

Parliamentary Oversight of Intelligence Services

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**Geneva Centre for the
Democratic Control
of Armed Forces**

This document is part of the DCAF Backgrounder series, which provides practitioners with concise introductions to a variety of issues in the field of Security Sector Governance and Security Sector Reform.

What is the role of Parliament in intelligence scrutiny?

Parliamentary oversight of intelligence services is one element of the five-layer process of intelligence scrutiny. (See box on page 2.) Although parliaments tend to have very little authority over operational matters, they have broad powers to determine the mandate and budget of the intelligence services, as well as to scrutinise its conduct after the fact. In some cases, Parliament, or at least some of its members, must be informed of or authorise certain operational matters.

Parliaments scrutinise intelligence services in several different capacities. Some tasks are performed by the body as a whole, while others are delegated to committees. Committees that address intelligence issues include specialised parliamentary intelligence oversight committees (PIOCs), budgetary committees and other committees whose mandates include regulating the ministries under which certain intelligence agencies are grouped, such as the defence ministry or the interior ministry.

PIOCs perform the bulk of parliamentary oversight tasks in most democracies – a notable exception being France, which does not have such a committee. PIOCs can be composed of either parliamentarians or of experts working on behalf of parliaments, such as in Norway and Canada. Not only do PIOCs provide a forum for the discussion of intelligence issues, but they are also a repository of knowledge and expertise. Members are appointed and confirmed by either the parliament as a whole, special committees on procedure, or by the executive – with or without parliamentary confirmation. (For examples of PIOCs in four countries, see table on page 6.)

Why should parliaments take an active interest in intelligence oversight?

Parliaments need high-quality intelligence in order to make appropriate decisions on national security in a number of areas, from setting the size and budget of specific security forces to authorising the use of force. In

addition to being consumers of intelligence, parliaments also help ensure the following:

- **Democratic legitimacy of intelligence services.** Parliamentary oversight can help to ensure that intelligence services respect democratic norms.
- **Prevention of abuse.** Because of the nature of the services that intelligence services render to the state, they are prone to abuse. As they operate with a relative degree of secrecy on national territory, there are valid concerns about the way in which domestic intelligence services exercise their extraordinary powers. Parliamentary oversight can help to ensure that intelligence services operate according to law.
- **Intelligence sector efficiency.** The parliament is often the final arbiter of the performance of security sector institutions and as such must actively investigate their performance to ensure that tax monies are spent appropriately.

What is the oversight mandate of Parliament?

In most democracies, parliaments have broad mandates over intelligence services, but the specific mandates of PIOC's vary widely. Parliamentary powers are divided into two main categories: legislation and investigation. In some countries, they may be informed of, or even play a role in authorising, certain operational activities.

Legislation. As a full body or in PIOC's or other committees, parliaments draft and negotiate legislation on issues such as:

- the mandates of the individual services;
- methods and structures of intelligence cooperation;
- budget formulation and approval and/or recommendations to the budget committee or plenum.

Five layers of intelligence scrutiny

Intelligence scrutiny is the general term for examination and evaluation of intelligence service activities. Other than parliamentary oversight, it includes:

- **Internal control** – the authority and corresponding liability of directing officials for the actions of their subordinates (including mechanisms for protecting the rights of officers and disciplining individuals within the agency);
- **Executive control** – the liability of the relevant executive officials and/or ministries responsible for the intelligence services;
- **Judicial review** – the judiciary's role in authorising certain intelligence activities and judging alleged violations of the law; and
- **External oversight by the media and civil society** – their role in promoting public debate on the activities of the intelligence services and the accountability of officials.

Deficiencies in one level can affect the entire process. For instance, parliamentarians can only effectively scrutinise the performance of ministers if the latter possess real powers of executive control.

Investigation. In many parliaments, the PIOC can review:

- compliance of intelligence actions with national law and humanitarian norms; and
- the effectiveness of the intelligence services in using resources and meeting national needs and goals.

Specific investigatory powers of the PIOC can include:

- initiating investigations based on complaints referred to them by individuals, the executive or members of parliament;
- issuing subpoenas for members of the intelligence community and requests for information, files or reports on specific issues;
- establishing independent investigatory or review boards;
- calling for expert advice on complicated subject matters;

- referring complaints or cases to the judicial authorities or to parliamentary committees (e.g., the human rights committee in certain countries); and
- monitoring training methods and methods of analysis used.

In some countries, the parliament must be informed of, or even has a role in authorising, certain operational matters. For instance, in the United States, key members of the PIOC in each house of the Congress must be notified in advance of covert actions. In Germany, any exercise of extraordinary powers considered to be in violation of fundamental rights, such as wiretapping or censorship, are regularly reviewed and reauthorised by a group appointed by the PIOC. While some maintain that too much bureaucratic involvement can hamper the effectiveness of the intelligence agencies, these procedures are valuable as powerful checks on the power of the executive.

What are the key challenges of intelligence oversight?

Authority. The mandate of PIOC and other oversight bodies can be hampered by the exemption of certain intelligence services from their remit, or the outsourcing to private actors of tasks traditionally performed by intelligence services. In addition, increased international cooperation in fields such as counter-terrorism can complicate oversight of certain foreign intelligence activities.

Ability. Intelligence oversight requires a good understanding of the role of intelligence services in the national intelligence system. (See DCAF Backgrounder on Intelligence Services.) In addition, the PIOC must have access to sufficient funds and an experienced staff to conduct research and investigations.

Attitude. There must be a genuine willingness on the part of the PIOC and the parliament as a whole to take an active approach to intelligence oversight, including such measures as requesting records and initiating investigations of suspicious or questionable conduct.

Secrecy versus Transparency. Intelligence oversight must ensure adherence to democratic norms whilst maintaining a necessary level of secrecy, especially concerning operational matters. This is also important if the intelligence agencies are to be confident that their parliaments will handle sensitive material in a confidential manner.

How can these challenges be met?

The differences in systems of national intelligence oversight reflect how different political cultures have prioritised certain challenges over others. Nevertheless, in response to specific problems the following approaches may be considered:

Authority. A comprehensive *law on intelligence and intelligence oversight* must cover all of a nation's intelligence services, providing a specific mandate for each in terms of:

- geographical area of operations;
- subject matter to be investigated;
- authorised investigation techniques;
- nature of cooperation between the services, the executive and the parliament; and
- rules concerning the control of, access to and distribution of resources.

In addition, PIOC should be attributed by statute strong powers of investigation and review as well as rights to monitor the implementation of their recommendations.

Ability. Expertise. Parliamentarians should have an experienced, vetted support staff to assist them.

Preservation of knowledge and experience. This can be facilitated by members serving throughout their legislative careers, though there is a risk that members become too closely affiliated with the intelligence services to properly oversee their activities.

Diversity of background of members. Members of the PIOC should ideally come from backgrounds that reflect the political, ethnic and religious diversity of the country. In some systems, the chairman of the PIOC must be a member of the opposition party.

Prevention of collusion. Former members of the intelligence community and former responsible ministers do not usually serve with a PIOC for some period of time. The role of the executive in the selection of PIOC members should be limited.

Attitude. The following measures are important in shaping parliamentarians' attitudes towards their responsibilities:

- effective training in intelligence issues;
- sufficient staff and resources; and
- adequate financial compensation.

At the same time, it is the duty of political parties and voters to choose qualified candidates for Parliament and for parliamentarians to pick appropriate individuals for the PIOC.

Secrecy versus Transparency. *Well-codified vetting criteria.* If members of the PIOC are vetted, the vetting criteria should be unclassified and clear, and should include the possibility of appeal.

Adequate reporting for intelligence services. Regular reporting requirements, such as annual reports, should:

- contain content specified in the framework of an intelligence oversight

law rather than being at the discretion of the executive or agency; and

- specify budgetary, organisational and operational detail where possible, even if this requires separate classified and unclassified versions for vetted and unvetted members of parliament and the general public.

In addition to regular reporting, the PIOC should have the power to request more specific reports on an *ad hoc* basis. In turn, the PIOC should also be obliged to report regularly to Parliament on its findings, while generally informing the intelligence services of the contents of their report. The recommendations and reports of the PIOC should be debated in Parliament.

Further Information

Checks and Imbalances? Intelligence Governance in Contemporary France
Born and Wetzling, in 'Democratic Control of Intelligence Services'
Born and Caparini (eds.)
Ashgate, 2007

European intelligence governance and democratic accountability
Wetzling, in 'Delegation and Mechanisms of Accountability in the European Union'
Gustavsson, Karlson and Persson (eds.)
Uppsala University Press, 2006

Making Intelligence Accountable:
Legal Standards and Best Practice for
Oversight of Intelligence Agencies
Born and Leigh, 2005
www.dcaf.ch/handbooks

Intelligence and Security Legislation for
Security Sector Reform
Hannah, O'Brien and Rathmell, 2005
www.rand.org/pubs/technical_reports/2005/RAND_TR288.pdf

Parliamentary Oversight of the Intelligence Services in the WEU Countries: Current Situation and Prospects for Reform
Interparliamentary European Security and Defence Assembly, 2002

Related Issues

- Civil Liberties and National Security
- Contemporary Challenges for the Intelligence Services
- Democratic Governance
- Intelligence Fusion and Coordination
- Intelligence Reform in Transition Countries
- Intelligence Services
- Parliamentary Committees on Defence and Security

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Thorsten Wetzling and James Stocker contributed the material for this Backgrounder. James Stocker also provided editorial assistance.

Oversight Committees in Four Countries

Country			
United States	Germany	South Africa	United Kingdom
PIOC Name			
House Permanent Select and Senate Select Committee on Intelligence (two committees)	Parliamentary Control Panel	Joint Standing Committee on Intelligence	Intelligence and Security Committee
Mandate			
Strong	Strong	Limited	Limited
Powers of Review			
Legality of actions and effectiveness of all intelligence agencies	Legality of actions and effectiveness of all intelligence agencies	Legality of actions and effectiveness, but limited budgetary control No powers over military services	Finances, administration and policy of MI5, MI6, and GCHQ but not military intelligence or legality of actions
Legislation			
Both PIOC's initiate and consider legislation	Initiates and considers legislation	Initiates and considers legislation	None
Nominations and Appointments			
Senate Select Committee approves top intelligence appointments	None	Nominates Inspector-General for Intelligence Parliament as a whole approves	None
Membership			
Members of each house, appointed by House and Senate leaders	Bundestag representatives, appointed by the Bundestag	MPs from both houses, appointed by the President	MPs from both houses, appointed by the Prime Minister in consultation with the Opposition leader
Powers of Investigation, Access to Information			
Do not investigate complaints Both PIOC's have total access to all relevant information Both PIOC's are endowed with subpoena powers Upon authorizing covert actions, the President must inform both PIOC's, though respecting operational considerations	Investigates citizens' complaints Can request information from government and intelligence services Has subpoena powers Entitled to request testimony and site visits	Can order investigations by the Inspector-General or the Heads of Intelligence Services Has unlimited access to files Has subpoena powers Can refer cases to the Parliamentary Human Rights Commission	No formal investigation remit Does not check legality of specific actions Can request information, but not specific documents Has no subpoena powers, but ministers and agency heads give testimony as needed
Budget			
Both PIOC's hold authorisation and appropriation powers Both PIOC's make recommendations to budgetary committee	Approves budget plans Consults with Budgetary Select Committee Hears testimony	No direct budgetary control powers, but participates in formulation	Has budget review power, but does not authorise Chairman of the House of Commons' Public Accounts Committee oversees expenditure details

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