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Global Intelligence Co-operation versus Accountability: New Facets to an Old Problem

RICHARD J. ALDRICH

ABSTRACT The most important recent change within the realm of intelligence and security services has been the expansion of intelligence co-operation. The growing connectivity between both foreign intelligence services and also domestic security services means that we might speak – not just of growing international co-operation – but perhaps even of global co-operation. This essay considers the complex interplay of intelligence and globalization since 1989. It argues that there is an obvious tension between a developing global style of co-operative activity and the traditional mechanisms of oversight, which have tended to be national. Accordingly, it moves on to discuss the recent efforts by national, regional and international systems of inquiry to examine issues that involve intelligence co-operation. It suggests that while formal committee-type mechanisms have limited purchase, they are not the only options for oversight in a globalized context.

Globalization and Intelligence

In 1991, a group of Palestinian refugees, mostly former members of the Palestine Liberation Organization, arrived in Norway seeking political asylum. They were interviewed by the Overvåkingspolitiet, Norway's security police. The officers who interviewed them over an extended period spoke excellent Arabic and elicited a quantity of information, which the Palestinians believed would contribute to the consideration of their refugee status. Eventually, the suspicions of the refugees were aroused when they discovered that some of these 'Norwegians' could not speak Norwegian. In

This paper was first presented at the Aberystwyth University Centre for Intelligence and Security Studies Conference, Gregynog, in April 2007. I would like to record my thanks to the Leverhulme Trust for a fellowship that facilitated the research. I would like to express my gratitude to Matthew Aid, Hans Born, Ian Leigh, Martin Rudner, Adam Svendsen, Cees Wiebes, Aidan Wills and others who have drawn my attention to relevant material.

the event they proved to be officers of Mossad who were engaged in co-operation with their Nordic colleagues. A public furore ensued. The Norwegian parliament produced a critical report and called for stricter guidelines on intelligence co-operation. Although the chief of the security police was forced to resign, together with the head of Norway's anti-terrorist unit, the oversight committee failed in its efforts to elicit much information about the relationship with Mossad. Moreover, their efforts to develop new procedures intended to allow more insight into international intelligence co-operation did not progress very far.¹

International intelligence co-operation – or 'liaison' – has long been identified as an area that is opaque to oversight and accountability bodies, indeed it also constitutes a notoriously difficult area for academics, journalists and other researchers. This is partly because of the extreme secrecy that intelligence agencies attach to 'liaison'. Not only do they wish to avoid damaging these relationships but also they are not always keen to inform their political masters of their degree of dependency on friends for certain streams of intelligence. Intelligence co-operation is a diffuse activity and so intrinsically hard to monitor. Although some larger intelligence agencies boast an office of liaisons, in reality it spread across every aspect of the intelligence process.²

For more than a decade the 'black hole' of international intelligence co-operation has been expanding. Stephen Lander, the former Director General of MI5, has observed that the exponential increase in international intelligence co-operation constitutes the most significant change within the world of intelligence over the last decade.³ Most obviously, since 2001, the 'Global War on Terror' has greatly accelerated the scope and scale of international co-operation. It has also prompted more aggressive operations by clandestine agencies – including rendition – which some legislatures have been keen to investigate. However, this article argues that activities such as rendition are merely the most visible symptom of a more fundamental change in the style of intelligence activity that has been under way since the mid-1990s. Most of the targets that intelligence agencies have been asked to address since the end of the Cold War have an increasingly globalized dimension and in response intelligence and security agencies are being forced to transform their activities. Agencies, together with their operations and their targets are moving apace down the transnational trail. The resulting changes include the development of a global world of domestic security liaison and accelerating privatization of

¹G.R. Weller, 'Political Scrutiny and Control of Scandinavian Security and Intelligence Services', *International Journal of Intelligence and Counterintelligence* 13/2 (2000) pp.175–6. Also private information.

²M.S. Alexander, 'Knowing Your Friends, Assessing Your Allies – Perspectives on Intra-Alliance Intelligence', *Intelligence and National Security* 13/1 (1998) pp.1–17.

³S. Lander, 'International Intelligence Co-operation: An Inside Perspective', *Cambridge Review of International Affairs* 17/3 (2004) pp.481–93.

some key functions. Unsurprisingly, accountability and oversight have been left behind.⁴

'Globalization' is a word that social scientists use *ad nauseam*, but rarely pause to define. Jan Arte Sholte, in his widely referenced text, has tended to emphasize the spatial (or spatio-temporal) aspects of this phenomenon. This perspective is primarily about social and political geography, distinguished by the development of 'supraterritorial spaces', which exist awkwardly alongside conventional sovereign territoriality.⁵ This particular notion of globalization speaks directly to current intelligence targets, agencies and their operations. Since the end of the Cold War, states have been increasingly confronted by security problems that emanate from non-state actors. States have made things worse by deliberately opening up their borders to free flows of money, expertise, communications and ideas in order to benefit from exponential increases in trade. Terrorists, warlords and criminals have been quick to capitalize on this fluidity. Many of these adversaries have ridden the wave of globalization, employing dispersed networks to hide their activities and achieving a somewhat mercurial existence.⁶

The elusive nature of these opponents has prompted states to develop counter-measures that are increasingly intelligence-led. We are not only seeing a quantitative increase in co-operation between the intelligence services of different states, but also qualitative changes. We are seeing improbable intelligence partners, rather than the familiar combination of Cold War intelligence collaborators. While the majority of meaningful intelligence exchange remains bilateral, multilateral co-operation in areas such as training and field operations is also growing. Moreover, we are witnessing a remarkable growth in the inter-connections between domestic police and security services, eroding the distinction between what constitutes domestic and foreign. Finally, private security companies and corporate providers of national infrastructure – sometimes themselves multinationals – are playing a larger part in intelligence operations. These latter developments resonate strongly with the spatial notions of globalization.⁷

⁴Little has been written specifically on international intelligence co-operation and accountability, or indeed international accountability mechanisms, but see Hans Born and Ian Leigh, *Making Intelligence Accountable: Legal Standards and Best Practices for Oversight of Intelligence Agencies* (Oslo: Publishing House of the Parliament of Norway 2005) pp.64–68; Iain Cameron, 'Beyond the Nation State: The Influence of the European Court of Human Rights on Intelligence Accountability' in H. Born, L.K. Johnson, and I. Leigh (eds.) *Who's Watching the Spies? Establishing Intelligence Service Accountability* (Dulles, VA: Potomac Publishers 2005) pp.34–56; Thorsten Wetzling, 'The Democratic Control Of Intergovernmental Intelligence Cooperation', DCAF Working Paper – No. 165, Geneva, May 2006, <https://pforum.isn.ethz.ch/handbook_intelligence/Democratic_Control_Wetzling.pdf>, accessed 13 September 2008.

⁵Jan Arte Scholte, *Globalization: A Critical Introduction* (New York: St. Martin's, 2000).

⁶M. Naim, *Illicit: How Smugglers, Traffickers and Copycats are Hijacking the Global Economy* (London: William Heinemann 2005).

⁷For recent literature on the acceleration of liaison see, S. Lefebvre, 'The Difficulties and Dilemma of International Intelligence Cooperation', *International Journal of Intelligence and*

We can usefully deploy the term globalization in several other senses. Underlined by the collapse of the Iron Curtain, globalization has been closely associated with the cosmopolitan idea of global citizenship, implying a common ownership of liberal and humane values – and of course – human rights. Cosmopolitans like David Held have argued that globalization requires the extension of liberal democratic institutions to the transnational level. Recognizing that states are ill-equipped to deal with some of today's global maladies, they argue for more supranational authority, at either the regional or global level, and for the democratization of existing forms of governance. These sorts of bodies, typically within the European Union, are now taking a stronger interest in intelligence oversight. Arguably they have little choice given the growing profile of intelligence as a mode of policing the underside of globalization. However, while much beloved of academics, real examples of effective and democratic global governance are few and far between.⁸

We may only have weak global governance, but we have witnessed the development of strong global civil society. Here, globalization manifests itself in the form of citizen groups and transnational bodies that campaign on thematic issues, such as human rights and the environment. The number of transnational non-governmental organizations (NGOs) broadly doubled in the 1990s. Of course, transnational civil society contains both civil and non-civil elements. The facilitating aspects of globalization – not least the internet – that make new forms of oppositional politics possible are often the same aspects that have encouraged new forms of insecurity from transnational threats.⁹ Some would argue that this informal network of counter-surveillance by activists and pressure groups, although unable to call intelligence agencies directly to account, has nevertheless proved to be a moderately effective means of intelligence oversight. Self-evidently, it is less troubled by state boundaries than national committees and commissions of inquiry.¹⁰

Counterintelligence 16/4 (Winter 2003–04) pp.527–42; D.S. Reveron, 'Old Allies, New Friends: Intelligence-Sharing in the War on Terror', *Orbis* 50/3 (Summer 2006) pp.453–68; M. Rudner, 'Hunters and Gatherers: The Intelligence Coalition against Islamic Terrorism', *International Journal of Intelligence and Counterintelligence* 17/2 (Summer 2004) pp.193–230; J.E. Sims, 'Foreign Intelligence Liaison: Devils, Deals, and Details', *International Journal of Intelligence and Counter-Intelligence* 19/2 (Summer 2006) pp.195–217; A. Svendsen, 'The Globalization of Intelligence since 9/11: Frameworks and Operational Parameters', *Cambridge Review of International Affairs* 21/1 (March 2008) pp.129–44; A. Svendsen, 'The Globalization of Intelligence since 9/11: The Optimization of Intelligence Liaison Arrangements', *International Journal of Intelligence and Counter-Intelligence* 21/4 (December 2008), pp.661–78; J.I. Walsh, 'Intelligence-Sharing in the European Union: Institutions Are Not Enough', *Journal of Common Market Studies* 44/3 (2006) pp.625–43.

⁸David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Stanford, CA: Stanford University Press 1995).

⁹P. Gready, *Fighting for Human Rights* (London: Routledge 2006) p.4. Simon Tormey, *Anti-capitalism* (London: Oneworld 2006).

¹⁰Shanthi Kalathil and Taylor C. Boas, *Open Networks, Closed Regimes: The Impact of the Internet on Authoritarian Rule* (New York: Carnegie Endowment 2003) pp.22–33.

This article argues that these three facets of globalization all bear heavily on intelligence oversight and accountability. More precisely, if we accept that intelligence activities are now globalizing, there is an obvious mismatch between the emerging new style of operational activity and the traditional patterns of accountability which look increasingly parochial. Intelligence co-operation or 'liaison' has always presented a challenge for bodies charged with accountability and oversight. However this article contends that the scope and scale of co-operation has resulted in a qualitative change that now renders traditional forms of accountability – rooted in the sovereign nation-state – increasingly outmoded and incomplete.

These arguments are developed here by considering the connections between intelligence liaison, globalization and accountability since 1989. It first examines the interplay between intelligence and accelerating globalization in the 1990s. It then moves on to review the recent efforts of national accountability mechanisms, both standing and ad hoc, in this realm. Thereafter, it looks at more unusual examples of supranational endeavours at the regional and then international levels. It argues that some of these latter supranational exercises have been more successful than we might imagine. This is especially true where legal rather than political avenues have been exploited. It closes with some modest recommendations for future development of mechanisms for accountability and oversight in a globalized context.

Intelligence and the Promise of 'Perpetual Peace'

Not all the current troubles of intelligence relate to events since 9/11. To understand the multiple impact of globalization upon intelligence and accountability we need to consider several trends that were emerging in the previous decade. In the early 1990s, few anticipated the significant security challenges that now confront us. Instead, Francis Fukuyama famously promised us 'the end of history'. This was a shorthand expression intended to denote the anticipation of a quiescent period in international relations characterized by peaceful competition between parliamentary democracies that had engaged with a liberalized world economy.¹¹ Fukuyama was not alone. Singing a descant were the confident assertions of the democratic peace theorists (DPT) that liberal democracies do not fight each other. The DPT literature is too vast and complex to be summarized here, but for a brief period, these assertions seemed entirely plausible, since the early 1990s contained some undeniable advances.¹² Autocracies had crumbled, not only in Eastern Europe, but also in South America and Africa. Prolonged and

¹¹Fukuyama's predictions have undergone diverse interpretation. However he asserts that he had in mind something like the European Union, only on a global scale. See Francis Fukuyama, 'The History at the End of History', *Guardian*, 3 April 2007.

¹²Thomas Friedman, the *New York Times* globalization correspondent offered a popular version of this theory, arguing that no two countries that both had a McDonalds could go to war. However, the NATO bombing of Serbia in 1999 constituted an effective strike on the

intractable conflicts, such as Northern Ireland, seemed to be drawing to a close.¹³

The end of the Cold War in 1989 had roundly surprised the intelligence services. Thereafter, the subsequent talk of 'perpetual peace' represented a second and more fundamental shock, particularly for American intelligence bureaucracies, which operated on an industrial scale. What would intelligence and security agencies do in this new period of global calm and prosperity? After a brief period of moral panic, the agencies attempted to reinvent themselves for an era of economic competition between democratic states. During his confirmation hearings in February 1993, the new DCI, James Woolsey, told Congress that economic espionage was 'the hottest current topic in intelligence policy'.¹⁴ However, they failed to convince the politicians and Western intelligence budgets were cut by a quarter. The Treasury in Whitehall also saw the intelligence services as soft targets. By 1994 there no longer seemed to be a rationale for spending millions for the privilege of GCHQ listening in on Russian tank commanders in Chechnya and similar cuts followed in the UK.¹⁵

Other important changes were under way. As we have seen, the end of the Cold War was closely associated with the optimistic themes of openness, liberalization and democratization. In Europe, this was reflected in a rush to place intelligence services on the statute book. Admittedly, this was driven as much by a specific ruling by the European Court of Human Rights as by the end of the Cold War. However, it was also in the spirit of the age. An extraordinary flurry of legislation between 1989 and 1995 saw most European agencies embrace legal frameworks, often incorporating the European Convention on Human Rights (ECHR). Some countries, imbued with enthusiasm for the new regulatory state, even incorporated references to ECHR into their detailed guidelines on surveillance. Across Europe, intelligence and security services had discovered the law and now found it operationally beneficial. Operations no longer depended on secrecy, but on legality. This enthusiasm for regulation was soon exported to the newly reconstructed intelligence services of central and eastern Europe by evangelizers from London and the Hague through the Middle European Conference, a mechanism for intelligence reform in the East set up in 1994.¹⁶

cherished ideas of DPT theorists and also upon the 'Golden Arches Theory of Conflict Prevention'.

¹³M. Cox, 'Bringing in the "International": The IRA Ceasefire and the End of the Cold War', *International Affairs* 73/4 (1997) pp.671–93.

¹⁴R. Jeffrey Smith, 'Administration to Consider Giving Spy Data to Business', *Washington Post*, 3 February 1993.

¹⁵See Jonathan Aitken's vivid account of his interaction with GCHQ in 1994 as Chief Secretary to the Treasury in, *Pride and Perjury* (London: HarperCollins 2000) pp.2–7.

¹⁶Jean-Paul Brodeur, Peter Gill and Dennis Tollborg (eds.) *Democracy, Law and Security: Internal Security Services in Contemporary Europe* (London: Ashgate 2003).

Parallel trends could be observed in Washington. Here too, there was greater emphasis on legality and regulation. High-risk human operations were no longer popular and, following several high-profile human rights cases in locations such as Guatemala, new internal regulations were put in place curtailing the CIA's use of 'dirty assets'. In 1995, it was revealed that a CIA paid informant had been involved in the deaths of an American hotelier and the Guatemalan husband of an American Harvard-trained lawyer. After an inquiry by the CIA Inspector General, Fred Hitz, CIA headquarters insisted on a complete review before agents with criminal records or other problems could be recruited in the field. Although the new procedures were well-meaning, valued agents were let go. Future agents were reviewed by risk-averse legal staff in Washington. The sheer bureaucratic effort involved in acquiring agents that worked in dirty places ensured that few were recruited. In any case, in a new era of perpetual peace, edgy operations simply did not seem to be justifiable and calculated risk-taking was replaced by risk aversion.¹⁷

Arguably, this amounted to a further intelligence failure. Having failed to spot the end of the Cold War, the intelligence services also failed to assess the nature of the emerging 'hot peace' characterized by violent transnational groups and problematic sub-state actors. Instead, they downsized their capacity and focused on economic counter-intelligence. They set about dismantling many of the networks that would have been valuable in addressing the underside of globalization. Instead, by 1999 it was abundantly clear that the main threat would instead be insurgents, warlords, militias, 'new terrorists' and organized crime, all riding to some extent on the coat tails of globalization. One of the linking themes amongst this miasma of 'new threats' was that many of them depended upon a degree of subterfuge. Developed states had always found asymmetrical warfare difficult and these sorts of conflicts were now erupting in many corners of the world. Few had envisaged the high incidence of these sorts of conflicts and no country was properly prepared for them.¹⁸

It would be unfair to suggest that globalization was entirely ignored by intelligence in the 1990s. Re-organization reflected a growing tendency to draw lessons from private corporations, especially knowledge-intensive organizations. The UK's SIS (MI6) set up a global issues section, initially small, but rapidly expanding by the late 1990s.¹⁹ It changed its modus operandi, placing less emphasis on country stations and more emphasis on flexible teams despatched from London. During the mid-1990s, under David Omand and then Kevin Tebbit, GCHQ began a major re-organization, taking some interest in companies like Shell and Microsoft. The essence was

¹⁷Seymour M. Hersh, 'What Went Wrong: The CIA and the Failure of American Intelligence', *New Yorker Magazine*, 1 October 2001. See also Susanne Jonas, 'Dangerous Liaisons: The U.S. in Guatemala', *Foreign Policy* 103 (Summer 1996) pp.144-60.

¹⁸Richard H. Shultz and Andrea J. Dew, *Insurgents, Terrorists and Militias: The Warriors of Contemporary Combat* (New York: Columbia University Press 2006).

¹⁹M. Smith, *The Spying Game* (London: Pimlico 2003) pp.233-4.

to move away from a rigid Cold War architecture characterized by silos and to achieve a new flexibility. The culture was shifting away from 'need to know' towards 'need to share'. At the core of this was an accelerated effort to adopt new technologies to try and keep abreast of the revolution in telecommunications, entitled 'Sigint NEW Systems' or SINEWS. GCHQ's American equivalent struggled woefully to address the global communications revolution, which brought exponential increases in volumes of communications. Tony Blair's New Labour government arrived in 1997, bringing with it a foreign policy that was interventionist in style, requiring more intelligence support. Blair was also keen to see the intelligence services in the frontline of the war against organized crime and held a Downing Street summit on the subject in 1999.²⁰

Accordingly, while 9/11 is often represented as *tabula rasa* for intelligence, the theme of globalization illuminates some important continuities with the previous decade. The growth of Al Qaeda in the 1990s was interwoven with globalization, indeed this was what marked it out from other jihadist organizations. As Gerges has explained, while many national jihadists were focused on overthrowing their local government – the so-called 'Near Enemy' – instead Al Qaeda was seeking to ally with groups around the world against the 'Far Enemy' – the United States.²¹ In other words, although Al Qaeda postured as an enemy of modernity, paradoxically it was riding the wave of globalization, exemplified by its extensive use of the internet. John Gray has eloquently summarized Al Qaeda's disingenuous relationship with globalization, suggesting that, in reality, it amounts to 'a symptom of the disease of which it is pretending to be the cure'.²²

Gray's distinction between symptom and disease helps to illuminate the relatively superficial ways in which intelligence has addressed globalization. Intelligence chiefs have not been slow to respond to a range of 'symptoms' produced by globalization. Indeed, through the 1990s managers thrashed about seeking plausible new enemies and found plenty of them. However, their search for a single dominant theme revealed the persistence of continued Cold War thinking. Furthermore, they had not identified *globalization itself* as a fundamental source of disruption and instability. Accordingly, we can find few explicit references to the detrimental impact of globalization per se on national security in the 1990s. Belatedly, in February 2003, the US National Counter Terrorism Strategy observed:

Ironically, the particular nature of the terrorist threat we face today springs in large part from some of our past successes ... terrorist networks have twisted the benefits and conveniences of our increasingly

²⁰NSA New Enterprise Team, (NETeam) Recommendations, The Director's Work Plan for Change, 1 October 1999, <<http://cryptome.org/nsa-reorg-net.htm>>.

²¹F. Gerges, *The Far Enemy: Why Jihad Went Global* (Cambridge: Cambridge University Press 2005).

²²John Gray, *Al Qaeda: And What it Means to be Modern* (London: Faber 2003) p.26.

open, integrated, and modernized world to serve their destructive agenda ... Its global activities are co-ordinated through the use of personal couriers and communication technologies emblematic of our era – cellular and satellite phones, encrypted e-mail, internet chat rooms, videotape, and CD-roms.²³

In the same month, George Tenet warned Congress of key transnational issues that were complex, evolving, and that have far-reaching consequences. Tenet did not mince his words and stated that: ‘Globalization – while a net plus for the global economy – is a profoundly disruptive force for governments to manage.’²⁴

The reluctance of intelligence agencies to think through the profound consequences of globalization for their activities has deleterious effects. Some of these are merely operational. Typically, it has degraded their effectiveness against terrorism. Despite the claims to be pursuing a ‘Global War on Terror’, most American intelligence officials overlooked the important links between terrorism and globalization. In the words of Audrey Cronin, the result has been that we are now ‘behind the curve’ on globalization.²⁵ Indeed, despite much rhetoric about the ‘new terrorism’, there were in fact many similarities between ‘old’ and ‘new’ organizations since much of its newness came from the global context. Al Qaeda, like many other post-Cold War pathologies, drew its strength from the complexity of a networked world.²⁶

Although intelligence agencies have failed to conceptualize the fundamental way in which globalization is changing the terrain, globalization has nevertheless been the main driver of change in the world of intelligence. New challenges have forced them to reverse the downsizing of the 1990s and to grow at a remarkable rate, including significant privatization.²⁷ Most importantly they have been forced to radically increase the range and depth of international partnership. Sharing, and especially multilateral sharing, of sensitive data is anathema to intelligence agencies and so the extent to which their hesitations have been overcome is a testament to a change born of necessity. Moreover, as Martin Rudner and Adam Svendsen have argued, co-operation also includes the increasing standardization of training and methodology, together with joint operations. Others have pointed to the sheer proliferation of alliance partnerships. Most important are the

²³US National Strategy for Combating Terrorism, February 2003, p.7, <http://www.whitehouse.gov/news/releases/2003/02/counter_terrorism/counter_terrorism_strategy.pdf>.

²⁴George Tenet, Director of Central Intelligence, ‘The Worldwide Threat in 2003: Evolving Dangers in a Complex World’, presentation to Congress, 11 February 2003, <http://www.fas.org/irp/congress/2003_hr/021103tenet.html>.

²⁵A. Cronin, ‘Behind the Curve: Globalization and International Terrorism’, *International Security* 27/3 (Winter 2002/03) pp.30–58.

²⁶This thesis is most persuasively expounded by Adrian Guelke in *Terrorism and Global Disorder: Political Violence in the Contemporary World* (London: I.B. Tauris 2006).

²⁷Robert Baer, ‘Iraq’s Mercenary King’, *Vanity Fair*, 10 April 2007.

increasing international connections between *internal* security services of many countries, a profound sign of deterritorialization. Even a small domestic service, such as the Danish Security Intelligence Service (PET), has established relations with 80 services in 50 countries. The boundary between what is inside that state and what is outside – for years the key distinction between intelligence services and security services – is increasingly porous.²⁸

Intelligence and security services have often been represented as the ‘villains of the peace’ during the last ten years, but they might equally be perceived as victims, caught amid the unpredictable tides of globalization. They are now being asked to undertake much more invasive surveillance, together with a range of kinetic activities that includes disruption and enforcement. Rendition is an obvious example. Yet the enhanced expectations of ethical behaviour, policed by a vibrant global civil society, have not diminished. The manner in which recent operations against terrorism have gone global, but accountability mechanisms have not, is a further symptom of these contradictions. The paradoxes are perhaps more acute in the case of intelligence and security services because as institutions they are peculiarly tied to notions of sovereignty. This can be illustrated by comparison with armed forces. States are often willing for their military units to be placed under allied command, however this is much less common in the case of secret services. This raises interesting questions about Westphalian notions of security and the ‘Just War’ tradition.²⁹

How important are these contradictions? On one level we might dismiss recent controversies associated with rendition as part of a familiar cycle of revelation and recrimination that has characterized the history of covert action over several decades. History shows us that the more robust activities of the CIA are celebrated and then flagellated by equal turns. Long-suffering practitioners assert that this is nothing new. However, this article argues that the current changes and challenges may be more profound. The Westphalian basis of intelligence accountability is being eroded by the global nature of alliance operations. Meanwhile, we are seeing the gradual rise of additional types of accountability. Supranational bodies in Europe, and elsewhere, have begun to take an interest. Moreover, recognizing that they have limited political purchase they have also used formal legal mechanisms, seeking to enforce treaties and conventions. In addition, we have also seen the rising importance of a messy coalition of investigative journalists, campaign groups and NGOs. This manifestation of global civil society has not only been important in applying political pressure, but has also begun to eclipse national bodies as the lead investigator. One of the many claims for globalization is that it is making it harder for states to keep secrets, despite

²⁸Svendsen, ‘Frameworks and Operational Parameters’, pp.129–44; PET Annual Report 2004–05, pp.57–8, <<http://www.pet.dk/upload/annualreport2004-2005.pdf>>.

²⁹I am indebted to John Williams for comments here. See his, ‘Space, Scale and Just War: Meeting the Challenge of Humanitarian Intervention and Trans-national Terrorism’, *Review of International Studies* 34/4 (October 2008) pp.581–600.

their desire to reassert the importance of state secrets privilege.³⁰ Alongside a growing interest in intelligence amongst supranational bodies we may also be seeing an emerging culture of 'regulation by revelation'.³¹

National Mechanisms of Accountability

How well have national accountability mechanisms fared in examining the new world of enhanced liaison? How effective have they been in addressing the globalization of intelligence practices? Although rarely remarked on, the institutions of accountability and oversight have their own patterns of co-operation, focused upon the bi-annual International Intelligence Review Agencies Conference. The first conference was held in Canberra in 1997, focusing on the role of Inspectors General, and attracted no fewer than 22 delegates from six countries.³² The second was held in Ottawa in 1999 and the third was scheduled to be held in Washington in 2001, albeit this was cancelled in the wake of the events of 9/11. The UK hosted the third conference in 2002, while Washington became the venue of a fourth conference in 2004. In 2004, the hosts declared that the purpose of this bi-annual conference was for delegates 'to strengthen their relationships with one another, share their experiences in establishing oversight systems, and discuss more effective ways of conducting intelligence oversight and strengthening accountability'. Conference agendas have ranged over subjects that included operating policies and procedures, resource and recruitment challenges, together with the relationship of intelligence agencies with executive, judicial and legislative oversight bodies and the media. The delegates have included not only members of scrutiny committees but also commissioners and inspectors general.³³

In October 2006 the conference was held in Cape Town, a first for the African continent.³⁴ Hosted jointly by the South African Joint Standing Committee on Intelligence and the Office of the Inspector-General of Intelligence, the theme was 'Balancing National Security and Constitutional Principles within a Democracy'. Delegates from Australia, Belgium, Canada, the Netherlands, New Zealand, Norway, Poland, South Africa, the United Kingdom as well as the United States attended the gathering. Officials from Ghana, Namibia and Tanzania also participated as observers. A key theme

³⁰Ann Florini, 'The End of Secrecy', *Foreign Policy* No.111 (Summer 1998) pp.50–63.

³¹R.J. Aldrich, 'Regulation by Revelation? Intelligence, Transparency and the Media' in R. Dover and M. Goodman (eds.) *Known Knowns: British and American Intelligence and the Media* (New York: Hurst/Columbia University Press 2009).

³²Proceedings of the First International Meeting of Inspectors-General of Intelligence and Security, Canberra, Australia 17–18 November 1997 at <<http://www.igis.gov.au/conference.cfm>>.

³³The 2004 Conference in Washington enjoys a comprehensive web site with agenda, see <http://www.rkcreations.com/portfolio/web/web_graphics/iirac_clean/index.html>.

³⁴The last conference was hosted in New Zealand in autumn 2008.

was the African continent's commitment to deepening democracy through intelligence oversight. The Minister of Intelligence Services, Ronnie Kasrils, gave the keynote address and chose to speak on the theme of 'National Security in a Globalised World: Challenges for Intelligence Oversight'. However, despite the promising theme and the unusually international complexion of the gathering, the problem of extending oversight to liaison was not addressed. Meanwhile, the concept of global governance reared its head only in the form of savoury digressions into subjects such as trade imbalances.³⁵

Alongside this formal conference mechanism, there is also considerable bilateral 'accountability tourism'. Typically, in 1999, the UK's Intelligence and Security Committee (UK ISC) visited the Romanian Parliamentary oversight committees and then travelled to Poland as the guests of the Parliamentary Special Services Committee. In Warsaw, they met the Minister Co-ordinator of the Polish Security Service, the National Security Adviser, a representative of the Office of State Protection and the Head of Military Intelligence. In May 2000, the UK ISC spent a week in the United States meeting both the House Permanent and Senate Select Committees on Intelligence, together with the heads and representatives of the US intelligence agencies and the Presidential Foreign Intelligence Advisory Board.³⁶ However, by all accounts these meetings have studiously ignored the subject of liaison, instead they focused on sharing best practice at a national level. This is hardly surprising, since their own requirement to maintain confidentiality make the prospect of the joint investigation of any subject intrinsically difficult.³⁷

However, by 2001 numerous national committees and commissions on intelligence were being forced to grapple with matters that arose directly out of the accelerating pace of international intelligence co-operation. The events of 9/11, the invasions of Afghanistan and Iraq, together with the 'Global War on Terror', presented cross-cutting issues that could only be properly understood in the context of liaison. In the decade since 9/11, national mechanisms have not fared well in their attempts to look into multinational activities. Three examples of types of national inquiry that have broached 'liaison' might be identified here. First, the attempts of standing committees to look into liaison, illustrated here by the vexed issue of the so-called 'Yellow Cake' saga, that is Iraqi attempts to obtain uranium ore from Niger. Second, the work of special commissions of inquiry, often led by judicial figures, illustrated here by Canada's O'Connor inquiry into the Maher Arar case. Third, the efforts of the judiciary to look at renditions,

³⁵South Africa hosts international intelligence oversight gathering', 6 October 2006, press release from Joint Standing Committee on Intelligence and the Office of the Inspector-General for Intelligence, <<http://www.intelligence.gov.za/MediaStatements/Oversight%20conference%2005%20Oct%2006.doc>>.

³⁶Cmnd. 4897, UK Intelligence and Security Committee Annual Report 1999–2000 (London: HMSO 2002) paras.99–102.

³⁷Private information.

illustrated here by the efforts of the Milanese courts to probe the case of the rendition of Abu Omar.

The 'Yellow Cake' saga presents a useful example of multinational intelligence co-operation since it has been examined by national committees in the United States, the UK and Italy. All these committees worked in isolation and proved relatively ineffective. The saga began on 24 September 2002, when Prime Minister Tony Blair released a dossier on Iraqi WMD. Much of the dossier's information was not new to proliferation specialists. One of the few pieces of fresh intelligence contained in the dossier was the assertion that Iraq had been discovered attempting to buy raw uranium 'Yellow Cake' from the African state of Niger.³⁸ On 19 December 2002, US Secretary of State Colin Powell appeared before the UN with George Tenet sitting at his right hand to explain why he considered that Iraq had failed its recent weapons declaration. One of the points underlined by Powell was Baghdad's failure to account for its efforts to buy 'Yellow Cake' in Africa. A month later, in January 2003, President Bush thought this matter important enough to include in his State of the Union Address. However, on 7 March 2003, the Director of the International Atomic Energy Agency, Dr Mohamed El Baradei, reported to the UN that much of the documentation presented as evidence of Iraqi efforts to buy this material were forgeries, indeed embarrassingly weak forgeries. Some documents were written on notepaper from a Nigerian military government which had not been in power since the 1980s.³⁹

At this point, the national mechanisms of intelligence accountability in several countries began to take an interest. Their first task was to identify the source of the forged material. Both the UK's ISC and the US Senate Committee on Intelligence sought to clarify where this material had come from. However, liaison proved to be a subject that dare not speak its name. The Senate committee alluded vaguely to various reports from several European agencies. Some suggested that Iraq had also sought to buy from Somalia or the Congo. A year later the Butler Enquiry touched on this matter, again without naming countries or giving specifics. The UK insisted that it had not based its assessment of the Africa allegation on any forged documents. However, Butler had been persuaded to avoid any reference to Britain's largest and most expensive intelligence agency and so did not refer directly to previously intercepted GCHQ material suggesting other meetings between Nigerian and Iraqi officials between 1997 and 1999.⁴⁰

No national enquiry mechanism, standing or otherwise, quite got to the bottom of the 'Yellow Cake' saga. Instead, it was journalists who unravelled

³⁸Blair Says Iraq Could Launch Chemical Warheads in Minutes', *New York Times*, 25 September 2002.

³⁹Some Evidence on Iraq Called Fake: UN Inspector says Documents on Purchases were Forged', *Washington Post*, 8 March 2003.

⁴⁰It is likely that earlier drafts of the Butler report contained more extensive discussion of GCHQ. The glossary of abbreviations includes 'GCHQ' even though the acronym is not used in the final text.

some of the more complex international conduits through which this material had reached the White House. Press reports revealed that the French had recruited a former Italian intelligence officer, Rocco Martino, who is alleged to have supplied the forgeries. The UK had received material from the French and the UK has passed this to the USA without identifying its source, together with other material from GCHQ. However, only in October 2005 did we learn why the 'Yellow Cake' issue had been given so much profile by President Bush. It is likely that the dubious Italian material had also been hawked by the Italians themselves. The Italian Newspaper *La Repubblica* revealed that Rocco Martino's material was identified by both the CIA in Rome and also Italian intelligence personnel as probable forgeries. Nevertheless, it is alleged that Nicolò Pollari, Director of SISMI (Italian Intelligence), passed copies to the White House after consulting with the Italian Prime Minister, Silvio Berlusconi. The press reports of meetings between the Italians and the NSC are especially fascinating and represent a classic case of what might be termed 'international stove-piping'.⁴¹

A month later, on 4 November 2005, in the wake of the Italian press revelations, Nicolò Pollari was asked to explain himself to a closed meeting of the Italian parliamentary committee on secret services. He conceded that Rocco Martino was 'a former intelligence agency informer who had committed the forgeries'. He also admitted that Martino was working for the French intelligence service, not SISMI. However, Pollari was highly evasive with the Italian committee about contacts between SISMI and the NSC in Washington. Nor would he comment on the circulation of this material by London and Paris.⁴² Indeed, the lesson of the 'Yellow Cake' saga is that national committees failed to extract much of the story about the complex circulation of this material between the four countries involved. Not only was international co-operation between investigative journalists more effective, but also the weak national committees often failed to get their national agencies to discuss behind closed doors what was already in the press. Officials simply blanked their national accountability committees on the matter of liaison.⁴³

Special commissions, often headed by judicial figures and normally set up to examine specific abuses, have traditionally enjoyed more power. Yet they have fared little better in the realm of liaison. This is illustrated by the efforts of the Canadian Commission of Inquiry under Justice Dennis O'Connor, set up to examine the case of Maher Arar, a Canadian citizen born in Syria. On 26 September 2002, after travelling from Zurich to John F. Kennedy Airport

⁴¹Carlo Bonini and Giuseppe d'Avanzo, 'Berlusconi Behind Fake Yellowcake Dossier', *La Repubblica*, 23 October 2005; Carlo Bonini and Giuseppe d'Avanzo, 'NigerGate: The Great Nuclear Centrifuge Scam', *La Repubblica*, 26 October 2005.

⁴²Tom Regan, 'Italy Denies Faking Niger Documents Italian Secret Service Names "Occasional Spy" as Source of Forged Documents', *Christian Science Monitor*, 4 November 2005.

⁴³Peter Eisner, 'How A Bogus Letter Became A Case For War: Intelligence Failures Surrounded Inquiry on Iraq-Niger Uranium Claim', *Washington Post*, 2 April 2007.

in New York, Maher Arar passed through US immigration. Arar, a wireless computer consultant, was en route to Montreal after a family holiday in Tunisia. FBI officers and police took him to the Metropolitan Detention Center in New York. He was then taken by a small aircraft to Washington DC and then to Jordan. There, Jordan's security forces moved him by road to Syria. Thereafter he was held in a tiny grave-like cell, from which he was taken periodically to be tortured with electrical cables and interrogated. The Canadian government finally secured his release in October 2003.⁴⁴

In September 2006, four years after Arar's abduction, the O'Connor Commission reported. Arar was cleared of any activities that might threaten Canada and awarded over \$10 million compensation. However, despite its best efforts, the Commission uncovered little about the connections between the security organizations in Canada, the USA, Jordan and Syria. The United States repeatedly refused to assist the inquiry. The US ambassador in Ottawa at the time of the incident, Paul Cellucci, refused to testify. In common with so many of these examples, the inquiry secured resignations but limited information. Although the RCMP Commissioner Giuliano Zaccardelli was required to resign because of his contradictory evidence to the Canadian House of Commons Committee on Public Safety and National Security, both Canadian and American agencies were coy about the nature of their co-operation with each other and with Jordan and Syria. Only late in the day did they learn that Canadian security officials had, in fact, visited Syria.

Significantly, co-operation between the American and Canadian oversight mechanisms was also poor. US Senator Patrick Leahy, who was chairman of the Senate Judiciary Committee, had initially suggested parallel hearings into the Arar case in Washington, but took no action. Publicly, Leahy had stated that the US's removal of Arar to Syria was instrumental in his abuse. Instead of detaining Arar and sending him a 'couple of hundred miles to Canada', he was sent on a bizarre journey to Jordan and then Syria. He added 'We also knew damn well, if he went to Syria, he'd be tortured'. However, what was clearly needed was parallel enquiries in Washington and Ottawa that could compare notes. Liaison between the gamekeepers – unlike the poachers – is not permitted, but a parallel inquiry would have been permissible and would have fulfilled many of the same functions. Canada had certainly desired a parallel American enquiry, but aside from individual pressure from Leahy, little happened.⁴⁵

In Canada, Justice O'Connor was eventually given information on the liaison issue, but only on condition that this was excluded from his report. It transpires that Canadian Security Intelligence Service (CSIS) officers flew to Damascus in November 2002 on a visit to improve liaison and concluded a general agreement on intelligence sharing. While they were there, they said

⁴⁴A Message from Maher Arar', Maher Arar's comments at <<http://www.maherarar.ca/>>.

⁴⁵O'Connor Commission, *Analysis and Recommendations Report of the Events Relating to Maher Arar* (Ottawa: Ministry of Public Works 2006); O'Connor Commission, *A New Review Mechanism for the RCMP's National Security Activities* (Ottawa: Ministry of Public Works 2006).

they had no particular interest in Arar, but this appears to have been misread by Damascus. Some members of the O'Connor commission believe that Syria was waiting for permission from Washington before they would release him. Meanwhile, O'Connor was warned that public discussion of these matters would damage US–Canadian intelligence relations and might even put Canada in 'an intelligence bubble'.⁴⁶

Oversight and accountability is traditionally associated with either the standing committees of democratic institutions, commissioners or *ad hoc* committees of inquiry that often enjoy judicial powers. Although their role often has a lower profile, courts also have a part to play. The most notable recent examples in the context of liaison have been court cases relating to rendition in Germany and Italy. Milanese courts are pressing for the extradition of 26 Americans, mostly alleged to be CIA officers, involved in the seizure of Abu Omar. The Berlusconi and Prodi administrations refused to co-operate with the Milanese courts. None of the CIA officers sought by the Italian courts were in Italy when their trial opened in June 2007. However, this has raised the possibility of CIA officers being convicted *in absentia* and then being subject to arrest warrants that are enforceable across Europe.⁴⁷

The Milan case focuses on the CIA kidnapping of an Egyptian named Hassan Mustafa Osama Nasr, but more commonly known as Abu Omar, on 17 February 2003. Abu Omar was a local resident of Milan and also a member of the radical Islamic group Jamaat al Islamiya, that is prevalent in Southeast Asia, therefore he was already under surveillance by the Italians. His kidnappers reportedly stopped him on Guerzoni Street a mile from his house, sprayed him with chemicals and pushed him into an anonymous white van. He was then driven to an American airbase at Aviano in Italy and flown to Ramstein airbase in Germany. Here he was transferred to a Gulfstream executive jet and transported to Egypt where he was tortured. Released and then re-arrested, he only secured his freedom in February 2007.⁴⁸

As a result of these events, the first criminal trial relating to CIA extraordinary renditions was held in Milan. Some 26 Americans and five Italians were charged with kidnapping Abu Omar. The dogged persistence of Milan authorities has ensured that the Omar case is one of the best documented cases of rendition and certainly the most high-profile judicial investigation of liaison. An interesting feature has been the way in which

⁴⁶J. Travers, 'How CSIS Botched Arar File', *Toronto Star*, 9 June 2005.

⁴⁷Jan Sliva, 'U.S. to Refuse Extradition of CIA Agents', *Associated Press*, 28 February 2007.

⁴⁸Good summaries are provided by Michele Nino, 'The Abu Omar Case in Italy and the Effects of CIA Extraordinary Renditions in Europe on Law Enforcement and Intelligence Activities', *Revue internationale de droit pénal* 78/1–2 (2007) pp.113–41; Matteo M. Winkler, 'When "Extraordinary" Means Illegal: International law and the European Reactions to the United States Rendition Program', Yale Law School, *Yale Law School Student Scholarship Series*, Paper 46 (2007) pp.1–39, <<http://lsr.nellco.org/cgi/viewcontent.cgi?article=1046&context=yale/student>>.

various courts around Europe examining rendition appear to have achieved better co-operation in their investigations than the national accountability committees, reflecting the fact that they are not bound by national secrecy requirements. Typically, in February 2007, the Swiss government agreed to a prosecutor's plans to investigate the flight that appears to have transported Omar through Swiss air space on his way from Italy to Germany. The Italian courts have also worked with a German court in Munich, which had already issued arrest warrants for people who are accused of helping with the alleged removal of a German citizen by the CIA.

This judicial co-operation reflects the fact that in both Milan and Munich there is a strong sense of an independent judiciary pitted against the executive, and indeed perhaps also of region against centre. The Milanese prosecutor, Armando Spataro, has been especially pugnacious. Remarkably, in Rome, the Italian constitutional court has been asked to examine whether Milanese prosecutors had themselves infringed surveillance guidelines when they decided to listen in to telephone conversations made by Italian intelligence officers in pursuit of their quarry. It now transpires that the Italian intelligence services have also been monitoring the communications of journalists and lawyers investigating the Abu Omar case.⁴⁹

Premier Berlusconi made his views on the case known at an early stage. He immediately seized on the liaison issue, asserting that this 'is a trial we absolutely should not have'. His reasoning for this was that the outcome was likely to be 'that our intelligence services will no longer have the co-operation of foreign intelligence'. This was a time-honoured executive response to judicial efforts to enquire into liaison. The somewhat implausible assertion is often that the foreign intelligence partner is robust enough to constitute an important contributor to national security, but far too flimsy to withstand exposure to accountability or oversight.⁵⁰

Other commentators have argued that the CIA operation in Italy needs to be investigated because it was not only illegal, but detrimental to ongoing intelligence operations. Omar was allegedly a key figure in European terrorist networks. Italian intelligence was monitoring him through telephone taps and ambient listening devices. As a result, Omar was an unwitting fountain of intelligence, but this source was switched off when he was abducted in February 2003. His abduction therefore illuminates a tension amongst western intelligence and security officials between the objective of degrading terrorist core structures and the objective of keeping individuals in play as a source of intelligence. The former strategy seems to have driven rendition. Subsequently, some Italian officials have complained that intelligence sharing with Washington was a one-way street. Moreover, in the case of Omar, they have claimed that Washington passed misleading

⁴⁹Greg Miller, 'CIA's Secret Agents Hide Under a Variety of Covers', *Los Angeles Times*, 25 July 2007.

⁵⁰'Italy Indicts 31 Linked to CIA Rendition Case', *International Herald Tribune*, 15 February 2007.

information to the Italian police after the kidnap. They suggested that Omar, who is thought to have fought in Afghanistan in the past, had probably gone overseas to join a jihadist struggle. The result has been a corrosion of trust between Rome and Washington.⁵¹

One of the interesting features of the Omar case for students of accountability is the conflicting nature of the national accounts that emerged in the press. Italian officials, reported in the Italian press, initially insisted that they were not told of the operation. In Washington, CIA officers advised the American press that the CIA station chief in Rome sought and secured approval from his counterpart in Italy, presumably a senior SISMI officer. Apparently, both the CIA and SISMI agreed that if the operation were uncovered they would both deny involvement. It now appears that although the Milan operation was initially developed by the Rome CIA station chief, it was approved by the CIA's Counterterrorism Center, the DCI and eventually taken to one person at the National Security Council. Approval was also given by the Italians, although this knowledge was kept secret.

Most importantly, the Abu Omar case underlines the difficulties of studying liaison. On the one hand, the case is fascinating because we have so much detail, but on the other hand it may be atypical in many respects. With most renditions the local security service seems to have apprehended the target and then transferred him to the CIA, often at a nearby airport. In the Omar case, a large paramilitary team from the CIA's Special Activities Division (SAD) were despatched and used to abduct him. Exactly why this vast circus felt the need to visit Milan remains unclear. Moreover, as the documents generated by the Milanese authorities reveal, SAD's operational security was far from good. When the Italian police began their initial investigation of the incident they examined the mobile phone traffic on Guerzoni Street on the day of 17 February 2003. To their surprise they discovered that at the time of the abduction, several calls were made, respectively, to Langley in Virginia, the US Embassy in Milan, and the airport at Aviano. Some of the Americans were identified retrospectively because they could not bear to lose air miles and so made use of their frequent flier cards that bore their real names.⁵² Individuals named by the court include the former Milan CIA station chief and former Rome CIA station chief. An Italian police officer who has admitted that he helped to stop Omar in the street in order to facilitate the kidnapping has already been sentenced. Indeed, he is perhaps the first European official to be sentenced in a case arising out of a liaison operation.⁵³

⁵¹Phil Stewart, 'Did CIA Undermine Italy's War on Terror?', 19 July 2005, 01:07 by SwissInfo ROME (Reuters).

⁵²Winkler, 'When "Extraordinary" Means Illegal', pp.1-3; Dana Priest, 'Italy Knew About Plan To Grab Suspect: CIA Officials Cite Briefing in 2003', *Washington Post*, 30 June 2005.

⁵³Miller, 'CIA's Secret Agents'.

Regional Inquiries

At the European level, intelligence inquiries into the subject of extraordinary renditions have achieved a first. Tangentially, at least, the CIA offered a response. In March 2007, the CIA Director, Michael V. Hayden, took the unusual step of speaking to a group of senior European ambassadors on the subject. Although the venue was an informal one, a luncheon at the German Embassy in Washington, Hayden explained that his decision to speak to them was partly driven by the inaccurate information that was circulating, and partly by the strong criticism emanating from European institutions. This included the Council of Europe and the European Parliament. Only a few weeks later, members of a team from the European Parliament arrived in Washington to testify about their inquiry into renditions on Capitol Hill.⁵⁴

Although Hayden was responding to multiple European inquiries, he was not on the defensive. He was vocal in his complaints about the hypocrisy of European diplomats who had publicly attacked the American programme of renditions and interrogations, while at the same time benefiting from the resulting intelligence. Hayden also asserted that the scale of the CIA programme, and the sort of treatment that had been dealt out to detainees, had been exaggerated. He insisted that it had involved fewer than 100 people, not the thousands that were often reported. What is more, he added that only half had been subjected to 'alternative procedures'. Hayden also expressed a wish to separate out the CIA programme from parallel activities by the Department of Defense, which included the 400 detainees at Guantanamo Bay.⁵⁵

Hayden's underlying worry was the threat to the long-term future of CIA liaison activities with a range of key European partners. During the Cold War, the United States had been able to tolerate problems in its intelligence relations with foreign countries. However, liaison is now at the core of ongoing CIA operations. The CIA has established joint operations centres in more than 20 countries. Here, American and foreign intelligence officers 'work side by side to track and capture suspected terrorists and to destroy or penetrate their networks'. One of the most important of these centres is thought to be located in Paris. This network of centres constitutes the CIA's most successful strategy against terrorism, working in an integrated way with foreign security services. In 2005, the CIA deputy director of operations reportedly told a closed committee session on Capitol Hill that 'virtually every capture or killing of a suspected terrorist outside Iraq since the Sept. 11, 2001, attacks – more than 3,000 in all – was a result of foreign intelligence services' work alongside the agency'.⁵⁶

⁵⁴Walter Pincus, 'CIA Chief Complains About Agency's Critics in Europe – Hayden Speaks to Foreign Envoys on Anti-Terror Efforts', *Washington Post*, 17 April 2007.

⁵⁵*Ibid.*

⁵⁶Dana Priest, 'Foreign Network at Front of CIA's Terror Fight: Joint Facilities in Two Dozen Countries Account for Bulk of Agency's Post-9/11 Successes', *Washington Post*, 18 November 2005.

In Europe, the regional impetus of accountability has been provided by two linked inquiries by the Council of Europe and by the European Parliament. These institutions have sought to do three things. To collate existing research on renditions within Europe, to clarify Human Rights Law in this context in collaboration with the Venice Commission, and to apply pressure to national governments informally through the publicity their reports have generated. These European institutions have limited political power since they cannot directly call national governments to account. Instead they have focused their attention on the strongest area of Europe's supranationality – its legal structure. Having embraced ECHR in the 1990s, European intelligence and security services are now beginning to discover its deeper implications. First, many countries outside Europe belong to the Council of Europe, lending it considerable authority. Second, signatories of the ECHR are clearly bound to take due care to ensure its provisions are respected within their jurisdictions by the intelligence partners they are working with. As a result, intelligence officers in Europe have also become more cautious in collaborating with the Americans for fear of court action.⁵⁷

The most significant inquiry has been that carried out by the Parliamentary Assembly of the Council of Europe (PACE). It is important to underline that this is not a component of the European Union, and instead has a wider membership, consisting of some 46 states including Russia. In addition, Canada, Japan, Mexico and the USA have observer status. Significantly, most states from Central and Eastern Europe and from the former Soviet Union have joined during the last decade. Created in 1945, its purpose is to monitor human rights in Europe. Its most significant achievement is the European Convention on Human Rights, promulgated in 1950, which led to the development of the European Court of Human Rights in Strasbourg. This court is one of the most powerful examples of supranationality and works mainly through generating conventions. By drafting conventions, which are in effect international treaties, common legal standards are set for member states. These often have effect outside Europe. Typically, its Convention on Cybercrime has been signed by Canada, Japan, South Africa and the USA and the Lisbon Recognition Convention on university education has been signed by Australia, Canada and the USA.

On 4 November 2005, the investigative journalist Dana Priest published allegations in the *New York Times* concerning the CIA use of secret prisons in Europe, and especially Eastern Europe. Alvaro Gil-Robles, Council of Europe Commissioner for Human Rights, called for an investigation into the allegations. Simultaneously, the President of the European Parliamentary Assembly, René van der Linden, asked the Committee on Legal Affairs and Human Rights to examine the same issue. He later asserted that if secret detention centres existed they would be a clear violation both of the

⁵⁷They are also aware that ongoing inquiries within the United States by the Inspector General have led to a number of CIA officers opting to retain legal council at considerable cost.

European Convention on Human Rights and the European Convention for the Prevention of Torture. Clearly, for the Council, this issue was, in part, a litmus test of their own effectiveness in transferring democratic norms and institutions to the new Europe.⁵⁸

The Council of Europe actually initiated two separate inquiries. The Secretary General of the Council, Terry Davis, developed an investigation under Article 57 of the ECHR, which gave him the authority to demand from member states details of how they were ensuring full compliance with the ECHR. Meanwhile, the Committee on Legal Affairs and Human Rights of PACE designated a rapporteur to look into the role of European governments in rendition. By early 2006 they had selected Dick Marty, a Swiss lawyer. Marty's initial mode of enquiry was deceptively simple. He wrote to all European national governments asking them basic questions that ranged from the national regulation of foreign intelligence agents on their soil to their procedures for monitoring flights. The partial and inadequate nature of the responses from member governments illuminated the mismatch between national regulation and international intelligence activity.⁵⁹

Marty's PACE inquiry gleaned few precise details about how foreign intelligence services were controlled in member states. In general, his impression was that foreign agents were not allowed to undertake detentions, but could gather intelligence and recruit agents with the permission of national secret services. In other words, national entities, normally the domestic security service, authorized requests by foreign services. The Czech Republic and the Netherlands had 'special provisions' regulating co-operation between their domestic security services and foreign intelligence organizations, but this was atypical. In their replies, countries made much of the existence of their parliamentary oversight committees, often newly established. However, the Council observed tellingly that, where it exists, 'oversight appears to be restricted to the activities of national secret services'. The Council concluded that while stronger supervision over the activities of national secret services was generally required, 'this is even more the case in respect of foreign secret services'.⁶⁰

⁵⁸Committee on Legal Affairs and Human Rights, 'Alleged Secret Detentions in Council of Europe Member States', Information Memorandum II, Rapporteur Dick Marty, AS/Jur (2006) 03 rev, 22 January 2006 (ajdoc03 2006rev) para.10–13, <http://assembly.coe.int/Main.asp?link=/CommitteeDocs/2006/20060124_jdoc032006_E.htm>. Both the Council of Europe and the European Parliament also co-operated with the United Nations High Commissioner for Human Rights, Ms Louise Arbour. Arbour stated in an article in *Le Monde* published on 7 December 2005 that secret detention was a form of torture in itself, *ibid*.

⁵⁹Margaret L. Satterthwaite, 'Rendered Meaningless: Extraordinary Rendition and the Rule of Law', (Symposium on the New Face of Armed Conflict: Enemy Combatants after Hamdan v. Rumsfeld), *George Washington Law Review* 75 (August 2007) pp.1333–420.

⁶⁰Council of Europe, 'Secretary General's Report under Article 52 ECHR on the Question of Secret Detention and Transport of Detainees Suspected of Terrorist Acts, Notably By or at the Instigation of Foreign Agencies', SG/Inf (2006) 5 28 February 2006.

The Council of Europe also took a keen interest in the rule of law at a national level. Typically it censored the Italian Justice Minister for not forwarding the requests of the Milanese judicial authorities for the extradition of CIA officers from the United States.⁶¹ The issues here are complex and are not only about regional intelligence oversight, but also about a judge operating at a regional level complaining about the decision of the executive in several countries ignoring the decisions of their courts. Although the reports issued by the Council have attracted the most attention, the parallel legal processes have been no less significant. One of its earliest initiatives was to ask the European Commission for Democracy through Law (known as the Venice Commission) to develop an opinion on the legality of secret detention and other intelligence activities.⁶² This took into account the *international obligations* of member states, in particular the European Convention on Human Rights and the European Convention for the Prevention of Torture.⁶³ Some American legal experts have interpreted this as an attempt to globalize ECHR and even to impute it to the United States in locations where it is co-operating with European partners. However, this seems to be an ambitious interpretation.⁶⁴ In reality, the views of the Venice Commission are unlikely to carry weight beyond European territorial jurisdictions.⁶⁵

The work of the Council of Europe (PACE) also triggered parallel activity by the European Parliament. On 16 January 2006, the European Parliament confirmed its decision of the previous month to set up a 'Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners' (hereafter TDIP). This was designed to accompany the Council of Europe enquiry because some member states seemed to have participated in renditions. The remit of this inquiry was thus somewhat different, being partly focused on controlling foreign intelligence agencies and partly about complicity by Europeans. Its modus operandi was also different to PACE in that it tended to work through open sessions rather than taking evidence in private. Its legal footprint was also broader, inquiring into violations of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the EU-US treaties on extradition and mutual legal assistance, alongside the obvious provisions of ECHR.⁶⁶

⁶¹Ibid. para.46.

⁶²European Commission for Democracy Through Law ('Venice Commission'), Opinion on the International Legal Obligations of COE Member States in Respect of Secret Detention Facilities and Inter-State Transport of Prisoners, No. 363/2005, CDL-AD(2006)009 (17 March 2006), para.30, <[http://www.venice.coe.int/docs/2006/CDL-AD\(2006\)009-e.asp](http://www.venice.coe.int/docs/2006/CDL-AD(2006)009-e.asp)>.

⁶³Committee on Legal Affairs and Human Rights, 'Alleged Secret Detentions in Council of Europe Member States' (note 58).

⁶⁴M. Hakimi, 'The Council of Europe Addresses CIA Rendition and Detention Program', *American Journal of International Law* 101 (2007) pp.442-52.

⁶⁵Private information.

⁶⁶European Parliament, Resolution 15 December 2005, 'Presumed Use of European Countries for the Transportation and Illegal Detention of Prisoners by the CIA',

The TDIP inquiry was led by Claudio Fava, with Baroness Sarah Ludford as deputy, presiding over a committee of some 44 further members of the European Parliament. Unlike the Council of Europe, which generated fresh evidence, it tended to 'piggyback' on the work of other bodies. In reality, its 'research' was more a process of collating evidence from a range of national inquiries, from court cases, from NGOs and human rights organizations, especially by representatives of Amnesty International and Human Rights Watch. Most important perhaps was evidence from investigative reporters. As we have already seen, it was revelations in the American press in November 2005 that triggered these regional investigations. The testimony of specialist journalists working in the intelligence field was also important in providing context since the inquiry itself was temporary in nature and had little in-house expertise in the field of intelligence.⁶⁷

Where TDIP undertook its own research there were problems. Its estimate of the flights operated by the CIA in Europe in fact captured activities that related to more than one American agency. TDIP boasted of its ability to penetrate air operations run from behind 'a surprisingly thin cover of rural hideaways, front companies and shell corporations'. Most of the details were secured by comparing European and American flight control data. TDIP concluded that since September 2001, CIA aircraft had made some 1245 stopovers in Europe. This in turn led them to deduce a high overall number of secret detainees. It was these speculative conclusions that seem to have prompted a reaction from Michael Hayden, who was clearly alarmed that the press had begun to conclude that all this added up to perhaps 1000 secret prisoners circulating around Europe in the hands of the CIA.⁶⁸

In fairness to TDIP, developing a more detailed narrative of rendition was not a primary objective. Instead it perceived itself as a mechanism that took evidence collected by others, tested it against key European statutes and conventions, and then provided a platform for action by the European Parliament. Unsurprisingly, the TDIP report was strident in its criticism of the United States. It concluded that 'in a number of cases, the CIA or other US services have been directly responsible for the illegal seizure, removal, abduction and detention of terrorist suspects on the territory of Member States'. The TDIP also found 'implausible' that certain European governments were not aware of extraordinary rendition activity in their countries. It found it 'utterly implausible' that the many hundreds of flights had moved through the airspace of European states and airports without the knowledge

P6_TA(2005)0529, <<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2005-0529&language=EN>>.

⁶⁷The extraordinary relationship between American intelligence and the press, and its consequences for secrecy are rarely discussed but see, James B. Bruce, 'Laws and Leak of Classified Intelligence: The Consequences of Permissive Neglect', *Studies in Intelligence* 47/1 (March 2003) pp.39–49.

⁶⁸TDIP, Working Document No.8 on the companies linked to the CIA, aircraft used by the CIA and the European countries in which CIA aircraft have made stopovers, 16 November 2006, <http://www.europarl.europa.eu/comparl/tempcom/tdip/working_docs/pe380984_en.pdf>.

of senior members of the local intelligence and the security services. Indeed it observed, with commendable logic, that the insistence of senior US policy-makers that they had not encroached on the national sovereignty of European countries seemed to confirm local complicity. TDIP became increasingly familiar with the long-standing conveniences of liaison which allow the host government to blame its guests and vice versa, with neither being properly called to account.

The TDIP inquiry was unique in other respects. It joined with the UN Special Rapporteur on Torture, Manfred Nowak, in calling for member states to reject the diplomatic assurances against torture as wholly unreliable. Some European states, including the UK, have placed much emphasis upon these. More importantly, it expressly addressed liaison. It gave full recognition to the importance of close co-operation between the intelligence services of the member states and their allies, but thought that this had been 'conducted' with the abandonment of sovereignty over European territory. It called for more effective controls over the activities of foreign secret services in Europe and suggested that the rules of intelligence co-operation should be established at EU level. It also suggested the need for internal EU monitoring of 'new rules on the exchange of information between intelligence services'.⁶⁹

The TDIP visited member states and also undertook two overseas 'missions', one to Macedonia and the other to the USA.⁷⁰ The visit to Washington in May 2006 included meetings with the State Department and members of Congress, such as Arlen Specter, the Republican chairman of the Senate Select Committee on Intelligence. A meeting of minds was never likely but it allowed the TDIP to hear at first hand the views of John Bellinger, the State Department's Chief Legal Adviser. Predictably perhaps, Bellinger argued that, partly on grounds of self-defence, the US government enjoyed a degree of 'freedom of action' in combating Al Qaeda, over and above the international conventions it might have acceded to in the past.⁷¹

The TDIP interim report underpinned a critical resolution, adopted by the European Parliament on 6 July 2006, on the alleged use of European countries by the CIA for the illegal detention of prisoners.⁷² The TDIP produced a final report on 23 January 2007, leading to a further critical

⁶⁹A6-0213/2006 Interim Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (2006/2027(INI)) Claudio Fava, 15 June 2006, <http://www.europarl.europa.eu/comparl/tempcom/tdip/presentation/interim_report_en.pdf>.

⁷⁰TDIP also visited member states including the UK. Direct criticisms of Geoff Hoon, the former UK Defence Secretary, for non-cooperation with the TDIP inquiry were expunged from the final report. The charges arose from a prickly committee session when Geoff Hoon was cross-examined by Baroness Sarah Ludford MEP who became infuriated by his minimalist answers. Ben Russell, 'Hoon "Unhelpful and Evasive" about American Rendition Flights', *The Independent on Sunday*, 7 October 2006.

⁷¹A6-0213/2006 Interim Report (note 69).

⁷²European Parliament, Texts adopted, 'Extraordinary Rendition', 6 July 2006, P6_TA(2006)0316, <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0316+0+DOC+XML+V0//EN&language=EN>>.

resolution in the European Parliament on 14 February 2007. The final report was adopted by a significant majority, with 382 MEPs voting in favour, 256 against and 74 abstaining.⁷³ In April 2007, Jonathan Evans led a European Parliament delegation to Washington to defend the criticisms. They gave testimony to the House panel on Human Rights. Capitol Hill was divided in its reception of this further delegation, with some arguing that rendition had been a useful tool under the Clinton administration, but had been abused under Bush. Others were outraged by the efforts of Italian courts to effect the extradition of CIA officers for doing their duty.⁷⁴

The European enquiries also underline a symbiotic relationship with the press. Both inquiries were triggered by specific press stories in late 2005 by American investigative journalists. Research by the *Washington Post* and ABC News in 2005 was central to the unravelling of the secret prisons story. Prior to the enquiries by the Council of Europe and the European Parliament there was remarkably little general press interest in Europe. The reports and debates in Europe in 2006 and 2007 have generated much of the subsequent press attention. As Marty himself observed:

We may well ask why it is only now that the allegations concerning secret detention centres in Europe are triggering a proper debate and public shock and indignation at the reports of ill-treatment and even torture in this connection. In countries that pride themselves in being long-standing democracies that protect human rights, the revelation of these allegations should have sparked off reactions and categorical condemnation several months ago, and yet this was not the case...

One might argue that in political terms, all the European committees and reports have been able to do is act as a glorified transmission belt, ultimately generating more press stories and in some cases triggering national inquiries, such as the UK ISC's report on renditions in 2007. In political terms at least, it is only by these indirect means that pressure has been placed upon national governments.⁷⁵

International Enquiry: The UNIIC

Perhaps the most surprising development has been the appearance of what is in effect an investigation into intelligence co-operation at the international level. This is unusual because international organizations and non-governmental organizations have enjoyed a traditional aversion to

⁷³David Charter, 'Pressure is Building in Europe against CIA Flights', *The Times*, 14 February 2007.

⁷⁴Dan Robinson, 'European Parliament Members Defend Criticisms of Rendition', *Voice of America*, 18 April 2007, <http://www.house.gov/list/hearing/ma10_delahunt/renditions.html>.

⁷⁵Committee on Legal Affairs and Human Rights, 'Alleged Secret Detentions in Council of Europe Member States' (note 58).

intelligence matters in general. Since 1989 we have seen a gradual change. The growing level of both UN and regional intervention to deal with civil wars, proliferation, state failure and warlordism after the end of the Cold War has ensured that the UN, at second hand at least, was tackling opponents that were elusive and arguably required some intelligence capabilities to address them. Important failures, such as Rwanda in 1990, are in retrospect effectively regarded as UN 'intelligence failures'. In the former Yugoslavia, where organized crime, paramilitaries and intelligence services overlapped to a considerable degree, the UN had no choice but to take more account of them. Complex peacekeeping operations underlined a need for intelligence support on the ground and also at a higher level. Moreover, there is an increasing acceptance that assistance with security sector reform must include the intelligence and security services.⁷⁶

A key motor for change was the creation by the UN of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991. This is more commonly referred to as the International Criminal Tribunal for the Former Yugoslavia or ICTY. ICTY in The Hague confronted UN officials with the uncomfortable fact that it would actually have something that was close to a small functionally focused UN intelligence organization. The Office of Investigation of this tribunal has been staffed by a multinational team of defence and police intelligence officers. Their targets are often themselves former intelligence personnel from the Balkans. Once identified, the operations to arrest them have also required co-operation between the Office of Investigation at ICTY and the intelligence and special forces of NATO. Many of the former intelligence officers have now set themselves up in organized crime in the Balkans. The United Nations monitoring mission in Iraq in the 1990s also entailed complex and not untroubled engagement with UK and US intelligence.⁷⁷

However, 2005 witnessed a new departure in terms of the United Nations, namely an international intelligence inquiry into an assassination. On 14 February 2005, the Prime Minister of the Lebanon, Rafik Hariri was killed, along with 21 people, by a massive bomb. An improvised explosive device (IED) that was equivalent to approximately 1500 lb of TNT was detonated as his official motorcade passed near the St. George Hotel in central Beirut. The explosion was devastating and also killed several bodyguards and the former Minister of the Economy, Bassel Fleihan. Hariri's car was travelling in a convoy of six other vehicles and was equipped with the most advanced protection against remotely detonated IEDs. However, the use of a suicide

⁷⁶Greg Hannah, Kevin A. O'Brien and Andrew Rathmell, 'Intelligence and Security Legislation for Security Sector Reform', TR-288-SSDAT (Cambridge: RAND Europe 2005), <http://www.rand.org/pubs/technical_reports/TR288/>.

⁷⁷Address by Ms Carla Del Ponte, Chief Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, to the United Nations Security Council, The Hague, 10 October 2003, FH/P.I.S./791-e, <<http://www.un.org/icty/pressreal/2003/p791-e.htm>>.

bomber defeated many of these protective devices and the assassin managed to reach his target. From the outset, many observers suspected collusion between the intelligence services of Syria, the Lebanon and various local proxies.⁷⁸

Hariri's world standing was considerable. He was well regarded among international leaders and enjoyed substantive support from London and Washington. He was also a close friend of the French President, Jacques Chirac. Immediately after the bombing, Kofi Annan despatched a fact-finding team to Lebanon resulting in the Fitzgerald Report. On 7 April 2005, the United Nations Security Council unanimously adopted Resolution 1595 which established the United Nations International Independent Inquiry Commission (UNIIC) to investigate the murder. This was led by a German prosecutor, Detlev Mehlis. The inquiry was clearly part of a wider political effort to roll back Syrian influence and Lebanese demonstrations and, together with international pressure, forced the Syrian government to remove its covert intelligence and overt military apparatus from Lebanon.⁷⁹

During the first 12 weeks of the inquiry, some 380 people were questioned and 60,000 documents were examined. At an early stage, several leading suspects were identified. A number of people were arrested and charged with conspiracy to commit murder and related crimes in connection with the assassination of Hariri and 22 others. On 20 October 2005, the UNIIC's initial report asserted that both Lebanese and Syrian intelligence officials had been involved in the assassination of Hariri. It gave special attention to Syria's military intelligence chief, Assef Shawkat and Syrian President Bashar al-Assad's brother-in-law. Responding to a request from the Lebanese Government, Kofi Annan extended the mandate of the UNIIC to the end of the year. On 13 December 2005, Detlev Mehlis, reported that the Syrians had procrastinated and obstructed the investigation. However, they eventually offered up five Syrian officials who were under suspicion. These officials were interviewed in Vienna. This allowed them to offer more detail supporting their earlier assertions that members of Lebanese and Syrian intelligence and security services had been involved in the assassination.

Hariri was a leading member of the anti-Syrian opposition which was seeking to block efforts to extend the term of Lebanese President Emile Lahoud, who was perceived as a Syrian puppet. Hariri reportedly received physical threats to induce him to support Lahoud. On 30 December 2005, former Syrian vice-president Abdul Halim Khaddam in a televised interview implicated President Assad in the assassination and said that Assad personally threatened Hariri in the months before his death. On the ground, the UN investigators were themselves subjected to attack and several key members of the team narrowly escaped death from grenade attacks and roadside bombs. This included Lt Colonel Samir Shadade, Chief of the

⁷⁸The best account is offered by N. Blandford, *Killing Mr Lebanon: The Assassination of Rafik Hariri and its Impact on the Middle East* (London: I.B. Tauris, 2006).

⁷⁹W.W. Harris, 'Crisis in the Levant: Lebanon at Risk?', *Mediterranean Quarterly* 18/2 (2007) pp.37-60.

Lebanese Interior Ministry's intelligence branch. Lebanese politicians have asked to extend the investigative team's duration and charter, to include subsequent assassinations. Damascus clearly hoped that December 2005 would see the end of the UNIIC investigation. However, in January 2006 a new commissioner was appointed, Serge Brammertz. The UN's dogged persistence paid off. During March 2006 it was able to report growing Syrian co-operation with its investigators. In the light of this the UN Security Council approved preparations for a Joint International and Lebanese Tribunal to review the evidence. In late April 2006, President Assad of Syria held meetings with Brammertz, allowing the UN and Lebanon to sign an agreement on the creation of a special tribunal on 6 February 2007. Remarkably, Serge Brammertz's reports in 2006 praised Syria for its co-operation. In December 2007 the Netherlands agreed to host the tribunal in the town of Leidschendam, a suburb of The Hague. The tribunal is housed in the former headquarters of the Netherlands General Intelligence Agency.⁸⁰

The UNIIC enquiry has not secured all its objectives and is likely only to identify the smaller players in the assassination of Hariri. Nevertheless, it is important for several reasons. First, it reflects a long-term change in the attitude of the United Nations towards intelligence. Intelligence agencies are mainstream – even omnipresent in a globalizing world – and the United Nations has little choice but to accept their importance and on occasion to review their activities. There is also a recognition of the neutral quality of intelligence agencies, an instrument that can be used for both malign and benign purposes. For example, few can ignore the progressive role of intelligence services as covert negotiators trying to promote peace between factions in Northern Ireland and the Middle East since 1989. The United Nations is beginning to recognize that good governance and modernization also extends to intelligence and security services. The emphasis that the UN counter-terrorism committee has placed on security sector reform also underlines this. Inescapably, good governance in the realm of intelligence also extends to accountability and oversight.⁸¹

Conclusion

History suggests that intelligence and security agencies, and indeed the policy-makers whom they serve, are unlikely to be in a rush to address the substantial lacuna that liaison presents to oversight and accountability. In recent times, it has largely been European inquiries that have taken issue with liaison, causing official consternation in Washington. Three decades ago, the boot was on the other foot. During the late 1970s, as the United States embarked on its 'Season of Inquiry' and developed a remarkable new

⁸⁰Jay Solomon, 'How Beirut Police Fingered Syria in Hariri Assassination – Despite Leads, Probe Hindered by Threats – UN Tribunal is Urged', *Wall St Journal*, 20 March 2007.

⁸¹Len Scott, 'Secret Intelligence, Covert Action and Clandestine Diplomacy', *Intelligence and National Security* 19/2 (2004) pp.322–34; Shlomo Shpiro, 'The CIA as Middle East Peace Broker?', *Survival* 45/2 (2003) pp.91–112.

system of congressional oversight committees focused on intelligence, damage to liaison with major overseas services was the primary concern for American intelligence officials. In the UK, SIS and GCHQ were especially anxious that information about joint operations might emerge. In 1979, DCI Admiral Stansfield Turner testified to Congress that a direct result of these hearings had been a subsequent reluctance on the part of foreign agencies to share intelligence or to plan for joint covert action with the United States. He explained:

We have had more sources tell us they are very nervous about continuing work with us. We have had very strong complaints from a number of foreign intelligence services with whom we conduct liaison, who have questioned whether they should continue exchanging information with us, for fear it will not remain secret. I cannot estimate to you how many potential sources of liaison arrangements have never germinated because people were unwilling to enter into business with us.

It is hard to avoid the conclusion that intelligence liaison and accountability have never mixed well. During the 1990s, American officials left Canadian officials in no doubt that enthusiastic co-operation with accountability bodies would result in a curtailment of the flow of intelligence.⁸²

Although this has been a long-standing issue, the acceleration of intelligence liaison over the last decade has brought about a qualitative change in the nature of intelligence. Improved international intelligence co-operation has changed the way in which agencies work. Accordingly, the 'black hole' presented by liaison is now too big to ignore. Some of the more imaginative accountability committees have begun to give this subject serious thought, but the answers are not immediately clear.⁸³ National committees seem inappropriate, given that their work-a-day effectiveness depends on continually demonstrating that they are worthy of trust in the context of their own national services. They are not naturally inclined to adventurous activity. Reflecting on the experience of PACE, Dick Marty has suggested that complex intelligence cases that transcend borders raise the issue of whether current instruments are still equal to the task. He has called for a new type of regional committee, assisted by experts enjoying more extensive investigatory powers. This he views as essential to deal with these new important challenges.⁸⁴

⁸²Gerald B. Solomon and Bruce Fein, 'A Tight Plug on Intelligence Leaks', *New York Times*, 10 June 1987. Private information.

⁸³The Norwegian Parliamentary Intelligence Oversight Committee (EOS) hosted a conference on this subject in Oslo in October 2008, which was run jointly with Geneva Centre on Democratic Control of Armed Forces (DCAF) and Durham University Human Rights Law Centre.

⁸⁴Committee on Legal Affairs and Human Rights, 'Alleged Secret Detentions in Council of Europe Member States' (note 58) para.98.

What is clear is that the regulatory legacy of a brief period of post-Cold War optimism will not go away. In the mid-1990s, ECHR was written into the statutes that conferred a legal identity on many of Europe's services. The legal ramifications of ECHR ensure that, within European jurisdictions at least, wherever European intelligence services are partners of overseas services, there will be increasing scrutiny. Arguably, intelligence services would be wise to engage with these first glimmerings of global governance, rather than hide from it. The broad experience of democracies with accountability committees over the last 30 years has not been as ghastly as some once predicted. At a regional level, a similar process of institutional education of officials and elected representatives will be required, but there is no reason why this should not also be successful and result in mutual understanding.

Intelligence services under pressure from globalization have an important story to tell. Placed in the front line, not only against terrorism, but also organized crime, warlordism and other globalized threats, they have been asked to do many unpleasant things. Intelligence is no longer the passive world of Cold War bean-counting, but a world that requires disruption and enforcement against immediate threats. Yet, at the same time, while they have been cast in the unwelcome role of the 'toilet cleaners of globalization', intelligence services are themselves under growing surveillance from global civil society. Intelligence services cannot, at one and the same time, be tough enough to deal with some of the more intractable transnational problems of the world and soft enough to please the human rights lawyers. This dilemma has manifested itself most clearly in the last few years for the Americans and some of their East European partners, but it is a generic problem that awaits all services in liberal democratic states. International and regional accountability for intelligence liaison will emerge only slowly. Even if we were to see the creation of effective supranational or transnational bodies that might conduct oversight and accountability in the area of intelligence, like so much global governance they will suffer from an obvious democratic deficit. The arrival of unaccountable accountability bodies in this area would not necessarily be a welcome step. International lawyers are externally hopeful about the possibility of these sorts of units but the reluctance of major powers to co-operate with them suggests that inquiries like UNIIC will be the exception rather than the rule.⁸⁵ Global governance remains weak; meanwhile we can expect global civil society, including journalists and human rights watchers, to play a growing role in informal oversight and accountability.⁸⁶

Informal oversight might be said to include a free press, independent think-tanks and lobby groups, and, in the case of new democracies, foreign-funded non-governmental organizations that are increasingly expected to

⁸⁵P. Sands, 'The International Rule of Law: Extraordinary Rendition, Complicity and its Consequences', *European Human Rights Law Review* 4 (2006) pp.408–21.

⁸⁶Christopher J. Bickerton, Philip Cunliffe and Alexander Gourevitch (eds.) *Politics without Sovereignty: A Critique of Contemporary International Relations* (London: Routledge 2007).

monitor and help to reform intelligence organizations. The significant contribution of NGOs, especially in new democracies such as Argentina, Guatemala, Indonesia and Romania, to name only a few countries, is continuous pressure on the executive to pursue intelligence reform. This sort of oversight is less constrained by national boundaries. However, it is also problematic, since these organizations have no democratic mandate and are not concerned with effectiveness. For accountability to be embraced by practitioners, the intelligence services must believe that it makes them more effective. In short, informal oversight is effective at blowing the whistle on spectacular abuse or scandal, but it is difficult to see how it might be institutionalized to provide oversight over routine matters, still less develop patterns of trust.

What might nation states themselves do to extend national accountability to encompass intelligence liaison? The likelihood of committees of politicians being allowed to peer into this sensitive area remains low. However, a little explored alternative would be Inspectors General with extended authority to operate in more than one country. If states co-operating on intelligence can agree on complex protocols for the distribution of sensitive material, they can agree on common guidelines for investigating officers. Inspectors General have obvious shortcomings in the sense that their inquiries are internal. Yet arguably, in the ultra-secret world of intelligence co-operation, this is possibly what is required. A senior intelligence official, perhaps the respected former head of a national service, could serve as a roving Inspector General for a number of allied countries working together, perhaps reporting to a body such as NATO. This is certainly conceivable in the context of the more prominent US, EU and Commonwealth services.