

Improvement of Civilian Oversight of Internal Security Sector Project



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PARLIAMENTARY OVERSIGHT IN FRANCE

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Reference to the Description of the Action	
Component	C. Civil Society and Media
Activity	C.2 A minimum of 5 parliamentary meetings and discussions on civilian oversight held with the participation of 30 Members of Parliament
Output	C.2. Report of the parliamentary discussions on civilian oversight
Description	<ul style="list-style-type: none">• Presenting a description of parliamentary oversight in France



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A legal framework for the effective and efficient control management of the French security services by Parliament

The history of the parliamentary control of Intelligence activities in France has been conditioned by a double phenomenon: a lack of concern by the nation's elected representatives and a total hostility by the executive power towards any initiative intended to restrict or to review its privileges. This remains true even today, in spite of timid attempts to curtail this established situation.

❖ The thwarted history of parliamentary control of intelligence services

As historian Sébastien Laurent, a specialist in French Intelligence, demonstrated: *"until the early 1970s, it has seemed very clear that the nation's elected representatives had never wanted to "monitor" or "investigate" the intelligence services.*

Unmistakably, year 1971 embodied a turning point when, with the Delouette case (involving the SDECE² in drug trafficking in the United States): the political centre group of the Senate tabled an amendment proposing to subject the budget vote to a government report dedicated to our foreign service.

Former Prime Minister and Minister of Defence at that time, Michel Debré expressed an opinion which perfectly sums up the position of the executive branch of government in this field *"I am willing to come before the Committee on National Defence to explain the major features of the organization of the services. I am even willing to indicate the Services' general missions; it is not in the domain of secrecy. But before a committee [...] what would you want me to say or what would you want anybody to say? [...] On the other hand, as you know, these services must be aware of very serious cases related to the fight against infiltrations coming from outside. Am I going to speak about it? Am I going to open files? This is out of question. I prefer to tell you at once that I will remain silent and that whoever has a sense of State" or, I would say, a sense of respect we owe to some agents could only remain silent³*". Thus, the Minister of Defence predicted exactly the area of competence of the Parliamentary Delegation for intelligence established in 2007, some thirty six years later.

Subsequently, attempts in Parliament grew: between 1971 and 1992, about twenty offensives succeeded in the creation of inquiry commissions or reports. Nevertheless, *"the parliament had more interest in the Intelligence services' tools and practices (such as phone tapping in 1973 and anti-terrorist coordination in 1984) or again in "specific cases" than in The Services themselves⁴*". As such, there had never been any mention of control. The interest from the members of Parliament was fragmented,

¹ In Sébastien LAURENT « Les parlementaires face à l'État secret et au renseignement sous les IV^e et V^e Républiques : de l'ignorance à la politisation », *Cahiers de la sécurité*, juillet-septembre 2010, n° 13, p. 137.

² Service de documentation extérieure et de contre-espionnage, the French foreign intelligence service from 1946 to 1981.

³ *Journal officiel de la République française*, Débats parlementaires, Sénat, Compte rendu intégral de la séance du 2 décembre 1971, p. 2623

⁴ In Sébastien LAURENT, « Les parlementaires... », *op. cit.*, p. 138.

occasional and related to media pressure. Only the communist Party suggested establishing a parliamentary delegation after the case of the Rainbow Warrior, a ship belonging to the environmental organization Greenpeace sunk whilst in harbour in New Zealand by operatives of the French intelligence service (DGSE) in June 1985.

The collapse of the Eastern bloc seemed to revitalize the parliamentarism of the liberal democracies. The nineties saw the reinforcement of the intent to control the work and roles of the intelligence services. In 1996, Jean Faure (a senator and a member of the political centre group) dealt the deathblow to further progress during the discussion of the finance bill. The most successful attempts to advance were engendered after the elections of 1997 and the cohabitation between left and right parties (a political configuration in which the Parliament flourishes a little by getting more power). Senator Nicolas About tabled a private bill concerning the creation of a parliamentary delegation for intelligence in the French Parliament (the heading supported by the Communist party in 1988 thrived). Though ineffective at the beginning, the senator's ideas caused Paul Quilès (chairman of the Parliamentary commission for national defence and the armed forces) to convene a trans-partisan working group to think about this theme.

This process of reflection led to a draft law tabled by Paul Quilès in March 1999. However, to avoid tensions during the period of cohabitation, the government refused to table the text in the Parliamentary calendar.

Yet, Paul Quilès' initiative is not an example of audacity: the former Minister of defence did not intend any control. His approach was to follow up intelligence activities restricted to a review of their organization and general missions, their competences and their means. The scope of action of the DPR created in 2007 so became the direct descendent of Quilès's draft law. Besides, in this abortive proposal, the members of Parliament were authorised to act *ex officio*. They could hold their work as confidential and publish an annual report, on the model of the practices adopted by the current DPR. At the same time, the power to hear the elected representatives was extended to the Ministers, the directors, their delegated officers and "*any person likely to enlighten the committee members and not subjected to these services*" It was thus a slight restriction but less prejudicial to honour than in the case of the DPR today.

The stated purpose of this "follow up" laid in "*keeping Parliament informed*"; as a result, the annual report would have been submitted to the Chairman of each House of Parliament who, in turn, would have transmitted it to the President of the Republic and to the Prime Minister.

Basically, even if the work that was carried out in 1999 was not successful, it undoubtedly influenced the practical and intellectual framework of the authority created in 2007. Between 1999 and 2005, the members of Parliament abandoned the project of controlling intelligence activities. UMP Member of Parliament Alain Marsaud broke this peace of mind. He brought this debate back onto the Parliament agenda during the review of a text concerning the fight against anti-terrorism for which he served as the rapporteur.

The bill indeed considered providing the intelligence services with additional resources in the fight against terrorism, the rapporteur said that “ *one might well think more deeply about the nature and the degree of parliamentary control of these services*”, all the more so as France was, with Portugal, the last western country with no mechanism addressing this subject.

The MP, a former anti-terrorist judge, proceeded to a real bargaining with the Minister of the Interior, Nicolas Sarkozy, who in fact was sensitive to the idea. As Alain Marsaud analyses the situation with great clarity, “ *for the first time, a Minister offers us, Members of Parliament, to intervene in the regulation of these activities. But he does not do it for free: he needs us to give these services strong legal tools for fighting against terrorism more effectively*” .

With this support, MP Marsaud withdrew the amendment which he had tabled and created an executive parliamentary supervision board with the promise of a future legislation dedicated to this question. It is however interesting to analyze the elected representative’s project in detail: he wished to set up a national control committee of intelligence services composed of ten parliamentarians without taking into account the presence of *ex officio* members. Excluding the ongoing operations the account of which was forbidden by the Constitutional council in 2001, the committee would have carried out the control of the general activities of the services. With this objective, it would have the power of examining all the documents it deemed necessary. Alain Marsaud’s project perfectly conformed to the rules of a real parliamentary control of the intelligence services without subjecting them to unreasonable exposure.

The government of Dominique de Villepin fulfilled Nicolas Sarkozy’s promises and worked on a text presented in March 2006. This text largely prefigured the current DPR and confined the authority to budgetary matters concerning the organization of the services and their general activities. In addition, the terms of reference made the members of Parliament totally dependant on the Government for their information. Thus, the law bill fell short of Alain Marsaud’s proposals. He was beaten in the legislative elections in 2007 so he was not able to express his views about the subject. The government ended up ruling out any possibility of parliamentary control and modelled the bill closely on Mr Quilès’s proposal of 1999.

The discussion at the Senate and then, at the National Assembly made some minor changes and led to the establishment of the DPR (Parliamentary delegation to the intelligence) as it is currently constituted. Indeed, Law n°2007-1443 of 9 October 2007 created an article 6 *nonies* within ordinance n°58-1100 of 17 November 1958 concerning the functioning of parliamentary assemblies. This article governs the DPR’s mode of functioning, its sphere of competence and the nature of its mission.

❖ General considerations

The DPR has an unusual feature: it is common to the National Assembly and to the Senate. As such, it is worth noting that only the science and technology committee of the French parliament enjoys the same status.

The DPR consists of 4 members of the National Assembly and 4 senators and includes the presidents of Judiciary and Defence Committees from both chambers as *ex officio* members. As a result, only four representatives of the Nation are present among the members of the above mentioned parliamentary committees “to ensure a pluralistic representation”. The power of rightly chosen words is important: it legitimates that the choice is made within the parliamentary groups of the two main political parties. Since 2007, the composition of the DPR has been the illustration of the hegemony of the two main political parties (the **Socialist party** - to the left - and the UMP, **Union for a Popular Movement**- to the right). In this particular context, it also explains the overwhelming domination of the majority party: the political majority in power has always an absolute majority, what considerably limits critical capacity of the authority since the majority political group never gets into trouble a government of its same political colour.

2008-2009-2010		
	National Assembly	Senate
Committee Chairmen	Jean-Luc Warsmann	Jean-Jacques Hyst
	Guy Teissier	Josselin de Rohan
Parliamentarians	Jean-Michel Boucheron	Didier Boulaud
	Jacques Myard	Jean-Patrick Courtois

2011		
	National Assembly	Senate
Committee Chairmen	Jean-Luc Warsmann	Jean-Jacques Hyst puis Jean-Pierre Sueur
	Guy Teissier	Josselin de Rohan puis Jean-Louis Carrère
Parliamentarians	Jean-Michel Boucheron	Didier Boulaud
	Jacques Myard	Jean-Patrick Courtois

2012		
	National Assembly	Senate
Committee Chairmen	Jean-Jacques Urvoas	Jean-Pierre Sueur
	Patricia Adam	Jean-Louis Carrère
Parliamentarians	Philippe Nauche	Michel Boutant
	Jacques Myard	Jean-Patrick Courtois

The political composition of the DPR since its creation

It must be pointed out that one of the committee chairmen, *ex officio* members, hold the Presidency alternatively every year.

❖ The administrations concerned by the DPR

The law of 2007 delineated the area of competence of the DPR to “*specific services for that purpose placed under the authority of the ministers in charge of the homeland security, defence, economy and budget*” without listing the relevant services. Thus, it only specifies the supervisory authorities according to the method already used by the law of 1991 relating to the interception of security or by the law of 2002 regarding special funds.

Yet, it would have been simpler to refer to article 13 of ordonnance n°59-147 of 7 January 1959 on general organization of the defence. It said: “*under the authority of the Prime Minister, the orientation and the coordination of the documentation and intelligence services are assigned to an inter-departmental intelligence committee. The composition and the role of this committee are determined by decree.* This option was not adopted probably because the inter-departmental intelligence Committee had fallen into disuse.

Indeed, it was necessary to wait until article 27 of the LOPPSI of 2011 created article L.2371-1 of the Defence code which stated that “*the Intelligence services are appointed by order of the Prime Minister among the services mentioned in article 6 nonies of ordonnance n° 58-1100 of 17 November 1958 relating to the functioning of parliamentary assemblies*” (article created by the law of October 2007).

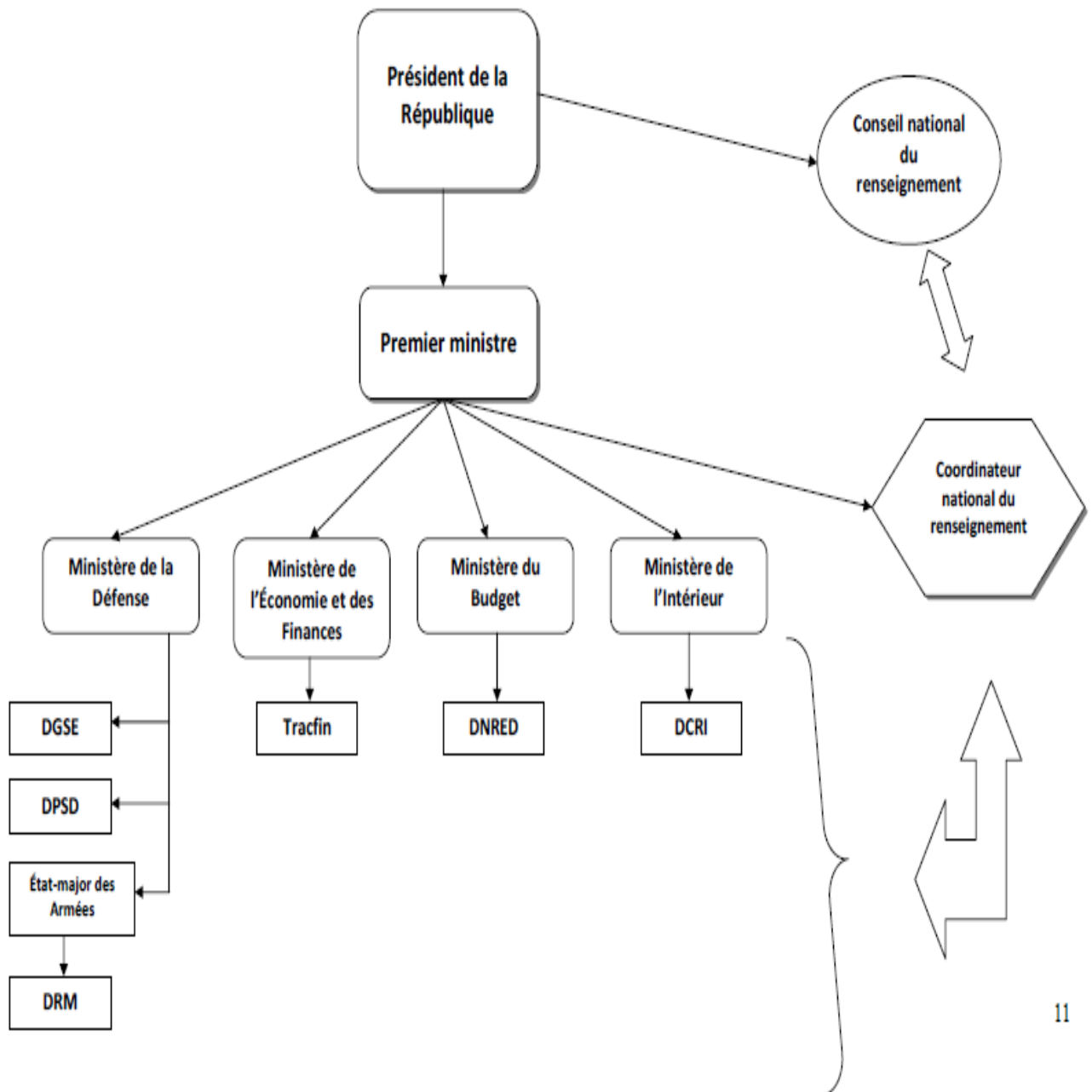
But, this article created in 2011 is an accident of history which has nothing to do with a parliamentary control: actually, the legislator realized that the intelligence services had no legal existence. Consequently, the executive power gave its best attention to consider a mechanism to list the specialized administrations not to remedy a questionable situation but to solve a contingent problem and to provide means for these specialized administrations. Doing this, the executive power indicated the framework of control of the DPR. But previously, it had not bothered to do the same concerning the creation a mechanism of control. This attitude says much about his little concern for the DPR action which, from 2007 to 2011 worked in total illegality (in legal loopholes, at least).

All things considered, on 9 May 2011, pursuant to the third subparagraph of paragraph1 of article L.2371-1 of the defence code, the Prime Minister ordered to appoint the concerned services: DGSE, DSPD, DRM, DCRI, DNRED and Tracfin.

- The DGSE, formed on 2 April 1982 is France’s foreign intelligence agency. It can also perform clandestine operations.
- The DSPD was created on 20 November 1981. Its responsibility is to ensure protection of the personnel and installations of national defence, to protect military secrecy and France’s economical and scientific heritage, to control arms sales and to protect the French forces in operations abroad.
- The DRM (Directorate of Military Intelligence) was created on 16 June 1992 to collect and analyze military intelligence for the French Armed forces
- The DCRI is the only French domestic intelligence agency. It became officially operational on 27 June 2008. It has five complementary functions: counter-espionage, counter-terrorism, protection of

France's economical and scientific heritage, fight against violent subversion and surveillance of radio based electronic communications likely to prejudice national security.

- The DRNED, in English, National Directorate of the Intelligence and Customs investigations has to fight against customs offences (smuggling, counterfeit money....)
- Tracfin fights against money laundering. In the 1990s it used to be a coordination unit in the French Ministry of Finances created to fight against money laundering resulting from narcotic trafficking.



The organization of French Intelligence apparatus

❖ The mission of the DPR.

As indicated previously, The DPR does not control the Intelligence services but it follows “*the general activities and means of intelligence*”. These terms “follows” and “general activities”, carefully chosen, define an extremely vague area of competence, without any full significance.

The clarifications provided by the law regarding the DPR information back up this idea. The executive power communicates “elements of evaluation” (and no “information”) relating to the budget (which the Parliament already had after the finance acts vote or after the audit of special funds), to the general activities and to the organization of intelligence services. The whole idea is to give the Parliamentarians a short simple training course to get acquainted with the Intelligence services. Particularly since this information must not concern:

➤ The missions of the Intelligence services, pursuant to Decision n° 2001-456 DC of French Constitutional Council of 27 December 2001 by which it considers that the Parliament cannot interfere with “*on-going operations*” on the basis of the separation of powers. This decision results from a very restrictive interpretation of Parliament powers, a very strict interpretation of the division of powers and a favourable interpretation of the prerogatives of the executive power.

➤ The instructions given by the public authorities regarding the missions and the funding for the same reasons as those mentioned previously. Yet, “*we do not see how the interdiction (for the Parliament) to control the ongoing operations would prevent it from controlling the completed actions*”⁵. Besides, this principle justifies the audit committee of special funds.

➤ The exchanges with foreign services or international organizations expert in intelligence. The other restrictions can be criticized, but this one stems from the necessities of an international cooperation regarding intelligence, regulated by the “third service” rule.

➤ Subparagraph IV specifies that “*the data that could put at risk anonymity, security or life of a person belonging or not to these relevant government services as well as the methods to get the information*” are not made public to the Parliamentarians. Again, this precaution could not raise the slightest criticism for the good of the work of departments. The philosophical framework of a parliamentary control of the intelligence services does not include these data.

Finally, as it seemed absurd to give the right to inform the DPR only to the executive power (the supervision would have been a scandal according to the rules of the division of powers which cannot always work in favour of the Government alone), the law gives the DPR a power of hearing but limited to the Prime Minister, the relevant ministers, the General Secretary of National Defence (reporting to the Prime Minister and playing an administrative role in support of the action, fringing on the security intelligence) and the heads of these departments. The law provides *expressis verbis* that the other agents must not be concerned.

⁵ Sandrine CURSOUX-BRUYERE, « Les fonds spéciaux : les zones d’ombre de la réforme », *Petites affiches*, 5 janvier 2006, n°4.

In this respect, the law is obviously conservative. Indeed, the law of 2007 brings no more power to the DPR than the Parliament has already had. At most, it allows the parliamentarians to break the limitation concerning secret matters... (see below)

On the contrary, we may wonder if arrangements restricting the members of Parliament's power of hearing are constitutional. We perceive again the attempt to confine the DPR in urban conversations between members of Parliament and heads of departments as deputy Alain Marsaud expressed at a session on December 5th 2012: *"The political majority of 2007 has decided to create a delegation whose purpose we do not know very well: not to control, may be to follow up. Some of you here feigned satisfaction. Let us say that, at least, it allows an examination of the intelligence services budget and it also allows to spend a few moments with the persons in charge"*

❖ A report against the division of powers?

Prevented from acting, the DPR has not developed its action. It meets the heads of departments and some of their assistants (eluding thus legal shackles) and it gets interested in major matters concerning the Intelligence apparatus.

The public reports which it provides each year give a short outline of its activity (unfortunately quite accurate for what I can judge according to my information). The summary of the year's activity is only two pages long if we exclude historical and institutional reviews which make it possible to reach ten pages or more.

Subparagraph IV provides that the DPR publishes an annual public report which excludes any elements safeguarded by national defence secrecy. However, this subparagraph seems to have a paralyzing effect on the DPR which makes no effort to publish the facts whereas the British publish reports of hundreds of pages and, respecting similar constraints, show that it is possible for the nation's elected representatives to mention intelligence matters, even in a critical way. In contrast, the French situation is characterized by a state of indigence. The DPR does not even care to mention the intelligence services budgets, a subject that the finance law rapporteur deals with every year (this aspect could be seen as a - superficial- control of the work of the services).

In their defence, the members of the DPR argue that they deliver a much more circumstantial report to the President of the Republic and to the Prime Minister than as provided for in subparagraph IV. However, and even if these reports are submitted to the chairmen of both parliamentary assemblies, what is the sense of a parliamentary control reporting only to the executive power? It seems strange that the Parliament contributes to the information of the government which it is supposed to oversee. Some people see there a transgression of the principle of the division of powers. Secrecy could not justify that the Parliament is kept in ignorance of the activity of one of its agencies

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There is no parliamentary control of the intelligence services in France. A delegation was created using all the legal and political subtleties to hinder any possible real control. The members of parliament, also members of the DPR, seem to have accepted these rules. They did not try much to hide or develop them nor did

they wish to denounce them. It justifies the reflection initiated by Jean Jacques Urvoas, Chairman of the Law Commission of the National Assembly.

❖ **When the Parliament decides to reflect on intelligence: the mission of evaluation of the applicable legal framework concerning the intelligence services.**

On July 12th 2012, the Law Commission of the National Assembly examined a bill introduced by its Chairman Jean Jacques Urvoas aiming at creating a fact finding mission to evaluate the applicable legal framework concerning the intelligence services. After a favourable vote, the mission held a constitutive meeting on Wednesday July 25th 2012, during which Jean Jacques Urvoas was appointed Chairman Rapporteur. Patrice Verchère (UMP deputy of Rhône) took up the appointment of Vice Chairman and co-Rapporteur and Axelle Lemaire (PS deputy representing the French living abroad) was made Vice President.

The Law commission accepted to implement Jean Jacques Urvoas's ideas that were produced at a time when there was no crisis in February 2010. Indeed at the time, I had proposed to the Socialist Party's current National Secretary in charge of Security, to set up a working group constituted of lawyers, former services directors... to reflect on a possible intelligence service reform.

After a year's work, Jean Jacques Urvoas and I published a book at the Jean Jaurès Foundation: *A Reform of the intelligence services: efficiency and democratic requirements*. Historian Sébastien Laurent had then considered it as "*the first political expert's report on the intelligence services in France*".

In this book, we made the argument, among other things, for an increased parliamentary control of intelligence services, for a readjustment of the powers of the President of the Republic and his Prime Minister, with further coordination coming from him, and for the adoption of a legal framework to the activities of Intelligence. But among the 36 proposals the least substantive was the one concerning this reform framework. So, I suggested to J.-J. Urvoas that we resumed sessions of a working group on this question. We held meetings for almost eight months (twice or three times a month).

In January 2012, we had a draft bill which could not be tabled at the National Assembly because of the orientations chosen for François Hollande's election campaign and because of very focused resistance (besides, more political than intellectual). I was determined to keep these ideas alive yet I undertook to amend the text and I published it at the Jean Jaurès Foundation⁶.

In this memo, I deemed appropriate that a country had to have three complementary types of control:

- an internal control over intelligence services exercised by the executive power,
- an external control of responsibility (the parliamentary control focuses on the action of the executive power regarding Intelligence and not on the Intelligence services themselves);

⁶ Floran VADILLO, « Une loi relative aux services de renseignement : l'utopie d'une démocratie adulte ? », note n°130 de la Fondation Jean Jaurès, 17 avril 2012, 20p.

- and finally, an external control of legality and proportionality in the authorization and implementation of the means of special investigation identified by the future law. To fulfil this task, I recommended the creation of an independent administrative authority referred to as: National Defence and Security Intelligence Review Committee, on the model of the CNCIS.

Concerning the parliamentary control, I pleaded for its legal existence, for greater openness in the DPR constitution and for ensuring it more extensive powers and means.

His re-election as Deputy of Finistère and his election as Chairman of the Law Commission fully enable J.-J. Urvoas to promote some ideas he was keen on. He wished to substantiate his ideas thanks to the works of the fact finding mission. Between September 2012 and February 2013, the parliamentarians heard 63 people in camera: former politicians who dealt with intelligence situations (Prime Ministers, Ministers of the Interior and Defence (Home affairs and Defence), and Directors of cabinet), former or current French or foreign expert and officials of the intelligence services. The members of the fact finding mission travelled to Marseille, Nantes and Canada. They also submitted a questionnaire to all the Prefects of the Départements to collect their remarks about this reform of the Intelligence services led by the government.

Here are the partial conclusions which J.J Urvoas presented at a symposium in Lille on April 4th: *“After all, our works should allow us to plead in favour of the adoption of a law relating to the activities of Intelligence. This law would provide for diversified control mechanisms (internal, external and parliamentarian). Similarly, we ponder over the best means of helping the Prime Minister to get into the coordination of the Intelligence services. Besides, the mission paid a particular attention to analyze the organization of domestic Intelligence (in its different elements) and of foreign Intelligence and Defence. Finally, we wanted to insist on the appreciation of culture of the Intelligence services including Economical intelligence”*. No doubt that the fact finding mission report will reveal all the details. Its publication was on the fourteenth of May 2013.

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After very weak ambitions, it appears that the Parliamentarians have chosen to create a real parliamentary control of the Intelligence activities still missing in France. Undeniably the President of the Law Commission has played a leading role here. He was able to seize the opportunity to put forward his ideas dear to him.

In short, few are the Parliamentarians who can boast about having made progress on this subject. Alain Marsaud also knew how to seize an opportunity and he initiated a movement leading to the creation of the DPR (the configuration of which deeply disappointed him). Time will tell if Jean-Jacques Urvoas will succeed in transforming this draft bill into a reform.