



Intelligence Security Agency of BiH: Too Secret to be Accountable?*

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Secrecy vs. Accountability

One of the basic principles of democracy is accountability, which rests on the transparency of the work of public institutions. However there are areas in which transparency also has necessary limitations, e.g. when disclosure of certain information can endanger national security. Therefore, intelligence-security agencies – being public institutions themselves - have to find a balance between secrecy and openness. The most important reason why these agencies must be transparent is to avoid possible abuse by centers of power,¹ or from within the agency, but also in order to garner public support, which is crucial for the successful functioning of these agencies.

“... in modern democracies intelligence services require public support and need to earn public trust to be completely functional. Without such support and trust the services will not be able to obtain resources or recruit talented people and their judgments will be questioned by those who use the intelligence product.”²

Reaching a balance between secrecy and transparency is not an easy task but it can be achieved. Some of the ways in which this balance can be established is through publication of public reports, through cooperation with the media and civil society, and through unhindered revision. The record of the Intelligence Security Agency of BiH (OSA) in that regard shows that this Agency has not been successful in its transparency, nor, hence, its accountability.

The Public Report That the Public Has Not Yet Seen

One of the most obvious failures of the Agency is its failure to publish public reports. In the eight years of its existence OSA has not published a single public report. Even though this is prescribed by the law its officials have not undertaken this crucial element of the Agency’s transparency.

Director General of the Danish Security and Intelligence Service (PET), Jakob Scharf, in a foreword to the 2008 annual report, stated that “[p]reventing security threats is not a task PET can perform on its own. It is, therefore, an important goal for PET to involve Danish society as such in the protection of the values on which our society is based. The involvement of citizens requires openness and transparency on the part of PET in relation to the general public.”³

When it comes to the content of the report, of course it should not include details of the operative work of the Agency, as that could endanger the confidentiality of some of the information and perhaps compromise the security of the country. However, it should include general information that would make the public aware of the benefits of the Agency’s existence for society as a whole, and that would make the Agency more accessible regarding its cooperation with the public. One of the best examples of the preparation of such reports is the Danish Security and Intelligence Service. Its public reports offer an insight into its achievements, actions and observations across its field of work. The extent of the openness of this agency is also reflected in the fact that all its reports are published both in Danish and in English language.

Summary

Reform of intelligence was part of the robust approach that the international community took in the security sector in BiH. Despite the fact that the new legislation on the intelligence agency was of high quality, some of the most important provisions of the law on the agency were overlooked. A public report on its activities was never published, despite the fact that this was clearly prescribed by the law. Introduction of oversight and control of the agency was not taken seriously, which resulted in diminished accountability of the agency. This paper provides solutions for these shortcomings and offers a policy option that is based on improved coordination among bodies for oversight and control of the agency.

* This policy brief is based on the research conducted by the author. Complete policy study “Improving Accountability of the Intelligence-Security Agency of BiH” is available at www.soros.org.ba.

¹ One of the most recent examples is politicization of the US Central Intelligence Service prior to the invasion of Iraq. See Peter Gill, ‘Politicization of Intelligence: Lessons from the Invasion of Iraq’ in H. Born, L. K. Johnson i l. Leigh, *Who’s Watching the Spies?*, Washington D.C., Potomac Books, 2005.

² Arthur S. Hulnick, *Fixing the Spy Machine: Preparing American Intelligence for the Twenty-First Century* by, Westport-Connecticut, Greenwood Publishing Group Inc., 1999. p. 173 . See also DCAF, *Intelligence Practice and Democratic Oversight - A Practitioner’s View*, Geneva, July 2003, p. 63 where it is claimed that public debate on some of those issues results in improved professionalism of intelligence agencies.

³ Danish Security and Intelligence Service, “Annual Report 2006-2007”, available at http://www.pet.dk/upload/petannualreport_2006-2007.pdf Accessed on 8 November, 2011.

Danish Security Intelligence Service (PET)	General Intelligence and Security Service of the Netherlands (AIVD)	Canadian Security Intelligence Service (CSIS)
General strategy plan for PET	The risks of openness	Terrorist Financing and Financial Investigation
PET's collection and transfer of information	Domestic developments: threats from local networks neutralised	Espionage and Foreign Interference
Parliamentary supervision	The Moroccan community and radicalisation in the Netherlands	Immigration Screening
Oversight by The National Audit Office	Political and animal rights extremism	Foreign Operations and Cooperation
Surveillance assistance	Clandestine activities by foreign powers	Employee Recruitment
Threat assessments	Chemical and biological weapons	Domestic Cooperation
Potential targets for attack	Sensitive information and security	Foreign Operations and Cooperation
Danish terrorism cases	Developments in 2008	Improving Current Practices
Threats against public figures	Control and accountability	CSIS on the Internet
Sources and informants	Complaints	Community Involvement

Excerpts from public reports of Danish, Dutch and Canadian security-intelligence services

The Nonexistent Spokesman “Speaks” to the Public

OSA's lack of cooperation with the media and civil society represents another key obstacle to the Agency's accountability. The failure to be more open to the public hinders both media reporting and research on OSA undertaken by civil society organizations. One example of the way that the media are treated by OSA regards the proposal for an increase in allocations for salaries in the Agency of one million convertible marks. When asked by the media about this increase, the Office of the Inspector General answered: “For all requested information you can turn to our spokesman. Considering that we have no spokesman, you cannot obtain the information anyway.”⁴ Moreover, the Agency's web site has not been updated in more than six years, which leaves the public with no insight into the Agency.

Audited, But Only Partially

Another concern related to the legislation relevant for OSA is the conflict between the Law on the Audit of Institutions of BiH and the Law on Classified Data Protection. Even though the Law on auditing stipulates that auditors should

have access to any document in the property of any BiH institution, the Agency interprets the Law on Classified Data Protection in a way that prevents the Office from conducting a complete audit. When interviewed by the author of this paper, a spokeswoman of the Audit Office of Institutions of BiH said that their office carries out the audit of the Agency, but that due to the nature of this audit its details are not included in the reports published by their office, which is one of the reasons why it is not generally available. During the research for this paper it was found out that the Joint Committee of the BiH Parliament for Oversight of OSA is aware of the problem with this legislation.⁵ In order to solve the existing conflict i.e. to allow the Audit Office of Institutions of BiH to conduct complete, unhindered audit, the Committee has undertaken some activities in that regard. This study offers some of the possible solutions that might be applied to the current situation.

Overseen for the Most Part, Controlled Partially

These failures of OSA cannot be ascribed only to the agency, as part of the blame has to be apportioned to the oversight and control bod-

⁴ *Nezavisne Novine*, “OSA traži još milion KM za plate”, 13 March, 2007.

⁵ Interview with the Secretary of the Joint Committee for Oversight of OSA.



ies. The Law on OSA designated different bodies to exercise parliamentary oversight, executive control, internal control, judicial control, as well as independent control over the work of the Agency. The most important role in terms of oversight and control of the Agency has the Joint Committee that is in charge of parliamentary oversight, as well as the Council of Ministers of BiH, which is in charge of executive control. Despite the fact that the Joint Committee has rather good record in this regard, its lack of reaction on concerns that were mentioned above, points out that there have been some failures in the work of the Committee as well.

On one occasion, Mirko Okolić, former Chair of the Joint Committee, even stated that he does not know why this institution does not publish reports on their work.⁶

On the other hand, the Council of Ministers is the weakest link in this chain along with those in charge of internal control of the Agency.

Despite the fact that there are so many layers of oversight and control of the Agency, no measures have been undertaken to correct failures of the Agency that were mentioned above. This clearly indicates that there has been a failure in "enforcement" as one of the aspects of accountability and represents a key problem when it comes to the improvement of the Agency's accountability.

Had the bodies that are in charge of oversight and control of the Agency been more active and determined in pursuing their obligations prescribed by the law, OSA's record in this regard would look much better. Therefore, policy recommendations are not addressed directly to OSA, but to those bodies in charge of oversight and control of the Agency

Improved Accountability of OSA Depends on Improved Coordination of Oversight/Control Bodies

In order to solve the problems related to the accountability of the Agency, three policy options were considered. The option of introduction of coordination meetings of the bodies in charge of

control/oversight was evaluated as the best fit in terms of the current state of affairs of OSA's accountability and the limitations that the current environment poses.

This option proposes the establishment of coordination meetings between the most important bodies in charge of oversight and control of the Agency, i.e. Joint Committee, Executive Intelligence Board, Chief Inspector, and a representative of the Office for Audit of Institutions of BiH. As coordination among these bodies is currently almost nonexistent, this proposal of regular meetings of bodies in charge of oversight and control is put forward in order to make oversight and control more efficient and streamlined than they are at the moment. Coordinated activities that would be agreed at these meetings would result in a more streamlined approach towards the OSA, eventually resulting in improved accountability of the Agency. It is additionally supported with recommendations that this paper puts forward, resulting from or connected to this option.

Steps to Take on the Road to Improved Accountability of OSA

a) Memorandum on collaboration to be signed between bodies in charge of oversight/control

The memorandum would regulate the coordination of activities among the relevant bodies. Coordination would entail regular meetings in order to report to the Joint Committee and to discuss other issues related to the oversight and control of the Agency. The meetings would be held at least twice a year, and more often if necessary.

b) Bodies in charge of oversight/control to put pressure on OSA to establish Press Office

This undertaking would open the door of OSA to the public and the media, as well as those with a scientific interest in OSA. All statements and news releases prepared by this office would have to be authorized by the Director General, but this would still lead to a more open Agency. This office would facilitate regular web site updates, sending the message that OSA is active in its work. Furthermore, this office could work on the preparation of the public report.

⁶ *Nezavisne Novine*, "OBA četiri godine", 27 June, 2008.

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c) Bodies in charge of oversight/control to ensure that OSA publishes public reports

In order for OSA to improve its performance with regard to accountability it would be necessary to publish public reports. These reports should not be regarded as revealing too much information about the Agency, but rather as giving an overview of the objectives and activities of the agency. A sample report should first be provided by these bodies in order for the agency's management to become acquainted with similar developments in the world. The public report of the Danish Security Intelligence Service could serve that purpose.

d) Legal assessment of laws governing oversight/control of OSA to be conducted

In order to avoid possible conflicts between existing laws, it would be necessary to propose amendments to the legislation in question. Input from all bodies would be beneficial as this would be a forum where all perspectives would be presented.

e) The Audit Office of BiH to appoint auditor for particularly sensitive areas of OSA's operations
Changes in the legislation should remove the obstacle that the Audit Office of BiH is currently facing in terms of the auditing of the agency. The changes should entail the appointment of a special auditor, assigned for the auditing of particularly sensitive areas of OSA's operations, which should result in unhindered audit.

f) Joint training to be organized for members of oversight/control bodies

Training should be organized for all members of all oversight/control bodies, not only the Joint Committee. These trainings would serve as a window of opportunity for members of these bodies to learn from each other in their dealings with OSA, especially those related to ever important accountability issues.

Sources

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A "Policy Development Fellowship Program" has been launched by the Open Society Fund BiH in early 2004 with the aim to improve BiH policy research and dialogue and to contribute to the development of a sound policy-making culture based on informative and empirically grounded policy options. The program provides an opportunity for selected fellows to collaborate with the Open Society Fund in conducting policy research and writing a policy study with the support of mentors and trainers during the whole process. Eighty one fellowships have been granted since the starting of the Program. All policy studies are available at www.soros.org.ba