

## Fighting terrorism in the Netherlands; a historical perspective

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### 1. Introduction

The terrorist attacks in the United States in September 2001 and in Spain in March 2004 have led to an unprecedented set of anti-terrorist policies and laws in most Western countries. The Netherlands is no exception. Indeed, the murder of the cinematographer Van Gogh by an Islamic fundamentalist on 2 November 2004 has strengthened the Dutch government in its resolve to introduce new policies and laws, particularly in the field of substantive and procedural criminal law, to defend Dutch liberal democracy against terrorist attacks. On 10 August 10 2004, for example, the Terrorist Crimes Act came into effect, which defines a number of specifically terrorist crimes, such as recruitment for the Jihad, and increases the penalties for crimes which have been committed with terrorist intent.<sup>2</sup> More recently, the government has proposed an Act that will enable intelligence gathered by the General Intelligence and Security Service (AIVD), the Dutch secret service, to be used in criminal proceedings.<sup>3</sup> On 11 November 2004, to give a final example, the government published a draft Bill that significantly expands the procedural powers for investigating and prosecuting terrorist crimes.<sup>4</sup> These and other laws and proposals have met with remarkably little opposition; the government seems to enjoy substantial popular support in its anti-terrorist policies. Nevertheless, they have not gone entirely unopposed: a number of critics have pointed out that the government's anti-terrorist policies significantly undermine civil liberties, particularly those of suspects, and that these are consequences that are either unnecessary or unjustified or both.<sup>5</sup>

It is hard to assess whether the government or its critics are right. A careful balancing of civil liberties and security after all requires a clear view on two kinds of issues, as M. Ignatieff has

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<sup>2</sup> Wet terroristische misdrijven, 24 June 2004 (Stb. 2004, 290).

<sup>3</sup> Kamerstukken II, 29 743, 2. See the paper by J.A.E. Vervaele in this issue of the Utrecht Law Review on 'Terrorism and information sharing between the intelligence and law enforcement communities in the US and in the Netherlands; emergency criminal law?'.

<sup>4</sup> 'Wijziging van het Wetboek van Strafvordering, het Wetboek van Strafrecht en enige andere wetten ter verruiming van de mogelijkheden tot opsporing en vervolging van terroristische misdrijven'. As long as the proposal is not sent to parliament, it can be found at [www.justitie.nl](http://www.justitie.nl), under 'wetgeving in voorbereiding'.

<sup>5</sup> See, for example, E. Prakken, 'Naar een cycloisch strafrecht', in: *Nederlands Juristenblad*, 45/6, 2004, 2338-2344 and H. van Gunsteren, *Gevaarlijk Veilig; Terreurbestrijding in de Democratie*, Amsterdam: Van Gennep, 2004.

recently pointed out.<sup>6</sup> The first issue concerns the facts. Although it is obvious that Islamic terrorism poses a threat to the Netherlands, the degree of risk is unclear. Governmental agencies cannot but rely on extrapolations about future threats on the basis of facts concerning past and present ones, and these predictions are inherently questionable, not least because the information that is used is only partly open to public scrutiny. The second issue concerns the moral appraisal of these facts. Even if the degree of risk is established beyond doubt, there will still be controversies over the measures that need to be taken to meet the threat, disagreements that go to the heart of the meaning and relative importance of the principles underlying liberal democracy. Some argue that the safety of the majority is more important than civil liberties and that liberties should be revoked in times of danger if safety so requires. Others argue that civil liberties ought to limit government action in times of safety and danger alike, even if this commitment to individual rights is likely to undermine the safety of the people. Yet others argue that civil liberties may be suspended temporarily in times of danger as a last resort, provided the measures are strictly targeted and applied to the smallest number of people, but insist on safeguards to prevent the exception from becoming the rule, on continuous adversarial scrutiny of anti-terrorist measures.<sup>7</sup>

In this paper, I do not wish to confront these factual and normative issues head-on. Rather, I wish to raise some general questions concerning the government's current anti-terrorist measures by examining the way Dutch governments have dealt with terrorism in the past. In the present situation of factual uncertainty about the threat posed by Islamic terrorists, it is all too easy to forget that Dutch society has had to face terrorism before. Indeed, if the number of people killed or targeted is a measure of the gravity of terrorist acts, terrorism in the 1970s was more serious than Islamic terrorism has been in the Netherlands up until now. Yet the government's response was less comprehensive than the one we are currently witnessing, as were the measures that were introduced at the time in Germany and Britain in the fight against the RAF and the IRA. This does not automatically mean, of course, that the current policies are wrong-headed. History is not always a reliable guide; the current threat may be graver or more difficult to meet than past threats. But a sense of what the record tells us may help us to identify if and why the current threat is as unprecedented as the government claims it to be, and thereby enable us to take a more critical stance towards the current government's claim that drastic measures are necessary and justified. I will not attempt to give a full account of terrorism and anti-terrorist measures in the Netherlands, but will focus exclusively on the six so-called Moluccan actions in the 1970s, because these were by far the most serious terrorist acts the Netherlands has seen so far.

## 2. The Moluccan actions

Some 35 years ago, in the early hours of 31 August 1970, three vans drove up to the residence of the Indonesian ambassador in Wassenaar, an affluent village near The Hague. The residence was guarded by a police officer, as President Suharto was expected to arrive for a four day state visit to The Netherlands the following day. At six am, the police officer, Hans Molenaar, hears sounds coming from the drive of the residence. He walks along the drive and

<sup>6</sup> M. Ignatieff, *The Lesser Evil; Political Ethics in an Age of Terror*, Princeton: Princeton University Press, 2004, 3-12.

<sup>7</sup> For a more elaborate discussion of these three positions, see Ignatieff, *The Lesser Evil*, 1-12, 25-53.

suddenly notices a group of armed men coming towards him. Molenaar automatically pulls his gun, but before he is able to make use of it he is shot and dies. Alarmed by a scream over the walkie talkie, two of his colleagues arrive shortly after. They cannot prevent, however, that 33 Moluccan men, only 4 of whom are older than 30, occupy the residence and take 30 people hostage. After 12 hours of negotiations the Moluccans surrender without further killings. Most subsequent Moluccan actions will be bloodier.

The aim of the Moluccan actions was the establishment of an independent Republic of the South Moluccas, the RMS (Republik Maluku Selatan).<sup>8</sup> The Moluccas is a group of approximately 1000 islands that is currently part of the territory of the Republic of Indonesia. It is bounded by the Philippines in the North, Australia in the South, New Guinea in the East and Celebes in the West. Its fate was determined by European colonial powers from the sixteenth until the middle of the twentieth century. Its fate was determined by European colonial powers from the sixteenth century until the middle of the twentieth century. In 1942, Japan occupied the Dutch East Indies. This would lead to the end of European domination. The Dutch were interned in camps and lost their role in the administration of the country. Japanese and Indonesian administrators took their place. This proved to be a powerful impetus for the Indonesian nationalist movement. On 17 August 1945, two days after Japan's surrender to the Allied Forces, Hatta and Sukarno in Java proclaimed the independent Republic of Indonesia, which was to encompass the entire archipelago.

The Dutch government did not accept an independent Indonesian republic, but realized that the days that it could rule the entire archipelago were over. It thus tried to confine the influence of the nationalist movement to Java and Sumatra by dividing the archipelago into four and subsequently sixteen states, held together by a union with The Netherlands. The Moluccas were to be a province of the state of East-Indonesia. The Indonesian republicans, having little military power, could not but accept this plan for a Republic of the United States of Indonesia (Republik Indonesia Serikat). They formally acknowledged the federative structure in the agreement of Linggadjati in November 1946. Relations between the republicans and the Dutch remained tense, however, and there were many violent confrontations between republican guerrilla's and Dutch troops. The Dutch government reacted by launching exceptionally brutal military operations, euphemistically called police actions, against the republicans in the summer of 1947 and again in December 1948 and January 1949. These police actions provoked strong condemnation by the international community, especially by the United States, which threatened to end the aid provided to The Netherlands by the Marshall Plan and to remove The Netherlands from NATO. The Dutch government was thus forced to negotiate with the republicans during the Round Table Conference of 1949, which was organised in Geneva by the UN Security Council. This conference paved the way for the transfer of sovereignty from The Netherlands to the United States of Indonesia on 27 December 1949. Immediately after, Sukarno started to dismantle the

<sup>8</sup> This paragraph is based on P. Bootsma, *De Molukse Acties; Treinkapingen en Gijzelingen, 1970-1978*, Amsterdam: Boom, 2000; F. Stijlen, *RMS; Van Ideaal tot Symbool; Moluks nationalisme in Nederland, 1951-1994*, Amsterdam: Het Spinhuis, 1996; A.P. Schmid, J.F.A. de Graaf, F. Bovenkerk, L.M. Bovenkerk-Terink, L. Brunt, *Zuidmoluks Terrorisme, de Media en de Publieke Opinie; Twee studies van het Centrum voor Onderzoek van Maatschappelijke Tegenstellingen*, Amsterdam: Uitgeverij Intermediar, 1982; J. Cuperus and R. Klijnsma, *Onderhandelen of Bestormen; Het Beleid van de Overheid inzake Terroristische Acties*, Groningen: Polemologisch Instituut, 1980; P. Klerks, *Terreurbestrijding in Nederland, 1970-1988*, Amsterdam: Ravijn, 1989.

federative structure of the newly established state. On 17 August 1950 he proclaimed the Republic of Indonesia (Republik Indonesia), the unitary state which has existed ever since. The disintegration of the Dutch East Indies and the rapid dissolution of the federative state was anxiously watched in the Moluccas. During the last century of the colonial period, the Moluccans had been loyal to the Dutch government and the House of Orange. They were a privileged group and had favourable career opportunities. They were employed across the archipelago as soldiers in the Royal Dutch-Indies Army (KNIL), teachers, administrators, clergymen and general practitioners. Unsurprisingly, the Moluccans were deeply concerned when Sukarno first proclaimed independence in 1945; indeed, many seemingly chose the side of the Dutch government and hoped for a return to colonial times, because they feared that a Java-dominated Indonesian state would significantly worsen their position. In the years that followed, some Moluccans accepted the idea of a federative state, because this entailed a degree of administrative autonomy. Others opted for a direct relationship with The Netherlands, comparable to that of Suriname. Almost none, however, accepted the idea of a unitary Indonesian state. Relations between Indonesian republicans and Moluccans were thus far from warm. The fact that many Moluccans served in the Royal Dutch-Indies Army that carried out the brutal police actions in 1947 and 1948/9 did not improve matters. For these soldiers the establishment of a unitary Indonesian state entailed the risk, not only of a loss of privilege, but also of reprisals.

When Sukarno, in the spring of 1950, dissolved the state of East Indonesia, of which the Moluccas were a province, a group of Moluccans immediately responded by proclaiming an independent Republic of the South Moluccas (Republik Maluku Selatan) on 24 April. This, of course, was unacceptable for Sukarno. In November 1950, the Indonesian army occupied the island of Ambon, the cultural and political centre of the Moluccas. The RMS government and its sympathizers fled to the island of Ceram, where it started a guerrilla war against the Indonesian government. In the early 1960s it became clear that this struggle was utterly hopeless. In 1962, The Netherlands transferred New Guinea to the Republic of Indonesia, thereby depriving the RMS guerrillas of the safe haven where it had prepared its actions and found refuge. In addition, Dr. Chris Soumokil, LLM, President of the RMS and symbol of the struggle for independence, was arrested and executed by order of Suharto, who had succeeded Sukarno as President of Indonesia. The outrage over this execution led to the first Moluccan action in The Netherlands: the pelting of the Indonesian embassy in The Hague with Molotov cocktails in 1966.

That The Netherlands became the locus of terrorist activities in the name of an independent republic on the other side of the world can to some extent be attributed to a failed policy by the Dutch government towards the Moluccans after the transfer of sovereignty in 1949. It was clear in 1949 that the Royal Dutch-Indies Army (KNIL) had to be dissolved. This happened on 27 July 1950. The question, however, was how to deal with the approximately 4000 Moluccan KNIL soldiers who were stationed in Java and who had not yet been demobilized. The Indonesian government refused to give Moluccan soldiers permission to return to Ambon as long fighting continued there against the RMS. Only when the RMS was defeated and Ambon was placed firmly under Indonesian rule the Moluccans were permitted to return. The Moluccan KNIL soldiers, however, refused to return to an Indonesian-dominated Ambon. They preferred to be sent to New Guinea, which was still under Dutch rule, because they

could then easily join the RMS guerrilla in Ceram. Obviously, this idea did not appeal to the Indonesian government. A stalemate ensued, which the Dutch government tried to break by ordering Moluccan soldiers to demobilize in Ambon. This attempt failed, however, because a representative of the Moluccan soldiers started and won preliminary relief proceedings against the Dutch state in The Hague. The Dutch government then opted for a solution that was meant to be temporary. It ordered the soldiers to go to The Netherlands. Between February and May 1951, 4000 soldiers and their families, some 12,500 people in all, arrived in The Netherlands. Most of them would never return to their home country.

Neither the Dutch government nor the Moluccans intended a permanent residence of the Moluccans in The Netherlands. However, their views on the obligations incumbent upon the Dutch government differed. The government wished to believe that the Moluccans had come on a voluntary basis and that they would happily return to Indonesia after a cooling-down period. The government only had to make arrangements with the Indonesian government concerning the repatriation of the Moluccans and to provide some logistical support to the Moluccans. The Moluccans took a less pragmatic view. They believed that they had been given no choice but to come to the Netherlands. They also believed that the Dutch government had committed itself to the ideal of an independent RMS and that it had to put the issue of the RMS on the agenda of the United Nations and raise international support. The Moluccans would repatriate to the RMS, not to the Republic of Indonesia, and the Dutch government would play a pivotal role in making the Moluccas independent. It is beyond the purposes of this paper to discuss which interpretation of the obligations of the Dutch government most accurately reflected past promises and acts by the Dutch government, or to raise the question of whether the Dutch government could and should have promoted the cause of the RMS in the international arena, given its obligations under Dutch constitutional law and international law.<sup>9</sup> Suffice it to say that expectations of the Dutch government ran high and that the Moluccans were deeply disappointed when it turned out that the government did not in fact endorse the ideal of the RMS.

This would probably not have caused any lasting resentment if the Dutch government had taken care to facilitate the integration of the Moluccans into Dutch society. But nothing much was done. Indeed, the Moluccans were treated very poorly, even when the fact is taken into account that the Dutch government had few resources at its disposal during the first decade or so after the war. On the day of their arrival, the KNIL soldiers were discharged from the army and thus deprived of their military status. The Moluccans were placed in camps, some of which had served as transit camps during the Second World War. They were not allowed to work, since Dutch trade unions feared their competition. They did not receive an income or pension, but were paid benefits in kind and a negligible weekly allowance. They could not acquire Dutch nationality, since supposedly they were in the Netherlands on a temporary basis. They had difficulties mastering the Dutch language and getting used to the climate. They were isolated from the rest of Dutch society. When it became clear in the late 1950s that the Moluccans were to stay in the Netherlands their living conditions slowly improved. However, unemployment among Moluccans remained high, their income low and they were never

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<sup>9</sup> On this issue, see E.W. Vierdag, 'Enkele volkenrechtelijke kanttekeningen bij het Zuid-Molukse vraagstuk', in: *Nederlands Juristenblad*, 1976, 245-255.

successfully integrated into Dutch society. For people who used to enjoy a privileged position in the Dutch East Indies, this was hard to swallow. They thus found refuge in the ideal of the RMS, which by that time had ceased to mean much to most Moluccans in Indonesia.

It is perhaps understandable that the ideal of the RMS was cherished even more by the second generation of Moluccans. Resentment over the way their parents had been treated; the feeling of being outcasts in The Netherlands; high unemployment, poor education, and living conditions that left much to be desired; these are but a few of the factors that explain why the second generation felt so strongly about the independence of a group of islands that they had never seen with their own eyes. It is less easy to explain why some Moluccan youths were prepared to commit terrorist acts in their pursuit of the RMS. In the declarations which they issued to defend their terrorist acts and in their statements in the courtroom they would claim that the use of force was the only means available to focus the attention of the general public and the government on the plight of the Moluccas after 25 years of neglect.

In late 1970, the Moluccans hoped for a while that the occupation of the residence of the Indonesian ambassador in Wassenaar would bring about a significant change in the attitude of the Dutch government. The Dutch government had promised to organize a meeting between Prime Minister De Jong and the President in exile of the RMS, Mr Manusama, the results of which would be sent to the Indonesian government. These hopes were soon to be shattered. The talks hardly produced any tangible results and the Dutch government did not put the issue of the RMS on the agenda of the UN or other international fora. Indeed, five years later the Dutch government would unequivocally state that it considered the issue of the RMS closed and that the majority of Moluccans was likely to remain in the Netherlands. A few months later, on 25 November, the Dutch queen declared Suriname independent and in a speech stated that all peoples have a right to self-determination. This outraged many Moluccans, who did not understand why Suriname was granted what was denied to them, and triggered two of the most traumatizing terrorist acts in Dutch history.

On the morning of 2 December 1975, a week after the queen's statement, 7 Moluccan youths got on the train to Zwolle. They were carrying guns, which were gift-wrapped in paper used for the feast of St. Nicholas, and a message to the Dutch people, which stated that the Dutch people had been blind to the ongoing injustice inflicted upon the Moluccans by the Dutch and Indonesian governments for 25 years. It also stated that they were prepared to kill and die for the future of their people and the independence of their country. At approximately 10 am, the Moluccan youths brought the train to a halt near the village of Wijster and took 57 people, mostly commuters, hostage. Some 20 minutes later they killed the engine-driver and threw him onto the rails. A few hours later, they shot another hostage, because they felt that the government was not taking their demands seriously. Two days later, they again shot a hostage. Meanwhile, a group of 7 Moluccan youths in a club in Smilde spontaneously decided to support the action in Wijster by occupying the Indonesian consulate in Amsterdam. On 4 December, they took a train to Amsterdam, asked the local tourist office for directions, and arrived at the consulate at 4 pm, where they took 36 people hostage, among whom 16 children. An Indonesian employee tried to escape by jumping out of a window and died. The demands of the hostage-takers in Amsterdam were the same as of those in Wijster: the Dutch government had to put the Moluccan issue on the agenda of the UN; it had to initiate and facilitate talks between Moluccan organizations and the Indonesian government; and it had to

declare on television that the Netherlands had done injustice to the Moluccan people and the ideal of the RMS. The government reacted in a way that was to become known internationally as the Dutch approach. It tried to buy time by endlessly negotiating without making concessions, with the aim of disheartening the hostage-takers and wearing them out. It worked; the Moluccans in Wijster surrendered on 14 December and those in Amsterdam on 19 December.

Less than 2 years later, Moluccan youths again committed terrorist acts. On 23 May 1977, 9 youths hijacked a train near De Punt with 94 passengers on board, 40 of whom were released almost immediately. Shortly after, 4 youths occupied a primary school in Smilde and took 105 children, all between the age of 6 and 12, and 5 teachers hostage. The actions would last until June 11. On that day, special anti-terrorist forces simultaneously attacked the train and the school, killing 6 terrorists and 2 hostages in the train. Less than one year later, on 13 March 1978, 3 members of the so-called Moluccan Suicide Squad occupied the Provincial Government building in Assen and took 69 people hostage, one of whom was immediately executed. On the next day, marines attacked the building, wounding several people, one of whom later died. This proved to be the last Moluccan action.

### **3. Moluccan terrorists on trial**

All Moluccan terrorists who survived the actions were prosecuted and tried. It was not particularly difficult to convict them. Not only had they been caught red-handed, they also confessed to being guilty of the crimes with which they had been charged. They insisted that they all receive the same punishment, as they felt they shared the responsibility for the terrorist acts. In the case of Wassenaar, all participants were convicted to 1 year imprisonment, apart from the person who was convicted of having killed the police officer and who was sentenced to 7 years' imprisonment, although he was later acquitted on appeal because the bullet had been fired from another gun.<sup>10</sup> In the case of Wijster, all of the surviving Moluccans received a 14 year prison sentence for having unlawfully deprived people of their freedom, murder, and the possession of illegal arms.<sup>11</sup> In the case of the Indonesian consulate in Amsterdam, all participants were sentenced to 7 years' imprisonment. In the case of De Punt, the terrorists all received 8-year prison sentences, and in the case of the school in Smilde they all received 9-year sentences, again for having unlawfully deprived people of their freedom and for possession of illegal arms.<sup>12</sup> In the case of the Provincial Government building in Assen, the terrorists were sentenced to 15 years' imprisonment.<sup>13</sup>

One of the most interesting aspects of these judgments was the way in which the courts dealt with the political aspect of the crimes. In the Wassenaar case the court clearly stated that it recognized that the crime had been committed for political reasons. 'The district court, bearing in mind the text of the telegram by Queen Wilhelmina of 21 November 1945, has, in determining the sentence that is to be imposed upon the persons convicted, taken into account

<sup>10</sup> Rb Den Haag, 5 January 1971.

<sup>11</sup> Rb Assen, 26 March 1976.

<sup>12</sup> Rb Assen, 22 September 1977.

<sup>13</sup> Rb Assen, 30 June 1978.

that there is perhaps reason for reflection on the issue of whether the Dutch government, the Dutch parliament and the Dutch people have been sufficiently aware over the past 20 years of Dutch obligations towards the people of the South Moluccas.<sup>14</sup> Five years later, in 1976, the District Court of Assen also displayed some sympathy to the plight of the Moluccans in the case against the youths that were responsible for the violent high jacking of the train in Wijster. The court noted that there was a historical connection between the frustrated ideal of the RMS and the acts of the Dutch government. It went on by saying that the Dutch legal order, in particular the government, should do everything within its power to understand and alleviate the position of Moluccans living in the Netherlands and that public statements showing insufficient understanding of the position of the Moluccans had contributed significantly to the eruption of violence which had cost 3 lives.<sup>15</sup> The court also noted that punishment could not contribute to the solution of the underlying problems and it urged the Dutch government to start a healthy dialogue with the Moluccans in order to solve these problems.<sup>16</sup>

#### 4. Anti-terrorist measures

When Moluccans occupied the residence of the Indonesian ambassador in Wassenaar in 1970, the Dutch government was completely taken aback. There were no standard procedures for dealing with terrorist acts, let alone an apparatus or a set of policies designed to prevent or investigate terrorist activities. When they were informed about the events in Wassenaar, Prime Minister De Jong and Minister of Foreign Affairs Mr. J. Luns went to Wassenaar immediately and led negotiations with the Moluccans from a house opposite the residence. At one point, De Jong and Luns went outside to take a closer look at the residence, and came within shooting distance of the hostage-takers, as one of them would later recall.<sup>17</sup> During subsequent Moluccan actions, the government would be far removed from the scene of the crime, in a crisis centre in The Hague. The management of terrorist crises had become more sophisticated. By then, there were also policies in place to prevent and investigate terrorist activities.

One would perhaps expect the events in Wassenaar to have triggered a comprehensive set of anti-terrorist measures. In fact, nothing of the sort happened. The government initially chose a

<sup>14</sup> Rb Den Haag, 5 January 1971. ‘De rechbank heeft, denkend aan de tekst van het telegram van koningin Wilhelmina van 21 november 1945 er bij haar strafrekening rekening mee gehouden dat er wellicht reden is voor bezinning op de vraag of de Nederlandse regering, het Nederlandse parlement en de Nederlandse volksgemeenschap zich in de afgelopen 20 jaar steeds voldoende bewust zijn geweest van de Nederlandse verplichtingen tegenover het volk der Zuidmolukken’.

<sup>15</sup> Rb Assen, 26 March 1976. ‘...in historisch perspectief [bestaat, rij] er een aanwijsbaar verband tussen het gefrustrerde vrijheidsideaal van de naar een eigen onafhankelijkheid strevende Zuid-Molukkers en de betrokkenheid daarbij van de Nederlandse rechtsorde. Vanuit die betrokkenheid zullen de deelgenoten in de Nederlandse rechtsorde – in het bijzonder diegenen, die een vrije Republiek der Zuid-Molukken voorstaan – de grenzen en beperkingen moeten erkennen, die thans in de weg staan aan de erkenning en bevordering van hun onafhankelijkheidsideaal. Tussen deze twee polen ligt het spanningsveld, waarin de vonk van agressie maar al te gemakkelijk kan overslaan. Het is in dit spanningsveld, dat de feitelijke gebeurtenissen hebben plaatsgehad, waarvan de bewezen geachte stafbare feiten deel uit maken. Te hoog opgevoerde verwachtingen aan Zuidmolukse zijde omtrent wat realiseerbaar is enerzijds en uitlatingen die getuigen van onvoldoende begrip voor de positie van de Zuid-Molukkers in Nederland aan de andere zijde, hebben in belangrijke mate bijgedragen tot de ontlading die o.m. drie mensenlevens eiste’.

<sup>16</sup> Rb Assen, 26 March 1976. ‘De Rb is van oordeel dat...het opleggen van straf niet kan dienen ter oplossing van het conflict dat aan het begin van de...gepleegde strafbare feiten ten grondslag ligt. Zoals de reclasseringambtenaar terecht aan het slot van zijn algemeen rapport stelt kan dat probleem niet worden opgelost door het uitspreken van gerechtelijke vonnissen, waarbij de conclusie van de samenvattende psychiatrische beschouwingen zich aansluit met een vingerwijzing naar gezonde communicatie ter voorkoming en oplossing van dit soort situaties’.

<sup>17</sup> Bootsma, *De Molukse Acties*, 44-5. Luns also attempted to climb the fence of the residence, but failed and fell on his vital parts, an event that was to be re-enacted in a Dutch satirical television show time and again with the sound of clock-bells ringing.

soft approach. It had become abundantly clear after Wassenaar that there was a Moluccan problem. The government tried to solve this through dialogue and by making attempts to address the social and cultural problems that the Moluccan community faced in the Netherlands. Most of these early attempts were not successful, not least because of tensions between the various governmental departments that were involved. Those that were successful took a long time to materialize.<sup>18</sup> After 1975, the government intensified its efforts to reach a solution through dialogue and resolving underlying problems. In February 1976, for example, a panel of Moluccans was established, which had to make recommendations for improving the social and cultural conditions of the Moluccans.<sup>19</sup> A few months later, on 5 May, a commission was established that was chaired by Mr A. Köbben, a professor of sociology, and Mr L. Montouw. This commission had three tasks: to mediate between the Dutch government and the Moluccans and ease current and future tensions; to examine the political situation in the Moluccas and find out whether the RMS ideal was still shared by the Moluccans; and to establish, on the basis of historical research, whether the Moluccans were correct in believing that they had been betrayed by the Dutch government during the late 1940s and early 1950s.<sup>20</sup> In addition, the Dutch government started to take seriously the recommendations concerning the improvement of the living conditions of the Moluccans, especially their housing, as originally made in 1957 by a commission chaired by Mrs H. Verwey-Jonker.<sup>21</sup> The results of these and other efforts were sometimes disastrous, sometimes encouraging.

The Dutch government also took tougher and more repressive measures against terrorism. This was the immediate result of a shocking event outside the country. In 1972, the Palestinian terrorist group Black September took 9 Israeli sportsmen hostage during the Olympic Games in Munich, a situation that ended in a bloodbath. The Dutch government now realized that terrorism was a serious problem that needed to be dealt with. On 22 February 1973, the Prime Minister sent a letter on terror to parliament in which he announced general and specific measures that were going to be taken over the next few years in the fight against terrorism.<sup>22</sup>

A first set of measures was aimed at creating a force that could respond quickly and effectively in the case of a terrorist emergency. The main effort in this respect was the establishment and training of Special Assistance Units (*Bijzondere Bijstandseenheden*), which consisted of sharpshooters and close-combat fighters from the army, the marines and the national police force.<sup>23</sup> These units were to play a pivotal role in the violent ending of the Moluccan actions in the train and the school in 1977 and in the Provincial Government building in 1978. A second set of measures was aimed primarily at prevention. Within the National Security Service (*Binnenlandse Veiligheidsdienst*) and the National Criminal

<sup>18</sup> In 1972, for example, the government promised to improve the legal position of the Moluccans, who were stateless: except for the right to vote and the duty to serve in the army, they were to enjoy a legal position similar to that of Dutch citizens. It would take almost 6 years before this law came into effect. See Cuperus and Klijnsma, *Onderhandelen of Bestormen*, 90-1.

<sup>19</sup> Steylen, *RMS*, 157; Cuperus and Klijnsma, *Onderhandelen of Bestormen*, 90.

<sup>20</sup> Cuperus and Klijnsma, *Onderhandelen of Bestormen*, 26-7; Bootsma, *De Molukse Acties*, 176-191.

<sup>21</sup> Bootsma, *De Molukse Acties*, 25, 183-188.

<sup>22</sup> Handelingen II, 1972-3, 12.000, nr.11. I am not discussing the precise chronology of the various measures that were taken after the letter on terror in 1973, nor the way in which general measures gradually took shape. Nor is the list of measures that I mention complete.

<sup>23</sup> Cuperus and Kleinsma, *Onderhandelen of Bestormen*, 78-83; Bootsma, *De Molukse Acties*, 70-4, 304-6.

Intelligence Service (*Centrale Recherche Informatiedienst*) special units were established that were to gather intelligence concerning terrorist activities. In addition, a National Assistance Team for Terror (*Landelijk Bijstandsteam Terreur*) was created, which had to gather intelligence and assist and advise the police in investigating terrorist activities. The efforts of all these special units were to be directed and coordinated through the newly created post of anti-terror public prosecutor, which Mr Gonsalves, who 20 years later became entangled in what is known as the IRT scandal, was the first to hold.<sup>24</sup> The results of all this intelligence gathering, incidentally, were disappointing. The intelligence units were completely taken by surprise by all of the six Moluccan actions.<sup>25</sup> The only Moluccan action that they were able to prevent, it seems, was the plan to take Queen Juliana hostage.<sup>26</sup>

The government did not introduce special anti-terrorist laws. It did not propose specific provisions for terrorist crimes in the Criminal Code.<sup>27</sup> In its letter to parliament in 1973 on the measures that needed to be taken in the fight against terrorism, there is no mention of the need for special laws for terrorist crimes, nor is there mention of such laws in its letter to parliament in 1979, in which an overview is given of measures that have been taken over the past 6 years or so.<sup>28</sup> This lack of specific anti-terrorist legislation was not uncontroversial. Indeed, some thought that the legislature should introduce provisions in the Dutch Criminal Code that explicitly dealt with terrorist crimes. Mr J.J. Abspoel, for example, public prosecutor in the case against the Moluccans who had occupied the Indonesian Consulate in Amsterdam in 1975, argued in his closing speech in court that he felt that he could not adequately qualify the crimes that had been committed.<sup>29</sup> Although the Moluccans were obviously guilty of the possession of illegal arms, of threatening to commit a crime against the lives of people, and of unlawfully depriving people of their freedom, the true nature of their crime was a ruthless and uncompromising use of force in the pursuit of a political aim.<sup>30</sup> He thus called for new provisions in the Criminal Code dealing explicitly with the political crime of terror. He also felt that the amount of punishment that the Dutch Criminal Code allowed for was insufficient and called for tougher punishments for terrorist crimes. These pleas did not have any effect, however, partly because most lawyers and politicians were satisfied with the fact that the Moluccan actions already constituted serious crimes under the existing Criminal Code and with the sentences that the Moluccans received for those crimes.<sup>31</sup> Some also feared that provisions in the Criminal Code for political crimes could be used in future to prosecute people with radical political views, because of the inherent vagueness of definitions of political or terrorist crimes.<sup>32</sup>

The government's anti-terrorist measures were thus relatively modest. This does not mean, incidentally, that the government was completely satisfied with existing criminal law. The

<sup>24</sup> Cuperus and Kleinsma, *Onderhandelen van Bestormen*, 80-1; Bootsma, *De Molukse Acties*, 77-8.

<sup>25</sup> Bootsma, *De Molukse Acties*, 373, 379.

<sup>26</sup> Cuperus and Kleinsma, *Onderhandelen van Bestormen*, 21-2; Bootsma, *De Molukse Acties*, 63.

<sup>27</sup> Klerks, *Terreurbestrijding in Nederland*, 185.

<sup>28</sup> Handelingen II, 1972-3, 12.000, nr.11; Handelingen II, 1978-9, 15 300, nr. 36

<sup>29</sup> J.J. Abspoel, 'Requisitoir in de zaak van het Openbaar Ministerie tegen J.R. en zes anderen', in: *Delikt en Delinkwent*, 1976, nr. 6, 303-37.

<sup>30</sup> Abspoel, 'Requisitoir', 323, 325-8.

<sup>31</sup> G.E. Mulder, 'Bestrafing, bestrijding, berechting; Enkele gedachten over de bestrijding van het terrorisme door middel van het strafrecht', in: L.G.H. Gunther Moor, *Terreur; Criminologische en juridische aspecten van terrorisme*, Nijmegen: Ars Aequi Libri, 1977, 85-110. See also the televised interview with minister of justice Van Agt on December 6, 1975, in: *Gijzelingen; 2-19 december 1975*, Stafbureau Voorlichting van het Ministerie van Justitie, 1976, (deel R: Radio en Televisie)

<sup>32</sup> See for example P.W. van der Kruis, 'Kanttekeningen bij een requisitoir', in: *Delikt en Delinkwent*, 1976, 459-462.

government sometimes felt it necessary to instigate actions that were of questionable legality, if not downright unlawful. In 1970, for instance, during the state visit of President Suharto, the police was given instructions to effectively close off The Hague for Moluccans, by stopping all cars driven by Moluccans to The Hague, search these cars for weapons, and order the cars to return to where they came from. The government later had to admit that there was no basis for this in Dutch law, but argued that it had an obligation under international law to ensure the safety of Suharto, an argument that failed to convince many legal experts.<sup>33</sup> In 1977, to give another example, the police conducted extensive search operations in houses in Moluccan sections in Assen and Bovensmilde, the legality of which was doubtful, because it seemed that the police had made use of powers for other purposes than those stipulated by procedural criminal law.<sup>34</sup> The government seems to have preferred overstepping the limits of existing law now and then over introducing comprehensive legislation to deal with the terrorist threat.

## 5. A few comments on the government's letters on terror

Over the past few years, the Dutch government has sent a number of letters to parliament, in which it gives an overview of the measures that have been and will be taken in the fight against terrorism.<sup>35</sup> These measures include new legislation, particularly in the fields of substantive and procedural criminal law, which significantly expands the powers of the authorities and creates specific terrorist crimes; the establishment of bodies that are to coordinate the anti-terrorist efforts of various departments and agencies; the establishment of a more effective system for the gathering and processing of intelligence; the systematic observation and monitoring of potential terrorists; international cooperation and the introduction of policies that are designed to remove the breeding ground of terrorism and to prevent the radicalisation of groups that are susceptible to the ideology of Islamic terrorism. This set of anti-terrorist policies is significantly more extensive than that of the 1970s, even though the terrorism of the 1970s was more serious than current terrorism has been up until now in terms of people targeted and killed.

The government explains this difference by claiming that present-day terrorism is a 'new phenomenon', which, compared with old-style terrorism, poses an unprecedented threat to the security of Dutch society.<sup>36</sup> Current terrorism is both different and more dangerous than old-style terrorism.<sup>37</sup> The government gives five reasons why it believes that this is so. First, present-day terrorism is religiously inspired and has the broad aim of inflicting damage on and destabilising Western society, if not annihilating it. Current Islamic terrorism is 'catastrophic terrorism'; old-style terrorism, by contrast, had narrow aims and was purely politically motivated.<sup>38</sup> Secondly, present-day terrorism is a global, not a local phenomenon, in the sense that it targets many societies and that terrorists may cross borders to launch their

<sup>33</sup> Cuperus and Kleinsma, *Onderhandelen of Bestormen*, 7-8.

<sup>34</sup> Idem, 47-9. See also Klerks, *Terreurbestrijding in Nederland*, 45-8, 185.

<sup>35</sup> Kamerstukken II, 2002-3, 27 925, nr. 94; Kamerstukken II, 2003-4, 27 925, nr. 123; Kamerstukken II, 2003-4, 29 754, nr. 1.

<sup>36</sup> Kamerstukken II, 29 754, nr. 1, 1.

<sup>37</sup> Idem.

<sup>38</sup> Kamerstukken II, 2003-4, 27 925, nr. 123, 3.

attacks. The third difference is in organizational capacity: present day terrorists form a loose collection of cells and individuals; there seems to be no clear chain of command. The second and third features lead to a fourth one: it is to a great extent uncertain who the potential terrorists are and what the nature and the location of the terrorist attacks will be, except that current terrorist prefer ‘soft targets’, that is, civilian targets such as airports and railway stations. The government further notes that current terrorists may make use of deeply destructive weaponry. For all these reasons, Islamic terrorism presents an unprecedented threat, which calls for an equally unprecedented set of anti-terrorist measures.

It is true that the aim of present-day terrorism differs from the aim of the Moluccan actions. The Moluccan actions were a form of political, separatist terrorism: the aim was an independent republic on the Moluccas. It is questionable, however, that this difference in itself makes current terrorism more threatening, as the government sometimes seem to suggest.<sup>39</sup> In the 1970s, many people could understand and some could sympathize with the aim of the Moluccan actions. The courts, for example, clearly indicated that they understood the ends, though not the means, of the Moluccan actions. The aim of today’s terrorism cannot count on much understanding, let alone sympathy. However, it is one thing to say that one does or does not understand or sympathize with the ultimate aims of terrorist groups; it is quite another thing to say that a terrorist group poses a great threat to security. The degree of threat rather depends primarily on the willingness of a terrorist group to use force and on the means it has at its disposal. This is not to deny that the aims matter. If the aim of a terrorist group is narrowly defined and if the underlying grievances are clear and specific, a combination of dialogue, negotiation, and social and political measures can contribute to preventing terrorism. In the 1970s, it was believed by the courts that a ‘healthy dialogue’ between the Dutch government and the Moluccan community could have prevented terrorist acts, and perhaps they were right. Healthy communication and social and economic policies are less likely to be effective if the aim is annihilation and if the underlying grievances range from a rejection of Western values to the Palestinian conflict in the Middle East.

It is equally true that present-day terrorism is a global phenomenon, while the Moluccan actions were prepared and carried out in the Netherlands. But again, it is unclear why global terrorism would, in itself, be more threatening than local terrorism. True, it is difficult to monitor potential terrorists if they cross borders and commit terrorist acts outside their own country easily. But the tight Moluccan community also proved hard to penetrate in the 1970s, as have communities in other countries that harbour terrorists groups, like the ETA or the IRA. The third and fourth features of present-day terrorism do not seem to be particularly novel. The Moluccan terrorists, too, were a loose collection of individuals and no one could predict in the 1970s who would commit terrorist acts and what the location and nature of the targets would be. The Moluccans, too, chose soft targets, like trains and a primary school. As to the fifth feature of present-day terrorism, it is true that the Moluccan actions were carried out with unsophisticated arms, whereas present-day terrorists might use destructive weaponry. This difference is, of course, very important; if terrorists who aim to annihilate Western society

<sup>39</sup> Kamerstukken II, 2002-3, 27 925, 2: ‘De Veiligheid van Nederland, met zijn op democratie en individuele vrijheid gebaseerde systeem, wordt ernstig bedreigd. Het lijken zware woorden, maar de risico’s voor onze samenleving zijn sinds tijden niet zo groot geweest. Dat komt vooral omdat wij thans geconfronteerd worden met een dreiging van islamitisch terrorisme, waarbij de daders een andere logica en motivatie (religieus) hanteren dan terroristen in het verleden en zij bovendien oproffering van het eigen leven tot ideaal hebben verheven’.

have indeed acquired such weapons, then a new and very threatening form of terrorism has admittedly emerged.

So what do the Moluccan actions tell us? Not that the limited set of anti-terrorist policies in the 1970s was better than the current one. Perhaps it can be argued that some of the Moluccan actions could have been prevented if the government had introduced a comprehensive anti-terrorist policy and perhaps the price of such a policy in terms of civil liberties would have been worth paying. Besides, the current threat is different in some respects and in one respect far more threatening. The lesson to be learned from the Moluccan actions is rather that a less comprehensive response to serious and as yet unprecedented terrorist actions was given in the 1970s; that current Islamic terrorism is less different and in many ways not necessarily more threatening than old-style terrorism; and that it is thus not as self-evident that a significant expansion of state powers is necessary and justified as the government claims.