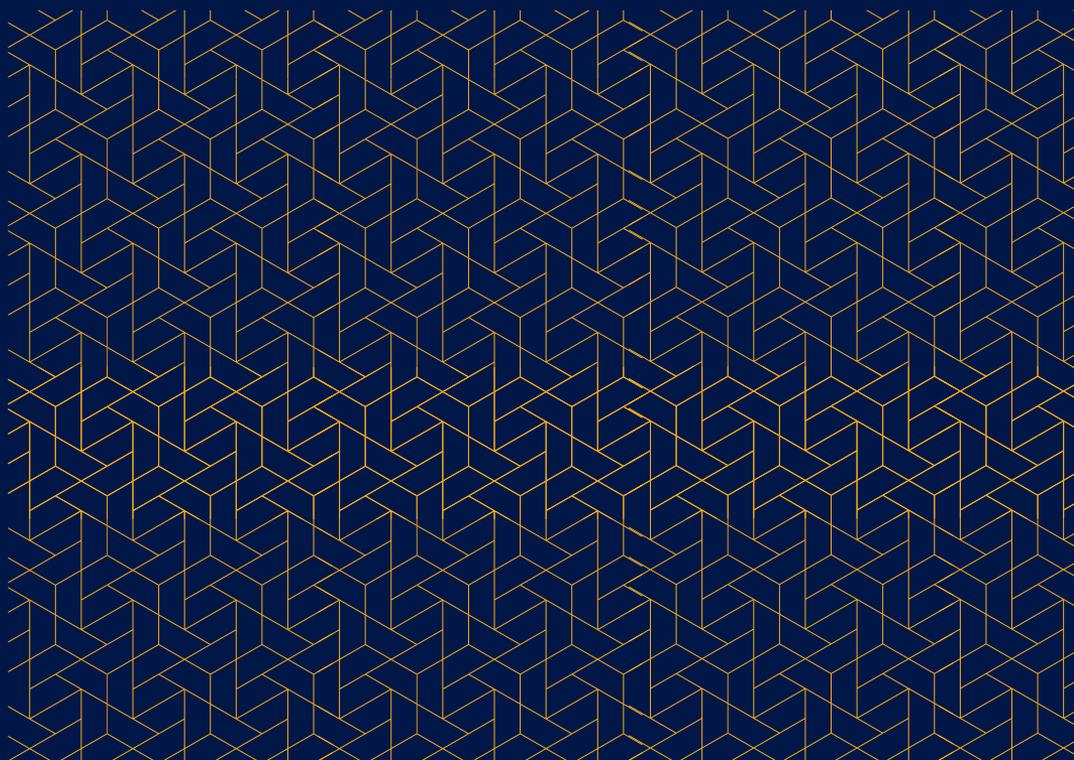


THEMATIC BRIEF

**Rethinking
Engagement
Between Intelligence
Services and Civil
Society**



About this thematic brief

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Note

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Sector Governance

RETHINKING ENGAGEMENT BETWEEN INTELLIGENCE SERVICES AND CIVIL SOCIETY

Introduction

In recent years, the concept of democratic oversight has been extended to include the role played by civil society in overseeing the security sector. Despite this, national security and in particular, the intelligence community, are generally viewed as within the exclusive domain of the executive. Where civil society plays a role in overseeing the intelligence sector, it generally does so through traditional means of public oversight, such as advocacy. While underscoring the importance of such strategies, this Thematic Brief suggests that under certain conditions they may be complimented by other approaches. It details the conditions under which the interests of intelligence services and civil society may coincide and presents several strategies for intelligence services undergoing reform processes to engage with civil society. Such dialogue can have many benefits: from improving the quality of intelligence work to identifying ways to enhance the oversight and management of intelligence activity. It is nevertheless important to stress that in general the roles of civil society and intelligence services should be strictly separated to ensure the independence of the former, and that only under certain conditions should intelligence services consider engaging civil society.

The Thematic brief is composed of three parts. First, it explains *raison d'être* for dialogue between civil society and intelligence community. Second, the paper focuses on contextual factors impacting the relations between civil society and intelligence services, and details the conditions under which dialogue between intelligence services and civil society may be considered. Finally, it presents some strategies intelligence services may pursue in order to foster dialogue with civil society.

1. Raison d'être for dialogue between civil society and the intelligence community

More specifically, dialogue between civil society and the intelligence community can:

- **Avoid politicization:** Dialogue limits activities of executive branch that may lead to the politicization of the intelligence services and misuse for its own political ends. Policymakers may neglect intelligence products that do not confirm the political masters' agenda and the engagement of civil society can reinforce objectivity versus policy influence and persuasion.
- **Enhance awareness on the security needs of civil society:** Civil society possess technical expertise that intelligence services rarely draw upon. Specialized civil society organizations (CSOs), often composed of former practitioners, can contribute to analyzing national security threats, and formulate proposals responding to the security needs and challenges of society. They can analyze legal and institutional frameworks governing the activity of intelligence services, in particular regarding information classification and oversight.
- **Increase legitimacy of and trust in intelligence services:** The establishment of platforms for dialogue between civil society and the intelligence community can enhance the legitimacy and credibility of latter. CSOs can play an important role in promoting societal awareness and understanding of the role that intelligence services play in ensuring national security. In particular, specialized CSOs can contribute to the development of strategic communication policies which ensure that intelligence services effectively communicate the nature of their work to the public.
- **Facilitate professionalism and integrity of intelligence services:** CSOs dealing with ethics and security sector management can contribute their expertise to develop ethics frameworks for intelligence services, in particular codes of ethics and conduct.
- **Provide a platform to deal with historic grievances:** In many transition states, intelligence services must confront a past characterized by a confrontational relationship with society. In some cases, intelligence services stand accused of committing historic injustices, and are viewed with suspicion by civil society. Providing platforms for mutual dialogue with civil society can help overcome such historic grievances and can facilitate communication with civil society on the nature and progress of intelligence reform processes.

2. Contextual factors

The context in which intelligence services operates varies from the country to country, as does the role of civil society. As such, the ability of intelligence to engage with CSOs depends on four factors.

Contextual Factors	Explanation	What to Consider
Legal Basis Governing Intelligence Services	Security sector legislation often establishes means through which dialogue with the public can be established. In cases where legislation does not contain such norms or mechanisms, engagement between civil society and the intelligence community is normally conducted on an ad-hoc basis.	Does legislation provide mechanisms to enable systematic engagement between civil society and the intelligence community? These could include, for example, Public Councils composed of civil society experts specialising in intelligence issues? If not, does legislation provide for the establishment of expert oversight bodies?
Legal Basis of Access to (Classified) Information	Under law, information may be classified or considered as information of public importance, and therefore available for consumption by civil society.	Does legislation on state secrets/classified information provide clear guidelines and procedures for declassifying information? Does law provide clear, transparent and accessible procedures for accessing information of public importance?
Political instrumentalization	Organizations may represent particular political interests or promote hidden agendas	Do potential partners remain neutral and serve communities?

Overlapping interests	In general, civil society and intelligence services should remain strictly separate. In transition states, intelligence services should only consider engaging with civil society under specific conditions. Otherwise, the independence of the latter may be jeopardized.	Are intelligence services committed to reform? Are the interests and motivations behind reform processes sincere? In such situations, intelligence services should involve civil society in reform processes, through for example, drawing on the expertise of academic institutions and specialized civil society organizations. In the absence of such reform processes, intelligence services should still seek to engage civil society, but in a way that does not jeopardize their independence. This might entail public roundtables and discussions to discuss common security challenges and concerns of civil society, as well as the provision of information on the activities of intelligence services.
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3. Forms of dialogue between intelligence community and civil society

Traditionally, civil society has exercised oversight over the security sector, including the intelligence sector, through several methods. These include: research and information, which constitutes one of the most important means through which the legal basis and conduct of intelligence services can be scrutinised; awareness raising, which is linked to provision of information and is essential for educating citizens about their rights vis-à-vis the security sector and about how an accountable and responsive intelligence service should work; and others, including advocacy, training, and monitoring. The above-mentioned strategies are critical for ensuring effective public oversight of the security sector. Nevertheless, they are generally initiated by civil society, rather than intelligence services. This can act to absolve the latter of the need to establish dialogue with civil society and prevent it from drawing upon the expertise that civil society can offer. While such approaches have merit, they are limited in their ability to facilitate dialogue between civil society and intelligence services.

Several strategies exist which could be leveraged by intelligence services to enhance dialogue with civil society. The core aim of such approaches is to move civil society-intelligence sector relations beyond traditional forms of oversight, towards enhanced dialogue. In combination with traditional forms of oversight, such approaches can expose intelligence services to the untapped potential of civil society; can enhance public trust, and act as a conflict prevention mechanism by providing a platform to address historic grievances and communicate intelligence reform processes. This approach attempts to deconstruct the perception of civil society and intelligence services as ‘adversaries’ by considering contexts in which their shared goals and common purposes align. The below details several strategies which could be employed, or otherwise advocated for, by intelligence services. Where available, case studies are also provided.

• **Civilian Oversight Councils**

Some countries have considered creating civil oversight bodies, composed of civil society representatives who are mandated under law to oversee intelligence services. As part of their mandate, these bodies must also establish direct channels of communication with intelligence services. Two examples of such institutions exist – the Croatian Council for Civilian Oversight of the Security and Intelligence Services and the North Macedonian Council of Civilian Supervision. In both cases, these bodies are not fully independent, being accountable to the parliament. If established as an independent body, such an institution would be free of political party affiliations, and thus more objective in their analysis of and interaction with intelligence services. This could potentially serve a useful means through which dialogue and mutual trust between civil society and intelligence services could be improved.

While the establishment of a civilian oversight council would require a legislative amendment(s), an alternative approach might involve the inclusion of civil society representatives in expert oversight bodies. Within the Euro-Atlantic sphere, such bodies are widespread,¹ but typically include individuals with legal and judicial expertise (former judges, prosecutors, politicians, senior law-enforcement official). Expanding this requirement to include representatives of specialized civil society organisations, as in the case of the Croatian Council for Civilian Oversight, would enable civil society engagement without the need for legislative amendments.

1 These include, for example: Belgium – Standing Intelligence Agencies Review Committee; Netherlands – Review Committee on the Intelligence and Security Services; Portugal – Council for the Oversight of the Intelligence System of the Portuguese Republic; and Sweden – The Commission on Security and Integrity Protection

Case Study: Croatian Civilian Oversight Council

The Croatian 2006 Security-Intelligence System Acts provides for three oversight bodies: a standing parliamentary oversight committee, an administrative oversight body and the Civilian Oversight Council (COC). The COC's mandate is two-fold: assure the legality of intelligence activities and the legitimate use of special powers. The COC consists of seven members chosen to serve a four-year term by the parliament after an open selection process. It is accountable to the parliament, staffed by former intelligence personnel, as well as civil society representatives, and its work is overseen by the parliament's intelligence oversight committee.

The Council played an important role in several high-profile cases of abuse of special powers. On two occasions in 2004 and 2007, separate court proceedings filed by victims of abuse acknowledged the valuable contribution of the Council in establishing the facts and the court's rulings.

The Civilian Oversight Council has since taken on a more complementary role to that of the parliament. It mainly investigates individual complaints from citizens, with high-profile cases generally addressed by the parliamentary oversight committee. The COC has the authority to review any documents and interview intelligence officials.

• Roundtable Discussions

Intelligence services may consider convening roundtable discussions with civil society organizations. While in practice this remains rare, it provides a unique opportunity to build trust between intelligence officials and civil society. It can help ensure that civil society understands the broader issues at stake and is able to consider the perspective of intelligence agencies. In Croatia, the intelligence service introduced annual roundtable discussions between senior intelligence officials and civil society groups. The initiative has been viewed positively by both sides, and has been argued to result in greater transparency on the part of intelligence services, with an increase in the number of publicly released documents and declassified information.

Alternatively, in the United States, the Office of Civil Liberties, Privacy and Transparency convenes discussions with civil society following disclosures of newly declassified documents by the Director of National Intelligence. This provides context to the documentation, and allows for the civil society to ask related questions. In addition, such discussions provide an opportunity to address concerns related

to surveillance and the use of other intrusive methods by intelligence services, and provide civil society with an opportunity to present their perspective on the issues. A certain level of engagement can also be observed in France, with its intelligence officials present during the “La Fabrique Défense” event, to “inform, discuss and debate” the security issues with wider audience.

• **Provision of Information by Intelligence Services**

Publishing declassified annual reports on the activities of intelligence service has become a widespread practice to facilitate information sharing with civil society. For example, the Latvian Constitution Protection Bureau publishes annual reports on its activities, while Croatian agency permitted visits to their premises by students, civil society groups and international delegations, such as members of parliamentary oversight committees. Annual reports are also an established practice in France, Slovakia and the Czech Republic, amongst others.

In addition to this, clear and transparent procedures for the declassification of information are important for facilitating the engagement of civil society with intelligence matters. For example, the French intelligence community has consulted several historians and journalists in managing the progressive declassification of their archive.

• **Expert Reports and Recommendations by CSOs**

Civil society organizations frequently focus of specific topics and areas of public concern such as civil liberties, privacy, or online surveillance (interception of personal communication). Their analyses, reports and recommendations can help intelligence agencies to improve their institutional functioning and operations.

• **Establishing Relationship with Academic Communities**

Another avenue to facilitate engagement between intelligence services and civil society is fostering relations with the academic community. Such an approach may include the provision of internships to university students. For example, the Czech Intelligence service (BIS - Bezpečnostní Informační Služba) has since 2017 offered three rounds of internship positions for university students. In 2018, the BIS also hosted a lecture in cooperation with the Plzeň law faculty on the topic of ‘Legal Status and Functioning of the BIS within the Czech Security System.’

Another example includes that of the State Security Department in the Republic of Lithuania, which has initiated a joint project with Vilnius University entitled “Intelligence officer for a Week”. 60 students were briefed about the challenges of Lithuanian national security and the specifics of intelligence activities. Another example concerns the

French Intelligence Agency, which has on various occasions organized high-school cryptology rewarded challenges.

- **Hosting of -and Participation in Public events**

Intelligence services can increase public awareness of their work by hosting or participating in public events. For example, the State Security Department of the Republic of Lithuania held various public events to mark the 100th anniversary of the “restoration of statehood”. These included events celebrating important historical figures in the Lithuanian intelligence community, and the development of a documentary entitled “Shadow Front”.

The French intelligence community also engages in public outreach, for example through providing interviews to accredited journalists and holding public opinion polls. In the United States, officials of The Defense Intelligence Agency regularly report on their activities..

- **Establishing Online platforms**

One of the major obstacles to systematic engagement between civil society and intelligence services is the absence of a platform through which regular communication can be maintained. Currently, it remains common practice for civil society organisations to publish reports on intelligence agencies, but without any platform for the latter to follow up on identified issues and concerns. Establishing a digital platform through which intelligence services and civil society could communicate would foster better relations and mutual understanding. Over time, such digital platforms could lead to the formation of community of practice among CSO representatives on intelligence matters, with whom intelligence services could discuss related issues.

- **Innovative Approaches to Information Sharing**

Blockchain technology is the foundation for a new type of online communication which allows digital information to be distributed but not copied. Information held on a blockchain exists as a shared database with no control by a single entity. Intelligence agencies have in the last few years begun exploring how blockchain technology may contribute to secure data storage. Distributed ledgers allow for sharing of databases with a network of actors across multiple sites, geographies and institutions where all the participants in a network have their own identical copy of the ledger, but any change to the ledger will be reflected on all the copies. By connecting through the secure and neutral platform, the blockchain opens the door to fast and direct interaction between intelligence services and CSOs. The information and results become fully transparent and accessible to the participants. All users will become owners of information and decentralizing file storage on the internet brings clear benefits. The types of assets stored therein can vary and the blockchain technology

can be used to incorporate rules, smart contact, digital signatures, or other tools. The use of this technology by intelligence services in their relations with civil society could provide a secure way for the two parties to cooperate and share information.

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