

# MIVD & Targeting

Brochure CTIVD report no. 50  
on the MIVD's contributions to targeting

## What is a contribution to targeting?

The provision of intelligence that can be used in making the decision to use force in a (military) operation.

## Background to the investigation

The potential use of Dutch intelligence for the unlawful use of force by other states has been discussed regularly in the Dutch Parliament in recent years. The debates revealed the existence of questions about the role and activities of the MIVD. The CTIVD's investigation covered namely the period from 1 January 2013 up to and including 31 December 2015.

## Purpose of this report

With this report, the CTIVD intends to provide insight into:

- What targeting is;
- The legal framework applicable to the MIVD's contributions to targeting;
- The contributions of the MIVD to targeting;
- The (un-)lawfulness of this.

## Desired legal framework

The CTIVD points to the importance of a clear legal framework for the actions of the MIVD. It provides the following framework in the report:

1. For each cooperative relationship with a foreign service, the MIVD must assess the risks of contributing to the unlawful use of force (weighting notes).
2. The MIVD must record its considerations in writing for each individual provision of intelligence that can reasonably be used for targeting.
3. Each provision must include the written condition that the intelligence provided cannot be passed on or used for violations of international law.
4. Following the provision of intelligence, the MIVD must remain alert to indications that this intelligence has been used for the unlawful use of force. (*feedback loop*).

This framework must be guiding for future actions. It has been elaborated in a table on page 18.

## When is a contribution of the MIVD to targeting unlawful?

When the MIVD accepts an unacceptable risk of a contribution to the unlawful use of force when providing intelligence to a foreign service or a military coalition.

## Conclusions on policy and practice

The CTIVD has established the following regarding the MIVD's policy and recent practice:

1. The legal framework applied by the MIVD in its current intelligence provision policy is insufficiently focused on the risk that this can contribute to the unlawful use of force.
2. The MIVD has purposefully made a contribution to targeting within the scope of two military missions (in which the Netherlands participated). These instances of intelligence provision were in accordance with the law.
3. Except for military missions in which the Netherlands participated, the MIVD has not provided intelligence to foreign services for the express purpose of contributing to targeting.
4. In spite of the MIVD not intending to contribute to targeting, some of the intelligence provided to foreign services could in principle be used for that purpose. The CTIVD has not found any concrete indications that the MIVD has accepted an unacceptable risk of a contribution to the unlawful use of force.

The CTIVD cannot answer the question of whether (lethal) force has been used as a result of intelligence of the MIVD. The foreign recipients of the intelligence are not accountable in that regard and the CTIVD does not have the power to investigate those recipients. In its investigation at the MIVD, the CTIVD has not encountered any concrete indications that intelligence provided to foreign services (except for military missions in which the Netherlands participated) has been used for the (lethal) use of force.

Not even the application of the legal framework described as desirable by the CTIVD will exclude that intelligence provided by the MIVD to foreign services can be used for the unlawful use of force without this being the MIVD's intent. Applying the legal framework can, however, reduce significantly the risk of this happening.