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## Articles

# The Italian Intelligence Establishment: A Time for Reform?

Vittorfranco S. Pisano\*

### I. Introduction

In the area of comparative studies, the Italian intelligence establishment should be a matter of interest for jurists, political scientists, and intelligence professionals of various nationalities. Regrettably, this topic has to date drawn primarily the attention of the media, both in Italy and abroad, with a focus on alleged institutional abuses and conspiracy theories.<sup>1</sup>

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1. The influence of journalistic accounts and instant books, nearly always with a pronounced ideological and partisan slant, has been so pervasive that even technical studies produced outside of Italy reflect an emphasis on alleged misconduct. See JEFFREY

The political climate in which the Italian intelligence establishment has operated in the past and continues to operate today is indeed significant. However, commensurate attention should be devoted to the technical aspects regarding the organization and functions of the pertinent intelligence services, to the findings of the courts, and to the parliamentary hearings regarding charges of misconduct, whether of domestic origin or, as often claimed, externally induced.

The author of this article, formerly a Senior Legal Specialist with the European Law Division of the Library of Congress in Washington, D.C., had the opportunity to examine, translate, and analyze the current Italian intelligence law shortly after its enactment, which dates back to 1977, for the Select Committees on Intelligence of both Houses of the U.S. Congress.<sup>2</sup> These Congressional committees were primarily interested in acquiring comparative insights entailing foreign legislative and political experiences and initiatives. At the time, Italy constituted a particularly interesting case study on account of chronic governmental instability, the emergence of "Eurocommunism," the onslaught of domestic terrorism and its international connections, the subversive infiltration of the pacifist movement within the context of the Cold War, and the enactment of legislation that led to a major intelligence reform.

This appears to be a particularly opportune time to reconsider the nature of the Italian intelligence establishment and to discuss the proposed amendments, because the Italian Parliament is expected to finally debate and vote upon the latest of a series of proposed amendments to the intelligence law of 1977. The present legislature was inaugurated in 2001.

In light of the complexity of the Italian system of government and sociopolitical scene, it is advisable in the interest of clarity and perspective to address these significant factors, by way of a concise overview, prior to describing and commenting upon the Italian intelligence establishment and applicable legislation.

## II. The Italian System of Government

The Constitution of the Republic of Italy, which replaced the monarchist constitutional order after the demise of the Kingdom of Italy on June 2, 1946, was drafted in 1947 and became effective on January 1, 1948.<sup>3</sup>

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T. RICHELSON, FOREIGN INTELLIGENCE ORGANIZATIONS, 101-125 (1988).

2. Vittorfranco S. Pisano, *A Study of the Restructured Italian Intelligence and Security Services* (1978) and *Contemporary Italian Terrorism: Analysis and Countermeasures* (1979), (both prepared under the auspices of the European Law Division, Law Library, Library of Congress, Washington, D. C.).

3. The formation of the Kingdom of Italy as an independent and sovereign state

It is a compromise document drawn up by the political forces elected to the Constituent Assembly that had contributed to the defeat of Fascist loyalists and Nazi occupation troops during the latter part of World War II, usually referred to in Italy as the *Resistenza* and covering the 1943-45 period. These political forces included Christian Democrats (Catholics), Socialists and Communists (Marxists), and members of several smaller parties as heterogeneous as the major ones.

Little did they share in common beyond their intent to prevent the recurrence of Fascism, whose dictatorial rule from 1922 to 1943 had established a nearly all-powerful executive branch of government. In order to achieve this objective, the Constituent Assembly adopted for Italy a parliamentary system, characterized by the preeminence of the legislative branch, rather than a presidential democracy. An ancillary objective was to insure an incisive role for each of the parties with their ideologically discordant platforms represented in the Constituent Assembly, and subsequently in various organs of government.

The Constitution confers the legislative power upon a bicameral Parliament consisting of the Chamber of Deputies and the Senate of the Republic. The Parliament is the only central organ of the Italian government elected directly by the people. In turn, it elects for a seven-year term the President of the Republic, who is the head of State. The head of Government, however, is a role assigned by the Constitution to the President of the Council of Ministers. In accordance with the parliamentary system, each Chamber is also empowered to grant or deny a vote of confidence to the Government, which consists of the President of the Council of Ministers and of the Ministers. Whenever this approval is not granted or is withdrawn, the Government must resign.

In addition to the power to make laws and to the powers already discussed, the Chambers may declare a state of war and confer the attendant powers on the Council of Ministers; authorize the ratification of treaties by the President of the Republic; approve the budget submitted by the Council of Ministers; make inquiries into matters of public interest; impeach the President of the Republic, the President of the Council of Ministers, or any member of the Council; and appoint, through a majority vote, a number of members of the Constitutional Court<sup>4</sup> and of the Superior Council of the Judiciary.<sup>5</sup>

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was achieved in 1861 under the dynasty of Savoy, whose territorial expansion brought about national unification, the *Risorgimento*. Full unification had to wait until the end of World War I, Italy's fourth and final war of independence. Under the Kingdom, Italy was governed by a constitutional charter, *Statuto*, originally granted to the pre-unification Kingdom of Piedmont by its monarch, Charles Albert of Savoy, in 1848.

4. The Constitutional Court, specifically created by the Constituent Assembly as a constitutional safeguard and composed of 15 members (one-third appointed by the

The Council of Ministers is a collegiate organ. Its members are jointly responsible for the acts of the Council and are also individually responsible for their own Ministries (i.e., executive departments). The President of the Council of Ministers, often referred to as the Prime Minister, or increasingly simply as the Premier, is appointed by the President of the Republic, who also appoints the Ministers at the proposal of the Premier. Although the Premier and the other Ministers are almost invariably members of Parliament, this is not a constitutional requirement. The Premier, as the head of Government or chief national executive, must maintain "unity of political and administrative control by promoting and coordinating the activities of the Ministers."<sup>6</sup>

In addition to having the power to appoint the Council of Ministers, the President of the Republic may also dissolve one or both Chambers of Parliament prior to the expiration of their five-year term in order to call new elections. All acts of the President of the Republic must bear the countersignature of the Minister or Ministers who propose the act and assume responsibility for it.

The Constitution also calls for a unitary state as opposed to a federal system of government. Local governments, Regions, Provinces, and Municipalities, enjoy limited legislative and regulatory powers.

In consonance with its unitary-state structure, Italy has a unified national court system that is part of the central government. No courts are part of the local bodies of government.

Prosecutors enjoy the status of members of the judiciary, *magistratura*, and the same constitutional prerogatives as judges. Although an integral part of the judicial system, their functions are regarded as administrative rather than judicial. It follows that a member of the judiciary assigned to the Office of the Prosecutor cannot perform judicial functions until such time as he/she is returned to the bench. The organization, including jurisdiction and venue, of the Office of the Prosecutor is parallel to that of the courts. The Ministry of Justice, which prior to the enactment of the current Constitution exercised

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Parliament), judges disputes regarding the unconstitutionality of State and regional legislation and settles conflicts between State authorities, the State and the Regions, or between Regions. It also has jurisdiction over charges of misconduct against the President of the Council of Ministers and the Ministers. This court should not be confused with the Supreme Court of Cassation, which is the ultimate appellate court (judge of law rather than fact) in all proceedings not involving constitutional issues.

5. This organ, intended to insure the independence of the judiciary and composed of three ex officio and 21 appointed members (one-third by the Parliament), has the responsibility, pursuant to Art. 105 of the Constitution, "to designate, appoint, transfer, and promote members of the judiciary and to adopt disciplinary measures regarding them, in accordance with the rules of the judicial organization."

6. COST. [Constitution] art. 95.

operational control over the Office of the Prosecutor, now merely oversees the legitimacy of its functions.

Police forces that are organized by and operate within the jurisdiction of the local bodies of government, primarily at the municipal level, enjoy limited resources and their functions are substantially administrative in nature, including traffic control and the enforcement of local ordinances.

At the national level there are five major police organizations which carry out their functions throughout the national territory and whose powers to enforce the Criminal Code and complementary statutes exists throughout the entire national territory.

These forces, State Police, Carabinieri, Finance Guard, Penitentiary Police, and State Forestry Corps, are organized and administered by the respective Ministry to which they are assigned by law. But for purposes of public order, security, and safety, their employment is coordinated by the Ministry of the Interior, which is responsible, inter alia, for crime prevention and law enforcement.<sup>7</sup>

In consonance with legal terminology, Italian police manuals classify the police as the Public Force and proceed to consider it from the perspective of its technical functions: security police, administrative police, judicial police, and confinement police.<sup>8</sup> The first two functions fall under the purview of the pertinent executive departments of the Government, while the remaining two are subject to the jurisdiction of the judicial branch.

The term "judicial police" is purely a functional one and refers to the most complex and exacting mission of the Public Force. This mission is carried out by members of the police forces, and by certain other public officials having limited police functions, in the performance of their duties following the commission of a crime. The Code of Criminal Procedure distinguishes between officers and agents of the judicial police, in most cases on the basis of their rank. It further places them under the direct supervision of the Office of the Prosecutor. No transfer, suspension from judicial police functions, or promotion of

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7. The State Police is the law enforcement agency of the Ministry of the Interior. The Arma dei Carabinieri is a military police force, also vested with civil jurisdiction, organized under the Ministry of Defense. As opposed to the State Police and Carabinieri, whose responsibilities are quite broad, the Finance Guard, a militarily organized agency under the Ministry of Economics and Finance, is specifically tasked with the prevention and repression of crimes related to tax evasion. Like the Finance Guard, the Penitentiary Police, under the Ministry of Justice, and the State Forestry Corps, under the Ministry for Agricultural and Forestry Policies, are assigned the specific missions reflected in their names. All five national police forces can, however, be commanded to perform, as needed, general police duties.

8. See Scuola Ufficiali Carabinieri, *Sinossi di Tecnica Professionale*, (Rome 1975).

judicial police officers and agents may take place without the concurrence of the prosecutor to whose District they are assigned.

The members of the national police forces vested with judicial police functions do not lose their judicial police status when assigned to other police duties. While performing other duties, they are not under the supervision of the Office of the Prosecutor, but report to their ordinary chain of command.<sup>9</sup>

### III. National Political Dynamics of Italy

Today there is an unofficial tendency to divide Italy's post-World War II constitutional and political history into two periods: the First Republic, 1948-93, and the Second Republic, 1993 or 1994 to date. While not precise from a constitutional standpoint and only approximate from a temporal standpoint, this distinction is nonetheless indicative of certain developments and trends.

The complexity of the parliamentary system and of the procedures consecrated in the Constitution were magnified during the First Republic by the re-emergence and longevity (at times accompanied by mere changes in party labels) of numerous and heterogeneous political parties and their ancillary organizations, affiliated labor unions and various other associations, including within the judiciary, after the collapse of the Fascist imposed one-party system.<sup>10</sup>

The multi-party system is largely but not exclusively attributable to the ideological fractionalization of Italian society and to the benefits to be derived from political patronage at various levels of government. In fact, proportional electoral laws have greatly facilitated and encouraged the multiparty system.

From the enactment of the Constitution in 1948 until the beginning of the 1990s, proportional electoral laws, also dating back to 1948, made it possible for the following parties to be represented in both Chambers of Parliament and in the local bodies of government: Christian Democratic Party (the major national party and primarily centrist in orientation but with strong internal factions of the left), Communist Party (consistently the second largest party), Socialist Party (with a Communist-oriented component), Social Democratic Party, Republican Party (center-left), Radical Party (libertarian), Liberal Party (secular and

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9. The organization and functions of the judicial police are governed by Title III, Articles 55-58 of the Code of Criminal Procedure.

10. The Constitution does specifically prescribe the right of citizens to form and join political parties as well as labor unions. A very detailed and programmatic document, consisting of 139 articles, the Constitution addresses a very broad spectrum of "rights and duties of citizens" under the headings of civil, ethical-social, economic, and political relations. COST. [Constitution] art. 13-54.

conservative), and Social Movement (often termed neo-Fascist), as well as additional small parties of the extreme left or representative of regional interests. The history of these parties includes both schisms and mergers.

Throughout the First Republic, electoral returns gave the Christian Democrats a relative majority status at the national level. However, in the absence of an absolute majority, it was necessary to form parliamentary coalitions, manifestly based on compromise and frequently in contradiction with electoral platforms, in order to pass legislation and to express the vote of confidence for equally heterogeneous coalition Governments. Moreover, since the 1953 parliamentary elections, coalitions enjoyed small and, therefore, uncomfortable margins over the opposition.

Nuances and imaginative ad hoc terminology notwithstanding, coalition formulas of that period may be roughly summarized as follows: centrist (1948-62), center-left (1962-72), centrist (1972-73), center-left 1973-76, center-left with unprecedented external direct or indirect Communist support (1976-79), and a subsequent arrangement among centrists, conservatives, and leftists to the exclusion of the Communist Party and its successors (1979-1993). The precarious nature of these formulas caused, during the same period, the succession of 47 Governments or national executives, in addition to the dissolution of Parliament five times by the President of the Republic without leading to more stable results with the recourse to early elections.

The blatant ideological clash between democratic forces, however diverse, and the Communist Party, flanked by its fellow travelers, characterized the First Republic. The internal Italian situation, aggravated by the presence of the largest and most influential Communist party in the free world, paralleled the USA-USSR and the NATO-Warsaw Pact confrontations.

The Communist Party, which never became part of the national executive, represented the major opposition force at the national level. It ruled in several local governments, joined the ruling parliamentary majority in supporting certain legislation, strongly conditioned governance, and made inroads into every walk of Italian society. The Communist Party made significant inroads in the labor movement, mass media, and educational-cultural affairs. It was successful in creating alliances with non-Communist forces, particularly, but not only, at the labor union level, that could seriously challenge parliamentary and governmental conduct. Moreover, its foreign policy stance ranged from total alignment with the Soviet Union to ambiguous attitudes and



pronouncements, especially with respect to NATO and military issues.<sup>11</sup>

The fear caused by the presence of a strong and pervasive Communist Party, coupled with the possibility of a Communist political victory at the national level, largely accounts for the continued relative majority status of the Christian Democratic Party throughout the First Republic, as opposed to a genuine commitment to its platform by the majority of its electorate.

The First Republic was further marred by disruptive and violent demonstrations as well as serious and repetitive acts of domestic terrorism, mainly from the extra-parliamentary left but also from the extra-parliamentary right. The Marxist and non-Marxist parliamentary left, including Catholic elements, systematically attributed the unlawful behavior of the extra-parliamentary left to disguised rightist initiatives and repeatedly ascribed these actions to homegrown and/or international conspiracies.

In this connection, the entire left conducted a great deal of propaganda that advocated the principle of anti-Fascist national unity by the so-called "constitutional spectrum" (*arco costituzionale*) against the specter of a Fascist takeover. As a consequence, the aforementioned Social Movement, a regularly elected party usually ranking fourth in parliamentary representation, was de facto barred from participation in any parliamentary coalition or other meaningful political arrangement because it was viewed as neo-Fascist.

Just as the Communist Party constituted the principal parliamentary opposition of the left, the Social Movement played a similar, though weak, opposition role from the rightist side of the political spectrum. Elements that considered the Communist Party and the Social Movement insufficiently committed to their respective ideologies and rhetoric frequently would desert these parties to join more radical and extra-parliamentary forces.<sup>12</sup>

Often referred to as the "passage from the First to the Second Republic," the 1990s ushered in what appears to be a prolonged period of institutional and political transition. It was characterized by (1) amendments to the national electoral laws, which reduced proportional

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11. For an analysis in English of Communist Party attitudes toward NATO with particular reference to the 1976 parliamentary elections campaign, whose returns gave that party an unprecedented 34.4% of the vote (thus trailing the relative majority Christian Democratic Party by only four percentage points), See JAMES E. DAUGHERTY & DIANE K. PFALTZGRAFF, *EUROCOMMUNISM AND THE ATLANTIC ALLIANCE*, (Institute for Foreign Policy Analysis, Cambridge, Mass., 1977).

12. For a detailed survey of the Italian system of government, political players and mechanics, and threats to national security during nearly the entire duration of the First Republic, See Vittoriofranco S. Pisano, *The Dynamics of Subversion and Violence in Contemporary Italy*, Hoover, Stanford, Cal. (1987).

representation to 25% in the Chamber of Deputies and further introduced a 4% threshold for a candidate to achieve election; (2) initial steps toward constitutional reform and transformation from a unitary state to a federal system of government; (3) the demise of the political parties of the past, including the Christian Democratic Party and the Communist Party, under the weight of the “new world order” brought about by the end of the Cold War, on the one hand, and judicial investigations into kickbacks obtained for individual and party financing on the other; (4) the emergence of new political parties, which draw their support from the disoriented electorate of no longer viable parties; (5) switches of allegiance by elected representatives from one party to another; (6) the break up of party coalitions; and (7) unprecedented public and media focus on individual political leaders, including their background and personality.

Changes in the international setting, with the demise of the bipolar world, also catapulted Italy into a role of greater responsibility in the Mediterranean and Balkan regions and even beyond, including peacekeeping and humanitarian commitments entailing the deployment of armed forces abroad.

Under the Second Republic, six Governments have succeeded one another from 1994 to the time of this article in October 2002. Moreover, early elections were called twice, in 1994 and again in 1996. Both early elections were in accordance with the revised electoral laws of 1993. As opposed to the past, party coalitions as well as overall coalition leaders, in essence candidates for the office of Premier, were announced in advance to the electorate.

Whereas the number of political parties has by no means diminished and party platforms do not reflect absolute homogeneity, relatively well-defined coalition blocs have emerged with the possible result of producing greater political stability in the long run. However, internal bickering continues to exist in the coalitions.

The current political spectrum substantially revolves around two “poles,” as they are called, which provide alternatives within a roughly bipolar system. The center-right pole won the parliamentary elections in 1994. It was more of a cartel than a coalition and it broke up seven months later. This center-right Government was consequently replaced by a center-left one. The center-left pole was the winner in 1996 and ruled through the end of the regular five-year term legislature. The center-right Government won in 2001. This time it was more unified and it obtained a comfortable majority.

The present majority, governing Italy since its election in 2001, belongs, as indicated, to the center-right pole. It is led by *Forza Italia*, literally “Go Italy,” the basically centrist relative majority party, which

also attracts former conservatives and progressives. The center-right pole further includes in order of electoral returns, the National Alliance, the former Social Movement, which has since renounced all neo-Fascist vestiges and now draws support from conservatives and former centrists; the Northern League which is a regional coalition attracting a federalism-oriented and substantially conservative electorate from the Northeast; and the Christian Democratic Center and the United Christian Democrats, both made up of former Christian Democrats heretofore representing the centrist and conservative internal factions of the defunct Christian Democratic Party. Contrary to its center-left opponent, the center-right pole has maintained the same coalition leader since 1994, Silvio Berlusconi of *Forza Italia*, now serving as Premier for the second time.

The center-left pole, which governed the country from the mid-1990s to 2001, is currently preoccupied with maintaining an alliance between four key groups and several minor formations. The first key group is the Democrats of the Left which is the major successor of the Communist Party as well as the largest party of the no longer Marxist left and of the left as a whole. The second party is Democracy and Liberty, which is the major successor of the leftist component of the Christian Democratic Party. The third party is the Greens. The Popular Party, which is another leftist oriented successor of the Christian Democratic Party, is the final key party.

The center-right governing majority is further opposed by two other successors of the defunct Communist Party. These Communist loyalists, contrary to the Democrats of the Left whose political stance no longer includes the rhetoric of the past, are the Communist Refoundation Party and the Party of Italian Communists, whose direct and indirect support has, nonetheless, been accepted by the center-left pole during its period of governance under the Second Republic. The Party of Italian Communists also held ministerial posts as a coalition partner during the last legislature.

From a security standpoint, the Second Republic has experienced a recrudescence, for the time being at comparatively minor levels, of domestic terrorism. The more menacing manifestations of terrorism have issued from Marxist-Leninist and anarchist components of the extreme left. Other security and public order threats and challenges entail unlawful actions by transplanted radical Islamic elements and domestic and foreign "no-global" protesters, as well as agitation conducted by parties and extra-parliamentary aggregations claiming to act in the name of pacifist and ecological values.<sup>13</sup>

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13. For a survey, in English, of these developments See Vittorfranco Pisano,

#### IV. Italian Intelligence Prior to the Reform Law of 1977

Both the current intelligence and security services, instituted in 1977, and their immediate predecessors trace their origin to the Military Intelligence Service, *Servizio Informazioni Militari* (SIM), which was organized in 1927 under the Fascist regime.

SIM comprised two main branches, one tasked with intelligence collection and analysis, including espionage, and another with counterespionage. SIM was in practice subordinate to the Deputy Chief of Staff of the Army for the performance of strictly military functions and to the Undersecretary of War for the performance of non-military duties, although its sphere of action had generally been limited to military objectives.<sup>14</sup> This service was dissolved in 1944 and was replaced for a few years by a small intelligence office in the General Staff. The Fascist regime also ran a secret police, which was totally separate from SIM, called OVRA.<sup>15</sup> The secret police disappeared with the fall of Fascism without any need for a formal dissolution act because there is no known official record of its creation.

From 1949 until the passage of the reform law of 1977, two intelligence services succeeded one other.

Instituted on September 1, 1949, the first was the Armed Forces Intelligence Service, *Servizio Informazioni Forze Armate* (SIFAR), organized under the Ministry of Defense as a military intelligence service. However, three additional services connected to SIFAR were established within the Army, Navy, and Air Force for intelligence collection and analysis of specific interest to each of the three military organizations. All of these services were termed Operational and Current Intelligence Service, *Servizio Informazioni Operative e Situazione* (SIOS), but were followed by the designator "Army," "Navy," or "Air Force" to identify their respective parent organization.

In the mid-1960s, SIFAR became the object of sharp criticism

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"*Terrorist Revival in Italy?*" (pts. 1 & 2), *Essecome International Magazine* (Bologna), June and Sept. 2001., See also Vittoriofranco Pisano, "*Transnational Terrorism in Italy?*", *Essecome International Magazine* (Bologna), Feb. 2002.

14. SIM is credited, by both Italian and non-Italian sources, with operational efficiency, including the forecasting of the Anglo-American landing in North Africa, a contingency not considered by German intelligence, and the penetration of the British naval ciphers in the Mediterranean. See Domenico Bartoli, *Gli Italiani nella Terra di Nessuno*, Mondadori 167-168 (Milan 1976)., See also Richelson, *supra* note 1, at 106.

15. According to some sources, the expansion of this acronym is unknown. See Ambrogio Viviani, *I Servizi Segreti in Italia, 1815-1985* 450 (Adnkronos, Rome). According to other sources, it stands for Organization for the Surveillance and Suppression of Anti-Fascism (*Opera Vigilanza Repressione Antifascismo*). See Francesco Paolo Fulci, "*Informazione e Sicurezza: Il Ruolo del CESIS,*" *Informazioni della Difesa* 49 (Rome, No. 2, Mar.-Apr. 1992).

because of actual or alleged deviations from institutional functions. As a result, several officers were transferred out of the more sensitive offices of SIFAR and the service itself was renamed Defense Intelligence Service, *Servizio Informazioni Difesa* (SID), on June 25, 1965.

Although the basic organization and functions of SID appear to have remained the same as those of its predecessor, two directives having legislative and regulatory force, respectively, were issued.

The first directive was Article 2(g) of President of the Republic Decree No. 1477 of November 18, 1965. Pursuant to Article 2(g), SID was "to carry out, through its offices and units, intelligence duties relating to the protection of military secrecy and to every other activity of national interest for the defense and security of the country; and to take appropriate measures for the prevention of actions harmful to the defense potential of the country."

The second directive, a Ministry of Defense Circular of June 25, 1966, assigned to SID the operational duties to "collect at home and abroad all useful information for defense and national security; organize and conduct operations against foreign intelligence activities and against every other activity that might be dangerous or damaging to national defense and security; follow and keep abreast of the political, economic-industrial, military, and scientific condition of foreign countries of interest; and to insure the protection of military secrecy and other state secrets."<sup>16</sup>

The SID structure included three basic branches: "R" was responsible for intelligence collection abroad and political and military espionage; "S" was responsible for processing and analysis of data collected by section "R"; and "D" was responsible for counterespionage, including all operations in Italy. Moreover, "D" was territorially subdivided into 23 counterespionage detachments, each commanded by a field-grade officer of the Carabinieri. "D" was made up almost exclusively of Carabinieri personnel. The other two branches, "R" and "S," included primarily military personnel from other arms and services.

The organization and functions of SIOS within the Army, Navy, and Air Force remained unchanged after SIFAR was transformed into SID. SIOS was responsible for at least a part of the intelligence information acquired abroad.

Prior to the intelligence reform of 1977, intelligence personnel already vested with the status of officers and agents of the judicial police, essentially Carabinieri, retained this status while assigned to SIFAR or

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16. Both directives quoted above are drawn from *Atti Parlamentari, Camera dei Deputati*, V Legislatura, Doc. XXIII, N.1, *Commissione Parlamentare d'Inchiesta sugli Avvenimenti del Giugno-Luglio 1964*, 1361-1362 (Rome 1971).

SID and could conduct law enforcement functions directed at the repression of crimes. The Carabinieri assigned to SIFAR and later to SID were therefore contemporaneously intelligence and law enforcement officers.

Accusations of even greater magnitude than those leveled against its predecessor, coupled with the perceived need to modernize the intelligence system, brought about the dissolution of SID with the enactment of the intelligence reform in 1977.<sup>17</sup>

## V. Current Legislation Governing the Italian Intelligence Establishment

Law No. 801 of October 24, 1977 on the Formation and Organization of the Intelligence and Security Services and the Regulation of the State Secret, hereafter referred to as the Intelligence Law, currently governs the structure and functions of the Italian intelligence establishment.<sup>18</sup>

The Intelligence Law repealed specifically all regulations and/or internal directives contrary to its provisions. It also prohibits the performance of any intelligence or security activity outside the instruments, procedures, tasks, and objectives called for in its text.

The report of the special committee that examined the various bills introduced in the Parliament before the passage of the Intelligence Law reflects Italy's reliance upon the experience and intelligence models of other allied and democratic countries.<sup>19</sup>

The Intelligence Law has in fact introduced four major innovations into the Italian intelligence system. First, more stringent supervision of the intelligence establishment by the Government or national executive and, for the first time, by the Parliament or national legislature exists. Second, two separate services responsible for foreign intelligence and internal security, respectively, were created. The third innovation is the separation of intelligence and security functions from judicial police or law enforcement functions. Finally, new regulations governing State secrecy exist. Each of these innovations warrants more detailed explanation.

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17. A rather detailed and ostensibly political bias free account of Italian intelligence, particularly prior to the 1977 reform, is provided by Viviani, *op. cit.*, *supra* note 15. Viviani, an Army general officer, served in counterintelligence.

18. The text of this law was published in *Gazzetta Ufficiale della Repubblica Italiana* [Official Law Gazette of the Republic of Italy], No. 303, 8055 (Nov. 7, 1977). For an English translation, See Vittorio Pisano, *A Study of the Restructured Italian Intelligence and Security Services*, App. I, *supra* note 2.

19. Atti Parlamentari, Camera dei Deputati, VII Legislatura, Disegni di Legge e Relazioni, N. 696-385-1033-1086-1087-A, *Relazione della Commissione Speciale Concernente Istituzione e Ordinamento del Servizio per la Informazione e la Sicurezza*.

### A. *More Stringent Oversight*

The President of the Council of Ministers (Premier) is now responsible for intelligence and security policy as well as for the top supervision of the intelligence and security services. The Premier is also empowered to issue directives on organization and operations to the intelligence and security services and to control the application and protection of State secrecy. In essence, the responsibility for central intelligence has been removed from the Ministry of Defense and has been directly assigned to the Premier.

The Inter-ministerial Committee on Intelligence and Security, *Comitato Interministeriale per le Informazioni e la Sicurezza* (CIIS), instituted by the Intelligence Law, assists the Premier. CIIS is chaired by the Premier and includes the Ministers of Foreign Affairs, Interior, Justice, Defense, Productive Activities (formerly Industry), and Finance (which has since absorbed Treasury). It advises the Premier on general directives and fundamental objectives of the intelligence and security policy and makes proposals. The Premier may invite other Ministers, the directors of the intelligence and security services and civilian and military officials and experts to CIIS meetings.

In addition to CIIS, the Intelligence Law created an Executive Committee for the Intelligence and Security Services, *Comitato Esecutivo per i Servizi di Informazione e di Sicurezza* (CESIS), under the direct authority of the Premier. CESIS is responsible for providing the Premier with all data needed to coordinate the intelligence and security services, as well as processed and analyzed information. Responsibility for coordinating liaison with the intelligence and security services of other countries is also assigned to CESIS.

The Premier, or an Undersecretary of State appointed by the former, presides over CESIS. The Premier also determines the composition of CESIS, which includes the Directors of the intelligence and security services who are ex officio members. Although the Intelligence Law calls only for a General Secretariat, it authorizes the Premier to organize whatever other offices are strictly necessary. The General Secretariat is headed by a Secretary General, who must be a public official of the highest administrative grade. He or she is appointed and may be dismissed by the Premier, after the opinion of CIIS is heard.

The Government, consisting of the President of the Council of Ministers and the Ministers, must report in writing every six months to the Parliament on intelligence and security policy, as well as on its results.

The Intelligence Law also provides for a parliamentary committee comprised of four Deputies and four Senators, to be appointed by the

Speaker of their respective Chambers according to the principle of proportionality (i.e., party representation in the Parliament). The purpose of this committee, generally referred to as the Parliamentary Oversight Committee, *Comitato Parlamentare di Controllo*, is to monitor the application of the principles set forth in the Intelligence Law.

The Parliamentary Oversight Committee is entitled to request basic information on the structure and activities of the intelligence and security services from the Premier and CIIS. It can also make observations and recommendations.

If the Premier avails himself of the power to claim the need for State secrecy, which he must briefly substantiate, the Parliamentary Oversight Committee may refer the matter, after an absolute majority vote, to each Chamber of Parliament for the necessary political evaluations.

The members of the Parliamentary Oversight Committee must respect classified information to which they are exposed in the course of their duties. The proceedings of the committee are also classified.

#### *B. Creation of Two Separate Intelligence and Security Services*

The foreign intelligence service, termed by the Intelligence Law as the Service for Intelligence and Military Security, *Servizio per le Informazioni e la Sicurezza Militare* (SISMI), is assigned all intelligence and security functions pertaining to Italian military defense. SISMI also carries out counterespionage duties.

SISMI is subordinate to the Minister of Defense, who is responsible for structuring this service and for supervising its activities in keeping with the directives of the Premier.

The Director of the service and the other functionaries to be indicated in the table of organization or force structure of SISMI are appointed by the Minister of Defense, subject to the concurring opinion of CIIS.

SISMI must keep the Minister of Defense and also CESIS abreast of all intelligence information and analyses in its possession and of all its operations.

The Intelligence Law provides for the continued existence of all those units and offices responsible for intelligence, security, and estimates that operate within each armed service or corps of the State. At the same time, the Intelligence Law explicitly restricts the functions of these units and offices to duties of a technical-military or military-police nature to be exercised within the specific confines of each armed service or corps. These activities must also be conducted in strict liaison with SISMI. Finally, the Intelligence Law repealed the previously cited



Article 2(g) of the President of the Republic Decree No. 1477 of November 18, 1965.

The internal security service, termed by the Intelligence Law as the Service for Intelligence and Democratic Security, *Servizio per le Informazioni e la Sicurezza Democratica* (SISDE), is assigned all intelligence and security functions for the defense of the Italian democratic State and of the institutions established by the Constitution.

SISDE is subordinate to the Minister of the Interior, who is responsible for structuring this service and supervising its activities in keeping with the directives of the Premier.

The Director and other functionaries of SISDE are appointed by the Minister of the Interior in the manner indicated above for SISMI. SISDE is also subject to the same reporting requirements established for SISMI.

The personnel of CESIS, SISMI, and SISDE include not only civilian and military employees transferred, with their consent, to these entities, but also those hired directly. CESIS, SISMI, and SISDE may not employ, either permanently or occasionally, members of Parliament; regional, provincial, or municipal councilors; members of the judiciary; clergymen; or professional journalists.

Matters relating to personnel strength and organization, as well as to the juridical and economic status of personnel assigned to CESIS, SISMI, and SISDE, respectively, are regulated by the Premier, the Minister of Defense, and the Minister of the Interior, subject to the concurring opinion of CIIS. Provisions are also made for the utilization by CESIS, SISMI, and SISDE of property assigned to governmental departments and agencies.

The Intelligence Law imposes upon SISMI and SISDE the duty to assist and cooperate with each other.

Individuals whose record does not guarantee their fidelity to democratic and constitutional principles are barred from permanent or occasional employment in CESIS, SISMI, and SISDE. Article 8 of the Intelligence Law specifically requires "scrupulous fidelity to the Republican and anti-Fascist Constitution."

### *C. Separation of the Intelligence and Security Function From Judicial Police Powers.*

Under the Intelligence Law, assignment to CESIS, SISMI, and SISDE is not compatible with the status of officer or agent of the judicial police. Consequently, personnel who hold that status in their parent organization are suspended from that status for the duration of their assignment to any of the above.

The members of the intelligence and security services must channel

all reports, regardless of their nature, exclusively through their superiors to the Directors of the pertinent services, who will in turn report to the Ministers of Defense and of the Interior, respectively, as well as to the Premier through CESIS.

The Directors of the intelligence and security services must also provide the jurisdictionally competent organs of the judicial police with information and evidence on matters that could constitute criminal offenses. The performance of this duty may be delayed only with the explicit consent of the Premier, when such delay is strictly necessary for performing institutional functions of the intelligence and security services.

All officers and agents of the judicial police are obliged to cooperate fully with the intelligence and security services.

#### *D. New Regulations on State Secrecy*

The Intelligence Law imposes State secrecy on acts, documents, information, activities, and matters where disclosure can damage the State, including its democratic institutions, constitutional functions, independence and sovereignty, military preparedness and defense, and international agreements. Events directed at subverting the constitutional order are excluded from State secrecy.

The Intelligence Law further imposes on all public officials the duty to abstain from testifying on matters covered by State secrecy. If the prosecuting authority does not consider the pertinent matter subject to State secrecy, it questions the Premier, who must reply within 60 days whenever he intends to uphold State secrecy.

The Premier must inform the Parliamentary Oversight Committee every time he upholds State secrecy and must briefly provide basic justification. If the absolute majority of the Parliamentary Committee does not consider State secrecy warranted, the committee reports to each Chamber for the necessary political evaluations. In any case, the Premier must apprise each Chamber every time he imposes State secrecy.

The four innovations described above reflect the current basic framework governing the organization and responsibilities of the Italian intelligence and security services.

While no single organic regulation has been issued for the implementation of the Intelligence Law, several individual provisions have been adopted, particularly in the takeoff stage of the reformed intelligence and security services.

On January 30, 1978, the Premier issued a Decree setting forth the composition of CESIS to include the Chief of Staff of Defense, the Chief of Police, the Secretary General of the Ministry of Foreign Affairs, the

Commanding General of the Carabinieri, the Commanding General of the Finance Guard, the Directors of SISMI and SISDE (both of whom are ex officio members as provided for by the Intelligence Law), the Secretary General of the Council of Ministers, and the Secretary General of CESIS. Moreover, the same Decree empowers the first five committee members listed above to designate a permanent representative. It also empowers the Premier to summon CESIS as well as representatives of other Ministries or public entities whenever the subject matter of the discussion requires their presence.

On May 10, 1978, the Premier issued another Decree regarding the functions of CESIS. Pursuant thereto, CESIS evaluates intelligence information provided by SISMI and SISDE; makes recommendations to the Premier regarding the coordination of SISMI and SISDE with other public entities, as well as possible jurisdictional conflicts; determines foreign intelligence and security services with which SISMI and SISDE may establish contact and coordinates the pertinent relations; submits to the Premier proposals regarding the intelligence and security policy to be executed by SISMI and SISDE; and imparts directives for the utilization of intelligence information.

In accordance with the same Decree, the Secretary General of CESIS is answerable before the Premier for the actions of this committee; sees to the execution of its resolutions; and issues directives relating to the classification and storage of documents in the general archives subject to his/her authority.

Moreover, pursuant to the earlier Decree of January 30, 1978, the Office for Internal Security, *Ufficio Sicurezza Interna* (USI), formerly operating within SID, has been reestablished within the General Secretariat of CESIS.

By Ministerial Decrees of May 3 and 6, 1978, respectively, the Ministers of Defense and of the Interior defined the internal structure of SISMI and SISDE.<sup>20</sup>

Very limited information regarding their structure is generally available in open sources. Journalistic accounts indicate that SISMI, in particular, is structurally patterned after its predecessor, the above-mentioned SID.<sup>21</sup> It can be reasonably assumed, however, that, in

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20. The Decrees of the President of the Council of Ministers and the Decrees of the Minister of Defense and of the Minister of the Interior referred to above are mentioned and summarized in the first semi-annual intelligence report to the Parliament. See "Relazione sulla Politica Informativa e della Sicurezza e sui Risultati Ottenuti - Semestre 22 Novembre 1977-22 Maggio 1978," appended to Camera dei Deputati, Segreteria Generale, Ufficio Stampa e Pubblicazioni, *I Servizi di Sicurezza in Italia*, Rome, 1988.

21. For example, a presumably dated (even if then accurate) 1993 newspaper account reported that SISMI consisted of four numbered Departments - with subordinate divisions - respectively tasked with the following duties: I. Counterespionage and

addition to pertinent command, personnel, logistics, and communications sections, the internal structure of both SISMI and SISDE generally corresponds to the fields of intelligence collection related to the basic mission of each service. The fields of endeavor repeatedly discussed in the semi-annual intelligence reports to the Parliament include: developments in geopolitical areas of direct interest to Italy (which remains basically a Mediterranean regional power), economic security, international terrorism, domestic subversion and terrorism, clandestine immigration, organized crime, advanced technology transfers, proliferation of weapons of mass destruction, espionage, and other concerns regarding the environment, information technology, and sects and cults.<sup>22</sup>

References to the personnel strength of SISMI and SISDE, as well as CESIS, appear from time to time, presumably by way of approximation, in the press. In 2001, SISMI reportedly employed 2,100 agents, researchers, and analysts, including approximately 100 abroad; SISDE 2,300; and CESIS 800.<sup>23</sup> A more recent account indicates that an additional 100 military officers and civil servants have been detailed to SISMI and SISDE in the latter part of 2002.<sup>24</sup>

In the early stages of implementation of the Intelligence Law, personnel regulations were also set forth, including the prohibition to carry out political or labor union activities, to engage in political propaganda, and to join strikes. Furthermore, the provisions of the Code of Military Justice were made applicable to all CESIS, SISMI, and SISDE employees. Finally, all personnel are to be militarized in case of war.<sup>25</sup>

Implementing regulations further require that, during periods of assignment to the intelligence and security services, military personnel are to be civilianized, notwithstanding the applicability of the Code of Military Justice. As odd as it may seem, this rule applies to SISMI personnel as well. Reported exceptions pertain to the Directors, when detailed from their parent military services. Presumably, the suspension from military status follows criteria analogous to the suspension from

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terrorism; II. Foreign operations; III. Communications and electronic security; and IV. Logistics. The account also referred to subordinate "counterespionage centers" in various Italian cities and to subordinate "foreign centers" in various capitals abroad. See *Il Tempo* (Rome), June 5, 1993, at 2.

22. Said subject-matter areas are also dealt with in the latest semi-annual report available. See "Relazione sulla Politica Informativa e della Sicurezza - Secondo Semestre 2001," published in *Servizio per le Informazioni e la Sicurezza Democratica, Per Aspera ad Veritatem* (Rome), No. 2, Jan.-Apr. 2002.

23. *Corriere della Sera* (Milan), Aug. 30, 2001, at 2.

24. *Corriere della Sera* (Milan), Oct. 14, 2002, at 20.

25. Said regulations and provisions are cited in *op. cit.*, *supra* note 20.

judicial police status.

Subsequent directives, issued by the Premier in 1982 and again in 1987, attributed to the Secretary General of CESIS the role of prime and principal associate of the Premier in the domain of intelligence and security and stated that the Secretary General "exercises his functions and powers so as to provide a unitary approach to the action of the two [intelligence and security] services."<sup>26</sup>

In 1995, the then Premier suspended all hiring by CESIS, SISMI, and SISDE of personnel not already serving in a military or civilian governmental capacity. This initiative was presented as a measure against patronage and has since remained in force.<sup>27</sup>

In 1997, the three SIOS's belonging to the Army, Navy, and Air Force merged under the name of Intelligence and Security Department, *Reparto Informazioni Sicurezza* (RIS). The merger allowed overall coordination by the Chief of Staff of Defense, who is the equivalent of the Chairman of the Joint Chiefs of Staff in the United States. They contemporaneously remain subject to the pertinent provisions of the Intelligence Law.<sup>28</sup>

With respect to the innovations introduced by the Intelligence Law, the author of this article expressed a number of reservations in his reports to U.S. Congressional committees shortly after its enactment.<sup>29</sup> Those early reservations can be summarized as follows.

- While positive in preventing possible abuses by the intelligence and security services, governmental and parliamentary oversight can contemporaneously create potential problems given the Italian system of government and the workings of Italian politics. The operational effectiveness of the restructured services could become directly proportional to the stability of the Government. The recurrence of endemic governmental crises could paralyze the functioning of these services. Malfunction or even paralysis could result from events ranging from the too frequent appointment and dismissal of the Secretary General of CESIS and of the Directors of SISMI and SISDE to changes in intelligence and security policy following the formation of new parliamentary majorities and/or the succession of each Premier and Council of

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26. Fulci, *op.cit.*, *supra* note 15, at 53. Fulci, an ambassador, has served as Secretary General of CESIS.

27. *Corriere della Sera* (Milan), Aug. 12, 2001, at 5.

28. This development was brought about by Law No. 25 of February 18, 1997, published in the Official Law Gazette of the Republic of Italy, No. 45, February 24, 1997, which reformed the Defense or military establishment.

29. *Op. cit.*, *supra* note 2.

Ministers. The intelligence and security policy of the Premier could also be conditioned by CIIS. Moreover, participation in CIIS and/or the Parliamentary Oversight Committee by members of parties without a clear commitment to the national security policy could result in the unauthorized disclosure of classified information and procedures.

- The attribution of the intelligence and security function to two different services is not immune to potential drawbacks. Positive operational results are dependent upon the degree of cooperation between SISMI and SISDE and between the Ministries of Defense and of the Interior, to which the two services are respectively assigned, and – once again – upon the overall stability and homogeneity of the Government. Moreover, the functions of the two services could counterproductively overlap each other, particularly with respect to the threat posed by situations entailing actual or suspected links between domestically and externally induced terrorism.
- The separation of the intelligence and security services from judicial police requires, in turn, a high degree of cooperation between the services and the various police forces. This separation could cause a form of bipolarization with SISMI and the Carabinieri on one side and SISDE and the State Police on the other. Moreover, a certain degree of flexibility appears to be lost and occasions for security leaks may increase.
- The regulation of State secrecy by the Intelligence Law could result in friction between the Premier and the supporting parliamentary coalition or other sectors of Parliament, thus contributing to upsetting the generally precarious equilibrium of Italian politics.

In reports to the U.S. Congress, this author concluded that the then newly restructured intelligence and security system could impose restrictions and/or courses of action of a political, rather than technical, nature on the Premier to the detriment of the institutional functions and efficiency of the two services. However, much would obviously and ultimately depend on the implementation of the regulations of the Intelligence Law.

To be sure, the above-outlined reservations were to a notable degree due to the threat or risk posed by the Communist Party within the Italian governmental and political system and the broader context of the Cold

War. Such concerns were shared, and expressed in decidedly stronger terms, by other observers even outside of Italy and of the United States.<sup>30</sup> The demise of the Soviet Union and the changes brought about by the Second Republic in Italy have removed that overriding concern. But, in this author's judgment, the same reservations as well as additional ones, will linger on, albeit to a lesser extent, at both the political and technical levels, until such time as certain amendments are made to the Intelligence Law.

In this connection, it is worth noting recent commentaries issuing from various sources, including highly authoritative ones.

In his memoirs, Admiral Fulvio Martini, a retired Director of SISMI, laments that Italy has traditionally not held the intelligence services in due consideration on account of belated Italian statehood and the tendency on the part of Italian society to be inward looking. He also notes that the contemporary national political milieu is mentally unprepared to deal with intelligence, an instrument it does not understand, especially with respect to its utility in support of foreign policy, and tends to utilize intelligence for unrelated and inappropriate purposes. He further remarks that the political establishment has not only allowed a "fanciful and uninformed press" to vilify the intelligence services, but also failed to protect them. While he considers the current Intelligence law "not bad" from a political standpoint, he criticizes it as "flawed" from a professional perspective. It was enacted during an anomalous period of "national solidarity" between non-Communists and Communists parliamentarians without seeking the advice of the practitioners of intelligence, that is, technically competent personnel who would ultimately be subject to the provisions of that legislation. With respect to counterintelligence operations, he refers to the difficulties caused by the suspension of the police forces from the status of judicial police, thus necessitating in the final stages, involving arrest, the intervention of personnel extraneous to the intelligence services.<sup>31</sup>

In a book-length interview, Francesco Cossiga, a former President of the Republic and a longstanding student of intelligence, not only concurs with Admiral Martini's judgment on the misuse and mistreatment of the intelligence services by the political class, but also advocates a "radical reform" of the intelligence establishment.<sup>32</sup> Furthermore, he authored a

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30. See "The Italian Intelligence and Security Services – The New Law and Its Risks," *East-West Digest*, Foreign Affairs Pub. Co. Ltd., Richmond, Surrey, England, No. 18, Vol. 14, at 689-693.

31. Fulvio Martini, *Nome in Codice: Ulisse* 16-17, 105-106, 147 (Rizzoli, Milan, 1999).

32. Piero Testoni, *Francesco Cossiga: La Passione e la Politica* 254 (Rizzoli, Milan 2000).

concise manual on intelligence in which he defines the Italian intelligence system as an “anomaly” with respect to those of the Atlantic Alliance. He proposes a two-track system, based on “positive intelligence” abroad and “defensive intelligence” at home, coordinated by an organ under the direct political responsibility of the Premier.<sup>33</sup> Finally, in a recent interview, Cossiga laments the failure to safeguard the operations of the intelligence services and the identity of their personnel when conducting, for institutional purposes, “unconventional operations” entailing minor violations of the law, a matter of standing procedure in other democratic countries.<sup>34</sup>

Franco Frattini, Chairman of the Intelligence Oversight Committee during the past legislature and contemporaneously Minister without portfolio for Public Administration as well as the Premier’s delegate to preside over CESIS during the current legislature, has raised or reiterated numerous issues that require serious attention or remedial action. These include, recruitment of personnel possessing needed technical, scientific, and linguistic skills; enhancement of collection and analysis capabilities; actual utilization of the intelligence product by the political decision makers; avoidance of intelligence leaks; need to introduce “functional safeguards” for operatives; and effective intelligence coordination by the Office of the Premier.<sup>35</sup>

Finally, in a well balanced article from which emerges, inter alia, the delicate relationship between the branches of government, Marco Valentini, the Executive Editor of *Per Aspera ad Veritatem*, a professional open-source journal published by SISDE, tactfully raises the necessity of safeguarding national security as a value not less precious than the remaining ones whose protection is afforded by legal institutions.<sup>36</sup>

In order to appreciate fully the difficulties that the Italian intelligence establishment has had to face, a few final and brief observations are in order with specific reference to allegations of misconduct and conspiracy theories.

According to the overall misconduct-and-conspiracy thesis, which can be drawn from a combined reading of older as well as current

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33. Francesco Cossiga, *Abecedario*, Rubbettino, Soveria Mannelli, Catanzaro, 53-54 (2002).

34. *Corriere della Sera* (Milan), May 5, 2002, at 8.

35. Franco Frattini, “I Nuovi Scenari di Minaccia alla Sicurezza del Paese e i Compiti dell’Intelligence,” *Rivista Trimestrale della Scuola di Perfezionamento per le Forze di Polizia* (Rome), No. 1/2, Jan.-June 2001. See also *Corriere della Sera* (Milan), August 12, 2001, at 5 and *La Repubblica* (Rome) Oct. 25, 2001, at 18.

36. Marco Valentini, “Sicurezza Nazionale, Sicurezza della Repubblica,” *Per Aspera ad Veritatem* (Rome), No. 22, Jan.-Apr. 2002.



accusations,<sup>37</sup> the Italian political scene was characterized throughout the Cold War, or even beyond, by “an invisible government,” “a hidden party,” and “a double State” and therefore by a “double loyalty” bearer of “limited sovereignty.” All of this was allegedly due to Italy’s membership in NATO and consequential “status of subjection.” In this context, the United States, assisted by “deviant and subservient” Italian intelligence services and rightist subversive formations which were infiltrated, controlled or created by American political, diplomatic, military, and intelligence organizations, are seen as the promoter and conductor of “a strategy of tension” accompanied by projected or simply threatened coups, unlawful police measures, and repeated terrorist attacks aimed not solely at suppressing the former Communist Party, but also at repressing “all other democratic forces” in the name of NATO.

To date, none of these allegations have been substantiated by court decisions or by univocal findings of parliamentary committees.<sup>38</sup> Moreover, all known cases of misconduct regarding the Italian intelligence establishment cannot be attributed to the services as such, but to individual members. These cases pertain to financial matters and to other behavior in conjunction with the protection of sources and undercover operations. While financial misconduct is clearly reprehensible, the other instances apparently are to a considerable extent the result of legislation that fails to contemplate contingencies peculiar to the mission of intelligence and the conduct of related operations.

With respect to the alleged American role in Italy, the following facts appear to have been conveniently forgotten: the majority of the Italian electorate has freely and consistently voted in favor of a democratic system of government to the exclusion of the Communist model; Italy has likewise freely entered the NATO Alliance; all NATO partners are juridically equal in this collective defense organization whose nature is intergovernmental and decidedly not supranational; and, not least, internal security has always been an attribute of Italian sovereignty. All surveillance of Communist activists and concern with their possible access to material classified in the interest of national and collective security was in fact conducted by the pertinent Italian police

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37. A relevant survey of sources includes Marco Sassano, *SID e Partito Americano*, Padova, 1975; Sandro Amoroso, “I Servizi di Sicurezza,” *Politica del Diritto* (Bologna), No. 3-4, 1976; Giuseppe De Lutiis, *Storia dei Servizi Segreti in Italia*, Editori Riuniti (the Communist Party affiliated publishing house), Rome, 1984; Gianni Cipriani, *Lo Stato Invisibile*, Sperling & Kupfer, Milan, 2002, and Fabrizio Cicchito, Gianluigi Da Rold, and Francesco Gironda, *La Disinformazione in Commissione Stragi*, Bietti, Milan, 2002. The latter work is based on a selection of contrasting points of view.

38. Investigations, appeals, and retrials regarding a number of terrorist bombing attacks with multiple victims dating as far back as the 1970s are still ongoing and are accompanied by incessant out-of-court allegations and polemics.

and intelligence agencies given the Communist Party's close political and economic ties with the Soviet Union and longstanding stance against Italy's security and defense policies.

Anti-American allegations are, moreover, couched in language and terminology that reflect both willful ignorance and confusion as to the workings of U.S. Government departments and agencies as well as to the nature of the American presence in Italy, particularly in military installations. These allegations have been repeatedly refuted by the author of this article, who has held various assignments in Italy as a U.S. Army junior and senior officer in military police and general staff positions.<sup>39</sup>

## VI. Contemplated Intelligence Reform under the Current Italian Government

Criticism of the Intelligence Law and speculation over possible reform has been going on practically since its enactment.<sup>40</sup> Moreover, 48 reform bills have been introduced in Parliament since 1979.<sup>41</sup>

The reform bill titled "Amendments to Law No. 801 of October 24, 1977," which was submitted on June 19, 2002 by the current Council of Ministers, deserves particular attention. The current Council of Ministers, as previously noted, is supported by a comfortable majority in both Chambers of Parliament. Therefore, it could easily muster enough votes to insure the conversion of this reform bill into law, even without the bipartisan support sought on account of the sensitivity of the issue.<sup>42</sup>

### A. This "Bill" Consists of Ten Articles Summarized as Follows:

The stated overall objective of the Bill, which leaves the intelligence oversight provisions and the general structure and responsibilities of the intelligence establishment unchanged, is manifold. It entails (1) improved awareness regarding the importance and usefulness of intelligence in formulating national security policy; (2)

39. Most recently, Vittorfranco Pisano, "Complotti," *Area* (Rome), No. 70, June 2002.

40. Various media reports attest to this, including *Corriere della Sera* (Milan), May 23, 1978, at 1; *AIPE* (Rome), Jan. 2, 1979, at 5-6; and *L'Espresso* (Milan), Jan. 7, 1979, at 13.

41. Among these, there is one by Cossiga, who as former President of the Republic is now a lifetime Senator by constitutional dictate. For the text of his bill, see the Appendix of *Abecedario*, *supra* note 34, at 61-101.

42. Atti Parlamentari, Senato della Repubblica, *Disegno di Legge N. 1513 - Modifiche ed Integrazioni alla Legge 24 Ottobre 1977, N. 801, Recante Istituzione ed Ordinamento dei Servizi per l'Informazione e la Sicurezza e Disciplina del Segreto di Stato*, comunicato alla Presidenza il 19 giugno 2002.

“functional safeguards” for personnel legitimately involved in intelligence operations requiring legal flexibility in the interest of State security; (3) assured full direction and coordination of the intelligence establishment by the Premier in conformity to the current Intelligence Law; (4) formulation of procedures for the selection and hiring of qualified personnel outside of the public sector; and (5) introduction of a viable regulation of State secrecy.

*B. Specific Considerations, Should the Bill Become Law*

The composition of CIIS is reduced to five members: the Premier, who presides, and the Ministers of Foreign Affairs, the Interior, Defense, and Economics and Finance. The specific purpose of CIIS is to assist the Premier in the overall formulation of intelligence and security policy.

CESIS verifies and controls the execution of the Premier’s directives; develops and updates intelligence estimates on the basis of information provided by SISMI and SISDE; coordinates actions requiring international cooperation; establishes criteria for document and archive control; and is tasked with intelligence-awareness promotion, relations with the media, and institutional communication. The General Secretariat of CESIS is directly subordinate to the Premier, who, in his capacity as National Security Authority, determines its internal organizations and functions.

The Premier, after hearing CIIS, sets forth requirements for the recruitment and selection of personnel hired from the private sector and for the training and continuing education of all intelligence personnel.

Crimes not specifically directed at endangering life, physical integrity, personal liberty, or public health and safety, committed in cases of exceptional necessity by members of the intelligence and security services, or by persons tasked as auxiliaries but not subordinate thereto, are not punishable by law, provided certain conditions are met. Those conditions entail suitable and indispensable conduct in order to achieve an institutionally recognized outcome and the impossibility to achieve it by other means. This conduct must, moreover, be normally authorized by the Premier, following a request by the Director of the service involved, or directly by the Director in cases of absolute urgency, but the latter must inform the Premier within 24 hours through specified channels. Unlawful authorization or related unlawful conduct carries a prison term of 2 to 5 years. If an authorization has been granted, the judicial authorities may not commence proceedings, but they may raise a jurisdictional issue before the Constitutional Court. Secrecy applies to all proceedings.

The Premier, after informing the Minister of Defense or of the

Interior, depending on the circumstances, can authorize either Director to issue, solely for institutional purposes, false documents in order to provide operational personnel with suitable cover. Similar rules govern the authorization to conduct, for analogous purposes, economic activities at home or abroad.

The obligation on the part of the Government to report semi-annually to the Parliament on the intelligence and security policy and its results is confirmed, together with the prerogatives of the Parliamentary Oversight Committee already set forth in the Intelligence Law. However, various precautions are specifically added. CIIS is to provide the Parliamentary Oversight Committee with additional information that it may request from time to time. But the latter is specifically barred from access to any information regarding sources, assistance from foreign intelligence services, the identity of operatives, operational frameworks, and ongoing or completed operations whose disclosure is deemed dangerous by the Premier for the security of the Republic. Moreover, the Speakers of both Chambers must promote the adoption of suitable procedures for the protection of classified information submitted to the Parliamentary Oversight Committee.

The Premier, in his/her capacity as National Security Authority, makes the determination of State secrecy. It applies to all matters where knowledge, outside of authorized institutional bodies having an "absolute need to know," may endanger or damage the constitutionally safeguarded values already indicated in the Intelligence Law. State secrecy expires after 15 years, except for particularly sensitive "acts, documents, things, or information" pertaining to such matters as military security systems and intelligence sources and methods. After 40 years and following declassification, all formerly classified documents, including those issued from the intelligence establishment, are turned over to the State Archives. The Premier can extend this term by 10 years with respect to matters of particular sensitivity.

When the judiciary needs to acquire documentation or other material in possession of the intelligence and security services, it must indicate precisely what it requires. The pertinent acquisition can take place only at the central offices of the respective services. Access to all other offices is denied. Whenever documentation or other material requested by the judiciary issues from a foreign intelligence service or a security organ of an international organization with the proviso that it will not be disclosed, the Premier must consult with said service or organ. If the head of the office holding documentation or other material requested by the judiciary claims State secrecy, said documentation or other material must be forwarded to the Premier, who must authorize its release within 60 days or uphold State secrecy. As National Security

Authority, the Premier must declassify all releasable documentation and other material prior to its release.

The judiciary can raise a jurisdictional issue with the Constitutional Court should it consider the Premier's confirmation of State secrecy unjustified. If the Constitutional Court concurs with the judiciary, State secrecy can no longer be claimed in proceedings relating to the same event.

The rapidity with which this reform bill could be converted into law will depend in part on whether the governing parliamentary coalition, the center-right "pole," wishes to do so with the nearly full support of the parliamentary opposition. Unanimous support is unlikely because the remaining Communist hard-liners and the Greens will vote in the negative.

The urgency to upgrade the viability of the intelligence system in an era characterized by multidimensional and multidirectional risks, both domestic and transnational, likely will bolster the bill's conversion into law. The impact of September 11, 2001 and its aftermath on all allied and friendly countries rendered this need to upgrade even more disquieting.

## VII. Concluding Considerations

Conversion of the proposed Bill into law may neither solve all problems nor simplify all challenges, but it would undoubtedly constitute a reasonable step in the right direction. Such a commentary is prompted by this author's pragmatic considerations. It is not an unconditional endorsement of the proposed reform legislation.

A single intelligence service, rather than two services subject to a coordinating organ, as called for by both the current system and the reform Bill, could prove to be considerably more streamlined and efficient. This is particularly true in the many instances where the bureaucratic process tends to be proverbially slow, regardless of specific political, cultural, sociological, or psychological factors and environments.

This hypothesized single intelligence service would be organized as a separate and autonomous public entity. It would be composed of technically and geopolitically oriented divisions and offices operating under a civilian or military director appointed by and immediately answerable to the Chief Executive. The Chief Executive's prerogatives would include policy formulation, overall mission tasking, decision-making, and upholding State secrecy when reasonable and appropriate.

This entity would be endowed with built-in capabilities for the collection, evaluation, and analysis of information, as well as the conduct

of covert action, understood as a complementary intelligence function requiring specific approval in all highly sensitive cases. Therefore, here would be no need for another organ at a higher level to supplement the capabilities of the intelligence service.

The removal of the intelligence services from their current respective Ministries would in no way downgrade these Ministries' operational capabilities. The police organizations as well as the military establishment would retain sufficient intelligence capability organic to their specific mission and institutional methodology (i.e., police intelligence and military intelligence). Moreover, cooperation between the hypothesized single intelligence service and other governmental departments and agencies would be mandated by law.

A bicameral oversight committee, or perhaps separate committees for the two chambers of Parliament, would safeguard a healthy system of checks and balances. No less significantly, the committees would serve the purpose of utilizing the intelligence product in the interest of legislation within the boundaries of national and collective security. The latter function would be highly emphasized.

Moreover, any challenge to the Chief Executive's upholding of State secrecy would still be brought before a specialized section of the judiciary having exclusive jurisdiction and duly cleared to examine classified material.

In the interest of security procedures during both the investigative and arrest stages, special provisions would be made for the retention of judicial police status on the part of personnel assigned to counterintelligence. Their jurisdiction would be limited to security offenses.

Finally, in order to simplify procedures affecting temporary duty and subsequent return to their parent organizations, military personnel assigned to the intelligence service because of special skills or other requirements would simply be detailed thereto without loss of military status.

Realistically, however, given the current Italian system of government and the workings of Italian politics, the times do not appear to be ripe for an intelligence reform such as the one concisely hypothesized here.

Consequently, the passage of legislation along the lines of the Bill outlined under the previous heading would constitute as appreciable of an achievement as can be prudentially expected under present circumstances. On the positive side, it would to some degree streamline the system, provide for the hiring of select personnel in certain skill areas, and above all else afford badly needed operational safeguards, thus enhancing mission potential at a time when national and collective

security requirements are in fact demanding.

As this article goes to press, media accounts report that the Bill proposed by the majority coalition is being discussed with the opposition in order to reach a broad consensus based on compromise.<sup>43</sup> While cautious optimism is warranted, it should not be forgotten that political compromise in professional and technical areas has often failed to produce positive results. Hopefully, the intelligence law will not necessitate re-visitation under the onslaught of emergency conditions.

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43. *Il Tempo* (Rome), Nov. 13, 2001, at 5.