



More than a ritual dance. The Dutch practice of parliamentary oversight and control of the intelligence community

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Abstract

Parliamentary oversight and control of intelligence and security services is complex, in theory as well as in practice. Because of the secrecy that surrounds their work, parliamentary control is essentially difficult. In this article the Dutch experiences in institutionalizing and practising oversight are explored. It will become clear that factors such as the structural makeup of the parliamentary committee for oversight, political culture, and the personal views of the Members of Parliament involved, decide to a large degree how often the committee convenes, what the atmosphere of the meetings is like, and what issues are on the table.

Keywords

intelligence and security; oversight; control; parliamentary oversight; democratic control; oversight in practice; Dutch committee on oversight of intelligence and security services

Infringing services

Democracies and intelligence organizations are inherently at odds. Democracies are characterized by principles of law, legality, checks and balances, and fundamental individual rights. This implies that constitutional laws attribute and regulate state power; that every form of governmental action is based on general rules which the citizens are able to know and understand (so that they may know in advance that some of their actions might cause the government to interfere in their lives); that the legislature, judiciary, and executive are separated; and that individuals are safeguarded against too much state intervention in their personal lives.¹

Activities of the intelligence and security services may infringe on these rights. Therefore in the course of the twentieth century most states introduced royal decrees and laws to legally settle the question of when, how, and why these services may infringe on these rights. In addition they have sought different forms of democratic oversight. In this article it will be explored how and why in the Netherlands parliamentary control is institutionalized, organized, and practised. The experiences of different members of parliament involved in the oversight of intelligence will offer us an interesting insight into the practice of intelligence oversight and they can be of interest to oversight bodies in other countries too.

Before turning to the Dutch oversight practice, it is necessary to establish how and why intelligence and security services infringe on the fundamentals of democracy. The principle of legality is under pressure, in the first place because these organizations keep their methods and actual operations secret: as a result individuals can only know to a certain extent (on the basis of yearly reports, press releases, news articles, and public statements by politicians) when, how, and why these organizations will (possibly) act, possibly infringing on their individual freedoms. Second, these services that are part of the executive may violate the *trias politica* insofar as most of their inquiries do not concern criminal behaviour, so the secret services' actions will almost never be judged in any court. If an intelligence matter does come before the judiciary, intelligence officers can rely on their legal obligation to keep silent about their sources, methods, and actual knowledge. And, finally, intelligence and security services may infringe on the principle of checks and balances. Due to their secrecy, normal levels of transparency are not applicable to them. To democratically check governmental proceedings, one needs at least to be able to oversee what the government is doing or has done.²

1 R.A. Dahl, *On democracy*, New Haven en Londen, 1998, pp. 47-61.

2 N. Verhoeven, 'Toezicht op inlichtingen en veiligheidsdiensten', in B.A. de Graaf, E.R. Muller en J.A. van Reijn (eds.), *Inlichtingen en veiligheidsdiensten*, Kluwer, Alphen aan de Rijn, 2010, pp. 144-160, at pp. 147.

These observations might lead one to conclude that it is better not to have intelligence and security services in a democracy altogether. Most democracies do have them, however. The very reason for states to institutionalize these organizations throughout the nineteenth and twentieth century, however, was their perception that democracy as such was under pressure. Although states have been gathering foreign political or military intelligence for centuries, the institutionalization of these activities coincided with the establishment of security services – domestic intelligence organizations.³ Belgium established its first security service in 1830 when it fought a war of independence against the Netherlands, mainly to check if agents from abroad would not come to destabilize the new and internationally unsure Belgian nation state; France established the Deuxième Bureau after they lost the war with Prussia in 1871; the British established their Secret Service Bureau in 1909 to track down German spies; and in the Netherlands the first security service was established in 1919 due to the fear that revolution would bring down democracy. Consequently, exactly when democracies feel that they are under threat, they tend to institutionalize their intelligence and security activities. So these services have been around for a long time.⁴

Pressing for parliamentary control

Not many governments felt the need to inform society or parliament about the establishment or existence of their secret services – let alone to publicly discuss the legality and transparency of the secret services' operations and their effects for the democratic state and individual citizens. The Dutch Ruijs de Beerenbrouck Cabinet, for example, decided in 1919 that the security service (Centrale Inlichtingendienst) was to be paid for by the secret budget of the War Office, explicitly to avoid Parliament finding out that such a service existed. Even in 1949, when the Dutch government had vastly expanded the intelligence community, Prime Minister Drees considered intelligence to be something 'by the government, for the government'. He felt, accordingly, no need to inform the public about it.⁵ This inclination towards secrecy was by no means extraordinary in the international world. To this day France has refrained from granting Parliament the right to oversee its intelligence community because the Parti Communiste Français was strongly represented in Parliament in the early Cold War period. And Great Britain officially acknowledged the existence of its security service only after the Cold War ended in 1989, when the Security Service Act was passed.⁶

In 1952, however, a Member of Parliament for the Dutch social democratic party (Jaap Burger), pressed the Dutch government to expand the parliamentary instruments to oversee and control the activities of the Dutch security service. Until then, the only opportunity to inquire into the workings of the secret service was when Parliament discussed, once a year, the budgets of the respective ministries for the following year. Burger pleaded for a 'standing committee' which could call to account the Minister for Internal Affairs at

3 B.G.J. de Graaff, 'De 'intelligence revolution' van de 20e eeuw en haar geschiedschrijving: een bibliografisch artikel', *De Nieuwste Tijd*. Contactblad van de Vereniging voor de Geschiedenis van de Twintigste Eeuw, no. 6, 6 June 1996, pp. 5-16, at pp. 5-6.

4 R. Libert, 'In vogelvlucht. 'De geschiedenis van 175 jaar Veiligheid van de Staat', in M. Cools et al (eds.), *De staatsveiligheid: essays over 175 jaar Veiligheid van de Staat*, Brussel, 2005, pp. 23-43; S. Laurent, 'Aux origines de la 'guerre des polices': militaires et policiers du renseignement dans la République (1870-1914), in F. Guelton en A. Bicer (eds.), *Naissance et évolution du renseignement dans l'espace Européen (1870-1940)*, Parijs, 2006, pp. 17-38; S. Twigge, E. Hampshire, and G. Macklin, *British intelligence; secrets, spies, and sources*, Richmond, 2008, pp. 19-50; C.W. Hijzen, 'Geheim gewroet in het duister? Percepties en maatregelen ten aanzien van veiligheidsdiensten in Nederland' 1918-1989, in *Tijdschrift voor Geschiedenis*, 2012, 125, no. 3, pp. 332-349.

5 Proceedings of the First Chamber of Parliament, session year 1948-1949, 10 August 1949, pp. 787-789.

6 R. Warnes, 'Chapter four: France', in B.A. Jackson (ed.), *Considering the creation of a domestic intelligence agency in the United States: lessons from the experiences of Australia, Canada, France, Germany, and the United Kingdom*, Rand Corporation, Santa Monica, 2009, pp. 65-92, there 85; L. Clutterbuck, 'Chapter six: United Kingdom', in B.A. Jackson (ed.), *Considering the creation of a domestic intelligence agency in the United States: lessons from the experiences of Australia, Canada, France, Germany, and the United Kingdom*, Rand Corporation, Santa Monica, 2009, pp. 115-142, there 120.

anytime it saw a reason to do so.⁷ Because Burger played the political game cunningly (he refused to vote for another law which the Drees Cabinet wanted to introduce) in 1952 the ‘Permanent parliamentary committee for the domestic security service’ was established. Members of this committee were the leaders of the five largest political parties in Parliament. The minister would inform the leaders of the parliamentary groups in confidentiality; they were not allowed to share what they had heard in the committee with other party members or other parliamentarians. In line with the Cold War consensus communists would never be allowed to become members, not least because the most important activity of the security service was to gather intelligence on Dutch communists.⁸

In the minister’s briefcase

The first head of the post-WWII security service, Louis Einthoven, skilfully neutralized the potential interference of Parliament with his secret service. He was very secretive and limited the information he provided to the parliamentary leaders. So although Jaap Burger, who as the leader of the (electorally largest) social democratic party chaired the committee, tried to influence the security service’s policy, the committee did not have much room for manoeuvre. Without knowledge of what the security service exactly did, it was difficult to ask questions and exercise influence on its activities. Parliamentary control was thus practically limited to investigating complaints by Dutch citizens who in one way or another felt that they were being victimized by the workings of the security service. In the light of the democratic protection of the individual against the disadvantageous effects of the pursuits of the government, this was of course an important function of the committee.⁹

Almost every discussion in this parliamentary committee concentrated on the Dutch security service, the BVD. Neither the foreign intelligence service, Inlichtingendienst Buitenland, which was on the agenda at the beginning of the 1970s, when it was briefly transferred from the Prime Minister’s department to the War department, and later on in the 1980s when the intelligence service’s abrogation was discussed, nor the military intelligence services were the topic of discussion for the oversight committee. So when Parliament discussed intelligence, it was in fact the security service. Partly this was due to the fact that the committee’s main task was to discuss complaints, and they were almost always directed against the security service.¹⁰

It was not until the second half of the 1960s that Parliament demanded a more active role in the control of intelligence affairs. Especially the social democrat Joop den Uyl, the chairman of the parliamentary committee for the security service in 1967-1973 and 1978-1981, and Hans van Mierlo (the leader of the D66 parliamentary group, a new liberal, reformist party in 1967-1973 and 1986-1994), started asking more critical questions about the intelligence and security services. Through their questions and interference, Parliament took a critical stance vis-à-vis the norms, definitions and working practices of the security service. More and more, Parliament made an issue of the lack of legality, transparency, and judicial checks in intelligence practice.¹¹ In 1968 the permanent committee decided to extend its oversight activities to the other intelligence

7 Proceedings of the Second Chamber of Parliament, session year 1950-1951, 25 October 1950, Document number 1539, no. 5, pp. 13-20; Proceedings of the Second Chamber of Parliament, session year 1951-1952, pp. 1980.

8 D. Engelen, *Geschiedenis van de Binnenlandse Veiligheidsdienst*, The Hague, 1995, pp. 102-103.

9 Proceedings of the Second Chamber of Parliament, session year 1967-1968, pp. 9394; D. Engelen, *Geschiedenis van de Binnenlandse Veiligheidsdienst*, The Hague, 1995, pp. 368-369.

10 B.G.J. de Graaff and C. Wiebes, *Villa Maarheeze: de geschiedenis van de Inlichtingendienst Buitenland* (The Hague 1998) 220-221.

11 D. Engelen, *Frontdienst: de BVD in de Koude Oorlog*, The Hague, 2007, 213.

organizations (then the Foreign Intelligence Service and the three military intelligence agencies) and began to write declassified reports about its oversight activities to inform the other Members of Parliament, which in turn were publicly debated.¹²

Although this practice remained, the activist attitude towards the secret services faded away in the late 1970s. Of course Parliament now and then uttered objections, fears about excesses, and criticism about incidents or complaints. And on some occasions Parliament did take on a more proactive role by asking important questions. Joris Voorhoeve remembers, for example, that as a member of the parliamentary committee between 1986 and 1989 he asked for intelligence about the criminal background of a ‘certain foreign politician’, most probably the leader of Surinam, Desi Bouterse.¹³ In response to Voorhoeve’s request, the security service pooled intelligence from the local intelligence services at the municipal police departments, which clearly showed that Bouterse was not only heavily involved in international drug trafficking, but also in the international weapons trade. This was important information for the Cabinet’s relations with Surinam. Without Voorhoeve’s request, this intelligence would not have been combined and the view of the Dutch government would not have been adjusted. This thus illustrated that it is possible for Parliament to switch from a fundamental passive to a now and then active role vis-à-vis the world of intelligence.¹⁴

But despite these incidental interventions, the parliamentary committee never managed to cause much trouble for the responsible politicians. A former member of the Dutch security service once stated that when his minister had to go to a session of the parliamentary committee he always carried two pieces of paper, implying that one of those was a ‘light version’ and the other a more thorough account of the latest operations and activities. The second piece of paper always remained in the minister’s briefcase, he remembered.¹⁵

Not in the paper

Parliament thus never took on the role of an aggressive watchdog of democracy in the sphere of intelligence and security. A number of reasons account for this. A structural reason was the fact that the committee consisted of the leaders of the parliamentary groups of the respective political parties. These leaders were and still are very busy people. They find it difficult to find the time to convene. Joop den Uyl complained about the lack of time and how he found it difficult to properly perform his oversight tasks in the intelligence field. In the early 1970s he suggested to the then head of the Dutch security service, Andries Kuipers, that another less prominent Member of Parliament should take his place in the committee. Because of the confidentiality of the meetings with the leaders of the parliamentary groups, Kuipers was not very enthusiastic about that idea and asked Den Uyl to continue attending the committee meetings. Den Uyl accepted, and though the issue has been brought up many times by different Members of Parliament since then, Parliament has never decided to change the structure of the parliamentary committee by replacing them with Members of Parliament with expertise in the intelligence field.¹⁶

12 Proceedings of the Second Chamber of Parliament, session year 1967-1968, pp. 9394.

13 Interview by C. Hijzen with J. Voorhoeve, 23 January 2012. Cf. Proceedings of the Second Chamber of Parliament, session year 1989-1990, Report of the Permanent Committee for the Intelligence and Security Services (July 1989-july 1990), 19 September 1990, Document number 21819, no. 2, pp. 1-2.

14 Interview by C. Hijzen with J. Voorhoeve, 23 January 2012.

15 C. Hijzen, ‘Tot het lachen ons vergaat’, in *Socialisme en Democratie*, 70, no. 4, pp. 64-75, at pp. 69.

16 P. Klerks, ‘Ontwikkelingen op het gebied van de Binnenlandse Veiligheidsdienst’, Buro Jansen en Janssen, 1 March 1993; C.W. Hijzen, Dissertation, forthcoming 2014.

The only alteration to the committee's structure concerned the expansion of the number of leaders of the parliamentary groups in the committee. After the Socialist Party, coming from a Marxist-Leninist and Maoist background in the 1970s and 1980s, won many seats in the 2007 election, the then head of the General Intelligence and Security Service (Algemene Inlichtingen- en Veiligheidsdienst, AIVD), Sybrand van Hulst, emphatically asked the leader of the parliamentary group of the Socialist Party Jan Marijnissen to finally let go of his party's refusal to 'democratically legitimize' the existence of the intelligence and security services by taking a seat on the committee. Marijnissen's successor Agnes Kant thus decided in 2009 that the time was ripe to accede. As the socialists were the last party not represented in the committee, all parties in Parliament have been represented in the committee since then.¹⁷

Two consequences arise from this structural choice to appoint only the leaders of the parliamentary groups. In the first place, most of the time they had other priorities to attend to. Because of their full agendas, it was and still is difficult for the leaders to make time to convene, let alone to read the relevant policy documents. Not many of them actively discussed intelligence within their respective political parties, they did not read about it a great deal, nor did the members of the committee put forward a clear vision on the function of intelligence and security services in the democratic state. Most of the time their priorities lay elsewhere, as the former leader of the conservative liberal parliamentary group Frits Bolkestein (1990-1998) remembers:

As leader of my parliamentary group I was absorbed by what was in the paper the next morning. The security service seldom was.¹⁸

A second consequence of this structural makeup of the committee was that it did not often convene. In the early Cold War period the interval between sessions could add up to several years, before the Minister for Internal Affairs took the initiative to invite the members of the committee to discuss current issues.¹⁹ When parliamentary criticism of the security service intensified throughout the 1960s, the parliamentary committee met more often, but it still occurred that it would not meet for long periods of time. Interestingly, the leaders of the parliamentary groups in the 1990s differed in their recollection of how often they met. Bolkestein thought that the committee met 'not more than once a year' whilst the social democrat Jacques Wallage (the leader of the social democratic parliamentary group and chairman of the committee between 1994 and 1998) remembered that the committee came together 'rather frequently', presumably a couple of times per year.²⁰

An additional problem was that even if the committee managed to get together, not everyone showed up. Absenteeism afflicted the meetings throughout the Dutch Cold War history. Even at present, the committee struggles to attract the leaders to come to their meetings. After presumably a series of meetings during which almost no one showed up, Stef Blok, the leader of the conservative liberal parliamentary group and chairman of the committee in 2012, urged the leaders of the other political parties to attend the confidential meetings more often. Although some members apparently still structurally fail to come, the attendance is now

17 NRC Handelsblad, 18 November 2007; Trouw, 18 April 2009.

18 Interview by C. Hijzen with F. Bolkestein, 10 January 2012.

19 National Archive The Hague, Archives of the Ministries of General Warfare of the Kingdom, the Cabinet of the Prime Minister, and General Affairs, 2.03.01, 4735, Meeting 7 December 1956.

20 Interview by C. Hijzen with F. Bolkestein, 10 January 2012; Interview with J. Wallage, 12 April 2012.

‘reasonable to good’.²¹

A ritual dance

The atmosphere during those meetings was usually not one of grave seriousness. The leader of the social democratic parliamentary group Ed van Thijn (1973-1978) remembers that the meetings he chaired were always held ‘in a good mood’. There was ‘not much discipline’, the gatherings were ‘shallow’ and without any ‘real pressure’. People walked in and out of the Regentenkamer, the ornamental room in the Parliament building that was once part of the Ministry of Colonial Affairs, where the meetings took place.²² In the 1990s not much of this informality had disappeared. Frits Bolkestein said that ‘he couldn’t remember that he ever saw an agenda for a meeting’.²³ As a result of this informal and unstructured character of the meetings, not much serious criticism was heard. The lack of legality, transparency, judicial checks and balances and other fundamental policy issues were almost never a topic of discussion.²⁴ One ‘should not overrate the importance of those meetings’, the leader of the conservative liberal parliamentary group between 1986 and 1989 Joris Voorhoeve stated.²⁵ Complaints or certain incidents that the press reported formed the most likely reasons for calling together the leaders of the parliamentary groups.²⁶

In most sessions, the Members of Parliament in the committee thus asked the Minister for Internal Affairs or the head of the security service about a certain complaint or incident. Then they listened to what the politician or official had to say thereon, and usually then accepted the given explanation or illustration. It was ‘fundamentally difficult’, stated Gerrit Jan Wolffensperger (the parliamentary leader of D66 between 1994 and 1998), to ask follow-up questions, because ‘as a parliamentarian you had no context information to judge whether what was being said was true or not’. The matters spoken of were classified and so the leaders of their parliamentary delegations only had the remarks made during the meetings to go by. Therefore much of ‘what we did was listening’, Wolffensperger remembered. Sometimes the parliamentarians did make some critical remarks, but that did not lead to more fundamental debates about the activities, powers, operations, legality, or transparency of the intelligence and security services. In the eyes of Wolffensperger, the meetings became a sort of ‘folkloristic’ or ‘ritual dance’.²⁷

To most of the leaders of the parliamentary groups, however, this ritual dance was the adequate way of exercising oversight. In the eyes of Joop den Uyl the mandate of the parliamentary committee was reactive by nature; its role was fundamentally passive. The committee’s activities could not consist of more than a ‘complaints and accidents procedure’, he explained to the press in the 1980s. First, the committee did not have the staff to monitor the intelligence activities more intensively. Moreover, Den Uyl argued secondly, that even if the Members of Parliament wanted to do more, that would not be desirable. The government

21 Report of the Committee for the Intelligence and Security Services about its activities in 2012, Report no. 33644, no. 1, laid down 30 May 2013.

22 Interview by C. Hijzen with E. Van Thijn, 18 January 2012.

23 Interview by C. Hijzen with F. Bolkestein, 10 January 2012.

24 Interview by C. Hijzen with F. Bolkestein, 10 January 2012; Interview by C. Hijzen with D. Van Thijn, 18 January 2012; Interview by C. Hijzen with J. Voorhoeve, 23 January 2012; Interview by C. Hijzen with G.J. Wolffensperger, 24 January 2012; Interview by C. Hijzen with J. Wallage, 12 April 2012.

25 Interview by C. Hijzen with J. Voorhoeve, 23 January 2012.

26 Interview by C. Hijzen with J. Wallage, 12 April 2012.

27 Interview by C. Hijzen with G.J. Wolffensperger, 24 January 2012.

ruled and executed its policies and Parliament was there to control and oversee those policies. As soon as Parliament started to intensify its oversight activities, it became partly responsible. That would go against the trias politica, he argued.²⁸ Bolkestein advocated along the same lines. He argued that from a constitutional perspective, Parliament should not interfere with the contents of the policy of a bureaucratic organization, which is part of the executive.²⁹

Parliamentary oversight in the future

Talking about the Dutch intelligence and security service, AIVD, on 27 November 2013, the socialist Member of Parliament Ronald van Raak claimed that ‘parliamentary oversight is a farce’.³⁰ He did not, however, make clear which observations led him to believe that, nor did he suggest how it could be improved. From this article it nevertheless follows that the structure of the Dutch intelligence oversight bodies has had important consequences for current practices.

How the current members of the committee look at their role in the parliamentary committee and how active or passive they conceive their own proceedings to be is not known. Although the committee reports once a year about its meetings and the topics touched upon, we do not know what the atmosphere of the meetings is like. Nor do we know how thorough some topics are being discussed. It is very likely that the members of the parliamentary oversight committee will need to cope with the same problems that their predecessors dealt with. They will probably find it difficult to find the time to come to the meetings and to read the reports and documents, let alone to actively discuss their opinions and visions within their own political party.

This is partly due to the structural choices made back in 1952. These had important consequences for the culture of oversight: meetings took place quite infrequently, were rather unstructured and in a relaxed atmosphere. The people present discussed incidents and complaints. And the members of the committee listened. Of course now and then certain chairmen were more proactive and mobilized the other members of the committee to be more critical about certain intelligence issues, but in general the parliamentary committee’s interventions did not have many far-reaching consequences for the activities of the intelligence and security services, nor for those politically responsible.

Although today’s meetings may take place more frequently and in a more structured and official manner, and though since 2002 a non-parliamentary, independent committee for oversight has been established (the committee for the oversight of the intelligence and security services, in Dutch abbreviated as the CTIVD), which investigates the legality of the proceedings of the intelligence and security services, it is still up to the leaders of the parliamentary groups to decide how they actually practice their oversight role. If they fundamentally regard their role as reactive and passive in nature, then today’s oversight practice will probably resemble that of the past decades. If they think that their activities should take on a more structural and proactive character with the purpose being to influence the policies and boundaries of the intelligence community’s activities, discussing for example a report of the CTIVD in order to talk about the legality, transparency, and accountability of the complex, international, and digital intelligence practice of today’s world, they would have to overcome the structural and cultural constraints inherent in the Dutch oversight practice.

28 ‘Who oversees the BVD?’, *Intermediar*, 22nd year, no. 42, 17 October 1986.

29 Interview by C. Hijzen with F. Bolkestein, 10 January 2012.


30 Proceedings of the Second Chamber of Parliament, session year 2013-2014, 29th Meeting, 27 November 2013.

If Members of Parliament such as Ronald van Raak, however, want to improve the quality of the Dutch intelligence oversight practice, they can try to reconsider the structure of the oversight bodies. In Germany, for example, the Parlamentarische Kontrollgremium consists of Members of Parliament chosen by Parliament itself. Therefore it is most likely that specialists or Members of Parliament with a good track record end up practising oversight. What is more, they often have considerably more time for their tasks.³¹

Other European countries have chosen comparable but sometimes slightly different structures for their intelligence and security oversight bodies, with different powers and rules, but most importantly different practices. Since Edward Snowden has revealed documents that shed light on the work of the intelligence and security services in the United States and Europe, many different Western states have tried to come to terms with what their intelligence and security services exactly can and cannot do. The role of parliamentary and specialized oversight and control is central to those discussions. In order to improve oversight and control in the intelligence domain, politicians and Members of Parliament in the West should try to look across the borders to learn more about the way other countries bring their intelligence oversight into practice. It is in this respect that the Dutch experience can be useful. Not just for our own Members of Parliament, in order to understand how intelligence oversight works, but also for other countries that struggle with the structure and culture of their intelligence and security oversight bodies. They can learn from the Dutch experience.



31 A. Wills et al., 'Parliamentary oversight of security and intelligence agencies in the European Union', Report for the European Union Directorate for Internal Policies: Policy Department C: Citizens' Rights and Constitutional Affairs (Civil liberties, Justice, and Home Affairs) (Brussels 2011) 93.



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