AN ANALYSIS OF THE RATIONALE FOR DOMESTIC CIVILIAN INTELLIGENCE SERVICES: SELECTED CASE STUDIES

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by

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To the Creator for making things possible

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Dedications

Dedicated to my three daughters, Tokologo, Kgothatso and Dineo whose presence in my life served as a motivation to persevere

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CHAPTER ONE

INTRODUCTION

1. IDENTIFICATION OF THE RESEARCH THEME

The focus of domestic civilian intelligence as a component of national security policy formulation has been subjected to change as a consequence of the end of the Cold War. According to Strange (1994: 45) security is the most basic of basic human needs. Any development in security is bound to significantly influence human life. As a result of the end of the ideological rivalry between the United States (US) and the former Soviet Union, national security has shifted from predominantly external and military threats to include domestic and non-military threats. In this regard, Buzan (1991: 116) for instance, identified five major sources of threats to national security, namely, military, political, societal, economical and ecological. However, from a Western perspective, he still primarily views threats to national security as external in origin.

Ayoob (1995) acknowledges that as a result of the end of the Cold War, interstate wars have significantly receded. He indentified state weakness, underdevelopment and poverty as major sources of threats in Third World countries. Job (1992) employs the notion of the 'insecurity dilemma' to describe the existence of various forces competing for security in a single territory. Such conditions make developing countries vulnerable to both internal and external manipulation. From a Third World perspective, national security primarily refers to internal rather than external threats.

Burgess (2008: 60) adds that at the core of non-military threats, a people-centered notion of security has taken root at global level. Individual security as largely informed by the United Nations Development Programme (1994) does not only ensure the rights and dignity of the individual but contributes to securing national, regional and international security. A 'basket' consisting of health, economic, food, environmental, personal, community and political securities best characterizes individual security. Eriksson and Noreen (2002) examine the long

term effects of non-military threats and insist that they should be elevated to priority status in security policies.

The ramifications of defining national security in accordance with contemporary views and developments are significant. The same applies to the focus of intelligence in the post-Cold War period. The US, for example, has been lacking in clarity regarding the focus of its intelligence following the end of the Cold War up to 2001. However, the 9/11 terror attacks forced it to redefine its intelligence focus and targets. The US intelligence community has prioritized its focus on the proliferation of weapons of mass destruction (WMD), narcotics, economics, organised crime, terrorism, health and environmental issues, information operations and battlefield awareness. Non-military and internal threats to national security, especially narcotics, economics, health and environmental issues have spilt over into the domestic arena, creating an overlap between crime intelligence and domestic civilian intelligence in the US (Lowenthal, 2006: 182-188). Jackson (2009: 7) states that this has led to issues involving the breakdown of information sharing and mistrust, and therefore compromised co-ordination. As a result, duplication, inefficiency and turf wars have become common. In the US, this has also resulted in the creation of the Department of Homeland Security, which still fails to sufficiently address problems created by the domestic/foreign intelligence divide (Masse, 2003: 3).

Despite the demise of the Soviet Union and Irish Republican Army (IRA) terror threats, the United Kingdom (UK) has, for instance retained its domestic civilian intelligence service. Treverton (2008: 7), however, asserts that the disadvantages linked to it such as the violation of human rights and privacy, can further undermine national security. Cepik and Attunes (2003: 355) indentify common problems related to domestic civilian intelligence such as the illegal interception of telephone conversations of government officials and the unlawful manipulation of elections in the interest of incumbent governments or certain political formations.

In view of the above, there is a clear risk that the functions of a separate domestic civilian intelligence agency may overlap with crime intelligence, which is the competence of the police. Domestic civilian intelligence also often becomes involved in the line functions of other civilian government departments whose areas of activity are directly connected to basic service delivery. Moreover, these agencies often become embroiled in the domestic politics of their countries and

therefore serve as platforms for infringements of the democratic fabric of states. The question therefore is to what extent domestic civilian intelligence agencies have a role to fulfill regarding national security.

2. STUDY OBJECTIVES

The main objective of this study is to determine the rationale for the continued existence of separate domestic civilian intelligence agencies and the rationale for the creation of domestic civilian intelligence agencies in countries where they did not exist until relatively recently.

The study will aim at achieving the following specific objectives, namely to:

- analyse the concept of national security within the contemporary context in both developed and developing countries;
- analyse the mandate and role of domestic civilian intelligence services of two countries, namely, South Africa in the context of developing countries and the United Kingdom (UK) representing developed countries; and
- assess possible risks and threats to the constitutional democratic order in countries where domestic civilian intelligence services exist.

3. LITERATURE SURVEY

The concept of national security in its Cold War and post-Cold War context has been widely addressed in the literature. According to Buzan (1991), military invasion or attacks, sabotage, terrorism and treason still occupy their primacy as traditional threats to national security. He also indentified new non-military and domestic threats which are more prevalent in the Third World. As far as the First World is concerned, Buzan (1991) sees threats to national security to be primarily external in origin. As far as the Third World is concerned, Ayoob (1995: 15) cites ethnicity, lack of internal cohesion and legitimacy, discernible economic disparities and differing organizing ideologies coupled with intrastate conflicts as factors affecting national security. Job (1992) explores the magnitude of security changes in the post-Cold War era and asserts that the First World looks relatively more secure. He uses the concept of the 'insecurity dilemma' to

describe the existence of various forces competing for security in a single territory in Third World countries. Lack of institutional capacity to deliver basic services and the inability to maintain order and stability have also been identified as contributing to insecurity. This suggests vulnerability to both internal and external manipulation as a condition characterizing security in the Third World countries. Therefore threats to national security in the Third World are largely internal rather than external in nature.

The concept of strategic intelligence has been widely covered. Shulsky and Schmitt (2002) are among the leading authors on the general practice of state-sponsored intelligence. Although the focus of domestic intelligence is clearly delineated, they also identified the problematic nature of the crime intelligence/domestic civilian intelligence divide as a consequence of transnational threats such as international terrorism, narcotics and organised crime. Lowenthal (2006) examines the magnitude of the impact of the post-Cold War changes on intelligence in general. In addition to traditional threats to security, the new non-military threats are succinctly described. Domestic civilian intelligence in the US is only, however, discussed in the context of counterintelligence. Godson (1995) explores various dimensions, elements and forms of intelligence as they are employed for purposes of national security both within geographical confines of states and abroad. He, however, fails to establish a clear division of roles between foreign and domestic civilian intelligence, as well as other state intelligence agencies.

Coverage on the specific concept of domestic civilian intelligence is largely absent because most of the literature on intelligence has its origin in the US, which does not have a domestic civilian intelligence agency. Although some sections in both Godson (1995), and Shulsky and Schmitt (2002) touch on elements of intelligence falling within the specific ambit of domestic civilian intelligence, domestic civilian intelligence is not embroided on.

South Africa's National Strategic Intelligence Act (No 39 of 1994) provides a description of the concept of domestic civilian intelligence. It defines it as the "gathering, correlating, evaluating and analyzing of intelligence on any activity, factor, or development, which is detrimental to the national stability of the Republic, as well as threats and potential threats to the constitutional order of the Republic and the safety and well-being of its people". Schreier (2009: 216) summarizes the theory of domestic civilian intelligence as predominantly covert activities or

statecraft undertaken by secret state entities within the territorial confines of the state. All activities primarily involving counterintelligence as well as collected and analysed information, assist policy-makers to advance critical national interests with specific emphasis on internal threats.

As far as domestic civilian intelligence in the UK is concerned, the Center for Democracy and Technology (2003: 7) sees the mandate of MI5 as primarily revolving around traditional target areas of sabotage, terrorism and subversion within the territorial confines of the UK, despite the absence of the Soviet and IRA threats. Chalk and Roseanau (2004: 7) highlight the widened mandate of domestic civilian intelligence according to the Security Services Act (c 35 of 1996). It has become the statutory duty of the Security Service (MI5) to deal with organised crime despite the existence of the Metropolitan Police (Scotland Yard) and the Serious Organised Crime Agency (SOCA), amongst others, which are considered to consist of some of the best investigative services in the world. Burch (2007) raises concern about the self-tasking nature of the UK's domestic intelligence with regard to operations even though executive oversight exists. Gregory (2005: 2) explores problems arising from the joint mandate which MI5 shares with the police. This was viewed as contributing to intelligence failures that resulted in the terrorist attacks in the UK and the Bali bombings of 2002 in Indonesia, for instance.

With regard to domestic intelligence in South Africa, Cave (2002) considers organised crime to be integral to threats to national security, and also requiring the attention of domestic civilian intelligence. Bernhardt (2006) identified the problematic character of the mandate of domestic civilian intelligence emanating from the National Strategic Intelligence Act (No 39 of 1994), which covers a wide area. He formulated a security threat and risk analysis framework in an attempt to partly mitigate problems related to the broad mandate of domestic civilian intelligence in South Africa. Hutton (2008) highlighted the magnitude of the mandate of domestic civilian intelligence in South Africa regarding domestic political intelligence. It included warding off instability arising from transformation, inter-party and intra-party competition.

South Africa's Ministerial Review Commission on Intelligence (RSA, 2008: 132) indicates that the mandate of South Africa's domestic civilian intelligence agency contains problems of overreach, duplication, lack of specificity in terms of focus, politicization and inconsistency

regarding interpretation and prioritization. Nathan (2009) examines and concludes that the risk exists that intelligence services in South Africa may easily interpret and define domestic civilian intelligence in a manner so expansive as to cover the mandate of almost every state department.

From the literature survey, it is evident that as far as the contemporary concept of national security is concerned, domestic civilian intelligence has become a problematic concept. The concept of national security as espoused in Buzan (1991), Job (1992) and Ayoob (1995) is wide and broad. It has influenced intelligence and more specifically the mandate of domestic civilian intelligence to a degree that it overlaps with the line functions of other state departments. The existing literature does not sufficiently address the rationale for the existence of domestic civilian intelligence agencies in the post-Cold War period, especially within the context of an often overly broad concept of national security. Within this context, this study will aim at assessing the justification for domestic civilian intelligence agencies, with specific reference to South Africa and the UK as respectively representative of a Third World country and a more developed country.

4. FORMULATION AND DERMACATION OF THE RESEARCH PROBLEM

The main research question to be addressed is whether domestic civilian intelligence services are the appropriate organs of state to deal with non-military and internal threats in the absence of major domestic threats such as wide-spread insurgency. Specific secondary research questions to be addressed are as follows:

- To what extent does the establishment and retention of a separate domestic civilian intelligence service in South Africa and in the UK seem justified? This is specifically problematic due to the reduction of the terrorist threat in both countries.
- What are the main risks and threats linked to the existence of domestic civilian intelligence agencies? In South Africa, issues such as unauthorized surveillance by the domestic civilian intelligence agency have, for instance, created problems.

Following from the research problem, the study will be based on the following assumptions:

- In the absence of wide-spread violence such as an insurgency, the role of domestic civilian intelligence has become questionable.
- Separate domestic civilian intelligence services have exacerbated problems of overlap with other government security departments and government civilian departments in the absence of wide-spread violence such as an insurgency.
- Separate domestic civilian intelligence services, through the widened definition of threats, have increased the risk of unwarranted infringements of basic human rights in the absence of wide-spread violence such as an insurgency.

The study will primarily focus on the post-Cold War period up to the end of 2008 as the mandate and focus of intelligence changed significantly after the end of the Cold War.

5. RESEARCH METHODOLOGY

The study will make use of description as well as analysis. As far as the theoretical framework is concerned, the concept of national security in developing and developed countries will be discussed. The broadened post-Cold War views on national security will be examined and how this specifically impacted on the role and mandate of domestic civilian intelligence. In South Africa specifically, the domestic civilian intelligence agency has become embroiled in controversy. The two case studies that have been selected, namely, South Africa and the UK, were chosen as the first represents developing countries and the second developed countries.

Both primary and secondary sources will be used in the study. South Africa's White Paper on Intelligence of 1994 and the National Strategic Intelligence Act (No 39 of 1994), as well as the UK's Security Services Act (c 5 of 1989), the National Intelligence Machinery Booklet (2001) and the National Security Strategy of the United Kingdom (2008) are included in the primary sources. As far as secondary sources are concerned, the discussion of the concept of national security in its post-Cold War context and national security in developing countries specifically, will draw amongst others, on the works of Buzan (1991), Job (1992) and Ayoob (1995). As far as intelligence is concerned, use will be made of Godson (1995), Shulsky and Schmitt (2002)

and Lowenthal (2006). Cave (2002) and Bernhardt (2006) will also be used as their works deal largely with domestic intelligence practice, especially in South Africa.

6. STRUCTURE OF THE RESEARCH

CHAPTER 1: Introduction

The Introduction will outline the objectives and research problems as well as the methodology and assumptions of the study.

CHAPTER 2: National security and intelligence: A conceptual framework

This chapter will deal with the concepts of national security and intelligence with specific reference to the link between intelligence and national security. A distinction will be made with regard to the approach to national security during the Cold War and in the post-Cold War era as well as the different manifestations of national security in developed and developing countries.

CHAPTER 3: The mandate and focus of the components of the intelligence community

The third chapter will distinguish between foreign civilian intelligence, domestic civilian intelligence, crime intelligence and military intelligence with regard to their mandates and focus, especially in the post-Cold War period. In essence, this determines the degree to which domestic intelligence has overlapped with areas belonging to crime intelligence and other organs of the state.

CHAPTER 4: An analysis of domestic civilian intelligence in South Africa

The mandate and focus of the National Intelligence Agency (NIA) in South Africa will be discussed in this chapter. The rationale that led to the creation and continued existence of NIA will be analysed. This will also determine areas where domestic civilian intelligence overlaps with crime intelligence specifically, and other government civilian departments as well as the issues that have arisen over domestic political intelligence gathering.

CHAPTER 5: **An analysis of domestic civilian intelligence in the United Kingdom**

Within the context of developed countries, the mandate and focus of the UK's M15 as the domestic civilian intelligence agency will be discussed. The rationale for the continued existence of M15 despite the end of the Cold War and occasional Al Qaeda threats only, as well as the dramatic decrease of terrorism in Northern Ireland, will be examined. The resultant effects of the overlapping roles of MI5 with regard to the mandate and focus of the police Security Branch, crime intelligence and other intelligence structures, will be analysed. Potential risks and threats to democracy will also be highlighted.

CHAPTER 6: **Evaluation**

The final chapter will include a summary of the text and an evaluation of the assumptions formulated in the introductory chapter.

CHAPTER TWO

INTELLIGENCE AND NATIONAL SECURITY: A CONCEPTUAL FRAMEWORK

1. INTRODUCTION

This chapter analyses core concepts which are fundamental for assessing the rationale for domestic civilian intelligence services. Intelligence remains one of the principal inputs into national security policy, hence the role of intelligence pertaining to national security is discussed, as well as the intelligence cycle. This also necessitates the examination of different types of intelligence products and the focus of intelligence. Levels of intelligence refer to concepts such as strategic, departmental and tactical intelligence.

National security is analysed from both the Cold War perspective and the broadened view of the post-Cold War period. Lastly, national security is examined from the perspective of Third World or developing countries, as threats to national security are often primarily perceived as internal in these cases, with corresponding implications for intelligence.

2. THE CONCEPT OF INTELLIGENCE

Intelligence refers to "information relevant to a government's formulating and implementing policy to further its national security interests and to deal with threats to those interests from actual and potential adversaries" Shulsky and Schmitt (2002: 1). South Africa's White Paper on Intelligence (1995: 2) defines intelligence as "the product resulting from the collection, evaluation, analysis, integration, and interpretation of all available information, supportive of policy- and decision-making processes pertaining to the national goals of stability, security and development. Modern intelligence can thus be described as "organised policy related information", including secret information". In support of the above, Lowenthal (2006: 9) defines intelligence as "the process by which specific types of information important to national security are requested, collected, analysed, and provided to policy-makers; the products of that

process; the safeguarding of these processes and this information by counterintelligence activities; and the carrying out of operations as requested by lawful authorities". Zelikow (1996: 143) summarizes intelligence as follows: "intelligence encompasses the interpretation and presentation of 'raw knowledge' or information as 'finished reports' or analyses that are submitted to inform policy making consumers".

The above definitions capture all the core elements of intelligence as an integrated state undertaking consisting of four main pillars. Firstly, collection focuses on the gathering of valued data. Secondly, intelligence consists of analysis, that is, the conversion of raw data into intelligence. Thirdly, counterintelligence deals with information denial. Lastly, covert action is primarily concerned with influencing actions while hiding one's identity (Godson, 1995: 1-2).

Key elements in intelligence practice are information, and the distinction between information and intelligence. Information is anything that can be known, irrespective of methods of acquiring it. Information can be equated with processed or unprocessed data where national legal codes of restriction of access do not apply. However, intelligence contains some unique characteristics which provide evidence that it is of a higher order. The collating, assembling, arranging and comparing of secret and open source information, coupled with analysis, and narrowing it to meet consumer demand are core values which govern the practice of state-sponsored intelligence. Godson (1995: 2) also sees intelligence as processed information which has been tested for intelligibility and meaning. Information cannot be classified as intelligence before it is processed.

Shulsky (1993: 112) highlights the notion of secrecy as one of the most dominant values of intelligence. The common system of information classification into 'top secret', 'secret' and 'confidential' attests to the secret nature of intelligence. According to Scott and Jackson (2004: 3), it is also of critical importance to highlight that some open-source information forms an integral component of intelligence as a final product.

To fully understand what intelligence represents in the national security equation, it is critical to discuss the role that intelligence plays in attaining national security objectives.

3. THE ROLE OF INTELLIGENCE

State-sponsored intelligence plays a critical role in national security. Some of the most important responsibilities of the intelligence community include the following.

3.1 Warning

It is undeniable that every intelligence product carries a built-in warning element. This understated role is evident in products of all levels and types. Davies and Gurr (1998: 10) indicate that a product will also indicate whether the situation remains unchanged, or has retrogressed or progressed. Policy-makers will know what adjustments need to be effected with regard to national security as a consequence of the warning element in intelligence reports. As a functional role of intelligence, warning concientizes policy-makers to be expectant of future developments that can affect national security.

3.2 Information denial

Guarding certain state information and operational methods remain some of the core responsibilities of intelligence services. The counterintelligence element of the entire intelligence practice is the exclusive preserve of intelligence dealing specifically with information denial. It involves security pertaining to personnel, physical infrastructure, documents, communication, operations and other types of information (Shulsky and Schmitt, 2002: 105).

3.3 Provision of secret information and data

McLennan (1996: 72) advances the notion that intelligence must provide information that is otherwise unavailable, that is, secret information. He adds that intelligence should provide information to policy-makers that changes the picture, and confirms and strengthens what is known or has been suspected. In this context, benefits and exploitable opportunities can be easily discerned and taken advantage of in the interests of national security.

3.4 Avoid surprises

Handel (1982: 85) defines intelligence-related surprise as "any unexpected development that can have a significant impact on national security." The most serious form of surprise is armed attack. Both strategic and tactical surprises carry the potential to cause the end of a state or the loss of huge national resources. A tactical surprise such as the 9/11 terrorist attack on the US may cause huge loss of resources.

3.5 Informing policy

The intelligence services remain the principal specialists and information guardians regarding intelligence matters. Practitioners are also well-versed concerning the developments of a variety of issues at all levels. Therefore, intelligence provides expert input regarding policy issues and matters that affect national security. Care must be taken that the dividing line between intelligence and policy is not compromised. Lowenthal (2006: 4-5) emphasizes the fact that, as a rule, the intelligence community should never advance its own agenda in the process of providing expert input regarding those specific policy issues.

The role that intelligence plays, points to the fact that no country will ever effectively address its national security concerns without information and data collected by the intelligence community. It is important to understand the various stages that information goes through, before it is classified as intelligence. These aspects of intelligence are dealt with below.

4. THE INTELLIGENCE CYCLE

Intelligence should never be seen as a single activity, but a culmination of a rigorous integrated phenomenon encompassing several interlinked phases. It is a demand-driven activity which also explains the relationship between producers and consumers of intelligence. Richelson (1985: 3) sees the intelligence cycle as "a process by which information is acquired, converted into intelligence and made available to policy-makers". This cycle is also referred to as the 'intelligence process'.

4.1 Identification of requirements

It is commonly agreed that the requirement dimension of intelligence in this phase remains the preserve of policy-makers (Lowenthal, 2006: 56). Policy-makers will have to identify the needs that have to be satisfied by the intelligence community and communicate them through existing channels. The type of security issues resulting from the needs will determine the platforms necessary for the collection of such data or information.

4.2 Environmental scanning

Laqueur (1985: 21) argues that policy-makers may not always know what they specifically want from intelligence practitioners. Due to the fact that they are not dealing with those specific issues on a daily basis, they are more likely to overlook a number of aspects regarding the reality of problems and challenges related to the intelligence task. Lowenthal (2006: 56) adds that except only in obvious cases, policy-makers fail to convey views on their priorities clearly, assuming that intelligence practitioners know their needs. According to Bernhardt (2006: 23) the 'scanning' or 'scouting' phase closes the gap between the requirement and collection phases. This means that intelligence practitioners would have to scan the environment and identify issues which may present future threats and challenges. Amongst others, it pertains to the critical study of the current political, economic, social and technological state of affairs, and assessment of possible future trends that may place a country in a vulnerable situation. A unique feature of the scouting phase is its self-tasking and independent nature.

4.3 Collection

The nature and character of topics at issue determine which of the five platforms, also called collection disciplines (O'Connor, 2010: 3), that is, human intelligence, imagery intelligence, measurement and signature intelligence, open-source intelligence as well as signals intelligence will be used. In an ideal situation, information collected through human intelligence should be verified through technical intelligence such as communication and imagery intelligence, where possible. In support of this view, Cave (2002: 18) agrees that collection methods complement each.

4.4 Processing

Processing remains a core element in the production of a usable intelligence product. Separating useless from genuine and useful information is an art that requires trained specialists who have gained enough insight with regard to the subject matter. Collected information often arrives in a form that makes it unusable by consumers. It is at this stage that information is sifted, monitored and begins to be controlled. The integrity of the information will be critically investigated so as to establish its value to both policy-makers and national security. Richelson (1985: 4) maintains that it converts basic data to a form usable for production and analysis. It lays the ground for report preparation and writing.

4.5 Analysis and production

Analysis plays an important role in the production of the final report to the consumer of intelligence. Analysts take all processed elements of information and merge it together into a coherent whole. Gray and Slade (2008: 508) further illuminate that it is the process of 'connecting the dots,' which suggests that information must be put together to make sense of the situation. System input and evaluation are included in this phase. Critical judgments and predictions of both a short and long term nature are made. The culmination point is the preparation of reports destined for intelligence clients. All the reports and products are aimed at answering the original questions asked by the policy-makers in their attempts to respond to security threats, challenges and opportunities.

4.6 Dissemination

Dissemination represents the ultimate output of the intelligence cycle. Reports are handed over or submitted to policy-makers. The intelligence product is moved from the producers to the ultimate consumers of intelligence and others who triggered the process (Richelson, 1985: 4). The products range from short briefs or bulletins to detailed reports and can be delivered in writing or orally. Reports should be disseminated on time so as to afford the policy community ample opportunity to institute strategic planning for the issues at hand. In other words, intelligence products should be accurate, usable and timely.

4.7 Feedback

Feedback completes the intelligence cycle. The aim of this phase is to communicate to the analysts the level of achievement of the previous intelligence product (Wittens and Nagtegaal, 2010: 1). It also reflects the level of satisfaction of the policy community regarding the quality of the product. However, not all policy-makers engage in communicating their opinion regarding the quality of the product to the intelligence community. This can create a communication gap between intelligence and policy, especially if the element of continuity is not deeply institutionalized.

As a well structured and controlled state activity consisting of different categories, intelligence serves various national security needs. The discussion below describes different types of intelligence products and how each contributes to national security.

5. TYPES OF INTELLIGENCE PRODUCTS

Finished intelligence products can be classified into the following categories, depending on their purpose and nature**.**

5.1 Background studies

Bernhardt (2006: 18) states that background studies include material such as encyclopedic and factual in-depth research on specific topics. This category of information mostly serves as a repertoire from which information supporting main intelligence products can be gleaned. Background studies in themselves are not of a sensitive nature but play an important part in the production of a report.

5.2 Current intelligence

Current intelligence has much to do with information which may have major effects on national security policy. Shulsky and Schmitt (2002: 57-58) equate this function with the one similar to news media reports. Indications and Warning (I & W) is an example of current intelligence which focuses on the prevention of a surprise attack. Its main function is to provide advanced and timely warning.

5.3 Basic intelligence

According to Shulsky and Schmitt (2002: 60), basic intelligence provides a coherent and complete picture of a given situation. It draws information from open and clandestine sources, and verifies it through all-source intelligence. For example, reports of Iran's compliance with the Nuclear Non-Proliferation Treaty (NPT) are relevant.

5.4 Intelligence estimates

Intelligence estimates, also called intelligence assessments, represent an inclusive long term view of the future state and also attempt to see how it will unfold over the years. An intelligence estimate is the integrated view of the entire intelligence community, unlike some other reports which reflect the view of a specific agency. This type of product requires major intellectual input as well as a heightened degree of consensus from the intelligence community (Lowenthal, 2006: 122-123).

All intelligence products generated by the intelligence community, irrespective of the nature of the political system, share common target areas. This requires a discussion on the focus of various structures of the intelligence community in a state.

6. THE FOCUS OF INTELLIGENCE

The intelligence community, in the form of distinct intelligence structures, focuses on several specific areas of responsibility to meet the informational needs of policy-makers.

6.1 Scientific and technical intelligence

It will remain critical for states to be well-versed with the technology of new sophisticated weapon systems and also design means and ways of countering them. For a nation to be able to compete against that technology, it must task a section of its intelligence community to focus on data related to new emerging technology (Shulsky, 1993: 59-60).

6.2 Military intelligence

Military issues as a focus area of the intelligence community relates to information regarding the war capacity of armed entities, including the defence forces of other states. Their intentions as well as their strategies and tactics need to be known. It includes the number of personnel, type of training, the numbers and types of weapons systems, weapon accuracy, fighting morale and other related issues (Richelson, 1985: 7). In other words, military intelligence focuses on the order of battle of armed entities, with specific emphasis on the defence institutions of other states. This type of intelligence helps to plan for military operations during times of war and peace. Further discussion on military intelligence will be included in the next chapter.

6.3 Economic intelligence

With the advent of economic liberalization and neo-liberal tendencies, more intelligence agencies are questioning the involvement of intelligence services in gathering economic intelligence. Raman (1999: 3) contends that it would be prudent for intelligence to focus on issues that have a bearing on national security. Issues such as energy supplies and the availability of raw materials supporting the main industries that are relevant to national security, are of critical importance for the survival of a state.

6.4 Political intelligence

Political intelligence is the body of information about the state of affairs in a foreign country. The main ideas on which the political system rests, and the current political processes are of paramount importance. Knowledge about existing political formations as well as the power they command is very important. Information regarding influential individuals needs to be made available as well. Of all the information required, the intentions of the leadership are of critical importance to avoid surprises (Leonhardt, 1990: 3-7). In closed societies, where the decisions are made by a single individual or a family clique, it is more difficult to gather that information. As will be discussed later on, aspects of domestic political intelligence gathering have become a source of contention in democracies such as South Africa.

6.5 Crime intelligence

Crime intelligence is the intelligence that is vital for the prevention of crime and the conduct of criminal investigations (Kopal, 2003: 3-7). This also includes preparing evidence for law enforcement as well as the prosecution of offenders. The timely dissemination of this type of intelligence is critical if law-enforcement agencies have to successfully apprehend criminals and secure convictions. The most distinguishing feature regarding crime intelligence is that it remains the primary focus area of the police. More detail regarding crime intelligence will be provided in the next chapter.

While responding to security needs, the intelligence products do vary in terms of importance and scope. A discussion of the levels of intelligence attests to the varying order of importance and range of intelligence products.

7. LEVELS OF INTELLIGENCE

Intelligence products can be divided into three levels, namely strategic intelligence, departmental intelligence and tactical intelligence.

7.1 Strategic intelligence

Strategic intelligence is defined as "comprehensive, integrated and estimative intelligence on all current and long-term aspects of national security which are of special concern to strategic decision making and formulation and the implementation of policy and strategy at national level". Policy and strategy encompass political, economic, social, military, technological and other intelligence resources for the realization of national security objectives. Strategic intelligence covers broad aspects of national policy and transcends the exclusive competence of a single agency or department. In other words, strategic intelligence remains intelligence of the highest order as it is designed to provide policy-makers with a comprehensive picture of matters related to national security (National Strategic Intelligence Act, RSA, 1994: section 1 (xvii)). Swenson (2003: 7) adds that the grand strategies of states originate primarily from strategic intelligence.

7.2 Departmental intelligence

George and Kline (2006: 55) define departmental intelligence, also called line functional intelligence, as "intelligence needed by a department or agency to execute its mission and discharge its lawful responsibility". Departmental intelligence implies threats and potential threats to national security and stability that remain the competence of a specific department rather than several agencies as in the case of strategic intelligence. It helps to determine the effective and efficient allocation of resources. This level of intelligence is of a fairly limited nature.

7.3 Tactical intelligence

Hulnick (1996: 274) defines tactical intelligence, also called operational intelligence, as "knowledge about the immediate situation which is based on straightforward observation". This concept is commonly used in law enforcement and military circles. In the context of law enforcement, tactical intelligence refers to knowledge required for crime investigation, crime prevention as well as obtaining crime evidence (Cave, 2002: 14). In the military context, Hennessy-Barrett (2009: 2) indicates that tactical intelligence is designed to plan and execute tactical operations. It is clear that tactical intelligence represents the most basic level of intelligence.

State-sponsored intelligence is a tool of, and also subservient to national security. Therefore the concept of national security has to be analysed.

8. NATIONAL SECURITY: A CONCEPTUAL FRAMEWORK

To fully comprehend the so-called 'broadening' of the national security concept after the end of the Cold War, it is also necessary to first discuss Cold War perspectives on security.

8.1 National security in the Cold War

Netshitenzhe (2005: 8) quotes Lipmann as stating that: "a nation is secure to the extent to which it is not in danger of having to sacrifice its core values, if it wishes to avoid war and be able if challenged to maintain them by victory in such war". Shulsky and Schmitt (2002: 8) define

national security as follows: “Protecting the nation against threats, ultimately military, emanating from foreign nations. When a nations is or about to be invaded, its national security concerns clearly center on preventing or defeating the invasion and securing itself against a similar situation arising in future”.

The above definition resonates with core realist perceptions which dominated the entire Cold War period when the state was the main referent. The military power of states used to be a critical prerequisite which guaranteed national security (Bernhardt, 2006: 34). This traditional approach sees the international system as anarchic in nature and devoid of a central authority capable of presiding over state’s interests. It also considers the international system to be lacking in terms of the capacity to mediate over their conflicts and therefore requiring self-help policies in order to advance national security interests.

Balaam and Veseth (2001: 185) acknowledge that the Cold War was largely thought of in military terms. In this context, the use of military power to secure objectives in international politics was paramount. The Cold War definition of national security is also closely linked to the Western interpretation of security. Security in the developed world tended to rest on two main pillars. The first is that security threats mostly originate from beyond the territorial confines of sovereign states. Secondly, threats to national security are predominantly military in nature and therefore require a military response.

8.2 Post-Cold War conception of national security

The post-Cold War conception of national security emanates primarily from the broadened or widened security approach popularized by, amongst others, the Copenhagen School of thought. In the post-Cold War context, Buzan (1991: 18-19) defines national security as “the ability of states and societies to maintain their independent identity and functional integrity”. In support of this contemporary view, Buzan (1991: 17), quoting the National Defence College of Canada, defines national security as "the preservation of a way of life acceptable to the…people and compatible with the needs and legitimate aspirations of others. It includes freedom from military attack or coercion, freedom from internal subversion and freedom from the erosion of the political, economical, and social values which are essential to the quality of life”. This approach

resonates perfectly with the humanist approach to security as it includes both the traditional and 'new' security issues.

The above definitions contain two basic features. First, a radical departure from a predominantly narrow militaristic approach is openly evident and the broadening the sources of threat to national security is explicitly represented. Secondly, the referent object of security has moved away from state-centered security to include individuals as referents.

8.2.1 Sources of threats to security

The post-Cold War threats to national security, as a result of the inclusion and intensification of non-traditional issues have been broadened.

8.2.1.1 Military threats

Military threats still occupy primacy as the most serious of all threats to national security. Buzan (1991: 116-117) admits that hostile military actions carry the potential to threaten all components of the state and therefore are justified to be accorded the highest priority in national security concerns. Components of the state refer to the idea of the state, the institutions of the state as well as the physical base of the state.

8.2.1.2 Political threats

Political threats entail the weakening of the organisational stability of states, systems of government and the ideologies that give them legitimacy. It is agreed that the main target in the case of political threats remains the legitimacy and the organising ideologies of the state. Magnifying cleavages based on ethnicity, race and culture are some of the instruments employed to undermine the political unity of a nation-state. The weakening of the state before an armed attack by employing such measures and sometimes fomenting secession, are common (Buzan, 1991: 118-122).

8.2.1.3 Societal threats

Societal threats are aimed at weakening the ability of the state to safeguard its culture, languages, customs, religion and national identity. National cohesion and identity are the primary targets in this case. At a lower level, it is easy to discern societal threats as such, but when the threats are more serious, they gravitate towards political threats (Buzan, 1991: 122-123).

8.2.1.4 Economic threats

Buzan (1991: 123) states that economic threats refer to issues that compromise access to raw materials and related resources, markets for local products as well as finance. They are directly related to the ability of the state to provide jobs for its citizens. Internal stability and social development rely heavily on economic security. The state is then able to provide sufficient levels of welfare. The correlation between economic power and security is evident in this instance (Balaam and Veseth, 2001: 116). The main target with regard to economic threats is the national economy.

8.2.1.5 Ecological threats

Ecological or environmental threats, including the effects of deforestation, the depletion of the ozone layer, the over-exploitation of natural resources and any other activity that threatens to disturb the ecological cycle, are currently priorities on the security agenda of states. However, it is of paramount importance to note that threats related to environmental security are largely unintentional and are also a consequence of sustained social habits representing a way of life accumulated over lengthy periods of time (Buzan, 1991: 131).

8.2.2 Referent objects

In addition to the state, which has always been the main referent as dictated by the realist approach during the Cold War period, the people-centered paradigm represents a radical departure from the state-centered approach.

8.2.2.1 State security

The security of the state has lost some of its primacy as a security referent in the post-Cold War period. The state, however, still remains the main referent of security. Baylis (2005: 300) argues that the fragmentation of the former Soviet Union and Yugoslavia, for instance, has created new problems of boundaries, minority rights and differing organising ideologies. This remains one of the principal reasons for a more pronounced departure point which facilitated a movement away from state-centric security to human security.

8.2.2.2 Human security

Fourie and Schonteich (2001: 30) quote Hubert's view of human security, stating that:

> …in essence, human security means safety for people from violent and non-violent threats. It is a condition of state of being characterized by freedom from pervasive threats to people's rights, their safety or even their lives. It is an alternative way of seeing the world, taking people as its point of reference, rather than focusing exclusively on the security or territory of governments. Like other security concepts of national security, economic security and food security, it is about protection. Human security entails taking preventive measures to reduce vulnerability and minimize risks, and taking remedial action where prevention fails.

It is clear that human security focuses specifically on the general well-being of the individual rather than the state. The motive behind this reasoning resides mainly in the perception that the individual is the basic unit of the society. If a significant portion of the life of the individual is satisfied, there is less likelihood that national security can be endangered. This approach to security resonates with a new notion of a new body of basic rights and entitlements known as 'individual security'. Burgess (2008: 68) summarizes individual security as follows: "Security on an individual level is generalized across all communities in all parts of the world". In support of the above, Fischer (1993: 11) asserts that at a personal level, the guarantee of basic human rights is fundamental.

8.3 National security in the Third World

The majority of Third World countries are facing fundamental problems related to national security. Ayoob (1995: 21-24) identified a close correlation between the Third World security predicament and state-making. Among the underlying causes of security threats are the issues of state boundaries and weak state institutions and regimes. Lack of societal cohesion and the absence of consensus on fundamental issues related to the social, economic and political organisation of society, remain some of the most persistent features in developing countries. These factors have exacerbated state weakness, underdevelopment and poverty.

According to the notion of the 'security dilemma', Job (1992: 17-18) highlights four elements that characterize security in the Third World, namely: various groups within the same territory compete for security; lack of legitimacy because regimes reflect tendencies of representing a particular ethnic or social sector instead of a significant portion of society; states lack effective institutional capacity to provide order, peace and infrastructural services; and vulnerability to external influence, intervention and control by other states, communities and multinational corporations. In essence, sources of threat to security originate primarily from the domestic realm of states rather than from external sources.

9. CONCLUSION

As an enterprise consisting of collection, analysis, covert action and counterintelligence, intelligence is designed to warn and inform policy-makers on issues related to national security. Intelligence aims at avoiding surprise, and the provision of secret information to policy-makers. Intelligence, as processed and collated information, must be accurate, usable and be delivered at a time when it is required.

Intelligence responds to various national security needs through the generation of several products. Background studies serve as a support database for more specialized products. Basic intelligence provides a comprehensive picture of a given situation, while current intelligence is similar to news reports by updating policy-makers on issues of security interest. Intelligence estimates focus on providing policy-makers with long range assessments of situations and events that may have a bearing on the future of national security.

During the Cold War, threats to national security were mostly defined in military terms. The sources of threats were primarily seen as external in origin. The end of the Cold War led to security being defined on a widened basis, including political, social, economic and environmental issues. On the basis of this approach, national security focuses on the individual and the state.

Since the developed world is economically advanced and the inhabitants enjoy unparalleled rights compared to other members of the international community, it is more secure. The developed world still views threats to national security as both primarily external in origin and military in character, although non-military and domestic threats are increasingly prioritized as well. However, Third World or developing countries are facing different challenges, and are characterized by challenges to regime security and difficulties in providing sufficient basic services. The level of social cohesion remains low as the ruling élite often tends to represent a certain section of society only.

The next chapter will analyse the mandate of different components of states' intelligence communities, and identify overlaps emanating from the widened definitions of national security.

CHAPTER THREE

THE MANDATE AND FOCUS OF THE COMPONENTS OF THE INTELLIGENCE COMMUNITY

1. INTRODUCTION

Four components of the intelligence community, namely: domestic civilian intelligence, foreign civilian intelligence, crime intelligence and military intelligence are discussed, although all states do not have domestic civilian intelligence services. Specific threats to national security, which are a competence of the intelligence community, some being traditional threats and others 'new' threats, are also discussed.

This necessitates the examination of the impact of the redefinition of national security on the current mandate and focus of domestic civilian intelligence as the end of the Cold War did impact significantly on this. The mandate and focus of foreign civilian intelligence is also discussed, as well as the focus of crime intelligence. Lastly, the role of military intelligence is examined. Possible areas of overlap for domestic civilian intelligence and other components of the intelligence community, and more specifically, crime intelligence, as well as other government departments are also identified and discussed.

2. TRADITIONAL AND 'NEW' THREATS TO NATIONAL SECURITY

In the previous chapter, threats to security were briefly discussed in the context of Cold War threats as both primarily military and foreign in origin, and post-Cold War threats, also consisting of the 'new' issues as described in Buzan's new framework of security threats. This section expands on the more specific threats to national security that are relevant to intelligence.

2.1 Traditional threats

Traditional threats are mainly threats that primarily target the survival, prosperity and strength of the state. Due to the fact that states continue to constitute a dominant component of the post-Cold War international system, it is inescapable that direct and credible threats to them in the same form still persist. Firstly, most forms of traditional threats contain a common element of armed violence. Secondly, threats to national security may simultaneously have internal as well as external components.

2.1.1 Terrorism

According to the International Terrorism and Security Research (2010: 1), terrorism is defined as "the calculated use of unlawful violence or threat of unlawful violence to inculcate fear, intended to coerce or intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological". Three central elements are easily discernible in this definition, namely, major political violence, instilling fear in society and intimidation of the state. The perpetrator must reflect the will and capability to employ massive violence to attain political goals.

Organisations using terrorism to achieve their goals employ a variety of tactics including bombings, aircraft hijackings, assassinations and kidnappings. For example, one of the most well-known groups using terrorist tactics against an incumbent government is the Taliban in Afghanistan. Terrorism is a factor in the escalating insurgency in Afghanistan (Edelman, 2007: 3), and evidence of Al Qaeda complicity as a foreign factor in the Afghan insurgency, has also been proven.

2.1.2 Subversion

Subversion is defined as "any act that incites, aggravates and creates dissension within and among member states with the intention or purpose to destabilize or overthrow the existing regime or political order by, among other means, fomenting racial, religious, linguistic, ethnic and other differences in a manner inconsistent with the Constitutive Act, the Charter of the UN

and the Lome Declaration" (African Union Non-Aggression and Common Defence Pact, 2005: 2).

The most effective form of subversion remains the use of selected platforms that are aimed at destabilizing or overthrowing the existing political order. Extreme forms of subversion include the element of major violence. The understanding of subversion becomes clearer when a sub-national actor acts on the instructions of a foreign government to overthrow the existing political order. In the same vein, when a foreign sponsor shares the same goals with the local actor and provides material and other forms of support for the execution of subversive activities, this also qualifies as subversion from the point of view of the target state. For example, Islamist separatist militants in Indian-ruled Kashmir have been blamed for anti-Indian violence (Kronstadt, 2003: 5-7). The Pakistan government is widely believed to be sponsoring the militants. However, subversion is also possible without foreign involvement.

2.1.3 Sabotage

Sabotage serves the purpose of reducing the ability of the state to provide critical services for its survival and development, as well as the provision of day to day services to society. Sabotage of national infrastructure such as roads, railways, sea-harbours and airports, water plants, pipelines and others, results in disrupting the distribution of goods and related services. In the case of the Iraqi insurgency, for instance, it has been reported that the sabotage of oil pipelines by insurgents amounted to US $ 11 billion from the beginning of 2004 until the end of the first half of 2006 (Iraq Update, 2006: 1).

2.1.4 Espionage

Although espionage is basically a non-violent intelligence activity, it is a critical enabling tool preceding the commission of major violent activities. In fact no war or battle can be successfully waged without espionage, that is, the illegal sourcing of information. Elsea (2006: 3) reinforces the fact that before violent actions by hostile entities are undertaken, data or information gathered through espionage becomes a major requirement. The quality of foreknowledge determines the success or failure of operations in times of war.

2.2 'New' threats

In the context of the 'new' threats or 'soft' security issues, a distinction is made between organised crime and developmental issues.

2.2.1 Organised crime

Organised crime has been declared a threat to national security as a result of the effects on development, governance and the rule of law. According to the United Nations Convention for the Suppression of Transnational Organised Crime (1998: 1), organised crime means "group activities of three or more persons, with hierarchical links or relationships, which permit their leaders to earn profits or control territories or markets, internal or foreign, by means of violence, intimidation or corruption, both in the furtherance of criminal activity and to infiltrate the legitimate economy". Barcott (2000: 2) states that organised crime represents the deliberate continuation of business by criminal means.

The methods of operation of criminal organisations are also designed to avoid detection and prosecution by law enforcement agencies (Adamoli et al, 1998: 14-16). This means that the level of sophistication of organised crime is complex and can only be adequately countered by the use of sophisticated investigative techniques. In some cases, syndicates engaged in organised crime may equal or even surpass police agencies in terms of secrecy and other related skills.

Organised crime has adopted a number of forms which continue to make it more difficult to address. Swanstrom (2007: 9) admits that narcotic trafficking carries the potential to corrupt and weaken governments, especially in weak states. Other expressions of organised crime include human trafficking; dealing in counterfeit currency; illicit dealing in cultural objects; theft of and use of nuclear material; arms trafficking; illicit trafficking in drugs; theft of motor vehicles and the corruption of public officials (United Nations Convention for the Suppression of Transnational Organised Crime, 1998: 1).

2.2.2 Threats emanating from developmental issues

Within the context of 'new' threats, some issues have been elevated to the level of national security threats. They include climate change, waning water resources, energy insecurity and health insecurity (Burgess, 2008: 62). Many of these issues are directly linked to the ability of the state to deliver basic social services. Most states have instituted specific government departments and each entity deals with a particular issue or a set of issues. Although threats emanating from developmental issues such as violent protests over service delivery may form a legitimate focus of intelligence services, the service delivery issues themselves are part of the mandate of other line function departments. Issues such as illegal migration and border control may, however also involve the intelligence community due to their direct implications for national security.

The next section examines the changing nature of the mandate and functions (focus) of domestic civilian intelligence as a direct consequence of the redefinition of threats to national security.

3. DOMESTIC CIVILIAN INTELLIGENCE

Domestic civilian intelligence is examined from Cold War and post-Cold War perspectives, and how the changing nature of national security impacted on it.

3.1 Definition of domestic civilian intelligence

Posner (2005: 2) defines domestic civilian intelligence as "intelligence concerning the threat of major, politically motivated violence, or equally grievous harm to security or the economy, inflicted within the nation's territorial limits by international terrorists, homegrown terrorists, or spies or saboteurs employed or financed by foreign nations". As foreknowledge, it is pertinent to infer that domestic positive intelligence is concerned with people, organisations as well as opportunities, risks or problems within state borders (Cave, 2002: 13). Both domestic and foreign civilian intelligence, as well as military intelligence fall in the category of 'positive intelligence' to distinguish this from crime intelligence (Kent, 1966: 3).

3.2 The mandate of domestic civilian intelligence

As its mandate, domestic civilian intelligence is mainly designed to collect, analyse and disseminate information related to threats to national security within the domestic realm of the state (Treverton, 2008: 6). This implies that domestic civilian intelligence is a state activity that represents the direct opposite of foreign civilian intelligence because the nature and character of its clandestine and intrusive operations are primarily defensive (Canada, Information on the Mandates of CSIS and the RCMP Security Services, 1997: 1).

For an issue to be classified as falling within the ambit of a domestic civilian intelligence service's competence, the information should satisfy certain requirements. Activities directed against the constitutional order, sovereignty and territorial integrity of the state; threats to the protection of classified information; activities of foreign intelligence services; activities whose consequence may threaten the security and vital economic interests of the state; as well as organised crime and terrorism would fall in this category (Zeman, 2007: 17). This category of intelligence targets the internal or domestic dimension of threats rather than where the intelligence action is taking place. Domestic civilian intelligence does not have law enforcement powers although assistance to law enforcement agencies is frequent (Canada, Information on the Mandates of CSIS and the RCMP Security Services, 1997: 2).

3.3 The focus of domestic civilian intelligence

The end of the Cold War, as stated, brought fundamental changes to the conception of threats to national security. Similarly, it also served as a catalyst with regard to the focus of domestic civilian intelligence**.** A distinction is made between the focus of domestic civilian intelligence during the Cold War and in the post-Cold War period.

3.3.1 Cold War period

During the Cold War period, domestic civilian intelligence focused on addressing traditional threats. The collection and analysis of information on traditional threats to national security was

and is justified especially if it manifests in major forms of political violence such as an insurgency (Swanstrom, 2007: 7). Terrorism, subversion, sabotage and espionage are issues of high politics which still constitute a major security consideration for states.

In Canada for instance, during the Cold War, domestic civilian intelligence operations were performed by the Security Service of the Royal Canadian Mounted Police (RCMP). Political violence consisting of terrorism, subversion and sabotage as well as espionage, remained the main targets of the Security Service of the RCMP (Canada, Information on the Mandates of CSIS and the RCMP Security Services, 1997: 3). However, no major form of violence such as an insurgency existed in Canada at that stage.

3.3.2 Post-Cold War period

In the post-Cold War period, the focus of domestic civilian intelligence broadened as a consequence of the inclusion of 'new' issues in addition to traditional threats. Firstly, domestic civilian intelligence collects and analyses information on organised crime. It has been acknowledged after the end of the Cold War that organised crime poses a threat to national security, including human security. In support of this, the United Nations (UN) in 1995 adopted a resolution acknowledging the link between terrorism and organised crime (Cave, 2002: 21). One of the implications is that it further reinforced perceptions which ultimately led to the notion of organised crime posing a threat to international security. Organised crime, including human trafficking, drug trafficking, arms smuggling, nuclear proliferation, money laundering and fraud, impede and undermine social, economic and political development. Some, however, argue that the concept of 'narco-terrorism' for narcotics dealing is deliberately used to justify the existence of intelligence services in the post-Cold War period (Cave 2002: 21). Since organised crime has been declared a threat to national security, domestic civilian intelligence services are also mandated to be part of national efforts to combat it.

Secondly, domestic civilian intelligence has added, as its functional focus, areas which are considered to be even more 'soft' security issues. Although some may contain transnational or violent elements, these new threats are primarily non-military. A major distinguishing element is that these issues connote a notion that is developmental rather than security oriented. In the

same vein, Lynn-Jones (1991: 208) argues that these 'new' issues only require awareness and timely action from non-security state departments.

However, the focus of domestic civilian intelligence services on all the above mentioned areas may add value to national security in terms of competitive analysis. Shulsky (1993: 79) views competitive analysis as a technique designed to prevent intelligence failures through the establishment and use of separate analytical centers within government's intelligence system. This entails, for example, a state's domestic civilian intelligence service and crime intelligence service conducting intelligence analysis on the same topic and comparing it. Competitive analysis serves as a built-in information verification instrument for information collected by individual components of the intelligence community.

During the Cold War, the UK's domestic civilian intelligence functions were performed by the Security Service, popularly known as MI5, which originated as an internal arm of the Secret Services Bureau (SSB) (UK, National Intelligence Machinery Booklet, 2001: 9). Its efforts were initially focused on traditional threats posed by Germany and later the Soviet Union to the UK, including their espionage activities, and a local terrorist campaign waged by the IRA starting in 1969 (Clutterbuck, 2009: 121). The Soviet threat disappeared with the demise of the Soviet Union between the late 1980's and early 1990's. The Security Services Act (c 35 of 1996) extended the mandate of MI5 to act in support of the prevention and detection of serious crime. The Security Services Act (c 5 of 1989) had already provided MI5 with the responsibility for information and intelligence collection on terrorism, including terrorism perpetrated by the IRA in the UK. Ironically, in 1996, when the mandate was extended, the IRA had already started abandoning its terrorist campaign. Despite the absence of major forms of violence such as an insurgency, the UK retained its domestic civilian intelligence service and extended its mandate and focus.

While most target areas of the Canadian Security Intelligence Service (CSIS), as a result of a legislation of 1984, are clearly defined as those constituting political violence and espionage, the complex challenges of the post-Cold War period forced the CSIS to also focus on issues such as uncontrolled migration; transnational organised crime; the globalization of the economy; increasing competition; as well as budget reductions forced by fiscal realities (Canada, Report of

the Auditor- General of Canada, 1996: 6). The new focus adds to the functions inherited from the Security Service of the RCMP during the Cold War period, which dealt with domestic threats such as espionage, sabotage, terrorism and serious crime including violent crimes that further foreign power interests in Canada (Canada, Information on the Mandates of CSIS and the RCMP Security Services, 1997: 3). Despite the widened role of the CSIS as a domestic civilian intelligence agency, no major forms of violence such as an insurgency exist in Canada.

To further expand on the distinction between the different categories of intelligence, the mandate and focus of foreign civilian intelligence, which is the external dimension of civilian state-sponsored intelligence, is discussed below. It follows on the brief introduction to foreign civilian intelligence in the previous chapter.

4. FOREIGN CIVILIAN INTELLIGENCE

Foreign civilian intelligence agencies exist in most countries, even though an agency may not have a domestic civilian equivalent.

4.1 The concept of foreign civilian intelligence

Parkinson (2006: 16) defines foreign civilian intelligence as "intelligence data about plans, capabilities, activities or intentions of foreign states, organisations or individuals. It is collected to promote as well as to safeguard national security." Foreign civilian intelligence primarily targets entities which are external in origin.

Within this context, Kent (1966: 211) defines foreign positive intelligence with the inclusion of military intelligence, as "knowledge of other countries and other people, and, incidentally, what those countries may plan in terms of their policy or action against another country's national interest". Kent (1966: 3) adds that positive intelligence does not include counterintelligence and counter-espionage. Threats and opportunities that need to be known in advance can be economic, political, technological or diplomatic in nature.

4.2 The mandate of foreign civilian intelligence

It is self-explanatory that the mandate of foreign civilian intelligence is primarily centered on the activities that affect or have a bearing on security issues that lie beyond the state's territorial confines. The mandate of foreign civilian intelligence is offensive in character because it strives to acquire knowledge and information which some states are hiding. As Parkinson (2006: 6) states, the competence of a foreign intelligence service is the external environment. The fact that foreign civilian intelligence focuses on the external environment makes it less controversial.

4.3 The focus of foreign civilian intelligence

The focus areas or functions of foreign civilian intelligence in pursuing the interests of national security are discussed below.

4.3.1 Collection and analysis of information on strategic resources

The collection and analysis of foreign and economic intelligence are legitimate missions of foreign civilian intelligence. The availability of energy resources and the manipulation of currencies by governments are key elements to national interests. Resources and raw materials that have a bearing on the state's war effort, for instance, are included as well. Situations where a country's private firms are placed at a competitive disadvantage in obtaining foreign contracts due to unethical conduct by rivals and bribery by competitors could also be of interest in this regard (Intelligence Working Group, 2003: 28).

4.3.2 Collecting information on transnational organised crime

It has been argued that the transnational nature of organised crime implies that the expertise and competence of local police forces, including crime intelligence, often become inadequate in addressing the challenge of organised crime. It includes sophisticated crimes such as the illegal transnational narcotics trade; human trafficking; the illegal weapons trade and proliferation of nuclear weapons. It cuts across cultural, national and religious divisions which were thought to be traditional barriers. Easier international travel, quicker movement of goods, as well as the nearly real time communication tools such as the Internet, have simplified the activities of

organised crime (Adamoli et al, 1998: 10). Foreign civilian intelligence services are trained to operate on the international arena where these activities manifest.

4.3.3 Support for military operations

Support for military operations by foreign civilian intelligence has increased as one of its main missions and priorities (Cadena, 1997: 5). This is also closely related to supporting defense planning. This type of support entails timely warning on attacks against the physical bases of the state as well as providing intelligence that aids in the planning and carrying out of future military operations of any nature. Support to military operations and defense planning are second tier focus areas of foreign civilian intelligence because in general, military intelligence deals with this area specifically.

4.3.4 Support efforts against international terrorism

Bjorn and Leigh (2007: 7) argue that international terrorism has a cross-border character which domestic agencies cannot effectively counteract. Foreign intelligence carries the expertise to address this challenge since it also operates on the international plane. In the Third World, the role of intelligence to curb terrorism is of paramount importance as it helps to monitor political and other developments that could escalate into conflicts and destabilization.

4.3.5 Support diplomacy

Foreign civilian intelligence is critical for monitoring all the international agreements and treaties that the government is party to. It includes arms proliferation treaties such as the Nuclear Non-Proliferation Treaty (NPT). For instance, though Iran is justified to generate electricity for peaceful use, suspicion in the West is still rife that Iran intends to produce weapon-grade nuclear energy (New York Times, 2010: 1). Foreign intelligence carries the responsibility to determine the level of compliance with regard to, for instance, the NPT. In this context, intelligence must monitor the activities of organisations and terrorist groups which might seek to acquire weapons of mass destruction (Scalingi, 1996: 149).

Crime intelligence was briefly discussed in the previous chapter. The section below more fully examines the concept of crime intelligence, which forms an integral component of the

intelligence community. Its mandate and focus as a law enforcement component of the intelligence community within state borders, are discussed.

5. CRIME INTELLIGENCE

Crime intelligence is distinguished from the other components of the intelligence community which form part of positive intelligence.

5.1 Definition of crime intelligence

According to Schneider (1995: 403), crime intelligence can be defined as "the product of systematic gathering, evaluation, and synthesis of raw data on individuals or activities suspected of being, or known to be criminal in nature". This implies that crime intelligence remains a form of intelligence activity constituting an integral component of state-sponsored intelligence. It is a result of the gathering, collating and analysing of information leading to actionable law enforcement activity.

Crime intelligence products are prepared for consumption by various levels of the police hierarchy such as the political leadership dealing with national security, including the executive head of state. To be specific, tactical reports are used to guide operational units to suspects and destinations linked to various crimes for the apprehension of suspects and seizure of property. Strategic reports, primarily related to the prevention and prosecution of criminals are for the attention of the national head of the police, federal or provincial heads, federal and provincial policy-makers as well as the executive head of state (RSA, Annual Report of the South African Police, 2005: 100). According to Kopal (2005: 2), the difference between crime intelligence and other forms of intelligence resides in the fact that it remains investigative reporting which is evidentiary in nature and primarily aimed at crime prevention and prosecution.

5.2 The mandate of crime intelligence

The end of the Cold War has not caused much controversy with regard to the mandate and focus of crime intelligence globally. Crime intelligence is primarily preoccupied with the gathering, co-ordination and analysis of information, and intelligence related to criminal activities. As an intelligence function, it resides in law enforcement or the police agencies. Schneider (1995: 422)

states that the growing power, sophistication and globalization of organised crime make the role of crime intelligence more important.

5.3 The focus of crime intelligence

At a strategic level, crime intelligence collects and analyses information on both past and current trends in support of law enforcement agencies' planning and management functions (Schneider, 1995: 403). Crime intelligence products are critical tools in determining resources that need to be deployed for successful law enforcement. Kopal (2005: 3) adds that at a tactical level, collected and analysed information is also useful for identifying, targeting and neutralising crime in the short term. Immediate law enforcement objectives such as the successful completion of an active investigation to finally secure arrests and prosecutions are also best served by crime intelligence.

Panner (2005: 4–5) states that instituting an investigation warranting crime intelligence needs to meet certain standards or criteria to qualify as such. Firstly, two or more people involved in a continuous basis should be engaged in acts for the purpose of commercial benefit wholly or partially through racketeering. Racketeering acts should include violence, extortion, narcotics or systematic public corruption. Secondly, standard tools and techniques for addressing common crime fall far short of addressing a sophisticated criminal activity like organised crime.

There have been shifts with regard to crime intelligence standards as a consequence of information sharing gaps in the US intelligence community before the 9/11 events. The Federal Bureau of Investigations (FBI) is not the only agency that deals with crime intelligence. Equipped with an investigation capability, the Department of Homeland Security has also become an analysis centre and an information clearing house for intelligence, including crime intelligence (Burch, 2008: 16-17).

In the next section, the mandate and focus of military intelligence are analysed to provide an understanding of the non-civilian component of positive intelligence.

6. MILITARY INTELLIGENCE

Military or defence intelligence has war-time as well as peace-time functions. In the following discussion, both roles are discussed.

6.1 Definition of military intelligence

The US views military or defense intelligence as follows:

> Information concerning the (1) military capabilities of foreign countries or organisations or (2) topics affecting potential US or multinational military operations, relating to the following subjects: armed forces capabilities, including order of battle, organisation, training, tactics, doctrine, strategy, and other factors bearing on military strength and effectiveness; area and terrain intelligence, including urban areas, coasts and landing beaches, and meteorological, oceanographic, and geological intelligence; transportation in all modes; military materiel production and support industries; military and civilian communications systems; military economics, including foreign military assistance; insurgency and terrorism; military political-sociological intelligence; location, identification, and description of military related installations; government control; escape and evasion; and threats and forecasts (US, Army Field Manual 2-0, 2010: 178).

The above definition reflects the state of readiness of foreign armed forces and entities in order to determine requirements which have a bearing on national security. According to Richelson (1985: 7), military intelligence serves as the main guide for planning needs, which adds to the warning and monitoring roles. In the context of planning, military intelligence will determine how the state will have to train, equip and organise its armed force for various operations.

6.2 The mandate of military intelligence

Miller et al (2005: 3-4) argue that military intelligence is preoccupied with the collection, analysis and distribution of information relevant to military policy, strategy and operations. In the majority of cases, efforts of military intelligence are concentrated on both the external

military environment and domestic conditions. As far as domestic conditions are concerned, military intelligence targets may consist of both military and non-military threats.

The involvement of military intelligence in the domestic settings of states is an international phenomenon, though a theory in this regard is still not well developed. In essence, this represents domestic military intelligence. However, Filip (2006: 26) acknowledges the importance of military intelligence regarding issues that constitute threats to the institutional order of the state. In other words military intelligence has both external and internal dimensions.

6.3 The focus of military intelligence

The focus areas or functions of military intelligence are discussed to identify its role in pursuing national security interests.

6.3.1 Collecting information related to the external military environment

The basic order of battle of foreign entities is considered the first tier and primary focus of military intelligence**.** It is the most conspicuous and traditional target area of military intelligence. Henessy-Barrett (2009: 8) contends that military intelligence covers all levels, namely, strategic, departmental and tactical or operational requirements for operations by the armed forces. It is also important to emphasize that operations by military intelligence may also be relevant to operations of a non-combat nature.

6.3.2 Collecting information related to internal order and stability

As a second tier focus, Filip (2006: 26) provides for the direct involvement of military intelligence within the domestic realm of the state. The principal rationale in this case lies in military intelligence providing information in support of the maintenance of internal order and stability. In the majority of cases, this becomes a core requirement when the existing national security apparatus cannot effectively deal with challenges related to maintaining internal

security. The majority of Third World countries are more prone to this challenge as most threats emanate from within state boundaries.

The redefinition of threats to national security has had a significant impact on the roles of various intelligence structures. The section below examines overlaps between domestic civilian intelligence and crime intelligence as well as other state departments.

7. AREAS OF OVERLAP BETWEEN THE MANDATE AND FOCUS OF DOMESTIC CIVILIAN INTELLIGENCE, OTHER INTELLIGENCE AGENCIES AND OTHER CIVILIAN GOVERNMENT DEPARTMENTS.

The implications of the end of the Cold War with regard to the overlapping of roles in the intelligence community are significant.

7.1 The role of crime intelligence

One of the practical implications of the redefinition of threats to national security is that the mandate of domestic civilian intelligence overlaps with the functions of crime intelligence. In simple terms, domestic intelligence services are operating at the same level as crime intelligence (Randol, 2009: 6). The main difference resides in the fact that domestic intelligence does not have arresting and prosecuting powers.

In Canada for instance, co-operation involving the RCMP and CSIS to resolve stove-pipe issues to facilitate information sharing between domestic civilian intelligence and crime intelligence, had always been a necessity. In 1996, the CSIS created the Transnational Crime Activity unit as part of a government-wide effort, including close partnership with the RCMP to combat organised crime (Canada, Canadian Security Intelligence Service, 2003: 6). However, issues of overlap between domestic civilian intelligence and crime intelligence have increased tremendously despite instituting this arrangement.

At the collection stages of the intelligence cycle specifically, crime intelligence and domestic civilian intelligence focus on the same targets, collect the same information at the same level, meaning that one agency is practically doing exactly what the other agency is doing. The

ultimate product by both crime intelligence and domestic civilian intelligence is bound to be similar except that crime intelligence has to convict criminals while domestic civilian intelligence may surrender it to crime intelligence or keep it for analysis from a national security perspective. The fact that similar methods of operation or tradecraft are used for the same objectives relegates domestic civilian intelligence agencies to police detectives regarding organised crime (Murphy, 2007: 449). Schreier (2009: 227) states that as a consequence, a duplication of tasks and activities by domestic civilian intelligence and crime intelligence occur.

7.2 The internal role of military intelligence

The mandate of domestic civilian intelligence also overlaps with the internal role of military intelligence, especially in cases where the state experiences internal instability and threats of terrorism from paramilitary groups. This becomes even more problematic when security forces are not adequately resourced to deal with current challenges. Filip (2006: 26) states that military intelligence collects and analyses information regarding the internal military and non-military risk factors to national security. This becomes relevant specifically in cases involving radical or paramilitary groupings and large scale civil disobedience. It also becomes more difficult to determine the lead agency with regard to these threats.

7.3 The roles of other civilian government departments

The mandate of domestic civilian intelligence overlaps with mandates assigned to other non-security departments of the state. The new security agenda provides a broad direction for domestic intelligence with regard to the 'new' security threats and gives it an expansive mandate which lacks specificity. For example, Departments of Energy, Water, Environmental Affairs Health, Immigration, Social Welfare, Fisheries, Trade and Industry, Agriculture, Housing and others have a specific and well defined mandate to deliver basic and development related services. According to the United Nations Development Programme (1994: 23), threats emanating from the above show a direct resonance with developmental and service delivery issues. For instance, domestic intelligence is mandated to look into the implications of conflicts for national security, while a housing department specifically focuses on housing issues as such.

When domestic intelligence becomes involved in pure service delivery issues, overlaps, however, start to develop.

8. CONCLUSION

The implications of the end of the Cold War with regard to the mandate of some components of the intelligence community are significant. The mandate and focus of domestic civilian intelligence remain the domestic or internal realm of states, but 'new' issues have developed in this regard. The external environment is still the competence of foreign civilian intelligence.

The mandate and focus of crime intelligence has not experienced substantial change as a result of the new developments, although more emphasis is placed on domestic and international sharing of intelligence. Crime intelligence's territorial theatre of operation is the local or domestic terrain. It resides in the broader context of law enforcement, meaning that all intelligence is primarily geared towards investigations aimed at the successful prosecution of criminals and crime prevention. Forms of organised crime that crime intelligence focuses on, include the illegal narcotics trade, the illegal weapons trade, human trafficking, organised vehicle theft, violent crimes, smuggling and currency counterfeiting.

Although it is acknowledged that efforts to counter threats to national security have been reinforced by mandating domestic civilian intelligence to address threats from 'new' security issues, problems of overlapping and overbroad mandates are apparent. With regard to organised crime, domestic civilian intelligence shares roles with crime intelligence. They operate within the same territorial theatres and target the same individuals and organisations. The tradecraft consists of similar investigative tools of intelligence.

In the internal realm of states, domestic civilian intelligence also overlaps with the internal dimension of military intelligence. In general, domestic civilian intelligence addresses domestic threats that place internal stability and order at risk, including the traditional target areas which consist of more major manifestations of violence. The internal dimension of military intelligence also targets lawlessness, the existence of paramilitary formations and major social implosions which carry the potential to develop into major forms of political violence. Therefore, domestic

civilian intelligence and domestic military intelligence tend to share the same roles, and focus on the same targeted individuals and organisations.

The extent to which the widened mandate of domestic civilian intelligence deals with non-military and internal threats raises controversy. In the context of the developing world, chapter four discusses the implications of the widened role of domestic civilian intelligence for the mandate of crime intelligence and military intelligence in South Africa, as well as for the service delivery roles of other civilian government departments.

CHAPTER FOUR

AN ANALYSIS OF DOMESTIC CIVILIAN INTELLIGENCE IN SOUTH AFRICA

1. INTRODUCTION

Since 1994, the broadened role of NIA as South Africa's domestic civilian intelligence agency, has had far reaching consequences for its mandate and focus in the domestic security realm. In order to analyse this transformation, this chapter first briefly discusses the previous intelligence dispensation during the period 1961 to 1989. A short period of transitional arrangements that formally served as a catalyst for the new intelligence dispensation between 1989 and 1993, is also briefly discussed.

Two critical problems with regard to the broadened roles of domestic civilian intelligence arise. The first problem centres around the issues of overlap, according to which the mandate of NIA duplicates the roles of other state intelligence agencies, and other civilian government departments regarding, for instance, economic development and basic service delivery. The second problem relates to the open-ended character of the NIA mandate, and the collection of domestic political intelligence which saw the domestic agency become embroiled in a controversy involving the violation of basic human rights and compromising the rule of law.

2. AN HISTORICAL OVERVIEW OF STATE INTELLIGENCE IN SOUTH AFRICA FROM 1961 TO 1989.

At the dawn of independence in 1961, the existence of the intelligence community in South Africa was broadly covered under the Constitution (No 32 of 1961), which provided for the appointment of a Cabinet Minister to "administer such department of State of the Republic as the State President may establish" (RSA, Constitution, 1961: section 20 (1)). Although parameters were drawn, subsequent legislation clarified the mandate of the components of the intelligence community with regard to national security. The Bureau of State Security (BOSS), also referred

to as the "Bureau" was established in 1969 as a civilian intelligence structure (RSA, Public Service Amendment Act, 1969: section 1(a)). It was only in 1972 that legislation was passed that clearly provided for the mandate of each component of the intelligence community. The Security Intelligence and State Security Council Act (No 64 of 1972) acknowledged BOSS to be South Africa's main civilian intelligence service. In terms of this Act, BOSS was accorded the mandate to "collect, evaluate, correlate and interpret national security intelligence" (RSA, Security Intelligence and State Security Council Act, 1972: section 2 (a)). However, BOSS was not accorded arresting powers.

At a departmental level, the South African Police (SAP), through the Special Branch and later the Security Branch, also collected information and intelligence relating to national security within South Africa but required the "knowledge and approval of the Bureau" to collect information outside South Africa (RSA, Security Intelligence and State Security Council Act, 1972: section 3 (1)). A directorate of Military Intelligence was established in 1964 as the main intelligence organ of the South African Defence Force (SADF). The Security Intelligence and State Security Council Act provided for the covert execution of "counterintelligence functions" within the borders of South Africa by the Military Intelligence section of the SADF but it also required "the knowledge and approval of the Bureau" with regard to performing intelligence functions outside the borders of South Africa (RSA, Security Intelligence and State Security Council Act, 1972: section 3 (1)).

Nathan (1992: 10) notes that the definition of threats to national security in the era of the National Party government was explicitly narrow but well defined. It consisted of three primary threats, namely: the challenge by African liberation movements which threatened to unseat White domination; the promotion of the communist ideology; and the attempt to or the use of violence to achieve both African liberation and communism.

Based externally, the capacity of African liberation movements to conduct armed actions in South Africa was due to material support of which a major component flowed from non-Western sources, especially the former Soviet Union and the Eastern Bloc. The overriding Soviet threat was a reality in South Africa as it was globally. The internal situation characterised a reflection of aggravating conditions or a state of violent uprising by popular movements in the country.

The synergy of the armed contingent and the internal conditions created a combination of threats consisting of terrorism, sabotage, subversion and treason, which constituted traditional threats to national security (Selfe, 1994: 104, 108). Similarly, Cawthra (1986: 26-35) interprets the 'communist total onslaught' as construed by the Nationalist Party to have consisted primarily of traditional threats to the state, including leftwing insurgency by the liberation movements and other subversive entities.

Secret undertakings by BOSS within the Department of Information resulted in widespread irregularities which later came to be known as the 'Information Scandal', and led to a change of National Party/government leadership in 1978 (Roherty, 1992: 74). The establishment of the National Management System (NMS) comprising the National Security Management System (NSMS) and the National Welfare Management System (NWMS), with the Cabinet Committee on State Security, also known as the State Security Council (SSC) at the apex of the national security system, created a perception that securocrats were dominating policy making in South Africa (Du Plessis and Hough, 1992: 4). In the intelligence realm, the resultant effects induced the establishment of a new National Intelligence Service (NIS) as South Africa's main civilian intelligence structure in 1980 (Roherty, 1992: 76). NIS was governed by the same legislation that provided BOSS with its terms of reference, namely, to "collect, evaluate, correlate and interpret national security intelligence" (RSA, Security Intelligence and State Security Council Act, 1972: section 2 (a)). The police Security Branch and Military Intelligence later had several off-shoots such as C10 unit based at Vlakplaas and the Civil Co-operation Bureau (CCB) respectively, also focusing on the domestic political situation. The success of the government against the insurgency is an indication that the SSC reaped huge rewards in the context of competitive analysis and information/intelligence verification from the overlapping of roles between the NIS, Military Intelligence, the police Security Branch and other structures. Flaganan (1994: 217, 220), however, states that the overlapping mandates of the three main intelligence services as well as their off-shoots, created problems of co-ordination and turf wars.

The period from 1989 and 1993 represents a watershed in the security history of South Africa as also influenced by international events. It was also characterised by a combination of an admission by the National Party government of the untenability of current security arrangements

and the activist posture of the liberation movements which, amongst others, necessitated a new security dispensation. As observed by Du Plessis and Hough (1992: 4-5), FW de Klerk quickly wrested control of national policy making from the securocrats by establishing the National Co-ordinating Mechanism (NCM), and confirmed Cabinet as the highest policy making and co-ordinating authority while the once powerful SSC was reduced to its statutory advisory functions.

Groundbreaking agreements such as the Pretoria Minute (1990) and the Groote Schuur Minute (1990) addressed the core elements of the security situation in South Africa. Siko (2007: 33) states that this was later reinforced by the dismantling of the NSMS and other structures, as well as the merging of the Security Branch of the SAP with the Crime Investigation Division (CID) to form the Crime Combating and Investigation (CCI) unit. De Klerk imposed substantial limitations on the intrusive gathering of intelligence. Important milestones were achieved when the Transitional Executive Council (TEC) was established and culminated in the adoption of the Interim Constitution of 1993, namely, the Constitution of the Republic of South Africa Act (No. 200 of 1993), according to which, major components of the security and intelligence establishments changed significantly (Siko, 2007: 40). It provided for state restructuring, including security and intelligence reorganisation while the Constitutional Assembly was drafting the final Constitution.

The next section deals with the contributions from various stakeholders and their impact on the new security-intelligence dispensation in South Africa in the period from 1989 to 1993.

3. TRANSITIONAL SECURITY ARRANGEMENTS AND THEIR IMPACT ON INTELLIGENCE

The new political dispensation negotiated in South Africa, included substantial changes affecting both the security and intelligence apparatus of the state. One of the reasons for the changes resided in the hope of curtailing the range of security functions performed by intelligence structures in the country.

In accordance with the Groote Schuur Minute (RSA, 1990: 1), the National Party government undertook to decriminalise political offences to conform to the requirements for normal and free

political activity. Political formations which were prohibited from freely operating in South Africa were allowed the freedom of assembly and association. The ANC and Pan African Congress (PAC), as well as other political formations suspended the armed struggle. According to the Pretoria Minute (1990: 2), the government further committed itself to repealing the Internal Security Act of 1977 and other security legislation. De Klerk also recognised that political changes abroad would have to be met with corresponding security adjustments at home (RSA, House of Assembly Debates, 1 February1991: cols 20-21).

As an ongoing process, all stakeholders engaged in intense negotiations that produced historical agreements that resulted in the repeal of more security legislation. Siko (2007: 37) states that as a result of the Groote Schuur Minute (1990), exiles were also allowed to return, which paved the way for further agreements for a new security and intelligence dispensation. However, an element of confusion with regard to the focus of the intelligence community as a consequence of the transformation was evident. So-called 'Third Force' activities, widely considered to be the extension of the state's extra-judicial capability to gain an advantage in the negotiations also became a feature of politics in South Africa. Despite these challenges, O'Brien (2005: 207) states that through mutual agreement, the ANC and NIS committed to ensure a constant flow of information and intelligence to create a balance between continuity and change. It resulted in both parties signing the Declaration of Intent (1991), upon which the Convention for a Democratic South Africa (CODESA) was based.

Both the National Party government and the ANC specifically agreed to deal with the new security threats, elevating non-military and domestic issues, and according them an increased primacy in the post-Cold War era (Shaw, 1994: 14). In addition, NIS; the security and intelligence unit of the ANC, namely, the Department of Intelligence and Security (DIS); the PAC's intelligence organisation; as well as intelligence services of all the former TBVC states (Transkei, Bophuthatswana, Venda and Ciskei) were dissolved and integrated into an interim national structure while their principals were busy crafting new constitutional and legislative frameworks within which the new intelligence dispensation would be accommodated (RSA, Transitional Executive Council Act, 1993: article 20).

From an intelligence perspective, the section below discusses the establishment of South Africa's new and separate domestic civilian intelligence agency as well as the rationale thereof.

4. THE ESTABLISHMENT OF THE NATIONAL INTELLIGENCE AGENCY

Arguments for the new intelligence dispensation were unanimously in favour of the establishment of the National Intelligence Agency (NIA). Tabling the National Strategic Intelligence Bill (1994) before Parliament, the Intelligence Minister, Ronnie Kasrils, stated that the central mission of NIA would reside in the warning, informing and advising of the government on threats to national security within the national territory (RSA, National Assembly Debates, 11 November 1994: col 4128). The Deputy Minister of Intelligence, Joe Nhlanhla, concurred that higher levels of professionalism, accountability and specialisation in the separate fields of intelligence would be achieved by the creation of a separate domestic civilian intelligence agency (RSA, Debates of the National Assembly, 11 November 1994: col 4132).

A new intelligence dispensation would also empower government with the ability to exercise meaningful control over intelligence (RSA, White Paper on Intelligence, 1995: 8). Further justifications for the establishment of NIA have been linked to having to conform to international trends related to intelligence reforms. After its establishment in 1994, NIA also brought forward several arguments, reinforcing justification for its existence and domestic mandate. According to Hough and Du Plessis (2002: 71), NIA insists that a unique value lies in its ability and task to scan and monitor the domestic environment in its entirety, and report on events and threats as well as their future impact on national security and stability. Additionally, NIA argues that it ensures that government is warned and informed on time regarding 'threats' and 'potential threats' to national security.

NIA as the domestic civilian intelligence agency in South Africa as well as the South African Secret Service (SASS) were established in terms of the National Strategic Intelligence Act (No 39 of 1994). For the first time in its history, South Africa had a new and separate domestic civilian intelligence agency. This means that South Africa has two civilian intelligence services, with SASS focusing on foreign civilian intelligence.

Within the national territory, South Africa had internal security concerns to grapple with, which posed threats to national security. According to Sisk (2009: 9), mostly White rogue elements within the pre-1994 security-intelligence community in co-operation with other right-wing elements remained a factor, but the potential to pose a serious challenge to national security had substantially diminished. Taxi wars or violence between rival taxi associations had also become one of the dominant features in the manifestations of urban violence (Abrahams, 2010: 510). The taxi violence was initially alleged to contain an element of the 'Third Force', which, it was widely suggested, had to do with government's covert operations. It was widespread and becoming increasingly unmanageable, and the new government had to intervene and successfully managed to stem the rising tide of violence. Taylor (2002: 3) argues that in early 1994, there was a discernible trend indicating that political violence in the Kwa-Zulu Natal province was on a dramatic decline. The above factors clearly describe the fact that despite the receding violence at that stage, the government saw it in the best interest of the country to establish NIA. However, no political formation in South Africa had the capability, combined with the political will, to wage a massive and sustained violent campaign such as an insurgency to warrant the establishment of a separate domestic civilian intelligence structure.

The next section analyses the mandate of South Africa's domestic civilian intelligence service as predominantly influenced by the broadened security agenda of the post-Cold War period.

5. THE MANDATE OF THE NATIONAL INTELLIGENCE AGENCY

The principal mandate of NIA resides in the "gathering, correlating, evaluating and analysing" of information and intelligence with the aim of identifying threats or potential threats to national security (RSA, National Strategic Intelligence Act, 1994: section 2 (1) (a)). In addition, NIA is also tasked to perform "national counterintelligence" functions (RSA, National Strategic Intelligence Act, 1994: section 2 (1) (b)). Engaging in counterintelligence activities means that NIA is authorised to perform reactive intelligence monitoring such as counter-espionage and other forms of countering hostile actions of foreign intelligence agencies coupled with positive intelligence functions within the state borders. Departmental intelligence, according to the aforementioned Act must be supplied by NIA to any state department that requires intelligence in

the custody of NIA to discharge its duties (RSA, National Strategic Intelligence Act, 1994: section 2 (1) (c)).

Three principal clients of NIA as consumers of intelligence are clearly identifiable in this Act. The first layer consists of the President of the country while the second consists of the National Intelligence Co-ordinating Committee (NICOC), and the third layer is made up of government departments (RSA, National Strategic Intelligence Act, 1994: section 2 (1) (b) (ii); 2 (1) (a) (ii) and 2(1) (c)).

In the National Strategic Intelligence Act (RSA, 1994: section 1 (ix), the "safety and well-being" of the people of South Africa represents a radical departure from the traditional concept of security. South Africa also does no longer acknowledge military threats as the main threats to security where the state used to be the main referent. Both the Act and the White Paper on Intelligence (1995) elevate human security or individual security to a level which also makes the individual a referent object. The Bill of Rights as encapsulated in the Constitution of the Republic of South Africa Act (RSA, 1996: chapter 2) points to a range of individual rights and basic liberties which form the basis for human security.

Although the mandate of NIA is premised on holistic and human security approaches as dictated by the National Strategic Intelligence Act and the White Paper on Intelligence, it has also become too broad and problematic. Issues of 'threats' and 'potential threats', the 'constitutional order', 'safety' and 'well-being of the people' remain some of the elements which need more clarification. As key concepts that should provide specific directions to NIA at an operational level, they are either ill-defined or vague. In the case of the counterintelligence functions of NIA, the National Strategic Intelligence Act fails to define 'impeding', 'neutralising' and 'countering' hostile actions of foreign intelligence services (Nathan, 2009: 157-159).

In addition to the above, Hutton (2008: 1-2) also argues that the mandate of NIA is overly broad and expansive, and includes "every aspect of the human endeavour upon which good order and the prospects for a prosperous future depends". Bernhardt (2006: 2) also concurs that NIA's mandate is vague when it comes to clear explanation and practical guidance regarding the exact

meaning of 'threats' and 'potential threats'. More problematic is the issue of identifying them from an intelligence perspective.

The section below deals with the functions or focus of domestic civilian intelligence as determined by the new security agenda.

6. THE FOCUS OF THE NATIONAL INTELLIGENCE AGENCY

The contemporary focus of NIA primarily comprises of issues emanating from traditional threats; threats from organised crime and corruption; as well as threats related to developmental and service delivery issues.

6.1 Issues arising from traditional threats

The focus on traditional threats is given a more practical expression in the National Strategic Intelligence Act. It explicitly states that NIA, as the lead agency regarding domestic civilian intelligence functions, shall "gather, correlate, evaluate and analyse" information and intelligence relating to domestic threats to national security (RSA, National Strategic Intelligence Act, 1994: section 2 (1) (a)). This involves scanning the domestic environment in the fulfillment of pro-active and early warning roles. The NIA as stated, also fulfils counterintelligence functions, which in the Act are described as "measures and activities conducted, or instituted or taken to impede and to neutralise the effectiveness of foreign or hostile intelligence operations, to protect classified intelligence and to counter subversion, sabotage and terrorism aimed at, or against personnel, strategic installations or resources of the Republic" (RSA, National Strategic Intelligence Act, 1994: section 1 (v)). All measures in this regard are aimed at countering the activities of foreign intelligence services as well as protecting the government's secrets. Furthermore, these measures include countering traditional threats aimed at the Republic of South Africa. NIA has also been tasked to execute departmental intelligence functions (RSA, National Strategic Intelligence Act, 1994: section 2 (1) (c). This largely involves liaising intelligence to other state departments to assist in their line-function responsibility.

The focus of domestic civilian intelligence is an indication that although security and the application of domestic civilian intelligence had evolved significantly, traditional threats have

remained first tier priority areas for NIA since 1994. This can be observed from the following statement: "And in turning to our domestic priorities, we remain vigilant to countering espionage, subversion, violent instability, corruption, transnational crime and will ensure that all events hosted by our country, including the 2010 World Cup, are properly secured" (RSA, Kasrils, 2008: 8).

Sisulu (RSA, 2001: 6) concedes that terrorism, sabotage, subversion and violent protests were, amongst others, priority areas for NIA since 1994. However, the criminality of these activities remains the competence of crime intelligence and law enforcement. Since crime intelligence and NIA use similar methods, the warning role fulfilled by NIA seems to be ever present in the crime intelligence infrastructure. Therefore, the dividing line between domestic civilian intelligence and law enforcement/crime intelligence seems to be blurred.

A Cabinet decree during former President Mbeki's era also added another responsibility to NIA in 1999 (RSA, Ministerial Review Commission on Intelligence, 2008: 128). Political intelligence became a new priority area for NIA. According to Hutton (2008: 1-2), the justification by the government for the collection and analysis of domestic political intelligence resided in the possibility of instability arising from intra-party disputes. From the perspective of the government, it seems there had been more concern with protecting and safeguarding the emerging state as a new democracy. By collecting and analysing domestic political intelligence, NIA would be engaging in an undertaking to identify and address home-grown threats or potential threats to the security of the state and its people. The result of this function was that South Africa's domestic civilian intelligence agency employed clandestine means and tools to gain access related to plans, intentions and capabilities of political parties engaging in conventional and acceptable forms of political contestations (RSA, Ministerial Review Commission on Intelligence, 2008: 138-140).

Despite government tasking NIA to address threats from traditional sources, no major form of violence such as an insurgency existed in South Africa at the time. Though Passas (1995: 15), amongst others, considers domestic civilian intelligence as insurance against the unknown future, the focus of NIA on current traditional threats seems questionable, as the SAPS already deals with this. As shown in Chapter 3, domestic civilian intelligence operations seem justified to deal

with traditional threats, including wide-spread insurgency. Therefore the establishment of NIA in South Africa in the post-1994 period seems questionable.

6.2 Threats of organised crime and corruption

As stated, organised crime has been declared a threat to security at global level. Within the domestic realms of states, intelligence agencies have also been tasked to combat organised crime. Organised crime and corruption were specifically identified as forming the seven priority areas of the intelligence focus, which in 2003 were identified as political intelligence, terrorism, economic intelligence, counter intelligence, border intelligence, organised crime, drug trafficking, corruption and special events. (RSA, Sisulu, 2003: 2). It becomes the function of NIA to address these threats if they manifest themselves within the territorial boundaries of South Africa.

The National Strategic Intelligence Act is also explicit in directing NIA to provide intelligence to the SAPS for purposes related to the investigation of offences by stating that it must "supply (where necessary) intelligence relating to any such threat to the South African Police Service for the purposes of investigating any offence or alleged offence" (RSA, National Strategic Intelligence Act, 1994: section 2 (b) (iii)). Though the instruction is overly broad, it also covers crimes that include organised crime and corruption which the police must investigate and prosecute for the benefit of law enforcement. The authorities are conscious of the fact that South Africa has, for instance, become both a major transit route as well as a lucrative market for the narcotics trade, and it continues to corrupt the social system.

The Police Service Act instructs the SAPS to act as a lead agency in the "prevention and investigation of organised crime" (RSA, South African Police Service Act, 1995: chapter 6, section 16 (1)). The National Strategic Intelligence Act takes cognisance of the existing capacity residing within different agencies of the SAPS, including crime intelligence structures and other law enforcement entities to deal with organised crime and corruption. Considering the existence of several structures in South Africa, competitive analysis and information/intelligence verification within the context of law enforcement should be satisfied without the involvement of a domestic civilian intelligence service. Moreover, the fact that organised crime is not aimed at

the violent overthrow of the government makes competitive analysis and information/verification between domestic civilian intelligence and law enforcement seem less beneficial.

In respect of the above, three basic observations can be made. Firstly, the SAPS's intelligence structures and NIA inter alia employ similar secret investigative methods to collect information, which renders NIA participation in this regard is questionable. Secondly, the culture and training of law enforcement agencies, especially crime intelligence, is geared towards effective prosecution and crime combating. Thirdly, NIA plays a supplementary role in combating organised crime, implying that this is not its first tier priority. NIA could be disinclined to provide support to an organisation that also rivals it.

6.3 Threats emanating from developmental and service delivery issues.

Threats emanating from the developmental and service delivery context represent more 'soft' security issues. The inclusion of these new types of issues in the security realm is an acknowledgement by the South African government that it is no longer able to view security from a military perspective only. A more holistic approach that includes political, social, economic and environmental factors has been adopted as a new framework to guide the addressing of threats to national security (RSA, White Paper on Intelligence, 1995: 4).

According to Kasrils (RSA, 2005: 2), issues involving poverty, infectious diseases and environmental degradation have become pervasive and are a source of threat to security. In this context, the relationship between developmental issues and security points to the fact that the state's failure to ameliorate their negative effect has the potential to result in security threats. In addition, Hough et al (2008: 105) further quote Kasrils stating that:

> At the same time there is a relentless pressure on resources such as energy, water, minerals, fertile land and food, leading to increased competition and potential for conflict... It affects everyone especially a new and diverse nation like South Africa, with a range of domestic challenges and wide international responsibilities, including our obligation within the region and our commitment to the African renaissance, to the African Union and New Partnership for Africa's Development.

These types of threats also have the unintended effect of rendering the focus and priorities of NIA vague, and tend to involve it in almost every aspect of human life. The White Paper on Intelligence (RSA, 1995: 4-5) states that regarding the internal dimension of South Africa, intelligence has a critical role to play in terms of development and economic growth. NIA is commissioned by government to actively participate in creating a situation conducive to economic prosperity and development. From a service delivery perspective, the Mail and Guardian Online (2010: March 12) states that, NIA is, for instance, reported to be engaged in the vetting of the health department's senior personnel with regard to qualification verification. This is in line with ensuring that that personnel hired are sufficiently qualified with the necessary skills and expertise to deliver basic social services. The irony regarding this exercise is, as the Mail and Guardian Online (2010: March 12) observes, that the Health Department in Gauteng has a Human Resource component that specifically deals with such matters. This has created tension between NIA and a significant portion of the Gauteng Health Department. Taking into consideration the polarised nature of some sections of the public service along political party lines, largely induced by the practice of political deployment by the ruling party which often involves poorly qualified and incompetent individuals, the vetting of the civil service by NIA has also become a debateable issue.

A combination of developmental and service delivery issues, however, constitutes an amorphous area for intelligence. At the inception of the new political dispensation in 1994, these issues resided within the Reconstruction and Development Programme (RDP) under the former Minister without Portfolio, Jay Naidoo. In the context of addressing intelligence from the post-Cold War perspective, an opposition parliamentarian, Jacobus Jordaan warned about a future potential for conflict over the mandate of domestic civilian intelligence in 1994:

> There are certain grey areas in the Bill and despite what has been said, there might be elements, not so much between the different intelligence agencies but between intelligence agencies and certain line-function departments, which on the one hand might be staking an additional claim and on the other trying to defend their turf. ... It is an absolute minefield which will have to be very carefully watched (RSA, National Assembly Debates, 11 November 1994: col 4145).

For developmental and services delivery functions to reside partly in the intelligence domain, despite the absence of major traditional threats like an insurgency, serves to further complicate the problem of securitising the domestic environment in a democracy. As indicated in Mutimer (2008: 88-90), the securitisation of the domestic environment carries with it state practices that often involve the suspension of civil liberties. It could represent a reversal of democratic gains consolidated in the body politic in the name of national security.

It can be deduced that the focus of domestic civilian intelligence in this respect is overly broad and tends to lack practical limitations. The next section discusses corresponding problems related to the expansive focus of NIA.

7. PROBLEMS RELATED TO THE OVERLY BROAD MANDATE OF THE NIA

The mandate and guidelines that NIA derives from the White Paper on Intelligence and the National Strategic Intelligence Act are premised upon the principles of human security and democracy. However, several problems as a result of the overly broad mandate of domestic civilian intelligence have occurred. The main issues are primarily those of overlaps and domestic political intelligence.

The post-2009 intelligence dispensation seems to reflect characteristics of overlaps and an overly broad mandate. Following from Proclamation No R 59 of 2009, NIA merged with SASS and other structures to form the new State Security Agency (SSA) as the country's main civilian intelligence service. The Domestic Branch of the SSA, formerly NIA, which came into being as a result of Proclamation No. 912 of 2009, relies primarily on the same terms of reference that governed NIA as encapsulated in the National Strategic Intelligence Act (1994) (RSA, State Security Agency, 2010: 1). However, there is an attempt by government to narrow down the mandate of the Domestic Branch of the SSA because the collection of domestic political intelligence, for instance, does not feature as one of its focus areas.

7.1 Problems of overlaps

The mandate of NIA has been found to overlap with the functions of SAPS's crime intelligence and the former Directorate of Special Operations (DSO) of the National Prosecuting Authority

(NPA) on the one hand, and the domestic dimension of the Intelligence Division of the SANDF on the other. In addition, NIA's mandate overlaps with the roles of civilian department such as the Department of Trade and Industry (DTI) and others.

7.1.1 Overlaps with functions of the SAPS's CIU and NPA's DSO

As far as the National Strategic Intelligence Act is concerned, NIA should supply information to the Police for purposes related to the investigation of crimes and alleged crimes. This mostly refers to the SAPS's crime intelligence structures. This is reflective of an institutionalised co-operative and information sharing framework between NIA and the police. It reinforces arrangements of information sharing and co-ordination under the aegis of the National Intelligence Co-ordinating Committee (NICOC) (RSA, National Strategic Intelligence Act, 1994: section 2 (1) (a) (ii)).

Chapter 6 of the South African Police Service Act (No 68 of 1995) provides for the use of "specialised skills" in the prevention and investigation of organised crime (RSA, South African Police Service Act, 1995: section 16 (2)). These 'specialised skills' refer to highly refined investigative methods residing in the intelligence discipline. Additionally, the Khampepe Commission (RSA, 2006: 72) found that the former DSO, in the course of its prosecutorial investigative duties in combating organised crime, also employed intelligence methods. As stated, NIA, from a national security perspective, engages in activities also aimed at addressing organised crime threats. Aided by other intrusive methods, all three agencies, namely NIA, Military Intelligence and the police crime intelligence, task informants to secretly infiltrate the same individuals and organisations engaged in organised crime activities. According to Jansen Van Rensburg (2005: 17), the above agencies employ similar secret collection methods. It is evident that NIA's role overlaps with the functions of the CIU and the now defunct DSO. This indicates an example of the duplication of tasks and functions by NIA.

The duplication of functions by intelligence agencies focusing on similar issues has resulted in counter-productive competition leading to outright rivalry. The Financial Mail (2000: June 9) reported that NIA and SAPS's CIU were involved in a dispute over the handling of an informant who successfully managed to infiltrate the organisation, People Against Gangsterism and Drugs

(PAGAD) in the late 1990's and early 2000. It developed into a public embarrassment which saw each agency trying to expose the inefficiencies of the other in public.

7.1. 2 Overlaps with the domestic dimension of the Intelligence Division of the SANDF

The Constitution broadly provides that the objective of deploying the SANDF is to "defend and protect the Republic, its territorial integrity and its people" (RSA, Constitution of the Republic of South Africa, 1996: section 200 (2)). In cases involving terrorism, the SANDF needs prior information, and also requires the involvement of military intelligence to provide an objective picture of the actual state of affairs.

The Intelligence Division of the SANDF, is allowed to "gather, correlate, evaluate and use domestic military intelligence excluding covert collection", except when employed for service in the upholding of law and order in cooperation with the SAPS (RSA, National Strategic Intelligence Act, 1994: section 4 (b)). In addition, "specific geographical areas and time-scales" are required for the authorisation of the involvement of military intelligence in conducting covert operations within the domestic realm (RSA, National Strategic Intelligence Act, 1994: section 3 (2)). An element of overlap is clearly discernible, relating to actions of organisations employing terrorist tactics to achieve their objectives. While the Intelligence Division of the SANDF focuses on military issues, it could overlap with NIA functions in addressing threats of, for instance, terrorism.

7.1.3 Overlaps with the Department of Trade and Industry, and others

The White Paper on Intelligence (RSA, 1995: 5) mentions 'development' as well as 'national prosperity' as amongst some of the responsibilities that NIA's information collection must deal with. These responsibilities represent a major part of South Africa's macro-economic issues. At an operational level, South Africa's Department of Trade and Industry (DTI) is the primary government department that deals with trade issues.

According to the Department of Trade and Industry (DTI) (RSA, 2010: 1-3), Trade and Investment South Africa (TISA) has the expertise to deal with the economic and trade component of the polity in order to foster economic development, growth and prosperity. It is

imbued with the culture of operating at home and abroad. Aided by respective state departments, the DTI deals with the exploitation of resources such as water, minerals, agriculture, energy, and others for the developmental benefits of the people, in terms of internal and external trade, and other related matters. Kasrils (RSA, 2004: 3) states that the intelligence community must play a role in the protection of the country's resources. In this context, the role of NIA is clearly overlapping with the mandate of the DTI and other non-security government departments.

Similarly, the White Paper on Intelligence (RSA, 1995: 4) indicates that intelligence has a duty to address threats originating from environmental sources. Obviously this, for instance, involves the plunder of natural resources and the destruction of the environment. NIA's role in this regard also duplicates the work of experts within and outside government structures. The Ministerial Review Commission on Intelligence (RSA, 2008: 133) laments the involvement of NIA in these developmental issues, and also declares that such areas remain the competence of many non-security government departments and non-governmental bodies.

Another example is that of migration. The Minister for Intelligence Services, Siyabonga Cwele, stated that a need for the intelligence community to confront issues of migration and urban concentration which have a bearing on xenophobic tendencies, had arisen (RSA, Cwele, 2008: 5)). Migration has become a complex international phenomenon which requires the integrated national policy responses of the state and other international stakeholders. The implication of the involvement of NIA in migration issues is reflective of overlaps with many government civilian departments, especially the Department of Home Affairs (DHA).

7.2 Problems of the collection of domestic political intelligence

While the White Paper on Intelligence and the National Strategic Intelligence Act had already provided NIA with an overly broad mandate, the Ministerial Review Commission on Intelligence (RSA, 2008: 128) states that NIA, in earnest, started to interpret it expansively from 1999 onwards. Political intelligence is concerned with political formations as well as the power they command, and intentions within a specific political setting. Within the domestic environment, it clearly meant that NIA would collect and analyse information on political parties and other political formations including civic groupings.

Hutton (2008: 1-2) indicates that political intelligence was designed to cover intra-party and inter-party competition, instability and possible subversion arising from transformation, given the unusual and fragile nature of South Africa's political landscape immediately after the 1994 elections. There was a likelihood that subversion and sabotage could have resulted from these issues. The involvement of NIA in domestic political intelligence carried with it corresponding risks that undermined the basic tenets on which the new political dispensations stands. Firstly, domestic civilian intelligence agencies can easily interpret their mandate in a manner covering illegal acts in the name of national security. Secondly, in a democracy, politicians and political parties are tempted and could easily use domestic political intelligence to gain unfair advantage over rivals. Therefore this implies that NIA could easily have served as a springboard to subvert principles of democracy.

In 2005, NIA was embroiled in an intelligence crisis that involved the surveillance of a former senior ANC member who is also a prominent businessman, Saki Macozoma, on alleged suspicion of having contacts with members of a foreign intelligence service (Financial Mail, 2006: June 9). Although the surveillance was not illegal, it was not justified. However, what was illegal was the wiretapping because no court order was issued to authorise this operation. The whole saga led to the dismissal of the Director- General of NIA by the then President Thabo Mbeki. The former Minister for Intelligence Services, Kasrils denies having given consent for this project (Institute for Security Studies, 2007: 11).

In the same vein, the Premier of Western Cape, Helen Zille alleges that she has been subjected to wiretapping by NIA since 2008, when she was the Mayor of Cape Town, and there are no indications that it had stopped (News 24, 2011: March 9). After laying a complaint with Kasrils, she was informed that no directive was issued for such an operation. Furthermore, Kasrils also advised that no guarantee could be given that rogue elements within NIA had not acted unilaterally (IOL News, 2011: April 10).

Kasrils later admitted that NIA, as a domestic civilian intelligence agency, had become a ready-made platform for threats and risks which subverted the same democratic order which it claimed to have protected and safeguarded (Business Day, 2007: December 4), especially when traditional threats that involved major violence such as an insurgency were absent. Politicians

were at all times tempted and sometimes managed to use that platform to advance their own agendas. Information and intelligence in the custody of NIA stood the risk of being manipulated to advance and also unfairly disadvantage individuals and rival political parties, which in a democracy is not acceptable. NIA also interpreted its mandate expansively for reasons related to the self justification of its existence. As shown, the risk of infringing on basic human rights such as privacy and other individual or personal liberties basic to democracy, were ever present.

Having gone through the experience of 2005, the realisation dawned on the South African government that the gathering of domestic political intelligence had become problematic in its existing form. Kasrils admitted in 2007 that the political situation had improved to the extent that it no longer posed threats to the domestic stability of South Africa, and as a result, NIA no longer maintained a specific category of political intelligence as one of its core priorities (Business Day, 2007: December 4). This happened even before the results of the Ministerial Review Commission on Intelligence were made public. Since late 2007, the use of 'domestic political intelligence' in the intelligence budget speeches and other declarations seems to have receded.

Amongst the core recommendations, the Ministerial Review Commission on Intelligence (RSA, 2008: 142) states that NIA should abandon the collection of domestic political intelligence. Hutton (2008: 2) specifically states that the gathering of domestic political intelligence carries the potential for political misinformation, the manipulation of information, as well as propaganda to serve partisan political objectives of individuals and political parties.

8. CONCLUSION

At the inception of the Republic of South Africa, the intelligence community officially consisted of the Special Branch of the SAP and Military intelligence. A civilian intelligence service was established in 1969 when BOSS was formed. It was replaced by the NIS in 1980. It is undeniable that the SSC established in 1972 benefited enormously in terms of competitive analysis and information/intelligence verification emanating from the overlapping mandate of the civilian intelligence structure with the police Security Branch and Military Intelligence. However, having to execute domestic civilian intelligence functions, BOSS and later NIS,

encountered serious problem of overlap, co-ordination and turf wars with the SAP's Special Branch, Military Intelligence and other government agencies. That emanated from the fact that with regard to traditional threats such as terrorism, subversion, sabotage, and espionage within the domestic confines of South Africa, all agencies targeted the same individuals and organisations.

The mandate and focus of NIA are overly broad and overlap with the functions of other intelligence agencies and civilian departments. For instance, with regard to organised crime, NIA's mandate overlaps with the role of the SAPS's crime intelligence, which deals with organised crime. Secondly, NIA's role could easily overlap with the mandate of the SANDF Intelligence Division in cases involving terrorism. On the whole, in view of the absence of major threats of violence such as insurgency, NIA as a separate domestic civilian intelligence agency has increasingly become problematic in South Africa. This poses risks and threats to civil liberties, which remain core tenets of democracy.

The collection of domestic political intelligence has been a contentious issue in South Africa specifically since 2005. One of the main lessons learned is that in a democracy, domestic political intelligence poses risks and threats to national security. Political intelligence could be abused by intelligence chiefs for their own agenda. Ruling political parties as well as factions within political parties can use political intelligence to gain advantage over their rivals.

Problems related to the overly broad mandate of domestic civilian intelligence have been analysed from a developing country perspective, with South Africa as a specific case study. The next chapter deals with problems related to the widened mandate of domestic civilian intelligence from a developed country perspective, with the UK as a case study in this regard.

CHAPTER FIVE

AN ANALYSIS OF DOMESTIC CIVILIAN INTELLIGENCE IN THE UNITED KINGDOM

1. INTRODUCTION

From the developed world perspective, this chapter examines the mandate and focus of the domestic civilian intelligence service in the UK. An overview of domestic civilian intelligence in the UK before and during the Cold War periods, specifically from 1909 up to 1988 is first provided. The year 1989 serves as a watershed period characterised by the codification of domestic civilian intelligence in the UK.

Despite the end of the Cold War and paramilitary threats from Northern Ireland subsiding, the UK government further broadened the mandate of the domestic intelligence service, known as the Security Service (MI5). This period is also analysed with emphasis on the principal legislative provisions and official guidelines governing the domestic civilian intelligence dispensation, as well as how it impacts on the mandate and focus of other security organs of the state. Corresponding issues arising from the mandate of the domestic civilian intelligence agency such as overlaps; information sharing and co-ordination; and specific intelligence failures, are also identified and discussed.

2. AN OVERVIEW OF THE ROLE OF MI5 PRIOR TO AND DURING THE COLD WAR

As stated, the UK domestic civilian intelligence service, the Security Service (MI5) originated in 1909 within a structure known as the SSB, which dealt specifically with foreign threats. It came about as an offshoot of Military Intelligence in the UK's Department of Defence (DoD) (Porter, 1987: 167). The existence of the UK's domestic intelligence capacity was not codified in any legislation, and was also not publicly acknowledged by the government until 1989.

According to Elmostehi and Vozzo (2005: 4), at the outset, MI5 was mandated to focus on counterintelligence, of which German espionage constituted the main threat at that time. The

Germans were already showing signs of intentions to rearrange international relations according to the values, interests and needs of Germany in Europe, and probably, as it proved later, the entire world. The UK, as an imperial power with a global reach was targeted by the Germans because it had the power to challenge German's ascendancy in Europe and elsewhere. As an advanced technological power, the UK remained a target of economic espionage by the Germans. Its War Department was also of major interest to the Germans due to its imperial ambitions in both Europe and elsewhere. The threats from Germany intensified as it sent its spies to collect information on the UK's war potential. The advent of World War 1 in 1914, forced the UK government to increase the counter-espionage activities of MI5. In terms of manpower, MI5's personnel increased from 14 in 1914 to 844 in 1918 (Porter, 1987: 179).

The triumph of the Bolsheviks/Communists in the 1917 Revolution in Russia, led to an era of hostile relations with the West. After the end of World War 11, the consolidation of Soviet power and its global influence created an overriding Soviet and communist threat. The Soviet influence was also present in the UK's domestic realm. It was mostly carried out through acts of espionage and subversion. As one of the most important members of the capitalist West, the UK became a prime target of the Soviet Union (Carruthers, 2004: 74).

In 1952, the UK Home Secretary, Maxwell Fyfe issued an administrative order which reiterated the tasks of MI5 in the 'Defence of the Realm' decree as including countering espionage, sabotage and subversion. Sometimes called the Maxwell-Fyfe Directive, this pronouncement was never elevated to statutory status and remained unpublished. However, it provided direction and operational guidance with regard to the mandate and focus of the intelligence community within and beyond the national territory (Hannah et al, 2005: 14-15).

From 1969, the IRA began its terrorist campaign in an attempt to secede from the UK's rule and reunify Northern Ireland with the Republic of Ireland as they were a single geographical unit before the independence of the latter (Archick, 2011: 1). Attacks were carried out in both the mainland UK and Northern Ireland, and attacks on human targets and the infrastructure became the official policy of the IRA. Since then, MI5 established a tradition of operating against terrorist organisations with the aid of intelligence methods such as electronic surveillance, infiltrations and recruitment (Burch, 2007: 6). The Security Branch of the police was the lead

structure with regard to terrorism, especially Irish terrorism until 1992, when the lead role was transferred to MI5 (Chalk and Roseanau, 2004: 9; Dillon, 1994: 178).

The next section briefly discusses factors that precipitated the change in the UK from its Cold War approach to the post-Cold War practice of intelligence, to conform to standards such as the legality of its intelligence services and greater transparency.

3. THE ADVENT OF CODIFICATION OF THE INTELLIGENCE SYSTEM IN THE UNITED KINGDOM

The period starting from 1989 does not necessarily explain the substantial reorganisation of the intelligence system and the restructuring of individual intelligence and security entities. An important intelligence structure such as, for example, the domestic civilian intelligence structure (MI5) was retained. The justification for the retention of MI5 was provided much later, and is in part contained in the National Security Strategy of the United Kingdom (2008). The most important reason forwarded for the post-Cold War intelligence system, which includes the retention of MI5 in the UK, is globalisation, within which the transnational character of terrorism and organised crime manifests (UK, National Security Strategy of the United Kingdom, 2008: 8, 10, 12).

However, from another perspective, the UK also embarked on a process of reorganisation which could in part be construed as representing reforms of its intelligence activities. Amongst key developments, the proclamation of the Security Services Act (c 5 of 1989) put the domestic civilian intelligence structure, namely, MI5 on a statutory footing. For the first time in its history, the UK government publicly acknowledged the existence of its domestic civilian structure. Some of the most important issues addressed in the Act include principles of relative transparency, controlled openness and accountability as espoused in the intelligence reforms of the post-Cold War era. In 1994, the government enacted the Intelligence Services Act (c 13 of 1994), according to which the Secret Intelligence Service (SIS) or MI6 was acknowledged as the UK's main foreign civilian intelligence service (UK, Intelligence Services Act, 1994: section 1). Despite the fall of the Soviet Union and the receding communist threat at that time, the government retained its primary and separate civilian intelligence structures, namely a domestic

and a foreign service. The entire intelligence co-ordination and assessment functions remained under the direction of the Joint Intelligence Committee (JIC) (UK, Intelligence and Security Committee Annual Report, 2006: 7; Burger, 2008: 76, 78).

Accordingly, all intelligence structures are obliged to operate under the laws of the country and their activities are governed by a legislative framework and other operational guidelines within which they have to discharge their respective duties (UK, National Intelligence Machinery Booklet, 2001: 3). The blanket of secrecy under which intelligence structures operated for much of their Cold War history was reduced to a level necessary for national security as seen from a government perspective. The legislative framework continues to evolve to meet current challenges. Clutterbuck (2009: 120) shows that the modification of the UK intelligence system is minimal because it continues to reflect overlaps of functions between individual intelligence structures as one of its defining features.

However, in general, the new approach by the UK government represents a departure from past practices characterised by a lack of proper scrutiny of the state intelligence services. It resonates with the requirements of accountability, oversight and control. Accordance to Gill (1994: 80), for intelligence oversight to be effective, it needs to satisfy the intelligence community itself, the executive, the legislature, the judiciary and civil society. Clutterbuck (2009: 124-5) indicates that the oversight role by Parliament is clearly indirect because the head of MI5 reports directly to the Home Secretary, who in turn reports to the Prime Minister. The head of MI5, like the heads of most intelligence agencies, enjoys the right of direct access to the Prime Minister. Both the Home Secretary and the Prime Minister account to Parliament. Strong executive oversight over intelligence matters, including domestic civilian intelligence, with weak parliamentary and judicial oversight is apparent.

In the next section, the legal mandate of UK's domestic civilian intelligence is discussed to analyse its post-Cold War national security role.

4. THE MANDATE OF MI5 IN THE POST-COLD WAR PERIOD

To a certain extent, UK intelligence also underwent some changes as a result of the end of the Cold War. Several Acts promulgated by Parliament, necessary for MI5 to address national security challenges in the post-Cold War period, are discussed below.

As indicated, MI5 primarily owes its legal mandate to the Security Services Act (c 5 of 1989). The principal role of MI5 with regard to national security is "the protection against threats from espionage, terrorism and sabotage, from the activities of agents of foreign powers and from actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means" (UK, Security Services Act, 1989: section 1 (2)). The above threats are still considered the most serious in the contemporary post-Cold War period, and also occupied unrivalled primacy during the Cold War period.

As the National Intelligence Machinery Booklet (UK, 2001: 12) states, MI5 can only fulfil its legal mandate by collecting, analysing and assessing information to counter threats to national security. Most of these threats contain an element of violence aimed at disrupting the stability of the political system. Espionage, as stated, is by nature not a violent activity but can serve as an enabling tool in the commission of violent activities. Although the Soviet and communist threats formed most of the traditional threats during the Cold War period, after the demise of the Soviet Union, the UK government ironically failed to scale down resources and downgrade threats from traditional sources. Moreover, at that stage, it required minimal resources to contain the remaining threat from paramilitary formations in Northern Ireland. According to Lewis (2006: 1), the threat of home-grown Islamic extremism, which evidently constitutes an off-shoot of the Islamic Jihadists as championed by Al Qaeda with its strongest presence in Pakistan, is clearly a foreign inspired phenomenon.

The same Act tasks MI5 to "safeguard the economic well-being" of the UK (UK, Security Services Act, 1989: section 1(3)). The issue of industrial and economic espionage is relevant here. According to Porteous (1993: 2), the developed world, including the UK, is also a target of industrial espionage through which foreign firms attempt to benefit illegally from technical, commercial and other proprietary information owned by the government and the private sector.

In respect of economic espionage, a significant portion of the government's industrial, commercial and trade secrets is also sought after by foreign governments to benefit their industries. This implies that the government and a significant portion of the private sector's industrial and technological base could be disadvantaged to the extent of having an overall negative impact on the economic well-being of the UK.

As the prime state organ dealing with domestic intelligence, MI5 informs the government and "others as necessary" on the scope and type of threats to national security (UK, National Intelligence Machinery Booklet, 2001: 12). This includes the provision of departmental intelligence to any state structure which requires this, as well as any information or intelligence that could help in the execution of its functions.

Despite the existence of one of the world's best trained and resourced police investigative agencies popularly known as Scotland Yard, the UK government has increased the responsibilities of MI5 with regard to serious organised crime. MI5 has been commissioned, as one of its core functions to "act in support of activities of police forces and other law enforcement agencies in the detection and prevention of serious crime" (UK, Security Services Act, 1996: section 1).

The redefinition of security in the post-Cold War period had profound effects on the reorganisation of domestic civilian intelligence in the UK. In the next section, the focus of MI5 is analysed in order to identify the scope and extent of its involvement in achieving national security objectives.

5. THE FOCUS OF MI5 IN THE POST-COLD WAR PERIOD

The operational competence of MI5 with regard to national security can be divided into three distinct but interrelated areas, namely, traditional threats, organised crime and the safeguarding of the economic well-being of the UK.

5.1 Traditional threats

As stated, with the exception of espionage, traditional threats primarily consist of threats which contain an element of violence. The most common expressions of traditional threats include

terrorism, subversion and sabotage. The wide-spread manifestation of violence in these forms within national territories is often aimed at overthrowing or destabilising incumbent governments. This is captured in the Security Services Act (1989) which includes "actions intended to overthrow or undermine parliamentary democracy by political, industrial or industrial means" (UK, Security Services Act, 1989: section 1 (2)).

Firstly, in fulfilling intelligence functions, MI5, like any intelligence organisation, is required to proactively scan the domestic environment in order to identify any form of threat to the national security of the UK. Guided by policy-makers and the legislation, this self-tasking function remains one of the first-tier priorities of MI5, and threats identified need to be timeously relayed to the policy-makers for prompt action. As Kent (1966: 3, 211) alluded to earlier, this refers to positive intelligence, that is, intelligence that needs to be known by policy-makers before a particular course of action is taken.

It is undeniable that the UK faces threats of international terrorism originating primarily from Islamic extremism. A residual domestic threat in the form of terrorism also exists from Northern Ireland paramilitary groups, but at this stage requires fewer resources. The UK plays host to a large contingent of the Islamic immigrant community. Radical elements espousing extremist views and intentions have been found to reside within this community and some of their activities culminated in the London terrorist bombings of 7 July 2005 (UK, Report into the London Terrorist Attacks on 7 July 2005, 2006: 3). Clutterbuck and Roseanau (2009: 3) quoted the British Prime Minister, Gordon Brown as stating that "Three quarters of the most serious plots investigated by the British authorities have links to Al Qaeda in Pakistan". This indicates that most threats of terrorism originate from a foreign source. It remains the function of MI5 to counter terrorism if it manifests within the national territory. However, taking into consideration that this threat does not constitute wide-spread violence such as an insurgency; and that the police Special Branch are also dealing with it, this makes the role of MI5 questionable in this regard.

Secondly, MI5 is also engaged in activities aimed at countering the "activities of agents of foreign powers" (UK, Security Services Act, 1989: section 1(2)). This consists primarily of counterintelligence functions. First and foremost, both allies and foes of the UK would like to

obtain information about its intentions and capabilities. Therefore sending spies to obtain information in this regard is one of the oldest elements of statecraft. Counterintelligence functions include measures such as the protection of information; the provision of personnel security; the provision of security to the intelligence infrastructure in its entirety; and infiltrating foreign intelligence services operating in the UK. Since counterintelligence deals with threats originating externally, MI6 should focus on this threat if MI5 is disbanded.

In combating terrorism, especially Irish terrorism, MI5 shared this responsibility with the Special Branch of Scotland Yard as a police structure since the Cold War period. Countering the proliferation of weapons of mass destruction, which seems to be closely related to terrorism, falls within the ambit of MI5's focus (UK, National Intelligence Machinery Booklet, 2001: 9). The lead responsibility regarding terrorism resided within the police for most of the Cold War period. Since 1992, the lead role in this regard was transferred to MI5 (Dillon, 1994: 178). The Joint Terrorism Analysis Centre (JTAC) co-ordinates and analyses intelligence on terrorism. However, according to the United Kingdom's Strategy for Countering International Terrorism (UK, 2009: 99), MI5 can task the police without having to provide reasons for such operations within a relationship governed through the Executive Liaison Groups (ELG's), which in part provides for information sharing between MI5 and the police. A complex undercover operation by MI5, the Special Branch and the Anti-Terrorist Branch of the Scotland Yard, for instance, led to the conviction of an IRA terrorist cell, which planned to bomb six electrical sub-stations in London and elsewhere in England in 1997 (Wilkinson, 2000: 78). The success of the attack could have paralysed London and brought most essential services to a halt.

The Security Services Act (1989), the Security Services Act (1996) as well as the Intelligence Services Act (1994) fail to sufficiently provide a holistic and relational picture of the components of the UK's intelligence community, including defence or military intelligence. As far as paramilitary organisations bent on achieving their goals through the use of violence are concerned, MI5 and the Ministry of Defence's Defence Intelligence Staff (DIS) focus on the same organisations and individuals (Gregory, 2005: 3).

Some ambiguities can be discerned from "actions intended to undermine parliamentary democracy by industrial or political means" (UK, Security Services Act, 1989: section 1 (2)).

Public dissent against an unresponsive government can be so robust that the dividing line between actions intended to undermine democracy and those not intended to undermine it, can be blurred. For MI5 to determine where specific actions fall, is problematic and therefore gives it the right to involve itself in almost every anti-government, but legal action (Global Campaign for Free Expression, 2006: 4-5). In this context, the Canadian Security Intelligence Service Act (Canada, 1984: section 2 (d)), for instance, prohibits the CSIS from gathering information on advocacy, protests or dissent that are conducted lawfully. A comparative analysis of the focus of MI5 and the CSIS points to a lack of specificity with regard to the operational focus of MI5 in the areas of advocacy, protest and public dissent.

5.2 Organised crime

The Security Services Act (1989) stipulates that MI5, through the office of the Director General must ensure that information obtained and disclosed, amongst others, is for the purpose of "preventing and detecting serious crime" (UK, Security Services Act, 1989: section 2 (2) (a)). This denotes that the collection of organised crime information has also been the focus of MI5, although not a primary focus area. The Intelligence Services Act (1994) also states that the functions of the Secret Intelligence Service (foreign intelligence service - MI6) shall be exercisable in support of the "prevention or detection of serious crime" (UK, Intelligence Services Act, 1994: section 1 (2) (c)). In 1996, government formally tasked MI5 to "assist the police and other law enforcement agencies in the detection and prevention of serious organised crime" (UK, Security Services Act, 1996: section 1). The detection of organised crime indicates that MI5 is effectively engaged in police work, which is a traditional focus area of crime intelligence. Lowenthal (2006: 291) elaborates that MI5's expanded role includes the entry of the property of organised crime suspects such as homes and offices. In this case, MI5 seems to be acting as the police rather than supporting them. Such situations have the potential to result in turf wars between law enforcement and intelligence services.

MI5 also shares the same operational space with a stand-alone non-police law enforcement structure, the Serious Organised Crime Agency (SOCA), established in terms of the Serious Organised Crime and Police Act (c 15 of 2005), to ensure a joint intelligence and operational approach to organised crime in the UK. Some of the core functions of SOCA include

"preventing and detecting serious organised crime (UK, Serious Organised Crime and Police Act, 2005: section 2 (1) (a)). Though it seems to be emphasising the importance of integrating crime intelligence structures rather than proliferating them, SOCA constitutes an additional bureaucratic layer with regard to dealing with organised crime from a national security threat perspective. Interestingly, SOCA contributes to the reduction of organised crime 'in other ways' and ensures that the effects of such crimes are mitigated (UK, Serious Organised Crime and Police Act, 2005: section 2 (1) (b)). Though the latter is vague, it elevates SOCA to the status of an intelligence structure with regard to dealing with organised crime. To a limited extent, SOCA is also involved in combating terrorism, specifically in respect of the financing of terrorism, because it is alleged that 60 percent of the membership of paramilitary forces in Northern Ireland have turned to organised crime (Jacobs and Hough, 2010: 99-100). The role of SOCA in the realm of crime intelligence reflects the high level of sophistication currently available in the UK to deal with organised crime as a national security threat. In the interests of efficiency, Wilkinson (2000: 108), however, states that if additional resources are required to combat organised crime, they should be invested in the law enforcement's intelligence infrastructure.

5.3 Safeguarding the economic well-being of the United Kingdom

From a domestic intelligence perspective, safeguarding the economic well-being of the UK provides an indication that, amongst others, the government maintains a category of information/intelligence gathering capacity that includes countering economic espionage by foreign entities. Even the globalised nature of multi-national corporations (MNC's) has not stopped states from viewing national economies from a realistic perspective in the post-Cold War period. Gregory (1997: 3) urges governments to increase the capability of states to gather economic intelligence through economic espionage partly because economic challenges have replaced military challenges. Porteous (1993: 3) indicates that although private companies are unwilling to disclose this, losses from economic and industrial espionage, including those suffered by national economies run into billions of dollars annually. In addition to the economic well-being of the UK, Wilkinson (2000: 106-107) argues that MI5 should focus on terrorism, subversion and espionage to avoid rivalry and duplication of functions with other intelligence structures.

The UK remains a target of high level non-military activity by foreign intelligence agencies targeting sensitive technology related to civilian and military projects (UK, National Security Strategy of the United Kingdom, 2008: 15-16). Pursuant to this function, MI5 has created a relationship with private companies which contribute substantially to the economic performance of the UK. This relationship, amongst others, provides for expert advice by MI5 to security officers and other sectors responsible for defending the UK's critical infrastructure. Overall, the government has indentified roughly 400 key infrastructure targets, which, if attacked, would cause massive damage to the economy (Chalk and Roseaneu, 2004: 11). Critical infrastructure including water storage facilities, financial services, energy supply grids and telecommunications systems, represent the most fundamental components for any economy in the developed world to function properly and effectively.

In terms of the above, there seems to be no major shift regarding the organisational design of the UK's intelligence system as a consequence of the 9/11 terror attacks. Burger (2008: 90) notes that the government, however, strengthened the capacity of individual agencies as well as co-ordinating structures. The section below discusses issues arising from the mandate of MI5.

6. ISSUES ARISING FROM THE OVERBROAD MANDATE OF MI5

Like the developing world, the developed world has proved not to be immune from the challenges related to the retention of domestic civilian intelligence agencies in the post-Cold War period, especially in the absence of wide-spread insurgency. With regard to the UK, issues of overlap, information sharing and co-ordination as well as the overbroad definition of terrorism, have created challenges.

6.1 The issues of overlap

The organisational design of the UK's intelligence is also characteristic of a condition in which the mandate and focus of domestic civilian intelligence overlap with the roles of other components of the intelligence community. Amongst others, this approach produces benefits such as competitive analysis as well as the verification of information/intelligence. The mandate of MI5 has been found to overlap with the roles and functions of other state agencies such as the police Special Branch, police crime intelligence and SOCA, and the Ministry of Defence's DIS.

6.1.1 Overlaps with the functions of the police Special Branch

As indicated, since 1992, countering terrorism was transferred to MI5 as the lead agency, which has been playing a supportive role to the Special Branch and other counter-terrorist structures within the police. According to Chalk and Roseanau (2004: 12), the Special Branch serves as a link between the demands of high politics of national security and the need to be informed about the local environment through the law enforcement structures. This arrangement is also characterised by a vertical relationship of which MI5 tasks and guides the entire counter-terrorist effort while the Special Branch, amongst other structures, carries out orders in this regard. However, both MI5 and the Special Branch have counter-espionage, counter-proliferation, and counter-subversion as their functions, with counter-terrorism as the most important one.

The practical and main component in executing the above functions by both MI5 and the Special Branch lies in the collection of information on the ground. In this respect, both agencies collect the same information and target the same organisations as well as individuals. This means that as far as threats of terrorism are concerned, MI5 and the Special Branch collect the same information. Burger (2008: 67) indicates that as distinct entities, both MI5 and the police also sit on the Joint Terrorism Analysis Centre (JTAC), another bureaucratic layer which analyses and co-ordinates intelligence on terrorism. It would seem as if the same information would already have been shared between MI5 and the Special Branch through the ELG arrangement. As an advantage, information collected by the Special Branch serves as a verification tool or instrument for the information that MI5 collects.

However, the above approach represents a duplication of tasks by two separate state security structures at operational and analytical levels, which clearly leads to the inefficient deployment of scarce resources. Hindle (2007: 41) warns that the independent status of both domestic civilian intelligence and law enforcement in dealing with terrorism has high potential to obstruct counter-terrorist investigations. The dividing line between domestic civilian intelligence and the Special Branch in this regard seems to be blurred.

Wilkinson (2000: 106,108) concedes that although the volatile post-Cold War threats faced by the UK require a sophisticated intelligence capability of the highest quality, duplication of

functions and rivalry between intelligence structures need to be avoided. Intelligence structures are encouraged to focus on their traditional roles. In the same vein, he suggests that intelligence services should not be allowed to 'colonise' traditional police work.

6.1.2 Overlaps with crime intelligence

As stated, the UK has declared organised crime as a national security threat. The police and other specialised law enforcement agencies have mobilised massive resources to combat organised crime. While the UK has several law enforcement agencies, only two entities, namely, the police and SOCA are considered for analysis.

Considering that domestic civilian intelligence has also been drawn into combating organised crime, the issue of overlap is apparent. Organised crime is a traditional competence of the police (Hannah et al, 2005: 8). The involvement of MI5 in countering organised crime overlaps directly with police work due to the fact that both Scotland Yard and MI5 collect information from the same targets.

The mandate of domestic civilian intelligence in the UK also overlaps with the secret investigative functions performed by SOCA. It should be highlighted that apart from information and intelligence gathering, SOCA performs analysis as well as operational functions destined to detect and also mitigate the negative effects of organised crime. Secret investigative methods including surveillance, interception and the infiltration of targets through the use of human sources by SOCA are also provided for in the Regulation of Investigatory Powers Act (c 23 of 2000) or RIPA (UK, Regulation of Investigatory Powers Act, 2000: section 26). In addition, SOCA's mandate covers almost all categories of organised crime in the UK and deals with cases from discovery through secret investigation till the arrest stages. According to Segell (2007: 226), SOCA investigators work in close co-operation with a specialist prosecutorial component of the National Prosecution Service which is expected to be involved at the earliest stages of investigations. While information/intelligence verification regarding organised crime between SOCA and MI5 is achieved, Maris (1997: 10) adds that competitive analysis is also attained when intelligence structures are accorded overlapping missions.

Despite the benefits accrued from overlapping mandates including competitive analysis and information verification as indicated, the UK intelligence system has sometimes presented a dilemma to both the police and domestic civilian intelligence service. Uncertainties regarding ownership of joint operations and mismatches of expectations between domestic civilian intelligence service and the police have been encountered (Center for Democracy and Technology, 2003: 3). These normally result into operational indecisiveness including individual structures not applying themselves and their resources fully as they may be required by the situation.

In addition to the above, competitive analysis and information verification seem to add little or no value to the combating of organised crime in the UK. Firstly, unlike traditional threats, organised crime does not constitute threats of wide-spread violence, which requires lesser urgency, and this relegates competitive analysis between domestic intelligence and crime intelligence to a marginal value. Adamoli et al (1998: 2) add that organised crime is aimed at the illegal accumulation of profits, which does not necessarily target the government. Competitive analysis and information/intelligence verification could still be optimised between Scotland Yard and SOCA within a law enforcement context without MI5. Secondly, police crime intelligence and SOCA seem to be able to provide whatever MI5 is capable of providing as far as organised crime is concerned. They use classical intelligence methods which are on an equal footing with those employed in MI5 operations. The involvement of MI5 into the realm of organised crime seems to add marginal or no value with regard to combating organised crime in the UK.

6.1.3 Overlaps with the functions of the Defence Intelligence Staff

As stated, the external and internal roles that military intelligence performs are aimed at achieving the primary objective of gathering information concerning the order of battle of armed enemies. The DIS, as the UK's main military intelligence structure, supports the Armed Force's field operations (UK, National Intelligence Machinery Booklet. 2001: 11). In addition to supporting combat related operations, military intelligence also supports non-combat field operations involving the Armed Forces.

Gregory (2005: 3) observes that the functions of the UK's military intelligence section include some aspects of counter-terrorism, given the existence of paramilitary groups in Northern Ireland and other armed formations linked to Al Qaeda in the UK. Intelligence investigations by the Ministry of Defence, including "intrusive surveillance", for instance, are permissible when national security is involved (UK, Regulation of Investigatory Powers Act, 2000: section 41 (2) (a)). Considering the existence of paramilitary forces in Northern Ireland and other armed groups linked to Al Qaeda in the UK as a traditional competence of the DIS, the MI5 role regarding terrorism overlaps with the functions of military intelligence. In terms of competitive analysis and information sharing value, the benefit is debateable since the threat of Irish terrorism is low and terrorism linked to Al Qaeda in the UK is not wide-spread. As stated, since three quarters of serious cases of terrorism within the UK investigated by MI5 originate from a known foreign source, MI6 would presumably have collected the information before threats start to materialise in the UK.

6.2 Issues of information sharing and co-ordination

As discussed, the UK's intelligence system is designed along overlapping missions of individual intelligence structures. Interdepartmental co-operation and information sharing regarding terrorist threats have been enhanced through the JTAC consisting of MI5, the police, the DIS, MI6, the Government Communications Headquarters (GCHQ) and other relevant structures (Burger, 2008: 70). The JTAC breaks downs institutional barriers between MI5, the Special Branch and other individual intelligence structures. From a national security perspective, as far as organised crime is concerned, SOCA, which deals with almost all forms of organised crime, is an intelligence-led law enforcement agency. It also co-ordinates all intelligence relating to organised crime in the UK.

Despite the above structural arrangements as a result of contemporary post-Cold War threats and the 9/11 attacks, problems related to information sharing and co-ordination still exist. As long as police and intelligence structures enjoy independent status, the likelihood to withhold information from each other would always be high. Stove-piping and the slowing down of information flows come to the fore as natural consequences. The Centre for Democracy and Technology (2003: 3) indicates that though it has been claimed by UK security authorities that

intelligence co-ordination between law enforcement and intelligence structures has improved since the 9/11 terror attacks, media reports have attested to the fact that turf wars and information sharing problems are rife. According to Elmostehi and Vozzo (2005: 7), the Constabulary Inspectorate released a report in 2003, citing the problem of inter-agency rivalry between the police and MI5, emanating from ownership of joint operations.

Another factor is the issue of the Special Branch which in effect has two masters. Firstly, the Special Branch is a sub-structure whose statutory home is the police force. Secondly, MI5, which is a different state organ governed by a different legislation, issues direct orders to the Special Branch, which has experience in combating Irish terrorism as a lead agency during the Cold War years. Burch (2007: 20) warns that competition for resources and focus between law enforcement and domestic civilian intelligence is an inherent attribute of the relationship between these two agencies.

Burger (2008: 21) also states that ideal structural arrangements for the central co-ordination of information and intelligence are currently not yet in place**.** As stated, since the police and MI5 deal with the same issues regarding terrorism, the propensity of one organisation to create the perception of being more effective than the other is also highly likely. The most common way of effecting this is by selectively withholding information that is required by the other structure to discharge its mandate.

6.3 Issues relating to the overbroad definition of terrorism

Wenger and Zimmerman (2007: 1) concede that Western countries, including the UK, face a complex and dynamic terrorist threat. It is every government's duty to protect its people, property, business, infrastructure and other interests against threats, including terrorism. Considering the asymmetric nature of terrorism, the complexity of the threat is in fact unprecedented. For instance, one of the principal tenets of terrorist operations is the sophisticated ability to avoid detection, especially in the urban landscape (Wilkinson, 2000: 105). In the UK, various policy and other measures have been put in place to respond to the complex nature of terrorism.

The current anti-terrorism approach has its roots in the Security Services Act (1989), which widened the definition of threats to national security. Some of the threats include actions that "undermine parliamentary democracy by political and industrial means" (UK, Security Services Act, 1989: section 1 (2)). In addition to mainstream and traditional manifestations of terrorism, recent legislation provides for a broadened definition, including the "direct or indirect encouragement or other inducement" to commit terrorism as well as every statement that "glorifies" terrorism (UK, Terrorism Act, 2006: section 1, section 3 (a)). Anti-globalisation and animal rights activities have turned violent in the past, which is indeed illegal. The National Security Strategy of the United Kingdom (UK, 2008: 11) for instance, states that animal rights groups need attention. On the whole, official government perception favours a need for specialised counter-terrorist measures, distinct from normal criminal law (Donohue, 2007: 39). These measures are aimed at disrupting acts of terrorism before they occur, as well as removing the enabling environment for terrorism.

However, the approach of the UK government has created several problems. Firstly, the definition of threats which fall within the framework of terrorism is both vague and excessively broad, opening the way for the infringements of individual privacy, civil rights and liberties which are fundamental to the successful operation of a democratic political system. The British Broadcasting Corporation (2005: October 23) indicated that "wildly different interpretations" of the anti-terrorist laws when dealing with public protests and other related matters often occur in the UK. The Scotsman (2005: October 3) reported that anti-terror laws were applied to detain more than 600 people who participated in a lawful protest during a Labour Party conference in 2005. In a democracy, public dissent is a fundamental and legitimate right of the citizenry.

Secondly, the policy response to terrorism has criminalised the legitimate exercise of the freedom of expression which has in part induced the erosion of free speech, assembly and association. The same prohibitions prompted MI5 to engage in illegal counter-terrorist investigations involving break-ins at mosques (Center for Democracy and Technology, 2003: 4). Related to break-ins at mosques as indicated, there seems to be no break with Cold War practices when MI5 encroached on basic human rights, including the violation of the rights to privacy of prominent political figures in the name of national security. MI5 was for instance, engaged in

wiretappings of the National Union of Mineworkers (NUM) leadership in the mid-1980's and used information gathered from those operations to create negative public images in order to discredit the legitimate cause of mineworkers in the UK (Chalk and Roseanau, 2004: 14). Those counter-subversive operations were, however justified on the basis of Irish terrorism and wide-spread espionage activities carried out by the Warsaw Pact countries spearheaded by the former Soviet Union's KGB (Komitet Gosudarstvennoy Bezapasosti). While the threat of terrorism is present in the UK, it is however not widespread. Considering the cumulative extra-ordinary intrusive powers provided for by RIPA, the DIS, MI6, the Special Branch and other structures which deal directly with this threat, the involvement of MI5 in combating terrorism is questionable. Moreover, terrorism in the UK is currently not at a level at which a separate domestic civilian intelligence service would be an absolute requirement.

As Burch (2007: 6) also notes, the main dividing line between the police and MI5 is the fact that civilian intelligence lacks the power to arrest. It adds an additional burden to the complexities of managing intelligence and co-ordination with other law enforcement structures in the domestic realm. The fact that the police were the lead agency dealing with Irish terrorism during the Cold War period, and successfully so for that matter, strengthens the argument that in the post-Cold War period, the retention of MI5 in the UK has become questionable.

In addition to the above, Wilkinson (2000: 108) indicates that UK's law enforcement infrastructure comprises an effective intelligence system that includes the Special Branch and the highly competent National Criminal Intelligence Service (NCIS) which later became SOCA. According to Jacobs and Hough (2010: 99), SOCA has created co-operation relationships with specialist crime intelligence and other intelligence structures across the world. This measure reflects an indication that as far as organised crime is concerned, crime intelligence structures are well resourced to deal with organised crime without the assistance of domestic civilian intelligence.

Despite major benefits such as competitive analysis and information verification, amongst others, the retention of MI5 in the post-Cold War period has exacerbated duplication, infringements on basic human rights, turf wars as well as co-ordination challenges in the UK

intelligence system. Some of the most devastating consequences resulting from these challenges in the form of intelligence failures attributable to MI5, are discussed in the next section.

7. INTELLIGENCE FAILURES

Diaz (2005: 2) sees an intelligence failure, either tactical or strategic, to be a critical informational gap which prevents intelligence entities from generating timely and accurate intelligence products on issues or events of national importance.

Although certain intelligence failures are inevitable, conditions within which the intelligence community operates, generate consequences for its ability to discharge its mandate. Turf wars between intelligence structures resulting from the overlapping of functions come with bureaucratic competition, and also induce cult-like tendencies from individual structures. The natural consequence is a resultant co-ordination problem detrimental to the security of the state. Jones (2007: 384-385) argues that information sharing is crucial to integrate all the pieces of information to obtain a comprehensive view of issues of interest. Several problems are discernible relating to co-ordination challenges. Firstly, co-ordination challenges have a negative effect on the intelligence cycle in general, meaning that data or intelligence may not be supplied at the required time. Secondly, these challenges have a detrimental effect on the ability of intelligence analysts to generate accurate intelligence products.

The UK experienced several disastrous incidents which are perceived in intelligence circles as intelligence failures attributable to challenges mentioned above (Field, 2009: 1008-1009). The Centre for Democracy and Technology (2003: 3) notes that in the domestic realm, for instance, MI5 failed to upgrade the threat in 1996 after the police warned of an imminent attack by the IRA. The 1996 Dockland bombings in London left two dead, hundreds wounded and infrastructural damage running into a 100 million pounds. According to The Guardian (2006: March 3), the lead suicide bomber in the terrorist incident of 7 July 2005 in London was known to both MI5 and the police. Despite being under surveillance by both the police and MI5, he, together with three others went on to execute the mission which left 52 people dead and damages ran into millions of pounds. This failure materialised despite the establishment of the JTAC, the

added and strengthened co-ordination capability of UK intelligence regarding terrorism in the post-9/11 period.

Intelligence failures attributed to MI5 further permeated the national territory and catapulted into the international realm, leading to the unprecedented damage to UK's interests and those of allies. According to the Centre for Democracy and Technology (2003: 2), though MI5 had information regarding, for instance, the Bali bombings in Indonesia in 2002 which left 23 UK citizens dead and the Mombasa attacks in Kenya which left hundreds dead, including the bombings on an Israeli hotel in 2002, it failed to issue a warning. Therefore these failures were a direct result of the analysis failures of MI5 rather than its collection capability, suggesting that they could have been prevented before materialising.

8. CONCLUSION

The history of modern intelligence in the UK started in earnest in 1909 largely as a result of sustained German espionage activities. With the 1917 Revolution in Russia, which later led to the formation of the Soviet Union, communism was set to spread globally. One of the main features of the UK intelligence system included overlapping functions of intelligence structures. In the UK, the Soviet threat was in part countered by MI5. Much later in 1969, MI5 had to deal with terrorism perpetrated by the IRA, although the police's Special Branch played a lead role. MI5 shared national security responsibilities with other intelligence structures including the police Special Branch and the DIS.

The retention of a domestic civilian intelligence service means that the MI5 mandate overlaps with the line functions of other state security structures. The UK continues to extract benefits such as competitive analysis, information verification, improved co-ordination, co-operation and joint operations from MI5. However, the overlapping role of MI5 has exacerbated old problems and created new challenges. In terms of organised crime, MI5 performs functions that are a preserve of the police and SOCA. Regarding armed activities emanating from sources such as Al Qaeda and Irish terrorism, MI5's role overlaps with the functions of the DIS and the police. Overlaps have induced the proliferation of layers of bureaucracy which add an unnecessary burden to the complexities of co-ordination between intelligence and law enforcement agencies.

Overlaps also seem to slow down the flow of intelligence in the UK. These factors point to the duplication of functions, which represents a waste of resources.

The retention of MI5 has also led to turf wars, mistrust, co-ordination and information sharing problems which has evidently led to intelligence failures within the national territory and beyond. On the basis of the fact that MI5 had information about these threats, there is a general perception that those failures could have been prevented. MI5 seems not to have discontinued with the Cold War culture of infringing on basic human rights due to the widened definition of terrorism.

While the benefits of retaining a separate domestic civilian intelligence service in a developed country such as the UK may seem attractive even in the absence of wide-spread insurgency, the disadvantages may fundamentally outweigh the benefits. Considering problems arising from overlaps, the duplication of functions, as well as the widened definition of threats coupled with the capability of crime intelligence to combat organised crime, retaining a separate domestic civilian intelligence service in the UK has become debateable. As Wilkinson (2000: 108) suggests regarding organised crime, additional resources should be invested in the crime intelligence structures to enhance their capacity. An argument for placing counterintelligence functions including counter-espionage, under foreign civilian intelligence primarily because these threats are foreign in origin, also seems viable.

CHAPTER SIX

EVALUATION

1. INTRODUCTION

This chapter summarises the principal aspects of the study, followed by an assessment of the main assumptions as formulated in the Introduction. Finally, conclusions with regard to the findings of the research relating to the rationale for domestic civilian intelligence as a separate service, in the absence of wide-spread or major forms of political violence such as an insurgency are made, coupled with recommendations.

2. SUMMARY OF THE TEXT

Chapter 1, as an Introduction outlined the objectives and methodology of the study. A critical literature overview was provided, and certain assumptions were formulated.

Chapter 2 described and analysed two basic concepts, namely, intelligence and national security, as both are central to the study. A definition of intelligence was presented, followed by an overview of its role in national security. The intelligence cycle was further discussed as well as the different types of intelligence products, followed by the focus and levels of intelligence. In terms of national security, the Cold War perspective was largely state-centric while the post-Cold War approach entailed the broadening of security threats and its resultant effects. Both these concepts were discussed and analysed. Additionally, threats to national security were viewed from the perspectives of both the developing and developed countries.

Chapter 3 dealt with the mandate of the traditional components of the whole of the intelligence community, namely, domestic civilian intelligence; foreign civilian intelligence; crime intelligence; and military (defence) intelligence. Specific emphasis was placed on domestic civilian intelligence. The perceptions of national security during the Cold War period and how these impacted on the role of domestic civilian intelligence were examined. This was followed by the corresponding effect of the broadening of security threats on the mandate and focus of

domestic civilian intelligence. An analysis of the consequences of the post-Cold War focus of domestic civilian intelligence in relation to the focus of crime intelligence and military intelligence, as well as that of departments involved in service delivery and developmental issues, was provided.

Chapter 4 presented a brief historical overview of the development of domestic civilian intelligence in South Africa, representing a developing country perspective as a case study. The focus was on the changing views of national security after 1994, and the establishment of NIA as a separate domestic civilian intelligence agency despite the absence of wide-spread threats of political violence or an insurgency. The mandate as well as the focus of NIA were analysed. The analysis also examined the effects of the overlapping mandate of NIA with crime intelligence, military intelligence and the roles of other civilian government departments.

Chapter 5 examined the development of domestic civilian intelligence in the UK from its inception within the SSB in 1909, throughout the Cold War era until the contemporary post-Cold War period, as a case study representing a developed country perspective. An overview of the Cold War mandate and focus of domestic civilian intelligence (MI5) was provided. The retention as well as the widened and overlapping mandate and focus of MI5 in the late post-Cold War period in the absence of a wide-spread insurgency were analysed, as the IRA almost completely abandoned it terrorist campaign against the UK government from 2000 onwards. The chapter discussed whether the focus of MI5 on sources of traditional threats such as Al Qaeda and residual IRA terrorism, is needed as the police Special Branch deals with this. An assessment of the justification for MI5 to focus on organised crime despite the existence of Scotland Yard and the Serious Organised Crime Agency (SOCA), was also made.

3. TESTING OF ASSUMPTIONS ON WHICH THE STUDY WAS BASED

The assumptions formulated in the Introduction to this study are as follows.

3.1 Assumption: "In the absence of wide-spread violence such as an insurgency, the role of domestic civilian intelligence has become questionable"

The analysis of domestic civilian intelligence demonstrated that its mandate and focus are appropriate for addressing traditional threats such as terrorism, subversion and sabotage, which are often aimed at the violent overthrow and destabilisation of governments/regimes (International Terrorism and Security Research, 2010: 1; Edelman, 2007: 3).

Domestic civilian intelligence responds to issues that endanger the survival and well-being of the body politic against traditional threats (Posner, 2005: 2). In the developing world, the elevation of developmental and service delivery issues to the level of national security threats, have proved to be unmanageable from an intelligence perspective. Many of the 'new' security issues fall within the competence of civilian government departments and non-governmental research institutions, rather than intelligence structures (RSA, Ministerial Review Commission on Intelligence, 2008: 133). Domestic civilian intelligence services seem to be unsuitable as organs of the state to deal with predominantly new 'soft' threats which do not contain elements of wide-spread political violence, or direct threats to national security.

During the Cold War, MI5 dealt with terrorism, subversion, treason and espionage, including Irish insurgency in the UK (Burch, 2007: 6). The overriding Soviet threat, coupled with wide-spread terrorism by the IRA had the potential to threaten stability in Northern Ireland. In the post-Cold War period, the existence of a separate domestic civilian intelligence agency and its overbroad mandate in the UK, needs to be viewed in the context of threats of terrorism from Al Qaeda and remnants of the IRA. As Wilkinson (2000: 106) states, threats faced by the UK require a sophisticated intelligence capability. However, the fact that these threats are not wide-spread or continuous, questions the retention of the UK's domestic civilian intelligence service, especially as MI6 already deals with threats originating externally.

In South Africa, the banned liberation movements and other underground structures bent on overthrowing National Party rule, also employed wide-spread violence in the form of an insurgency to achieve their objectives. The threats of wide-spread insurgency during the liberation struggle in South Africa were partly countered through a domestic civilian intelligence capability in the form of South Africa's NIS (Roherty, 1992: 76). However, in the post-1994 period, the establishment of NIA as a domestic civilian intelligence agency in the absence of wide-spread violence such as an insurgency, has become questionable.

The assumption formulated above can therefore be verified.

3.2 <u>Assumption</u>: "Separate domestic civilian intelligence services have exacerbated problems of overlap with other government security departments and government civilian departments in the absence of wide-spread violence such as an insurgency"

In both case studies, namely, South Africa representing a developing country perspective and the UK representing a developed country perspective, the following common problems of overlaps have been discerned:

- Both NIA and MI5 overlap with the mandates and focus of law enforcement agencies. Similar intelligence methods including electronic eavesdropping, infiltration and surveillance are used, and the same individuals and organisations are targeted. In respect of the collection of information related to organised crime, NIA largely does what the SAPS is doing (RSA, National Strategic Intelligence Act, 1994: section 2 (1) (a) (ii); RSA, Sisulu, 2003: 2). In the UK, MI5 addresses threats of organised crime as formally tasked by the government in 1996 (UK, Security Services Act, 1996: section 1). Organised crime is the traditional competence of law enforcement agencies including Scotland Yard and SOCA. The only exception lies in the fact that domestic intelligence agencies in both countries lack arresting powers.

- In cases involving threats of paramilitary forces and other non-state armed entities, the mandate and focus of domestic civilian intelligence in collecting information regarding terrorism could easily overlap with the role of military intelligence. NIA in South Africa could find itself duplicating the functions of Defence Intelligence while in the case of the UK, MI5 would be duplicating the functions of the Defence Intelligence Staff of the Ministry of Defence.

From a developing country perspective, in South Africa specifically, the problems of overlaps have created turf wars between NIA and the police, and continue to have a negative effect on the co-ordination of the effort against organised crime. Currently however, in the case of South Africa, where threats of wide-spread insurgency are relatively remote, occasional threats of

violence as well as organised crime are also a competence area of law enforcement agencies. Overlaps also occur regarding non-security or government civilian departments, covering areas such as health, migration and local government. These areas constitute the developmental and services delivery realm of the body politic, and belong to the civilian departments of the state and non-governmental institutions through research (RSA, Ministerial Review Commission on Intelligence, 2008: 133).

From a developed country perspective as represented by the UK, problems of overlap have been more notable. Although the threats of terrorism posed by Al Qaeda are pronounced, coupled with residual IRA threats, the cumulative threat posture is not extensive. Concerning threats of terrorism, the police Special Branch was the lead agency until 1992 when MI5 was accorded the role (Chalk and Roseanau, 2004: 9). It has been proved that the Special Branch was successful in addressing the threat of terrorism. With a highly reduced threat of terrorism, the retention of MI5 seems debateable.

The duplication of functions between MI5 and the police has created problems, and has led to intelligence failures which saw the UK suffer substantial losses (Field, 2009: 1008-9). According to The Guardian (2006: March 3), the loss of human life alone from the London bombings of 7 July 2005 amounted to 52 UK citizens, with infrastructural damage running into hundreds of millions of pounds. Damage to the infrastructure in the case of the Docklands attacks by the IRA inflicted economic loss amounting to 100 million pounds (Center for Democracy and Technology, 2003: 3).

The assumption as formulated above can therefore be verified.

3.3 Assumption: "Separate domestic civilian intelligence services, through the widened definition of threats, have increased the risk of unwarranted infringements of basic human rights in the absence of wide-spread violence such as an insurgency"

The widening of the scope of threats to national security has increased infringements of basic human rights. However, dealing with terrorism is a complex and difficult task (Wilkinson, 2000: 108). Domestic civilian intelligence agencies, according to Chalk and Roseanau (2004: 14), though pursuing a generally justified defensive role, can easily indulge in aggressive operations,

especially those involving counter-terrorist measures including wiretapping and intrusive surveillance, which can undermine the same liberal democracy that domestic civilian intelligence agencies claim to protect and safeguard. In addition, a school of thought exists that supports the view that domestic civilian intelligence needs to be seen as insurance against the unknown future (Passas, 1995: 15).

In respect of the two case studies, namely, South Africa and the UK, the assumption is examined separately.

3.3.1 South Africa

From a developing country perspective represented by South Africa, the widened view of threats to security by NIA has become controversial. The collection of domestic political intelligence saw NIA become embroiled in an intelligence crisis following its engagement in political party issues as it was involved in the surveillance of opposition politicians and other political figures without legal authorisation and sufficient justification (Financial Mail, 2006: June 9; News 24, 2011: March 9). This constitutes an abuse of the powers and the legal mandate accorded to NIA by the Constitution and other legislation, and represents infringements on the rights to privacy.

Although the government claimed in 2007 to no longer maintain a specific category of domestic political intelligence (Business Day, 2007: December 4), evidence emerged that the domestic intelligence structure could still be actively engaged in spying on political parties, factions and their leaders. In the same vein, the post-2009 intelligence dispensation does not include the collection of domestic political intelligence as one of the focus areas of the Domestic Branch of the State Security Agency. Political intelligence has an inherent unique advantage as a crucial factor in the gaining and preservation of political power, implying that it could be used as leverage by political parties or factions to gain unfair advantage over their political rivals in elections (Hutton, 2008: 2). This practice represents the immoral and unethical use of information as a source of power in a democracy, and may indeed undermine or decisively threaten the sense of political fairness in a modern democratic system. Considering the fact that the threat of major forms of violence such as wide-spread insurgency in South Africa is

relatively remote, the existence of the domestic civilian intelligence service has clearly resulted in unwarranted infringements of basic human rights in the name of national security.

In the context of a developing country perspective, with South Africa as a case study, the assumption formulated above can therefore also be verified.

3.3.2 United Kingdom

In the case of developed countries represented by the UK, the overbroad definition of threats to security has created and exacerbated corresponding problems which, according to some observations, run the risk of undermining liberal democracy as a political system. The widened definition of terrorism specifically tends to include nearly every anti-government action including those that could be legal and legitimate (Global Campaign for Free Expression, 2006: 8). To label animal rights protests and anti-government demonstrations which could indeed sometimes turn violent, for instance, as falling within the widened definition of terrorism, has become controversial.

The UK plays host to a large minority of Middle Eastern origin who are predominantly Muslim, and a significant portion of this community now have UK citizenship. In response to a perceived threat from this community, the domestic civilian intelligence agency sometimes employs methods that violate basic human rights. Some evidence relating to the treatment of Muslim communities regarding terrorism attests to the infringements of basic human rights (Center for Democracy and Technology, 2003: 4). These actions fuel world-wide perceptions, especially amongst Muslim communities, that the UK government is embarking on an anti-Islamic crusade.

In addition to the weak parliamentary oversight roles regarding intelligence in the UK (Clutterbuck 2009: 124-125), the risk exists that significant infringements of human rights by MI5 may never be revealed. This emanates from the notion that weak parliamentary oversight mechanisms result in inadequate powers to call both the intelligence community and the executive to account for their actions. This view is also reinforced by the fact that MI5 seems not to have abandoned Cold War traditions, whereby infringements of basic human rights when dealing with national security issues, especially terrorism, were rife.

In the context of a developed country perspective, with the UK as a case study, the assumption formulated above can therefore be verified as well.

4. CONCLUSION

The challenges that emerged as a consequence of the creation and retention of a domestic civilian intelligence agency in the absence of widespread insurgency have shown that intended benefits may be outweighed by resultant disadvantages. In view of this, the following is suggested:

- In the post-Cold War era, separate domestic civilian intelligence services, in the absence of wide-spread or major political violence such as insurgencies, should not readily be instituted or retained. The unique methods of domestic civilian intelligence should be designed to match the threats from traditional sources including terrorism, sabotage, and subversion which have the potential to violently overthrow or destabilise a government. For domestic civilian intelligence to focus on domestic threats in the absence of insurgency, represents the deployment of huge and scarce resources or instruments for threats which could be countered by far fewer resources of a lesser complicated nature. Alternatively, the mandate of domestic civilian intelligence should be more narrowly defined and a domestic civilian intelligence agency could form part of a foreign civilian intelligence agency.

- The organisational design/architecture of crime intelligence functions carried out by the police as a law enforcement agency, should be arranged around a new model. As a directorate within the police, it should be sub-divided into two, namely, one section that deals with the lower end of organised crime and another that focuses on the higher end or sophisticated forms of organised crime. The latter should also act as insurance against occasional manifestations of traditional threats such as terrorism, sabotage and subversion. Training in all relevant aspects of intelligence, with specific emphasis on crime intelligence, needs to be provided to all investigators. As a point of caution though, a law enforcement agency outside the police service focusing on organised crime

needs to be accorded a clear and concise mandate to avoid turf wars between law enforcement agencies.

- Threats such as espionage, which fall within the broad competence of counterintelligence, should be placed under the auspices of a foreign civilian intelligence agency, since this form of threat primarily originates from outside the national territory. Cases of espionage requiring the prosecution of foreigners or local nationals acting on behalf of foreign states or entities, should involve the sub-division of organised crime which focuses on the more sophisticated forms of organised crime. This unit needs to be involved at the earliest possible moment of the investigation for the purposes of arrest and the presentation of evidence in court.

ABSTRACT

Topic : An Analysis of the Rationale for Domestic Civilian Intelligence Services: Selected Case Studies

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Degree : Master of Security Studies

The main objective of this study is to investigate and analyse the rationale for separate domestic civilian intelligence services in the absence of wide-spread political violence such as an insurgency. South Africa as a developing country and the UK as a developed country, are used as case studies. The study, amongst others, focuses on the definitions of national security during and after the Cold War, and the mandate and focus of domestic civilian intelligence during and after the Cold War. The widened definition of security and how it impacts on domestic civilian intelligence in South Africa and the UK, is investigated. The study also examines the impact of domestic civilian intelligence services on the democratic fabric of states.

The findings of the study confirmed that the elevation of non-military or 'new' threats to the level of national security threats, presents additional challenges to domestic civilian intelligence services. The overlapping mandate and focus of domestic civilian intelligence with other intelligence agencies raises issues of information sharing, co-ordination and intelligence failures. The study concludes that in the absence of wide-spread political violence or insurgency, a domestic civilian intelligence agency should neither be readily established nor retained, or otherwise its mandate should be narrowly defined.

Key Terminology:

Cold War

Domestic Civilian Intelligence

Human Security

Human Rights

Intelligence

Intelligence Community

National Security

New Threats

Post-Cold War

Terrorism

Traditional Threats

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