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Oversight of intelligence agencies
(in countering terrorism)

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TERRORISM AND HUMAN RIGHTS

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Oversight of intelligence agencies

I. Introduction

Since the terrorist act on the World Trade Centre the western democracies have been at war against the world wide terror. NATO has declared a collective self-defence case for the first time. While the world was waiting for a sortie in Afghanistan or Iraq the public did not notice that the intelligence agencies in particular had the most important actors in the counter terror fight.¹ Covert operations should provide them with information to rebel the attack against the liberal-democratic social order. However the revealing of the intelligence agencies, CIA and BND, shocked the foundation of the democracy. The CIA has used European Airports as a platform for its illegal secret transports, in which terror suspects were flew to clandestine prisons where they have been questioned under torture. German security agents have questioned prisoners in Guantánamo and Syria. The US prison camp in Cuba is deemed to be contrary to international law and in Syria torture is on the agenda.

These incidents lead use to the question, which limits are set for acts of intelligence today? Does the issue about the oversight of intelligence agencies have the right significance nowadays? What are effective restrictions for these kinds of services? In which way should the oversight be implemented in the work of the agencies without derogating their work disproportionally?

Therefore first of all, this essay is going to provide the reader with some basic information about intelligence agencies, their purpose, categories and functions and at least a few examples from different countries. Subsequently basic oversight aims are mentioned. Followed by specifying the Legal framework concerning oversight and accountability such as executive, legislative and judicial control. Thereafter supervision of budget and covert actions are discussed. Finally there will be a summary.

II. Basic Information

“The primary task [of intelligence Agencies] is gathering and evaluating information about the foreign policy, domestic policy, war-making capabilities, industrial and agricultural output of other nations.[...] In addition to this primary task, intelligence agencies also

¹ United States Congress Committee on Foreign Relations, „Countering the changing threat of international terrorism“. 
engage in three other activities: counterintelligence, clandestine political activities, and police work.”² This short definition delivers us a little insight of the function of intelligence agencies.

1. Purpose

The gathering and evaluating of information is probably the contributing advantage of intelligence compared to other sources. At the same time it also holds a great risk particularly about information concerning personal data. For example if the data is just collected as a preventive measure because it might be useful at a later time. Nowadays there is a lot of discussion because of the increasing information being gathered by the authorities for example in passports, national databases or concerning crimes. As the world changes also the relevance of information is changing. For a government choosing the right action depends also on the quality of facts which can be taken into consideration. Nevertheless there are clear guidelines for data collection, use, and dissemination needed to guarantee lawful work of intelligence.

The other function of external intelligence services “covert action […] is increasingly disputed as an appropriate intelligence function in a modern democratic state”³.

To put it briefly the purpose of intelligence agencies is the state security. This term enfolds all measures that serve the protection of government bodies, the interior and external existence of the state and those facilities.

2. Categories

The Organisation and division of power and the competence of intelligence services have various arrangements in different countries. There are domestic and foreign intelligence activities as well as civil and military acquisition of information. In some countries they are perceived by only one agency whereas in other countries a few distinct services exist. Another determination constitutes the differentiation between the very information retrieval and analysis on the one hand, and police competences on the other. In some countries, intelligence agencies are able to request administrative assistance from the police for prosecution. In addition there are numerous intelligence services provided with departments for the enforcement of covert operations in overseas. Summarily there are

² http://www.britannica.com
³ Caparini, Marina, „Challenges of control and oversight of intelligence services in a liberal democracy“. Paper presented at the Workshop on Democratic and Parliamentary Oversight of Intelligence Services, organized by the DCAF, Geneva 2002, p. 2.
various categories of intelligence agencies in different countries with highly differing competencies.

3. Examples

(a) Germany

In Germany, a division between military and civil external espionage does not exist. Both terms of reference are associated in the “Federal Intelligence Service” (BDN). The “Federal Office for the Protection of the Constitution” (BfV) is responsible for the domestic reconnaissance. The BfV is federally organised which means there is existing one “State Office for the Protection of the Constitution” (LfV) in each federal state. The principal activity takes place in the particular agencies in the federal states. The counterintelligence is the task of “Military Counter-Intelligence Service” (MAD). The BND gathers information which is relevant for the reclamation of cognitions about foreign countries as well as information of importance for the external and domestic policy of Germany and analyses them. Not until 20.12.1990 did the German intelligence agencies have legitimacy because of the decision of the Federal Constitutional Court in 1983. The BND does not own a police authority. The respective chairman of the Federal Chancellery is the administrator of the BND.

(b) USA

The two most commonly known services in the USA are the “Central Intelligence Agency” (CIA) and the “Federal Bureau of Investigation” (FBI). However the FBI is a police authority with a relatively small intelligence service section. The Department of Homeland Security established in 2003 combines a large number of agencies of homeland security and boarder control but can not be designated as domestic intelligence service. Besides the

4 Schafranek, Frank Peter; „Die Kompetenzverteilung zwischen Polizei- und Verfassungsschutzbehörden in der Bundesrepublik Deutschland“; p. 54.
5 Schafranek, Frank Peter; „Die Kompetenzverteilung zwischen Polizei- und Verfassungsschutzbehörden in der Bundesrepublik Deutschland“; p. 55.
6 Rose-Stahl, Monika; „Recht der Nachrichtendienste“; p. 22.
7 § 1 II BND act; http://www.rechtliches.de/info_BNDG.html.
8 Gröpl, Christoph; „Die Nachrichtendienste im Regelwerk der deutschen Sicherheitsverwaltung“, p. 76.
CIA there are 12 further national intelligence services which are organizationally centralized in the “Intelligence Community” (IC). The main task of the CIA is “providing accurate, comprehensive, and timely foreign intelligence on national security topics”, “conducting counter-intelligence activities, special activities, and other functions related to foreign intelligence and national security, as directed by the President”. The legal basis is mainly the “National Security Act” from 1947 and the “USA Patriot Act” from 2001 in which the competences and authority of homeland security are reformed. The CIA is directly subject to the President through the DCI, the rest of the intelligence services are controlled by the particular ministers. The budget of CIA, FBI and numerous smaller agencies is 30,2 billion Euro excluding the military intelligence service.

III. Aims of intelligence oversight

“Secrecy is the enemy of democracy” because as they operate in secrecy, intelligence agencies are often seen as uncontrolled. In Comparison with other institutions of the federal government, it seems to be much more difficult to provide accountability for them. If they reveal their activities to the public they simultaneously inform their enemies.

There from and out of the principle of separation of powers in conjunction with practice of secrecy follows that a particular control of intelligence agencies is essential. The parliament can not control the tasks and usually can not see the outcome of the intelligence agency which is commissioned by the executive. The courts can not act without a claim. The victims of intelligence operations however mostly do not know anything about it or they are in a foreign country. Consequently claims are to a greater or lesser extent unlikely. Also the public force made by the press is not really possible because of the secrecy. As all of these control mechanisms are not working a legal black hole occurs and other mechanisms have to be created to achieve effects.

Nevertheless the government itself has to ensure that the secret services actually obey the directives and do not develop a life of its own. The awareness of the agencies being controlled could already contribute to the prohibition of grievances.

The set of problems is to what extent should the parliament be involved in the activities of government? As a matter of course the parliamentarians do not command the army, but on

11 https://www.cia.gov/index.html
13 Holt, Pat M.; „Secret Intelligence and Public Policy“; p. 3.
the other side the responsibility for the security sector must be shared by parliament and government. This applies to the proportion between political and military leaders as well. They should not be seen as adversaries with conflicting goals. It is rather the opposite as they both need each other to pursue an effective security policy that meets the military as well as the societal requirements. An important condition so is the communication between political leaders and generals.

IV. Democratic control

“In a democratic state, intelligence services should strive to be effective, politically neutral or non-partisan, adhere to a professional ethic and operate within their legal mandates, in accordance with the constitutional-legal norms and democratic practices of the state”. To ensure that these premises will be fulfilled all instruments of democratic oversight should be used in the adequate degree. Elected politicians are representatives of the public the agencies have to be controlled by them.

1. Executive oversight

First part of external control of the intelligence agencies has to be performed by the government. Here should be noted that executive and democratic oversight do not collide, it is more the opposite, that parliament can be much more efficient and call the ministers to account if they have information about operations of the intelligence agencies. The executive has a more controlling function. Basically the term control means ensuring that specific procedures are followed. In a broader sense, it means creating the conditions that lead to the achievement of agreed standards of performance, including the desired results as well as compliance with law and policy.

15 Born and Leigh; „Legal Standards and Best Practice for Oversight of Intelligence Agencies“; p. 55.
16 Born and Leigh; „Legal Standards and Best Practice for Oversight of Intelligence Agencies“; p. 55.
17 Hastedt, Glenn; „Controlling Intelligence: The Role of the DCI. International Journal of Intelligence and Counterintelligence“; No. 1; p. 25.
(a) The executive control in general

The control by the executive is the need for competent political guidance of the intelligence services from the people they serve.\textsuperscript{18} The minister must combine both powers, to control the intelligence agencies on the on hand and to have the authorization to request information from the agencies on the other hand also to fulfill their duty as elected state representatives. If intelligence does not receive direction, the chances of resources being misdirected and wasted increase. Intelligence services need clear guidelines as to what information to collect and when it is needed. They need to know if their products are useful and how they might be improved to better serve policymakers. Ministers need to appreciate what intelligence can offer them to a much greater extent and become more directly involved in the ways in which intelligence capabilities are used.

Intelligence agencies should always act within the scope of the policies of the government of the day and in pursuit of objectives relevant to these policies. That certainly does not mean that the executive obtains management rights about intelligence agencies and their operations and that the policy prevails on the agencies.\textsuperscript{19} However if the aim of intelligence actions gets interfered with political issues the danger that a political actor could use the intelligence to ensure his power impedes. Also the minister itself has to assure that he does not get involved in the structure of the intelligence agency, because otherwise he cannot be seen as an external supervisor anymore.\textsuperscript{20} A major maxim for the intelligence sector has to be the achievement of political neutrality. A well-balanced system between political oversight on the one hand and controlling on the other is indispensable.

Besides the ministerial control which varies at least with every change of the government and seldom more often because a minister retires or has to quit from the cabinet, there should be a further institution with a more constant character. This facility could consist of independent experts. They would give advice to current responsible officials like the president, prime minister or particular minister. The institutional role of that body should not change with the government elected. That would establish a balance between political issues and stability. Ideally, this could be a National Intelligence Council.\textsuperscript{21}

\textsuperscript{18} „A Policymakeris Perspective on Intelligence Analysis“; https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/csi-studies/studies/95unclass/Davis.html.
\textsuperscript{19} Born and Leigh; „Legal Standards and Best Practice for Oversight of Intelligence Agencies“, p. 55.
\textsuperscript{20} Born and Leigh; „Legal Standards and Best Practice for Oversight of Intelligence Agencies“, p. 55.
The international cooperation with other foreign intelligence services should at least be mentioned.\textsuperscript{22} Such cooperation could be a convenient indicator about the one work. The performance, value, reliability and credibility of the intelligence agency would be benchmarked by the cooperating agency, if they determine that the agency is not doing well. The effect would be reduced collaboration. The agencies would benefit from the feedback given by the foreign intelligence service.

\textit{(b) The executive control in Germany}

The coordination of the intelligence service in Germany is realized by the commissioner for intelligence services at the Federal Chancellery. He coordinates the collaboration of the different intelligence agencies among each other and the inter-agency cooperation with other administrative bodies and bureaus.\textsuperscript{23}

Furthermore the supervision is performed by the particular ministers respectively, the administrative head of the Federal Chancellery (ChefBK). The basis for the work of the BND is the long-term mandate which is compiled by the executive committee (Department of Foreign Affairs, Department of Defence, Home office, Ministry of Economics, Ministry of Research, Federal Ministry for Economic Development and Cooperation) at the head of the Federal Chancellery every 4 to 5 years.\textsuperscript{24} The ChefBK in an assistant to the coordinator for intelligence services.\textsuperscript{25} His function is the coordination and increase of the cooperation between the three German Federal intelligence agencies.\textsuperscript{26} He is responsible for the entire monitoring and supervision of the activity of the BND. His duty encompasses a whole series of competences. He has the right to demand disclosures about work methodology, character of information and files, organisation, budgeting, and personnel structure of the intelligence agencies.\textsuperscript{27} Furthermore he is authorized to contribute on legislative projects


\textsuperscript{24} Wieck, Hans Georg; „Der Bundesnachrichtendienst in den Entscheidungsprozessen der Außenpolitik“, p. 47.

\textsuperscript{25} Porzner, Konrad „Der Bundesnachrichtendienst im Gefüge der öffentlichen Verwaltung“; 1995, p. 125.

\textsuperscript{26} Busse, Volker; „Bundeskanzleramt und Bundesregierung, Aufgaben, Organisation, Arbeitsweise“; Heidelberg 2001, p. 129.

\textsuperscript{27} Porzner, Konrad: Der Bundesnachrichtendienst im Gefüge der öffentlichen Verwaltung, Opladen, 1995, S. 125.
and regulations concerning intelligence services and collaborating sites. He is also authorized to call meetings with the chiefs of the services and there deputies.

(c) The executive control in the USA

The chief control and feedback council at the executive in the USA is the National Security Council (NSC) which consists of the President, Vice President, the Secretary of State, the Secretary of the Treasury, the Secretary of Defence, and the Assistant to the President for National Security Affairs as well as the Chairman of the Joint Chiefs of Staff as the statutory military advisor to the Council, and the Director of National Intelligence as the intelligence advisor. The function of this board is to give advice to the president in view of national security especially at the domestic, foreign and defence policy. In addition it oversees and conducts intelligence and counterespionage activities.

Furthermore the President’s Foreign Intelligence Advisory Board (PFIAB) consists of selected and reliable experts from outside the government, who are working voluntary. The PFIAB controls quality, amount and adequateness of intelligence activities but mainly confined to organizational-financial requests.

Another facility is the President’s Intelligence Oversight Board which was created by President Ford in 1976, the members are not cabinet affiliated. The board reports about activities of the intelligence agencies which could be unlawful or inexpedient.

Another regulation and control instance follows from the centralisation of the intelligence agencies into the IC in charge of Director of Central Intelligence. He is closely working together with president coordinating all actions of the intelligence services.

Intelligence agencies subordinated to a ministry are also controlled by them as far as the secrecy allows.

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30 http://www.whitehouse.gov/nsc/.
31 http://www.whitehouse.gov/nsc/.
The powerful role of the President is obvious, especially as he is accountable to authorize covert operations.\(^5\)

\(d\) *Summary*

The control of the intelligence agencies is performed by the executive respective the ministers and committees. Therefore in Germany the ChefBK and in the USA the NSC are the controlling organs.

2. Legislative oversight

The legislative oversight designates the consistent control of the executive authority through the representation of the people (Parliament) and is a fundamental element of the political system of a democratic state. Besides the separation between functions and persons at the exercise of sovereignty, abuse of power is avoided by mutual control, so called “checks and balances”. Concerning legislative oversight of intelligence it is not about disclosure of their activities to the public at large. Essential information for the foreign policy and the inner security could be acquired sometimes merely through secrecy. However the intelligence agencies may not act in a legal black hole.

\(a\) *The legislative oversight in general*

Therefore first of all a legal basis is needed as a judicial foundation for intelligence activities and their restrictions. Another main point is the existence of committees and other organs with enough power to affect the actions of the intelligence agencies is also dependent on the size of the intelligence agencies.\(^6\) As well as the willingness of the government to provide them with the most imports facts. The parliament should have a comprehensive right to information regarding decisions and proposal from government and administration as well as concerning implementation of acts of parliament. Furthermore the parliament should be able to summon and consult the members of government at any time. Also an Enquête right would improve the oversight by the parliament. Still the right to analyse statutory violations, grievances and undesirable conditions which possibly could happen in a court proceeding or with the commission of an investigator is another part of adequate oversight.

Clandestine actions for the protection of the citizens could only encounter comprehension, if clear guidelines and efficient democratic oversight mechanisms are present. Therefore it

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\(^{6}\) Born and Leigh; „Legal Standards and Best Practice for Oversight of Intelligence Agencies“; p. 84.
is also crucial that the entire intelligence agency and all associated bodies are part of the legislative oversight.\textsuperscript{37}

(b) The legislative oversight in Germany

The legislative control of the German intelligence agencies is primarily performed by the parliamentary control commission, which consists of nine members from the Bundestag who are elected every legislative period. The government has to brief the commission comprehensively about the general intelligence activities and procedures of particular importance.\textsuperscript{38} According to § 2 S. 2 PKGrG there is also the duty to report on demand about other processes.\textsuperscript{39} Together with the G10-commission it controls the monitoring of telecommunication and intrusion into privacy of correspondence. The commission has the right to access records and is able to hear members of the agencies. Furthermore it could pay an unannounced visit of intelligence agencies and assign official experts to accomplish inspections. If necessary the commission also has the right inform the public.\textsuperscript{40} However according to § 2b PKGrG the government might under certain conditions refuse the publishing of information’s by giving reasons. The chairmanship alternates half-yearly between government and opposition.

An Assurance committee is responsible for the approval of the classified economic plan and for the control of its enforcement.\textsuperscript{41} He is being advised by the parliamentary control commission. An Appointment of a commission of enquiry is possible as well. Additionally the Federal Commissioner of Data Protection pursues together with the State Commissioner of Data Protection, whether the citizens right of self-determination is retained during the everyday activity of the agencies.\textsuperscript{42} This affects the core function of the intelligence agencies. He watches for instance over data whether it gets deleted if it is not associated with the purpose of intelligence. He has also explicit access to classified-documents. Violations of data protection might be formally objected by him as well as a test procedure initiated. Besides that he has also the possibility to include them into his

\textsuperscript{37} Born and Leigh; „Legal Standards and Best Practice for Oversight of Intelligence Agencies“; p. 84.
\textsuperscript{38} http://www.bundestag.de/parlament/gremien/kontrollgremien/parlkon/index.html.
\textsuperscript{39} http://bundesrecht.juris.de/ndkontrg/__2.html.
\textsuperscript{40} Shpiro, S.; „Guarding the Guards – Parliamentary Control of the Intelligence Services in Germany and Britain.“ Sankt Augustin: Konrad-Adenauer-Stiftung p. 63.
\textsuperscript{41} http://www.bnd.bund.de/nn_355204/DE/Unser__Auftrag/Kontrolle/Kontrolle__node.html__nn=true.
\textsuperscript{42} http://www.bfdi.bund.de/clf_029/nn_531532/SharedDocs/AufgabenOrganigramm/GVPL__schmal, templateId=raw.property=publicationFile.pdf/GVPL_schmal.pdf.
official report, which is presented every two years.

(c) The legislative oversight in the USA

The control of the intelligence agencies in the USA is the business of Congress. The Senate Select Committee in Intelligence (SSCI) consists of 13 to 17 members, whose membership is limited to eight years. They are appointed by the Speaker of the House.  

The chairmanship alternates between a member of the majority party and a member of the minority party.  

The House Permanent Select Committee in Intelligence (HPSCI) has 19 members. The membership is limited to five years and the members are designated by the party whip. Herein only the majority party is presiding.

These two boards have an overall right of control and therefore they receive several thousand documents and briefings per year from an Office of Congressional Affairs. Further, they are able to extend a summons and control the budget, which is explicitly provided for the government. The committees are being informed about all covert operations authorizes by the government.

The Director of Central Intelligence is appointed by the senate on proposal of the President if required the congress may apply committees of enquiry.

(d) Summary

The oversight of the intelligence agencies and the executive is performed by the legislative. Therefore in Germany the parliamentary control commission is installed. In the USA the SSCI is the main oversight organ.

3. Judicial oversight

(a) Judicial oversight in general

The judicial supervision receives a more underpart in the intelligence oversight. At least with the establishment of a claimant it gains importance. However just if the court has full access to classified documents concerning the case it is able to fully prove the incidents, as well as to reconstructing the motives of the guarantors. Also the members of the intelligence agencies and the corresponding authorities could be suspects in a court hearing.

Another practice is also ready known from the domestic police work. If the police want to use special procedures like a raid or putting a trace on someone’s telephone they have to request for authorization from a judge first. Similarly it could be handled within the intelligence agencies. If they want to perform some special or even covert operations they should attain the authorization from a judge before. Possibly with the exceptions for danger in delay and the dispensability of the authorization.

(b) Judicial oversight in Germany

In General referring to the constitution lawsuits from citizens against intelligence agencies are possible in Germany. Indeed it is much more difficult because usually the victims do not realize that they have been targets of intelligence actions. Furthermore the BND’s activity is bent on foreign countries.

In this context the G10 commission is relevant again. It is non-partisan and consists of four members and four representatives. The chairman has to have the qualification as a judge. To give the citizens the possibility to question the intelligence activities the agencies have to inform the person concerned after determining the task, provided that does not endangers the purpose of the action.

48 Sandberg, Justin M.; „The Need for Warrants Authorizing Foreign Intelligence Searches of American Citizens Abroad: A Call for Formalism“ The University of Chicago Law Review. Vol. 69, no. 1; p. 413.

49 Art. 19 VI GG.


(c) Judicial oversight in the USA and other committees

In the USA electronic wiretapping and searches have to be previously judicially approved as far as American citizens are affected. The Inspector General is a largely non-partisan setup in the CIA, who is only supposed to the DCI and his representative. His task is to “audit, evaluate, monitor, and review the programs, policies, procedures and functions of the Personnel Security, Nuclear, and Intelligence Community within the Department of Defence, ensuring intelligence resources are properly managed”.

His inspections are also performed locally. He reports to the DCI, which has to forward the record within 30 days to the congress-committees. The Inspector General is nominated by the President and opted by the senate. As well as the General Counsel his function is the advising in legal questions and to tend legal affairs of the agency.

(d) Summary

The legislative oversight is limited to the review and interpretation of the constitutionality of the laws. As well as to judicial approval of operations.

V. Public oversight and whistle blowers

1. Public oversight

The relevance of public discussion and media coverage for intelligence oversight should not be underestimated. Investigations about intelligence activities have consistently created mishaps and public grievances. This frequently led to wide controversy about certain, objectives and limits.

Especially at infringements of fundamental rights it is significant to visualize the control of these constraints at any time. Even to let the citizens consider the intelligence agencies not just as legal but also as legitimate. The media coverage therefore is not merely important for the audience to report about processes, which matter the general security as well as the freedom of the individual. It is also of vital importance for the agencies itself to obtain the apprehension of there work for the long term.

As a consequence the intelligence services in Germany e.g. have enhanced their public
relations. They are present with brochures, information centres and homepages.\textsuperscript{54} Inside
the CIA is the Office of Public Affairs.\textsuperscript{55} It advises the DCI in issues concerning public
affairs and supports them. Thereafter the Study of Intelligence (CSI) arranges scientific
conferences about the history of CIA and there activities.\textsuperscript{56} Frequently they result in
declassification of considerable archive-supplies concerning the topic of the conference.
Further the media intensifies the oversight mission of the parliament by reporting on the
parliamentarian attention on intelligence.
Also the interests dealing with intelligence agencies out of the media have increased. The
International Intelligence History Study Group especially deals with historical aspects of
intelligence agencies.\textsuperscript{57} The workgroup Intelligence Services in Germany attempts to
benefit the open discussion about the further work of the agencies among other things.\textsuperscript{58}

\textbf{2. Whistle blowers}

An informant who makes grievances, illegal action or generally endangers the public, of
which he learned during his work, is called a ‘whistleblower’. They disclose non-tolerable
dangers, risks and undesirable development against international agreements, which
menace the peaceful coexistence of the society and the environment. Further
‘whistleblowers’ do not act out of self-interest but for concern about the fellow men and
the environment. Initially they bring existing grievances up for discussion. If the company
do not react adequately they bring it to light. Usually they run a high risk, compromise
their career or even their existence.
Whistle blowing is an act of moral courage and is not just related to companies but also
brings grievances of governments or the administration to public. If the government or
large company are affected they also have to deal with imprisonment, claims for
indemnification or even criminal attacks. In GB and the USA they already gain protection
through several acts.\textsuperscript{59}
Referring to intelligence it is also a possibility of oversight. At least particularly in this
field there should be detailed guidelines how a whistleblower is protected. Otherwise the

\textsuperscript{54} E.g.: http://www.bnd.bund.de/DE/Home__Vorschaltseite/home__node__mit__javaSkript.html.
\textsuperscript{56} https://www.cia.gov/library/center-for-the-study-of-intelligence/about-csi.html.
\textsuperscript{57} http://www.intelligence-history.org/.
\textsuperscript{58} http://www.gknd.de/.
\textsuperscript{59} E.g. Whistleblower Protection Act.
danger of over hasty whistling blowing would be added. However the knowledge of the eventuality of whistle blowing could be a form of oversight.

VI. Budget and covert actions

The budget oversight is a very powerful form of supervision. Without a well provided budget the intelligence agency can not work effectively. Therefore the intelligence agency should send a request to the parliament about the estimated amount of money it will need. It should contain a detailed listing of the purpose the money is needed for. Then parliament should inspect the budget proposal accurately. Furthermore the oversight body should have access to all relevant budget documents.\textsuperscript{60}

In Germany the budget of the agencies are debated in the assurance committee of the budget committee. The budget committee itself knows only total sum of the approved budget but no further details.\textsuperscript{61} This regulation ensures that right of the parliament to authorize the budget; the financial control and the secrecy are retained. The assurance committee decries the responsibility of intelligence budget for the parliament. So that the parliamentarian control committee obtains a deeper view at operative process.

The National Security Act of 1947 requires that intelligence and intelligence-related activities are specifically authorized because of the sensitive nature of the Intelligence Community’s activities. Therefore, the House and Senate Intelligence Committees are responsible for producing an annual authorization bill for all elements of the Intelligence Community. The wide guidelines provided by the authorizing committees typically translate into aggressive daily reviews of the budgets for the intelligence agencies. The details of those budgets remain classified to intelligence committees in both houses maintaining auditing staff dedicated to the continuous review of budgets. The House Appropriations Committee also possesses a team of cleared and experienced auditors to review intelligence budget concept.

Concerning covert operations the control of budget is important as well. Only if the covert operations are being proved by the responsible member of the executive and it is secured that they do not infringe the legal framework the authorization should be given and therewith the money. A violation of human right as a matter of course is prohibited.\textsuperscript{62}

\textsuperscript{60} Born and Leigh; „Legal Standards and Best Practice for Oversight of Intelligence Agencies“; p. 97.

\textsuperscript{61} Mayntz, Gregor; „Die Parlamentarische Kontrolle der Nachrichtendienste“, p. 25.

\textsuperscript{62} Born and Leigh; „Legal Standards and Best Practice for Oversight of Intelligence Agencies“ p. 62.
In the USA the CIA has to inform the Intelligence Committees about covert operations. Furthermore on the President has to authorize the covert operation. He has to justify his decision to the senate before the initiation of the operation. Only in extraordinary circumstances the President can limit the reporting to the congress to the “Gang of Eight”. This group consists of the chairmen and ranking minority members of the congressional intelligence committees, the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate. For this special type of oversight there should be stricter rules to ensure a correctly and judicious work.

In Summary the oversight of the intelligence budget and covert operations are a far more controversial topic. Both are hard to control without the knowledge of classified documents. Therefore a special small committee might be a fair solution but always with the background of stricter guidelines.

**VII. Conclusion**

Ensuring democratic oversight of intelligence is necessary and highly complex, particularly with today’s challenges of democratic consolidation. A system of control, supervision, and oversight is necessary to draw a clear guideline for intelligence collection that is acceptable for the affected society. There has to be legal limits but at the same time the function of the intelligence could not be constrained too tightly. The right proportion between restriction on the one hand and scope on the other is a major aim. Therefore it is essential that this balance does not lead to a move more and more in the wrong direction because of the growing threat of terrorism.

Another major part of oversight lies to independent committees and public accountability. The government and parliament alone cannot secure consistent oversight. The challenge has to be divided to provide more effective structures. However the balance between secrecy and democracy will always be a controversial subject.

International cooperation and comparison of several oversight systems could help to improve existing practices. Another development is the approach of the work of intelligence and the functions of the police. Comparable monitoring systems have to be created as well. However it should not be the task to establish as much committees as possible but effective once.

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64 50 U.S.C. § 413b, c 2.
The domestic standards should also obtain for information gathered by foreign intelligence services. If the information is provided through actions violating human rights they should not be used.

In addition a commissary could be installed who could provide a general overview. Thereby the communication with the intelligence agencies could be improved and there would be a contact person. He also could enforce his own inspections.

The oversight of intelligence agencies will remain a controversial topic. There will always be space for changes and improvements connected with world policy.