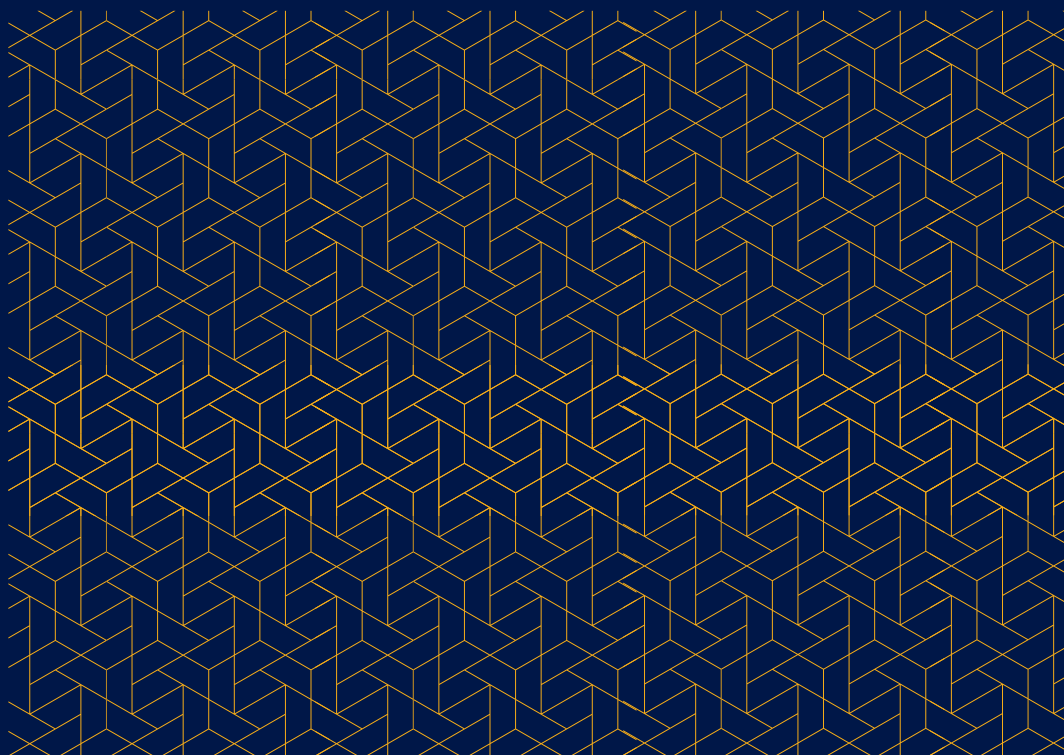


THEMATIC BRIEF

THE ROLE OF PARLIAMENTS IN OVERSEEING INTELLIGENCE TASKING



About this Thematic Brief

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Introduction

Intelligence tasking is the process of setting key intelligence requirements and priorities that define intelligence agency spending and the collection and analysis of intelligence. In democracies, intelligence tasking is the responsibility of the executive branch of government and reflects a state's foreign, security, and defence policies. The output of the tasking process, commonly referred to as a 'statement of intelligence priorities', is usually summarized in a document that is approved by government ministers or the head of the executive.¹ While parliaments are not directly involved in the tasking of intelligence agencies, they nevertheless play a crucial role in overseeing the process.

In representative democracies, parliaments do not directly task intelligence agencies as the executive controls the policies, strategic planning, and actions of the public sector.² As such, any attempt by parliaments to task intelligence agencies would undermine the ability of the executive to govern, though this does not necessarily prevent the parliament from being able to scrutinize or question individual policies or tasks. Furthermore, as parliaments are the primary body charged with exercising oversight of the implementation of national security priorities by intelligence agencies, any attempt by them to be directly involved in tasking would create a conflict of interest: parliaments could not carry out independent and effective oversight or scrutiny of intelligence agencies while at the same time being responsible for their tasking.

Notwithstanding this restriction, there remains a role for parliaments in overseeing intelligence tasking. This role is twofold: firstly, overseeing the process through which the executive defines intelligence priorities; and, secondly, overseeing the execution by intelligence agencies of these priorities. Parliaments can fulfil this function in a number of ways, primarily by legislating to establish the mandate of intelligence and security agencies, but also by scrutinizing government policies

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- 1 A formal policy document or 'act' is issued and approved by an authorized executive body (i.e. prime minister, government/cabinet minister, president or national security council). Such documents have also been referred to as 'intelligence requirements', 'intelligence objectives', and 'intelligence guidance'. This document is usually an 'end product' of the first phase of the intelligence cycle – the planning phase (or the tasking phase).
 - 2 This is particularly the case in semi-presidential democracies, such as France, where the executive is often empowered to directly task intelligence agencies. For example, in accordance with Article 15 of the French Constitution, the President of the Republic acts as the Commander-in-Chief of the Armed Forces and, in accordance with Article 21, the Prime Minister is in charge of national defence. For these reasons, both are legally empowered to directly task intelligence agencies.

that guide intelligence tasking. Parliamentary intelligence oversight committees also play a key role by scrutinizing the intelligence tasking process, reviewing tasking documents, and monitoring the progress of intelligence agencies in meeting strategic priorities. This Thematic Brief will explore how parliaments could perform these functions and improve oversight mechanisms in this domain.

The Brief is divided into five sections. The first section describes the intelligence tasking process, while the second discusses the 'intelligence cycle'. The third section outlines the means through which parliaments can oversee the strategic tasking of intelligence agencies. Finally, the fourth and fifth sections examine the barriers to effective parliamentary scrutiny of tasking and possible ways of overcoming these. The Brief concludes with recommendations on how to strengthen the role of parliament in overseeing the tasking of intelligence agencies.

Intelligence Tasking

Intelligence tasking is the process of setting key intelligence requirements and priorities that define intelligence agency spending and the collection and analysis of intelligence. The process begins by monitoring the development of ongoing threats or issues of concern and potentially seeking to identify emerging or future threats. Strategic intelligence is developed through this monitoring process. This type of intelligence differs from operational or tactical intelligence in that rather than focusing on the collection of information in relation to a specific situation or event, it is concerned exclusively with the identification of trends or patterns over a longer period of time. These identified trends and patterns form the basis of what is commonly referred to as a statement of intelligence priorities, which is usually summarized in a document approved by government ministers or the head of the executive and reviewed on an annual or biannual basis. This document defines the priorities for the collection and processing of intelligence by a state's intelligence agencies. The table below summarizes the statements of intelligence priorities in three countries: Canada, the United Kingdom, and the United States.

Table 1. Statements of intelligence priorities in Canada, the United Kingdom, and the United States

Country	Canada	United Kingdom	United States
Title of document	Government Intelligence Priorities	Intelligence Coverage and Effects Plan (ICE)	National Intelligence Priorities Framework (NIPF)
Responsible state organ(s)	Set by the Cabinet Committee on Intelligence and Emergency Management - chaired by the Prime Minister	Drafted by the National Security Secretariat and approved by the National Security Council - chaired by the Prime Minister.	Set by the Office of the Director of National Intelligence, reviewed by the National Security Council, and approved by the President.
Content of document	Thematic priorities based on domestic and international threats.	Thematic and geographic priorities.	Thematic priorities linked to countries and non-state actors.
Review process	Strategic Intelligence Requirements reviewed every six months with new priorities identified every two years.	Reviewed annually but with scope for 'in-year changes'.	Reviewed every six months.

The Intelligence Cycle

Setting intelligence priorities is a crucial phase of what has become known as the intelligence cycle. The process involves setting intelligence requirements and defining corresponding priorities for the collection and processing of intelligence by a state's intelligence agencies. Information is collected through a number of different means and then processed and analysed within the intelligence community before being disseminated to policymakers, who use intelligence to support policy development and implementation. The utility of the intelligence cycle has been the subject of considerable debate, with critics noting that the tasking process can be more fluid and that intelligence collection does not always begin with direction from policymakers.³ Nevertheless, the notion that intelligence agencies should generally operate on the basis of priorities (otherwise referred to as intelligence requirements, guidance, or objectives) set

3 See for example: Hulnick, A.S. 2014. 'The future of the intelligence process,' in I. Duyvesteyn, et al (editors), *The Future of Intelligence: Challenges in the 21st Century* (New York: Routledge), p. 47.

by democratically elected governments – and that there should be some means of allowing intelligence to feed back into future planning – remains a useful model. This is particularly important in emerging democracies where intelligence agencies have not previously operated under democratic control.

1. The Role of Parliaments in Overseeing Intelligence Tasking

As mentioned above, given their role as elected representatives of the people, parliamentarians are responsible for monitoring and verifying whether the security sector is acting in accordance with the constitution, laws, regulations, and policies that it is legally subject to.⁴ With respect to overseeing the tasking of intelligence agencies, parliaments generally perform these functions in one of three ways: establishing the mandate of intelligence agencies; scrutinizing government policy; or scrutinizing the tasking of intelligence agencies.

1.1 Establishing the mandate of intelligence agencies

While the strategic priorities of intelligence and security agencies are likely to change over time, it is important that they remain within the legal mandate of the agencies. The mandate for intelligence and security agencies should be set out in legislation that has been debated by parliament. Defining the mandate of intelligence agencies in legislation allows for a broad public and parliamentary discussion about their role and helps to prevent the abuse of intelligence agency powers by the executive. Intelligence agencies have exceptional powers and legislation should define the circumstances in which they can be asked to operate (assigned tasks). This is usually limited to threats to national security and in response to other exceptional challenges such as terrorism and serious crimes posing a threat to national security. Legislation may also distinguish between agencies' competencies at home and abroad. This is important to ensure that intelligence and security agencies are not used to suppress domestic dissent or political opposition.

1.2 Scrutinizing government policy

As noted above, the tasking of intelligence agencies should be defined by a state's foreign, security, and defence policies. These policies should be subject to parliamentary scrutiny and debate both on the floor of legislative chambers and in parliamentary committees. In addition, they are likely to be scrutinized by the media and other

4 DCAF. 2015. 'Parliaments,' SSR Backgrounder Series (Geneva: DCAF). Available at: https://dcaf.ch/sites/default/files/publications/documents/DCAF_BG_8_Parliaments.11.15.pdf.

civil society bodies. National security priorities may also be subject to broad public and parliamentary scrutiny. While many of the details concerning the tasking of intelligence agencies are classified, numerous states now publish broad national security strategy documents offering a broad outline of the tasks, such as the UK's Integrated Security and Defence Review (IR), which are subject to extensive scrutiny in parliaments and beyond.

In addition to specialized parliamentary intelligence oversight committees, some parliaments – for example, in the United Kingdom and Canada – have standing committees on national security policy:

- The UK Parliament's Joint Committee on the National Security Strategy reviews the UK's National Security Strategy and scrutinizes government structures for decision-making on national security, such as the National Security Council. It is a senior committee whose membership is made up of chairs of other parliamentary committees with an overlapping interest in national security, including the chairs of the select committees on defence, foreign affairs, home affairs, and justice, as well as the chair of the Intelligence and Security Committee.
- The Canadian Parliament's Standing Committee on Public Safety and National Security has a broad remit to review the legislation, policies, programmes, and expenditure of a wide range of government departments and agencies responsible for public safety and national security, including the Canadian Security Intelligence Service. The committee also has a role in reviewing the work of other bodies involved in intelligence oversight, notably the National Security and Intelligence Committee of Parliamentarians and the Security and Intelligence Review Committee.

1.3 Scrutinizing the tasking of intelligence agencies

Specialized parliamentary intelligence oversight committees may have a more direct role in scrutinizing the various elements of intelligence tasking (see Box 1). While parliament as a whole can scrutinize the broad outlines of policy, intelligence oversight committees that operate within the 'ring of secrecy' and comprise parliamentarians who may have been subject to vetting may be provided with much more detail about the tasking and resourcing of intelligence agencies. The role of such committees in overseeing tasking takes a number of forms:

- Intelligence oversight committees should be provided with details of the strategic priorities of intelligence agencies and given access to documents related to tasking. This will enable oversight committees to ensure that agencies are not being

asked to operate beyond their legislative mandate and that tasking is in line with the state's broader foreign, defence, and security policies. It also enables committees to assess the performance of intelligence agencies (i.e. their effectiveness, efficiency, and use of resources).

- An important function of intelligence oversight committees is to ensure that intelligence and security agencies operate effectively and efficiently. This involves monitoring the progress of intelligence agencies in meeting strategic priorities and scrutinizing intelligence budgets and the allocation of resources. Budgetary scrutiny is designed to ensure not only that agencies are working efficiently but also that the executive is providing agencies with the necessary resources to meet strategic priorities.
- While parliamentary intelligence oversight committees may not be directly involved in the tasking of intelligence agencies, in addition to reviewing plans and resource allocation, they also have a role in reviewing the process through which intelligence agencies are tasked. While parliamentary committees are unlikely to have access to tasking-related discussions within the executive, oversight committees may scrutinize the work of other bodies involved in the process of intelligence tasking. For example, in addition to scrutinizing the work of the UK intelligence and security agencies, the UK Parliamentary Intelligence and Security Committee scrutinizes other bodies that form part of the management structure of the UK intelligence community – including the Joint Intelligence Organisation and the National Security Secretariat in the Cabinet Office, and the Office for Security and Counter-Terrorism in the Home Office. In Spain, the Commission of the Congress of Deputies – a specialized intelligence oversight committee – is responsible for scrutinizing the work of the National Intelligence Centre (CNI). In addition to this, they monitor the progress of the CNI in meeting the strategic intelligence priorities established by the executive. In France, the Parliamentary Delegation for Intelligence (Délégation parlementaire au renseignement) – a bicameral parliamentary committee composed of eight members – is responsible for monitoring the performance of French intelligence agencies. The committee can take testimony from the Prime Minister, ministers, and heads of agencies; is authorized to receive classified information; and must produce an annual report on its activities, observations, and recommendations. In the United States, the House Permanent Select Committee on Intelligence oversees the intelligence community, studies intelligence-related activities, and examines legislative proposals, while the U.S. Senate Select Committee on Intelligence conducts hearings

on and reviews of intelligence activities, and sets funding limits for intelligence agencies.

Box 1. Checklist for scrutinizing intelligence tasking

- Are the tasks legitimate, timely, and effective?
- Are the appropriate institutions involved in the process?
- Have results from previous intelligence cycle assessments been considered?
- Has the performance of intelligence agencies been effectively measured?
- Have intelligence agencies used resources efficiently?

Case study: parliamentary oversight of intelligence tasking in Canada

The Canadian National Security and Intelligence Committee of Parliamentarians was established in 2017 with a broad remit to review the legislative, regulatory, policy, administrative, and financial framework for Canadian national security and intelligence. It is a cross party committee composed of members appointed by the Prime Minister from both Houses of Parliament. Members of the committee have top secret security clearance.

One of the new committee's first tasks was to review how the Government of Canada sets intelligence priorities. The committee examined the current (classified) list of Canadian intelligence priorities and reviewed how the executive government sets and responds to priorities and requirements, the participation of the organizations involved, performance measurement and resource expenditures. It gathered evidence from a wide range of departments and agencies involved in the process, including the Security and Intelligence Secretariat of the Privy Council Office and the Canadian intelligence agencies. The committee was, however, 'legally prohibited' from accessing records of deliberations in cabinet, cabinet committees, and briefings to ministers.

While the committee was broadly satisfied that the intelligence tasking process had 'a solid foundation', its review revealed a number of areas for improvement in the process including the need to address inconsistencies in ministerial direction and the operational implementation of priorities; to ensure that cabinet has sufficient information to support its discussions and decision-making; to

develop performance and financial reporting; and to ensure sufficient central leadership. The committee concluded that these challenges could undermine ministerial accountability for intelligence activities and should be addressed.

Although the current list of Canadian intelligence priorities was redacted, the committee's annual report was made available to the public and the committee gave extensive details of the process of intelligence tasking before parliament and made a number of recommendations.⁵

2. Barriers to Effective Parliamentary Oversight of Intelligence Tasking

The above section has examined the role that parliaments can play in overseeing the tasking of intelligence agencies. It has considered how these measures are applied – especially in the United Kingdom and Canada – focusing in particular on the role of specialized parliamentary intelligence oversight committees. Nevertheless, various barriers to effective parliamentary scrutiny of the tasking of intelligence agencies exist, many of which are similar to those affecting parliamentary oversight of intelligence more generally. In particular, these relate to having the authority to access the necessary individuals and documents, as well as the necessary expertise and capacity to carry out the role, balancing secrecy and transparency, and the risk of the politicization of the oversight process.

- **Authority and access:** Parliamentary intelligence oversight committees will not be able to oversee tasking effectively if they do not have a mandate (legal basis) to access individuals and documents relating to the process. One particular problem relating to the oversight of intelligence tasking is that while intelligence oversight committees may have extensive access to intelligence agency documents and staff, they may not be authorized to scrutinize decision-making within the executive, including within cabinet committees. The Canadian National Security and Intelligence Committee of Parliamentarians faced this problem when reviewing the process for tasking intelligence agencies in 2018 (see case study). The ability of oversight bodies to provide democratic accountability may be significantly impaired if they have access to intelligence agencies but are not able to discuss tasking with the ministers responsible.

5 National Security and Intelligence Committee of Parliamentarians. 2018. National Security and Intelligence Committee of Parliamentarian Annual Report 2018. Available at: https://www.nsicop-cpsnr.ca/reports/rp-2019-04-09/2019-04-09_annual_report_2018_public_en.pdf.

- **Expertise and ability:** Most parliamentarians are unlikely to have significant knowledge, expertise, or experience related to intelligence prior to their appointment to intelligence oversight committees. Even if these committees have significant authority and wide-ranging access, they are unlikely to be able to provide effective scrutiny if their members do not have a detailed understanding of the role of intelligence agencies and the operation of national intelligence frameworks.
- **Secrecy and transparency:** Openness and transparency are essential features of democracy; however, while the broad scrutiny of policy by parliament is likely to take place in the open, much of the detailed scrutiny of tasking undertaken by parliamentary intelligence oversight committees takes place behind closed doors. While committees that operate within the 'ring of secrecy' are better able to provide rigorous scrutiny, it may be difficult for them to demonstrate to parliament and the public that effective scrutiny is taking place.
- **Politicization of the oversight process:** Parliamentary oversight of intelligence can be an important mechanism for preventing the politicization of intelligence by the executive; however, oversight bodies composed of parliamentarians may also succumb to partisan politics or politicization. Committee members may seek to use privileged access in order to gain political advantage, particularly by leaking classified material. Politicization can also undermine the effectiveness of such committees if they are dominated by members of one party.

3. Overcoming Barriers to Effective Parliamentary Oversight of Intelligence Tasking

There are a number of possible solutions to the problems outlined above:

- **Authority and access:** Intelligence oversight committees should have extensive access to documents and personnel involved in the tasking process, including documents outlining strategic priorities and periodic reviews, members of the executive involved in tasking the agencies, and in certain cases intelligence and security service personnel responsible for ensuring that priorities are met. Given the executive's central role in the tasking process, it is particularly important that its members engage in oversight in this area. If oversight committees do not have access to records of government decision-making, it is incumbent on government ministers to

meet with the committees on a regular basis to discuss the intelligence tasking process.

- **Expertise and ability:** The provision of resources is central to effective parliamentary oversight of intelligence. Oversight committees should be provided with sufficient resources, including staff with the necessary expertise and experience to conduct investigations and support inquiries. Given the unique nature of their work, such committees may require more resources than other parliamentary committees.
- **Secrecy and transparency:** Intelligence oversight committees have an obligation to report on their work in as much detail as possible. Regular reporting to parliament may be accompanied by parliamentary debate on the work of such committees, which can serve to enhance the transparency and accountability of intelligence oversight committees.
- **Politicization of the oversight process:** It is important that parliamentary oversight committees are composed of parliamentarians drawn from a range of parties. Government ministers should not serve on such committees and membership should not be confined to those who have previously held ministerial office. To prevent committees from becoming dominated by the party in power, it is good practice for the chair of parliamentary intelligence oversight committees to be drawn from an opposition party, even if a governing party holds a majority of seats on a committee.

Recommendations

Effective parliamentary oversight of the tasking of intelligence and security agencies is dependent on an active and informed parliament and an executive branch that is prepared to fully accept parliamentary scrutiny. This thematic brief has established several key principles that should underpin the role of parliament in intelligence tasking:

- **The tasking of intelligence agencies should be based on a state's foreign, defence, and national security policy.** A broad outline of this policy should be publicly accessible and subject to parliamentary scrutiny and debate. National security should not be viewed as a no-go area for parliaments and parliamentary committees, and ministers should be prepared to respond to parliamentary scrutiny in this area on a regular basis.
- **Parliamentary intelligence oversight committees should monitor the legality and appropriateness of intelligence tasking.** Oversight committees should have access to strategic intelligence priorities and ensure that tasking is in line with

the state's foreign, defence, and security policies and that intelligence agencies are not being asked to operate outside their legal mandate.

- **Parliamentary intelligence oversight committees should also monitor the progress of intelligence agencies in meeting strategic intelligence priorities.** In doing so, intelligence oversight committees should have the formal authority to access documents and staff related to intelligence tasking, as well as details of intelligence budgets and resource allocation. The executive has a responsibility to ensure that intelligence oversight committees have the necessary resources to carry out this task effectively.
- **Parliamentary intelligence oversight committees should play a particular role in overseeing the intelligence tasking process.** In doing so, the mandate of oversight committees will encompass not only intelligence and security agencies but also those involved in the management of intelligence, including government ministers. Given the executive's central role in the tasking process, it is particularly important that ministers, including the head of the executive, are prepared to meet on a regular basis – at least annually – with parliamentary intelligence oversight committees to discuss intelligence priorities.



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