

Dutch intelligence culture

**...and the political and public debate
on the new Act on the Intelligence
and Security Services (2017)**

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1 Introduction

The world of intelligence is a fascinating one. Since the establishment of modern intelligence services, many examined and researched intelligence services all over the world. Most of the conducted studies focused on one intelligence community. These ‘single case studies’ provided adequate explanations for both the design and the procedures of the intelligence community in question. However, the studies did not provide an answer to the ‘question of diversity’ within the world of intelligence. In recent years it appeared that some of the intelligence communities, and the accompanying designs and procedures, are unique, while they were considered to be universal. In other words, there are differences between intelligence communities, and the differences cannot be explained with the help of the conducted single case studies (Davies, 2012: 1-10).

In order to be able to explain the differences, it is necessary to conduct a comparative research. O’Connell, for example, argues that ‘scholars should start a discussion about intelligence in comparative terms’ (O’Connell, 2004: 190). In his article ‘Thinking about Intelligence Comparatively’, he maintains that intelligence systems vary across countries, especially in the methods used to collect and process information. The ability to understand these differences is a source of new approaches to intelligence (O’Connell, 2004: 190).

In order to explain and understand the differences between intelligence communities, a variety of studies focused on the organizational aspects of intelligence services. As a result, a ‘standard model’ was created. This model focused on differences related to manpower, budget, geographical aspects, and the constitutional context (Davies, 2012: 4-6). However, more recent studies showed that the described ‘explanations’ caused similarities between intelligence communities, rather than explaining the differences (Davies, 2012: 7-11). In other words, the organizational aspects did not provide a comprehensive answer to the question why intelligence communities differ. Therefore, another concept was introduced: intelligence culture.

The introduction of the concept intelligence culture is part of a trend within international relations and security studies, which increasingly sheds light on norms and identity politics (Hall and Taylor, 1996: 948). Because of this trend, different scholars advocate that cultural aspects should be higher on the agenda of intelligence studies (Davies, 2002; O’Connell, 2004; Duyvesteyn, 2011). As a result, a recent strand in intelligence studies focuses on ‘intelligence cultures’ and ‘intelligence systems’.

'Intelligence culture' is described by Davies (2004) as a culture 'that comprises the institutional forms, cultural context, and social practices of intelligence and security.' It is a relatively new and ambiguous concept: although a lot has been written on intelligence activities, not much has been done in regard to culture (Warner, 2009: 11). Culture in general is often used as a context for understanding a phenomenon or as a 'lens' in different branches of social science (Duyvesteyn, 2011: 521).

This research focuses on the concepts 'intelligence culture' and 'intelligence system' within the world of intelligence. The study aspires to strengthen the literature on this topic. The existing literature incorporates different aspects of intelligence cultures and intelligence systems. Warner, for example, focuses on the geopolitical aspect of an intelligence culture and system in his article 'Building a Theory of Intelligence Systems'. Davies, on the other hand, highlights the more bureaucratic aspect of intelligence culture in his article 'Intelligence culture and intelligence failure in Britain and the United States'. At the same time, few studies focus on the political and public context as an aspect of intelligence cultures and intelligence systems. An exception is Chiru (2016). In the article 'Engaging Public Support and Awareness in Intelligence: the Demand and Challenges to Developing an Intelligence Culture', the relevance of public support for intelligence services is emphasized. In democracies, the efficiency of national security institutions depends significantly on the way their role is perceived by the general public. The 'social capital' conditions the efficient functioning of the institutions (Chiru, 2016: 503). Other scholars who focus on the public dimension of intelligence services are Teirilä and Nykänen (2016). They highlight in specific the support and legitimacy of the services, which is an important requirement for their work. Despite these studies on the public context of intelligence services, a comprehensive study which incorporates both the political and public dimension of intelligence cultures and intelligence systems does not exist. Therefore, the main aim of this research is to focus on this aspect in order to extend and test the literature on intelligence cultures and intelligence systems. This research focuses on an unique case in which the political and public context of intelligence services can be recognized. More than that, the political and public context is the main feature of the case.

In the Netherlands, a heated debate took place about a law which governs the intelligence services: the new Intelligence and Security Services Act (in Dutch: *Wet op de Inlichtingen- en Veiligheidsdiensten*). The Act grants the Dutch intelligence community new special powers.

The earlier Act was introduced in 2002. And, according to a special commission which evaluated the Wiv (2002) in 2012, the Act did not provide the intelligence services with the right tools to encounter different threats such as terrorism and cyberattacks. One of the reasons for this, is the fact that the communication of (potential) terrorists takes place through cable-bound communication channels which cannot be examined under the old Wiv (2002).¹ The ‘traditional’ intelligence methods such as observing and collecting telephone conversations on the ether were not sufficient enough to provide the Dutch intelligence services the information they needed.² Eventually, the evaluation committee, the Dutch intelligence services, and the majority of the political parties argued that the Wiv (2002) should be replaced by the Wiv (2017), which is the result of a process that started with the evaluation of the Wiv (2002). In 2017, the new Wiv was confirmed by both the House of Representatives and the Senate.

At the same time, there were opponents of the Wiv (2017). They maintained that the Wiv (2017) is a ‘tapping law that violates the right to privacy’, since the law allows the intelligence services to tap telephone and internet traffic on a large scale as a result of the interception of communication traffic that runs through fiber optic cables.³ In addition, the intercepted metadata may be stored for up to three years.⁴ Another aspect of the Wiv (2017) which is criticised is the possibility to perform hacks more often and on a larger scale than under the old Wiv (2002). All in all, the opponents of the Wiv (2017) were worried that the application of the new, special powers has consequences for the privacy of Dutch citizens.

Therefore, a group of concerned students from Amsterdam collected in August 2017 more than ten thousand signatures for a consultative referendum on the Wiv (2017). At that time, the Wiv (2017) already has been discussed in, and confirmed by the House of Representatives and the Senate. This did not matter, argued that students, since their ‘goal was to start a serious discussion about the Wiv (2017)’, which the opponents consequently called the ‘dragnet law’.⁵

The students were supported by several organizations, including Amnesty International and Bits of Freedom. Eventually, as a result of the attention in the media, the students successfully

¹ Rijksoverheid (2018), ‘Waarom is een nieuwe Wet op de inlichtingen- en veiligheidsdiensten nodig?’, <https://www.rijksoverheid.nl/onderwerpen/bevoegdheden-inlichtingendiensten-en-veiligheidsdiensten/vraag-en-antwoord/waarom-is-een-nieuwe-wiv-nodig> (visited on 01.03.2018).

² Idem

³ C. Hijzen and P. Koop (2018), ‘Report from Holland: A heated debate over a new intelligence and security act’, <https://intelnews.org/2018/03/17/01-2293/> (visited on 16.05.2018).

⁴ C. Hijzen and P. Koop (2018), ‘Report from Holland: Cable-bound interceptions and ‘dragnets’, <https://intelnews.org/2018/03/24/01-2294/> (visited on 16.05.2018).

⁵ Idem

petitioned 300,000 signatures, which meant that the Dutch government was required to hold a consultative referendum about the new Wiv (2017).⁶ The Netherlands held a referendum on this legislation on March 21, 2018, coinciding the municipal elections. Many organizations, including political parties, the Dutch intelligence services, and NGO's campaigned for or against the Wiv (2017) in order to influence the result of the referendum.

The Dutch political and public debate on the Wiv (2017) will be researched in order to strengthen the literature on the political and public aspects of intelligence cultures and intelligence systems. In this research, a typology of the Dutch intelligence culture and system, which is derived from the theory, will be compared with insights in the political and public debate. In other words, a general typology of an intelligence culture and system will be used for both the description of the Dutch intelligence community, and the analysis of the political and public debate on the Wiv (2017). This way, theory and practice can be compared. Are there differences between the theoretically described Dutch intelligence culture and system, and the practice of a political and public debate about the intelligence services? To what extent, and in which way, are theoretical aspects of the Dutch intelligence culture and system reflected in the political and public debate? As a result, the relevance of the political and public context of intelligence services can be highlighted and defined. Besides that, the insights which are derived from the theory can contribute to a better understanding of the political and public debate.

1.1 Research question

The research question which structures the ambitions of the research asks:

‘To what extent, and in which way, is a typology of the Dutch intelligence culture and system reflected in the political and public debate on the new Intelligence and Security Services Act (2017) which took place in the Netherlands?’

The research focuses in specific on the political and public debate between February 2017 and the referendum in March 2018. Political debates in the House of Representatives and the Senate will be analysed, as well as articles in newspapers and on websites that cover the political and public debate on the Wiv (2017). Besides that, experts in the field of intelligence will be interviewed.

⁶ C. Hijzen and P. Koop (2018), ‘Report from Holland: Cable-bound interceptions and ‘dragnets’, <https://intelnews.org/2018/03/24/01-2294/> (visited on 16.05.2018).

1.2 Academic and societal relevance

The research question will be answered by analysing the Dutch intelligence culture and system and the political and public debate on the Wiv (2017). The academic relevance of this research can be recognized in the effort to work with a relatively new and ambiguous concept. The study will be conducted on the basis of theory introduced by, amongst others, Warner, Davies, and O'Connell. At the same time, the study aspires to shed new light on the concepts intelligence culture and intelligence system by highlighting the political and public context of intelligence communities, which is an under-researched topic. Because of this, the study expects to provide new knowledge, in addition to current knowledge on intelligence cultures and intelligence systems.

Besides that, the focus on the Dutch intelligence community broadens the existing literature on intelligence culture. The few studies that have taken intelligence culture into account, have a strong emphasis on the United States and the United Kingdom. The availability of sources and the openness of discussion about intelligence in these countries is the reason for this (Duyvesteyn, 2011: 522). An exception is the *Handbook of European Intelligence Cultures* (2016), in which De Graaff, Locke, and Nyce analyse European intelligence cultures. However, no other comprehensive efforts have been made to broaden the understanding of intelligence culture related to a specific European country. This research could fill this gap in the existing literature.

The research is also socially relevant. It is helpful to understand how and why intelligence services differ while at the same time the essential functions are the same (collect, process and analyse specific information) (O'Connell, 2004). Intelligence often forms the basis of decision-making within governments. More knowledge about intelligence and the way intelligence services operate within the political and public context could be relevant for society. Besides that, a heated debate about surveillance powers of intelligence services could use some more in-depth knowledge about these services.

1.3 Reading guide

After the introduction, in which the general topic and the research question are introduced, the theoretical framework will be discussed. An overview of the existing literature about intelligence, intelligence culture and intelligence systems is part of this chapter. This overview will provide a framework which will be used in the analysis of the intelligence culture and intelligence system in the Netherlands. After the chapter about the theory, the research design

and the different methods to gather valid data will be discussed, as well as the different sources of this data. Afterwards, the case – the political and public debate about the Wiv (2017) – will be described. In the next chapter, the focus lies on the Dutch intelligence culture and system. The framework which is derived from the theory, will be used in order to describe the Dutch intelligence community. Afterwards, the political and public debate will be analysed with the help of the same framework in order to highlight the similarities and the differences between theory and practice. The thesis ends with a conclusion in which the research question will be answered. Besides that, the conclusion contains a summary of the research, a critical discussion about the limitations of this study and it will provide suggestions for further academic research.

2 Theory

This chapter presents the main concepts of this research: intelligence, intelligence culture and intelligence system. Different scholars wrote about these concepts, thereby introducing theories and frameworks related to them. First, the general concept of intelligence, and the different views on this concept, will be discussed. This discussion also includes a part of the concept intelligence culture, because different perspectives on intelligence are considered to be part of the concept intelligence culture. Afterwards, the concept intelligence culture will be discussed. Lastly, the concept intelligence system will be introduced, since it is closely related to an intelligence culture and because it will provide input for a typology which will be used in the analysis of the Dutch intelligence community.

2.1 Concepts of intelligence

Since World War II, different scholars have studied the topic of intelligence. Kent, who served in the Bureau of Analysis and Estimates of the US Office of Strategic Services, was the first who was convinced that intelligence should be an analytical discipline. He wanted intelligence to be programmatically examined and addressed within the social science tradition (Davies, 2002: 62). However, even many years later, intelligence is still a relatively new subject. Although intelligence is a significant part of government, it has not yet received the attention other government powers have received. The absence of reliable information which is often absent due to official secrecy is one of the reasons for this. Another reason is the terminology, which is confused by military-civilian and transatlantic differences. The differences in terminology lead to a working field in which intelligence is ‘the least understood and most undertheorized area of international relations’ (Herman, 1996: 3). Warner even stated:

‘Indeed, even today we have no accepted definition of intelligence. The term is defined anew by each author who addresses it, and these definitions rarely refer to one another or build off what has been written before.’ (Warner, 2002: 15).

In this chapter, the different points of view regarding the concept of intelligence will be examined, as well as the consequences of these differences.

Warner describes two different ‘camps’ within the world of intelligence in his article ‘Building a Theory of Intelligence Systems’. One camp holds that intelligence is information for decision makers. This means that intelligence is anything from any source that helps leaders decide what to do. In other words: intelligence is something that informs decision making. The second camp

defines intelligence as ‘warfare by quieter means’. It is an activity that relates to both the informing and executing of decisions (Warner, 2009: 15).

Whereas Warner describes ‘two camps’, Herman (1996), writes about a spectrum of broad definitions and more narrow definitions of intelligence. The broad definitions describe intelligence as all-source analysis, while the more narrow definitions emphasize intelligence collection; in specific covert information collection. The notion of broad and narrow definitions will be discussed in the context of Davies’ study on different concepts of intelligence in the United States and the United Kingdom.

Davies maintains that the United States and the United Kingdom have different approaches to intelligence. The intelligence community in the United States defines intelligence as a finished product of information that has been put through an analysis process. This information can be used by decision-makers (Davies, 2002: 500). In order to explain this approach, Davies refers to the already mentioned Kent, as the founder of American ‘intelligence theory’. Kent argues that intelligence should be composed of three elements: descriptive background, reportorial current information, and the substantive-evaluative analytical process of evaluation (Davies, 2004: 500). In other words, ‘intelligence’ has been processed before it is considered to be ‘intelligence’.

On the other hand, the intelligence community in the United Kingdom has a more civil law approach. In the United Kingdom, intelligence refers to a particular kind of information, often gathered from indirect sources. Furthermore, the ‘raw information’ is used immediately by decision makers, without an intervening analytical stage (Davies, 2002: 64). Davies summarizes the different approaches as:

‘the United States approaches information as a specific component of intelligence while Britain approaches intelligence as a specific type of information’ (Davies, 2002: 64).

According to Davies, two historical, catastrophic events form the foundation of the different conceptions. The attack on Pearl Harbour (1941) and the Boer War in South Africa (1899-1903). After the Pearl Harbour-attack, the Americans concluded that the United States lacked the means to analyse and interpret raw information, which was available and could have prevented the attacks. A joint congressional committee that investigated the Pearl Harbour attacks stated that ‘the coordination and proper evaluation of intelligence in times of stress must be insured by continuity of service and centralization of responsibility in competent officials’ (Davies, 2002: 65). Partly because of the report written by the joint committee, the

administration of President Truman passed the National Security Act (1947) which established the CIA in order to centralize intelligence assessment, and the National Security Council in order to coordinate national security policy. Furthermore, after the Pearl Harbour-attacks there was a public debate in the United States about the need for intelligence in peace time. This debate resulted in Kent's 'Strategic Intelligence for US World Policy' (1949), in which he took up the notion of intelligence 'as collection plus all-source assessment' (Davies, 2002: 65). Because of these trends, intelligence was more and more defined in terms of an analytical process which resulted in the conclusion of Davies (2012) that the United States defines intelligence as 'a finished product'.

For the United Kingdom, the Boer War in South Africa (1899-1903) was the 'traumatic event' that shaped the perception of intelligence. The United Kingdom went into this war fully unprepared. There was no information available about the landscape, the social organization and the guerrilla tactics that were used against the British people. The (surviving) papers of the post-Boer War Special Section of the War Office reveal how deeply the failing in South Africa influenced the British military. The lessons of the Boer War contributed to the establishment of an extensive human intelligence system. So, the first intelligence service in the United Kingdom was a result of the failings in the Boer War. The Boer War revealed the need for raw intelligence in the wars to come. The lessons from this historical events led to the situation in which the British decision makers 'immediately use raw information, without an intervening analytical stage' (Davies, 2002: 64).

Davies concludes in his study that the intelligence culture in the United States tends towards a disintegrative culture (emphasis on all-source analysis) whereas the intelligence culture in the United Kingdom is considered to be integrative (emphasis on covert intelligence collection). Duyvesteyn elaborates on the two conceptualizations in the article 'Intelligence and Strategic Culture'. Disintegrative culture are highly sensitive to turf wars while integrative cultures are highly sensitive to groupthink (Duyvesteyn, 2011: 527).

The brief overview of different definitions of, and approaches to intelligence shows the ambiguous world of intelligence. Besides opposing the attempts to structure the academic field of intelligence studies, the different definitions also affect governments and intelligence communities in a practical way. Governments that approach intelligence as the basis for decision-making will assign different tasks to their intelligence services than governments that approach intelligence as an activity. Besides that, governments will dictate the placement of

legal and oversight makers differently, depending on the approach towards intelligence (Warner, 2009: 17).

2.2 Intelligence culture

According to Davies, the different approaches and conceptualizations of intelligence are an component of the concept intelligence culture. As he states:

‘[...] There exists at least one recognisable difference between the respective intelligence cultures in the United States and the United Kingdom. And it is a fairly fundamental one. Bluntly put, ‘intelligence’ does not mean the same thing on opposite sides of the Atlantic’ (Davies, 2004: 500).

The fundamental differences in the definitions and approaches have influenced the institutions surrounding the world of intelligence. Davies maintains that the intelligence culture relates to ‘the many different ideas of intelligence and their institutional and operational consequences’ (Davies, 2002: 65). In other words, intelligence culture shapes different aspects of the way intelligence services work. This way, the concept ‘culture’ is linked to the concept ‘intelligence’ and to the intelligence community itself.

Duyvesteyn also discusses the link between culture and intelligence. She focuses in particular on strategic culture. This concept is defined as ‘the sum total of ideas, conditioned emotional responses, and patterns of habitual behaviour that members of a national strategic community have acquired through instruction or imitation’ (Duyvesteyn, 2011: 522). According to her, strategic culture has only been marginally linked to intelligence. Nevertheless, the process of intelligence is suited for a thorough comparison of the role of culture. The role of culture can namely logically be derived by the analysis of intelligence processes (Duyvesteyn, 2011: 524).

According to Duyvesteyn, ‘culture’ influences the perceptions of reality. As a consequence, culture guides the formation of preferences within government and intelligence communities. In order to support this statement, Duyvesteyn brings forward empirical evidence that the perception of geo-political conditions informs priorities and definitions of intelligence, which on their turn influence collection mechanisms, assessments and dissemination in the political domain (Duyvesteyn, 2011: 529-530). This means that intelligence communities can only be understood within their cultural and historical context. This relates to the study conducted by Davies, in which he includes the historical component that has influenced the development the different approaches to intelligence (Pearl Harbour and the Boer War).

2.3 Intelligence system

In order to be able to present a comprehensive theoretical framework, another concept will be discussed: intelligence system. There is a variety of intelligence systems all over the world. The systems differ from country to country as a result of different cultures. As Hall and Taylor state in their article 'Political Science and the Three New Institutionalisms' (1996): cultural differences lead to differences between organizations. This way, culture is a leading factor in the process of shaping and structuring an intelligence system.

Warner defines an intelligence system in his article 'Building a Theory of Intelligence Systems' as 'the dealings of secrets and how these are organized, treated, and exercised, by plan or by default' (Warner, 2009: 24). This definition incorporates more than intelligence services, their functions, and their capabilities. These are 'just' components of the intelligence system. When the overall intelligence system is understood, the components of the system could be compared with components of other systems (Warner, 2009: 24).

Warner advocates a research agenda oriented around cross-national comparisons. According to him, such agendas have not yet fully emerged. Warner mentions factors for explaining this deficit of comparative analyses: the paucity of reliable data to analyse, the lack of interest among governments in sponsoring such studies, and the methodological divide between scholars (Warner, 2009: 11).

In order to provide such a framework, Warner compares the intelligence systems of the United States and Vietnam. He maintains that the types of intelligence systems depend on three main variables: strategy, regime and technology.

Historical evidence supports the notion that *strategy* is a major influence on intelligence systems. For example, states with few foreign threats may neglect external intelligence; states in conflict-ridden regions may concentrate on collecting against likely threats; and expansionist powers will conduct covert operations abroad (Warner, 2009: 27-28). In addition, strategy determines intelligence relationships. A great deal of intelligence work is accomplished in cooperation with other sovereignties (against shared enemies) (Sims, 2006: 196-203). Warner describes different values of the strategy variable:

- Basic orientation
- Geopolitical
- Motives

- Sources of support or mediation
- Strategic culture
- Situational
- Objectives

The type of intelligence system also depends on the *type of regime* of a state. The form of government, the departmental structure, oversight and internal challenges shape such a regime. For this research, it is relevant to describe characteristics of intelligence systems in democratic regimes. Within a democratic regime, intelligence systems are built to protect the rulers at home and to help them function abroad. Democracies are built on a broad base of popular consent. Therefore, democracies tend to build intelligence systems on the theory that the systems are less able to abuse the liberties of citizens (Warner, 2009: 29-31). Warner describes the following values of the regime variable:

- Type of sovereignty
- Form of government
- Ministerial/departmental structure
- Internal challenges
- Oversight

Lastly, *technology* shapes an intelligence system. Warner focuses in specific on the digital revolution, of which the effects are still emerging. The outcome is difficult to predict. Since the 1990s, different developments such as the interlinking of mankind via mass communications and the shift of humanity's collective memory into electronic archives, have given all nations suited intelligence capabilities that used to be monopolized by the richer and more advanced states. Governments and intelligence systems are feeling the effects of this 'digital storm', but the results remain uncertain (Warner, 2009: 32-34). The values of the technology variable are:

- Information
- Production
- Resources
- Military
- Social and institutional forms

Another scholar who started a discussion about a comparative analysis of intelligence services is O'Connell. In his article 'Thinking about intelligence comparatively' (2004), he provides a framework for this comparison. First, he examines what various intelligence services have in common. Aspects of this analysis relate to the relation between intelligence services and politics. 'All national leaders expect that intelligence services provide special information in support of security aims' (O'Connell, 2004: 192). Another common element is the fact that many intelligence services are grappling to stay relevant for policy-makers in the information age (O'Connell, 2004: 192).

At the same time, O'Connell highlights the differences between intelligence services. These differences occur in topics such as national security information requirements and resource levels. And, in line with the already discussed authors, O'Connell argues that states have different approaches to analysis because of their unique societal, political, and historical context (O'Connell, 2004: 194). For example, the role of intelligence within the broader policy context varies around the globe. Furthermore, different national cultural perspectives lead to different perceptions of a national threat (O'Connell, 2004: 194). As a result, O'Connell provides a framework for comparing intelligence services. This framework is different from Warner's framework, which is based on strategy, regime, and technology. The aspects which O'Connell describes are:

- National security context
- National security structure
- Breadth and diversity of intelligence requirements
- Organizational cohesion, size and budget
- Management and oversight
- Penchant for cooperation
- Collection emphasis
- Analytical emphasis
- Operational emphasis
- Counter-intelligence emphasis
- Intelligence-decision making relationship (O'Connell, 2004: 195-196)

Elements of the two described frameworks (Warner and O'Connell) will be used in the process to work with an own typology of an intelligence system. This typology will structure the analysis of the Dutch intelligence services and the analysis of the political and public debate on

the Wiv (2017). In the next chapter (Methodology), the elements and the conceptualization of them will be described and explained in more detail. However, first the existing literature about the political and public context of intelligence services and their culture will be discussed.

2.4 Political and public context

As mentioned in the introduction, the literature on the concepts intelligence culture and intelligence system lacks a comprehensive study that involves the political and public context of intelligence communities. Nevertheless, different scholars wrote about some of the aspects of this context. This section will provide a brief overview of their contributions.

Valero (2003) examined the public discourse over (American) intelligence and the support for a new type of national intelligence system following World War II. The organization of this new intelligence system was covered in newspapers, popular magazines, public speeches and polling data. In addition, special interest groups influenced the public debate about post-war intelligence. This discussion, fostered by the wartime leader of the Office of Strategic Services William Donovan, influenced the establishment of the modern intelligence bureaucracy. More specific: the public attention shaped the perception of the government and citizens regarding the role of intelligence in the United States (Valero, 2003: 91). Valero concludes that the public attention for this policy matter was ‘a truly remarkable departure in the history of the United States and the establishment of intelligence bureaucracies around the world’ (Valero, 2003: 115). This research shows the relevance of the public opinion in the process of shaping the perception regarding intelligence, which is a component of intelligence culture. Moreover, the research provides insights in the influence of the public discourse on the establishment of intelligence services.

Also Teirilä and Nykänen (2016) write about the relationship between the public and intelligence services. They maintain that public debates provide ‘construction pieces’ for the development for intelligence legitimacy. The debates also contribute to transparency, often considered an essential part of governance (Teirilä and Nykänen, 2016: 278). Furthermore, actions have to be in accordance with national and international laws. When actions are known this way, they are more easily perceived as legitimate. Even when some aspects of intelligence services are secret, the legitimacy of the services can cover their actions. Public acceptability of intelligence services leads to the services being trusted to execute their tasks within legal boundaries (Teirilä and Nykänen, 2016: 280).

In line with this, Chiru (2016) argues that the efficiency of a security institution depends significantly on the way its role and mission are perceived by the general public. The intelligence culture, as a set of attitudes and behaviours related to intelligence which influence social perceptions, is fundamental for public trust and support (Chiru, 2016: 503). Intelligence community legitimacy is acquired or damaged through actions, while at the same time the public image is built through communication policies. So, intelligence services are embedded in society and their efficiency depends partly on the public (Chiru, 2016: 512).

These different scholars (Valero, 2003; Teirilä and Nykänen, 2016; Chiru, 2016) all write about the dynamics between intelligence services, their culture and their social environment which contains the public. They argue that the public discourse and perceptions influence intelligence services and their culture. Professor in the field of intelligence and security studies Abels agrees with this statement: ‘the way the public [and politicians] talk about intelligence services, influences the very same services and the intelligence culture.’

3 Methodology

In the previous chapter, the literature on the concepts intelligence, intelligence culture and intelligence system is introduced. The discussion included different frameworks for comparing intelligence cultures and systems.

In this chapter, the research design, the methods for the data gathering, and the sources of the data will be discussed. Furthermore, this chapter presents the framework which will be used in the analysis. In order to do so, aspects of the introduced literature and the frameworks will be explained in more detail. Lastly, the validity and reliability of the research will be described.

3.1 Research design

The research involves a single case study in order to answer the research question about the Dutch intelligence culture and intelligence system and the political and public context of the services. The main aim of the research is to strengthen the literature on these topics. Besides that, the literature could contribute to a better understanding of the political and public debate on the Wiv (2017).

According to Yin, a single case study is legitimized when three conditions are met. First, the case should represent a ‘critical test of existing theory’ (Yin, 2003: 44). Because the concepts of intelligence cultures and intelligence systems are relatively new, it is necessary to use the existing literature, the corresponding insights, and the provided frameworks. This way, a concise analysis with the help of the concepts is possible. Therefore, the frameworks of Warner, O’Connell and aspects of the literature about the political and public context of intelligence services will be used for an own typology of the Dutch intelligence community, as will be explained in this chapter. So, on the one hand the research is based on the existing literature. On the other hand, the analysis will ‘test’ the literature by using the theory in the analysis of a relatively under-researched topic – the political and public context of an intelligence culture and system.

Secondly, the case should be an ‘extreme or unique event’ (Yin, 2003: 44). The case of the political and public debate on the Wiv (2017) is indeed an unique event. As professor Abels stated: ‘the Dutch intelligence services stood in the spotlights during the political and public debates like never before.’ Besides that, it was for the first time that Dutch citizens could cast a vote about an Act which governs the Dutch intelligence services.

The third condition relates to the ‘revelatory purpose’ of the case. In other words, the research should focus on a case which was previously inaccessible for investigation. Despite the fact that the political and public debate on the Wiv (2017) *was* accessible for investigation, this research has a revelatory purpose. First of all, the research focuses on a case which took place very recently. Besides that, relatively new concepts will be used in the analysis of the case. A lot has been written about the case by scholars and journalists alike. Nevertheless, a comprehensive analysis which includes the Dutch intelligence culture and system does not exist. This way, the study has an exploratory nature. According to Gerring (2004), a single case study enjoys a natural advantage for a study with this kind of nature.

All in all, the research design allows an in-depth research which includes relatively new and ambiguous concepts: intelligence cultures and intelligence systems. Because the study focuses on one case, all surrounding aspects can be used in the research. This is helpful, since the research has an ‘qualitative nature’. An intelligence culture is not a concept you can ‘catch in numbers’ (in other words, with quantitative data).

3.2 Sampling of the case

As mentioned in the previous section, the case of the political and public debate about the Wiv (2017) is a ‘unique event’ and thereby fulfils one of the conditions mentioned by Yin (2003). The Dutch intelligence services stood in the spotlight when the political debates intensified during 2017. Ultimately, a referendum was set up in order to cast a vote on the (already political confirmed) Wiv (2017), which resulted in a heated public debate. Many articles, blogs and op-eds were written by journalists and scholars. Also the intelligence services themselves (more specific: the heads of the intelligence services) tried to influence the public debate by campaigning for the Wiv (2017). Therefore, the case provides a good opportunity to examine the Dutch intelligence services within the political and public context, despite their ‘natural mentality’ of not sharing much information.⁷ The debates on a grand scale and the referendum includes many aspects and sources of information which could contribute to the research. The availability of information, as a result of the reports, political documents and contributions in newspapers and blogs, is another important argument for this specific case.

The research focuses on the political and public debate on the Wiv (2017) between February 2017 and March 2018. Because of the limited time for conducting this research, and because of

⁷ H. Modderkolk (2017), ‘Veiligheidsdiensten moeten uit ‘oesterkramp’’, <https://www.volkskrant.nl/nieuws-achtergrond/veiligheidsdiensten-moeten-uit-oesterkramp-~b8dff10f/> (visited on 11.05.2018).

the need for a structured analysis, a specific time period is needed. During the period between February 2017 and March 2018 the most important political debates took place: the debates in the House of Representatives (February 2017) and in the Senate (July 2017) which resulted in the confirmation of the Wiv (2017). Besides that, the time period includes the public debate, involving the media coverage, on the Wiv (2017). The public debate significantly increased when it became clear that a referendum would be held on 21 March 2018.

3.3 Data gathering and analysis

The research question will be answered by using content analysis and by conducting interviews. First of all, the literature that is used will be explained. The theoretical framework (chapter two) is based on literature written by scholars who worked in the field of intelligence studies and, more specific, on the concepts of intelligence cultures and intelligence systems. Studies conducted by Davies, Warner, O'Connell, Duyvesteyn and Valero contributed to this chapter, in which an overview of the current knowledge is presented.

The Dutch intelligence culture and system, which is the first part of the analysis (chapter five), is based on the typology derived from the theoretical framework. Studies of scholars who worked on the subject of the Dutch intelligence community are used as input for this section. This relates to both historical events and the Dutch intelligence culture. An example of the latter is the *Handbook of European intelligence Cultures*, which is written by De Graaff, Locke, and Nyce (2016).

The analysis of the Dutch political and public debate is based on documents related to the case and on interviews. Relevant documents are the reports that cover the political debates on the Wiv (2017) in the House of Representatives and the Senate. These reports are available in the online archives of the government. It is also possible to watch the debates, but it is easier to conduct a content analysis on reports that phrase every sentence which is said during the debates. Besides the primary data as presented in these reports, other sources provide more in-depth knowledge about the political and public debates. This relates to articles from newspapers such as *NRC*, *De Correspondent*, and *Volkskrant*. The newspapers covered the public debate during the build-up for the referendum extensively. Another source is the website www.wiv-onderdeloep.nl. This website is founded by investigative journalists who involved several people in their project: journalists, scholars, and persons who worked for the Dutch intelligence services. Also the journal *Justitiële Verkenningen* provides relevant insights. In specific the edition about *Secret services and the democratic, constitutional state* (March 2018).

Besides the content analysis, two experts are interviewed. One of them is Paul Abels, who is professor in the field of governance of intelligence and security studies. He was intensively involved in the political and public debate on the Wiv (2017). Because of his background in the intelligence community and because of his perspective on the debate as a participant, his insights are relevant for the research. Also Hilbert Bredemeijer is interviewed. He is a senior spokesman of the AIVD. With his background, he provided relevant information about the way intelligence services, politicians and the public work together. Both interviews were based on open questions about the intelligence services, their culture, and the debates on the Wiv (2017).

All in all, the analysis is based on a variety of sources: primary sources which cover political debates, articles in newspapers, articles in journals, articles on websites, and interviews. The different sources strengthen the internal validity of this research, as will be explained in this chapter.

3.4 Operationalization of the concepts

Aspects of the frameworks by Warner and O'Connell, and studies on the political and public context of intelligence services will be used for a framework which is suited for this research. The scholars highlight different aspects of an intelligence culture or an intelligence system. Warner (2009) focuses on the international, geopolitical aspects of intelligence systems, whereas O'Connell (2004) highlights the organizational, structural aspects of intelligence communities with variables as 'organizational size and budget' and the 'intelligence-decision making relationship'. Despite the differences, the frameworks also overlap on some aspects such as 'oversight' and the 'national security structure'.

In order to conduct a research with a proper framework, different aspects of the frameworks and the articles on the political and public context, will be combined. The aspects which are not relevant for the scope of this research will be ignored. This process is based on a brief preliminary study of the political and public debate on the Wiv (2017). This led to an overview of aspects which are relevant for the research, such as basic orientation and oversight. Other aspects, such as the emphasis on counter-intelligence (Warner, 2009) or the relationship between intelligence officers and policy makers (O'Connell, 2004) were considered not, or less, relevant for this research.

The different aspects will be used as a framework in order to structure the analysis. In this section, the variables are discussed, as well as the indicators of these variables.

3.4.1 Frameworks explained

Several elements of Warner's framework will be used. As explained in the chapter about the theory, his framework consists of three main variables: strategy, regime, and technology (Warner, 2009).

The first variable contains seven factors: basic orientation, geopolitical, motives, objectives, sources of support or mediation, situational, and strategic culture (Warner, 2009: 27-28). The first factor, basic orientation, is the posture that a government presents towards other governments. Warner describes different attitudes: passive, aggressive, or vigilant wariness. The second factor relates to the geopolitical context of intelligence communities. It is about the relative power of a country compared to other countries. This factor affects the basic orientation (the first factor). Warner gives the example of a nation that is physically isolated from other nations which results in 'fewer needs for intelligence' (Warner, 2009: 27). The third factor is formed by the motives of a nation. The motives can relate to everything. Warner mentions for example religious, imperial or mercantile motives. The fourth factor is about the objectives of a nation. This could be the survival of a nation, the defence of interest, or expansion. The fifth factor, sources of support or mediation, brings forward the relationships with other stakeholders, such as states or intergovernmental institutions. Some of them are friendly or allied, other are uncaring or hostile. This factor influences the strategy of a nation with regard to intelligence. The sixth factor, situational, relates to a continuum ranging from harmony to hostility. The latter incorporates conflict and competition between states. The seventh, and last factor is strategic culture. A rather abstract concept which relates to the nations 'historical context and collective perceptions of its place in the world, the shared ethical boundaries of its people and leaders, and the perhaps indefinable quality called 'national character' (Warner, 2009: 28).

The second variable in Warner's framework, regime, contains five factors: type of sovereignty, form of government, oversight, ministerial/departmental structure, and internal challenges (Warner, 2009: 29-30). The first factor, the type of sovereignty, relates to all possible types of institutions which form a sovereignty. Warner mentions, for example, a city-state, an empire, an international institution, and a West-phalian nation. The outcome affects the type of intelligence system a sovereignty builds. The second factor, the form of government, is closely related to the type of sovereignty. The forms Warner mentions are: representative, aristocratic, and tyrannical (Warner, 2009: 30). The third factor is oversight. All sovereignties 'exercise some form of oversight over their intelligence systems' (Warner, 2009: 30). Political, judicial,

media, or public attitudes could shape the circumstances in which intelligence systems operate. The fourth factor is about the ministerial or departmental structure. The structure has attributes that influences, the size, the resources, the traditions and the degree of professionalism of intelligence systems (Warner, 2009: 30). The fifth, and last, factor is formed by internal challenges. Many governments endure some degree of opposition or friction. This may range from passive resistance to armed insurrection. The struggles are all target of intelligence. As a result, the challenges influence the intelligence system, since the intelligence services must pay attention to them.

The third variable in the framework is technology. This variable has five different factors: information, production, resources, social and institutional forms, and military (Warner, 2009: 32-33). Information, as the first factor, relates to the question how others (other governments and intelligence communities) acquire, store, transmit and secure information. This is of fundamental importance to intelligence communities all over the world. This aspect dictates the tactics and techniques of intelligence at a basic level. The second factor, production, is about how society manages the available 'means of production' in order to shape the physical environment and accumulate wealth (Warner, 2009: 32). This factor provides the foundation of capabilities and resources on which the intelligence system stands. The third factor, resources, affects the target list for intelligence activities. Warner gives the example of water and energy, which are two obvious concerns for intelligence today. The fourth factor is formed by social and institutional forms. Sovereignties composed of wandering tribes, feudal demesnes, or urban professionals will have different intelligence capabilities and intelligence needs. The last factor is the military. Much intelligence work is devoted to managing competition or winning conflicts. The way a government applies violence, with the help of the military, shapes the intelligence system.

Besides Warner's framework, the framework of O'Connell will be explained. It consists of different criteria. Together, it provides an outline which represents a nominal framework for comparing intelligence services. O'Connell focuses on a variety of questions related to the rather 'organizational' side of intelligence communities.

The first factor is the national security context. Is a nation at peace, in crisis, or at war? In addition, the perceptions of the leadership about the national security context are relevant. The second factor is the national security structure. Are the intelligence services independent? Or are they subordinate within a political structure? The legal and administrative structure which

forms the basis for intelligence services is also relevant for this factor. The third factor is the breath and diversity of intelligence requirements. This relates to the emphasis political leaders have placed upon intelligence services. Do the leaders want unique information? Or coverage of events and activities? The fourth factor is the organizational size and budget. It is helpful to compare the size and budget to other government functions such as diplomacy and the military. The fifth factor is organizational cohesion. How many intelligence services make up the intelligence community? Is there a hierarchy? And is the community based on competition or collaboration? The sixth factor relates to the internal management structure to oversee intelligence: oversight.

The seventh factor is collection emphasis. What are the proportions of human intelligence (HUMINT), signal intelligence (SIGINT) or open source collection? The eighth factor is about the analytical emphasis: what are the underpinnings of the way people think? This is driven by sociological, cultural, and physiological factors. This is related to the main concepts of this research: intelligence cultures and intelligence systems. Other factors are: the intelligence-decision making relationship, the operational emphasis (to what extent are intelligence organizations involved in covert operations?), the penchant for cooperation (to what extent does an intelligence service cooperate with other services?), and the counter-intelligence emphasis (what is the place of counter-intelligence within the overall fabric of intelligence?) (O'Connell, 2004: 195-196).

As already mentioned, there are similarities and differences between the frameworks of Warner and O'Connell. This research will work with a framework which is based on aspects of both frameworks and on aspects of the political and public context of intelligence services. This means that not every aspect of the discussed frameworks will be used. The main argument is that it would provide a framework which is beyond the scope of this research. It is not relevant to provide an extended overview of all the described factors, since the research focuses on the Dutch context and on the political and public dimension of intelligence services in particular. Besides that, the frameworks only need to be applied fully when the study consists of a comparison between different intelligence systems. This is not the case, since this research is based on a single case study. In the next section, the framework which will be used in this research will be discussed.

3.4.2 Operationalization

The ‘lens’ through which will be looked at the Dutch intelligence community and the political and public debate consists of the following elements: basis orientation (including the closely related motives and objectives), the geopolitical context of an intelligence community, and the internal challenges of a sovereignty.

The following aspects cover the more organizational aspects of the intelligence community: the national security structure, the organizational cohesion between different services, and oversight.

Lastly, two aspects related to the political and public context of intelligence services will be used: the emphasis politicians placed upon the intelligence services, and ‘transparency’, which is labelled by Teirilä and Nykänen (2016) as an essential part of governance and intelligence legitimacy.

The mentioned factors provide a framework which will be used in the description of the Dutch intelligence culture and system. Afterwards, the political and public debate on the Wiv (2017) will be analysed on the basis of the same framework. In order to do this in a structured way, indicators which relate to the factors will be used. These indicators will be used as a guideline while analysing different documents. An overview of the factors and the accompanying indicators is presented in the following table:

Factors	Indicators
Basic orientation	Is the essential posture of the intelligence system passive or aggressive? What are the main objectives of the intelligence services?
Geopolitical aspect	What is the geopolitical context of the intelligence system?
Internal challenges of sovereignty	What are the main threats for national security?
National security structure	What does the political and legal structure look like?
Organizational cohesion	Is their organizational cohesion within the intelligence community? (Ranging from competition to collaboration).

Oversight	What does the oversight structure look like? (committees, binding vs. non-binding).
Politics	What emphasis have politicians placed upon the intelligence services?
Transparency	Are the intelligence services considered to be transparent or rather reserved? Do the intelligence services share much information?

Table 1: Framework: factors and indicators.

3.5 Validity, reliability, and risks

In this section, the internal validity, the external validity, the reliability, and the risks related to the research will be discussed.

The internal validity of the research (‘do we measure what we want to measure?’) can be guarded by a carefully composed research design. This includes the already discussed single case study, which allows an in-depth research that includes all relevant aspects. Besides that, the triangulation of methods, which forms the basis of the data gathering for this research, contributes to the internal validity. By conducting both a content analysis and interviews, the analysis includes different perspectives on the same political and public debate on the Wiv (2017).

The external validity (‘can the sample be generalized to the total population?’) is difficult to achieve, since the research focuses on a specific case. Therefore, it is hard to generalize the findings to other cases related to intelligence cultures and systems. However, this study focuses also on contextual insights and contribute to more understanding of these concepts. Therefore, the insights related to the broader analysis of the Dutch intelligence culture and system can be used for further academic research.

The reliability is defined as showing that the gathering of the data can be repeated by another researcher with the same results (Yin, 2003). The reliability of this research can be guaranteed by writing down every step that has been taken. Careful describing the choices that are made contribute to the reliability of this research. This chapter provides such a description, by elaborating on the research design, the different sources, and the methods which are used in order to gather data.

A specific risk related to intelligence studies is ‘secrecy’. The fact that intelligence services deal with secrets can make it difficult to conduct a research on this topic. This problem is mentioned in a survey by the North American editors of *Intelligence and National Security* in which they asked members of the journal’s editorial board about the state of intelligence studies. The ever-present problem of secrecy is a clear obstacle, according to the respondents (Johnson and Shelton, 2011: 117). However, for this particular research in the field of intelligence studies, the problem of secrecy needs not to be an obstacle. Because the political and public debates on a public law took place in a democratic state, there is no need for ‘secret information’ in the discussion. Besides that, the description of the intelligence culture and system in the Netherlands does not rely on secret information (secrets are however part of the Dutch intelligence services and their culture). With the help of open sources, a clear typology of the Dutch intelligence culture and system can be described, which can be compared with the open, democratic debate on the Wiv (2017).

In this chapter, the research design is explained and justified. Besides that, the methods of data gathering are discussed, as well as the framework which will be used for the description of the Dutch intelligence culture and system and the analysis of the political and public debate on the Wiv (2017). The framework is made operational by using indicators in order to be able to analyse different documents in a structured way. Lastly, the quality of the research is justified by discussing the internal validity, the external validity, and the reliability.

4 The case

The case will be described and discussed in a chronological order. First of all, the context in which the proposal for the new Wiv (2017) is made will be discussed. In order to describe this context, the old Wiv (2002) and the time period before the new Wiv (2017) will be elaborated on. In addition, several key events between February 2017 and March 2018 will be described and summarized in order to be able to analyse the case.

4.1 Wiv (2002)

In 1987, the Royal Decree (1949), which was confidential for a long time, was replaced by the first Intelligence and Security Services Act. The Royal Decree legitimized the intelligence services. With the first Act (1987), any infringement made by the intelligence services on the constitutional rights of citizens had a legal basis in an Act of Parliament (De Graaff, Nyce, and Locke, 2016: 11).

The Wiv (2002) was the follow up of this Act (1987). The Wiv (2002) structured the Dutch intelligence community, which changed significantly during the 1990s. The IBD, which was responsible for the collection of intelligence in other countries, was shut down and became part of the BVD.⁸ Besides that, the military intelligence services worked very much on their own, despite the fact that the Act (1987) created one military intelligence service on paper: the Military Intelligence Service (in Dutch: *Militaire Inlichtingendienst*) (De Graaff, Nyce, and Locke, 2016: 7).

So, in order to structure and organize the intelligence community a new Act was needed. The Wiv (2002) led to some significant changes in the organizational structure of the intelligence services. The BVD became the AIVD, which is the general intelligence and security service in the Netherlands. At the same time, the Wiv (2002) established the MIVD, the military intelligence and security service in the Netherlands.⁹ As a result, civil intelligence was institutionalized under the same roof as the security service (Braat, 2016: 667).

Besides the organizational changes, the Wiv (2002) established the independent Review Committee on the Intelligence and Security Services (in Dutch: *Commissie Toezicht op de*

⁸ N. De Fijter (2010), 'AIVD is bij lange na de CIA niet', <https://www.trouw.nl/home/-aivd-is-bij-lange-na-de-cia-niet~a580393d/> (visited on 09.04.2018).

⁹ AIVD (2018), 'Geschiedenis van de AIVD', <https://www.aivd.nl/over-de-aivd/hoe-verloopt-onze-geschiedenis> (visited on 09.04.2018).

Inlichtingen- en Veiligheidsdiensten). The committee writes supervision reports and advises the responsible Ministers.¹⁰

Since the introduction of the Wiv (2002), the personnel of the AIVD increased significantly due to the 9/11 attacks, whereas the MIVD grew less. The increasing services is a characteristic of the time period between 2001 and 2008. However, in 2008, the government felt the effects of the global economic crisis. Therefore, several reorganizations occurred within the intelligence community. A result of this is the increasing collaboration between the AIVD and the MIVD. During this time period, Dutch politicians seemed more concerned about efficiency and collaboration than in the past (Braat, 2016: 668). The same politicians decided in 2012 that the Wiv (2002) had to be evaluated.

4.2 Evaluation (2013)

The commission ‘Dessens’ was created in February 2013 in order to evaluate the Wiv (2002). The evaluation led to a report that was made public in December 2013. The most important and controversial aspect of the report was the advice to allow ‘untargeted access’ to cable-bound telephone and internet traffic. The intelligence and security services were not allowed to conduct such intelligence operations under the old Wiv (2002). According to the commission, the access to cable-bound communications was necessary since cable-bound telephone and internet traffic increased (Commissie evaluatie Wiv 2002, 2013: 171-172).

Besides the advice to enlarge the powers of the intelligence and security services, the commission promoted the rule of law by maintaining that the oversight committee CTIVD should have the opportunity to put activities on a hold when members of the CTIVD have complaints about the way intelligence and security services work. In other words, ‘there must be a balance between effectivity and the rule of law’ (Commissie evaluatie Wiv 2002, 2013: 12). Therefore, the commission advocated a better system of oversight. For example, a cyclic evaluation of the effectivity of the intelligence and security services was recommended (Commissie evaluatie Wiv 2002, 2013: 171).

After the commission presented the report, it took almost two years to make a draft of a new law (July 2015). Organizations and Dutch citizens had the opportunity to comment on this draft. In two months, the Dutch government received 1100 reactions. Most of them were critical and therefore a new draft was made. In this new draft, the Dutch government included an

¹⁰ CTIVD (2018), ‘Taken en bevoegdheden van de CTIVD’, <https://www.ctivd.nl/over-ctivd/taken-en-bevoegdheden> (visited on 05.06.2018).

independent committee which had the task to verify and control the use of powers by intelligence and security services. This committee was necessary due to verdicts of the European Court of Justice.¹¹

When the new draft was introduced, the Council of State reconsidered it. The Council of State was rather critical on essential elements of the draft such as the storage of ‘Big Data’: ‘is the gathering of ‘Big Data’ proportional?’ Moreover, the Council of State noticed a ‘fragmentation of oversight’ which could harm the effectiveness of oversight.¹² As a result of the critical remarks, the Dutch government changed the draft for the second time. Eventually, the Dutch government introduced a new Act on the Intelligence and Security services. This Act is discussed in the House of Representatives (February 2017) and in the Senate (July 2017).

4.3 The debate (2017-2018)

Prior to the plenary session on the Wiv (2017), the commission of the House of Representatives that is concerned with intelligence and security services organized three hearings with experts and policy makers. For these hearings, the CTIVD, the AIVD and the MIVD and several experts were invited.¹³ At the same time, 29 scientists expressed their worries about certain aspects of the Wiv (2017) in an ‘open letter’. The scientists commented on the organization of oversight, the collection of bulk data, and the lack of transparency as a result of the proposed Wiv (2017).¹⁴

After the hearings, the debate in the House of Representatives took place. During this debate more than 30 amendments were presented by political parties. Most of the amendments were discarded by the Dutch government. One of the few amendments which is supported by the majority in the House of Representatives is about the storage of data. The Wiv (2017) contains the opportunity to store up data up to three years. As a result of the amendment, the government will examine whether or not the three years can be reduced.¹⁵ After a long debate, the House of

¹¹ H. Modderkolk (2016), ‘Kabinet houdt vast aan massaal aftappen internetverkeer’, <https://www.volkskrant.nl/tech/kabinet-houdt-vast-aan-massaal-aftappen-internetverkeer~a4291392/> (visited on 09.04.2018).

¹² Raad van State (2016), ‘Samenvatting advies voorstel nieuwe Wet op de inlichtingen- en veiligheidsdiensten’, <https://www.raadvanstate.nl/adviezen/samenvattingen/tekst-samenvatting.html?id=421> (visited on 09.04.2018).

¹³ P. van der Beek (2016), ‘Forse kritiek op wetsvoorstel inlichtingendiensten’, <https://www.computable.nl/artikel/nieuws/overheid/5900072/250449/forse-kritiek-op-wetsvoorstel-inlichtingendiensten.html> (visited on 09.04.2018).

¹⁴ Idem

¹⁵ J. Pedd (2017), ‘Tweede Kamer akkoord met vernieuwde inlichtingenwet’, <https://www.techzine.nl/nieuws/103357/tweede-kamer-akkoord-vernieuwde-inlichtingenwet.html> (visited on 18.05.2018).

Representatives passed the Act on 14 February 2017. In line with this, the Senate passed the Act a few months later, on 11 July 2017.¹⁶

However, this was not the end of the story. Five students from Amsterdam decided to set up a consultative referendum on the Wiv (2017) because they were worried about the consequences of the new Act for the privacy of Dutch citizens. The students were supported by a variety of digital civil liberties organizations (including Bits of Freedom and Amnesty International). As a result, they successfully petitioned 300,000 signatures. By law the Dutch government was required to hold a consultative referendum about the new Act.¹⁷ The referendum coincided the municipal elections on 21 March 2018.

The students and digital civil rights groups claim their goal was to start a discussion about the so-called ‘dragnet law’. The Act that was confirmed in both the House of Representatives and the Senate settles a variety of intelligence matters; however, the discussion often focused on the interception of communication traffic that runs through fiber optic cables.¹⁸

When the referendum approached, the public debate intensified, due to a lot of media attention. Both supporters and opponents of the new Act shared their message via newspapers, television, radio, and social media. In the end, 49,44% of the electorate voted against the Wiv (2017), 46,53% voted for it, and 4,03% casted a blank vote.¹⁹ As a result, the Dutch government tightened up elements of the Act related to sharing information with foreign intelligence and security services, the storage of data and the aimed use of the new surveillance powers.²⁰

¹⁶ NOS (2017), ‘Aftapwet’ nu ook door de Eerste Kamer’, <https://nos.nl/artikel/2182718-aftapwet-nu-ook-door-de-eerste-kamer.html> (visited on 09.04.2018).

¹⁷ C. Hijzen and P. Koop (2018), ‘Report from Holland: A heated debate over a new intelligence and security act’, <https://intelnews.org/2018/03/17/01-2293/> (visited on 06.06.2018).

¹⁸ C. Hijzen and P. Koop (2018), Report from Holland: Cable-bound interceptions and ‘dragnets’, <https://intelnews.org/2018/03/24/01-2294/> (visited on 06.06.2018).

¹⁹ Kiesraad (2018), ‘Uitslag referendum over de WIV: meerderheid tegen’, <https://www.kiesraad.nl/actueel/nieuws/2018/03/29/uitslag-referendum-over-wiv-meerderheid-tegen> (visited on 06.06.2018).

²⁰ Rijksoverheid (2018), ‘Kabinet scherpt Wiv 2017 aan’, <https://www.rijksoverheid.nl/actueel/nieuws/2018/04/06/kabinet-scherpt-wiv-2017-aan> (visited on 06.06.2018).

5 Dutch intelligence culture and system

In this chapter, the Dutch intelligence culture and system will be described with the help of the framework which is discussed in chapter three ('Methodology'). The concept of intelligence system has been used to develop this framework, since a comprehensive and operational concept was needed for the study of the Dutch intelligence community and their culture. An intelligence system can be defined as the 'dealings of secrets and how these are organized, treated, and exercised, by plan or by default' (Warner, 2009: 24). However, an intelligence system is closely related with an intelligence culture, since culture influences intelligence communities and the intelligence systems. First of all, a brief overview of the history of the Dutch intelligence services will be given.

5.1 History of the Dutch intelligence services

The first intelligence service in the Netherlands was called General Staff III (in Dutch: *Generale Staf III*). This intelligence service was established in 1914 as a special department within the Dutch military force. General Staff III had to inform the government about relations between different (state-)actors during the war. This often related to military affairs. In addition, General Staff III researched activities of foreign soldiers and secret agents.²¹

In 1919 the Dutch government established the Central Intelligence Service (in Dutch: *Centrale Inlichtingendienst*). This was a result of the increasing threat of revolution all over Europe. The Central Intelligence Service had to provide realistic assessments of stories about approaching troubles for the Netherlands. This function structured the reports written by the Central Intelligence Service, in which the service often expressed the opinion that the Dutch were known for their lack of enthusiasm for extremism (De Graaff, Nyce, and Locke, 2016: 1). Contrary to General Staff III, the Central Intelligence Service mainly focused on threats within the Netherlands. The service had to inform the government about extremism, but also about the threat of socialism and communism.²²

The intelligence community in the Netherlands from 1919 onwards is described as 'stable and neutral' (De Graaff, 2015: 253). There was a lack of political interest in the work of the intelligence service. Without a clear direction provided by the government, the service

²¹ AIVD (2018), 'Geschiedenis van de AIVD', <https://www.aivd.nl/over-de-aivd/hoe-verloopt-onze-geschiedenis> (visited on 05.06.2018).

²² Idem

‘muddled through’ (De Graaff, 2015: 255). This went on until an important event in the history of the Dutch intelligence community took place in November 1939.

In November 1939 two British intelligence officers and a Dutch colleague were kidnapped by a SS-unit. The Germans took the collaboration between the British and the Dutch officers as evidence of the Netherlands’ weak commitment to neutrality (the Netherlands were considered to be neutral during World War I and the time period before World War II). This notion by the Germans eventually led to the German invasion of the Netherlands which ended the period of Dutch neutrality (De Graaff, Nyce, and Locke, 2016: 3).

Only a part of the Dutch intelligence establishment was able to flee at the time of the invasion. Despite this, there was no functioning intelligence service which ‘stayed behind’ in the Netherlands. As a result, the Dutch intelligence service had to start its intelligence operations almost from scratch, making the Dutch government dependent on British authorities for transport, transmissions, and agent training (De Graaff, Nyce, and Locke, 2016: 3).

In the aftermath of World War II, the Dutch authorities tried to establish a more efficient and active intelligence service in order to not become the playground of foreign intelligence services – as was the case with the kidnapping in 1939. At the same time, the cooperation with British intelligence services, which increased during World War II, continued. This had an impact on the Dutch intelligence community, its development and its culture (De Graaff and Wiebes, 1999: 35).

In 1949, the Internal Security Service (in Dutch: *Binnenlandse Veiligheidsdienst*) was established. This service was placed under the authority of the Minister of Internal Affairs. Besides that, the Foreign Security Service (in Dutch: *Inlichtingendienst Buitenland*) was founded. This service fell under the office of the Prime Minister. The successes of this service were rather few, and after a history of internal quarrels the service was abolished in 1994 by Prime Minister Lubbers (De Graaff, Nyce, and Locke, 2016: 4-5).

In addition to the civilian services, also military services were established: the Army Intelligence Service (in Dutch: *Landmacht Inlichtingendienst*), the Navy Intelligence Service (in Dutch: *Marine Inlichtingendienst*), and the Air Force Intelligence Service (in Dutch: *Luchtmacht Inlichtingendienst*). As a result of the Intelligence and Security Services Act (1987), the military intelligence services had to reorganize. The three different services formed the Military Intelligence Service (in Dutch: *Militaire Inlichtingendienst*). Although the Act

established one military intelligence service on paper, the different intelligence and security components continued to operate mostly on their own (De Graaff, Nyce, and Locke, 2016: 7).

In 2002, a new Intelligence and Security Services Act passed. As a result, the General intelligence and Security Service (in Dutch: *Algemene Inlichtingen- en Veiligheidsdienst*) and the Military Intelligence and Security Service (In Dutch: *Militaire Inlichtingen- en Veiligheidsdienst*) were established (De Graaff, Nyce, and Locke, 2016: 8). The Wiv (2017) applies to these two services.

5.2 Framework

After the brief overview of the history of the Dutch intelligence services, the aspects of the framework will be applied to the Dutch intelligence community. The aspects are: basic orientation, geopolitical context, internal challenges, national security structure, organizational cohesion, oversight, political emphasis, and transparency.

5.2.1 Basic orientation

The basic orientation of the Dutch intelligence community changed over the years. As already mentioned in the overview of the history, the Dutch government adhered to a ‘policy of neutrality’ during the time period between 1914 and 1940 (Braat, 2016: 662). This was the best option to keep things the same, as was the purpose of the Dutch government. The Netherlands possessed a colonial empire outside European territory, the government did not aspire new territory, and the government did not want to have enemies (Braat, 2016: 662).

However, the international environment changed during World War II and during the Cold War. As a result, the Dutch intelligence community worked closely together with the British intelligence community. This was necessary, since the Dutch intelligence community was diminished during the war. After the German invasion, the Dutch government was not considered to be neutral anymore. This can be seen in the tasks of the Office for National Security, that was established after World War II. The Office had to work against the remnants of German espionage systems (De Graaff, Nyce, and Locke, 2016: 3).

During the Cold War, the Netherlands was part of an alliance against the Soviet Union. As a result, the Dutch intelligence services were mainly investigating political parties and activist groups which were related to communism. The BVD developed a strong focus on the Communist Party. This can be seen in the fact that eventually, the BVD had at least one agent in every section of the party (Braat, 2016: 666). The focus on ‘the threat of communism’

characterized the BVD until the beginning of the 1980s. The underlying orientation of this actions relate to the promotion of Western values and the stability in other countries, which structures the attitude of the Dutch government towards other countries.²³ As a result of this orientation, the Dutch government also joined peace keeping missions in, for example, Afghanistan (since 2002)²⁴ and Mali (since 2014).²⁵

So, the basic orientation still can be described as ‘passive’ towards other countries, rather than ‘aggressive’ (which are two orientations Warner (2009) describes in his framework). At the same time, the Dutch government is no longer considered to be ‘neutral’, as can be seen in the workings against German espionage systems, communism, and terrorism. The promotion of Western values and the protection of national security structure this orientation.²⁶

5.2.2 Geopolitical aspect

The geopolitical aspect is about the relative power of a nation and the intelligence community compared to other countries (Warner, 2009: 28). This section discusses the international changes which influenced the Dutch intelligence community and their role within the international context.

After the Cold War, the Dutch intelligence community needed new tasks. The significant focus on the threat of communism was not relevant anymore. In order to prepare the service for the post-Cold War period, Arthur Docters van Leeuwen became the new head of the BVD. His task was to make the service more politically responsive, flexible, and transparent. This way, the service would be fit for the coming international changes (Braat, 2016: 666-667). The basis of this process was formed by the conviction that the Dutch intelligence community cannot work alone, as an entity on itself. The Dutch community, within a small country as The Netherlands, was dependent on the exchange of intelligence with other intelligence communities. This is not a new perspective. As already mentioned, the Dutch intelligence community worked intensively together with the British intelligence community during and after World War II. Hoekstra describes in his book *De Dienst* (2012), the cooperation between the BVD on the one hand, and

²³ Rijksoverheid (2018), ‘Security and the rule of law’, <https://www.government.nl/topics/development-cooperation/the-development-policy-of-the-netherlands/security-and-the-rule-of-law> (visited on 25.07.2018).

²⁴ De Volkskrant (2006), ‘Feitenoverzicht Nederlandse missie in Afghanistan’, <https://www.volkskrant.nl/nieuws-achtergrond/feitenoverzicht-nederlandse-missie-in-afghanistan~bb9553bb/> (visited on 25.07.2018).

²⁵ Ministerie van Defensie (2018), ‘Missie in Mali’, <https://www.defensie.nl/onderwerpen/missie-in-mali> (visited on 25.07.2018).

²⁶ Wet op de inlichtingen- en veiligheidsdiensten (2017), ‘Hoofdstuk 2. De diensten en de coördinatie tussen de diensten.’ <http://wetten.overheid.nl/BWBR0039896/2018-05-01#Hoofdstuk2> (visited on 25.07.2018).

British, American, and French intelligence services on the other. Most of the time, the cooperation worked well for both communities.

The notion that the Netherlands is a small country within the international and geopolitical arena can still be recognized in the perspective on cooperation with other countries. Moreover, cooperation became increasingly essential for the Dutch intelligence services. In 2007, the AIVD released a document in which the service discussed this trend. The AIVD stated that the threats for national security are becoming more and more international oriented. As a result, many intelligence services have similar interests, such as fighting terrorism and establishing stability in certain areas (AIVD, 2007: 21).

Because of this trend, the Dutch intelligence services are working intensively together with other intelligence services. This relates to both cooperation on strategic level, which involves sharing insights and long-term developments, and on analytical level, which is about sharing analyses and methods for these analyses. In addition, operational information can be shared. According to the AIVD, this happens within a small, bilateral context. However, there are some restraints. The national security is the most important reason for cooperation and sources which are shared have to remain secret. The latter is labelled as a 'strict condition for the effectivity of intelligence services' (AIVD, 2007: 23).

Also the MIVD works together with other (military) intelligence services. The service has been cooperating with European partners for decades and is, for example, part of the club of Anglo Saxon countries that came to be known as the 'Nine Eyes Community'. Moreover, the MIVD also was involved in the more exclusive 'Five Eyes Community' during the mission in Uruzgan (2006-2010). This community is formed by Australia, Canada, the United Kingdom, the United States, and New Zealand.²⁷

There are different visions on the international relevance of the Dutch intelligence services. In an article written for *De Groene Amsterdammer*, De Graaff argues that 'for a long time, the Netherlands lacked the capacity to deliver good foreign intelligence'.²⁸ However, the AIVD highlights another aspect in their annual report (2007): 'the AIVD had become an important international partner for other countries (AIVD, 2007: 24). To support this claim, the AIVD

²⁷ K. van Teffelen (2013), 'We weten bar weinig van de af luisterpraktijken in Nederland', <https://www.trouw.nl/home/we-weten-bar-weinig-van-de-af luisterpraktijken-in-nederland~ab89043b/> (visited on 10.07.2018).

²⁸ Bob de Graaff (2010), 'Onze cowboys in Verwegistan', <https://www.groene.nl/artikel/onze-cowboys-in-verwegistan> (visited on 10.07.2018).

mentions that the service has been involved in the establishment of both the European Counter Terrorism Group (2001) and the EU Joint Situation Center (2002).

5.2.3 Internal challenges of sovereignty

This aspect is about the challenges that form a threat to national security. These threats can either be foreign-inspired or ‘homegrown’ (Warner, 2009: 30). Just like the geopolitical context within which the Dutch intelligence services function, the internal challenges changed over time. By the end of the 1980s, it became clear that the BVD needed new tasks, since the Communist Party merged with other political parties into the Green Left Party (in Dutch: *GroenLinks*), which was considered to be more respectable and less dangerous. As a result, extensive surveillance was not needed anymore (De Graaff, Nyce, and Locke, 2016: 7).

The new tasks were provided by the Intelligence and Security Services Act (1987). The main goals of the intelligence community were the protection of national security, the protection of the democratic order and providing security of government services and vital industries (De Graaff, Nyce, and Locke, 2016: 7). At the same time, the BVD reorganized internally because it lacked a strategic vision and clear criteria for its priorities. This is partly the result of the Dutch government, which did not provide much input regarding policy and direction. The BVD had become ‘estranged from society’. The before mentioned Arthur Docters van Leeuwen had the task to ‘shake up the organization’ (De Graaff, Nyce, and Locke, 2016: 7).

In the years following this process, a rather new threat structured the intelligence services: terrorism. Due to the 9/11 attacks in the United States and the terroristic attacks in Madrid (2004) and London (2005), the focus on Islamic inspired terrorism increased (De Graaff, Nyce, and Locke, 2016: 7). In the most recent annual report of the AIVD, the intelligence service states that the ‘belt of instability’ requires special attention. This ‘belt’ relates to the instable political situation in Libya and the jihadist-inspired terrorist organizations across Iraq, Syria, Egypt, and Somalia (AIVD, 2017: 3).

There are, besides terrorism, other internal challenges that are worth mentioning. In the annual report (2017) the AIVD focuses in specific on the strained relationship with Russia. According to the service, Russia is striving to become a super power. In order to achieve this, Russia is actively influencing citizens in other countries in order to destabilize society. This not something new. However, the means are relatively new, since Russia uses digital methods which are hard to trace back (AIVD, 2017: 8-9). Furthermore, the AIVD mentions the threat of

right-wing and left-wing extremism in the Netherlands. The confrontation between both movements is becoming more violent (AIVD, 2017: 16).

5.2.4 National security structure

The national security structure includes the political structure within which the intelligence services function as well as the legal structure that forms the basis for the legitimate operation of the services (O'Connell, 2004: 195).

The intelligence services in the Netherlands are in service for one government: the Dutch government. A main feature of the Netherlands is its parliamentary democracy. As a result of this type of government, the intelligence services have to be accountable to the House of Representatives, since the members of it are representing the Dutch citizens. The implication of this is that the intelligence services need to be transparent. This can be difficult because of the secretive nature of their work. Therefore, the Netherlands exercise oversight that is still accountable to the House of Representatives, but also takes into account the secretive nature of the intelligence services. In the sections about 'oversight' and 'transparency', this structure will be discussed in more detail.

Within the political structure, the intelligence services are not subordinate to politicians. Bouman, former head of the AIVD, highlighted this in a handout about the AIVD (2011), in which he stated that the AIVD is 'independent of the leading societal and political movements' (AIVD, 2011: 5).

The legal structure of the Dutch intelligence services is based on an Act, which is confirmed by the House of Representatives and the Senate. The Act defines the duties and powers of the services and shapes the organizational structure of the intelligence community. The structure of the current-day intelligence community is based on the Wiv (2002), which established the AIVD, the MIVD and the Review Committee on the Intelligence and Security Services (CTIVD). The latter issues public supervision reports and advises the responsible ministers (Braat, 2016: 667). In addition, the Wiv (2017) founded the TIB. This is discussed in more detail in the analysis of the debate on the Wiv (2017).

5.2.5 Organizational cohesion

This aspect is about the way intelligence services within a community work together. Is there a hierarchy? Is there competition or collaboration between the different intelligence services? (O'Connell, 2004: 195).

The basis for the way the Dutch intelligence services work together is formed during World War II, when the Dutch intelligence community was dependent on the British intelligence community. The Dutch intelligence community was influenced by the British, who emphasized coordination, rather than centralisation. As a result, the intelligence services which were established after World War II tried to find a compromise between coordination and centralisation. Major Somer, who was involved in this process, maintained that different intelligence services should work together (De Graaff and Wiebes, 1998: 35-40).

Because of this notion, different intelligence services worked side by side throughout history, in the sense that there was not a service that centralized the power. This was also the case when the AIVD and the MIVD were established in 2002. The collaboration between the two intelligence services eventually resulted in the National Signals Intelligence Organization (2003), merging into a joint AIVD-MIVD project: the Joint SIGINT Cyber Unit (2014) (Braat, 2016: 667).

However, a more nuanced description of the cooperation between the AIVD and the MIVD is necessary. In an article in *De Volkskrant*, Cobelens, a former director of the MIVD, calls the AIVD the ‘joint enemy of the MIVD’. Within the organization of the MIVD, the AIVD is considered to be a competitor, especially in the field of counterterrorism.²⁹ And the project of the National Signals Intelligence Organization also caused tensions, since both the AIVD and the MIVD were in the lead.³⁰

So, there is not a hierarchy within the Dutch intelligence community and the AIVD and the MIVD are cooperating, which led to joint projects such as the Joint SIGINT Cyber Unit. At the same time, different articles describe tensions between the services on some topics, such as counterterrorism. Both the AIVD and the MIVD deny this tension.³¹

5.2.6 Oversight

Oversight forms a relevant aspect in the world of intelligence services, since intelligence gathering may infringe on civilian rights. An oversight committee is needed in order to check if the services legally move aside these rights.

²⁹ A. van Es (2016), ‘Bij de MIVD is amateurisme nooit weg’, <https://www.volkskrant.nl/nieuws-achtergrond/bij-de-mivd-is-amateurisme-nooit-ver-weg~b735d064/> (visited on 15.07.2018).

³⁰ A. van Es (2013), ‘Afluisterproject split AIVD en MIVD’, <https://www.volkskrant.nl/nieuws-achtergrond/afluisterproject-split-avd-en-mivd~b2bdc754/> (visited on 15.07.2018).

³¹ Idem

To execute this task, a Dutch parliamentary committee was founded in 1952. This committee consisted of the leaders of the five main political parties. The leaders received information on security issues and the intelligence services, which they were not allowed to share (Hijzen, 2013: 230). Despite the parliamentary committee, there was not much administrative and political control over the Dutch intelligence services, since the political leaders did not have the time and interest to pay attention to intelligence issues (De Graaff, Nyce, and Locke, 2016: 10).

However, some things changed. During the second half of the 1960s the members of the House of Representatives demanded a more active role in the control of intelligence services (Hijzen, 2013: 231). In 1971, a law on privacy protection was introduced, and in 1972 the Royal Decree (1949) was published. This Royal Decree, which was confidential, legitimized the intelligence services. In 1987, it was replaced by the first Intelligence and Security Services Act. For the first time, any infringement made by the intelligence services on the constitutional rights of citizens had a legal basis in an Act of Parliament (De Graaff, Nyce, and Locke, 2016: 11).

In 2002, the CTIVD was established. This commission monitors the legality of the operations conducted by the AIVD and the MIVD. And in 2017, as result of the new Wiv, the TIB was founded. This commission decides whether or not the mandate of the Minister for the use of several special (surveillance) powers is rightful or not.³² All in all, Dutch oversight includes the parliamentary committee, the CTIVD, and the TIB.

5.2.7 Political context

The section is about the relationship between politics and the Dutch intelligence community. As mentioned in the section about the history of the Dutch intelligence services, the services became increasingly estranged from its political and societal environment during the 1980s. This led to a situation in which the Dutch intelligence services were considered to be ‘irrelevant’ in Dutch politics (Hoekstra, 2012: 17). However, a similar attitude towards the intelligence services can be recognized in the 21st century. There are several reasons for this. First of all, there is strained relationship between the political oversight committee and the intelligence services. The number of working visits decreased and if the leaders of the political parties are informed, they are directly confronted by the press.³³ Other members of the House of Representatives, who are not part of the oversight committee, argue that they lack information

³² P. Peterse (2018), ‘Controle’, <https://wiv-onderdeloep.nl/controle> (visited on 15.07.2018).

³³ C. Hijzen (2013), ‘Tappen wat je tappen kan’, <https://www.groene.nl/artikel/tappen-wat-je-tappen-kan> (visited on 15.07.2018).

about the intelligence services as a result of the reserved nature of the services.³⁴ Because of this, they lack the expertise that is needed in order to improve the debates about intelligence. In addition, politicians refer to the oversight committees, which are monitoring the intelligence services. Therefore, ‘the politicians do not have to execute this task’.³⁵

In line with this, Hijzen (2013) maintains that the intelligence services have always been unpopular institutes in Dutch politics. The Netherlands is never attacked in the 19th and 20th century, with the German invasion during World War II as an exception. Besides that, serious threats such as revolutions and terrorist attacks never became reality on a large scale. In this context, Dutch politicians assumed that safety themes were not popular items to talk about.³⁶

Because of the described trends related to the relationship between politics and the intelligence services, the political debates about the services often follow a fixed pattern. As a result, the debates lack essential questions about the intelligence services and their role within society.³⁷

5.2.8 Transparency

This factor is about the question whether or not the Dutch intelligence services are transparent. Or are the services rather ‘reserved’?

According to professor Abels, the transparency of the Dutch intelligence services is limited. An important reason for this is that the operational process could be negatively affected when the services share too much information. Besides that, it is not the ‘natural mentality’ of the services to share information with the public. This mentality has always been part of the Dutch intelligence services. According to Hoekstra, who worked for the BVD between 1971 and 1987, ‘everything was secret within the organization’ (Hoekstra, 2012: 17). Also the AIVD, as the follow up of the BVD, is ‘very reserved’, despite the increased public interest in intelligence (Hoekstra, 2012: 193). This can be seen in the fact that only two former members have written memoirs (De Graaff, Nyce, and Locke, 2016: 12). Besides that, there is limited access to the secret services’ archives. It is a long process to make parts of the BVD archive accessible (Braat, 2016: 668). Nevertheless, the publication of annual reports is a good start, according to De Jong, who researched the transparency of the AIVD. His conclusions are similar as Braat’s; the

³⁴ C. Hijzen (2013), ‘Tappen wat je tappen kan’, <https://www.groene.nl/artikel/tappen-wat-je-tappen-kan> (visited on 15.07.2018).

³⁵ Idem

³⁶ Idem

³⁷ C. Hijzen (2013), ‘Hoe doe je dat: een serieus debat voeren over inlichtingendiensten?’, <https://decorrespondent.nl/328/hoe-doe-je-dat-een-serieus-debat-voeren-over-inlichtingendiensten/10087968-32abc1fc> (visited on 15.07.2018).

AIVD is not as open as it should be, especially in situations related to the publication of memoirs of its retired officials and the archives. Vleugels, who is a legal adviser who tries to increase the transparency of the Dutch government, puts it more bluntly: ‘the AIVD is one of the most reserved intelligence services in the world’.³⁸

The MIVD, on the other hand, has become more transparent. For example, in 2010, the MIVD founded a chair for intelligence and security services at the Dutch Defence Academy. Besides that, the MIVD (also) publishes annual reports. Still, the MIVD has been criticized for its screening activities and because of publicity sought by several former agents (De Graaff, Nyce, and Locke, 2016: 12).

³⁸ K. van Teeffelen (2014), ‘AIVD een van meest gesloten diensten in westerse wereld’, <https://www.trouw.nl/home/-aivd-een-van-meest-gesloten-diensten-in-westerse-wereld-~ac040375/> (visited on 15.07.2018).

6 The political and public debate

In this chapter, the political and public debate will be analysed through the lens of the same framework which is used for the description of the Dutch intelligence culture and system. The explained aspects will be discussed: to what extent, and in what manner, are the described aspects (chapter five) reflected in the debate? Are there similarities or differences? This way, the theory could contribute to a better understanding of the debates. In addition, the relevance of the political and public context can be defined, since the analysis provides an opportunity to examine whether or not this context affects the Dutch intelligence culture and system.

6.1 Basic orientation

In the previous chapter, the basic orientation of the Dutch government and intelligence services is described as ‘passive’ towards other countries, rather than ‘aggressive’. Since the Netherlands is a democracy, the intelligence system is built on the theory that the system is less apt and able to abuse the liberties of citizens (Warner, 2009: 31). The main goals of the Dutch intelligence services are protecting national security, the democratic order, and Dutch citizens.

These objectives, which are the result of the basic orientation, can be recognized in the arguments used by different actors during the political and public debate on the Wiv (2017). Both the AIVD and the MIVD repeatedly maintained that the Wiv (2017) is necessary in order to be able to protect national security.³⁹ With this message, the intelligence services contributed to the public debate in the time period prior to the referendum. Bertholee, the head of the AIVD, stressed the importance of the Wiv (2017) in talk shows such as *De Wereld Draait Door* and *College Tour*. His main argument was that ‘the services need the Wiv (2017) in order to be able to protect national security and Dutch citizens.’⁴⁰

While the AIVD focused on national security and Dutch citizens, the MIVD maintained that the Wiv (2017) is of great importance for the safety of Dutch soldiers. Minister of Defence Bijleveld contributed to the debate by stating that ‘the Wiv (2017) is important for Dutch

³⁹ AIVD (2018), ‘De nieuwe Wiv’, <https://www.aivd.nl/onderwerpen/nieuwe-wet-op-de-inlichtingen--en-veiligheidsdiensten> (visited on 06.06.2018).

⁴⁰ De Wereld Draait Door (2018), ‘Directeur AIVD Rob Bertholee over de Sleepwet’ (vanaf 05:00), <https://dewerelddraaitdoor.bnnvara.nl/media/382725> (visited on 20.07.2018).

soldiers abroad.’⁴¹ In addition, Eichelsheim, the head of the MIVD, argued that ‘the Wiv (2017) could save Dutch soldiers’ lives.’⁴²

Also political parties argued in line with the described basic orientation of the Dutch government and the intelligence services. Opponents of the Wiv (2017) such as *GroenLinks* and *SP* expressed their worries about the practical consequences of the application of the Wiv (2017). However, representatives of both parties also maintained that their parties want to protect Dutch citizens. The representative of *GroenLinks* stated that ‘the party wants a situation in which the Netherlands is as safe as possible. The Dutch intelligence services contribute to this objective with their work.’ (Handeling Tweede Kamer, 50: 16). And the representative of *SP* maintained that ‘it is important to challenge terrorism and to protect Dutch citizens.’ (Handeling Tweede Kamer, 50: 69).

All in all, the basic orientation and the corresponding objectives (‘the protection of national security and Dutch citizens and soldiers’) are clearly reflected in the political and public debate on the Wiv (2017). Not covert operations abroad (which are according to Warner (2009) related to expansionistic powers), nor collecting information against threats to thwart subversion by neighbours (which are according to Warner (2009) related to weak states in conflict-ridden regions), but the protection of national security and Dutch citizens form the main objectives of the Dutch intelligence services.

6.2 Geopolitical aspect

This aspect is about the relative power of the Dutch intelligence communities compared to other countries and their role within the international arena. As mentioned in the previous chapter, cooperation with other intelligence services has become increasingly essential for the Dutch intelligence community as a result of threats which are more and more international oriented.

One important aspect of the critical comments on the Wiv (2017) during the political and public debate is related to this cooperation. More specific: the sharing of data with foreign intelligence services. Several articles covered the public debate on this aspect.

⁴¹ Ministerie van Defensie (2018), ‘Nieuwe Wiv voor veiligheid militairen’, <https://www.defensie.nl/actueel/nieuws/2017/12/15/nieuwe-wiv-voor-veiligheid-militairen> (visited on 07.06.2018).

⁴² RTL (2018), ‘Baas MIVD: nieuwe wet geheime diensten redt levens’, <https://www.rtlnieuws.nl/nederland/baas-mivd-nieuwe-wet-geheime-diensten-redt-levens> (visited on 07.06.2018).

One of the organizations which commented on this element of the Wiv (2017) was the Dutch Data Protection Authority (in Dutch: *Autoriteit Persoonsgegevens*). The AP stated that it is ‘dangerous to share bulk data with foreign intelligence services.’⁴³ In an official statement about the Wiv (2017), the AP argued that the data which could be shared is not evaluated. Therefore, it is unknown what the Dutch intelligence services share with other services. The AP is afraid that this could have negative consequences for Dutch citizens when they, for example, visit other countries. The shared data could uncover their sexual orientation or religious convictions, which could lead to dangerous situation in countries which do not respect human rights (AP, 2018).

Another actor that criticised the sharing of bulk data with foreign intelligence services is *Privacy First*. In an interview with *EenVandaag*, Böhre, the director of *Privacy First*, maintained that ‘this aspect is a clear mistake in the Wiv (2017).’ Also Abels, who is a supporter of the Wiv (2017), is critical: ‘it is not good to share data which is not analysed and evaluated by the Dutch intelligence services.’⁴⁴

The critical comments can also be seen in the political arena. Also D66 and CU, both members of the coalition, asked critical questions. The representative of D66 stated that he is ‘quite uncomfortable with the fact that the Dutch intelligence services could share a box with information which is not evaluated’ (Handeling Tweede Kamer, 50: 9).

Fox IT, a company working in the field of cyber security, presented a more ‘moderated’ perspective. Different experts of *Fox IT* reviewed the Wiv (2017) in order to give a factual overview. On this aspect, ‘there are different opinions amongst their employees.’⁴⁵ The company maintained that the sharing of bulk data could guarantee good operational workings of the Dutch intelligence services as a result of the ‘quid pro quo’-principle: in order to receive something, you have to give something.

Both the AIVD and the MIVD defended the element of the Wiv (2017) during the public debate. Bulk data is only shared with intelligence services when their interests are not incompatible

⁴³ NRC (2017), ‘Met een sleepwet door het internet op zoek naar terroristen’, <https://www.nrc.nl/nieuws/2017/07/12/met-een-sleepwet-door-het-internet-op-zoek-naar-terroristen-6580813-a1544813> (visited on 26.07.2018)

⁴⁴ EenVandaag (2018), ‘Zes vragen over de nieuwe sleepwet’, <https://eenvandaag.avrotros.nl/item/zes-vragen-over-de-nieuwe-sleepwet/> (visited on 24.07.2018).

⁴⁵ Fox IT (2018), ‘De techniek achter de Wiv: blogserie [5/6]’, <https://www.fox-it.com/nl/insights/blogs/blog/onderzoeksopdrachtgerichte-interceptie-wiv-2017-data-delen-buitenland/> (visited on 24.07.2018).

with the interests of the Dutch intelligence community. Furthermore, the AIVD only shares data with intelligence services which are part of existing collaborations. If new collaborations are established, the Dutch intelligence services will examine the factors surrounding the other services, such as human rights.⁴⁶ The critical comments could be the reason for the fact that Bertholee, the head of the AIVD, specified this aspect during his public appearance in *College Tour*. He maintained that the AIVD ‘never shares data with other services without thinking about it.’ He mentioned in specific the unpredictable political climate in the United States, since the inauguration of President Trump. As a result, the AIVD ‘thinks better about sharing data with other services.’⁴⁷

All in all, the geopolitical aspect which includes the cooperation with other intelligence services, is narrowed down in the political and public debate towards the element of the Wiv (2017) which allows the Dutch intelligence services to share bulk data with other services. This became a main argument for opponents of the Wiv (2017). As a result, the AIVD and the MIVD had to explain the necessity of the proposed possibility against the background of the increasingly international oriented threats in combination with the role of the Netherlands in the international arena.

6.3 Internal challenges of sovereignty

Terrorism, cyberattacks and espionage have replaced communism as the main threat which the intelligence services are dealing with. Besides that, the Dutch intelligence services also pay attention to the increasing threat of left- and right extremism in the Netherlands.

This aspect is closely related to the ‘basic orientation’ of the Dutch intelligence services, which structures the objectives. Several challenges are mentioned during the political and public debate on the Wiv (2017). One of the reasons for this, is the fact that the AIVD and the MIVD used the challenges in order to promote the Wiv (2017): ‘the Wiv (2017) is necessary for the protection of national security, the prevention of cyberattacks, and effective espionage.’⁴⁸

This also affected the media coverage on the Wiv (2017), as can be seen in an article in *NRC*: ‘the Wiv (2017) increases the possibilities of the intelligence services in their efforts to oppose

⁴⁶ AIVD (2018), ‘Delen van ongeëvalueerde gegevens met het buitenland’, <https://www.aivd.nl/onderwerpen/samenwerking-met-buitenlandse-diensten/delen-van-ongeevalueerde-gegevens-met-andere-landen> (visited on 25.07.2018).

⁴⁷ NTR (2018), ‘College Tour met Rob Bertholee (vanaf 40:00)’, https://www.ntr.nl/College-Tour/25/detail/College-Tour/VPWON_1283707#content (visited on 24.07.2018).

⁴⁸ AIVD (2018), ‘De nieuwe Wiv’, <https://www.aivd.nl/onderwerpen/nieuwe-wet-op-de-inlichtingen--en-veiligheidsdiensten> (visited on 05.07.2018).

the threats. The services work with ‘shreds of information’, such as a telephone number, a name, or a place.’⁴⁹ When the shreds are combined, a valid overview of the internal challenges can be presented.

The public debate mainly focused on two ‘internal challenges’: terrorism and cyberattacks. *Trouw* mentioned in an article about the Wiv (2017) that ‘terrorism and cyberattacks’ are the main threats to society.⁵⁰ *Algemeen Dagblad* also focused on terrorism. In addition, the ‘cyberattacks that overflow the Netherlands’ were mentioned.⁵¹ In line with this, *Telegraaf* labelled terrorism and cyberattacks as the main challenges which are related to the new Wiv (2017).⁵²

Relevant for the discussion about the internal challenges, in which terrorism and cyberattacks were often mentioned, is the contribution of Lubach, who hosts the weekly news satire television show *Zondag met Lubach*. He became an important actor in the public debate about the Wiv (2017). Lubach successfully contributed to the process of collecting signatures for a referendum and he analysed several times the debate on the Wiv (2017).⁵³ As mentioned, the supporters of the Wiv (2017) often used ‘terrorism’ and ‘cyberattacks’ as arguments for the necessity of the Wiv (2017). However, Lubach labelled this as ‘the terrorism-schwalbe’. This is used a metaphor for a situation in which people who are critical about the Wiv (2017) are considered to be against safety.⁵⁴ In other words: if you oppose the Wiv (2017), you are responsible for future terrorist attacks. With this contribution, Lubach nuanced the often mentioned internal challenges in the public debate on the Wiv (2017).

Meanwhile, other internal challenges which are described in the annual reports of the AIVD and the MIVD were rather ‘under-represented’ in the political and public debate. Espionage,

⁴⁹ L. van Lonkhuyzen, P. van den Dool, and K. Versteegh (2018), ‘Waarom zou je voor of tegen de Inlichtingenwet stemmen? En 18 andere vragen’, <https://www.nrc.nl/nieuws/2018/03/16/voorkomt-de-sleepwet-aanslagen-13788220-a1579490#vraag4> (visited on 26.07.2018).

⁵⁰ K. van Teeffelen (2018), ‘Hoe te stemmen over de sleepwet? Hier de vijf belangrijkste dilemma’s’, <https://www.trouw.nl/democratie/hoe-te-stemmen-over-de-sleepwet-hier-de-vijf-belangrijkste-dilemma-s~a037565e/> (visited on 26.07.2018).

⁵¹ P. Winterman and C. Rosman (2018), ‘Alles wat je moet weten over het Wiv-referendum in 20 vragen’, <https://www.ad.nl/binnenland/alles-wat-je-moet-weten-over-het-wiv-referendum-in-20-vragen~ac3d8f7a/> (visited on 26.07.2018).

⁵² *Telegraaf* (2018), ‘Alles over de Wiv, tapwet of sleepwet’, <https://www.telegraaf.nl/nieuws/1800945/alles-over-de-wiv-tapwet-of-sleepwet> (visited on 26.07.2018).

⁵³ L. van Lonkhuyzen (2017), ‘Het sleepwetreferendum, mede mogelijk gemaakt door Lubach’, <https://www.nrc.nl/nieuws/2017/10/09/het-sleepwetreferendum-mede-mogelijk-gemaakt-door-lubach-13411189-a1576574> (visited on 26.07.2018).

⁵⁴ *Zondag met Lubach* (2018), ‘Sleepwet #2’, https://www.vpro.nl/zondag-met-lubach/spel~POMS_VPRO_11451587~sleepwet-2~.html (visited on 26.07.2018).

the threat of right and left-wing extremism, and secret operations in order to influence society, did not receive as much attention as terrorism and cyberattacks. So, this aspect is also partly highlighted and thus narrowed down.

6.4 National security structure

In the description of the Dutch intelligence culture and system is mentioned that the services are independent of the leading societal and political movements. In other words: the intelligence services have their own role within the political and legal system. However, both aspects are affected by the Wiv (2017), as can be seen in the political and public debate.

During the public debate, professor Abels repeatedly expressed his worries about the possible ‘politicization of the Dutch intelligence services’, due to the so-called ‘Integrated Approach’ (in Dutch: *Geïntegreerde Aanwijzing*). The GA, which is an aspect of the Wiv (2017), allows the responsible Minister to work out a ‘wish list’ of topics, whereupon the Dutch intelligence services should act. If the Minister and the intelligence services are in disagreement, politics decides what to do.⁵⁵ Abels maintained that the GA could have serious consequences for the independency of the Dutch intelligence services. ‘The GA contradicts the essence of the work of intelligence services, which should be independent when they determine threats to national security.’⁵⁶

Abels elaborates on this aspect of the Wiv (2017) in several articles, in his Inaugural lecture (16 February 2018), and in a podcast for the project ‘Wiv onder de loep’.⁵⁷ In the latter, he argued that the GA is a ‘total reversal’ in the world of intelligence. Instead of politicians, *the law* should prescribe areas of interest for the intelligence services. Politicians are not experts and often have short-term political interests. This way, the GA opposes the intelligence services, which should examine threats which are not expected. Despite the efforts, this theme – the politicization of intelligence services – did not receive much attention during the public debate, according to Abels. Also in the political debates, this topic is not fully addressed. The only political party which asked critical questions about it, is the CU (Handeling Tweede Kamer, 50: 30).

⁵⁵ K. Versteegh (2018), ‘Politisering AIVD dreigt als minister zin doordrijft’, <https://www.nrc.nl/nieuws/2018/02/15/politisering-aivd-dreigt-als-minister-zin-doordrijft-a1592464> (visited on 28.07.2018).

⁵⁶ Idem

⁵⁷ W. van der Schans (2018), ‘Podcast deel 2: Prof. Paul Abels over de politieke invloed onder de nieuwe Wiv’, <https://wiv-onderdeloep.nl/node/98> (visited on 28.07.2018).

Bredemeijer, senior spokesman of the AIVD, disagrees with Abels about the ‘threat of politicization of the services’. According to him, it is not realistic to describe a situation in which the intelligence services are guided by politicians. The AIVD is still an independent service with its own history and professionalism. In an article in *NRC*, Bertholee argues in line with this. He agrees with Abels that the GA is a significant change. However, the GA only explains what is expected of the intelligence services, which can be helpful. Besides that, the AIVD still has an own, professional role within the national security structure.⁵⁸

Besides the relationship with the political system, the national security structure also includes the legal basis of intelligence services. Since the *Wiv* (2017) itself is the legal basis for the legitimate operation of the services, it is difficult to distinguish certain elements of it in the political and public debate. Nevertheless, two elements of the legal basis are often discussed in the debate: oversight and new special surveillance powers. The first, oversight, will be discussed in another section.

Most of the critical comments on the *Wiv* (2017) were related to the possibility to intercept communication traffic that runs through cables, as a new special surveillance power of the services.⁵⁹ Because of this element, the *Wiv* (2017) is often called a ‘dragnet law’. This metaphor is consequently used by several political parties, such as *GroenLinks*⁶⁰, *SP*⁶¹, and *Partij voor de Dieren*⁶² and by other opponents of the *Wiv* (2017). As a result, this was the most recognizable element of the legal basis in the political and public debate.

6.5 Organizational cohesion

In the previous chapter is mentioned that there is no formal hierarchy within the Dutch intelligence community. The AIVD and MIVD are cooperating, as can be seen in the joint project of the SIGINT Cyber Unit. However, several articles described tensions between the services on some topics, which are contradicted by the intelligence services themselves. In this

⁵⁸ L. van Lonkhuyzen and K. Versteegh (2018), ‘Wij moeten niet bepalen wat nepnieuws is’, <https://www.nrc.nl/nieuws/2018/02/04/wij-moeten-niet-gaan-bepalen-wat-nepnieuws-is-a1590977> (visited on 28.07.2018).

⁵⁹ T. Tunalı (2017), ‘Je kunt niet shoppen in mensenrechten’, <https://www.groene.nl/artikel/je-kunt-niet-shoppen-in-mensenrechten> (visited on 28.07.2018).

⁶⁰ GroenLinks (2018), ‘Tegen de sleepwet’, <https://groenlinks.nl/referendum/sleepwet> (visited on 28.07.2018).

⁶¹ SP (2018), ‘De sleepwet is onnodig en gevaarlijk’, <https://www.sp.nl/achtergrond/sleepwet-is-onnodig-en-gevaarlijk> (visited on 28.07.2018).

⁶² PvdD (2018), ‘Zeg NEE tegen massale bespieding via sleepwet!’, <https://www.partijvoordieren.nl/standpunt/zeg-nee-tegen-massale-bespieding-via-sleepwet> (visited on 28.07.2018).

section, the organizational cohesion will be used as a ‘lens’ to look through at the political and public debate. Is de cooperation between the AIVD and MIVD reflected in the debate?

First of all, the Wiv (2017) applies to both intelligence services. So the debate highlighted the AIVD *and* the MIVD; not just the AIVD *or* the MIVD. During the political debates in the House of Representatives and the Senate, the representatives of the political parties consequently referred to the ‘intelligence services’, rather than focussing on the AIVD or the MIVD.

Secondly, the heads of the AIVD and the MIVD expressed themselves together in interviews. According to Buitenweg, who is a representative of *GroenLinks*, the heads of the AIVD and MIVD can ‘promote the Wiv (2017) without any difficulties.’⁶³ In an interview in *NRC* (4 February 2018), Bertholee (AIVD) and Eichelsheim (MIVD) represent the intelligence community, rather than their own services. Their main goal is to promote the Wiv (2017), ‘which is necessary for both intelligence services.’⁶⁴ At the same time, the article highlights the fact that there is not much attention for the ‘military aspects of the Wiv (2017)’ in the public debate.

Another case which expressed the coordination of the AIVD and the MIVD is related to a special hack which is conducted by both services. The services had access to the infamous Russian hacker group ‘Cozy Bear’. Hackers of the AIVD and the MIVD witnessed the hacks live and discovered that the Democratic Party, the White House and the State Department were victims of the hacks. Afterwards, the Dutch services informed the NSA-liaison at the American embassy in The Hague.⁶⁵ As a result, the services provided the FBI with crucial information about Russian interference with the American elections.⁶⁶ This case was revealed in January 2018 – around two months before the referendum took place.

⁶³ B. Zuidervaart (2018), ‘Geen posters of stickers: partijen voeren nauwelijks campagne voor sleepwet-referendum’, <https://www.trouw.nl/democratie/geen-posters-of-stickers-partijen-voeren-nauwelijks-campagne-voor-sleepwet-referendum~a4884acb/> (visited on 29.07.2018).

⁶⁴ L. van Lonkhuyzen and K. Versteegh (2018), ‘Wij moeten niet bepalen wat nepnieuws is’, <https://www.nrc.nl/nieuws/2018/02/04/wij-moeten-niet-gaan-bepalen-wat-nepnieuws-is-a1590977> (visited on 29.07.2018).

⁶⁵ L. van Lonkhuyzen and K. Versteegh (2018), ‘AIVD wil professionele ruimte behouden’, <https://www.nrc.nl/nieuws/2018/02/05/aivd-wil-professionele-ruimte-houden-a1590992> (visited on 29.07.2018).

⁶⁶ H. Modderkolk (2018), ‘Dutch agencies provide crucial intel about Russia’s interference in US-elections’, <https://www.volkskrant.nl/wetenschap/dutch-agencies-provide-crucial-intel-about-russia-s-interference-in-us-elections~b4f8111b/> (visited on 29.07.2018).

Around that same time, Bertholee was a guest at *College Tour*, a TV-show (21 January, 2018). During the interview, someone in the audience asked Bertholee about the cooperation between the AIVD and the MIVD. He stated that the ‘AIVD and the MIVD are working closely together’ and that ‘the services have joint teams’.⁶⁷

So, the described organizational cohesion is reflected in the political and public debate. At the same time, the assumed tensions are not recognized. The AIVD and the MIVD had the same goal: promoting the Wiv (2017) which applies to both intelligence services.

6.6 Oversight

The Dutch oversight mechanism includes the parliamentary committee, the CTIVD, and the TIB. The latter is a result of the Wiv (2017). In this section, the political and public debate about oversight will be discussed.

In the journal *Justitiële verkenningen*, Hagens, who is a researcher for CTIVD, elaborates on the changes in oversight as a result of the Wiv (2017). The Wiv (2017) introduced the independent review committee TIB. The most important aspect of the TIB is the binding review *prior* to the approval by the Minister for special investigation powers (Hagens, 2018: 87). In addition, the role of the judge is extended. If intelligence services want to use special investigative powers to obtain information about advocates or journalists, the judge has to give permission. Moreover, the Wiv (2017) allows citizens to report their complaints about the Dutch intelligence services to the CTIVD. Under the Wiv (2017), the CTIVD continues with executing the task to judge the effectivity of intelligence services during and after intelligence operations (Hagens, 2018: 87).

Of the changes, the TIB received the most attention in the political debate in the House of Representatives. Several political parties elaborated on the role of the introduced TIB. For example, the representative of D66 expressed his worries about the cooperation between the CTIVD and the TIB: ‘Could the TIB undermine the CTIVD?’ (Handeling Tweede Kamer: 50: 12). And the representative of the SP argued that ‘the TIB does not receive the information which is needed for effective oversight.’ (Handeling Tweede Kamer, 50: 14). Furthermore, the representative of the PVV wondered if the establishment of TIB leads to situations in which the

⁶⁷ College Tour (2018), ‘Rob Bertholee’, https://www.npostart.nl/college-tour/21-01-2018/VPWON_1283707 (visited on 29.07.2018).

Minister can claim that he or she is not responsible for the intelligence and security services (Handeling Tweede Kamer, 50: 25).

This comments are in line with the conclusion of the Council of State. In the reaction to the Wiv (2017), the Council of State elaborated on the role of the TIB and concluded that the TIB ‘could function as stamping machine’ since the committee does not have access to information about the services and their systems. Therefore, the TIB lacks insight in the intelligence community and this leads to a situation in which it is difficult to monitor the intelligence services effectively.⁶⁸

However, the critical comments also relates to other aspects of the oversight system. The stratification and complexity of the system could form an obstacle for effective oversight, according to Hagens (2018). Furthermore, the approval *prior* to the approval by the Minister could have negative consequences in the case of the interception of bulk data. The value of this type of approval is limited, since it is unclear which interests have to be examined in order to give permission for the interception (Hagens, 2018: 94).

Despite the critical comments on this element of oversight, other perspectives were also part of the debate. According to Bindt, former head of the MIVD, the changes resulted in a very strict oversight system related to the Dutch intelligence community: ‘if there was a championship on this topic, the Netherlands would probably win.’⁶⁹ In line with this, Abels argued that the Wiv (2017) established an ‘unequaled’ strict oversight system.⁷⁰ At the same time, Hijzen maintained in a podcast on oversight that the formal, strict oversight system is not the only thing that matters. The people working in the system (members of the CIVD, the CTIVD, and the TIB), have to work seriously and critical in order to be effective.⁷¹

In other words, the formal oversight and control system is described as ‘strict’ (perhaps the most strict system in the West). At the same time, different actors argued that there are risks related to the effectivity of the oversight and control committees in both the political debate and

⁶⁸ M. Martijn and M. Koot (2018), ‘Sleepwet? Vier cruciale inzichten over de wet voor de geheime diensten’, <https://decorrespondent.nl/8032/sleepwet-vier-cruciale-inzichten-over-de-wet-voor-de-geheime-diensten/247032192-19e2cff3> (visited on 06.06.2018).

⁶⁹ Wiv onder de loep (2018), ‘Hoe kun je de diensten het beste controleren?’, <https://wiv-onderdeloep.nl/diensten-controleren> (visited on 06.06.2018).

⁷⁰ P. Abels (2018), ‘Leidse hoogleraar: ‘sleepwet’ hard nodig, maar niet perfect’, <https://www.universiteitleiden.nl/nieuws/2018/02/leidse-hoogleraar-%E2%80%98sleepwet%E2%80%99-hard-nodig-maar-niet-perfect> (visited on 06.06.2018).

⁷¹ Wiv onder de loep (2018), ‘Hoe kun je de diensten het beste controleren?’, <https://wiv-onderdeloep.nl/diensten-controleren> (visited on 06.06.2018).

the public debate. The political and public debate mainly focused on the new oversight committee – the TIB. Nevertheless, the complete ‘oversight system’ is also discussed in terms of effectivity and complexity. This aspect of the Dutch intelligence system was an important theme in the political and public debate.

6.7 Political context

This aspect relates to the emphasis which politicians place upon the intelligence services. In the discussion of the Dutch intelligence culture and system is stated that the political attitude towards the intelligence services can be described as ‘disinterested’. An evident relationship based on trust is not clearly reflected throughout history. Besides that, politicians claim that they lack information about the services.

The analysis of the political context is based on the two most important debates on the Wiv (2017): the debate in the House of Representatives (February 2017) and the debate in the Senate (July 2017). In these debates the Wiv (2017) was confirmed and all political parties had the opportunity to directly express their position in relation to the Dutch intelligence community. The two aspect, the lack of trust and the lack of right information about the services will structure this section which aspires to present an overview of the political context of the Dutch intelligence services.

6.7.1 Debate in the House of Representatives (14 February 2017)

Trust in the Dutch intelligence services

During the debate in the House of Representatives, many political parties maintained that the Dutch intelligence and security services were doing a good job ‘without getting any reward in public.’ In other words, the intelligence and security services were considered to be essential in protecting national security. However, all political parties had questions (and sometimes serious worries) about the Wiv (2017). Some of the questions and/or worries could be interpreted as a sign of ‘natural’ mistrust in the Dutch intelligence and security services.

D66 formulated a critical review. The representative, Verhoeven, started his contribution with a compliment and a warning:

‘Compared with other intelligence services abroad, the Dutch intelligence services respect the constitutional law very well. However, this does not mean that the Dutch intelligence services must be able to get unstrained powers without clear control mechanisms.’ (Handeling Tweede Kamer, 50: 1)

Verhoeven maintained that the trust in the Dutch intelligence and security services is decreasing. In addition, he questioned the need of the Wiv (2017): ‘why does the government propose the new Act at this moment? And why with this urgency?’ (Handeling Tweede Kamer, 50: 2). D66 formulated five elements of the Wiv (2017) that needed improvement. Intelligence and security services must not be allowed to gather ‘unlimited data’; a strong oversight committee was needed; parts of the Wiv (2017) had to be formulated more precisely; there must be a description of sound data-analysis; and possible cooperation with foreign intelligence services had to be grounded in the Wiv (2017) (Handeling Tweede Kamer, 50: 3).

After the lengthy introduction by D66, the Socialist Party (SP) had the opportunity to comment on the Wiv (2017). The SP elaborated on complaints by the Council of State and the Institute of Human Rights related to the proposal. The SP was worried about the fact that the Dutch intelligence services are allowed to share data with other intelligence services. In the end, the representative of the SP stated that ‘there are many unanswered aspects’ related to this possibility (Handeling Tweede Kamer, 50: 14). The Green Left party (GL) endorsed this statement. GL wanted to make sure that the Dutch services are acting in a right and legal manner.

The strained relationship between trusting the intelligence and security services on the one hand, and promoting strict control mechanisms on the other, forms the basis of the arguments made by D66, SP and GL. However, also political parties that supported the Wiv (2017) beforehand, had serious questions and critical statements about the Wiv (2017). The social-democratic political party (PvdA) expressed doubts related to the use of meta-data. ‘To what extent can the privacy of innocent people be guaranteed during the collection of meta-data?’ (Handeling Tweede Kamer, 50: 14).

The conservative-liberal party VVD, which was a prominent supporter of the Wiv (2017) argued that a ‘clear balance between safety and privacy is necessary.’ During the debate it became clear that VVD was convinced that the Wiv (2017) provided this balance. Another supporter of the Wiv (2017), the Christian democratic party (CDA), had questions about the storage of data.

All in all, some general trends regarding (dis)trust in the Dutch intelligence and security services can be recognized in the debate. The services are ‘trusted’ in the sense that all political parties argued that the services are important for national security. At the same time, all parties had critical questions or statements about the Wiv (2017).

Information about the Dutch intelligence and security services

The question whether or not politicians have enough and right information about the Dutch intelligence services forms another indicator for the emphasis that politicians placed upon the intelligence services.

During the debate in the House of Representatives, several political parties argued that they lacked sufficient knowledge about the Dutch intelligence services and the way the services operate. The representative of the SP said that he ‘did not know what the intelligence services did in the past. However, he wanted to compliment them on their crucial work’ (Handeling Tweede Kamer, 50: 13).

The representative of PVV, a nationalistic right-wing party, maintained that ‘the CTIVD form the only source of information for politicians’ and that Dutch politicians ‘do not have a single clue on what is going on within the intelligence community’ (Handeling Tweede Kamer, 50: 25). The representative of the socially conservative Christian Union (CU) agreed with this. She focused on the role of the parliamentary oversight committee and concluded that she did not know what was going on in the committee. Professor Abels stated the same in the interview: ‘the parliamentary oversight committee is a rather ‘symbolic oversight mechanism’, since the members are not allowed to share any information.’

All in all, politicians maintained that they lack right information about the intelligence services. Despite the fact that it is not explicitly said during the debate, this could lead to a situation in which the interest of the politicians in the Dutch intelligence services diminishes.

6.7.2 Debate in the Senate (11 July 2017)

Trust in the Dutch intelligence and security services

On this topic, the debate in the Senate was similar to the debate in the House of Representatives. Political parties maintained that Dutch intelligence and security services are essential for encountering threats as terrorism. At the same time, political parties advocated strict control mechanisms and clear regulations in order to protect civil rights of citizens. GL, an opponent of the proposed Wiv (2017) used a metaphor: ‘the interception of ‘Big Data’ is more or less the same as opening every letter that is sent from Amsterdam to Brussel in the past.’⁷²

⁷² Eerste Kamer (2017), ‘Verslag van de plenaire vergadering van dinsdag 11 juli 2017’, <https://www.eerstekamer.nl/verslag/20170711/verslag> (visited on 19.05.2018).

Contrary to the debate in the House of Representatives, there is not much said about the ‘reliability’ of the intelligence and security services. The input from D66 could represent the atmosphere during the debate:

‘If we have deep distrust towards the Dutch intelligence services, this debate is easy. However, this is not the case. The AIVD and the MIVD hold a tradition from decades of democratic embedding and the services know the values in our constitution upon which they act. Therefore, we must express our gratitude for the work of the intelligence services. And the responsible Ministers also deserve compliments.’⁷³

Information about the Dutch intelligence and security services

Several members of the Senate stated that they do not know much about (operational aspects of) the Dutch intelligence and security service. The representative of D66 maintained that members of the Senate were walking ‘with a match in the dark’. They did not know the extent of the threats for national security and neither did they know the source of the threats in detail. ‘It is the task of the CTIVD to judge the effectivity of intelligence services.’⁷⁴

6.7.3 Conclusion political debates

Members of the House of Representatives and members of the Senate argued that the intelligence services are essential for national security. This could be interpreted as a clear signal from the politicians: the services are considered to be valuable and reliable. According to Abels, the political support for the Dutch intelligence services can be recognized in the fact that no political party wanted to abolish the intelligence services. The reason for this could be the changing threats for society; politicians are convinced that intelligence and security services are needed in order to protect national security. In the 1980s, it was the other way around. According to Abels, some politicians publicly announced that there were good reasons to give up the intelligence and security services. During that time period, the politicians were not interested in the intelligence services at all, which could be the reason for the statements.

So, despite the critical questions and statements on the proposed Wiv (2017), the services were not considered untrustworthy or needless. According to Bredemeijer, spokesman of the AIVD,

⁷³ Eerste Kamer (2017), ‘Verslag van de plenaire vergadering van dinsdag 11 juli 2017’, <https://www.eerstekamer.nl/verslag/20170711/verslag> (visited on 19.05.2018).

⁷⁴ Idem

the ultimate evidence for this, is the fact that the majority of political parties voted for the proposed Wiv (2017), which granted the intelligence community new special powers.

The other aspect, the lack of information about the intelligence services, is reflected in the debates more clearly. However, according to Bredemeijer, this must be nuanced. Despite the fact that several politicians maintained that they did not know what was going on within the intelligence community, a lot of public information is available. Think of the statutory basis, the surveillance powers, the budget, and the annual reports of the AIVD and the MIVD. The described ‘lack of knowledge’ mainly relates to the operational aspect of intelligence.

6.8 Transparency

There is a strained relationship between intelligence services and the public, since the notion of ‘secrets’ is an important aspect of the world of intelligence. The transparency is often limited because operational processes could be negatively affected when the services operate publicly.

According to Abels, a characteristic of Dutch society is the aversion to secrets. ‘Citizens do not always understand that intelligence services cannot share every bit of information they have.’ Besides that, the distrust towards the government increased during the last decade because of international trends such as the revelations of Edward Snowden. In a weblog about the referendum on the Wiv (2017), Van der Heide, researcher for the Institute for Security and Global Affairs, argued that people became more sceptical towards government surveillance in the aftermath of Snowden, Wikileaks, the Panama Papers, and the Pentagon Papers.⁷⁵

Abels maintained that the Dutch intelligence services were challenged by the sceptical public during the debate on the Wiv (2017). ‘The services had to show their reliability.’ In order to do so, the services had to become more transparent. Despite the appeal to share more information with the public, it is not the ‘natural mentality’ of the Dutch intelligence services.⁷⁶ This led to tensions between the reserved culture of the services on the one hand, and society which demands more transparency on the other. According to Abels, there had never been a serious debate about this tension until the political and public debate on the Wiv (2017). The debate provided the opportunity to look at the intelligence services from a new perspective, which is needed in order to gain political and public support for government organizations. As discussed

⁷⁵ L. van der Heide (2018), ‘De privacy-illusie’, <https://wivreferendum.weblog.leidenuniv.nl/2018/02/23/de-privacy-illusie/> (visited on 07.06.2018).

⁷⁶ H. Modderkolk (2017), ‘Veiligheidsdiensten moeten uit ‘oesterkramp’’, <https://www.volkskrant.nl/nieuws-achtergrond/veiligheidsdiensten-moeten-uit-oesterkramp-~b8dff10f/> (visited on 11.05.2018).

in the theory, it is difficult, or rather impossible, to work as intelligence services without this support.

According to Bredemeijer, the AIVD did not want to interfere in the democratic process related to the Wiv (2017) which included the political debates and the referendum. ‘The service is part of the democratic and constitutional state and tries to protect this state.’ However, when it became clear that the referendum on the Wiv (2017) would be held, the service consciously ‘stepped on the stage.’ Bredemeijer argues that the AIVD had the responsibility to explain the work of intelligence services, since ‘some public statements about the services did not represent the truth.’ The head of the AIVD, Bertholee, attended several TV shows and radio shows in order to explain this, besides promoting the proposed Wiv (2017) ‘which was needed in order to protect national security.’⁷⁷ Because of this approach, which was part of the political and public debate on the Wiv (2017), more people have insight in the Dutch intelligence community.

Furthermore, Bredemeijer maintains that ‘the intelligence and security services have been more accessible than ever before.’ Despite this, the ‘reserved culture’ of the intelligence community can be recognized in the political and public debate. Rare insight in the intelligence and security services are the results of annual reports and public performances of Bertholee (who was the only person representing the AIVD). However, some changes can be recognized. The intelligence and security services were challenged by the demand for transparency; the services reacted on public statements; the (heads of the) services actively promoted the Wiv (2017) via a variety of communication channels; and the services tried to explain their position in society as a state actor.

⁷⁷ HP/De Tijd (2018), ‘Rob Bertholee: het ideale boegbeeld van het pro-sleepwetkamp’, <https://www.hpdetijd.nl/2018-03-07/rob-bertholee-pro-sleepwet/> (visited on 06.06.2018).

7 Conclusion

In this last chapter, the research question that was posed in the introduction will be answered. Besides that, the limitations of the study and recommendations for further research will be given. The research question which structured this research asks:

‘To what extent, and in which way, is a typology of the Dutch intelligence culture and system reflected in the political and public debate on the new Intelligence and Security Services Act (2017) which took place in the Netherlands?’

The research included different parts which are related to this question. First of all, the existing literature on the concepts intelligence culture and intelligence system is discussed. Intelligence culture ‘comprises the institutional forms, cultural context, and social practices of intelligence and security’ (Davies, 2004). An intelligence system is defined as ‘the dealings of secrets and how these are organized, treated, and exercised, by plan or by default’ (Warner, 2009: 24). The concepts provided the research comprehensive theoretical frameworks in order to research the Dutch intelligence community.

The typology which is used is based on Warner’s framework, on O’Connell’s framework and on theories related to the political and public context of intelligence services. The framework contains the following aspects: basic orientation, geopolitical context, internal challenges, national security structure, organizational cohesion, oversight, political emphasis, and transparency. With the help of this typology, the Dutch intelligence culture and system are described. Afterwards, the political and public debate is analysed ‘through the lens’ of the same typology. This way, the research explored the way the aspects were reflected in the political and public debate and whether or not this differed from the theoretical notions on the aspects. In addition, the research contributes to a better understanding of the debate on the Wiv (2017).

All in all, some aspects are clearly reflected in the political and public debate on the Wiv (2017). The first aspect, basic orientation and the corresponding objectives, can be recognized in the debate. The basic orientation is described as ‘passive’ and the main objective of the Dutch intelligence community is to protect national security and Dutch citizens. These objectives were repeatedly used by different actors during political debates, in articles in newspapers and in talk shows.

Another aspect which is reflected in the political and public debate is the organizational cohesion. There is no hierarchy in the Dutch intelligence community in the sense that the AIVD

and the MIVD are cooperating. In the analysis of the Dutch intelligence system is mentioned that some articles describe ‘tensions’ between the services. However, these tensions are not reflected in the political and public debate. The Wiv (2017) applies to both intelligence services. This is the reason that the heads of the AIVD and the MIVD expressed themselves in joint interviews during the public debate before the referendum took place. The head of the AIVD also stated that there is a ‘good collaboration’ during a talk show. Moreover, two months before the referendum took place, a special hack operation was revealed. This operation was conducted by both the AIVD and the MIVD.

A third factor which is reflected in the political and public debate is oversight. This aspect was an important theme during the debate. Different perspectives on oversight are expressed, ranging from ‘the services need more strict control’ to ‘the Dutch oversight system is probably the most strict in the world’. Nevertheless, the debate mainly focused on one specific committee: the TIB. The TIB is a direct result of the Wiv (2017) and several political parties asked critical questions about it. The parliamentary committee and the CTIVD received less attention, despite the fact that the complete oversight system is discussed a lot. This process of ‘narrowing down’ also applies to other aspects of the framework.

One of these aspects is the ‘internal challenges’. During the debate, only two challenges were consequently mentioned: terrorism and cyberattacks. Politicians, articles in newspapers and articles on websites all focussed on these challenges in the discussion about the Wiv (2017). As a result, other challenges which are described in the analysis of the Dutch intelligence community received less attention. Think of espionage, left-wing and right-wing extremism, and secret operations in order to influence political developments via the internet.

The geopolitical context is also narrowed down to one topic. The Netherlands is a small country and the Dutch intelligence community works together with other services in order to oppose threats which are increasingly international oriented. Nevertheless, during the political and public debate only one aspect received the most attention: the possibility to share data with foreign intelligence services. Opponents of the Wiv (2017) used this theme when they elaborate on the negative consequences of the Wiv (2017). Because of this, the AIVD explained on their website, in news articles and in talk shows (in the person of Bertholee) that the service ‘does not share data without thinking’. Besides that, the service ‘takes into account the unstable political climate in several countries.’ So, the intelligence service reacted to certain accusations in order to influence the political and public debate. This way, the debate influenced the way

the intelligence services expressed themselves by highlighting several aspects of broader themes.

There are also aspects which received less attention and which are not clearly reflected in the political and public debate. The national security structure relates to the political structure and the legal basis of the intelligence services. The changes related to political influence, due to the GA, did not receive much attention, despite several attempts of Abels to start a serious discussion about this topic. At the same time, the legal basis is formed by the Wiv (2017) itself. Therefore, it is difficult to recognize this aspect in debate. However, one aspect which significantly structured the debate is related to the legal basis: the possibility to intercept communication traffic that runs through fiber optic cables. This was the reason that opponents of the Wiv (2017) used the metaphor of a 'dragnet law', a terminology which can be recognized in almost every article that covered the debate.

The described political disinterest was not fully reflected in the debate. Two described components relate to trust in the intelligence community and the (lack of) information about intelligence services. Members of the House of Representatives and the Senate argued that the intelligence services are essential for national security. This could be interpreted as a clear signal from politicians: the services are considered to be valuable and reliable. According to Abels, the political support for the Dutch intelligence services can be recognized in the fact that no political party wanted to abolish the services. Moreover, all political parties maintained that a new Wiv (2017) was necessary. However, not all political parties supported the proposed Wiv (2017). All in all, politicians are convinced that the intelligence services are needed in order to protect national security.

The lack of information is reflected in the political debate more clearly. However, a more nuanced statement is needed. Despite the fact that several politicians maintained that they did not know what was going on within the intelligence community, a lot of public information is available. Think of the statutory basis, the surveillance powers, the budget, and the annual reports of the AIVD and the MIVD. In other words, the 'lack of knowledge' mainly relates to the operational aspects of intelligence.

The last aspect which differed from the theoretical description, is transparency. The Dutch intelligence community is described as a community with a reserved culture. Hoekstra (2012) mentioned that 'almost everything is secret'. Despite the described lack of transparency, the Dutch intelligence services were challenged by the demand for transparency; the services

reacted on public statements. Moreover, the services actively promoted the Wiv (2017) via a variety of communication channels; and the services tried to explain their position in society as a state actor.

So, the theoretical framework which contains the description of the Dutch intelligence culture and system is partly reflected in the political and public debate. This means that some aspects can be explained with the help of the existing literature. At the same time, some described aspects were not (fully) reflected in the political and public debate. Think of the political disinterest and the lack of transparency. Meanwhile, some aspects are narrowed down in the political and public debate towards one topic, while the aspect represents a broader theme. Examples of this are the geopolitical context (of which the possibility to share data with foreign intelligence services received much attention) and the internal challenges (of which ‘terrorism’ and ‘cyber attacks’ were repeatedly used by both supporters and opponents of the new Wiv).

This means that the political and public debate shaped certain elements of the intelligence system, by focussing on some topics which influenced the debate. The intelligence community reacted to some of these trends. In other words, the political and public debate also affected the intelligence community and their legitimacy. An important indicator for this is the fact that after the referendum, the government changed several criticised aspects of the Wiv (2017), including the possibility to share data with foreign intelligence services and the time period for the storage of data.⁷⁸

7.1 Limitations of this study

The research aspired to contribute to the understanding of rather new and ambiguous concepts: intelligence culture and intelligence system. The study applied these concepts on the Dutch intelligence community. The advantage of this is that most studies within the field of intelligence studies relate to intelligence services in the United States and the United Kingdom. A research that focuses on the Dutch context can be helpful by expanding and understanding the concepts. However, as in every study, the research has its limitations.

First of all, the research focussed on an extensive political and public debate. Therefore, it is impossible, given the time period in which the research is conducted, to describe and analyse every aspect of the debate on the Wiv (2017). The choices that have been made are described

⁷⁸ Rijksoverheid (2018), ‘Kabinet scherpt Wiv 2017 aan’, <https://www.rijksoverheid.nl/actueel/nieuws/2018/04/06/kabinet-scherpt-wiv-2017-aan> (visited on 01.08.2018).

in chapter three ('Methodology'). However, it is possible that certain relevant insights in the political and public debate are not part of this research. It was not possible to include every article which covered the debate. Moreover, it was not possible to analyse every relevant political meeting since the evaluation of the Wiv (2002) in 2013.

Despite the limitations of this process, a conscious effort has been made to overcome them. Examples are the transparency and the use of multiple sources by focusing on key moments in the political and public debate. Although it is difficult to pose valid conclusions in this field of research, the findings of this research are interesting and new. The way the political and public context of intelligence could affect the intelligence services and their culture and system, forms a new insight in the field of intelligence cultures and intelligence systems. Whereas the existing literature focusses on geopolitical or rather bureaucratic aspects of intelligence cultures and intelligence systems, this research shows the relevance of an under-researched theme: the relationship between intelligence services and the political and public context in which the services operate. Furthermore, the research has also provided a way to make the concepts operational, thereby showing that an abstract concept can turn into a practical concept for research. Doubtlessly, there are many more ways to operationalize these concepts in order to use them for the analysis of cases or to compare intelligence cultures and systems around the world. This research tried to examine a new perspective on an intelligence community and its environment through the 'lens of intelligence culture'.

In order to extent the literature on this topic, further research is needed. For example, it is helpful to conduct a research about the situation in 2002, when the Wiv (2002) replaced the Act that was introduced in 1987. A comparative case study could elaborate on the similarities and the differences between the political and public debate on the Wiv (2002) and the debate on the Wiv (2017). Did these aspects changed? Possible variables to look at are the role of social media in the debate or the influence of 9/11 (2001). Another interesting aspect is the referendum. What are the consequences for the Dutch intelligence and security services? This could relate to the transparency – are the services more transparent in the aftermath of political and public debate?

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