

SUPERVISORY COMMITTEE
ON
THE INTELLIGENCE AND SECURITY SERVICES

CTIVD no. 5B

SUPERVISORY REPORT

On the Supervisory Committee's investigation into the legitimacy of the investigation by the AIVD into the proliferation of weapons of mass destruction and means of delivery

1. The AIVD's tasks concerning the proliferation of weapons of mass destruction

The AIVD's task concerning non-proliferation is to conduct investigations and prevent the undesired international dissemination of goods, technology and knowledge relevant to the development and production of weapons of mass destruction and the associated means of delivery. These activities are carried out by the AIVD under its A task, as referred to in article 6 paragraph 2 of the Act on the Intelligence and Security Services 2002 (hereinafter referred to as: WIV 2002). This investigation focused both on the attempts by high-risk countries to acquire these weapons and means, and on attempts by 'non-national actors' (e.g. terrorist groups) to acquire such weapons.

In addition, the AIVD's foreign task (art. 6 paragraph 2 sub d WIV 2002) enables the service to perform (intelligence) investigations into weapons programmes in high-risk countries. The investigation into developments in countries which are relevant in the context of the proliferation of weapons of mass destruction and their means of delivery is stated as a subject in the decree 'Designation of subjects Act on the Intelligence and Security Services 2002'¹, as adopted by the Prime Minister. The explanation to this Designation Order states that this Designation leaves unimpaired the activities conducted by the AIVD and MIVD² under their other tasks.

For the AIVD's non-proliferation strategy the service has formulated an awareness programme that seeks to make companies and academic institutions more aware of the risks they run in getting involved in the proliferation of weapons of mass destruction. For this task

¹ Decree of 8 December 2004, Government Gazette 23 December 2004, no. 248, p. 10.

² The Designation Order applies to both services.

the AIVD has prepared a brochure³ and it organises meetings with the relevant companies and institutions.

The AIVD provides support to various government bodies (e.g. the Ministries of the Interior and Kingdom Relations, Foreign Affairs and Economic Affairs, and Customs) with regard to the Dutch non-proliferation and export control policy.

1.1 Shift in the approach

In the course of time the AIVD's focus concerning the investigation into proliferation has shifted slightly. Formerly having a more defensive character, the investigations have now become more offensive. This is also related to the designation of the subject of proliferation in the decree 'Designation of subjects Act on the Intelligence and Security Services 2000', as a result of which an intelligence approach to the subject of proliferation – also from a statutory viewpoint – has become possible.

Before, the service focused in particular on acquisition activities of high-risk countries in the Netherlands as well as making companies and academic institutions aware of the dangers of becoming involved in the proliferation of weapons of mass destruction. However, according to the AIVD, global developments have demonstrated that for a properly functioning prevention policy, it is necessary to conduct investigations at an earlier stage. The nature of proliferation problems has become more international, as a result of which the AIVD is forced to investigate proliferation with an international focus. For this reason the service has opted for a more offensive approach of the subject of proliferation, in the context of which the service refers to a shift from non-proliferation to counter-proliferation. In so doing, the service will also be able to execute its security task (aimed at preventing acquisition in the Netherlands) more effectively.

1.2 Teams charged with non-proliferation

As from 1 January 2004 two teams were charged with the investigation into the proliferation of weapons of mass destruction, in which context both teams covered different themes. One team dealt with the proliferation of nuclear weapons and means of delivery, whereas the other team focused on the proliferation of chemical and biological weapons and NBCR terrorism.

³ Brochure 'Proliferation of weapons of mass destruction; Risks for companies and scientific institutions' of July 2003. The brochure can be consulted via www.aivd.nl.

In this context NBCR terrorism is understood to mean the possible threat with nuclear, biological, chemical or radiological means by terrorist groups.

From October 2004 this division has changed. NBCR terrorism has been transferred to one of the counter-terrorism teams of Directorate 1 (Democratic Legal Order), and the remaining components have been transferred to Directorate 4 of the AIVD (Foreign Intelligence), responsible for the execution of the AIVD's foreign task. TFor the proliferation of weapons of mass destruction has been designated as one of the subjects to be investigated in the Prime Minister's Designation Order, which sees to the interpretation of this task.

2. The Committee's investigation

De Supervisory Committee on the Intelligence and Security Services (hereinafter referred to as: the Committee) has performed an investigation into all the activities developed by the AIVD as from 29 May 2002 (the date of entry into force of the WIV 2002) in the context of the investigation into the proliferation of weapons of mass destruction and their means of delivery. The Committee has listed all the powers used and has tested these against the statutory requirements including the AIVD's mandate regulations. Also tested in this context was whether the investigative activities satisfied the requirements of necessity (article 18 WIV 2002), proportionality and subsidiarity (article 31 and 32 WIV 2002). In addition to an examination of the files, the Committee also conducted interviews with several of the AIVD's staff members in charge of the proliferation investigation, as well as with the coordinator of the intelligence and security services (art. 4 WIV 2002).

3. Collaboration and aligning of tasks between AIVD and MIVD

The Committee has established that in aligning the tasks between the two services a number of problems occurred which, according to the Committee, can be considered as a consequence of the Designation Order in the meaning of art. 6 paragraph 2 sub d and art. 7 paragraph 2 sub e WIV 2002.⁴ This Designation Order provides the subjects which the services are to investigate in the context of their international task. One of these subjects concerns the 'developments in countries relevant in the context of the proliferation of weapons of mass destruction and their means of delivery.' The explanatory memorandum to this Designation

⁴ Designation of subjects Act on the intelligence and security services, Government Gazette 23 December 2004, no. 248, p. 10.

Order notes that for reasons of security the more detailed elaboration regarding the aspects, countries and regions is laid down in a confidential annex to this order.

Both services have been given a leading role in relation to certain countries. In the explanatory memorandum to the Designation Order it is noted that this Designation Order leaves unimpaired the activities that the two services conduct on the basis of their other tasks.

The problems of alignment referred to have resulted in one of the objectives of the Designation Order, as phrased in the explanatory memorandum, having been insufficiently met:

‘Providing one instruction to two services with regard to the subjects referred to requires a careful alignment and collaboration between the two services and the immediate sharing of relevant information.’

It follows from the WIV 2002 (art. 58) that the two services have a statutory obligation to render assistance to one another as much as possible. This in order to ‘arrive at the services acting as efficiently and effectively as possible’.⁵

The Committee has established that the country division opted for has (also) resulted in several problems concerning the alignment of tasks between the two services. The Committee recommends investigating the possibilities for another division, better geared to the special tasks of the two services.

However, a certain overlap of tasks – also in the event of a more distinct division – cannot be avoided. According to the Committee, a special task is set aside here is for the heads of the services, who are in charge of collaboration between the services. In particular for an investigation as the one in hand the Committee considers this important, in view of the clear tasks which the services have in this investigative area, and in view of the fact that overlap is to be expected in this context.

The Committee also emphasises here the role that could be played by the coordinator of the intelligence and security services (art. 4 WIV 2002). This coordinator has the task, among other things, to coordinate, in accordance with the instructions of the Prime Minister in

⁵ Parliamentary documents II 1997/98, 25 877, no. 3, p. 72.

accordance with the other Ministers, the execution of tasks of the services. The legislator says in this context:

‘It is evident, that (...) both services benefit from an alignment of tasks between the services where necessary. In so far as this occurs insufficiently in practice, article 4 third paragraph under b of the legislative proposal gives a provision that in our view is adequate; for it is the coordinator’s task to coordinate the execution of tasks by the services.’⁶

Art. 5 WIV 2002 provides that the heads of the services are to render their assistance to the coordinator in executing his task. The Committee notes in this context that the coordinator can only perform his statutory tasks if he has sufficient information. According to art. 5 WIV 2002 the heads of the services are responsible for providing this information.

It is the Committee’s recommendation to involve the coordinator of the intelligence and security services (art. 4 WIV 2002) as closely as possible in the alignment of tasks and activities of the two services in the area of the proliferation of weapons of mass destruction.

The Committee has established that the collaboration between the AIVD and MIVD has been properly organised by the management of the two services and has therefore concluded that the importance of collaboration has been subscribed to by both. We note here that points of improvement are of course possible on this aspect. In the case in hand however, the problem occurred on the services’ shop floor. The Committee points to the fact that the management of the services is also responsible for communicating the agreements made within the organisation.

Besides the question of the modus to be opted for in respect of a proper alignment of tasks, we can also ask the question whether it is to be recommended to organise a single task force team consisting of both staff members of the AIVD and the MIVD who are to be engaged in the investigation of the proliferation of weapons of mass destruction. The overlap of tasks and the problems that came to light as a result of this overlap, could then be avoided, thus satisfying the starting point formulated in art. 58 paragraph 1 WIV 2002. Also, according to

⁶ Parliamentary documents II 1997/98, 25 877, no. 3, p. 24.

the Committee, this could result in a more efficient investigation into the proliferation of weapons of mass destruction.

The Committee recommends performing an investigation into the practical pros and cons of a single operative team.

4. Collaboration of the AIVD with foreign fellow services

In the investigation into the proliferation of weapons of mass destruction the AIVD joins forces with several fellow services. This concerns both providing support and providing information to these services. Below, the Committee will enter into the first form of collaboration.

For several foreign fellow services the AIVD has provided support within the context of the investigation into the proliferation of weapons of mass destruction. Art. 59 WIV 2002 provides the statutory framework for this form of collaboration, among other things. Art. 59 paragraph 4 WIV 2002 provides that technical support and other forms of support can be given to the intelligence and security services of other countries in connection with the interest to be looked after by these organisations, in so far as:

- a. these interests are not inconsistent with the interests to be represented by the services;
and
- b. a proper execution of the tasks of the services is not incompatible with rendering said forms of support.

As regards the ‘interest to be represented by the service’ the government notes:

‘The criterion referred to under a (...) has necessarily been phrased in general terms; for this concerns a variety of interests. Sometimes these interests have been translated into a concretely adopted government policy, such as the human rights policy, but often this is not the case.’⁷

From this consideration we may conclude that the service has to look after a large number of interests, but that it is impossible to give a comprehensive enumeration of these interests.

⁷ Parliamentary documents II 1999/00, 25 877, no. 8, p. 101.

Besides, the concrete formulation of the concept strongly depends on the concrete circumstances.

The Committee has established that there is some confusion within the AIVD regarding the question who, from a substantive point of view, bears responsibility for these operations. The Special Operations (SO) department, one of the support departments of the Directorate Special Means of Intelligence (D5), occupied itself with the factual organisation of the operations, which should be focused on logistic support in particular. According to the proliferation team, this support department was however – during the period in which the operations were accommodated with this team – not responsible for the operations from a substantive point of view. The steering and monitoring of the operations was, according to this team, its responsibility. The support SO department on the other hand considered itself to be primarily responsible for the operations.

The Committee recommends creating a clear distinction between the tasks and responsibilities of the SO department and that of the primary directorates.

In this context the Committee points to the importance attached to this subject and described clearly in the AIVD Handbook, and which can therefore be considered known throughout the service. The Committee recommends adjusting the AIVD Handbook on this point.

The team had the impression that the operations comprised more than the team was aware of. According to the team, it therefore received too little information from the foreign fellow organisation on the organisation and results of the operation. Attempts by the team to change this were to no avail. Also, the team was unable to release sufficient capacity for the operations.

The Committee has tested the collaboration of the AIVD with the foreign service against the statutory requirements under art. 59 WIV 2002.

The Committee is of the opinion that, in view of the clear link with the Netherlands, i.e. the AIVD, involved in said operations, a certain degree of supervision over the operations is required. This in order to assess whether or not the operations remain within the boundaries set by art. 59 paragraph 4 WIV 2002. In this case this concerns the assessment whether the operations are not inconsistent with the interests to be represented by the service, or whether a proper execution of tasks is not incompatible with the providing of support.

More in general, the Committee notes that in its opinion an increased form of supervision by the AIVD over such operations is needed under certain specific circumstances, for example the deployment of foreign agents on Dutch territory, or the (direct) involvement of sources (agents and/or information) of the AIVD in the operations.

About the deployment of foreign agents on Dutch territory the legislator notes the following:

‘The deployment of foreign agents on Dutch territory is in principle only allowed if the relevant Dutch service has given permission for this – in practice this is the BVD [the predecessor of the AIVD] – and under the terms attached to this permission. (...) If permission is granted, the deployment occurs under the responsibility of the minister responsible for the relevant Dutch service. The deployment on Dutch territory of the relevant foreign agent also, in principle, takes place under the direction of the Dutch service, however, the foreign service continues to be involved as an equal partner. (...) It is further up to the Dutch service to exercise control over the actions of the foreign agent and to check whether or not these actions meet the terms set.’⁸

These requirements, according to the Committee, are to be regarded as a consequence of the provisions of art. 59 WIV 2002. The Committee understands the ‘interests which the service needs to represent’ in the meaning of art. 59 paragraph 4 WIV 2002 to include among other things the supervision by the AIVD of the activities of foreign agents on Dutch territory, in particular to oversee the possible risks involved in such operations.

Exercising more far-reaching control over the organisation of the (collaborative) partnership is, according to the Committee, also needed when this could entail risks for sources of the AIVD. For, it follows from art. 15 sub c WIV 2002 that (the head of) the service is to ensure the safety of persons with the cooperation of whom data is collected. In the Committee’s view this duty of care is also to be regarded as one of the ‘interests the service is to represent’ in the meaning of art. 59 paragraph 4 WIV 2002.

Said requirements, which are related to the supervision over the collaborative partnerships with foreign fellow services by the AIVD, according to the Committee entail an assessment as regards the substance of the operations. The Committee is of the opinion that the team under whose team instruction the operations fall – in the context of a proper execution of tasks – is

⁸ Parliamentary documents II 2000/01, 25 877, no. 14, p. 64.

best suited to make such an assessment. For this will often require specific expertise, which the relevant team can be assumed to have.

In the current case it was not possible for the relevant team of the AIVD to exercise sufficient control over the operations, in particular because in the team's view it received insufficient data from the foreign fellow service. Partly because of this the team decided to end its involvement in the operations.

It strikes the Committee that prior to its ending its involvement with the operations, the team did not call in the Foreign Relations department (BR) of Directorate 5, for the contacts between the AIVD and the foreign fellow organisations are in principle to run via this department.

The operations subsequently continued under responsibility of the support SO department. There was no direct Dutch interest involved in this. The Committee would like to note the following about this.

The Committee subscribes to the position that it may be necessary and desirable to provide support to foreign fellow services without this involving a direct Dutch interest. Intelligence and security services work together according to the principle of reciprocity (the 'quid pro quo' principle), which means that an intelligence and security service provides support to a fellow organisation in the knowledge that it will actually receive this support in turn when it requests this. Rendering such form of support is therefore in the interest of both services, apart from the fact that otherwise there might be a proliferation of non-controlled activities of foreign services on Dutch territory. However, these operations will have to meet the provisions laid down in the WIV 2002.

The AIVD incidentally observes that for a far-reaching form of collaboration with a foreign fellow service (such as, for example, conducting a joint operation) in principle only those fellow services qualify which on professionalism and reliability have proven their worth to the AIVD.

A substantive assessment and substantive control over the operations remains necessary with a view to the requirements laid down in art. 59 in conjunction with art 15 WIV 2002. It is the Committee's opinion that if there is no, or no longer any, involvement of the AIVD, the management of the service is to take a decision about the question whether a concerted operation will be started or continued by SO, which decision is to include all relevant

interests. The management of the service will be informed about all requests for collaboration made by foreign fellow services to the SO department through weekly reports sent by SO to the management. These reports will state SO's proposal to put the collaborative partnership under a specific team of the AIVD. This way the management of the service will be able to exercise control over the way in which the SO department renders services to its foreign fellow services.

The Committee wishes to raise the question what room there is left for the SO department, when the team (which is responsible as regards substance and assigning of the responsibility of the operations) has decided to end its involvement in the operations.

According to the Committee, a modus needs to be found for allowing the service to exercise adequate (substantive) control over such operations.

5. Exercising (special) powers

In its investigation into the proliferation of weapons of mass destruction and their means of delivery the AIVD used special powers besides the right to request information from informants under art. 17 WIV 2002. However, these powers are not used by the team on a large scale. It is the Committee's view that the use of these powers complied with the statutory requirements, including the requirements of necessity (art. 18 WIV 2002), subsidiarity and proportionality (art. 31 and 32 WIV 2002). However, the Committee wishes to make a few observations concerning the use of certain special powers.

5.1 Recording emergency actions

The Committee has found that several times the AIVD, due to the urgent nature of an action, was unable to timely record a request for the use of a special power and the permission for using it. In such emergency actions, permission is in the first place often given orally by persons authorised to do so. At a later stage, such a request as well as the permission are to be recorded as yet. The Committee has established that in some cases a relatively long period was involved before a written record was made. It is the Committee's recommendation to expedite the coming about of such a written record.

5.2 Searching a dwelling

In its investigation the Committee encountered a number of legal issues concerning the search of a dwelling (art. 22 WIV 2002).

In several statutory provisions dwellings occupy a special position in the law.⁹ Because of the often substantial invasion into someone's privacy, exercising special powers in dwellings is subject to strict rules. For example, article 22 paragraph 4 of the WIV 2002 provides that only the Minister involved may give written permission to search a dwelling.

Art. 22 paragraph 5 of the WIV 2002 provides that the Minister's permission is given for a maximum period of three days. The legal history says that alignment was sought with the period applicable under the General Act on Entry into Dwellings applied to the permission for entering dwellings without the permission of the occupant.¹⁰

The Committee has found that the AIVD had incidentally requested the Minister of the Interior and Kingdom Relations for permission to exercise the power within a specific period (e.g. three months) for a period of three days.

In the Committee's view art. 22 paragraph 5 WIV 2002 offers insufficient room for this view held by the AIVD. The Act does not explicitly state that the Minister of the Interior and Kingdom Relation's permission can commence on another day than that on which the permission was granted. The latter, in the Committee's view, would indeed be too great a deviation from the basic premise of the General Act on Entry into Dwellings and would render the link stated by the legislator to the term specified in this Act useless.

The Committee acknowledges that it is often difficult for the AIVD to assess when the power will be exercised. Unlike the exercise of the powers in the context of criminal proceedings, the exercise of powers by the AIVD is usually not done in public. Therefore it is usually not clear beforehand when the AIVD will be able to - secretly - exercise the power in question. As a result, the statutory period of three days is in some cases too strict for the AIVD.

The Committee learned that an amendment of the law is being prepared which seeks to give the AIVD more scope. In connection with the proposed amendment of the law the Committee wished to note the following.

In the Committee's opinion in the event of an amendment of the law a proper balance needs to be found between giving the AIVD more scope and offering sufficient legal protection to those involved. The latter means among other things that the Minister of the Interior and

⁹ See for example art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the General Act on Entry into Dwellings.

¹⁰ Parliamentary documents II 1997/98, 25 877, no. 3, p. 36.

Kingdom Relations is to give his permission based on all the circumstances of the case. If the Minister has given permission a relatively long period in advance of the actual exercise of the power, there is a risk that the circumstances based on which permission was given, have meanwhile changed. For this reason it is necessary in the Committee's view to find a proper balance in this context. This point is important especially with a power such as the present one, because of the generally substantial invasion of the involved person's privacy.

When the AIVD proceeds to exercising the power to search a dwelling, the Head of the AIVD is separately asked permission for entering the dwelling under art. 30 WIV 2002.

Strictly speaking the AIVD does more here than required by law. For art. 30 paragraph 4 WIV 2002 provides that under art. 22 paragraph 4 WIV 2002 the permission given by the Minister of the Interior and Kingdom Relations for searching a dwelling, also counts as authorisation in the sense of art. 2 of the General Act on Entry into Dwellings. Separate permission for entering a dwelling is therefore not required. The reasoning behind this is that the more (searching a dwelling) includes the less (entering a dwelling).

The AIVD however observes that the authorisation for entering into dwellings also states the persons who will exercise the power, thus meeting the requirement laid down in art. 30 paragraph 3 WIV 2002. In this sense the request put before the Head of the AIVD for permission to enter a dwelling, is certainly relevant.

In the Committee's view the use of the power to search a dwelling, incidentally, met the criteria of necessity (art. 18 WIV 2002), subsidiarity, and proportionality (art. 31 and 32 WIV 2002).

Several times the AIVD provided technical support to the Public Prosecutions Department within the context of a search of a dwelling for prosecution purposes. In case of such a search the examining magistrate is often the competent authority. When providing assistance the AIVD sometimes also independently requested permission for searching a dwelling under art. 22 paragraph 4 WIV 2002. Strictly speaking the AIVD was not held to do so, since in this case the AIVD only provided support to the Public Prosecutions Department (art. 63 WIV 2002). In order to avoid complications (e.g. with regard to the role the AIVD staff members are expected to play in this context) the AIVD has once or twice asked requested the Minister of the Interior and Kingdom Relations for independent permission to search a dwelling. Whether such permission is requested, according to the AIVD depends on the

circumstances of the case. In such a case however the requirements ensuing from the WIV 2002 are to be met. In the Committee's view the use of the power satisfied these requirements.

5.3 The use of SIGINT (art. 27 WIV 2002) by the AIVD

Monitoring and recording non-cable telecommunication – also referred to as SIGINT (Signals Intelligence) – and the use of a further selection of these data, is a relatively new means of intelligence for the AIVD. The MIVD has already used this means for some time and therefore has more experience with this power.

In 2003 a covenant was concluded between the AIVD and the MIVD about a newly to be formed organisation, the National SIGINT Organisation (NSO), in which both services are to participate.¹¹ Until the formation of this organisation the AIVD is dependent on the cooperation of the Signals Intelligence department (AVI) of the MIVD for using this power. The AIVD's selection criteria (see art. 27 paragraph 3 WIV 2002) with respect to the bulk of data received are currently under investigation at the MIVD, the results of which will be provided to the AIVD.

The Committee detects within the AIVD a feeling of routine as far as the use of the power under art 27 WIV 2002 is concerned. This also becomes clear in the motivation used regarding the use of the selection criteria such as described in art. 27 paragraph 3 sub a and b WIV 2002.¹² Initially the AIVD used a rather general phrasing in relation to the selection based on these criteria. Continuing new insight has convinced the AIVD that a request for the use of these criteria requires a more extensive motivation. Currently the reason(s) for selecting with regard to a concrete person or organisation is (are) indicated in as much detail as possible.

The Committee subscribes to the AIVD's latter course of action. In the Committee's view, by so doing the AIVD meets the requirement of art. 27 paragraph 4 sub b WIV 2002, which provides that the request for granting permission shall at any rate state the reason why the selection will be used.

¹¹ See for this covenant: Government Gazette 9 October 2003, no. 195, p. 11.

¹² This concerns data relating to the identity of a person or an organisation, or, respectively, a number as referred to in art. 1.1, under t, of the Telecommunications Act, or of any technical feature.

Art. 27 paragraph 3 sub c WIV 2002 states that the monitoring and recording of telecommunication can be selected based on catchwords related to a specified subject. Each year the Minister of the Interior and Kingdom Relations is to give permission for the subjects to be selected (art. 27, paragraph 5 WIV 2002). The establishing of catchwords related to these subjects is subject to art. 19 WIV 200, and therefore it is possible that the granting of permission by the Minister of the Interior and Kingdom Relations or, on behalf of him, the Head of the AIVD, is mandated to their subordinates.

Currently the Head of the AIVD is formulating catchwords, contrary to the situation at the MIVD, where senior analysts are responsible for this power. The present mandate regulation of the AIVD does allow for catchwords to be formulated at a lower level, but the AIVD currently does not make use of this possibility. Since it is a relatively new competence for the AIVD, the AIVD currently considers it desirable that a thorough (legal) test is conducted in advance of the way in which the power is used within the service. At a later stage the AIVD could as yet opt for formulating catchwords – in accordance with the mandate regulation – at a lower level.

Reason for the difference between the two services in respect of formulating catchwords could be that the MIVD has more experience in the use of this competence and that it is used more frequently by the MIVD than by the AIVD. Currently for the AIVD it is also possible (from a practical point of view) that permission at a high level is granted; this in contrast to the MIVD.

It is the Committee's opinion that subject to certain conditions it is allowed to give a mandate for this power. These conditions see in particular to exercising sufficient supervision by the service over the catchwords used. This supervision is necessary to determine whether the staff member of the service entering the catchwords, is confining himself to the subjects approved by the Minister of the Interior and Kingdom Relations.¹³ Otherwise there would be a danger of the team's instruction for investigation (gradually) changing as regards substance and composition. Apart from this internal supervision, the Committee also supervises the catchwords entered.

5.4 Long-term investigation

¹³ See for this also the Committee's supervisory report concerning the investigation by the MIVD into the proliferation of weapons of mass destruction and means of delivery, § 4.2.4.

Over a long period the AIVD has invested in an investigation into a specific person, in the context of which several special powers were employed.

The AIVD noted that it was compelled to continue the investigation since other bodies – including the Ministry of Economic Affairs – had too little means to adequately prevent the risk of proliferation. The AIVD in this context points to the legal difficulties that exist in proving that a person has actually provided goods relevant to proliferation or knowledge to a high-risk country.

This concerned a difficult weighing-up of interests, in the context of which a continuous (major) proliferation risk was to be assessed against the principle of proportionality under art. 31 paragraph 3 and 4 WIV 2002, which requires that exercising special powers should be proportionate to the intended object. This requirement implies among other things that a person may not be confronted with special powers for an unnecessarily long period of time. The Committee is of the opinion that the investigation and in connection with this the use of special powers by the AIVD continued to be legitimate in this case. The employment of special powers in this investigation in the Committee's view satisfied the requirements of necessity (art. 18 WIV 2002), subsidiarity and proportionality (art. 31 and 32 WIV 2002).

6. Conclusions and recommendations

6.1 The Committee has established that the division into countries was one of the problems involved in the alignment of tasks between the services. The Committee recommends an investigation into the possibilities for a different division, in the context of which alignment is sought with the various tasks of the two services. In the Committee's opinion this does not affect the responsibilities of the heads of these services for a proper alignment of tasks and collaboration.

The Committee recommends that the coordinator of the intelligence and security services (art. 4 WIV 2002) is to be involved as closely as possible in the alignment of tasks and activities of the two services in the area of the investigation into the proliferation of weapons of mass destruction.

The practical advantages and disadvantages of a single operation team consisting of the AIVD and MIVD are to be studied in more detail.

6.2 The Committee has established that a lack of clarity existed within the AIVD on the question who (from a substantive point of view) was responsible for a number of joint operations with a foreign fellow service. The Committee recommends a clear division of the tasks and responsibilities between the SO department and the primary directorates and that the AIVD Handbook will be adjusted in this respect.

The Committee is of the opinion that it follows from art. 59, paragraph 4 WIV that with respect to granting support to a foreign fellow service a certain degree of supervision is required. In the Committee's view, a more profound form of supervision by the AIVD of such collaborative partnerships is required where the use of foreign agents on Dutch territory is involved, or the (direct) involvement of sources (agents and/or informants) of the AIVD.

In the Committee's opinion the team under whose team instruction a joint operation with a foreign fellow service falls will – in the context of a proper execution of tasks – best be able to make an assessment as regards substance, required for monitoring such an operation.

It is the Committee's opinion that when a joint operation with a foreign fellow service does not, or no longer, fall under a team instruction, the management of the service is to take a decision about the question whether this operation will be started or continued, respectively. In the Committee's opinion a modus needs to be found whereby the service also in this situation will be able to exercise adequate supervision over the operation.

6.3 The Committee has found that the use of special powers satisfied the statutory requirements, including the requirements of necessity (art. 18 WIV 2002), subsidiarity and proportionality (art. 31 and 32 WIV 2002).

6.4 The Committee recommends that in the event of emergency actions the AIVD ensures the timely recording of the request and permission for the use of a special power.

6.5 The Committee is of the opinion that the WIV 2002 does not offer sufficient room for the interpretation which the AIVD in one or two cases has given to the period under art. 22 paragraph 4 WIV 2002.

In case of a (possible) amendment of the law, in the Committee's opinion a proper balance should be found between giving the AIVD more scope and offering sufficient legal protection to the person(s) involved.

6.6 The Committee is of the opinion that currently the AIVD sufficiently meets its obligation to motivate the use of the selection criteria under art. 27 paragraph 4 sub b WIV 2002.

Giving a mandate regarding the power to establish catchwords (art. 27 paragraph 5 and 6 WIV 2002) based on which a selection can be made, is in the Committee's view permitted provided that sufficient supervision is exercised over the use of this power.

6.7 The Committee is of the opinion that the long-term investigation of the AIVD into a specific person, in the context of which several special powers were employed, considering all the circumstances of the case, satisfied the requirements of necessity (art. 18 WIV 2002), subsidiarity and proportionality (art. 31 and 32 WIV 2002).

Thus adopted at the meeting of the Committee of 10 August 2005.