

**Intelligence and Foreign Policy**  
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**I. Introduction**

Decisions of the Government involving their political and military commitment with regard to national or international issues such as

- threats to the internal or external security,
- the maintenance of peace and
- challenges by non-state based international organizations that means by terrorists organizations to the peaceful international cooperation of states and nations and to peace and security within national boundaries

put at risk the credibility of the Government in the eyes of the citizens, the international prestige of the Government and the responsibility of the Government for the life of its soldiers.

The engagement of German military units in Afghanistan has to be re-evaluated in regular intervals. At the latest, on the occasion of the commitment of German forces in support of the fragile process towards peace, democracy and the respect for Human Rights on the Balkans some years ago - the political elite in Germany abandoned its prejudicial attitudes and distance towards the intelligence organisations of the Federal Republic - more by way of necessity than by choice. This change of attitude constitutes an important step towards normality and a business like approach of the Government of the Federal Republic of Germany towards its intelligence organisations and towards the establishment of a genuine freedom of action on the national and the national stage very much needed in order to meet the dangers that the German foreign and security policy continues to face. This development constitutes a major if not the most important change that occurred in recent years regarding the decision making process on issues of foreign policy in comparison with the situation of the „old“ Federal Republic of Germany.<sup>1</sup> The German political elite of the „old“ Federal Republic of Germany took with satisfaction shortcomings of the German intelligence structures in order to justify its „distance“ from these German institutions, which were kept away from Bonn as far as possible (Pullach/Munich and Cologne). It was customary to characterise the Federal German Intelligence Organisation as an „outpost“ of the US American intelligence organisations - in view of the fact that the US institutions had helped to

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<sup>1</sup> On November 13, 2001, the City Court in Berlin sentenced Libyan citizens to prison terms who were charged of having committed attacks with explosives on the Discotheque „La Belle“, a place frequented by US soldiers. The Court held the Libyan Intelligence Organisation responsible for the attack. Shortly after the attack in April 1986, the Federal German Foreign Intelligence Agency presented to the German Government Libyan messages gathered by Signal Intelligence and deciphered by the German intelligence organization proofing the responsibility of Libyan state structures for the attack. However, the German Government was only willing to state publicly, „Libyan responsibility could not be excluded.“ However the Government did not refer publicly to the Intelligence Organisation as source of its knowledge. The USA considered the Libyan responsibility as proven and undertook retaliatory action by military means. The City Court in Berlin confirmed that responsibility of Libyan state structures for the attacks on the US Discothèque in Berlin. A similar sceptical attitude as shown in the case of the Libyan attack on the discothèque in 1986 was adopted by the German Government in response to the reports of the Federal Intelligence Service on the role of German industrial companies in the establishment of a Libyan Chemical Weapons factory in 1988.

establish the pre-runner of the „Bundsnachrichtendienst“ in 1947, called „Organization Gehlen“<sup>2</sup>. With a great deal of satisfaction governmental and media representatives registered - even after the dissolution of the GDR - the alleged „poor performance“ of the “BND” (Bundesnachrichtendienst) in comparison with the „success stories“ of the GDR Foreign Intelligence Organisation under the command of “famous” Markus Wolf.

One of the close collaborators of the Federal Chancellor suggested to the President of the Federal Intelligence not to take part in a conference organised in New York by organisations from the USA, Israel and Germany in the late eighties. He argued that - after all - the „Bundesnachrichtendienst“ was considered to be a successor-organisation of the Hitler-Regime. Irrespective of the unacceptability of such an association, the close collaborator of the Federal Chancellor had not realised that there is tradition of long standing of close cooperation that had developed over the years between the German and the Israel Intelligence organisations over a long period of time

After the establishment of the German unity, the Federal Chancellor noted publicly that he had no prior knowledge of the critical situation of the GDR economy. This statement was incorrect. The critical situation of the GDR economy was well known in the Federal Republic of Germany based on the Federal Republic’s own assessment and based on the analysis of the situation in the GDR presented by the German Foreign Intelligence. This assessment had also been taken into consideration when German banks provided a credit of one billion DM (German Mark) to the GDR (German Democratic Republic), guaranteed by the Federal Government.

The poor economic performance of the new Federal States however was caused in the end not by the poor performance in the past but also as a result of the break down of the Soviet Union that used to be the most important trading partner of the GDR. In addition, the industrial capacity of the „old“ Federal Republic of Germany could supply whatever was needed to the new "Bundesländer", without even undertaking major investments for the expansion of the capacities in order to meet the additional demand of the market.

Assessing the situation in the new "Bundesländer", the Federal Government did not take into account the complex situation of the GDR economy.

### *Intelligence Organisation during the Cold War*

In spite of its reserved ness towards the intelligence family, the Federal Government was also dependent on the intelligence input by the national German internal and external agencies. Together with its Western Allies the country was exposed to the concentration of Soviet military power and that of its military alliance. By way of intelligence operations it was tried - with remarkable success - to acquire samples of modern Soviet weapons and equipment from Warsaw Pact countries. In particular it was the goal of German intelligence agency to obtain access to Soviet military and strategic planning, deployment plans and the internal mood of the Soviet Army, as well as access to specific equipment in the communication fields and of political goals as well as ideological orientation.

In view of the fundamental character of the disagreements and confrontation of opposing interests and of enormous military forces in divided Europe, the intelligence community was charged also with the task of helping to prevent a war by miscalculation and misunderstanding. It was their task to establish beyond doubt not only the military capabilities, but also and foremost the intentions of the opponent - admittedly a thorny task. -

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<sup>2</sup> Gehlen, Reinhard, DER DIENST 1942-1971, Mainz/Wiesbaden 1971,  
Reese, Ellen, General Reinhard Gehlen -The CIA Connection, Fairfax/Va, 1990

In the absence in most instances of direct intelligence links into the central decision making centres this task could only be accomplished by exploiting effectively knowledge acquired from within the general social, economic and communication system of the opponent. Such detailed knowledge would allow drawing conclusions regarding the intentions of the political command centre and regarding indications about changes in these intentions. This system was called the “Early Warning System”; it was brought to perfection within the NATO framework, heavily relying on national intelligence inputs.

## **II. A New Understanding of the Role of Intelligence Organisations in Germany**

Today the former negative relationship between the political class in Bonn and the intelligence community can be considered to be part of the past. The unsatisfactory situation that prevailed in the past can be noted with greater clarity today than ever before. After the end of the Cold War, Germany acts not only within the framework of an Alliance focussed on Europe and on defence against an aggression against the homelands or the member states of the Alliance but also within the framework of military operations sanctioned by the United Nations and as part of joint military operations of the European and trans-Atlantic partners, including third countries such as the Russian Federation, the Ukraine and of other European countries. In such circumstances it is essential to provide up to date assessment of the situation on the tactical, operational and strategic level in areas where Western governments pursue a policy of conflict prevention, post conflict rehabilitation and long term peace- and nation-building. Today Germany is involved substantially as an actor on various global and regional stages. Foreign Intelligence has to play an important role in such situations. They accomplish their tasks on the basis of their own operational capacities, but also rely on international inputs from partner organisations for their assessment processes. Therefore the reports made available to the government are rather reliable.

However, the efficiency of the Bundesnachrichtendienst was substantially reduced in the course of the nineties due to budgetary cuts of an unheard proportion. This development affected negatively the quality of the contribution made by the German Intelligence Community to the national and the international decision making process as well as the readiness of other intelligence organisations around the world to cooperate with the German intelligence family. In the context of the „Security Pact“ adopted by the Federal Government in order to improve the capacities in combating international terrorism, some improvements were brought about also for the Federal Intelligence Service (250 posts).

The participation of Germany in international crisis management, which is rather risky in some areas, has given the Intelligence community in Germany a higher profile within the government and the general public than enjoyed by them at any given time after World War II. It appears that - as part of new pragmatism we are experiencing - in comparison with the Kohl-area - a sea change has taken place in the acceptability of the role of Intelligence in Germany by the political elite and by the public.

## **III. Intelligence and Foreign Policy**

### **Mandate - Implementation - Structures - Information - Analyse - Consultation**

#### *The Legal Situation*

The Law on the Federal Intelligence Agency entered into force on December 20, 1990. That means the Bundesnachrichtendienst existed more than 35 years as an administrative entity under the control of the Federal Chancery but without a legal basis established by law. It had been established by the German Government in 1956 on the basis of the „Organisation Gehlen“ that had been operating since 1947 under US Control as an intelligence organisation focussed on Eastern and Central Europe. The new law stated: „The *Bundesnachrichtendienst* collects information about the outside world, which are importance for the Foreign and Security Policy of the Federal Republic of Germany, and evaluates this information.“<sup>3</sup>. The Bundesnachrichtendienst (Federal Intelligence Service) is supervised by the Federal Chancellor's Office and is entitled - like the Bundesamt für Verfassungsschutz“ (BfV - Federal Office für the Protection of the Constitution) and the „Militärische Abschirmdienst (MAD, Bundeswehr Counterespionage Office) - to use secret means (nachrichtendienstliche Mittel) for the gathering of information, for instance signal intelligence and clandestine informers. However, the collection of information by signal intelligence is regulated by law. The Parliamentary Authorization- and Control-Body (G 10 Body) was established by the law on the Restriction of the Secrecy of Postal letters and Communication dated August 13, 1968. It was revised on October 28, 1994. The law restricts temporarily - under certain circumstances - the secrecy of postal letters and communication according to Article 10 of the Federal Basis Law<sup>4</sup>.

The rather important legal framework for the intelligence services was established by way of the “Law for the Protection of Personal Data” on December 20, 1990. This law had become mandatory as a consequence of the decision of the Constitutional Court on December 15, 1983 determining that collection of personal data by state institutions and organs would be allowed only on the basis of a special law.

For quite some time in Germany and elsewhere in Europe it was felt not to be advisable to recognise within a law on Intelligence Services that the Government authorized the use of clandestine methods for the purpose of collecting confidential or secret material from within other governments. However, since a couple of years international agreements on disarmament and arms control legitimised the presentation of reports based on the results of national intelligence. More and more the use of intelligence work methods is considered compatible with the goals and ethics of foreign policy. Therefore, also democratic states in Europe have adopted legislation on intelligence organizations. The USA had done so already in 1947 with the legislation on the establishment of the Central Intelligence Agency (CIA). Since a number of years pressure mounted from within parliamentary institutions demanding transparency of Intelligence structures and operations in order to ensure meaningful parliamentary control and, the respect for the rules of protection of personal data also by the Intelligence Organizations. Such developments have contributed significantly to the changes in attitude regarding legislation on intelligence.

Nevertheless, in all states support of foreign meaning outside intelligence operations in the country remains illegal and is sued in court - as it was done in the past.

### *Mandate and its implementation*

<sup>3</sup> Bundesgesetzblatt (Federal Law Bulletin) BGBl 1990, Teil I, S. 2979-2981, hier §1 (2)

<sup>4</sup> BGBl 1968 Teil I, WS 949-952; 1978 S. 1546f., Teil 1989, Teil I, S.1049f., 1992, S. 997f., 1992, Teil I, S. 3186-3198

On the domestic stage, Government and Prosecutors need information about terrorist and anti-constitutional activities conducted under cover and therefore beyond reach for the public and the police. Such activities of terrorist groups could involve border-crossing efforts to seek access to information on nuclear, chemical and biological technology. On the domestic stage juridical and the executive structures dispose of the investigative means of the juridical structures. That is not the case with regard to the threat from beyond the boundaries.

Among states cooperating within an Alliance or within the European Union there is no need for border crossing clandestine operations of intelligence organisations. However in other regions where - in case of a conflict - the Federal Government might get involved politically, financially, militarily - as a member of the Alliance or as member of the United Nations as well as in the case of monitoring international arms control agreements there is a sizable list of countries and issues on which the government, in particular the armed forces and the governmental institutions involved in foreign policy matters wish to obtain up-to-date information and in depth analysis. The Bundesnachrichtendienst engages its capacities where reliable and substantive information on the situation of a country or specific information on particular issues is accessible neither through diplomatic reporting nor by way of the media.

The "Bundesnachrichtendienst" is different in one important aspect from most other intelligence structures around the world: It provides consolidated analysis of a country or an issue of special interest for the government on the basis of all information available - through the government, media, research and through the Intelligence service as such. The Bundesnachrichtendienst covers all areas of international significance - let it be military in nature, diplomatic, economic or technical or be related to issues such as whitewashing of money or illegal trafficking. In many countries military intelligence is organized within the structure of the Ministry of Defence that means separately from the Foreign Intelligence Agency. The separation of intelligence structures in military and non-military intelligence and associated with different state structures has been the cause of failure and of shortcomings many times. This separation causes tension and inefficiencies.

*From a „necessary evil“ to an „indispensable partnership“*

The findings of the "Bundesnachrichtendienst" reach the addressees within government and armed forces by way of electronic data processing and by way of expert meetings on issues of actual interest. Contrary to the past, that means at a time when prejudice on the part of the officials within the governmental structures prevented very often meaningful exchanges on issues at hand, today there is in existence a broad network of effective cooperation between the governmental structures and the intelligence organisations. Gradually the departments of the "Bundesnachrichtendienst" are transferred to Berlin - a collocation will be brought about that was disputed through decades within and between government and Intelligence organizations. The traditional written report transmitted by special messenger has been replaced by electronic letter with up-to-date maps and charts attached. The capacity of the government to organise around-the-clock crisis management has increased substantially - in comparison with the situation during the cold war. Expert talks on current affairs and issues have become daily practice. The reports reach their point of destination - members of the government, state secretaries, military situation centres at the national and the international stage within very short time. There are - without any doubt - shortcomings and deficiencies - due to difficulties of obtaining first class material and due to budgetary constraints. These limitations have reached a critical dimension. As a result of close cooperation with friendly services around the world, capabilities and findings of partner services are used as well in the reporting to the government - to the advantage of the user of the material in the capitals of the

world. In the course of military operations of various allied countries under a joint command - for instance on the territory of the former Yugoslav Federation - requirements for up to-date tactical information had increased considerably. Such requirements do not only relate to information of military significance but also, and in particular in the present circumstances regarding information on political domestic developments in regions affected by unrest and civil war situations.

The profile of requirements for intelligence based on up to-date and in-depth material and analysis is established in regular intervals by a government committee chaired by the Federal Chancery with all relevant and interested departments of government partaking. This coordination leads to detailed requirements established in talks among experts from the governmental structures and the BND. Also, the assessment of the reports submitted by the intelligence service is done by this committee under the chairmanship of the Federal Chancery.

Following the end of the Cold War intelligence capacities were reduced substantially - almost all over the world. Indeed, such capacities were no longer required in almost all questions related to the Cold War. New priorities were set, for instance requirements expanded with regard to the monitoring of the implementation of the international disarmament and arms control agreements, such as the implementation of the agreements on agreed levels of "Conventional Forces in Europe" (CFE). Increased interest was attached to border-crossing activities of international criminal structures - called Mafia. The events in New York on September 11, 2001 did not only activate intelligence efforts in this area of international cooperation but also in connection with military operations of the members of the international Anti-Terrorism-Coalition against the network of Osama bin Laden and Al Qaeda and against the Taliban-regime in Afghanistan that used to be supportive to the Al Qaeda-structures. This cooperation of course includes the support for the interim and now for the permanent government in Afghanistan under President Karzai in Kabul.

Great efforts had to be initiated in order to convince the ruling political groups in Berlin that the curtailing of expenditures for intelligence operations turned out to be wrong, and had to be reversed. More funds are needed, but also a continued effort to optimise the use of funds for the needs of today and tomorrow.

The operative part of the work of an Intelligence Structure is focussed in almost all circumstances on the efforts of getting access to classified information and material. It is of the essence today to improve and adjust collection of relevant information to the new requirements. The same adjustment is needed with regard to the analysis and evaluation capacities. Until now, material from intelligence orbiting systems is available only in limited quantities and not always within the short periods of time. Also in this area - the use of satellite based systems - international cooperation constitutes a necessity.

Only in very rare cases it is the task of intelligence services to implement operative tasks of the government.

#### **IV. Intelligence in a global communication world and their challengers**

The Federal Republic of Germany has at its disposal a Federal Intelligence Structure well suited to the needs of the country:

- On the basis of governmentally established requirements all human and all technically based operations are conducted under one administrative roof. That means, there is no such thing as unnecessary competition between several organisations. From time to time, the Armed Forces tried to set up a military intelligence separate from the all-embracing structure of Foreign Intelligence. Such aspirations and endeavours have to be discouraged.
  - The assessment of information gathered by operative activities is done by way of interdepartmental analysis. Specific interests of the governmental departments are integrated into the product. Such specific interests do not lead to competing assessments of competing intelligence organisations.
  - In order to ensure the continued application of the interdepartmental principle several steps have to be undertaken, in particular:
    - Intensification of international cooperation on issues related to the structures and participants of international terrorisms - similar to the methods developed during the Cold War to ensure timely „Early Warning“ in case of the preparation and the unleashing of a military offensive of Soviet forces against Western Europe
    - Development of an intelligence based assessment unit for the activities of the „Common European Foreign and Security Policy“
- Due to irresponsible budget cuts during recent years in recent years the BND runs the risk of losing its international standing in the cooperation with other strong intelligence structures. Only on the basis of a strong and efficient cooperation among friendly countries is it possible to optimise the collection of information and to secure the sharing of well-founded assessment and analysis - which benefits the consumer in the first instance - the Governments. Re-enforced efforts are needed in the fields of technical and satellite based intelligence, including extensive use of commercially run systems.
- Next to the menace posed by potentially aggressive states and nations - undoubtedly this menace is on the decline - the risk potential from non-state structures is on the rise. This threat is more difficult to face and to handle than the traditional threat of an aggressive nation. Large investments are needed. Germany is not in a position to meet the threat with the means available. Budgetary means cannot always be inserted into the Federal Chancery's budget but have to be incorporated into the budgets of interested ministries That used to be the case with the military component of the "Bundesnachrichtendienst" in the past. This practice can serve as a point of orientation for the handling of the issue of budget allocation for the "Bundesnachrichtendienst" under the heading of several Ministries.
- In view of the border crossing nature of terrorist organisations as well as of Mafia- and other criminal structures improved intra-national and international networking and co-operation is needed. Such new forms of cooperated are needed in order to gain the upper hand over the border-crossing criminal structures. The European network of national investigative police structures (EUROPOL) as well as the Common European Foreign and Security Policy (GASP/CEFSP) and the well established cooperation of intelligence structures within the North-Atlantic Treaty could be examined as cases of reference. Only in such a way it will be possible to bring about an effective „Early Warning System“ with regard of the new threat profile of border crossing non-state international terrorism. Such an “Early Warning System” seems to be a must in order to prevent aggressive acts such as

the attack of international terrorism on the Trade Centre in New York in September 2001 and for the eventual success of efforts to eliminate the existing and follow-up networks of international border crossing non-state based international terrorism.

- The transfer of the BND-headquarter and structures from Pullach to Berlin has to be accelerated. Only in such a way the BND can ensure closeness and quick reaction to the real requirements of the government structure

#### Literature:

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