35. See Anthony Minnaar and Mark Shaw, Violence on the East Rand, 1990-1994, NPKF Research Project, Institute for Defence Policy, May 1994.
36. I am indebted to the NPKF for allowing me to visit its East Rand bases and talk to both officers and men. This subsection on the NPKF's operational deployment relies heavily on information gleaned in this way.
37. This is the impression of many within the NPKF itself.
38. Commonwealth observers reporting to the subcouncil of defence have denied that this was the case.
39. Cilliers, 'A South African Peacekeeping Force'.
40. Chris de Cock and Charl Schutte, The public's perceptions of the NPKF at deployment in Katorus, NPKF Research Project, Institute for Defence Policy, May 1994.
41. Cilliers et al, The history of the National Peace-Keeping Force.
42. ANC Policy Guidelines, adopted at the national conference of 28-31 May 1992, Section Q (3), 'A New Approach to Defence'.
43. The SADF made no secret about these objectives: I was told of them in a number of interviews. They have since been published in CSADF Internal Communication Bulletin, Achievements by the SADF in the Negotiating Process, 2 January 1994, no 2, 1994.
44. See 236 (1) of the constitution.
45. This is done in terms of Section 62 (4).
46. Section 228 (3) (c).
47. Sections 226 (4) and 226 (5) respectively.
48. ANC Policy Guidelines, adopted at the national conference of 28-31 May 1992, p 47.
49. See Tom Lodge, 'The Post-Apartheid Army: Political Considerations', unpublished paper, Institute for Defence Policy, September 1993.
50. Section 226 (7).
51. See Proposed Structures for the Department of Defence, Office of the State Secretary for Defence and Legislative Reform to Effect Civilian Control of the National Defence Force, a report to the Joint Military Co-ordinating Council, Institute for Defence Policy, 28/3/94.
52. In mid-1994, former MK chief of staff Sipiwe Nyanda was appointed as chief of staff of the SANDF. The appointment clearly reflected a compromise – Nyanda was required to pass all the necessary staff courses in order to take up the position. Thus the issues of 'standards' and 'legitimacy' found themselves uncomfortable bedfellows.

from: Friedman S & Atkinson D (eds) (1994) South African Review 7: The Small Miracle: SA's Negotiated Settlement (Ihb, Ravan Press).

Chapter Ten

Spy meets spy

Negotiating new intelligence structures

Mark Shaw

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

This was true of South Africa in the apartheid years – and beyond.[1] At least from the time former prime minister John Vorster appointed his lifelong associate Hendrik van den Bergh to head the appropriately named Bureau of State Security (BOSS), the state's intelligence agencies were assumed to wield immense power. The impression was strengthened by allegations that intelligence operatives not only gathered information, but also acted on it in ways which flouted even the government's laws. It was they, it was assumed, who did in secret what their political masters could not order in public. For example, in the 1980s it was the chief of military intelligence, Joffel van der Westhuizen, who allegedly ordered the 'removal from society' of activist Matthew Goniwe.

This perception did not die after February 1990. Military intelligence operatives and political police were alleged to be destabilising the transition, an impression partly confirmed by a 1994 Goldstone Commission report implicating police intelligence officers in post-1990 violence (see chapter 8).

But the importance of intelligence seemed also to be confirmed by a very different, although equally crucial, role which one government agency played in the transition: it was the National Intelligence Service which made the first contact with the ANC on behalf of the SAG. Meetings between NIS and the ANC began the process which led to Kempton Park; if this leavened the belief that intelligence agencies were simply

instruments of repression, it strengthened the belief that they were powerful.

This may explain why negotiators considered intelligence important enough to warrant its own subcouncil of the TEC, and its own set of negotiations. In theory, these brought together those 'at the forefront of the war' on both sides and should have been central to a workable settlement. The reality was different – but the intelligence negotiations nevertheless raised issues of some importance to the transition.

Analysing the negotiations and their participants is no easy matter. Public knowledge of the activities of this country's intelligence agencies is not extensive. Although the rise of the Directorate of Military Intelligence received much academic and media attention in the mid-1980s,[2] in-depth examination of the intelligence agencies has lain beyond the public domain. And for good reason: it is an offence even to mention the names of employees of the NIS besides that of its director-general.[3] Gaining access to the inner workings of the agencies or persuading their employees to talk openly is difficult and time-consuming.

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

Breaking the mould

Changing the player to suit the game

The most central player in the negotiations was the state intelligence agency, NIS. The De Klerk presidency and the negotiations in particular changed NIS from a junior member of the state intelligence community to its dominant agency: a new R140-million building has been built for it in Pretoria, and it is reputed to employ about 2 500 people.

NIS was the successor to Van den Bergh's BOSS. But its change of name also signalled a change of role: during the 1980s it was restricted to gathering strategic intelligence needed for political decision-making. It also had less influence than military or police intelligence, since it lacked the capacity to act on its information. The Directorate of Military

Intelligence in particular had gained influence during the PW Botha era. It did not restrict itself to briefing generals on military issues – like NIS, it submitted political intelligence estimates to the government; it, not NIS, was deeply involved in countering township rebellion in the mid-1980s. Although a co- ordinating committee consisting of DMI, NIS and SAP representatives was established to ensure that their operations did not overlap, competition was inevitable – 'Angola [provided] a meeting point for two agencies on a collision course',[4] notes one analyst.

And while NIS chaired the committee, the increased role which the military played in government plans – in Angola, elsewhere on the subcontinent and at home – ensured that DMI became the more influential agency. This occurred even though many in the SADF were uncomfortable with its growing role, particularly when some of its activities which had nothing to do with information-gathering – such as training Inkatha impis, and alleged covert operations aimed at the ANC – were revealed.

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

But DMI's strategy remained dominant until the possible contours of a deal became clearer – as they did under FW de Klerk, who, after he became NP leader, decisively displaced military and police intelligence. They had derived their influence from their operational roles: as troops withdrew from the townships, diplomacy supplanted destabilisation in the subcontinent and the ANC and PAC were unbanned, both their role and influence declined. DMI again restricted itself to military issues, while the SAP intelligence function (the Security Branch) was restructured and renamed in 1991 (see chapter 8), and its political role purportedly ended, although it is likely that it continued to monitor the activities of the government's former foes into 1992. Later evidence of destabilising activity within both arms was the result of declining and splintering power, not continued influence; there is no evidence that

their actions were approved, let alone ordered, by the political authority, and some key personnel were dismissed when the actions were revealed.

It was easy to see NIS's waxing star purely as the result of a change in government leader: it was moved to the office of the president within the first week of De Klerk's tenure,[5] and analysts claim that he gradually undermined the power of DMI during his first years in office.[6] It was not new for a head of government to give primacy to a particular intelligence agency: Vorster relied on the SAP Security Branch; Botha enhanced DMI's role. De Klerk, whose power base stemmed from civilian politicians, may have preferred to use a civilian agency.

But the choice of NIS to make the first contact with the ANC occurred before DMI influence began to wane – and before De Klerk became president. Negotiation was not, for obvious reasons, a job for DMI: it strongly opposed any contact with 'the enemy', and fought a meeting with the ANC 'tooth and nail'. This confirmed that it was changing politics as much as changing presidents which paved the way for the resurgence of NIS. If DMI was seen as a vehicle for internal security during the emergency, NIS was the instrument of negotiations – by both Botha and De Klerk.

But why send an intelligence agency to make the first contact – particularly since NIS was sensitive to the charge that it was making the first contact with an 'enemy' it had advised others to avoid? NIS seems to have been central in persuading the government that a settlement was its only workable route. It had then evaluated how to negotiate from a position of strength. It was therefore the arm of government which had thought through the need for, and implications of, negotiations most thoroughly. It was also the one best versed in secrecy. It was thus a natural choice to initiate the first contact.

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

Our man in Europe?

Sources close to the intelligence community say the first meeting between NIS representatives and the ANC took place on 12 September 1989 in strict secrecy somewhere in Europe, without the knowledge of the 'host' government. The NIS team was led by then deputy director-general Mike Louw, the ANC delegation by Jacob Zuma and Thabo Mbeki.

What was discussed is unknown, but it seems that no agreements were reached. Sources on both sides say the meeting aimed only to initiate a first contact, to assess each others' positions, and perhaps to prepare the ground for the political principals to meet. Both parties undertook to report back on the meeting.

Its date was significant: De Klerk had been elected NP leader on 2 February, but only became president eight days after the September meeting. And since it must have taken months to arrange the meeting, preparations may have begun even before he took over the NP – after all, PW Botha had met Nelson Mandela. This seems to confirm that the change in government strategy was more important than the change of leader.

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

Once the 1990 Groote Schuur Minute was concluded, the intelligence men, according to most sources, withdrew to the periphery of the process; the politicians and Constitutional Development took over. But the 'steering committee' continued to play an important role when the process was in crisis. 'There was an unstated rule', an ANC intelligence official notes, 'that the (intelligence) agencies would step in when the process came unstuck.' The reason, he argues, was that they were able to 'think what no political party could think'; they could find gaps through which the process could continue to proceed. Sources on the government side confirmed that the 'old team' did come forward whenever the

process was endangered; they were able to 'play a constructive role because of the trust and good relations developed from the very first meetings onwards'. This role was particularly important until the end of Codesa. After this, other channels existed to resolve crises.

On military matters, among other areas, intelligence officials played a fairly crucial role. At the Simon's Town meeting which paved the way for military negotiations (see chapter 9), intelligence representatives from both sides were present. Constitutional Development also had close ties with the intelligence establishment – Barnard was later to become its director-general – while ANC intelligence personnel were influential in formulating policy, particularly as it affected security issues.

Coming in from the cold: negotiating intelligence

Having acted as midwife to political negotiations, NIS now turned its attention to negotiating the future of its own function with the ANC's intelligence arm.

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

There is evidence that NIS and ANC intelligence met before the September meeting at which the negotiations began. Both had played a key role in nursing negotiations through the early, difficult phase and this made it seem natural that they should bargain the future of intelligence.

This history may explain why, in contrast to the police and military, NIS did not resist the creation of a new intelligence agency. This was agreed quickly, although integration was to begin only after the election:

neither side wanted to weaken itself before an election by sacrificing its intelligence arm. But the NIS's role in the transition may not have been the only reason. While there is a growing recognition of the role intelligence agencies play in influencing policy,[7] unlike militaries and police forces they have no power beyond that bestowed on them by governments. Men in uniform who are ignored by politicians might stage coups; intelligence operatives can do little more than establish private consultancies. National intelligence was used to changing when politics changed; it had done so under the NP. To argue that it should remain unchanged in an entirely new order would have been implausible.

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

Agreeing on principle

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

What does seem to have emerged was agreement that a set of principles for intelligence should be investigated. At three meetings on 7, 14-15 and 30 July, an appointed working group set out to define these. Later, the TEC subcouncil on intelligence was to be mandated to devise principles – but they were already agreed by the time the mandate was issued. This initiative came largely from the ANC, which had adopted its own principles at its 1992 policy conference, based on a discussion document written by Mo Shaik, an ANC intelligence specialist.

These stated that an intelligence agency should guard the 'ideals of democracy, non-racialism, non-sexism, national unity, and reconciliation in a non-discriminatory way'. It must be politically nonpartisan and reflect the country's racial and gender balance: affirmative action was needed to achieve this. They also argued strongly for parliamentary oversight: 'Intelligence activities shall be regulated by relevant legislation, the bill of rights, the constitution and an appropriate code of conduct'; intelligence institutions should be 'accountable to parliament and subject to parliamentary oversight'. And they clearly envisaged more

open and accessible agencies: the public 'shall have the right to information gathered by any intelligence agency within the limits of classification consistent with an open and democratic South Africa'.[8]

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

These principles largely shaped those which emerged from the negotiations. The first principle agreed was that a single agency be established. Tied to this was an agreement, never officially stated, that it would have a new name: 'National Intelligence Agency' appeared to be favoured early on, although 'South African Secret Service' was also mooted in mid-1994. It would also include the intelligence capabilities of the TBVC territories. Although these were believed to be limited,[9] Transkei, Venda and, indirectly, Bophuthatswana later participated in the Joint Co-ordinating Intelligence Committee (JCIC), and Transkei sat on the TEC subcouncil on intelligence (where its seat was a result of negotiation dynamics, not a perception that it was a more important intelligence player). Ciskei was not included in these arrangements, because it had no civilian intelligence capability, although military ruler Oupa Gqozo appeared to have employed 'private consultants' to do the job.

Besides showing that both sides were committed to a new order, this rapid consensus also showed a common interest in curbing DMI's autonomy: they both hoped that the creation of a single agency would reduce competition between agencies, and more clearly define their roles.[10] But they were to find that creating an integrated agency entailed more than agreeing on principle.

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

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

As happened in negotiations on the police and military, those on intelligence guaranteed a role in the new order for those who had maintained the old. That this was agreed with such ease – indeed, that it was negotiated at all – was odd, if not unique. Since NIS was identified with the old order, the ANC might have been expected to resist its survival. NIS's bargaining power seemed further limited by international evidence showing that intelligence agencies which served authoritarian governments survived change only where these were replaced by authoritarian successors – the East German government retained Nazi operatives. Where they were replaced by democracies (as in Eastern Europe in the past decade), the old agencies were dismantled;[11] and the whole point of the local negotiations was to agree the terms for a future democracy. NIS also seemed to have no way of resisting if it was dismantled.

But NIS had some formidable bargaining chips. The fact that a compromise between the old and new order was being negotiated may have been primary – NIS's political principals would retain a share in power, and this might have ensured that it would do so too. NIS's key role in initiating a settlement also presumably lessened resistance to it. And it commanded assets which ANC intelligence might not want to lose: arguably greater technological capacity and professional training; potential to gather intelligence on the white right wing, which seemed likely to pose the greatest threat to the new order; and – information on ANC politicians and operatives. After the election, intelligence operatives claimed to possess information on ANC figures who had worked for government intelligence, information they would be more likely to reveal if they were no longer employed. ANC sources also suggest that the organisa-

tion's capacity to confront the NIS in negotiations was constrained: ANC intelligence structures were characterised by a degree of disorganisation and a limited strategic and analytical capacity, as a result of its return from exile and limited resources. What weight these factors carried is unclear: what is clear is that the parties agreed that the new intelligence agency would not be entirely new. It would, rather, be a marriage between government and ANC intelligence.

Jack of all trades ...

The principles also defined what the new agency would do. They seemed aimed at reducing its potential threat to democracy. The effect was, arguably, to increase it. 'National security' was defined extremely widely to include issues such as social and economic welfare and the environment, an approach for which the ANC had pressed. Shaik, at a conference on covert operations, had declared: 'The ANC strongly believes that national security should be understood in comprehensive terms to include military, political, economic, social, technological and environmental dimensions.' Intelligence should underpin 'freedom, justice, prosperity and development'.[12] Similarly, Laurie Nathan, who advised ANC policy-makers, argued that 'security [should be] conceived of as a holistic phenomenon which is not restricted to military matters but broadened to incorporate political, social, economic and environmental issues'. Security was not only an 'absence of war', but was also related to the 'pursuit of democracy, sustainable economic development, social justice and a safe environment'.[13]

While this approach purported to 'democratise' intelligence work, its effect could be to expand its activities and influence: the intelligence agency could be preparing assessments on anything from population movement over borders to increased pollution in the PWV. This would presumably increase its connections to most government departments, and centralise government strategic and analytical work.

Its supporters said this would create an intelligence agency which would be the 'university of the state'. It reminded opponents of nothing so much as the joint security management system of the Botha era: at the time, it was also assumed that there was no issue which was not relevant to national security. While supporters insist that an agency seeking to uphold a democratic order would apply a wider brief differently, their proposals did open the way for a larger, more intrusive agency: there was no reason for NIS to oppose this – and much incentive to greet it with enthusiasm. Indeed ANC sources suggest that NIS had been engaged in similar work, and both parties appear to have relied on the same source.[14] In a probable attempt to allay fears of an overweening new agency, the principles stressed that intelligence agencies were not policy-makers. But control over information gives those who have it inevitable power over policy choices – whatever commitments in principle they might make.

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

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

Behind closed doors: the intelligence subcouncil

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

Its supporters gave three reasons for a subcouncil. Firstly, since intelligence agencies had been at the forefront of the war, at least at a strategic level, it would be a public sign of reconciliation if they began to operate together; it might lay the basis for further co-operation on difficult issues. Secondly, if intelligence was excluded, the citizenry might fear that one of the most controversial aspects of the old order was out

of reach to multiparty control: leaving it out would have been 'laughable'. A subcouncil would also increase public scrutiny of intelligence, and force its members to adjust to the public domain – by, for example, developing the capacity to handle public and media queries, and respond to publicity.

And thirdly, while this goes unmentioned by both parties, there may have been a concern in the ANC that state intelligence operations would need to be particularly accountable during a transition they had been accused of 'destabilising'. A subcouncil would allow them to be monitored. Certainly, despite the ANC stress on 'transparency', the subcouncil did not operate openly. A press report written at the time gives an idea of its ethos: the journalist concerned had asked a TEC representative where the offices of the more secretive subcouncils were located in the TEC building. The response was: 'I am not liable to tell you.'[15] But if the subcouncil did not usher in a new era of openness, it did allow each party, in theory, to monitor the other.

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

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

Once these points had been agreed, observers close to the process suggest, it was fairly easy to draft the remainder of the provisions establishing the subcouncil. They provided for a joint co-ordinating intelligence committee (JCIC) comprising the head or senior representative of

each agency which would monitor and liaise with the agencies and manage the subcouncil. It would also initiate discussion on a new intelligence function.

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

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

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

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

Because it operated in secrecy – and because the principles on which agencies would be integrated had been worked out before it was established – it is not clear whether the subcouncil took forward the task which began in March. But some sources do suggest – with no great

enthusiasm – that it became a rudimentary intelligence oversight committee. Its members, they say, 'came to love its power ... developing notions of their own importance'. This implied that they would continue jealously to guard their power to oversee intelligence.[16] Whether this would increase control over it, or simply broaden the small group of insiders, was less than clear.

What is also clear is that neither the subcouncil nor the negotiations which preceded it agreed on the details of establishing a single agency. While the subcouncil produced what was referred to as a 'future dispensations document', it was a product of compromise[17] and regarded by sources close to the process as a 'weak piece of work', which 'never properly defined intelligence' nor properly delineated the functions of the various future agencies of the intelligence community. In the end, there appears to be agreement that the subcouncil produced little of substance. Two months after the 1994 election, NIS director Mike Louw, in his first public appearance before a parliamentary committee, conceded that integration had not begun and that no decision had been taken on how it was to proceed. A cabinet committee was, he said, 'considering the matter'.[18] However, replying to further questions, he said there were no problems about what had to be done; the only issue was how it should be done.

The second oldest profession: intelligence and the future

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

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

But the end of apartheid would not mean an end to real and perceived threats. Despite the constitutional settlement, South Africa would remain a highly volatile society; violence and instability had been so deeply rooted that they would not disappear overnight. There were those on the right and left who might try to destabilise the new order, a point stressed, inevitably, by both sides. Shaik, who argued constantly for more open intelligence work, cited this in a plea for continued secret operations: 'My personal view on the issue of covert operations is that for a while, until ... the people of this country are safe ... [it] may be a necessary evil for a period ...'[16]

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

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

But if an intelligence arm was set to remain – and even to grow in the short term to accommodate all the services – would its operatives co-operate to support the new democracy? Could the rival agencies merge into what Louw called 'an intelligence service at peace with itself'?[20] The negotiations showed that the rival agencies had some mutual interests. They showed too that there were differences within as well as between the old adversaries. But at least until the election, ANC and government intelligence organisations remained rivals, and there was no guarantee that they would merge easily. Shortly after the election, suggestions that FW de Klerk might be given political responsibility for the

new agency prompted reports that 'intelligence officials' were advising the ANC against this, since it would ensure that the agency remained partisan to the NP.[21] And the fact that integration had not begun well after the election suggested that bridging the divide between the rival agencies was more difficult than the negotiators had assumed.

Sources close to NIS said this issue had been exaggerated. All intelligence products were submitted to the president, and no other political office-bearer could intervene. It was, however, necessary for a deputy president or minister to relieve the president of some of the administrative work associated with intelligence. The only issue was to define the powers the president would delegate.

One point of tension was the question of consolidating sources. While this would strengthen a new agency's capacity to gather information, the agencies agreed not to declare their sources initially – perhaps with good reason, since doing so might cause a grave political scandal. Each would also have an incentive to implicate falsely key figures on the other side. The new service might begin with operatives from different backgrounds who might tell each other what they knew, but not how they came to know it. Another concern of both intelligence agents stemmed from the fact that the new generation of intelligence officers is trained by overseas agencies. This, they feared, created greater opportunities for recruitment by foreign powers, potentially compromising the new intelligence function from the outset. All new officers, it was agreed, would undergo stringent security evaluations but this could, of course, hamper integration – and later co-operation. Indications were that the parties would start off by accepting each other's bona fides.

Also, even if an integrated, non-partisan civilian service was to emerge, negotiations affecting those agencies accused of acting against apartheid's opponents – DMI and the police – would be crucial. The future of these agencies would become vital if internal instability continued, since this would imply an increased role for both – and their intelligence structures. The crucial distinction would lie between the areas of strategic and tactical intelligence: but even then questions remained. Who would infiltrate, say, right-wing terror groups? The police, if crimes had been committed? The SANDF, if a military threat was posed and tactical intelligence required? Or national intelligence, because strategic information was needed? Thus, it seemed likely that the roles of the various agencies would be clarified only some time after the settlement.

Moreover, whatever the shape of the new agency, there was no guarantee that it would operate much differently to its predecessor. Despite

agreement on the principles, the debate on openness had not been resolved. There had been some movement towards it in practice: NIS had produced a pamphlet for 'selected distribution', explaining itself and its functions. But the TEC subcouncil's style of operating suggested that secrecy died hard, and that the birth of a national intelligence agency would not be a public process.

Perhaps predictably, intelligence sources continued to argue that intelligence agencies were secret by nature, and that agents would not jeopardise their careers and physical safety for a service that did not guarantee secrecy.

If, as suggested above, the subcouncil did become the nucleus of an oversight body, this would hold dangers as well as safeguards. Experience elsewhere shows that intelligence oversight committees need a fairly high turnover of members – it has been suggested that none should serve for longer than three to five years, lest they become subject to the influence of the intelligence agency.

A more accountable agency remained possible because this might be in the ANC's interests. At least in the short to medium term, NIS had the resources to maintain a grip on the running of the profession. Goldstone commission evidence that DMI officers had been engaged in partisan activity during the transition was said to have reinforced the ANC belief that better monitoring was needed. Continued secrecy would also heighten fears among particularly ANC politicians that intelligence officers might continue to pursue their own agendas, even after the agencies merged. If the ANC housed people who shared NIS's enthusiasm for secrecy, it also housed many whose experience as activists had left them deeply suspicious of secret intelligence work. Thus, when Louw appeared before the parliamentary committee in June 1994, ANC MP Phillip Dexter commented that 'greater transparency' would mean that 'many of us wouldn't be so hostile to the idea of you getting any money at all'.[22] This suggested that, as implied above, the intelligence community might need to support greater openness to counter political resistance. The government of national unity could support fairly comprehensive oversight, which might be carried into the long term. But, as intelligence sources point out, there are limits to openness: without a large measure of secrecy, intelligence agencies lose much of their purpose.

Ultimately, however, the role of the new intelligence agency would depend on the order which emerged after a settlement. Intelligence agencies are far more creatures of political circumstance than armies or police forces. If the parties to a government of national unity found

ways of co-operating, so too would their intelligence operatives. If they did not, intelligence might again become a weapon in the hands of competing parties. If stability and democracy consolidated, the agency was likely to play a role similar to that of its counterparts in established democracies. If it did not, it could become a vehicle for covert operations against new – or in some cases, the same – enemies.

While the fact that the rival agencies began to negotiate their future was in itself a remarkable feature of the transition, the shape and nature of intelligence in the new order remained in the balance as a post-settlement government took office.

Notes

1. This chapter is largely based on interviews with persons who declined to be identified. Information gleaned from these interviews is therefore not sourced.
2. See Mark Swilling and Mark Phillips, 'The Powers of the Thunderbird – Decision-Making Structures and Policy Strategies in the South African State', *South Africa at the End of the Eighties*, Centre for Policy Studies, Graduate School of Business Administration, University of the Witwatersrand, Johannesburg. See also Annette Seegers, 'South Africa's National Security Management System, 1972-1990', *Journal of Modern African Studies*, 29 (2), 1991.
3. Protection of Information Act, No 84 of 1982.
4. J Roherty, *State Security in South Africa*, Sharpe Inc, New York, 1992, p 73.
5. *Sunday Times*, 1/10/1989.
6. Laurie Nathan and Mark Phillips, '"Cross-currents": Security developments under FW de Klerk', in Glenn Moss and Ingrid Obery (eds), *South African Review 6: From 'Red Friday' to Codesa*, Ravan Press, Johannesburg, 1992.
7. See introduction to Ian Black and Benny Morris, *Israel's Secret Wars – A History of Israel's Intelligence Services*, Warner, London, 1988.
8. African National Congress, *Ready to Govern*, 1992.
9. Roger Southall, 'Restructuring intelligence for post-apartheid South Africa', conference paper, 19 August 1992.
10. The constitution also stipulates that provinces will not have their own intelligence agencies, a standard provision in federal as well a unitary systems.
11. Arguably, an exception to this rule is Zimbabwe, where Ken Flower, head of Rhodesia's Central intelligence Organisation, remained head of intelligence under the new Mugabe government.
12 Mo Shaik, 'Panel: Policy formation', in Anthony Minnaar, Ian Liebenberg and Charl Schutte, *The Hidden Hand: Covert Operations in South Africa*, HSRC, Pretoria, 1993.
13. Laurie Nathan, 'Revisiting security', in Minnaar et al, *The Hidden Hand*.
14. This was an influential book on security policy, Barry Buzan, *States and Fear – An Agenda for International Security Studies in the Post-Cold War Era*, 2nd edition, Harvester-Wheatsheaf, 1991.
15. *Sunday Times*, 23/1/94.

16. Members were Shaik (SACP), Alfred Nzo (ANC, later appointed as Foreign Affairs minister); Gert Rothman (SAG and NIS); Fanus Schoeman (NP); Lluwellyn Landers (then Labour Party, later an ANC MP); WM Ndzwayiba (Transkei), Bob Rogers (DP) and MW Mokoena (Lebowa).
17. NIS is said to have arrived with position papers on a number of subjects related to the integration of the agencies. The ANC objected, arguing that both parties should put formal proposals on the table.
18. *Business Day*, 28/6/94
19. Shaik, 'Panel: Policy formation'.
20. Shaik, 'Panel: Policy formation'.
21. *Weekly Mail and Guardian*, 24-30/6/94.
22. *Business Day*, 28/6/94.