Interrogation, Coercion and Torture: Dutch debates and experiences after 9/11

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ABSTRACT The 9/11 attacks and the subsequent increase of counterterrorism laws and regulations in Western democracies have also spurned heavy debates on torture and ill-treatment of captured terrorist suspects. However, while the Netherlands did deploy troops to Afghanistan and adopted new laws and policies regarding counterterrorism, debates on torture remained marginal. Indeed, the Netherlands has not suffered the pressure of a constant high terrorist threat, or endured a catastrophic terrorist attack. However, the author argues that there are more reasons for the lack of heated discussions. While this article does not intend to lift the Dutch case to an exemplary one, it illustrates how Dutch government authorities made good use of the benefits of hindsight regarding torture debates and incidents elsewhere and were able to apply lessons regarding accountability and oversight concerning interrogation issues at home successfully.

Introduction

One of the most hotly debated issues ensuing from the conflicts that emerged from the 9/11 attacks on the United States, now over a decade ago, concerns the treatment and interrogation of captured terrorists and insurgents. While for decennia torture and ill-treatment were generally considered to be the exclusive domain of barbarian and dictatorial regimes,2 the atrocities of 9/11 led to a revival of the discussion in liberal, rule of law-based democracies regarding the balance between national security interests of the state and the civil liberties of the
individual. It is evident from the recent revelations of practices employed as well as from the resulting storm of protests that this debate is not going to subside within the foreseeable future. According to Amnesty International, in 2007 there were reports of abuse and torture of prisoners in 81 countries, including many Western countries, while recently, the UN rapporteur on Human Rights and Terrorism concluded in an interim report that ‘torture continues to be widely practiced in the majority of states in all parts of the world’. While the Netherlands increased domestic counterterrorism measures and deployed troops to Iraq and Afghanistan, they thus far managed to avoid a major torture scandal. Only after the Volkskrant newspaper torture accusations in 2006, the Netherlands seemed to get involved in the international torture debate. But soon after the disclosure, the newspaper had to rectify parts of its statements and the discussion faded away. Within the Netherlands, torture and the ‘ticking bomb’ would never form part of popular political and public counterterrorism discourse.

In this article I will describe how the torture debate developed in the Netherlands after the 9/11 attacks by examining the public discussions, the political discourse and the role of the police and the military. I will begin with an introduction of the international – predominantly American – discourse and describe some perspectives from existing literature. Thereafter I will address the Dutch position, focusing on three questions. First, how did the debate on torture develop in the Netherlands after the terrorist attacks in the US? Second, why did the debate about countering terrorism in the Netherlands focus on many facets, while the aspect of intelligence gathering by harsh interrogation remained largely ignored? And third, why did the Dutch manage to remain largely detached from torture accusations?

**International Perspective**

According to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, torture is ‘any act by which severe pain

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or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or from a third person information or a confession.\(^7\) The Netherlands signed and ratified the Convention in 1988. The prohibition against torture, inhuman and degrading treatment is absolute, and cannot be derogated from; no ‘exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture’.\(^8\)

Despite the apparent completeness of the definition before the 9/11 attacks, the torture debate has been dominated by the different interpretations of terms such as ‘severe’, ‘ill-treatment’ and ‘coercion’. First of all, it is argued that the concept of coercion is flawed, as the detainee’s perceived pressure does not only stem from external stimuli but also from self-induced pressure, which results from an individual’s interpretation of and chosen response to events, both real and imagined.\(^9\) Next to that, there has been much debate on the question of when the application of methods during an interrogation crosses the line between what is authorized and what is not. There is of course an enormous grey area; when do methods of exerting pressure cross the boundary of ‘severe’ and ‘intentionally’ and become cruel, inhuman or degrading, or even torture?\(^10\)

\(^7\)Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (New York, 4 February 1985) article 1 <http://untreaty.un.org/cod/avl/ha/catcidtp/catcidtp.html> (accessed 23 December 2008). The full definition is: ‘any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or from a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity’. See also: European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as amended by Protocol 1 and Protocol 2 of 4 November 1993 <http://www.minbuza.nl/verdragen> (accessed 10 January 2009).

\(^8\)Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (New York, 4 February 1985) article 1.


Changes After 9/11

The dilemmas are not easily solved. Despite certain imperfections, however, prior to 9/11 these concepts offered Western countries a sufficiently feasible framework for the treatment of captured terrorists and insurgents. However, after the 9/11 attacks the debate about coercion, torture and interrogation changed. For some US officials the protection of alleged terrorists from torture and ill-treatment during interrogation no longer seemed important. Right after the terrorist attacks, for example, former Vice President Donald Rumsfeld famously stated: ‘We also have to work sort of the dark side, if you will. We’re going to spend time in the shadows in the intelligence world’. After 9/11 the gloves came off’ said Cofer Black, the former head of the CIA’s Counter-terrorism Centre, during a testimony for the US Congress in 2002. But the Bush administration would not stick to words only. The maneuverable scope for the treatment of detained terrorist suspects was formally expanded by the infamous memos written by John Yoo and Jay S. Bybee. Also, some of the prohibitions in frameworks, such as the Geneva Conventions, some US federal laws and treaties, were partly dismissed as ‘obsolete’.

Public Discourse After 9/11

In the post-9/11 public discourse, raw emotions came to the surface and the US public demanded revenge, ‘[w]hatever it takes’. Many journalists,


academics and worried citizens wondered whether the torturing of a terrorist was permitted if a terrorist attack could be prevented that way.16 ‘Time to think about torture’, Jonathan Alter suggested in the 5 November issue of Newsweek, a few weeks after the attack.17 ‘[T]orture may be the lesser of the two evils’, suggested right-wing political news correspondent Tucker Carlson on CNN. The American lawyer and jurist Alan Dershowitz brought the ‘ticking bomb scenario’ into the topical forefront in 2002.18 This was only the start of a lengthy debate between opponents and proponents of torture of captured terrorists.

Throughout the years, the discussion within the US has been influenced by fictional series depicting torture. Hit series such as ‘Battlestar Galactica’ and especially ‘24’, starring Kiefer Sutherland as Counter Terrorism Unit agent Jack Bauer, affected public opinion and shaped the discourse around torture.19 While torture before 9/11 belonged to the ‘bad guys’, in ‘24’ the hero implements torture as a common method of acquiring information – and with success. The message of the series is that torture works. ‘24’ had enormous impact on real life; it influenced public opinion, and also encouraged government officials to falsely believe that coercion and torture were necessary in some occasions.20 In 2007, even a West Point General visited the set of ‘24’ to voice concerns over the depiction of torture in the hit series.21

The torture debate became global after revelations of the abusive situations in Abu Ghraib and Guantanamo Bay. The spread of shocking pictures all over the world was followed by much international protest. Years later, the discussion is far from over. Still, many high-level officials in the US actually believe that enhanced interrogation techniques do work.

President Bush, for example, still firmly believes that the CIA interrogation programme saved American lives.\textsuperscript{22} In 2005 the CIA itself concluded that ‘the intelligence acquired from these interrogations has been a key reason why al Qaeda has failed to launch a spectacular attack in the West since 11 September 2001’.\textsuperscript{23} Also, in 2008, while Human Rights Watch explicitly condemned waterboarding as a form of illegal torture, the White House defended the use of waterboarding as a legal interrogation technique, saving American lives.\textsuperscript{24} Recently, American officials yet again tried to gain sympathy for the enhanced interrogation techniques.\textsuperscript{25} Shortly after the targeting of Osama Bin Laden in Pakistan, intelligence officials stated that the initial leads for Bin Laden’s hideout were acquired from interrogations in Guantanamo Bay.\textsuperscript{26}

In short, after 9/11 the US political and public view about torture has changed considerably. This brings me to the question of how the debate developed in the Netherlands.

\textbf{Dutch Perspective}

So, what happened in the Netherlands after 9/11? It is important to note that the Dutch torture discourse has been influenced by two events prior to the attack. First of all, in the 1990s, the practice of the coercive ‘Interrogation method of Zaandijk’ (\textit{Zaanse Verhoormethode}), which was then applied during the questioning of criminal suspects in police investigations, led to public outrage, expressed both in the media and in Parliament.\textsuperscript{27} The aim of the method was to reconstruct criminal atrocities in the mind of the criminal, using gruesome details of the criminal act and bloody pictures of the victim. This was combined with enduring and coercive interrogation, in which the interview style was rather improper and unethical. For example, interrogators would repeatedly suggest that the suspect should confess immediately, as his wife was probably already seeing somebody else and his children would

\textsuperscript{25}CIA Chief: Waterboarding Aided Bin Laden Raid’.
end as criminals or prostitutes. Simultaneously, the interrogators would trivialize the criminal act, making the suspect falsely believe that confessing was the best and only option. Revelations of the use of the method led to fierce debates and, ultimately, the *Zaanse Verhoormethode*, which resembles the Reid Technique, has been forbidden since 1996. Subsequent Dutch studies into interrogation methods in exceptional circumstances, such as terrorist activities, organized crime and/or life-threatening situations, cast doubt on the use of pressure during interrogations. While the Dutch political debate about the treatment of alleged terrorists after 9/11 was of a different nature, the public disapproval of coercive interrogations in the 1990s was fresh in mind.

Secondly, in the 1990s, the Netherlands initiated the further professionalization of the intelligence and security services, which appeared to coincide with the upcoming terrorist threat. Accelerated by the 9/11 attacks, this resulted in the Law on Intelligence and Security Services (LISS) in 2002. Never before was the execution of intelligence activities so thoroughly described. Further protocols were added to verify the effectiveness, subsidiarity and proportionality of intelligence collection. Together with the LISS, the ministers of Justice, Internal Affairs and Defence also agreed

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29 The Reid Technique of interviewing and interrogation is a nine-step approach to interrogation that was developed by John Reid. While some supporters argue that the Reid Technique is useful in extracting information from otherwise unwilling suspects, critics have claimed that the technique can elicit false confessions from innocent persons. See http://www.reid.com/; Saul Kassin and Christina Fong ‘I’m Innocent!’: Effects of Training on Judgments of Truth and Deception in the Interrogation Room’, *Law and Human Behavior* 23/5 (1999) pp.499–516.

30 Currently, exerting limited pressure on the detainee is authorized in the Netherlands during domestic police investigations, such as confrontation with the technical and tactical leads. Other coercive means remain prohibited, such as (the threatening with) physical abuse, intimidation and insults, false promises, misusing religious or family matters and ambiguous questioning. See Adri van Amelsvoort, Imke Rispens and Henny Grolman, *Handleiding verhoor, derde herziene druk* (Amsterdam: Stapel en de Koning 2007) pp.251–252; Tom Smeets, ‘Valse bekentenissen, waarom bekentenissen niet als enige bewijsmiddel mogen gelden’, *Skepter* 17(1) (2004) pp.18–21.


with the installation of the Review Committee on the Intelligence and Security Services (RCISS, Commissie van Toezicht betreffende de Inlichtingen- en Veiligheidsdiensten, CTIVD), a control mechanism for the intelligence and security services to avoid excesses and unauthorized activities. This independent commission has access to all information of the Dutch General Intelligence and Security Service (GISS, Algemene Inlichtingen- en Veiligheidsdienst, AIVD) and the Defence Intelligence and Security Service (DISS, Militaire Inlichtingen- & Veiligheidsdienst, MIVD) when they are tasked with an investigation. While the RCISS primarily focuses on the legality of intelligence activities, it also deals with questions about effectiveness. A limitation of the RCISS is, however, that they have no mandate to investigate the activities of the armed forces, such as the interrogations conducted by intelligence units.

Counterterrorism Measures After 9/11

After 9/11, the Dutch government was hesitant to respond to the new terrorism challenge. However, it participated in the increased counterterrorism measures on an international (mainly EU and UN) level. Within the Netherlands, these counterterrorism measures did not attract much public attention. With regard to the treatment of captured terrorist suspects, both the Dutch citizens and the politicians hardly discussed the use of harsh interrogation techniques. Nor were ticking time-bomb scenarios intensely debated within the Dutch police forces and security services. One of the reasons for this was that within the Netherlands the perceived threat was simply different. The Dutch public mainly associated terrorism with attacks abroad.

Secondly, the lack of debate on coercive interrogations can be explained by the fact that within the Netherlands only a few terrorist suspects were arrested. US law enforcement agencies detained more than 800 persons allegedly related to the terrorist attacks of 9/11, while the Dutch detained very few terrorists in the following years. Moreover, the persons detained were not easily linked to a ticking bomb scenario. Therefore no debate arose about the treatment or interrogation of detained terrorists in order to prevent attacks or capture other extremists. Among the Dutch population, there was no fear of an imminent attack that could be prevented with the collection of information on the captured terrorists. The members of the Hofstadgroep, a Muslim extremist group that was suspected of planning

36 De Graaf and Hijzen, ‘Bound by Silver Cords’.
37 Ibid.
terrorist attacks, were potentially of great danger, but soon after some members were arrested in October 2003, it became clear that the status of preparations for attack had not yet developed into an imminent threat (as the judges later concluded, based on the collected evidence).

The Next Counterterrorism Debate

In 2004, the terrorist attacks in Madrid and the murder of the Dutch film director Theo van Gogh by the dual Dutch-Moroccan Muslim extremist Mohammed Bouyeri led to a new sense of urgency. This time, new national laws were adopted to expand the possibilities for countering terrorism. For example, not only the attempt but the mere planning of a terrorist attack became punishable. Other laws lowered the threshold for detention of alleged terrorists, while the detention period after being convicted for terrorist activities was lengthened. Also in 2004, the State Prosecutor for Terrorism (Landelijk Officier van Justitie voor Terrorismebestrijding) was installed. Since then, when the GISS deems that terrorists or affiliated persons are to be arrested, it informs this State Prosecutor.38 Contrary to many other countries, the Netherlands has explicitly divided the collection of intelligence and the collection of evidence in a criminal case between separate organizations. Therefore, the GISS itself has no authority to interrogate terrorists.

Via the State Prosecutor, a special police unit can be tasked, for example the Special Intervention Service (SIS, Dienst Speciale Interventie, DSI), to carry out the arrest. The interrogation of terrorists and affiliated persons is a specific task of the Flexible Employable Expertise Team (Flexibel Inzetbaar Expertiseteam, FIET).39 Complex terrorist interrogations are conducted or supervised by police officials who follow an advanced interrogation course.40 Nevertheless, there are no different rules for the treatment or interrogation of terrorists other than the standard ones taught at the Dutch Police Academy.41

Despite the new laws in 2004, for Dutch politicians and the public it was a step too far to discuss the extension of the limits for interrogators when questioning terrorists. The question of whether harsh interrogation techniques should be permitted in certain extreme circumstances was hardly put forward in the Netherlands.42 The fear of a ticking bomb was not expressed in political debates and not considered as a serious scenario.

38Interview with Jos Hoekendijk and Arend de Vries, interrogation instructors of the Royal Netherlands Police Academy, Apeldoorn, 11 February 2010.
39Back in 2004 the unit was known as the Unit Counterterrorism and Counter Activism (Unit Contra Terrorism en Activisme, UCTA), interview with Jos Hoekendijk and Arend de Vries.
40The advanced interrogation course is named ‘Preparing and Executing Complicated Interrogation Methods’ (Voorbereiden en Uitvoeren van Gecompliceerde methoden, VUG).
41Correspondence with Netherlands Police Agency (Koninklijke landelijke Politie Diensten, KLPD), 4 December 2009.
The international torture debate, however, heavily influenced the Dutch political discourse. When the debate on the antiterrorist laws was at its peak level in 2004, reports and images of the ill-treatment of prisoners – such as the incidents in Abu Ghraib and Guantanamo Bay – were already publicly known and condemned. Also, the jurisprudence from that period reflects the international rejection of the violation of human rights.43 In 2002, members of the Dutch Parliament criticized the treatment of detainees in Guantanamo Bay.44 During the counterterrorism debates in 2004 and 2005, following the murder of Theo van Gogh, Dutch politicians again focused on the negative effects of the detainee treatment at the US detention camp. In one of the debates, three months after the death of van Gogh, the then Minister of Justice Piet Hein Donner warned the Dutch Parliament to be careful with the adoption of new counterterrorism policy to prevent situations such as those in Guantanamo Bay.45 By then, the long-term negative effects of these practices had become visible, such as the polarization and alienation of the international Muslim population, radicalization of (potential) Muslim extremists and increased doubts about the legitimacy of the national and international counterterrorism and counterinsurgency efforts.46

The discussion on the treatment of terrorists and insurgents continued during the parliamentary decision-making process of the Dutch mission in the South-Afghan province of Uruzgan in 2005 and early 2006. Again, the Dutch fiercely discussed the treatment of detainees and the transfer to other nations.47 Most Dutch members of Parliament were convinced that strict compliance with the rules on detainee treatment was necessary to gain the support of the local population and rejected the existence of so-called

unlawful combatants. Bert Koenders of the Labour Party and Farah Karimi of GreenLeft criticized the detainee treatment by American forces of Operation Enduring Freedom (OEF) and claimed that only a legitimate counterterrorism approach could succeed. One specific event that instigated the debate was the obscurity regarding 12 Afghan detainees who were captured by US Forces during several patrols led by Dutch Special Forces in South-Afghanistan early in 2006. Later that year, Minister Henk Kamp declared some of the captured persons to be transferred to the detention facility at Bagram Airfield, after which their fate remained unclear. This was one important reason why some Dutch politicians repeatedly stressed the importance of very explicit rules regarding the handling and transfer of captured Afghans during the mission in Uruzgan.

In sum, after 9/11, the issues of torture and the ticking bomb were practically non-existent within the Dutch political and public terrorism debates. The perceived threat in the Netherlands was relatively low, so no public discussion erupted about harsher counterterrorism measures. Moreover, only a few alleged terrorists who were captured were easily related to a ticking bomb scenario. After the attacks in Madrid and the murder on van Gogh, the situation in the Netherlands changed. But while the Netherlands expanded the scope of its counterterrorism policy, discussions regarding enhanced interrogation techniques was a step too far. The revelations of the scandals in Abu Ghraib and Guantanamo Bay had its effects on the political discourse, especially regarding the policy of the Dutch treatment of detainees during the mission in Afghanistan. At that time, nothing suggested that the Netherlands would get involved in the torture debate. But in 2006 the situation changed.

Missions Abroad: Dutch Soldiers and Detainee Treatment

After years without any significant incident and the apparent political and public consensus about the condemnation of torture, in November 2006 the
Volkskrant claimed that Dutch interrogators had tortured Iraqi prisoners during the first rotation of the Stabilisation Force Iraq (SFIR) in 2003.\(^{53}\) According to Jan Hoedeman, the writer of the article, Dutch members of the DISS interrogated the Iraqis in an illegitimate way. The captured persons were blindfolded, exposed to blazing light and high-tone noise, and the interrogators threw cups of water on the detainees to keep them awake. Unsurprisingly, the Dutch Parliament was immediately on the alert and the next day a list of 81 questions was delivered to the minister of Defence demanding an explanation.\(^{54}\) Hereafter, the RCISS was tasked to investigate and report about the incidents.\(^{55}\) An aditional special commission was formed to investigate the allegations of abuse under the chair of Jacobus van den Berg, a former member of the Dutch Parliament.

In June 2007, both investigations found that no prisoners had been tortured during these interrogations.\(^{56}\) However, they did find that the methods used could be called ‘improper’.\(^{57}\) The commission and Van den Berg concluded that in one specific case the treatment of a detainee could be described as humiliating, as understood in the European Convention on Human Rights.\(^{58}\) This was not due to one specific incident but to the overall treatment and duration of the hooding, interrogation, blindfolding and use of water. The abuse uncovered was not intended to coerce the detainees but was meant primarily as a force protection measure and to prevent the detainee from taking notice of operational information.\(^{59}\) The employees of DISS used water to keep the detainees awake when they fell asleep during the interrogation session.\(^{60}\) The conditioning of the detainee was not purposely perpetrated, but according to the commission the improper behaviour of the DISS employees was mainly due to the lack of expertise. The interrogators were simply not trained in the interrogation of detainees and not prepared for this task during their preparatory mission.\(^{61}\)

\(^{54}\) Minutes of the Second Chamber of the Dutch Parliament 2006–2007, 23432, no. 211.
\(^{60}\) Van den Berg, et al., ‘Onderzoek ondervragingen in Irak’, no. 52.
Moreover, it was clear that these interrogations had yielded very little relevant information.

Both commissions also concluded that the preparation time for the mission had been too short and that the mandate of SFIR-1 was not sufficiently clear with regard to detention and interrogation of detainees. While the Dutch forces were allowed to capture persons, it was not allowed to keep the detainees for internment. The Dutch had to transfer all captured persons who were considered a security threat as well as persons suspected of war crimes to the British Joint Forward Interrogation Team (JFIT) of the Multinational Division South East within a maximum of 96 hours. Other captured persons who had no additional intelligence value and who posed no direct security threat for Coalition forces had to be either transferred to the Iraqi authorities or released.

Because there was no authorization to intern captured persons, the Dutch government did not provide the forces with additional guidelines for detainee handling. According to the Dutch caveats, interrogation by Dutch troops was not allowed; it was only permitted to engage in conversation with the detainees on a voluntary basis. But an interrogation was necessary to determine whether a captured person either needed to be released or to be transferred to foreign forces in the first place. Consequently, the commander of SFIR-1, Lieutenant-Colonel Dick Swijgman, tasked the Field Liaison Team (FLT) to question the detainees. They were, however, not trained for this task and requested the Counter Intelligence and Security Team of the DISS for support.

In the end, the Volkskrant article led only to temporary unrest and after the findings of the two commissions in 2007 the commotion faded away. The Dutch government, however, became once again aware that the treatment of prisoners is closely scrutinized by the media. On the other side, the Volkskrant was heavily criticized for exaggeration of the facts and

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64 Preferably within 14 hours, see Commissie van Toezicht betreffende de Inlichtingen- en Veiligheidsdiensten, ‘Toezichtsrapport inzake het onderzoek naar het optreden van MIVD-medewerkers in Irak’.
the newspaper had to rectify parts of its statements. Not only Dutch politicians questioned the Volkskrant for their inaccurate article, but also the Dutch public placed question marks at the suggestive and unconfirmed torture accusations. This was a strong message to the Dutch media.

The Dutch Experience in Uruzgan

2006 not only marked a change in the torture debate due to the allegations of the Volkskrant. Also that year, the Dutch mission Task Force Uruzgan (TFU) deployed to Uruzgan, a province in the southern part of Afghanistan. As outlined above, the Dutch politicians disapproved of any expansion of rules based on the international experiences and were very clear about the detention policy from the beginning. In their interrogation of ‘captured persons’, military interrogators were not allowed to make any distinction between different categories of prisoners; all had to be interrogated in accordance with the rules of the Geneva Convention, which explicitly prohibits ‘any form of coercion used on prisoners of war in order to obtain information’. The Geneva Conventions, however, were applied on the basis of policy, and not because there was a legal obligation to do so. Further guidelines were provided in the ‘Allied Joint Publication 2.5 Captured Persons, Materiel and Documents’, the International Security Assistance Force (ISAF) Standard Operating Procedure (SOP) on detention and the TFU SOP regarding this subject. Furthermore, Dutch interrogators and guards were not allowed to act independently. A ‘supervisor detention’ was allocated, who, in close consultation with the (medical) staff and the legal advisor attached to the TFU, oversaw the correct treatment of detainees.

The extensive political restrictions had their impact on the executive level. Prior to the first deployment to the mission in Afghanistan, the Defence Intelligence and Security Institute (DISI, Defensie Inlichtingen en Veilighe-
eidsinstituut, DIVI) was assigned to train the interrogators in order to prepare them for their mission. In the Netherlands it is established that the DISS does not undertake interrogations, but this is the preserve of the interrogators of 103 ISTAR battalion, an army intelligence unit with military interrogation capability. The training focused primarily on the legal boundaries of using coercive techniques and different ways to improve the effectiveness of the interrogation. In January 2006, the interrogators of TFU-1 attended the first operational interrogation course.

During the first course, there was much discussion about ‘what is permissible and what is not’, because the text in the relevant legal documents is rather abstract and not easily translated into concrete procedural rules for the interrogator. Various defence lawyers supported the training and gave clear guidelines, while simultaneously emphasizing that it is not always possible to indicate for every actual situation whether torture, cruel, inhuman or degrading treatment is involved or when the thin line of coercive interrogation is crossed. The factors that might need to be assessed include the techniques and tactics, the methods and means that one might want to use in an interrogation, their combination, the duration and intensity with which, and the circumstances under which, they are used. At the same time a number of factors relating to the interrogated prisoner must also be considered, such as the personality, age, sex, condition, religious background and so on. It may be taken as a rule that every interrogation is unique, calling on the powers of judgment of the chief interrogator and the interrogation team (in the stage of preparation) and of the individual interrogator (during the actual interrogation). The legal advisor acts as an important safeguard, ensuring that the limits of the permissible are not exceeded (although he is not present during the interrogations). During the entire procedure of interrogation several measures were built in to minimize the possibility on errors. For instance, all interrogations were conducted in pairs and afterwards all sessions were thoroughly documented. Also, a strict division was maintained between operational interrogation skills and the

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77 ISTAR: Intelligence, Surveillance, Target Acquisition and Reconnaissance. The ISTAR battalion (last year transformed into the Joint ISTAR Commando) is an operational unit charged with the gathering, processing and dissemination of intelligence.


techniques for training units in Resistance to Interrogation (R2I). Contrary to the United States, where certain SERE techniques incidentally were employed on detainees, in the Netherlands these methods were strictly used for training purposes only and were never used during operations. Furthermore, there is a strict separation between the interrogators and the supporting elements, such as the guards. Guarding personnel – who are specifically appointed and trained for their task – are not allowed to have any verbal interaction with the detainees. When looking back to the relatively large role of the guards in the recent ill-treatment incidents of prisoners such as occurred in Abu Ghraib, this measure can be considered as a fundamental one.

**Dutch Practices Do Not Attract Attention**

Since the first rotation of Task Force Uruzgan on 1 August 2006, interrogators of the ISTAR battalion interrogated hundreds of prisoners. The Dutch interrogation programme in Uruzgan would, however, hardly attract attention from the Dutch public. Only in 2008, the NRC, a Dutch newspaper, managed to get its hands on some official documents of the Ministry of Defence, in which was stated that some detainees were treated incorrectly in January 2007. According to the internal memorandums, three undressed detainees had possibly been kept outside for too long during a cold rainy day. This was, however, only due to the lengthy procedural intake, not a malicious attempt to cause discomfort of the detainees. When the legal advisor and the ‘supervisor detention’ noticed the discomfort of the detainees, they immediately took appropriate measures to improve the situation. The report opined that the prolonged exposure to rain and cold was unacceptable but concluded that there had been no question of torture or cruel, inhuman or degrading treatment. It was a procedural fault in the detainee handling procedure, not specifically the negligence of the interrogators. Right after the incident the TFU staff decided to change the intake procedure to avoid repetition. The reports and the news articles regarding this subject barely received the attention of the Dutch public and did not lead to a revival of the intense debate in 2006; neither did other incidental reports about alleged mistreatment of detainees.

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86For example Arnold Karskens, ‘Vernederd onder Nederlands gezag’, *De Pers*, 8 September
The Dutch military forces in Uruzgan managed to stay distanced from accusations of torture or ill-treatment of detainees. Besides the clear mandate, the explicit rules and thorough training for both interrogators and guards, there were more reasons. First of all, it needs to be mentioned that Uruzgan province was not a Taliban centre of gravity. Mostly, only lower-level insurgents were active in the province. Some higher-level terrorists and insurgents who did operate in Uruzgan had already fled to Pakistan or had been neutralized by American and British forces in the first years of the conflict. Consequently, Dutch military forces simply had not captured a significant number of insurgents and those captured were mostly insurgents active on the executive level. Secondly, the Dutch forces in Uruzgan were part of ISAF, which primarily focused on the development and security side of the mission and not so much on capturing terrorists, as has been the main purpose for troops belonging to OEF. A final reason is that the Dutch forces did not make use of proxy forces to conduct specific tasks, such as Xe Services (formerly known as Blackwater). While the use of these services can have several benefits, these units and their methods are difficult to control. Their activities do, however, reflect heavily on those whom they serve.

Conclusion

In 2010, Eline van den Broek, then the Dutch leader of the European-orientated political party Libertas, wrote in a column that torture in ticking bomb scenarios should be permissible. The Dutch public hardly paid attention to her rather ‘un-Dutch’ statements, and those who did reacted predominantly with disapproval. A few days after publication, her column was removed from her website and shortly thereafter she silently left the political arena.

This example characterizes the lack of Dutch interest in the torture debate. Throughout recent years, Dutch politicians have been quite unanimous about their rejection of torture and ill-treatment. Concurrently, the Dutch public opinion was hardly interested in the torture debate. Aside from a small number of papers by academics and legal philosophers, the Dutch discussion about coercion, ill-treatment, torture and the ticking bomb scenario is very subdued. After the Volkskrant accusations in 2006, the Netherlands seemed to get its own torture scandal. However, the accusations appeared to be largely

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inaccurate and soon after publication the discussion faded away. Since then, the Dutch forces have hardly been confronted with any raised suspicions of ill-treatment or torture of detained insurgents. Why is it that the Dutch managed to stay largely distanced from torture accusations? And why did the debate about countering terrorism in the Netherlands focus on many facets, while the aspect of intelligence gathering by harsh interrogation remained largely ignored? I will summarize my findings, focusing on the public debate, the political discourse and the role of the police and military officials.

First of all the public debate: I need to emphasize that the Dutch population has not suffered the pressure of a constant high terrorist threat nor faced a catastrophic terrorist attack. Throughout recent years, the perceived threat in the Netherlands has not been high, so a public demand never arose to prevent terrorism ‘at all costs’. Furthermore, since the emergence of the war on terror only a few alleged terrorists have been captured, and reportedly none of them were related to a ticking bomb scenario. The public does not approve of harsh interrogation techniques and, contrary to the US, series such as ‘24’ have not influenced the discourse in the Netherlands. After the attacks in Madrid and the murder of van Gogh, the Netherlands’ counterterrorism measures were expanded, but there was no room for the political rhetoric which suggested harsh treatment of detainees was a serious option or even necessary. This reflected on the Dutch opinion which did not urge for harsher treatment either.

Secondly, prior to the peak level of the counterterrorism debates in the Netherlands, the Dutch politicians were already aware of the long-term negative effects of ill-treatment of detainees, such as the consequences of revelations about Abu Ghraib, Bagram and Guantanamo Bay. Because the Netherlands entered the counterterrorism debate years after the commencement of the war on terror, the Dutch government had the ‘luck’ to have examples to learn from. Dutch politicians were clear about the boundaries of new policies; there was no room for extension or misconception. In addition, the Dutch government only decided on the deployment of a large military force in a high-risk environment as of 2006. Moreover, Uruzgan province was not a Taliban centre of gravity. Therefore the Netherlands logically have not captured many terrorists or insurgents. These were two of the reasons the expansion of rules did not reach the political topical agenda. Dutch politicians were, however, already aware of the unpopularity of unsavory techniques in the 1990s, when the application of harsh methods during police investigation led to public outrage.

The final reason why the Dutch successfully managed not to get involved in the torture debate was the role of the police and military officials working at ground level. The political guidelines have been translated to strict rules on the executive level, which do not create much space for personal interpretation or misconception. The Dutch police do not have different rules for the treatment or interrogation of terrorists, other than the standard ones taught at the Dutch Police Academy. Police officials designated for the interrogations of terrorists are trained thoroughly, provided with clear rules,
and without the essential training and education, conducting interrogations is strictly prohibited.

With regard to the military, the strict rules for the treatment of detainees have been of crucial importance for the interrogators, guards and detainee handlers in the field, as for these young officials the long-term secondary effects of their actions are not always recognized in the midst of action, in the emotional heat of battle or in the face of (threatened) loss of colleagues.89 During the Dutch mission in Uruzgan, all personnel involved in the detainee process were thoroughly trained, instructed and during the process monitored by judges, (medical) staff and a supervisor detention. With the exception of some minor incidents, the Dutch managed to stay distanced from torture accusations. But while the nature of these incidents proved to be relatively harmless, they demonstrated that there is no room for inattention or negligence.

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Notes on Contributor

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89‘To a field commander in a combat zone, the life of an uncooperative enemy captive weighs very lightly against the lives of his own men. There are very few who, faced with a reluctant captive, would not in certain circumstances reach for the alligator clips, or something else’, in Mark Bowden, ‘The Dark Art of Interrogation’, Atlantic Magazine, October 2003 <www.theatlantic.com> (accessed 11 August 2009).