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The changing role of the South African intelligence community

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Intelligence - 'spying', in the popular imagination - operates behind an aura of great power and influence. This is particularly so in authoritarian societies, where intelligence gathering is aimed at discovering, monitoring, and acting against opponents of the regime: adjectives such as 'hated' and 'feared' cling almost automatically to intelligence agencies in this context.

This was true of South Africa in the apartheid years - and beyond. At least from the time former prime minister John Vorster appointed his lifelong associate Hendrik van den Bergh to head the appropriately named Bureau of State Security (BOSS), the state's intelligence agencies were assumed to wield immense power. The impression was strengthened by allegations that intelligence services not only gathered information, but also acted in ways which flouted even the government's laws. It was they, it was assumed, who did in secret what their political masters could not order in public. For example, in the 1980s it was the chief of military intelligence, Joffel van der Westhuizen, who ordered the 'removal from society' of activist Matthew Goniwe.

This perception did not die after 1990 - if anything, it was reinforced. Military intelligence operatives and political police were alleged to be destabilising the transition, an impression partly confirmed by a 1994 Goldstone Commission report implicating police intelligence officers in post-1990 violence[1].

But the importance of intelligence seemed also to be confirmed by a very different, although equally crucial, role which one government agency played in the transition: it was the National Intelligence Agency who served an important part in making the first contacts with the ANC on behalf of the South African Government. Meetings between NIS and the ANC began the process which led to Kempton Park; if this leavened the belief that intelligence agencies were simply instruments of repression, it strengthened the belief that they were uniquely powerful.

This in itself may explain why negotiators considered the intelligence issue important enough to warrant its own subcouncil of the Transitional Executive Council, and its own set of negotiations. In theory, these brought together those, as one participant suggested, "at the forefront of the war" on both sides and should have been central to a workable settlement. The reality was different - but the role of the intelligence community in the transition, the intelligence negotiations themselves and the new structures they created, raise issues of some importance for the transition and beyond.

Analysing the negotiations, their participants and the outcome is no easy matter. Historically, public knowledge of the activities of this countries intelligence agencies has never been extensive. Although the rise of the Directorate of Military Intelligence received much academic and media attention in the mid-1980s[2], in depth examination of the intelligence agencies has lain largely beyond the public domain[3]. And for good reason, it has been an offence to mention the names of employees of the

NIS besides that of its director-general[4]. Gaining access to the inner workings of the agencies or persuading their employees to talk is a difficult and time-consuming process.

However, this is probably a better time than most to write about intelligence, since the transition has loosened some tongues[5]. There is also a worldwide trend among intelligence agencies towards slightly greater openness; here, too, this has prompted a greater willingness in South Africa to answer enquiries[6]. But nevertheless the culture of secrecy remains strong, and a shadowy world in which disinformation remains a stock in trade is one in which no information can be taken at face value. All this ensures that this account covers only some aspects of the changing role of South Africa's intelligence community[7].

BREAKING THE MOULD

Changing the player to suite the game

One of the most central players in the negotiations was the state intelligence agency, NIS - both in terms of planning aspects of the initial stages of the negotiations on the government side and carrying some of these discussions through. The de Klerk presidency and the negotiations in particular changed NIS from a relatively junior member of the state intelligence community to its dominant agency: a new R140-million building was started for its future occupation and it was reputed to employ between 2500 and 3000 people[8].

NIS was the successor to Van den Bergh's BOSS. But its change of name also signalled a change of role: during the 1980s it was said to have been restricted to gathering strategic intelligence needed for political decision making. It also had less influence than military or police intelligence, since it lacked the capacity to act on its information and was regarded to be more of a "think tank"[9]. The Directorate of Military Intelligence in particular had gained influence during the PW Botha era. It did not restrict itself to briefing generals on military issues - like NIS it submitted political intelligence estimates to the government; it, not NIS, was deeply involved in countering township rebellion in the mid-1980s. In some respects this was fortunate for the NIS since it suffered little, unlike military and police intelligence, from poor publicity after the ANC was unbanned[10]. Although a co-ordinating committee consisting of DMI, NIS and SAP representatives was established to ensure their operations did not overlap, competition was inevitable and fierce - "Angola [provided] a meeting place for two agencies on a collision course", notes one analyst[11].

And while NIS chaired the committee, the increased role which the military played in government plans - in Angola, elsewhere on the sub-continent and at home - ensured that DMI became the more influential agency. This occurred even though many in the SADF, outside of DMI, were said to be uncomfortable with its growing role, particularly when some its activities which had nothing to

do with information-gathering - such as training Inkatha impis, and covert operations aimed at the ANC - were revealed[12].

These developments seemed to reinforce a developing rivalry between the three state intelligence agencies which was to play an important role when negotiations on intelligence began[13]. This did not mean that the NIS ceased to play a role: some sources warn against exaggerating the ascendancy of DMI over NIS in the PW Botha era. They point out that Botha acted as political head of NIS during his whole term of office, and appointed Niël Barnard as director-general. They claim NIS played a key role in co-ordinating the intelligence community in this period[14], and initiated the shift away from the 'total onslaught' thinking which was dominant within DMI. This suggested, as did other evidence, that Botha's security strategy did not rely solely on DMI's war against the ANC and its allies. It was under Botha that the first tentative steps towards a compromise with the ANC were taken, and NIS was their instrument.

But DMI's strategy remained dominant until the possible contours of a deal became clearer - as they did under FW de Klerk, who, after he became NP leader, began to displace the influence of military and police intelligence. They had largely derived their influence from their operational roles: as troops withdrew from the townships, diplomacy supplanted destabilisation in the sub-continent and the ANC and PAC were unbanned, both their role and influence declined. DMI again restricted itself to military issues[15], while the SAP intelligence function (the old Security Branch) was restructured and renamed in 1991[16], and its political role purportedly ended, although it is likely that it continued to monitor the activities of the government's former foes into 1992. Later evidence of destabilising activity within both arms was the result of declining and splintering power, not continued influence; there is little evidence that their actions were approved - even less that they were ordered - by the political authority, and some key personnel were dismissed when the actions were revealed[17].

It was easy to see NIS's waxing star purely as a result of a change in government leader: it was moved to the office of the president within the first week of De Klerk's tenure[18] and analysts claim that he gradually undermined the power of DMI during his first years in office[19]. It was not new for a head of government to give primacy to a particular intelligence agency: Vorster relied on the SAP Security Branch; Botha enhanced DMI's role. De Klerk, whose power base stemmed from civilian politicians, may have preferred to use a civilian agency.

But, the use of NIS to make the first contact with the ANC occurred before DMI influence began to wane - and before De Klerk became president. There is some evidence that NIS were influential in initiating the first meeting with the ANC overseas, getting approval from Botha before his resignation but (due to some administrative bungling) not informing De Klerk fully of the proposed meeting[20]. And, NIS had also been party to the internal talks with Mandela while Botha had still been

president[21]. Negotiation was not, for obvious reasons, a job for DMI: it strongly opposed any contact with "the enemy" , and fought a meeting "tooth and nail". This confirmed that it was changing politics as much as changing presidents which paved the way for the resurgence of NIS. If DMI was seen as a vehicle for internal security during the emergency, NIS was the instrument of negotiations - by both Botha and De Klerk.

Enemies together

Why send an intelligence agency to make the first contact[22] - particularly since NIS was sensitive to the charge that it was making first contact with an enemy it had advised others to avoid? NIS seems to have been fairly important in persuading the government that a settlement was the only workable route. It had done some internal work analysing how negotiations could be conducted from a position of strength. But, there is some doubt that NIS (although those close to it may claim otherwise[23]) had planned or predicted the final outcome of negotiations as being a transition to majority rule: evidence suggests that at least part of the initial strategy was to split the internal and external arms of the ANC. Notwithstanding this, NIS was the arm of government which had thought through the need for, and implications of, negotiations (whatever their final outcome) most thoroughly. It was also the one best versed in secrecy - a distinct advantage given Botha's paranoia that his early initiatives would be discovered undermining his image as a strong leader[24]. NIS was thus a natural candidate for carrying out the first set of direct contact between the government and the ANC.

NIS operatives, and the ANC figures they met, stress that they neither initiated nor controlled these early negotiations - they were acting on instructions. But their orders (on both sides) were to control the process - to keep it secret, and to limit the agenda. After De Klerk became president, NIS argue that the initiative needed to be centred in his office, and that contact had to be controlled to ensure that the ANC did not deal with more than one player, allowing it to play one off against the other. But, both sides overestimated their ability to monopolise a process which would have to include other parties. It was not envisaged, a key ANC player Mo Shaik noted, that the process would develop a dynamic of its own. But these initial contacts were crucial both to the negotiations and to the future of intelligence.

The first meeting between NIS representatives and the ANC took place on 12 September 1989 in strict secrecy in Lucerne in Switzerland, without the knowledge of the 'host' government[25]. The NIS team was led by then deputy director-general Mike Louw, the ANC delegation by Jacob Zuma and Thabo Mbeki.

Discussion ranged around issues relating to the release of Mandela, the unbanning of political organisations and, NIS's own particular bugbear, the relationship between the ANC and the South African Communist Party. No agreements were reached: both sides say that the meeting aimed only at initiating first

contact, to assess each others' positions, and perhaps to prepare the ground for the political principles to meet. Both parties undertook to report back on the meeting.

The date of the meeting is significant: De Klerk was only acting president at the time - he had been elected NP leader on 2 February but had only officially become president eight days after the September meeting. And since it must have taken some months to arrange the meeting preparations must have begun even before he took over the NP - after all PW Botha had met Nelson Mandela[26]. This seems to confirm that the change in government strategy was more important than the change of leader. The difference though lay in De Klerk's ability to carry the issue through.

The first meeting led to others, and as the process developed the number of participants expanded to form a body called the "steering committee". On the government side, most were intelligence people: Barnard, Louw and Marius Spaarwater (then NIS chief of operations). The ANC delegation also included intelligence figures Jacob Zuma and Joe Nhlanhla. But the presence of Thabo Mbeki and Aziz Pahad on the ANC side and Fanie van der Merwe of the Department of Constitutional Development on the other confirmed that the subject matter was political compromise, not intelligence work. Initially, the process required gathering information about the other side - intelligence work. But both sides knew it would eventually move into the political arena, and representatives of that world were included as the contact developed.

Once the 1990 Groote Schuur Minute was concluded, the intelligence men, according to most sources, withdrew to the periphery of the process; the politicians and Constitutional Development took over. But the "steering committee" continued to play an important role when the process was in crisis. "There was an unstated rule", an ANC intelligence official notes, "that the [intelligence] agencies would step in when the process came unstuck." The reason, he argues, was that they could find gaps through which the process could continue to proceed. Sources on the government side confirmed that the "old team" did come forward whenever the process was endangered; they were able to "play a constructive role because of the trust and good relations developed from the very first meeting onwards". This role was particularly important until the end of Codesa. After this, other channels existed to resolve crises.

On military matters, among other areas, intelligence officials played a fairly crucial role. At meetings which paved the way for military negotiations, intelligence officials from both sides were present[27]. Constitutional Development also had close ties with the intelligence establishment - Barnard was later to become its director-general - while ANC intelligence personnel were influential in formulating policy, particularly as it affected security issues.

Intelligence in a changing world

While the early stages of South Africa's negotiated settlement got underway wider developments in the world were to have important consequences for the post-apartheid intelligence community. The collapse of the Soviet Union and its Eastern European satellites effectively ended the Cold War and reshaped the world order. On one hand, in NIS's assessments about the process of change in South Africa the ending of the Cold War was a crucial event - communism lost its power to directly threaten any changes initiated in South Africa. More specifically for the intelligence community, the changes precipitated a debate amongst their colleagues the world over as to the future of the intelligence functions of the state.

During the Cold War intelligence priorities between the super powers were well defined: they concentrated on each other or in theatres of the world where one was seen to have expansionist plans over the other. Now, as the US Director of the Central Intelligence Agency (CIA) has argued the jungle has changed - "it is no longer the domain of dragons, but is now full of snakes". Since the collapse of the Soviet Union and a seeming increase in the number of smaller (less controllable) conflicts or threats a debate seeking to explore the new role - if any - that intelligence agencies should have in the new world order began to gain momentum[28].

The debate has led to some reversal, and indeed collapse, of roles: realist and liberal proponents of international relations have to some extent adopted converging viewpoints[29]. Proponents of the realist model argued, before 1990, that state policy rested on the ability to be able to defend the national interest against other states, who likewise are engaged in the pursuit of national interest in a competitive environment. The intelligence arms of the state were seen as a central component of the preservation of the national interest by providing warning of hostile threats and an ability to respond.

Liberal protagonists on the other hand asserted the importance of norms and values, ideas of right or wrong, in the conducting of affairs between states. While most liberals conceded that intelligence was a necessary evil it was generally agreed that the activities of the intelligence agencies should be made more responsive to democratic values and more accountable to the legislature and in certain cases to the judiciary.

A new school of thought which begun gaining prominence as the balance of power in the new world altered - and which probably links more closely to the liberal than the realist model - argued that security should be given a much broader focus: in short, "security is not only about power but involves a variety of other factors including the interests of individuals"[30]. The broader approach to security emphasised the importance of economic and environmental issues and argued for a broader criteria by which to judge whether people (rather than nations) are more secure: this involves the normative dimension of conflict resolution,

conflict reduction and a concentration on issues which promote the joint security of nation states.

The effect of adopting a broader definition of security is to widen the intelligence brief - intelligence for good rather than bad in the liberal perspective. Environmental protection, food security, peacekeeping operations, disease control and disaster relief could become possible intelligence priorities. A concentration on these factors by governments and co-operation between states, the new proponents of security argued, would result in greater total security for all peoples. Realist conceptions of the security of national states also expanded to include organised crime, drug trafficking, terrorism and economic competition as being dangers to the state.

The result is a new agreement on what intelligence can be used for: an expanding field of priorities to take account of new threats in a hostile world environment[31]. There have been, however, notable dissenters on both sides: some realists argue that the expansion of intelligence activities into areas of 'new security' is inappropriate and that the role of intelligence should be limited to finding out about and countering direct threats to the national state; some liberals too argue that the end of the Cold War implies that no intelligence function is needed at all and that this activity can be carried out in different ways by different government agencies. The counter to both sets of detractors has been similar: precisely because the world is changing so rapidly, and so too threats emanating from the system, that a capacity to collect, evaluate and provide assessments of dangers and opportunities is needed.

The expansion of the intelligence mandate into these areas is not uncontroversial. Primarily, it is not clear whether intelligence agencies are best suited to dealing with some of the broader issues like environmental protection - these could be handled quite competently by other government departments without any secrecy. As it is, most of the equipment of current intelligence services is geared to monitoring hostile, among others, intelligence services, prevention of economic espionage, potential situations of war or instability and organised crime which are likely to remain a feature (if not an expanding one) of the current environment.

The wider debate around security in the new world order was to have interesting ramifications at home. With the decline of the Cold War and the end of apartheid it seemed reasonable to assume that the usefulness of a South African intelligence function would, over time, decline. Instead, with a changing world order the South African intelligence community, on both sides, began a search to define a new role for itself. International debates in and around other agencies was to have a profound influence on the thinking of South African policy makers as they begun the delicate process of integrating and restructuring the South African intelligence community.

COMING IN FROM THE COLD: NEGOTIATING INTELLIGENCE

Having acted as midwife to political negotiation, NIS now turned its attention, within the context of the wider debate on the future of intelligence, to negotiating the future of its own function with the ANC's intelligence arm.

ANC intelligence was the responsibility of a National Intelligence Department, or NAT, headed since 1987 by Nhlanhla. This was divided into security, counter-intelligence and intelligence divisions; Zuma headed intelligence. It also had a Military Intelligence department, headed by Keith Mokoape, who had succeeded Ronnie Kasrils in 1987. Little is known about how these departments operated, but it does appear that their functions overlapped considerably: despite this, there is no evidence of the rivalry noted in the government departments - whether this means that there was none or that the secret was better guarded is unclear. In principle, MI's job was to obtain intelligence needed for operations, and that of NAT to gather strategic information and to secure the ANC against infiltration by government agents[32]. ANC intelligence sources insist that their operation was reasonably effective - they claim, for example, to have recruited informants within the government's military and civil service[33]. Once the ANC was unbanned and had re-entered the country, it established a Department of Intelligence and Security, headed by Joe Nhlanhla.

Both NIS and ANC intelligence officials had met before the intricate talks around the future of South African intelligence. Both had played a key role in nursing negotiations through the early, difficult phase and this made it seem natural that they should bargain the future of intelligence.

This history may explain why, in contrast to the police and military, NIS did not resist the creation of a new intelligence agency. This was agreed quickly, although integration was to begin only after the election: neither side wanted to weaken itself before an election by sacrificing its intelligence arm. But the NIS's role in the transition may not have been the only reason. While there is growing recognition of the role intelligence agencies play in influencing policy[34], unlike militaries and police forces they have no power beyond that bestowed on them by governments. Men in uniform who are ignored by politicians might stage coups; intelligence operatives can do little more than establish private consultancies. National intelligence was used to changing when politics changed; it had done so under the NP. To argue that it should remain unchanged in an entirely new order would have been implausible.

Nevertheless, quick agreement on the need for a new agency was only the first step. As later events would show, actually creating the agency was much more difficult. Meanwhile, what it should do and how it should do it remained to be negotiated.

Agreeing on principle

Like the military negotiations, discussions around intelligence began with the government agency, NIS, briefing the ANC on how it functioned and the principles to which it subscribed. The briefing took place on 12 and 13 March 1993 at a NIS-owned venue in the Transvaal. There was little discussion on a future intelligence structure, and no agreement. Participants suggest that the aim was simply to acquaint the parties with the current state's intelligence operation.

What does seem to have emerged was agreement that a set of principles for intelligence should be investigated. At three meetings on 9,14-15 and 30 July, an appointed working group set out to define these. Later, the TEC subcouncil on intelligence was to be mandated to devise principles - but they were already agreed by the time the mandate was issued. This initiative came largely from the ANC, which had adopted its own principles at its 1992 policy conference, based on a discussion document written by Mo Shaik, an ANC intelligence specialist.

These stated that an intelligence agency should guard the "ideals of democracy, non-racialism, non-sexism, national unity, and reconciliation in a non-discriminatory way". It must be politically nonpartisan and reflect the country's racial and gender balance: affirmative action was needed to achieve this. They also argued strongly for parliamentary oversight: "Intelligence activities shall be regulated by relevant legislation, the bill of rights, the constitution and an appropriate code of conduct"; intelligence institutions should be "accountable to parliament and subject to parliamentary oversight". And they clearly envisaged more open and accessible agencies: the public "shall have the right to information gathered by any intelligence agency with the limits of classification consistent with an open and democratic South Africa"[35].

The ANC principles proposed a dramatic change to the ethos of intelligence work. The were a reaction to past misconduct, and thinking elsewhere in the world. In theory, greater openness might offer ANC intelligence an advantage over its NIS counterparts since it was likely to enjoy greater public sympathy in a post-apartheid order. But it might also advantage NIS operatives by enabling them to stress their role in democratisation and their usefulness to the new order. The ANC's preference for openness was not necessarily a bargaining strategy: it may simply have reflected the reality that the victims of past secrecy were mainly within its constituency. And not all in the ANC opposed secrecy: Shaik, who argued strongly for greater openness, apparently had to do so in the face of opposition from within the ANC.

These principles largely shaped those which emerged from the negotiations. The first principle agreed was that a single agency be established. Tied to this was an agreement, never officially stated, that it would have a new name: 'National

Intelligence Agency' appeared to be favoured early on, although South African Secret Service' was also mooted in the press in mid-1994. It was unclear at the time that agreement in intelligence circles about the need to establish two agencies - hence, the two different names - was beginning to harden. The final structure would also include the intelligence capabilities of the TBVC territories. Although these were believed to be limited[36], Transkei, Venda and, indirectly, Bophuhatswana later participated in the Joint Co-ordinating Intelligence Committee (JCIC), and Transkei sat in the TEC subcouncil on intelligence (where its seat was a result of negotiation dynamics, not a perception that it was a more important intelligence player). Ciskei was not included in these arrangements, because it had no civilian intelligence capability, although military ruler Oupa Gqozo appeared to have employed 'private consultants' to do the job. The PAC was to join the process at a later date.

Besides showing that both sides were committed to a new order, this rapid consensus also showed a common interest in curbing DMI's autonomy: both sides hoped that the creation of civilian structures would reduce competition between the current agencies, and more clearly define their roles[37]. But they were to find that creating an integrated community entailed more than agreeing on principle.

The agreed principles also recognised the need for parliamentary control of the new agency, and other measures to ensure accountability. It was suggested, for example, that its headquarters no longer be secret, and that it recruit more actively at all universities. But it was agreed that openness would have to be balanced against the need for secrecy if the agency was to be effective.

If these principles did not necessarily favour one of the parties, two others clearly did - at least in the short term, they could advantage NIS staffers. It was agreed that the "constant flow of intelligence should not be disrupted". Current structures would continue to function until they evolved into something new. This, a person close to the old order has suggested, reflected agreement on the need for a "balance between continuity and change". Similarly, the principle of "effective management" was agreed. That would imply, insiders suggest, that particularly those at senior levels should be competent to perform their task. The aim was presumably to limit political appointments, and to ensure that affirmative action programmes did not disrupt the new agency. It was also agreed that all members of existing agencies would be eligible to join the new one if they were suitably qualified. NIS, like the military and police, relied on its claim to greater technical competence to limit the effects of a change in government.

As happened in negotiations on the police and military, those on intelligence guaranteed a role in the new order for those who had maintained the old. That this was agreed with such ease - indeed, that it was negotiated at all - seemed odd. But the future of NIS's position (or at least it's staff) seemed

reinforced by some international evidence showing not only that intelligence agencies which serve authoritarian governments survive change - the East German government retained Nazi operatives. But, where authoritarian regimes were replaced by democracies (as in Eastern Europe), the old agencies, while often being dismantled, simply had their staff transferred to new structures[38].

In addition, NIS had some formidable bargaining chips. The fact that a compromise between the old and new order was being negotiated may have been primary - NIS's political principals would retain a share in power and this might have ensured that it would do so too. NIS's key role in initiating a settlement also presumably lessened resistance to it. And it commanded assets which ANC intelligence might not want to lose: arguably greater technological capacity and professional training; potential to gather intelligence on the white right wing, which seemed likely to pose the greatest threat to the new order; and - information on ANC politicians and operatives. After the election, intelligence operatives claimed to possess information on ANC figures who had worked for government intelligence, information they would be more likely to reveal if they were no longer employed. ANC sources also suggest that the organisation's capacity to confront the NIS in negotiations was constrained: ANC intelligence structures were characterised by a degree of disorganisation and a limited strategic and analytical capacity, as a result of its return from exile and limited resources. What weight these factors carried is unclear: what is clear is that the parties agreed that the new intelligence agency would not be entirely new. It would, rather, be a marriage between government and ANC intelligence.

Jack of all trades ...

The principles also defined what the new agency would do. They seemed aimed at reducing its potential threat to democracy. The effect was, arguably, to increase it. 'National security' - consistent with developments in the international debate - was defined extremely widely to include issues such as social and economic welfare and the environment, an approach for which the ANC had pressed. Shaik, at a conference on covert operations, had declared: "The ANC strongly believes that national security should be understood in comprehensive terms to include military, political, economic, social, technological and environmental dimensions." Intelligence should underpin "freedom, justice, prosperity and development"[39]. Similarly, Laurie Nathan, who advised ANC policy-makers argued that "security [should be] conceived of as a holistic phenomenon which is not restricted to military matters but broadened to incorporate political, social, economic and environmental issues". Security was not only an "absence of war", but was also related to the "pursuit of democracy, sustainable economic development, social justice and a safe environment"[40].

While this approach purported to 'democratise' intelligence work, its effect would be to expand its activities and influence: the

intelligence agency could be preparing assessments on anything from population movement over borders to increased pollution. This would presumably increase its connections to most government departments, and centralise government strategy and analytical work.

Its supporters said this would create an intelligence agency which would be the "university of the state". It reminded opponents of nothing so much as the joint security management system of the Botha era: at the time, it was also assumed that there was no issue which was not relevant to national security. While supporters insist that an agency seeking to uphold a democratic order would apply a wider brief differently, their proposals did open the way for a larger, more intrusive agency: there was no reason for NIS to oppose this - and much incentive to greet it with enthusiasm. In a probable attempt to allay fears of an overweening new agency, the principles stressed that intelligence agencies were not policy-makers. But control over information gives those who have it inevitable power over policy choices - whatever commitments in principle they might make.

If this and other issues were agreed fairly amicably, one area of dispute was a code of conduct for members of the new agency, advocated by ANC negotiators. They wanted a code which would not only bind operatives, but give them the right to disobey an order which contravened it. NIS argued that a code, while a good idea in principle, could not bind operatives but should serve merely as 'guiding principles' or a 'statement of intent'. ANC sources complained that the government "wanted a Ten Commandments approach to intelligence" - a set of moral exhortations. The ANC wanted detailed guidelines - in the form of a booklet, perhaps - with real regulatory power. NIS replied that this would require spelling out in detail the rights of operatives, or how to handle sources. It would make intelligence work difficult, and could endanger operations and agents. It wanted, says one source, a 'cryptic' code, which would bind agents as little as possible.

Negotiating positions on this issue were similar to those on other security issues - the ANC wanted to restrict the intelligence functions through greater civilian control; NIS seemed to want to reduce political controls. The likelihood that the civilian authority which would enforce the code would be dominated by the ANC may have influenced thinking on both sides. Similar issues lay behind negotiation on the TEC subcouncil on intelligence. Eventually, though, negotiators agreed on a code which sources describe as a "classic example of a good compromise".

<u>Behind closed doors: the intelligence subcouncil</u>

Debate on an intelligence subcouncil raged both within and between agencies- it was not simply a clash between competing political interests. Broadly, however, NIS was initially against a subcouncil, while pressure for it came from within the ANC.

Its supporters gave three reasons for a subcouncil. Firstly,

since intelligence agencies had been at the forefront of the war, at least at a strategic level, it would be a public sign of reconciliation if they began to operate together; it might lay the basis for further co-operation on difficult issues. Secondly, if intelligence was excluded, the citizenry might fear that one of the most controversial aspect of the old order was out of reach of multiparty control: leaving it out would have been "laughable". A subcouncil would also increase public scrutiny of intelligence, and force its member to adjust to the public domain - by, for example, developing the capacity to handle public and media queries, and respond to publicity.

And thirdly, while this goes unmentioned by both parties, there may have been a concern in the ANC that state intelligence operations would need to be particularly accountable during a transition they had been accused of 'destabilising'. A subcouncil would allow them to be monitored. Certainly, despite the ANC stress on 'transparency', the subcouncil did not operate openly. A press report written at the time gives an idea of its ethos: the journalist concerned had asked a TEC representative where the offices of the more secretive subcouncils were located in the TEC building. The response was: "I am not liable to tell you"[41]. But if the subcouncil did not usher in a new era of openness, it did allow each party, in theory, to monitor the other.

Arguments against a subcouncil were that it would expose delicate negotiations before they were complete, and focus unnecessary public attention on the activities of intelligence agencies. NIS, ANC sources say, argued that the result sought by establishing the subcouncil could be achieved by a "private arrangement" between the parties. It argued that a subcouncil would alarm sources or agents who relied on absolute secrecy.

The principle that a subcouncil should be established was eventually agreed[42]. A new point of dispute then emerged: NIS in particular did not want it to have any managerial control over the day-to-day operations of the agencies. In response, the ANC argued that it would oversee, not control, them. This was recognised in the TEC Act in similar clause to that on the military: "... the day to day management of every service remains the responsibility of the relevant minister or head ... and all services shall during this period of transition ... continue to fulfil their duties to their respective principals". While the Act binds the parties to deal "with intelligence matters in a manner conducive to the national interest and not sectional interest", they would continue to do so as separate entities.

Once these points had been agreed, observers close to the process suggest, it was fairly easy to draft the remainder of the provisions establishing the subcouncil. They provided for a joint co-ordinating intelligence committee (JCIC) comprising the head or senior representative of each agency which would monitor and liaise with the agencies and manage the subcouncil. It would also initiate discussion on a new intelligence function.

The subcouncil could also investigate, through the JCIC or independently, the activities of any agency which acted against its aims. It would enjoy the power to make what one participant called "strong recommendations" to the agency concerned, which could include the suspension of officers. It could also recommend "steps to ensure that a service does not perform or carry out any act or operation likely or intended to undermine ... the objects of the council".

One subcouncil function which touched a raw nerve on both sides was the stipulation that it provide 'evaluated information' to the TEC and its subcouncils. This is information which has been checked to ensure that it does not start rumours or spread alarm. But this might imply that agencies could be asked about their sources of information: both sides were sensitive to this, since both presumably controlled sources within the opposition. In the words of one party, "a blown agent can cause all sorts of dynamics which would complicate the political process". Far from becoming a source of dispute, this was an issue on which the two sides clearly had a common interest - sources, it was agreed, would remain sacrosanct.

The subcouncil, like that on defence, was also given the crucial task of discussing the shape and function of the new agency. One issue which it was meant to negotiate, the principles, had already been agreed. But it was also to discuss the code of conduct and to "facilitate the transition to a future intelligence dispensation by commissioning research and formulating proposals in this regard". It could also make "proposals regarding suitable legislation relating to the practice of intelligence in a new political dispensation, including suitable mechanisms of accountability and political supervision". In effect, this meant turning the agreed principles into legal terms of operation.

The potential importance of these discussions was increased by the fact that the intelligence services, unlike the military and police, were not regulated in the interim constitution. This, one source close the ANC conceded, was simply because "the agencies could not get their act together". In principle though, this gave the subcouncil potentially greater scope than its security counterparts.

Because it operated in secrecy - and because the principles on which agencies would be integrated had been worked out before it was established - it is not clear whether the subcouncil took forward the task which began in March. But sources on both sides suggest - with no great enthusiasm - that it became a rudimentary intelligence oversight committee. Its members, they say "came to love its power ... developing notions of their own importance". This implied that any new oversight mechanism would jealously guard its power to oversee intelligence. Whether this would increase control over it, or simply broaden the small group of insiders, seemed less than clear.

What is clear though is that neither the subcouncil nor the

negotiations which preceded it agreed on the details of establishing a single agency. While the subcouncil produced what was referred to as a 'future dispensations document', it was a product of compromise[43] and regarded by sources close to the process as a "weak piece of work", which never "properly defined intelligence" nor properly delineated the functions of the various future agencies of the intelligence community. In the end, there appears to be agreement that the subcouncil produced little of substance. Two months after the 1994 election, NIS director Mike Louw, in his first public appearance before a parliamentary committee, conceded that integration had not begun and that no decision had been taken on how it was to proceed. A cabinet committee was, he said, "considering the matter". However, replying to further questions, he said there were no problems about what had to be done; the only issue was how it should be done[44].

THE SECOND OLDEST PROFESSION: INTELLIGENCE AND THE FUTURE

At peace with ourselves

Throughout the apartheid era, intelligence was inevitably seen as an instrument of minority rule. But, as the intelligence negotiations showed, the end of apartheid did not necessarily mean the end of national intelligence.

The most obvious reason is that even democracies retain intelligence capacities to monitor external threats. Intelligence practitioners noted that conflict in southern Africa could affect this country, and would need to be monitored. The presence of foreign intelligence agencies here created a need to monitor and pre-empt their activities. More revealingly, throughout the negotiations it was never argued that there was no further need for a *domestic* intelligence role. One possible explanation was that both sets of negotiators had a vested role in insisting that a domestic threat remained, even if it did not. Intelligence specialists on both sides remained influential in the policy debate, and wielded power through control of information. And many key politicians on both sides had some background in or exposure to intelligence work. This may explain why there was no thought of abandoning intelligence, or why it should remain influential in future.

But the end of apartheid, intelligence insiders argued, would not mean an end to real and perceived threats. Despite the constitutional settlement, South Africa would remain a highly volatile society: violence and instability had been so deeply rooted that it would not disappear overnight. There were those on the right and left who might try and destabilize the new order, a point stressed inevitably by both sides. Shaik, who argued consistently for more open intelligence work, cited this in a plea for continued secret operations: "My personal view on the issue of covert operations is that for a while, until... the people of this country are safe...[it] may be a necessary evil for a period..."[45].

These threats provided intelligence with a rationale for existence - and a potential too for influence. Their power derives from a real or perceived ability to identify threats, and this might give them the power to define "when we are safe". Despite their all-knowing all-seeing aura, much of the data collected by intelligence agencies is obtained from public sources, such as newspapers and academic and specialist articles. Strategic intelligence gathered covertly also requires analysis, and operatives are not necessarily better at this than others. But decision-makers do not always command the means to check the intelligence they receive: therefore, while the intelligence agency would not pose a threat to government , it would have an important influence on policy, whatever the political history of its operatives[46].

Since an intelligence function was bound to survive a settlement, there was a strong argument for a civilian agency (or as it turned out agencies). The military and police invariably established their own intelligence capabilities. If there was no civilian intelligence component, insiders suggested, they might monopolise intelligence and be thrust again into a strategic role, as opposed to the gathering of tactical intelligence. A central agency could, in principle, ensure that intelligence was the responsibility of those who could not act on the information. This would limit its power, and reduce the prospect of unauthorised or illegal action.

But if an intelligence arm was set to remain - and even grow in the short term to accommodate all the services - would its operatives co-operate to support the new democracy? Could rival agencies merge into what Louw called "an intelligence service at peace with itself"[47]. The negotiations showed that the rival agencies has some mutual interests. They showed too that there were differences within as well as between the old adversaries. But at least until the election, ANC and government intelligence organisations remained rivals, and there was no guarantee that they could merge easily. Shortly after the election, suggestions that F W de Klerk might be given political responsibility for any new agency prompted reports that "intelligence officials" were advising the ANC against this, since it would ensure that the agency remained partisan to the National Party[48]. And the fact that integration had not begun well after the election suggested that bridging the divide between the rival agencies was more difficult than the negotiators had assumed.

Building new structures

Negotiations before the establishment of and in the subcouncil for Intelligence of the TEC constituted the first stages of the establishment of a new South African intelligence capability. Talks continued after the election as the opposing sides sought compromise on the shape of the new community. The process culminated in an announcement by Minister of Justice Dulla Omar on Friday 21 October 1994[49] as to the nature and structure of South Africa's new intelligence agencies. Three draft pieces of legislation, an intelligence white paper and a document outlining

the 'guiding principles' of the new South African intelligence dispensation were released.

The draft legislation, which soon passed into law with little debate[50], envisaged two civilian intelligence structures: the National Intelligence Agency (NIA) for the collection of domestic intelligence and the South African Secret Service (SASS) for the collection of external intelligence. The army and police each also retained an intelligence arm.

The National Strategic Intelligence Act allows for the defining of the roles of the various agencies and the mechanism of co-ordination between them. The role of military intelligence is confined to the gathering of foreign military intelligence with an emphasis on the southern African region - except in the case of domestic deployment - but the military are explicitly prohibited from gathering "intelligence of a non-military nature in a covert manner". The South African Police Service are limited to the gathering of crime intelligence. The NIA retains a domestic intelligence and counter-intelligence function with SASS holding the foreign intelligence brief.

Each of the four agencies is required to pass on national strategic intelligence in their respective fields to an umbrella structure, the National Intelligence Co-ordinating Committee (NICOC). NICOC consists of a co-ordinator as well as the heads of each of the respective services. This committee has the responsibility to serve as the co-ordinator and interpreter of strategic intelligence in order to provide assessments to the cabinet.

The reason why two civilian intelligence agencies resulted from the process is unclear. The rationale could be linked to the practical politics of compromise: the arrangement gave scope for the inclusion of personnel from all the old agencies and allowed a division of responsibility amongst the players. In the end, the internal portfolio fell to an ANC appointee, Dr SW Sigxashe, and the external one to Mike Louw[51]. What is more certain is that the creation of two separate agencies will give the intelligence community greater power than ever within the structures of the state. And, at least in theory follow the models of Western democracies whose own intelligence functions have both separate internal and external arms.

While never publicly stated the reasons why the ANC should have a firmer control on domestic intelligence is openly admitted in intelligence circles: NIA is the bigger of the two services and will have the greatest influence on policy at home having the more important function of countering internal challenges to the state. SASS, on the other hand, is the smallest of the two services and while having a powerful influence on aspects of government's external relations the agency will not have the ability to interfere in politics at home. A more practical aspect also suggests itself: SASS will be in a position to make use of (and know where to find) old NIS assets in foreign countries whereas ANC intelligence never had the resources or the need to

maintain as wide a network of external contacts.

The direct linkage with government, NICOC, which will act as a channel and assessment centre for intelligence is in the hands of Shaik, strengthening the linkage (at least at the highest level) between ex-ANC intelligence operatives and government. Joe Nhlanhla has also been appointed as a deputy minister charged with the responsibility for intelligence. This is a more powerful position than the portfolio suggests; Nhlanhla will sit in on all cabinet meetings and be responsible for making sure the politicians are briefed. The exclusive nature of the portfolio (which in the past has usually been included in the Justice portfolio) is, those close to the process argue, "very significant" since it provides a direct channel between the agencies and government.

Nhlanhla's appointment may also weaken Deputy-President de Klerk's position in the intelligence loop - de Klerk chairs the cabinet committee on intelligence and so oversees policy matters. Nhlanhla, on the other hand, is more responsible for the day to day operations of the agencies. How the distinction between this function and the broader policy matters will be made is not yet clear; what will occur, for instance, if Nhlanhla and de Klerk disagree? The process so far has been non-conflictual: Nhlanhla moved quickly to reassure de Klerk by emphasising that he will report to cabinet through the cabinet committee.

Given the significance of these changes and the fact that the intelligence agencies were in the forefront of the war to maintain and dismantle apartheid, attempts at restructuring have taken place against a backdrop of increased public and media suspicion of intelligence abuses. The agencies have tried to display a unified face to the public and have adopted a fairly successful and low key campaign to advertise their new presence and structure. Each agency has a directorate of communication responsible for ensuring a positive image for the agency and countering media or public critiques. More broadly the directorate has been tasked to link up with academic bodies and think tanks to ensure a wider scope of information and analysis is channelled through the agencies.

But, the South African intelligence agencies have not been entirely alone in these efforts. Since 1980, intelligence agencies in the United States and Britain have also come under increasing scrutiny, and in some cases under the control of more complex oversight mechanisms. Like elsewhere in the world, the South African intelligence community has attempted to show a friendlier face to the public: intelligence has been discussed on television while prominent members of the intelligence community have granted interviews to the media[52].

The desire to show a friendlier public face is partially aimed at removing excessive suspicion of the activities of the intelligence community. It is also clear though that the degree of openness will have its limits: while the director-generals may appear in public of necessity other staffers and operational

details will remain secret. It is unclear what debates the new policy of openness have generated within the South African intelligence community itself[53]: in Britain some insiders argued that the changes to greater openness were merely the tip of the iceberg which would eventually illuminate more than was necessary for operational effectiveness[54].

But despite the positive media outlook bringing the agencies together has not been unproblematic. Without fail senior intelligence staffers have argued that the consolidation, integration and affirmative action process was going better than any other department. Yet, it is known that there have been disagreements within the agencies about who should be placed in which position and with what rank. And, since both sides kept their intelligence functions intact until the last possible moment in the transition the process of combination according to an onlooker from another department (using the metaphor of colonial change in African countries) is a "flag down, flag up affair". NIA has virtually cleared of NIS personnel from the level of deputy-director general upwards[55]. This suggests that if NIS's technical skills and expertise are to be retained they should at least be closely controlled.

While some of these problems are common to other departments of government, intelligence has been complicated by an additional factor. A central point of tension has been the question of the consolidation of sources. While this would strengthen a new agency's capacity to gather information, the opposing agencies agreed, as the first part of the paper showed, not to declare their sources initially - perhaps with good reason, since doing so might cause a grave political scandal. Each would also have an incentive to implicate falsely key figures on the other side. The new services then, in theory, might have begun with operatives from different backgrounds telling each other what they knew, but not how they came to know it.

Another concern of both intelligence agencies in the early stages of the integration process stems from the fact that many of the new generation of intelligence officers have been trained by agencies overseas. This, it is feared, created greater opportunity for recruitment by foreign powers, potentially compromising the new intelligence function from the outset. All new officers, it was agreed early on in the negotiations, would undergo stringent security evaluations but this could, of course hamper integration and later co-operation. Indications are though that the parties generally started off by accepted the bona fides of the other[56].

<u>An expanding mandate</u>

The debate around the changing role of intelligence in the South African context has been undertaken at the same time as more specific debates around new structures for intelligence in the country. It is important (and worth reemphasising) that the creation of new democratic intelligence structures and the combination of old intelligence functions from opposing sides has

occurred simultaneously and cannot be abstracted from a broader world wide debate as to the changing nature of the intelligence function *per se*.

In line with their overseas counterparts, the changing world order has, South African intelligence insiders argue, considerably changed the nature of threats to national security. Thus, the White Paper on intelligence suggests a more holistic concept of security. Both the old agencies of the apartheid state and the ANC Department of Security and Intelligence are said to have embraced the new concept. This is clear from both the White Paper and the document containing the 'guiding principles' for the new intelligence dispensation.

New thinking in the White Paper has four central elements closely reflecting the earlier proposals of the ANC. First, security as a holistic phenomenon incorporating political, social, economic and environmental issues. Second, security aimed not only at achieving the absence of war but encompassing the pursuit of democracy, sustainable economic development and justice. Third, a regional focus for security "seeking to advance the principles of collective security, non-aggression and peaceful settlement of disputes". Finally, dealing effectively with a greater number of issues, the document argues, "compels questions relating to the vulnerability of society. National security objectives should therefore encompass the basic principles and core values associated with a better quality of life, freedom, social justice, prosperity and development"[57].

The White Paper argues that in "recent years there has been a shift away from a narrow and almost exclusive military-strategic approach to security"[58]. This broader concept of security draws at least partly on the work of British academic Barry Buzan, who recently argued for a broader understanding of the concept of security[59].

Buzan's argument is complex, but basically he suggests that a more integrative view of security is required on both a horizontal and vertical level: "Some sense can be made of individual national and international security, and of military, political, societal, economic and environmental security as ideas in their own right. But a full understanding of each can only be gained if it is related to the others. Attempts to treat security as if it were confined to any single level or any single sector invite serious distortions of understanding"[60].

From the arguments spelt out in the white paper it appears that ANC intelligence officers were influential in its construction. This is not entirely the case. Insiders suggest that both the ANC and NIS intelligence advisors had studied Buzan's book and similar texts and agreed on the new role for an intelligence agency. The book appears as a reference in the document on 'guiding principles' along with other studies which propagate a similar aim. The crux of Buzan's argument is that if national security goals such as these are pursued: "...the logic is to lead irresistibly in the direction of international and common

security, so much so that the two cannot be separated in relation to achievement of security as a policy objective"[61].

The widening scope of the intelligence brief spelt out in the White Paper and the 'guiding principles' is controversial, and two connected strands of opposition can be discerned.

The first points out that South African intelligence agencies have always had a broad mandate: the 1971 Potgieter report on state security spelt out, among other things, that economic, social, educational and psychological aspects should all fall into the scope of security given that threats to national security could emanate from these areas[62]. The operation of the Joint Management System during the 1980s was also an attempt to provide a broader solution to the security problematic.

Thus, some opponents suggest, the new intelligence principles are simply new wine in an old bottle. Connected to this is a fear that the scope of intelligence activity could become too wide: any issues perceived to be threatening to the state would be allowed to fall into the ambit of intelligence activities.

The National Security Intelligence Act states that the functions of the NIA will be to "identify any threat or potential threat to the security of the Republic or its people". This is in line with the broad concept of security. But, no attempt has been made to delineate more tightly which areas should be of concern to intelligence agencies.

In contrast Canada, in particular, has sought to provide a more specific definition of what national security should mean to intelligence agencies. The Canadian Security Intelligence Act provides a statutory definition of what constitutes threats to the national security of Canada. They include among other things, "espionage or sabotage that is against Canada or detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage", and "activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political objective within Canada or a foreign state". The Australian Secret Intelligence Act also provides fairly specific definitions of what is considered "subversive". An interesting inclusion in the Canadian Act is a proviso that the focus of intelligence activity *would not include lawful advocacy, protest or dissent* unless undertaken in conjunction with espionage or sabotage activities[63].

Of course, legalistic definitions like these retain the scope for generous interpretation. What of those attempting to overthrow the Canadian state? Surely no agency will wait for violent objectives to be implemented but will investigate groups who appear to be likely to follow such objectives.

These debates around a widening mandate for the South African intelligence community have crystallised of late into some muted opposition to the monitoring by the intelligence community of the

Reconstruction and Development Programme[64]. The broadened scope of the South African intelligence community's mandate has been read by some as an attempt to "police" wider issues of economic and social development as a monitoring agency for the RDP. While sources close to the agencies argue that this is a misinterpretation, the white paper contains explicit reference to the RDP: "...the new approach to security holds that the Reconstruction and Development Programme, as an organised and collective effort of our society led by the Government of National Unity, is integral to and forms the core of the country's emerging security doctrine"[65]. In short, the argument is that the RDP aims to develop South Africa's human resources, build the economy, and contribute to a democratisation at all levels of society. And, since these factors are essential for peace and national security the role of the intelligence community will be to secure this process through an integrated understanding of the concept of security.

This approach may be problematic on three levels. The first is the broad ranging definition that the RDP itself encompasses: almost every aspect of society from resolving crime, increasing imports and health policy are covered by the document. This, in turn, implies that all these activities and any potential forces who may disrupt them will be subject to the scrutiny of the intelligence community. Thus, by arguing that the intelligence community will focus on the RDP widens rather than narrows the mandate of their operations.

Second, no clear distinction appears to have been made between government policy and the security of the state. In theory, in a democratic society the intelligence community should preserve the security of the state and not the policy of any government. Since the RDP is government policy should it not be outside the concern of the intelligence agencies? Also, to argue for oversight of the development process may be to misunderstand the nature of development: by definition development usually occurs by favouring one group over another simply because of the scarcity of resources. This process is bound to give rise to legitimate protest which rather than undermine the RDP serves to warn political leaders about which areas or constituencies are being neglected.

There are however three possible rebuttals which could be made to such arguments. First, since the Government of National Unity (GNU) is representative of all parties, it implies that the linkage between government and state is closer than it would usually be, thereby justifying a defence of policy. Second, since the success of the GNU is essential to the future of South Africa its policies should be secured. Third, the role of intelligence agencies would in any event be to act as a warning mechanism which could preempt protest - and prevent disruption - by forewarning government officials.

But these arguments though may be misconceived on a number of levels. It is not at all clear that if the RDP fails that the state will be threatened - such a conclusion relies on a

subjective value judgement. As it is, given the complexities of the political environment and their linkages to the policy process, it is by no means evident what will be "good" for the RDP and what will be "bad". Rather, the success of government should be measured by its achievements and failures - this is by nature a political process and not one which should involve intelligence officers.

And surely, information relating to an assessment of the progress of development initiatives could be collected and published quite openly. If this is so, why should the process involve the intelligence community? Couldn't every government department assess the progress, challenges and dangers to its own RDP programmes? This is not of course to argue that covert threats to the RDP or to the state should not fall within the ambit of the intelligence agencies. A reading of the white paper though suggests that the intelligence community does not see itself as being confined to this role[66].

If anything the consolidating intelligence community appears to be backing away from its commitment to the broad mandate: the media spokesman has taken the blame upon himself for raising the question of the RDP which resulted in some critical press coverage. And, Joe Nhlanhla on his new appointment stressed that the new intelligence agencies "would not spy on South Africans"[67]. Some evidence remains though that the mandate will not be contracted, rather its advertisement will be more carefully handled. Shaik, in a presentation to a parliamentary committee, also sought to limit the role by arguing that only those who undermined the RDP or created conditions which made the implementation of development difficult would be targeted. What was not clear from the presentation was the distinction between protest and activities that threatened to undermine the RDP. The communication directorate of NIA has also stressed that the spy masters do not want create a public debate about the role of the agencies in the RDP or in wider issues since it could snowball. While a conference was held earlier in the year with the RDP office, neither department have seemed willing to go into any detail as to its conclusions.

<u>Oversight</u>

Throughout the negotiations it seemed as if a more accountable agency remained possible because this might be in the ANC's interest. At least in the short to medium term, NIS had the resources to maintain a grip on the running of the profession. Goldstone Commission evidence that DMI officers had been engaged in partisan activity during the transition was also said to have reinforced the ANC's belief that better monitoring was needed. Continued secrecy would also heighten fears among particularly ANC politicians that intelligence officers might continue to pursue their own agendas, even after the agencies merged. If the ANC housed people who shared NIS's enthusiasm for secrecy it also housed many whose experiences as activists had left them deeply suspicious of secret intelligent work. Thus, when Louw appeared before the parliamentary committee in June 1994, ANC MP Philip

Dexter commented that "greater transparency" would mean that "many of us wouldn't be so hostile to the idea of you getting any money at all"[68]. This suggested that the intelligence community might need greater openness to counter political resistance.

While the mandate for the operation of the South African intelligence agencies remains fairly broad, the proposed legislation and agreements provides for some form of oversight and control. Primary among these is establishing a monitoring mechanism for intelligence activities through the appointment by the President of Inspector-Generals to each of the agencies. Inspector Generals will have access to intelligence information or premises under the control of the service to which they are appointed. They will monitor and review the various services and report to the relevant ministers.

And, the appointment of a parliamentary committee to oversee the intelligence community also has important consequences. Appointment to the committee will be restricted: its members are to be picked by the President in proportion to party support, in consultation with parties and with the concurrence of the speaker. This is unlike other committees where parties choose their delegates.

The functions of the committee, among others, will be to examine the audit report regarding the accounts and financial statements of the agencies, obtain a report from the Evaluation Committee of the services considering any comments and recommendations contained within, to review legislation relating to intelligence and to order investigations as a result of public complaints.

As it stand now the functions it is not entirely clear how the oversight mechanism will function in practice[69]. For instance, its success may depend on whether it has a proactive or reactive function. Whether, for example, the oversight structures should hear general appeals against the intelligence structures or carry out a broader process of review. Some evidence suggests that if both functions are combined the oversight mechanism could become bogged down in hearing complaints and not providing an overall system of review. The South African case seems to have split the two functions: public complaints are routed through the parliamentary committee although investigations can be given to the Inspector-General to carry out. The actual process of review of the day to day operations of the Agency and Service appear to lie with the Inspector-General while the broader process of oversight and review of relevant legislation with the parliamentary committee.

The broadness with which the oversight mechanism interprets its mandate (as well as the resources it will have at its disposal) will be crucial. If simply requesting information from the intelligence community on specific items and then obtaining an 'official' response which is published through the oversight mechanism the latter could simply become a conduit for information that the intelligence community wants revealed. The South African Acts make provision for both requests for

information as well as an investigative capacity - in effect the mandate of the oversight mechanism is open to fairly wide interpretation.

Finally, another important and related question is where the oversight mechanism starts and stops? This needs to be clearly defined in the oversight mandate. Is a process of review of continuing operations possible, or, only once operations have been finished and 'the files closed'? In the latter case this would make the oversight mechanism merely the "historians of the intelligence community". And, since intelligence often functions on the principle that knowledge held today may be useful tomorrow, intelligence files may never be closed or will be closed only on the discretion of the intelligence community itself. Alternatively, a mandate can be spelt out which argues that intervention is required when public concern arises - while this is an advance it has the notable limitations of making the oversight mechanism purely reactive to events that have already occurred. It would appear from the South African legislation that the process of oversight would be continuous. This applies more to the office of the Inspector-General than it does to the parliamentary committee. Although the committee does have full access to the documents of the intelligence agencies and can "deliberate upon, hold hearings, subpoena witnesses and make recommendations" the relationship with the agencies will in all likelihood be more distant and less continuous than that of the Inspector-General. The Inspector-General will need to act as a crucial intermediary between the parliamentary committee and the intelligence community flagging issues of concern. The integrity and independence of the Inspector-General as well as her/his relationship to both parliamentary committee and the intelligence agencies will be crucial to the effective functioning of the system.

CONCLUSION

The role of intelligence actors in the maintenance of apartheid goes without question. Yet, less work has been done on the changing role of South Africa's intelligence community since 1990. This is a crucial gap in the literature on the South African transition. Even more so since many of the processes that shaped the involvement of intelligence actors in the negotiations have been central in determining the shape and function of the post-apartheid South African intelligence community.

On the government side negotiations allowed the rise to prominence of NIS - as both an arm of negotiations and the strategiser behind it. This was the beginning of the process - continued in post-settlement South Africa - where the demise of military and police intelligence began. Both have been reconfined (after a period in which their names have been blackened by their activities in the dying days of white rule) to more specific roles. The civilian intelligence components now form the central players in the intelligence community.

This is a result not only of their influential process in shaping the negotiations but also in a widening brief. The latter is at least in part a reflection of a broader debate about the future of intelligence agencies in the new world order. While more publicly attached to ANC analysts such an approach appeared to find some agreement within the senior ranks of NIS. These debates shaped much of the earlier process of negotiations around the future of intelligence in South Africa concluding with agreement around a set of principles for intelligence and a code of conduct for its operatives.

More crucially the debate was to be reflected in the white paper on intelligence which spelt out publicly for the first time the new role that the spies envisaged for themselves. And importantly, it is hoped to include the wider brief in the new constitution. The result is both positive and disturbing. Positive, in demonstrating intelligence agencies eager to show that they are as much part of rebuilding the society as they were in fighting over who should control it. Disturbing, in allowing the growth of the intelligence mandate to cover a wider (and potentially expanding) range of activities.

While the broad mandate is contained to some degree by processes of oversight - more comprehensive than anything in South Africa's history - it is too early to determine just how successful they will be in fulfilling their brief. But the actions of intelligence operatives are constrained to the degree that the expanding mandate only applies to the civilian agencies who have no power to act on intelligence received but simply pass it through a co-ordinating network to the politicians. The police and military intelligence functionaries have been confined to more specific roles although they too, at least theoretically, are not excluded from the broadened concept of security.

This contains some potential for overlap and competition between the four agencies. The military, NIA and SASS in southern Africa, police intelligence and the NIA at home. Given these possible areas of competition the role played by NICOC in processing and delivering strategic intelligence to the political players will be crucial. How powerful this connection will be has yet to be demonstrated. Current indications are, however, given a number of recent appointments that the intelligence chiefs have the ear of government and will be fairly influential. How this relationship in particular develops should be a crucial aspect of study for those examining new South African security relationships.

But, the process of consolidation of the intelligence agencies has been far more difficult than the agencies themselves admit. This is in part a reflection of their late start due to the need for each side to retain its intelligence arm until the end, and more practical problems relating to sources and staffing. Despite these factors it is significant that new agencies were formed from the old: those who sought to maintain apartheid - with notable changes in the leadership echelons - will continue their defence of the new government.

Ultimately, however, the role of the new intelligence agencies would depend on the political order which is currently emerging. Intelligence communities are far more creatures of political circumstances than armies or police forces. If the parties to a government of national unity find ways of co-operating, so too will their intelligence operatives. If they do not, intelligence may again become a weapon in the hands of competing parties. If stability and democracy are consolidated, the agencies seem likely to play a similar role to that of their counterparts in established democracies. If democracy and stability remain some way off, the agencies and the intelligence community more generally could become the vehicle for covert operations against new - or in some cases, the same - enemies.

ENDNOTES

1. Goldstone Commission, Interim Report on Criminal Political Violence by Elements within the SAP, the KZP and the IFP, 18 March 1994.

2. See Mark Swilling and Mark Phillips, 'The Powers of the Thunderbird - Decision-Making Structures and Policy Making Strategies in the South African State', South Africa at the End of the Eighties, Centre for Policy Studies, Graduate School of Business Administration, University of the Witwatersrand, Johannesburg, 1989; Annette Seegers, 'South Africa's National Security Management System, 1972-1990', Journal of Modern African Studies, 29 (2), 1991; Jackie Cock and Laurie Nathan (eds), War and Society: the militarisation of South Africa, David Phillip, Cape Town, 1989; and, Philip Frankel, Pretoria's Praetorians: civil-military relations in South Africa, Cambridge University Press, Cambridge, 1984.

3. There have been some exceptions. See Gordon Winter, Inside BOSS - South Africa's Secret Police, Penguin, London, 1981. For a more recent account of police hit squad and intelligence activities in the 1980s, see Jaques Pauw, In the Heart of the Whore - The story of Apartheid's Death Squads, Southern, Johannesburg, 1991. But, unlike in Britain, the United States and elsewhere, there are no complete academic studies of the South African intelligence community. For a comprehensive overview of changing intelligence policy in South Africa, see Johan Christiaan Kriek van der Merwe, 'Die Staatsveiligheidraad: Die ontwikkeling van a stelsel vir veiligheid in die Republiek van Suid-Afrika, 1972-1989', Doctor Litterarum et Philosophiae, University of South Africa, November 1990.

4. In terms of the Protection of Information Act, No 84 of 1982.

5. This paper is based largely on interviews with persons who declined to be identified. Information from these interviews is therefore not sourced.

6. Recently, for example, NIS established a directorate of communication to deal with media and public enquiries.

7. There is a growing literature centered around the difficulties of studying intelligence and related issues. See, for example, R Lowry, 'Towards a sociology of secrecy and security systems', Social Problems, 19(4), Spring 1972; I de Sola Pool, 'Approaches to intelligence and social science', in R L Pfaltzgraff (ed), Intelligence Policy and National Security, Basingstoke, MacMillan, 1981; and, J Michael, The Politics of Secrecy, Harmondsworth, Penguin, 1982.

8. It is extremely difficult, for obvious reasons, to get correct answers from NIS officials as to how large their organisation is. This figure is generally accepted although some estimates are as high as 5000.

9. J Roherty, State Security in South Africa, Sharpe Inc, New York, 1992, p. 76.

10. Indeed, NIS has gone out of its way to avoid poor publicity. In at least one instance police intelligence allegedly tried to implicate NIS in the delivery of ESKOM arms to Inkatha by leaking the number plate of an NIS truck, which had supposedly collected the weapons, to the press. The allegations were investigated by the Goldstone Commission and no evidence of collusion found. See Goldstone Commission, Report on the Preliminary Inquiry into the Attempted Purchase of Firearms by the KwaZulu Government from ESKOM, 22 April 1994.

11. Roherty, op. cit., p. 76.

12. See Mark Shaw, 'Biting the bullet - Negotiating democracy's defence', Steven Friedman and Doreen Atkinson (eds), South African Review 7 - The Small Miracle, Johannesburg, Ravan, 1994.

13. Strictly speaking, the Department of Foreign Affairs also has an intelligence capacity. This is said to operate only in the collection of overt information. See a secret review of these activities, W P Steenkamp, Die RSA Inligtingsgemeenskap en die Departement van Buitelandse Sake, Pretoria, April 1987.

14. Indeed, in reaction to allegations that the military controlled the system, figures released in 1984 claimed that 56% of the State Security Council's secretariat were made up of NIS personnel. See Kenneth Grundy, The Militarisation of South African Society, Oxford, Oxford University Press, 1986, p. 53.

15. There is evidence that old habits died hard and that DMI were involved beyond their brief after their role increasingly became more restricted.

16. See Gavin Cawthra, Policing South Africa - The SAP and the transition from apartheid, London, Zed, 1993, pp. 131-153.

17. The 'splintering of power' thesis is to be found in Mike Morris and Doug Hindson, 'South Africa: Political Violence and Reconstruction', Review of African Political Economy, 53, 1992.

18. Sunday Times, 01/10/89

19. Laurie Nathan and Mark Phillips, '"Cross-currents": Security developments under KW de Klerk', in Glenn Moss and Ingrid Obery (eds), South African Review 6: From 'Red Friday' to Codesa, Ravan Press, Johannesburg, 1992.

20. See Allister Sparks, Tomorrow is Another Country - The Inside Story of South Africa's Negotiated Revolution, Johannesburg, Struik, 1994, pp. 109-112.

21. Barnard attended some of the meetings with Nelson Mandela in prison. Mandela admitted to being "disturbed" by the presence of a representative of the intelligence community since "it made the talks more problematic and suggested a wider agenda". Nelson Mandela, Long Walk to Freedom, Johannesburg, Macdonald Purnell, 1994, p. 522.

22. This is by no means the first time where intelligence agencies have been involved in secret negotiations. The British in Northern Ireland, the French in Algeria and the

Rhodesian government all used secret channels to sound out 'the enemy'. See James Adams, The New Spies - Exploring the frontiers of espionage, London, Hutchinson, 1994; Alistair Horne, A Savage War of Peace, Algeria 1954-1962, London, MacMillan, 1987; and, Ken Flower, Serving Secretly - Rhodesia's CIO Chief on Record, Johannesburg, Galago, 1987.

23. Ex-NIS staffers often emphasise the role the agency played in negotiations as though full majority rule was a foreseen consequence from the beginning. It is not clear that this was the case at all - while NIS may have initiated the first contacts and helped plan negotiation strategy, early negotiations suggested that the National Party government (and in all likelihood its intelligence arm) remained wedded to the concept of group rights.

24. See Sparks, op. cit., p. 109.

25. Both sides were extremely sensitive about the location where this meeting occurred, saying only that it was "somewhere in Europe". The truth only became known in late 1994.

26. This has been confirmed by Sparks op. cit. who argued that NIS had persuaded Botha to allow them to initiate a meeting with the ANC outside the country.

27. See Shaw, op. cit.

28. The literature on the debate is large and growing, see for example, Abram N Shulsky and Gary J Schmitt, 'The Future of Intelligence', The National Interest, November/December 1994; George A Carver, 'Intelligence in the Age of Glasnost', Foreign Affairs, Summer 1990; and, A S Farson, eta al, (eds) Security and Intelligence in a Changing World, London, Frank Cass, 1991.

29. For a comparison of the two approaches, see Ken Robertson, 'Intelligence and the New World disorder', paper presented at the Annual Conference of the British International Studies Association, University of York, 19-21 December 1994.

30. Adams, op. cit, p. xvii.

31. For a discussion on intelligence mandates, see Peter Gill, Policing Politics - Security Intelligence and the Liberal Democractic State, London, Frank Cass, 1994.

32. Tsepe Mtumi, 'Umkonto Wesizwe: Structure, training and force levels', African Defence Review, 18, August 1994.

33. See Ronnie Kasrils, 'Armed and Dangerous' - My undercover struggle against apartheid, London, Heinemann, 1993. The claim is made with some justification - ANC sources within the SADF, for instance, passed on news of DMI's support for Renamo in Mozambique.

34. For more general accounts, see H H Ransom, 'Being intelligent about secret intelligence agencies', American Political Science Review, 74 (1), March, 1980 and Christopher Andrew, The Missing Dimension: Governments and intelligence communities in the twentieth century, Urbana, University of Illinios Press, 1984. For accounts which concentrate on the influence of specific intelligence agencies, see for example, Christopher Andrew, Secret Service - The making of the British Intelligence Community, London, Heinemann, 1985 and Ian Black and Benny Morris, Israel's Secret Wars - A History of Israel's Intelligence Services, Warner, London, 1988. For a less complimentary account see, John A Gentry, Lost promise: How CIA analysis misserves the nation: an intelligence assessment, University Press of America, 1993.

35. African National Congress, Ready to Govern, 1992.

36. Roger Southall, 'Restructuring intelligence for post-apartheid South Africa', conference paper, 19 August 1992.

37. The constitution also stipulates that provinces will not have their own intelligence agencies, a standard provision in a federal as well as a unitary system.

38. This had different results in different countries: the Poles are said to "simply have changed the name on the door", many East German intelligence officers have been incorporated into the unified German intelligence service, while Romania has retained many of its intelligence operatives from the old order. The exceptions are Estonia and Czechoslovakia who have built their new agencies from scratch. An example closer to home confirms the general rule: Ken Flower, head of Rhodesia's Central Intelligence Organisation, remained head of intelligence under the Mugabe government. See Adams, op. cit. and Dennis Deletant,

'The Securitate and the Police State in Romania, 1964-1989', Intelligence and National Security, 9 (1), January 1994.

39. Mo Shaik, 'Panel: Policy formation', in Anthony Minnaar, Ian Liebenberg and Charl Schutte, The Hidden hand: Covert Operations in South Africa, HSRC, Pretoria, 1993.

40. Laurie Nathan, 'Revisting security', in Minnaar et al, op. cit.

41. Sunday Times, 23/01/94.

42. Members were Shaik (SACP); Alfred Nzo (ANC); Gert Rothman (South African government and NIS); Fanus Schoeman (NP); Lluwelleyn Landers (then Labour Party, later an ANC MP); WM Ndzwayiba (Transkei); Bob Rogers (DP); and, MW Mokoena (Lebowa).

43. NIS is said to have arrived with position papers on a number of subjects relating to the integration of the agencies. The ANC objected arguing that both parties should put formal proposals on the table.

44. Business Day, 28/06/94.

45. Shaik, 'Panel:Policy formation', in Minnaar op. cit.

46. There is a fairly large literature around the relationship between intelligence and policy making. See, for example, L K Gardiner, 'Squaring the Circle: Dealing with Intelligence Policy Breakdowns', Intelligence and National Security, 6(1), January 1991.

47. Business Day, 28/06/95.

48. Weekly Mail and Guardian, 24-30/06/94.

49. NIS and the other agencies were officially disbanded on 31 December 1994.

50. This is a fairly surprising feature in itself. Neither the question of the broader mandate nor the need for two agencies seemed to have been questioned much in parliament.

Intelligence spokespeople have suggested that parliamentarians congratulated the agencies on getting their act together so quickly as opposed to other components of the security hierarchy like the police.

51. Louw initially worked for DMI (1964-69), joined BOSS and then rose through the ranks of NIS. Sigxashe holds a PhD in political economy, was a lecturer at the University of Dar Es Salaam before joining ANC military intelligence rising to the senior ranks of DIS. Significantly, he is said to have acted as a stand in for Louw in his absence during 1994 implying that he was being groomed for the post.

52. Both Barnard and Louw granted interviews in late 1993 and 1994. Sparks, for one, relied heavily on their accounts of the negotiations process. Reservations clearly remain though: arrangements for a TV debate in late 1994 fell through after Louw withdrew to be replaced by academics with 'intelligence expertise'. Shaik, while probably the most accessible has also shied away from the lime light. Generally, the exposure of the agencies in the media has been carefully managed to reflect positively on the intelligence transition. See, for example, Financial Mail, 24/02/95.

53. Evidence that is available suggest that greater openess was generally regarded with suspicion. At an internal meeting in NIA, for example, it was suggested by a senior official that a list of intelligence priorities should be made public. This was refused.

54. Adams, op. cit., pp. 88-113.

55. Apart from Louw holding the senior position in SASS, only one other NIS official George Grewar holds a senior function, and he is deputy director-general of support services for NIA. The rest are either former ANC officers or homeland security chiefs.

56. Suspicion that foreign moles are working in an intelligence structure, resulting in endless witch hunts and finger pointing, can be as destructive as the activities of the moles themselves. See Tom Mangold, Cold Warrior - James Jesus Angleton: the CIA's master spy hunter, London, Simon and Schuster, 1991.

57. White Paper on Intelligence, October 1994, (pages unnumbered).

58. White Paper on Intelligence, October 1994.

59. Barry Buzan, People, States and Fear - An Agenda for International security Studies in the Post-Cold War Era, Harvester Wheatsheaf, London, 1991.

60. Ibid., p. 363.

61. Ibid., p. 371.

62. Report of the Commission of Inquiry into matters relating to the Security of the State, (Potgieter Commission), 1971.

63. Canadian Security Intelligence Service Act, 1984. See also, Peter Gill, op. cit., pp. 116-122.

64. Weekly Mail and Guardian, 1-7/10/94.

65. White Paper on Intelligence, October 1994.

66. These arguments are drawn from Mark Shaw, 'The Intelligence White paper - Spooks in the new South Africa', Indicator SA, Vol 12, No 1, Summer 1994.

67. Sunday Tribune, 26/02/95.

68. Business Day, 28/06/95.

69. For a discussion of an oversight mechanism in practice, see Peter Gill, 'Symbolic or Real? The impact of the Canadian Security Intelligence Review Committee, 1984-1988', Intelligence and National Security, 4 (3), July 1989.