

Executive Summary
2021 Annual Meeting of the Five Eyes Intelligence Oversight and Review Council
Hosted by the Office of the Inspector-General of Intelligence and Security, New Zealand
November 8-10, 2021
Prepared by the
Office of the Inspector General of the Intelligence Community of the United States

INTRODUCTION

In its role as the Executive Secretariat of the Five Eyes Intelligence Oversight and Review Council (the Council), the Office of the Inspector General of the Intelligence Community of the United States prepared this Executive Summary of the Council's annual meeting held from November 8-10, 2021, via Microsoft Teams. Representatives from all Five Eye partners attended the meeting.

The 2020 meeting, scheduled to be hosted by New Zealand's Office of the Inspector-General of Intelligence and Security, was postponed due to the COVID-19 pandemic. The Council hoped to hold the 2021 meeting in-person but due to ongoing health and safety protocols, the session was held virtually. In order to accommodate time differences, the Council met for two hours the first day and 90 minutes the next two days.

BACKGROUND

The Council was created in the spirit of the existing Five Eyes partnership, the intelligence alliance comprising Australia, Canada, New Zealand, the United Kingdom, and the United States. The Council is comprised of the following non-political intelligence oversight, review, and security entities of the Five Eyes countries: the Office of the Inspector-General of Intelligence and Security of Australia; the Office of the Intelligence Commissioner and the National Security and Intelligence Review Agency of Canada; the Office of the Inspector-General of Intelligence and Security of New Zealand; the Investigatory Powers Commissioner's Office of the United Kingdom; and the Office of the Inspector General of the Intelligence Community of the United States.

The Council members exchange views on subjects of mutual interest and concern; compare best practices in review and oversight methodology; explore areas where cooperation on reviews and the sharing of results is appropriate; encourage transparency to the largest extent possible to enhance public trust; and maintain contact with political offices, oversight and review committees, and non-Five Eyes countries as appropriate.

Day 1:

Brendan Horsley, New Zealand's Inspector-General, welcomed the participants and offered each country an opportunity to make brief introductory remarks. The Five Eye partners

acknowledged the difficult circumstances they have navigated over the past two years, but each office remains steadfast and dedicated to the mission.

Session 1 – Sources of advanced technical expertise for oversight

The United Kingdom’s 2016 Investigatory Powers Act enabled the creation of the Technology Advisory Panel (TAP), an independent body appointed by, and reporting to, the Investigatory Powers Commissioner. The panel provides advice on technology and techniques used to minimize the effect of privacy. The panel is comprised of scientists and academics whose expertise enhances scientific and technical knowledge across the organization. Members of TAP are part-time (approximately 25 days a year) and possess the knowledge and expertise needed to examine specific topics at hand on behalf of the Investigatory Powers Commissioner’s Office (IPCO).

Sir Brian Leveson led the discussion on sources of advanced technical experience for oversight and shared that TAP members have been invaluable and, among other areas, have helped with the understanding of Artificial Intelligence (AI) and Machine Learning. When asked about the relationship with IPCO personnel, Sir Brian stated that TAP representatives have increased understanding in terms of scientific experience, and open communication between TAP and the organization has cultivated a positive relationship.

Session 2 – Staff exchanges

Kristi Waschull, the Defense Intelligence Agency’s Inspector General, facilitated the United States’ presentation on potential staff exchanges between Council bodies. This topic has been addressed at previous conferences, and members see the value of exchanges in terms of information sharing and professional development. The members discussed best practices for establishing successful exchange programs.

A staff representative from one of the Five Eye countries addressed his recent staff exchange experience. He shared that he was included in everything from the routine project to the exceptional and was treated as a member of the host country’s team.

Multiple Council members saw the benefits of exchanges, but expressed concerns about challenges such as security clearances. A system of mutual protocol was suggested where security offices would accept clearances of the Five Eyes, but Council members acknowledged it could still take 8-9 months to process clearances and visas. The members believe there is much to be learned from each other and agreed to further explore potential options.

The first day concluded after two hours of discussion.

Day 2:

Session 3 – Lessons learned from adapting to widened/altered oversight jurisdiction

Canada began the second day of the conference with a discussion on lessons learned from adapting to widened and altered review and oversight mandates. In July 2019, the National Security Act, 2017, came into force. The Act established the National Security and Intelligence Review Agency

(NSIRA), which took over the mandates of the former Security Intelligence Review Committee (SIRC) and of the Office of the Communications Security Establishment Commissioner (OCSEC), and was given a broader review mandate to cover the entire security and intelligence spectrum of activities across the federal government. The Act also created a new oversight function, that of the Intelligence Commissioner (IC). In this new regime, the IC is an integral part of the decision-making process for certain national security and intelligence activities before they can be conducted. Canadian officials discussed the changes they have made when conducting oversight business as it relates to working relationships within agencies, staffing numbers, and the competencies and backgrounds needed to complete the mission. NSIRA particularly noted the gains to effectiveness and efficiency in moving their complaints investigations from a litigation/adversarial model to an investigative approach. The session concluded with an open discussion where countries offered ways to liaise with various sections of the intelligence community and accommodate cultural differences within their respective agencies.

Session 4 – Approaches to accessing agency information

Australia’s Inspector-General steered the second portion of the day by discussing approaches to accessing agency information. The Office of the Inspector-General of Intelligence and Security has a legal basis for access to information, and they recognize information does not just come in written form. Access to people, expertise, intelligence, and the need to observe what’s happening in the organization is also critical. Members of the Council discussed their authorities, ways to help ensure they have access to relevant information, and how the pandemic has impacted their operations.

The day concluded after the scheduled 90 minute agenda.

Day 3:

At the 2019 annual meeting in London, Council members identified areas of mutual interest and committed to in-house staff resources to draft working papers on the following topics:

1. Jurisdictional or Territorial Constraints on the Review/Oversight Activities of Five Eyes Intelligence Oversight and Review Council Partners that Create a Gap in Coverage Over the Cumulative Activities of Five Eyes Agencies (“Accountability Gaps”) (led by Canada)
2. Methods to Mitigate Risks of Mistreatment from Sharing Information with Foreign Entities (“Assurances”) (led by the UK)
3. Automated Data Processing and Artificial Intelligence (“AI”) (led by the US)

The third day of the conference was dedicated to in-depth conversations about the issues.

Accountability Gaps – The working group examined potential gaps where there is limited or no independent accountability in terms of oversight of Intelligence Community agencies, or other areas where accountability could be strengthened. Five themes were identified: jurisdiction; technology; access to information; resourcing; and physical presence.

Assurances - When addressing the legal framework, Council members determined the fundamental issues are consistent across the Five Eyes. The countries are bound by various provisions in domestic and international law, but acknowledged there are varying levels of transparency.

AI – The working group discussed terminology; the legal frameworks of AI; oversight of technology; and the future uses of technology.

The countries concluded that Council members can learn from one another in terms of best practices and information sharing, and the increased use of AI warrants additional oversight.

All countries agreed that the working groups were a productive and valuable source of shared information and agreed to continue to discuss how greater value could be obtained from the working groups.

Conclusion:

The United States will host the next annual Council meeting in the fall of 2022. If health and travel restrictions allow, the conference will be held in-person in Washington, D.C.