

# Sending Dutch troops abroad, some domestic legal aspects

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SOME DOMESTIC LEGAL ASPECTS*Liesbeth Lijnzaad\**

## 1 INTRODUCTION

People everywhere, the Netherlands included, disagree with their governments. One of the issues that tends to lead to considerable debate is the way in which the government decides on issues of peace and security, ranging from strategic issues, such as whether to accept the stationing of nuclear weapons on one's territory, or the choice to deploy troops abroad. With straight-forward situations of self-defence against an attack on the territory being rare in Western Europe, attention focuses on situations where there may be no imminent need for a government to deploy troops abroad, but such deployment would rather be a policy choice. People may want to question the wisdom of such decisions, discuss the reasons for sending troops and consider whether alternatives to military action, such as negotiations, are still available. It has thus become a matter for public debate whether military participation in a certain conflict is indeed the best possible choice. Such choices, while clearly being political decisions, have legal aspects in the Netherlands legal order.

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The legal framework for sending troops abroad lies at the crossroads of constitutional law and international law, and it has occupied the Ministry of Foreign Affairs in recent years. During the tenure as Legal Adviser of Johan Lammers, the number of court cases relating to the deployment of Dutch troops abroad has risen significantly. Also, Article 100 of the Netherlands constitution came into force providing a procedure on informing parliament about sending Dutch troops abroad. In the following, I will focus on the specific parliamentary procedure developed in the 1990s with respect to foreign military missions, as well as the frequently used step of trying to obtain an injunction against a government decision to participate in foreign missions. Both are ways to discuss the legal aspects of foreign military missions, and merit a comparative analysis. It would appear that both approaches, of either taking the government to court or a parliamentary debate, have more connections than one would expect at first sight.

## 2 ARTICLE 100 OF THE NETHERLANDS CONSTITUTION

With the increased willingness of the government to contribute troops to military missions abroad, in particular to peace-keeping activities under the aegis of the Security Council, the Dutch parliament has in the 1990s become increasingly concerned about its ability to monitor such decisions, and indeed its role in the decision-making with respect to such missions.

Some see this concern as directly related to the presence of Dutch troops in Srebrenica in Bosnia and Herzegovina, where in July 1995 a massacre took place in the presence of Dutch peacekeepers. Senator Van Middelkoop, the intellectual father of the constitutional framework for the involvement of parliament in decisions on sending troops abroad that was to develop, has however asserted that the origins of the idea of constitutional rules on parliamentary involvement with sending Dutch troops abroad lies some years earlier. Whilst still a member of parliament, Van Middelkoop raised the issue in a parliamentary session in May 1993, expressing a wish to develop a formal basis for the existing constitutional practice of the government sharing its intention to send troops with parliament.<sup>1</sup> The government, however, had no intention of complying with this suggestion.

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<sup>1</sup> TK, 1992-1993, Handelingen 28, at 4968.