

## Confidence is fine, control is better?

The topic I would like to cover today is moving towards a sustainable relationship between the intelligence services and their review bodies.

In the short time granted to me, I shall confine myself to three points, namely (a) the essential elements of a review body, (b) the need for a change of mentality and lastly (c) I would like to put forward a few practical suggestions which could help to optimise relations between intelligence services and review bodies.

Ladies and Gentlemen,

Let's be frank: it is now generally accepted that democratic control contributes to the acceptance and legitimacy of the work of intelligence services. To be effective, this review consists of five essential elements. Firstly, a review body needs to be independent from the executive and the intelligence services. Secondly, it should have the power to decide to initiate investigations into any subject it chooses. Thirdly, the review body needs to have access to classified documents and information, fourthly, it should be able to maintain secrets and fifthly, it should have enough support staff, legal powers and financial resources. These are the conclusions - to which I adhere - of Hans Born and Loch Johnson, both highly distinguished experts and well known in the international intelligence community.

However, my personal experience has taught me that these five elements only partially reflect reality. Effective review is based not only on authority (legal and other powers) and ability (resources and expertise), but also on the commitment of all parties concerned to be seriously involved in intelligence review. I shall come back to this.

I shall also leave aside the question of whether the Belgian review body meets these requirements. What you do need to know, by way of introduction, is that up until the early nineties, the two Belgian intelligence services - State Security and the military intelligence service - were not subject to any external review. Whereas spying is said to be the second oldest profession, intelligence accountability is a fairly recent phenomenon. Our Review Committee was set up in May 1993 as a response to a number of incidents and the subsequent parliamentary investigative committees. Nevertheless, our Committee was not created in a vacuum: similar concerns have prompted other countries to respond in a more or less comparable way.

The Belgian Committee's board is composed of three members (including a chairman), and is appointed by the Belgian Senate for a renewable five-year term. When appointed, the members must hold a 'top secret' security clearance. In fulfilling its role, the Committee is assisted by an Investigation Service and it also employs a secretary and administrative staff. Our Committee reports to the Senate.

In contrast to many other countries - particularly Anglo-Saxon countries - the position of inspector-general does not exist in Belgium.

Rather than giving you the umpteenth description of our review body, I would like to tackle the need for a change in mentality and to put forward a few ideas which could bring about a sustainable relationship between the intelligence services and their review bodies.

The first issue is the change in mentality. Our Review Committee is embedded and enshrined in the Belgian legislative framework. The review that we exercise in principle covers not just legitimacy (control over compliance with the relevant legislation and regulations) but also – which is far from being the case in every country – effectiveness (control over the efficiency of the intelligence services) and coordination (the mutual compatibility of the operations of the services involved). The primary function of review is not to hunt down US Senator Church’s mythical ‘rogue elephants’. It is not meant to seek out wrongdoing and ensure that wrongdoers are suitably punished. In other words, the main purpose of this review 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.

I am also of the opinion that democratic control must be viewed as a link in the chain of the intelligence process. And as you know, a chain is only as strong as its weakest link. This implies that we – both intelligence services and review bodies – must sing from the same hymn sheet, on the basis of an open dialogue. And for that, “trust” is primordial. I shall explain further.

Previously, the operation of the review body may have been perceived as a model where the interests of the *supervisors* and the *supervised* differed fundamentally. As of a few years, the Standing Committee wishes to represent a model in which both parties recognise each other’s value and communicate on the basis of equality. No mother-in-law principle. No energy is therefore wasted through fear and mutual distrust. The philosophy at the basis of this approach is the continuing acceptance of and respect for each other’s position, within the framework of each other’s legal assignments.

The challenge is to find out how to optimise this trust. Along with a number of obvious points, such as always being alert to avoid indiscretions, I would like to make a number of suggestions.

So what might be changed? First things first, from the point of view of the review body:

- It may be expected of a review body that it should possess the appropriate expertise. After all, you can’t comment seriously on what you know nothing about. This can be achieved, for example, by detaching members of intelligence services to their own Investigation Service, as is the case, for instance, in Belgium, or by permitting the review bodies to take on expert assistance or else by following training courses run by the intelligence services, etc ;

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- If both partners speak the same 'language', you avoid misunderstandings. That means there is a need to set up a joint glossary. What is meant by information? What exactly is an operational or strategic analysis? And so on ;
- Consideration can be given to setting up common platforms. Thus, the members of our Investigation Service are currently discussing the subject of 'analysis' with both the military and civilian intelligence services. An initiative which, if it gets a good appraisal, ought to find a way in to other fields ;
- Building up the relationship of trust which I mentioned earlier is not something that can be achieved by creating (additional) problems, but by detecting possible dysfunctions and then proposing concrete solutions ;
- It may be expected of a review body that it itself offers transparency in all its working processes and the methodology adopted. After all, fear of the unfamiliar is normal. Here again there is a pressing need for change ;
- Extending this point: a review body also has the task of keeping the reviewees informed about its priorities and intentions;
- A review body must also show itself to be vulnerable, assess itself critically and demonstrate that it is itself also an evolving organisation which operates on the basis that it is a work in progress;
- Possibly one of the most important topics in this report is to ensure that there is no drift into an overburdening of the intelligence services. A review body cannot and must not compromise the proper functioning of the intelligence services with its own investigations (*and must therefore be selective in its choice of investigations*). From this also follows the need for the review body to consider clearly beforehand which methodology will be used for an investigation: we should definitely not take a sledgehammer to crack a nut;
- There also needs to be recognition and stimulation of what, on investigation, is seen to be positive. This can be achieved by organising investigations so that they are conducted more proactively, rather than - as is rather too often the case at present - only initiating investigations as a response to incidents. More attention should thus go into monitoring;
- Lastly, review must not mean that improvements are merely presented on paper. Intelligence services must - and for this my eyes are turning towards the legislators - be offered the guarantee that recommendations from the review body will also be put into practice effectively. If not, the review body is likely to lose its credibility.

A constructive attitude towards given or pronounced recommendations is also to be expected from the intelligence services. If proposals for improvements are implemented effectively, the relationship of trust can only be strengthened. And from this, we seamlessly reach the question of what may be expected from our intelligence services:

- A Belgian saying goes: "*the best way to restore trust is to know the truth*". I would therefore also like to plead for an unconditional transfer of information every time the need to know is established; information requested must be made

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- available to the review body quickly, correctly and in full. Having to chase up documents repeatedly certainly does nothing to promote the climate of trust ;
- Developing and maintaining international and cross-agency intelligence cooperation has become imperative in today's intelligence community. As a review body we are confronted with the third party rule, so that in this specific case a structural solution must be sought ;
  - In my opinion, consideration needs to be given to the idea of conceivably involving the review body passively - and I emphasize on passively - in the development (at a fairly general and abstract level) of strategic plans for the intelligence services ;
  - The mentality should also be instilled that dysfunctions which they themselves have observed should be notified to the review body and that that body would be involved in proposing improvements ;
  - More intense lines of communication should also be cultivated. Consideration could be given to following the Dutch example of providing a permanently available room in the offices of the intelligence services with access to the electronic files.
  - Following on from this, the intelligence services could be asked to look at themselves and draw up a self-assessment, with critical factors for success. This has hitherto been a blind spot.

Ladies and Gentlemen,

What I have said may show that I am a proponent of an integrated form of review, where all parties in the intelligence community complement each other. The keyword here is 'trust'.

Such trust and confidence is not easily obtained and incidents are bound to occur during this process. But it would go a long way if all parties could embrace the views of Tristan d'Albis, of the French *École Nationale d'Administration*, who said, and I quote: "The external supervision of the [intelligence] services should, far from being a sanction, be proof to them of both a modern approach and an undeniable sign of recognition."

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