which gives an indication about someone's state of health. The public prosecutor will probably view these data as 'an additional haul' and just use it. In spite of repeated questions from the Partij van de Arbeid (PvdA) (Labour Party), amongst others, during the plenary hearing of the legislative proposal, there was no clear answer to this question on the part of the government.

The data retrieved may then be processed by the police by checking them against other databases, or data mining. In this way they can find out for example the identity of the people who got money from a cash dispenser on 1 March 2004 in Amsterdam and in the following week bought a car or flew from Schiphol; or which people of those who bought a knife set at Blokker's made a phone call by mobile in Deventer. In this respect, it helps that citizens leave so many digital traces behind them. An increasing number of data are registered and thanks to computer technology are easy to retrieve. In this way, a coarse-meshed net can be thrown out to have a look at who the suspect interacts with, who had used a mobile phone in a 10 kilometre radius of the offence had had their mobile phone on or who paid with a cash card. This is how citizens come more quickly and more often in the sights of police and judiciary. The cliché 'if you've nothing to hide, you've nothing to fear' falls short. Imagine, will the bank still make a loan available to someone in whom the police are interested? How will the garage owner view you if the police have just visited you – or the school team?

The IT lawyer, Egbert Dommering, speaks therefore of the corrupting of the state under rule of law. 'The reasoning seems to be that IT is constantly making it easier to register and follow behaviours of individuals and that the government therefore has the right to benefit from the advances in this technique by far-reaching limitation of individual freedom.'

There is also scarcely any constraint on the hunger for information of the police and the judiciary. A proposal to make the government pay for the work businesses had to carry out for it, something that could have functioned as a constraint, got nowhere. The costs of the hunger for information are paid by businesses and ultimately by the citizen.

COMMUNICATION DATA

Another example is a European proposal, which the Dutch government endorses in principle, to file the communication data of all 450 million European citizens for a period from one to three years. Communication data do not give any insight into the contents of communication, but do reveal communication patterns: who rang who and when? Who is mailing who? Which internet sites are visited? Moreover, by establishing the location of mobile telephones it is also possible to find out where people have been. That means that an enormous quantity of extremely sensitive information on all citizens is stored for years. Police and judiciary cannot easily access these data; they are stored by the telecom and internet providers and the police may only request them in the context of a criminal investigation. That means there must already be a suspicion against someone, but that can happen quite quickly. In the Netherlands, furthermore, it is possible to start an investigation into 'unknown suspects' and the concept 'investigation' is extended. Next, the communication patterns and networks of the suspect will be exposed, thereby once again all sorts of innocent citizens, above suspicion, will be exposed to the spotlight. What happens next with these data is not clear.

A complicating factor is that the theme of the European proposal is the reciprocal exchange of these data, in which the European trend is to make fewer and fewer demands on the procedure of information exchange. The European Member States are racing at high speed towards a situation in which it actually does not make much difference whether a request for exchanging communication data comes from the public prosecutor in Groningen or from a prosecutor in Italy, Poland or Latvia. That is called the 'trust principle': the European member states assume that each member state has its state under

rule of law in good order, and it is therefore bad form to ask very probing questions when a prosecutor from Italy or Greece checks in with the question of whether he can have all the communication data on Mr X or Ms Y.

This trend is becoming more and more common. A well-known example is the American demand to inspect in advance a great deal of data of passengers who wish to travel to the US: place of residence, date of birth, bank account, telephone numbers, method of payment, and meal preferences. The Americans drag these data through their own databases in order to investigate and prevent potential terrorists or criminals at an early stage. However, all these data then disappear for years in American databases, to which all sorts of American authorities have access. The European Union, in the meantime, is making the same demands of passengers from the countries of origin of many asylum seekers and immigrants. Donner, Minister of Justice, has repeatedly stated that it will become a matter of course in the future that all countries exchange passenger data with each other. Add to that the plans to include biological data (finger prints and photo) in both passports and permits of residence that are automatically readable and it becomes clear that slowly but surely gigantic databases are coming into being in which all sorts of information is stored about innocent citizens.

The big question, of course, remains: why are governments so keen to have so much information about citizens who are not under suspicion? States are developing an immense potential for control. It demonstrates an exaggerated and dangerous dose of trust in the government to think that all these data will just be properly used in order to combat serious crime and terrorism, ignoring awkward questions (such as: what precisely is the definition of terrorism?). In many countries, also European countries, the state under rule of law is looking frayed at the edges.

The collection of more and more information about all citizens entails a big security risk. Corruption also occurs in government circles and for criminals it’s even more interesting to try to bribe officials in government or in business. And there is yet another danger involved in large-scale collection and distribution of intelligence. We have already drawn attention to the ‘soft’ information of intelligence services that is going to play a larger part in the actions of police and judiciary, with all the concomitant faults. In the US, thousands of people have been disappointed because for unfathomable reasons they have been placed on a black list (the No-Fly List), as a result of which they cannot fly. Senator Ted Kennedy is also on the list. Research by the organisation American Civil Liberties Union shows that the black list is in total chaos. It is unclear what the criteria for including names were and there are no procedures in place to fight against the black list in a court of law.

Something similar happened when a number of Air France flights to the US were cancelled because the Americans were frightened that there were terrorists on board. Subsequently, it turned out that one of the names on the passenger list that had given rise to alarm was not that of the leader of a Tunisian terrorist group but that of an eight-year-old child. Other ‘terrorists’ turned out in fact to be an estate agent from Wales and an elderly Chinese woman with a restaurant in Paris. It is a clear example of how soft intelligence information is more and more frequently interwoven into daily life and how legal protection is lagging behind.

In addition, there are also many problems with all sorts of databases that contain ‘hard’ information. There is always the possibility of contamination of databases, not processing decisions not to prosecute, exchanging or spelling names incorrectly. As more and more databases are linked and as information is exchanged on an international scale, the faults and the carelessness permeate even further and can lead to unexpected consequences.

But all the information in worldwide databases will also be applied more frequently, in order to construct risk analyses and on the basis of known data to set up ‘profiles’ of terrorists. These profiles are then run through all databases and on the basis of that there is a list of ‘suspected persons’ who must be arrested, denied access or subjected to extra body searching or observation. An innocent person therefore really does have something to fear.

PRIVACY

Anyone still daring to mouth the word ‘privacy’ in the present political climate is excluding him/herself from the debate. Privacy is dismissed as something absurd, an unwieldy instrument that presents a big obstacle for security. The CBP has spoken out on several occasions against this caricature. The CBP points out once again that privacy protection with personal data actually has a number of simple fundamental principles: personal data are not just collected at random and used, but are only for specific purposes; the citizens involved are informed about this and have the right of perusal and correction of inaccuracies; the stored data are well protected, are not available for just anyone and are not stored without reason. And, said the CBP, as opposed to an infringement of the rights to privacy of the citizen there is the obligation always to ask oneself whether it can’t be done another way or whether it can be done less or whether it is actually effective.

‘Anyone who brushes aside privacy with the false antithesis between privacy and security does not therefore wish to ask these questions’, concludes the CBP. ‘Negligent treatment of the privacy of the citizen puts trust in the government at stake’, warns the board. ‘Citizens who have nothing to hide deserve a government that automatically adopts the norms of privacy protection as a fundamental principle in designing measures, intelligence systems or obligations of citizens. Anyone who demolishes the right to privacy is depriving the well-intentioned citizens of an important guarantee and is undermining the state under rule of law’.

2 THE AIVD, STATE CONVEYOR OF INTELLIGENCE

On 3 November 2004, one day after the murder of Theo van Gogh, Mohammed B., soon identified as a member of the Hofstad (Capital) network was arrested. Amsterdam police were then feverishly looking for information about other people possible involved. Did other people know about it? Did Mohammed B. get help in preparing or committing the murder? These were questions that the judiciary wanted an answer to as soon as possible.
Police teams all over the country were digging through their databases and informers were being asked what they knew about Mohammed B. In Utrecht there was success. An informer from radical Muslim circles, who had previously supplied reliable information to the local Regionale Criminele Inlichtingen Eenheid [Regional Criminal Intelligence unit] (RCIE), had information about Mohammed B. According to the informer 'a video tape has been made of the Moroccan man who shot dead Theo van Gogh in which he tells that he has shot Theo van Gogh and has become a martyr.'
As is customary, the team leader of the RCIE indicates in the report how reliable the information is. In this case, the informer was described as reliable. This is next to the highest appraisal that an RCIE can give; only information from government services gets a higher score. 'My assessment is that the background of the informer, known to me, viewed in connection with the details provided by the informer, led me to the conclusion that the information provided can be regarded as trustworthy', according to the team leader, Hendrik Lodder, in the report, that was faxed to Amsterdam the next day.
One day later, Lodder sent another report to Amsterdam. In it, the informer reported that 'Mohammed B. belonged to an extreme group attending the Al Taweed mosque and that in that group it was known in advance that this young man was going to murder Van Gogh. The plan of the murderer, after he had committed the murder was to have himself shot dead by police bullets and thus become a martyr and go to paradise. A few months previously it was said that extreme Muslims were involved in collecting money to finance the killing of Theo van Gogh and Ayaan Hirsi Ali, according to the informer in the report.
The information from the Utrecht informer seemed as if it was going to play an important role in the criminal investigation into the co-perpetrators of the murder of Theo van Gogh. In any case, if it was known in advance that Mohammed B. was intending to commit this murder, so it should be possible to find some evidence of this. The informer seemed to be an important witness in the case against Mohammed B, certainly because he'd been described by the Utrecht RCIE as reliable.
KRO's *Reporter* broadcast news about this prominent crown witness on 1 May 2005. In the broadcast, Professor Ybo Buruma clearly explained what the description 'reliable' meant: the man had previously provided information that turned out to be correct. According to *Reporter*, the man had also declared that he had previously supplied the AIVD with information. The AIVD, however, denied having ever spoken to the man and invited the Ministry of Public Prosecutions to provide further information. Two days later, the second pro forma session about the Hofstadgroep came before the Rotterdam court. The picture that the judiciary sketched of the Utrecht informer was then completely reversed. The public prosecutor, A. van Dam stated that the informer did not have any previous knowledge of the imminent murder of Theo van Gogh. From a subsequent

hearing of the man it turned out that he considered himself to have ‘the gift of prophesy’, reported the prosecutor. In his revised statement he called his report ‘pure predictions of my spirit’. He did not know that Mohammed B. was going to murder Theo van Gogh.

INFORMATION, INFORMATION, INFORMATION

Investigations are successful or unsuccessful depending on the input of information. State conveyors of intelligence are the AIVD and its little brother, the Regionale Inlichtingendienst [Regional Intelligence Service] (RID). On the basis of the Intelligence and Security Act, these services can collect intelligence on anyone who constitutes a danger for national security. In addition, the police, on the grounds of the Special Powers of Investigation Act (BOB), are collecting independent information about possible suspects or about breaches of the peace.

The AIVD is an all-in-one intelligence and security service. An intelligence service is actually described as an ‘offensive’ service: they collect information abroad about all sorts of matters that might threaten the Netherlands. The security service has a defensive task: recognising and rendering safe threats on Dutch soil.
The AIVD is emphatically not an investigative body. Its aim is not to investigate people and bring them to court. The AIVD has to monitor national security. Officially, the task constitutes ‘conducting investigation relating to organisations and persons who, through the aims for which they strive, or by their activities, cause serious supposition that they represent a danger to the continued existence of the democratic legal system or to the security or to other important interests of the state’. This rather abstract concept ‘important interests of the state’ is not further defined.
The Commission for AIVD administrative evaluation (the Havermans Commission), in its final report described in great detail the difference between intelligence work of the AIVD and the investigative work of the police. ‘Intelligence work distinguishes itself from the classic investigative work relating to happenings that took place in the past by its orientation on the future. In evaluating risks, it is all about the probability of a threatening event and the seriousness (or magnitude) of that event’.
From the past history of the security service, it turned out that quite a lot could be listed under the protection of national security: communist parties, the squatter movement, the anti-nuclear movement, the environment movement, the peace movement, student protests against a hike in tuition fees and animal rights activists. ‘The concepts “suspicion” and “other serious interests” were so vague that as a service we could easily get away with it’, according to ex-BVD worker Frits Hoekstra in his book *In the service of the BVD.* ‘Certainly that was the case if you could rely on protection of source in order to avoid having to clarify the grounds for suspicion.’
According to the minister responsible for home affairs, however, the service has always denied that these movements as a whole have been regarded as dangerous to the state. The state kept an eye on these sorts of political movements in order to investigate whether perhaps persons or clubs were operating that could indeed pose a danger to state security. That is why officials of the security service, whether or not through informers or infiltrators, attended more or less every meeting of anti-apartheid activists or peace

activists in every remote corner of the Netherlands. After a demonstration there was a dutiful report to headquarters about what stands there were, which organisations, what the atmosphere was like, who jumped up in the debate and any other information that was considered useful. The working method of the BVD was once significantly described by the ex-BVD chief Arthur Docters van Leeuwen thus: in searching for a needle we are collecting haystacks.

The AIVD also viewed terrorism from a wide perspective. Since the fall of the Berlin Wall, the service has focused on political Islam and has monitored the developments within numerous organisations. From reports such as *Political Islam, Saudi influences in the Netherlands, Recruiting for the Jihad, From Dawa to Jihad* and the annual reports of the service show that the AIVD is keeping a close track on a broad spectrum of organisations.

If the service comes across information that is of interest for state security, those known as having a particular interest are informed: the minister, mayors, public prosecutors or others responsible for monitoring the 'important interests' of the state. On the advice of the security service, they can then take measures: order a security investigation, increase the security of secret documents, refuse a residence permit, set up an administrative investigation of an organisation, or set up a criminal investigation. The service may also be 'disruptive'. As indicated by the government, it may take the form of spreading disinformation or frustrating planned violent actions. In the opinion of the Haverman commission, which investigated the functioning of the AIVD in 2004, the service makes sporadic use of heavier forms of disruption but lighter forms are used with some regularity. There are examples of disruption known from the past: a police car suddenly parked pointedly in front of someone's house, or a home visit by officers who tell those present that the service is fully aware of intended plans, with the urgent advice to abandon them. But having suspects arrested by the police is also a form of disruption.

In order to be able to discharge its duties, the security service, in addition to its general authority to ask anyone for information, has extended special powers: to observe, pursue, put in officers, set up legal persons, surreptitiously search, open letters, hack into computers, phone tap and directly listen in, investigate communication, and receive and record non-cable bound communication without direction.

CUTTINGS PORTFOLIO

What is the situation now with the Dutch security service, now renamed AIVD? In their view, the service has managed to prevent attacks a number of times. Although this is not easy to check, let us assume that this statement is correct. There are also a number of matters that the security service was not able to prevent. Take, for example, the actions of the Moluccans in the seventies, or the RaRa actions in the eighties and nineties. In addition, the service was not able to discover in time and prevent the murders of Fortuyn and Van Gogh. Moreover, in recent years there were a number of minor scandals that evoke a less than flattering image. Who could forget the humiliating departure of the intended LPF secretary of state, Bijlhout, only six hours after officially coming to office? The AIVD scrutinised her lifestyle and concluded that everything was squeaky clean. However, a number of alert journalists dug up some compromising material in no time that indicated Bijlhout's involvement with the army leader Bouterse's militias in Surinam. How did the AIVD fail to spot what a journalist could rustle up from his own cuttings portfolio?

Or what about the damning conclusions of the Van den Haak committee that investigated how security for Pim Fortuyn was organised? Van den Haak's conclusion was that the BVD had done a botched-up job. Furthermore, there were a number of matters that could not be verified, because the BVD official responsible had been on sick leave for a few months. The investigation also showed numerous communication problems between the AIVD and the upper echelons of the Ministry of the Interior. At the time when the Minister, Klaas de Vries, asked the BVD to make a risk analysis regarding Pim Fortuyn, he probably had no idea that the service would go no further than browsing through a few folders containing newspaper cuttings. The service then reported that there were no threats and both the minister and the service were under the impression that they had discharged their duties successfully.
Now of course there are a lot of expectations with which the service may not or cannot comply. In the case of state secretary, Bijlhout, for example, the service may not do much more than look in its own files. In any case, screening of politicians can also have negative effects. However, there is consultation between the chairs of the political parties and the AIVD. In drawing up the electoral lists the party chairs can appeal to the AIVD if they have doubts about the integrity of a candidate. In an investigation like this the AIVD may not deploy special intelligence measures.

The AIVD was under great pressure after the murder of Theo van Gogh by Mohammed B. How was it that the service knew nothing of his plan to murder Van Gogh? According to ex-employee, Frits Hoekstra, Mohammed B was even the ideal informer. In the *Vrij Nederland* of 20 November 2004, Hoekstra said that if he had considered Mohammed B's background through BVD eyes, 'then I would have thought: there was a point at which Mohammed B should have been recruited as an informant agent. This young man was very concerned, went to the authorities with his plan, but his enthusiasm turned into bitterness because nobody would listen to him. He was very concerned about the position of young Moroccans in the district where he lived. There have been riots in that square. In August 2002, it would probably have been relatively easy to have motivated this Mohammed to work for the AIVD as an informant. The intelligence he provided could have prevented the matter from getting any further out of hand. That was also in his own interest. He really wanted to do something and the government could have helped him to do so. Instead, he was recruited by the other side. He went the way of fundamentalism'.

Within the AIVD they look back with horror at the 2nd November: couldn't they have prevented it? With hindsight, after a huge police investigation, the service assesses Mohammed B differently. In KRO's *Reporter* of 1 May 2005, Theo Bot, acting head of AIVD, said that, with the information now available, the service views Mohammed B in a different way. The opinion of the situation before the murder of Van Gogh seems to remain unequivocal within the AIVD: on the basis of the information then available we would have made the same decisions.

INTELLIGENCE POSITION

The intelligence position of the AIVD has been built up by making use of open sources, half-open sources, government databases and firms' databases and closed sources. On the basis of all this intelligence the service produces official reports and analyses, depending on who is requesting the information.

The methods used to collect intelligence vary from Open Source Intelligence (OSINT), Signals Intelligence (SIGINT), Imagery Intelligence (IMINT), Human-Source Intelligence (HUMINT) to Geospatial Intelligence. In counter terrorism, the AIVD deploys all these possibilities where it is necessary and feasible. Good reliable intelligence is essential in combating terrorism. How does the service score?

TECHNICAL MEANS

The AIVD can do a lot in this area: direct wire-tapping, phone-tapping and locating via mobile telephones, tapping land lines, placing (small) cameras, hacking into email traffic and using location apparatus in vehicles, breaking into homes or computers, opening letters. The above authorisations are stated in law in articles 18 to 33 of the Intelligence and Security Act (WIV). Although now and then there's an appeal in the Second Chamber for the powers of the AIVD to be extended, that is in fact superfluous in view of the powers the service already has. The only proposed moderation that is now in the Second Chamber concerns a non-technical process. The government wants to modify article 17 WIV in such a way that semi-governmental services are obliged to make their databases available to the service. It also transpires from the plans for setting up an independent national SIGINT organisation that the AIVD in collaboration with the National SIGINT Organisation (NSO) wants to be able to hack into email communications on a large scale.
The deployment of technical means is related to the seriousness of a suspicion. First, there must be a review of whether lighter means are adequate before technical means can be used. The question is whether this system is also actually applied.
The new WIV, which came into force in 2002, includes a duty of notification for the AIVD. In exercising the prerogatives: opening letters, direct wire-tapping, use of the IMSI catcher, (an installation that can directly monitor mobile phones in order to discover mobile phone data) and in breaking into a home, the service, five years after the last time that the powers were employed, must inform those to whom this has happened. However, notification does not take place if actual sources and working methods of the service are endangered by the notification. Within the AIVD a *Handbook AO procedures* is doing the rounds. The handbook indicates when and in what manner an authority can be deployed. According to the Havermans committee, AIVD employees observe in detail the lawfulness of the application of special intelligence methods.
In the discussion about shadowing the fluctuating group of 150 alleged terrorists, included in the system of the counter-terrorism infobox, the AIVD has frequently asserted that it is impossible to shadow this group. Capacity is restricted and 24-hour surveillance is impossible. The Directorate of Special Intelligence Means is the department within the AIVD that is responsible for the application of special intelligence means. The Havermans committee stated that the demand from the operational teams exceeded the supply. 'This applied particularly in the case of the surveillance and shadow teams', according to the committee. The service does appeal (for help?) to the surveillance teams of the police, the Military and Intelligence and Security Service (MIVD) and the Koninklijke Marechaussee [Royal Netherlands Military Constabulary] (KMAR).

By deploying technical means, the AIVD can collect a lot of information about the ‘infrastructure’ of networks. Not only can the AIVD see who people are ringing up (and what they are discussing), but a record can also be made of where people are staying, where they are going to, who people regularly spend time with, how the finances are organised and what are the contacts in these cases. Just as with common criminals, a wide circle round the network is phone-tapped. This often provides more information than the coded agreements within such a network.
From an investigation into the Hofstadnetwerk, it transpired that when the AIVD suspected a serious threat they made wide-scale use of technical means. In this context, the AIVD lured a number of suspects into a prepared building on the Antheunisstraat in The Hague, the house in which Jason W. and Ismael A. were arrested in November 2004. On 5 February 2005, *de Volkskrant* reported that the AIVD ‘made use of the services of “Ed”, who introduced himself as a representative of firm H, a firm whose name is known to *de Volkskrant.* The probability is that it is a business that was specially set up by the secret service’.
The house was indeed furnished with a huge amount of monitoring devices, as shown in the reports on the Hofstadnetwerk. Right from the first day that Jason W. rented the house as an anti-squatter agent, the AIVD recorders were logging everything. However, the AIVD is keeping much of the recorded information away from the police investigation. According to NOS news of 13 April 2005, the AIVD even deleted all recordings prior to 2 November 2004. However, further research showed that there was no question of wiping the tapes, but that protection of sources probably held the service back from releasing the CD-ROMs.
The NOS news based its case on the argument that the public prosecutor Frits van Straelen put forward that day during the pro forma hearing of Mohammed B. He stated that only the CD-ROMS of conversations recorded by the AIVD in the Antheunisstraat from 2 to 10 November 2004 were available. Van Straelen reported that the service gave a couple of reasons why conversations could no longer be provided. In the first place, only those conversations were preserved that the AIVD considered relevant for the execution of its task. In the second place, those CDs that were preserved were assessed by the AIVD for their relevance to the criminal investigations and for the risk factor for the AIVD. The risk factor, and then in particular the protection of sources was evidently too great to release the tapped conversations for the police investigations.
All this corresponds with stories circulating about the presence of a third person (in addition to Jason W. and Ismael A.) in the Antheunisstraat until just before 2 November. It was possibly this person who brought Jason and Ismael in contact with the ‘Ed’ and in this way placed them under maximum surveillance of the AIVD.
From answers to Parliamentary questions of Peter van Heemst (PvDA), it transpires that it is the sound technician who makes the selection. ‘He selects the sound fragments that are relevant for the investigation and makes a written report of this. This selection takes place on the basis of the team assignment and the related investigation questions’. The minister also reported that it is standard practice in the AIVD that the only sound fragments from microphones to be preserved are those considered relevant by the sound technician and those for which there is a written report. ‘The non-relevant sound fragments on tape for which no report has been made are overwritten after a period of time. This period varies from one week to a number of weeks, calculated from the time of

recording. There is no question of taped sound fragments containing relevant conversations being erased.'
More information about the actual functioning surfaced when it transpired that there was a leak in the AIVD. On 30 September 2004, the interpreter Outman Ben A. was arrested by the police on suspicion of leaking secret AIVD information. Outman Ben A., a former employee of the IND, on his first working day at the AIVD, was immediately placed in a demanding ongoing investigation. 'In fact, I had no training and had to set to work immediately', he told the Central Criminal Intelligence Agency ('rijksrecherche') after his arrest. The Central Criminal Intelligence Agency dossier, under the code name of 'Walcheren' passed into the hands of *de Volkskrant*. From one day to the next, he had to make important decisions. For example, under guidelines, he determined which tapped telephone conversations were relevant and from his experience as a sound technician decided whether or not he wanted to transcribe them. Outman Ben A was suspected of having passed on secret information to radical networks which were being monitored by the AIVD.
'I had to make the decision on my own as to whether a conversation was significant or not. I would like to point out in this respect that only a quarter of all conversations are actually transcribed. That is case with all my colleagues. I also noticed, moreover, that when a colleague is off sick certain taps are not dealt with at all, and not later either', as the sound technician said to his interrogators. 'I also noticed that a team leader often has no idea of the number of taps and their contents.' Ben A. said that he himself had an advisory role in recommending new tapping connections. By giving instructions to an operator he could also interfere in an ongoing investigation.
In July 2004, he appeared in the Vuursche investigation, also known as the Utrecht terrorist case. A major figure in this respect was Hassan O, who had spoken of holy war in the monitored conversations and of explosives that he would use for this purpose or of a bomb he had been given for safe-keeping. The AIVD wanted to know what Hassan O was doing and what his plans were. The intelligence service established that he had made photographs of the British and American embassies and of the Noordeinde Palace. His trips to Belgium were also worthy of note as he was thought to have contact with 'cells' there. Ben A. suddenly had to monitor fifteen phone taps and was extremely busy. He complained about this to the team leader because he could not cope with the volume of work. He was told that he had to solve the problem himself.
On Sunday 26 September 2004, the police raided Hassan's house. The immediate cause was information that had come in a day earlier about a person from an Islamic network who had AIVD information. On the same Sunday evening, a controversial raid took place in the Utrecht Bucheliusstraat, in the family house of a 30-year-old man in Brussels who Hassan had met there. Neither in the family's home nor in that of Hassan O. was anything found in the house search. There was some AIVD information found at Hassan's: two A4s with fragments of text from 'situation week 31'.These state secrets form part of a ten-page-long report of the AIVD on a possible Utrecht terrorist network. They were printed letters containing names of a close circle of Muslim friends. It transpired that they had been monitored since 2002.
Four days later, Ben A. was arrested. Internal AIVD investigation showed that he was responsible for circulating this envelop.

Also Abdelaziz B., Rachid C. and the Moroccan interpreter's brother-in-law, Nadir B., all belonging to the same circle, were arrested in connection with leaked state secrets. AIVD observation reports were found at the homes of all three. Four weeks previously, Outman had told a colleague that his brother-in-law knew targets from the investigation. He was alluding to Rachid and Abdelaziz, whom his brother-in-law had casually mentioned. He had even suggested to the AIVD to recruit his brother-in-law as an informant. For those four weeks he received no answer, until he was told that no action had been taken following his suggestion. One week later he was arrested.
According to *De Telegraaf*, Outman Ben A. was thought to have used an extraordinary method to leak documents. In addition to his work with the AIVD, Ben A. also ran a travel agency. On its website (www.chafarinastours.com) information from the AIVD was inserted in the travel information, according to *De Telegraaf.* Outman Ben A. was also held responsible for the leaking of investigation information among members of the Hofstad network. *NRC Handelsblad* of 11 January 2005 reported that circles in the Hofstad network had an update on the AIVD investigation into the network. During the pro forma hearing against Outman Ben A., public prosecutor Zwaneveld reported that Outman Ben A. was also suspected of leaking a phone tap conversation, the report of which was found at the home of Ahmed H., who was suspected of being a member of the Hofstad network.

STORING

Why in fact did the AIVD make a selection of the phone taps at an early stage? The current storage capacity of computers does not present any restriction at all on storing all the relevant conversations. It should therefore not have been necessary for the already overburdened audio technicians to make a selection. Although they would, of course, have made a selection of the conversations to be transcribed, the rest could simply be stored on DVDs. Certainly in terrorism investigations, in which, as in the present case of Mohammed B, the picture can vary tremendously, storing information is obviously better than deleting it.
Technical means can provide the AIVD with much insight into the movements, contacts and intentions of suspected terrorists. They often form a reliable source of information. Judges will accept information that has been obtained by means of tapping or direct monitoring, on condition that the lawyers can also have the CDs at their disposal. This has happened already in a number of court cases.
The problem in all this is the selection. In the first place, let us consider the selection made by the overworked audio technicians. Which conversations do they transcribe and which not? In the second place, there is the selection made in order to protect the AIVD's sources, as happened in the case of the Hofstad network. The material released after these two filters will never form a complete picture of the information that the AIVD has obtained. The risk, of course, is that in this way disculpatory information is kept outside the lawsuit. The AIVD ought to indicate what selection has been made and what selection criteria have been used.

HUMAN SOURCES

In addition to information from technical sources, people are a major source of information for the AIVD. Human sources can be their own agents, infiltrators or

informers. The AIVD/RID recruits informers very actively in the field of foreigners. Research studies by Buro Jansen & Janssen (*De vluchteling achtervolgd [Persecution of refugees]* and *Misleidende methode [Misleading method])* present an extensive picture of this. The service has also been recruiting informers from within radical Islamic circles for years. From the statement of the case that Ministers Remkes and Donner sent to the Second Chamber after the murder of Theo van Gogh it was also apparent that the AIVD had (several) infiltrators operating in the Hofstad network.
Thus, ministers reporting on 22 October 2003, shortly after the first arrests of a number of members of the Hofstad network, said that 'through the apprehension of a number of key figures from the Hofstad network, the AIVD instantly lost a significant part of its information position with respect to this network. This is the inevitable consequence of such an intervention'. In May/June 2004 the AIVD seemed to have built up its information position again. The ministers reported that 'by gradually building up its information position, the AIVD once again was obtaining more information about the network.'
Also in the turbulent November days of 2004, it transpired that the AIVD had informants available close to members of the Hofstad network. In an official report, the AIVD stated that on 8th November an 'extremely reliable source' monitored a six-minute conversation between Jason, Ismael and 'a person as yet unknown'.
From other police archives of suspected terrorists as well it transpired that the AIVD had infiltrators/informers operating in the circle of persons against whom criminal proceedings were being taken.

NORDINE B. ALIAS RACHID A.Z.
Two days after 11 September 2001, the Netherlands was briefly alarmed by a possible threat of terrorism. With a great show of power, the police raided a house in Rotterdam. Four men were arrested. The men were later brought before the public prosecutor in the first terrorism case in Rotterdam.
One of the men was known by the name of Rachid A.Z. However, this name turned out to be an alias for Nordine B. Rachid A.Z./Nordine B. seemed to get off scot-free. Whereas the others were connected with a Dutch and perhaps even European terrorism network, Nordine was merely a coincidental visitor. He did remain a suspect, but could not be detained on the basis of the evidence in the terrorism file. He was transferred to the Aliens Police in connection with unauthorised residence. Whereas the other three suspects were detained in close confinement, Rachid A.Z. alias Nordine B was released through the bungling of the judiciary. Was it incompetence?
During the first pro forma hearing, the lawyer A. Saey stated that Nordine B was working as an informer for a national or international investigation service. During the hearing, the President of the court, S. van Klaveren, commented: 'If you read this information carefully, then you could conclude that we are concerned here with an infiltrator'. Those directly concerned in the investigation stated in *de Volkskrant*: 'Damaging for the investigation into the Rotterdam cell? Not at all, say interested parties who know the contents of the file. Rachid A.Z. is a "poor wretch", a foreigner who "lived here and there as a subtenant". Just after the attack in the USA he was "visiting De Kempenaerstraat at the wrong moment".
Who was right in this matter remains an open question, but in the meantime Nordine B has vanished into thin air. Yet the position of Rachid A.Z., as he was initially known,

remains extremely strange. The then BVD and judiciary passed on his name to the Nederlandse Bank in order to have it put on the United Nations 1267 List (what we called the UN torture list). That is not granted to everyone.
Was Nordine B, alias Rachid A. Z. an ordinary infiltrator? That is an important question. In all probability his statements led to the arrests on 13 September 2001. The evidence that the Ministry of Public Prosecution had assembled consisted of forging of passports, driving licences and credit cards. Not grave offences, but by connecting these activities with the suspects who were preparing attacks on American targets in Paris, they became offences with a terrorist objective. According to those directly involved with the file Nordine B was 'a poor wretch', but the main suspect, C., stated that Nordine B was frequently seen with an expensive mobile phone. In addition, Nordine B. said that he did not speak French, but he did read French newspapers. The other suspects, I. and R. also stated that Nordine behaved in a suspicious manner and often contradicted himself. They also painted a picture of someone who was more fanatic than they were themselves. Nordine B. was jubilant on 11 September 2001 and regularly watched video tapes of the attacks in Kenya, attacks on the American warship USS Cole in Yemen and tapes of the Chechen militants. Suspect R added that Nordine B. always stayed in the car when they went out running together. C., the main suspect, was well-known by the police. It is not beyond the bounds of possibility that an intelligence service had sent someone to check on him. But the question of whether Nordine B. was an ordinary infiltrator or whether he wanted to entice C. to find out how far he would go remains unanswered. 'According to my client, Z. was continually asking questions. He said that he wanted to go to Afghanistan to train for the jihad. He wanted to know from my client how he should set about it', stated I. Saey, C.'s lawyer during the hearing.

OFFICER FREEK

Furthermore, in the second terrorism case, the alleged recruiters from Eindhoven once again seemed to have been informants drafted by the AIVD. These proceedings involved men from Algeria in particular, believed to be members of the Algerian GSPC, the 'Group Salafiste pour la predication et le Combat.' Some of the suspects were residing legally in the Netherlands and had a Dutch or a French passport, but the majority had no valid residence permits. That was the case with the suspect R. From June 2001 to January 2002, R was held as an alien in the Willem II barracks in Tilburg because he did not have any valid residence papers. While he was in the Willem II barracks, R was visited four times by a tall Dutch man with black/grey hair and green eyes, who introduced himself as Freek from the intelligence service. Freek spoke reasonably good French and always came with a man that R assumed to be from the police. R. was asked if he wanted to cooperate in collecting information about the man whose photograph Freek showed him. R. was also asked if he wanted to gather information about fellow prisoners. Freek seemed particularly interested in the GSPC. R. had the feeling that if he cooperated with Freek he would be held as an alien for a shorter period, even though it would still be six months before he was released in January 2002. R. settled in Groningen. Shortly after his release, Freek approached him once again and they met in Breda. R. was given one hundred Euros to buy a mobile phone and was given Freek's number. Freek contacted R. seven times in order to talk to him. The meetings always took place in Breda or Zwolle in a café near the train station. Freek was always accompanied by the man who had also sat

in on the discussions in the Willem II barracks. Freek asked R. to spy on people visiting the Al Fourkaan mosque. Freek was especially interested in one particular man and asked R to spy on this man extensively. R. himself said that he had informed people he knew about his activities for Freek. R. had the impression that Freek was continually putting pressure on him to provide information and that if he did not work satisfactorily he would end up in prison again.
Whether or not R, was speaking the truth is unclear. In his diary he had written the name of Freek or Frederik as R. called him, the telephone number and the number plate of the black Clio that Freek drove.
R.'s lawyer, P. Beijen, thought that R.'s story was plausible. In any case, at the first interrogation after his arrest, R. was already talking about the approaches of the AIVD and about Freek. Beijen also tried to gain some insight into Freek's visits to the Willem II barracks. Prisons keep a detailed account of visits, but Beijen was not able to find out anything about them. He came up against a wall of silence.
The credibility of his statement was corroborated by a Buro Jansen & Janssen investigation into the method in which the AIVD approached refugees. In the book *Misleidende methode* (Misleading method), we described how the Egyption Ahmed was approached by an AIVD agent called Freek. In a broadcast in November 2003 of the radio programme *Argos*, Ahmed rang the AIVD and the existence of Freek was confirmed.
On 12 June 2002, R. was arrested on suspicion of membership of a terrorist organisation and was one of the suspects in the second terrorism trial in Rotterdam. R. is still not free even though he was acquitted in the terrorism trial. Once again, he is detained as an alien and he has now been in prison for more than three years.

During the hearing, it became clear that AIVD had several informers. F., one of the suspects at the hearing, related that he had been locked up or stayed in a bungalow in the recreation park Duinrell in Wassenaar. F. drove to Italy three times with a consignment of drugs. This undertaking was not very successful: twice everything went according to plan, but the third time it went wrong. The third time he decided to keep the money he had earned for himself and not to share it with A.O., who according to F. had organised the transaction. Whether that is true is open to question. It seems more likely that F. was simply arrested by the Italian police who in his car found an iron bar, a flick knife and € 26,765, which they confiscated. F. was photographed, fingerprinted and held in custody for one day. F. went into hiding and did not want to speak to A.O. and the others. This is probably the reason why people became suspicious and went looking for F. According to F., the alleged leader of the group, R.D. issued a fatwa against him. On 24 April 2002, A.O., R.D. and some other men were arrested. F. decided to go to the police because he was frightened that the others would murder him. The Utrecht police handed him over to the AIVD. According to F., his cousin brought him into contact with Freek of the AIVD. F. was frightened and had to go into hiding. The Duinrell story seems far-fetched, but the combination with Freek is strange. F. talked quite freely about the drugs transport and about the various suspects. He said that the money from the drugs had been used for the armed conflict, a statement he later withdrew at the court hearing. When the police started to make arrests in the context of the second terrorism trial, F. was put to one side. In fear, he fled to Morocco. In the meantime, R.D. had somehow miraculously managed

to escape from the panopticon in Breda, using knotted sheets. Later, F. was arrested in Belgium and extradited to the Netherlands.
F.'s account seemed like a tall story, but it is strange that he named Duinrell and Freek. Assuming that he was an informer, the question arises as to how reliable his information was about his former friends. F. deceived his friends with the drugs, got into a problem and then made incriminating statements about them to the AIVD. However, he was frightened that his former friends wanted to murder him and he would have been only too happy if they disappeared behind bars.

RELIABILITY
The problem with informers is, of course, reliability. That was clear from the example of the Utrecht RCIE, that thought it had got a reliable informer who would deliver reliable information about Mohammed B, On further examination, it turned out that he had only made 'a prediction'.
There are some issues that stand out in the stories about informers that Buro Jansen & Janssen has collected over the last fifteen years. Informers are often recruited by the services because they are in a labile situation. This can vary, for example, from people with debts to people who have been let down by friends. Foreigners are often put under pressure to cooperate. Threatened deportation from the Netherlands (see for example R. in the trial of the alleged Eindhoven recruiters) is used as the ultimate coercion. In the past, minor criminals have often been deployed as informers (e.g. Lex Hester, Cees van Leishout).

The evaluation of the reliability of an informer is closely related to the way in which people handle information. In the *Algemeen Politieblad* (General Police Journal) of 30 April 2005, the journalist, Maarten Bollen, who was writing a book about the occurrence of tunnel vision, commissioned by the police, wrote that in research, the reliability of the information is always one of the biggest problems. According to Bollen, tunnel vision occurs when a criminal investigation is based on false information and those mistakes are not recognised, as a result of which the investigation gets onto the wrong track and stays on it. According to Bollen, the reason for this is the fact that our potential to assimilate information is limited and is filtered by schemes and prejudices. Psychological research has demonstrated that people are prepared to adjudge arguments to their opinion. Opinions are rarely modified to accommodate arguments.

The AIVD indicates the reliability of informers with a double letter code (an upper case letter and a lower case one), both going from A to C. The first letter reflects the reliability of the source and the second the reliability of the information. Aa, therefore, indicates that the reliability of the source and of the information have been highly evaluated and Cc that both have a low evaluation.
After 11 September, the AIVD has also released less reliable information, Bc qualifications as it were. However, the receiving party does not receive the AIVD evaluation. In official reports, which are also compiled on the basis of information from informers, the reliability qualifications are not stated. The receiver must interpret the information himself/herself. It is not clear whether it is about Aa or Bc information.

If the police is the receiving party, another problem arises. This is caused because the services have a different way of operating. We mentioned it earlier: the intelligence services make predictions (looking for threats, for a probability), while the police are looking for evidence (hard facts for a conviction).
Not that there will be much difference in the basic information, a report from an informer is a report from an informer, but even there the instruction to the informer plays a role. Is someone looking to the future (avoiding attacks) or is the person looking to the past (in order to collect tips about suspects)? In a search for the burden of proof, the police will have to be able to exclude that other suspects have committed the offence. The chance that someone else is guilty must be made as low as possible. If that did not happen then many innocent people would land up in prison.
In a search for possible terrorists it is just the opposite. It is not a case of excluding other people – then the attack would already have taken place – but what it is all about is certain facts, circumstances and behaviours that cannot be explained by anything else. From a methodological point of view, you operate in a completely different way.

There also seems to be a difference in the manner in which the reliability of an informer is assessed within the Dutch intelligence services. For example, at the beginning of 2003 there was a difference of opinion about the deployment of an informer in a terrorism investigation in collaboration with a foreign intelligence service in the Netherlands. In the first instance, this service asked the AIVD for its cooperation in an operation. Without that permission, a foreign service may not carry out any activities in the Netherlands. However, according to the AIVD the informer was unreliable. Cooperation with the foreign service did not take place.
Yet an investigation by the Supervisory Committee on the Intelligence and Security Services proved that the informer had been active in the Netherlands. After rejection by the AIVD, the foreign intelligence service then approached the MIVD. The latter service came to a different conclusion: the informer was in fact reliable. The MIVD set up a joint operation with the sister service. The Supervisory Committee on the Intelligence and Security Services was very surprised at this difference of insight. In its investigation report, the committee wrote that ‘it found it extraordinary that the AIVD and the MIVD came to such different conclusions in the field of reliability’. In its report, the committee referred to Intelligence and Security Services Act, in which stringent requirements are demanded for the deployment of informers. They have to meet high standards of reliability.

MONITORING

Even the information of a reliable informant who had previously supplied reliable information would need to be checked at all times. The fact is that obtaining reliable information via an informer/infiltrator is not the only reason for the AIVD to deploy someone. At least as important is the directing/monitoring role that an infiltrator will be able to assume in a network. Via an infiltrator, the AIVD can try to monitor the use of violence from such a network. In the past, this led to much criticism, for example on matters such as incitement. How far can an infiltrator of the AIVD go with his activities?
One example of such an operation is Lex Hester from Zaanstad. He was recruited in 1978 and then worked for more than twelve years for the Plaatselijke Inlichtingen Dienst

[Local Information Service] (PID), BVD and Centrale Recherche Informatiedienst [Central Criminal Investigation Service] (CRI). His particular brief was to infiltrate the activist movements. After his exposure in 1990, it became known that he regularly peddled explosives: he tried to persuade people to buy these explosives on at least six occasions. Under the auspices of the BVD, he set up his own very radical journal, *Het Info.* Among other things *Het Info* translated statements and articles from radical left and revolutionary groups.
At a certain point, Hester, a drug user and a known burglar and arsonist, was sentenced and sent to prison. At the request of the intelligence services, the administration allowed him to be picked up by an agent of the BVD in order to attend important meetings of groups into which he had been able to infiltrate.

Another example is that of Cees van Lieshout, a key figure in a BVD operation that is described in detail by OBIV in Nijmegen in the book *Operatie Homerus.* Until 1981, Van Lieshout had worked in the Nijmegen squatters' scene and was one of the hardliners there. He played a principal role in the local Rood Verzetsfront- groep [Red Resistance Movement] and several times incited people to highly dangerous actions, such as an attempt to bomb a public police exhibition in 1979. A bit later, he was also involved in an action against the annual four-day walking event in which a man on the road was fire-bombed. Van Lieshout was continually stirring things up in the Nijmegen squatters' scene and the anti-nuclear weapons movement saying that they were not radical enough! After 1981, he was primarily involved in criminal circles.

In addition to these examples of incitement and provocation, a security service also sometimes wants to delay taking action. In the eighties, the Rood Revolutionair Front [Red Revolutionary Front] (RRF) from The Hague planted a number of small bombs. The Rotterdam Police tracked down the group and put in an observation team. To their utter amazement, the team stumbled across another observation team in the woods: it turned out that the BVD had been observing the groups for some time and were watching how bombs were placed and how they went off. Was the BVD trying to build up a better information position? Did they consider the time was not ripe for intervening? Were they frightened that by intervening a bomb might go off? Of did it suit the service for other reasons that the RRF could continue its activities?
In the logic of a security service these sorts of operations are legitimised: otherwise how can you find out who in certain circles shows an interest in more violent activities? But the dividing line between infiltrating, informing, inciting and provoking is paper-thin. Could it be that the action of the security service caused exactly the opposite to be achieved to what was wanted?
For example, from Frits Hoekstra's book (*In dienst van de BVD)* [In the service of the BVD], it is clear that the Rode Jeugd [Red Youth] an organisation that expressed solidarity with the RAF in Germany, maintained contact with it and did odd jobs for it, was extensively infiltrated by the service. Sometimes there were four members in a cell and three of them were working for the service. In his book, Hoekstra indicated the ensuing dilemmas: 'The extensive infiltration in the Red Youth meant on the one hand that in the first half of the seventies there was scarcely any need to fear uncontrolled actions of violence. On the other hand, the flip side of the pervasive presence meant that the Red Youth, without the active BVD agents, might have collapsed like a house of

cards and might have consisted only of a handful of urban guerrillas. This was how the BVD seemed to uphold its objective.'

REDOUAN AL-USSAR ABD NOUREDINE EL F.

Can the same be said to apply to the Hofstad network? In any case, the spiritual leader of the network, Redouan al-Issar, has been able to carry on his work in the Netherlands for a long time.
After he was arrested in October 2003 on suspicion of terrorism (together with Samir A.), he was deported to Germany, the country to which he had submitted his first asylum request. However, Redouan was able to continue to visit his wife in the Laak area of The Hague without any problems. After a detailed report about this in the *Utrechts Niewsblad* and other newspapers, the Second Chamber Member, Geert Wilders, asked Minister Remkes why Redouan had not been arrested at that time.
Minister Remkes replied that in August 2004 the AIVD had reported in the CT infobox that Redouan al-Issar was once again illegally in the Netherlands. According to Remkes, the conclusion was that 'in practice, no circumstances had occurred that would warrant a successful and effective action against Renouad, either from the point of view of criminal justice or the law concerning aliens'. This was indeed a remarkable conclusion. The AIVD could have submitted an official report to the IND, for example, on the basis of which Redouan al-Issar (just as after his arrest in October 2003) could have been deported to Germany. This did not happen. The Minister reported that 'in the meantime the AIVD had done what was necessary in order to keep Redouan under observation as much as possible in terms of intelligence'.
The AIVD probably used Redouan al-Issar in order to gain insight into the Hofstad network. Which young people felt involved and who contacted him? Certainly, after the arrests in October 2003, when the AIVD lost a major source of information, it suited the service that Redouan could remain in the Netherlands and in a way could give structure to the network.
The position of Nouredine el F. can also be said to be extraordinary. In any case, according to the AIVD, he had been an important target for a long time, in contrast to Mohammed B. Nouredine el F., together with two other members of the Hofstad network, was arrested in Portugal on 11 June 2004. The AIVD had informed the Portuguese authorities about the departure of these three. They might have been preparing an assault on the European Championship football to be held there. On 16 June 2004, when Nouredine el F. landed at Schiphol, officers of the AIVD and the Anti-terrorism Unit of the KLPD (UTBT) were waiting for him. They interrogated him and then came his famous statement about Mohammed B. The latter was alleged to be very dangerous and a supporter of the Takfir, an extremist movement in Islam. Nouredine stated further that a will signed by him and found in the house of Mohammed B. in October 2003 was not his will but that of Mohammed B. In the opinion of the AIVD, however, his statements were implausible. By blackening someone else he was trying to exonerate himself.
What is extraordinary is that subsequently there was not the slightest obstacle put in the way of Nouredine el F. In spite of the fact that he was illegal and, according to the AIVD, he constituted a danger, he was simply allowed to stay in the Netherlands. Nouredine el

F. was also one of the last members of the Hofstad network to be arrested after the murder of Theo van Gogh. Not until July 2005 was he put in handcuffs at Amsterdam NS station Lelylaan. At that point, he had a loaded submachine gun with him. In monitoring the AIVD, more attention should be paid to this specific item. What are the limits that the service should observe? How far should operations be allowed to go? Certainly, now that legislation is going to give more opportunities for things going wrong this consideration should be accorded more attention.

ANALYSES

After the fall of the Wall, there has been a great intensification of analysts in the AIVD. The number of operators in the last ten years has decreased tremendously. At the moment, the ratio analysts/ operators is still distorted, too many analysts in comparison with the operators who organise the informers/ infiltrators. There is a lack of operators, particularly at Centre of Islamic Terrorism and in the management of Overseas activities. The consequence is that teams are understaffed and that for example no independent agent operations can be carried out abroad. Moreover, it is not easy to deploy operators in new cases. Old cases cannot be stopped at the drop of a hat. An infiltrator who has worked for years for the service has to be carefully debriefed; otherwise there is a high risk factor. After the murder of Theo van Gogh, an important conclusion of the Havermans committee and of the government was that the operational power of the AIVD in particular needed to be extended. The training for operators will have to have a new impetus, because in spite of the 450 people coming into the service there will also be 200 leaving. This puts too much pressure on a service of 1000 people.

Ultimately, the information was elevated to analyses or official reports. Minister Remkes and Minister Donner were given information every month about the threat of terrorism in the Netherlands. If necessary, as for example after the murder of Theo van Gogh, this would take place more frequently.
In relation to other positions, therefore, the AIVD has a large number of analysts. In the nineties, the number of academics employed there also increased considerably. But did all this lead to better analyses?
A quick look in the report on radical political Islam, scrutiny of the Islamic schools, the recruitment reports and the last report, *From Dawa to Jihad* show that the service can produce reports of a qualitatively high level. The reports are detailed where possible, make a distinction where possible and come up with subtle solutions where possible.
We cannot say much about the threat and risk analyses, but the Havermans Committee stated that the latter were 'often less subtle and less highly-developed than the clients expected'. According to the Havermans Committee, this came about because it was only partially possible to implement a central quality policy. 'There is a lack of a regular, systematic screening of the AIVD for quality control' according to the committee. The conclusion of the Havermans Committee is harsh: if the system of quality control within the AIVD is not improved, in the long term no improvement can take place of the organisation and functioning of the AIVD.
The clients reacted negatively to the international reports of the AIVD. 'They could find little added value in the information delivered', commented the Havermans Committee. The major cause was the lack of staff in this management. Another client of the AIVD at

the moment is the Nationale Coördinator Bewaken en Beveiligen [National Coordinator Surveillance and Security] (NCBB). As a result of the Van der Haak Committee's findings, a new system has been set up within which the AIVD delivers reports of threats and threat assessments. A legislative proposal has been submitted in which it is regulated that the AIVD may investigate potential threats from the perspective of the person threatened. There will therefore be a change in the products. The NCBB is continually making a better appraisal of the quality of threat assessments, but has a problem with its practicability. According to the Havermans Committee, there is still a debate about terms such as 'seriousness' and 'probability'. In particular, it finds an area of tension between an academic and analytical approach and the operational requirements.
This tension between expectations and the analyses frequently occurs in the AIVD environment. The dismay of a number of mayors at the lack of information on the part of the AIVD is well-known. A committee under the leadership of Mr Bakker is researching this question. However, there are other partners with a negative view of the AIVD.
The service is frequently dubbed a 'vacuum cleaner', which does come along to pick up information but is not available when something has to be delivered. Thus, the collaboration in the analytical cell (the forerunner of the CT-infobox) went badly and RIDs were overcharged by various teams of the AIVD.
As we said, the quality of the AIVD analyses is difficult to monitor. The investigation by Giliam de Valk showed that quite a bit could be modified. In a recently published investigation, D Valk examined a number of good and a number of not so good analyses of the BVD.
De Valk does not know precisely whether the situation is any different now, but factors that in his opinion are important for the quality of the analyses are the degree of feedback that analysts obtain, the leading political group that should keep well away from the analyses, the standard of training of the analysts and the extent to which deception is used. 'You can see the quality shooting upwards with deception. At that point, there are more funds deployed and that produces more 'secret' information, as a result of which the quality of the analysis rises', according to De Valk.
In any case, a large number of mistakes can occur in an analysis. Distortion can occur through an inadequate account or too much fantasy. The analyst can overestimate himself or be too ingrained in the culture of the service. There may be security paranoia, but equally there may be a forced consensus. There may be a surplus of data, but equally a deficit of data. There is often a quest for consistency, which in fact generates trust. According to De Valk, it is the feedback that is particularly important. 'Actually, all reports should be made public, and then you could get feedback from a lot of different angles'.

INTERNATIONAL COLLABORATION

Politicians repeatedly clamour for closer collaboration between the (European) intelligence services. After Madrid, the suggestion of establishing one European intelligence service was mooted, but in Europe this idea of the Belgian Prime Minister, Verhofstad, was soon abandoned.
International collaboration in the field of intelligence and security services is no sinecure. The problems are actually self-evident, but politicians take too little notice of them.

In a European Institute for Security Studies (ISS) study, entitled *For your eyes only*, there is a point-by-point explanation of what the intelligence collaboration in Europe is suffering from.

Intelligence services primarily serve the national state interest. And in the political hybrid that is the European Union that national interest, when you look at it, is very much alive and kicking. None of the intelligence services want other countries to know their exact information position, and what intelligence methods they have, even if the only reason was that friendly intelligence services in political and economic areas are often each other's competitors. Intelligence, and particularly the exchange of intelligence, will first have to be thoroughly filtered through the national sieve. Exclusive intelligence, for example, is useful to strengthen the position of a country in a coalition. Whoever can provide crucial information at the right moment does not only have a head start in information, but may also have an advantage in the policy to be implemented.

Within the intelligence world, moreover, the premise of reciprocity applies: intelligence is only exchanged if something useful is returned. Countries that are poor in their own intelligence miss the boat. Another significant obstacle is the fear that intelligence will be passed on to third countries. The more widely intelligence is spread, the greater the chance that this intelligence product will finally end up in services that, as far as the original 'owner' was concerned, they should never have reached. That is why the United Kingdom and Spain, for example, were never prepared to share their intelligence on the IRA and ETA respectively with Europol. That is why the five large EU Member States have made it clear that not all Member states will have access to their domestic secrets.

In the European context, the collaboration with the USA in this respect is of vital importance. In the ISS report this was described as the catch-22 of the European Union. The US is the world's major intelligence nation. If intelligence services within the EU are going to exchange more information, there is a risk that the US will turn off the intelligence tap even more tightly for fear of leaking important information. The recent expansion of the EU with ten new member states will only increase America's restraint. European countries, such as the UK, will keep a careful watch that plans for intensified European intelligence collaboration is not at the expense of the exclusive intelligence relation with the US.

During a public hearing on counter-terrorism in the Second Chamber, Cees Wiebes of the University of Amsterdam confirmed this image. According to Wiebes, this poor collaboration is due to a difference in perception of the threat, varying visions of the causes of terrorism, difference in foreign and domestic political convictions and fear of compromising one's own sources. There is also a great fear of losing control over information once it is exchanged. This fear is sometimes so great that intelligence services actually neglect their task because of this.

Wiebes cited the example of the Australian secret service that knew exactly where five Australian hostages were in Indonesia, but did not share that information. The service did not want to reveal that they had successfully infiltrated the Indonesian messaging system.

The Dutch AIVD also found itself in this impossibly difficult situation. Sharing too little information creates bad feeling, sharing too much means a significant risk factor that a foreign sister service could run off with the source. Quite recently, the AIVD shared information with a sister service in a terrorism investigation. The informer was of great

importance in the AIVD operation. For weeks, the sister service puzzled and analysed who the source could be. Once identified, the service took over the AIVD source.

HUMAN RIGHTS

In addition to the usual principles ('need to know', 'one good turn deserves another' and protection of sources), the AIVD also has principles in the field of standards with which a service must comply in collaborating. They must be thoroughly democratic and may not violate any human rights. However, if we consider the huge number of services (more than 100) in which there is collaboration at present, it transpires that more and more frequently these principles disappear into the background.
Since the attacks of 11 September, 2001, the services involved in collaboration are of a different calibre. Whereas until that date the rule was that the collaboration must always take place within legal boundaries, the wish to track down terrorism will prevail. In any case, this is not entirely new, because in spite of the fine words of the AIVD and the wish of the Second Chamber to honour the principle of human rights, the whole question concerning international collaboration is more complicated.
In reply to parliamentary questions of Leoni Spikes and Tara Singh Varma of GroenLinks (GreenLeft) party on 18 July 1995, the Minister of the Interior at that time stated that 'the question whether unlawful action of the Turkish or any other intelligence service should automatically exclude collaboration with the BVD is not easy to answer'. In any case, the collaboration must comply with Dutch law, 'but several factors also play a role in this' according to the then Minister, Dijkstal. 'The consequences of non-collaboration are also important, so that non-collaboration in connection with the prevention of terrorist activities can also be unlawful,' In other words: if it is a case of combating terrorism, the AIVD does not have to worry about the human rights situation in a particular country.
Since 1998, the AIVD has also focused on collaboration with intelligence services in North Africa. In that year, the ties with Morocco were strengthened and agreements were made to collaborate against radical fundamentalist organisations. From that year onwards, meetings at expert level have been held regularly. At the request of Algeria itself the BVD also made contact with the service there. Whereas in 1998 there was some reserve (no personal data were to be exchanged), only one year later the BVD spoke of 'close collaboration' with the services of countries in North Africa. Algeria, Tunisia, Morocco and Libya were visited regularly by AIVD delegates. The annual report of 2002 stated that there were two travelling liaison teams that visited North Africa on a regular basis. It was announced that in 2003 a liaison post would be opened in the United Arab Emirates. A year later, it turned out that this extension was spreading even further: in the field of counter terrorism the AIVD was in fact going to enter into single-issue relations with services which until recently would not have been eligible for a collaboration relation. In January 2005, there was uproar in the press because the AIVD had announced that it wanted to open liaison posts in Morocco, Saudi Arabia and Pakistan. In October 2004, in answer to questions from the D66 Member of the Second Chamber, Van der Laan, Minister Remkes stated that in principle international collaboration is based on an absolute ban on torture. 'Before the AIVD enters into a collaborative relation with a foreign service the AIVD examines the democratic background, the tasks, the professionalism and the reliability of the service' said Minister Remkes. In addition,

international obligations (for example treaties) determine the extent of collaboration. According to Minister Remkes, it is on this basis that decisions are made as to the extent of the collaboration. Should there be any doubt about the human rights issue, then Minister Remkes himself is always involved in the decision of whether to collaborate or not. Remkes also indicated in his answer that through keeping the source secret it was not always possible to find out whether the information had been obtained through torture. 'Moreover, such services will never state that they have obtained information through torture. This uncertainty, however, may not result in any form of collaboration with certain services being excluded beforehand. In a situation in which such a service has information at its disposal concerning an imminent threatened terrorist attack, this could have disastrous consequences. For acute life-threatening situations, communication channels with appropriate services should always be kept open.'

WEAPONS OF MASS DESTRUCTION IN IRAQ

One condition for the effective operation of security services and intelligence services is, of course, that their information is correct. This would appear obvious, but in reality it is one of the biggest problems services have to tackle. For most people, the disaster of the never discovered weapons of mass destruction in Iraq is still a vivid recollection. The supposed presence of weapons of mass destruction in Iraq was the major justification for the *coalition of the willing* led by the United States to open the attack. In an extreme attempt to gain the support of the Security Council of the United Nations, the American Minister of Foreign Affairs, Colin Powell gave an impressive PowerPoint presentation. Since then, it has become clear that the 'irrefutable evidence' demonstrated by Powell in reality was based on quicksand. In a report of the American Congress afterwards, damning conclusions were drawn about the American intelligence services. In the reports that reached the American policy makers more far-reaching conclusions were drawn than was possible on the basis of the main intelligence material. Shades of meaning disappeared, dissenting opinions of analysts disappeared from the reports, information that could have thrown a different light on the matter was rejected contemptuously, critical footnotes disappeared mysteriously from the reports and doubts about the reliability of certain sources never reached the analysts.

According to the American Congress report, many mistakes that were made during the interpretation and analysis process arose from groupthink and prejudice. The intelligence services worked on the assumption that after the first Gulf War, Iraq had continued with the construction of a nuclear programme and had made great efforts to conceal this from the outside world. Subsequently, all snippets of information were analysed in this way: as an essential foundation for this supposition. Vague information was also reinterpreted in this way as established facts. Information that indicated the opposite was pushed aside. This bias was evident, for example, in the way in which reports of the UN weapon inspectors were dealt with. If the inspectors stated that in a particular factory they found no evidence of biological or chemical activities, this was seen by the analysts as evidence of the assumption that Iraq was able to conceal the weapons programme in a particularly clever manner. The report expressed surprise that all sorts of internal control mechanisms, specifically intended to combat prejudice and groupthink, in this case had not worked, or were not even used. Another aspect was that a lot went wrong in the translation of the necessarily vague intelligence reports into easily digestible reports for the policy makers. The Intelligence services failed to indicate all the shades of meaning,

the large gaps in their knowledge and the doubts surrounding the reliability of a number of essential sources.

In the wake of the devastating reports, and incidentally comparable conclusions were drawn in evaluations published in England and in Australia, a number of (ex) employees of intelligence services sought publicity in order to limit the damage. It was repeated again and again that intelligence work is extremely difficult. The favourite metaphor is that of doing jigsaw puzzles. Information is gleaned from all nooks and crannies: open sources are followed from day to day, obscure publications or internet sites are investigated, embassies supply information, monitoring satellites comb through the lines of communication, defectors or infiltrators turn up with information and satellite pictures are analysed. Intelligence and security services themselves like to use the metaphor of jigsaw puzzles, in order to indicate how difficult their work is: with only a small number of the jigsaw pieces they have to try to make a threat or risk analysis, in which it is often not clear in advance which puzzle exactly they are trying to solve. And with many of the jigsaw pieces it is not clear whether they should go in a corner or in the middle, and indeed whether they belong to that particular puzzle and not to another. With a complicated game like this, it should be clear that things can go wrong now and again.
Intelligence work is simply not an exact science, according to the former chair of the British Joint Intelligence Committee, Sir Rodric Braithwaite, in a speech to the Royal Institute of International Affairs. After all, ultimately, it's not about the intelligence itself, but the analysis of the intelligence and the conclusions that can be drawn. There is no simple, direct connection between the two. 'Analysis is a dangerous occupation, it is a question of interpretation and judgement, but it is not an exact science. Intelligence is always diffuse and there is never enough of it and it hardly ever leads to undisputed conclusions'. Braithwaite's conclusion: there are still quite a few unrealistic expectations of what intelligence services can do.
One of the greatest misunderstandings about intelligence and security services is that they must be right because they have secret information. However, the real secret work of intelligence services is at the most 15% of the information position; the rest comes from open sources. The concrete wall of secrecy around intelligence services is therefore grossly exaggerated. But what is even more important: secret information can be incorrect. This statement, however, is scarcely acceptable for the most politicians and journalists. What intelligence services come up with often counts as indisputably true, simply because intelligence services can make use of secret sources and secret methods. Intelligence services can access information that others cannot touch, therefore it must be right, seems to be the underlying principle. Rubbish, said the previously quoted former chairman of the British Royal Intelligence Committee: 'Merely because information has been obtained by secret means does not imply that this information is therefore true or even fit for use.'
To put it in even stronger terms: secret information should actually be viewed with extra suspicion, because deceit and manipulation are lying in wait. In that field too, the report of the American Congress is an instructive piece of handiwork. The intelligence services leaned heavily on information that was produced by members of the exiles' organisation Iraq National Congress (INC) that claimed to have obtained the information from informers in Iraq. However, it was greatly to the advantage of the INC to foster American

war plans. The same applies to information that was produced by foreign intelligence services: it was not possible for the Americans to monitor it directly, while foreign intelligence services would have had their own agenda in influencing American policy in the Middle East.
Take, for example, the adventures surrounding an Iraqi defector, who operated under the romantic name of Curve Ball, and who was the most important source of information about the alleged Iraqi biological weapons programme. Curve Ball had poured his heart out to a foreign intelligence service, as a result of which the Americans could never monitor their source directly. Only one American agent was ever allowed to have the pleasure of meeting Curve Ball directly and he was shocked. It turned out that not only was Curve Ball an alcoholic, but on closer investigation, his statements were full of inconsistencies. The American agent expressed his doubts many times internally, but his superiors turned a deaf ear.
According to the American agent, the foreign runner of Curve Ball had become more or less so 'enamoured' of his important source that he believed everything he was told. It wasn't until later that it transpired that there were doubts in other sections of the American intelligence world about the reliability of Curve Ball and this ultimately led to the official conclusion that Curve Ball was unreliable and that his information was 'fabricated'. However, other sections of the intelligence service were not informed of these doubts (secret!), as a result of which analysts assumed that the information originating from Curve Ball was correct from beginning to end and the conclusions based on this even appeared in Powell's speech.
This is indeed the structural and fundamental problem faced in working with informers and infiltrators. Are they honest, are they double agents, fantasists; do they embellish their information somewhat for their boss? The problem concerning the reliability of informers is actually so great that the European police organisation Europol, established in The Hague, has created a strictly secret databank containing the names of notoriously unreliable informers who offer their services all over Europe. But there are only a few European Member States that work with this databank. An anonymous intelligence officer said to a *Trouw* reporter: 'The image is that we can do everything. But that isn't the case. Intelligence is usually incorrect, incomplete or doctored. There is so much that we don't know.'

THE NETHERLANDS

Manipulation or selective interpretation does not always have to be done ham-fistedly. In a fine reconstruction in the *NRC*, the editor, Joost Oranje, demonstrated how subtle these sorts of mechanisms could be. He investigated precisely how the decision-making about the Iraq War had taken place in the Netherlands. The more it became clear that there were no weapons of mass destruction in Iraq, the more the Dutch government emphasised that the Netherlands had supported the war for another reason: Saddam's continuing refusal to comply with UN resolutions. This was a white lie, because consecutive Ministers had already made other statements. 'For me, the justification for the international community to take action is entrenched in the question of the weapons of mass destruction', said the Minister of Foreign Affairs, De Hoop Scheffer in September 2002. 'If the weapons of mass destruction disappear, there is no need for any action in Iraq. There will be no

invasion. The flag can be flown at full mast', said Henk Kamp, Minister of Defence as recently as 12 February 2003.
In addition, the ministers involved emphasised that the Netherlands had made its own, independent assessment of the danger posed by Saddam. The government was clearly much impressed by Minister Powell's PowerPoint presentation for the UN – a presentation that, as we later found out, was full of mistakes. 'That is evidence' said Prime Minister Balkenende. 'It can't be denied.' Minister De Hoop Scheffer called the evidence 'convincing' and 'completely in line with what has transpired from Dutch intelligence sources.' However, these Dutch intelligence sources consisted primarily of material originating from the British and American intelligence services. But in confidential memos, the Dutch intelligence services pointed out the fact that intelligence is one thing, but the conclusions drawn from it were an entirely different matter. 'The same information from our American sister service can lead to different conclusions in American and Dutch politics' wrote the MIVD in the confidential Defence memo of 23 July 2003. 'Other interests play a role here'. And: 'In spite of the fact that there were few other sources available, The MIVD regularly came to quite different conclusions from those presented by the American and British political leaders.'
Moreover, the *NRC Handelsblad* reconstruction demonstrated that in the Netherlands too politics interpreted the intelligence reports opportunely. De Hoop Scheffer wrote that 'there is no doubt that, after the departure of the UN weapons inspectors, Iraq continued with the development of biological and chemical weapons in particular. The ensuing threat is explicit and as time progresses becomes ever more serious.' Yet according to the MIVD this was not the case: 'we never stated in specific terms that Iraq resumed the production of chemical and biological weapons after the departure of UNSCOM in 1988'.

From the reconstruction, it further transpired that internal warnings about the lawfulness of an attack on Iraq without permission from the United Nations were not passed on to the Chamber. Because this was one of the big questions: can the Netherlands support a one-sided attack on Iraq without an explicit UN resolution. UN resolution 1441 stated that if Iraq did not seize its last chance for disarmament, it would have 'serious consequences'. Was this an adequate legitimisation for military intervention, without a new UN resolution? According to Prime Minister Balkenende it was: 'It is sound legal reasoning', according to Balkenende. 'The legal ground has been complied with according to international law'. Balkenende was referring to a report that had recently been presented to the British government, in which, on the basis of a recommendation from Lord Goldsmith it was established that a possible invasion was completely lawful. A striking detail is that a few weeks earlier, this same Goldsmith was still of the opinion that an invasion was completely unlawful. According to ex-Minister, Clare Short, Goldsmith was put under pressure by Tony Blair. However, there was also doubt in the Netherlands civil service about the 'sound legal reasoning'. In an internal memo, the Director of Legal Affairs of the Ministry of Defence stated that Goldsmith's reasoning was not valid. Only a new, explicit resolution from the Security Council would form legitimate grounds for military invasion. There were still doubts at the Ministry of Foreign Affairs as well. According to the lawyers at Foreign Affairs, Goldsmith's

reasoning did provide ‘room for interpretation, but could not by definition be construed as an authorisation for the use of force’.

NRC’s reconstruction showed that Dutch politics were also very selective in shopping around for intelligence material. Powell’s presentation was described as impressive and convincing, although it was known that Dutch intelligence services regularly came to other conclusions. Findings from Dutch intelligence services with the omission of essential details were presented as hard facts. Internal criticism of the lawfulness of the invasion was kept secret.

The way that politics, in its own interests, can treat information from the intelligence world selectively was also apparent during the attack on 11 March 2004 in Madrid, a few days before the general elections in Spain. Immediately after the bloody attacks on the commuter trains, the conclusion of the Aznar government was unambiguous: it was the work of ETA. Aznar even made personal telephone calls to the domestic and foreign press to convince them that the ETA was responsible. The media, linked with the conservative Partido Popular of Aznar then obediently brought out this news. Foreign correspondents were also manipulated the same way. In addition, Spanish embassies were mobilised to broadcast the message to the whole world. ‘You must take every opportunity to confirm that ETA is responsible’, was the message on the internal memo from Minister Ana Palacio of Foreign Affairs to the Spanish diplomats. Even the Security Council of the United Nations was wrong-footed. Spain submitted a resolution in which the ETA was denounced. The American and French UN ambassadors, who supported the resolution, explained later that they had complete faith in the information from the Spanish government. For as long as he could, Aznar maintained that ETA was responsible, until the evidence that more searches should be made in Muslim circles became too convincing.
The political aim of the Aznar government was all too clear: a massive ETA attack on the eve of the elections would turn out favourably for the ruling Partido Popular that advocated a ruthless fight against the ETA. On the other hand, an attack of extreme Muslims could turn out the wrong way: it could make the population, which was mainly opposed to the unconditional Spanish support for the American invasion in Iraq, go over to the camp of the opposition. Ultimately, that is what happened, probably mainly due to anger at the attempts to manipulate the elections using the bloody attacks that cost nearly two hundred people their lives.
Reconstructions proved that there were traces from the first minutes of the attacks that pointed to Muslim extremists. After a tip from an observant porter, the police found a white delivery van near one of the stations. In the bus they found a tape with Arab music and the same detonator mechanisms that were also used in the attacks. Almost immediately a search was also made of the two hotels at which the perpetrators of the attacks had stayed. On 11 March at around midday, the Spanish intelligence service concluded that investigation should focus on Muslim extremists. However, the government was still obstructive. The police and the intelligence services were so angry that they leaked the discovery of the van to the media. Nevertheless, the Spanish government continued to maintain that the ETA was behind the bomb attack and it tried to keep the discovery of a videotape in which the attack was demanded by Al Qaida’s representative in Europe away from the press for as long as possible.

The consequences of the Spanish government's policy were not only targeted manipulation of the elections, but also to wrong-foot intelligence and police forces in other EU Member States. The Spanish government itself was enraged when, at an early stage, the director of Europol dared to say that in his opinion the attacks bore the hallmarks of Muslim extremists. In the past year many overtime hours have been spent to normalise disturbed relations within the European police and intelligence world.
In an interview with *De Staatscourant*, the deputy head of the AIVD, Theo Bot, recognised unreservedly that such manipulations had taken place. In answer to the question of whether that had led to a breach of confidence between the Dutch and the Spanish service, Bot replied: 'It makes you more aware of the fact that under certain circumstances there can be national interests in creating a particular picture. That is just what the Americans and the British did in the run-up to Iraq. Services can be used to reflect a particular idea of the politics adopted at that time. That is a fact of life. However, I do not have the idea that the services here were the primary instruments to think that out and carry it out. You start talking to each other again but then you go a step further. That does not cause fundamental breach of confidence.'

HALL OF MIRRORS

The facts vis-à-vis the attack of 11 March 2004 in Madrid actually raise even more questions. On Saturday 13 March the Spanish police arrested five men, Jamal Z., Mohammed El Hadi C., Mohammed B., Vinay K. and Suresh K. in connection with an unexploded bomb that was amongst the luggage on one of the trains that was attacked. The mobile telephone that served to explode the bomb by remote control led to the mobile phone shop where Jamal Z. worked. It turned out that Jamal Z. was known to both the Spanish secret service and various intelligence services in the European Union and North Africa. Since 1993, the Moroccan authorities had linked him with radical Islamic movements such as The Group of Islamic Combatants of Morocco, Eternal Lions and the Moroccan Combatants, and the names of the members of these associations were circulating among European police forces. Jamal Z. was also thought to have maintained contact with the people who carried out the suicide attacks in the Moroccan town of Casablanca. This attack was attributed to Salafija al-Djihadia, a faction that did not appear on the American Ministry of Foreign Affairs' list of terrorist organisations. Jamal Z. was also thought to maintain contact with Mohammed F., one of the spiritual leaders of Salafija al-Djihadia. In addition, it turned out that Jamal Z. and Mohammed El Hadi C. were also acquaintances of Barakat Y., who the Spanish judiciary saw as the leader of the Spanish division of Al Qaida and who, with various fellow suspects had been in pre-trial detention in Spain since 2001. They were also acquaintances of Amer El-A., who, according to a 2003 investigation of the Spanish judiciary and according to reports from interrogations of prisoners on Guantanamo Bay at the beginning of 2005, performed a supporting role for the attacks on 11 September 2001. According to Spanish police, based on information from phone-tapping, Amer El-A was in the company of Abu Musab Z., whom the Americans suspected of various bomb attacks in Iraq. The contacts between Jamal Z. and Barakat Y. were proved by phone-tapping reported in an investigation of the Spanish judge Baltasar Garzón into Al Qaida in Spain. However, Garzón did not put Jamal Z.'s name on the list of 35 people who were suspected of terrorist actions and who

were indicted in September 2003. Finally, Z. was further suspected of having helped to prepare for the bomb attacks in Casablanca.
On the 18 March 2004, seven days after the attack, the Spanish police arrested another five men. The police thought that one of those arrested had played a leading role in the attacks and was also thought to be involved in the attacks in Casablanca (Morocco) in May 2003. In the weekend of 20 and 21 March another four men were arrested in Madrid. Finally, on 25 March, another five people were arrested. Three of these suspects were considered by the German judiciary to be 'dangerous jihad fighters'.

PREVIOUS HISTORY

It can be deduced from the above that for quite a long time Jamal Z. and various other detainees had been known sympathisers of Al Qaida or of factions linked to Al Qaida. They were certainly not complete strangers to police and intelligence services. Obviously, their telephones were tapped, because before the attacks nothing particular had been picked up, but the suspects were not kept under detailed surveillance. It was no problem for Jamal Z. and his fellow suspects to obtain 100 kg of explosives and convert them into effective bombs in a house in the suburbs of Madrid and then later to place them in four trains. 'For the last month or two they've been coming here often' said a petrol station owner in the Spanish newspaper *El Pais*. Why was no attempt made to monitor these people, who were on the lists of various European police forces? Was Spain in no danger; were there no signs of a possible attack? No, nothing could have been further from the truth.

Since 1997, Spain had been monitoring people who sympathised with Al Qaida. During his interrogation, Ramzi B., who was arrested and is now in prison on Guantanamo Bay, explained that the people who carried out the attack on 11 September 2001 had met up in the Spanish town of Tarragona in the summer of 2001. Rolf Tophoven, a German expert in the field of Islamic terrorism, stated in the *NRC* that 'Spain, even before the attacks on New York, ranked as a major place of business for radical Muslim extremists in Europe.' It became clear in November 2001 that the Spanish judiciary was making extensive investigations when eight members of the presumed Spanish division of Al Qaida were arrested. One of those arrested was Barakat Y. According to the examining magistrate, Garzón, there was already a substantial Al Qaida infrastructure in Spain, but as yet no direct threat.

This became clear for the first time in October 2003 when Osama bin Laden called for attacks to be made in the countries supporting the USA in Iraq. At a meeting of military intelligence services, Jorge Dezcallar, head of the Spanish secret service, Centro Nacional de Linteligencia (CNI), had already indicated that he feared attacks in Spain because of Spain's contribution to the occupation of Iraq. In December 2003, a document entitled *Jihadi Iraq, Hopes and Dangers* was circulated among intelligence services. The document had been found on the internet by researchers of the Norwegian Defence Research Establishment (FFI) and was attributed to Yusuf al-Airi, an Al Qaida member who was making propaganda for the faction on the internet. The 42-page document described possible ways of putting countries that supported America under pressure to withdraw their troops. One part was specifically devoted to Spain; according to the

Norwegian institute it could be inferred that because of the anti-war movement there Spain would be considered as a possible first target. The document was not the only indication. In January, 2004, the police arrested a man of Algerian origin in the Basque country who threatened that 'in two months' time a lot of people will die in Madrid and that the station at Atocha will be filled with corpses'. The police released the man, but seemed to be in a state of high alert. Eleven days before the attack, there were road blocks in and around the capital to monitor cars for the transport of explosives. Two days before the attack, monitoring at airports, train stations and government buildings was intensified.

PREVENTING ATTACKS?

One can interpret the portents of the attack in Madrid in various ways. On the one hand, it seemed as if the Spanish judiciary did take them seriously, but was obsessed with the idea of a possible ETA attack. On the other hand, it was not clear whether or not this was planned. The Spanish police said that it had intercepted two men and a large quantity of explosives, but this information only appeared in the news on the day of the attack. It was about the detention of an ETA suspect who was on his way to Madrid with 500 kg of dynamite. The man bought the dynamite from a mineworker, the same man from whom the perpetrators of the 11 March attack bought their explosives. On the day he was arrested, he was on his way to Morata de Tajuňa, where the attacks were being prepared. It is unclear whether or not that was also his goal.

The group of suspects of the attack turned out to be swarming with informers for the police, Guardia Civil and intelligence services. One of them was the ex-mineworker Suárez Trashorras, who, in exchange for €7000 and a quantity of hash, stole the explosives and sold them to the terrorists. He duly passed on to the police a sample of the explosives supplied. The police did nothing.
The Moroccan, Zuheir, also arrested on 20 March 2004, was working as an informer for the Guardia Civil. He too was aware of the drugs deal in exchange for explosives. The Spanish police, who had admitted that both were working as informers, gave the excuse that both informers had only been put in the operation to pass on information about drug trafficking. That is why the information about the explosives never reached the offices of the intelligence services and police, and why its true significance had not been realised. In the meantime, the Spanish Ministry of Justice had to admit that the information had been properly passed on by the police, but 'informally, over a cup of coffee'. Consequently no further action was to be taken.
However, the police officer 'Victor' explained to the Spanish parliamentary investigation committee investigating the course of events surrounding the attacks in Madrid that another suspect, Jamal Ahmidan, who later died when the building besieged by the police was blown up by the suspects, had come up with the plan to blow up the Bernabeu stadium of Real Madrid or demolish a station.
From later revelations it turned out that the police had been present virtually live during the transport of explosives, via phone-tapping and tracking the perpetrators' mobile phones, but did not intervene. In any case, most of the suspects of the attack were therefore being monitored, on the orders of the public prosecutor against terrorism, Baltasar Garzón and a number of suspects were shadowed until shortly before the attack.

In this shadow theatre there is also Trashorras' brother-in-law, Antonio Toro Castro, who tried to establish contacts with ETA activist detainees in prison to offer to sell them explosives. The infiltrator Zuheir was in the same prison at the same time and reported Toro's activities. What is more, Toro's wife was also working for the Spanish police as an informer. A tape recording that turned up of tapped telephone conversations that for some mysterious reason had been missing for three years gives even more credence to the shadow theatre. Yet another informer, Francisco Javier Villzón, recounted in a conversation with a police officer that Trashorras and Toro were embroiled in a deal to sell explosives. One informer, Trashorras, told the other informer, Villzón, that he could lay his hands on tons of explosives. He supplied a sample and, in passing, asked if Villzón happened to know anyone who was capable of converting mobile telephones into detonators – exactly what was used in the attacks in Madrid. Villzón duly reported all this to his contact in the police.

But this is not the full extent of the many absurdities in the case. A member of a special unit of the Guardia Civil, 'Pedro', was said to have supplied the terror cell with weapons. The informer, Zuheir, had also dutifully passed on this fact to the authorities. The Spanish newspaper *El Mundo* quoted from a tapped telephone conversation between Toro Castro's wife and the chief inspector of police, Rodríguez. 'Manuel, I think we've made a complete mess of it', said Carmen Toro Castro on 11 March to the police inspector. 'Don't worry,' answered the inspector, 'these attacks will be attributed to ETA.'

It is not beyond the bounds of possibility that the Spanish police and intelligence service tried via Toro Castor to get an infiltrator in the ETA, and that is why they did not intervene in the explosives deal. According to this theory, the Spanish services would have failed to realise that the explosives were not intended for the ETA, but for an Islamic cell. It is also quite possible that the intelligence services were expecting a more minor attack and deliberately did not want to intervene because such an ETA attack would be quite convenient for the present government.

The Spanish secret service also took no notice when the Moroccan judiciary warned them of an attack. The Moroccan judiciary even handed over a list of 16 suspects, including Jamal Z. to the Spanish police. *Aujourd'hui Le Maroc (Morocco Today,* a Moroccan newspaper) wrote that Prime Minister Aznar no longer wanted to cooperate with the Moroccan secret service. 'The suspects weren't even shadowed', the newspaper contended, and 'the Spanish secret service did more to spy on Morocco than to cooperate with it'. A source within the European intelligence world added in *The Guardian* that everyone knew that a big attack was in the pipeline.

However, the role of the Moroccan secret service is not entirely unambiguous. Mohammed H. was seen in the company of various suspects of the attacks in Casablanca and Madrid at a meeting in Istanbul in 2000. Then his name cropped up again in witness statements of the attacks of 11 March 2004 that said that he was one of the men who placed bags in one of the trains. Two weeks after his arrest, Mohammed H. was released without the Spanish authorities being informed of this.

Various indications of an imminent bomb attack, combined with a list of known people involved with Al Qaida or similar factions should actually have been all that was needed to alert police and judiciary. Yet in the months before the attack, the number of police units that were responsible for monitoring possible members of Al Qaida was halved.

Jamal Z. was consequently no longer shadowed, although at the same time it was difficult to tap his phone as he had too many mobile telephones and changed them regularly. Spain and Morocco were involved in a diplomatic war over the tiny island of Perejil (Parsley Island) / Leila, fishing rights and immigration. One hundred kilos of explosives disappeared in the months before the attack and in a country in a state of high alert for bombings this disappearance remained unnoticed.

11-M COMMITTEE OF ENQUIRY

In July 2004, a parliamentary committee of enquiry began examining '11 M' and how the Aznar government dealt with the crisis. The committee was a political game in which the largest parties in particular blamed each other. In spite of this political wrangling, the committee still managed to bring to light some sensational facts.

Rafa Z., who was working as an informer both for the Guardia Civil and for the national police and had brought the group of Moroccan men into contact with the men in Asturias, as he admitted himself, had also reported this to the police. When the potential perpetrators of the attacks of 11 March 2004 picked up 110 kilos of explosives in Asturias at the end of February, they were apprehended by two officers of the Guardia Civil. It was said to have been a traffic check, but it is unclear what the offence was. The officers checked the number plates that appeared to be in order, while in fact it was a stolen car.

During the interrogation, it also became clear that although ultimately Jamal Z. was not being shadowed, this did take place with the Tunisian, Serhane F. Right up until the day of the explosion in an apartment in Madrid, in which he and six others died, the latter was being followed by the police. This means that both in the preparations in the house in Morata de Tajuňa and at the moment of the attacks he was observed by the police. Furthermore, that means that the house in which the preparations for the attack took place had been known to the police for a long time. Four days before the attack, a suspicious neighbour warned the police. 'But because of the high fence we couldn't see anything' the police report stated. Without a search warrant, they could not go inside the house. The officers did make a note of the number plates of the cars that were parked in front of the house, including the Renault Kangoo, stolen on 28 February and used to bring the bombs to the train station Alcala de Henares.

As if the police and intelligence services still did not have enough information to investigate the group further, the Spanish newspaper *El Mundo* published secret documents from the Spanish intelligence services. They contained a report of conversations with the informer Abdelkader el F. This imam from a Madrid mosque had close contacts with radical Muslims. He came forward as an informer in September 2002 and from then on worked for the Spanish intelligence service for 300 Euros a month. Abdelkader el F. supplied the secret service with a list of names of a group of Muslims he labelled as dangerous. This report even listed telephone numbers and the cars they were driving, including number plates. One of the men on the list was Jamal Z., the owner of the telephone shop in the Madrid district of Lavapies.

Unfortunately, this is not an isolated story. It was not to be the first time that intelligence services became so entangled in their own mock battle that it was no longer clear who were the 'good guys' and who were the 'bad guys'. Not long ago, there was a similar state of affairs in Germany. The Constitutional Court decided that the neo-Nazi party of the National Democratic Party Germany (NPD) could not be banned. The NPD turned out to be swarming with informers and infiltrators to such an extent that it was no longer clear what value could be attached to the evidence. The infiltration had been so successful that at least fifteen per cent of the executive NPD members were in fact on the payroll of the intelligence services. The Court was then faced with the question of whether the state could ban a party on which it had so much influence.

The attacks that were carried out in Paris by the Algerian GIA in 1995 subsequently turned out to have been orchestrated by the Algerian intelligence service. In their book *Françalgérie: Crimes et mensonges d'états (Francalgerie: Crimes and lies of states),* Lounis Aggoun and Jean-Baptiste Rivoire described how the Algerian intelligence service DRS systematically infiltrated groups like the GIA from 1992 onwards. In 1994, the DRS managed to gain complete control. One of the infiltrators, Jamel Zitouni, was even appointed leader of the GIA. In the spring of 1995, Paris was surprised by a GIA bombing campaign. In the following autumn one man was arrested and another was killed during his detention. The amazing thing was that the organiser, Ali Touchent was never arrested. Aggoun and Rivoire have an explanation for this. They talked with Mohammed Samraoui, a former employee of the Algerian secret service. He told them that Touchent was working for the DRS. Touchent set up the group in Chasse-sur-Rhône, from which the members carried out the attacks in Paris. After the attacks Touchent escaped to Algeria. According to Aggoun and Rivoire he lived there in a protected area for police officers in Algiers.

LESSONS

Political interests, power struggle between services, badly functioning services, lack of capability and uncontrollable operations: these are terms we prefer not to mention, but they all play an important role in counter terrorism. The increasing role of intelligence services also leads to more awareness, but it should also lead to more control. The information from the AIVD will gain a decisive role in more and more places, whether it is about criminal law, administrative law or law concerning aliens. In addition, disruptive operations of the service will be applied more often after an amendment.
This increasing role will have to be flanked by growing control. An enlargement of the supervisory committee would appear obvious, but the Second Chamber will also have to consider its controlling role. It cannot have the overworked chairs of the parliamentary parties continuing to carry out the duty of control. Active control requires specialists who are informed more or less weekly of the activities of the service.

3 INFIGHTING

Security services and police forces have various roles. A security service has to safeguard national security. That is why it has a large number of special powers at its disposal. Security services operate under terms of strict secrecy. If it works well, nobody is aware of the operations of a security service. It is precisely because the security service has wide powers that it does not have the role of detection. That is reserved for the police who indeed also have wide powers and can investigate in secret, but ultimately have to give a detailed explanation in public in the courts.
In practice, both circuits are less isolated from one another than theory would suggest, because of course the AIVD now and then comes across criminal offences in the course of its secret investigations. And police forces carry out criminal investigations into suspects of terrorist crimes. For many years, this area of tension has guaranteed fierce infighting between the two organisations.

In his book *In dienst van de BVD* (in the service of the BVD), Frits Hoekstra, an ex-BVD officer gave a number of salient examples of situations in which the security service and the police could have gladly knocked each other's brains out. 'It is hardly an exaggeration to contend that sometimes the energy the BVD spent on the fight against the judicial authorities was equal to the efforts spent on the real adversary', is Hoekstra's cheerful opening sentence.
In each police force in the Netherlands, what we now call regional intelligence services are active, the former Politie Inlichtingendiensten [Police Intelligence services](PID). These police clubs have a dual nature: on the one hand, they work under the BVD and on the other hand, they glean information on behalf of the mayor, because s/he is responsible for maintaining law and order. In addition, there are still criminal intelligence services within the police. The dividing line between these two organisations is indeed very thin. For example, the PID Nijmegen managed informers for the BVD who were to provide information about pacifism and anti-nuclear energy, but as squatters they were also to provide the mayor with information about possible threats to public order from the squatters. There were, of course, also advantages to working like this. As the same officers were operating in various roles under different legal regimes, every now and then data would end up in the filing system that should not really have gone there. 'It was not the application of means of coercion that blurred the frontiers, but the simple access to judicial information', according to Hoekstra. 'That applied to the data of the Aliens Department, but for example also to the data of the squatters' riots, and what's more the young people picked up there were useful in selecting applicant officers. It was also unavoidable that information obtained with BVD means occasionally ended up in a criminal file. In addition, the deployment of the PID officers for the tasks of the BVD that was operating on the interface of criminality and breach of public order and security provided the opportunity to draw up an enormous smokescreen when the question of responsibility was at issue.'

However, this collaboration also had its problems. The police considered and regularly still do consider that the security service carries out tasks that actually are reserved for the police. Matters such as infringement of state security, for example, are also offences that the police can and must investigate. As soon as it became known in the seventies that the *Rode Jeugd* (Red Youth) were arming themselves, many police forces considered that it was therefore a matter for their authority and not something in which the BVD should be actively involved. It was a thorn in the flesh of the police that the BVD determined how operations should be conducted against these factions and which information should be passed on to the judiciary. Conversely, the judicial authorities refused to make a ruling that protected BVD officers against criminal proceedings if, for example, they were found in possession of weapons. 'This blunt unwillingness on the part of the police did nothing to improve the relationship' wrote Hoekstra.
The Rotterdam PID even had a special stamp 'NOT TO GO TO THE SERVICE'. This message was stamped on reports of PID/BVD agents when the Rotterdam police considered that they should not go to The Hague. Sometimes, the local PID departments took over an informant from the BVD, without the service realising that that had happened. Then a surprised BVD runner heard from his informer that he was no longer working for the BVD but for the police.
The infighting really built up steam when the Landelijke Bijstandsteam Terrorisme [National Terrorism Support Team] (LBT) was set up in response to possible terrorist actions on the part of Moluccans or Palestinians. Later, the LBT was merged into the Special Cases Unit of the CRI, part of the KLPD. The BVD considered that by doing this the police were 'playing at intelligence services'. The LBT was certainly involved in proactive examination: investigation into suspects before they had committed any offence. The BVD felt that it was specifically for this sort of work that it had been set up. Moreover, the BVD thought that the police were far too casual and careless in their handling of information from the BVD and were not sufficiently aware of the many options pertaining. The BVD therefore increasingly kept information away from the police. 'One bad experience with judicial carelessness made the BVD decide again to only pass on information to the CRI when it was obtained from other sources and could no longer therefore be traced back to that one vulnerable source. Once the CRI realised that the BVD had already had the information concerned for a long time then the fat was in the fire', according to Hoekstra.
A big conflict arose about the peace camp at Woensdrecht, where activists were protesting against the intended placing of cruise missiles by regularly occupying buildings on the air base and destroying the fencing. A clear case of state security thought the BVD: a patently obvious threat to the democratic rule of law, a threat to the security of the state and to the interests of the alliance. The chief of national police in Woensdrecht, however, had a completely different view: this was a question of law and order. He forbade his officers to infiltrate the camp on the instructions of the BVD.

Tracking down the pressure group RaRa, which first made bomb attacks on Dutch firms with interests in South Africa where apartheid was still prevalent and later attacked the restrictive Dutch asylum policy, once again led to big clashes between the BVD and the police. The agreement was that the police would concentrate on tracking down and prosecuting the perpetrators, while the BVD would try to infiltrate the pressure group.

Both organisations worked together in the Landelijk Coördinatie Team [National Coordination Team] (LCT).The LCT consisted of Amsterdam detectives, the Special Matters Centre of the CRI, the BVD and the PIDers from all over the country. The lack of trust within the organisation was massive. The police, suspecting that the BVD were withholding information, even went to the lengths of setting a trap for the BVD. Using an informer who only worked for the BVD and who had access to all the data at police stations they gave a tip that one of the main suspects had been seen in a boat near Warffum. This information should have come into the LCT via the BVD agent within 24 hours, but that did not happen. Also other information that was brought into particular circuits in order to test the cooperation of the BVD did not reach the LCT.
After the LCT investigation came to nothing (of the eight people arrested only one appeared before the court and was discharged on appeal), a committee was set up under the Groningen Public Prosecutor, J.A. Blok in order to repair the upset relationship between the BVD and the CRI. The exchange of more staff was to restore personal relationships and create more understanding between them. Moreover, the committee laid down that the CRI could indeed be involved in counter terrorism. The proactive work of the CRI (collecting intelligence without there being any question of a concrete reason or criminal offence) was formalised, as a result of which the CRI became less dependent on information from the BVD.
On this basis, the police and the BVD set up the Bomb team. This was to solve the RaRa attacks on the home of Aad Kosto, the Secretary of State responsible for the asylum policy, and on the Ministry of Justice. It seemed as if the axe had been buried, but the investigation came to nothing, in spite of a budget of millions of guilders and a secret villa from which a team of forty detectives operated. Somewhat later, a Hague detective revealed that the work relationships were still problematic. 'In the Kosto case, we were actually more worked against by the BVD than that there was any cooperation. We received no information from the BVD, but it was all right for us to supply them with all the details. It was a one-sided affair, so to speak. That was very frustrating.'
Politicians, in the meantime, were sick and tired of the BVD. In 1993, the RaRa struck again, this time with a bomb attack on the Dienst Inspectie Arbeidsverhoudingen [Industrial relations Inspectorate] (DIA) of the Ministry of Social Affairs that was responsible for tracking down illegal workers. Politicians were speaking quite openly about the failure of the BVD and had little trust in direct participation of the BVD in the detection team. The BVD therefore were not given a place in the 'DIA team', in which there were detectives from The Hague police and the CRI. The BVD did have a place in the policy team. After some time, the DIA team arrested two journalists from the journalists' collective Opstand (Insurrection). Both suspects were later released and it never came to a court case because the judiciary did not have a shred of evidence. BVD officers who in that time were trying to recruit informers told people several times that The Hague police 'of course' were completely at fault in these arrests. They knew how to do things better in the BVD.

In recent years, the relation between the intelligence/security services and the police has hardly improved, according to the investigation that the Havermans committee carried out on the functioning of the BVD/AIVD. On the eve of the attacks of 11 September 2001, the AIVD was not very concerned about the threat of Islamic terrorism in the

Netherlands. After the attacks, the Centrum Islamitisch Terrorisme [Islamic Terrorism Department] (CID) was set up within the department of Democratic Legal System. In addition to identifying and preventing attacks in time, the CIT should also carry out factual experience investigation: gathering knowledge and insight into radicalisation. The CIT concentrated particularly on following 'targets': about a hundred people were selected, who later became known as 'the list of 150 persons'. The CIT had a number of problems: for example, the number of operators (who approach and run the human sources) and audio technicians (who process and interpret tapping reports) is too small.
Quite soon the politicians took the decision that operational control of the fluid group of about 150 potential terrorists is essential. The AIVD was not in a position to do that themselves; the group was simply too big for that. That is why the AIVD had to work much more closely with the police. The AIVD had to report to the KLPD which risk persons could not be kept under surveillance by the AIVD themselves. This list was then linked to a list of 95 targets that the Unit Terrorismebestrijding [Unit of Counter Terrorism] (UTB) had drawn up from the KLPD. An Analytical Cell, consisting of analysts from the AIVD, the National Criminal Investigation Information of the KLPD and the UTB, then analysed the list, drew up personal files together and made threat analyses.
However, it turned out that the Analytical Cell was not really functioning. Police and judiciary thought that the AIVD supplied too little information. Background details were missing and it was unclear what sources the AIVD had at its disposal. Moreover, tactical teams from the National Criminal Investigation often could not set to work. Before the National Criminal Investigation department could start an investigation in the field of terrorism, they needed permission from the two national Public Prosecutors. In 2003, not one project proposal from the National Criminal Investigation Department was approved by the Public Prosecutors. 'These proposals probably concerned suspects who were also targets of the AIVD', according to the Havermans committee. 'The National Criminal Investigation is a proponent of parallel investigation and considers that too little use is made of the possibilities offered by the KLPD'.
In the meantime, a number of parallel investigations have been started. The information exchange between the AIVD and the KLPD has been better organised by the setting up of the Counter Terrorism infobox (CT infobox), in which information is more intensely exchanged and joint decisions are made about what action should be taken against suspects: intelligence operations of the AIVD, criminal investigations of the police and legal steps concerning aliens of the IND. 'Up to that point, the actual operational collaboration between KLPD and the AIVD seemed to come into being with great difficulty', stated the Havermans committee. 'The usual political pressure was necessary before actual far-reaching operational cooperation came into being. It turned out that there were huge cultural differences between the KLPD and the AIVD. There was great resistance to sharing information in both organisations. Until recently, the KLPD had a negative judgement of the products, the collaboration possibilities and the communication with AIVD.'

In addition, the committee was tackling the problem of the collaboration between AIVD and the Regionale Inlichtingendiensten [Local Intelligence Services] (RID), the successors of the PIDs. In the past, this relationship was also difficult, as described

above. Furthermore, the RID carried out work both for the AIVD and for the mayor in the field of public order. According to the committee's report, the collaboration was still not satisfactory. Attempts to improve the collaboration only had 'limited results'. In practice, the double role of the RIDs created confusion. In the opinion of the committee, the construction between the AIUVD and RID was ripe for reform.
The December 2004 issue of the *Recherche Magazine* (Criminal Investigation Magazine) revealed how complicated this collaboration was in practice. Just imagine, a tip comes to the beat officer from one of the local residents about a group of male suspects. To whom should the beat officer pass on this information? If the information goes via the regional intelligence service to the AIVD, the police 'loses' this information. Not until the AIVD, via an official message to the local public prosecutor, directs the information back to the police can the police set up a criminal investigation. If the beat officer passes on the information to the criminal intelligence unit of the police, the information remains the 'property' of the police and the detectives can get to work immediately. The choice of where the information goes, therefore, makes a big difference. Large regional forces have therefore set up information points, in which all information is evaluated, on the analogy of the national CT-infobox.
The choice thus remains the same: is this information in the field of national security or of criminal matters? However, this distinction has become unclear, insofar as it ever was clear.

The blurring of the boundary was partly caused by a number of legal amendments in recent years. The essence of this is that the police can more quickly do an investigation into suspects of involvement in terrorism. They may do this if there are 'indications' instead of the 'specific presumptions and facts' that applied until recently. The police also have to focus more on investigating preparatory activities and conspiracy. In a previous chapter, we described how professionals concluded that because of these legal amendments the KLPD in fact became a sort of shadow secret service: in the field of counter terrorism the police may do more or less the same as what the AIVD is already doing. The distinction between the two services is becoming smaller and smaller. That in turn means that the inherent area of tension between the KLPD and the AIVD is becoming larger rather than smaller.
The police consider that the AIVD is passing on too little and not enough specific information. That is why the police prefer to deal with matters themselves and backed by the legal amendments they can do just that. As a result, the dependence on the AIVD is decreasing. The AIVD continues to regard information that may be of importance for their investigation activities as 'additional catch': fine if it does take place but it's not what the service is all about.
The AIVD feels the pressure from politicians: they should pass on more information more quickly to the police and must supply AIVD information for legal proceedings. Both wishes are at odds with the wish of the AIVD to keep their sources and working methods secret and to make choices themselves in their operations. Whereas the police want to intervene, investigate and haul suspects to the courts, the AIVD want to build up information positions, expose networks, screen infiltrators, stir up trouble in groups, spread disinformation and conduct other typical intelligence operations. Both services are fishing more and more frantically in the same pond. Cooperation is recommended, but

the concerns at stake are huge. For the AIVD, for example, it's a washout if, in the context of a stirring-up-trouble operation, the police are tipped off to make a raid somewhere. Suspects are taken away for some time and a possible act of terror has been prevented. For the police and the judiciary that is when it actually starts: the suspects have to be sentenced. The Police and the Ministry of Public Prosecution are shown in a bad light each time that a court releases suspects because there is insufficient evidence. It does not bother the AIVD so much: they have done their work.

In any case, the AIVD is trying publicly to reduce expectations that the service is suddenly going to be more interested in the criminal law concerns of the police, judiciary and politicians. 'Our key function is to indicate. We do not collect information primarily for the benefit of the criminal or administrative judge', said the deputy head, Theo Bot in the *Staatscourant* (Netherlands Government Gazette). 'Of course, it's great if sometimes we have something as an additional catch that can be used. But that assumes that you make your sources known, while it is the protection of sources that is the foundation supporting the added value of the AIVD. It is precisely because of that that we can indicate in good time. If you take that away you might as well scrap the service'.

4 THAT MUST BE AN ALIEN

Since 11 September 2001, government interest has focused on aliens. After all, the hijackers of the flying bombs came from abroad, whether or not they had first travelled freely around Europe for a long time. The enemy is among us, was the conclusion of the trendsetters in public debate. With the removal of the boundaries in Europe, it has become increasingly difficult to monitor who comes into our country. A national security check on aliens should provide a solution and it should become easier to deport aliens, if necessary to a country where they are not so particular about human rights.

After the 11 September attacks, The Hague politicians looked into ways of introducing a better control of aliens. Attention was particularly focused on possibilities of denying entry at an early stage to potential terrorists who were trying to come into our country. That is why the Mobiel Toezicht Vreemdelingen (Mobile Supervision Aliens) service was expanded, the flying brigades of the Royal Netherlands Military Constabulary that guard Schiphol, the Rotterdam port and the borders with Belgium and Germany. Quite soon, there were measures on the political agenda in the European Union to tighten up the visa policy. That is why visa applicants' biometric data were recorded that would be centrally registered in a Visa Information System that still had to be set up. Biometrics would make better monitoring possible, counteract identification fraud and facilitate tracing travel movements of aliens.
A major role in all this was reserved for the Immigratie en Naturalisatie Dienst [Immigration and Naturalisation Office] (IND).Based on the idea that aliens should be regarded as terrorists and that they are dependent on human traffickers for their travel, the units of war crimes and of people smuggling were expanded. The IND also began to work more closely with the intelligence service. After all, an alien can have entry to the Netherlands refused if this is a danger for public order or national security. In June 2003, a separate covenant was concluded between the IND and the AIVD in which closer collaboration was regulated. It was agreed that the services would give each other information that was important for their task and that implementation plans could be made for matters yet to be determined.

In May 2003, the Adviescommissie Vreemdelingenzaken [Advisory Committee on Alien Affairs] (ACVZ) came up with a policy-making recommendation *(Vreemdelingenbeleid en terrorismebestrijding)* [Policy regarding aliens and counter terrorism] in which there were proposals to make more intensive use of the monitoring possibilities of the policy regarding aliens in the context of counter terrorism. The ACVZ examined the policy in the USA and in Canada and looked at the possibilities in the Netherlands. The result was that the policy had to take a different course. The ACVZ considered that what the government had been focusing on up to that point, better control of frontiers, was a useless exercise. When aliens came in contact with the authorities to obtain or extend their residence permits was the right time to effect a stricter control on involvement in terrorism. In other words, the controls should no longer only take place at the external borders but also within the country.
The basis of the ACVZ recommendation was the Security Resolution 1373 of 28 September 2001, a resolution that has a binding effect on the Member States of the UN.

This resolution states explicitly that not only terrorists themselves, but also persons supporting terrorism must be subject to the measures taken to combat terrorism. The UN determined in this resolution that countries may not be a safe haven for (suspected) terrorists. Regarding refugees, moreover, the resolution stated that (suspected) terrorists must be excluded from the status of refugee. Before a decision can be taken to grant someone the status of refugee, there must be an investigation of whether that person is guilty of terrorism or of supporting terrorism.

This broad UN definition did, of course, have consequences for the policy of admission and expulsion. For many refugees it may mean that they are excluded from refugee status on the basis of article 1(F) of the Refugees Convention. In this provision, war criminals are excluded from protection. The IND has repeatedly applied this provision in order to refuse admittance to asylum seekers. Now that this article is also going to be inserted in order to exclude alleged terrorists from the asylum procedure, the consequences may be far-reaching. Fatma Ozgümüs, director of Vluchtelingenzelforganisaties Nederland (Netherlands Refugee Self-Organisations), called this proposal alarming. 'If you look at the backgrounds of refugees, then very many of them are labelled as terrorists in their country of origin', said Ozgümüs, 'including myself. Look at Turkey, for example. There, the concern is not about the use of violence but political persuasion. And what is the result? The PKK was completely legal in the Netherlands. Now, suddenly, they are international terrorists and have become isolated. That is not helping the cause of peace.'
The highlighting of the policy was to have taken shape by setting up a national security test. The idea elaborates on the Canadian system of concentric border control. After 11 September 2001, the Canadian intelligence service acquired an important screening role in admitting or expelling aliens. Canadian immigration authorities work closely with various security services, in particular with the Canadian Security Intelligence Service (CSIS). In principle, the application of each adult migrant is checked against a possible threat to national security. This takes place partly by collaboration between officials of immigration and security services in positions abroad and partly by forwarding personal data to Canada, where further investigation is carried out. Use is made of risk profiles in order to concentrate the capacity as much as possible. A section of the aliens who want to make a short visit to Canada is screened in this manner. In addition, each immigration officers undergoes a training course given by staff of the CSIS. In this way, recently, 200/ 300 people annually have been turned down on the grounds of threat to public order or to national security.

CROSS-DATABASE

The Dutch also planned that the AIVD was to have a leading role. A cross-database was to be set up at the AIVD with all the available information about aliens. This might be information from the IND, the Aliens Police, KMAR, Centraal Orgaan opvang Asielzoekers [Central Agency for the Reception of Asylum Seekers] (COA), police and intelligence services themselves. This cross-database was to be the core of a new monitoring system, the concentric border control. Each time that someone applied for, or extended, a residence or asylum permit, the cross-database was consulted to check whether that person was involved in terrorism.

The first stumbling block would be abroad, for those submitting an application for a visa or a Machtiging tot Voorlopig Verblijf [temporary residence permit] (MVV) at a Dutch embassy. The second hurdle would also be abroad. At the start of the journey to the Netherlands, papers are often checked on the spot by the Military Constabulary or IND, known as entry controls. Here too, they would first have to check what was known about a person on the cross-reference database. The same check would then have to be carried out on arrival in the Netherlands, at Schiphol, at the port of Rotterdam or by the Mobiel Vreemdelingen Toezicht (Mobile Unit for Surveillance of Aliens). The last orbits of control are actually in the Netherlands. These would take place by the aliens registration department or IND when granting permits for (un)limited period, extending that permit, naturalisation or in mainstream supervision of aliens.
In such a system, the primary concern would be the information in the cross-reference database the AIVD had about aliens. That would be the basis of decisions to allow someone to enter the Netherlands or not or to expel someone. There are databases like this in the United States and in Canada, but not yet in the Netherlands.

Minister Verdonk of Aliens Affairs and Integration welcomed the ACVZ idea in November 2003, and reported to the Second Chamber that she wanted to investigate further the setting up of a national security test. However, in her opinion, there were two problems. The Netherlands was party to the Schengen Uitvoeringovereenkomst [Implementation Agreement] (SUO) and according to Verdonk measures can only be effectively implemented if they are taken in accordance with the Schengen Agreement. In addition, Verdonk considered that the setting up of risk profiles was not a simple matter, but required much research. In her letter to the Second Chamber, Verdonk wrote that ‘study of the attacks that have taken place in recent years makes it clear that it is becoming increasingly more difficult to set up such profiles. What is happening is that the relevant categories are becoming progressively broader. In addition, retrieving and employing effective and efficient distinguishing characteristics in order to recognise people who might be involved in supporting or carrying out terrorist activities is difficult and requires much research.’ Moreover, Verdonk was afraid that risk profiles might actually lead to more narrow-mindedness.

In the same letter, Verdonk announced that she was going to set up a project group to see whether a national security test like that was feasible in the policy on aliens. For a long time, it remained unclear what exactly that project group was investigating. An interim report was dealt with internally in 2004. The state of affairs finally became apparent from the report of the Havermans committee (AIVD Administrative Evaluation Committee), ‘Modification in the AIVD’. It transpired from the Havermans committee report that various plans had been made and concrete projects had been begun. What these were, the committee did not divulge. The results, however, were mediocre. According to the Havermans committee there was a problem with information management. ‘The biggest problem is that personal index cards are not filled in, are filled in incompletely or incorrectly and/or are not brought to fruition. As a result, automated references or manual references are always unreliable, but furthermore incomplete and out of date personal index cards mean that the setting up of reliable risk profiles is almost impossible’.

A workgroup has been set up in the AIVD to improve the information management, so that automated reference is improved and risk indicators can be set up. On the basis of these facts, the Havermans committee concluded that a national security test was not feasible for the time being. Some drastic changes in the AIVD would have to be implemented in order to carry out the proposals of the Advisory Committee on Alien Affairs in the area of national security test in alien groupings. From the second progress report on counter terrorism of June 2005, it turned out that the national security test would probably be a long-winded affair. In the supplement, it was stated that 'in the meantime, it has become clear that the development of reliable and valid risk indicators is very difficult. There is cooperation with the USA on this point'. In May and June a number of officials from the Joustra department stayed in the USA for this purpose. Setting up the cross-reference database was now viewed in the light of the CT-infobox.
For the time being, therefore, the national security test is not feasible. However, the government has made preparations to make it possible in the future. The intensive participation of the IND in the CT-infobox made a progression to a cross-reference database possible. Dependent on the technical and juridical solutions, it would take a few years, but then the national security test in policy on aliens would become an accepted procedure. Data from the AIVD would then determine more frequently who could, and who could not, stay in the Netherlands.

COUNTER-TERRORISM INFOBOX

Meanwhile, the exchange of information between the IND and the AIVD gained momentum. After the attacks in Madrid in March 2004, in the first instance a close collaboration was set up between the KLPD and the AIVD in order 'in order to intensify monitoring of persons who in any way are connected with terrorist activities or with the support thereof'. In June 2004, this 'analytical cell' was renamed the Counter-terrorism infobox, in which, in addition to the KLPD, the IND and the MIVD were also involved. In the CT-infobox, the services combine the information from their own data; they compare the information about networks and persons that might be involved in terrorism. Based on this information, an analysis is made to determine which measures might be desirable or possible, in terms of criminal law, of information or of the law regarding aliens, or of disruption.
The more direct involvement of the IND in counter-terrorism resulted in more collection and exchange of information taking place in the service and with associated partners, such as the KMAR, about persons who might be involved in terrorism. To start with, the IND set up its own counter-terrorism unit, with about 13 employees at work. The team is responsible for integrating counter-terrorism within the IND. On a yearly basis, the IND anticipated investigating 500 files. The service also expected to take measures more frequently on the basis of the analyses made in the CT-infobox , in which between 100 and 200 people were being monitored. In addition, the IND was intending to intensify cooperation with the KMAR and the Dienst Zeehaven Politie [Seaport Police Force] (ZHP). Both services were going to intensify border control on the basis of risk analyses. The KMAR was extended and would concentrate on enhancing its information position. This closer collaboration should lead to suspect applications for asylum or residence permits being dealt with by the services on the spot.

The collaboration in the CT-infobox had already resulted in a number of decisions, whereby it was not always clear whether or not the goal had been achieved. In November 2004, for example, the Algerian, Abdelhamid B. was deported. He was one of the suspects in the Eik terrorism case. All the suspects at that time were acquitted. According to the court, Police and Public Prosecutions Department had done a botched job and could not substantiate the suspicion (recruiting for the enemy at a time of war). After consultation in the CT-infobox, Abdelhamid B. was immediately deported to Spain, where he has a residence permit. The strange thing here was that someone who was registered in one European country as a 'danger for national security' was deported to another EU country where to all intents and purposes he could just continue his normal life. Abdelhamid B. was acquitted in the Netherlands and was therefore not deported on the grounds of a penal sanction. The deportation took place purely and simply on the basis of information from the AIVD. Perhaps Minister Verdonk thought: rather in Spain than here. What was the ultimate contribution to counter-terrorism remains an open question.

Another decision of the CT-infobox that generated a lot of questions among politicians was the decision not to deport the Syrian, Redouan al-Issar. He was generally regarded as the spiritual leader of the Hofstadnetwerk, in which Samir A. and Mohammed B were also involved. In February 2005, the *Utrechts Nieuwsblad* wrote that in the period before the murder of Theo van Gogh, after he had been deported to Germany in October 2003, Redouan al-Issar was sighted in The Hague, where his wife lived. In answer to Geert Wilders' question in parliament, the Minister of Justice, Piet Hein Donner replied that in August 2004, the AIVD had contributed the information to the CT-infobox that for some time Redouan al-Issar had been sighted as an illegal in the Netherlands. The evaluation in the CT-infobox meant that no concrete action either in criminal law or in law regarding aliens was taken against Redouan al-Issar. The AIVD did keep him monitored as closely as possible.

In a reaction in *Het Parool* of 31 March 2005, experts in the law concerning aliens called the Minister's explanation implausible. Since the Syrian had previously been deported from the country as an illegal, he could have been picked up again the minute he reappeared in the Netherlands. 'It is very strange that Donner has another allegation', said Anton Kalmthout, professor of aliens law. 'The intention must have been to fob off the members of parliament'. Also Piet Boeles, professor of European Migration Law, said that 'the normal procedure would have been to run the man in and then deport him again'.

CONTAMINATED INTELLIGENCE

The question of whether someone can stay in the Netherlands is now much more likely to be determined by information from the intelligence service than in the past. Then immediately the age-old question crops up: how reliable is the information from the AIVD, how have they obtained it and who is controlling it? In any case, the reason why people are refused entry to the country, refused an asylum application or why people are deported is not based for example on criminal offences that are relatively easy to prove, but on vaguer accusations such as involvement in, or support of terrorism. Terrorism, just like freedom-fighting or political activism, is a political concept. In South Africa, the ANC was seen as a terrorist organisation, while western countries, ultimately, saw

ANC's fight as a legitimate fight for liberation. The PKK is viewed by the Turkish government as a terrorist organisation, while the organisation, until quite recently, could operate legally in many European countries. For a long time, the Kosovo break-away movement UCK was registered as a terrorist organisation, until, for geopolitical considerations, it was suddenly catapulted into the status of a legitimate liberation movement by the West. Since 11 September, the concept of 'terrorism' has become considerably more comprehensive and the label, whether relevant or not, has been stuck on opposition groups by governments that see their opportunity in the war on terror.

Information about people's alleged involvement in terrorism will often originate from foreign intelligence services. How else could AIVD know whether or not someone from Chechnya, Uzbekistan, Pakistan or the Yemen, for example, had supposed terrorist connections? Turkey will supply information about alleged PKK members, Morocco about possible Muslim extremists, Uzbekistan about the opposition there, from where someone has possibly fled to the Netherlands. It is evident from Amnesty International and Human Rights Watch reports that torture is still practised every year in countries like these. This same information can crop up again in the procedure in which an alien is deported from the Netherlands or refused entry.

Answers to the questions from the Second Chamber member, Lousewies van der Laan (D66) about the use of intelligence obtained through torture made it clear that there is no ban on collaboration with Uzbekistan, for example. The degree of collaboration, according to Johan Remkes, Minister of the Interior and Kingdom Relations, takes place within legal frameworks and with due regard for Dutch foreign policy, including that in the field of human rights. The extent to which there is collaboration with a foreign service is determined on the basis of its democratic track record, its responsibilities, professionalism, and its reliability.

'One of the reasons for choosing this varied approach is that in actual cases it cannot be determined whether information from a foreign intelligence or security service has been obtained by torture', said Remkes. 'Services will never acknowledge that they have obtained information through torture. However, this uncertainty may not result in every form of cooperation with certain services being excluded beforehand. In a situation in which such a service had information concerning an immediate threatened terrorist attack this could have disastrous consequences. For acute life-threatening situations there should always be open communication channels with the appropriate services'.

Information about 'acute life-threatening situations', therefore, may be exchanged. How far this exchange, which in any case can run via friendly services, may extend is thus unclear.

In this respect, in July 1995,the ex-Minister of the Interior, Hans Dijkstra, demonstrated more clearly where the boundaries lay. On July 18, 1995, in answer to the parliamentary questions of Leoni Sipkes and Tara Singh Varma of GroenLinks, the then Minister of the Interior stated that 'the question whether unlawful acts of the Turkish or other intelligence services should exclude collaboration with the BVD cannot easily be answered'. Collaboration must, in any case, comply with Dutch law, 'but in this respect several factors play a role', said Dijkstra. 'The consequences of non-collaboration are important too, as non-collaboration may also be unlawful in connection with preventing

terrorist activities.' In other words: if it is a case of counter-terrorism, the AIVD does not have to take any notice of the human rights situation in a particular country.

THE SECRET PROCEDURE

People, who are refused entry, or deported from the Netherlands, do not have the right of perusal in any of the material coming from the intelligence services. Just as in criminal proceedings, the service does not want the underlying information to be made public. The only thing the judge gets to see is the official report from the AIVD in which it is stated that the service has reliable and important information that indicates a danger for public order and national security. The underlying information cannot be checked. And that of course is the problem. The necessity of such a check is very obvious, not only for reasons of principle, but also because a number of examples from the past point to the fact that the service often gets the wrong end of the stick.

At the time of the First Gulf War, Al Baz' naturalisation procedure was ongoing. Just before the end of the period, in which the decision had to be made, the judiciary suddenly declared Al Bax to be an undesirable citizen. From secret BVD information it was supposedly apparent that 'clandestine activities were developing that resulted from his position as representative of the Palestinian organisation, Al Fatah.' Amazed at this assessment of his activities, Al Baz sought publicity. In any case, he had never tried to hide his political activities on behalf of the Palestinian question.
The case was completely unsound, both in terms of content and procedure. The Nederlandse Juristen Comité voor de Mensenrechten [Dutch section of the International Commission of Jurists for Human Rights] (NJCM) criticised the use of secret BVD information in the executive order declaring a person an undesirable alien. 'The impossibility for the people involved to obtain right of perusal is a considerable restriction of their procedural rights'. Regarding content, his case was raised by numerous social organisations that were shocked by the violation of migrants' rights. Under relentless pressure, the Secretary of State for Justice, Aad Kosto, finally withdrew the decision on 29 November 1991: on further investigation, it had turned out that there were few grounds for declaring Al Baz to be an undesirable alien. Looking back on the whole matter, the then BVD chief, Arthur Docters van Leeuwen admitted that in fact mistakes had been made. 'The Council of State said: you come here with information that is three years' old, why didn't you do something then, aren't you too late now?' And things had changed and we had taken too long. The Council of State was right; we should have intervened at that time. Yes, perhaps we did make mistakes. Sometimes you spend too much time looking at something. You can't know any of this in advance. It's difficult to sew things up,' said Docters van Leeuwen in an interview with *Vrij Nederland* on 21 December 1991. Whether it actually was a case of leaving a matter for too long is, of course, a good question. Would it not be more likely that the BVD, under the pressure of circumstances, the First Gulf War, wanted to allege an act? Wasn't the BVD all too willing to show that they were prepared for their tasks?
There is an example from England that shows that scrutiny of these official reports is necessary. There, immediately after 11 September, a measure was introduced making it possible to detain aliens in custody for an unlimited time if there was any suspicion that

they were involved in terrorism. This suspicion was based on information from British intelligence services. *The Independent* investigated these accusations and in January 2005 concluded that there was "flawed and inaccurate intelligence" on the part of MI5. Thus, an analyst's report was withdrawn, in which it was concluded that a group of Muslims had visited Dorset in order to elect a 'terrorist leader'. Further investigation revealed that the men wanted to have a weekend away with their wives. In another report, it was wrongly stated that a weapon had been found in an Islamic bookshop. The Home Secretary also had to admit that accusations about a certain suspect (he was supposed to have collected money for terrorist activities) were not true. It turned out that the suspect was collecting money for an orphanage in Afghanistan. In another case, two articles, from the newspapers, *The Guardian* and *La Stampa,* were used as evidence. In 2004, when one of the suspects was released, the British immigration service, the Special Immigration Appeals Commission (SIAC) that conducted the matter concluded that 'a number of the accusations were clearly misleading. The source documents gave no reason for suspicion. Some accusations could only be substantiated if the worst possible view was taken of the suspect.'
It is obvious that the suspicion was viewed in the most superficial manner. The SIAC concluded that 'inadequate attempts were made to view the certainty of the facts from a more detached standpoint, certainly because it now turns out that further investigation demonstrated that the facts were not so certain.'

HELICOPTER VIEW

Now and then, it seemed that the detached view, that helicopter view, was also lacking in the Netherlands. Only a few official reports gained publicity, but that did happen with the official report that underlay the firing in 1992 of Eric Sinister, the then Minorities Co-ordinator of the Amsterdam Police. Sinister was talked about after reports appeared that he would infiltrate the Amsterdam police force for the then Surinam army leader (Desi Bouterse).
Sinister himself exposed his official report in proceedings before the National Ombudsman, in which he complained about the BVD's operating methods. The official report turned out to be extremely inaccurate and the Ombudsman concluded that the behaviour of the BVD in this matter had not been appropriate. For example, the official report stated that 'on several occasion, on his own initiative (Sinister) had sought contact with the Suriname army lead Bouterse. It can be assumed that factual contacts also took place. From 28 June to 25 July 1990, E. Sinister visited Suriname where he was said to have met Bouterse personally. Positions were to be offered to him in the police and in the army.' Sinister did meet Bouterse, but 'that was on the occasion of a birthday party at which I was present and where it turned out Bouterse was also there'.
It was also said that Sinister gave some lectures while he was in Suriname for the police and for the army. Sinister wrote to the Ombudsman that indeed he did on request give a lecture for the police in the context of the 95-year existence of the Suriname Police Force. He made no secret of this: video recordings were made of that lecture which he showed, also in the Netherlands.
After this, the BVD had established that actual contacts had taken place between Sinister and the Bouterse sympathiser, former first minister, Wijdenbosch. Sinister told the

Ombudsman that he had known Wijdenbosch for a long time. Wijdenbosch had a seat on various committees, was chair of the Amsterdam-Suriname football club, Real Sranang and chair of the Welfare foundation Bouw een Surinaams tehuis [Build a Suriname refuge] (BEST), and until his departure to Suriname, he worked as an official in the service of Amsterdam town council. Moreover, the contacts go even further back: Wijdenbosch's father taught at the secondary school and at the police academy where Sinister was also trained. Suriname is a relatively small and thinly populated country and (just as in the Netherlands) it's a case of 'like knows like'. Sinister's lawyer wrote that his client did not therefore deny the charge against him, but emphatically wished to distance himself from the suggestion implied in these paragraphs, namely that his (infrequent) contacts with Wijdenbosch might mean that he sympathised with his political viewpoint and opinions. In any case, you do not have to agree with someone just because you get on well with him.

Thus, there are limited possibilities, both with the judge in administrative law and the Ombudsman, of raising the question of official reports, both in terms of content and quality. The person involved only has access to the official report and therefore not to the complete underlying report or investigation. In the government's opinion, however, this is adequate and it refers to the jurisprudence of the Council of State. Moreover, it is striking that the ACVZ, which came up with the idea of a national security test, was the one to raise questions about it. In its recommendation, the board quoted a judgement of the European Court of Human Rights from 2002. In this judgement the Court stated that in cases concerning 'classified information, the independent authority must be able to react in cases that concept has no reasonable basis in the facts or reveals an interpretation of national security that is unlawful or contrary to the common sense and arbitrary…' The ACVZ doubted whether the procedure, as it was then continuing via the judge in administrative law, was actually providing adequate procedural guarantees.

In the meantime, the first result of the intensification of deportations on the basis of danger for national security was displayed. On 3 February 2005, Minister Rita Verdonk announced that three imams from the Eindhoven Fourkan Mosque had been deported on the basis of an official report from the AIVD. From the AIVD official report it was said to have transpired that the imams 'knowingly' contributed to the 'radicalisation of Muslims in the Netherlands'. They were also alleged to have tolerated the recruitment of youngsters for the jihad in the mosque. According to the AIVD, the imams, in their sermons and meetings with young people, were said to have made clear their distaste for Dutch society. They preached 'far-reaching separation from, and avoidance of, those with a different outlook'. In the opinion of the AIVD, this was how they were urging Muslims to isolate themselves from Dutch society. Moreover, they were putting the sharia (Islamic canonical law) above the constitution.

DEPORTED TO THE TORTURE CHAMBERS

It was quite dark when, on 18 December 2001, one hour before the airport, Bromma, in Stockholm closed, a small unfamiliar plane landed. It was a Gulf-stream v Turbo jet with the number N379P on its tail. Within the hour, the Gulfstream had taken off again in the

direction of Cairo with two handcuffed Egyptians on board. Paul Forrel, a Swedish policeman who had worked at Bromma airport for years, told the current affairs programme *Kalla Fakta* that on that evening he could hardly believe his eyes: ‘Suddenly on that evening, the Swedish Security Service appeared at the airport. About ten minutes later, two Americans also turned up; I think that they were from the American Embassy’. About twenty minutes after that, some Swedish Security Police cars drove onto the airport. They parked by the police station and got out. Two handcuffed men were taken inside, followed by about eight Americans with caps hiding their faces. ‘It was a strange sight,’ said Forrel. ‘The handcuffed men had to stand in the changing room and the Americans cut their clothes off. They were searched thoroughly, with even a rectal examination.’ The two men were then given overalls and were taken to the waiting Gulfstream. The plane left at 21.49. On board were the two Egyptians, about eight Americans and two Swedish security police officers.

For the two Egyptian asylum-seekers in Sweden, Ahmed Agazi and Mohammed Al-Zari, that day, 18 December, ended very differently from anything they could ever have imagined. Unsuspectingly, Agazi was walking home on that afternoon through his hometown of Karlsstad, after his Swedish course. Out of the blue, a special squad appeared and arrested him. At about the same time, the Säpo (the Swedish security police) arrested Mohammed Al-Zari, who at that moment was shopping in Stockholm. Within a few hours, they were on the plane to Egypt, where they landed at two o’clock in the morning.

Ahmed Agazi and Mohammed Al-Zari had both fled from Egypt. Agazi sought asylum in Sweden in 2000 and Al-Zari in 1999. The Swedish migration service deemed that both men were eligible for asylum. The situation in Egypt, where members of Islamic organisations were vulnerable to capricious persecution and torture was the major reason for granting them asylum. Nevertheless, Agazi and al-Zari were deported to Egypt in a sort of abduction.

Kjell Jönsson was Mohammed al-Zari’s lawyer at that time. He explained to *Kalla Fakta* what happened on that day. ‘At a quarter to twelve, on that morning, the government met under the leadership of the then prime minister, Göran Persson. The removal of Agazi and Al-Zari to Egypt was on the agenda. On the basis of secret information from the Säpo and the Egyptian government, the government took only one minute to decide to deport both asylum-seekers. The information they had received supposedly indicated that both were involved in terrorism’.

It turned out that the deportation had been meticulously organised. ‘They were arrested on the same afternoon and when al-Zari telephoned me the connection was cut off,’ said Jönsson, the lawyer. Jönsson then tried to telephone relevant officials in the Ministry of Foreign Affairs, but nobody answered the calls. ‘Two days later, I got the letters about the deportation of my client. By then, he had been in a state prison in Cairo for some time’.

The secret information, on the basis of which the Swedish government decided to deport Agazi and Al-Zari, turned out to have come primarily from Egypt. According to the Egyptian secret service, Agazi was said to have maintained contact with a highly-placed Al Qaida leader, the Egyptian, Ayman al Zawahiri. In fact, Agazi did know this number two Al Qaida man. At the beginning of the nineties, both were active in radical Islamic organisations in Egypt. Moreover, they met each other in the mid-nineties in Pakistan.

But the Säpo had no reports of any contacts at later dates. After that time, Agazi made it clear publicly on several occasions that he renounced the ideology of al Zawahiri. In 1999, together with 104 others, Agazi (while he sought refuge in another country) was convicted by a military court in Cairo for membership of Tala al-Fatah, an illegal organisation. The proceedings lasted 20 minutes. In December 2001, when the Säpo handed over this information to the government, the service stated that 'we have no reason at all to assume that this information is not correct. We have a lot of faith in intelligence services and when we get information from them we can usually trust it'.

On the basis of this information, the Swedish government deported Agazi and al-Zari to Egypt, in spite of the problematic human rights situation there. According to Amnesty International and Human Rights Watch, persecution, torture and other human rights violations take place there regularly. However, Gun-Britt Anersson, Secretary of State for Foreign Affairs, thought that they had found a solution and negotiated with the Egyptian authorities in order to obtain a guarantee of good treatment and a fair trial. Egypt promised to treat the men in accordance with international treaties. Moreover, Sweden was to be allowed to monitor the men's imprisonment and trial. They were not be condemned to death, would not be treated badly and would not be tortured. They would also be given a fair trial. Agazi, who had been sentenced by a military court in absentia, was to have a new trial.

In 2002, Human Rights Watch investigated what had happened to the two men. From the Human Rights Watch report (http://hrw.org/reports/2004/un0404/5.htm#_ftn127) it transpired that Agazi and al-Zari had been placed in isolation in the first five weeks. The Swedish government did not visit the men at all in that period. Later, representatives of the Swedish embassy visited the men, more or less on a monthly basis. However, the delegation was always hosted by the prison authorities and they were never left alone with the men. Agazi and al-Zari could only be visited in the prison governor's office and never in their cells, which the Swedes were not allowed to visit. In any case, the authorities were notified a few days in advance that the Swedes would visit.

Al-Zari was released in October 2003, after nearly two years in prison without a charge. He did remain under supervision of the Egyptian security service He had to report regularly to the police.

Sweden also made little effort to make a fair trial possible for Agazi. In March 2004, he was given a new trial, but once again before a military court. On 27 April 2004, the military court condemned him to 25 years in prison due to membership of an organisation whose aim was to overthrow the government.

Agazi testified that he had been tortured, but that he was only allowed to be treated by a prison doctor. Although the latter verified that Agazi had physical wounds, the court refused his lawyers' request for an independent investigation. Agazi also stated that after he had submitted a complaint against the Mazra 't Tora prison, he was transferred to another prison (Abu Za'bal) where for punishment, he was placed in solitary confinement.

Human Rights Watch, that was present at all four sessions, testified that Agazi's right to a fair treatment of his case had been violated. The right to defence had also been violated, according to Human Rights Watch. Agazi had inadequate access to his defence, as a result of which the preparation of his defence was poor. It meant that his lawyer had inadequate access to the files and only obtained them for perusal for10 to 15 minutes

before each session. In addition, no witnesses wanting to make disculpatory statements were admitted. Moreover, the Egyptian authorities used secret evidence, which was not accessible to Agazi's defence. Finally, he could not appeal to an independent court. Human Rights Watch also recorded that the Swedish diplomats were not allowed to attend the first two sessions of the trial.

NEW DIRECTIONS

The deportation of Ahmed Agazi and Mohammed al-Zari would have been almost impossible before September 2001. Deportation to countries where torture and harassment were practised was simply *not done* and was in fact prohibited by international treaties. Yet there were increasing numbers of countries in Europe, including the Netherlands, that were developing plans to make this sort of deportation possible. This proposal was also launched by the ACVZ. In its recommendation on Policy regarding Aliens and Counter-Terrorism, the ACVZ advocated (preferably in an EU context) making agreements with the countries of origin, to which at that moment it was not possible to deport people because of the EVRM or anti-torture treaty in the case that someone had to be deported from the Netherlands on the grounds of involvement in (supporting) terrorism. Agreements would have to be made about a lawful judicial process in trials, treatment in accordance with the EVRM and with access to the proceedings of EU monitors. These monitors should also be able to monitor the enforcement of the (prison) punishment of the deported or extradited persons. In the agreements it was also to be established that the death penalty or other barbaric or inhuman punishment were not to be imposed. As long as such agreements were not established in an EU context, the Netherlands was to make them independently.

After the murder of Van Gogh, in its letter of 10 November 2004 on terrorism measures, the government repeated that 'against persons who act as catalyst and to whom the Aliens Act is applicable, when the occasion arises, the possibilities of terminating residence and deportation should be used to the full.' In November 2003, Rita Verdonk, Minister of Alien Affairs and Integration, had also reacted positively to the proposals of the ACVZ. If such a case should occur in the Netherlands, every effort would have to be made to make such agreements. Verdonk did comment that with countries that violated article 3 EVRM (Prohibition on torture, nobody should be exposed to torture or to inhumane or humiliating treatment or punishments) it would be difficult to make agreements. If people could not be deported in such a situation, Verdonk proposed investigating whether someone could be considered an undesirable alien. If such a person remained in the Netherlands, it would then be an offence and that person could be imprisoned for six months.
On 26 March 2004, the Second Chamber debated the proposals of the ACVZ and Minister Verdonk's reaction. The CDA thought that the minister didn't actually go far enough. The CDA Member of Parliament, Van Fessem, wondered whether 'there really are so many barbarian countries and whether a little more trust wouldn't be more appropriate. In other words, couldn't we do more than we thought we could?' Nebahat Albayrak (PvdA) also embraced the proposal. She did ask why there was so little success

in sentencing war criminals (including terrorists in this category). Marijke Vos (GroenLinks) thought that in this way the Minister was shoving difficult cases onto other countries. 'Of course, it all sounds fine, but is it really feasible in practice? Why haven't we tried to take legal action in the Netherlands in more cases? However, we must avoid clause 1F people ending up in illegality in the Netherlands.'

Monitoring deported aliens is a tricky business. We described the extreme deportation of two Egyptians from Sweden, in which the Swedish government completely failed on the issue of monitoring the judicial process in Egypt. In April 2004, Human Rights Watch published a report over comparable examples from Great Britain, Germany, Turkey and Austria (*Empty Promises, Diplomatic Assurances No Safeguard against Torture,* HRW, April 2004 Vol.16 No. 4). Human Rights Watch came to the conclusion that in none of the examples investigated did diplomatic guarantees mean that the rights of the deported aliens were safeguarded.
With the intensification of the policy on terrorism after the murder of Theo van Gogh, more emphasis was placed on the possible deportation of undesirable aliens. As in the Swedish example, one of the countries to which they could be deported was Egypt. Ever since September 2001, the Second Chamber has been urging that a number of Egyptian asylum-seekers, who would be sentenced in Egypt, should be extradited. The extradition requests from Egypt were dismissed in 1998 because there was no extradition treaty with Egypt and there was also no other treaty basis for extradition. The asylum requests of the asylum-seekers concerned were turned down on the grounds of article 1(F), but for the time being those involved were not deported because there was a real risk of violation of article 3 EVRM. The Netherlands has not negotiated with Egypt over an extradition treaty. Negotiations, however, have been made over a comprehensive UN proposal that should provide the basis for extradition of persons suspected of terrorism.
Another country in which there is a similar situation is Turkey. In considering extradition, it is an important factor here that people are still tortured in Turkey, certainly when (prominent) PKK leaders are involved this is a very real problem. In January 2005, the Court of Justice in The Hague made a ruling about an extradition request for Nuria Kesbir, a prominent PKK leader. The court was of the opinion that Kesbir, as a woman and as a prominent member of PKK, ran an increased risk of being tortured during her detention. The Court did praise Turkey for its efforts to improve the human rights situation in Turkey, yet torture was still practised. 'Evidently, there is a discrepancy between what the Turkish government wants and what happens at a lower level in the prisons and police stations', according to the Court. 'Thus, the risks existing for Kesbir could be removed if the Turkish government gave solid guarantees that it would ensure that Kesbir was not tortured. There is no reason to distrust guarantees made by the Turkish government. However, the promises that Turkey has made to date are too general and too indefinite to exclude the risk of torture.' The Dutch judge, therefore, would be willing to agree if there were specific promises.

THE KREKAR CASE

In the Netherlands, the rule of law is sometimes easily put aside in the case of aliens with a possible involvement in terrorism. At Schiphol, on 12 December 2002, Mullah Krekar

was arrested. The Americans suspected him of being involved with Al-Qaida, via his organisation, Ansar al-islam. The Netherlands Military Constabulary had been tipped off that Jordan was on the look-out for Krekar in connection with suspected heroine trading. Not long after that, an official Jordanian extradition request dropped through the letterbox. Krekar had been living in Norway for some time with a refugee status. Immediately, high-level talks took place between the Dutch judiciary and intelligence services and American intelligence services.
Krekar had been in prison for four months when, just before the extradition request was to be dealt with by the judge, he was unexpectedly put on a plane to Norway. Even his lawyers only heard about it at the last minute. The Military Constabulary immediately, and on unsafe grounds as the judge later ruled, rejected the asylum request that Krekar made at the airport and the plane took off. His lawyers were put behind bars for a few hours on account of obstructing the competent authorities. On that same evening, Minister Donner announced that the 'Norwegian authorities had assured the Dutch government that Krekar would be taken into custody'. However, at the airport in Norway there were no police, just dozens of journalists.
Later, however, it became clear that Krekar was also wanted by Jordan in connection with possible involvement in bomb attacks in Jordan on 28 February 2002, at the headquarters of the Counter-Terrorism unit of the Jordanian security service GID. But the AIVD official report of 13 September, in which this was stated, was withheld from the extradition file. In his letter to Minister Donner of 28 November, Victor Koppe, Krekars' lawyer, who suspected that something was going on, asked explicitly if the minister 'or any other Dutch government body had knowledge of a suspicion concerning my client in Jordan of other facts than the facts for which the present extradition is requested.' The answer was unequivocal: no. Also during the first handling of the extradition request neither the defence, nor the Public Prosecutor, nor the judge were aware of the AIVD information. The Ministry of Justice therefore deliberately misled everyone. When the news was leaked by *NRC Handelsblad,* Minister Donner and the Prime Minister Balkenende frankly admitted that they had deliberately withheld the AIVD intelligence.
Koppe outlined two possible scenarios that could have been behind Krekar's arrest. It could have been a ploy to get Krekar to Jordan, where he could then have been interrogated by the Jordanian and/or American secret service about the connection between Ansar al-islam and Al Qaida. According to American jurisprudence, American officers operating abroad are not in fact bound by American laws. Moreover, the *Washington Post* quoted anonymous American diplomats who stated that it was a deliberate tactic not to bring suspected terrorists to America, but to friendly countries with a somewhat broader concept of interrogation methods. 'We can get information from terrorists in a way we can't do on US soil', according to one diplomat.
But it might also be the case that the Americans particularly wanted to silence Krekar on the eve of the invasion of Iraq. Krekar had been in detention for four months in the Netherlands. On 13 February 2003, when Krekar was deported to Oslo, he was left in peace after his arrival and the Norwegian police did not arrest him. The Norwegian government denied that a deal had been made with the Dutch government. According to the Norwegian ambassador in the Netherlands, Norway had plenty of time, so Krekar would not be arrested for the time being. However, Norwegian television announced that the US was 'not amused' about the release of Krekar. They were considering submitting

an extradition request to the Norwegians. The US Minister of Foreign Affairs, Colin Powell, spoke with his Norwegian colleague, Jan Petersen. Powell stated that the US did not want suspects of terrorist activities ‘leaving the country to take part in new actions’.
On 1 February 2003, the Supreme Court of the Netherlands determined that the deportation of Krekar was illegal and that the asylum request that Krekar submitted at Schiphol required better treatment than the 20 minutes that were taken before giving a negative decision. The judge wondered why Krekar and his lawyer, after four months detention in the high-security EBI at Vught, were not informed about the deportation and why Minister Donner personally had decided on this deportation. He also wondered why normal rules were not followed in this case. However, according to the court, return to the Netherlands was not under discussion. In any case, Krekar was also safe in Norway.
In retrospect, various judges were very angry at Donner’s methods. In any case, Krekar’s deportation to Norway was a masked extradition: Donner knew, and even boasted that Krekar would be arrested by the Norwegian authorities. That is as near as it gets to being a deadly sin in extradition law.

RASTERFAHNDUNG (DRAGNET)

A very different measure in counter-terrorism that can encroach deeply on the privacy of aliens is the introduction of automated data analysis (*Rasterfahndung)* that the government proposed after the events of 11 March 2004. The principle is simple: you search through databases as much as you can by means of a previously established profile. Suppose that you telephone regularly via the recently opened Internet Phone Centre, you rent your videos at Videocenter Kahn, you pay your monthly contribution to your parents through a *hawala* intermediary, you visit the Arrahmane mosque in de Pijp district of Amsterdam now and then, and you borrow a book from the library on Dutch architecture now and then. There’s a good chance that a profile like that will be conspicuous in the Rasterfahndung and that the person concerned will have a visit from the AIVD or the police. The AIVD will obtain access to as many databases as possible in the Netherlands: the banks, the IND, the internet providers, telecommunication companies, membership records, investment funds, libraries, travel organisations, airline companies and of course everything within the government itself – an almost endless row of records.
Rasterfahndung has been in use in Germany since the seventies. However, it has not been very successful in the fight against the RAF. Only once did the efforts lead to an arrest. In 1979, the Bundes Kriminal Amt [Federal Bureau of Criminal Intelligence] (BKA), the national police in Germany, was looking for the kidnappers of the employers’ chairman, Schleyer. On the basis of police intelligence, they suspected that a number of them were in the vicinity of Frankfurt. The BKA then asked for records of payment to energy suppliers and filtered out the clients paying in cash. The suspicion was that the RAF members would pay their bills in this manner. These data were linked to the data of housing associations, child benefit, number plate registration and driving licence administration. The result was quite a list of drug dealers and one residence of conspirators of the RAF. That is where the RAF member Rudolf Heissler was arrested.
The lawyer, Britta Böhler, originally from Germany, of the Amsterdam office of Böhler, Franken, Koppe & Wijngaarden, is still convinced that the Rasterfahndung had little success. ‘That one success was actually the result of clear concrete indications: the RAF

members were living in the vicinity of Frankfurt, they were in hiding and paid as much as they could in cash. All the more general Rasterfahndungs produced nothing, apart from a horrible atmosphere of insinuation of everything that was left wing. You could rightly question whether such a far-reaching measure is really appropriate'.
Immediately after 11 September 2001, when it turned out that a number of the hijackers, including Mohammed Atta, had been living in Hamburg for a long time, the system of Rasterfahndung was immediately put into practice again in Germany. An amendment in the law in the eighties had legalised the searching of computers which had previously been illegal. In cases of acute threat, the BKA may use Rasterfahndung.

The criteria with which the BKA went to work in September 2001 were broadly formulated. They were looking for people coming from Afghanistan, Saudi-Arabia, Algeria, Libya, Iraq, Iran, Jordan, Syria, Egypt, Kuwait, United Arab Emirates, Lebanon, Yemen, Sudan and Pakistan. Later, Bosnia, Israel and France were added to the list. The profile consisted of the following characteristics: male, involvement in the Islamic faith, legal residence in Germany, childless, student, multilingual, no criminal history, evidence of frequent travel, visa applications and financial independence.
This measure led to great unrest, particularly in the German universities. 'Rasterfahndung with its main feature for suspicion being a person coming from a particular country leads to an intensification of racism', according to a press release from the student union in Berlin. It was not only in Berlin that students protested. In other parts of the country too, students expressed their concern about the increase of racism and the control by the state.
Quite soon, the BKA were faced with the problem that the profile they had drawn up was too specific. It turned out that there was not one single hit that complied with the profile. Moreover, many data suppliers were not in a position to supply all the data requested, simply because they were not registered. By the end of September, the search criteria were broadened. Ultimately, in Berlin alone, the personal data of 58,000 people were collected. 109 complied with the profile formulated. The police listed 77 of these as relevant. Yet it turned out that not one of these people warranted suspicion. Nationally, the eastern neighbours collected 8 million data that led to 11,000 questionable cases. These were all investigated but not one single investigation led to criminal proceedings or suspicion.
Thilo Weichert, chair of the Datenschutz association in Germany, stated at that time that because of the Rasterfahnung, foreigners in Germany had become much more insecure. 'People came to us who felt they were being permanently spied against, with traumatic consequences in some cases', said Weichert.
In an article in the German *Panorama* of 8 April 2005, Wilfried Albishausen of the Bund Deutscher Kriminalbeambter sketched a disillusioned picture of the results of the Rasterfahndung. 'It hasn't produced anything at all, except that a lot of police officers were kept from their daily duties. In Nordrhein-Westfalen alone, 600 officers were deployed for the Rasterfahndung for a few months. The result was a big increase in robberies, burglaries and car theft – in other words criminality that particularly affects ordinary citizens.' Also the Minister-President of Niedersaksen stated in *Panorama* that the result was sobering. 'We must deal with themes like this in an open and honest way. I think that Otto Schily misjudged the effect of Rasterfahndung.'

At the same time that in German counter-terrorism circles doubt was increasing about the usefulness of Rasterfahndung, the Dutch Minister of the Interior and Kingdom Relations, Remkes, came up with a proposal to introduce the system in the Netherlands. In an initial reaction of 31 March 2004 to the attacks in Madrid, Remkes wrote in a letter to the Chamber that the attention of the police and intelligence services should expand in the direction of unsuspected persons. 'Where perpetrators and organisations are hiding among their potential victims and are taking cover behind seemingly normal social activities, searching for information, surveillance and possible investigations and monitoring can be less focused,' according to Remkes. By linking data files suspected abnormalities should be found.
It is striking that Minister Remkes already had his analysis ready (less focused on specific suspects more on everyone) by 31 March, less than twenty days after the attack in Madrid. At that moment, the investigation was still in full swing. Anyone looking at the situation of the perpetrators of the attack in Madrid would be perplexed at the level of Remkes' analysis. Quite soon after the attack in Madrid, it became clear that a great number of the suspects had for some time attracted the attention of various intelligence services. Links were established with previous suspects of the attack in Casablanca, connections with Al-Qaida leaders in Spain and the suppliers of the explosives were actually working as informants for the police and judicial authorities. The question is whether Remkes really made a sound analysis of the facts and circumstances that led to the attack in Madrid. On the basis of this sort of public information one would be more inclined to expect a number of specific measures relating to particular networks rather than a general measure such as Rasterfahndung.

Yet Remkes continued on the path he had chosen. Mid July 2004, he announced to the Second Chamber that he would come up with 'new forms of automated data analysis, such as searching on the basis of profiles and tracking particular patterns by means of data mining'. If it were up to the Minister, the AIVD would obtain direct access to data that third parties could make available in automated form. If government data were involved, then according to Remkes there would have to be an obligation to make these available to the AIVD.
A number of linkages were in preparation, for example, the AIVD was to gain access to the data files Basisvoorziening Vreemdelingen (Basic Facility for Aliens). Work was in progress on the formation of the above-mentioned cross reference database with data of aliens. In addition, a combined workgroup of the AIVD and the KLPD was investigating the possibilities of channelling information directly from the police to the AIVD. In any case, they wanted to make the Verwijsindex Rechercheonderzoeken [Reference Index Criminal Law] (VROS), in which all ongoing criminal investigations are included, available to the AIVD.
The AIVD expressed caution about the possibilities of Rasterfahndung. Whereas in the seventies it was relatively easy to make profile of a *home-grown* RAF terrorist, nowadays it is much more complicated. This is not only because such a profile is drawn up on the basis of recorded data, but also because the starting point is quite different. Moreover, quite rightly the AIVD posed the question of what the legal consequences would be and how effective such a system would actually be. Rasterfahndung does fit in well in the

strategy of the AIVD in striving towards a reduction of the 'unprecedented' parallel society.
Experts proved to be very critical of Rasterfahndung. Jan Holvast, one of the first *privacy watchers*, was increasingly surprised at the panic measures that the government was proposing. 'It seems as if there is an immense amount of powerlessness and a lack of organisational abilities, while the deployment of Rasterfahndung has many consequences. As a government, you are digging deeply and unobserved into people's personal lives. I consider that the biggest problem is that with such a system in fact you are reversing the burden of proof. Anyone who is scanned as a possible terrorist by the system has to prove personally that there is nothing wrong with them. 'According to Holvast, this is an almost insoluble problem. 'The first step with Rasterfahndung is making a profile with features that you are going to look for. You really need a very good definition of a possible terrorist; otherwise many *lookalikes* will come out'.
This opinion also seems to have been aired in the cabinet itself and among the ministers not everyone is convinced of the usefulness of profiles of terrorists. In November 2003, the Minister of Alien Affairs and Integration, Rita Verdonk, wrote to the Second Chamber that 'study of the attacks that have taken place in recent years makes it clear that it is becoming increasingly more difficult to set up such profiles. The relevant category is in fact becoming more and more wide-ranging. Discovering and employing effective and efficient distinguishing indicators to recognise persons who might be involved in supporting or carrying out terrorist activities is also difficult and requires a lot of research. In addition, there is the risk that risk profiles and indicators can lead to a narrowing of vision in those who are using them.'

Britta Böhler sees a gross infringement of civil rights in the so-called *profiling. '*Within each profile drawn up there are essential civil rights that are placed in a suspicious framework by that profiling. Take the right to freedom of speech, the freedom to go and stay where you want and to surf freely on the internet. Rasterfahndung requires a very precise presentation of the question. Anyone who has looked up something on the internet, for example a particular film with a particular actress in it, knows how much nonsense is churned out if you don't ask the correct question.' According to Böhler, at the moment there is not enough concrete information and a great lack of the expertise needed to introduce Rasterfahndung successfully. 'Quite simply, too little is known about possible terrorists. Then people fall back automatically on generalities, such those used in Germany: country of origin, faith, travel behaviour, etc. Added to that, profiling in Europe is only applied sporadically. In the US for example it has been developed as a specialism within the FBI.'
But even if the expertise were to be improved, Böhler still sees too many negative aspects of the Rasterfahndung. 'The point is that the limits are stretched a step further. The distinction between people who are under suspicion and people who are not suspected of anything becomes blurred with Rasterfahndung. Everyone who falls within the profile is investigated. The reasonable grounds for suspicion cease to be applicable.'
Professor Corien Prins of the Tilburg research institute for Recht, Technologie en Samenleving [Law, Technology and Society] (TILT) calls the measure disproportional. It is umpteenth step that produces an infringement of privacy. It is a sliding scale, mainly determined by fear.' According to Prins, too little attention is paid to the rights of

citizens, whose identity is becoming ever more virtual. ‘Privacy legislation is limited to the right of inspection of simple registrations. For example, if I am fully registered in police files and in a credit register, at present an identity is assembled from various pieces of the jigsaw, as in Remkes’ proposal on the basis of particular patterns. With these new forms of data collections, patterns and also the manner in which the total puzzle is assembled, there is too little control. It is precisely the underlying processes that should be much more transparent, verifiable and controllable.’

Gert Onne Klashorts, spokesman of the College Bescherming Persoonsgegevens (Dutch Data Protection Authority), in his commentary on Tuesday, 14 September in *NRC Handelsblad*, perhaps put his finger on the core of the matter. ‘This affects the heart of society. And we have to ask ourselves what sort of society we want. Now we have a society in which we can control power. Yet it seems as if power will soon be controlling the citizen. Where have we seen that before? Singapore, China, East Germany. When the Wall fell, everyone knew precisely what the score was. Balkenende calls respect an important European value. A government that tails its citizens to me seems to show little respect.’

5 SQUEEZING

In the fight against terrorism, the fight against terror money plays an important role. The underlying principle is simple: anyone who can dry out terrorists financially can outlaw terrorism. Each attack costs money for preparations, travel and accommodation costs, weapons, ammunition, explosive materials and other necessities. It is not too difficult to draw up a shopping list for an average terrorist. However, it remains difficult making an exact estimate of the costs involved in a terrorist action. The estimates of the costs of the 11 September attacks vary from a few hundred thousand to a few million dollars. With the attacks on the four commuter trains in Madrid, the experts were in agreement that these had 'only' cost some ten thousands of Euros. Reports from the European Union, point out that smaller, independently operating cells in particular do not need to make use of complicated, international financial webs. These sorts of cells are also self-supporting in the financial area: casual jobs and petty crime provide the money needed.

Even before the attacks of 11 September, the UN had imposed financial sanctions on the Taliban regime in Afghanistan and the network around Osama bin Laden. Sanctions are international measures that are imposed by the international community on a regime to force political changes: putting a stop to an occupation, stopping the persecution of a section of the community, or stopping support of resistance movements. A well-known example of a sanctions measure is the total embargo that was imposed on Iraq after the invasion of Kuwait. Iraq is also a good example because it shows that the instrument of sanctions is quite blunt: it is usually the population that takes the brunt of the sanctions, while the political elite can continue to wallow in luxury without a care in the world. That is why in recent years attempts have been made to target *smart sanctions,* particularly on the political leaders, such as that experienced by Charles Taylor in Liberia, for example. The sanctions are intended to force a change in policy and can also be discontinued once that goal has been achieved. A well-known example here is the cancelling of the sanctions against Libya.
The sanctions that the Security Council imposed on Afghanistan on 15 October 1999 were intended to force the Taliban regime to hand over Osama bin Laden. The Taliban rejected this demand and not entirely unreasonably stated that they first wanted to see proof of the involvement of Osama bin Laden in international terrorism. The Sanctions Committee, which oversaw observance of the resolution of the Security Council (named after the number of the resolution it was known as the 1267 Sanctions Committee), drew up a list of persons and organisations from whom it was assumed that they kept up links with the Taliban and Al Qaida and for whom the financial sanctions also applied.

After the attacks of 11 September, in addition to the existing 1267 committee, which in fact was only focused on the Taliban and Al Qaida, a new committee was established by resolution 1373. This Counter Terrorism Committee (CTC) was to oversee more generally that the Member States of the United Nations also actually carried out measures focusing on terrorism. This involved obligations that the Security Council had imposed, including the freezing of terror funds and combating money laundering. It is interesting that nowhere in this resolution can a definition of 'terrorism' be found. Negotiations

about a UN treaty in which terrorism would have to be defined have been in deadlock for years.
The setting up of the CTC was something new in the UN. Prior to that, the practice in the Security Council was to take measures relating to a very specific situation that was seen as threat to international peace and security. Now, however, the Security Council imposed the obligation on the UN Member States to introduce specific legislation against terrorism. There had been no evidence of that previously. Moreover, the measures were focused in a general way on 'international terrorism': it was unclear where that was precisely, how it was to be combated and for how long that was going to last.
'In the meantime, the CTC has become a complete institution', said Bibi van Ginkel, university lecturer at the department of International and European Institutional Law of the Law faculty in Utrecht. She was carrying out doctoral research into the role of the UN in counter terrorism and she visited New York in 2004 in order to conduct research into the CTC. 'At the time there was an awareness among Member States that unique steps were being taken there, but nobody had the courage to protest. The prevailing mentality was: if you are not for us, then you are against us. That is why the resolution, including the setting up of the CTC was accepted without any protest, even though nobody could take stock of the full dimension of the decision.' The CTC monitored how the Member States of the UN fulfilled their obligations in the field of counter terrorism. Member States had to submit reports to which the CTC wrote a reaction and listed what sort of help Member States could use. However, it also criticised states that did not fulfil their obligations, because they could not, or because they did not want to and in some cases it was a combination of these two reasons. A strong criticism of the CTC is that on the whole there was no attention to human rights. Because some states, under the cloak of the obligation imposed by the UN to take measures against terrorism, see their opportunity to make life difficult for all sorts of domestic opposition movements. 'You don't want to know how many divisions there are within the UN,' said Van Ginkel. 'The CTC was saying: we are only concerned with monitoring the counter terrorism regulations. Respect for Human Rights is something for the High Commissioner for Human Rights. It's up to him to keep an eye on that. The fact is, it would be much more efficient if there was an integrated policy right from the beginning. But everyone is busy looking after their own little shop. I did once ask the director of the New York office of the High Commissioner how they deal with the lack of professional procedures in the Sanctions Committee. He hadn't heard of that problem at all. I nearly fell off my chair.'

THE BLACK LIST

What is the actual procedure to determine which persons and organisations appear on the UN black list? States can propose an organisation or person for placing on the list. The Sanctions Committee, consisting of fifteen Member States that also have seats on the Security Council, must make a unanimous decision about the proposal. If there has not been a veto within 48 hours, the placing on the list is a fact. The whole procedure is secret. After all, if it was announced in advance that a person or organisation was nominated for the list there is a risk that a day later there would be nothing left to freeze.
However, the requirement of unanimity leaves the door open to all sorts of political power games. On international forums it is quite usual to have horse-trading with files:

one state blocks a particular file because it wants to seize a concession on a completely different file. This horse-trading also even takes place within the Sanctions Committee. ‘I was speaking to an American diplomat’, said Van Ginkel. ‘At that time, America had made a number of nominations for the black list. But China was blocking it because it wanted an American concession on a completely different international dossier. That was just inserted as a lever. That is just how international politics work, but it is indicative of the weakness of the system. It is a political market place. Certain matters are settled by promising investments, or conversely by withdrawing them. It is political and power-driven decision making. As an individual you are just thrown to the lions.’
There are no criteria for placing on the black list. Immediately after 11 September, the Americans came up with an enormous number of names. ‘That process was utterly careless’, said Van Ginkel. ‘The Americans have since frankly admitted this. They have also realised that if you proposed the name Ali Mohammed ten times, without further details, you don’t get very far. Then all sorts of assets are haphazardly frozen and the whole system becomes implausible.’ In the meantime, there is a somewhat more meticulous procedure regarding personal data and an experts committee has been set up to monitor it. The intention is to present details about an individual as accurately as possible: aliases, date and place of birth, passport numbers, first and last names.

Does a greater problem lie in the criteria regarding contents? What proof is adequate for putting a person or organisation on the list? In fact, the criteria do not exist. In 2002, three Swedish Somalis discovered that their bank cards did not work, After a long trail through Swedish bureaucracy, the truth emerged: the accounts of the three had been blocked, because they had been placed on the UN black list. The Swedish government was obliged to carry out the decision of the Security Council, so they had no choice but to instruct the Swedish financial institutions to freeze the accounts of the three Somalis. The three protested vigorously that they had nothing to do with terrorism. The case attracted a lot of attention in Sweden, not least because one of the three was a candidate for the Swedish parliament.
After appealing at length, the Swedish government approached the UN Sanctions Committee to request a full explanation, but were met with a refusal. The Sanctions Committee could not pass any judgement on the dossier in question and referred Sweden to the Americans, who had submitted the names of the Swedish three in the first place. ‘No detailed information was given and no discussion carried out before or after the decision’, wrote the Swedish Ministry of Foreign Affairs afterwards.

In the first instance, the Americans refused to make the files available for perusal. They considered that they did not have to justify their decision. The Americans were annoyed at the action of the Swedish government. ‘We will not agree to removing the three from the list’, said an anonymous American diplomat to the press agency Reuters. ‘We are prepared to sort out any problems, but we will not relinquish any sensitive information or take a terrorist off the list’. The Columbian chair of the Sanctions Committee expressed himself in similar terms. ‘We will see whether perhaps it is necessary to introduce new guidelines, but they should not be too complex, enabling terrorists to take advantage of them’.
After much pressure and mounting diplomatic tension between Sweden and the US, ultimately the right to peruse the evidence was granted. It turned out that the Somalis

were suspected of acting as representatives of the Somali bank Al Barakaat. This bank was said to finance Al Qaida. The Swedish government and the Swedish security service concluded that there was no evidence that the trio was involved in financing terrorism. It transpired that there was not even any concrete evidence against the main offices of Al Barakaat in Dubai and Mogadishu, or against representative of the bank in Europe and North America. An additional charge of the American intelligence services, that one of the men had been imprisoned on suspicion of being in possession of suspect assets, turned out, after investigation by a Swedish political party, to be ungrounded because the three were all in Sweden in the period concerned.
In the months that followed, a strange diplomatic sparring match developed around the three Swedish residents. The American Ambassador in Sweden issued a statement on 22 March 2002 in which once again he referred to the meticulousness and thoroughness of the procedure with which people were designated as bankers of terrorism. He also referred to the sensitive nature of much of the information which therefore could not be brought into the open and to the fact that people could appeal. It remained a difficult situation. In the case of the three Swedish citizens, it seemed to be the support of the Swedish government in particular that made the difference. In June, the Americans presented a new terrorist list from which various names had been deleted because they turned out to have died, but the three Swedes were still on the list as being involved in international terrorism. On 22 August 2002, the then Minister of Foreign Affairs, Anna Lindh, reported that she had concluded an agreement with the Americans in order to remove two of the three Swedish citizens from the list in any case and that they were still negotiating over the third. This third person was later removed from the list.

Germany, which at that time had a seat on the Security Council, saw in the problems that arose a reason to scrutinise the procedures of the Sanctions Committee. In order to set a good example, the Germans produced an impressive pile of dossiers with their own nomination to substantiate why they considered the proposed persons dangerous. The other members were able to appreciate the German attempt. In this way at least, it became clearer why persons or organisations were placed on the black list. 'Except the Americans', said Van Ginkel. 'They produced by far the most names on the list and they were frightened that the German approach would set a precedent.'

PROFESSIONAL PROCEDURE OR A CONCESSION

The problems relating to the three Swedish Somalis indicated that in addition to the lack of substantive criteria, there was yet another weak point: there was no procedure at all for deleting persons and organisations from the list. Germany suggested setting up an individual complaints procedure. That proposal was immediately brushed aside. A recommendation had been adopted in which states were called upon to inform citizens who had landed on the list and to indicate what the consequences were. However, not one state has yet accepted that recommendation. Strictly speaking, there was already a *delisting* procedure in place at the time that Germany made its proposal. It was therefore then already clear that the delisting procedure did not provide satisfactory guarantees. The recommendation to the member states to inform individuals about being placed on the list was thus an empty gesture.

Finally, after much entreaty, a delisting process was adopted. If someone considered that he had been put on the list unfairly, he had to ask the country in which he was resident to submit a request for delisting on his behalf. 'Just imagine that you are Chechen and have to appeal to Moscow for help', said Van Ginkel, outlining the problem with the procedure. 'It's no use trying that with them. In any case, there's a good chance that Moscow put you on the list in the first place.' In accordance with the procedure, the country, at least if it wants to substantiate your case, then has to make contact with the country that put you on the list. Both countries bilaterally have to come to an agreement. There is no formal procedure for this, nor are there any judicial criteria and the negotiations take place outside the framework of the UN. If both countries manage to reach an agreement about delisting, then the sanctions committee has to make a unanimous decision about the request. This in turn opens the door to all sorts of political power games. 'That delisting procedure is just a joke', said van Ginkel. 'It is a pure political mechanism. You don't get any right to perusal of the evidence that is said to exist against you. There is no question of *equality of arms* or *presumption of innocence.* It is pure window-dressing. That's true, I can't express it otherwise.'

During her visit to New York, Van Ginkel had quite a few discussions with American diplomats about the goings-on in the Sanctions Committee. In the first instance, she seemed to be completely in the right. Of course, Americans assured her, it is also in our interest to carry out the procedure correctly. Otherwise the credibility of the entire sanction system is jeopardised. That is why we work so carefully. 'But once you begin to talk about judicial and procedural guarantees a completely different picture emerges', said Van Ginkel. 'They invoke the fact that it all has to take place very quickly, that international terrorism is a new type of threat and they state that this is now a matter for the Security Council and its members. Ultimately, they do not want to have anything to do with all those wonderful principles. And they are able to express that so eloquently, they really turn on the charm. But ultimately what they are saying is: *trust us.* Personally, that always makes my hair stand on end. That is not what a state under rule of law is all about. I do not want to belittle the danger of terrorism in any way. Steps must be taken against it. But this should be done with respect for a number of essential principles of the democratic state under rule of law. This does not exude respect for these principles, to put it politely. In fact, the Security Council is operating like a quasi-judge. And that's without the inbuilt guarantees that normally spoken would be involved. That is an evil development. It is a misunderstanding to think that there is an area of tension between counter-terrorism and respect for human rights. Within the human rights regime there are adequate controllable ways of diverging from the strictest application of human rights. The most important thing is that this divergence is controllable. Moreover, there is now a danger of throwing out the baby with the bathwater. In any case, in our fight against this danger we should not destroy that which terrorism is threatening, i.e. the principles of a free and democratic state under rule of law, by showing no respect for those principles.'

EUROPEAN SQUEEZE LIST

The European Union (EU) also operates squeeze lists. One of those lists is a direct copy of the list set up by the UN Sanctions Committee. In that way, the European Member

States are fulfilling their international legal obligation to implement decisions of the Security Council. In order to come off this UN list as a person or as an organisation, as we have seen above, requires a descent into the Kafkaesque crypts of international politics. There is probably no point at all in going to a national or European court. Decisions of the UN Security Council are to be considered to be the highest international judicial norms. A minor judge will not be likely to say: in my opinion the UN made a mistake, you should never have been on that list. A national or European judge cannot overrule the international judicial obligation of states to implement UN decisions.
The names that are on the two other European squeeze lists, however, were brought forward by the EU itself. The point here is the interpretation of Resolution 1373 of the United Nations, which calls upon the Member States to take measures against terrorism, including the freezing of funds. Nevertheless, in this UN resolution there are no names of individuals or organisations. Van Ginkel: 'The resolution also does not give any definition of terrorism and thus leaves it to Member States or other international organisations to fill in the details. In the case of the EU, they have set up their own definition. You can be critical of that, but it's better than nothing, because in this way what is meant by terrorism is at least clear and verifiable. That is not the case universally', The EU has created two lists: the 'external' list contains names of persons and organisations outside the European Union and the 'internal' list contains the names of persons and organisations from within the European Union. The 25 European Member States decide unanimously about names on the list. It is unclear what criteria are adopted. The evidence must be 'convincing' according to the corresponding EC regulation, but nobody knows precisely what that involves. Is it possible to lodge a complaint against placing on the internal and external EU lists?

The financial sanctions that have to be imposed against persons and organisations that are on the 'external EU list' are drawn up in an EC regulation. An appeal against such a regulation can be lodged at the European Court of Justice in Luxembourg. Thus, in principle the way to legal action is open. A number of organisations and persons have also taken that route. The problem, however, is that the procedure takes an inordinate amount of time. The first procedure started in 2001 and there is still no judgement on that. That is important, because only from these judgements will it be clear whether or not the route to the European court is completely open. 'The question is how insistently the Court will test whether someone was rightly put on that list', said Mielle Bulterman, senior lecturer in European and Economic Law at the faculty of Law, Leiden University. 'We are concerned just as much with a communal viewpoint as with a regulation. Placing on the list comes to pass by a communal viewpoint that operates under the 'second pillar' of the European Union, the communal foreign policy and security policy of the Union. Actually, the Court has no authority over Second Pillar decisions. But the sanctions themselves are drawn up in a regulation and the Court does have some say on that. In the regulation there is again a reference to the communal viewpoint. What exactly the Court is going to do with that remains to be seen. It is quite possible that the Court will give no answer to all sorts of fundamental points of law'.
Another unclear point is whether the Court, if it declares itself fully competent, will acquire the underlying evidence that led the European Member States to put the persons and organisations on the list. And will the complainants gain the right to peruse this

evidence? For the majority of the incriminating information will have originated from intelligence services and these services do not readily make their material public in order not to endanger sources and methods of operation. On the other hand, complainants can hardly defend themselves against the stigma of terrorism if they do not know what it is they have to defend themselves against. It is still completely unclear how the European Court will deal with this dilemma. Will it force the Member States to make the material public? Is the evidence only to be presented to the judges? And what does this mean for notions such as a *fair trial*?

In the Netherlands there is a precedent in this field. The Netherlands wanted to have the Al Aqsa Foundation put on the list. However, as this would take some time, the Dutch Ministry of Finance issued a temporary measure of sanctions against Al Aqsa, in the anticipation of it being placed on the EU list. Al Aqsa has been in existence since 1993 and it organises financial and humanitarian support for the Palestinian people. The foundation was discredited a few times, for example, in 1999, anti-Semitic and racist comments were placed on an email discussion list. But a spokesman of Al Aqsa said he did not know the writer of the text and disassociated himself from the contents.

In December 2000, some teachers at the Islamic primary school, Bilal, in Amersfoort showed the video *Geschiedenis van een volk* (History of a nation). In the film, there are some very distressing pictures of Palestinians that had been shot dead and Israel was accused of using Nazi methods. The film was said to have been distributed by the Al Aqsa foundation. Other teachers stepped in, the educational inspectorate made an investigation and the Public Prosecutions Department in Utrecht started a criminal investigation into the film. The teachers were given a reprimand, the school was not considered to be a fundamentalist school and the investigation did not lead to a prosecution of Al Aqsa.

After 11 September 2001, the foundation was regularly referred to in the category of 'terrorism funds' that included the Muwaffaq foundation and others. The *Algemene Dagblad* managed to report that the BVD, police and judiciary had been monitoring Al Aqsa for years and that according to the BVD they were collecting money for Hamas. A criminal investigation failed to materialise since 'it is a big problem establishing whether the funds actually go to terrorism', according to the researcher B. Jongman of the University of Leiden, a specialist in terrorism studies.

Germany banned the German branch of Al Aqsa on 31 June 2002, froze its assets, searched premises of the German foundation and the houses of its board and seized documents and computers. A month later, this ban was suspended by the court of Leipzig. By the end of 2004, the court had still not pronounced a judgement on the matter. The Public Prosecutions Department had submitted new evidence against the chairman of the German Al Aqsa, M. Amr, but the ban remained suspended. Sources within the German judiciary reported that the accusations against Al Aqsa were based primarily on evaluations made by the secret service, not on facts. In December 2004, the federal court in Leipzig made a judgement that Al Aqsa could no long collect donations and that its assets should remain frozen. The decision was based on material that the German secret service had disclosed during the court case. This was also a requirement of the court. In the judgement, reference was made to the fact that Al Aqsa had supported some organisations that were part of the Hamas network, which the court considered to

be a terrorist organisation. The evidence of the secret service was an overview of the structure of the network in which four organisations appeared that were supported by Al Aqsa. The plea of Al Aqsa that it was not in a position to penetrate the Hamas network was rejected. Al Aqsa was not going to appeal against the judgement, also not at European level, because only judgements of the European Court relating to the European Convention on Human Rights can overrule German jurisdiction. In all other cases this does not happen. The German judiciary instituted no proceedings against Al Aqsa, its board and its members.

The freezing of the Al Aqsa foundation's assets in the Netherlands on 8 April was followed by interim injunction proceedings of the foundation against the State on 6 May 2003, in which the judge commented that on the basis of the official report from the AIVD on 17 April 2003 he could not come to a judicial review of the measure. The Hague court then decided to accept the offer of the state advocate to peruse the 'thorough, but secret investigation report' of the AIVD. The Al Aqsa foundation board was in agreement. On 3 June 2003, Judge Paris formed the judgement that the Ministry of Foreign Affairs had acted fairly. In order to reach this conclusion, the judge was allowed to peruse the dossier at the AIVD office in Leidschendam for one hour. On the advice of the new lawyer, the foundation did not go to appeal, but in April 2004 decided to go directly to the European Court of Justice. A criminal investigation into the foundation had never been initiated by the Public Prosecutions Department. The foundation still appears on the internet, but in the meantime it seems as if its activities have been taken over by another foundation that is not undergoing criminal investigation.

In his decision, the Hague judge revealed the juridical dilemma. 'Confidential perusal of the dossier by the judge seems to be at loggerheads with an essential premise of procedural law, i.e. the right to hear and to be heard, and consequently it will not be manifest from the substantiation of the final judgement after confidential inspection of that to which confidential perusal is given, so that to that extent the substantiation given is not directly verifiable. Nevertheless, it is conceivable that from considerations of public order from the above-mentioned fundamental principle exceptions might be made. Such a situation is prevalent at the moment.' How the European judge would deal with this dilemma was at that time uncertain.
Mielle Bulterman can well imagine the dilemma in which the government is placed. Perusal of the underlying intelligence material could damage the sources and working methods of the security service. But now, it is difficult for Al Aqsa to refute the material. An analysis, drawn up by the AIVD, which seems convincing to a judge, could of course by refuted by the other party with facts. But then you need to know what the material contains. 'It's a continuing problem of a fair trial if one party cannot peruse everything and yet tries to refute what the other party is submitting', said Bulterman. 'If someone really is a terrorist, then I do believe that there is a good reason for not making all the information public on the grounds of which one could prove that someone is a terrorist. On the other hand, you do create a big problem regarding the public nature, transparency and verifiability of the system. Because the information is secret you cannot refute it. No discussion is possible, not about the information that is in the dossier, nor about the manner in which the judge makes a decision about it. I can imagine that in the majority of

cases, it will be that the judge has the right of perusal of the documents and that he will come to a good judgement. Yet there is a problem of principle, also recognised by the judge in the Al Aqsa case, that in the judicial assessment of such a radical decision as a financial sanction not all rights of defence can be completely satisfied.'

BLACK HOLE

For persons and organisations that are on the internal EU list, it seems as if the juridical pitfalls are even greater. This decision in fact was taken as a community position under the Third Pillar of the European Union, in which the police and judicial policy take shape. The European Court does not have much authority over decisions of the Third Pillar. An individual cannot go to the European Court to fight a decision of the Ministers of Justice and the Interior under the Third Pillar. That path is only open to the European Commission or the EU Member States. A national judge can put what is known as the preliminary question to the Court as to how a particular European law should be interpreted. But this can only be done with framework decisions, not with community positions. For persons or organisations that are on the internal EU list, it seems as if there is therefore no effective legal remedy for fighting placement on the list.
In the meantime, the European Court of Justice has been involved in a judgement on this vacuum. The case was brought by Basque youth organisation, Segi, which, according to the Spanish government, is in fact the youth movement of the ETA and a breeding ground for ETA activists. Spain put forward Segi to be placed on the internal EU list. Segi then brought damage proceedings to the European Court in Luxembourg. However, it is not legally possible to ask to be taken from the list at the European Court. In this manner, Segi was trying in an indirect way to gain a judicial opinion on its placement on the list. But the Court considered that it was not competent to make a judgement on an action for damages.
'It is necessary to note that the petitioners probably have not any effective legal means at all at their disposal, whether for the national or for the European court, regarding their placement on the list. Contrary to what the Council contends, petitioners have nothing to gain from fighting the individual liability of the member states because nothing changes their placement on the EU list. Any possibility the petitioners might have to fight the registration on the EU list before the national judge is made impossible by a preliminary procedure by the choice of accepting the list on the grounds of a community position.'

Segi then went to the Europe Court for Human Rights in Strasbourg, but there too came away empty-handed. The Court deemed that placing on the list in itself could not constitute a violation of human rights. The implementation of the sanction measure might well produce a human rights violation, but not the placing on the list. 'Nevertheless, there is still a legal problem at issue there', said Mielle Bulterman. 'After all, it is still not a foregone conclusion whether or not you can complain at the Court in Strasbourg about the implementation of a decision of the European Union. The Court has not as yet made a judgement about it. Thus, the Court in Strasbourg also seems to be very reticent in providing legal protection.'

The financial sanction measures do not fit in any legal framework. Originally, they were international measures to compel a state, or the political leadership, to do something or not to do something. Once this had been complied with, the sanctions were withdrawn. With the current sanctions, the goal is not clear. Does an organisation have to stop financing terrorism in order to get rid of the sanctions? And how can that be proven and monitored?
'A financial sanction is not a penal measure', said Bulterman. 'The fact that an organisation is affected by financial sanctions does not mean that that organisation is therefore banned. Nor does it mean that criminal proceedings can be brought against the person. But the effect, both for individuals and for organisations, can actually be comparable with a penal sanction. It is in fact a penal sanction without any preliminary inquiry, thereby lacking the specific safeguards that you automatically have as a suspect in a criminal investigation.' Van Ginkel supports this criticism. 'If you are a suspect, you have the right to know what evidence there is against you, for example. With the sanctions, that does not apply. If measures are taken against individuals or organisations the checks and balances must develop accordingly.'

It would not be illogical if organisations whose financial assets were frozen were also prosecuted. In any case, it's financing terrorism and that is punishable. Yet that does not always happen, as shown by the case pertaining to Al Aqsa.
With other organisations whose assets were frozen there were criminal investigations at the same time. At the end of January 2003, the Belgian Minister of Finance, Didier Reynders, had the personal accounts blocked of Patricia Vinck and her husband Nabil Sayadi (of Lebanese origin) by order of the United Nations. According to the UN sanction committee, they had links with Al Qaida or with the Taliban in Afghanistan. 'Our son is a member of the Catholic scouts. So we are certainly not such extremists' said Patricia Vinck cynically in the *Nieuwsblad* of 3 February 2003. The sanction committee had added their names to the list of 'persons and entities linked with the Al Qaida network'. By November 2002, the account of the Wereldhulp (Global Relief) Foundation had already been blocked. This took place after the sanction committee had placed the Global Relief Foundation on the blacklist.
The Global Relief Foundation was set up in 1995 by Nabiul Syadi and collected money and relief supplies for refugees in the Balkans. In 2002, the foundation received an official recognition from the same Minister of Finance, Didier Reynders after a total audit of their bookkeeping. The Global Relief Foundation worked closely with the American Global Relief Foundation that is active in thirty countries and areas such as Afghanistan, Pakistan and Chechnya. The FBI suspects Global Relief of channelling funds to terrorists. The evidence against Global Relief revolves around Mohammed Z., a Syrian man who is in prison in Spain on suspicion of financing terrorist attacks. Mohammed Z. regularly donated money to the foundation, 'as a good Muslim should do' added Nabil Sayadi. According to the charge, Z.'s money was used for the purchase of weapons. The evidence for this was delivered by the US Department of Treasury.
The dossier reports contacts between the foundation and Rabih Haddad, the initiator of the Global Relief Foundation, who has been in prison in the US since 14 December 2001. Wahid El-Hage also appears in the dossier. He has been condemned to life imprisonment in the United States because of involvement in the attacks on the American embassies in

Kenya and Tanzania. In addition, Nabil Sayadi features in the Spanish investigation of Baltasar Garzón. Garzón suspects Sayadi of having played the banker for the Spanish Al Qaida cell.
The criminal investigation into the foundation goes back to 2001, when raids were made on the employees in Kosovo, Albania and Bosnia, when the police seized files, visual material and a computer. In October 2002, a search took place of the Sayadi's family home in Putte, province of Antwerp, after they have been shadowed for months, according to Patricia Vinck. In addition to the Global Relief Foundation, Nabil Sayadi was also named in connection with Fondation Secours Mondial, an organisation that is also on the UN blacklist. Sayadi is the director of the Belgian branch of this organisation.
In February 2003, the judicial authorities in Brussels announced that the criminal investigation that had been operating since 2002 against the Global Relief Foundation and the Sayadi couple had still not produced any concrete suspects or evidence. In August 2004, the American committee that was investigating the attacks of 11 September 2001 concluded that there was no evidence that the Stichting Wereldhulp, the Global Relief foundation and the couple were financing terrorism. The Belgian examining magistrate, Damien Vandermeersch of the federal public prosecutor's office in Brussels, also had to recognise this. The bank accounts of the couple and of the foundation, however, were not unblocked, and the foundation is still on the UN list.

AUTOMATIC PROHIBITION

There are frozen bank accounts with no criminal investigation or frozen bank accounts in spite of criminal investigations coming to nothing. The world of financial sanctions turns out to be somewhat shadowy.
Donner, the Minister of Justice, has added to this confusion. Donner wants all organisations that are on the EU lists to be prohibited by law. That means that there will be no legal test of content as to whether an organisation is in fact as dangerous to the state as the government thinks. Moreover, the organisation would be liable to punishment if it carried out any operations. Thus the sanctions, originally financial, gain an increasingly far-reaching effect: they result not only in frozen bank accounts, but also to automatic prohibitory provisions and penal sanctions.
According to Donner, prohibitory provisions suffice by law, because placing on the EU lists 'takes place on the basis of consensus within the 25 member states after careful consideration'. What Donner is in fact saying is that if 25 governments have looked at a dossier it is not necessary to have an independent judge do that as well. That in itself is poor reasoning.
Donner, however, goes a step further by saying that 'any interested party can lodge a complaint against placing on the EU list at the European Court in Luxembourg.'
That is simply not true. For objections to placing on the UN list, which the EU adopted as its own, there is no access to a national or European court. There is only a shadowy delisting procedure at political state level. Against placing on the EU external list, the path to the European Court of Justice is in principle open, but because a judgement has not been made in any single case, it is still too early to say whether this path is in fact completely open or whether the Court has reached a test of content and which

fundamental legal questions will be involved. There is no appeal available against placing on the internal EU list, neither before the national or the European judge.
This means that if Donner’s legislative proposal is accepted organisations will be prohibited and persons will risk penal sanctions with no judgement from an independent judge ever being possible in the entire trajectory. That undermines one of the basic principles of the state of law. It turns out once again that the fight against terrorism in order to protect the foundations of the democratic state of law is gnawing away at those same foundations. Osama bin Laden can breathe freely in his cave. With friends like this you don’t need enemies.

6 STATE OF EMERGENCY

Panic stations! In Groningen, there was a European Council of Ministers with the policy for aliens on the agenda. Demonstrators had turned the town upside down and at the same time there was a sit-in action in Rijswijk. At Eelde airport, demonstrators had let off hot-air balloons so that air traffic was impossible there. How could those ministers still be flown in without obstruction? Would it be possible from Schiphol or from another airport? And at the same time, what procedure should be adopted with those protesting in the sit-in in Rijswijk?

Until fairly recently, the above-mentioned events might have been the result of a days' 'campaigning' and the police officers responsible, in consultation with the local authorities, would have found 'solutions' to these public order problems. But in the meantime this has become a plausible scenario for a staged disaster whereby the council of ministers is hastily convened to consider emergency measures. The scenario was described in *NRC Handelsblad* (21 June 2004) and was part of a crisis training course for ministers and State Secretaries. Remkes, the Minister of the Interior, wanted to organise these exercises twice a year. There was a large one in Amsterdam in April 2005, Code Bonfire, as this exercise was called, was no joke. The exercise, in which thousands of people participated, including crisis management staff with mayor Cohen and a crisis cabinet with Balkenende, originated from fictitious attacks on a 'soft target', a place with large crowds, such as the Arena football stadium, filled with fans of the rapper, Ali B., in combination with the discovery of a rocket launcher in the port of Rotterdam, a threat of anthrax and a violent kidnapping.

In June 2004, *NRC Handelsblad* quoted the above Groningen exercise as an example, on the occasion of the publication of the *Policy plan for crisis management 2004-2007.* Remkes' plan heralded a considerable intensification and centralisation of the equipment for crisis and emergency measures at the government's disposal. It is the result of civil servants' processing of shocking incidents such as 11 September, the Iraq war, bioterrorism, fowl pest, SARS, power failures and IT incidents. Remkes and the leading figures in the Ministry of the Interior drew the conclusion from all these disasters that a review of the system of emergency measures was necessary. The prevailing working method was 'insufficiently prepared for new threats', according to the Minister. 'The question is to what extent one can compel everyone's cooperation at short notice.'

This is a singular state of affairs. The system in force for crisis and emergency measures is certainly no dusty relic from the Cold War. In the second half of the 1990s, the entire legislation was radically revised on this point, whereby in particular the role of the military during the various forms of emergency was driven back, references to war situations were scrapped and the possibility of taking emergency measures in sectors was introduced. In this Coördinatiewet Uitzonderingstoestanden (Coordination Act Emergency Situations), martial law and the state of war were abolished. There were still two emergency situations, increasing in gravity: the limited and general state of emergency. The state of emergency could be declared by a Royal Decree, a decision of the government that was taken in the Council of Ministers. The state of emergency could

be ended or limited in duration by a joint meeting of the States General, thus a meeting of the First and Second Chamber together, or by the government declaring a new Royal Decree. Both states of emergency open the possibility for the government to activate a series of emergency articles from very diverse laws (List A and List B respectively). The measures to be taken in the case of general emergency can certainly be very far-reaching: extending to requisitioning property, large-scale evacuation, censorship and the internment of unacceptable elements of the population.
All procedural aspects related to the declaration of a state of emergency are extremely important. The state of emergency is in fact a form of legal dictatorship whereby considerable infringements can be made on the constitutional balance between the various powers and the fundamental rights of citizens. Moreover, parliamentary control is temporarily suspended. In the words of a well-known reference book on constitutional law, that of Van der Pot and Donner, 'the declaration of a state of emergency is a dramatic event (…)that can itself have an escalating effect and that therefore should be avoided for as long as possible'.

SETTING ASIDE

What did Remkes and his staff want to change? In the first place, they were concerned with centralisation of the enforcement power, as it is named at present, in all sorts of crisis situations (thus not just during a state of emergency). Currently, the mayor of a community in which a disaster has taken place plays an important role. But in future there will be a Regionaal Crisisbestuur [Regional Crisis Management] (RCB), consisting of police, fire brigade and regional police force managers, chaired by a mayor designated by the cabinet (usually the mayor of a big city). The RCB is given a far-reaching mandate to enforce decision-making in all the participating communities. While the official term for this is 'upgrading', it is clearly about the centralisation of power in crisis situations. The policy document mentions a 'commander-in-chief' for the chair of the RCB. In turn, the Minister of the Interior gains the competence to give mandatory directions to this chair during crisis situations. 'If the latter then makes a mess of things, the Minister must be able to transfer the authority to the Queen's Commissioner,' according to Remkes. What it boils down to is that in the event of terrorism and other great disasters the Minister gains the possibility of setting aside the local authorities. This is particularly important because, after the murder of Theo van Gogh, there was a big row with the mayors of Amsterdam and of The Hague. The next time, the proclamation of the state of emergency should be made easier. According to Remkes, the current emergency legislation is based on war legislation. As we saw, this is a dubious argument, because this aspect has just been removed during the amendments to the Act in the nineties. Nevertheless, the Minister is of the opinion that: 'Between the normal administrative set of instruments and those based on war legislation for a state of emergency, there should be something that makes it easier to intervene administratively.'
The means of doing this was to install Ministeriële Beleidsteams [Ministerial Policy Teams] (MBT), specialised ministers on whose territory the crisis was taking place, with the chairman usually being the Minister of the Interior. The chair of the MBT would be authorised to put sector specific emergency legislation into operation. The proposal for this would go through the Prime Minister. The difference from the present situation is

therefore that the Council of Ministers in its entirety is bypassed when the crucial decision is taken. The judicial effects of this are still being studied. It could well become a form of authorisation, a manner that has also become extremely popular in managing the activities of the secret services. An alerting system was to be developed in order to inform all the sectoral and regional authorities in good time of the phase of the state of emergency in force and the consequent measures. The business community would also be involved. This system would be tailored to the NATO Crisis Response System (NCRS).
For the 'enforcement' at local level, in times of emergency people fell back on a fossil from the darkest time of the Cold War, namely the Institute of the Knights of State. The Knights of State were local dignitaries, such as the director of the Chamber of Commerce, the Commissioner of Food, the chief engineer the Ministry of Public Works and Water Management, the regional military commander and the chief public prosecutor. The original intention was that the Institute of the Knights of State would be activated if contact with the government was lost, for example, as a consequence of a nuclear war or a military occupation. But in the plans they are to be used for a completely different purpose, they are to be activated after (once again!) an authorisation of the specialist minister concerned. The memorandum *Crisisbeheersing* (Crisis management) states: 'During the Cold War, consultation with the Knights of State formed the decentralised forum under the leadership of the Queen's Commissioner for measures in the context of civil defence. Formally, this agreement is still in existence. In the recent bill relating to modernisation of emergency legislation of the ministries of Transport, Public Works and Water Management and of Economic Affairs, the Knight of State was once again positioned and operates according to mandate the competencies attributed to a minister on the basis of emergency legislation.'
Outside officialdom, few people will have known much about the existence of this institute. Now the Knights of State get their own plans and competences and the above-mentioned local crisis committees RCBs will have an obligation to coordinate with these figures.

THIRD REICH

The editor-in-chief of *Het Friesch Dagblad* gave a scathing commentary on these plans:
'The new laws to combat terrorism do not only mean that the government will want to know about the activities, movements and contacts of the citizens more often than previously. It also means really essential civil rights can be temporarily rendered inoperative. If the new warning system that is coming into force next year indicates the highest level of alert, the government can decide that the freedom to demonstrate, freedom of speech or freedom of movement should be limited. In fact, what it amounts to is that during such a period, the government, with the national coordinator of security at its head (Mr Joustra, a sort of terrorist Tzar who comes under the Minister of Justice as well as under the Minister of the Interior), has dictatorial powers at its disposal.'
'There are great dangers in giving dictatorial powers to members of the government in emergency situations. The history of the establishment of the Third Reich before the Second World War provides a terrifying substantiation for this proposition. Hitler used instruments that democracy offered him to render democracy inoperative. One day after the Reichstag fire of 27 February 1933, defined as an act of Communist terrorism, an

emergency law was adopted, which entailed the suspension of fundamental rights. On 24 March 1933, in the wake of the emergency law, an *Ermachtigungsgesetz* (Enabling Act) was adopted that in the case of emergency gave the government authority to take measures outside parliament. In this way, for twelve long years, the Third Reich was founded on a permanent state of emergency.'
(…)
'If the highest state of alert is reached in the new warning system, the exceptional powers will undoubtedly be in safe hands in such a convinced democrat and defender of the state under rule of law as Minister Donner. But what happens if ever, maybe dozens of years hence, there were people in government who cherished other ideas about the point of some fundamental rights?'

To date, the Second Chamber has reacted extremely laconically to these developments.

7 POLITICIANS AND COUNTER-TERRORISM

'It seems as if there is less and less interest in backgrounds, politicians hardly listen any more to the stories we want to tell them.' The speaker was Cees Wiebes, an expert in the field of intelligence services, during a round-table discussion on counter-terrorism that we organised in May 2005. The other people present and we ourselves often experienced the same lack of depth in many politicians.
This chapter is about politicians. On the basis of remarks made in newspapers and in debates in the Second Chamber, we are examining the understanding of, and ability to act against, terrorism of a number of politicians. We are imposing a number of restraints on ourselves because the prototype of a Second Chamber member does not exist. Furthermore, it is impossible to analyse all the remarks and debates. We are restricting ourselves to the top people, the party leaders and spokespersons, and then not all of them. The second restraint is the period of time. To be specific, we have looked at the period from mid-March to mid-April 2004, the period just after the attack in Madrid. In addition, we have looked in detail at a number of interesting developments, for example, the debates on the banning of organisations and viewpoints about the AIVD report *Recrutering voor de jihad* (Recruiting for the jihad). In other words, we are not claiming to present a complete picture of how politician deal with the debate about terrorism, but to provide insight into a number of mechanisms.

THE AIVD

After the fall of communism, when the historical enemy of the West disappeared, the AIVD focused on radical Islam. In one of its first public reports, the AIVD stated that 'a possible side effect of migration from South European and North African countries in which far-reaching radicalisation or fundamentalism took place could have repercussions on the relations between these migrant groups in the Netherlands and on their attitude with regard to Dutch society.' (from *Ontwikkelingen op het gebied van de binnenlandse veiligheid,* [Developments in the field of national security]11-2-1992)
The AIVD took the possible threat seriously. In consecutive years, the service noted that small groups of militant Islamic fundamentalists were active. There was concern about the consequences for integration and about the possibility that Muslim activists would launch themselves or be launched for foreign powers. They also considered prejudices against Islam in Dutch society. 'Reports on attacks of Islamic terrorist groups abroad have an extremely stigmatising effect on the total Islamic community in the Netherlands. This has damaging consequences for the integration policy', wrote the AIVD in its annual report for 1995.

Politicians were silent. Every year, one hour was spent on the annual report. But in spite of the new opportunity to ask the AIVD questions, it remained extremely quiet on the benches of the Second Chamber. Also in 1998, when the AIVD issued the report *De politieke islam* [Political Islam], no attention was paid to it. The Second Chamber members took only two hours for the report that was dealt with at the same time as the annual report for 1997. The then Minister of the Interior, Bram Peper, looked relieved during the general consultation: 'The report's contents provide reassurance for the

Netherlands in that the assessment of danger from political Islam originated from a very small group.' (TK 26279 no 2, AO 9 December 1998). Policy conclusions were not drawn. The warning issued by the AIVD that 'a continuing marginalisation of groups of Muslim immigrants in the long run will mask the danger that their support base will grow', was not taken seriously by anyone at the time. The service predicted that 'the consequence of this will be ideological polarisation between Muslims and the society around them, with all the damaging effects for the integration process and the peaceful and democratic co-existence of various cultures'.

A similar silence from the government and the Second Chamber would follow much more frequently. This also happened in December 2002, when the AIVD published its memorandum *Recrutering in Nederland voor de jihad* [Recruiting in the Netherlands for the jihad]. At that point it was after the fatal attacks of 11 September 2001 in the USA, but once again the politicians showed their worst side.

In the report, the AIVD described in guarded terms the threat to which the Netherlands was exposed. The report presented an overview of profiles of recruits and recruiters, discussed the process of recruitment and examined recruitment in the context of the changed world after 11 September 2001. The AIVD warned of an increase in recruitment. The service had 'clear indications that from circles of recruiters and recruits established in the Netherlands initiatives were being deployed in a more professional manner in order to extend the number of recruitments in the Netherlands for the jihad and to optimise the direction of recruits to paramilitary training camps or Islamic scenes of action. '

There were a few dozen young people in a recruitment phase: youngsters between 18 and 32 years old, indigenous, recently immigrated youngsters and (the largest group) second or third generation immigrant youngsters. Amongst other things, the AIVD noted 'second or third generation problems, that had become apparent earlier in Dutch society, most explicitly in the case of Moroccan youngsters. The young people concerned were often searching for their identity. They reproached Dutch society for lacking respect for their ethnic and religious community and last but not least for their parents and for themselves.' The service also warned of an increasing global polarisation: attacks like those of 11 September were in that sense also a form of successful provocation, the reactions to which have been over-generalised. The AIVD saw stagnating integration and inadequate acceptance of Muslims as a breeding ground for radicalisation. 'First and foremost, we need to prevent a deep gulf emerging between Muslims and non-Muslims', according to the service. The final conclusion of the AIVD was that the government, together with moderate forces in Dutch society, both Muslims and non-Muslims, should avoid alienation of Muslims.

Johan Remkes, Minister of the Interior and Kingdom Relations, wrote that 'the efforts of the AIVD in this area have produced much new information about the risks of the recruitment phenomenon as an early stage of a process that can lead to terrorism'.

According to Remkes, the trend of radicalisation was clearly visible. He thought that there should be intervention at an early stage. 'To this end, a halt is being called to recruiters with legal means where possible, attempts are made to halt the recruits on their disastrous path, the sources of inspiration are called to account and radical Islamic networks are dismantled. This is an essential complement to a rigorous approach to the recruitment activities.'

It is interesting to see what happened next with this report. In view of the importance that politicians have attached to the intelligence services since 11 September, you might imagine that the contents of this sort of report would be taken seriously. In any case, on this occasion, a separate Chamber debate (on 17 December 2002) was devoted to it. However, it is depressing to read once again what politicians actually picked up from such a report.

The government parties at the time did not beat about the bush. The LPF linked the memorandum to the failure of the integration policy. Eerdman, the LPF spokesman, stated that in spite of the billions spent on the integration of minorities the government had not succeeded in preventing the emergence of a fundamentalist Islamic breeding ground. His conclusion was that a U- turn was needed in integration policy. 'We've had enough of the government support of integration projects that are purely focused on immigrants' said Eerdman.

What Geert Wilders (at the time still in the VVD) interpreted from the report was that 'more and more militants of the jihad are settling in the Netherlands' Yet in fact, in the report the AIVD described how, at the beginning of the nineties, radical Muslims from Afghanistan were swarming all over the world. Wilders also emphasised the failure of the integration policy. 'The fact that recruitment for jihad militants is no longer incidental, but takes place as a regular tendency among first and particularly second and third generation immigrants indicates the failure of the integration policy, now that increasing numbers of immigrants are clearly turning their backs on Dutch society.' After that Wilders was considering answers to parliamentary questions that he had asked about the financing of certain mosques by Saudi Arabia. In the memorandum about recruitment, the AIVD reported that recruitment did in fact also take place in orthodox mosques in the Netherlands. 'Finding potential recruits there is relatively simple for the mujahidin. All they need to do is to join in the prayers, discussions and activities to come into contact with these young people', according to the AIVD. However, the AIVD also reports that 'spotting' certainly does not only take place in the mosques. Islamic centres, coffee houses and particularly prisons also turn out to be suitable locations for making the initial contacts and discussing the Islamic conflict.

Ella Kalsbeek of the PvdA put into perspective the importance that the government and part of the Second Chamber attached to integration. She had noticed that the AIVD reported that 'the young people who were recruited in the Netherlands were of Dutch nationality and often of Moroccan origin and that neither in level of education nor in the extent of the orthodoxy could they be distinguished from other Dutch/Moroccan youngsters'. 'It is not those who are poorly integrated who are susceptible to recruitment', said Kalsbeek. She also alluded to the statement of the AIVD that the Islamists concerned did have a thorough understanding of the 'favourable' polarising effect of Islamic-inspired actions of violence. These stimulated the prejudices of the Dutch population against all Muslims, as a result that among them alienation from Dutch society was growing. Kalsbeek stated that the fight against alienation has 'evaporated' and that 'people can say whatever they like.' 'And that's what happens too, including putting entire sections of the population in a bad light', according to Kalsbeek. The PvdA was asking the cabinet for a more comprehensive vision than that already given.

Via its spokesperson Eurlings, the CIA concentrated all its power on the failing integration policy that would have to be managed with a firm hand in the years to come.

‘If newcomers do not learn our language and have no idea how our society is constituted, then there is a good chance that their children will fall between two stools.’ The CDA would also like a legal approach to the recruitment, such as a ban. Eurlings put a number of questions to the government, particularly on the last issue.
D66 seemed to have studied the report in more detail and indicated the problem of alienation and the perspective that young people should be offered in our society. Boris Dittrich stated that the development should be turned around by tracing the recruiters and prosecuting then, but at the same time it was equally important that young people who were receptive to the recruitment should be given another perspective. The government itself was seeking far too many solutions in the legal area. It was giving notice of an extension of the Wet Terroristische Misdrijven [Crimes of Terrorism Act]. Attracting members for a terrorist organisation and recruiting people for the armed fight would be made punishable by law. However, Johan Remkes, Minister of the Interior clearly dissociated himself from the picture that the government parties were painting of the integration policy. ‘I think that this is a wrong standpoint, which is also not corroborated by the argumentation in the AIVD memorandum. What should be established is that a number of shifts of emphasis, clarifications and highlighting of the integration policy should take place. That is quite different from declaring the policy a failure.’

Whereas the AIVD is particularly focused on the recruiting process and the international context, the government parties singularly lack depth and nuance. It is perhaps easier to talk with hindsight than in December 2002, but it seems very much as if an important warning from the AIVD was bogged down in a debate in which hobby horses (integration, ban organisations and shut down mosques) monopolised the discussion. It is not the first time that this has happened: for example, anyone reading the reports of the debates over the annual reports of the AIVD sees a Second Chamber that resorts to its hobby horses in the issues of the day.
In a candid interview in *NRC Handelsblad* of 31 December 2004, Sybrand van Julst, the head of the AIVD, said he had never made a secret of the fact that it would be very stupid to ignore the warnings of the AIVD in nearly all the annual reports. ‘There’s nothing easier than being wise after the event. But I do think that politicians are increasingly realising that perhaps things should have been changed earlier. It has always amazed me that politicians haven’t really raised the alarm as a result of our annual reports. Even before the attacks in New York, in 2000, we expressly indicated an increase in terrorist threats. Also before 2001, we spoke about Osama bin Laden. In 2000, we confirmed in our annual report that our society was under increasing pressure. That was a severe statement. However: not one word from the politicians. It really surprised me very much’ said Van Hulst in the *NRC*.

ISSUES OF THE DAY

Years of calm weather can come to an end as a result of one severe storm. In furious waves of indignation, more and more politicians spout their outrageous language. Maxime Verhagen, the CDA chairman, scarcely used the word ‘terrorists’. For about three years, he talked about ‘all the scum in the world’. When Geert Wilders was talking

about deporting imams to their country of origin, he said that they should be sent back to their cave.

A review of all the actions of a number of politicians in the month of March 2004 reveals that the main interest was in political games and scoring points off each other. Very little thought was given to the sense and effect of certain measures against terrorism.
On 11 March 2004, Madrid was shaken by a number of gruesome attacks. It was a few days before the Spanish elections and the Conservative government of Aznar initially took a united stand against the ETA. However, it soon turned out that the attacks had come from the Muslim fundamentalist section. In the following week, dozens of suspects were arrested and the first five were arrested within two days. All were said to be members of the Islamic Combatants Group. In addition, it soon became known that a number of suspects had featured previously in investigations into Al Qaida in Spain and in the investigation into the bomb attacks in Casablanca.
Understandably, people in the Netherlands reacted with horror to the events in Spain. The attack was unanimously condemned. In particular, the shock was caused by the fact that Europe was now also confronted with this form of terrorism. But people were quick to draw conclusions. Whereas you might expect that expressions of sympathy would be adequate, politicians had the tendency to draw conclusions immediately and to announce measures.
PvdA Member of Parliament, Bert Coenders, found that ‘once again it has turned out that the cooperation between the various intelligence services has failed. They should be obliged to share their information about terrorism.’ The Belgian Prime Minister, Verhofstadt, on a visit to the Netherlands, suggested forming one European intelligence service. One Dutch politician after another embraced this idea unquestioningly. VVD Member of Parliament, Wilders, called the existing cooperation between the national services ‘medieval’. Camiel Eurlings (CDA) thought that striving for a European intelligence service was ‘highly desirable’. In the opinion of PvdA member of parliament, Albayrak, ‘every day spent waiting for more cooperation was one too many’.
At that point, of course, Dutch parliamentarians had to react, express criticism, think about policy and preferably make appropriate proposals. The only problem was, and it was a big problem, that this should be done on the basis of known facts. These reactions were not only premature; they also lacked any great depth of knowledge. It was premature because, certainly in the first days after the attack, the conclusion that there was poor cooperation between Europeans could not be drawn. The swift arrests rather indicated the opposite situation. However, in the first instance, the suspects were active in Spain and/or Morocco.
In addition, the qualifications for the cooperation between European intelligence services was somewhat presumptuous for politicians who in the preceding years had not paid any attention to that cooperation in any way when discussing the AIVD annual report or the Councils of Justice and of the Interior. Not only the annual reports of the AIVD, but also studies of the European Union Institute for Security Studies, for example, show how the collaboration has worked and what the problems are. The question quite soon cropped up of why the Spanish police had not prevented the attacks. Various services were using informers who were aware of the purchase of explosives. Was the Spanish police

dysfunctional? This was another question that had not until then been posed, but which, in view of the importance of such collaboration, is indeed important.

The reaction of the government also seemed to be based on quicksand. In a letter to the Second Chamber of 31 March 2004, the Minister of the Interior and Kingdom Relations described the need for new measures. At that point, the investigation in Spain was still ongoing, but it was very clear that nearly all the suspects had links with the Group Islamic Combatants. Yet in his letter, Remkes wrote that 'the attacks in Madrid seem to indicate a much more diffuse method of operation in the organisation and preparation. Where perpetrators and organisations take refuge behind their potential victims and take cover under a pattern of apparently normal social activities, tracking information, surveillance and any possible investigations and monitoring will not be able to be as focused. That means that more than previously there will have to be an attempt, by exchange of information between diverse government services, by linking databases and by an exchange and coordination of information, to find the "suspect deviation". This applies not only at the national level but also particularly at the international level, in view of the cross-border nature of both the threat and the preparation. Therefore, the exchange and collaboration between intelligence and investigation services will be intensified and the synergy between various files must be improved.'
On the basis of the facts from Spain, with (some) known suspects (later it would turn out that even more information was available from informers, see the chapter on the AIVD), linked to extremist fundamental Muslim organisations, what you would expect would be that the appropriate capacity would be released for focused investigation or surveillance. The Spanish dossier did not in any way point to perpetrators who 'take refuge behind their potential victims and take cover under a pattern of apparently normal social activities'. Not until after the attack in London of 7 July 2005 would such a conclusion be drawn. On the occasion of that attack, however, the government kept completely silent.
Anyone who consults the literature about it will see that profiling was still in its infancy. This is not only because of the enormous technical problems, but also because it seems to be well nigh impossible to set up good profiles.
The AIVD views data analysis as an option, but in fact cites the formulation of the profiles as a big problem. Not only is the profile of 'Muslim terrorists' difficult to compile, but the problem also crops up that in profiling use can only be made of registered data. The AIVD also talks of the creation of myths among politicians and condemns the lack of consultation. It warns of unrealistic expectations in this area. During all the debates there have been on terrorism, not one Second Chamber member has devoted any attention to this subject.

THE CREATORS AND LEADERS OF OPINION

March 2004 was an extraordinary month. Just before the attacks in Madrid, Remkes sent a new report from the AIVD, on recruitment, to the Second Chamber. The memorandum gave a brief summary of what the new insights were in the field of recruitment. In comparison with the memorandum that appeared in December 2002, it was particularly noticeable that the AIVD stated that 'to a certain degree, political radical Islam has gained an autonomous basis among Dutch Muslim youngsters. A number of politically

radical Muslims are turning to violent jihad. This is taking place within a European form of political radical Islam. Young people are driven both by the foreign context and by domestic developments.'

The domestic developments, referred to by the AIVD caused a lot of upset. The service stated that 'it can be noted that a growing number of Muslims feel badly treated by opinion-makers and opinion-leaders in social intercourse. Moreover, in their eyes it seems as if the government does not act – or does not act adequately– as an impartial arbiter. This notion is current among the small group of politically radical Muslims, but also among a large section of Muslims that does feel linked with, and considers itself bound by, the principle of the democratic state under rule of law. In particular, young people from the second and third generation of immigrants seem to take the supposed alienation between society and Muslim citizens very badly. This group of young people, considering themselves to be badly treated, forms a principal pool of receptive persons for radicalisation and possible recruitment.'

This statement was perhaps the AIVD's way of stimulating a debate on the manner in which opinion-makers and opinion-leaders relate to Islam. What happened, however, was completely different: opinion-makers and columnists felt pushed into a corner by the AIVD. 'It's a topsy-turvy world', said Geert Wilders (then still in the VVD), for example, in the *Algemene Dagblad*. 'I am quite certain that nobody here in the Chamber is seriously planning to drive apart sections of the community. If I am critical of Moroccan youths, then I mean criminal Moroccan youngsters, not the entire immigrant population. It is not my responsibility if people only listen with half an ear and then draw the wrong conclusions', said Wilders. Joost Eerdmans (LPF) also said in the *AD* that he saw no reason to tone down his statements. 'On the contrary, I will continue to make clear what the risks are of radical Muslims. The AIVD's conclusion was alarming. The messengers are the bogeymen.'

Arendo Joustra, editor-in-chief of the weekly, *Elsevier*, said he could make neither head nor tail of the AIVD's conclusions. 'If a journalist wonders what the effect is of what he writes then he stops being a journalist. If, with everything that you say, you have to think that it might upset a young Muslim, then we have to ask ourselves what we are doing.'

In *Het Parool*, professor and columnist, Paul Cliteur, said that he could see a dangerous tendency in AIVD's 'statement'. 'If it's not possible to debate about political views and religion, then that's the end of the debate.' According to Cliteur, the AIVD was aligning itself with the views of Paul Rosenmöller, Hans Dijkstal and Job Cohen, who in his opinion think that the debate on integration had become too inflexible, as a result of which groups are opposed to one another. 'Does the problem reside with those youngsters or with the indigenous left-wing elite? Shouldn't Cohen make a firmer stand against the critics of the integration policy? The political elite does not stand resolutely enough for civil rights.' According to Cliteur, 'Cohen and his adherents, and now the AIVD, are trying to exclude certain people from the debate.' Columnist Afshin Ellian of the *NRC* also found the reasoning of the AIVD in *Het Parool* senseless. 'If a person is attracted to the jihad then that is an individual decision.' In his opinion the AIVD was making a political comment and not a security analysis. 'A small majority of Muslims are being taken as a representative measure.' For the jurist, originating from Iran, this is all the more evidence that the Netherlands is having problems with freedom of speech.

On this occasion, left-wing members of parliament were very satisfied with the AIVD analysis, according to *Het Parool*. ‘People who are treated as enemies are going to behave as enemies. My trust in the AIVD is increasing’, said Groen-Links Member of Parliament, Farah Karimi. The PvdA Member of Parliament, Ella Kalsbeek, also considered the AIVD statement to be well-founded. In her opinion, polarisation of the debate is unavoidable. *NRC Handelsblad* was keeping its ear to the ground to find out what people from migrant organisations thought of the AIVD analysis.

Haci Karacer, director of the Turkish Muslim organisation, Milli Gorüs, found the columnists’ reaction striking. ‘If the intelligence service, AIVD, makes a report about Islam in a negative sense, the service is a reliable source. Politicians and other opinion-makers do not bring up that information for discussion. Now that the AIVD is saying: ladies and gentlemen, can you please change your tune, because your remarks are likely to chase immigrant youngsters into the arms of the jihad, they think that the AIVD is turning the world upside down’, said Karacaer. Continuing criticism of Islam made Muslim youngsters feel excluded, thought Karacaer. ‘As a result, they have less and less trust in Dutch society. That also applies to more educated young people. And the moderate section, which fortunately still exists in the Netherlands, does not have a voice. That is why they cannot put into perspective those attacks on their faith. They get the idea that everyone thinks like that about them and about Islam.’

Sadik Harchaoui, director of the centre for multicultural development Forum, stated in *NRC Handelsblad* that there was an increasing ‘them and us’ feeling. ‘Bridge-builders are out, the emphasis now lies on the religious differences, as a result of which immigrant youngsters are shorn of their individual identity. At the end of the day, they are still always that slow-witted Muslim. That results in the youngsters feeling that they don’t belong anywhere and makes them receptive to radical Islam.’

However, the columnists and politicians seem to be more interested their own individual position than in people joining in the debate. During a party council on 12 March 2005, the VVD leader, Van Aartsen denounced the suggestion in the AIVD report. ‘Minister, look at what your service is doing.’ Just like Geert Wilders, Van Aartsen thought that ‘the AIVD is turning the world upside down’ by stating in a report that ‘in the Netherlands more and more jihad militants are being recruited because opinion-makers are treating the Muslim communities without respect’.

The columnist, Paul Cliteur, even went to the extent of withdrawing from the public debate. He felt that he was being pushed too far into the field of inappropriate opinions by other columnists. ‘I feel that the climate of debate in the Netherlands is threatening. You can say hostile things about me, but not that I am a Nazi or a fascist, or that I am stigmatising the alien. That threatens my reputation as an honest researcher’, said Cliteur in an interview with *de Volkskrant* on 26 March 2005. ‘That AIVD report adds to that feeling. Evidently, I’m adding fuel to the fire of the jihad warriors. Then you think: should I maybe express my views on Islam differently? I find this very difficult because my life is as a columnist of free debate. The world has made progress through the Reformation and through the Enlightenment. But the politicians have just let that AIVD report go ahead. There is pressure to moderate expression in everything that is said about everything connected with Islam. But there is nobody standing up for the freedom of expression.’

It was a misguided fuss about the simple statement of the AIVD that ‘a growing number of Muslims feels badly treated in social intercourse’. In any case, the majority of the opinion-leaders argued that they only had criticism of a small radical section of Muslims. Would it not then be logical for them to put their hand on their hearts and to consider their reaction? Does the criticism perhaps seem too general and does that not in fact contribute to the ‘them and us’ feeling? However, Dutch opinion is only enraged about a spectre it has defined itself: the infringement of free speech. Finally, even the AIVD felt obliged to intervene. The head of the service, Sybrand van Julst, wrote in a piece in *NRC Handelsblad* of 26 March 2005 that ‘it should be stated that they (a succession of opinion-makers) pass over the actual comments made and the observing task of the AIVD’. Van Hulst repeated once again the actual statement in order to then make it clear that the AIVD was not saying that Muslims were justified in feeling wronged by remarks in Dutch public debate over Islam. ‘The service has merely observed that many Muslims feel wronged. The freedom of opinion-makers to see and to write whatever they want is not brought into question in any way in the memorandum. Moreover, the AIVD is actually one of the defenders of a constitution that guarantees that right.’ Van Hulst further continued that the purpose of the memorandum was also to give politicians, policy-makers and society insight into relevant developments in security, in order to defend themselves against threatening dangers. ‘In this analysis of relevant actual observations, it would be wrong to omit the more difficult issues,’ said Van Hulst.
In *Het Parool* of 9 April 2004, Minister Remkes said that he had read the infamous sentence a few times. ‘There is nothing wrong with it. The AIVD pointed out something and did not state an opinion. I wonder how many people actually read the sentence in question. With hindsight, you could say that I could have perhaps added a sentence about it in the covering letter. However, the image has arisen and it gave me no pleasure to observe it.’

According to Professor A. Verhagen, professor in Dutch Language, it makes quite a difference whether you write: ‘Opinion-leaders are treating Muslims badly or ‘Muslims feel badly treated by opinion-leaders’. ‘The first phrase places the responsibility of the occurrence with the opinion-leaders, the second at least partially with the Muslims. In the latter case, the unfair treatment is “embedded” in the perspective of the Muslims. If someone feels unfairly treated, there is plenty of room for the question of whether that feeling is justified or not, as opposed to when you are unfairly treated. If the AIVD had written the latter then Cliteur would have been right if he (as opinion-maker or opinion-leader) had taken it personally. However, the actual formulation provides little justification for the indignation.’
Verhagen was amazed that the rest of the text had not been added. ‘Well, here it is:… “In particular, young people from the second or third generation of immigrants seem to take the supposed alienation between society and Muslim citizens very hard. This group of young people, considering themselves to be badly treated, forms a principal pool of receptive persons for radicalisation and possible recruitment.” Nota bene: “supposed alienation”’, said Verhagen.
Moreover, Verhagen stated that in fact an opinion of the Balkenende cabinet expressed earlier in a memorandum of 24 June 2003 about counter-terrorism was being repeated. ‘Donner, Minister of Justice, wrote in it about the consequences of the attacks of 11

September 2001: “At least equally damaging was the growing mistrust of the population in western societies towards Muslims living in their community. It gave many Muslims the feeling that they were no longer welcome in the West, and drove a section of them in the direction of radical-Islamic factions.” These were therefore statements for which the responsibility is taken by members of the government, who can hardly be suspected of exaggerating multicultural tendencies.’

LAX AND NAÏVE

The VVD leader, Jozias van Aartsen was responsible for a number of extraordinary statements in that month. In the course of a lecture in Sneek, Van Aartsen dubbed the cabinet policy ‘lax and naïve’. The *NRC Handelsblad* of 16 March 2004 noted that Van Aartsen reproached Donner for putting up a smoke screen to conceal his ‘lax attitude’. What the minister should have done instead of ‘putting up smoke screens’ was to have adopted a truly ‘Churchillian vision’ on the fight against terrorism, ‘which is going to be a long fight’, according to Van Aartsen. ‘Certainly, after the attacks in Madrid last week, it is time to abandon laxity and doubt and to take steps.’
Van Aartsen was alluding in particular to the action against mosques, so fervently desired by the VVD. Donner was also said to ignore the wish of the Second Chamber to denounce financing of fundamentalist faith communities and Donner did not want to modify the Civil Code in order to institute civil or criminal proceedings against religious organisations.
In *NRC Handelsblad* of 20 March, the VVD intensified its attack on the government’s terrorism policy. In an opinion column, Ayaan Hirsi Ali and Geert Wilders (then in the VVD) posited that the cabinet reacted badly to the threat of terrorism. In a strongly-worded article, they wrote that the cabinet, and particularly the Minister of Justice, could not deal with reality after 11 September 2001. ‘Anyone who thought that 11 March 2004 would have roused the cabinet from its dogmatic sleep would be wrong. The cabinet shows no sense of urgency, inadequate political willpower and especially a lack of administrative dynamism when it comes to national security.’ The lack of a sense of urgency, according to Hirsi Ali and Wilders, can be seen from the fact that in the Netherlands, as opposed, for example, to Great Britain or France, no extra measures have been taken to protect the Dutch citizen against the threat of terrorism. In addition, the cabinet has not sufficiently acknowledged that the terrorist threat in the West comes largely from an extremely small section of Muslims, the radical Muslims. ‘The political correctness of the second Purple Cabinet has now been succeeded by a Christian political avoidance culture’, according to Ali and Wilders. The two members of parliament concluded with an appeal to Prime Minister Balkenende not to yield to those ‘who say that whenever you mention the enemy by name, or whenever security measures are actually introduced, the Netherlands will become a target for terrorist actions. The Minister of Justice is reproaching us that because we are naming the danger of radical Islam we are unleashing a war of religion. The AIVD is suggesting that opinion-leaders in the Netherlands are driving young Muslims into the arms of the jihadists.’

It was a strange reproach that the VVD spat out in that period. A month earlier, the Second Chamber was debating the financing of imams by the Embassy of Saudi Arabia.

During the debate, Remkes was also in favour of adopting a stringent approach to Saudi Arabia. According to Remkes, the AIVD were closely monitoring the missionary activities from Saudi Arabia. The sowing of hate or anti-western preaching had not been confirmed, but, according to Remkes, 'should incontestable proof of this be found, then I can assure you that the judiciary will be called in immediately'. Remkes also gave notice of a report on this by the AIVD.
In September 2003, Minister Donner had already indicated where, in his opinion, the distinction lay in the definition: extremism or terrorism? 'Terrorism has more connections with methods. Extremism is related to radicalisation in society, whereby a number of elements can be handled via criminal law, such as provocation, insults, racial discrimination and the spreading of hate', according to Donner. 'If offences or manifestations are reported in the mosques, legal action can be taken against the persons or the board concerned, which has already taken place in situations which have arisen. The Civil Code outlines the possibility of banning and disbanding civil rights organisations and there is a special clause with respect to religious communities.'
At that point, laxity and doubt were not apparent from other ongoing dossiers. In those months, efforts were made to improve the exchange of intelligence, the Second Chamber considered recommendations of the ACVZ on policy regarding aliens and combating terrorism and at the end of February a quick scan of terrorism financing and non-profit organisations was published at the same time as the second AIVD memorandum on recruiting. Legal action against mosques, emphasised so heavily by the VVD, was actually just a small part of the overall set of measures. The VVD was completely engrossed with this to the exclusion of other matters.

Van Aartsen focused on the other point, the naivety of the cabinet, in an interview with *Elsevier* and during the debate of 14 April 2004 on the measures taken by the Spanish government. In the interview with *Elsevier* on 10 April, Van Aartsen reacted to a question posed by the journal about the actions of Prime Minister Balkenende after the European summit of that week. According to *Elsevier,* Balkenende had pressed his European colleagues to act against the Islamic terror not only by deploying the police but also by having a dialogue with Muslims and by development aid. Van Aartsen could see neither rhyme nor reason in his approach. 'Balkenende's analysis is illogical. The fact is that there is Islamo-fascism, as *Die Zeit* journal calls it. Dialogue and development aid are not going to make a scrap of difference. The attacks on the WTC in New York were not carried out by poverty-stricken Congolese or West Africans who had lived in appalling circumstances for years, but by rich Saudis. Equally, everything points to the fact that the attack in Madrid was carried out by Moroccans who were certainly not deprived.' A few days later, during the debate on Madrid Van Aartsen added fuel to the fire.
During this debate, Van Aartsen accused the cabinet of glossing over terrorism by paying too much attention to the breeding grounds of terrorism. 'The cabinet should not make the mistake of more or less justifying terrorism by saying that the poverty in the Third World in some way explains what is happening in the world. We reject the theory of the breeding grounds. I can provide a very clear answer to this – I would call it a dangerous rationale,' said Van Aartsen. Prime Minister Balkenende reacted with annoyance and asked Van Aartsen to quote chapter and verse. The latter explained that what he had said

referred to a press conference in which the German Chancellor had supported this theory. 'During the press conference after the European Council, I noticed that you used exactly the same words,' said Van Aartsen. Balkenende then repeated his words at the press conference ('Trying to understand why people commit these types of hostile acts and addressing those factors may never be an excuse for inaction and lack of commitment of resources for the fight against terrorism') and he was plainly annoyed when he added that 'I have never ever done anything like glossing over. I resent what Mr Van Aartsen has said.' Van Aartsen then retracted his allegation. 'If this was the wording of the Prime Minister's statement after the European Council then there is no difference of meaning at all between the Prime Minister and myself.'
However, did Van Aartsen actually mean that every discussion about the background and breeding grounds of terrorism was whitewashing terrorism or not? That was something that Rouvoet (Christian Union) also wanted to know. 'I would appreciate it if he would recognise that there is a difference between looking for explanatory factors, which could play a role in the policies that ensued, and on the other hand so easily calling it "whitewashing". I think that this has caused the debate to be unnecessarily edgy and a suggestion has been generated that Mr Van Aartsen wouldn't have wanted to generate,' said Rouvoet. Van Aartsen then stated that 'the VVD wanted to keep entirely separate the story of the breeding ground and what happened in Madrid, New York and Washington and is occurring in other parts of the world. If this connection is made in some way or other, if it is seen as an explanatory factor, then we are embarking on a process of more or less justifying the actions. We don't want to do that'.
In an editorial comment of 15 April 2005, *NRC Handelsblad* commented that 'Van Aartsen once again played the role of getting under the Prime Minister's skin. However, whereas he usually places his comments gracefully as with a fencing sword, his recent contribution was more like a dull thud: not only did he accuse the cabinet of being "lax and naïve", but he also accused the Prime Minister personally of whitewashing terrorism. Balkenende had previously made comments about the "breeding grounds" for terrorism. Van Aartsen clearly went too far, and he realised it too, judging by the speed with which he withdrew his characterisation after Balkenende had stood his ground.'

How deeply that realisation actually extended is highly doubtful. In June 2005, Van Aartsen once again resurrected his old hobby horse. He explained to *Vrij Nederland* reporters why he still thought that he was right. 'Balkenende was naïve because he laid too much emphasis on causes of terrorism, such as poverty in the third world.' Van Aartsen: 'I spoke in very clear language about the need to fight terrorism and it was not appreciated. I was depicted as an alarmist. There was rather a feeling of: there is so much hunger and poverty in the world and you shouldn't be too surprised if such things happen. Whereas I think: it's certainly not poverty-stricken people in African villages or in Indian slums who grab the Semtex and the bombs. The danger comes from well-educated youngsters, intelligent people who know exactly what they are doing. They are certainly not pathetic creatures. I was then very worried about a small minority of Muslims in the Netherlands who are under the influence of foreign clerics. The VVD has always said: this is a problem and you should arm yourself against it. Our Dutch nation has found it very difficult to recognise that war has been declared against us and that we have an enemy. That penny has been slow to drop.'

More than a year later, Van Aartsen greatly exaggerated the view, quite removed from reality, in which he once again exposed the cabinet that in all sorts of letters reported to the Second Chamber the wish to pay more attention to the breeding grounds of terrorism. In fact, Van Aartsen was playing a dangerous political game, which was primarily intended for the media that walked into his trap with open eyes. It was dangerous in the sense that it completely blocked every open discussion about the breeding grounds of terrorism.

UNFAMILIARITY AND UNCLEAR STRATEGY

Unfamiliarity with the approach to terrorism sometimes also leads to difficult and occasionally inexplicable choices. One example of this is the banning of organisations that are on the assets freeze list of the European Union. Chapter 5, Squeezing, examines these lists in some detail. The Netherlands has dutifully co-operated with the assets freeze lists of the UN and the EU. There was actually quite a lot of protest in the EU, for example when other countries pushed to have the Kurdish Socialist Party, (PKK), on the list. In the first instance, there was a lot of uncertainty among politicians about the status of the lists. Could organisations that were on the list be banned or was it really just a matter of squeezing the financial assets? When it turned out that the lists indeed concerned the freezing of finances, in September 2002, the leader of the CDA, Maxime Verhagen, came forward with a motion, which was adopted by the Second Chamber. Verhagen urged the government to submit proposals to actually ban the organisations that were on the EU list.

In November 2002, the Minister of Justice, Piet Hein Donner, reacted with a very detailed letter (criminal law proceedings against terrorist organisations TK 28666, no.1). He explained the status of the lists, indicated what possibilities criminal law already provided and concluded that banning in fact had only negative consequences. One of the problems that Donner predicted was that merely being recorded on a list would be enough for a ban. Donner's caution in using the list as a basis for a ban was due to the fact that it was not a legal decision that determined whether an organisation featured on that list, but 'also data from the intelligence or investigation fields that have not been certified in the form of a legal judgement'. Moreover, Donner was also of the opinion that with other legislation (art. 140 and 140a) any contribution to a terrorist organisation was already liable to punishment.
Taking enforcement into account, Donner doubted whether it made any sense to issue a ban. In any case, banning an organisation did not mean that its activities stopped. 'A legal ban will exert a more negative than positive influence on the intelligence and investigative practices. Legally banned organisations will go underground, with the risk that they will disappear from sight', according to Donner.
The Second Chamber did not like the answer and in considering the European Treaty relating to the recognition of the legal personality of non-governmental organisations (TK 28764) the VVD party again introduced the statement of prohibition. The VVD wondered if the Netherlands was becoming the export country of the recognition of terrorist organisations. 'The members have had every backing to act effectively against terrorist organisations. It surely cannot be the case that Al-Qaida-like organisations in the

Netherlands are recognised because the Conflict of Laws Corporations Act is based on a broad theory of incorporation and because public order exceptions are used very sparingly?'
In June 2003, when the Belgian Arab-European League announced that it was going to be based in the Netherlands, the then CDA Member of Parliament, Camiel Eurlings, suggested that the organisation should be banned as a preventative measure, a step further than banning organisations on the lists.
It seemed as if the government had already taken that step. On 24 June 2003, for the first time, the government came forward with a broader vision on the combating of terrorism. Many new measures were announced, including the following striking statement: 'The banning of terrorist legal persons who are on the "assets freeze lists" will be included in the Civil Code. The basic principle hereby is that it is sufficient that the legal person concerned is placed on the assets freeze list.' This change in opinion about the point of the statement of prohibition occupied less than one paragraph in the memorandum. In the general consultation of the Justice committee of 30 October 2003, the government's memorandum was on the agenda. The committee members did not say one word about the change of direction in Minister Donner's viewpoint. Even the opposition parties remained silent.
On 10 September of that year, the government sent a new letter about counter-terrorism to the Second Chamber. As a result of the attack in Madrid and the increased threat of terrorism in the Netherlands after the arrest of Samir A., although the murder of Theo van Gogh had not yet taken place, the government came up with a number of proposals to intensify counter-terrorism. A section of the letter concerned proposals to take legal action against legal persons who were supporting terrorist activities. In its report, the Financiële Expertise Centrum [Financial Expertise Centre] (FEC) had stated that there were few possibilities of monitoring foundations. In 2003, there were only three foundations of which it could be stated that they were involved in financing terrorism. In its letter, the government proposed improving the possibilities of monitoring.
Once again, it was announced that the Minister of Public Prosecution would make use of 'its authority under civil law with respect to legal persons', which meant nothing less than instituting the statement of prohibition. It turned out that the Ministry of Public Prosecution had started a pilot study to look at the possibilities in that field. According to the letter, it would involve an action at the court for the dissolution of a legal person, a request for statement of prohibition and suchlike.
On 21 December 2004, Minister Donner finally reacted to the criticism of the VVD and the CDA. In a letter to the Commission of Justice he solemnly declared: 'With these members it is of essential importance to the government to operate effectively against terrorist organisations.' Subsequently, he announced a memorandum of modifications in which he stated that 'the Ministry of Public Prosecutions at Utrecht can request a declaratory judgement that means that the purpose or the activity of a foreign corporation is in conflict with public order in the sense of article 2.20 BW.'
In theory, it was a logical modification, because equality was achieved with the possibility of banning Dutch legal persons on the basis of article 2.20 BW. Moreover, Donner also had the stipulation included that the EU list was given a special ruling. 'For both Dutch and foreign organisations on a terrorism list, it is stipulated by means of the memorandum that they are prohibited by law and are no longer competent to carry out legal acts.'
The memorandum of modifications was sent to the Second Chamber the same day. In it, Donner stated that 'the ruling provides a supplement to the sanctions system that ensues

from the European freezing regulations. These regulations are restricted to the freezing of assets. The proposed regulation is necessary in order to immobilise non-proprietary activities as well. Some examples of this are the banning of membership recruitment, the naming of board members (in order to be able to establish that weapons have been laid down) and banning the setting up of a new organisation (so that the whole thing could start again). Experience has shown that in general people cannot understand it if an organisation, whose financial assets are frozen because they are on a terrorism list, can still continue to operate and perhaps organise manifestations.'
In the chapter, Squeezing, we wrote that according to Donner a statement of prohibition was adequate by law because placing on the EU lists 'takes place on the basis of consensus within the 25 member states after careful consideration.' Within the period of two years, the Minister of Justice changed his opinion drastically. In 2002, Minister Donner referred to a prohibition as 'problematic', because it was not based on any legal judgement, the information frequently came from intelligence services and the measure 'was more likely to harm the possibilities of actually preventing and investigating terrorist crimes than that it would provide a useful contribution'. Two years later, it was a 'carefully considered procedure'. People lost sight of the real debate about the usefulness, necessity and effect of this measure'.

AIVD – BILL TO PROTECT WITNESSES

Political pressure plays a large role in the lack of development of vision in fighting terrorism. The prime example here is the pressure that the Second Chamber, soon after the failure of the second terrorism trial in Rotterdam, put on the government to come up with a legislative proposal to allow AIVD information as evidence in legal proceedings.
The Minister of Justice and the Ministry of Public Prosecutions had already demonstrated great enthusiasm for new legislation. In view of the radical nature of the proposal, however, Minister Donner was in favour of thorough preparation. In the memorandum published in June 2003, *Terrorism and the protection of society*, the government stated specifically that the item of AIVD information was still *sub judice,* but that the necessity of new legislation should not be excluded. During the General Consultation of 30 September on the memorandum, the Second Chamber asked Minister Donner to produce a memorandum about the use of AIVD information in criminal proceedings. Donner once again indicated that he wanted to await the legal proceedings before sending a related memorandum on this subject to the Second Chamber. When requested, he did send an overview of the items that would appear in that memorandum. In the debate on the legislative proposal, Terrorist Crimes, at the beginning of December 2003, Minister Donner was under increased pressure to submit a legislative proposal on the use of AIVD information in criminal proceedings as soon as possible. On the initiative of Geert Wilders, then of the VVD, a motion was adopted in which the Second Chamber wanted to see a legislative proposal over the use of AIVD information submitted within six weeks. The consequence of this acceleration was that the promised memorandum, in which, among other things, a comparison would be made with foreign countries, was definitely dropped. Ultimately, all normal consultation rounds with organisations within criminal law, such as the Netherlands Association of Judges, the National Bar and the procurator general, were also abandoned. The reason for this was the extra political pressure exerted by a number of parties in the debate on the attacks in Madrid

of 14 April 2004, in order to have legislation in this area as soon as possible. Consequently, the legislative proposal was submitted in September 2004 without the usual rounds of consultation.
What is striking is that when it was dealt with in the Second Chamber parliamentary Committee for Justice there was once again criticism that the consultation rounds had been omitted. The CDA also raised the question of whether a rapid consultation would not have been possible. In the course of a public hearing, when among other things criticism was expressed by Professor Ybo Buruma on the legislative proposal, the committee for Justice requested the Minister of Justice to ask for recommendations from the procurators general on the legislative proposal in question. At this juncture, Donner had had enough: after first being hassled by the Chamber, he then finally dealt with it. Recommendations are important at the form-giving stage of legislative proposals, not at the point at which the Second Chamber is already considering the legislative proposal. With this procedure, the Second Chamber breached an essential public discussion about the proposal to use AIVD information as evidence in court cases. How badly it had damaged itself by doing this was evident when there was criticism of the legislative proposal, not only from lawyers and academics, but also the Netherlands Association of Jurisprudence and the Board of Procurators –general lodged serious objections against it. In the chapter 'Criminal Law of Intent', we examined this problem in more detail.
After the failure of the first two terrorist proceedings, the pressure from the Second Chamber to produce legislation put a stop to any meaningful discussion. The question in fact is not only whether and how AIVD information should be used as evidence, but also the main question is whether the AIVD is actually the appropriately equipped service to do this. As a result of this haste, the relationship between the police and the Minster of Public Prosecution was also not really discussed.

RELATIONSHIP

In the Netherlands, the relationship between the security service and politicians has not always run smoothly. In his book, *In dienst van de BVD* (In the service of the BVD), Frits Hoekstra illustrated this point with a number of striking examples. For years, the political leadership of the department of the Interior had 'blind trust' in the service. 'So for years the service could just get on with things, more or less undisturbed by politicians', said Hoekstra. Not until Ed van Thijn took office as a minister in 1981 did the relationship deteriorate. Van Thijn and the then head of department, Pieter de Haam couldn't stand one another. Van Thijn forbade the BVD to continue to collect and record intelligence about the Communistische Partij van Nederland [Communist Party of the Netherlands] (CPN), apart from in the context of the 'aspect approach' we described earlier. However, in 1982, Van Thijn's successor, Max Rood (D66) partially reversed Van Thijn's decision. But the Chamber was not fully aware of this, although Rood had informed the permanent committee for intelligence services about it. The BVD, foreseeing problems, warned the department a number of times that the parliament had the wrong picture of what the BVD was still doing with relation to the CPN. However, successive ministers ignored the warning for fear of political complications. This issue was not brought into the open until the nineties.

It was evident from the Havermans Committee report that the political guidance of the BVD/AIVD was still problematic. It was more like reading an impressive *tour d'horizon* of the Netherlands as a coordination country. It was true that the AIVD had an independent scope to make choices in the priorities. But the broad lines were set out by the politicians and there was plenty of consultation between political policy-makers and the AIVD about the lines to be followed. However, according to the committee, this political guidance did not work well. Until the spring of 2004, AIVD issues were discussed at the Board for Intelligence and Security Services, a subsidiary board of the Council of Ministers and prepared by the administrative Comité Verenigde Inlichtingendiensten Nederland [Committee of Associated Netherlands Intelligence Services] (CVIN). However, since spring of 2004, matters have been discussed in the Board for National Security. In addition, there is also another subsidiary board of the Council of Ministers, the Board for Security and Legal Order, which also tackles anti-terrorism and intelligence work. Furthermore, there is also a Coordinator for Intelligence and Security Services (the secretary general of General Affairs) and since March 2004, the Netherlands has also been endowed with a Nationaal Coördinator Terrorismebestrijding [National Coordinator for Combating Terrorism] (NCTB), which has its own anti-terrorism unit, and comes under the administration of the Ministry of Justice, yet is the political responsibility of both the Minister of Justice and the Minister of the Interior.
However, the coordinator for the intelligence and security services lacks the possibilities of effecting coordination, said the committee. 'There is hardly any coordination.' In any case, the Minister of the Interior and the Minister of Defence are primarily responsible for the MIVD and the AIVD, and a coordinating official form the Minister of General Affairs is then a rather unwelcome intruder. The coordinator has no enforcement power or other means of guiding the services in the desired direction. 'In fact, there has been scarcely any coordination done by the coordinator.'

The new phenomenon of the NCTB made the relationships even more complex. The role of the NCTB is to coordinate and monitor the cooperation between the services and departments concerned and it is the chair of the Gezamenlijk Comité Terrorismebestrijding [Joint Committee of Counter Terrorism] (GC T). This committee is focused on strategy and policy and consists of ministries, services, police and the Public Prosecutions department. The operational collaboration between all the services is again coordinated in the Coördinerend Overleg Terrorismebestrijding [Coordinating Consultations in Counter Terrorism] (COTB).
From January 2005 onwards, the organisation had to be streamlined once again. The NCTB was to be in charge of an organisational unit in which the workings of the Ministry of the Interior and the Ministry of Justice were combined. Administratively, it came under the Ministry of Justice, but the ministerial responsibility was again shared by the Ministers of Justice and of the Interior. The NCTB was to be responsible for the preparation of general policy in the field of counter-terrorism, coordinate, 'combine and interpret policy' in the information from the services, produce threat analyses, but could in no way be involved with the following of persons. That remained the exclusive authority of the collaboration between the AIVD, KLPD, department of Public Prosecutions and IND. The committee concluded cautiously that there was still some lack of clarity in the new setup.

In the day-to-day routine, the secretary general of the Ministry of the Interior is the first port of call for the AIVD. However, the secretary general does not have enough administrative support to give form to his management of the AIVD, according to the report. The secretary general and the Minister of the Interior are informed by means of three-monthly reports of the ups and downs of the AIVD, in which a total picture is presented of the threats, risks, ongoing investigations and official reports. These overviews are only distributed in very limited circles.
According to the committee, the secretary general and the minister only give directions to the AIVD in broad outlines. There is no direct involvement in operational matters and the government minister has no knowledge of management annual reports or team assignments. The committee considered that the Minister should give more meaning to his administrative role, which in turn made it necessary to obtain more information from the AIVD.
Until recently, the Minister of Justice had no access to the three-monthly reports or other AIVD information. That has now changed, but according to the committee, both the AIVD and the Ministry had to get used to the new situation. What is unusual is that officially the Minister of Justice is the coordinating government minister for counter-terrorism, but in fact he cannot direct the AIVD, is only partially informed of the operational matters of the AIVD and is not involved in the effort of special authorities. Direction can only take place by the Minister of the Interior, and therefore intensive consultation between the two ministers is essential.
According to the Havermans committee, politicians expect too much from the AIVD, because they have no clear idea of the ups and downs of the service, they underestimate the possibilities of the service and they lack a realistic picture of the threat. 'The AIVD has been left too much to itself' the committee reported. 'Direction has left a lot to be desired in an administrative environment that is too complex and hectic (…). Notwithstanding the responsibility of the Minister of the Interior, it lacks a clear structure to select the relevant expectations, to prioritise and to give to the AIVD as an unambiguous assignment. At the moment, the AIVD itself determines priorities and subsidiary concerns. Although the AIVD is acting in a responsible manner, the committee considers this to be an undesirable situation.'

CONCLUSION

There is a great dearth of knowledge about the backgrounds, the causes and the combating of terrorism. For years, the AIVD reports have been put to one side and now suddenly a lot is expected of the service. For a number of politicians, backgrounds and causes of terrorism are taboo subjects and therefore they obstruct any debate that threatens to go in that direction. Why? Is looking for causes really the same as whitewashing? Is the naming of processes (the way in which columnists write, the war in Iraq) the same as generating ideas?
By not discussing, engaging in controversy or even taking action, politicians deny themselves the opportunity of investigating terrorism. Investigation is what is needed in order to intervene.
Investigation on several fronts, also into the effectiveness of certain measures, remains a difficult matter to assess. The same applies to investigation into the functioning of intelligence services and police. The Second Chamber invested a lot of energy into legislative activities while doing nothing about the regulatory task. After the criminal

proceedings in Rotterdam, when there was a compelling reason to have a thorough review of the functioning of the police and of the Ministry of Public Prosecutions, the Chamber turned to new legislation. Why was it that control in Germany was increased but that the Second Chamber made do with a statement that here matters were marginally regulated?
Too often, politicians react from an entrenched position. They take little time for analysis and, also in times of crisis, they react from the standpoint they created. The expectations of politicians are not always authenticated in practice. As a result, sometimes solutions are dreamt up that are difficult if not impossible to carry out. They should make more effort, take a deep breath, reflect and only then give an answer.

ARMED CONFLICT IN THE 21ST CENTURY

Terrorism and counter-terrorism are closely linked with the process leading to someone deciding to blow himself up in an over-crowded train. Analysts at the AIVD have made diligent attempts to indicate who would take the step to armed resistance and who would philosophise, think and talk about it. In academia and in the media, publicists, columnists and other self-appointed experts regularly speak in an attempt to interpret and explain the process of radicalisation, as it is often called. Actually, their basic assumption is always that thinking radically is wrong or problematic and automatically leads to violent action. With this viewpoint, it would not be appropriate to support the armed conflict of the Chechens rebels under the leadership of the guerrilla leader Basajev, to look at videos of it and to give lectures about it in backstreet halls throughout the country. What's more, the statement of Abdul-Jabbar van der Ven that he would not regret the death of Geert Wilders, Member of the Second Chamber, would be considered radical in this perspective. At the same time, on the other hand, it was not at all problematic that Zalm, the Minister of Finance, publically congratulated the Pakistan President, Musharaff, on the unlawful execution of a person suspected of terrorism, with the emphasis on 'suspected', because there is no question of a normal judicial process in Pakistan. In all cases, it is about glorifying violence, although Abdul-Jabbar van der Ven's remark was actually modest in comparison with the two other examples.

Radical left, as it was called in the eighties, did nothing else. Guerrilla movements, particularly in South America were supported, even with campaigns such as 'Weapons for El Salvador'. Frequently, a commander, a person concerned or a sympathiser would travel through Europe to request support for the movement in Guatemala, El Salvador, Nicaragua and Mexico. Benefit parties and campaigns were launched to give the movements concerned financial and moral support. 'Information' brigades set off for those areas, teaching material was created and on 5 May there were people standing by the various stalls to hand out leaflets to the Dutch public about the violation of human rights in the countries from which the guerrilla groups originated. Nowadays, these committees would soon be labelled as radical, the touring commanders as recruiters and the activists who visited the countries as recruits or possible terrorists.

Perhaps time is passing quickly, but there doesn't seem to be any sort of historical viewpoint in the debate about terrorism. It's not that processes of radicalisation should not be taken seriously, but labelling these processes as problematic or seeing them as a prelude to violent actions is not taking them seriously, but looking at them from a criminal law perspective. Radical visions about injustice in the world are important and deserve more attention than a mere judicial approach.

There are personal and community-related elements in the processes of radicalisation. In addition, in the discussion about terrorism from an Islamic point of view, religious aspects also play a role. The chapter will conclude with the political aspect. We do not claim to have a monopoly on wisdom to interpret the processes at all levels and to correlate them all. Radical visions, thoughts and sometimes deeds are not terrorism, but political realities that form or try to give an answer to increasing the uniformity and blurring of society. The

Netherlands is characterised by keeping out refugees, treating people on benefits as criminals, putting homeless people in prison for two years, approaching religious minorities with contempt and marginalising or criminalising anyone who deviates from the norm. In the world around us, the conflicts, wars and droughts are forgotten or presented in an overblown way in programmes such as *Netwerk* or *Twee Vandaag* (Dutch television programmes). Suddenly, everyone realises that Uzbekistan is actually a dictatorship, while President Karimov has been able to torture away for three years in the shadow of the media sidelines. If an Uzbekistani, whether Islamic or not, should drive into *De Telegraph* office with a car full of explosives, the Pavlovian reaction of Dutch politicians and the media can well be imagined. Any self-reflection on the role of western politics and media in this globalised world seem a long way away, while the same Uzbekistan seems to shout out: 'but that's what you wanted.' Together with the return to the cradle and renewed experience of Dutch history, in which the rotten bits are still neatly excised, after all, Jan Pieterszoon Coen was a hero and not a mass murderer, people don't realise that the nice vision of the world as a *global village* has become a fact and they can't turn the clock back. Fundamentally, that same Uzbekistani was driving into the Ministry of Defence offices in Tashkent as he entered *de Volkskrant* building.

WOULD THE REAL TERRORIST STAND UP, PLEASE?

Society has changed since the eighties. Uniformity has become more extensive: the same supermarkets, clothing shops and shopping centres feature throughout the entire European Union. The same uniformity is also visible in politics. During the European constitution campaign, PvdA and GroenLinks fought side by side with the CDA and VVD in the 'yes' camp. In their opinion, an increase in scale would be both a guarantee for peace and security and a counterbalance against other super powers. The opposition came particularly from Geert Wilders and the SP. Their reply could be summarised as 'The Netherlands is disappearing'. Benjamin Barber could not have suspected that such a sharp contrast between jihad and McWorld would develop. 'An ominous Balkanisation of national states is taking place, with cultures against cultures, people against people, and tribes against tribes. It is a jihad in the name of a hundred literally-translated religious systems against anything that is inclined to mutual dependency, voluntarily organised social collaboration and communality, against the popular culture, against integrated markets, against modern life itself and against the future in which it will develop,' wrote Barber in 1995. The text should not be taken too literally, but in fact Barber was referring to diversity and individuality when he talked about jihad and he was meaning uniformity and feeling of displacement when he talked about McWorld. 'The second scenario paints that future in clear pastel shades, as a dynamic portrait of accelerating economic, technological and ecological forces that require integration and uniformity, that hypnotise people all over the world with fast music, fast computers and fast food and those nations are egged on into some homogeneous and global theme park, into a real McWorld, linked by communication, information, entertainment and commerce.'

What Barber was trying to do is unthinkable in the current circumstances. He expanded the word 'jihad' into a sort of umbrella concept. In the debate on terrorism, it seemed as if every idea of interpretation went up in smoke. Anyone attempting to formulate a qualified

definition of terrorism and radicalisation would be well advised to throw these concepts overboard. They have been stripped of any connotations or meaning. If primary school children are becoming radicalised and if youths hanging around are already perpetrating acts of terror, then urinating in public is a terrorist attack on the environment. This is not an absurd approach, because if we briefly scan the texts in the media, then we notice that politicians are merrily juggling with combinations of adjectives and terrorism vocabulary. What should we make of ‘acquitted terrorist’ or the ‘terrorists that get off scot-free’? They are not described as ‘suspects’, but as ‘professional terrorists’, or, as *NOVA* explained in 2003: ‘potential illegal terrorists’. Terror and the Islamic culture are closely linked with one another, Islamic (terror) organisations’, ‘a nest of extremist Islamic terror’, and ‘Islamic terrorist networks’ are some of the titles given to so-called fundamental mosques. Another example is the catchy terminology of *NRC Handelsblad*: ‘terrorist Islam’. All imaginable combinations seem to be both allowed and tried out: ‘militant Arab Muslim extremists’, ‘radical Arab (Muslim) extremism’, ‘extreme Muslims’, ‘fundamental, barbaric interpretations’ and ‘imported Islamic radicalism’.

Perhaps it is an admission of weakness that no attempt has been made to define radicalisation and terrorism, but as Martijn de Koning, anthropologist at the University of Leiden is in the habit of saying: if young children are already radicalised then the concept has become meaningless. An attempt can be made to define radicalisation, which would then provide some insight into the word ‘terrorism’. Is radicalism terrorism, or does it always lead to terrorism? Or is radicalism a process and fundamentalism the outcome? Does that make fundamentalism equivalent to terrorism? And how is radicalism related to extremism? Are extremists terrorists or are radicals extremists? Or is the word fanaticism more appropriate? In his book, *Jihad*, Ahmed Rashid makes a mishmash of these words. The distinction cannot be so easily drawn. Fanatics, extremists and fundamentalists are not by definition terrorists or freedom fighters. Take the example of the Hizb ut-Tahir. In the Netherlands there was a fuss about the organisation of a meeting of this movement on 6 March 2004. The organisation was said to be fundamentalist, according to the AIVD it was an international radical-Islam movement and Germany had labelled the movement as dangerous to the state. The assumption here was that the accusations that the organisation was said to be anti-Semitic were based on references and facts and that the organisation would be prosecuted for this. Is the organisation fundamentalist because it is anti-Semitic? Is it extremist because it is anti-Semitic or, as *De Telegraph* writes, because it advocates the destruction of Israel? It is definitely liable to punishment if, as happened in Denmark, it promotes the killing of Jewish people. The chair of the movement has also been convicted for this. However, does that make the group terrorist? Let us assume that the members of Hizb ut-Tahir are anti-democratic. Are they therefore fundamentalist, extremist, radical or terrorist? A year previously, *Elsevier* wrote that Hizb ut-Tahir was a fundamentalist and ‘apparently peaceful movement’ of which ‘six thousand alleged members were detained, tortured to death or executed’ by the regime of the democratically-elected dictator Karimov of Uzbekistan. Assuming that they are deeply religious, are they also fundamentalist or extremist? These remain difficult concepts. Ahmed Rashid compares the Hizb ut-Tahir with the Islamic Movement of Uzbekistan, which is conducting an armed conflict against Karimov’s regime. Compared with the latter movement, Hizb ut-Tahir is somewhat less terrorist, but perhaps more fundamental from a religious point of view.

Being labelled as radical or terrorist seems to take place in a flash. That is why, in his interview with *ABC Nightline,* the Chechen Shamil Basajev immediately indicated that he was a terrorist, because the broadcast was no longer over what he wanted to say.

A KILLER IS BORN?

On the steps of the Central Library in Amsterdam, a dishevelled man I know suddenly buttonholed me. Do you know who has just been murdered? I looked at him pityingly and shook my head, I hadn't a clue. 'Theo van Gogh', he replied breathlessly, as if he still had to telephone the breaking news to the editorial staff. 'And do you know by whom?' came immediately after his answer. Once again, I had to apologise as I hadn't spent the whole day online. 'A Moroccan' he whispered. And after giving me another piercing look, he ran off again. The same story could have applied to the murder of Pim Fortuyn, because everyone had expected that. It almost seemed as if the murder of Fortuyn was not as bad because it was not a Moroccan.
After the murder of Van Gogh, it soon became apparent that the perpetrator, Mohammed B., was a very religious man. His clothing and the texts that he pinned to the body were indicative of this. 'Now those fucking Moroccans have gone too far' and 'don't give racism a chance' seemed to be the two major reactions. It seemed as if a small civil war was developing. Mosques, Islamic schools, churches and other religious symbols had to pay for it. The 'fucking Moroccans' were Muslim and suddenly became the symbol for an entire population group. Council discussions, group discussions and neighbourhood meetings and other activities suddenly had to bridge the rediscovered chasm. One individual became the symbol for failed integration, a derailed population group and a statutory Muslim for hard words and measures. All things considered, it's not strange that Mohammed B. suddenly achieved a sort of cult status among primary schoolchildren in Amsterdam.
The failed integration referred to also caused confusion, because Mohammed B.'s integration was not all that unsuccessful. He had completed his HAVO (Upper general secondary education) and gone on to the Hogeschool Holland in Diemen, and although he had not got his diploma, he had not ended up in the criminal circuit, but had found work in the community-building team. He was clearly someone who demonstrated involvement in society and made a stand for the position of Moroccan youngsters in the neighbourhood. On the other hand, he had not been a model Moroccan either. It was said that he was a member of the Moroccan youth group in Nieuw West, referred to as 'fucking Moroccans' by Rob Oudkerk. Apparently, he was involved in fight in the café de Kooi in Diemen after the Netherlands' victory over France during the world championship football in the Netherlands and Belgium. In 2001, he was sentenced to a twelve-week prison sentence for threatening a police officer with a knife. He appealed against the court's decision. Although some media painted the portrait of a Moroccan heavily involved in crime, the general picture is more that of 'an exemplary young man' (W. Kool, former chair of the community organisation Eigen Wijks (Own neighbourhoods) in *Netwerk.* In *de Volkskrant,* a former neighbour of Mohammed said that he offered to help problem youngsters. 'Then he would say to the young people standing at a corner: "You'd do better to split up, because you are attracting too much attention." He was also very pleased if things were going well for me – that I was no longer in trouble with the police and that I had obtained my diplomas for becoming a driving instructor.'

Was Mohammed B. confused? Did he suffer from a mental illness? It would be so simple if that was the case. Referring to his 'violent past', psychiatrists made pronouncements according to the DSM-IV model about the degree and the sort of psychiatric disorder that he was supposed to have, without having spoken to him at all. The crazy thing is that Mohammed B. is simply a Dutchman. He is an individualist, as his act would indicate, even if the Public Prosecutions Department suspect him of having taken part in a terrorist organisation. He is an individualist, assertive, well versed in the Dutch consultative and polder society, but also Moroccan and later Muslim.

Frank Buijs, a social science researcher at the Institute for Migration and Ethnic Studies (Imes) of the University of Amsterdam, is conducting research into radicalism in the broad sense and is seeking an explanation more in individualism and religion. 'In a way, Mohammed B. is a prototype. He was certainly not locked up in a parallel ethnic-religious society, but had actually distanced himself from it. He had made individual choices, was well integrated, was a contributor to a neighbourhood newspaper and tried to raise money for projects for ethnic minority youngsters. And strangely enough, it was precisely that individualism that enabled him to play an active role in the social arena that was also the foundation of his later radicalism,' wrote Buijs in *Socialisme & Democratie* of February 2005. The individualism that is so strongly promoted and propagated in the west seems to link seamlessly with the ideology of radical Islam.

Buijs explained his viewpoint: 'First of all, a shift takes place from national identity to religious identity. The youngsters no longer feel primarily Moroccan but Muslim. This shift runs parallel with processes of individualisation that they are experiencing. That is absolutely essential, because Islamic radicalism diverges from mainstream Islam precisely on the point of the emphasis on individual decision-making. If you read all the Islamic radical classics, you learn that the jihad is an individual duty, i.e. you have to make your decision irrespective of your parents, irrespective of the *oelema,* and in that sense radicalism is rather like Protestantism'. Martijn de Koning defined this viewpoint further as a result of his research among Moroccan youngsters in Gouda in an interview in *De Gelderlander*: 'Muslim youngsters consider their belief to be something "between me and Allah". You can't get more individualistic than that. There isn't just one essence in Islam. It is a repertoire of options that is repeatedly assembled differently by the youngsters. On the one hand it is a cut-and-paste Islam, but it is based on sources.'
Before 2 November 2004, Mohammed B. was certainly not an average Dutchman or Dutch Moroccan man. He was involved in the neighbourhood and although it is true that every lapse in someone's past can be blown up into a real criminal record, he was trying to make young people keep to the straight and narrow. His strong leaning towards religion may be connected in this respect and provides a more positive picture. Reversion to religion is something that Martijn de Koning has seen frequently in his research into Moroccan youngsters in Gouda. 'In adolescence, girls are what is important. Going out, hanging around, sometimes going a bit too far, maybe seen by society as 'fucking Moroccans', but that's what puberty is all about. Once they have gained a diploma from secondary school, they enter a new phase in their lives: studying and working. Many young people become a lot more serious at this point. We are talking about the period between 16 and 18 years of age. It is also the moment that they become more involved in Islam. The fact that they are

Muslim goes without saying, but how you actually set about doing that is another story. The parents do it in the Moroccan way: you can't do that, it is not good Islam practice. With this rejection of the Moroccan rules, you can't get any help in the mosque. In addition, the imam often does not know what a young person is involved in. These young people demand their rights in the Dutch manner. The reaction of the members of the mosque is also typically Dutch: "What do you mean, you want to say something? You don't pay any contribution therefore you have nothing to say."'

In adolescence, it is not so surprising if you clash with your parents and with society. In fact, that young people turn towards Islam is also not so strange. It is a part of their youth and the tradition in which they grew up. In addition, the Netherlands is not Turkey, Algeria or Morocco and the majority of young people of the second or third generation were born here. Sometimes they are more Dutch in their assertiveness and in claiming their rights than the indigenous population. In his *Moslims in Nederland* (Muslims in the Netherlands) of December 2004, Frank Buijs interpreted this as an almost unavoidable process with the only end result seeming to be an isolated group. 'They [young people] are going to look down on their parents, because they have assumed a subordinate position in society and because they see them as routine Muslims and not as really devout people, completely devoted to the faith. These young Muslims reject the conservative mainstream of Islam as inconsequential and far removed from the original ideal of purity. They do not see the culture of the country of their parents as a source of pride and identification. They experience Dutch society as decadent, arrogant and discriminating… Ultimately, a globalised Islam, disassociated from the country of origin and referring to the *Umma* serves as the focus of a new identity.' (Buijs, 2003)

In *Justitiële Verkenningen* [Judicial Investigations] (jrg. 31 no. 2 2005), Oliver Roy is even more explicit: 'In fact, most terrorist actions in the West are committed by western Muslims, or at least Muslims living in the West, among whom we also have to take into account many converts. Most actions took place in the name of the "defence" of Islam or in order to combat Western imperialism, only a few showed a direct relationship with a specific conflict in the Middle East (in the past, terrorist actions committed by the Palestinians). The situation in the Middle East is no explanation of the radicalisation of young Muslims in Europe: it is a *sui generis* phenomenon, a consequence of both globalisation and westernisation and is related to a generation gap.'
So much for theory. The Mohammed B.s and Samir A.s and other suspects of terrorist acts are just integrated Dutch people who, in the process of identity development, have become entangled between two cultures. They have come into a sort of vacuum, where 'radical Islam' or 'Euro Islam' has appeared, offering them a fitting identity. The localisation of the problem could not be simpler. The recruits of the 'radical Islam' are pinpointed and kept under surveillance by the intelligence and security services. Perhaps they are not all going to cross the threshold into violent resistance, but the potential for that is definitely present. The strange thing about this analysis is that these young people are almost diagnosed as psychiatric cases. They have an identity problem and therefore end up in 'radical Islam', which can only be seen as evil, as a scourge from which they need to be cured. Martijn de Koning is not in agreement with Roy, as he explains: 'Roy says that a sort of loss of culture is taking place. Religion is taken out of its tradition. I do not agree with him. In the first

place, they are not in a cultural vacuum, from an anthropological viewpoint that is nonsense. You are always a part of a culture, willy-nilly. He gives *halal fast food* as an example. It is simply a sign of something new but constructed on the basis of well-established features. In addition, that claim of a pure Islam is partly in order to rebel against parents and as a sort of cultural criticism of Dutch society, but that isn't the same as breaking off relations with the parents or with Dutch culture.'

After 11 September 2001, the number of attacks in Europe can be counted on one hand. Not that that is any measure of the threat, nor can it be a result of the effectiveness of the intelligence and security services, but if the identity development of second and third generation Muslims goes wrong and if we assume that the recruits are roughly aged between 15 and 35, then there is an invisible army of 'radical Muslim fighters' ready to conquer Europe. Minister Zalm would then certainly be correct in his statement after the murder of Theo van Gogh that we are at war. Yet it is a strange thought that tens of thousands of young people are ready to slit the throat of their non-believing neighbours, colleagues, friends and acquaintances. It seems to be only a matter of time, but the moment is getting closer. Perhaps it is an exaggeration and a cynical commentary on Roy and Buijs, but making these young people into pathological/psychiatric cases and the diagnosis of 'radical Islam' as a problem *an sich* rather begs the question of whether one is not frightened of these young people being taken seriously. This fear becomes even more pertinent if the conclusion of the process of that identity development is defined in terms of radicalisation.
Should you be determined to see their struggle for identity as a problem, then the causes and cure lie in the diagnosis that these young people do not feel at home either in Dutch society or in their migrant community. This approach, however, is too perverse to maintain. Young people, migrant or not, to a greater or lesser extent, come into conflict with the established order in puberty and adolescence. There is nothing wrong with that, it is not unhealthy. Neither is the decision to become a Muslim. In fact, these young people are the new global citizens. They have no national identity, neither from their adopted country, nor from their country of origin. That 'Euro Islam' offers that global identity, but the concept of 'global citizen' does not says more about the weakness of the non-religious concept than about the danger of the religious identity.

THE COMMUNITY

In his contribution to the special edition of *Justitiële Verkenningen,* 'radicalisation and jihad', Rob de Wijk, director of the Clingendael Centre for Strategic Studies says the following: 'Since the murder of Theo van Gogh, the debate on terrorism has narrowed to the socio-economic background of minorities, the failure of integration and the nature of Islam… In the debate, too little distinction is made between causes and catalysts… The causes are of foreign origin; the catalysts are of both foreign and domestic origin. That means that it is very difficult for the Netherlands to get a grip on terrorism.' He devotes one page to the causes, about which he thinks that there is a consensus in academic circles. The West has an inferior role in the causes. The social development in the Arab world is characterised by 'inexperienced and incompetent leaders.' The result is a disjointed society in which young people, particularly highly-educated youngsters, are looking for something to hold on to. According to De Wijk, this can take place in two ways: reverting to familiar

basic principles or developing an alternative ideology. The former took place in the Arab world and the latter in the West. The conclusion would appear to be obvious. All over the world, Muslims are looking for something to hold on to and are finding it in 'pure Islam'. The only way to avert the inferno is to influence the catalysts and the Dutch government should be focusing on that.

If it is true that in academic circles there is actually a consensus on this analysis, it means writing off an entire section of the population. The hearts and minds of the moderate Muslims should be won, writes De Wijk poetically, but the others have already been written off. Essentially, De Wijk is drawing a parallel with the identity development in young Muslims at the moment in the Netherlands. Their parents' traditional attitude to life, the first generation of migrants, can be compared with the falling back on familiar basic principles in the Arab world, which can be traced back to traditional tribal relations rather than to 'pure Islam'. Developing an alternative ideology is then tantamount to the neoliberal policy that the Netherlands has in a stranglehold. In both cases, highly educated young people have lost the way and are looking for something to hold on to. Youngsters in the Arab world found that guiding principle in people like Mohammed Mossadegh, a democrat in heart and soul, who had the dubious honour of having led the first democratically-elected government that was thrown over by the Americans in 1953 in favour of the 'modern' dictatorship of the Shah. What is cynical about Mossedegh is that he was once the democratically –elected prime minister of Iran, a country that is now portrayed as being in the grip of religious fanaticism.

De Wijk's analysis of the causes immediately reveals a lacuna that continually recurs in the debate on Islam. The young people are viewed from a perspective of there (the Arab world) and them, and not here (Dutch society) and us. There is a prevailing feeling of superiority, an arrogance that assumes that what we have is better than what they have, want or are striving for. They are looking for something to hold on to, they feel powerless and that impotence is converted into violence – not political violence, but unfounded religious violence. Because everything is preceded by the word 'radical' it seems as if an actual discussion with these people is not possible. The only way left open to us is that of criminal law.

POLARISATION

The fact that Dutch society has become polarised in recent years is evident from the extreme positions taken in arguments. However, this polarisation is not the same as that pertaining for many Muslim youngsters. Although they undoubtedly have more affinity with their own community, they rebel against it as well. Martijn de Koning: 'You can see that those in their twenties and thirties are trying to break away from the victim mentality of their parents. They reproach the first generation of immigrants of cultivating that victim mentality and call them professional immigrants, benefit whores, or worse still, NSBers (members of the NSB [National Socialist Movement], a defunct Dutch political party that became associated with the Nazis during the Second World War). The new generations are now of an age at which they can make their voices heard, which makes a big difference because they are quite

numerous. Examples of the above can be found in the following websites: koerswijziging.nl (change of direction.nl) and benjebangvoormijl.nl. (are you afraid of me.nl).'
De Koning's comments emphasise his earlier remark that many young people no longer get any support from their own mosque. 'What those youngsters (16-18 years old) know about the Koran is minimal. .. What they are looking for are handy booklets about what is in the Koran and what is not. It's much easier to look up internet sites that spit out fatwa's than to ring up an imam in Saudi Arabia. Often, what they want to know are the most usual things, such as: can I go out with Dutch boys or Dutch girls? Can I have them as friends? The average imam hasn't a clue about that sort of thing. Because they don't speak Dutch they have little idea of what Dutch society is like. The young people soon come to the conclusion that they have little or no affinity with their own mosque'.

On the other side, actually of the same spectrum, you have the establishment, the gut reactions and the current, prevalent intolerance. On 9 March 2004, in his memorandum *Combating international terrorism,* Remkes, Minister of the Interior and Kingdom Relations, wrote: 'It should be noted that a growing number of Muslims feel rebuffed by decision-makers and decision-leaders in social intercourse. Moreover, they feel that the government is not sufficiently impartial as an arbiter. This opinion is not only prevalent in the small group of politically radical Muslims, but also within a large section of Muslims who do feel connected with, and consider themselves connected to the principles of the democratic state of law.'
Relationships have worsened considerably since 11 September 2001. Martijn de Koning pointed out that the trend had set in earlier. 'Of course, we always refer to September 11, but when I talk to young Muslims between the ages of twenty and thirty, they also talk about 11 September but they nearly all begin by referring to the El-Moumni affair of May 2001. It seemed that *NOVA* deliberately cut out of the broadcast the Imam's statement that he personally deplored violence and that according to Islam, violence was not permitted. They still experience that as a stab in the back. Earlier matters, such as Paul Scheffer's multicultural drama and Bolkestein's statements did not really count. However, in that period they were quite a bit younger. Something like the El-Moumni affair came at a moment that political awareness was starting to grow in that group. After 11 September something happened every three months: there were the Islamic primary schools, El Tawheed, the imams who made all sorts of stupid statements in *NOVA* programmes. Whether or not this was actually the case, at a certain point they suffered an avalanche of negative publicity.'

The polarisation in which Muslim young people became involved cannot be simply defined as twofold. After 11 September 2001, Muslims in general were urged to express their disgust at, or disapproval of, the attacks on the World Trade Center and the Pentagon. Perpetrators and accomplices had been found before the smoke lifted. Actually, this same game of musical chairs is repeated each time after an attack. This seems to intensify polarisation as it is impossible to give the right answer. It is not in the words 'that is really awful' or 'we disapprove of it', but in the constellation of how society is set up. The first generation of migrants that established itself in the midfield of civic society makes frantic attempts to belong in Dutch society by expressing sympathy with the West. This attitude serves to undermine their position with Muslim youngsters who already feel ill at ease in

their own circles. They analyse 11 September from a completely different perspective, i.e. ‘serves you right’. ‘Many people thought that America had asked for it, apart from the innocent civilian victims of 11 September. A lot of people had no problem with the fact that the Pentagon was attacked. That was a military goal’, explained Martijn de Koning.

The “Dutch pole” is characterised by a government that is acting increasingly more severely and by various politicians and opinion-makers who think that they are sticking their necks out because the government is doing nothing about the problem. The polarisation is compounded by a group of young people who cheer every time a mosque or Islamic school goes up in flames. It’s impossible to keep up with the measures that the ministers Remkes and Donner send to the Chamber, but when the AIVD sent a reflective letter to the Chamber about the underlying causes of radicalisation, the balloon went up. Various journalists and politicians reacted as if they had been stung by wasps. ‘The AIVD, which has yet to discover the word “substantiate” gives no figures and no details. This service does indicate those mainly responsible for this violent conversion to the Jihad that is shrouded in mist. The guilty parties are opinion-makers and opinion-leaders, i.e. journalists and politicians. The politically correct community, both inside and outside the Chamber, can hardly contain its joy and suddenly embraces the usually so profoundly hated AIVD, wrote Sylvain Ephimenco in his column in *Trouw*. VVD party leader, Van Aartsen, had another swipe at the intelligence service at a party council in The Hague. ‘The AIVD should not interfere with public opinion in our country.’ In the meantime, the young people who were sentenced for arson at the Islamic primary school Bedir in Uden have been honoured as resistance fighters and, according to visitors of websites such as Holland hardcore, have earned a medal.

It is quite evident that the debate is escalating. ‘No, we are used to anti-Western, anti-American, but that anti-Dutch mentality is something quite specific to the last year or two. Previously, people were anti-Americans, anti- westerners, that was all the same and anti-Dutch was part of that, but it was not specifically targeting the Netherlands’, said Martijn de Koning. ‘But with characters like Ayaan Hirsi Ali, Geert Wilders and also Van Gogh, the anti-Dutch sentiment became much stronger. People felt that they were in the area where blows were exchanged and that many young people had a slanted view of reality, which is not unusual, but when Theo van Gogh made a film with Moroccan yobs it went too far. The fact that Hirsi Ali sometimes modified her statements was completely glossed over. And when someone like Naema Tahir made a comment about how Muslims deal with sexuality and in particular how men deal with the sexuality of women, then they were immediately pushed into Hirsi Ali’s corner and every feeling of nuance has flown out of the window.’

Shades of meaning have disappeared. Every Muslim is a terrorist and should define himself by a suicide attack anywhere in the world and every Dutch person who criticises Islam is actually also a terrorist but viewed from the opposite perspective. The columnists who are currently expressing their indignation about Muslim youngsters who threaten each and everyone with death get an answer from the street about their sharp language and literary insults. That is no excuse for the behaviour of these youngsters, neither is it a complaint about the hard language of the opinion-makers, but it just shows that those who have gained

no access to the mass media are more likely to use the language of confrontation on the internet. It is now hard against hard.

SUPERIORITY

Both Muslims who are striving for a society based on pure Islam and fanatical preachers of the democratic order embrace a form of superiority with regard to the ideal state. In pure Islam, this is defined by the Koran and in democracy by elections and a neo-liberal economic system. With the Koran it seems to be obvious. If you live according to the letter of the scriptures, then you are a better person, and in view of the fact that this earthly existence is of no value, it seems to be logical to honour the laws of the prophet in order to create the ideal society. True freedom resides in the law of the prophet.
Liberal thought is also the basic principle for many fundamentalists, as the fanatical supporters of the Enlightenment are often called. People like Paul Cliteur seem to be saying that if one follows the Enlightenment everything will turn out well. In the *NRC*, he sets this utopia against Islam with the words ‘actual current Islam is not liberal but fundamentalist’. Cliteur does not go as far as to advocate introducing democracy everywhere by sword and by fire, as President Bush did for some time. It seemed to have some partial success, in view of the developments in Afghanistan, Georgia, Ukraine, Kirghiz, Lebanon and maybe even Iraq. Iran and China also seem to be slowly opting for ‘our’ side.
The main point here is not so much which of the two camps is right, but more the feeling of superiority that exudes from it. Without batting an eyelid, ‘Radical Muslims’ blow up train stations and commuter trains in Spain and the Americans bomb a wedding party in Afghanistan. The Americans call it ‘collateral damage’ in a war against terrorism. Abu Hafs Al-Masri Brigades or Al Qaida claimed responsibility for the attacks in Madrid with the words: ‘Now we say it clearly, hoping that you [Aznar] will understand it this time. We at the Abu HJafs Al-Masri Brigades are not sorry for the deaths of so-called civilians. Are they permitted to kill our children, our women, our elderly, and our youth in Afghanistan, Iraq, Palestine and Kashmir, and we are forbidden from killing them? Allah, may He be praised, said: “Whoever attacks you, attack him in the same way that he attacked you” [Koran 2:194].’ (The authenticity of the statement of this group that was published in the newspaper *Al-Quds Al-Arabia*, was disputed.) It was not *collateral damage* as part of precision bombing, but an undirected attack on anything that could be hit, military or not.
Both parties show profound contempt for human life. The so-called jihad fighters particularly want to export the war against terrorism and the escalation in violence in the Middle East and other parts of the world to the West. Who they hit in doing so is in fact of no interest to them at all. The allies are the same. The attack on Fallujah is a prime example of this arrogance. How much do we know about what went on there? Only the brave move of a CBS cameraman, who showed the world his rough images of the summary execution of a wounded man said to be a fighter, lifted the tip of the veil on what took place there. Were there also hundreds of victims who died there because ‘they’ had attacked us? Are ‘we’ within our rights to bring ‘democracy’ and ‘freedom’ there and should everything just give in to it as the so-called ‘terrorists’ also think they can do?
The feeling of superiority on both sides has intensified. One side entrenches itself with the Koran and the other with Socrates or Voltaire. The decisiveness with which Muslim youngsters express that they are in the right is described as radicalising and in the eyes of the

AIVD and many scholars, makes them into potential recruits. ‘People find it exciting and fascinating and many certainly admire Bin Laden because he opposes the US, but they find innocent civilian victims a step too far. That is something that has caused a lot of problems in the sense that people say we should not go in that direction. Also Mohammed B.: for some he is a hero, but on the other hand, people wonder who is going to be left holding the baby? Other Muslims. There is a sort of fascination, tension. It can be compared with the glorification of Che Guevara. You can see a comparable mechanism with the suicide attacks in Israel, where in any case there were mixed feelings. Is that the way forward? It is accepted that it is lawful to bring an Israeli solder to heaven or hell, but children? These topics come up time and again when there are discussions about what the Dutch are going to do in Iraq or sending commandos to Afghanistan. People understand that the Netherlands is taking part, but they are very cynical about it. ‘The Netherlands is seen as the errand boy for the Americans’ said Martijn de Koning.
On the other hand, Thijl Sunier, anthropologist at the University of Amsterdam, sees that ‘the West is more than ever convinced of being in the right. What you see happening in many countries is that after 11 September, but also after Madrid and Van Gogh, many countries have raised their defences. Close all the doors and then look inside to see if there are still any rats and get rid of them. Then you’ve solved the problem. That is rather a simple solution, so I would propose a stricter immigration policy as an answer. In the Netherlands, there is also another dimension in the form of a sort of culture offensive. You say that you can’t just throw everyone out on the basis of random characteristics, so therefore we have to work on a form of civilisation, the norms and values discussion, involvement, participation. Once they know our history, they will then understand and will have more respect for us.’

POWERLESSNESS

In his article, De Wijk refers to the academic consensus with regard to the disjointed society and the support that youngsters, particularly well-educated young people, are seeking. He is referring specifically to youngsters in the Arab world but since 11 September 2001, the Dutch government has viewed migrant youngsters in the Netherlands with some suspicion and this has only increased since the death of Theo van Gogh. The support the young Muslims are seeking seems to be Islam and, in particular, ‘pure’ Islam. According to Martijn de Koning, although there is a lot to be said against that, it is not just the question of where they will find support, but of why they are feeling upset. Actually, it is strange that young people educated to university degree level should turn to a religion that structures their lives in such a way that there is little room for individual interpretation. The spiritual enrichment provided by the Koran and other scriptures cannot explain this satisfactorily. Khaled Al-Berry, in his book *De aarde is mooier dan het paradijs* (The earth is more beautiful than paradise), wrote about his time in the Egyptian Muslim organisation Al-Jama’a al-islamiyya, to which Mohammed Arta also belonged. It is one of the few books written by a former member of a strict Muslim organisation. However, it is very superficial and does not give much insight into the organisation. The impression one gains from Al-Berry is that of a devout, fanatical, young man who is trying to climb the ladder in some sort of scout club. It is not clear from the book whether or not Al Jama’a al-islamiyya has had a great influence on him. He describes the depravity with which Muslim boys look at girls, but that is not much different from boys of that age who are not religious. One aspect, although not really

elaborated, perhaps gives some insight into why highly educated young Muslims feel attracted to this sort of organisation: the group feeling, the feeling of belonging. These youngsters find kindred spirits within this 'pure' form of Islam. Estranged from Dutch society and from their own migrant community, powerless to take part in social life, they drift further away. That is then labelled isolationism and in turn a link can be made with radical Islam. Frank Buijs explained this earlier: 'When you read the radical Islamic classics, they all say that the jihad is an individual duty, in other words: you must make your decision independently of your parents, independently of the *oelema,* and in that sense radicalism is rather like Protestantism.' Ultimately, there is nothing more to interpret in this reasoning. It's just about mapping out the last step, the direct step to violent actions. That is where recruiters, the internet or the group function play a role. Once again, it looks as if these young people have been written off and are not actually being taken seriously.

Joeri van den Steenhoven and Farid Tabarkir are two writers who do take these youngsters seriously in their article in *Science Guide.* 'Research carried out by investigation agency *Signs of the Times* into young people living in the Netherlands whose parents came from Morocco, for example, also gave evidence of the anger that is prevalent in this group of young people. It's not just that they feel that they are treated with contempt because of the way their parents are treated without respect. Talented young men and women now want to be judged on their own abilities. This is understandable because, after the high-speed emancipation of this group, evident from the great number of them in university and higher vocational education, they now want to find a job in the Dutch employment market. However, they seldom find employment at appropriate to their level of education. Last spring too, at the Echo Award, a competition for talented immigrant students, this sort of story was no exception to the rule. There were students with high marks, full of ambition and plans to make their mark in Dutch society, but they couldn't find a work experience place, and worse still, they couldn't find a job.'
Thijl Sunier goes a step further: 'During the Rushdie affair, people were very angry – in the same way that they are angry now after 11 September. Their reaction is something like, have they gone completely mad? But to dismiss Komeiny now as some sort of unworldly Islamic scholar is, in my opinion, the wrong assessment of what is going on. He knew very well that with the fatwa he pronounced on Salman Rushdie he was breaching the core of what we think cannot be attacked, namely freedom of speech. This was the same in the Theo van Gogh murder. In the case of Mohammed B., it wasn't that he didn't understand what he was doing, on the contrary he understood very well. One would therefore be more inclined to place him in society than to describe him as sort of unworldly force that was working itself in from the outside. If you want to understand it, it's much more important that you make an analysis of the circumstances here, in front of you, rather than to say it is related to the fact that Muslims cannot forge a link with society.
What I mean is that you are asking the question why certain groups are excluded from society and that in each case you are looking at society through a sort of reflection of inequality. That means that you should understand it more as something coming from inside towards the outside than as something coming from outside. Erect those walls!'
Van den Steenhoven and Tabarki conclude: 'If well-educated migrant youngsters continue to feel marginalised and discriminated against, this will continue to provide a breeding ground for radicalism. Even if this only actually happens with a very restricted group, the

consequences can still be devastating. History has also taught us this. The student protests in the sixties, the Rote Armee Fraktion, Brigate Rosse and the Black Panther Movement – they were all movements radicalising young people, usually well-educated youngsters, who were rebelling against the society in which they lived, but could not, or would not participate. Samir A. and Mohammed B. provide an extreme contemporary example. This is an enormously destabilising danger that cannot just be met by expanding the AIVD or withdrawing Dutch nationality from convicted terrorists. This is token politics that will merely intensify the feeling of alienation and marginalisation in these young people.'
Those last words sound ominous, just as ominous as specifying that that the effects of the identity development of these young Muslims can be found in the rift between them and their own community and with Dutch society. For Van den Steenhoven and Tabarki, the murder of Theo van Gogh shows 'just how deep the integration problem really is'. However, is there really an integration problem? Martijn de Koning states that many of the young people are ultra-Dutch. These highly-educated young Muslims mastered the Dutch language and have adopted customs on the street, at school and in the community centres. 'These young people demand their rights in the Dutch manner', said De Koning, so that is all right. Is it in 'our history' as Thijl Sunier used to say, that once they 'know that then they will also be able to understand us and will gain more respect for us'? That this is unlikely should be clear, because, in spite of the fact that many young Muslims are well integrated and know just as much history as the average young Dutch person, radical Islam is still very attractive.

JIHAD IS COOL

This longing for history has something of the absurd. The young people want to revert to 'pure Islam' as it is called. Using modern technological means, they communicate about returning to various centuries in the past, to reinstate the golden age of Islam on the basis of a story, a book that seems to have been at a standstill for centuries. In this history, they find justification for the violence they may perpetrate on others. The others are then the 'infidels' or are interpreted as such. Writing in *De Groene Amsterdammer*, Mohammed Benzakour draws an analogy with the adoration of Lotte by her admirer Werthe in Goethe's *De Leiden des Jungen Werthers.* The point at which the young Werther took his life for the inaccessible Lotte became a symbol for the Romantic Movement. In the same way, nowadays, radical young Muslims are a symbol for a renewed revival of Romanticism. 'Now, two centuries later, we regard Romanticism as a beautiful but past period… At least, that's what we thought. It is reasonable to ask whether, among all the modernisms and post modernisms, there is a quiet but unmistakable revival of Romanticism going on.' Benzakour wrote that 'in the period in which the heavenly light had not yet revealed itself to them, many were floating round aimlessly (…), until at a certain point, something crossed their dark path. That something turned out to be beautiful and pure, heavenly.' And '… the true Muslim Werther, with all his Sturm und Drang, is ready to sacrifice himself, with his Lotte being once and for all Allah'. Benzakour's comparison ends here, because that 'radical' 'Muslim, 'who kills the innocent in the name of religion, is a terrorist, a monster'. But the young Muslim, who is attracted to 'pure Islam', is he a first-class romantic and would he take his own life if he had the chance to do so? According to Islam scholars, that is not permitted and Mohammed B., therefore wanted to die a hero's death in a gunfight with the

police. But did he actually want to die? The suspects of the attacks in Madrid also did not blow themselves up, even though perhaps Allah was Lotte for them. Earthly life was still more attractive than life in paradise.

Benzakour is quite right when he says that there is one thing that regularly crops up in the debate on Islam and that is the romanticising of radical Islam. This is not romanticising in a positive sense, but the historical interpretation, as if 'radical Islam' forecasts the return to 'pure Islam' or that 'radical Islam' is striving for a return to the glory days of Islam during which the empire extended as far as Spain.
At the book launch of his *Democratie en terreur, De uitdaging van het islamitisch extremisme* (Democracy and terror, The challenge of Islamic extremism), Frank Buijs said: 'Fundamentalism is a religious movement that is striving for the revival of the idealised genesis of Islam, application of classical Islamic laws and subjection of the individual to their specific interpretation of the will of the Supreme Being. Fundamentalism embraces the theory that nearly all rulers of Muslim countries are failing to apply Islamic laws and that changes in society are necessary.' In his inaugural lecture at the University of Utrecht, 'Radical Islamic ideology: from Ibn Taymiyya to Osama bin Laden', Hans Jansen also said: 'Although contemporary radical activists regularly quote Ibn Taymiyya extensively in their pamphlets, there is of course no question of any organisational continuity between Ibn Taymiyya and contemporary radical Muslim movements. Not until the 1880s did any form of organisational continuity come into being. In that period, in Cairo a certain Gamal Al-Din al-Afghani was able to gather a group of disciples around him and convince them of the necessity of reviving the old glory of Islam.' Jansen described how Al-Afghani saw three paths of which: 'the third path was the clearest, and that was also able to attract the most followers: as is already known, certainly within the Islamic world, Muslims from the seventh to the seventeenth century were superior all over the world. Why have Muslims lost that superiority? There is only one possible reason for that: because they neglected their traditional laws and regulations, established in their sharia. Reintroduction and application of these regulations, which are well-known from dozens of manuals, would, as it were, give back to Islam and the Muslims their due place in this world. It is this movement which, for want of a better word, has become known as Islamic 'fundamentalism',

Well-integrated, highly-educated young Muslims, who are at a point in their lives when they are seeking a rationale in their lives, convert to a religion whose roots, fantasy and origin can be found in the early Middle Ages. Without a doubt, this is romantic and is rather like the glorification of violence during the war in former Yugoslavia by the various population groups. The Serbs, Croats and other population groups were the stars in history lessons about slaughter, glorious victories, treason and other events from the past that had to declare, justify or explain the present-day acts of cruelty. Some young Muslims who are now labelled as 'radical' and who are active on the internet are also very proficient in their knowledge of Islamic sources and use them to commend or condemn certain sorts of behaviour. Martijn de Koning also comes across that on the internet, but then in a positive sense: 'In those MSN groups, of which I am a member, there are people who say that they are 16 and who reel off a fairly radical language, unfortunately, it also makes sense. A real effort is made to support this point of view. They try to give it a good supporting structure. They work hard at this without marshalling the herd.' This last comment threw a different

light on the backgrounds of the 'radical Islam' to which the young people were turning. These youngsters did not seem to be just calling out what a certain Sayyid Qutb wrote or said fifty or sixty years ago. There is a religious component in so-called 'radical Muslim youth', but it is related to the present day, their own situation and to world politics. In that sense, perhaps 'radicalism' is cool, because at this point it means belonging somewhere. 'One young man said: "Jihad is cool", and the manner in which he began to talk about people like Bin Laden and Al-Zarqawi was almost a sort of hero worship. And what is going on in Amsterdam in the primary schools is analogous to this. The problem is that what takes place in the primary schools is immediately labelled radicalism and at primary school there are also kindergarten children. Are we talking about radical toddlers? The question is whether it is just macho adolescent behaviour or whether it is real radicalisation. What is radicalisation? Radicalisation in the sense of a strong anti-Dutch attitude is certainly present', explained Martijn de Koning in a less historical perspective.

Jihad is cool, the tendency to worship of Bin Laden, to express admiration for 11 September and consequent reactions; these are like a sort of thought police and tell you more about social relations than the attraction of history for these young Muslims. Thijl Sunier tries to argue that you can also see Islam as a lifestyle. Maybe that does not happen on a large scale, but it puts radicalisation into another context, as does Martijn de Koning with the question 'is this worship just macho adolescent behaviour?' 'At the point at which the Surinam or Dutch girlfriend of a young Muslim woman starts to wear a headscarf it becomes very much post modern. I saw one of my students in the magazine *Contrast* who was wearing a headscarf during an anti-racism demonstration and then you realise that this "lifestyle" isn't limited to the constraints of being a Muslim. In a situation in which the headscarf was traditionally worn because of custom or because it was expected in the community, wearing it as a "lifestyle" element constitutes a break with the past. The problem is not so much the headscarf, but that the headscarf is a symbol and a symbol for both parties.' Sunier again takes it a step further by cutting the historical bands of religion of these young people and by indicating the position that they want to take by means of Islam in the public arena. 'A fragmentation, a diversification of views has taken place. It has gone from extremely radical to very trivial. It can go in very many different directions and what is confusing in the present discussion is that many people regard the totalitarian (i.e. fundamentalist) world view as the "true" vision. That is the most Islamic, most traditional, most radical and to a certain extent that is so, but it is also a world view. It is not an expression of deep religious feeling, but it is an expression of the deployment of religion in the public arena.' History serves as a benchmark for radicalisation. The motto seems to be that the more you delve into Islam's historical past, the more radical you are. Once again, the thought crops up that these young people are not being taken seriously and have been set aside.

This is strange, in fact, because the Paul Cliteurs of this world can have lengthy discussions in newspapers and periodicals about the Enlightenment and delve even further into history as far as Socrates. These people are not rejected but seem to have gained more space in the public arena, because they supposedly defend our 'values and norms'. Carel Peeters wrote the article 'Voltaire, responsible for putting the enlightenment into perspective' in *Vrij Nederland*. In a circumspect way, he attempted to show that Voltaire did not have an absolutely closed world view regarding religious expressions. 'How far did Voltaire go in

combating bigotry and fanaticism? A long way, but it never amounted to the urge to forbid anything. In *Galimatias dramatique* he has a Jansenist, a Muslim, a Lutheran, a Jew and a Jesuit deliberating with one another, while a Chinese man listens to them spellbound. After they have all had their say, the Chinese man decides that every one of them should be in a lunatic asylum. Nevertheless, that was not to say that Voltaire found all those religions nonsense. He did challenge them and wrote about them satirically, but did not attack their right to an existence, fanatic or not.' Voltaire pointed out a nuance that places fanaticism in another light. '…but for society a Christian culture was a functional guideline for life. "If God did not exist, people would have to invent him", he (Voltaire) said', wrote Peeters. Is this a glossing-over of faith, or is he making an attempt to understand it? Of course, this does not reveal anything about his thought patterns regarding radical movements within any religion whatsoever, but it does tell us something about an openness to be found in his thinking. In contrast to this nuance within the Enlightenment, it is often said that such equivocality is not present in Islam. Critical and/or liberal thinkers have not made any headway in Islam.

Can this dive into history explain radicalisation? In any case, it does indicate that these youngsters sought their salvation in a faith or ideology that is hundreds of years old. In that sense, the return to the initial period of Islam can be interpreted as a step backwards or a step forward, a utopian idea. It is war and both sides of the battle field try to find justification in the past. Is 'our' point of view any more valid than theirs? Or is the old rivalry of centuries ago coming back to life on a new battlefield? It does look like that if you read the newspaper articles sent in. Ewald Vervaet, physicist and developmental psychologist at the Histos Foundation, wrote in *de Volkskrant*: 'Fundamentalist Islam is therefore not a derailed, essentially different Islam than the healthier orthodox Islam – fundamentalists are just more intensely orthodox. That explains why non-fundamentalists (Hanifi. Maliki, and Shafi'i) prefer to keep quiet about deeds of fundamentalists (Hanibali) condemned by non-Muslims. In fact, they are all against a non-Islam form of government, but the earlier ones put up with it passively for the time being while the later ones combat it in word (dawa) or in deed (jihad). In this, they recognise each other as good Muslims because each in his/her own way is carrying out God's will- "Islam" means "submission" to God's will: non-fundamentalists endure the non-Islamic state as an ordeal by God, just as fundamentalists on the other hand rebel against it because God called them to do so.
It is also possible that at any moment a Muslim can switch to another school of law. Thus, a moderate Muslim (Hanifi, Maliki or Shafi'i) can suddenly become a fundamentalist (Hanibali). Something like this must have happened to the "well-integrated" Mohammed B.' The conclusion is that there is a fundamentalist lurking inside every Muslim, but he or she is not yet aware of it.

UNDERSTANDING OF 'TERRORISTS'

Evidently, history concentrates on religion, and belief is in the past. The present day does not come into the matter. In their statements, suspects of terrorist attacks in Europe are vehemently a party to that. No well-constructed analyses of society, but quotations from the Koran as a statement. Attempts to interpret these texts provoke standard statements along the lines of religious terrorism. 'When you punish, punish them in the way they have

punished you.' (Koran 16:126). 'Kill them wherever you find them, and drive them out from where they have driven you out; for internal strife [Fitna] is worse than killing.' (Koran 2:191). 'Whoever attacks you, attack him in the same way that he attacked you. And trust Allah and know that Allah is with those who put their trust [in him].' (Koran: 2:194). These are the three Koran texts with which the Abu Hafs Al-Masri Brigades opened their statements on the bomb attacks in Madrid (it is not clear whether this statement is true). Mohammed B. opened his public letter to Ayaan Hirsi Ali with 'In the Name of Allah the Merciful, full of Grace', and 'Peace and Blessings to the emir of the Mujahedin, the smiling killer Mohammd Rasoeloe Allah (Sala Allaho alaihie wa Sallam), his family and companions and those who rightly follow him until the Last Judgement.'

After the murder of Theo van Gogh, but actually since 11 September 2001, Islam has been a focal point in the discussion on terrorism. Without generalising, the gist of the debate has had a religious slant.
Read the analyses of the AIVD, articles on the backgrounds of the suspects and you will find 'radical Islam'.

Without any doubt, the young men and also women are deeply religious and try to live their lives according to the letter of the Koran and study the sources and texts that allow them to probe even deeper into their faith. Is that also the reason why 'they' turn against 'us'? They are Muslims, but they are also Muslim terrorists, or fighters in the name of Allah. A Chechen woman, who blows herself up in a Russian theatre is perhaps Muslim, but also Chechen. However, she is labelled a jihad fighter.

In *de Volkskrant*, Jessica Durlacher reacted to an article about the Egyptian writer, Nawal el-Sadawi: 'she too [Nawal el-Sadawi] feels some sympathy for female suicides. Shortly afterwards, in another newspaper, she said: "Israel and the West call resistance operations 'terrorism'. The resistance in Iraq has changed into terrorism, just like the Palestinian resistance. Should we condemn those who fought with their bare hands and perished in the attempt? Should we criticise a woman who drapes herself in explosives, blows herself up and dies? Should we condemn her because she has blown herself up, after seeing her father and brothers being murdered? If I was in her place I would deck myself in dynamite, I would blow myself up…How can I condemn the victim? There are people who ask why martyrs do not blow themselves up at army bases, instead of among innocent civilians. But many of them did in fact blow themselves up at checkpoints and in so doing did their best to contribute something worthwhile. I do not criticise the victim, I am critical of the real criminal…"'

The conclusion is clear for Durlacher. El-Sadawi is actually inciting people to a jihad. She concludes her article: 'The impression is also created that it doesn't make much different to the Balie (Nawal el-Sadawi was speaking in the Balie) that this politically engaged guest is inciting her people to a military fight against Israel and the US in her free time'. If Sadawi is condemned for her sympathy for the victim of violence that is committing violence, then there is not much left over of the woman who is actually draped in dynamite. She is a pure-blooded jihad fighter. End of discussion.

BUSH, BLAIR, BIN LADEN

What is interesting about Durlacher's viewpoint is that she does not explicitly use the word 'religious', but that she actually finds it absurd that De Balie invites someone to speak who justifies the fight against Israel and the United States. In her eyes, these fighters are not just terrorists, but religious fanatics with whom there should be no dialogue. Uri Rosenthal from the Instituut voor Veiligheids- en Crisismanagement BV [Institute for Safety, Security and Crisis management] (COT) in The Hague supports a similar line of thought. Looking for the reasons behind the attacks is, by definition, approving them. He almost seems to say that religious fanatics should be summarily executed, a feeling shared by people like the Minister of Finances, Zalm.

The central role played by faith resounds in every argument. *NRC Handelsblad*, in the words of Carolien Roelants, has already mentioned terrorist Islam. To claim that this Islam plays a minor role seems to be completely meaningless. Even opponents of the hard line try to use the Koran to prove that the others are wrong. No, faith is a major issue.

Thijl Sunier sees the born-again Muslims more as a new generation of assertive migrants and the Koran serves rather to legitimise violence, or even peace. 'You can always legitimise violence with an appeal to all sorts of sources, but you can also do the opposite. If you just look at the relationship between those sources and behaviour and thus bypass the interpretation of the translation, then in my opinion you don't understand much of it'. Martijn de Koning goes a step further: 'You've seen that broadcast on *NOVA* with those chat logs of Abdul Jabbar van der Ven with Jason W. My impression was that if Abdul Jabbar had turned up with a song from *Sesame Street*, our Jason would still have found grounds for a fatwa with which he could rob the unbelievers. That is just what he wanted to do; it was only too clear from that chat log. However, the murder assignment or the approval of the murder was not at all clear to me.' Direct relationships between Islam and violence or between a sermon of an Imam and violence are not only difficult to establish, often they simply do not exist. The case of El-Moumni demonstrates this beyond the shadow of a doubt. Although El-Moumni claims that the Koran and he personally are opposed to homosexuality, he also states that the Koran does not permit violence against homosexuals, which is also his stance. The fact that Osama bin Laden or another member of Al Qaida or related Islamic action group brings out a fatwa, a writ or an appeal to kill unbelievers does not mean to say that the basis of this appeal can be found in the Koran. When President Bush decided to cleanse Fallujah of 'terrorists', his decision was not analysed according to the yardstick of the Enlightenment or the Bible, however much his choice of vocabulary might have suggested that. No, it was as if President Bush was elevated above any doubt. In the documentary *The Thesis of the Power and the Glory*, Michael Buerk stated that a marriage had taken place between belief and politics in both the United States of America and the United Kingdom. Although Buerk did not see any danger in this, the documentary showed in great detail how Blair manipulated his party with the magic word *believe.* In the run-up to the Iraq war and at the time of the conflict about whether or not there were any weapons of mass destruction, he presented himself as the leader of the people who should believe that he was acting in good faith. Bin Laden is more explicit in his use of Koran texts, but also uses belief as the binding element. 'When asked to whom he would answer for the

deaths of British soldiers in Iraq, Blair replied that it would be not to parliament or history or even the people, but to "my Maker". This reference to a higher authority is disturbing, particularly in our political system, where there is an inherent danger of elective dictatorship. It doesn't do to let the hand of God get too close to the levers of power.' (Iain Macwhirter, 'Backward Christian Soldiers' in *Sunday Herald*).

GOOGLE-ISLAM

Faith unites people. There is nothing wrong with that. Christians also seek each other out in churches or at happenings like the EO (Evangelische Omroep) [literally Evangelical Broadcast – a public broadcasting associations in the Netherlands devoted to promoting the evangelical message] young people's day. Bin Laden makes use of that phenomenon, as does Blair when he tells his listeners they should have endless faith in him, even when he is almost lying. By zooming in on belief, you get analyses like those quoted by Frank Buijs in his research proposal of December 2004, 'Muslims in the Netherlands'. 'From a theological point of view, fundamentalist Muslims are in an easier position, because they can fall back on an age-old tradition. The attraction of fundamentalism lies in various factors. For Muslims who are confronted with the chaos of the world, fundamentalism provides a system of order that is expressed in a familiar terminology (Kepel, 1997). It combines pride in a glorious past with the promise of a radiant future. It formulates a sharp criticism of the Western phenomena of decadence, individualism and a lack of interpretation, which to some extent is also endorsed outside the circle of fundamentalist Muslims.' Sorted. We can all go home now. Those 'radical' young people who have lost their way in this world are reverting to the past and using religion as a vehicle to explain and comment on the world. Close those mosques and keep under surveillance or arrest preventatively every Muslim youngster and the danger will disappear.
The bond with other people of the same faith does not seem to be essential for these religious fanatics. 'One example of this is the first recorded and, because of the arrest of the person concerned, frustrated, case of "self ignition". Self ignition means that an individual, without any involvement in networks or direct personal contact with recruiters, independently becomes radical, for example under the influence of internet sites, to such an extent that of his own volition he goes on a jihad or prepares and carries out a terrorist attack', said Minister Donner, with reference to the *Tweede Voortgangsrapportage Terrorismebestrijding* (Second Progress Report on Counter-Terrorism). Self ignition? As if these youngsters were born with a bomb belt and after their conversion to Islam exploded spontaneously somewhere. Has there been a serious attempt to gain any insight at all into potential perpetrators? The progress report does indicate one aspect, i.e. the increased role of the internet in these young people's pursuit of their belief and the role of Islam. 'From time immemorial, an Islamic identity was reasonably unambiguous. This identity is defined by particular regulations, with a particular tradition, a way of life according to that tradition and you could take the example of predecessors, which usually evolved via face-to-face relationships in the mosques and Koran schools. One of the aspects of the modernisation process is that this interaction is no longer one of the sources of knowledge. People acquire knowledge from various sources. We refer to that as Google-Islam and Mohammed B. seems to be an

exponent of this.' That is Google Islam, or, as Martijn de Koning called it earlier, cut-and-paste Islam.

Google Islam requires the internet and that is exactly where the so-called 'radical' sections of Islam are prominent. 'That is where you can see the *salafi* groups, which are mentioned so often, seizing that opportunity. They do that with fine websites because they know how the internet works. They know that if youngster put a question on the internet they are not going to wait two weeks for their answer. The question can be put to a database. And there is a page called Frequently Asked Questions.' Martijn de Koning refers to the websites of Al-Yaqeen and Selefie Publications. Al-Yaqeen seems to be linked to the As Soennah Mosque in The Hague and Selefie Publications seem to be more focussed on Saudi Arabia and closed to Dutch society. In addition to these websites, specifically focused on faith, of which there are many more, there are also some more general websites, such as Maroc.nl or Marokko.nl. On all these websites there is room for discussion via forums. 'Young people take positions, which they base on the Koran, Hadith and the statements of scholars. In this way they actually create their own fatwa's. The advantage of the Internet, of course, is that they can participate in these discussions under a pseudonym, which gives them the freedom to ask all kinds of questions', says De Koning in the lecture *Young Muslims: search for a true Islam.* Although religion plays an important role for these young people, the relationship with the West is very much in evidence everywhere. 'The MSN groups usually have fewer permanent members than the websites, but that is not to say they reach a smaller audience. Regularly, messages from the MSN groups can be found on sites such as Marokko.nl. The larger groups, such as islamenMeer, which sometimes have a couple of thousand members, are more moderate than the smaller groups and show a more varied picture of opinions concerning Islam. The smaller groups are seldom granted a long life. Soon after messages are received that inflammatory texts and threats are being exchanged, the groups are closed down. The discussions and messages within the groups vary widely. The subjects range from the devil to sex and from demonstrations to jihad, but they all talk about dealing with the Western world. "The West" stands primarily for the US, Israel and the Jews, and the Netherlands. There are Salafi MSN groups that strongly reject Dutch society. But there are also those that seek a rapprochement and reject violence.'

HUMILIATION

What role does religion actually play nowadays? Is it the Mohammed B.-like religious fanatics who use their faith to base criticism on Dutch society? Are they pushed into faith by a society that does not accept them as full members? Do they self ignite, as Minister Donner claims, by means of news groups and internet forums? Jessica Stern's book, *Terreur in naam van God* (Terror in the name of God), is based on the premise that in their youth or later terrorists have been humiliated as a person or as a group. She spoke to so-called terrorists of different affiliations. In the discussions she had with these people, the word 'humiliation' kept cropping up; in her opinion, that is the deeper root from which terrorism emerges.
Martijn de Koning makes the link between Jessica Stern's story and the manner in which many Dutch Muslim youngsters are turning to Islam. What you see in investigations into

radicals among Sikhs, Hindus and Christian fundamentalism is that feeling of impotence and also frustrations. Frustration, powerlessness and humiliation result in social humiliation in the personal, or in group situations. Then a number of things come together. If your religion is something you take for granted, then you don't think about it, and people are more flexible. For these young people, it is not something they take for granted, because they have been taught never to accept anything that is taken for granted. You have to justify yourself continually if you are Muslim. Then people start to think about religion as if it were a thing: a thing that is something or can do something itself. That's something that one has to accept, something intrinsic in oneself. At a given moment, you see that your own religious identity is becoming holier all the time and that any criticism of Islam whether or not it is justified is an attack on yourself. Then you see that you are experiencing a sort of personal humiliation.'
De Koning tries to posit that it is not the humiliation that is the main point but the manner in which these youngsters experience their belief, as 'a thing' that is part of 'your intrinsic self'. The humiliation then has nothing to do with a humiliation of the belief, but with a humiliation of the individual person.

Jessica Stern seems to offer some support to the potential Muslim fighters. It is nothing to do with you yourself, you have been humiliated. If you undergo psychotherapy everything will be all right again. It's logical that warhorses like Afshin Ellian, Leon de Winter and others make mincemeat of this argument. Just imagine that if everyone who had felt humiliated in their youth became as radicalised as Mohammed B. Then we would be living a sort of Wild West life in Amsterdam. Humiliation as an argument for radicalisation seems positive and understanding, but once again does not take these youngsters seriously. These young Muslims seem to be defined in terms of having an identity conflict, of not being integrated (read not yet adapted), not accepted, of being derailed in their religion, being fanatical or humiliated.

MODERN, WESTERN, RADICAL ISLAM

Is religion actually so important for this movement known as 'radical' Islam and if so, is it perhaps inclined to modernise rather than harking back to centuries ago? Daniel Pipes is not the most left-wing writer, and with Richard Pipes (fervent anti-Soviet) as his father he is often in the company of neoconservative friends, such as Paul Wolfowitz and Richard Perle. Yet Pipes wrote an article' The Western Mind of Radical Islam' in December 1995, thus long before the attacks of 11 September 2001. The conclusions of the article are unsurprising, but the argumentation is very interesting. Pipes claims and substantiates with many examples that 'radical' Islam in fact is a modernisation of traditional Islam. Pipes: 'Islamists are individuals educated in modern ways who seek solutions to modern problems. The Prophet may inspire them, but they approach him through the filter of the late twentieth century. In the process, they unintentionally substitute Western ways for those of traditional Islam.' 'Islamists' are the present-day 'fundamentalist' Muslims according to Pipes. 'The Islamists' goal turns out to be not a genuinely Islamic order, but an Islamic-flavored version of Western reality. This is particularly apparent in four areas: religion, daily life, politics and the law. It's certainly not their intent, but militant Muslims have introduced some distinctly Christian notions

into their Islam. Traditional Islam was characterized by informal organizations. (…) Islamists, ignorant of this legacy, have set up church-like structures.' In his account, Pipes lets various religious leaders and theoreticians express their opinions, including Hasan Al Turabi. In the appendix to the 9/11 commission report, Turabi was called a hardliner who was trying to introduce the *sharia* into the whole of Sudan. 'Traditional Muslim men took pride in their women staying home; in well-to-do households, they almost never left its confines. Hasan Al Turabi has something quite different in mind: "Today in Sudan, women are in the army, in the police, in the ministries, everywhere, on the same footing as men. I am for equality between the sexes", Turabi explains. "A woman who is not veiled is not the equal of men. She is not looked on as one would look on a man. She is looked at to see if she is beautiful, if she is desirable. When she is veiled, she is considered a human being, not an object of pleasure, not an erotic image."' In addition, Daniel Pipes examines the situation in the country that is seen as the ultimate Islamic bulwark, closed and undemocratic. 'For centuries, a woman's veil served primarily to help her retain her virtue; today, it serves the feminist goal of facilitating a career. The establishment of an Islamic order in Iran has, ironically perhaps, opened many opportunities outside the house for pious women. They work in the labor force and famously serve in the military. A parliamentary leader boasts, not without reason, about Iran having the best feminist record in the Middle East, and points to the number of women in higher education.' We are not ignoring the human rights violations in Sudan and Iran, but the reasoning and the practice described in the above examples and many others cited by Pipes, do give another slant on what we know as 'radical' Islam. In fact, it places Islam in another perspective, an ideological perspective. It was from this point of view that Ayatollah Khomeini wrote a letter to Gorbachev in January 1989, in which he divulged the universality of Islam. Daniel Pipes referred to the letter in his article: 'As interpreted by a leading Iranian official, this letter "intended to put an end to (…) views that we are only speaking about the world of Islam. We are speaking for the world." It may even be the case – Khomeini only hints at this – that Islam for him had become so disembodied from faith that he foresaw a non-Muslim like Gorbachev adopting Islamic ways without becoming a Muslim.' The neoconservative Pipes ends his account with an almost progressive interpretation of 'radical' Islam. 'The Islamist leaders are not peasants living in the unchanging countryside but modern, thoroughly urbanized individuals, many of them university graduates. Notwithstanding all their talk about recreating the society of the Prophet Mohammed, Islamists are modern individuals at the forefront of coping with modern life.'

RELIGIONS ARE JUST LIKE IDEOLOGIES

Consider Islam as an ideology. Frank Buijs was referring to this when he clarified that the process of individualisation that those youngsters were going through is seamlessly linked with the individualistic character of Islam. 'Radical' Islam provides a sort of guideline for everyday life. That can easily seem dogmatic and fundamental. In an open letter to Ewald Vervaet, Martijn de Koning shows that this all-embracing impression does not come from the Koran, but rather from the Muslim community, and that this impression has many links with the larger part of Dutch society. '… It therefore seems as if it is clear that this Islam is in everyday life and whether or not Muslims allow their

lives to be determined by what is written in the Koran. You state that there is a pressure that comes from orthodox Islam and that this is difficult to deny. That is true, but the force of that pressure is not determined by the Islamic scholars (they are too far away) and also not by the content of the Koran (which many believers cannot even read; which has both advantages and disadvantages), but by reciprocal social control and the pressure imposed by non-Muslims'.

De Koning's argument is in fact very simple. There is not much wrong with Islam, although you can of course always have reservations, but the manner in which we deal with Islam is determined by the interaction between Muslims and non-Muslims. 'That does not mean that I don't share your concern on some points, such as the man-woman relationship, but that there is no point in putting forward the Islamic theology only as a basis for all those problems. "Islam" itself of course does not do anything. It is Muslims and non-Muslims who determine what the face of Islam will be like. Identity and culture are always the product of interactions (and in turn can influence those interactions: one can justify behaviour on the basis of Islam) and interpretations. Which interactions and interpretations predominate is largely determined by power structures that are embodied in the economic, political, social and juridical context.'

In the sources, writings, speeches and discussions you can find both a legitimisation of violence and a legitimisation of peace, depending on your own agenda and wishes. History demonstrates that time and time again, not only with reference to religions, but also to ideologies. 'But doesn't Islam call for hate and violence? Certainly. Allah is a Supreme Being with a dualistic character, just like God and Jehovah. They all embody love, but equally so wrath and vengefulness towards unbelievers. (…) In any case, this duality does not only occur in religions, but equally in the major ideologies. The Enlightenment is at the same time a vehicle for progress and the basis of dictatorial planning à la Stalin. Liberalism is both the herald of freedom and the legitimisation of exploitation and exclusion of the weaker in society. Christianity served to extenuate apartheid but its major combatants were Christian clerics', wrote Frank Buijs in *Socialisme & Democratie* (Socialism & Democracy). Religion or ideology – in fact it does not make much difference. If they want to, the Mohammed B.s and Jason W.'s in the Netherlands will always be able to find a legitimisation for violence in the Koran. A discussion about whether or not Islam is violent is in fact meaningless. If Islam were violent, then the tens of thousands of young people who converted to Islam in recent years would already be involved in fighting, which to date is not the case, and if it were a peace-loving religion or ideology, then someone who was looking for a legitimisation of shooting , stabbing or ritually killing another would be able to find a relevant text.

MORE OPEN DEBATE

When 'radical' Islam was viewed as an ideology and not as a religion, it also became interesting for non-Muslims, as Khomeini had already realised in 1989. Although Khomeini did not belong to the Bin Laden movement within Islam, he did create an opening for non-Muslims to see Islam not just as a religious sect but also as an ideological basis for forming social structures. This is a Utopian mentality. One can hardly imagine the barbarity with which attacks were made in Madrid, Bagdad, London, Kabul, Amsterdam and elsewhere. While it is no guarantee for avoiding attacks, insight

can lead to a visionary treatment that binds people and brings them into dialogue. It also creates hope and openness to look for what we want to do with this world and bypasses the fatalism that radiates from the diehards with their sayings ‘they want to sow hate, we don’t and ‘we know that there is an attack on the way but we just don’t know when’.
An ideology seems to be more neutral and less loaded. In the eighties, the guerrilla movements in Central America, South America, Africa and Asia under the flag of socialism, communism, Maoism or Stalinism fought against dictators who were frequently supported by the United States. Although the acts of violence committed by the dictators were many times worse, the guerrillas themselves did not have clean hands. Whatever the war it’s always the civilians that are the first victims. In Uzbekistan, Afghanistan, Iraq and other countries in which the “war on terror” is now being fought, civilians are also the victims. However fiercely the allies proclaim that this is not the case, human rights organisations have frequently reported in recent years on human rights violations in the name of the war on terror. However much people like Bush and Blair would like to divide the world into Good and Bad, reality is not so black and white. No united front of the allies in Iraq, but neither was there any unanimity in the battles in Afghanistan.
The allies do not have a united front, but this is no less the case with ‘radical’ Islam. In 2002, Paul Eedle wrote an article in *Jane’s Intelligence Review* entitled ‘Al Qaida takes fight for “hearts and minds” to the web’. In his article he quotes Muntasser al-Zayyat, a well-known Egyptian activist: ‘We know that our brothers who carried out this action [11 September] were, in their view, supporting the Palestinian cause. But we are also interested in communicating well with others. By ‘others’ I mean those whom we want to side with us in this struggle.” Al-Zayyat went further. He said resistance to the USA was a religious duty, but added: “I do not go so far down this path as to target civilians indiscriminately in the way that happened.”’ Eedle mentioned a second moment of discussion in the so-called radical movement. In March 2002, 150 prominent figures in Saudi-Arabia signed an open letter in reaction to the support that 60 American intellectuals had proclaimed for Bush. ‘In March, Saudi scholar Sheikh Salman al-Oadah published a response, signed by 150 Saudi academics and professionals, called “How we can co-exist”. While it was clear in its condemnation of US policies, the letter caused a storm in Muslim circles by offering a dialogue with the West and conceding that the West and Islam did, indeed, share certain universal values. Sheikh Salman al-Oada was one of the two main religious leaders of the opposition movement in Saudi Arabia in the early 1990s, the other being signatory Safa al-Hawali.’ Eedle is particularly interested in the manner in which Al-Qaida uses internet to explain or establish its viewpoint to others. It’s a pity because by zooming in on the Al-Qaida problem and its power, something is lost. Ideological battles are also taking place within radical Islam.

NO COMMUNICATION

By viewing radical Islam as an ideology and not as a fanatic doctrine, with fundamentalist and terroristic mentality, an opportunity is created to consider it in a different light. This way of thinking in no way wishes to extol or justify what has happened but it does take seriously young people who are attracted to radical Islam. In the same way that the fight of various Latin American guerrilla movements in the eighties

seemed hopeless when faced with the superpower, America, and therefore exerted a great appeal for people in the squatters' movement, Al Qaida with its radical Islam holds great attraction for young Muslims. This is not surprising. Al Qaida won its spurs in the fight against the Soviet Union. Then the West stood cheering at the sidelines to send the jihad fighters to their death for the good cause, fighting against the Soviet Union. Even though the movement then caused more civilian victims in the Middle East or rather outside the West than under the Americans, it continually stoked up the ideological battle and kept it in the headlines. In July 2002, Paul Eedle wrote: 'How does Al Qaida stay organised when its members are in hiding and scattered across the world?' He provided the answer himself immediately: 'Easy – it runs a website.' And the fact that this has not changed much since 2002 was shown by the Middle East Media Research Institute with an extensive report on 'radical' Islamic websites. It is striking that the majority of these websites are hosted in the United States. In fact, internet is the only means of communication available for 'radical' Islam. One of the few networks that also broadcasts regular statements is Al Jazeera, but in the Netherlands these are considered to be almost propaganda inciting hatred.

The site, to which Eedle refers in his article in *The Guardian*, 'is entirely in Arabic, which means that tens of millions of people who hate American policies on the Middle East can read it, but almost nobody in either the governments of the media of the west can understand a word'. To some extent, this can be interpreted as strategy, but journalists of *Le Monde* point to another aspect. By defining the resistance as radical, terroristic and fanatical, we no longer need to listen to the message. The supporters of 'radical Islam have stopped taking the trouble to deliver the message and just show the terrifying images of beheadings and bomb attacks. In practice, it turns out that the Iraq conflict is increasingly dominated by American and Iraqi "discourse". The armed resistance on the other hand is almost inaudible, apart from the noise of explosions and kidnappings. Its message was obstructed for various reasons. One could start with the production methods; word of mouth reports, old-fashioned pamphlets, explanations and videos on various internet sites, and all this almost exclusively in Arabic. As a result, it is difficult for foreigners to receive the message. In addition, rumour has it that there is more or less deliberate censorship; the videos have been stripped of detail, only a few 'crucial pictures' are retained. Finally, the major element; the message is discredited from the very start, seeing that it comes from a "fanatical" or "bloodthirsty" enemy. The communication is nothing more than the rationalisation of diverted violence and is not worth listening to or analysing. Since the enemy makes use of violence, attention for the message is seen as obeisance.' Whereas in the eighties solidarity groups from all sorts of political movements were with the guerrilla wherever he was in the world, they cannot be found now in the Netherlands or in the West. The only ones who are prepared to fight for the resistance in Chechnya and Iraq are radical imams who are dealt with severely.

Remarks made by Zalm, Van Aartsen, Wilders, Ellian and others are not seen as sowing hatred, and if there should be any reference to that, then our greatest asset, freedom of speech would be attacked. Any mention of the resistance in Chechnya or Iraq cannot be heard anywhere. Nobody dares to say anything aloud for fear of being depicted as a hate-spreading imam, for example. During the trial of Mohammed B. it was hoped that he

would give a political explanation for his deed. Because of his silence and devotion to the Koran he was seen by many as pathetic. Would it really have made any difference if he had said something that had political import? Would it have made a difference if he had made a social analysis about the community mindset in Islam? Would it have made a difference if, instead of saying 'I want to thank Allah. I ask Allah for help in the words I am going to speak. I testify that there is no God but Allah', he had argued in favour of the poor in the Middle East? No, Mohammed B. had already been labelled a fanatical fundamentalist Muslim terrorist. Perhaps he is, but the movement to which he belongs is asking Western society a question and holding a mirror up to it.
This was the same mirror that jihad fighters in Bosnia and Kosovo held up to us in the last ten years. In Bosnia and Albania, Muslims were and are seen as the lowest class, disparaged by all. The fact that the mujahidin fighters from Afghanistan of the reviled Al-Qaida rolled their sleeves up to fight against the Serbians perhaps says more about their civilisation than about ours. Certainly if we believe the argument of Guido Snel, a lecturer in Slavic language and culture and interpreter for Dutchbat, who wrote in *Vrije Nederland* of 29 June 2005, the question is whether 'our boys' really did make every effort for the Muslims there or whether in fact they couldn't care less. In effect, the mujahidin were resistance fighters who were making a stand for the most oppressed. In August 2001, *NRC Handelsblad* wrote about these fighters: 'To a large extent, the Bosnian Muslims stood firm in 1992 thanks to the support of the mujahidin and military support of Islamic countries, in the opinion of Richard Holbrooke, the American mediator, in his book *To End A War.* All that time, the CIA had been aware of the activities of the mujahidin. The Americans had no objections to their presence because they were helping the "isolated Bosnians" to survive. However, in the Dayton agreement that ended the war towards the close of 1995, it was determined that the religious fighters must have left the country within 30 days of the arrival of SFOR. Holbrooke was frightened that the mujahidin would take up arms against the American soldiers. Had they not left the country, threatened Holbrooke, then Bosnia would get no support. Alija Izerbegovic, the leader of the Bosnian Muslims, opted for the money, even though it would be a long time before all the foreigners left.' In the long run, the fighters could do our dirty work for us, but then they should clear off, was the message. Ironically enough, it is these fighters who are now turning against 'us' and who are a source of inspiration for Muslim youngsters in the West.

TERRORISM VERSUS POVERTY

The reproach of arrogance and superior attitude we address to 'radical' Islam, with its total truth, applies equally to ourselves or perhaps even more so. It is an expression of the lack of historical understanding and of the place that the West still occupies in the international arena. R. Coolsaet, director of the department of Security & Global Governance at the Royal Institute for International Relations at Brussels and professor of International Politics at the University of Ghent, regularly makes bold statements. One example is that he published an overview of the number of deaths from terrorist attacks on the basis of figures from the American State Department and the Rand Corporation (without Iraq) from which he drew the conclusion that the number of attacks had reached a historical low point. The problem is that some dozens of deaths in London cannot be

compared with a few hundred ten or twenty years ago. That would result in a mathematical analysis that is comparable with hardliners who proclaim that we cannot avoid an attack, but that we can limit it. However, Coolsaet does not get bogged down in a mathematical analysis, as shown in his contribution to the article 'radicalisation and jihad' in the *Justitiële Verkenningen* (Judicial Investigations) special edition. 'The international community has only an indirect influence on the local roots of Islamic terrorism outside Europe. That is particularly true in the Maghreb and the Middle East. In contrast to the feeling that prevails in the West, large numbers fell victim to Islamic terrorist groups, particularly in this region, long before 11 September.
Many Arab communities have been in crisis for twenty years or more; growing unemployment, emigration of the more highly educated, dictatorial regimes, violence in all sorts of forms, repression and impoverishment. The population no longer expects anything from its leaders and demands solutions without really knowing what they want. Some of them find support and meaning in conservative Islam and others go in search of a jihad' wrote Coolsaet before switching to a discussion of the *Arab Human Development Report 2002*. 'The main author of the report, the Egyptian academic, Nader Fergany, is of the opinion that the Arab and Muslim regimes bear a heavy responsibility for the current malaise – but that applies equally to the West that has not hesitated, under the pretext of freedom and democracy, to support regimes that violate these same ideals. The authors of the report seem to beg for Western support – not in the form of an intervention to establish democracy in their country – but rather to make every effort politically to establish a more inclusive world in the foreseeable future.' An inclusive world. Coolsaet could not have expressed it better himself, which is why he let the writers of the report *High level panel on threats, challenges and change* express it themselves. Their analysis examines a further description of that inclusive world – no more Eurocentric, arrogance, but an open view. 'But they (the writers of the report) also fear the continuation of the present circumstance in which the Western sources of danger – terrorism and proliferation – absorb the most attention and energy. If equal attention is not paid to the fight against poverty, abuse of the environment, Aids, organised crime and civil wars, which form a far great threat to mankind than terrorism, then there is a risk that the UN and the entire multilateral structure will only be seen as an instrument of the "rich and powerful".'

We have allowed ourselves to be frightened by a set of Mohammed B.s who are producing bombs in their back gardens or bedrooms while wars, disease and hunger are defining daily life in the rest of the world. This should not be seen as a negation of that fear but as an eye-opener. The writers of the report seem to be saying "Get real and come down from your ivory towers."

JIHAD VERSUS MCWORLD

Ivory towers? Perhaps marble offices are more likely. Benjamin Barber puts this discrepancy between the feeling of superiority of the West and that of the jihad fighters into another perspective. In the new introduction to his book *Jihad versus McWorld*, Barber writes: 'The clash between the forces of a multiform clan culture and a reactionary fundamentalism, that I call jihad, and the forces of the uniform modernising

and aggressive economic and cultural globalisation that I have called McWorld is ruthlessly accentuated by the dialectic reciprocal dependence of these two apparently opposite movements.' The nice thing about Barber's story is that he used the word 'jihad' in a broader context. When he wrote the book in 1995, he could not have known that six years later the term would have acquired an almost apocalyptic connotation. In part two of the book, he explores the world of the jihad, starting not with Islam, but in Europe. After that, there is a review of examples from all over the world, in which nationalism, in particular, plays a major part. That Islam finally comes into the picture is nothing more than logical in the line of his argument. If Barber were to write the book now, a reverse order would be more appropriate – going from Islamic jihad to Lonsdale youth and the right-wing nationalism of people like Geert Wilders and Jozias van Aartsen.

Consider jihad as something degenerating, uprooting and involving the concept of no longer having any grip on your own situation, or jihad as a No to the European constitution. However futile the constitution might be in its meaning, because without it the European Union functions perfectly normally, the No is primarily a No to the invisible. It signals the end to individuality. You could view the constitution as the ultimate positive gesture towards an egalitarian world, but that gesture, that illusion is no more than a liberal convention, an argument for an unbridled McWorld. That provoked a real jihad in France and in the Netherlands. Unbridled capitalism, referred to as 'McWorld' by Barber, is in fact the world of high finance, which, completely globalised outside any reasonable democratic control, can have a monetary feast.

There was great surprise among established political systems at the loss of the referendum on the European constitution. In fact, it demonstrated that the bookkeepers in The Hague lacked any sympathy for society. In contemporary politics, there seems to be only one word that counts: control. In his *Pleidooi voor intolerantie* (In favour of intolerance), Slavo Žižek wrote: 'In post-politics, the conflict between world-wide, ideological visions epitomised by the various parties who are in a competition to exercise power is replaced by the collaboration of enlightened technocrats (economists, pollsters) and liberal multiculturalists; in the process of the negotiation and advocacy, a compromise is achieved that is then presented as a more or less universal consensus. That is how post-politics emphasised the necessity of abandoning old ideological discrepancies and taking on new issues, making use of the necessary specialised knowledge and free consultation, thereby taking into account the actual wishes and desires of the people.' Žižek's line of reasoning indicates not only the powerlessness with which politicians nowadays are struggling in their attempt to get to grips with transnational trade and industry, but is also an explanation of the introduction of uniformity into the debate relating to terrorism. From left to right, people marched behind the banner of criminal law. 'In a similar manner, the champions of New Labour emphasised eagerly that you should without prejudice take over and apply good ideas, irrespective of their (ideological) origins. What are good ideas? Ideas that "work", of course. (…) The political act (intervention) is not simply something that functions well within the framework of existing relations, but something that itself alters the framework of the manner in which the things work. Saying that effective ideas are the same thing as good ideas means an acceptance beforehand of the set-up that determines what works.' Politicians lack the courage and vision to step outside the debate on the War on Terror. As a result, society becomes even more blinkered. When Abdul Jabbar van der Ven said

in a television interview that he would not mind if Geert Wilders were dead in two years' time, the party leaders from left to right lost no time in sending a letter to the Minister of Justice about the possibility of prosecuting Van der Ven. On the other hand, congratulations from Zalm, the Minister of Finance, on a summary execution of a suspect in Pakistan, a country whose record of service in the field of human rights is not great, did not prompt one word in the Chamber. Actually, the conclusion should be simple, are you surprised that those young Muslims are all joining in the Islamic battle? After all, by definition, it is war. It is the bookkeepers who have the power in politics, in the field of social security, but also in the field of criminal law.

WELCOME TO THE DESERT OF THE REAL

Zalm's congratulations to General Musharraf is in keeping with a comment made by Donald Rumsfeld, the American Minister of Defence, that was quoted by Žižek to indicate that we no longer see terrorists as members of this society. 'Asked by journalists about the goals of the American bombardment of Afghanistan, Donald Rumsfeld once simply answered: "Well, to kill as many Taliban soldiers and Al Qaida members as possible." This statement is not as self-evident as it may appear: the normal goal of a military operation is to win the war, to compel the enemy to capitulate, and even the mass destruction is ultimately a means to this end…The problem with Rumsfeld's blunt statement, as with other similar phenomena like the uncertain status of the Afghan prisoners at Guantanamo Bay, is that they seem to point directly to Agamben's distinction between full citizen and Homo Sacer who, although he or she is alive as a human being, is not part of the political community.' The terrorist is thereby divested of any possibility of communication and any deed that he or she commits is a confirmation of that definition. 'This paradox is inscribed into the very notion of the "war on terrorism" – a strange war in which the enemy is criminalized if he simply defends himself and returns fire.'

In his essay *Welcome to the Desert of the Real,* Žižek examines the boundaries of what it is appropriate to say about attacks. Defending oneself could be said about a fighter in Iraq, but also about Mohammed B.? What is interesting about Žižek is that through endless association he tries to fathom whether there is any light at the end of the tube.
One of his answers to the above question about Mohammed B. is as follows: '… we should be careful not to attribute to the Other the naïve belief we are unable to sustain, transforming him or her into a "subject supposed to believe". Even a case of the greatest certainty – the notorious case of the "Muslim fundamentalist" on a suicide mission – is not as conclusive as it may appear: is it really so clear that these people, at least, must "really believe" that, after their death, they will wake up in heaven with seventy virgins at their disposal? What if, however, they are terribly unsure about their belief, and they use their suicidal act as a means of resolving this deadlock of doubt by asserting this belief; "I don't know if I really believe – but by killing myself for the Cause, I will prove in actual fact that I believe?..."' Perhaps Žižek is getting rather carried away in his argument, because he even asks the question of whether the Palestinian suicide bomber loves life more than the American military who is taking part in a war behind his computer screen. 'What if we are "really alive" only if we commit ourselves with an excessive intensity

which puts us beyond "mere life"? What if, when we focus on mere survival, even if it is qualified as "having a good time", what we ultimately lose is life itself? What if the Palestinian suicide bomber on the point of blowing him- or herself (and others) up is, in an emphatic sense, "more alive" than the American soldier engaged in a war in front of a computer screen against an enemy hundreds of miles away, or a New York yuppie jogging along the Hudson river in order to keep his body in shape?'

Žižek's questions refer directly to the title of his book *Welcome to the Desert of the Real* and to the perverse reality of the game and television/film industry. In both, the spectator becomes more and more of a virtual or actual participant without the actual dangers in life. In games like *Black Hawk* and *Desert Storm 1 and 2,* you can act out a war or a conflict as if you were a participant. The picture becomes increasingly realistic and one can imagine that in a few years one will almost be able to join in live. You can shoot Somalis and Iraqis in the game or bombard towns and villages as if it were an everyday activity. The television and film industry also elaborates further on this element of suffering and misery. The most harrowing dramas are enacted, but fortunately there is always a happy ending. Life in the West has become a game, divested of any blemishes. Even though the gap between rich and poor is growing greater in the Netherlands, it does not seem to be visible. The homeless and refugees are just erased from the picture of daily life. What *Welcome to the Desert of the Real,* written as an answer to 11 September 2001, actually really wants to say is more or less: this is the actual world in which we live.

EMERGENCY DEMOCRACY

Neither Žižek nor Barber is fatalistic. Their clear-cut analysis and criticism of western society and the jihad fighters does not end in a pessimistic conclusion as the Geert Wilders and the Uri Rosenthals of this world do, with their comment that we are just waiting for the next attack. This attitude is the only available if the criminal justice path is followed by radicalisation. The AIVD or the politicians will sometimes be lucky, sometimes unfortunately not, that has become a fact of life. Žižek and Barber are not navel-gazers who are resigned to the current political situation. They pose the question, for example, of what it means that a minister, at the instigation of the media, says that we are at war, while there seems to be no interruption of everyday life. 'The very distinction between the state of war and the state of peace is thus blurred; we are entering a time in which a state of peace itself can at the same time be a state of emergency', according to Žižek. That should be alarming, but the notion that 'we' could have been mistaken is not an option. After all, our democracy and security are sacred. But as Žižek rightly points out: when can one say there is a democracy? 'A decade ago, in the state of Louisiana's governor elections, when the only alternative to the ex-KKK David Duke was a corrupt Democrat, many cars displayed a sticker: "Vote for a crook – it's important!" In May 2002, French presidential elections, Front National leader Jean-Marie le Pen got through to the final round against the incumbent Jacques Chirac, who is suspected of financial impropriety. Faced with this unenviable choice, demonstrators displayed a banner "Swindling is better than hating".' Can one say there is a democracy if the choice is limited to two persons, both of whom in fact are not a choice? Is it a democracy if you need millions to conduct a campaign, as in the United States? After the referendum on the

European constitution, an American stated that if the government had asked the business community to become more actively involved in the campaign, the referendum would certainly have been decided to their advantage. Votes can be won with money. That has nothing to do with democracy.
Democracy and freedom are hollow concepts that have to be given shape time and time again. They are not statistical phenomena that once achieved are valid indefinitely. The absolute state of peace that can also be a state of war is the *emergency democracy.* Žižek: 'The unexpected precursor of this paralegal "biopolitics" in which administrative measures are gradually replacing the rule of Law, was the Rightist authoritarian regime of Alfredo Stroessner in Paraguay in the 1960s and 1970s, which brought the logic of the state of exception to its unsurpassed absurd extreme. Under Stroessner, Paraguay was a "normal" parliamentary democracy with all freedoms guaranteed; however, since, as Stroessner claimed, we all live in a state of emergency because of the worldwide struggle between freedom and Communism, the full implementation of the Constitution was forever postponed, and a permanent state of emergency was proclaimed. This state of emergency was suspended only for one day every four years, election day, so that free elections could be held…'
Democracy and the state under rule of law are responsible for their own preservation, but can also undermine it. It is not the so-called terrorists that are responsible for this, but the state under rule of law itself. Behind 'rifo79', the alleged nickname of Mohammed B., another young man is hiding. Yet he is not treated 'normally' by the state under rule of law. His possessions have been confiscated and the only proof of this is a written statement. There was no charge, nothing. A criminal law approach to radicalisation would ultimately produce complete martial law that would not only affect the rifo79s but each one of us.

The 'us-and-them frame of mind' is perhaps uncomplicated, but it simplifies the matter to the extent that the nuance, insight, the background and the facts are masked. Should Mohammed B. be punished, yes, but is his radicalisation basically wrong, no. The BBC documentary, *The Power of Nightmares*, clearly demonstrates that our image of terrorism, sleeper cells, self-ignition and other superlatives from the terror debate can also be viewed and approached in a different way. The force of democracy and freedom should not be sought in criminalising radicalisation but in entering into the debate, however difficult that might be. In comparison with the present, the eighties were mellow years. Since then society has become harder and has been put on a business footing and that is reflected in both the debate, the 'radicalisation' on both sides of the spectrum and in the reaction to this. It is not the route of criminal law that offers a way out of this vicious circle, but an open society. Of course, people who commit, or who are going to commit, punishable offences must be prosecuted, but criminal law is a safety net and not something that will bring universal happiness to society.

9 CRITIQUE

How do you defend a state under rule of law against terrorism? What is the threat of terrorism? Which organisations do you need in this? What is the quality of these organisations? Which legal measures are necessary? How far may the government proceed in its actions? What are the consequences in the more long-term aspect? And who bears the responsibility? These are questions that must be answered at a time in which, on the one hand, much is demanded of the assertiveness of society and on the other hand, the achievements of the state under rule of law are hanging in the balance.

Politicians and administrators are in a difficult situation. Knowledge about the nature of terrorism and how to combat it, some years after 11 September is not readily available. In any case, the knowledge that was accessible related to quite a different form of terrorism than that with which we are confronted nowadays. The AIVD was the only service in the Netherlands that had up-to-date knowledge about radical Islamic terrorism.
Furthermore, it is extremely difficult to assess the 'actual' threat emanating from terrorism. On the one hand, there is the tendency to exaggerate this and on the other hand, incorrect estimates are made.
In the earlier chapters, we have examined in detail the risks linked with counter terrorism. In the sections on the AIVD, the new legislation, the immigration policy, the state of emergency and the black lists, we have indicated what risks are involved in the various elements. In this chapter, we want to make a more general contribution in the discussion about the relation between counter-terrorism and civil rights. How far may a state go in the protections of its citizens?

THE THREAT

Whichever way you look at it, the threat of terrorism has changed fundamentally in recent years. In addition, the analyses of what our attitude should be towards the threat vary tremendously. While one party, for example the Belgian Professor Rik Coolsaet, points to statistics that show that the number of attacks is not so great compared with other periods, the other, for example Uri Rosenthal from the Institute for Security and Crisis management BV, indicates the vicious nature of current terrorism.
The threat is constantly developing, has different manifestations, is quite diverse for various places in the world and has varied greatly in the intensity of consequences for the society concerned. Moreover, the description of the threat by media and politicians may be quite different than the actual reality. The strength of society is essential in being able to cope with the consequences of an attack or a murder.
The description of the threat is often made inaccurately. It is of course unacceptable to talk about 'war' as Minister Zalm did after the murder of Theo van Gogh. The threat emanating from terrorism is in no way similar to the situation of a war. The recognition of this in itself creates a different atmosphere. Moreover, a strong society does not easily give up, viz., Great Britain and Spain after the attacks there.
Many media are extremely inaccurate. Terrorism is a hot item, with its need for drama. Newspaper headlines, suggesting that 'millions of Euros in the Netherlands are channelled into terrorism' turn out to have little or no basis in truth.

An overview of the number of attacks that have taken place in the last decade, published in the *NRC Handelsblad* of 17 April 2004, shows an enormous increase in the number of attacks since 2003. What is not reported is that one third of these attacks took place in Iraq.

A specification is necessary. After all, terrorism arouses feeling of anxiety and why should people be made more apprehensive than necessary? In December 2004, during a discussion in the Second Chamber on the package of measures, several members of the Lower House cited Beslan as a terrifying example of terrorism and this was in a debate about measures in the Netherlands.

After 11 September, it was logical that attention was focused on the threat of Al Qaida. Until the attack on Afghanistan, Al Qaida was certainly a disciplined organisation, but partly as a result of the fall of the Taliban, the destruction of the training camps and the arrest or killing of two-thirds of the Al Qaida leadership, it is now a fragmented organisation. In this respect, dealing with a sponsor state seemed to be quite effective. However, there are quite a few reports about regrouping.

Rik Coolsaet described Al Qaida after the fall of the Taliban as brain-dead. According to Coolsaet, the frequently heard formula after attacks, 'linked with Al Qaida' masked more than it revealed. 'Although every attack since 11 September has entailed an automatic reference to Al Qaida, it seems more likely at present that these attacks are largely, or even exclusively, the work of local militant terrorist groups. There is no real operational coordination between these groups, only some sporadic and fleeting contacts. There are scarcely any close links between terror groups such as the Islamic Jihad in the Middle East, militant groups in Kashmir and Southern Asia, Abu Sayyaf in the Philippines, the Tamil Tigers in Sri Lanka, the Jemaah islamiyah in South-East Asia, Abu Hafs Al-Masri Brigade and ibda-c in Turkey.'

In its annual report of 2002, the AIVD stated that the radical Islamic terrorist organisations were becoming increasingly autonomous. 'By concentrating on their own area, self-supporting units are largely able to plan and carry out attacks entirely independently from the larger organisation.' (*AIVD jaarverslag* (AIVD annual report) 2002, page 20.

In 2004, the service stated that 'the developments of the last year show that the ideas and the attacks of the international network of Al Qaida are going to form a significant source of inspiration for regional and local networks of radical Muslims.

The role of Al Qaida, in the meantime, is to inspirer, to boost alienation between the West and Islam, to challenge and sometimes perhaps to finance. Autonomous radical Islamic terrorist organisations seem to be in a position to carry out large attacks, for example the attacks of 11 March 2004 in Madrid and those of 7 July 2005 in London.

Quite separate from this development was the war of the US against Iraq. Part of the justification for war came with the reference of the US to the fact that Saddam Hussein acted as a sponsor for terrorism. Colin Powell, ex-Minister of Foreign Affairs of the USA referred to the speech in which he justified the war against Saddam Hussein in front of the Security Council of the UN as a blot on his career.

In the opinion of experts, the war in Iraq, rather than leading to less terrorism, has led to more terrorism. In an analysis of the application of military means for dealing with Al Qaida, Marianne van Leeuwen, a former colleague of Clingendael, wrote in the *Internationale Spectator* of November 2002 that 'in any case, the Al Qaida network does

not need to lose any sleep about this. Worse still, if the attacks stirred up a fresh ground swell of anti-Americanism in Islamic countries and if the resulting chaos from the attacks provided unprecedented opportunities to obtain non-conventional means, then that is actually a reason for joy,'

Peter van Ham of the Clingendael Institute also saw the extremism in the Middle East increasing after the war of the US in Iraq. The threat of terrorism is only going to increase now, argued Van Ham. As a result of the war in Iraq, the US has changed its agenda, for example, Pakistan and India are no longer put under pressure to stop their nuclear weapon programme. The discussions with Russia have also been put on the back burner so that the planned destruction of the large supplies of nuclear material that is stored in various parts of Russia has been further delayed.

In its annual report of 2004, the AIVD stated that 'the battle in Iraq is playing a significant role in the minds of radical young Muslims'. According to the service, the threat that the situation in Iraq poses to the Netherlands is twofold: in the first place, it fuels hatred against the West, but more worryingly, the AIVD mentions the possibility of Iraq becoming the new Afghanistan. 'The longer the conflict lasts and more radicalised Muslims go to Iraq on jihad, coming back some time later as trained and experienced militants, as happened in the nineties with veterans from Afghanistan, the more likely they will become active recruiters of new jihadists in Europe.'

But to be fair, that threat does not exist. There is a big difference between for example, the threat in the Netherlands and that in Saudi Arabia, where attacks from terrorists linked to Al Qaida take place quite regularly. Moreover, as shown in our chapter on the AIVD, intelligence and police services sometimes play a unique role in combating terrorism. The example of the Algerian GIA, which in the mid-nineties carried out attacks in Paris, under the direction of the Algerian intelligence service, speaks volumes. However, the background of the attacks in Madrid also raises questions about the role of intelligence and police services.

Edwin Bakker, of the Clingendael Institute, attributes the feeling that we are living under the imminent threat of terrorism to the relative rarity of the phenomenon in the Netherlands. In Germany, France and England, countries that have had far more exposure to terrorism, the disruptive effect of terrorist actions is less than that in the Netherlands. Also, the fact that in November 2004 it turned out that Dutch politicians, policy-makers and opinion-makers were not able to keep a cool head, let alone restrict the impact of terrorism and violent activism, all contributed to a general feeling of malaise, in Bakker's opinion. 'Possibilities in this area are the development of an open, active and well-thought-out communication strategy with respect to civilians and policy structures that make it possible for politicians and policy-makers to have a strong and unequivocal leadership.'

Erwin Muller and Uri Rosenthal gave the same advice. In *De Volkskrant* of 12 February 2005, they wrote that 'in debates about terrorism it is frequently said that it's not too bad and that we shouldn't get carried away: "Above all we should be realistic." But with these terrorism experts a realistic picture of the threat points to the fact that it's a very real threat. And that involves responsibilities. The government should ensure that the population gets a clear picture of the threat. Then we all know what is going on. Civilians are not afraid if they get an adequate analysis of the threat of terrorism.'

The importance of giving such an analysis has now also been recognised by the government. In the programme *Spraakmakende Zaken* (Topics of discussion) on 17 July 2005, Minister Johan Remkes spoke very openly about the threat as it is recognised by the AIVD. He was referring particularly to networks such as the Hofstadnetwerk and mentioned ten to twenty similar networks in the Netherlands. Some hundreds of persons belonging to such a category can start to use violence.
What is unusual about the facts known about the threat that emanates from the Hofstadnetwerk is that the network concentrates on preparing actions focused on the individual. The murder of Theo van Gogh, the threats to Ayaan Hirsi Ali, Job Cohen, Jozias van Aartsen and Ahmed Aboutaleb, were followed by threats directed at Johan Remkes and Piet Hein Donner. It is unusual because, unlike the case in other countries, the threat is directed at persons.
The threat analyses should go further than a sensational TV discussion with a former politician. Threat analyses should not be in the form of spectacle or disclosure. They should provide a picture of developments in the field of terrorism. The initiative could be taken, for example, from the academic angle. After all, the background to terrorism can be described from various disciplines as a result of which a broader picture than hitherto would emerge. Attention should also be directed to developments abroad. What do we actually know in fact about threats in Africa, the new Afghanistan and even in our neighbour, Germany?
Once fear, hysteria and sensationalism have been removed by means of serious and well-considered threat analyses, there is more scope for political negotiation and probably more opportunity for in-depth investigation, something that is urgently needed in the Netherlands.

POLITICS

That brings us to the attitude of politicians in the terrorism debate. There is a great dearth of knowledge about the backgrounds, the causes and the combating of terrorism. Backgrounds and causes, as far as a number of politicians are concerned, are taboo and that is why they block any debate that even threatens to go in that direction. Why? Is looking for the causes the same thing as whitewashing them? Is naming the processes (the manner in which columnists write, the war in Iraq) the same thing as fostering understanding? By not discussing, engaging in controversy or even taking action, politicians deny themselves the possibility of researching the process of terrorism. And research is necessary in order to intervene. Research on several fronts, also into the effectiveness of particular measures, remains in any case difficult to assess. But research is also needed into the method of operation and functioning of intelligence services and the police. The Second Chamber has devoted a lot of energy into legislative activities, while nothing is done about the supervisory task. After the trials in Rotterdam, when there was adequate reason to have a thorough review of the functioning of the police and the Ministry of Public Prosecutions, there was instead a rush for new legislation.
Why is it that in Germany supervision is extensive and why does the Second Chamber do nothing about the observation that parliamentary control of the intelligence services is only marginally regulated? Too often, politicians react from previously adopted positions. Too little time is devoted to analysis and, also in times of crisis, politicians react from the

picture they have built up. This picture is hardly ever adjusted and in the media people are usually convinced that they are right.
Politicians' expectations are not always in keeping with actual practice. As a result, it can happen that solutions are devised that are difficult or impossible to implement.
What is needed in an analysis is to approach radicalisation without fear and without criminal law, repression and all sorts of tough measures to approach a growing group of young migrants who are demanding a place in the social debate. Those who switch to or want to switch to assault must then be brought to justice according to the normal paths of the state under rule of law. Others who perhaps have strong criticism of the United States, Israel or even the Netherlands must not then be pursued as being rather wild, but debate should be engaged with them however difficult that might be.

USEFULNESS AND NECESSITY

Combating terrorism is necessary, a necessary evil, and to use the words of Michael Ignatieff (*Het minste kwaad. Politiek en moraal in het tijdsperk van het terrorisme* [The lesser evil. Politics and morality in the era of terrorism): what lesser evil may society commit if it is convinced that it is confronted by a greater evil?
Many criminal law experts, lawyers and judges have already been quoted in the chapter on legal measures. Much of their criticism is levelled at the absence of a clear explanation of the necessity of many measures. Whether it is about the introduction of the Framework Decision on Terrorism, the Protected Witnesses Act, the legislative proposal that would make the duty to report possible or the legislative proposal about extending the authority of the police, hardly anywhere does the government know how to make it clear why existing legislation is not adequate and why therefore new legislation is needed.
The worst thing is the fact that incompetent action on the part of police and the Public Prosecutions Department in the first two terrorism cases in Rotterdam led to new legislation, while those judicial decisions actually call for a large-scale cleanup in the police and the justice system. Moreover, the breakneck speed of introducing the legislation was excessive. Major modifications (conspiracy and recruitment for armed combat) were introduced half way through the legislative procedure. Subsequently, the pressure that was brought to bear on the legislative proposal Protected Witnesses actually made several parties feel uneasy.
Hardly anywhere does the government explain any links in the legislation. Thus, it may happen that at present the AIVD and the police are duplicating their activities. And again one can rightly ask the question: is this law necessary? In its recommendation of December 2004, the Board of Dutch Data Protection Authority stated that 'the draft bill falls short in the basis of choice for the proposed expansion of authority. It gives the police and judiciary authority that is comparable with that of the AIVD. Why that is necessary and which necessity could prove that is not made clear. Furthermore, it ignores the situation that very recent relevant expansion of the powers of the police has taken place, without proof or possibility of proof that they are failing.'
Another proposal of which the necessity and effectiveness are more than doubtful is the so-called duty to report. The duty to report or place or person banning order would have to apply to people who are not to be prosecuted, but about whom information is known (on the basis of contacts, activities or other indications) that they are involved in

terrorism. The government names examples of possible indications: ‘a pattern or combination of behaviour and activities, such as visits to a foreign training camp for terrorists and hanging around in a suspicion manner in particular locations’.
What precisely happens to people who have to report is still not clear. Will a visit to the police station once or twice a week restrain someone from violence? Someone with a personal banning order who really wants to commit a murder, won’t he just look for another victim?
Many of the measures are dictated by a legal mindset, without any real consideration of social development. Once one has taken a particular path, it is difficult to turn back, but there is a need to do that. Now each legislative proposal seems to demand a new one, because lawyers have realised what a legal gap the previous proposal has left. The judicial system is hammering away like a perpetual motion machine at a house that is completely boarded up.

AIVD INFORMATION

The information supplied by the AIVD plays an important role in nearly all measures: in criminal proceedings against suspects, in measures in the policy on aliens, in the duty to report and of course in the general threat picture. It goes without saying that the AIVD is the pre-eminent service with the expertise and powers to collect the basic information. In the chapter on the AIVD, we have already demonstrated comprehensively that the AIVD and the police collect and process information in completely different ways. Making threat analyses is quite a different matter than collecting information. There is a danger that this distinction will disappear from view through the merging of tasks. Administrators expect hard information from the AIVD on the basis of which measures can be taken, but the information is not always so reliable. Moreover, the increasing stream of official reports damages the position of those involved. In all legal procedures, access to contributory information is protected, sometimes by an examining magistrate, but in administrative law it is almost completely inaccessible. A fair defence is therefore of course no longer possible.

CIVIL RIGHTS VERSUS SECURITY

The major question is, of course, whether the government is going too far in the measures to combat terrorism. Is the state under rule of law being damaged to such an extent that our freedom is now limited from two directions? It is important to make a distinction. Why has a measure been taken, what is the desired effect, does it also deliver that and what negative consequences are involved in that? In some measures the rights of suspects are restricted; in others it is actually the rights of those who are not suspected that are restricted. Specification is of the essence; too many cases are thrown on one pile. That distinction is all the more essential because it is contended more and more that existing rights must cede to the all-embracing right to security, privacy must give way to detection and anonymity must give way to supply of data.

In the previous chapters, we have been able to establish a number of matters.

In general, there is a danger threatening to damage civil rights because there has been an almost unlimited extension of the police and judiciary dragnet. In fact, if all the legislative proposals are accepted, these services will have the same powers as the intelligence service. Detection is expanding, facts and evidence can be mixed with really soft information and with the pressure to score there is the risk of derailment. Not so long ago, the same pressure and unlimited powers led to the Van Traa Commission investigation.

The greater danger of the extension of powers lies particularly in its combination with other measures. For example, vague concepts such as 'conspiracy' and 'recruiting for armed combat' have been introduced into criminal law, organisations can be declared banned purely and simply because they have been put on a list of the European Union or the United Nations (therefore without a legal decision) and the glorification of terrorism has become punishable. The adage 'innocent until proved guilty' has disappeared with the so-called squeeze lists. Suspects are punished by having their assets frozen. For them it is almost impossible to prove their innocence because they lack the right of inspection of the furnishing of proof and there is no access to judicial bodies that have the power to reverse 'punishments'. In this way, the government opens the possibility to deny suspects of terrorism the right to perusal of their police files for a long time.

More people will end up in a police investigation at an earlier stage. The dividing line between radical and terrorist is vague. To be on the safe side, police and intelligence services will intervene earlier.

In the case of terrorism, however, the results could be more catastrophic. In any case, the role of the intelligence service has become much greater. The information that can lead to convictions, deportations or administrative duty to report remain unverifiable for the person who is suspected, an unacceptable principle.

It seems as if the fundamental distinction between intelligence services and the police have to disappear in the interest of combating terrorism, but the big difference in working methods between the services remains essential. The mingling of tasks seems such a simple matter, but perhaps just means that actually the tasks can no longer be effectively implemented.

Extension of the powers of the police produces yet another great risk: a 'guerre des flics' (war of the cops), in this case between police and the AIVD. Information gives power and the first one to get the information has control. There are indications for such a fight and in the past there have also been many a skirmish fought between the uniforms and the trilbies. Such a situation is undesirable and also unnecessary. Earlier, we saw that the benefit and necessity of extending police powers was not demonstrated. A number of experts have stated quite rightly that first the results of earlier legislation should be clearly measured before introducing new legislation.

Moreover, the circle of people with a whiff of terrorism is becoming larger and larger. In various memoranda there have been acknowledgements in writing that radicals should be won over with a moderate vision, yet all the measures seem to give the radicals the label of 'terrorist'. The Netherlands is threatening to opt for the manner of German repression in the seventies and eighties, rather than to remain faithful to its own considered approach from that period. Repressive measures were taken in moderation and attempts were made not to 'breed' any new terrorists.

The way of repression probably hardly works at all and has significant consequences for civilian freedom. What should be happening is taking the processes of radicalisation seriously and stepping up politics and policy accordingly and preferably in an inclusive policy, as others suggested in the round table discussions we organised.
Not everything should be thrown into one big heap, but we should take a serious look at what is behind the radicalisation. In any case, the young people who are susceptible to radical Islam at the moment have sincere feelings about the images that they see on the internet of Palestine, Chechnya and Iraq. Dutch politicians and media should be concerned that an open debate has not been organised for a candid discussion of this situation.

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