

1. Is your committee mandated to examine international intelligence cooperation in which the intelligence and security services might be involved? If so, how do you go about examining these issues?

As far as the Belgian review body is concerned, this question cannot be answered with a simple affirmative. I will explain further.

Our Committee is responsible for reviewing the activities and functioning of the two Belgian intelligence services: State Security or the civil intelligence service, and its military counterpart, the General Intelligence and Security Service. Except for the recently established anti-terrorism centre, the Committee has neither the power nor the authority to review other services.

In other words, the Standing Committee I is not mandated to exercise direct review over the operation of foreign intelligence services, even if these are active in Belgium or cooperate with the two Belgian intelligence services.

The review committee is mandated, however, and here we come to the crux of the matter, to review the way in which the Belgian intelligence services cooperate with foreign intelligence services.

Indeed, Article 20 of the 1998 Intelligence Services Act states explicitly that "the intelligence and security services are responsible for ensuring that there is cooperation with foreign intelligence and security services".

Since the Standing Committee I is to review the legitimacy and efficacy of all aspects of the operation of the Belgian intelligence services, our Committee also reviews this bilateral or international cooperation. In other words, our Review Act has entrusted us with the task of examining whether the manner in which the Belgian and foreign intelligence services cooperate is legitimate and effective. I shall return to the question of how we do that in my response to the second question.

Are there any examples of such investigations? As yet, the Standing Committee I has not carried out any thematic investigation that specifically focused on international cooperation between the Belgian and foreign intelligence services.

But it does not mean that this issue has not been indirectly addressed in various investigations.

For example, in our investigation into the monitoring of radical Islamism by the intelligence services, as mentioned in our 2007 Activity Report, it was established that the activities of the intelligence services clearly had an international (both bilateral and multilateral) dimension, at both operational and analytical levels. The same findings emerge from the ongoing investigation into the approach adopted by the intelligence services to address the issue of proliferation.

Perhaps I can conclude with another concrete example: the Kimyongür case. Mr Kimyongür, with both Turkish *and* Belgian nationality, is a member of the extreme left-wing group DHKP-C. For the details, I would like to refer to the English version of our Activity Report. During the investigation, the Standing Committee I – albeit marginally – examined the issues that occur when a foreign intelligence service requests and/or receives personal data from a Belgian intelligence service. Thus, for instance, there was the communication from State Security to the Dutch Intelligence and Security Service AIVD that the suspect would be travelling to the Netherlands at a given point. But there are also requests from the Dutch intelligence service to its

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Belgian counterpart concerning the transfer of personal data of the suspect and a few of his relatives. The Committee investigated whether the intelligence services can pass on information of this nature without further ado and came to the conclusion that there was no legal basis for such transfer of information.

2. From what perspective does your committee examine international intelligence cooperation (e.g. legal, human rights-specific, efficacy etc.?). To what extent does your committee use the European Convention on Human Rights as a point of reference?

Our Committee carries out investigations. These investigations can be either descriptive or assume the form of an audit; they can be reactive or prospective; they can be extensive or very brief. But the exercise always comes down to describing the situation 'as is' as accurately as possible. The Committee's investigations are fact-finding missions.

The next step is consequently to compare this current situation 'as is' with 'what should be' by checking compliance with the law in the widest sense of the word, the effectiveness and efficiency of the services' operations, the way they coordinate their activities, and last but not least, the respect for "the rights which the Constitution and the law confer on individuals". That last element is set out in those words in Article 1 of the Act of 1991, which established the Standing Committee I.

It goes without saying that this also applies to fundamental human rights! Should this arise in the course of a practical investigation, the Standing Committee I would not fail to highlight any problems in the workings of the intelligence services in terms of, for example, the right to privacy (Article 8 ECHR), the right to freedom of assembly (Article 11 ECHR) or the right to an effective remedy (Article 13 ECHR).

In any case, the fact that we pay particular attention to the fundamental human rights is clearly evident in our annual recommendations to the Parliament. These recommendations are split into three categories: those concerning the effectiveness of our parliamentary review, those concerning the coordination and efficiency of the intelligence services and, most importantly, those concerning the protection of those rights which the Constitution and the law confer on individuals.

Specifically as regards that last aspect, the Committee recently made two recommendations in its Activity Report, which are important in the context of this study day.

The first recommendation related to the review of foreign intelligence services. As I already mentioned, the review of the activities of foreign intelligence services on Belgian territory is not *as such* included as a statutory task for State Security or the military intelligence service. The Standing Committee I considers that this power should be explicitly provided for in the law.

A second recommendation to the Parliament called for effect to be given to the requirements set out in various articles in the Act on the intelligence and security services. More specifically, the conditions for cooperation with foreign intelligence services *still* have yet to be determined (Article 20, §§ 1 and 3 of the Intelligence Services Act).

However, the Standing Committee I also recommended that the legislator itself should describe in more detail what this cooperation may cover exactly. Does this refer to the exchange of analyses or personal data? Is there scope for collaboration at an operational level? Does this mean that foreign services may be allowed to carry out operations on Belgian soil? As you can see, a number of questions remain open.

### 3. What are the challenges that arise when supervising and reviewing international intelligence cooperation?

As regards the problems, which we encounter in Belgium in connection with the review of international cooperation between intelligence services, I would like to mention two issues in particular.

Firstly, the fact that the Belgian review body is unable to exercise any review over foreign intelligence services. And secondly, the issue of the 'third party rule'.

I have already raised the first question – no review of the operations of foreign services, whether or not they cooperate with Belgian intelligence services.

I would like to add that following the investigation into the CIA flights and the extraordinary renditions, the Belgian Senate has recommended extending the remit of the Standing Committee I to allow us to review the activities of foreign intelligence services on our territory.

The Standing Committee I, however, felt that this must be one of the core tasks of the two intelligence services. The Standing Committee I can then – in keeping with its statutory authority – review the manner in which State Security and the military intelligence service perform this task.

A second issue concerns the third party rule. Some investigations reinforce the conviction of the Standing Committee I that the issue of the third party rule has negative repercussions on review activities. Despite the fact that the Standing Committee I is aware that the intelligence community considers this rule as absolute and that it can be important in the context of the protection of sources, the Committee has repeatedly pressed for reflection on the application of this rule and on its supervision.

The third party rule put forward by the Belgian intelligence services - rightly or, as it appears from certain investigations, wrongly - obstructs the investigation and sometimes stands in the way of the meaningful reporting of the results of an investigation to its principal.

4. How could the supervision and review of international intelligence cooperation be strengthened? Are there any specific mechanisms at national or European level that you believe would strengthen accountability?

As the speakers from the first round table session have already noted, there are various – both legislative and organisational – options to improve the intelligence review work with an international dimension.

I would like to seize this opportunity, however, to make a practical and hopefully feasible proposal for cooperation between the review bodies. Since the Belgae were considered by Julius Caesar to be one of the bravest peoples, let me quote the Latin phrase: “*Experientia mutua omnibus prodest*” or “Mutual experience benefits all”.

We therefore believe very strongly in initiatives aiming at promoting increased dialogue and the exchange of national experiences between intelligence review bodies throughout the EU.

The Belgian review body has for some time been toying with the idea of setting up a “European Centre of Expertise for parliamentary review bodies of intelligence services”. I will explain further.

#### Where did the idea of a Centre of Expertise come from?

I doubt that many of you will dispute my contention that review of intelligence services is not an easy task. And even if it varies from country to country who reviews whom, the exchange of *best practises* or specific information can still contribute to achieving better results. But, and here I come to the practical issue, intelligence work is also an international matter. Review of these services must take account of this reality.

#### What would this Centre of Expertise look like?

The Standing Committee I would like to work on the creation of a closed, interactive web site, offering European parliamentary review bodies a means of sharing intelligence voluntarily or asking specific questions. I shall try to explain this briefly.

The Centre of Expertise would take the form of a web space or site (*members only*), which would only be accessible to parliamentary review bodies which have been specifically established to review the intelligence services.

The proposed Centre of Expertise (or the web space) is oriented towards the exchange and bundling of information and knowledge between the various members, on an entirely voluntary basis. Our idea is that the Centre of Expertise would not promote collective interests, initiate joint investigations, or exchange operational or classified information.

We feel that the creation of such a Centre of Expertise could help achieve a number of important aims:

- offering a ‘knowledge-sharing platform’ for review bodies of intelligence services;

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- making a contribution to the development of the field (providing documentary evidence via annual reports, investigation reports, legislation, jurisprudence, *best practices*, announcements of study days, etc.);
- developing and promoting expertise in the field and thus supporting the professionalization of one's own and other review bodies;
- creating a (virtual) meeting place for all those involved in the review arena;
- facilitating comparative law research;
- and finally, the European Centre of Expertise for parliamentary review bodies of intelligence services would also function as a sounding board (and discussion forum).

Such an initiative might be a first modest but practicable step towards a mechanism at European level that we believe could strengthen accountability. In the medium (or long) term it might lead to more concrete cooperation in investigations.

If the establishment of such a Centre of Expertise were to meet the approval of the representatives of the review bodies present here, the Belgian Committee would be happy to play a pioneering role. We are prepared in this regard to put a number of proposals on paper, to sketch out what such a Centre of Expertise could involve and possibly to organise a seminar in the short term.

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