

CHAPTER XI

TRANSPARENCY

Turning now to transparency – the essential guarantor of accountability – in the conduct of non-military security-sector organisations' affairs, our commentary is divided into three parts: first, observations on domestic practice in general; secondly, remarks on publications; and, thirdly, brief words on international obligations and constraints.

Domestic dimensions

In *Bulgaria* a definite 'secrecy culture' prevails; and there has been no pressure from opposition parties, the public or the media to make oversight of police forces, security services and intelligence agencies more effective and their business more transparent. Issues like the budget, the number of staff, and the priorities of the services are rarely discussed in public, thus preserving their opacity. Budgets are included in the total budget of the supervising ministries, so separate information is not available. There is no requirement for annual or other periodic reports by organisations to the parliamentary Internal Security Committee. Nor is the committee obliged to publish the results of its oversight activities. In fact, there is very little the public gets to know about the activities of the committee.

In *France* transparency is simply 'not an issue': apparently nobody asks questions about it. The services examined do communicate with the outside world, but not because of any pressure to be transparent. There are no constitutional or statutory obligations to practise openness. That said, the internet is being used increasingly by different services to disseminate information and documentation, at their own initiative. Moreover, elected representatives at least can find things out if they want to. Thus the police are not obliged to volunteer information to parliament (except for annual budgetary submissions), but the forces cannot refuse to answer a deputy's request for information and the elected chamber can always create an inquiry commission to probe a particular issue.

In *Italy* a lot of relevant information is available to the public and the media – on the websites of the Ministries of Interior and Defence. Here parliamentarians and public can find material on, among other things, the general guidelines governing specific operations. They are also provided with basic statistical information: time-series data on the nature of main crimes committed, the prison population, the nationality of convicted offenders, and so on.

In *Poland* the parliamentary committees receive data on the organisational structure of the law enforcement bodies and intelligence agencies. The public has access only to such data about the police. Information about the budget of individual services and agencies can be obtained from general categories of the Budget Law, with details available to members of competent bodies such as the Budget and Finance Committees.

Categorising *Sweden* under this heading is problematical. On the one hand the country has a well-earned reputation for transparency, for example in terms of the availability of official material to parliamentary committees (as befits a nation that is a stable democracy where the rule of law is secured, with low corruption and a generally good respect for human rights). On the other hand, in the field of intelligence and policing, this is probably one of the most closed countries among the western democracies. The official budget is publicly known as it is specified in the annual bill on the budget submitted to parliament, but no details are given (only the total costs of the services). On all other matters, though, information often emerges first in the media or the work of academics, only to appear later in the outcome of official investigations. Our national correspondent notes that the acronym which best describes the Swedish ‘model’ in our area of interest is COPS: Claim Openness, Practise Secrecy.

In the *United Kingdom*, apart from material called for by the Intelligence Services Committee, none of the agencies is obliged to make available any information to the legislature, and would refuse to do so unless ordered to by the responsible minister. There is no statutory obligation to inform; and, in the absence of a positive duty to supply detailed facts and figures, they are withheld. What is publicly available is the authorities’ sanitised material: the Cabinet Office produces a document called ‘National Intelligence Machinery’ that gives a broad picture of the intelligence agencies (and their overall budgets), the Security Service (MI5) produces a booklet about itself, revised every four years.

In the *United States* the Intelligence Oversight Act of 1980 stipulates that the Congress has the same right to classified national security information as the executive, both because it needs the information to perform its constitutional responsibilities of legislating and overseeing the executive and because the Constitution distributes shared responsibilities to the Congress and the President for decision-making on national security and foreign policy matters. This view is reflected in the House and Senate rules governing the intelligence committees. There is a procedure whereby, after giving the President an opportunity to register his disagreement and state his views, the House or the Senate as a whole may vote to declassify and publicly release classified information. In practice, the Congress and the President are usually able to reach agreement on disclosures.

Domestic publications

A noteworthy feature of the foregoing paragraphs is that, where police forces, security services and intelligence agencies are concerned, elected representatives' (and the public's) *right to know* about the conduct of government business is a notion to which many states pay little more than lip-service. Even the one or two that do more than this make getting access to facts and figures something of an obstacle course and offer few insights into decision-making processes – as opposed to policy, financial and operational outcomes – invoking stringent *need to know* restrictions wherever they think they can. Where a real 'secrecy culture' prevails, of course, such restrictions are so pervasive that they render the affairs of internal security and intelligence organs virtually opaque. These characteristics show up starkly when one examines what official publications states issue and what sort of public information effort they mount.

Thus it is no surprise to learn that in *Bulgaria* there is no practice of issuing regular policy statements or releasing detailed financial data. Nor do the various services produce comprehensive reports. The media are informed about important cases; and the Ministry of Interior issues regular press releases describing crime incidents or offering summary statistics. In a phrase, the organisations do public relations (PR) but not public information.

In *France* there is no obligation to publish information about the police regularly (except for financial matters). However, the police and

gendarmerie issue crime statistics, publish research journals and put out PR material. Practice in *Italy* has been touched on in the preceding section. Basic information – but only basic information – is published electronically (on the law enforcement agencies' and government departments' websites). On the Italian government's site there is a section dedicated to the intelligence agencies. It contains material on their organisation and on the legislation and other provisions underpinning intelligence policy.

In *Poland* reports on security-sector organisations' activity may appear occasionally but are not published on a regular basis. The police and the frontier guard make quite a lot of statistical data available. The intelligence services do not publish their figures. In *Sweden* all services publish regular reports of activities. That from the Security Police, however, is very brief and lacking in substance. The exception is the section on the vetting system.

There are only a few relevant publications in the *United Kingdom*. There is an annual report by the parliamentary Intelligence Services Committee, published in redacted form. Apart from periodic revisions of the 'National Intelligence Machinery' text and MI5's handbook about itself, there is nothing else. There is not much more in the *United States*. The President and the Director of Central Intelligence keep the relevant Congressional committees fully informed of all current intelligence activities and possible future operations. The Director of Central Intelligence should also, in most cases, inform the intelligence committees in advance of any contemplated covert action. In practice, classified information may be made available more readily on some subjects than others. However, although the committees issue reports, much material does not get into the public domain.

International obligations

The final transparency-related topic that we asked our contributing authors to consider was whether international codes and conventions or international co-operation arrangements carried transparency obligations or, perhaps, raised obstacles to transparency. Our experts had very little to say on this. Whatever obligations and obstacles do arise clearly receive little attention in the seven states of our sample or simply do not amount to much. However, a couple of comments are in order.

First, countries clearly sign-up to international conventions without necessarily feeling duty bound to take them seriously. Failure to incorporate politically-binding obligations in domestic law is one manifestation of this attitude. Flagrant or careless disregard is another. Among 'our' seven states, *Bulgaria* and *Poland* appear to represent cases where the first applies; in at least one signal instance *Sweden* clearly put itself in the second category (the Leander affair), as did the *United Kingdom* (over the set-up of the pre-2002 Police Complaints Authority).

Secondly, there do appear to be circumstances where international co-operation – among both law enforcement bodies and intelligence agencies – might be inimical to domestic transparency arrangements. Information-sharing in EUROPOL is an example. Collaborative intelligence operations like Echelon are another. It is also generally supposed that information which might be released if relating to domestic policing (for instance) can be, and often is, withheld when other national forces and/or extra-territorial operations are involved.