

Glossary

Accountability

The liability of representatives, whether elected or appointed, to be called to account in the exercise of their powers and duties. This applies equally for employees of intelligence and security services. It has the political purpose of checking the power of the executive and therefore minimising any abuse of power and the operational purpose to help to ensure that governments operate effectively and efficiently.

Checks and Balances

This concept describes constitutionally and legally derived mechanisms applied to the process of decision-making which are aimed at preventing one-party domination. With regard to the oversight of intelligence services, it means that the executive, the judiciary and the legislature each play their distinct role in the process of intelligence accountability. *See Democratic Control of the Security Services.*

Civil Society

Civil society refers to the set of institutions, organisations and behaviour situated between the state, the business world, and the family. Specifically, this includes voluntary and non-profit organisations, philanthropic institutions, social and political movements, other forms of social participation and engagement, and the values and cultural patterns associated with them.

Classified Information

A category to which national security information and material is assigned to denote the degree of damage that unauthorised disclosure would cause to national defence or foreign relations, and to denote the degree of the protection required. The desired degree of secrecy about such information is known as its sensitivity. It is often the case that sensitive information is disseminated on a need-to-know basis. The following US example demonstrates a formal hierarchy of classification for information: (i) *Top secret* – this is the highest security level, and is defined as information which would cause ‘exceptionally grave damage’ to national security if disclosed to the public; (ii) *Secret* – the second highest classification may include, for example, details of other security measures and procedures. It is defined as information which would cause ‘serious damage’ to national security if disclosed; (iii) *Confidential* – is the lowest classification level. It is defined as information which would “damage” national security if disclosed. Additional categories might be added such as (iv) *Sensitive but unclassified (SBU)* – data which is not related to national security but whose disclosure to the public could cause some harm; (v) *Unclassified* – not technically a ‘classification’, this is the default, and refers to information that is not sensitive and can be freely disclosed to the public. *Declassification* of information can happen if information becomes out of date or if an authorised body demands declassification for reasons of public interest.

Complaint

An individual or collective communication to a control body drawing attention to an alleged violation of human rights.

Democracy

Representation of the people, by the people and for the people. Marked by free elections, the rule of law, separation of power and respect for basic human rights. *See Human Rights.*

Democratic Accountability of Intelligence Services

Although secrecy is a necessary condition of intelligence services' work, intelligence in a liberal democratic state needs to work within the context of the rule of law, checks and balances, and transparent lines of responsibility. Democratic accountability of intelligence services thus identifies the propriety and determines the efficacy of intelligence services under these parameters. This involves five distinct yet interdependent pillars: (1) executive control; (2) parliamentary oversight; (3) judicial review; (4) independent oversight on behalf of the general public; and (5) internal control by the intelligence services.

Director of Intelligence

Tasked by the relevant minister, the director of an intelligence service is responsible *inter alia* for the control and management of the service, the timely fulfilment of its missions, the provision of leadership and political guidance for the services.

Executive Control / Ministerial Control

The executive exercises direct control over the intelligence services from the central, regional or local levels of government. It determines the budget, general guidelines and priorities of the activities of the intelligence services. In order to guarantee effective executive control, ministers need access to relevant information in the hands of the agency or to assessments based upon it through intelligence assessments and to be able to give a public account where necessary about the actions of the intelligence services. The exercise of external control is facilitated by the work of special offices or bodies such as Intelligence Coordination Commissioners, Intelligence Supervisory Boards, Policy Review Committees and Audit Offices who report directly to the responsible ministers.

Good Governance

The core elements of 'good governance' necessitate that government is people-centred, equitable, accountable, transparent, engenders participation and consultation in planning and decision-making, is effective and efficient in public sector management, and actively seeks and facilitates the involvement of civil society (World Bank).

Human Rights

Any basic right or freedom to which all human beings are entitled and in whose exercise a government may not interfere (including rights to life and liberty, freedom of thought and expression and equality before the law such as are contained in the main International Human Rights treaties eg the Universal Declaration on Human

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Rights (UNDHR), The International Covenant on Economic, Social and Cultural Rights (ICESCR), The International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights (ECHR) and other regional schemes eg the African Charter on Human and Peoples' Rights., the American Convention on Human Rights and Asian Human Rights Charter.

Independent Oversight

One of the five distinct pillars of intelligence accountability is independent oversight. Within the framework of this publication, independent oversight over the intelligence services is carried out by institutions whose independence is secured by law as well as special reporting and appointment mechanisms. Examples of independent oversight institutions are national audit office, ombudsman, tribunals or independent inspector-generals. *See Civil Society and Think Tank.*

Intelligence

Governments collect, process and use information. Part of statecraft is 'the central importance of knowing, both in general and in particular' (John Keegan). Intelligence in government usually has a restricted meaning – it has particular associations with international relations, defence, national security and secrecy, and with specialised institutions labelled 'intelligence' (Michael Herman). Intelligence can be described as 'a kind of knowledge', 'the type of organisation which produces the knowledge' and the 'activity pursued by the intelligence organisation' (Sherman Kent). Intelligence in government is based on the particular set of organisations with the name: the 'intelligence services'. Intelligence activity is what they do, and intelligence knowledge is what they produce (Michael Herman).

Intelligence Control versus Intelligence Oversight versus Intelligence Review

To have control means to be in charge, responsible, capable of managing and influencing a given intelligence task. Oversight is a more general concept than control as it does not imply that a supposed 'overviewer' is in charge or has the capacity to affect either decision-making or outcomes. Review is done by *ex post facto* monitoring the intelligence services' work and the legal status of their actions.

Inspector-General

In general, the term Inspector-General is used for a military or civilian government official responsible for investigations. Within the realm of intelligence, the Inspector-General is appointed and entrusted by the executive to perform a broad range of different tasks such as to monitor compliance by the intelligence services with the law and government policies and priorities as well as to review the activities of the intelligence services; and to submit regular reports to the executive (or in some schemes, to Parliament).

Internal Control

To ensure the compliance of intelligence service officers with the standards of democratic rule, a complex system of safeguard mechanisms within the intelligence services should be in place. A Code of Conduct and a book of rules should apply to intelligence officers. Furthermore, in order to prevent the abuse of intelligence, every employee should be trained in how to deal with an illegal order by a superior. A

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special body within the intelligence services should coordinate and control the proper functioning of internal control of intelligence.

Judicial Review

Judicial review is understood differently within various constitutional systems. Within legal systems possessing a Constitutional Court and a written constitution it frequently includes the power of a court to review a law or an official act of a government employee or agent for constitutionality. The court has the power to strike down that law, to overturn the executive act or order a public official to act in a certain manner if it believes the law or act to be unconstitutional. Within the UK it refers to the ability of the courts to declare actions of governmental bodies to be contrary to law or in violation of the European Convention on Human Rights. It is used here in the narrower sense of the ability of the courts to judge the legality of the actions of intelligence agencies or ministers including, where this applies, their constitutionality.

Law Enforcement Surveillance versus Intelligence Surveillance

Law enforcement surveillance is primarily perceived as a mechanism for obtaining evidence of criminal activities by identified suspects, whereas intelligence surveillance is primarily seen as a mechanism for gathering intelligence on more nebulous threats to national security not necessarily connected to criminal activities, or at least, specific criminal offences. The mandate of the intelligence agencies to engage in surveillance is usually framed in a less clear way and with more room for speculative 'fishing expeditions' and correspondingly less protection of the human rights of the targets. The time limits are usually more lenient, with most intelligence operations being conducted for much longer periods than law enforcement operations (Cameron, I.; see also Brodeur, J-P. and Gill, P.).

Legality

Nullum crimen, nulla poena sine lege, also known as the principle of legality, stipulates that certain criminal conduct is punishable only: (i) if at the time of that conduct there was a valid rule characterising the conduct as criminal, and (ii) if, at that time, there existed rules establishing, in relation to such conduct, a reasonably precise scale of punishments.

Legitimacy

The legitimacy of a rule, or of a rule-making or rule-applying institution, is a function of the perception of those in the community concerned that the rule, or the institution, has come into being endowed with legitimacy, that is, trusted, valued and respected.

Ombudsman

An institution whose function is to examine and report on complaints made by ordinary people about the government or public authorities. In order to guarantee its independence from the executive and its secret services, in many countries the ombudsman is appointed by and reports to parliament.

Parliamentary Oversight

The legislature exercises parliamentary oversight by passing laws that define and regulate the intelligence and security services and their powers and by adopting the corresponding budgetary appropriations. At the legislative level there should exist

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mechanisms by which parliamentarians can call to account the officials in charge of the intelligence services. These mechanisms should include:

- (i) a well-functioning parliamentary committee for intelligence oversight;
- (ii) the possibility to control the budget of the services;
- (iii) powers to retrieve (classified) information from the government and services;
- (iv) access to classified information;
- (v) the possibility to commission experts from civil society;
- (vi) clear and effective reporting mechanisms between parliament, government, services, and society at large;
- (vii) the possibility to initiate hearings;
- (viii) the possession of investigative powers

Proportionality

The proportionality requirement has three aspects: (i) the existence of a rational connection between the impugned measure and the objective; (ii) minimal impairment of the right or freedom, and; (iii) a proper balance between the effects of the limiting measure and the legislative objective (Supreme Court of Canada). The European Convention on Human Rights uses the principle of proportionality as an interpretive device designed to restrain the power of state authorities and to provide greater protection to individual autonomy.

Quality of Law Test

In a democratic society, some human rights such as the right to privacy, freedom of thought, conscience and religion, freedom of expression, and the freedom of assembly and association can be limited, among others, in the interest of national security and public order. As regards the European context, the European Convention on Human Rights (ECHR) prescribes that these limitations have to be made in 'accordance with the law'. Case law of the European Court of Human Rights (ECtHR) says, *inter alia*, that security and intelligence services can only exercise their special powers if they are regulated by the law. The following conditions must be fulfilled to qualify as 'law' under the quality of law test:

- (i) a norm must be adequately accessible and formulated with sufficient precision to enable the citizen to regulate his conduct;
- (ii) a rule needs to possess the essential characteristics of foreseeability and must not allow the exercise of unrestrained discretion;
- (iii) a rule must at least set up the conditions and procedures for interference.

Rule of Law

Legislation – including human rights legislation – must be created and mandated by a democratically legitimate government and enforced and systematically applied by an independent judiciary with coercive powers. The rule of law is an essential precondition for accountability in both the public and the private sectors. The establishment and persistence of the rule of law depends on clear communication of the rules, indiscriminate application, effective enforcement, predictable and legally enforceable methods for changing the content of laws and citizens who perceive the set of rules as fair, just and legitimate, and who are willing to follow them.

Security

Security is often thought of in the sense of national security, ie the absence of threats or perceived threats to specific values of a nation. In addition, according to both 'critical' and 'human' security approaches, security is about attaining the social, political, environmental and economic conditions conducive to a life of freedom and dignity for the individual.

Subpoenas

If a parliamentary oversight committee is vested with subpoena powers it possesses the authority to compel the attendance of a person before it (in a hearing).

Think Tanks

A think tank is an organisation that serves as a centre for research and/or analysis of important public issues. As civil society institutions, think tanks play a number of critical roles, including:

- (i) playing a mediating role between the government and the public;
- (ii) identifying, articulating, and evaluating current or emerging issues, problems or proposals;
- (iv) transforming ideas and problems into policy issues;
- (v) serving as an informed and independent voice in policy debates;
- (vi) providing a constructive forum for the exchange of ideas and information between key stakeholders in the policy formulation process (James McGann).

Basically, think tanks provide the public with alternative information to that provided by the government.

Transparency

The construction of institutions, networks and routines in government and government agencies which lend themselves to systematic scrutiny by parliamentary and other institutions and individuals diffused across the social and economic spectra of civil society.

Vetting & Clearance

Vetting is required for people that may take certain jobs or carry out particular tasks that need security clearance. These jobs and tasks can be found at all governmental levels and the entire national security decision-making apparatus including the intelligence services, the ministries of defence and the armed forces. In addition, it might include the members of a Parliamentary Oversight Committee. Notably, not all parliaments make their members of intelligence oversight committee subject to vetting procedures by intelligence services, as it might signify the subordination of parliament to the executive branch of government. Clearance refers to the outcome of a successful vetting process, which clears an individual to different levels of classified information. See *classified information*.

Whistle-Blowing

Whistle blowing takes place when an employee discloses that an employer is breaking the law, acting unethically or contrary to an announced policy. Many countries have recognised the importance of such disclosures and have adopted legal protections for whistle-blowers to protect them from sanctions, whether in their employment or by prosecution. To whistle blow, an employee must tell of the illegal or

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unethical act to someone outside the agency. Usually it must be a government or law enforcement agency. If the employee merely complains to someone inside the company or agency, that is not whistle blowing, and the employee is not protected by the whistleblower laws. Disclosures direct to the news media are usually not protected. Disclosures to relevant parliamentarians may be.

