

## Good Things May also Come in Small Packages

The Belgian Standing Intelligence Agencies Review Committee

### TODAY'S EFFECTIVE OVERSIGHT

Let's be frank, apparently, today's effective oversight consists of five vital elements. Firstly, an oversight body needs to be independent from the executive and the intelligence services. Secondly, it should have investigative powers as to decide to inquire whatever subject it chooses. Thirdly, the body needs to have access to classified documents and information, be able to maintain secrets and have enough support staff, legal powers and financial resources.

These are the conclusions of Hans Born and Loch Johnson<sup>1</sup>, two distinguished experts, each well known in the international intelligence community.

For my part, I will try, in the allowed time and while keeping those vital elements in the back of my mind, to convince you that even a small country as Belgium might be a worthy example, as the saying goes "*Good things may also come in small packages*".

### THE COUNTRY'S POLITICAL FRAMEWORK AND STRUCTURE

But first things first, our country in a nutshell. Belgium has developed a federal representative democratic monarchy, with legislative, executive and judicial branches of government, with the seat of this government centred in the capital city, Brussels. Under the terms of the Belgian constitution, legislative power is shared by the monarch, a bicameral parliament comprising the Chamber of Representatives and the Senate and the community and regional councils, whereas national executive power is vested in the monarch and his Council of Ministers (cf. diagram).

### TWO INTELLIGENCE AND SECURITY SERVICES AND A FUSION CENTRE

In Belgium there are only two intelligence and security services.<sup>2</sup> State Security is the civil intelligence service. The service primarily comes under the Minister of Justice.

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<sup>1</sup> H. BORN and L. JOHNSON, "Balancing Operational Efficiency and Democratic Legitimacy", in H. BORN, L. JOHNSON and I. LEIGH (eds.), *Who's Watching the Spies? Establishing Intelligence Service Accountability*, Potomac Books, Virginia, 2005, 225-241.

<sup>2</sup> See also: W. VAN LAETHEM, "The Belgian Civil Intelligence Service: Roles, Powers, Organisation and Supervision", *EJIS*, Volume 2 (2008), 1-30; L. VAN OTRIVE, "Intelligence Services in Belgium: A Story of Legitimation and Legislation", in *Democracy, Law and Security*, J.-P. BRODEUR, Aldershot, 2003, 31-59.

Sometimes however, it acts under the authority of the Minister of the Interior. The General Intelligence and Security Service of the armed forces, is the military intelligence service. It comes under the authority of the Minister of National Defence. The existence, roles and methods of the two Belgian intelligence services are governed by the law of November 1998.

The Belgian State Security has various roles. The most well-known is undoubtedly the collection and analysis of information that reveals a threat to the continued existence of our democratic, constitutional and welfare state, and informing the government of this. But the service is also responsible for the protection of VIPs, and security screenings of people who have to access classified documents, who want to enter certain places, or take on sensitive positions. State Security can also provide assistance and technical support in judicial investigations (for example in cases of the fight against terrorism).

The military intelligence service is part of the army. Its first role consists of the collection and analysis of intelligence relating to any activity that threatens or could threaten the inviolability of the national territory, the military defence plans, the performance of the roles of the armed forces, or the security of Belgian nationals abroad. In addition it must ensure the security of the personnel that come under the Defence department and of military installations and secrets. Just like State Security, the military intelligence service also does security investigations into people who have to work with classified information and it can provide assistance or technical support to the judicial authorities.

Like most of the European countries, we also have our own fusion centre: the Coordination Unit for Threat Assessments or CUTA, which has been operational since the end of 2006. This unit does specific or strategic evaluations of terrorist or extremist threats in or to Belgium. It largely does this on the basis of intelligence obtained from the "support services", which are the State and Military Security, police forces, Customs and so on. The threat assessments are intended for the various political, administrative and judicial authorities that have some responsibility for security.

Insofar, an overview of the Belgian (public) intelligence community.

## THE STANDING INTELLIGENCE AGENCIES REVIEW COMMITTEE

Up until 1993, the intelligence services were not subject to any external oversight. The independent Standing Intelligence Agencies Review Committee - hereinafter termed the 'Intelligence Committee' - was set up in May 1993. The basic law governing the supervision of the police and intelligence services (which dates from 18 July 1991<sup>3</sup> also set up the Committee for the Review of the Police Services (Police Committee).

The board of our Intelligence Committee is composed of three members, including a chairperson, and is appointed by the Belgian Senate for a five-year

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<sup>3</sup> Act of 18 July 1991 governing the review of police and intelligence services and of the Coordination Unit for Threat Assessment (*Wet tot regeling van het toezicht op politie- en inlichtingendiensten en op het coördinatieorgaan voor de dreigingsanalyse - Loi organique du contrôle des services de police et de renseignement et de l'organe de coordination pour l'analyse de la menace*)

renewable term. The chairperson must belong to the magistracy. When they are appointed the members must hold a 'top secret' security clearance.

In fulfilling its role, the Intelligence Committee is assisted by an Investigation Department. It also has a secretary and administrative staff.

## THE PERMANENT COMMISSION RESPONSIBLE FOR MONITORING THE INTELLIGENCE COMMITTEE

In compliance with the above-mentioned law, Parliament, or more precisely the Senate, set up a "Permanent Commission Responsible for Monitoring the Intelligence Committee". The Intelligence Committee meets regularly with this commission. As a matter of fact, their job is to monitor the Intelligence Committee, not to control them. The commission, composed of five Senators – and amongst them the President of the Belgian Senate - has several roles to play. For example,

- They can charge the Intelligence Committee with an investigation and the Intelligence Committee subsequently submits its investigation reports to them;
- They can request the Intelligence Committee to advice on a draft of a new law, a royal decree or any other document related to the work of Belgian intelligence services;
- And, last but not least, they discuss the Intelligence Committee's annual report.

## THE ROLES OF THE INTELLIGENCE COMMITTEE

Three laws, dating from 1998, 1999 and a very recent one in 2006, redefined the roles of the Intelligence Committee, which are now – roughly speaking - threefold: external supervision, the supervision of the CUTA, and a quasi-judicial role: examining appeals relating to security clearances.

### External supervision

1. Historically, the external supervisory role was the Intelligence Committee's first role. This supervision involves, in particular, protecting the rights that the Belgian Constitution and the law give to people, as well as the coordination and effectiveness of both civil and military intelligence services. The Intelligence Committee allocates equal importance to these aspects of its supervisory role. It has always aimed to perform its supervisory role by preserving a balance between the protection of citizens' rights and the effectiveness of the intelligence services.

Mind you, the Intelligence Committee's review does not in any way replace parliamentary supervision, or supervision by the ministers or the administrative and judicial authorities concerned: it operates in a manner that is independent from

and complementary to, the existing systems of oversight by Parliament and by the hierarchy. Our independency constitutes a surplus for democratic supervision.

The Intelligence Committee investigates the activities and methods of the Belgian intelligence services, their internal regulations and directives, and all the internal documentation governing the behaviour of their members. The intelligence services are therefore required to submit these documents, on their own initiative, to the Intelligence Committee. The supervisory body's role is primarily to report to the representatives of the nation on the way in which the intelligence services operate. The main purpose of this supervision is not to identify and punish individual actions by the intelligence services. That role remains entirely with the judicial and disciplinary authorities. Its aim is to identify the imperfections and malfunctions in the system and to make proposals to the political authorities to rectify them.

Who can ask the Intelligence Committee to carry out an investigation in their supervisory capacity?

Four federal authorities - each of them separately — may request the Intelligence Committee to carry out investigations: the Senate, the Chamber of Representatives, the Ministry of National Defence with regard to Military Intelligence, and the Ministry of Justice or Interior with regard to State Security.

Additionally, the Intelligence Committee can act on its own initiative, after advising the Senate that it intends to do so.

There is also the citizen and any person holding a civil service position, as well as any member of the armed forces, who has been directly concerned by the intervention of one of the intelligence services. All these people may submit their complaints and accusations to the Intelligence Committee without having to request authorisation from anyone, even with – when so requested – a guaranteed anonymity.

The Committee is then required to examine these complaints and accusations. In order to do so, the Intelligence Committee has several tools: it has the right to obtain the internal documents of the intelligence services, and the judgements or investigative dossiers on crimes and offences committed by members of these services. However, the Committee cannot interfere in any judicial investigation. Furthermore, the Intelligence Committee has the right to hear witnesses who may make depositions concerning matters covered by professional confidentiality and, if they are members of the intelligence services, they are required to reveal information entrusted to them. The Intelligence Committee and its Investigation Department also have the right to obtain assistance from experts and interpreters.

Each year the Intelligence Committee produces a general activity report, which can include conclusions and proposals of a general nature. This report is sent to the Chairmen of the Senate and the Chamber of Representatives, and to the Ministers concerned. After being discussed by the commission, the Committee's activity report is then made public.

The supervision of the Coordinating Unit for Threat Assessments

2. The second very important role of our Committee is the supervision of the Coordinating Unit for Threat Assessments. In Belgium a number of services have

responsibilities for fighting terrorism. They all act in accordance with their own specific roles and with their own responsibilities. These services have regular structural consultations and exchange information, including with international partners. The former joint anti-terrorism group was set up in the past in order to structure this consultation. In order to better perform its coordinating and analytical roles, and to involve an even wider range of partners, such as the customs department or foreign affairs, the government decided to expand this group and convert it into the Coordinating Unit for Threat Assessments.

As mentioned, this unit is subject to oversight from the Intelligence Committee. In simple terms it comes down to this. Every supervisory investigation relating to the work of the CUTA, or relating to the obligations of other support services (and thus not the police or intelligence services), must be done by the Intelligence and Police Committees jointly. In addition, the Intelligence Committee deals with the complaints and reports that relate purely to the operations, work and actions of the intelligence services, or indeed their failure to act. The police services are supervised by the Police Committee.

The examination of appeals relating to security clearances

3. A third important role of our committee is the examination of appeals relating to security clearances. More precisely, the Secretary of the Intelligence Committee makes up the registry of the appeal body for security clearances, certificates and advice. In the past, the Belgian procedure for granting security clearances was not open to challenge. Therefore, the Intelligence Committee recommended the establishment of an appeal body through which individuals could contest decisions of refusal or withdrawal of security clearances. Legislation passed in 1998 established the Intelligence Committee as the appeal body.

The Intelligence Committee has a genuine decision-making power in this respect, as it can, depending on the case, require the security authority to grant a security clearance that has been denied or to re-examine an application for clearance after an additional investigation has been carried out on the points that it specifies. Reasons must be given for these decisions, which cannot be appealed against, but no classified information may be divulged when doing so.

## CONCLUSIONS

I now come to my conclusions. Independence. Investigative powers. Access to classified documents. Being able to maintain secrets. Having enough support staff. Following Hans Born en Loch Johnson, these five points can be regarded as good practices contributing to strong democratic oversight of security and intelligence services.

However, these five vital elements only partially cover reality. Effective (parliamentary) oversight is based not only on authority (legal and other powers) and ability (resources and expertise), but also on the attitude and the willingness to be seriously involved in intelligence oversight.

The Belgian Intelligence Committee has always sought to fulfil its role whilst striking a balance between the protection of the rights of the individual and the

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effectiveness of the intelligence services. I think we got some things right and hope therefore that the Belgian example will in some way contribute to our common process forward. I therefore would like to thank the Government and the Council for Oversight of the Intelligence System of the Portuguese Republic for hosting this all-important conference.

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