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More Than Just Blind Guardians?: A Legal Analysis of Finnish Parliamentary Oversight of Intelligence

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Title: More Than Just Blind Guardians?: A Legal Analysis of Finnish Parliamentary Oversight of Intelligence

Year: 2023

Version: Publisher's PDF

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Please cite the original version:

Widlund, J. (2023). More Than Just Blind Guardians?: A Legal Analysis of Finnish Parliamentary Oversight of Intelligence. *Scandinavian Studies in Law* 69, 65-93.

More Than Just Blind Guardians?: A Legal Analysis of Finnish Parliamentary Oversight of Intelligence

Joonas Widlund*

1	Introduction	66
2	Parliamentary Oversight of Intelligence and the Rule of Law.....	67
3	Analysis of the Qualities of the Intelligence Oversight Committee	68
	3.1 Form	71
	3.2 Mandate.....	74
	3.3 Membership.....	79
	3.4 Resources	83
	3.5 Access to Information	84
	3.6 Reporting Practices	87
4	The Finnish Intelligence Oversight Committee – A Blind Guardian?.....	89

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1 Introduction

Most oversight systems of intelligence in Western democracies include some form of parliamentary oversight. However, there are various ways to organise parliamentary oversight of intelligence, and differences arise between the national solutions of countries even when they share a common basis of democracy, rule of law, and human rights.

Parliamentary oversight plays an important role in safeguarding democracy when it comes to intelligence oversight. Effective and credible oversight of intelligence is vital for controlling the risks to democratic governance that are inherent in intelligence. The role of oversight bodies ties into the principles of rule of law and democracy, as well as the legal safeguards of the individual and the compliance of the intelligence services to national policy.¹ The case law of the European Court of Human Rights (ECtHR) highlights this sentiment.² Parliamentary oversight often complements external legality oversight, adding democratic accountability and credibility to the oversight system.³ Parliamentary oversight is meant to prevent political abuse of intelligence powers, protect basic and human rights and rule of law, and to promote the appropriate use of public funds.

The purpose of this paper is to examine the role and form of parliamentary oversight of intelligence in Finland. This analysis is structured on the six principal qualities of an intelligence oversight committee presented by *Peter Gill*, focusing on the form, mandate, membership, resources, access to information and reporting practices of the Intelligence Oversight Committee (IOC) of the Finnish Parliament.⁴ The core question the paper seeks to answer is whether the IOC constitutes a mere ‘blind guardian’ or a ‘toothless windbag’ – monikers that have been ascribed to parliamentary oversight bodies in past public discourse in Germany – or if the committee has been provided the means to carry out meaningful oversight duties effectively.⁵ The question is linked to the matter of the mandate and the role that the legislator has intended for the IOC

¹ N Wegge, ‘Intelligence Oversight and the Security of the State’ (2017) 30(4) *International Journal of Intelligence and Counterintelligence* 691, 696.

² E.g. *Roman Zakharov v. Russia* 47143/06 (2015) § 283; *Szabó and Vissy v. Hungary* 37138/14 (2016) § 82. The ECtHR has emphasised the parliament’s role in enabling public scrutiny of not just the activities of the intelligence services, but also of their overseers. See also Tiedonhankintalakityöryhmä, *Guidelines for developing Finnish legislation on conducting intelligence: a report of the Working Group* (Ministry of Defence 2015) 69.

³ M Lohse and M Viitanen, *Johdatus tiedusteluun* (Talentum 2019) 204, 206; Tiedustelun parlamentaarinen valvonta -työryhmä, *Report of the working group for the parliamentary oversight of intelligence* (The Parliamentary Office 2017) 34.

⁴ See P Gill, ‘Evaluating intelligence oversight committees: The UK intelligence and security committee and the ‘war on terror’’ (2007) 22(1) *Intelligence and National Security* 16–18.

⁵ C Gusy, ‘Parlamentarische Kontrolle der Nachrichtendienste im demokratischen Rechtsstaat’ (2008) 41(2) *Zeitschrift für Rechtspolitik*, 38–39 (“Die parlamentarischen Kontrollinstanzen sind nicht nur blinde Wächter, sie sind auch Wächter ohne Schwert”); M Sattar, ‘Kontrolle der Geheimdienste: Mächtige Schweiger, zahnlose Schwätzer’ (2013) *Frankfurter Allgemeine Zeitung*. See also JH Dietrich, ‘Of Toothless Windbags, Blind Guardians and Blunt Swords: The Ongoing Controversy about the Reform of Intelligence Services Oversight in Germany’ (2016) 31(3) *Intelligence and National Security*.

to fulfil. Comparative observations are sought from an examination of the oversight systems of other Nordic countries – Sweden, Norway, and Denmark – as well as Germany. These observations are used to complement the analysis of the Finnish system. The scope of the paper is narrowed to parliamentary oversight and the other parts of the oversight system are purposefully excluded from the analysis. The paper also seeks to explore potential *de lege ferenda* options for improving Finnish parliamentary oversight of intelligence in the future.

2 Parliamentary Oversight of Intelligence and the Rule of Law

The Intelligence Oversight Committee was established in 2019 by an amendment to the Parliament's Rules of Procedures (*eduskunnan työjärjestys*, 40/2000, amendment 123/2018). The amendment was a part of the comprehensive intelligence legislation package that was the first of its kind in Finland.⁶ The new intelligence legislation institutionalised intelligence by designating the Finnish Security and Intelligence Service (*Suojelupoliisi* or *Supo*, hereafter FSIS) as a civilian intelligence service and the Defence Command Intelligence Division and the Finnish Defence Intelligence Agency of the Finnish Defence Forces as military intelligence services. The legislation also established the new intelligence oversight system, consisting of both internal control and independent external oversight and review. In addition to the amendment to the Rules of Procedures, which added sections establishing the IOC, its composition, and its tasks to the Rules, the Act on the Oversight of Intelligence Gathering (*laki tiedustelun valvonnasta*, 121/2019, hereafter Intelligence Oversight Act), contains key legislation on the external oversight of intelligence. The sections of the Intelligence Oversight Act primarily regulate the role and responsibilities of the Intelligence Ombudsman – the other primary external oversight body – but it also touches on matters highly relevant to the IOC, particularly when it comes to the cooperation between the Ombudsman and the committee.

Liberal democratic government is based on rule of law, transparency, openness and accountability, and in most of the Western democracies – Finland included – rule of law has become rooted in the core values of society. Intelligence, however, requires secrecy in order to function. Applying the notion expressed by *Ott*, intelligence is rather bound to rule of survival and success than to rule of law.⁷ This is why effective oversight is so integral in the process of

⁶ The fundamental necessity of the intelligence legislation was based in the changing security environment of Finland, particularly external security. Improved intelligence capabilities were viewed to be vital in developing the Finnish cybersecurity capacity and in increasing the Finnish authorities' ability to respond to the new kinds of threats towards national security, such as hybrid warfare, cyber threats, and evolving international terrorism. For many of these novel types of threats, the ability to recognise them in advance is key to repelling them or minimizing the damage they can cause. See A Pelttari, 'Comment to the Defence Committee on GP 198/2017 vp, GP 199/2017 vp, GP 202/2017 vp, and GP 203/2017 vp' (2018) 1–2; M Lehto, 'Comment to the Defence Committee on GP 198/2017 vp, GP 199/2017 vp, GP 202/2017 vp, and GP 203/2017 vp' (2018).

⁷ M C Ott, 'Partisanship and the Decline of Intelligence Oversight' (2003) 16(1) *International Journal of Intelligence and Counterintelligence* 71; L Hutton, 'Overseeing Information

allowing intelligence and liberal democracy to coexist. Oversight bodies play a vital role in protecting the rule of law, other constitutional principles and human rights while ensuring the effectiveness and efficacy of the intelligence services.⁸

The distinction between lawfulness and the rule of law is an important one in the context of intelligence. *Austin* has highlighted this distinction with her concept of *lawful* illegality. According to this concept, intelligence activity can be legal in a narrow sense of following the letter of the law while still violating the rule of law. This is because rule of law is more than simple legality. Rule of law has to have the power to set constraints to executive power and to guide decisions and activities.⁹ While the task of legality oversight of intelligence is designated to the Intelligence Ombudsman in Finland, the concept of lawful illegality and the understanding of the concept of the rule of law both illuminate the importance of the role of the IOC as a parliamentary intelligence oversight body. Not only does the committee introduce transparency through public scrutiny into the oversight system, as a parliamentary body it possesses the institutional requirements to set constraints on and advise on the use of executive power. The analysis of the six primary qualities of the IOC in this paper aims to examine how well-equipped the committee is to carry out this task in practice.

Finland has a unicameral parliamentary system, which means that the separation between the executive and the parliament is less distinct than in bicameral or presidential systems. In a unicameral system, while the parliament holds the power of the purse – controlling the public funds allocated to the intelligence services – the parliament's legislative and budgetary powers are potentially weaker than in the other types of parliamentary systems.¹⁰ Aside from legislative and budgetary control, a third mean available for a parliament to hold the government or individual ministers responsible for their direction of the intelligence services is a vote of confidence.¹¹

3 Analysis of the Qualities of the Intelligence Oversight Committee

The IOC has been in operation since 2019, and thus it would still be too early to begin drawing conclusions from the practice of the committee. No notable intelligence scandals, abuses of intelligence powers or other such issues have emerged during the few years the IOC has been active. The documents – mainly the minutes – produced by the committee offer a useful glimpse into its activities

Collection' in H Born and A Wills (eds.), *Overseeing Intelligence Services: A Toolkit* (DCAF 2012); H Born, 'Towards Effective Democratic Oversight of Intelligence Services: Lessons Learned from Comparing National Practices' (2004) 3(4) *Connections* 4.

⁸ H Born and G Geisler Mesevage, 'Introducing Intelligence Oversight' in H Born and A Wills (eds.), *Overseeing Intelligence Services: A Toolkit* (DCAF 2012) 17; N Wegge (n 1) 691.

⁹ L M Austin, 'Surveillance and the Rule of Law' (2015) 13(2) *Surveillance and Society* 295.

¹⁰ A Defty, 'From committees of parliamentarians to parliamentary committees: comparing intelligence oversight reform in Australia, Canada, New Zealand and the UK' (2020) 35(3) *Intelligence and National Security* 373.

¹¹ M Caparini, 'Controlling and Overseeing Intelligence Services in Democratic States' in M Caparini and H Born (eds.), *Democratic Control of Intelligence Services: Containing Rogue Elephants* (Routledge 2016) 13.

during the first years of its existence. The IOC has kept up a schedule of fairly regular meetings, and the matters discussed in the meetings have commonly included current issues in civilian and military intelligence as well as discussions and expert hearings about the annual report of the Intelligence Ombudsman as well as other reports touching on issues relevant to the committee.¹² However, detailed evaluations concerning the activities of the IOC in practice are difficult to formulate due to the general nature of the public minutes and the classified status of many of the appendices to the minutes.

While there is a relative lack of substantial, publicly available material about the activities of the IOC, it is possible to analyse the IOC as a parliamentary oversight committee based on the capabilities the law provides it and the expectations the oversight system places on the committee. The six qualities this analysis examines are the form, the mandate, the membership, the resources, the access to information, and reporting practices of the committee. Comparisons to the four chosen international counterparts from Germany, Sweden, Norway, and Denmark will provide helpful and illuminating context for the evaluation of the qualities of the Finnish IOC.

The German system appears to focus heavily on parliamentary oversight, as the oversight system features three committees: the Parliamentary Control Panel (*Parlamentarische Kontrollgremium*, PKGr), The G10 Commission, and the Confidential Committee (*Vertrauensgremium*) of the Bundestag.¹³ For the purposes of this analysis, the closest equivalent to the Finnish IOC of these permanent oversight instruments would be the Parliamentary Control Panel.

The Swedish system, like the German one, features a more varied field of permanent oversight instruments compared to the Finnish system. Another interesting difference between the Swedish and Finnish systems is that while a similar divide between internal (control) and external oversight can be observed, the Swedish oversight system draws a stronger distinction between civilian intelligence (Swedish Security Service, *Säkerhetspolisen*) and military intelligence (the National Defence Radio Establishment, *Försvarets Radioanstalt*, FRA, and the Military Intelligence and Security Service, *Militära underrättelse- och säkerhetstjänsten*, MUST). The non-parliamentary committee SIN (Commission on Security and Integrity Protection, *Säkerhets- och Integritetsskyddsnämnden*) oversees the intelligence activities of the Security Service along with crime-based secret surveillance measures used by different crime-fighting organisations. Another non-parliamentary committee, SIUN (Defence Intelligence Inspection, *Statens Inspektion för*

¹² According to 35 § of the Rules of Procedures, the meeting schedule of the committees of the Parliament is to be determined by their workload. The IOC had 14 official committee meetings in 2019, 19 in 2020, 33 in 2021, and 25 in 2022.

¹³ These three committees have distinct mandates that outline their tasks within the oversight system. The G10 Commission also differs from the other two in the fact that it is a non-parliamentary committee, and its mandate resembles more that of a legality oversight body than a pure parliamentary oversight body. Purely legality-oriented oversight is also carried out by the Federal Commissioner for Data Protection and Freedom of Information. See H De With and E Kathmann, 'Parliamentary and specialised oversight of security and intelligence agencies in Germany', in Annex A: Country Case Studies of A Wills and M Vermeulen, *Parliamentary Oversight of Security and Intelligence Agencies in the European Union* (European Parliament, Directorate General for Internal Policies 2011) 218.

Försvarsunderrättelseverksamheten), oversees the signals intelligence activities of the FRA.¹⁴ Both of these non-parliamentary committees focus on legality oversight, so they can be called comparable to the Finnish Intelligence Ombudsman rather than the IOC. Parliamentary oversight is carried out by two parliamentary select committees of the Riksdag: Committee on Justice (*Justitieutskottet*) and the Committee on the Constitution (*Konstitutionsutskottet*).¹⁵ The comparative analysis in this paper focuses on the Committee on Justice.

The oversight system in Denmark is reminiscent of the Finnish model in regards to divisions between internal and external oversight as well as between external legality and parliamentary oversight. The Parliamentary Control Committee (*Kontroludvalget*) is the closest comparable instrument to the IOC in the Danish system.¹⁶

The intelligence oversight system of Norway stands out the most in this collection of five countries. The Norwegian system does not include a clear distinction between parliamentary and legality oversight. The chief external oversight instrument, the EOS Committee (*Stortingets kontrollutvalg for etterretnings-, overvåkings- og sikkerhetstjeneste, EOS-utvalget*), features elements of both types of oversight in its mandate and activities.¹⁷ Certain similarities can be spotted between the G10 Commission in Germany and the EOS Committee in that both of them are non-parliamentary committees with strong ties to their national parliament, with both essentially falling into the model of indirect parliamentary involvement.¹⁸ There are, however, a few notable differences. Besides the hybrid oversight nature of the EOS Committee, sitting members of the parliament cannot become members, which reinforces the expert nature of the committee.

¹⁴ I Cameron, 'Parliamentary and specialised oversight of security and intelligence agencies in Sweden', in Annex A: Country Case Studies of A Wills and M Vermeulen, *Parliamentary Oversight of Security and Intelligence Agencies in the European Union* (European Parliament, Directorate General for Internal Policies 2011).

¹⁵ Ibid.

¹⁶ See S Andersen, ME Hansen and PHJ Davies, 'Oversight and governance of the Danish intelligence community' (2022) 37(2) *Intelligence and National Security* 245–246.

¹⁷ See F Sejersted, 'Intelligence and Accountability in a State without Enemies: The Case of Norway' in H Born, LK Johnson and I Leigh (eds.), *Who's Watching the Spies: Establishing Intelligence Service Accountability* (Potomac Books 2005).

¹⁸ I Leigh, 'The accountability of security and intelligence agencies' in LK Johnson (ed.), *Handbook of Intelligence Studies* (Routledge 2007) 74. Leigh has formulated three basic options for parliamentary oversight: direct involvement, indirect involvement and a combined approach. Direct involvement features a committee with sitting parliamentarians. Indirect involvement can be carried out with a non-parliamentary committee of experts that reports to the parliament. The combined option means a system that features both a non-parliamentary (expert) committee and a parliamentary committee. In the combined option, the expert committee will usually have a mandate that features a focus on legality oversight, as is the case for example with the German G10 Commission.

3.1 Form

Parliamentary oversight body can be a general committee with a broad mandate or a specialised committee that focuses solely on overseeing the intelligence community (IC).¹⁹ Farson has identified five different types of parliamentary committees: committee out of the secrecy loop, statutory committee of parliamentarians, permanent statutory parliamentary committee, special statutory review committee, and blended committees and systems. The Finnish IOC is a permanent statutory parliamentary committee, and as such, its members are appointed by political parties and the committee can draw on parliamentary resources. Permanent statutory parliamentary committees do not require the good will of the executive to operate as they are independent oversight bodies with their own staff and own premises. In general, committees like this possess broader powers and privileges compared to committees of parliamentarians due to their access to parliamentary resources and authority.²⁰ The IOC's permanence is established by legislation, or more specifically the Rules of Procedures.

Prior to the enactment of the intelligence legislation, none of the committees of the Finnish parliament specialised in the oversight of intelligence.²¹ Instead, the oversight of intelligence matters was divided among several committees, particularly to those committees dealing with matters related to national security and foreign relations. In addition, the highest legality overseers, the Chancellor of Justice and the Parliamentary Ombudsman of Finland, took part in intelligence oversight as a part of their general duties.²² The FSIS was under the supervision of the National Police Board. No parliamentary body had a specific task to oversee the FSIS, and the oversight was based solely on the parliamentary committees' general right to receive information (Constitution of Finland (CoF) 47 §).²³

As a part of its designated areas of responsibility, the Administrative Committee is the primary committee of internal security matters in the Finnish Parliament. The Administrative Committee handles various national security -related matters, such as organisational mandates, operating conditions and legislation related to internal security and national security, excluding the military dimension of these issues, which falls within the authority of the Defence Committee. As such, the FSIS and its activities fell under the Administrative Committee's jurisdiction, and continues to do so even after the

¹⁹ H Born and G Geisler-Mesevage (n 8) 11–12.

²⁰ S Farson, 'Establishing Effective Intelligence Oversight Systems' in H Born and A Wills (eds.), *Overseeing Intelligence Services: A Toolkit* (DCAF 2012) 30–32. See also I Leigh, 'The accountability of security and intelligence agencies' (n 18) 74.

²¹ Here, the term intelligence encompasses both crime-based intelligence as well as national security -focused, threat-based strategic intelligence. Before the enactment of the intelligence legislation, the lack of a legal basis heavily constrained the strategic intelligence dimension in Finland (see note 6).

²² GP 198/2017 vp, 10–11.

²³ OJ Teirilä and HJ Nykänen, 'The Public Dimension of Intelligence Culture: The Search for Support and Legitimacy' (2016) 29(2) *International Journal of Intelligence and Counterintelligence* 283–284.

enactment of the intelligence legislation and the FSIS' transformation into a civilian intelligence agency. The same is true for the Defence committee and the military intelligence agencies. The Foreign Affairs Committee and the Constitutional Law Committee also have special interests related to intelligence due to the connections intelligence has to foreign policy and constitutional law. However, when it comes to oversight, a committee with a broad, general mandate – like the four mentioned here – would not be able to function as the sort of active oversight body compatible with the democratic and rule of law requirements of parliamentary intelligence oversight.²⁴

In the planning of parliamentary intelligence oversight in Finland, the goal was to have a simple solution from an administrative point of view. This essentially ruled out the option of creating an entirely new organ within the parliamentary system. The decision to utilise the existing committee system of the Finnish Parliament left two options available: giving the oversight task to a pre-existing parliamentary committee or creating a new committee specialising in intelligence oversight. The former option would have led to a similar arrangement to Sweden's, where the Committee on Justice is a standard permanent committee of the Riksdag, tasked with overseeing intelligence along with the Constitutional Committee. To ascertain the credibility and effectiveness of oversight, it was determined that creating a new specialised oversight committee (the IOC) was preferable to the alternative of adding the oversight role to the workload of one of the pre-existing committees. From the point of view of Finnish democracy, it was important that the members of the new committee were members of parliament and that the different parliamentary groups received representation in the IOC.²⁵

The decision to include the legal basis of the mandate of the IOC mainly in the Rules of Procedures instead of a definite statute warrants attention. The Rules possess a statute-like status in the legal system, but despite having many qualities comparable to actual statutes, the Rules are meant for the organisation of the internal affairs of the parliament. The IOC's mandate, however, extends outside the parliament due to its task to oversee the IC.²⁶ The legal basis of the IOC is also divided to a degree between the Rules and the Intelligence Oversight Act, the latter of which is a regular statute. While the greater part of the legal basis of the IOC is located within the Rules, the Intelligence Oversight Act possesses one key element: the committee's right to receive information. This divided legal basis reflects the inherent duality of the IOC's nature as a parliamentary committee and as an intelligence oversight body. In doing so, it also accentuates the nearly unique trait of the IOC among the committees of the Finnish Parliament; the fact that its duties extend outside the internal realm of the

²⁴ HaVM 36/2018 vp, 41–42.

²⁵ M Lohse and M Viitanen (n 3) 206–207. The creation of a specialised intelligence oversight committee is in line with the common tendency in European nations. See Council of Europe Commissioner for Human Rights, *Democratic and effective oversight of national security services: issue paper* (Council of Europe 2015) 42.

²⁶ VP Viljanen, 'Comment to the Constitutional Law Committee on PNE 1/2018 vp' (2018) 2–3.

Parliament. Only the Audit Committee has a similar type of mandate that allows the committee activities to reach outside the Parliament.²⁷

For comparison, the PKGr in Germany was originally an informal oversight panel, but the Parliamentary Scrutiny of Federal Intelligence Activities Act (*Gesetz über die parlamentarische Kontrolle nachrichtendienstlicher Tätigkeit des Bundes*, PKGrG) of 1978 established a legal basis for the panel. The legal basis was further reinforced in 2009, when a constitutional amendment added a basis for the Panel's activities in constitutional law (45d of the Basic Law, *Grundgesetz*, GG). The Danish Control Committee and the Norwegian EOS Committee also possess a clear basis in law. Denmark's Parliamentary Control Committee was established in 1988 by *Lov nr 378 af 06/07/1988, Lov om etablering af et udvalg om forswarets og politiets efterretningstjenester* (Act on the Establishment of a Committee on Military and Police Intelligence Services), which was amended in 2013. The EOS Committee – a hybrid legality/parliamentary oversight body in the form of a non-parliamentary committee – was established in 1995 with *Lov om kontroll med etterretnings-, overvåkings- og sikkerhetstjeneste* (Act on the Oversight of Intelligence, Surveillance and Security Services) (EOS-kontrolloven). While the EOS-Commission is a non-parliamentary expert committee, it is appointed by the Norwegian Parliament (*Storting*) and its composition reflects the power relations of the Norwegian parliament.²⁸ Because of this, the EOS Committee is still closely linked to the parliament and the political realm. For example, according to § 1 of the EOS-kontrolloven, the parliamentary plenary session can order the committee to carry out a precisely defined investigation into a matter within its jurisdiction.

Another unique trait that separates IOC from the other Finnish parliamentary committees regards the publicity of documents. Openness and public access to information and documents of public authorities and actors are important principles of democratic governance in Finland.²⁹ CoF 50 § establishes the public nature of parliamentary activity, and CoF 50.2 § establishes that the minutes and other such documents of parliamentary committees are to be available to the public. The section includes a possibility for exception on the grounds that a committee sees a compelling reason to withhold a document from public access. The Rules of Procedures add further detail to this matter with 43 a §, where the handprints of the intelligence legislation can be spotted in the addition of compromising national security to the list of justified reasons to declare a committee document classified.³⁰ For the IOC specifically, 43 b § of the Rules details the confidentiality of the documents of the IOC and gives the committee the power to decide whether to make a document public or not. This turns the usual approach to the openness of committee documents on its head: instead of openness being the rule, in the case of the IOC it must be clear that

²⁷ M Hidén, 'Comment to the Constitutional Law Committee on PNE 1/2018 vp' (2018) 1.

²⁸ F Sejersted (n 17) 124–132; I Leigh, 'The accountability of security and intelligence agencies' (n 18) 72.

²⁹ For a general description of the principle of openness and publicity of public documents in Finland, see O Mäenpää, *Hallintolaki ja hyvän hallinnon takeet* (3rd ed., Edita 2008) 82–84.

³⁰ See PNE 1/2018 vp, 28.

making a document public would not cause significant harm to either Finland's international relations or to national security.

Furthermore, 43 c § of the Rules of Procedures binds the members of the IOC and its staff to an obligation of confidentiality. Additionally, the section prohibits the use of classified information for one's own or another's benefit or for another's detriment. The section also contains a reference to the Criminal Code of Finland (39/1889) as it pertains to breaching the obligation of confidentiality. The Criminal Code sections referred to are secrecy offence (chapter 38 1 §) and secrecy violation (chapter 38 2 §).

The division of duties between the IOC and the two branch committees, the Administrative Committee and the Defence Committee, is arranged in a way that allows the IOC focuses on intelligence oversight. The Administrative and Defence Committees are responsible for monitoring the operating conditions and resources of the intelligence agencies as well as the functionality of the intelligence legislation. The Foreign Affairs Committee and the Constitutional Law Committee also continue monitoring intelligence in a general manner as it pertains to their fields. There are some overlapping oversight and monitoring interests between the five committees involved in intelligence matters, and it is possible some practical challenges will arise from these intersections. There is precedence for these kinds of instances in other fields between the Audit Committee and other parliamentary committees. In the view of the Administrative Committee, however, these challenges had not been serious or common enough to warrant serious concern. Conversely, any kind of cooperation between the five committees involved in intelligence oversight can help to increase the overall effectiveness of oversight.³¹

3.2 *Mandate*

The mandate of the oversight body shapes its role in the oversight system, and it determines the oversight body's duties, powers and available means to carrying out its oversight task. The mandate is also closely related to the matter of sufficient resources, which will be discussed separately later. Oversight on the strategic level usually features a more extensive mandate and a wider range and scale of powers, as the information handled on the strategic level rarely includes highly sensitive information typical to the operational level.³²

The evaluation of the mandate in this paper expands beyond the scope of the strategic/operational-spectrum to the dimensions of the mandate. Determining the dimensions of the mandate involves asking how many organisations is the oversight body overseeing and how many different kinds of oversight functions fall within the scope of the single oversight body? This paper applies the terms width and depth of the mandate to these dimensions, respectively.

The third and final evaluation relates to the first two and concerns the concept of the *trilemma*. In this context, trilemma refers to the fact that the mandate of an intelligence oversight body can realistically include only one or two of the

³¹ HaVM 36/2018 vp, 42.

³² V-P Hautamäki, *Turvallisuuspoliisin parlamentaarinen valvonta: oikeusvertaileva taustaselvitys* (Ministry of Justice 2007) 5.

three main oversight interests: effectiveness, efficiency, and legality/proportionality.³³ The concept of the trilemma helps to highlight the limits of the resources, time and expertise of a single oversight body. *Aidan Wills* has presented a model that complements the concept of the trilemma. His model proposes that parliamentary and expert oversight bodies of intelligence have four possible areas of focus: legality of operations and policy, effectiveness, administrative processes, and financial management.³⁴ Legality, effectiveness and efficiency (to which financial management corresponds) are the three oversight interests at the core of the trilemma, and administrative practices fall under both legality and effectiveness, depending on the chosen approach.

In the broad sense of the mandate, the oversight of the IOC appears to be focused on the strategic dimension of intelligence activities, avoiding the challenges that come with oversight that involves active operational details. In terms of the width, however, the mandate of the IOC is a broad one. It covers not only both civilian and military intelligence branches, but also the non-intelligence functions of the FSIS.³⁵ The Finnish IC is constituted by a small number of agencies, which does help contain the width of the oversight mandate. Like the IOC, the Control Panel (PKGrG § 1), the Control Committee (Lov nr. 378 § 1), and the EOS Committee (EOS-kontrolloven § 1) have mandates that include all the major civilian and military intelligence services. In Sweden, the Committee on Justice oversees only the Security Police, therefore excluding the signals/military intelligence service FRA as well as the MUST from its oversight mandate.³⁶

The depth of the mandate is constituted by the oversight tasks of the committee. According to 31 b § of the Rules of Procedures, the IOC's oversight tasks include:

- overseeing the appropriateness of intelligence activity,
- monitoring and assessing the focus points of intelligence activity,

³³ P Gill, 'Of intelligence oversight and the challenge of surveillance corporatism' (2020) 35(7) *Intelligence and National Security* 974; M Cayford, W Pieters and C Hijzen, 'Plots, murders, and money: oversight bodies evaluating the effectiveness of surveillance technology' (2018) 33(7) *Intelligence and National Security* 1011–1012. The term and concept of the trilemma have their origin in the field of macroeconomics and the concept of the impossible trinity (see e.g. M Obstfeld, JC Shambaugh and AM Taylor, 'The Trilemma in History: Tradeoffs among Exchange Rates, Monetary Policies, and Capital Mobility' (2005) 87(3) *The Review of Economics and Statistics*). As Cayford and others (p. 1012) have noted, the term applies well to security and intelligence theory as well, even though the conceptual framework is different.

³⁴ A Wills, *Understanding Intelligence Oversight* (DCAF 2010) 38.

³⁵ Lohse and Viitanen have pointed out the possible asymmetry in the oversight of civilian and military intelligence. The FSIS duties were expanded as a consequence of it becoming a civilian intelligence service, but the majority of its security police duties remained intact. The need to extend the oversight mandate of the IOC to include all the activities of the FSIS stems from this dual role. However, although a similar dual role is possible within the context of military intelligence, especially in military counterintelligence, the mandate of neither the IOC nor the Ombudsman address this. See for more details, M Lohse and M Viitanen (n 3), 228–231. See also GP 203/2017 vp, 38; PuVL 6/2018 vp, 6; PuVL 8/2018 vp, 6; PeVM 9/2018 vp, 4–5; PeVM 10/1998 vp, 7.

³⁶ I Cameron (n 14) 278–279.

- monitoring and supporting the realisation of basic and human rights in intelligence activities,
- preparing the Intelligence Ombudsman's annual report and other reports for the Parliament,
- processing the oversight observations of the Intelligence Ombudsman (see also 18.2 § of the Intelligence Oversight Act).

Additionally, the IOC can, on its own initiative, begin investigating an oversight issue within the committee's jurisdiction and write a report of the investigation to the plenary session of the Parliament, if the committee deems the issue significant enough to merit it. As per 6.4 § of the Act on the Oversight of Intelligence, the committee also has a significant role in appointing the Intelligence Ombudsman. Though the government appoints the Intelligence Ombudsman, the government must give the IOC an opportunity to comment on the selection before carrying it out. This helps to alleviate some of the concerns that may arise from the fact the government is in charge of appointing such a major intelligence overseer as the Ombudsman.³⁷ Expert oversight actors like the Ombudsman have not been elected democratically and because of this, they have very little democratic legitimacy on their own. Additionally, their oversight role might make them unable to comment publically on many of the issues they are tasked to handle. Involving the IOC in the appointment process adds democratic legitimacy to the Intelligence Ombudsman institution.³⁸

The Director of the FSIS, *Antti Pelttari*, noted in his comment to the Defence Committee that the Finnish parliamentary system would not be compatible with a setting in which a parliamentary oversight committee carries out legality oversight tasks in individual cases. Pelttari stated that a parliamentary (political) body being involved in an oversight task requiring the ability to make legal evaluations and provide legal solutions would be highly detrimental for the realisation of legal safeguards. The risk of weaker legal safeguards would apply both to the individual and the intelligence authorities.³⁹ The decision to exclude legality oversight from the duties of the IOC could also be argued to shield the committee from an increased risk of politicisation. The risk of politicisation would be particularly present in a case in which the committee would need to evaluate the legality of intelligence activity targeting e.g. a prominent political figure. Additionally, tasks such as carrying out inspections in the premises of an intelligence agency can be seen more suitable for a politically independent overseer than for a parliamentary oversight body.

The national legislation grants both the PKGr and the EOS Committee the power to receive and investigate complaints from the public (PKGrG § 8 and EOS-kontrolloven § 5, respectively). This is a power that the IOC does not have, because in the Finnish system the power to receive and investigate complaints

³⁷ See GP 199/2017 vp, 65; PeVM 10/2018 vp, 10–11; PNE 1/2018 vp, 33–34; TiVM 1/2021 vp, 2–3; Tiedustelun parlamentaarinen valvonta -työryhmä (n 3) 23; M Lohse and M Viitanen (n 3) 210.

³⁸ Venice Commission, 'Report on the Democratic Oversight of the Security Services' (2007) 50; S Melander, 'Comment to the Constitutional Law Committee on PNE 1/2018 vp' (2018) 4–5.

³⁹ A Pelttari, 'Comment to the Defence Committee on GP 198/2017 vp, GP 199/2017 vp, GP 202/2017 vp, and GP 203/2017 vp' (2018) 6.

was designated to the Intelligence Ombudsman (Intelligence Oversight Act 11 §). However, the PKGr can additionally act as a whistleblower-mechanism for the members of the IC (PKGrG § 8). Considering the sensitive and secretive nature of intelligence work, clear and formal whistleblower-mechanisms for IC personnel are important and should be reinforced in Finland. Involving the external oversight bodies in a whistleblower-mechanism instead of just relying on internal channels serves to increase the legitimacy of the mechanism and, by extension, of the intelligence services themselves in the eyes of the public.

Another point of ambiguity in the Finnish oversight system is the oversight of efficiency. For example, the Committee on Justice oversees budgets and expenditure in addition to policy in Sweden.⁴⁰ In Germany and Denmark, special oversight bodies are tasked with the oversight of efficiency. The Confidential Committee deliberates and communicates the budgets of the intelligence services to the Budget Committee and oversees the execution of the budget. The Confidential Committee possesses investigative powers that are comparable to the PKGr in order to be able to carry out its oversight task.⁴¹ In Denmark, the National Audit Office (*Rigsrevisionen*) and the government inform the Control Committee on the budget of the intelligence services (Lov nr. 378 § 4).⁴²

In Finland, the National Security Unit of the Ministry of the Interior is responsible for the internal control of the civilian intelligence activities. The unit also oversees the performance guidance (efficiency oversight) of the FSIS (17 § of the Decree of the Ministry of the Interior on the Rules and Procedures of the Ministry (1078/2013), amended with decree 1456/2019). Additionally, the Ministry of the Interior reports on the performance targets of the FSIS on the state budget.⁴³ The question of oversight of efficiency is more unclear with military intelligence, which falls under the control of the Ministry of Defence. The lack of public information on the efficiency oversight of military intelligence is unsurprising, however, as military intelligence tends to operate behind an even stronger veil of secrecy than civilian intelligence.⁴⁴ This does emphasise the relevance of the question about the oversight of efficiency. The Ministry of the Interior reports to the Parliament on the spending of its various subdivisions, but the Parliament does not appear to have a direct mechanism to oversee the spending of the IC, as budgetary control does not fall within the IOC's mandate. Therefore, efficiency appears to be mostly internally controlled.⁴⁵ Organising the function of reviewing the financial propriety of the intelligence agencies is not a simple task due to the need to maintain necessary secrecy. A separate body like the Confidential Committee or an Auditor-General

⁴⁰ A Wills and M Vermeulen, *Parliamentary Oversight of Security and Intelligence Agencies in the European Union* (European Parliament, Directorate General for Internal Policies 2011) 95 (Table 1).

⁴¹ H De With and E Kathmann (n 13) 225–226.

⁴² S Andersen, ME Hansen and PHJ Davies (n 16) 245–246.

⁴³ GP 202/2017 vp, 34; M Lohse and M Viitanen (n 3) 64.

⁴⁴ M Lohse and M Viitanen (n 3), 6, 65.

⁴⁵ A decision to leave the oversight of efficiency, or efficacy, to the executive is also present in the Norwegian system. See F Sejersted (n 17) 125.

might be better suited for the task than a committee like the IOC.⁴⁶ Like with the Confidential Committee in Germany, any sort of auditing body would need to be able to inform the IOC and cooperate with it when necessary.

The oversight mode utilised by an oversight committee needs to be considered, perhaps especially so when dealing with the difficult task of intelligence oversight. A parliamentary oversight body tends to lean towards one of two oversight modes, so-called fire-alarm or police-patrol mode. Police-patrol oversight is centralised, active, and direct. An oversight body emphasising police-patrol oversight acts largely on its own initiative with the purpose of preventing intelligence failures. Conversely, fire-alarm oversight is less centralised, and leans towards a passive and indirect approach. An oversight body emphasizing this model springs into action once a failure has been detected. Thus, an oversight body that focuses on fire-alarm oversight rarely acts on its own initiative by carrying out frequent inspections or actively monitoring the activities of the intelligence services. Instead, such an oversight body usually opts to wait and monitor its target activities with a broad scope until a more active and focused use of its oversight powers is prompted by an emerging failure or suspicion of wrongdoing.⁴⁷

The parliament is, on its own, an inherently weak oversight body. In practice, the parliament has a limited access to information, and a limited timeframe to gain an understanding and a level of expertise in intelligence matters. The roles of parliamentarians are linked to election cycles and their work requires them to split their attention between multiple subject matters. Intelligence oversight is also not politically motivating work, as it is very labour-intensive and provides for no natural constituency outside the government.⁴⁸ With intelligence oversight, the fire-alarm mode appears to offer a smoother pattern of operations, particularly in the case of a committee of parliamentarians. The veil of secrecy of intelligence renders police-patrol oversight particularly laborious and demanding when it comes to time and expertise. These qualities do not match well with the practical weaknesses of parliamentary oversight.

The IOC, like many comparable parliamentary intelligence oversight bodies, leans clearly towards the fire-alarm type of oversight. A well-crafted oversight system should additionally include an expert oversight body more capable of carrying out effective oversight in the police-patrol mode. In the Finnish system, the role of the Intelligence Ombudsman fulfils this requirement, and the cooperative and supportive roles of the Intelligence Ombudsman and the IOC is intended to form a cohesive and effective external oversight system.⁴⁹

⁴⁶ I Leigh, 'The accountability of security and intelligence agencies' (n 18) 79.

⁴⁷ MD McGubbins and T Schwartz, 'Congressional Oversight Overlooked: Police Patrols and Fire Alarms' (1984) 28(1) *American Journal of Political Science* 166. See also LK Johnson, 'A shock theory of congressional accountability for intelligence', in LK Johnson (ed.), *Handbook of Intelligence Studies* (Routledge 2007) 343–345.

⁴⁸ S Farson, 'Parliament and its servants: Their role in scrutinizing Canadian intelligence' (2000) 15(2) *Intelligence and National Security* 239–245.

⁴⁹ For a closer look at the mandate and tasks of the Intelligence Ombudsman, see J Widlund and J Paasonen, 'Tieto, valta ja tiedustelun valvonta: tiedusteluvalvontavaltuutetun arviointia' (2021) 50(2) *Oikeus*.

Looking through the lens of the trilemma, the mandate of the IOC focuses clearly on effectiveness based on its attention to policy and its task of monitoring the focus points of intelligence activity. The Intelligence Ombudsman is a clearly defined legality oversight body, but in terms of human rights and general appropriateness of intelligence activity, the IOC has the ability to exercise its mandate in the sense of broad-spectrum legality oversight. A focus on policy and effectiveness is common among the parliamentary oversight bodies. As *Leigh* has put it, “[p]arlamentarians are best employed in policy oversight rather than detective work”.⁵⁰ In light of the trilemma model, the mandate of the IOC does not appear “overloaded”.

3.3 *Membership*

Unlike other permanent committees of the Finnish Parliament that are formed quickly after each parliamentary election, the IOC is established only after the government has been formed. The reasoning behind this is based in the confidential nature of the IOC’s work and the expertise required of its members, as well as the fact that the IOC does not take part in preparing any urgent matters for the Parliament.⁵¹ However, in the case the forming of the government is delayed significantly – most likely due to complicated government negotiations – 17 § of the Rules enables the Parliament, on a proposal by the Presidium, to establish the IOC before the formation of the government. This is an important failsafe mechanism, as prolonged interruptions to the parliamentary oversight of intelligence are to be avoided.⁵²

The process through which members of the oversight committee are appointed is crucial in evaluating the independence and appropriateness of the oversight body. Sufficient distinction must be maintained between the external overseer and the executive. In the case of a committee like the IOC, this means having balanced representation of parliamentarians of both ruling and opposition parties. Ideally, the membership period should be long enough to enable the accumulation of expertise due to intelligence as a subject matter possessing a particularly long learning curve. With parliamentarians, the election cycle and results will naturally play a part in the committee membership, but otherwise it is not recommended to set too strict term limits for how long a member of parliament can be a member of the committee. Experience and expertise are highly valuable assets in intelligence oversight, which is to be remembered when weighing them against the risk of long-serving parliamentarians becoming co-opted by the IC.⁵³

⁵⁰ I Leigh, ‘More Closely Watching the Spies: Three Decades of Experiences’ in H Born, LK Johnson and I Leigh (eds.), *Who’s Watching the Spies: Establishing Intelligence Service Accountability* (Potomac Books 2005) 7.

⁵¹ PeVM 10/2018 vp, 3; M Lohse and M Viitanen (n 3) 208; Tiedustelun parlamentaarinen valvonta -työryhmä (n 3) 25.

⁵² PeVM 10/2018 vp, 3; VP Viljanen (n 26) 4.

⁵³ Caparini has used the term *adversary vs. advocacy issue* to describe the concept of finding a balanced approach for a parliamentary intelligence oversight body. See M Caparini, ‘Controlling and Overseeing Intelligence Services’ (n 11) 19–20

The legal basis of the IOC was added to 7 § of the Parliament's Rules of Procedures, and according to 8 § of the Rules, the IOC has eleven members and two deputy members. Committee membership count is regulated both by 35.2 § of the CoF and 8.1 § of the Rules, both setting the standard number of members for permanent specialised committees of the Parliament at seventeen members and nine deputy members. Aside from the Audit Committee, which also has eleven standard members but eleven deputy members, the other committees of the Finnish Parliament have between seventeen and twenty-one members. This means the IOC stands out from the rest of the committees due to its low member count. The member count of eleven is comparable to the PKGr, which has no fixed member count, as the Bundestag decides on the matter. In the recent years, the PKGr membership has fluctuated between nine to thirteen members.

The decision on the membership structure of the IOC included illuminating balancing between promoting democratic principles and protecting the secret nature of intelligence activities. Originally, it was planned that the IOC would not have any deputy members. However, this might have been inviable due to the constitutional requirement for deputy members set by CoF 35.2 §. The matter of deputy members ties into the purpose of having a limited member count: the small size of the committee was deemed necessary to ensure its ability to handle confidential information with minimal risk of leaks. Parliamentary intelligence oversight committees tend to be smaller than regular parliamentary committees, as the lower membership count limits the number of parliamentarians with access to highly sensitive intelligence information. At the same time, however, the small number of members makes it more difficult to create a wide-range of parliamentary representation within the committee.⁵⁴ The current composition of the committee, meaning the number of committee members and the arrangement of the committee leadership – the chairperson comes from a governing party and the vice-chairperson from an opposition party – was concluded to be the best attainable compromise between the conflicting interests in the matter.

A few constitutional experts supported a solution in which the IOC would have been a regular-sized committee. The main argument behind this was the need to ensure a wide representation of different parliamentary groups in the committee.⁵⁵ There was no clear consensus among the experts, however, as others saw it acceptable that the need for confidentiality outweighed the need for comprehensive representation in the committee.⁵⁶

While the EOS Committee is a non-parliamentary committee and thus does not offer a direct comparison in the matter of membership practices to the IOC, the emphasis on maintaining institutional memory among the membership of the committee is a valuable detail to note. A member is appointed to a maximum term of five years, and a member can be reappointed once to a maximum service

⁵⁴ PeVM 10/2018 vp, 3–4; PNE 1/2018 vp, 31–32; Tiedustelun parlamentaarinen valvonta -työryhmä (n 3) 17–19; M Hidén (n 27) 2; M Lohse and M Viitanen (n 3) 207–208; A Defty (n 10) 374.

⁵⁵ M Scheinin, 'Comment to the Constitutional Law Committee on PNE 1/2018 vp' (2018) 3; J Viljanen, 'Comment to the Constitutional Law Committee on PNE 1/2018 vp' (2018) 4–6.

⁵⁶ M Hidén (n 27) 2. For example, in Denmark the Control Committee has only five members, with each of the five major parties represented.

term of ten years. In addition, no more than four members should be appointed at once, protecting a sense of continuity in the committee's oversight (EOS-kontrolloven § 3). As a further safeguard against being co-opted by the IC, no former member of the IC can serve in the committee.⁵⁷

The issue of security vetting of parliamentarians in relation to intelligence oversight has not been controversial only in Finland. For example, the United States and the United Kingdom have rejected the notion of it based on maintaining the autonomy of the parliamentarians and the intelligence oversight body from the executive and the IC. Norway, on the other hand, has opted to utilise a form of vetting, but the presidium of the parliament has the decision-making authority based on the results of the process.⁵⁸ Both in Germany and Denmark, the members of the Control Panel and the Control Committee have access to classified information without a security clearance required.⁵⁹

A security vetting model, in which the presidium or some other parliamentary organ makes the final decision based on the findings of an external organisation, such as a security or intelligence agency, is certainly preferable for allowing the external organisation the direct authority to decide on the suitability of a parliamentarian for a parliamentary role. This, however, does not completely remove the constitutional issue of the involvement of an organisation of the executive, particularly of the IC, in the process. This was the case with the initial proposal for the IOC security vetting in Finland.⁶⁰

The original solution for the vetting of the members of the IOC included the FSIS having a central role in the vetting process due to its status as the main security service of the Finnish state. From the point of view of parliamentary autonomy, allowing the FSIS, or any other external organisation to evaluate or even merely comment on the suitability of an individual member of parliament for membership of this parliamentary committee would have constituted an encroachment of that constitutionally protected autonomy. The Parliament is the highest decision-making body and the representative of the people, as is indicated by CoF 2.1 §, and the constitutional status of a member of parliament, constituted by CoF 29 § and 30 §, assigns the parliamentarians independence and immunity from any intrusions into their ability to carry out their duties, bound only to the Constitution. Therefore, the notion of the FSIS – the intended subject of the IOC oversight – carrying out the security vetting of the members of the oversight committee did not align well with these democratically fundamental constitutional doctrines.⁶¹

Along with the constitutional problems relating to the autonomy of the Parliament, the proposed vetting solution would have also contained a problem regarding to the qualifications the vetting would have imposed on the members

⁵⁷ See F Sejersted (n 17) 126–128.

⁵⁸ H Born, 'Towards Effective Democratic Oversight of Intelligence Services: Lessons Learned from Comparing National Practices' (2004) 3(4) *Connections* 11.

⁵⁹ A Wills and M Vermeulen (n 40) 140 (Table 6).

⁶⁰ See T Ojanen, 'Comment to the Constitutional Law Committee on PNE 1/2018 vp' (2018) 1–4.

⁶¹ PeVM 10/2018 vp, 4; T Ojanen (n 60) 1–4. Cf. PuVL 6/2018 vp, 7. In its statement, the Defence Committee did not find similar issue with the proposed vetting solution as the Constitutional Law Committee had.

of parliament considered for the membership of the IOC. The Constitution of Finland would not have recognised any such qualifications, and thus a constitutional amendment might have been required to implement the planned vetting system.⁶² In light of the status and significance of the Finnish Constitution, the number of amendments are to be kept to a minimal amount and carried out only in cases of absolute necessity. The fact that a constitutional amendment was already required for the enactment of the intelligence legislation (CoF 10 §, the right to privacy), a solution requiring another amendment would have been problematic from a constitutional law point of view.⁶³ It is also worth remembering that one of the main advantages behind the concept of the IOC was it being a simple oversight solution that was easy to implement within the framework of the existing parliamentary system.

Several of the legal experts who commented on the proposed intelligence legislation voiced criticism towards the extensive vetting proposition. It was viewed as unsuitable for parliamentary committee work and the parliamentary system of Finland, and it was deemed that the Parliament should carry out the evaluation of suitability internally.⁶⁴ In other words, if security vetting was to be implemented in some form, at the very least the IC could not be involved in the process in any direct fashion. Looking at the issue from a general perspective, it is also possible that too much value is placed on the importance of vetting in the context of a parliamentary oversight committee, as criminal liability already exists to protect the confidentiality of the interaction between the IOC and the IC.⁶⁵

Any traces of direct FSIS involvement were, in the end, removed from the final security vetting solution. The procedure of vetting is regulated by 17 a § of the Rules of Procedures. The parliamentary groups have the right to nominate members of Parliament for committee membership, including the IOC, and the Parliament, in a plenary session, decides on whether to confirm or not these nominated members of Parliament for those committee roles. The finalised vetting process of the IOC membership makes use of the FSIS data registry, but otherwise is handled internally by the Parliament with assistance from the independent Ombudsman institution.

The Member of Parliament, who has been nominated for a position in the IOC by their parliamentary group, requests the Data Ombudsman – the special ombudsman in charge of handling of personal information – to run a check in the FSIS data registry for any mentions of the Member of Parliament in question. The Data Ombudsman reports the result of the check to the Member of Parliament, the leader of their parliamentary group and the Secretary General of the Parliament. If some records of the Member of Parliament were discovered, the three parties mentioned, along with the Data Ombudsman, will convene to discuss the relevance of these findings to the appointment of the member of the

⁶² J Lavapuro, ‘Comment to the Constitutional Law Committee on PNE 1/2018 vp’ (2018) 3.

⁶³ I Saraviita, *Perustuslaki* (2nd ed., Talentum 2011) 609–610; GP 198/2017 vp, 3; PeVM 4/2018 vp, 3.

⁶⁴ M Scheinin (n 55) 3; O Mäenpää, ‘Comment to the Constitutional Law Committee on PNE 1/2018 vp’ (2018) 1–2; VP Viljanen (n 26) 4–5.

⁶⁵ S Melander (n 38) 6–7.

Parliament for membership or deputy membership of the IOC.⁶⁶ This solution can be viewed to be a compromise between the secrecy-oriented desire to maintain security vetting of the IOC members and the democratic and constitutional requirements for autonomy and independence of the Parliament and its members.

The question of security vetting only becomes pertinent in the first place, if the oversight committee needs to handle sensitive information as a part of its oversight duties. The crux of the issue can be placed in determining where the threshold of confidentiality is placed.⁶⁷ In the case of the IOC, the committee does not deal with operational intelligence information and details, but it does have access to classified documents. The constitutional status of the Parliament and parliamentarians also needs to be considered when balancing the security benefits of vetting with the independence of democratically elected representatives and the legislature. Additionally, when vetting is implemented, the criteria used for it needs to be both consistent and democratically acceptable.⁶⁸

3.4 Resources

Resources alone do not automatically translate into effective and successful oversight. The ample resources may easily end up squandered if there is no appropriate will or knowledge to use them effectively.⁶⁹ The need for resources corresponds to the dimensions of the mandate, or put differently, the role of the oversight body in the oversight system.⁷⁰

A professional, expert staff is the most important resource a parliamentary intelligence oversight committee possesses. The staff is an important asset, providing the committee with research and assistance during inspection visits, hearings, and investigations, and it preferably includes some personnel with intelligence experience.⁷¹ For a parliamentary committee, having former members of the IC serve in the staff offers a relatively safe manner of gaining vital expertise without risking the independence of the committee. A varied staff that features experts from various fields and with various backgrounds provides optimal support for the decision-makers in a committee.⁷² Matters of intelligence oversight tend to contain a number of different, and at times competing, interests,

⁶⁶ PeVM 10/2018, 4–7; M Lohse and M Viitanen (n 3) 209.

⁶⁷ H Born and I Leigh, *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies* (DCAF 2005) 7.

⁶⁸ Ibid.

⁶⁹ S Farson, 'Parliament and its servants' (n 48) 229; P Gill, 'Evaluating Intelligence Oversight Committees' (n 4) 17.

⁷⁰ P Gill, 'Evaluating Intelligence Oversight Committees' (n 4) 15.

⁷¹ Venice Commission (n 38) 6; H Born and LK Johnson, 'Balancing Operational Efficiency and Democratic Legitimacy' in H Born, LK Johnson and I Leigh (eds.), *Who's Watching the Spies: Establishing Intelligence Service Accountability* (Potomac Books 2005) 238; P Gill 'Evaluating Intelligence Oversight Committees' (n 3) 17.

⁷² See A Zegart, 'The Domestic Politics of Irrational Intelligence Oversight' (2011) 126(1) *Political Science Quarterly* 9–10.

such as effectiveness of intelligence, human rights, and foreign policy. Reaching a balanced approach amidst the different interests requires wide-ranging expertise and experience.

For the IOC, the staff, or rather the lack thereof, remains a prominent question. The Committee has only one public official listed, who acts in the role of committee secretary. For comparison, the Constitutional Law Committee has seven public officials in its staff and the Administrative Committee has six. Comparison to the resources of the PKGr illustrates a difference in approach to personnel resources. In addition to having a legal basis for its resources in PKGrG § 12, the PKGr is supported by the staff of the Parliamentary Control of Intelligence Services (*Parlamentarische Kontrolle Nachrichtendienste*) subcommittee of the Bundestag.⁷³ In addition, the Panel can commission an outside expert to investigate individual cases (PKGrG § 7). The Control Panel is also assisted by the permanent representative, whose duties include providing administrative assistance to the Panel as well as facilitating the relationship between the Panel and the German Parliament (*Bundestag*) (PKGrG § 5 a). On the other end of the spectrum, the Control Committee in Denmark appears to operate on similarly scarce personnel resources as the IOC, as § 1 of lov nr. 378 only designates a secretary for the committee.⁷⁴

Committee resources do not exclusively refer to staff, even though that is the most prominent of the resource quality. Parliamentary committees have the advantage of having access to the varied material resources of the parliament, which also relates to the quality of access to information.

When evaluating the available resources of the IOC, the larger picture of the intelligence oversight system needs to also be considered. The Intelligence Ombudsman could be counted, in a sense, among the resources of the IOC. The Ombudsman provides the IOC with information and while the Ombudsman is a distinctly separate, independent oversight body, the seamless cooperation between the two external oversight bodies is vital for the success of the oversight system.⁷⁵ Like the IOC, the PKGr cooperates with the other main external oversight bodies, particularly the G10 Commission and the Confidential Committee.

3.5 Access to Information

Right to access information is a vital power for a parliamentary intelligence oversight committee. In the drafting of the Finnish intelligence legislation, it was recognised early on that the committee must have unlimited access to the information it requires in order to carry out its oversight responsibilities. The IOC's right to access to information can be compared to the one the Parliamentary Ombudsman and the Chancellor of Justice possess as per CoF 111 §. What this means is that the IOC's right to receive information is based solely

⁷³ On the reorganisation of the staff within the German oversight system, see Gesetzentwurf 18/9040, 15.

⁷⁴ See Wills and M Vermeulen (n 40) 92. According to Table 1, the Committee has a staff of two.

⁷⁵ See P Gill, 'Evaluating Intelligence Oversight Committees' (n 4) 29–30.

on what information the committee needs to fulfil its oversight duty, unconstrained by the secrecy or confidentiality of the information.⁷⁶ The parliamentary right to receive information as established by CoF 47 § does not implicitly set a similarly unrestricted access.⁷⁷

When it comes to a parliamentary intelligence oversight committee's central duty of keeping the parliament informed, the IOC's ability to initiate investigations on its own and report of its findings to the plenary session of the Parliament are of great importance. Combined, these two powers allow the IOC to help maintain parliamentary awareness of important and timely intelligence matters.⁷⁸ The IOC can utilise the general right to access information guaranteed to parliamentary committees by 47.2 § of the CoF for its investigations, but 3 § of the Intelligence Oversight Act guarantees a specific right to access information for the IOC.

The legal basis for the IOC's right to receive information is set by 3 § of the Intelligence Oversight Act, and the committee's right to receive information is not limited to public authorities, instead extending to include all actors carrying out a public task.⁷⁹ In this regard, the IOC's right to receive information is broader than that of the Intelligence Ombudsman, whose right to receive information – based on 8 § of the Intelligence Oversight Act – is limited to public authorities and other actors performing a public administrative task.⁸⁰ The access of the IOC covers both documents and information and the committee can receive the information either verbally or in writing without any fees attached (e.g. for copies of documents).⁸¹

Closely connected to the access to information is the IOC's right to receive reports from the Intelligence Ombudsman, other public authorities, and other actors carrying out a public task, which is set in 4 § of the Act on the Oversight of Intelligence. The IOC also has the same right to receive a report on a matter within its mandate from the government or a ministry as the other Parliamentary committees have according to 47.2 § of the CoF. The Ministry of the Interior is also obligated by 60 § of chapter 5 a of the Police Act to give an annual report to the IOC, the Intelligence Ombudsman, and the Parliamentary Ombudsman on the use of the internal oversight of intelligence and the use of intelligence

⁷⁶ GP 199/2019 vp, 35; PeVM 2/2002 vp, 2; HaVM 36/2018 vp, 41–42. The notion of information relevant to the tasks/duties of the IOC sets a connection to the 31 b § of the Rules of Procedures, which outlines the committee's oversight tasks.

⁷⁷ PeVM 6/2000 vp, 2; GP 1/1998 vp, 167. Cf. GP 199/2019 vp, 44. The government bill claims that even without an implicit expression of the access to information being unrestricted, the Parliament's right to receive information (CoF 47.1 §) can be considered unlimited in a similar sense to the right of the Parliamentary Ombudsman and the Chancellor of Justice (CoF 111 §). See also PNE 1/2018 vp, 24–25.

⁷⁸ PNE 1/2018 vp, 34; Tiedustelun parlamentaarinen valvonta -työryhmä (n 3) 21; M Lohse and M Viitanen (n 3) 212–213.

⁷⁹ Non-public actors that might get involved in intelligence activities include actors such as telecommunications companies.

⁸⁰ On the distinction between a public task and a public administrative task in Finnish law, see O Mäenpää, *Hallinto-oikeus* (WSOY 2013) 100, 185–186. Public task is a broader concept that contains the concept of a public administrative task within it.

⁸¹ GP 199/2017 vp, 44–45.

powers. Though the Intelligence Ombudsman already has, according to 3 § of the Oversight Act, a duty to inform the IOC, but in combination with 4 §, the Ombudsman's informing and reporting duty is broadened. As the IOC itself has limited means for investigation and obtaining information, the committee is highly dependent on the Ombudsman's investigatory powers and inspections.⁸²

Access to information is a core element in determining the actual effectiveness and oversight capability of an oversight committee. By default, parliamentarians usually have a relatively high level of access to information on the merit of their status as elected representatives.⁸³ In intelligence matters, however, a standard parliamentary access to information may not be sufficient to fulfil the information needs of effective oversight. Therefore, the important question is whether the oversight committee of parliamentarians is within the ring of secrecy of intelligence. In order to make decisions on the legality or proportionality of intelligence activities, operational information is required to some extent.⁸⁴ This question is particularly pertinent in systems like Sweden's, where the parliamentary oversight of intelligence is carried out by a standard, non-specialised parliamentary committee. The Committee's access is limited to completed operations, but in terms of policy and expenditure, the access is unlimited.⁸⁵ Specialisation does not automatically mean the challenges of access to information are solved, as the situation of the Control Committee in Denmark showcases. The Control Committee has very limited access to information, which can handicap the committee.⁸⁶

Oversight of intelligence requires the overseer to have access to sensitive information and at times the use of secure locations, not to mention the special knowledge and expertise required. Therefore, a specialised committee is much better equipped to handle the task of intelligence oversight than a pre-existing parliamentary committee with intelligence oversight added to its list of tasks. Even a specialised committee will very likely have a limited access to detailed sensitive information on intelligence operations, especially regarding planned or ongoing operations. Intelligence agencies may treat committees as security threats for two reasons. First, transporting information from the agency's premises to the committee presents a risk, even when the information is moved from one secure place to another. Secondly, intelligence officials may distrust politicians with sensitive information out of fear the politicians will attempt to use the information for their own political needs. Intelligence leaks will expand this rift, even though leaks through parliamentary committees and other oversight bodies are rare.⁸⁷

Evaluations relating to the propriety and efficiency of intelligence operations require access to operational information. While the IOC has broader access to

⁸² GP 199/2017 vp, 35; Tiedustelun parlamentaarinen valvonta -työryhmä (n 3) 31; M Lohse and M Viitanen (n 3) 215–216.

⁸³ P Gill, 'Evaluating Intelligence Oversight Committees' (n 4) 17.

⁸⁴ P Gill, 'Evaluating Intelligence Oversight Committees' (n 4) 21; I Leigh, 'The accountability of security and intelligence agencies' (n 18) 72.

⁸⁵ A Wills and M Vermeulen (n 40) 95 (Table 1).

⁸⁶ S Andersen, ME Hansen and PHJ Davies (n 16) 254.

⁸⁷ M Caparini, 'Controlling and Overseeing Intelligence Services' (n 11) 13.

information than an average committee of the Finnish Parliament thanks to the powers that enable the committee to seek information, it cannot be considered to be fully within the ring of secrecy when it comes to operational information. *Prima facie*, this creates a trilemma-related problem of blind spot in the coverage of oversight.

In Finland, this problem was solved by adapting a two-pronged approach to external intelligence oversight. The Ombudsman, better suited for active oversight on the operational level, carries out oversight with the emphasis on legality, proportionality, and legal safeguards. The IOC, meanwhile, focuses on effectiveness and policy.

Like the IOC, the PKGr has more wide-ranging access to information than the average parliamentary committee in Germany does.⁸⁸ The EOS Committee is comparable to its Finnish and German counterparts in this issue, although there are a few interesting details related to its legal basis. EOS-kontrolloven § 8 requires that the commission does not seek more extensive access to information than is necessary given its task. The section also appears to indirectly refer to the third-party rule with its mention of taking into account the protection of information received from abroad. EOS-kontrolloven § 8 also reserves a right for the responsible personnel in administration to register a protest against the commission's information demands. These fall in line with the restrictions that are placed in the mandate of the EOS Committee. The committee is not to evaluate the efficiency of the intelligence services, the effectiveness of their activities, or the quality of their intelligence product, and the committee's role is described in § 2 of the EOS-kontrolloven as one of purely overseeing (*rent kontrollerende*). This does not necessarily narrow the committee's oversight to the ex post dimension alone, but, in the terms of the trilemma, it appears to limit the commission's role to the legality/proportionality dimension. The scope of the committee's oversight also almost completely excludes intelligence activities taking place abroad.⁸⁹

3.6 Reporting Practices

To fulfil its task of keeping the parliament sufficiently informed, the parliamentary oversight body should give a full report of its oversight activities at least annually to the parliament.⁹⁰ In the case of the IOC, it relies on the standard practices of Finnish parliamentary committees to fulfil its parliamentary reporting duty. These include producing the minutes of each of its meetings, alongside the reports and comments the committee gives on a regular basis, such as preparing a report on the annual report by the Intelligence Ombudsman for the plenary session of the Parliament.⁹¹ As per the 31.3 b § of the Rules of Procedures, the committee also has the right to draft a report on its

⁸⁸ H De With and E Kathmann (n 13) 220–221.

⁸⁹ F Sejersted (n 17) 125–126.

⁹⁰ H Born and I Leigh (n 67) 8.

⁹¹ See TiVM 1/2020 vp and TiVM 1/2021 vp. These committee reports are not limited to covering the Intelligence Ombudsman's annual report, as they also include what could be described the annual report – though brief – of the IOC itself.

own initiative to the Parliament regarding significant intelligence oversight matters. The same section of the Rules also serves to establish one of the basic quality requirements for reporting practices of an intelligence oversight committee, which is that the committee should report directly to the parliament.

Having the final say in the contents of its reports and the independence in reporting is vital.⁹² Intelligence, however, poses special challenges due to its secretive nature. An oversight committee must be mindful of not revealing compromising information when reporting to the parliament, but at the same time, it is the committee, and not the IC, that should decide on the contents of the reports. Good communication between the oversight body and the IC is vital for assuring the committee's ability to produce meaningful yet security aware public reports.⁹³

On the issue of the publicity of the documents of the IOC, 43 a and b § of the Rules establish a presumption of confidentiality. This matter was already briefly touched upon in the analysis of the form of the committee, but it is also relevant to the analysis of reporting practices. Limited publicity of documents is a two-edged sword for an intelligence oversight committee. It hampers the public's ability to follow and scrutinise the activities of the committee – and the agencies it oversees – but the layer of secrecy also enables the committee to handle issues that are of a more sensitive nature. Members of the IC or close to it may also be willing to talk more openly under such conditions. Furthermore, it should be stressed that the minutes of the committee are public with the material declared classified redacted from them.

Both the EOS Committee and the PKGr have formally designated minimum reporting rates. The EOS Committee reports annually to the *Storting* and the report must contain the parts decreed by law (EOS-kontrolloven § 17). According to EOS-kontrolloven § 16 §, the commission decides on what information is made public. The PKGr must report to the *Bundestag* twice during an electoral term – in the middle and at the end of it – and the reports are publically available (PKGrG § 13). Cooperation and sharing of information between the PKGr and the other intelligence oversight bodies is controlled by PKGrG § 15. The Parliamentary Control Committee has no formal reporting requirements based in law, but it can report to the Danish Parliament (*Folketing*) on its activities. The reports may be made public (Lov nr. 378 § 3).

Through its annual committee reports, the IOC fulfils the minimum reporting standard, but unlike with the PKGr or the EOS Committee, its reporting is not very regulated. 31.2 b § of the Rules of Procedures, tasking the IOC to process and present the annual report of the Intelligence Ombudsman to the Parliament, is the closest equivalent to a reporting requirement based in law.⁹⁴ While the IOC has seen to including summaries of all oversight dimensions and actors into

⁹² See P Gill, 'Evaluating Intelligence Oversight Committees' (n 4) 30.

⁹³ P Gill, 'Evaluating Intelligence Oversight Committees' (n 4) 18.

⁹⁴ Cf. 31.2 b § of the Rules of Procedures to Intelligence Oversight Act that establishes the reporting requirement of the Intelligence Ombudsman. See also GP 199/2017 vp, 65–66, which indicates guidelines as to what the Ombudsman's annual report should, at minimum, contain. In this regard, the Ombudsman's report is comparable to the law-based requirements of the EOS Committee's report.

the committee reports that fulfil this requirement, there is currently no legal requirement for the IOC to report on its own work.

4 The Finnish Intelligence Oversight Committee – A Blind Guardian?

In the effort to balance the principles of democracy and rule of law with the secretive intelligence apparatus and national security interests, there is substantial value in having the elected representatives of the people involved in oversight. Based on constitutional law, parliamentarians enjoy special autonomy and status, and as democratically elected representatives, they add a dimension of public scrutiny to the oversight process.⁹⁵ The parliament is intrinsically involved in the creation and maintenance of an intelligence machinery that does not erode the foundation of democracy and rule of law. The creation process includes writing the legislation governing intelligence activities as well as the accompanying oversight system. This process may involve creating new institutions within or outside the parliament to carry out a role in the oversight system. The parliament's involvement does not end with the creation of the legislation, as it continues to monitor the impacts of the legislation and produce amendments for it, when necessary. This monitoring includes looking for possible gaps or deficiencies in the legislation that it will need to fix either via amendments or by adding new legislation.⁹⁶

Parliamentary involvement also carries risks. It can involve the IC in political scandals and controversies and parliamentarians may attempt to score political victories and damage the public image of the IC in the process by presenting wild unsubstantiated claims and cultivating unwarranted doubts. Another major risk involves information leaks. When realised, these risks will not only cause damage to the public perception of the IC but they will also damage the relationship between the parliament and the IC, complicating any future interactions between them by increasing “gatekeeping” and possibly cause the culture of the IC to turn inward.⁹⁷

The parliamentary scrutiny of the intelligence services can be organised in more than one or two ways. One major distinction can be made between direct and indirect involvement of the parliament. Direct approach is used when a standing parliamentary committee or a specialised oversight committee is used to carry out parliamentary oversight of intelligence. Alternatively, indirect approach is used when the parliament appoints an expert oversight body to carry out active oversight and report regularly to the parliament.⁹⁸ Among the countries examined in this paper, Norway is the only one leaning towards the indirect approach, whereas the other four countries have elected to have parliamentary committees carry out oversight. Of these four countries, Sweden stands out as the only one with no specialised intelligence oversight committee.

⁹⁵ Particularly 29 § of the CoF that establishes the independence of the members of parliament.

⁹⁶ A Wills, *Understanding Intelligence Oversight* (DCAF 2010) 34.

⁹⁷ I Leigh, ‘More Closely Watching the Spies’ (n 50) 8; I Leigh, ‘The accountability of security and intelligence agencies’ (n 18) 71.

⁹⁸ A Wills (n 96) 34.

Lustgarten and *Leigh* have pointed out eight institutional characteristics that can be used to determine the strength of a parliamentary oversight body.⁹⁹ These characteristics can be linked to the six qualities analysed in this paper, and they provide a suitable framework for summarising the results of the analysis.

First of all, a parliamentary oversight body must be clearly owned by the parliament and be independent from the executive. Fundamentally, this means that the parliament is solely responsible for choosing and removing the oversight body's members, and that no members of the cabinet can have double-roles as members of the oversight body. In addition to independence from the executive, parliamentary control also includes the power to review and approve budgets.¹⁰⁰ Based on the analysis of the committee's form, the IOC clearly meets the definition of independence from the executive. The Finnish Parliament has full authority to decide on the committee's members, and the status of the committee is written into the Rules and Procedures of the Parliament. Relating to the matter of ownership, however, is the question of the security vetting of the members of the parliamentary oversight body, which became a prominent point of contention during the drafting of the intelligence legislation. Along with limiting the number of committee members, security vetting can be seen as a measure of ensuring the necessary confidentiality and secrecy that the handling of intelligence matters requires. The problem with vetting arises from it possibly allowing other actors than the parliament itself to assess the suitability of individual parliamentarians for roles within the parliament.¹⁰¹ The special arrangement created for vetting the members of the IOC, however, diminishes this risk in the Finnish system.

Secondly, the committee must be willing and able to carry out its task proactively. The mandate and powers of the IOC do enable the committee to act in a proactive manner, although the committee appears to lean more towards the fire-alarm mode of oversight in its activity instead of highly proactive police-patrol oversight. The specific tasks of parliamentary oversight of intelligence were left somewhat ambiguous on purpose, the intention being that this would allow the oversight and the IOC to evolve naturally through experience.¹⁰² Such an approach is not problematic in itself, as the relatively adaptable nature of parliamentary oversight does allow for it. A legal basis that provides a solid enough framework, however, is required, so as not to allow the adaptability lead to directionless and ineffective oversight, resulting in a growing lack of credibility in the eyes of the public. The mandate of the IOC does not extend to matters of efficiency, and there is no specialised efficiency/budget oversight

⁹⁹ L Lustgarten and I Leigh, *In from the Cold* (Clarendon Press 1994) 461–462.

¹⁰⁰ H Born and I Leigh (n 67) 7; H Born and LK Johnson, (n 71) 236.

¹⁰¹ Venice Commission (n 38) 6; M Lohse and M Viitanen (n 3) 208–209; A Defty (n 10) 374. See HaVL 39/2018 vp, 9–13.

¹⁰² PeVM 10/2018 vp, 10–11; M Lohse and M Viitanen (n 3) 210. This notion of allowing room for the parliamentary oversight of intelligence to evolve naturally can be linked to the relatively slowly accumulating intelligence expertise and institutional memory within a parliamentary intelligence oversight body. Both of these attributes are of utmost importance for effective oversight, but are only obtainable through practice. See S Farson, 'Parliament and its servants' (n 48) 228; S Farson, 'Establishing Effective Intelligence Oversight Systems' (n 20) 40.

body – comparable to the Confidential Committee of the Rigsrevisionen – overseeing the use of funds in the intelligence services. Thus, efficiency oversight remains a blind spot in the Finnish oversight system, but it is dubious whether the IOC would be the right organ to fix it, given its workload, lack of personnel resources, and the high demand of secrecy present in meaningful efficiency oversight.

Thirdly, the various political parties should have representation in a committee of parliamentarians, although the member count can reflect the political balance of power in the parliament. Additionally, although political representation is important, the members and the committee on the whole should strive for non-partisanship in its activities. The membership of the IOC allows for a broad representation of the different parliamentary parties. The membership of the committee reflects the power balance of the Parliament to some extent. A larger number of members would have provided optimally balanced representation, but confidentiality and security concerns were seen as a limiting factor. There are currently no signs of partisanship within the committee impeding the work of the IOC.

The fourth characteristic identified by Lustgarten and Leigh draws focus to the committee's access to information. The IOC has broader access to information than a regular parliamentary committee does, but the limited investigatory powers set constraints on the committee's access to information on a practical level. Cooperation with the Intelligence Ombudsman, who has potent investigatory powers, alleviates the issue. Due to the division of duties between the two main external intelligence oversight bodies, the IOC does not extend its oversight to the operational level of intelligence. Originator control, or third-party rule, limits the committee's access to information. The sharing of information with foreign intelligence partners is a common blind spot of oversight systems not only in Finland, but also in many other Western democracies. The possibility of cooperation with states that do not adhere to the same standards of human rights makes the matter a significant one from the viewpoint of rule of law, however. Intelligence cooperation links closely to foreign policy, and would therefore be within the mandate of most parliamentary oversight bodies of intelligence, including the IOC.¹⁰³

The fifth characteristic is related to access to information in both theory and practice, as it centres on the committee's ability to maintain secrecy when necessary. The ability to maintain secrecy when necessary is supported by the security vetting of the committee members. Security vetting of parliamentarians does pose some constitutional questions, but the vetting process of IOC members was modified in a way to minimise FSIS and executive influence over it.

The sixth characteristic emphasises the importance of institutional expertise. Institutional expertise is a challenge for a committee of parliamentarians, as the terms of the members are linked to the electoral cycle. This can become an obstacle for the development of institutional memory and specialised knowledge. Because of the limitations imposed by the parliamentary system, the seventh characteristic, adequate support staff, is very significant, and it is naturally closely connected to institutional expertise. For IOC, the size of the staff is very limited, and neither the intelligence legislation nor the Rules of

¹⁰³ A Wills and M Vermeulen (n 40) 110.

Procedures designate a minimum limit of staff for the committee. The ability to accumulate expertise and institutional memory via staff is an important aspect of intelligence oversight. While the IOC has not been operational long enough to allow for much accumulation of experience yet, the limitations of the staff size pose an additional challenge in this regard.

The eighth characteristic, the ability to campaign for the views held by the IOC, ties most clearly to the reporting practices and staff capacity when looking at the six qualities used here to analyse the committee. However, this characteristic also refers to the general willingness to be proactive and challenge the views expressed by the IC or the executive. As a fire-alarm oversight body, the IOC would provide answers to its capability to campaign in the media and garner support from the public only once ‘the alarm’ is triggered in the form of an intelligence scandal or misuse of power.

From a *de lege ferenda* perspective, legislative solutions do not appear to be a panacean remedy to all issues relating to intelligence oversight. This is in part because of the veil of secrecy that exists between the intelligence/security realm and the outside world, the latter of which includes external oversight bodies. While legislation can be utilised to limit the intensity of the veil of secrecy and assign oversight bodies well-designed mandates, there are multiple practical aspects to the oversight function that legislation cannot effectively control. These include the political will of the overseers (in the case of parliamentary oversight bodies), certain resource-related matters such as staff expertise and non-partisanship, as well as the relationship between the IC and the overseers and the interaction and exchange of information between different oversight bodies. In these cases, the focus ought to be placed on developing, monitoring, and evaluating the practices of the committee.

Even qualities that are ostensibly fully regulated by legislation, such as access to information, possess many practical facets that fall outside the reach of legislation, at least within the legislative model adopted for intelligence oversight in Finland for now. With access to information, these facets would include how willing the committee is to use its access to information and to what extent, how cooperative the IC or the executive are in relation to the IOC’s information requests and demands, and how the IOC chooses to manage its relations to the IC and other intelligence overseers.

Intelligence powers increase the power of the executive, which in turn creates a need for the legislature to create mechanisms to oversee the intelligence agencies of the executive in an effort to maintain a balance between the two state powers. In theory, the kind of direct oversight that a parliamentary committee like the IOC carries out could create considerable friction in the relationship between the executive and the legislature. In the case of Finland, the inherent nature of a unicameral parliament should mitigate any immediate, major changes in the executive-legislative relationship. The emergence of an intelligence scandal that would prompt the IOC to take more of an active role could, however, disrupt the current balance. Whether the fact that government parties hold the majority among the members of the committee serves to alleviate the tension between the government and the IOC – or alternatively blunt the IOC’s sword, so to speak – in such a situation could only be observed in practice.

This paper set out to examine whether the IOC possesses the means to be more than a mere blind guardian with a blunt sword. In evaluating the IOC it is

important take into account the committee's role in the overall external oversight system. This makes forming direct international comparisons difficult, even when looking at countries that can be considered closely related to Finland in terms of legal culture and commitment to democracy and the rule of law.

Nonetheless, the comparisons are useful in mapping out common practices internationally and what kind of alternatives may exist for current national practices. In this regard, the IOC appears to possess quite common defining traits for a parliamentary intelligence oversight committee. While there are certain aspects where the IOC appears weaker than its international counterparts, the answer appears to lie in the division of duties between the IOC and the Intelligence Ombudsman. As far as systems go, this kind of division in terms of the oversight bodies involved and the nature of their duties does appear distinctively characteristic to the Finnish system. This arrangement of close cooperation and support between two external oversight bodies, one parliamentary and the other independent (though parliament-adjacent) allows the IOC to focus more on tasks it is better equipped to handle. As long as the cooperation between the two external oversight bodies remains functional, the IOC should not be in danger of becoming a blind guardian, since the Ombudsman plays a major role in providing the IOC information through reports.

As for the sharpness of the "sword" is concerned, it is notable that the IOC does not possess directly punitive measures. On the other hand, as an instrument of the parliament, the committee does possess the ability to influence and scrutinise the activities of the executive in intelligence matters. The committee's ability to hold hearings, access documents and compose reports is likely to be of use in the event of a scandal, although it will be the willingness and expertise of the committee in using those tools that will determine its success as an overseer.

