



GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF
ARMED FORCES (DCAF)

WORKING PAPER – NO. 165

**THE DEMOCRATIC CONTROL OF
INTERGOVERNMENTAL INTELLIGENCE
COOPERATION**

Thorsten Wetzling

*Doctoral Student in Political Science; Research and Scientific
Assistant at the Geneva Graduate Institute of International Studies
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Table of Contents

Overview.....	1
Introduction.....	4
a. Definitions and conceptual ambiguity.....	5
b. Increased importance of intelligence in modern security strategies.....	6
c. Cooperation of intelligence services: Worthy case(s) of analysis?.....	8
aa. Intelligence Cooperation and the European Union.....	11
bb. European cognisance/contributions to US-led intelligence operations in the ‘war against terrorism’.....	14
Part I. Democratic control of intelligence.....	16
a. Towards theories of control and accountability.....	20
b. Control and accountability when applied to civil-military relations.....	25
c. Democratic Intelligence Governance: A model.....	29
d. The missing element in democratic intelligence governance: intergovernmental intelligence cooperation.....	34
Part II. The conceptualisation of international intelligence accountability cooperation.....	38
a. Grasping (European intelligence) accountability relations.....	40
b. The theoretical underpinnings of public accountability.....	41
aa. Keohane’s four-fold classification of accountability.....	43
bb. Accountability as a social relation.....	45
cc. Accountability in domestic contexts and pluralistic accountability mechanisms in international contexts.....	46
dd. Towards studying accountability empirically.....	50
ee. Accountability versus transparency, responsiveness and control.....	52
ff. Mapping the accountability relations in contemporary European intelligence politics.....	54
Part III. Conclusion: Theories of inter-governmental cooperation re-assessed.....	59
a. Intelligence cooperation: A form of networked governance?.....	60
b. Further theoretical hinges.....	61
Bibliography.....	64

THE DEMOCRATIC CONTROL OF INTERGOVERNMENTAL INTELLIGENCE COOPERATION

Thorsten Wetzling

Overview

What revelations spring from a detailed understanding of the character and propensity of post 9/11 inter-governmental intelligence cooperation? How can new concepts of security and new forms of intergovernmental cooperation affect the rule of law in established liberal democracies? Cooperation between states, it is commonly assumed, serves the needs of the affected societies. Does this assumption hold true for intelligence cooperation? What are the dangers, ambivalent effects of inter-governmental intelligence cooperation between established western democracies? How robust are national intelligence control mechanisms in times of increased inter-governmental intelligence cooperation? Would it be feasible to construe effective *international* intelligence accountability arrangements alongside international intelligence cooperation? What obstacles will be encountered and what does this say about the explanatory strength of different political theories? Is it even possible to study accountability empirically?

Whilst these are essential guiding questions for my research, the author does not tackle them methodologically yet. Instead, the document aims to expose the ontological hinges necessary for the construction of a genuine case for research. The text introduces and critically discusses existing knowledge in political science deemed indispensable for the proposition of a new avenue for research. In so doing, the text

- invokes key concepts such as government / bureaucracy control, oversight, accountability and legitimacy in democratic theory;
- introduces new thought on delegation, autonomy, security, national interest developed in comparative political science

- all with a view to better grasp the character, propensity and uniqueness of contemporary intergovernmental intelligence cooperation and the complex aspects

that determine its (international) democratic control. The review proceeds in the following manner:

The **Introduction** describes the phenomenon the author wishes to study more intensively in the course of his research. In so doing it introduces the main concepts necessary to grasp intergovernmental intelligence cooperation and comments generally on the increased importance of intelligence for national security. It concludes by exposing two cases that suit the described phenomenon.

Part I focuses on the commensurability of intelligence cooperation with democratic rule. In order to understand the challenge that such practices entail for liberal democracies, one needs spell out the actors as well as the general logic behind (domestic) systems of intelligence accountability. This presupposes a review of key thinking on authority, bureaucracy and (democratic) government control in civil-military relations. The notion of *democratic intelligence governance*, it will be argued, accommodates many concerns of prominent thinkers and resolves inherent conflicts between different national actors involved in the attempt to insulate intelligence services from abuse (Leigh, 2005). Yet, not only is this concept insufficiently implemented at the national level, another danger is often overseen: are national intelligence accountability regimes well-equipped to deal with international intelligence cooperation practices?

Part II focuses on the concept of accountability. It discusses ways to speak confidently about the robustness of accountability systems when confronted with cases of international intelligence cooperation. When can we speak of an 'accountability gap'? Provided national accountability systems are deemed insufficient, can existing European accountability fora be construed as being part of a *European intelligence accountability regime*? Yet, what is exactly meant by accountability? Many analysts look upon accountability as a "synonym for loosely defined political desiderata", but the review will also introduce new political thought which portrays accountability as a "specific set of social relations that can be studied empirically" (Bovens, 2006, 8-9). Based on these considerations, the review aims to spell out the essential criteria necessary for any intelligence accountability regime that intends to hold the perpetrators of intelligence cooperation practices to account. It will be shown that much of what it takes, (both with regard to its institutional framework and the necessary personnel) is either existent, or *in statu nascendi*. Yet, existing structures of European intelligence accountability are far from being

rigorously practiced nor is it clear whether this will eventually be the case. The review discusses therefore potential explanations for accountability's lame implementation / subtle rejection.

The **conclusion** juxtaposes explanatory models of multi-level governance against insights on networked governance and discusses how both constructs are helpful to grasp existing realities in the complex field of intelligence cooperation. Attention will also be drawn to the important but often underdeveloped presuppositions such as the wilful compromise of autonomy by national governments. This leads to a critical discussion of such concepts as national interest, national security and autonomy. Can key decision-makers still be assumed to work fully on behalf of the people they represent? The review concludes by discussing recent literature on the ambivalent effects of inter-democratic institutions on democracy, executive peace and collusive delegation.

Introduction

One might think that a predisposition with contemporary intergovernmental intelligence cooperation and its (international) democratic control does not lend itself to a review of the theoretical concepts listed above. After all, intelligence cooperation may lead to very concrete and practical advantages such as an enhanced protection of national security but might also bring about human rights abuses, the mismanagement of government funds, the exercise of plausible deniability and other forms of ministerial abuse (to be further explained at a later stage in this text). Whilst such challenges to (international) standards of democratic rule may be discomforting for many observers, they are also reasonably straight forward in nature. Why bother then with a thorough theoretical review?

Two points can be made in response to this: First, if the challenges were indeed so straight forward, how can one explain the consistent re-occurrence of such instances? In other words, what hinders the perfection of the current level of control over such intelligence activities? Second, on closer inspection, one realises how political theory is indeed crucial for a better understanding of this mismatch. Theory influences politicians' decisions and policies directed at both domestic and international aspects of government. It aspires to explain complex realities and has thus served (intentionally or unintentionally) as a guiding tool for how to best reach certain goals in politics. Hence, even the most practical considerations underlie a deeper reflection of political concepts such as security, the national interest and autonomy.¹ It follows that ill-founded theories, i.e. those that do not sufficiently account for changing realities or which are logically flawed, bear the potential danger that decision-makers and/or institutions that are designed to watch over them draw the wrong conclusions for they no longer possess a suitable tool for reaching political decisions. In turn, this may lead to instances where democratic rule is being challenged - common practice, it seems, even within established liberal

¹ To name just a few examples of what considerations spring to mind here: the French President's deliberation whether and how to disrupt Greenpeace protesting against France's nuclear weapons testing, the decision by the German Interior Minister whether to launch an investigation against the illegal kidnapping of German citizens by CIA agents, or the decision whether to allow German spies to question German detainees in Guantanamo despite the governments' long-standing criticism of the prison camp in Cuba as 'law-less territory'. Each case, it is assumed, is based on a prior calculation by the decision maker that searches for the most appropriate behaviour given the nation's and the decision maker's own political interest.

democracies.² In order to put my analytical finger on these instances at a later stage, it is inevitable to first review how contemporary intelligence cooperation can be conceptualised with reference to existing political science literature.

Definitions and conceptual ambiguity

What is meant by intergovernmental intelligence cooperation? Turning directly to the literature in search for an exact definition of intelligence is likely to cause disappointment. Perhaps not surprisingly, it does not offer a readily applicable definition. Walter Laqueur goes so far as to stipulate that “all attempts to develop ambitious theories of intelligence have failed” (Laqueur, 1985, 8). Intelligence scholar Michael Herman understands that intelligence flouts easy conceptualisation and maintains that an exhaustive definition ought not to be expected in the first place. Unlike other vocations, intelligence practitioners have no professional accreditation with standards established by the International Standards Organization (ISO). Knowing that this holds true for a variety of other professions, he adds that attempts to define intelligence are often mere reflections of the particular intelligence systems scholars happen to be familiar with. Herman concedes, however, that the discussion about what is meant by intelligence is nonetheless worthwhile: “Intelligence means different things to different regions and different regimes. But in a world in which international cooperation on intelligence seems an increasingly important aspect of globalization, some working international understandings about intelligence’s nature and standards seems essential”.³ Arguably, this was what Michael Warner had in mind with his much-debated publication “Wanted: A definition of intelligence” (Warner, 2002, 1). He deplores the fact that ‘intelligence’ has, as a rule, been defined anew whenever authors have addressed it. This led to the creation of an unnecessary mass of definitions which could have been avoided had scholars “referred to one another or build off what has been written before” (Warner, 2002, 1). After a careful weighing of different key definitions against each other, Warner gives a crucial reason for the lack of precise definitions amongst the ubiquitous attempts being made: the term intelligence denotes several things: “information, process and activity performed by ‘lawful authorities’” (Warner, 2002, 4).

² Thus the question is not only why do people act in defiance of democratic standards but also what has caused such behaviour to happen in the first place.

³ Michael Herman. Entry ‘definition of intelligence’ submitted on 02 December 2002 to IntelForum, a scholarly platform for exchange on intelligence relevant topics.

This insight is of direct relevance for this review as it makes it all the more necessary for the author to be specific about what he has in mind when using the term intelligence. In order to recap his options, consider how Mark Lowenthal has worked out the different connotations of intelligence:

“Intelligence is the process by which specific types of information important to national security are requested, collected, analyzed, and provided to policymakers; the products of that process; the safeguarding of these processes and this information by counterintelligence activities; and the carrying out of operations as requested by lawful authorities.”
(Lowenthal, 2002, 8)

Fortunately, despite further differences on the specific content of these sub-categories of intelligence, one can, at least, say that agreement exists inasmuch as intelligence stands for either (a) a particular knowledge, (b) a type of organisation, (c) the activities pursued by these organisations and the process that guides those activities as well as (d) the product(s) resulting from these activities (Schreier, 2006, 2). With a view to my interest on the international cooperation of different national intelligence services and potential means of (international) control, the text will mainly refer to the meanings (b) and (c).⁴

Increased importance of intelligence in modern security strategies

A few words on the importance of intelligence in emerging new security architectures seem in order. According to many scholars, ‘intelligence has become a crucial factor in foreign policy, as well as in collective security and defence’ (Müller-Wille, 2004, 5). Whereas intelligence sharing among foreign intelligence services has for a long time been appreciated by policy makers,⁵ it is remarkable how much politicians have of late emphasised the need for intelligence collaboration/cooperation.⁶ This development must, of course, be brought in relation to the fact that intelligence services are uniquely positioned at the forefront of any modern state’s defence against an altered conception of threats to national and perhaps regional security.

⁴ It will be made explicit, should ‘intelligence’ be invoked with other connotations in mind.

⁵ Some authors refer to intelligence as the second oldest profession in history (Knightley, 1988, 7).

⁶ Some European politicians have requested the outright creation of a joint European intelligence services whereas others have requested the intensification of collaborative efforts among European intelligence services. (Nomikos, 2005, 192-193).

When compared with traditional military threat scenarios in the decades that proceeded the fall of the Berlin Wall, many of today's main security threats such as international terrorism, international organised crime, and proliferation of weapons of mass destruction can not be met with the same deterrence strategies that worked with the traditional foes to national security such as aggressive authoritarian regimes. Threats like international terrorism tend not to originate from the traditional corridors of power of other nation-states but mainly from a variety of differently organised and widely dispersed non-state actors.⁷

Although most security threats stemming from non-state actors are anything but new,⁸ they have surely gained in prominence due to the effective usage of globalisation's advantages by individuals and groups committed to cause maximal harm to liberal democracies. Political analysts rightly speak about a proliferation of actors in an increasingly 'multi-dimensional security concept' involving states and non-state actors, legal and illegal players. (Biscop, 2004, 12) As a reaction to the rise of these threats, governments in Europe and North America increasingly felt (albeit to different degrees) the need to work together against a common foe. Here is how the need for increased intelligence sharing and international cooperation is explained by an experienced intelligence practitioner:

Table 1: Why have the needs for intelligence sharing and international cooperation so greatly expanded?

Since intelligence increasingly relates to matters that are global or transnational in nature, intelligence relationships among countries have been expanding.

The benefits of intelligence sharing are obvious: intelligence exchange is the prerequisite and one of the most decisive elements of timely, informed and well-developed decision making for crisis prevention, crisis management and intervention. Sharing is at the heart of unity of effort

⁷ Such an assertion is increasingly challenged by those who feel that some governments have unduly conflated the danger of these threats to national security with other, more worrisome trends. William Pfaff goes so far as to say that the real danger comes neither from the traditional corridors of power nor from non-state actors. He maintains that the "radical threat to the United States is at home", by which he means that terrorism, "a phenomenon that is scattered, limited and under control, and inevitably transient, has been conflated by Washington with something that is serious: the desperation among Muslim masses that is directed indiscriminately against Western nations, which are held responsible for Islamic society's backwardness, poverty and exploitation. (Pfaff, 2006, 4).

⁸ Just in Europe alone, most countries share decade-long experience in counter-terrorism.

and may, moreover, reduce the duration and impact of a crisis, bringing significant cost-savings.

Bilateral cooperation normally involves the sharing of intelligence information and analyses on topics of mutual interest. Though countries with smaller intelligence resources are not always able to bring to the table capabilities which match those of bigger services, they can reciprocate in other ways, such as providing geographic and other access, or language skills bigger services would otherwise have to develop.

New non-military dangers and threats, expanding international intervention and multinational peace operations account for the rapid expansion of requirements for intelligence contributions to international security, and have opened the way for more advanced multilateral cooperation. Coalition forces deployed in peace operations require virtually the full range of wartime intelligence support. The concepts of graduated force, surgical strikes, low casualties and minimum collateral damage are all intelligence-dependent.

Multilateral networking can be crucial in developing the necessary concepts, processes, communication, liaison arrangements, coordination, use of modern technologies and databases, mutual legal assistance, training and other support for peace support operations and actions against terrorist groups. Peace operations in Bosnia and Kosovo have already represented what appears to be the new pattern of intelligence support for international intervention of all kinds.

Source: (Fred Schreier, 2006, 7)

Cooperation of intelligence services: Worthy case(s) of analysis?

Counter-terrorism efforts do not only require enhanced cooperation among foreign intelligence services. It involves, among other areas, also the coordination of national law enforcements units, judicial cooperation and diplomatic assistance in the form of extraditions. While this will be borne in mind, the author nonetheless thinks that the cooperation of intelligence services deserves a separate analysis. This is due to the unique competences and (clandestine) methods with which intelligence agencies work worldwide. It will be argued that joint operations among foreign intelligence services have distinct ramifications for the protection of democratic rule in affected societies. To briefly illustrate this, consider that a foreign intelligence service, such as the American CIA or the French DGSE, is granted by the national executives to break non-American / non-French law if this is deemed necessary for the pursuit of its operations. What these services may not do, however, is to break American or French law (Scheuer, 2005). While this might be discomfoting by itself (especially for non-Americans or non-French), it also reflects the rules of the game as they have

been played for decades. American citizens might draw (limited) comfort from the fact that their services underlie substantial democratic control so as to prevent intelligence services from breaking American civil liberties guarantees.⁹ Yet, what happens if French, German, British, Russian and American spies are becoming increasingly involved in joint-activities the details of which are often not disclosed to national overseers due to (alleged) over-riding source protection requirements? Given the enormous degree of secrecy involved, who guarantees that fundamental international human rights obligations are being respected? Or, in the words of the Chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (PACE), Dick Marty, who guarantees that human rights are not seen by democratic politicians as an “obstacle to national security” (PACE, 2006, 17)?

It is indeed worrisome what investigative journalists of the Washington Post and other influential newspapers have brought to the fore about secret detention centres and rendition flights for (suspected) terrorists - some of them ordinary citizens without criminal records.¹⁰ Yet, it seems even more important for this and future ventures into intelligence cooperation to ask how it happened that journalists and not specially appointed functionaries admitted to the ring of secrecy (i.e. Members of Parliamentary Intelligence Oversight Committees, Ombudsmen, Inspector-Generals) have caused the likely ‘halt’ to such illicit practices. In other words, what do these revelations imply about the robustness of intelligence control in a new age of intelligence cooperation, or can we even speak of – “networked torture” (PACE, 2006, 15)?

It is not intended to draw unsubstantiated conclusions about an apparent new age of intelligence cooperation. Given that foreign intelligence services have long worked together and that this type of cooperation had - to some degree - been

⁹ Whether this is *de facto* guaranteed is debatable. In this regard one can mention the latest wire-tapping scandal involving the US National Security Agency (NSA) and the limited role of the congressional intelligence oversight committees in bringing executive malpractice to a halt. See (Powers, 2006) for a gripping analysis. Interesting, also, the current Bush administration seems keen to initiate leak investigations instead of investigations into illegal spying and torture. “Leak investigations are often designed to distract the public from the real issue by blaming the messenger” (IHT,06.01.2006).

¹⁰ For an overview of the precise allegations, please consult (Marty, 2005).

institutionalised prior to the end of the Cold War,¹¹ it is obligatory for the author to specify more concretely, where he thinks the novelty in contemporary intelligence cooperation lies. In fact, what kind of behaviour does he intend to study? Old wine in new bottles would not suffice.

Intelligence and security services are commonly referred to as secret services - precisely because their operations are seldom disclosed to the general public. Admittedly, finding (novel) examples of intelligence cooperation presents therefore a formidable challenge. This has already been noted by other researchers:

“The general public is largely unaware of the organised complicity [...] between European intelligence and security services based on instantaneous safe communication network –the Internet before its time – which has now become institutionalised. So said Prefect Bernard Gerard [...] thus revealing the existence of a fairly extensive cooperation in one limited area. Fora have thus been established to deal with specific subjects by bringing together the intelligence services of different countries. Such groups are known to a greater or lesser extent. Although there are frequent references to them in the literature within the public domain, it is rare to find a description of their precise membership or organisation” (Assembly of the Western European Union, 2002, 10)

Apart from knowledge of certain kinds of activities, it also presupposes that one can distinguish between different modes of intelligence cooperation, say from the occasional sharing of information, to the running of joint operations¹² to the formation of joint intelligence structures under the auspices of a supra-national organisation. The table below illustrates (somewhat crudely) the possible degrees of intensity of intelligence cooperation.

¹¹ This applies mainly to means of intelligence (information) sharing between members of the so-called UK-USA connection, i.e. United Kingdom, the United States, Australia, New Zealand, Canada. See especially (Richelson and Ball, 1985) and their account of the ‘ties that bind’.

¹² For a recent example of such activity, see Priest’s account of a joint operations centre in Paris, called Alliance Base (Priest, 2005a).

Table 2: Different levels of intelligence cooperation

No contact among foreign services	occasional information-sharing among foreign services	institutionalised information sharing among befriended services	joint-intelligence operations and streamlining of related efforts (e.g. training, procurement)	permanent inter-gov'tl. intelligence structures established	integrated intelligence structures at supra-national level	
no	>>	little	<< COOPERATION >>	advanced	>>	full

What is needed now is to give more concrete examples of state behaviour that could be subsumed under Table 1. Two recent developments are of particular interest:

a. Intelligence Cooperation and the European Union

A truly novel form of intelligence cooperation would be the direction, collection, analysis and dissemination of intelligence produced with the help of European intelligence services but performed under the auspices of the European Union.¹³ Following the treaty of Amsterdam and Nice, the EU increased its pace with regard to the creation of an integrated European Security and Defence Policy (ESDP). It should be no surprise then that the creation of a European Military Staff and the movement towards the creation of a rapid response force makes it also necessary to establish an independent intelligence structure next to these developments. This would take on the task of an early warning system and could support eventual military operations (even if limited to the pursuit of humanitarian tasks). In fact a three-fold approach towards the development of a European intelligence structure has been initiated by the Western European Union (WEU) during the 1990's. Today, the WEU is a partially dormant organisation (with the EU High Representative for the Common Foreign and Security policy presiding over the organisation). Most of the WEU institutions are already under (or in the process of merging under) the institutional umbrella of the EU. Among the incorporated WEU institutions, the

¹³ In the following, this will be illustrated with regard to the second pillar of European Union, i.e. the member states' cooperation in security and defence matters. This excludes cooperation within activities subsumed under the third pillar of the European Union, justice and home affairs. Hence EUROPOL and the common European arrest warrant will not be subject to further review.

following three organisations make up for the bulk of the EU's intelligence capacities in the security and defence realm: The European Union Satellite Centre (EUSC), the Intelligence Division of the European Union Military Staff (INTDIV) and the European Union Situation Centre (SITCEN). As per EUSC, one could indeed point to it "as the first truly European intelligence capacity" (Müller-Wille, 2003) with 68 employees and five different departments which is mainly tasked with imagery surveillance over ESDP relevant crisis and to work as an early warning unit. The EUSC is located in Torrejon, Spain and is (up until now) obliged to purchase imagery material as it does not yet possess of its own satellite equipment. The EUSC responds to the EU High Representative for the Common Foreign and Security Policy who receives requests for imagery intelligence from European Union institutions and member states alike. It also adheres to its own form of secret classification (EU Council, 2003).

INTDIV is the EU's principal tool to exchange and analyse military intelligence deemed relevant for the pursuit of the ESDP. About 30 military intelligence staffers from all member states of the EU work at INTDIV in an attempt to create a coherent picture about the military capacities and threats stemming from actors involved in conflicts where the EU is, or plans to be, present. Lastly, SITCEN has been promoted under High Representative Solana as the principal centre for the EU intelligence architecture. Here all information and intelligence from all accessible sources come together and will be integrated into an all-source intelligence report that goes to primary ESDP decision-makers. The core of this unit is its analysis department which employs seconded national intelligence agents from the UK, France, Germany, Spain, Italy, Sweden and the Netherlands who are appointed by the EU High Representative.

Anna Daun has demonstrated that with SITCEN at the center stage of EU intelligence, one can discern a fully institutionalised intelligence cycle within the framework of the European Council (Daun, 2005, 191). In agreement with Müller-Wille, Daun finds that the EU possesses a 'genuine' foreign intelligence capacity. The following table makes her argument more explicit.

Table 3: A complete intelligence cycle within the institutional framework of the EU:

Direction:

The High Representative and the Political and Security Committee formulate a framework of important goals and targets among which SITCEN chooses priority objectives which will be summarised in the so-called "Watchlist".

Collection:

For all objectives in the Watchlist, the SITCENT gathers information and intelligence from all sources available to it. This includes open source intelligence as well as intelligence provided by member states (often with high source protection). However, this includes increasingly also information provided by the EU's own institutions. For instance the EU Commission has 142 delegations in foreign countries which can be contacted, personal involved in current ESDP civil and military operations, EUSC and the EU Monitoring Missions. In the former Republic of Yugoslavia alone the EU deployed around 400 Monitors who operate openly (wearing a white coat) but which often report codified information to the SITCEN. This represents an expanded form of EU human intelligence.

Analysis:

The SITCEN then work with the collected intelligence and produce so-called all-source intelligence reports.

Dissemination:

These reports are classified and disseminated among key decision-makers in the pursuit of ESDP (i.e. High Representative for Common Foreign and Security Policy, the Political and Security Committee, the early warning unit, the EU Military Committee (EUMC) and the EU Military Staff (EUMS), member state governments, the general direction for international relations at the European Commission.

Source: (Daun, 2005, 141-143)

The 'EU intelligence cycle', it needs to be said, focuses mainly on imagery intelligence. Hence, the EU does not yet engage in any intelligence activities (surveillance, wire-tapping, and covert operations) that mark the portfolio of most national foreign intelligence services. Moreover, the EU Monitors can only partly be seen as true vehicles for the collection of human intelligence. Furthermore, it is noteworthy that the European Council and the European Commission function as the two top directing institutions in this (limited) intelligence activity. The European Council is the principal decision-making body of the Community and is composed of the ministers of the 25 EU member states. The European Commission is responsible for formulating the specific policies of the EU and its recommendations must

ultimately be decided by the Council. Members of the Commission are nominated by the individual governments, but the European Council has to approve the commission members. The constitutional set-up and the catalogue of competences for both the European Council and the European Commission demonstrates the lasting influence (if not to say ownership) of national governments over these institutions. In general, intelligence cooperation in Europe varies between the third and the fifth stage of the cooperation intensity scale (see Table 2, p. 8.). This will be borne in mind when we turn to the motifs and possible limits of intelligence cooperation in Europe and elsewhere.

b. European cognisance / contributions to US-led intelligence operations in the 'war against terrorism'

Abu Omar and Khaled Al-Masri, Dana Priest and Dick Marty, the Son Sant Joan Airport in Majorca and Ramstein Airbase in Germany, the Szymany airport in north-eastern Poland and the Mihail Kogalniceanu military airfield in southern Romania: What sounded at first like the beginning of a John le Carré novel resembles only a tiny fragment of victims, investigators and places of a very successful, real-life secret counter-terrorism operation. The details of this operation are just being established¹⁴ and need not to be laid out in detail for the purposes of this paper. Basically, the operations boil down to the kidnapping of persons suspected of terrorist activities for the purpose of detaining and interrogating them. This goes along with a second worrisome trend, namely the outsourcing of torture and other degrading and inhumane interrogation methods into countries that are either not bound by or do not respect fundamental international human rights standards such as the international torture convention.¹⁵

Notwithstanding the manpower and the massive budget of the CIA, the fact it was able to operate and coordinate such a splendid network of secret activities affecting *inter alia* Norwegian, Swiss-, Swedish, Spanish-, Italian-, German-, British-, Romanian- and Polish sovereignty rights renders some degree of cognisance by relevant European authorities indisputable. Related to this puzzle are notable double-standards which project a murky light on European states' credibility in counter-

¹⁴ As every so often with the help of investigative journalists and ex-secret service staffers who decided to break with their former employer (Scheuer, 2005).

¹⁵ See (Priest 2005a-d; Marty 2005; PACE, 2006) for more details.

terrorism. Double-standards seem common-place in this policy field in Germany, France and the United Kingdom. As per Germany, it has recently been reported (without being followed by an official denial by the executive) that German intelligence agents have interrogated German terrorism suspects in Guantanamo and in a Syrian torture chamber.¹⁶ Also speculated in the media (Spiegel, 3/2006), but unfortunately not further investigated in the Bundestag, is the question whether German agents stationed in Baghdad prior and during the war in March 2003 provided American military intelligence with key information about the hide-out of Saddam and his entourage? Arguably, it is the sum of allegations that renders the German government's insistence on calling Guantanamo a 'lawless territory unworthy of a country dedicated to the rule of law' less credible. Likewise, how can France be Washington's starkest critic in recent foreign policy aspects and remain its favourite ally when it comes to intelligence cooperation (Priest, 2005a; Shapiro and Suzan, 2003, Pipes, 2005)? And in Britain, has the government, despite its insistence on the absoluteness of the prohibition of torture, turned a blind eye to CIA rendition flights to and from British airports (Bright, 2006)?

Current investigations are under way in the Council of Europe, the European Union and in national parliaments on both sides of the Atlantic. Evidently, the results of these investigations (some of which are expected in March 2006) could provide insightful information about the level of intelligence cooperation required for these hitherto secret counter-terrorism operations. Second, and more realistically, the general conduct of governments (government officials) in these investigations is likely to provide valuable material to study the readiness of European governments to cooperate with supra-national investigations / oversight mechanisms.

¹⁶ (Stark, 2005); (Klenk, 2005).

Part I: Democratic control of intelligence

How commensurable is intelligence cooperation with democratic rule? In order to highlight the challenges that such practices entail (even) for (established) liberal democracies, one needs to spell out how systems of intelligence control work. Whilst several comparative analyses have shed critical light on different national oversight systems,¹⁷ this text seeks to expose the general assumptions behind intelligence control as well as the logic that most oversight systems subscribe to irrespective of national differences in political and cultural traditions.¹⁸

One can start this debate by pointing to an uneasiness experienced by many readers when speaking or reading about intelligence agencies. It seems that neither authoritarian regimes nor full-blown democracies can do without such institution which illustrates the important role of these agencies have for national defence but it also points to the reservations that many people have against them. Obviously, some concerns about these institutions are ill-founded: modern intelligence agencies serving democratic nations are not comparable – neither with respect to the means nor with respect to the command structure - to the *Gestapo* or the *KPG*. Having said this, it is worth pointing out that intelligence and security services can hardly be described as ordinary government institutions either. “In most nations, intelligence agencies are treated as exceptions from the rest of government” (Johnson, 2005a, 102). Yet such exceptional treatment, however motivated, is oblivious to the fact that intelligence agencies are nothing but government institutions. If government derives its power from the people, all government institutions ought to act on behalf of the people, too. This may seem simplistic but consider the practical consequences that accrue from it:

“All government institutions ought to respect, and be hold accountable to, predictable, open and enlightened policy and decision-making. Therefore their actions must be judged vis-à-vis their contribution to the public good, whether they uphold the rule of law and whether they apply transparent

¹⁷ (Cumming, 2006), (Born, Johnson and Leigh, 2005), (Born and Leigh, 2005), (Waske, 2004), (Shapiro, 1997), (Hirsch, 1997) are representative of comparative analyses on national parliamentary oversight systems.

¹⁸ Notable in this respect are the variety of constitutional models (i.e. presidential versus parliamentary democracies) which affect the oversight powers of the parliament and the judicial review competences of the national courts (Born and Leigh, 2005, 22).

processes that enable the national civil society to educate and, when possible, to participate in the policy generation. To ensure that these rules of democratic government are being respected, elected representatives of the people, in most cases parliamentarians, perform accountability procedures. If done efficiently, they ensure democratic practices which are the prerequisite for the trust in and respect for state institutions by the people”¹⁹

Contrast these prescriptive ‘ideal-world’ assumptions with the description that Johnson provides for intelligence services in most countries (many of them considered full-blown democracies): “They are cloaked in secrecy, allowed privileged access to policy-makers, and given leeway to get the job done – even if that means breaking laws overseas and engaging in unsavoury activities that would be deemed inappropriate for other government agencies” (Johnson, 2005a, 102).

Indeed, not exactly a match for ordinary government agencies! Current US President George W. Bush is not troubled by such findings. To him “secret services are called secret services because their operations are secret.”²⁰ Yet, if an agency is cloaked in secrecy, this means that either virtually no independent observer(s) are being admitted to the ‘ring of secrecy’ or that those overseers admitted are kept on a very tight leash. Either way, the result is that the outside world knows only a fraction of what information is being held or circulated among the agencies and the executive.

Obviously this raises difficult questions such as how much knowledge (operational and non-operational) should be disclosed so as to inform the interested public whilst not simultaneously damaging national security. The pursuit of a just and practicable balance between civil liberties and security is very difficult to achieve and occupies the minds of both practitioners and scholars alike.²¹ As with most complex balancing

¹⁹ This quote reflects the ideas of (World Bank, 1994) and (Born, 2003, 24) and is taken from (Wetzling, 2006).

²⁰ This is the response he gave at a joint press-conference with the German Chancellor Angela Merkel in Washington, 13.01.2006. A journalist had previously asked whether he knew about any cooperation between the DIA and two BND agents in Baghdad during the Iraq War in 2003. *Die Zeit* 4/2006.

²¹ Michael Ignatieff’s book ‘The lesser evil: Political ethics in an age of terror’ (Ignatieff, 2004) highlights the difficulty and the importance of striking against terrorists ‘with one hand against the back’ precisely because modern democracies cannot just apply the same tactics as terrorists but are bound to democratic rule. Considering George Bush’s light-hearted favouritism for security – it seems plausible to

dilemmas, there exists no single blueprint adopted by all democracies for achieving this end. National intelligence laws, seen as the ‘embodiments of different national democratic wills’ (Born and Leigh, 2005, 17), have proffered numerous ways to attain such a balance. Irrespective of the legitimate variety of different balancing efforts, all such measures ought to be predetermined by the principles of democratic rule. Amongst these principles, the doctrine of the separation of powers is pertinent. The application of this doctrine to the governance of intelligence challenges any forms by which parliament would be excluded or insufficiently involved in this sort of governmental activity. It stipulates that each of the three functions of government (legislation, execution and adjudication) should be entrusted to a separate branch of government (legislature, executive and the judiciary, respectively). Its purpose is to fragment power in such a way as to defend liberty and keep tyranny at bay. In its formal sense, it demands *independence*, in that there should be no overlap of personnel between the branches. However, it also implies *interdependence*, in the form of shared powers to ensure that there are checks and balances (Heywood, 1997, 297). This basic principle of democratic government seems sufficiently succinct and widely respected with regard to the purely (intelligence) law-making function of parliaments.²² However, a deeper investigation into the applicability of checks and balances to the other tasks of modern legislatures (especially oversight but also representation, political recruitment and legitimacy promotion)²³ shows more tellingly whether parliaments are truly emancipated political agents or whether they are reduced to rubber-stamping executive policies into laws.

Taking scrutiny as a benchmark for parliamentary vigour could be misleading for it can make this activity look as a discretionary matter for law-makers, i.e. leaving it to them whether how seriously they want to engage in scrutiny. Yet in fact, democratic rule is only guaranteed if constantly supervised and controlled. Hence, even “former special assistant to [U.S.] DCI (Director of Central Intelligence) William J. Casey” can be found to have rightly “urged former lawmakers and other officials on the Kean Commission (investigating the 9/11 attacks) to pursue their responsibilities with

abandon the idea of a balance and to speak instead of ‘less of both’ – security and civil liberties (Hayes, 2005).

²² Again, France is a notable exception to the rule. In France, each intelligence service has been created with the help of an executive decree rather than by intelligence legislation adopted by parliament (Born and Wetzling, 2006, 119)

²³ Heywood calls legislation, representation, scrutiny, political recruitment and legitimacy the five principal functions of assemblies (Heywood, 1997, 297-300)

utmost seriousness, in a ‘helicopter-raids-at-dawn, breaking-the-doors, kick-their-rear-ends sort of operation’ (Johnson, 2005a, 68).

Born maintains that “in a democracy, no single area of government activity can be a ‘no-go’ zone for parliamentarians, including the intelligence and security services” (Born and Johnson, 2005, 226.). Unfortunately, this principal is rarely upheld in practice. Whereas in some European countries (such as France, Portugal and Turkey) parliamentarians are prevented from pursuing intelligence oversight²⁴, other western democracies experience major difficulties with respect to its effective pursuit.²⁵ The most common obstacles can be summarised in the following manner: Oversight is hindered by insufficient cooperation from the executive and the intelligence agencies²⁶, scant and vague mandates of oversight committees²⁷, lack of resources²⁸ as well as insufficient motivation of parliamentarians to engage in proactive oversight.²⁹ Thus, checks and balances (both de jure and de facto) in this special brand of government activity are often insufficient.

Surely, if the picture looks as grim on the domestic level, how can one expect *good governance* to unfold vis-à-vis international intelligence cooperation? Before the focus turns to this pressing aspect of international relations, it seems advisable to step momentarily aside from the intelligence dominated outlook and to focus more generally on the issue of democratic government control and accountability in civil-military relations. This is deemed necessary for two main reasons: First, it paves the

²⁴ For an overview of the French intelligence politics, see (Born and Wetzling, 2006).

²⁵ For a recent study on eight different oversight systems, see (Born, Johnson and Leigh, 2005).

²⁶ In this respect, Martin Klingst has recently pointed to the insufficient cooperation from the BND as the main cause of ‘frustration’ which led to a notable series of resignations of parliamentary overseers from office (Klingst, 2006, 3).

²⁷ This was the conclusion of a recent case study on intelligence oversight in Canada, where the author concluded “in every instance their purview is limited to a single intelligence organisation, a significant weakness given the cross-departmental nature of security and intelligence. [The Canadian parliamentary oversight body] has a pro-active capacity to conduct routine checks on the efficacy and propriety of CSIS, but no mandate to go further afield” (Farson, 2005, 115).

²⁸ Fred Sejersted concludes his case study on Norwegian parliamentary intelligence oversight in the following manner: “The limited staff resources clearly restrict the Committee’s ability to conduct more extensive inquiries and investigations as well as its ability to be proactive.” (Sejersted, 2005, 127)

²⁹ According to Loch Johnson, “even director(s) of central intelligence (DCI) have been critical of oversight flaccidity. ‘Congress is informed to the degree that Congress wants to be informed’, testified former DCI William E. Colby, pointing out that several lawmakers had expressed little interest in being briefed by the CIA” (Johnson, 2005a, 69).

way for a more structured juxtaposition of the *ought-to situation* of intelligence scrutiny against the *is-situation* of intelligence scrutiny³⁰. Second, focussing on civil-military relations literature allows the author to distinguish more clearly between legitimate and illegitimate needs of national intelligence communities.

a. Towards theories of control and accountability

“If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control of government; but experience has taught mankind the necessity of auxiliary precautions.” (Person, Roland and Tabellini, 1997, 1) [Quoting from James Madison (Federalist Paper No. 51)]

Whereas the general need for control can be readily inferred, its argumentative foundation and conceptualisation proves much harder to come by. How can such auxiliary precautions be designed? Who should have what kind of control over whom? How can democracies institutionalise effective scrutiny over the activities of appointed officials working on their behalf? What powers should be granted to politicians, bureaucrats, parliamentarians, legal professionals, civil society representatives? And how can the inevitable struggles among different interests be resolved meaningfully?

For an answer to these questions, the focus turns to *political sociology* as it provides key concepts and reason for understanding complex relations between different political actors in modern democracies. The starting point for this excursion is placed

³⁰ The term *intelligence scrutiny* is used as a superordinate concept comprising both *control* and *oversight*. A distinction is necessary as both subordinate terms denote different practices by different actors at different moments in a nation's intelligence governance. Whereas intelligence control stands for a set of constraints on the services prior and during intelligence operations that originate mainly from the executive, intelligence oversight depicts accountability procedures after the fact. Here, the services and the executive are exposed to review from outside the inner circle of intelligence management that aims to ensure the liability of elected or appointed government officials in the exercise of their powers and duties. (Wetzling, 2006, 2)

on the findings of Max Weber (1864-1920), an astute and poignant analyst of power relations in modern societies. Scholars studying Weber might disagree with his conclusions but “his work remains important because it reveals the intractable problems involved in any attempt to understand the nature and possibilities of modern liberal democracy” (Lassman and Speirs, 1994, 14). My attempt is to understand the nature and possibilities of intelligence cooperation and its control and to reflect upon Weber’s conception of authority, legitimacy and bureaucracy is deemed insightful.

“Just like the political associations which preceded it historically, the state is a relationship of rule by human beings over human beings, and one that rests on legitimate use of violence. For the state to remain in existence, those who are rule must submit to the authority claimed by whoever rules at any given time. When do people do this, and why? What inner justifications and what external means support this rule?” (Weber, 1994, 311)

Weber observed that “without exception, every sphere of social action is profoundly influenced by structures of domination” (Weber, 1968, 941). Domination is seen as a political means for building a social order producing efficiency both for those in power and for subordinates (Courpasson, 2000, 143). When people in a given organisation (Weber does not make the distinction between private organisation or public bureaucracy apparatus) submit authority or respect the ordering power of fellow colleagues, this takes two important steps – recognition and consent: “Legitimacy is the recognition of the right to govern and the capacity, at the same time, to justify that some individuals hold the power to govern and that other individuals give their consent and submit to authority” (Courpasson, 2000, 143). Especially the consent leg of legitimacy is seen by Weber as inevitable for the creation of stable order. “The most solid grounds for domination are not so much in power as in the belief of the legitimacy of power” (Weber, 1994, 286)

Weber was not, of course, an impartial analyst of modern politics. He realised that domination could be ill-founded despite recognition and consent by the people who have submitted their authority. Yet, he also believed that some form of (soft) domination was necessary to establish order amongst masses. He pointed to the intermediary institution between the people and the state, i.e. the bureaucracy made up of civil servants. To him, bureaucracies serve efficiently the vital function to

enforce the laws of the legislature and the policies decided by the executive (Heywood, 1997, 349),

Although Weber drew attention to the phenomenon of bureaucratic power and the degree to which politicians subordinate to it, he did not, *a priori*, reject the new and ubiquitous form political administration (Heywood, 1997, 350). By contrast, he saw its efficiency to be the main reason for its legitimacy. Here is how Weber would have argued this:

To Weber, authority relations have historically been underpinned by three different modes of legitimisation: any rule has either been established by a. “the authority of eternal past (custom) exercised by the patriarch and the patrimonial prince of old type”; b. charismatic rule, “the entirely personal devotion to, and personal trust in, revelations, heroism, or other qualities of leadership in an individual” or c. rational-legal authority founded on “the belief in the validity of legal statute and the appropriate juridical competence founded on rationally devised rules” (Weber, 1994, 312). Obviously only the latter ‘ideal type’ of legitimisation corresponds to the recognition and consent attributed to state bureaucracies. According to Weber, the central feature of bureaucracy is rationality, because bureaucratisation reflects the advance of reliable, predictable and, above all, efficient means of social organisation (Heywood, 1997, 341) In Weber’s view the growth of bureaucratisation was further stimulated by the pressures of democratisation, which weakened ideas such as tradition, privilege and duty, and replaced them with a belief in open competition and meritocracy (Heywood, 1997, 341)

Weber knew that bureaucracy was a mixed blessing – organisational efficiency could be purchased at the expense of democratic participation. Bureaucratisation would strengthen hierarchical tendencies, albeit based on merit, meaning that command would be exercised from above by senior officials rather than from below by the masses (Heywood, 1997, 341). In this regard it is worthwhile to remember Weber’s staunch defence of national parliaments. He envisaged them as a crucial counterforce to excessive bureaucracy. “The central (reform) issue was how to prevent the bureaucratic elimination of genuine political activity. In the modern mass state this placed the question of the nature and role of parliament at the top of the agenda (Lassman and Speirs, 1994, 13) Observing how Germany adopted ill-balanced foreign policies prior and during World War I, Weber asked “How is parliament to be made capable of assuming power? Anything else is a side-issue.” (Weber, 1994,

190). To Weber, “parliamentary politics, as opposed to mere bureaucratic rule, is important because it provides the arena in which genuine leaders can be selected. These points are especially important for Weber because, in his view, there is a close affinity between modern democracy and bureaucracy. The policy demands typically generated within democratic states can only be met by large-scale bureaucratic administration. This, in turn, will tend to usurp the role of political leadership if the bureaucracy is not scrutinised. Political leadership and the rule of officialdom are antithetical” (Lassman and Speirs, 1994, 14).

Thus, Weber saw bureaucracies³¹ as legitimate intermediaries between the state and the people which guarantees efficient rule. Evidently, he was not alone in having second thoughts on bureaucracies and the need to scrutinise them. A much newer critique of bureaucracies was proffered by the so-called New Right who based their critique on rational choice theory. Central to this model of bureaucracy is a concern with the interests and motivations of bureaucrats themselves (Heywood, 1997, 343). Rational choice theory is based on the assumption about human nature as those in neo-classical economics, i.e. humans are rationally self-seeking creatures or utility maximisers. In *Bureaucracy and Representative Government* (1971), William Niskanen argued that senior bureaucrats, regardless of their image as public servants, are primarily motivated by career self-interest and thus seek an expansion of the agency in which they work and an increase in its budget. This is because bureaucratic growth guarantees job security, expands promotion prospects, improves salaries, and brings top officials greater power, patronage and prestige. Bureaucracies thus contain a powerful inner dynamic, leading to the growth of government itself and the expansion of public responsibilities (Heywood, 1997, 343).

Two comments are in order at this point. First, should an efficient control of international intelligence cooperation be institutionalised, this would in fact, add another apparatus to the bureaucratic jungle already in place both at the domestic and international level. This point raises the following concern: Aristotle asked: “*Quis custodiet ipsos custodes?*” (Who will guard the guardians?). Yet, the question could be extended to ask ‘who will guard those who guard the Guardians’? Obviously, one could continue asking this kind of question *ad absurdum*. But given the flaccidity (Johnson) of parliamentary intelligence control – should there not be another form of scrutiny over those entrusted to perform oversight? But then how could this be

³¹ Intelligence agencies are not different for that matter.

justified when adding another scrutiny mechanism cannot guarantee full control? Second, critics of the New Right do not totally accept the often 'unflattering comparison' (Heywood) made between private and public sector bodies. They normally tend to argue that public choice theory 'is flawed because it abstracts the individual from his or her social environment. A conservative value bias, so the argument goes is built into the theory by the assumption that human beings are always rationally self-interested (Heywood, 1997, 344). While it is true that most human beings act rational in most decision-making instances, it might be equally feasible to name instances when this assumption would not hold. Once related to the case under research, the oversimplification of both New Right and their critics becomes evident. While one can assume that intelligence staffers find rigorous parliamentary oversight perturbing and contrary to their interest, it has also been widely acknowledged that some agents call for more efficient intelligence oversight. Arguably, even the latter position can be said to have rational underpinnings. The self-seeking servicemen/servicewoman might wish greater legitimacy for his/her agency in the eyes of the public and/or he/she might also see parliamentary oversight as a balancing tool against illicit orders from the executive.

Returning to the phenomenon of modern bureaucracies, it is important to remember that the nature of bureaucratic power is, perhaps inevitably, shrouded in mystery and conjuncture (Heywood). According to Heywood the root cause for this lies in the fact that "if civil servants exert power, they do so through private dealings with ministers which are not subject to scrutiny, and because, in view of the myriad other pressures bearing on ministers, the influence of the civil service cannot be quantified" (Heywood, 1997, 351). Although one could respond to Heywood that some 'private dealings with ministers' can be somewhat objectified³², his basic assumption about bureaucracy sleaze seems warranted.

Naturally, this raises the question of bureaucracy accountability, but before this is approached it is deemed necessary to inspect briefly relevant aspects of civil-military relations literature. The reason for this being that intelligence services do not fit accurately the description of ordinary bureaucracies. Whilst they may not be entitled to treatment that defies democratic practice, they may legitimately demand slight

³² For instance, ministers could be required by law to communicate their commands to the civil servant in writing, which, when stored, could allow greater public review. More examples of laudable accountability-building practice can be found in (Born and Leigh, 2005).

modifications in accountability procedures. What kind of needs may require what sort of modifications is of course not easy to answer. What is needed, however, is a basic framework that distinguishes between legitimate and illegitimate claims of the intelligence services.

b. Control and accountability when applied to civil-military relations

Arguably, such a guiding tool may be found in the idea of the civilian primacy in civil-military relations. Although renowned authors such as Clausewitz, Huntington, Janowitz and Feaver have drawn and interpreted the demarcation line between the military and civil society differently, it seems commonplace to refer to the following division of labour as the main characteristic trait of this relationship in mature liberal democracies. Whilst civilian actors (parliament, government, civil society representatives, and the judiciary) accept the autonomy of military actors in the conduct of military operations, the military, in turn, voluntarily subjects to civilian authority in strategic military decision-making and to general civilian control. According to Clausewitz (1780-1831), only this kind of hierarchical relationship where the military is subordinate is feasible as “the subordination of the political under the military would be counterproductive, as it is always politics that creates war. Politics is the intelligence, war merely the instrument and not vice versa” (Clausewitz, 1994, 677, my translation).

What is the relevance of this literature to intelligence accountability? Felipe Agüero offers an interesting starting point for this. His critique that “the social sciences still maintain separate approaches to study civil-military relations, defense, police and judicial reform, with intelligence vastly overlooked” can be accrued so as to provide the necessary link. Indeed, if the central question behind the analysis of civil-military relations is the scope and consequences of military decisions for national politics, it seems unreasonable to treat similar scenarios in police and intelligence matters separately. Quite the contrary, widening the scope of the traditional civil-military relations outlook may have become a necessity given the inter-agency cooperation needed to successfully counter modern threats.

Hence “out of practical need and recent reflection, these problems have begun to be addressed with concepts such as security sector reform that cut across narrow boundaries allow for a comprehensive approach” (Agüero, 2005, 4). To Agüero a “weak or ineffective police will put pressure on officials to use the military in policing

roles for which it is ill prepared, or to militarize police. The existence of several poorly controlled intelligence agencies may harm the professionalism of military and police” (Agüero, 2005, 3). This interconnectedness is rarely captured by singular approaches that focus only on the police, the military or the intelligence services. Rather than to proclaim the discovery of an integrated approach to the study of civil-security sector relations, the present author will content himself with detecting suitable analogies from the civil-military relationship literature that can be useful for the understanding of the research problem.

A classic scholar of civil-military relations is *Samuel Huntington*. Writing on the control of the military by civilian actors, he distinguishes between objective and subjective control.

“The United States Constitution, despite widespread belief to the contrary, does not provide for civilian control. That is it does not permit the objective civilian control compatible with a high level of military professionalism. The essence of civilian control in this sense is a clear distinction between political and military responsibilities and the subordination of the latter to the former. These are unknown to the Constitution, which mixes political and military functions, interjecting politics into military affairs and military affairs into politics. Present in the minds of the Framers when they wrote it and perpetuated in its provisions was an essentially subjective approach to civil-military relations. Civilian control has at times existed in the United States, but it has emerged despite rather than because of constitutional provisions” (Huntington, 2001, 163)

To Huntington, civil-military relations can be reduced to a strict division of labour between the military and the civil society. Objective control presupposes a political neutral, professional military that is insulated from political conduct and which focuses exclusively on the winning of wars (Huntington). The emphasis on the military professionalism is tantamount, in Huntington’s view, to the creation of reliable obedience among the military personnel which includes the acceptance of the primacy of the civilian side. Drawing a clear demarcation line between civilian and military sphere, Huntington subscribes to objective control and treats conflicts in civil-military relations as a consequence of inadequate civilian control (Schaer, 1997, 48)

A different position is proffered by *Morris Janowitz* who advocates a pragmatic professionalism. Admitting that the military must not participate directly in politics, Janowitz criticises Huntington for his alleged ignorance of the fact that armed forces can perform a policing role within the state, whose members are well integrated into society and who share the society's values and possess a political self-image (Schaer, 1997, 49). Hence Janowitz discards the purely objectifying outlook advanced by Huntington.

Peter D. Feaver has also devoted his analytical mind to the study of civil-military relations. He challenges both previous authors as being too theoretical on the civilian side of the analysis. Contrary to their theories, he observes that the civilian part has rarely accepted to fully perform its role in the previously denoted division of labour (Feaver, 1995, 114). This observation is in fact very similar to what McCubbins and Schwartz found out in their renowned study of American congressional oversight of executive activity. Although the authors' initial comment that "scholars have often remarked that Congress neglects its oversight responsibility. We argue that Congress does no such thing: what appears to be a neglect of oversight is the rational preference for one form of oversight – which we call fire-alarm oversight – over another form – police patrol oversight" (McCubbins and Schwartz, 1984) does not insinuate insufficiency by itself – yet, a comparison between the two models makes it clear that fire-alarm oversight is tantamount to boxing in a lower class, i.e. a classic example of underperformance à la Feaver. As per the more reactive fire-fighting McCubbins and Schwarz maintain "Congress establishes a system of rules, procedures, and informal practices that enable individual citizens and organized interest groups to examine administrative decisions (sometimes in prospect), to charge executive agencies with violating congressional goals, and to seek remedies from agencies, courts and Congress itself" (McCubbins and Schwartz, 1984, 166). By contrast, the more aggressive model of police-patrolling oversight foresees that "at its own initiative, Congress examines a sample of executive agency activities, with the aim of detecting and remedying any violations of legislative goals, and, by its surveillance, discouraging such violations" (Ibid). Distinguishing between two models of oversight, police patrolling versus firefighting, the authors maintain the passive and largely insufficient firefighting practice to be dominating on Capitol Hill. In the same vein argues Loch Johnson's who has widely commented on the unwillingness of US parliamentarians – past and present - to get deeply involved in intelligence oversight. To him, "until a larger portion of constituents value accountability and judge their representative accordingly, most lawmakers will continue to view intelligence

oversight as a serious drain on their time with few practical benefits to enhance their prospects for re-election”³³ (Johnson, 2005, 117).

Feaver takes the often self-incurred underperformance of civilian control to discard the ‘subjective versus objective’ control debate previously discussed and introduces a new typology: “delegative versus assertive control” (Feaver, 1995, 132). Feaver maintains that assertive control, i.e. the conscious effort to control the armed forces and especially their military operations, through civilian instances, does not promote clear and distinguishable roles in defence matters but underscores the complementary and overlapping roles performed by both civilian and military actors. Huntington’s objective control model is therefore deemed ill-suited because “Civilians want the flexibility that assertive control brings while the military prefers objective control’s certainty that the operation will be done their way” (Quoted in Schaer, 1997, 50). Yet the game ought not to be played for the sake of the military. According to Feaver, the only objectifiable element that should remain in place is the strict prohibition for the military to interfere in the political aspects of defence politics (Schaer, 1997, 50). This aside, both sides are to steer the boat together.

Arguably, this is also the starting point for *Douglas Bland* who developed the concept of ‘shared responsibility’. The model sees national defence as the result of cooperative team-work between parliament, executive and the armed forces. Unlike previous authors, Bland does not intend to draw hard demarcation lines between different competence claims of different actors but adds duties to such claims. In practice this means that Bland sees civil-military relations only then as successful, when parliament avows to the military directorate adequate authority and the executive actively ensures that the military directorate can effectively use this authority in operations while avoiding the political abuse of the armed forces through representatives of special interests (Schaer, 1997, 55) Bland’s model is particularly interesting because it commits itself to the importance of consensus among different actors involved. It accepts the primacy of politics in a way that is novel: Especially because the model stresses shared responsibility, it accentuates the fact that the

³³ The serious consequence of such attitude is pronounced upon by Thomas Powers in his New York Review of Books article ‘The biggest Secret’. The tenor of his article can be summarised like this: “In public life as in kindergarten, the all-important word is no. We are living with the consequences of the inability to say no to the President’s war of choice with Iraq [...] The question now is whether the President could do it all again – take the country to war, and scrap restraints on spying, just as he pleases. The answer is yes, unless Congress and the courts can say no.” (Powers, 2006, 9-12)

civilian side may not disengage itself from decision-making. To Bland 'shared responsibility' is therefore not tantamount to evenly distributed responsibility (Schaer, 1997, 56) but first and foremost an appeal to get the civilian side more pro-actively involved.

What lessons can be drawn from the previous discussion? First, it points to a more detailed account of the primacy of the civilian side in civil-military relations. It indicates that primacy comes at a cost. The civilian side ought to ensure the active performance of the oversight role played by parliament. To do this properly demands greater pro-activity, i.e. the performance of tasks without external stimulus. Second, it also stresses the importance of professionalism vis-à-vis the military side of this relationship. For professionalism to thrive, certain duties ought to be placed on the civilian side. Applied to intelligence services, this means that respect ought to be paid to the need for operational flexibility of the intelligence services. Thus parliamentarians who should regularly perform their oversight tasks (i.e. visiting the premises of the agencies, requesting information on operations, budget control procedures, summon members of the executive and heads of the intelligence agencies to hearing that examine the legality and the effectiveness of intelligence operations) must not to jeopardise the successful pursuit of intelligence operations. In light of the crucial information that intelligence services hold for a nation's security and given the drastic value-decrease if this information is released into the public realm, intelligence oversight requires accountability provisions that protect vital secrets. Overseers admitted to the ring of secrecy must be prevented by law from leaking information to unauthorised sources. This is essential to warrant long-term cooperation of the services with the parliamentary oversight body. The services themselves, as previously indicated, have an interest to be seen as legitimate governmental institution and it cannot be the goal to isolate them from democratic governance. The main goal must be to ensure the adherence to democratic rules whilst allowing the services sufficient room for maintaining the secrecy needed to perform their legitimate function, namely to protect a nation from existing or potential threats.

c. Democratic Intelligence Governance: A model

Wise recommendations, one might think. But how can such normative principals be implemented into practice? It is in direct answer to this question that the focus turns now to the concept of *democratic intelligence governance*. In essence, this concept

draws on the logic of *good governance* and the idea of a *democratic security sector*. Both aspects need brief unpacking before being 'lumped' together.

With regard to good governance, one needs to point out that *governance* differs from the conventional form of *government* previously described. "Governance is more encompassing than government; it helps to grapple with the complex reality of the contemporary world in which governments are still central actors in domestic and international affairs though they increasingly are seen to share authority with non-state actors on multiple levels of interaction" (Hänggi, 2003, 6-7). In fact, this is not entirely unfamiliar turf to the attentive reader for *good governance*³⁴ takes on the people-centred form of rule that stresses equity, accountability, transparency, and which seeks to engender participation of the civil society. This was already noted when the author discussed the democratic predispositions that ought to characterise government institutions in modern democracies (see p. 12). Good governance with its emphasis on actor plurality can be said to add that government institutions cannot by themselves provide for legitimate and efficient rule any longer. This assertion has a theoretical and a pragmatic underpinning. The former is best provided by Fritz Scharpf:

"As Max Weber has shown, generally accepted legitimating arguments have been derived from a variety of premises [...]. Under modern (Western) conditions, however, legitimacy has come to rest almost exclusively on trust in institutional arrangements that are thought to ensure that governing processes are generally responsive to the manifest preferences of the governed (input legitimacy) and/or that the policies adopted will represent effective solutions to common problems of the governed (output legitimacy). Taken together, these two types of arguments constitute the core notions of democratic legitimacy" (Scharpf, 2003, 3)

From a practical point of view, *governance* presumes that it takes the joint effort of several formal and informal actors 'to get things done' (Cziempiel, 1992, 250). For the sake of the argument, suppose modern intelligence oversight depends on a wider

³⁴ As opposed to poor governance defined by the World Bank as "characterised by arbitrary policymaking, unaccountable bureaucracies, unenforced or unjust legal systems, the abuse of executive power, a civil society unengaged in public life, and widespread corruption. (World Bank, 1994)

array of actors to be effectively operated, it would follow that a national intelligence oversight system which denies a platform for such actors (parliament, media, think tanks, and international organisations) lacks (output) legitimacy and must therefore be reformed.

Evidently, the reality is more complicated and complex. The idea of good governance is, of course, controversial. It alludes to a 'retreat of the nation-state' as the sole service provider in times of increased interconnectedness and globalisation. Such a claim naturally invites critical reflection. For the purpose of this text – possible critical reflections will be limited towards the applicability of good governance to the national level of intelligence activity, and, to be shown in the next section, towards intelligence related activities on the international level. Perhaps in the economic field such a reflection might no longer be necessary. For instance, the German government may continue to boast new innovative means to reduce unemployment, fact is, however, that the government has only very little impact on the calculus of economic decision-makers around the world which increasingly affect the German job market. However, can the same phenomenon be attributed to the executive-agency centred realm of intelligence? Who would be there to compete with the executive and the agencies? And who sets the standards that would allow the conclusion that intelligence matters are no longer effectively operated?

True, it is not so much that traditional power centres of intelligence ought to be replaced by a new set of actors. Rather, and here one can draw parallels from the civil-military relations literature introduced above, modern democratic rule might simply require to broaden the spectrum of actors involved in the governance of intelligence so as to achieve the necessary acceptance (legitimacy) to perform these tasks in the first place. Yet, what would this entail in practice? *Democratic intelligence governance*, as it will be shown, presupposes that intelligence services and national executives by themselves do not sufficiently cope with the wider government tasks before them. Yet how can one judge confidently whether this is true or not? In fact, what consequences would stem from such a finding, that is, who should be added to regain the lost legitimacy?

Weber maintained that it is the belief in the legitimacy of power that counts. But who can authoritatively pronounce on whether there is belief (or not) in the legitimacy of the actors? In a democracy, the people do so collectively by casting their votes. But has there ever been a situation where the citizens expressed their consent or

disapproval on the management and control of national intelligence services?³⁵ How many different voter preferences can be interpreted into one single cross on a ballot? When Sharpf argues that it is the manifested preferences of the governed, coupled with a decision on whether the adopted policies sufficiently solve their common problems, which decides upon the legitimacy of government action, how can the existence of such preferences be measured? Asking more generally, how can such theoretical foundations of legitimacy be related to a practical problem, whether (or not) the intelligence management in country X lacks legitimacy so as to require the formation of intelligence governance that foresees greater actor plurality?

In the absence of a precise answer to this question, a tentative solution can nonetheless be envisaged. To do so, reference must first be made to developments that occurred in the broader sphere of civil-military relations. As indicated, recent thought on civil-military relations tried to integrate the non-military but security relevant agencies such as police, intelligence and private military companies into the analysis.

While Douglas Bland indicated this with his emphasis on shared responsibility, the concept of a *democratic security sector* goes even further. Not only does it stress the importance of shared responsibility of civilian and non-civilian actors, but it also manages to incorporate Agüero's remark about the need for an integrated approach to security which highlights the interconnectedness of different security actors (military, police, border guards, paramilitary groups, intelligence services). Hence, a nation's security sector has the following constitutive elements:

Table 4: Constitutive elements of a democratic security sector:

- (a) organisations authorised to use force,
- (b) civil management and oversight bodies,
- (c) justice and law enforcement institutions,
- (d) non-statutory security forces,
- (f) non-statutory civil society groups

Source: (UNDP, 2002, 87).

³⁵ Elections results might have been recently influenced by the fact that citizens in Britain and the United States felt that their respective governments have abused intelligence in their campaign to go to war against Iraq. Yet the citizens discomfort was rarely expressed in such a way as to allow the presupposition that citizens question the input/output legitimacy of government institutions in this field.

Stressing actor plurality and the role of civilian actors, the notion of a democratic security sector draws directly on the requirements of good governance. As such, this concept has gained prominence in the last few years especially when related to development and democracy promotion initiatives. Interestingly, this required a paradigm shift for many development agencies: “A well-managed security is increasingly seen as a fundamental objective of human development as well as a necessary precursor to economic growth. In this view security is an end in itself as well as means. This shift in understanding has moved the development agencies from viewing the military, police and other security organisations as a dangerous waste of money to seeing them as an important provider of *legitimate* security” (Wilson, 2005, 88, emphasis added). The growing acceptance of security sector reform (SSR) initiatives can, in turn, be taken as a substantial basis for assuming that broadening the range of actors involved is legitimated. A government cannot promote SSR credibly without insuring that its own security sector resembles the model reflected in those initiatives.³⁶

Based on this argumentation, it plausible then to construe the following analogy more in keeping with the research topic: *Democratic intelligence governance* includes five actor groups: (a) the intelligence services, (b) the executive, (c) the legislative, (d) the judiciary and (e) civil society organisations. Each has a central task, i.e. shared responsibility, in the overall task to avoid intelligence abuse: The intelligence services restrain themselves by means of internal control (whistleblower regulations, training of employees in accordance with a legislated code of conduct), the executive performs executive control, i.e. giving direction to intelligence services, including tasking, prioritising and making resources available. The parliament oversees the services by passing intelligence laws (that define and regulate the services and their control), by adopting the corresponding budgetary appropriations and by questioning decision-makers in special hearings. In addition, the judicative is tasked to monitor the use of the agencies’ special powers (such as surveillance and interrogation practices) and to adjudicate wrong-doings. Last but not least, civil society organisations may curtail the functioning of intelligence services by giving an alternative view (think tanks), disclosing scandals and crises (media) or by raising complaints concerning wrong-doing (citizens). (Born and Leigh, 2005, 15).

³⁶ A negative example would be a recent Russian law that delimits the freedom of NGO activity (especially those working in defence related fields). It stands in sharp contrast to the idea of a democratic security sector, which is why Russian development assistance in this field suffer credibility.

Table 5: Key actors involved in democratic intelligence governance

Democratic Intelligence Governance	Good Governance
<p><u>Intelligence and secret services:</u> external, internal, military and criminal intelligence services</p>	<ul style="list-style-type: none"> - equity - participation - pluralism
<p><u>The executive</u> president, prime minister, national security advisory bodies, ministries, financial management bodies</p>	<ul style="list-style-type: none"> - partnership - transparency - accountability - rule of law
<p><u>The legislature</u> parliamentary oversight bodies, complaint commissions</p>	<ul style="list-style-type: none"> - human rights - effectiveness - efficiency
<p><u>Justice and law enforcement institutions:</u> judiciary, justice ministries, criminal investigation and prosecution service, human rights commissions and ombudspersons, correctional services, customary and traditional justice systems.</p>	<ul style="list-style-type: none"> - responsiveness - sustainability
<p><u>Non-statutory civil society groups and organisations:</u> professional groups, the media research organisations advocacy organisations, non-governmental organisations, think tanks, diverse community groups.</p>	

d. The missing element in democratic intelligence governance: intergovernmental intelligence cooperation?

The previous section introduced the concept of *democratic intelligence governance* which emphasises greater actor plurality – i.e. more than just the executive and the services - in order to be legitimated. While this is a fair point to make, it has already been made by several authors and international organisations (for a recent example, see PACE 2005a). What has received less attention is international intelligence cooperation (as outlined in the introduction) and even less attention was devoted to the idea of international scrutiny thereof. Thus, the focus can finally move to the area where the author hopes to find his niche.

Continuing with the reasoning on legitimacy, this time with regard to intelligence activities on the international level, consider a passage from David Held's search for a democratic alternative to what he calls the Washington consensus. One might think that he is either unwilling or oblivious to account for an unresolved legitimacy problem at the international level. He readily jumps to the conclusion that the time has come to consider new modes of government:

"For the first time in history, the one thing that did most to give modern nation-states a focus and a purpose, that is, national security, and that has been at the very heart of modern statehood as understood from Hobbes onwards, can now be realised effectively only if nation-states come together and pool resources, technology, intelligence, power and authority." (Held, 2004, 86)

Based on the previous discussion, one might bounce the ball back to Held and ask him of whom he thinks when he presumes that nation-states should come together? Only nation-states, that is, only the executive branch of government that traditionally represents the nation internationally? Yet are we not faced then with the same dilemma the author has previously alluded to: Do executives deciding for their nation's sake possess sufficient output legitimacy to act in this function? Later the occurrence of '*executive peace*' and '*collusive delegation*' will be examined, both phenomena which shed much needed critical light on the assumption that executives cooperate internationally for the sake of the people they ought to represent. For the time-being, one should ask in the Weberian tradition: Why would executives voluntarily commit themselves to something that is in stark contrast to their proclaimed interest ever since 1648, i.e. the primary goal to exert maximal control over their sovereign right to exercise coercion? According to Held, security and intelligence cooperation can be depicted as *conditio sine qua non* for contemporary governments aspiring to maintain the undisputed legitimate authority to hold power. This reasoning reflects Fritz Scharpf's reasoning:

"When we speak of democratic legitimacy, we refer to arguments that justify the exercise of governing authority, that is the authority to adopt collectively binding decisions and to implement these decisions with resources taken from the members of the collectivity and by resort to the state's monopoly on legitimate coercion. [...] As interdependence increases, the nation-state finds its range of policy options exogenously constrained, and some

previously legitimated policies become less effective, more costly, or downright unfeasible – which must be counted as a loss of democratic self-determination even if new options are added to the policy repertoire. It is true, however, that constraints do not rule out choice, and it may be possible to achieve former (or newly agreed upon) policy objectives by means of new policy instruments [and] in that event output legitimacy may be maintained.” (Scharpf, 2000, 115)

Interestingly, Renate Mayntz might have provided a powerful constructivist limitation to such assumptions. The limitation would be that governance presupposes a readiness by academics and decision-makers to accept such conceptualisation in the first place. She has studied different academic reactions by European and American scholars to the notion of the withdrawal of the nation-state as a consequence of globalisation. She maintains (partially quoting Higott)

“the longer-term trend towards a stronger normative disposition for multi-level governance in Europe than in the United States expressed both in the European willingness, incomprehensible to US foreign policy community, to engage in sovereignty pooling and in a more positive attitude towards multilateral governance structures at the global level” (Mayntz, 2005, 17).

By invoking this observation, she hints to the possibility that

“the intense European interest in governance has to do with a particularly critical attitude towards globalisation. [...] A critical view of globalization could well lead to a particularly strong interest in global governance perceived, correctly or incorrectly, as a means to discipline the process of globalisation and to cope with its negative effects. Belief in the importance of and a positive attitude towards global governance could also lead to a greater concern with issues of democratic accountability” (Mayntz, 2005, 18)

Perhaps there is more than a grain of truth in her reflection that globalisation is likely to be seen as a more worrisome trend from the perspective of small political entities than from that of a modern hegemon. This has a direct consequence for the author's endeavour because it taints his research outlook in a 'European' colour. In fact, the very idea of international accountability is seen differently from the stance of a powerful nation than from a group of nations (which, fortunately, had their fair share

of tragic dominance). Unfortunately, such argumentation boils down to a power-political argumentation, which presupposes that only those who have 'little to loose' will wholeheartedly subscribe to the idea of a universal applicability of good governance. In reality, few actors have little to loose on both sides of the Atlantic and beyond. Even if one were to focus only on European intelligence cooperation and the feasibility of European control, who says that diverse European nations subscribe wholeheartedly to such lofty ideals?

What now? Should one throw the towel in light of such findings? Is the idea of international (intelligence) accountability too abstract to be further developed? Avowedly, the aforementioned doubts serve a powerful blow to the research endeavour. Not only is accountability often seen as a very elusive concept but to apply this to intelligence cooperation, i.e. activities that are mostly secretive, is perhaps far too demanding. Yet the battle goes on. Please turn the page to find out how the author defends his research against such nasty blows.

PART II: The conceptualisation of international intelligence accountability cooperation

This section intends to banish doubts on the practicability to study international intelligence accountability regimes. To do so, the author strikes on two counts: topography and methodology.

As per the first count, one must, of course, take into consideration that the establishment of an accountability regime presupposes willingness by those to be held to account to accept the curtailment of their respective autonomy. True, what functions (imperfectly) at the national level must not be automatically assumed to work at the international level where great power asymmetries between the actors persist. Quite simply, “people dislike being held accountable. Everyone seeks to hold others accountable, but few of us really want to be held accountable ourselves. The reason is that accountability is a power relationship. To be held accountable is to have one’s autonomy, and one’s power over others, constrained” (Keohane, 2006, 5). As power discrepancies in world politics are here to stay and will work as a powerful counter-force to global attempts to institutionalise accountability regimes,³⁷ “we need to devise and strengthen mechanisms of accountability that are feasible” (Keohane, 2006, 11).

Arguably, this leaves the present author with an important choice: Whether to maintain the global focus or to concentrate on a region where greater willingness towards autonomy curtailment exists.³⁸ As per the first option, it has already been alluded that popular visions of ‘global governance and public accountability’ (Held and Koenig-Archibugi, 2005) seem “utopian in the sense of illusory – impossible of realisation under realistically foreseeable conditions” (Keohane, 2005, 4). Yet Keohane rightly acknowledges that one (a true liberal democrat that is) cannot accept “the inherently undemocratic nature of international organisation” as this were tantamount to “accepting arbitrary rule, with attendant abuses of power, at the global level as the price of managing interdependence and resign ourselves to the demise of democratic practices, as globalisation proceeds” (Keohane, 2005, 5). Put more

³⁷ Exemplary behaviour seems to be the United States’ refusal to accept jurisdiction by the International Criminal Court jurisdiction over its armed forces or its non-ratification of the Kyoto Protocol.

³⁸ A willingness to allow autonomy curtailment is, of course, the result of a complex bargain. In return for autonomy curtailment, the actor enjoys the advantages of a regime, i.e. (*inter alia*) enhanced credibility among peers and the reduction of transaction costs that accrue from making and enforcing agreements.

drastically, to “combine interdependence with a lack of governance is to create an explosive deadly compound – as deadly as suicide bombs. Trusting national states to manage interdependence without international institutions is like trusting a four year old boy to play with real guns” (Keohane, 2005, 5). Keohane seeks to overcome this dilemma by constructing “piece by piece a pluralistic accountability system in world politics” (Keohane, 2005, 11).³⁹ Before the review sheds light on the idea of a pluralistic accountability system, one needs to expose the other alternative. Rather than building such a regime on the global level, one can also imagine to concentrate first on a regional level where more favourable conditions for building such an accountability system exist. In fact, this is the author’s preferred choice. Hence the study channels its research outlook onto European practices in intelligence affairs and, in particular, to the harmonisation of democratic accountability practices vis-à-vis intelligence cooperation.

Arguably, member states of the European Union (EU) and the Council of Europe (CoE) have gone further in the attempt to foreswear the idea of ‘bowling it alone’ (Putnam) in security and intelligence matters than any other region in the world. Thus, intelligence cooperation between European intelligence services takes place amidst a dense institutional and normative framework. Whether or not fully activated, Europe hosts a range of credible fora wherein accountability functions could be exercised. It remains a challenge for the author to denote how far European politics can be construed so as to speak of *European intelligence governance*. Is it possible to speak of the emergence of a *European intelligence accountability regime*?

Judging from the outset, it seems more promising to cast one’s hope upon the European integration project rather than to conflate the research with the idea of global governance. The author’s decision is notably influenced by the fact that the answer to the question ‘about what is account to be rendered’ goes: ‘practices of intergovernmental intelligence cooperation’, i.e. a very secretive undertaking even David Held would deem unfit for global governance as of yet. But when experts expect that the “EU and NATO will eventually develop machinery for supranational intelligence” (Schreier, 2006, 7), or when a complete intelligence cycle under the auspices of the European Union crystallises, it seems both timely and promising to

³⁹ Interestingly, he attributes a special responsibility for political scientists³⁹ in this endeavour to “help construct institutions that would both be accountable and that would hold other powerful entities accountable” (Keohane, 2005, 11).

investigate the robustness of intelligence accountability means alongside such practices.

a. Grasping (European intelligence) accountability relations

How should democratic accountability look like at the European level? As indicated, none of the authors discussed in Part I have spelled this out. Arguably, one could dismiss the need for a European accountability system by arguing that domestic intelligence accountability practices sufficiently comprise the kind of intelligence cooperation introduced at the beginning of this text. Alternatively, one could also adopt a more cynical position: if domestic intelligence accountability systems function only insufficiently, why bother with creating another insufficient accountability regime at the European level?

For both questions, one needs to establish first the existence of an accountability gap with regard to intelligence cooperation practices. This is because only if national accountability systems are found to be ill-equipped to hold the perpetrators of international intelligence cooperation practices to account, can one start writing about accountability regimes beyond the nation-state. As this review does not aim to go profoundly into methodological aspects, it seems justifiable to generally discuss instances that could be interpreted as indicators of existing accountability gaps. As an example, consider how the Italian state prosecution service complained that Italian government officials were not disclosing sufficient information so as to allow them to apprehend the CIA agents who have operated in Milan to perform the 'rendition' of a suspected terrorist.⁴⁰ Likewise, notice how the former German Interior Minister Otto Schily responded to accusations from parliament and the state prosecution service that he has not been forthcoming with information on how much knowledge he had on the illegal CIA rendition of the German citizen Al Masri. He replied boldly that he does not consider himself to be the '*Ermittlungsgelilfe*' [investigation assistant] of the prosecution service. As already discussed, it is hardly imaginable that the CIA could have performed its operations all by itself. Yet, as Dick Marty (and many other national investigators before him) has painfully experienced, these kinds of secret arrangements are incredibly difficult to come by. Recent studies distilled best practices whereby decision-makers could be brought to account more effectively (Born and Leigh, 2005) - but they were tailored mainly for national

⁴⁰ For a detailed account of this incident see (PACE, 2006).

intelligence contexts. One of the main tasks for the author will therefore be to find out in what way intelligence cooperation challenges national accountability practices and how these challenges can be addressed with a view to guarantee the maintenance of accountability procedures for all the activities of intelligence agents.

b. The theoretical underpinnings of public accountability

A common approach to the notion of accountability is to perceive it as the consequence of an authority delegation from a principal to an agent. If authority has been delegated to an international agent (be it in the guise of an international intelligence consortium à la Alliance Base (Priest, 20005a) or to supra-national intelligence bodies (Daun, 2005)) it should follow that the national principal (the people, the parliament) should be informed by the agent. What is more, the agent should face consequences should the principal's mandate have been unduly expanded. Yet to whom should the national principals turn to in cases of intelligence cooperation? Are German or Italian MPs entitled to subpoena members of the British Ministry of Defence, who might hold crucial information about the conduct of CIA agents in Europe?

The question is rhetorical - such a scenario has never happened and seems unlikely to arrive in the future. The interesting question is whether the absence of such procedures amounts to an accountability gap in the sense that national principals are failed by their agents? On what grounds should the principal accept the discretionary leeway of its agents? Asked differently, what legitimises the prevention of a 'full briefing' on international intelligence cooperation practices? Do the right actors set the right accountability standards to best serve an entire nation's democratic rule? Again, we stumble across the direct link between accountability questions and democratic theory. Whereas the existence of an accountability gap will need to be studied more carefully by the author, this review allows the author to set the scene for an investigation in the first place. Thus, especially after European governments were increasingly hard-pressed to explain the CIA rendition / secret prisons scandal, the speculation that cognizant government officials would be more prepared to share their respective information with foreign executives than with their own national oversight panels appeared less crude. Of course, one cannot say for sure. Fact is, however, that when intelligence services (with or without cognizance of national executives) cooperate it is not altogether clear how and to whom the actors should render account to. *Objection!* One could refute this statement by saying that German

agents report to German overseers and British agents to British oversight panels. *Permission granted?* What if British agents are under strict duty not to disclose information they have received from their German partners? What if British overseers need to speak to German agents in order to get the necessary information? Who insures that other goals such as the perceived credibility of a nation's intelligence service in the eyes of third parties will not undermine such processes?⁴¹

Provided the author will be able to lay his finger on precise shortcomings of domestic accountability regimes when confronted with intergovernmental intelligence cooperation practices, one would still need to confront the more cynical position which doubts whether European-wide or European-level accountability provisions,⁴² would do the trick to overcome these shortcomings. Again, at this premature stage there is little one can do in this regard other than to state that the author is aware of this. Perhaps, one can even allude to the preventive effect of accountability. "Ex post facto accountability can be an important input for ex ante policymaking" (Bovens, 2006, 14). Applied to our case this would mean that a European / European-level intelligence accountability relations extend the range of practices for which actors ought to render account. If countries – remember Wendt's famous dictum that anarchy is what we make of it – can be brought to agree that their agents would need to render account to a European accountability forum (just like nations accepted the jurisprudence of the ICC) this would provide even less leeway for abuse. It is open to argument that it was due to the fact that some MENA countries have either not ratified the international torture convention or national agents had little reason to fear punishment which made the 'export' of torture possible. My conviction is that one needs to start somewhere with international intelligence accountability. A convincing study might promote the gradual implementation of regional accountability regimes,

⁴¹ This alludes to the information sharing among foreign intelligence agencies. Often, information-receiving agencies must ensure not to disseminate the information to un-authorized third parties. Consider the following excerpt from an *Economist* article: "A baffled Edward Heath once asked what Britain was getting in return for making all kinds of facilities available to the Americans. The answer came back that, without intelligence provided by America, Britain would be instantly reduced to the "same position as other European members of NATO" – in other words, to the second rank of world intelligence powers" (Economist, 2005, 2)

⁴² This is a subtle but very consequential distinction. Do we want all European intelligence services to operate under the same accountability criteria (for which we need to harmonise national intelligence standards but would not necessarily need a supra-national accountability regime) or do we want to trust our faith in an independent accountability regime that operates on the European level (i.e. distinct from national accountability practices). The review will turn to this in due course.

which in traditional functionalist logic, might spill-over to other regions. This is also what Keohane has in mind when he maintains that the more advanced democracies should “be taking advantage of the opportunities we have to build, piece by piece, a pluralistic accountability system” (Keohane, 2005, 11).

aa. Keohane’s four-fold classification of accountability

Before mapping practices of European intelligence accountability, one needs to be clear about what accountability means. This is not altogether easy to establish, which is why the review turns to the second (methodological) count aimed at confronting doubts on the feasibility of the author’s research. Is accountability as such suitable for empirical research? Admittedly, little consensus exists on the notion’s precise meaning – some scholars have even distinguished between five different foundational blocks of accountability, namely transparency, liability, controllability, responsibility, and responsiveness (Koppell, 2005).⁴³ Of course, conceptual vagueness can also be purposely maintained by political entrepreneurs who use it as handy tool to ameliorate their public reputation. This way, accountability is reduced to a “garbage can filled with good intentions, loosely defined concepts, and vague images of good governance” (Bovens, 2006, 7). Yet, how to convince the reader that accountability can be a feasible subject for empirical research? It will be demonstrated that much depends on the definition and scope of the accountability regime under investigation.

To recap, what kind of critique are accountability students subjected to? As indicated, one of the most fundamental criticisms is that the term accountability is differently interpreted and thus regularly conflated with other concepts. Evidently, this renders an operationalisation of the concept for research purposes immensely difficult.⁴⁴ The second critique builds on the former as definitional vagueness invites politically motivated abuse. Accountability is often portrayed as the golden concept that no one can be against (Bovens, 2006, 5), it figures prominently in post-Cold war political science literature,⁴⁵ and it has increasingly been used by national legislators,⁴⁶ yet

⁴³ The following pages seek to make the most striking differences between some these concepts and accountability more explicit.

⁴⁴ A profound discussion on methodological obstacles and means to overcome these will be introduced at the next stage of this research.

⁴⁵ Schwartz searched world-wide political science abstract and found ‘accountability’ to appear 1, 415 times (between 1995-2005) in peer-reviewed journals (Schwartz, 2005, 2).

few have bothered to shed ontological light on the core of the concept itself. The consequences are deplorable: Non-governmental organisations, governmental agencies, media institutions and the general public proffer competing visions of accountability. In the end, no one adheres to a universal standard.

Yet, the question remains, can such a universal standard be realistically called for in light of the many different working relations and authority dispersions in private and public spheres? Certainly, no one can arrive at a meaningful conceptualisation of accountability without delimiting its applicability. For the purposes of this review, the author concentrates only on public accountability which leaves accountability relations in private (economic) spheres beyond its purview.⁴⁷ What is the quintessential idea behind the concept of accountability in political relations then? How is it different from the notions of control, oversight and legitimacy discussed in Part I? Arguably, Robert Keohane and Ruth Grant have gone further than most authors in describing the core of public accountability. To them

“accountability implies that some actors have the right to hold other actors to a set of standards, to judge whether they have fulfilled their responsibilities in light of these standards, and to impose sanctions if they determine that these responsibilities have not been met” (Keohane and Grant, 2005, 29).

Keohane and Grant rely on this definition to distinguish accountability from coercion and checks and balances. The authors maintain that not all sorts of constraints on political behaviour form an accountability relation. For instance, actors that are forced to resort to self-help when external aggressors have disrespected treaty obligations are not engaged in an accountability process. This is because the attempt to constrain the aggressor is not subject to mutually accepted standards. As per the difference between checks and balances and accountability, Keohane and Grant stipulate that checks and balances are mechanisms designed to prevent action that

⁴⁶ According to Dubnick, (quoted in Bovens, 2006) the word ‘accountability’ occurs in the title of between 50-70 proposed bills in recent two-year terms of the US Congress. A closer inspection of these acts revealed, however, that “the use of the term ‘accountability’ is usually limited to the title of these acts. In most bills, the term is rarely mentioned again, let alone defined. It is merely used as an ideograph, as a rhetorical tool to convey an image of good governance and to rally supporters” (Bovens, 2006, 7).

⁴⁷ Further steps to narrow the scope of accountability so as to exclude presidential democracies and to include only European relations will be made explicit in the course of the following pages.

oversteps legitimate boundaries. By contrast, “accountability mechanisms always operate after the fact” (Keohane and Grant, 2005, 30).

Objection? What about police-patrol congressional oversight discussed in Part I? Does the emphasis on the *post-hoc* nature of accountability render the unannounced routine inspections on the premises of intelligence agencies not an accountability measure? If so, what is the importance of this distinction if routine inspections help overseers (actors) to hold other actors (agencies) to a set of standards? *Permission granted.*

bb. Accountability as a social relation

It seems necessary therefore to consider a complimentary definition of accountability. Mark Bovens perceives accountability as a “specific set of social relation that can be studied empirically” (Bovens, 2006, 8). According to him an accountability relation exists only in the presence of the following seven indicators (see Table 6.)

Table 6: Public accountability

A relationship qualifies as a case of accountability when:

1. There is a relationship between an actor and a forum
2. in which the actor is obliged
3. to explain and justify
4. his conduct
5. the forum can pose questions
6. pass judgement
7. and the actor may face consequences

Source: (Bovens, 2006, 12)

Evidently, each of the seven pillars of the definition merits an individual discussion with respect to how it can be translated into practice for our problem at hand. In other words, who is the actor and what is the forum with respect to a European intelligence accountability regime? Likewise, what is the nature of the obligations and how can obedience be ensured? These are difficult questions when dealing with what others have termed ‘disaggregated sovereignty’ and ‘networked governance’ (Slaughter, 2004), i.e. the existence of plenitude of national and international, state and non-state

actors with several chains of authority delegation involved (for a crude, incomplete overview, see Table 9, page 42).

cc. Accountability in domestic contexts and pluralistic accountability mechanisms in international contexts

How to proceed amidst this confusion? It is best to work out first the general presuppositions of accountability as they relate to domestic politics. This is followed by a brief discussion on how such an accountability relation can be measured. This will then be contrasted with contemporary European politics where accountability relations have to be construed differently in order to be effective.

Reference is made to a helpful table (see Table 7, page 34) developed by Keohane and Grant. It distinguishes between four different accountability logics traditionally applied in domestic politics. Common to all political entities is the fact that its people are called upon to make a range of decisions that affect the general life of the collective. Yet it is in the art how this is to be organised that one can detect notable differences, which, in turn, allows for the distinction between four approaches. In essence, two basic questions and two different ways to answer each of them allows for this four-fold categorisation. The questions are

1. *Who is entitled to hold the powerful accountable?*
2. *How should power-wielders be acting?*

The first question seeks to distinguish between approaches that emphasise either democratic participation or populist views as opposed to theories that place emphasis on consent, legal authorisation and office (Keohane and Grant, 31). The second question alludes to a distinction based on the amount of independent leadership granted to the power-wielder. This allows for a distinction between the *participation model* and the *delegation model* on the one hand and between *instrumental agents* and *discretionary authorities* on the other hand (Keohane and Grant, 2005, 31).

Accountability regimes that follow the participation model leave it to the people affected by group decisions to evaluate the performance of power-wielders. Depending on whether power-wielders are considered as *instrumental agents* (i.e. little leadership) or *discretionary authorities* (more leadership) this can be done by

stressing either direction (*ex ante*) or control (*ex post*). A preference for the *ex ante* approach would give the people the power to ensure directly through means of plebiscites and referenda that “actions of power-wielders are what those affected (people) instructed them to do in this contingency” (Keohane and Grant, 2005, 31). This amounts to ‘direct democracy’ (*option A*). The alternative would stress the *ex post* side of scrutiny and thereby allowed more leeway for individual political leaders. Here “policies followed by the power-wielders lead to outcomes approved by those affected, which leads those affected to confer additional powers (Keohane and Grant, 2005, 31). This would be the populist alternative (*option B*).

Within the delegation model, the people generally accept the superiority of representation over models of direct rule. This decision can be motivated for several reasons, exemplary being the fact that it lets people to delegate their power to those deemed more fit to making the right decisions. Another advantage may be that “representation allows for a separation or distance between the governed and their governor [...] it is clear whom to blame [and the governed] can judge [the governors’] actions without being implicated in them themselves” (Keohane and Grant, 2005, 31). Either way, political units subscribing to the delegation model can adopt a principal-agent (*option C*) or a trustee (*option D*) accountability relation. With regard to the former, political officials (agent) are understood as acting upon the authority bestowed upon them by the people (principal). “In principal-agent models, the principal’s preferences are taken as given, and the relationship is judged as a failure if the agent deviates from them” (Keohane and Grant, 2005, 32). By contrast, trustee accountability relations emphasises the discretionary use of delegated authority. “Hence the implicit standard for abuse of power differs from that implied by the principal-agent model. Deviations of the agent’s actions from the principal’s desires would not necessarily constitute abuse of power. [...] A representative or officeholder could defend an unpopular exercise of power as legitimate by showing that it both was within the officer’s jurisdiction and actually served the purposes for which he or she was authorised to act” (Keohane and Grant, 2005, 32).

While the distinction between the four different types of accountability systems is very plausible by itself, one must admit point-blank that political reality is more complex in liberal democracies. Most contemporary liberal democracies have not chosen to limit themselves to one single accountability mode but have, instead, kept different accountability modes simultaneously in place or have even fused them (Keohane and Grant, 2005, 33).

To my mind, accountability models for domestic intelligence politics of liberal democracies resemble a fusion of accountability systems C and D (see Table 7 below). On the one hand, intelligence politics (especially in parliamentary democracies) involves the following principal-agent relationship: Authority delegation chains from the people via parliament via the executive via the agency to the individual intelligence agent. This can also be translated back into a hierarchical accountability chain running in the reverse direction: It begins with the intelligence agent who responds to the command within the agency. The agency's performance is subjected to supervision and direction by the (interior/defence) ministry which reports to the cabinet. Since the cabinet acts upon the authority granted to it by parliament, it is subjected to parliamentary oversight. The parliament then reports to the people through publications and public hearings (see Table 9 for an illustrated account of the authority/accountability chains). On the other hand, ever since their (relatively recent) inception,⁴⁸ domestic intelligence accountability relationships have also resembled the trustee accountability model. This can be argued because parliament has traditionally left substantial operational leeway to the executive and the intelligence services inasmuch as it did not request that actors render account for ongoing operations. Likewise, the executive has, in the tradition of civil-military relations discussed in Part I, left a margin of appreciation (discretionary leeway) to the intelligence agencies with respect to the art of policy implementation by the services. For example, whether or not the intelligence services use signals intelligence, human intelligence, imagery intelligence and/or open-source intelligence to administer their tasks is often left to the discretion of the services.

⁴⁸ At this point, it ought to be said that the concern of democracies with intelligence oversight and general notions of intelligence accountability is relatively recent. It was not until 1992 that the British government publicly acknowledged the existence of MI5 and MI6 and Britain's parliamentary intelligence oversight panel came into existence only by 1994 (Leigh, 2005). Ian Leigh exposes three decades of intelligence oversight starting from 1975 (despite earlier legislation in the US, Germany and the Netherlands) as for him "the mid-1970's, however, mark the beginning in liberal democratic systems of exposures concerning abuses by security and intelligence agencies which have proved to be a major catalyst for reform across the globe" (Leigh, 2005. 4).

Table 7: Four different national Accountability modes

1. Who is entitled to hold the powerful accountable →	Those affected by their actions – Participation Model	Those entrusting them with powers – Delegation Model
2. Power-Wielders are ↓		
Instrumental agents	A. “Direct Democracy”: Actions of power-wielders are what those affected (people) instructed them to do in this contingency	C. Principal Agent: Power-wielders act as faithful agents of principals who empowered them.
Discretionary authorities	B. “Populist: Policies followed by the power-wielders lead to outcomes approved by those affected, which leads those affected to confer additional powers.	D. Trustee: Power-wielders perform the duties of their offices faithfully

Such chains of authority delegation and diverse accountability relations do not necessarily work in the interest of the people, at least with respect to intelligence affairs. In fact, there seems almost no direct link between the people and the intelligence services other than that the services occasionally spy on their nationals.⁴⁹ As it is seldom up to the people to influence intelligence accountability regime, it is noteworthy how external impulses (European Court of Human Rights jurisprudence⁵⁰, intelligence scandals⁵¹ a civil society agenda setting⁵²) helped to bring a people-centred idea of intelligence governance to the domestic political reform agenda.⁵³

⁴⁹ For which they need a warrant authorised by a judge. How this method of judicial control can be watered down by referring to (unbalanced) national security legislation, is currently displayed by the Bush administration with respect to the authorisation of the National Security Agency (NSA) to wire-tap the communication of suspected American citizens with the outside world.

⁵⁰ The case of *Malone v. UK* serves as a poignant example. It found that “the British administrative practice did not indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities” (*Malone v. UK*, August 2, 1984, A/82, para. 79) which led to the enactment in the UK of the *Interception of Communications (IOC) Act 1985* (Cameron, 2005, 40).

⁵¹ Exemplary could be the growing public disenchantment with government performance in the 1970s in the US. With Watergate and Vietnam on public minds, “new oversight began with a fire alarm set off by the *New York Times* in 1974, leading to the most intensive investigation ever conducted into U.S. intelligence: the Church Committee in the Senate” (Johnson, 2005a, 60).

⁵² Initiatives such as parliamentary training in intelligence oversight matters were often conducted by (or drawing from the work of) academic scholars or (international) foundations, think tanks, etc.

How, then, can one study intelligence accountability relations domestically and can these methods also be applied for research on intelligence accountability regimes beyond the national level? Robert Keohane's appeal to create pluralistic accountability systems on the global level could be insightful here: For accountability to be really be effective beyond national borders, Keohane persists, "we need to abandon the domestic analogy: the belief that meaningful accountability has to be democratic, entailing popular elections" (Keohane, 2006, 11). Instead he suggests working on alternative accountability levels such as reputational accountability and peer-to-peer accountability to name just a few. His view stands in contrast to the author's intention to elaborate on an analogous projection of the five-levels of domestic accountability (see democratic intelligence governance, p. 24) onto the international level. With growing evidence of intelligence integration under the auspices of the European Union (Daun 2005), can existing European institutions (for the European Union: the European Parliament, the European Commission, the European Council, the European Court of Justice; for the Council of Europe: the European Court of Human Rights, its Parliamentary Assembly, its Council of Ministers) not be interwoven into the accountability relations so as to match extended authority delegations? Does the density of European institutions and normative frameworks (such as the European Convention of Human Rights) allow for an exception to Keohane and Grant's analogy prohibition?

dd. Towards studying accountability empirically

First one needs to know which of the many different types of accountability are pertinent to the research endeavour. While Keohane and Grant's four-fold distinction has been helpful to grasp the general feature of a principal-agent relation in domestic intelligence politics, the classification scheme will prove to be far from exhaustive for the purposes of a review which looks upon accountability relations involved in international intelligence cooperation . As it will be demonstrated, one needs to distinguish further in order to get an idea of the complex authority/accountability relations involved. More than a dozen different forms of accountability relations can be perceived (see table 8, overleaf) – ignorance thereof might have contributed to the regrettable conflation of accountability with related but different notions (transparency, control, responsiveness). In order to specify which accountability

⁵³ For an insightful overview of how intelligence oversight came into existence and how it has been strengthened since then, see (Leigh 2005).

relation one intends to study and to distinguish clearly between accountability and related concept, the focus turns now to Bovens' helpful attempt to map accountability relations.

To recap, Bovens defined public accountability relations as “*a relationship between an actor and a forum, in which the actor has an obligation to explain and justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences*” (Boven, 2006, 9). According to Bovens, accountability relations can be better characterised by grouping them as follows:

- (a) on the basis of the *forum type* i.e. the character of the authority formation to which the actor has to render account to (to parliament, to courts, to committees trying to uphold professional standards, to a larger group of civil society)
- (b) on the basis of the *nature of the actor*, i.e. which allows a distinction between cases when an individual is accountable only for his/her own behaviour or when the individual is also held accountable for the behaviour of parts of (or the entire) organisation or when only the organization is held accountable without consequences for the individuals acting on behalf of an organisation
- (c) on the basis of the *conduct subjected to accountability procedures*, i.e. does the accountability measure seek to establish whether public money had been spent inappropriately or does it aim to examine the legality of operations by government institutions or does it pertain to judge the effectiveness of governmental conduct (meaning whether the governmental agents have fulfilled their mandate by using their means (funds, personnel, equipment) in the most effective manner or could the same goals have been achieved with less recourse to public resources)
- (d) on the basis of the *nature of the accountability obligation*, i.e. asking why it is that the actor is obliged to explain and provide justification for his/her conduct to a forum.

Table 8: Types of accountability

Based on the <i>nature of the forum</i>	→ political accountability → legal accountability → professional accountability → social accountability
Based on the <i>nature of the actor</i>	→ corporate accountability → hierarchical accountability → collective accountability → individual accountability
Based on the <i>nature of the conduct</i>	→ financial accountability → procedural accountability → product accountability
Based on the <i>nature of the obligation</i>	→ vertical accountability → diagonal accountability → horizontal accountability

Based on Boven's accountability definition, one can paraphrase it for the purposes of the proposed research that intends to study the relationship between the actors of intelligence cooperation and respective accountability fora. For the existence of public accountability, the actors would have to be obliged to explain and to justify their cooperative conduct to the respective fora. Moreover, the fora should have access to the actors inasmuch as they should pose questions and pass judgments on the actors' conduct. Finally, the actors should face consequences should their conduct be judged to fail pre-existing standards.

ee. Accountability versus transparency, responsiveness and control

Already this allows drawing distinctions between accountability on the one hand and transparency, responsiveness and controlling on the other hand. As per the difference between accountability and transparency, it needs to be said that the former emphasises the dependency of the actor on the accountability forum inasmuch as the actor accounts *with a view to a judgment* that may entail a sanction. By contrast, transparency might be a precondition for the accountability forum to arrive at reasonable judgements in the first place but one can also imagine transparent reporting without engaging into an accountability procedure. In other words the obligation to be transparent needs to be coupled with the acceptance by the actor to report with a view to a judgement.

“However, transparency as such is not enough to qualify as a genuine form of accountability because it only sees to the element of publicness in public accountability, to the disclosure of information, the accessibility of the debates to the general public or the disclosure of the judgment. Therefore public reporting [...] does not in itself qualify as public accountability. Agencies make their annual reports, their assessment, and their benchmarks publicly available [...] but a public debate about the reported information will arise only if caught by the watchful eye of a journalist, an interest group or a lonely internet activist, who in turn may stimulate a forum, such as a parliamentary standing committee, to hold the agency to account” (Bovens, 2006, 13).

To my mind, the importance of the previous statement lies in the observation that public accountability, i.e. a (political) accountability relation between an actor and a forum requires to be institutionalised. While it is advisable to encourage witty journalists to pick up irregularities that might (or might not) lead to the ad hoc formation of accountability fora, an intelligence accountability relation should not rely exclusively on such irregular accountability procedures. Rather, the accountability relations between agents, the executive, parliament and the people should be codified in national intelligence laws and regularly practiced within an institutional framework. This way, agencies or executive officials questioned by parliamentary intelligence oversight committees do not only engage in transparent reporting (at least to those few parliamentarians admitted to the ring of secrecy) but they do so with a view to be judged according to standards set out in the relevant laws. In sum, accountability requirements are tougher on the actor than transparency requirements.

This is also true with respect to the *responsiveness* requirement that governmental institutions are subjected to. When the EU Commission, as a poignant example, is subjected to wide-spread criticism that it ought to listen more to the needs of the European people, this critique alludes to a lack of openness and a need for better involvement and more participation of a broad range of stakeholders in the EU policy process in general. What responsiveness alludes to therefore is a “pro-active inputs into the policy process” (Bovens, 2006, 13) which should be treated/studied separately from accountability “which is in nature retrospective” (Bovens, 2006, 13). Responsiveness, then, is linked to forms of consultation and participation which is

different from accountability's elements of justification, judgment and consequences" (Bovens, 2006, 13).

Lastly, one might find it more difficult to distinguish between control and accountability. Here the difference lies in the fact that control means more than accountability. To some authors, Bovens mentions Lupia, this fine distinction seems irrelevant - "an agent is accountable to a principal if the principal can exercise control over the agent". Yet if one thinks of control also as the ability to direct, that is the art of the principal to prioritise the actions of the agents through (ex ante) orders, directives and policy instructions (for example to set the main tasks for each intelligence agency, to allocate the finances etc) it becomes clear that this is different from procedures where the agent has to justify its conduct and may face consequences for wrong-doing.

ff. Mapping the accountability relations in contemporary European intelligence politics

Having set accountability more clearly apart from related political concepts, one could now turn back to Boven's accountability classification scheme with a view to map the accountability relations deemed pertinent for the proposed study on international intelligence cooperation practices. Yet, in essence, this amounts to a methodological discussion, something not tackled further in this review of pertinent literature. What should be said, however, is that such an endeavour requires the researcher to be specific about the actors, the accountability forum, the nature of the conduct and the nature of the obligation involved. Arguably this is not altogether an easy task due to the fact that national intelligence accountability systems have proven to differ substantially in scope and effectiveness (Born, Leigh and Johnson, 2005). Even if the study looks at accountability for international intelligence cooperation practices it cannot do without an investigation into how well national accountability procedures can hold the actors of intelligence cooperation to account. Moreover, the study must not neglect the existence of supra-national accountability fora (such as the European Court of Human Rights, which pronounces upon the compatibility with national intelligence practices / national intelligence laws with the European Convention; or the Parliamentary Assembly of the Council of Europe which is currently investigating the CIA operations in Europe). At present, it is foreseen to examine the ramifications of the projection of the five-layer democratic intelligence governance model (i.e. internal control, executive control, parliamentary oversight, judicial review,

independent see also p. 25) to the European level. For each actor involved, one could try to map the relevant accountability relations in accordance with Boven's method.

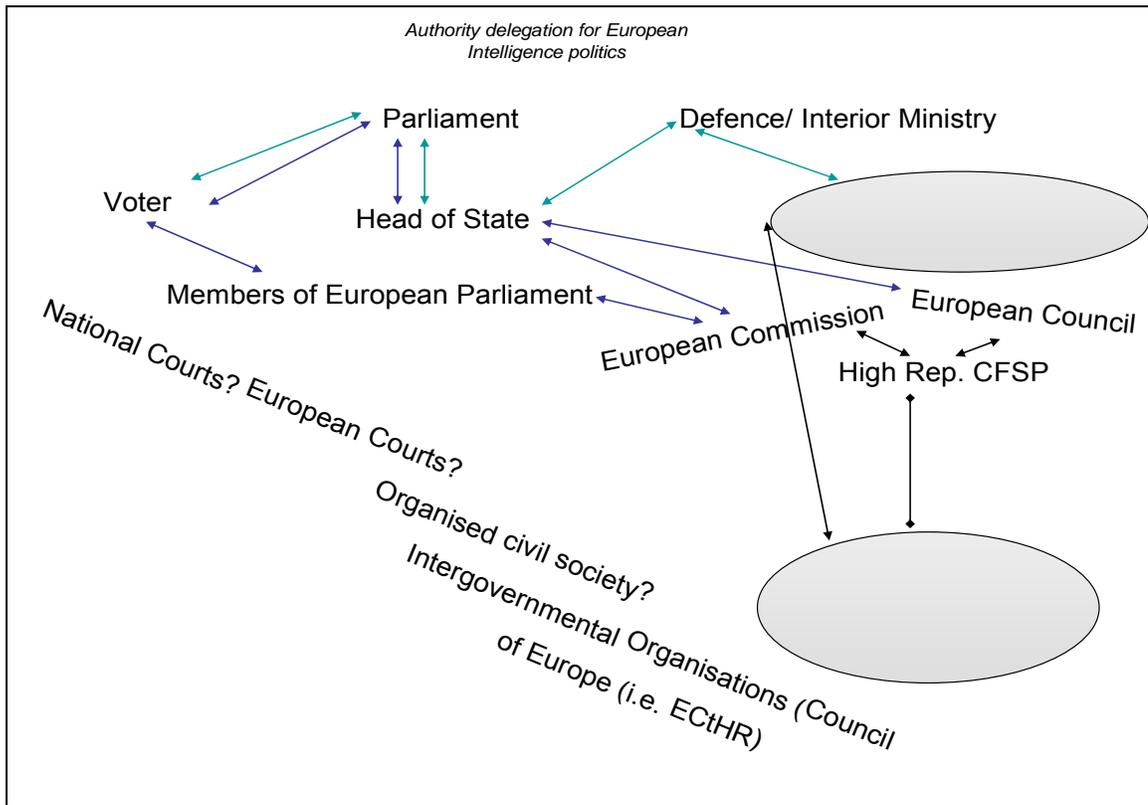
Provisionary table: Democratic European intelligence accountability

<p>xxx Caveat: This is merely to introduce possible methodological steps xxxxx</p> <p><i>Democratic European Intelligence accountability depends on:</i></p> <ul style="list-style-type: none">(a) Internal control <i>by organisations engaged in intelligence practices (national intelligence agencies, joint-intelligence operations, integrated EU intelligence capacities)</i>(b) Executive control <i>(European governments but also the European Council, the European Commission, the EU Counter-Terrorism Coordinator)</i>(c) Parliamentary oversight <i>(National Parliament, European Parliament, Parliamentary Assembly of the Council of Europe)</i>(d) Judicial review <i>(National Courts, European Court of Justice, European Court of Human Rights)</i>(e) Independent oversight <i>(national civil society organisations, European civil society organisations)</i>
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Picture an element of the second preliminary case study mentioned in the introduction: Alliance Base in Paris, i.e. the anti-terrorism cooperation of several national intelligence officers 'seconded' to a joint multi-national operations centre located near the Charles de Gaulle airport. Similarly, imagine German intelligence officers in Baghdad aiding US forces in the preparation for the Iraq war in 2003 or German/Italian government officials who might have received crucial information about illegal CIA practices on their nation's soil. In all such case it is certain that the researcher will not be able to interview the perpetrators of such practices directly. What could be insightful, however, is to study whether national and existing European accountability procedures are *per se* geared to (or sufficiently manage to) have the actors explain, justify and possibly redress illegal actions as a consequence. Yet, how does one arrive at measuring the robustness of the numerous accountability relations? At this premature stage, the author can only introduce a flow-chart to show how authority delegations have expanded beyond national borders (through the prioritisation of European intelligence actors, through the joint-efforts of European intelligence agencies for example). Whenever authority delegation chains are being expanded, democratic practice requires that they should

be matched by accountability procedures running in the opposite direction (see table 9, below).

Table 9: Authority delegation and accountability relations involved in European intelligence politics



The fact that one can envisage such European accountability arrangements seems noteworthy, given Keohane’s rather pessimistic outlook on international accountability.⁵⁴⁵⁵ Is Keohane correct in assuming that it takes a break from the logic

⁵⁴ When Robert Keohane invokes the necessity to create flexible, pluralistic accountability mechanisms in modern world politics, he speaks from the position of a liberal democrat who acknowledges the fact that power disparities will not lead to the universal acceptance of global public accountability regimes but who can also not accept the blatant existence of a global accountability gap. He therefore envisages “supervisory, fiscal, legal, market, peer and reputational accountability” and maintains that “such forms of accountability will not come from a centralised hierarchy but from a pluralistic, often discordant system of non-governmental organisations and networks among them” (Keohane, 2006, 10). The present author is dissatisfied with this statement. While he shares with Keohane the motivation to fill accountability gaps, the logic and effectiveness of a “discordant” global pluralistic accountability system is not inspiring. This said, Keohane’s (disappointing) prediction seems to be the best hope for installing accountability mechanisms for global politics. In fact, with so many differently motivated actors,

of domestic accountability mechanisms to create effective accountability on the international level? Based on some hapless attempts to subject the actors of European intelligence cooperation practices to accountability procedures⁵⁶, one can indeed question that imperfect national models of democratic intelligence governance will be meaningfully applied to accountability practices at the European level. Yet such supra-national accountability fora seem also to have gained momentum, symbolised by the fact that all parliamentary delegations contacted by Dick Marty's accountability forum within the Council of Europe have returned the completed questionnaire to him.

What essential lessons can be drawn from Part II? First, against the backdrop of substantial criticisms on accountability studies, the author introduced a systematic approach to accountability. In so doing, he distinguished accountability from related concepts such as transparency, responsiveness and control. What is more, the review introduced political theorists' views on accountability beyond the domestic liberal democratic contexts as this was deemed necessary for a study on intergovernmental intelligence cooperation practices. Based on whether authors have taken seriously the insight that accountability is directly linked to power

especially in the non-governmental field where institutions regularly act as self-appointed representatives of population groups (rarely asked whether they agree to being represented in this way), it is not altogether clear whether the world will (a) witness the implementation of vertical accountability systems (b) benefit from it.

⁵⁵ For a general debate on whether accountability regulations are not at all counter-productive as people/officials and organisations under too tight scrutiny will not act to their fullest potential, see (Schwartz, 2006). This debate is not (yet) included in this review as it seems only partially relevant. Given the blatant accountability gaps in established democratic societies, it seems secondary to discuss how accountability systems should be designed so as allow those who need to render account to perform to their fullest ability.

⁵⁶ In Germany, the parliamentary intelligence oversight committee published a report on 23.02. 2006 in which allegations about BND agents actively supporting the US war-efforts, allegations about German executive cognisance of CIA operations on German soil, and allegations about direct interrogation practices of suspected terrorists by German agents in torture prisons in Syria and in Guantanamo were rebutted. This said, the report indicates that the finding of the oversight committee was not unanimous and new allegations have already emerged on the BND allegedly submitting Saddams' secret plans to defend Baghdad to American partners. Admidst all these allegations, the new German coalition government (backed by the Green Party, a former government party, also not interested in having its brief interlude of steering Germany's foreign-policy tainted by unpleasant revelations) mobilises heavily against wide-spread calls for a parliamentary investigation committee that looks into these allegations. Similar motions in Britain have met harsh executive resistance. France does not even have a parliamentary intelligence oversight committee to this day.

considerations, one can distinguish between those who promote global governance (Held) and those who advocate pluralistic accountability systems (Keohane and Grant). The review author shares with Keohane and Grant the critique that global governance 'is utopian in the sense of illusory', especially when the reference matter is intelligence accountability. Yet, the review author has also expressed a reservation to the automatism of Keohane and Grant's pluralistic accountability model as the best option for international politics. On the regional (European) level, states have indeed been willing to compromise their autonomy which led the author to question Keohane and Grant's domestic analogy prohibition. Rather than to study pluralistic, flexible accountability mechanisms (reputational accountability, peer accountability, professional accountability) so as to mitigate the negative consequences that people who are directly affected by global decisions (of the World Bank for example) are not empowered to hold the perpetrators to account, the review proposed a different approach. One would need to

- establish the existence of an accountability gap when domestic accountability systems are confronted with practices of intergovernmental intelligence accountability
- study the existing and respected accountability fora at the European level as a potential way to study 'intelligence governance' beyond the national level.

Part III. Conclusion

[Disclaimer: This part is called conclusion out of necessity, i.e. it was meant as a fully-fledged part of the review, something I did not manage to finish. Therefore the text should be understood more as an enumeration of what would also need to be review]

“Cooperation is going to be needed if this investigation is going to succeed. European governments are at a crossroads. They can decide to cooperate with this investigation and uphold European traditions of human rights, or they can continue their romance with the CIA. But they can't do both.” (Carvajal, 2006)

This part was intended to situate accountability gaps in an (emerging) theoretical framework. Evidently, such a discussion presupposes that the author has in fact established the existence of accountability gaps with regard to intelligence governance in contemporary Europe. While this is not the case, it seems premature to discuss ways one could link such hypothetical findings to broader explanatory frameworks. Hence, the following text seeks to indicate merely that the author is aware of possible explanatory models that could strengthen his findings. More concretely, his study on intelligence accountability in European practice might contribute to the robustness of theories on European integration, theories of institutional design and multi-level governance. Much depends on whether conventional ways of perceiving autonomy, national interests, authority and delegation are compatible with the behaviour of executives and legislatures in particular. Especially the standing of executives prior and after the integration of policy fields (Wolf takes this to be the ‘dark-side of international cooperation (Wolf, 1999, 334)) seems worthy of critical analysis. Moravcsik maintains that “international cooperation tends to redistribute domestic political resources towards executives” (Moravcsik 1994, 7). Given that it is mainly national executives that decide upon the institutionalisation of accountability regimes beyond the national level, Moravcsik might have had it right when he proclaimed:

“Society’s loss of control over the executive results from four causal mechanisms: First, international cooperation enhances the executive’s control over the domestic agenda because the international agenda has

been cartelised between national leaders. Second, once international agreement has been reached, it may be costly, sometimes prohibitively so, for national parliaments, publics or officials, to reject, amend or block ratification of and compliance with decisions reached by national executives in international fora. Third, international cooperation gives executives privileged access to information about the political constraints of other governments and about the technical consequences of alternative policies. Finally, executives can impose an initial ideological ‘frame’ on an issue which is difficult for domestic groups to challenge” (Moravcsik, 1994, 11).

a. Intelligence cooperation: A form of networked governance?

It has already been discussed that intelligence has increasingly been appreciated by national policy decision-makers as a flexible tool against networked dangers that threaten contemporary (European) security. While some authors have called for the ‘shaping of an intelligence community within the EU’ (Müller-Wille, 2004)⁵⁷, others have gone further to discuss the necessity of establishing an integrated European Intelligence Agency (Nomikos, 2005). By contrast, another set of publications has also mounted substantial doubts on the feasibility of such projects.⁵⁸

Fortunately, the author has found a way to render this somewhat technical and prescriptive discussion *hors du sujet* for the purpose of his analytical research. One way to prevent taking the ‘prescriptive turn’ is by looking at intelligence cooperation practices as a facet of ‘networked governance’ (Benner, Reinicke and Witte, 2004, 198). Anne-Marie Slaughter maintains “networked threats require a networked response” (Slaughter, 2004, 160). Yet what are the governmental networks at work in our field of study? Notice the fine distinction, the author has (after some reflection) decided not to contribute to the search for an adequate institutionalisation of formal European intelligence cooperation. This is indeed, important but perhaps not ‘academic’ enough. Rather, epistemological preference will be given to a study on accountability dilemmas vis-à-vis existing cooperation practices featured in the introduction. One could describe such cooperation practices as being *networked* – at least they fit well the following description of networks:

⁵⁷ See also: (Borchert et al, 1998), (Villadsen, 2000) and (Baker, 2001).

⁵⁸ See for example: (Wirtz, 1992), (Lefebvre, 2003), (Pankratz and Benzcur-Juris, 2005), (Sturman, 2004).

“In many respects networks escape traditional mechanisms and conceptions of accountability. Networks as diffuse, complex and weakly institutionalized cooperative systems are neither directly accountable to an electoral base nor do they exhibit clear principal – agent relationships. Therefore two traditional mechanisms of accountability are not applicable in networks: electoral accountability and hierarchical accountability. Therefore we need to rely on alternative mechanisms of accountability. There will be no single mechanism of accountability in networks – we will need to devise a multi-dimensional system of accountability with multiple alternative mechanisms to improve the accountability of networks” (Benner, Reinicke and Witte, 2004, 198-199).

Again, the author is confronted with authors who argue in Keohane’s vein. Notice how Dick Marty speaks in his CoE Memorandum II about ‘networked torture’ – intelligence cooperation seems to borrow from the logic of networks. Perhaps the attempt to denote accountability gaps and to study the robustness of existing European accountability fora could benefit from insights produced by students of networks (Duncan Watts’ Six Degrees springs to mind here).

b. Further theoretical hinges

As indicated, results that speak of an accountability gap could also be brought in connection with regime theory / institutional theory (Rittberger/ Hasenclever: Theories of Regimes) and more precisely the institutional effects on state behaviour (to speak with an article title by Keohane and Martin).

The review has shown how the concept of democratic intelligence governance has incorporated the ideas of actor plurality and the primacy of civilian authority from civil-military relations literature. Perhaps one could also project one’s research findings as a hard-case for the popular approach of multi-level governance in European studies. The basic question, also discussed in this review, is to ask why would a national executive willingly shift authority beyond its control? To speak in Dustin Ells Howes terms, are European states wilfully choosing to die? He believes that “states are not destined to endlessly reproduce a Westphalian system” and when “they choose to die – and we seem them doing so regularly in this particular sense – it is an event that directly contradicts dominant theories of international relations” (Ells Howes, 2003, 670).

What is at the essence of such authors' attempts to reassess the theoretical foundations on international cooperation / international integration, is the insight that, perhaps, autonomy does no longer function as the sole fundamental feature determining a state's interest / a state's foreign policy. To Ells Howes autonomy is no longer key in determining state (executive behaviour).

“Empirical research fails to support the assumption that organisational independence [autonomy] is a primary consideration in the decision to establish or forego internorganisational relations. With respect to the ability to meet internal demands, it is certainly the case that situating domestic institutions within international agreements or organisations constraints domestic governments. However, as theorists linking domestic and international politics painstakingly demonstrate, involvement in international organisation also enables states to meet internal demands. Which state behaviours are constrained and which are enabled varies according to the particular agreement or institution, but there is no reason to believe that constraints generally predominate over possibilities” (Ells Howes, 2003, 688).

When states choose to die, or executives voluntarily let go of their precious autonomy, they might do so for other reasons than besides the benefit of their affected societies. Perhaps one can even suspect, as Koenig-Archibugi did, that governments to collude with other governments against their own societies (Koenig-Archibugi, 2004). Intelligence studies of the kind proposed in this review appear very suitable to test the robustness of such 'speculations'. What sounds simplistic seems nonetheless the golden rule: There is no such thing like a free lunch – international cooperation is likely to enable / strengthen the power position of executive governments. What is needed therefore would be a new reading of the national interest, perhaps Wendt's social theory could be of interest in this regard.

Much more could also be written about the national (executive) interest in intelligence cooperation and to what degree this is compatible with the assumptions proffered by conventional game theory.

Has the review kept its promise? Partially, it did. Not only did it demonstrate the familiarity with the key concepts necessary to study intelligence cooperation and accountability. It has also discussed possible approaches to make sense of this

jungle. Remaining irregularities, ambivalent research questions, it is hoped, will be gradually overcome when the author turns to methodology proper.

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