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PARLIAMENTARY OVERSIGHT OF INTELLIGENCE IN BRAZIL: ANALYSIS AND PROPOSALS FOR CHANGES TO THE JOINT COMMITTEE FOR THE OVERSIGHT OF INTELLIGENCE ACTIVITIES (CCAI)

SUMMARY:

Democracy and secrecy seem to be antagonistic terms. This is precisely the challenge in maintaining state intelligence systems in democratic contexts. If no State can do without intelligence bodies, responsible for safeguarding national security and interests and assisting the decision-making process through the exercise of specialized techniques, intelligence activity, to be effective, must also act under the cloak of secrecy. This is where the need for democratic control of intelligence activities comes in, even more important in countries with a recent past of authoritarian regimes. This study is part of this debate, analyzing the control of intelligence activities in Brazil. Specifically, we analyzed the parliamentary committee for controlling intelligence activities, the CCAI. After providing a brief history of the CCAI's activities since its creation, we point out its deficiencies and propose practical changes that could improve Brazil's institutional design of intelligence control.

KEYWORDS: Intelligence, intelligence oversight, Brazilian Intelligence System, parliamentarian oversight, Brazilian Joint Committee for the Oversight of the Intelligence Activities (CCAI)

The opinions expressed in this work are personal and do not necessarily reflect the views of any organizations with which the authors are affiliated.

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1 INTRODUCTION

Athens was on the brink of conflict. Social tensions increased as the wealthy accumulated land and goods while the poor could not repay their debts. The solution to avoid a civil war was to propose debt relief (at that time, *Refis* already existed[1]!). Both sides agreed that the process should be led by the moderate Solon.

Plutarch narrates that, after reflecting on the situation, Solon confided in his inner circle what the format of the social program would be: total forgiveness of debts would be proclaimed, but nothing would change in land ownership. Armed with privileged information, three friends ran, took out huge loans, and bought land (at that time, there was also influence peddling). When the law came into force, Solon's friends had become wealthy owners of land for which they did not have to pay anything. Of course, there was a scandal, but it soon "cooled down" over time (as this type of situation usually happens).

The use of state information for one's own benefit is just one of the risks inherent to the exercise of public functions. The problem increases when information and other resources to which one has access due to one's position of authority begin to be used to the detriment of the State and its citizens.

In Athens also, Plato was already philosophizing about this dilemma when conceiving his ideal Republic. How could it be guaranteed that the city's guardians would not turn against it? If courage to fight enemies is expected from warriors, then the city should make sure that this same courage is not used against its citizens. The warrior should be trained to have the instinct of a watchdog, capable of attacking thieves and protecting friends. But not only that, he must have the virtue not to be tempted, by gold, to betray his city.

In the real world, the sentry who watches the enemy from afar can often turn his trained gaze inside the city walls, satisfying several other interests than the protection of the community. Since it is neither possible nor desirable to monitor each of these sentinels, it is up to the State to establish control

[1] We refer to fiscal recovery programs.

mechanisms that can guarantee the correct and adequate functioning of its surveillance system.

Classical Athens may be very distant in time, but it carries political dilemmas similar to today's. These included not just discussions about *Refis* or influence-peddling scandals, but also care to control watchmen. In Brazil in the 21st century, where information is an even more important asset, and where forms of state surveillance are enhanced by technology, it is always useful to discuss the best institutional design for monitoring surveillance.

Among the various activities linked to the mission of "monitoring the city", such as that of the police and the armed forces, is the activity of state intelligence, or simply, intelligence (GONÇALVES, 2020), made up of public bodies and agents that deal with sensitive, strategic (and confidential) information, with the aim of protecting national interests.

This study is part of this debate, focusing on intelligence control. Specifically, we analyze the case of Brazil and its Parliamentary Committee for External Control of Intelligence Activities, the CCAI. After providing a brief history of the CCAI's activities since its creation, we highlight its deficiencies and propose practical changes that could improve the institutional design of intelligence control in Brazil.

2 DEMOCRATIC CONTROL OF INTELLIGENCE

Some time ago, armed conflict between one or more countries was seen as the main risk to the State's security. Today, terrorist threats, cyber-attacks, cross-border organized crime, international illegal migration, climate crises, and the interruption of global trade chains also enter the complex geopolitical scenario, bringing vulnerabilities to the State and its citizens.

In this context, no country can do without a state intelligence service capable of not only processing information but also obtaining, protecting, and using it in a timely manner to safeguard national interests. If the main foundation of the State, according to modern political theories, is to guarantee the security of its citizens, then the State must make use of an intelligence service capable of satisfactorily fulfilling its mission (GILL; PHYTHIAN, 2006).

This occurs even in modern democracies, showing that the democratic regime and the maintenance of secret services are fully compatible (GONÇALVES, 2019).

Regarding the legitimacy of intelligence services in democratic regimes, there is no controversy. The problem arises when it is necessary to articulate democracies and intelligence services. Now, democracy presupposes obedience to the law, transparency, popular control, and accountability of public agents, while intelligence must act, as a rule, under secrecy, lest it becomes ineffective. The big question lies in exercising democratic and effective control of state intelligence. Thus, the question arises: “Who watches the guards?”

Accountability is a key element in democracies. Not only must public agents be strictly guided by the law, but they must also be subject to criticism for their actions. Therefore, the government and its intelligence service must assume responsibility for failures, incompetence, or irregularities (BORN, 2004, p. 4). Although secrecy is an essential condition of intelligence, this activity must also be subject to the rule of law, control, checks and balances, and not become immune to accountability.

The challenge is even greater in recent democracies, which have coexisted with authoritarian regimes, as is the case in much of Latin America. Intelligence agencies are central in authoritarian regimes, being used to combat enemies external and internal to the regime (GILL, 2012). Thus, the democratic transition involves reforming the entire state intelligence apparatus. The task is difficult since legislative reforms or civilian control of agencies are necessary but insufficient conditions to put intelligence on a democratic track. Often, the new and democratic legal framework coexists with a subculture of rights violations that has been operating for a long time within intelligence agencies (GILL, PHYTHIAN, 2006). Therefore, democratic control of intelligence is essential not only to curb abuses but also to change the organizational culture of agencies in countries with a recent authoritarian past (GONÇALVES, 2019).

Discussions about the most appropriate model for the democratic control of intelligence have been part of a long and productive academic debate dating back to the 1970s. Control can be exercised at different levels, with emphasis on

those conducted by the agency itself, the Executive, parliament, or society (GONÇALVES, 2019).

Although much is said about the Canadian model, which chose control through a review body that works with parliament, Brazil adopted the parliamentary oversight control model. This model gives the National Congress, more specifically the CCAI, the task of exercising oversight and external control of intelligence activities.

As can be seen, the control of intelligence, and consequently, the democratic consolidation in Brazil, depend largely on the adequate exercise of external control by parliament. This is why it is essential to discuss legislative measures capable of reinforcing this control.

3 BRIEF HISTORY OF CONTROL IN BRAZIL

Parliamentary control of intelligence in Brazil had as its legal framework Law 9,883, on December 7, 1999, a rule that established the Brazilian Intelligence System (SISBIN) and created the Brazilian Intelligence Agency (ABIN).

Seeking to provide democratic legitimacy to intelligence activities, especially after the exceptional regime characterized by the actions of the National Information Service (SNI), the federal Executive proposed a new legal framework for intelligence. In the original proposal to establish the new model, Bill (PL) 3,651, of 1997, there was already a provision for external control to be exercised by a "joint committee of the National Congress" formed by three senators and three deputies. However, the scope of control was limited: it only concerned ABIN's acts in implementing the National Intelligence Policy. The provision, therefore, was for a comprehensive control that was institutional and purpose-driven (GONÇALVES, 2019).

The bill was approved in the Chamber of Deputies (the Low House) more than a year later, in January 1999. In the version approved by the deputies, external control was expanded, reaching the entire "intelligence activity", thus becoming a functional control, more comprehensive than the institutional one. This control would be exercised "by the Legislative Branch in the form to be

established in an act of the National Congress". However, the senators approved an amendment to the text that was later incorporated by the deputies, providing for the composition of the congressional body to control intelligence activities. This was the final version approved by Congress and sanctioned by the President of the Republic with regard to external control of the secret services.

Law 9,883/1999, therefore, provided in Article 6 that external control of intelligence activities would be exercised by the National Congress. More specifically, in the first paragraph of the same Article, it determined that the leaders of the majority and minority in the Chamber of Deputies and the Federal Senate would be part of that body, as well as the Chairs of the Committees on Foreign Affairs and National Defense of each Chamber.

Established in 2000, the external control body operated for a long time without adequate regulations regarding its composition, functioning, support staff, or legislative instruments. In this context, external control of intelligence was exercised in a precarious manner from a legal and operational point of view, being a common object of criticism by deputies and senators who engaged in the control activity, as well as by scholars from the intelligence community (BRUNEAU, 2007; CEPIK, 2007; CORSINI, 2012[2]). The situation remained until the promulgation of Resolution 2/2013-CN, the Standing Rules of the CCAI (RICCAI), more than a decade later.

The first meeting of the external control body took place on November 21, 2000, almost a year after the publication of Law 9,883/1999. In view of the omission of the standing rules, it was agreed at that installation meeting that the body would be chaired by the Chair of the Committee on Foreign Affairs of the Federal Senate, at the time Senator José Sarney, former President of the Republic. Still at the first meeting, the Committee began examining Message 35/2000, which established the National Intelligence Policy. The parliamentarians present at the meeting were unanimous in recognizing that the installation of the body constituted an undeniable democratic advance and that one of the most urgent matters would be to overcome the

[2] Out of curiosity, it is worth noting that, in the first meetings, the body's nomenclature itself was evidence of its institutional precariousness. The name "*external control body for intelligence activities*" (OCAI) was used, as provided for in Law 9,883/1999.

precariousness of the body's regulations with the approval of an act that regulated its functioning[3].

The next move towards structuring external control took place only on November 7, 2001, at the fourth meeting of the collective body, when Deputy Luiz Carlos Hauly submitted a Bill of Resolution aimed at "regulating the control body for intelligence activities". The draft was approved by the members and processed as a Bill of Resolution (PRN 8/2001). Thus, it was from that date onwards that the external control body began to act as a joint committee, henceforth called CCAI.

It was PRN 8/2001 that gave rise to Resolution 2/2013-CN, a fact that helps to understand several gaps or contradictions in this last rule, considering that its submission took place in the distant past. Deputy Luiz Carlos Hauly's bill expanded the CCAI by stipulating that the committee would consist of its natural members as defined in Law 9,883/1999 (majority and minority leaders and Chairmen of the Committees on Foreign Relations), along with additional appointed members (seven parliamentarians). The bill provided the CCAI with several instruments, including the ability to summon Cabinet ministers, request information directly from Cabinet Ministers, receive biannual intelligence reports from ABIN, and the authority to declassify documents.

The processing of PRN 8/2001, however, did not advance in the Chamber of Deputies. A technicality in the standing rules led Deputy Hauly to resubmit the same bill later. Since PRN 8/2001 was a bill authored by a committee, that is, it had the CCAI as its author, the processing determined by the Board of the National Congress was bicameral, requiring that the proposal was approved first in the Chamber of Deputies, following the internal procedures of that Chamber, and later in the Senate. In search of a simpler procedural path, Deputy Hauly reintroduced the same bill in 2008, PRN 2/2008. Being individually authored, the bill would be considered in a joint session of the National Congress, following opinions from both the Chamber and Senate Presidencies. However, the texts of PRN 8/2001 and PRN 2/2008 were identical.

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[3] According to the minutes of the meeting, available in the Journal of the Federal Senate of 11/29/2000, p. 23281-23289.

During this time, in a meeting held on April 6, 2005, following discussions among the members under the chairmanship of Senator Cristovam Buarque, standing rules were proposed to regulate the operations of the CCAI, largely drawing from the text of Deputy Hauly's PRN. Since it was merely internal in nature, the prerogatives of the body were set back, establishing, for example, that requests for information and semi-annual reports to be sent by ABIN should be preceded by approval by the Boards of either the Chamber or the Senate. Thus, although the PRNs continued to be processed in the Chamber with the original text, an altered version began to be used in the CCAI as standing rules from 2005 onwards.

In 2005, the actions of the CCAI were significantly influenced by the controversy surrounding a complaint made by a federal deputy alleging that the Workers' Party (PT) had received donations from the Revolutionary Armed Forces of Colombia (FARC). This information was purportedly substantiated by ABIN agents who had infiltrated the organization[4]. Now, 2005 saw the CCAI's greatest period of activity since its birth. A total of 13 meetings were held, during 4 of which the Chief Minister of the Institutional Security Office (GSI) and the Director-General of ABIN were present.

This 2005 text was pivotal in institutionalizing the CCAI and was again endorsed by the committee in 2008 as provisional standing rules. Meanwhile, PRN 2/2008 had a substitute bill approved by the Board of the Chamber of Deputies. This substitute bill incorporated the new changes already implemented by the CCAI, which reduced the control instruments since the text was conceived as internal regulations. The opinion of the rapporteur, Deputy Rose de Freitas, states that:

> The changes introduced [by the Board of the Chamber] aim to adapt certain provisions to the best legislative practices. Furthermore, the changes made here and the substitute bill submitted were discussed within the scope of the CCAI itself.

4 DENUNCIATION of the FARC donation to the PT sparks debates at the CCAI. Senate Agency. 21 Jul. 2005. Available at: <https://www12.senado.leg.br/noticias/materias/2005/07/21/denuncia-de-doacao-das-farc-ao-pt-movimenta-debates-na-ccai>. Access on 15 May, 2024.

Therefore, the version approved by the Board of the Chamber reduced the prerogatives of the CCAI and made external control activities more difficult by requiring prior approval of requests by the Boards of the Legislative Chambers. In turn, the Senate Board approved a separate opinion regarding PRN 2/2008. The senators' text was more concise and showed better legislative techniques. Although the Senate version ended the possibility of declassifying documents, it preserved the ability to request information from Cabinet Ministers and mandated that ABIN send periodic reports, which are pivotal instruments for exercising external control.

In the end, there were three texts available to parliamentarians: the original version of PRN 2/2008 (with wording dating back to 2001), the substitute bill approved by the Board of the Chamber (which had fewer control instruments and was used as standing rules by the CCAI), and the substitute bill approved by the Board of the Senate (a middle ground that improved the original bill). In a joint session held on November 19, 2013, parliamentarians approved the Chamber of Deputies' version, concluding a discussion that had lasted more than a decade about institutionalizing the parliamentary body for controlling intelligence activities. This text was promulgated as Resolution 2/2013-CN.

While striving to have its standing rules transformed into a permanent Resolution, the CCAI experienced periods of ineffective action from 2000 to 2013. In addition to the "constant cancellations", indicating a lack of interest on the part of its members, the CCAI's performance during this period was characterized by a "reactive pattern" (BRANDÃO, 2010, p. 159), often spurred into action by complaints about potential illegalities committed by intelligence agents (GILL, 2012).

While one goal of external control is to contain the excesses of intelligence agencies by duly addressing complaints about potential partisan political use of the State's intelligence apparatus, solely relying on accusations echoed by the press undermines the institutional integrity of the control body. Such an approach renders its actions episodic, reactive, and characterized by partisan division. As primarily reactive, the CCAI's activities faced challenges in effectively exercising control, resulting in fragmented and unsystematic efforts (CORSINI, 2012).

It is important to note that the challenge of effectively exercising parliamentary control over intelligence is not unique to Brazil. In general, politicians are hesitant to engage in this activity because “intelligence does not win votes”. Additionally, involvement in oversight can provoke both fear of antagonizing powerful entities, particularly given a history of authoritarianism, and discomfort at being associated with scandals involving intelligence agencies (BRUNEAU, 2000; GONÇALVES, 2019).

In the case of the CCAI, several additional factors further complicated its operations: a reduced number of members and a lack of expertise in intelligence matters (CORSINI, 2012); absence of support staff (BRUNEAU, 2007; CEPIK, 2007); inadequate resources and political will (GILL, 2012); frequent turnover in the committee’s leadership (CEPIK, 2007) and its membership (CORSINI, 2012). Of all these factors, the most significant one, undoubtedly, was the institutional fragility of the body, a point highlighted by both parliamentarians and experts (GONÇALVES, 2019).

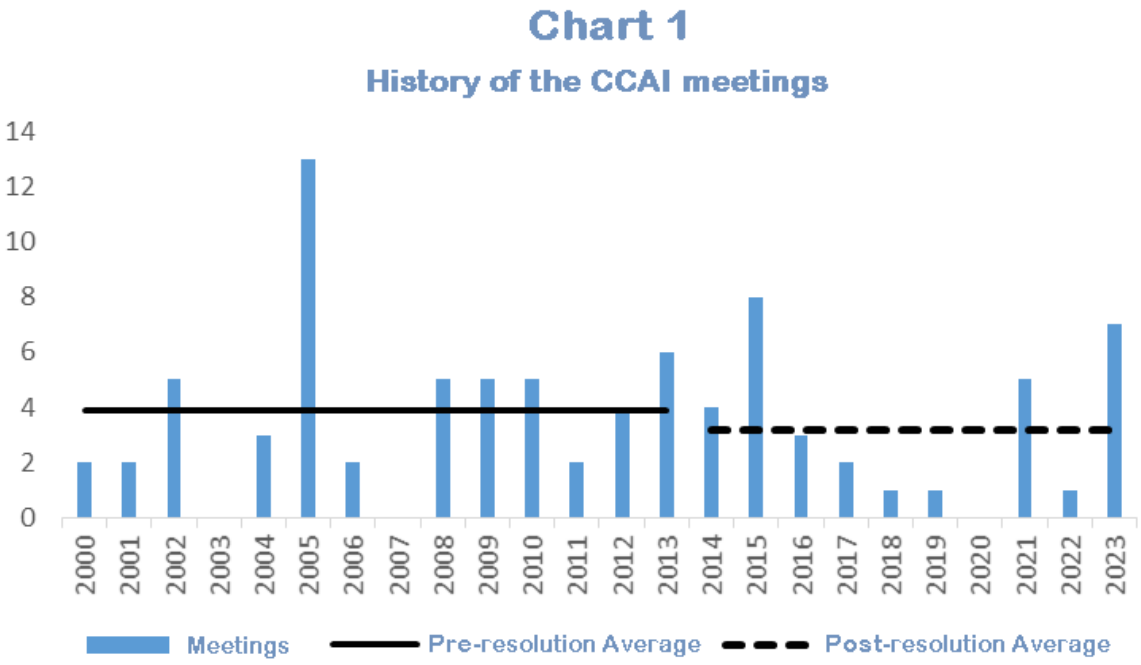
With the promulgation of Resolution No. 2 of 2013 by the National Congress, a significant step was taken towards institutionalizing intelligence oversight in Brazil. It was undoubtedly an eagerly anticipated and celebrated event among those who follow this issue in the country.

Over a decade since the approval of Resolution 2/2013-CN, it is pertinent to question whether intelligence oversight has improved and to what extent further enhancements are possible. Now, institutionalizing the external oversight body was undoubtedly a step forward, as it provided legal and regulatory clarity, despite its inherent shortcomings (GONÇALVES, 2019).

Resolution 2/2013-CN brought the external oversight of intelligence activities out of the shadows within the National Congress. Its members no longer need to operate in the dark, without standing rules support, relying on temporary regulations and analogies. On the contrary, CCAI members now have access to the same resources and prerogatives as other standing committees of the National Congress. Moreover, the CCAI has its dedicated secretariat within the parliamentary framework, equipped with support staff

and consultants assigned specifically to the Committee. This arrangement undoubtedly grants greater autonomy to the committee, removing it from the structure and sphere of influence of the Committees on Foreign Affairs and National Defense, as was the case until 2013.

If institutionalization enabled the CCAI to operate with greater transparency, autonomy, and legal certainty, the question arises: Was the effective exercise of external control facilitated by Resolution 2/2013-CN? The graph below illustrates the history of CCAI meetings from 2000 to 2023, comparing the period before and after the committee's institutionalization.



It is evident that the average number of meetings convened by the CCAI scarcely increased following the approval of Resolution 2/2013-CN; on the contrary, it decreased. By solely considering the number of meetings as a proxy for the effectiveness of external control, the decline in the average number of meetings would suggests that control was less effective during the period 2014-2023.

Naturally, this inference must be weighed against certain factors. Firstly, meetings of this collective body may only entail formal gatherings among parliamentarians without necessarily translating into effective intelligence oversight. Secondly, the COVID-19 pandemic practically rendered the activity of

parliamentary committees unfeasible in 2020, and the CCAI was no exception, as the committee did not convene any meetings during this year. Thirdly, it is understood that the political context plays a crucial role in shaping the functioning of parliamentary institutions. Lemos and Power (2013) show that parliamentary oversight of the Executive tends to be more prevalent in heterogeneous government coalitions, an argument corroborated by other studies (CITTADINO, 2021). Hence, one could argue that a specific political-party context prevailing since 2014 has influenced the activities of the CCAI, and its limited number of meetings cannot be solely attributed to the operational regulations of the committee[5].

The brief history of the CCAI's actions and the processing of Resolution 2/2013-CN highlight several significant points. Firstly, the framework of the Resolution was conceived in 2001, predating significant events and phenomena. Examples include the proliferation of the internet and social media along with their associated threats, the increasing significance of transnational issues such as organized crime, climate change, international migration, and terrorism, the enactment of Law 12,527/2011 (the Access to Information Law – LAI), which regulated public access to state documents and the circumstances under which access could be restricted, the passage of Law 13,709/2018 (the General Data Protection Law – LGPD), and enhancements to oversight by the National Congress, particularly through the enhancement of its technical counseling. This serves to illustrate that the RICCAI (CCAI Standing Rules), conceived in 2001, emerged during an analog era and, as a result, was developed with a certain lag, failing to recognize the essentiality of intelligence – and its democratic oversight – in addressing the complexities of the contemporary world.

Secondly, the text of Resolution 2/2013-CN was primarily designed as standing rules of the CCAI, reinforcing informal practices already established by tradition while also outlining other internal operational rules. However, as will

[5] Nevertheless, it is equally valid to recognize the significance of institutions, as they establish incentives and mold the behavior of actors (NORTH, 1991). Numerous studies show how the operational regulations of Congress influence the behavior of political actors (RICCI, 2003; FIGUEIREDO; LIMONGI, 1999; PEREIRA; MUELLER, 2003; BEDRITICHUK, 2017; GUIMARÃES *et al.*, 2019).

be demonstrated in the following section, Congressional Resolutions carry legal authority and may have external implications. There is no rationale for confining a resolution of this nature solely to internal matters, restricting its scope to the Joint Committee, when the same regulation could encompass all external oversight of intelligence activities, thereby enhancing control measures.

Lastly, the criticisms leveled against the CCAI's performance during 2000-2013 appear to persist in the subsequent period, even after the approval of Resolution 2/2013-CN. In essence, the CCAI's actions remain reactive and sporadic, with its members lacking incentives to engage in oversight, given the absence of effective tools at their disposal. In general, agents' behavior can be attributed, to some extent, to the institutional structure in which they operate.

After more than ten years of the validity of Resolution 2/2013-CN, it is now opportune to discuss an institutional model that better equips the exercise of external control over intelligence activities. Below, we propose some changes to improve the functioning of the CCAI, making it a committee capable of meeting the challenges of the intelligence sector in the current context.

4 FIXING RESOLUTION 2/2013-CN

In a democratic State, the role of the Legislative Branch in overseeing the actions of the public administration is undeniable. Composed of the foremost representatives of popular power, the Legislative has the legitimacy to evaluate and oversee the bodies and entities of the Executive Branch. In Brazil, this oversight and control role was expressly attributed to the National Congress by the 1988 Constitution (CF, Article 48, X).

The legislative's control can take various forms, including approval and dismissal of authorities, information requests, complaint receipt, public hearings, summoning of ministers, investigative committees, audits with the assistance of the Federal Court of Accounts (TCU), and budgetary oversight.

Agency theory has been widely used to better understand the control relationship between parliament and the bodies and agents of the Executive Branch. Initially applied to economics, the approach has advanced to other fields such as organizational studies, political science, finance, and sociology.

In general terms, agency theory analyzes the relationship established between two parties when one acts on behalf of the other as their agent (EISENHARDT, 1989).

Several studies investigate the agency relationship using the principal-agent model, which offers greater mathematical rigor and is grounded in a series of logical assumptions. In a principal-agent relationship, the principal delegates some of their duties to a specialized agent, who then carries out activities on behalf of the principal. Considering the different objectives of the principal and agent, as well as the information asymmetry between them, these models aim to establish an optimal contract to minimize losses (BERNHOLD; WIESWEG, 2021).

Gailmard (2014) notes that the principal-agent model has become very useful in analyses of public accountability. Several studies in political science consider the Executive bureaucracy (agencies, ministries, autonomous bodies) as agents that act in service of political bodies, typically Congress. In this established relationship, the executive bureaucracy functions as the agent, with Congress as the principal. The conflict between these actors is presupposed, as the bureaucracy aims to increase its budget, possesses a certain ideological vision of its service delivery (which may conflict with Congress's preferences), and holds information about the value of its service that it does not share with parliamentarians. Studies in this line aim to identify effective forms of control and oversight by Congress.

In every delegation relationship, there will be what is referred to as "agency loss", as the principal relinquishes control over the execution of their duties and relies on their agent. Now, in the absence of direct oversight by the principal, the agent may withhold information or provide inaccurate information about their activity (adverse selection); act independently (moral hazard); or even turn against the interests of the principal, essentially becoming a parallel power (Madison's dilemma) (KIEWIET; MCCUBBINS, 1991, p. 26).

These risks of delegation are particularly heightened when dealing with intelligence-related activities. Let us assume that the public delegates the execution of intelligence activities to a specialized body to safeguard national interests and aid the decision-making process. When handling confidential

information obtained through specialized techniques (GONÇALVES, 2018), the intelligence agency gains an informational advantage over the community – having exclusive access to certain information. Moreover, when operating under the veil of secrecy, there is a risk that the intelligence agency and its agents may pursue their own interests or even become insulated and evolve into a parallel power (GILL; PHYTHIAN, 2006).

Therefore, the essence of a delegation relationship lies in establishing control mechanisms over the agent to minimize losses resulting from the agency. Kiewiet and McCubbins (1991) propose four mechanisms: *i)* detailed delegation contracts that establish incentives and punishments; *ii)* mechanisms for selecting agents beforehand; *iii)* direct and indirect monitoring of the agent's actions; and *iv)* institutional controls that create veto points in the decision-making process to limit the agent's powers.

A successful delegation relationship will prioritize these mechanisms, proposing a combination of them to ensure that the service is carried out under the principal's preferences. Another factor that influences the relationship is "agency costs", as implementing any of these control mechanisms requires time and resources from the principal. For example, direct monitoring may be the most effective mechanism for controlling the agent's actions; however, it comes with high costs for the principal. Therefore, the optimal solution involves a combination of control mechanisms to minimize delegation losses while also reducing agency costs.

In the Brazilian context, one can observe the implementation of the four control mechanisms proposed by Kiewiet and McCubbins. The "delegation contract" for intelligence activities was established by Law 9,883/1999, albeit in a vague and imprecise manner. The requirement for the Director-General of ABIN to undergo prior approval by the Senate constitutes a selection mechanism, providing parliamentarians with insights into the preferences, methods, and values of the nominee for the highest position within the central intelligence body. Monitoring mechanisms include external control exercised by the CCAI, as well as judicial oversight. Lastly, institutional control is evident in ABIN's subordination to a Ministry — the Institutional Security Office (GSI)

until 2023, and subsequently to the Office of the President's Chief of Staff, both departments of the Presidency of the Republic (GONÇALVES, 2019).

The question to be addressed is how to enhance these control mechanisms to ensure that intelligence activities serve the public interest and do not result in increased losses due to delegation. Perhaps the most obvious step is to "start from the beginning", establishing a detailed "delegation contract". This entails establishing a clear normative framework defining intelligence activity, its boundaries, instruments, objectives, concrete forms of control, and provisions for punishment in case of non-compliance – areas where Law 9,883/1999 proves to be inadequate.

Resolution 2/2013-CN also had limited effect in this regard, as it only regulated the functioning of the CCAI. While the discussion on new legislation for the intelligence sector, or even its elevation to constitutional status, is worthwhile, the focus of this work is on parliamentary control of Intelligence. In this sense, the Resolution can progress not only to effectively function as internal regulation of the parliamentary control committee but also to outline how external control will be carried out.

Besides enhancing the delegation contract, Congress can play a more decisive role in the *prior agent selection process*. It is noteworthy that the CCAI, responsible for overseeing intelligence activities, does not participate at any stage in selecting the Director-General of ABIN. This can also be changed.

The third step involves reducing significant information asymmetries and establishing effective monitoring mechanisms. The existing rules perpetuate a scenario of information asymmetry, as the cost of acquiring information from intelligence agencies is high, and such information is prone to inaccuracies or evasion by agents. The information deficit contributes to a significant lack of understanding of the intelligence sector among parliamentarians, leading to distrust and reactive responses. Any reform of the external control of intelligence, therefore, must consider increasing the flow of information while simultaneously providing parliamentarians with effective mechanisms for direct or indirect monitoring of intelligence activities.

The fourth mechanism suggested by Kiewiet and McCubbins is to create veto points in the decision-making process to reduce the power of the intelligence agency. This means that certain intelligence actions must have not only the authorization of the Director-General of ABIN to be carried out but also the additional approval of other bodies, such as the hierarchically superior minister or even the CCAI.[6] This model is adopted in the United States, requiring parliamentary authorization for certain more sensitive operations, as was the case with Operation Neptune Spear, which culminated in the death of Osama Bin Laden, on May 1, 2011 (GONÇALVES, 2019).

The improvements suggested above, derived from the principal-agent models, require a major change in the legal framework of the entire intelligence system, with constitutional and legal reforms. As the focus of this work is only on the specific activities of the CCAI, five points will be considered below that could reinforce the effectiveness of the external control exercised by the committee, which would only require a regulatory update. Such changes, in our view, have the potential to reduce information asymmetries, favor the expertise of members, and guarantee a framework for the normal functioning of control activities, creating an institutional design that avoids merely reactive and episodic action.

4.1) REGULATION OF FULL ACCESS TO DOCUMENTS

One of the central foundations of external control is regular and full access to information from the controlled body. This is an essential premise for control activities because if no object is to be controlled or inspected, there is no way to talk about control. Thus, having unfettered access to relevant information is crucial for maintaining external control. Otherwise, the controlling entity risks being nothing more than a façade of democracy (MARANDINO, 2014). To ensure effective control, access to intelligence agency documents must be thorough, encompassing confidential information as well

[6] In the United States, "*covert actions*", or secret operations conducted, for example, by the CIA, are subject to prior control by the control committees of the American Congress, being an example of institutional control (BORN, 2004).

(BORN, 2004; BORN; LEIGH, 2005; GILL; PHYTHIAN, 2006; GONÇALVES, 2019).

The CCAI's complete access to information from SISBIN bodies can typically be inferred from Article 6 of Law 9,883/1999, where the terms "control" and "oversight" inherently imply the necessity of having proper access to intelligence information.

> Article 6 External control and oversight of intelligence activity shall be exercised by the Legislative Branch in the manner to be established in an act of the National Congress.

Furthermore, paragraph 4 of Article 2 of Resolution 2/2013-CN clarifies that for CCAI to carry out effectively its control and oversight duties, it **shall have** unrestricted access to the files, areas, and facilities of SISBIN bodies, including classified documents.

> Paragraph 4 To carry out its duties effectively, CCAI shall have access to files, areas, and facilities of the SISBIN bodies, regardless of their degree of secrecy.

Resolution 2/2013-CN appears redundant in stipulating that CCAI has the prerogative to seek Board approval for written requests for information from Cabinet Ministers or heads of bodies directly subordinate to the Presidency of the Republic. The Resolution does this in two moments. Firstly[7], in the head of Article 4, which anticipates a general scenario where the CCAI could submit any written requests for information on intelligence activities to the Board of the Federal Senate or the Chamber of Deputies." Secondly[8], in Articles 10 and 11,

[7] Article 4 It is the responsibility of the CCAI to ensure the necessary conditions for the fulfillment of its duties, to submit to the Board of the Federal Senate or the Chamber of Deputies written requests for information from Cabinet Ministers or incumbents of a body directly subordinate to the Presidency of the Republic, regarding to the performance of bodies linked to their Ministries that work in intelligence, counterintelligence and the safeguarding of confidential matters, observing the rules relating to the handling of classified information and the defense of national security and interests.

[8] Article 10. The CCAI shall request the Board of the Chamber of Deputies or the Federal Senate to request from the competent authority, in accordance with Article 50, paragraph 2, of the Federal Constitution, periodic reports to instruct its inspection and control activities.

it is outlined that the CCAI must ask the Boards of the Chambers to urge the Executive Branch to provide a series of regular reports on intelligence activities.

Both of these provisions have proven ineffective in legislative practice. Now, placing the external control conducted by the CCAI under the authority of a decision by the Legislative Chambers' Board essentially means transferring control to these two bodies. They would then have the power to approve or deny any request for information. Moreover, the option to appeal to the Boards of the Legislative Chambers' does not signify any unique control privilege. Instead, it serves as a right (according to the standing rules) that aids each National Congress parliamentarian or parliamentary committee individually (Standing Rules of the Federal Senate — RISF —, Article 216; and Standing Rules of the Chamber of Deputies — RICD —, Article 24, V and Article 116). Additionally, this requirement to submit information requests to the Boards contradicts the aforementioned Article 6 of Law 9,883/1999 and paragraph 4 of Article 2 of Resolution 2/2013-CN. These norms, as seen above, provide for CCAI's unrestricted access to information within the SISBIN framework.

Complete access to documents, including classified ones, is thus assured to the CCAI as stipulated in Article 6 of Law 9,883/1999 and paragraph 4 of Article 2 of Resolution 2/2013-CN, being a typical direct monitoring mechanism. However, we recognize that there are legislative gaps and inaccuracies that could be addressed to ensure this crucial prerogative, which is vital for the effectiveness of the CCAI.

Therefore, a revision of Resolution 2/2013-CN should enhance the legislative approach regarding the CCAI's right to full access to information from SISBIN bodies. This revision should aim to eliminate the inconsistencies in Articles 4, 10, and 11, as well as give greater prominence to the normative command currently included in paragraph 4 of Article 2. In practice, there has been a notable lack of awareness among the entities subject to control regarding their obligation to provide information and documents upon request. This lack of awareness has even led to surprise among public officials within SISBIN, including ABIN, when confronted with requests for full access to specific information by the CCAI.

Furthermore, along with clarifying the provision, a revision of Resolution 2/2013-CN should address gaps in regulating the prerogative of full access to documents. This includes establishing deadlines for information submission, outlining penalties for non-compliance, and specifying protocols for transferring confidentiality to other agents or bodies.

As for the deadline for providing responses, the CCAI has resorted to using analogy as a legal remedy to address the gap. In this regard, the CCAI's entitlement to full access is likened to the obligation of Cabinet Ministers to furnish information, as stipulated in Article 50, paragraph 2 of the Federal Constitution. Thus, a 30-day timeframe has been used for submitting responses. However, the Resolution must advance further to enhance the legal deadline for responses, potentially reducing it to 20 days, a timeframe we consider more reasonable. This aligns with the parameter set by the Access to Information Law for responding to requests for information (paragraph 1 of Article 11 of Law 12,527/2011).

However, while clearer wording and establishing a legal deadline for information submission are steps in the right direction, they alone are insufficient to address the issue of information asymmetry. Now, as observed, intelligence agencies and their agents, much like in any delegated relationship, have incentives to conceal or selectively disclose the information they possess. This risk can be mitigated by establishing a "delegation contract" that clearly outlines the obligations and penalties for non-compliance. Therefore, it is crucial to specify sanctions for non-compliance, as this is essential for ensuring the effectiveness of any legal rule.

Evidently, a congressional resolution cannot create crime definitions. However, it might suggest that a public official's action or inaction constitutes a crime or offense already defined by law, and it could also lead to administrative penalties.

Therefore, if the head of a SISBIN agency refuses to provide the information requested by the CCAI, misses the legal deadline without justification, or provides false or incomplete information, the Resolution may stipulate that this conduct constitutes the crime of malfeasance (Article 319 of the Brazilian Penal Code), act of administrative corruption (Article 11, VI of Law

8,429/1992); and administrative offense (Article 32 of Law 12,527/2011). The standing rules may also require the government agent to appear before the CCAI in person to explain any information denied, falsely provided, or incomplete.

Finally, to ensure full access to information, the CCAI has the authority to conduct on-site inspections of SISBIN agencies, with access to all areas and facilities "*regardless of their level of secrecy*" (paragraphs 4 and 5 of Article 2 of Resolution 2/2013-CN). This authority can be exercised immediately upon discovering any irregularities in submitting requested information, allowing the Committee to access the relevant documents or information.

Another issue worth noting involves access to and the transfer of confidential material held by the CCAI, which has been the subject of much controversy in recent years: who can access the Committee's documents, and how will this access be granted? Additionally, is the CCAI required to share its collection with administrative or police authorities?

Based on recent practices at the CCAI and the guidance from Opinion 318/2023-NASSET/ADVOSF by the Federal Senate Legal Department, the following can be observed: *a)* only CCAI members and accredited public employees working on the committee have access to documents; *b)* access does not mean possession or copying of confidential documents, but only viewing or on-site consultation of the Committee's files, with the use of encrypted electronic devices permitted; *c)* confidential documents cannot be copied, reproduced, or disclosed to third parties; *d)* in exceptional cases, the Committee Chairman may authorize the transfer of confidentiality to a specific member; *e)* only the Supreme Court (STF) and federal Parliamentary Committee of Investigation (CPIs) have the authority to order the transfer of secrecy, considering parliamentary privilege in the first case and the relevance of the investigations in the second; *f)* requests for the transfer of secrecy from other judicial, administrative, or police authorities, like the Public Prosecutor's Office, are not automatically granted.

All these practices, already applied in real cases, should positively inform a reform of Resolution 2/2013-CN. This approach aims to structure better access to confidential documents and ensure greater clarity in adhering to the standing rules.

These suggested innovations contribute to the CCAI having easier access to its primary objective: information on intelligence activities. With clearer rules and more precise instruments, the Committee will be better prepared to fulfill its responsibilities.

4.2) PERIODIC SENDING OF INFORMATION

One of the principal-agent model's primary contributions is its treatment of information as a commodity that carries a cost and can be obtained (EISENHARDT, 1989). The more expensive it is to acquire information, the less effective the principal's control becomes. One method to reduce the cost of information is to mandate regular reporting from agents to the delegating authorities detailing their activities (KIEWIET; MCCUBBINS, 1991).

Enhancing intelligence oversight in Brazil could be achieved by incorporating a provision in the Resolution mandating that ABIN and other SISBIN entities, particularly intelligence producers, submit regular consolidated reports on intelligence activities. Thus, by ensuring a steady flow of information, external oversight can be more effectively implemented, lowering the cost of information acquisition and thereby reducing asymmetries.

It is worth noting that the provision for this periodic submission of reports by ABIN did occur in the original version of PRN 2/2008, as well as in the substitute bill submitted by the Senate's Board, but it was altered in the version submitted in 2005 by CCAI itself, with the Congress approving the text wherein intelligence reports must be approved in advance by the Chambers' Boards. At this juncture, there is some controversy, with some arguing that only regular legislation could compel ABIN to submit regular reports to the CCAI.

Resolution 2/2013-CN holds the status of regular legislation and must be adhered to accordingly, potentially extending significantly to bolster the effectiveness of external oversight of intelligence activities. As they are a norm established in the Constitution, resolutions of the National Congress hold a legal hierarchy (MORAES, 2016) and can, for instance, impose obligations on other entities within the oversight jurisdiction inherent to the National Congress

without necessitating a formal law to achieve this. As an example, it is worth mentioning:

- Resolution 42/2016-SF (Article 3): *"The competent official institutions must provide all the information necessary for the full and adequate performance of the duties of the Independent Fiscal Institution";*
- Resolution 48/2007-SF : Article 13, sole paragraph: "*The Ministry of Treasury shall inform the Federal Senate, every six months, of the operations referred to in the head of this Article contracted during the period ...*" and Article 14, paragraph 1: "*The Minister of Treasury shall forward to the Federal Senate, at the end of each calendar quarter, a report on the issuances carried out, as well as the status of the balance of the authorization granted*";
- Resolution 1/2006-CN (Article 84): "*Before submitting the Preliminary Report, a public hearing shall be held with the Minister of Planning, Budget, and Management to discuss the bill".*
- Resolution 20/2004-SF (Article 4): "*The Minister of Treasury shall submit, at a meeting of the Committee on Economic Affairs of the Federal Senate, within 30 (thirty) calendar days after the end of each quarter, a report on the execution of the Securities Issuance and Management of Securities Liabilities Program of Responsibility of the National Treasury Abroad".*
- Resolution 1/2002-CN (Article 2, paragraph 1): *"On the day of publication of the Provisional Presidential Decree in the Federal Official Journal, its text shall be sent to the National Congress, accompanied by the respective Message and a document explaining the grounds for the act".*
- Resolution 43/2001-SF (Article 42): "*The Ministry of Treasury shall forward, quarterly, to the Committee on Economic Affairs of the Federal Senate, an analytical report on the purchase and sale operations of government bonds under the responsibility of the States, the Federal District, and the Municipalities carried out during the period, with specifications, for each authorizing resolution of the Federal Senate, the type of operation, the values and quantities negotiated, their costs and discounts and the list of participants in the purchase and sale chain".*

Moreover, this is the stance of Deputy Luiz Carlos Hauly, the author of PRN 2/2008, as articulated in the rationale for his proposal:

> Article 49, item X, of the CF/88 establishes that it is the exclusive responsibility of the National Congress to "oversee and control directly or through any of its Chambers, the acts of the Executive Branch, including those of its indirect administration", which constitutes one of its competencies falling within the system of "checks and balances" adopted in our Constitution.
>
> Therefore, Law 9,883, dated December 7, 1999, which outlines the National Congress's authority to oversee intelligence activities conducted by the Executive Branch, simply clarifies a competence already outlined in the constitutional text regarding this issue.
>
> In turn, the designated article 6 of Law 9,883, dated December 7, 1999, states that the National Congress should internally determine the form of this control, with the law itself already ensuring its external effects. **In other words, under Law 9,883/1999, the National Congress's internal decisions can establish rules or create obligations that the Executive Branch must follow**.[9] (Emphasis added).

In short, the requirement for ABIN and other SISBIN bodies to send reports does not violate the principle of administrative legality in any way. On the contrary, it reinforces the spirit of Law 9,883/1999 by creating conditions and instruments for the CCAI to exercise external control. Therefore, the argument that a Congressional resolution cannot impose an obligation on an executive body unless it is explicitly provided for by law, in adherence to the principle of strict legality guiding Public Administration, is invalid.

Thus, a resolution of the National Congress, having legal status, does not need to be subordinate to the law in a substantive sense. It can create certain obligations for external bodies as long as they relate to Congress exercising one of its typical functions, namely overseeing the Executive Branch (CF, Article 48, X). Furthermore, Law 9,883/1999 is clear and explicit in article 6 that external control of intelligence activities shall be exercised by the Legislative Branch

9 Journal of the Federal Senate. 28 Nov. 2001, p. 29707.

“in the form to be established by an act of the National Congress”, leaving no room for doubt regarding this possibility. This law did not – and could not – foresee all the external control instruments that the Legislative Branch would use. On the contrary, it delegated the regulatory function of the legal provision to an internal act of the National Congress itself.

Thus, it is possible, if not desirable, to stipulate the periodic submission of reports by ABIN in a potential reform of Resolution 2/2013-CN. This simple alteration would enable the CCAI to exercise its authority in a regular, routine manner rather than sporadically or occasionally. In fact, by becoming board members, parliamentarians would have access to a historical collection of documents depicting the evolution of intelligence activities in the country, thereby facilitating the exercise of external control. This repository of information on intelligence activities could serve as a foundation for the committee’s oversight, ensuring that its operations are not limited solely to addressing specific inquiries prompted by media reports.

However, the regular and periodic submission of information must be compared with other oversight mechanisms. In this regard, while the information in the reports supports the CCAI’s ongoing activities, it may only partially convey the oversight needed. Therefore, it is essential to complement external control activities with other instruments, such as specific information requests, on-site inspections, and hearings involving government agents and authorities.

4.3) REGULAR ATTENDANCE OF AUTHORITIES

Another crucial aspect of the CCAI’s oversight function is the opportunity to hear from authorities and intelligence professionals during collective body meetings. In this regard, the CCAI lacks any more effective control instrument beyond those that are common to all committees of the National Congress. Now, through the provision for parliamentary committees, the Federal Constitution aimed to empower these collective bodies. It allows for the summoning of a Cabinet Minister or heads of bodies directly subordinate to the Presidency of the Republic, with unjustified absence being considered an impeachable offense (CF, Article 50, head).

In Resolution 2/2013-CN, we merely observe the replication of this constitutional provision, devoid of any innovation. In addition to contravening legislative technique by lacking innovative content, the provision in Article 5 of Resolution 2/2013-CN relegates the CCAI to sporadic action only. This is because a provocation is always required, in the form of a request submitted and approved by the collective body, to compel the appearance of the highest authorities mentioned in the article. In this context, only Cabinet Ministers whose Ministries are linked to the intelligence sector could be summoned to provide clarifications to the CCAI. There are two shortcomings in this generic provision of merely reproducing the constitutional text that could be addressed in a potential reform of the standing rules. The first issue is the limited scope of the summoning possibility, and the second is the irregularity in the attendance of authorities.

Regarding the first deficiency, concerning the scope of the summons, it is at least curious that the Director-General of ABIN is not encompassed by this instrument. Indeed, such an authority could only be *invited* before the CCAI, and his or her appearance before the committee would not be obligatory. Now, it is the Director-General of ABIN who is most involved in the planning and execution of intelligence actions and is, undoubtedly, the public authority best suited to provide CCAI parliamentarians with the necessary clarifications for their day-to-day activities. Although the Director-General of ABIN ultimately reports to a higher hierarchical authority, whether it be the Minister of the GSI or the President's Chief of Staff (depending on the governmental ministerial structure), it is the Director-General of ABIN who possesses the most comprehensive technical expertise to address inquiries from CCAI members.

It is unsurprising that when Cabinet Ministers appear before the CCAI, they are typically accompanied by the respective Director-General of ABIN. This authority is adept at delving into technical details and effectively addressing parliamentarians' questions. So, the summoning process could be broadened to boost the effectiveness of external oversight. This could involve summoning not just the Director-General of ABIN but also other intelligence agency directors.

The second shortcoming of the summons mechanism relates to the irregular attendance of the authorities under scrutiny. Traditionally, it is customary in the Brazilian Parliament for each Minister to attend the thematic committee related to their Ministry at the beginning of the year. They submit to parliamentarians the priorities and challenges of their Ministries. Such closer interaction between the Executive and Legislative branches can happen through the approval of a summons or invitation request by the collegiate body or simply through an invitation extended by the Chair without additional formalities, as the Constitution itself permits the voluntary attendance of Cabinet Ministers (CF, Article 50, paragraph 1). The situation is similar with the CCAI, where one of the committee's first acts each year is the appearance of the Minister of the Institutional Security Cabinet and, more recently, following changes to the administrative structure, the President's Chief of Staff. This typically occurs without the formal approval of a summons or invitation request.

The legislative tradition could be codified into a standing rules norm, mandating at least an annual appearance by Ministers and intelligence area managers at the CCAI. An instrument like this would sidestep the rigid formality of adhering to existing rules for approving requests beforehand, and consequently, it would also bypass the potential political-party disputes that typically arise when attendance is arranged, whether through *invitation* or *summons*. Moreover, the yearly attendance of the President's Chief of Staff, Ministers of Justice and Public Security, Defense, the Director-General of ABIN, and other intelligence agency directors could mark a significant step forward in the oversight carried out by the CCAI. This would enhance institutional communication between the supervisory entity and the agencies under its purview, thereby transforming the external oversight of intelligence operations into a more state-driven endeavor rather than being subject to political-party fluctuations.

The necessity for the Cabinet Minister to attend the parliamentary committee regularly, without the need for a formal invitation, is not without precedent. Resolution 1/2006-CN, for example, which provides for the budgetary legislative process and the Joint Committee on Public Plans, Budgets and Oversight (CMO), provides, in its article 84, that prior to the consideration

of the Budget Directives Bill report, “a public hearing shall be held with the Minister of Planning, Budget and Management”. In fact, the Chair of the CMO may request the respective Minister to send explanatory texts on certain aspects of the bill. Article 4 of Resolution 20/2004-SF stipulates the Minister of Finance’s appearance before the Committee on Economic Affairs to submit a report on implementing the Bond Issuance Program. In fact, this rule specifies that the “unjustified delay in submitting the reports mentioned in Articles 3 and 4” constitutes an impeachable offense.

Another notable example is a standing rule, unmatched by any law, which mandates the appearance of a federal authority before the parliamentary committee. This is from the Senate’s own Standing Rules, issued by Resolution 1/1970-SF, which, in Article 96-A provides:

> Article 96-A. **The top managers of regulatory agencies shall appear before the Federal Senate annually** to report on the exercise of their duties and the agency’s performance, as well as to submit an evaluation of public policies within the scope of their competencies. (Emphasis added).

Thus, a single standing rule contains both the requirement for the attendance of a federal authority lower in rank than the Cabinet Minister and the mandate that this attendance be regular, specifically annual.

The current institutional framework, it is noteworthy, reinforces a reactive and sporadic nature of external control, as public authorities are mobilized to address intelligence matters only after news or scandals break in the press. In this manner, the debate becomes tainted by political maneuvering between the government and the opposition, where the solution often involves merely waiting for the issue to naturally lose momentum without hearing from the responsible authority. The regular attendance of these authorities could prevent such contamination, allowing the CCAI to maintain a routine flow of control activities and thereby enhance its institutional performance.

4.4) COMPOSITION AND FUNCTIONING OF THE CCAI

Arguably, the CCAI's biggest challenge stems from its composition and operating rules, initially established by Law 9,883/1999 and supplemented by Resolution 2/2013-CN.

Law 9,883/1999, as reiterated, stipulated that the National Congress would be responsible for exercising external control over intelligence activities. Nevertheless, it is considered questionable for an ordinary law to specify details regarding the regulation of external control, potentially suffering, unless deemed otherwise, from a clear constitutional formality defect (GONÇALVES, 2019). Now, matters regarding the Legislative's internal economic regulations, including its internal structure and operations, fall within its exclusive jurisdiction, risking a breach of the principle of separation of powers (CF, Article 2).

Furthermore, Law 9,883/1999 outlined two distinct powers exclusive to the Legislative Branch (and consequently requiring resolution), as articulated in its Article 6 on: *(i)* Delegating the control function internally to an "external control body" within its own organization; and *(ii)* determining the composition of this external control body. What we can see is that, in this particular instance, regular law overstepped its constitutional bounds, encroaching on the exclusive domain of parliamentary internal regulations, which are governed by resolutions.

Yet, the constitutional flaw here can be fixed since these provisions could fall under the regulatory purview of resolutions, even though they were initially conveyed through ordinary law. Therefore, another resolution passed by the National Congress could amend or even eliminate these provisions of Law 9,883/1999. Therefore, in a possible reform of Resolution 2/2013-CN, the *interna corporis* delegation to an external control body could be changed, as well as its composition.

However, opting to entrust external control of intelligence to a partial body was the right institutional decision. Given the sensitive nature of this control involving classified documents, it is clear that it should be entrusted to a specialized body within the Brazilian Parliament. Secondly, the question arises

as to whether a joint committee would be the right choice. It is worth noting that in the United States, each Chamber of Congress has its own external control committee for intelligence services[10]. Moreover, in the Brazilian context, the decision to establish a joint committee appears to have been equally appropriate. This single parliamentary forum facilitates debate on complex issues, pooling efforts and preventing decision-making from becoming fragmented.

In partial conclusion, it is evident that delegating external oversight of intelligence activities to a joint committee within the Brazilian Congress requires no adjustments. This leads to another question: the makeup of this collective joint body. In this regard, Law 9,883/1999 stipulates the following in Article 6, paragraph 1:

> Paragraph 1 The leaders of the majority and minority in the Chamber of Deputies and the Federal Senate, as well as the Chairs of the Committees on Foreign Affairs and National Defense of the Chamber of Deputies and the Federal Senate, shall be part of the external control body for intelligence activities.

The regulation outlined a structure requiring a minimum of three positions in the House and three positions in the Senate. It specified that these positions would be automatically filled by the majority leader, minority leader, and the chair of the Committee on Foreign Affairs and National Defense in both the House and the Senate. The clear aim of the regulation was to ensure a political-party equilibrium in the makeup of the collective body[11] while also imbuing it with the status of a governmental entity. However, it is possible to improve the composition, as outlined below.

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[10] In the House, the *House Permanent Select Committee on Intelligence* was created in 1977 and has 25 members. In the Senate, the *Select Committee on Intelligence* was created in 1976 and has 17 members.

[11] We recall that the addition of the external control body's composition in Law 9,883/1999 stemmed from an amendment passed by the senators, which was not part of the original text sent by the Executive and approved by the deputies in the initial version.

Firstly, the roles of majority and minority leaders are particularly relevant in a bipartisan setting, as seen in the United States. In the Brazilian context, where the parliament is characterized by fragmentation among various political forces, perhaps this division of standing rules couldn't be the most suitable. Indeed, recently, both the House and Senate established opposition leadership roles, serving as a counterbalance to the government leadership already in place within each respective Chamber. So, the question arises: Could the government/opposition dichotomy better reflect the party balance than the current majority/minority binary?

Secondly, past experiences have revealed that parliamentarians in leadership roles face practical challenges in allocating sufficient time and attention to intelligence control, given their responsibilities as leaders. This circumstance cannot be attributed to the professional competence of the mentioned parliamentarians but naturally stems from the heavy workload associated with their leadership roles in parliamentary groups. Being engaged in shaping the legislative agenda of each Chamber, participating in the party's political negotiations, and maintaining daily contact with their leaders, their involvement in the CCAI often becomes merely a political obligation amid numerous other tasks they must undertake. Active participation in external control activities is hindered. Consequently, the legal requirement may compel individuals who are unfamiliar with the body's subjects to join the CCAI, while excluding numerous parliamentarians engaged in intelligence matters from the board — a significant issue, given that one of the cornerstones for effective external control lies in the expertise of its members (GONÇALVES, 2019).

Resolution 2/2013-CN supplemented the legal provision regarding the composition of the CCAI by incorporating six additional members, four appointed and two elected. Hence, the Resolution introduced the roles of appointed and elected members, augmenting the CCAI alongside its inherent members. In both the Senate and the Chamber of Deputies, there will be a member designated by the majority leadership, another designated by the minority leadership, and a third member elected by the Committee on Foreign Affairs and National Defense — a position not necessarily held by a member of the respective committee. Since 2013, the CCAI has comprised twelve parliamentarians, consisting of six senators and six deputies.

Once more, the experience gained over the past ten years of the CCAI's operation under its existing Standing Rules demonstrates that appointed members have greater involvement and opportunities for participation compared to inherent members. Typically, these are parliamentarians who actively pursue and vie for the position, driven by their inherent interest in intelligence matters. Consequently, it is anticipated that their attendance and engagement with the collective body's work will be more substantial.

In conclusion, there is a consensus that the operational structure of the CCAI could benefit from improvement. In this regard, several parameters inform the proposed suggestions: the elimination of inherent membership; ensuring the composition of the collective body adheres to the principle of party proportionality; implementing a biannual term for members to ensure stability and foster expertise; and maintaining a small committee size relative to others, given the sensitive nature of its activities.

Practically speaking, the proposal entails the committee being comprised of five members from each Chamber, with vacancies distributed among party groups based on the principle of proportionality. The leaders would appoint parliamentarians to fill the respective vacancies, granting them a two-year term. These appointees could not be replaced before their term ended unless they switched parties or voluntarily gave up their seats. The proportionality calculation and leadership nominations would take place at the start of the first and third legislative sessions.

In addition, the Committee would have two more vacancies in each Chamber. The first would be reserved for the party that didn't secure a spot on the committee based on proportionality, according to the terms of article 10-A of the Joint Standing Rules of the National Congress. This provision ensures minority representation in the collective body, serving as a substitute bill for the minority leadership as an inherent member. Finally, a vacancy would be filled by election of the Committee on Foreign Affairs and National Defense of each Chamber. Experience has shown that this existing method boosts engagement within the collective body by generating candidacies and fostering healthy competition among parliamentarians interested in joining the CCAI. Maintaining this CRE/CREDEN nomination vacancy also provides an

institutional balance to the composition, which would otherwise be entirely appointed by party leaders.

In short, the proposal is for the CCAI to have 14 members, consisting of seven senators and seven deputies. Five members in each Chamber would be chosen by the leaders according to the proportional division of vacancies, and one would be appointed by the minority parliamentary group (article 10-A of the Joint Standing Rules of the National Congress), and one more elected by the respective Committee on Foreign Affairs and National Defense. The committee's size would be appropriately smaller than other standing committees, a vital step to safeguard the confidentiality of information. This change, as previously explained, could be implemented through a Resolution of the National Congress, as it falls under the purview of Parliament's internal affairs and thus does not necessitate the President of the Republic's approval.

Another point concerns the chairmanship of the CCAI. Resolution 2/2013-CN, merely formalized an informal agreement reached among the committee members since its inception in November 2000. This agreement, upheld since then, stipulates that the Chairman or Chairwoman of the CCAI would now be the Chair of the Senate's Committee on Foreign Affairs, and vice versa, in the House. This was for a straightforward and pragmatic reason: the CCAI lacked the administrative infrastructure necessary for its operation. Hence, it was only natural for the chairmanship to be assumed by members who had their own advisors and secretariat, and these members were the chairmen of the committees.

However, since Resolution 2/2013-CN established a support structure specifically for the CCAI within the administrative framework of Congress, this rule became obsolete. The CCAI now possesses its own dedicated room, staff, and advisory services, operating independently from the Committee on Foreign Affairs' structure. Hence, any parliamentarian who is a member of the collective body would be eligible to preside over it, as they will have access to all necessary logistical, administrative, and technical support.

Frequently, holding the chairmanship of two committees can lead to an overwhelming workload for the parliamentarian, resulting in a diversion of focus on various, albeit interconnected, subjects like foreign affairs, national

defense, and state intelligence activities. Hence, suggesting that the Chairman or Chairwoman of the CCAI be elected by his or her peers, as in other standing committees, would be a beneficial step to enhance the collective body's effectiveness while, of course, maintaining the rotation between the Chambers. It is also worth considering that the Committee Chairman serves a minimum two-year term leading the collective body, with the selection taking place at the outset of the first and third legislative sessions. In this regard, the chairmanship could rotate between the Chamber of Deputies and the Senate, while the vice-chairmanship would be assumed by the other Chamber, similar to the arrangement in joint bodies.

One positive aspect of the current system, where the chairmanship of the CCAI is automatic, is precisely that it ensures the committee shall not left without leadership. Hence, even if the committee has not yet convened, there is a parliamentarian who holds responsibility for it and bears the political burden of overseeing its proceedings. To establish a similar provision, the following system is proposed: the chairmanship of the CCAI would be biannual and the chairman or the chairwoman would be elected by the committee members, with the position being filled by a member of the Chamber of Deputies in the first ordinary legislative session and by a member of the Federal Senate in the third ordinary legislative session. The parliamentarian elected as a member of the CCAI by the Committee on Foreign Affairs and National Defense would serve as the interim chairman of the CCAI, responsible for convening the meeting to establish the collective body.

Therefore, even if there is a delay in leadership appointments and the committee encounters challenges in establishing itself, there will be a member who will temporarily assume the chairmanship of the CCAI, taking responsibility for it and making endeavors to ensure that the committee is able to convene. It is important to note that nothing precludes the chairman or chairwoman of the Foreign Affairs and National Defense Committee from being elected by their committee as a member of the CCAI and later being elected to chair the CCAI itself.

Moreover, appointing a Rapporteur to the Committee could aid in ensuring the regular functioning of the body. The committee rapporteur,

typically appointed to special committees and investigation committees (CPIs), is tasked with outlining a work plan for the collective body and steering activities in a specific direction. As it stands, with only the roles of Chairman and Vice-Chairman, it is evident that the CCAI operates without a structured plan, susceptible to individual initiatives from its members. In this regard, establishing the position of Rapporteur could bring greater coherence to the actions of the CCAI.

4.5) PARTICIPATION IN THE CONFIRMATION HEARING OF THE DIRECTOR-GENERAL OF ABIN

According to the Federal Constitution, the Senate is responsible for "*previously approving, by secret vote, after confirmation hearing, the choice of holders of other positions that the law determines*" (CF, article 52, III, "f"). The Director-General of ABIN is among those authorities for whom the law stipulates prior approval by the Upper Chamber (sole paragraph of article 11 of Law 9,883/1999).

The nominee's confirmation hearing is held before the Foreign Affairs and National Defense Committee of the Federal Senate, whose chairman or vice-chairman also holds a position in the CCAI. Now, it is worth noting that the CCAI is the specialized Congressional body in the realm of intelligence. Therefore, the Committee possesses the requisite expertise to interrogate the nominee for the position of Director-General, holds a profound understanding of the intricacies within this thematic field, has previously addressed various issues related to the body, and is well-versed in the challenges and risks associated with the position. Hence, it would be better positioned to assess the qualifications and stances of the nominee for the highest federal intelligence position. Nevertheless, the CCAI does not affect the nominee selection process.

There is no consideration here for transferring the confirmation hearing to the CCAI or subjecting the nominated individual to prior review by the CCAI, as constitutional constraints prohibit such alteration. Nevertheless, the question arises as to whether it would be appropriate to involve the CCAI in the confirmation process for the Director-General of ABIN, perhaps as an interested third party. Therefore, the confirmation hearing would still be conducted by the

Senate's Foreign Affairs and National Defense Committee, which would provide its opinion before the Senators' plenary analysis. However, the CCAI would be formally invited to participate in the confirmation hearing.

Members of the CCAI could contribute with more relevant questions, drawing from their experience in external control and thereby enriching the debate. Gill and Phythian (2006) note that intelligence professionals are trained to respond only to the questions they are asked. Hence, to discern what to inquire about, specialized knowledge and familiarity with the subject matter are necessary, areas in which CCAI members can provide valuable assistance.

If parliamentarians eventually acknowledge that the confirmation hearing should be conducted in a Senate's secret session, the proposed standing rules alteration would allow CCAI members to participate on it. Moreover, it is important to remember that the public confirmation hearing is when the nominee essentially pledges how they will perform, sharing their values, strategy, and key projects for the intelligence sector. Intelligence control is already compromised if the parliamentarians tasked with external control haven't even heard the ABIN Director-General's commitments, values, and strategy during the congressional confirmation hearing.

Thus, the formal involvement of CCAI members in the confirmation hearing for the ABIN Director-General nominee can enhance external intelligence oversight by strengthening the pre-selection process.

5 FINAL CONSIDERATIONS

The specialized literature on Intelligence nearly highlights Brazilian parliamentarians' low engagement in external oversight activities. However, while they call for more decisive action by the CCAI, most studies do not suggest how this can be achieved in practice.

This work aims to help fill this gap in Brazilian intelligence research by suggesting practical changes to strengthen intelligence oversight. These changes can be implemented through modifications in the standing rules, which are a simpler legislative path than ordinary laws or constitutional amendments.

Even after institutionalizing the CCAI with the approval of Resolution 2/2013-CN, its performance has not met the expectations set for this important committee. Having the legal authority to oversee is pointless without the proper tools to do so. Hence the concern to highlight the various deficiencies of the aforementioned Resolution, conceived as the standing rules for the committee. It can, however, structure all external control of intelligence in a much broader way, providing adequate instruments for exercising this control.

If Plato was already concerned about the character of the city's guardian, that same concern remains valid today, especially in intelligence activities involving confidential information. Enhancing control mechanisms is crucial to ensuring that intelligence operates within democratic parameters, serving the interests of society as a whole.

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