

Oversight and Governance of the Danish Intelligence Community

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Abstract

The study of intelligence communities, and oversight thereof, outside the English-speaking world remains relatively underdeveloped. One of the most instructive cases in this regard is the evolution of the Danish intelligence community and its oversight architecture.

Conforming neither to the ‘big bang’ of intelligence oversight in the Anglophone world during the 1970s and 1980s nor to the later security sector reform (SSR) surge amongst so-called ‘new democracies’, Denmark evolved its own somewhat patchwork oversight apparatus as a consequence of a series of public controversies regarding its agencies both during and after the Cold War. We argue that the Danish experience conforms well to Loch Johnson’s notion of ‘fire-fighting’ oversight, but otherwise shares little with the political trends and ethos that shaped oversight mechanisms elsewhere. Instead, the dominating influence on the governance of Danish intelligence were Denmark’s specific constitutional model on the one hand, combined with legacies of the country’s experience of Nazi occupation during the Second World War and geopolitical position during the Cold War.

Introduction

Only a generation ago, external oversight and accountability of intelligence services was still a topic of some debate and controversy.¹ Today it is an accepted, even indispensable, feature of intelligence amongst the world’s liberal democracies. As an international, if not global, phenomenon, the evolution of intelligence oversight is largely seen in terms of two archetypes. The first is the explosive spread of transparency and lustration concerning intelligence services in the wake of America’s so-called ‘Year of Intelligence’ and, especially, the very public deliberations and conclusions of the Senate’s so-called Church Committee.² The second was the more incremental spread of democratic institutions and scrutiny through ‘security sector reform’ (SSR) in so-called ‘new’ and ‘emerging’ democracies in the former Soviet Bloc, sub-Saharan Africa and Latin America.³ There is, however, a significant number of cases of evolving intelligence oversight that took shape *outside* both the North American accountability ‘big bang’ and the global accretion disk of SSR. It is fairly clear, for example, that the the UK’s intelligence oversight apparatus

¹ It is all too easy to forget in 2021 the often trenchant opposition to such lustration, see e.g. Michael Mates, *The Secret Services*.

² Loch Johnson, *A Season of Inquiry*.

³ Max Born and Marina Caparini, *Democratic Control of Intelligence*; Africa and Kwadjo, *Challenging Intelligence Dynamics*

fits neither template. It was shaped, rather, by changing transnational standards in governance and jurisprudence than either scandal or fundamental reform embodied in the European Convention on Human Rights and its Court, and the increasingly immersive European Union institutions that evolved out of the 1992 Maastricht Treaty.⁴

Denmark represents one of the most instructive additional cases that lies the outside North American and SSR precedents. Like Britain, Denmark is a constitutional monarchy but with a very different political history and experience of the international traumas since its constitution was first framed in 1849. More importantly, as one of the present authors has argued (in concert with Kristian Gustafson), the Nordic world represent an important line of democratic evolution, but one that has taken shape largely independent of the Anglo-American tradition.⁵ Like Britain, it joined the European Union in 1973, but is still a member after Britain leaving in 2020. One might reasonably expect the Danish evolution and experience of intelligence oversight to resemble or even parallel that of the UK. However, it does not.

As will become apparent, the Danish experience reflects that country's particular historical experiences as a constitutional democracy, of German occupation in the Second World War, and geopolitical and strategic pressures that prompted it to become a founding NATO. No less significantly, the initial mechanisms of Danish intelligence oversight were laid down nearly a decade before the American system was regularised. As in many other Western democracies, the political and strategic backdrop was subsequently overtaken by a succession of significant demographic and political-cultural transformations from the 1960s on that would consistently challenge established values and practices. This trend of accelerating social change coincided with a succession of scandals and controversies that prompted a series of oversight initiatives that led to the present arrangement that combines parliamentary and independent scrutiny. However, these developments took place within the political and linguistic bubble of the Danish polity that was largely cut off from wider global discussion and deliberation on intelligence oversight and accountability. The language barrier, in particular, has tended to work in both directions. On the one hand, discussions of

⁴ See, e.g. Leigh, 'The UK's Intelligence and Security Committee' p.180

⁵ Philip H. J. Davies, and Kristian C. Gustafson "Legacies, Identities, Improvisation, and Innovations of Intelligence" p.294. This lack of attention is especially ironic given the degree to which the British Parliament traces its own origins to the Anglo-Saxon (and therefore, implicitly Scandinavian) model of elective monarchy. See e.g. UK Parliament 'Anglo-Saxon Origins' <https://www.parliament.uk/about/living-heritage/evolutionofparliament/originsofparliament/birthofparliament/overview/origins/> (downloaded 26 August 2021).

Danish intelligence in Danish have had little visibility in the wider literature of intelligence studies which has focused almost exclusively on the so-called Anglosphere.⁶ On the other hand, as will become apparent, Danish commentators on intelligence have largely had to conduct their discussions without access to the toolkit of concepts, theories and precedents available from the Anglophone discourse. Within the Danish bubble, there have been persistent complaints that oversight machinery that has taken shape is one of the least systematic and least effective in Europe.⁷ While this may be true in broad brush terms, the matter is more nuanced and there degree of scrutiny achieved needs to be appreciated as much as its limitations.

Culture and Context

There has been a growing sense of the need to take cultural issues and nuances into account in understanding the evolution and operation of intelligence services around the world.⁸ This is essential to understanding the Danish case where politics of intelligence oversight in Denmark have been driven and shaped by concerns and concepts entirely particular to that nation. For example, the foremost and longest running of the controversies was a widespread discomfort over the handling of very large numbers of personal files generated by the domestic National Police security service, *Politiets Efterretningstjeneste* (PET) referred to in English-language discussions as ‘registrations, a term that carries none of the connotative intensity of the original Danish *registreringer*’. A critical juncture in the evolution of the Danish oversight was when – as we shall see in more detail below - an already febrile public mood about the basic nature and extent ‘registrations’ acquired renewed intensity when it transpired (as will be discussed below) that the Danish Defence Intelligence Agency, *Forsvarets Efterretningstjeneste* (FE) had gone to some lengths to by-pass measures to impose limitations on PET’s ‘registrations’.⁹ Lying at the heart of this controversy, the notion of ‘registration’ in Danish entails the government taking an official interest in a matter or person and therefore retaining a permanent record of them. The nearest

⁶ Davies and Gustafson “Legacies, Identities, Improvisation, and Innovations of Intelligence”.; Aldrich and Kusak, “Escaping from American intelligence: culture, ethnocentrism and the Anglosphere”.

⁷ Koch, B ”Reform af PET – styrket demokratisk kontrol?”, p.2.

⁸ See, variously, Davies, “Philip H.J. Ideas of Intelligence” also *Intelligence and Government in Britain and the United States*; Duyvesteyn, *Intelligence and Strategic Culture*, Richard Aldrich “Strategic culture as a constraint: intelligence analysis, memory and organizational learning in the social sciences and history”.

⁹ See also J. Laursen *Politiets Efterretningstjeneste 1945-1968. PET-Kommissionens Beretning Bind 2*.

English language equivalent to the notion is, perhaps, the sociological conception of ‘surveillance’ as official data collection and record keeping, particularly (but not exclusively) by the modern state¹⁰, but this lacks quite same implication of official intrusion into private space. The nearest equivalent in the Anglophone might be the short-lived furore about MI5’s retention of Cold War personal files during the 1990s, years after the confrontation had drawn to a close.¹¹ But there was never quite the same sense of breadth and pervasiveness of MI5 record keeping on private citizens that the notion of ‘registration’ implied for Danes. Thus the recurrence of ‘registrations’ as a source of public concern repeatedly and consistently over three decades reflects the deeply emotive and politically fraught nature of the *idea* as it does the specific actions of Denmark’s agencies with regard to acquiring and retaining such records.

To complicate matters further, the Danish language frames many English-language concepts essential to theories of oversight and control very differently. For example, in Danish the words *kontrol* (lit. ‘control’) and *tilsyn* (‘oversight’ or ‘supervision’) tend to be used interchangeably. One might reasonably expect such a conflation to make discussion about intelligence oversight difficult, and difficult to align with English-language conceptual frameworks where intra-governmental vertical ‘supervision’ or ‘control’ in *line management* terms is scrupulously distinguished from uses of ‘oversight’ or ‘accountability’ that imply some degree of scrutiny from *outside* that line management. Consequently, there are significant potential obstacles to trying to apply the conceptual armature for discussing intelligence oversight in the Anglophone literature to Denmark without a significant risk of ethnocentricity (in the methodological rather than pejorative sense) weakening the fidelity of that narrative.

And, while there has been some examination of Denmark’s intelligence community and its oversight, it has been confined largely to the Cold War and conducted almost entirely in Danish, for instance the 16-volume report of the PET Commission published in 2009.¹²

¹⁰ Christopher Dandeker *Surveillance, Power and Modernity: Bureaucracy and Discipline from 1700 to the Present Day*, 2nd Edition. It should be noted that this use of ‘surveillance’ differs significantly from the idea of ‘surveillance’ in intelligence studies, and does *not* denote specifically intrusive information collection activities.

¹¹ See, e.g. Glees, A., P.H.J. Davies and J. N. L. Morrison *The Open Side of Secrecy: Britain’s Intelligence and Security Committee* pp.145-149.

¹² The legislation founding the PET Commission was made available on-line at <https://www.retsinformation.dk/eli/lt/1999/359> (last accessed 26 August 2021). In effect the Commission functioned from 1999-2009. All 16 volumes were available for download online without cost, although at the time of writing the website is no longer active.

Almost entirely absent have been conceptual, policy or normative discussions of the intelligence function in Denmark. Only recently has a small number of books and articles appeared attempting to overcome this lack of research.¹³ By the same token, discussions in English of Danish intelligence have tended to be cursory and preliminary.¹⁴ The impact of the language barrier has been intensified by a culture of official and archival secrecy surrounding the Danish intelligence services than in the Anglosphere. Foreign intelligence work by FE, which doubles as Denmark's clandestine service as well joint military intelligence organ, remains very much out of the public domain in Denmark.¹⁵ While there are some Danish writers within Denmark working on intelligence studies much of that work has been journalistic rather than scholarly in approach, with the notable exception of historical work on the evolution of the Danish intelligence community.¹⁶

While PET has begun to foster better links to civil society in Denmark, the same cannot be said for FE. One need only look at the 2012 Wendler Pedersen Report (see below) where, out of some six hundred pages, only 47 pages deal with FE.¹⁷ Consequently much of the public debate and deliberation regarding the work of the Danish agencies and their accountability has tended necessarily focused on PET. As a result, despite FE playing a central role in what might be called Denmark's 'year of intelligence' in 1968 it remains far less visible and subject to less scrutiny in the understanding and scrutiny of the Danish intelligence community than PET. As a result, the Danish context has presented significant cultural and conceptual challenges to the study of intelligence within both the Danish and Anglophone worlds.

¹³ See, for example, K.L. Petersen and Kira Vrist Rønn. *Intelligence on the Frontier Between State and Civil Society*. For work in Danish, Kira Vrist Rønn's edited volume *Efterretningsstudier* is the first attempt to at a Danish introduction to the field of intelligence studies, and it is necessarily a very broad brush that is used. However, in her contribution to the collection she "acknowledges that the field in Denmark is just at the beginning of its journey. See Vrist, "Indledningpp.21-22.

¹⁴ Andersen, L. E. "Denmark – From State Security to Security State: The Invention of Preventive Security"; Weller, G. R. "Political Scrutiny and Control of Scandinavia's Security and Intelligence Services".

¹⁵ Although FE did publish a collection of articles in Danish about their work in 2017, see Forsvarets Efterretningstjeneste *Forsvaret Efterretningstjeneste FE 1967-2017*.

¹⁶ The lack of studies of is also remarked upon by Mariager, R. 'Danish Cold War Historiography', as well as Rønn "Indledning".

¹⁷ Justitsministeriet *Betænkning 1529 om PET og FE*, pp. 12-14, see length of chapter 12, compared to several chapters on PET.

Intelligence Governance in Denmark Today

The Danish System of Government

Any national model of intelligence and intelligence oversight will be a result of a variety of factors, chief among which is the political system within the country. The basic framework of Denmark's system of government is laid down in its Constitution which was enacted in 1849 transforming Denmark from absolutist to constitutional monarchy. Parliamentary democracy in its modern form was established in 1901. While the Constitution is the legislative basis for the Danish political institutions it is also the document setting the positive and negative rights enjoyed by the Danish citizens. Much of the Constitution has remained largely unchanged since 1849 apart from some linguistic updates. Danish voters elect a monocameral parliament, which is, in turn, empowered to appoint or remove the government which, as in Britain, actually controls the executive powers of the Crown.

Part of what sets the Danish system of government apart from the UK and the USA in any comparison is its proportional representation system which has not only resulted in a prevalence of coalition governments but also, less intuitively, an equally significant prevalence of minority governments. In fact, since 1953, Denmark has only been governed by coalitions commanding a majority in parliament from 1957-60, 1968-71, and 1993-94, and never by a single party majority. Indeed, for the last of these governments, it is even debatable whether it commanded a majority throughout its entire existence. Single party minority governments prevailed during 1953-57, 1964-68, 1971-78, 1979-82, 2015-16, and again since 2019. However, most of the time Denmark has been governed by minority coalitions from 1960-64 and 1978-79, and between 1982-1993 and 1994-2015 by a succession of different coalitions, and then again from 2016 to 2019. Consequently, no government has ever been able to pursue its policies without support from one or more other parties.¹⁸

The Prime Minister is free to choose members of his or her cabinet, and there is no demand for ministers to be members of the parliament, although all ministers, whether members of parliament or not, are as a matter of course responsible to parliament for their governance and can be called to appear in parliament.¹⁹ In practice, cabinet appointments are

¹⁸ Martin E. Hansen, 'The Government and the Prime Minister' pp.109-111.

¹⁹ Government of Denmark *Danmarks Riges Grundlov* [*Constitutional Act of the Kingdom of Denmark*] Articles

usually negotiated between party leaders when a coalition government is being formed. There are no formal requirements for ministerial appointment, but all potential ministers are vetted by PET. Notably, in 2011 the PET could not provide a clear record for the Social Democrat Henrik Sass Larsen who had been chosen as Minister of Finance. Due to his friendship with a known criminal it was recommended to the Prime Minister not to appoint him. Although the PET cannot veto ministerial appointments, in this case their advice was listened to and accepted. The only reason this is publicly known is that Larsen himself went public with the information, later confirmed by the then Chief of PET.²⁰

Ministers are responsible for their departments and are liable to parliamentary scrutiny through standing committees and parliamentary questions. If parliament expresses its non-confidence in a minister he or she must resign, although in practice the minister has always been removed before the formal vote was held. Each department is managed on a day to day basis by the Head of Department who is the seniormost civil servant in that department. The Head of Department advises the minister and manages the bureaucratic side of the department, although all business is done in the name of minister, meaning that a minister is the one who is held politically responsible for the policies, decisions and actions of that department.²¹

The Danish intelligence agencies fall under the jurisdiction of two different departments. PET has its administrative “home” in the Justice department and the FE its “home” in the Defence department. The Foreign Office also draws on the FE, although only indirectly through its work with the Defence department.²² Nonetheless, despite departmental affiliation, each agency’s head answers directly to their respective Heads and Department and ministers. The Prime Minister’s Office has been increasing its involvement in foreign and security policy since 1994.²³ Although there is little publicly available information about the intelligence flow between the agencies and the Prime Minister’s Office, Prime Minister chairs the government security committee where both the Ministers for Justice and Defence are members alongside the Foreign Minister and the Finance Minister.²⁴

15, 40 and 53.

²⁰ See Skjoldager, M. *Syv år for PET*.

²¹ See for instance, Christensen, Jorgen G. *Centraladministrationen*.

²² Indeed, according to Henriksen, “FE på fastere lovgrund. Flere beføjelser og styrket kontrol”, 113, FE was until 2001 only regulated by the Ministry of Defence own administrative directives and internal guidelines

²³ Hansen, ‘The Government and the Prime Minister’, 119.

²⁴ See: http://www.stm.dk/p_8011.html (last accessed 10/09/2017).

There are also, in theory, strict legal constraints on the use of intrusive investigatory powers. Ever since it was first framed, the Danish Constitution has required that any examination of letters, papers and private property could only take place with a court order. This was expanded in 1953 to include postal services and telecommunications.²⁵ The 1953 reform was especially significant because, prior to this, the agencies had exercised a free hand in intercepting telecommunications despite being signed up to a decision in principle that a court order should be sought for such intercepts. This also led to an update in the Procedural Law to reflect Constitutional change.²⁶ However, from 1954 to 1985 there was still the possibility of *periculum in mora*, i.e. interception without court order, but with administrative written consent. This was changed in 1985 when Procedural Law was amended to require any interception without a court order to be tested in a court as soon as possible and within 24 hours of the start of the interception. This also meant that any requests for a Court order would see the person or organisation against whom the order was sought represented by legal counsel drawn from a special list of approved persons independent of the government.²⁷ Consequently, while the governance of investigatory powers has become steadily more robust, the principle and practice of such court orders differ significantly from the Anglophone Common Law concept of warrantry.²⁸

The Intelligence Community and its Oversight Bodies

As noted above, the Danish intelligence community consists of two main agencies, the Police Intelligence Service or PET, and the defence intelligence agency or FE. FE provides strategic and operational intelligence support to the defence staff and, less frequently, the armed services²⁹ (when on foreign deployments such as the Balkans and Afghanistan) as well as to civilian defence policy. It also serves as the national agency for SIGINT and foreign intelligence. Likewise, PET doubles as the police criminal intelligence organisation and the

²⁵ Danish Constitution, Article 72.

²⁶ Schmidt, and Miller, *PET's Virkemidler*. 183.

²⁷ "Beskikket forsvarer" is the Danish term, denoting an advocate who is empowered to act for those who either cannot appoint an advocate of their own or where it is deemed impossible for them to appoint an advocate because of, for example, security considerations affecting the interception of communications.

²⁸ There is some variation, of course, in concepts and conduct of warrantry in the 'Anglosphere', see e.g. Michael Herman, *Intelligence Services in the Information Age* p.136.

²⁹ The Danish Army possesses an Army Intelligence Centre (currently in the throes of reform and restructuring) concerned with tactical intelligence support and field security for both army, navy and air force.

national security service.³⁰ Intelligence oversight in Denmark was confined to executive control for the first two decades after its post-war establishment, only reluctantly and gradually yielding to a limited degree of external scrutiny. Both FE and PET were placed on a statutory footing only in 2013.³¹ From inception, PET was responsible to the Justice Department and FE to the Defence Department, but since 1988 both agencies also fall under the authority of the Parliamentary *Kontroludvalget* ('Control Committee'), established in 1988 with one representative for each of the five largest parties in the Danish Parliament. In contrast to other parliamentary committees in Denmark there are no substitute members and both members and the government can call a meeting of the committee.³² Prior to this, there was no parliamentary oversight of the agencies or their activities. Between its creation in 1964 and 2013 when it was replaced by the '*Lov om Politiets Efterretningstjeneste*' (Translation: The Police Intelligence Law), the Wamberg Committee an independent committee provided independent oversight of a range of agency activities, such as the handling of personal information (such as 'registration'). During the late 1990s the Wendler Pedersen Commission and PET Commission both assessed parliamentary involvement in developing the future of the intelligence community as well reviewing past intelligence practice were both dissatisfied, primarily because of a reliance on ministerial control as the main mode of oversight. Even after these commissions, the intelligence agencies were not placed on a statutory framework until 2013 when the Wamberg Committee was replaced by a politically independent body named "*Tilsynet med Efterretningstjenesterne*" (abbreviated as TET, translated as "Danish Intelligence Oversight Board"). The 2013 statutory framework introduced by the reform has been cited as evidence of a "low level of ambition in Denmark" in intelligence oversight along with an excessive focus on the past.³³

Prior to 2013 reform, the Justice Department had taken the view that PET and FE were subject to the 'regular [ordinary] control [(measures)] by the judiciary'.³⁴ This

³⁰ The dual nature of PET's responsibilities has seen quite in-depth research from a legal perspective with regards to what oversight each role require, see E. B. Greve *Politiets Efterretningstjeneste*, also Greve "Efterretnings- og sikkerhedsvirksomhed" ipp. 93-112.

³¹ Koch, P. B. "Demokratisk kontrol med efterretningstjenester" p.119.

³² "Folketingets Kontrol" on *Forsvarets Efterretningstjeneste* website (last edited: 06/01/2014). Full text available in Danish at: <https://fe-FE.dk/om-os/Kontrol-med-FE/Folketingets-kontrol/Pages/Folketingets-kontrol.aspx> (last accessed 10/09/2017); N.A. "Supervision of the Danish Security and Intelligence Service" in *PET Website*. Text available in English. Full text available at: <https://www.pet.dk/English/Legal%20matters/Supervision%20of%20the%20Danish%20Security%20and%20Intelligence%20Service.aspx> (last accessed 10/09/2017).

³³ Koch, "Reform af PET – styrket demokratisk kontrol?" pp.2, 8-9.

³⁴ Justitsministeriet, "Betænkning 1529 om PET og FE".

effectively meant that while the Danish intelligence agencies were seen as beholden to the courts per the Danish constitution, requiring neither specific statute law nor dedicated judicial oversight. Unsurprisingly, concerns have been expressed both by politicians and former agency heads that there has been a “tendency to weaken judicial involvement in the intelligence process”, to the point where the role of the courts as an independent branch has been questioned.³⁵

Financial oversight of the intelligence agencies is undertaken by *Rigsrevisionen* (the National Audit Office) which is an independent institution under parliament tasked with auditing government expenditure, the work is led by the *Rigsrevisor* (National Audit Officer) which is a civil servant position. The National Audit Officer conducts the audit and presents a report to the six *Statsrevisorer* (Government Auditors) who are appointed by the six largest parties in the Danish parliament and often, albeit not exclusively, simultaneously serve as MPs. The Government Auditors report to parliament what has been discovered by the National Audit Office and what recommendations are to be made. Audit of the intelligence agencies is conducted under strict provisions of secrecy, but the existence of the audit process does provide evidence of increased scrutiny with the intelligence agencies. The National Audit Office oversees the finances of both FE and PET, in a manner similar to the audit of other parts of the national budgets.³⁶ Parts of the budget referred to as the ‘secret account’ (effectively agent/source-related expenses) are subject to special review measures by a specially mandated employee of the national audit office. This special review procedure entails a more stringent control with the financial records than that of the regular police.³⁷ The procedure is carried out biannually, and the national audit office reviews every file related to ‘special expenses’.³⁸ The results of the special review are presented annually to the Danish parliament by the government auditors.³⁹ This process was examined by the 1998 Wendler Pedersen Commission which concluded that this mechanism for financial control

³⁵ avidsen-Nielsen, H. *En højere sags tjeneste* p.341.

³⁶ “Rigsrevisionen” in *FE website* (last updated: 28/12/2013), full text available in Danish at: <https://fe-fe.dk/om-os/Kontrol-med-FE/riksrevisionen/Pages/Rigsrevisionen.aspx> (last accessed 10/09/2017).

Author unknown “Supervision of the Danish Security and Intelligence Service” in *PET Website*. See section called “Oversight by the National Audit office”. Text available in English. Full text available at: <https://www.pet.dk/English/Legal%20matters/Supervision%20of%20the%20Danish%20Security%20and%20Intelligence%20Service.aspx> (last accessed 10/09/2017)

³⁷ Justitsministeriet, ”Betænkning 1529 om PET og FE”.

³⁸ Justitsministeriet, ”Betænkning 1529 om PET og FE”. p. 398.

³⁹ Justitsministeriet, ”Betænkning 1529 om PET og FE”. p. 399.

constituted an adequate level of parliamentary oversight.⁴⁰ This is most likely because financial accountability provides the most concrete form of accountability.

Despite possessing formidable investigatory powers, Denmark's Parliamentary Ombudsman has never played a significant role in oversight or control of PET. The Ombudsman has investigated several cases involving PET over the years – primarily ones concerning personal information. The Ombudsman's function is to investigate complaints against the institutions of government rather than to act as an oversight entity as such. Despite this limitation to its accountability function, the Ombudsman is in a position to uncover 'anyone in the service pursuing illegal goals, making arbitrary or unfair decisions, or otherwise place themselves at risk of misconduct or negligence in the line of duty.'⁴¹ Ordinarily the Ombudsman acts at the behest of citizens, but is also permitted to investigate matters on own initiative.⁴² Any authority under the jurisdiction of the Ombudsman has a duty to comply with the investigation and disclose all documents requested by the Ombudsman, insofar as they are not subject to one of three categories of exceptions: State security, relations with foreign powers, or concerns posing a danger to the life of a third party.⁴³ According to the PET Commission, none of these three exceptions has, been invoked during any of the (admittedly limited) scrutiny of the intelligence community by the Ombudsman.⁴⁴ The Ombudsman has not often investigated the intelligence agencies or their personnel and activities, but there have been a few examples. In one case in 1968 the Ombudsman was involved in assessing the issue of a SIGINT station on which he issued a statement to the effect that FE, and the work of intelligence agencies in general, was subject to a "special set of considerations".⁴⁵

⁴⁰ Justitsministeriet, "Betænkning 1529 om PET og FE". p. 402. This is consistent with arguments that fiscal oversight constitutes one of the more concrete and effective instruments of intelligence governance. See, e.g. Glees, Davies, and Morrison, *The Open Side of Secrecy* p.65, also UK Cabinet Office 'Improving the Central Intelligence Machinery' <http://www.cabinetoffice.gov.uk/media/300268/improving-the-central-intelligence-machinery.pdf> (last accessed 8/10/2009), pp.4-6.

⁴¹ PET-Kommissionen, *Bind 1: Indledning*, (Albertslund: Schultz Grafisk, 2009). The quoted text is a translation by the author of "Ombudsmandsloven, §3, stk. 1" [The Ombudsman law].

⁴² PET-Kommissionen, *Bind 1: Indledning*, p. 156.

⁴³ PET-Kommissionen, *Bind 1: Indledning*, p. 156.

⁴⁴ PET-Kommissionen, *Bind 1: Indledning*, pp. 156-159.

⁴⁵ PET-Kommissionen, *Bind 1: Indledning*, p. 157.

Evolution of the Danish System

Gestation and Birth

Denmark's experience of German occupation in Second World War had a profound and lasting influence on the development of the post-war Danish intelligence community. It served as the impetus for its creation, and most of the recruits for the new agencies had practical experience as clandestine operators have served as resistance fighters or otherwise been engaged in anti-occupation activities.⁴⁶ A formative moment came in September 1944, after a general strike in Copenhagen and an increase in resistance movement activities, the German occupation forces arrested the Danish entire police as a precaution against a wider uprising. To this day, this is remembered as the moment the Germans 'took the police' (*'Da Politiet blev taget'*), although the literal translation perhaps fails to convey the connotative sense of abrupt and forceful *seizure* conveyed in the original Danish. The arrested policemen were sent to concentration camps in Germany. Those who survived these experiences were deeply marked by them in ways that would contribute to their perception of post-war intelligence work. However, it was with the advent of the Cold War that the Danish intelligence community was to find its role both at home and abroad.

Between 1939 and 1951, the Danish security service underwent several reorganisations. In 1938 Denmark's mix of municipal and national police organisations had been consolidated into the *Rigspolitiet* or National Police. With war brewing in 1939, the *Rigspolitiet* was expanded to include a security service component designated the *Sikkerhedspolitiet* (SIPO, 'security police'). SIPO was tasked with "[guarding] against undertakings or actions, which can be presumed to be aimed at the independence of the Realm and the legal social system".⁴⁷ In 1945, the function of SIPO was transferred to a newly created *Rigspolitiets Efterretningsafdeling* (REA 'National Police Intelligence Department', The National Commissioner's Intelligence Department). In 1951, REA was separated from the main National Police organisational structure as the Police Security Service or PET. PET was charged with expanded intelligence duties, giving it a remit as the national security service.

The Defence Intelligence Service, or what in 1967 became in its current form, FE, was created in 1950 shortly after the 1949 establishment of NATO (of which Denmark was

⁴⁶ For a discussion of the impact of the immediate post-war concerns for PET, see Laursen *Politiets Efterretningstjeneste 1945-1968*, pp.33-59.

⁴⁷ PET. "History" in *PET website*. Text available in English. Full text available at: <https://www.pet.dk/English/About%20PET/History.aspx> (last accessed 10/09/2017)

founding member). Earlier than Britain's establishment of a central Defence cabinet portfolio between the World Wars⁴⁸, and long before the Mountbatten Reforms amalgamated the UK's armed forces under today's Ministry of Defence, Denmark already had a central Minister of Defence as early as 1905. As in the UK, the service branches originally had their own Cabinet portfolios with the Ministry of War (*Krigsministeriet*) responsible for the Army (lit. Ministry of War *Krigsministeriet*) and the 'Marine Ministry' (*Marineministeriet*) overseeing the Danish navy, with its own command staff in the General Staff and the Maritime Staff respectively. However, in the years after 1945 their respective intelligence branches had been cooperating increasingly closely after being tasked with a range of security matters beyond the nation's borders, particularly with a counterintelligence emphasis. In 1950, the two service ministries were consolidated under the Ministry of Defence and an integrated Defence Staff created. Within the new Defence Staff, the Army and Maritime service intelligence branches were combined as the Defence Staff Intelligence Section. Initially there was some pressure from various political quarters, particularly amongst influential veterans of the resistance, to appoint Ole Lippmann. Lippmann was a civilian who had served in the Danish resistance prior to escaping to Britain in 1944 and then returning to Denmark working for the Special Operations Executive (SOE).⁴⁹ In the event, however, the government chose to draw the new organization's leadership from the armed service intelligence branches. The first head, Hans Mathiesen Lunding, was from the Army, while his deputy, Poul Adam Mørch⁵⁰, came from the Maritime intelligence section. In 1967 the defence intelligence function was made an independent service as FE.⁵¹

From its inception, the various precursors to FE and FE itself maintained close ties to allied intelligence services. The original focus was originally on the UK's Secret Intelligence Service (SIS aka MI6) and the Security Service (or MI5) but then extended to include the US Central Intelligence Agency (CIA) and National Security Agency (NSA). These foreign contacts were originally the result of wartime developments. Intelligence officers escaping Nazi persecution had gone to neutral Sweden, where a community of escaped intelligence

⁴⁸ Willson, F.M.G. *The Organization of British Central Government 1914-1956* pp.314-321.

⁴⁹ Hansen, "Fra genfødsel til Vestens vågne vagthund mod Øst. Efterretningstjenesten 1945-1967" p.47.

⁵⁰ Hans Mathiesen Lunding and Poul Adam Mørch. Common practice in the Danish literature is to refer to these individuals by initials and last name or last name only rather than their given names, not least due to their military background..

⁵¹ "Historie" on *Forsvarets Efterretningstjeneste* website (last edited: 11/06/2015). Full text available in Danish at: <https://fe-FE.dk/om-os/Historie/Pages/Historie.aspx> (last accessed 10/09/2017)

officers formed in Stockholm.⁵² Ties to foreign intelligence proved instrumental in the early post-war years during a time where public sentiment in the wake of the war had crystallized into the slogan “April 9th, never again”(‘*Aldrig mere en 9 april*’ [sic]⁵³) referencing the German invasion on April 9th, 1940.⁵⁴ It was in this setting that the Danish intelligence community built ties with the CIA to acquire materiel and contacts.⁵⁵ These ties were primarily developed through Mørch as deputy head of FE. Indeed, it was later suggested by Lunding that that CIA activities run out of Denmark were largely routed through Mørch.⁵⁶

The early years of the Danish foreign intelligence service were defined and hampered by an intensely adversarial relationship between its Lunding and Mørch. The antagonism between the two men appears to have been rooted in Mørch’s resentment over being passed over for the job as head of the agency. Over the years, this was noticed and commented officials from allied intelligence services dealing with the nascent FE.⁵⁷ This relationship was further soured when Lunding discovered that his deputy was involved in running an unauthorised, independent and illegal operation.⁵⁸ This took the form of an assortment of private intelligence organisations operating in Denmark during this time. Most prominent amongst these *Firmaet* (lit.: ‘The Firm’), an independent, anti-communist monitoring and assessment organization founded by Arne Sejr⁵⁹ and Niels Frommelt.⁶⁰

The founders of The Firm were both men with experience in intelligence work from their time in the wartime Danish resistance within Denmark or, in Sejr’s case, operating from Stockholm.⁶¹ The Firm organization had been founded with materiel and logistic support from CIA through an officer at CIA’s Copenhagen station called Cecil Viggo Albertsen, who was also an acquaintance of Arne Sejr.⁶² The Firm had its roots in a CIA-led programme to

⁵² Davidsen-Nielsen, H. *Spionernes Krig*.

⁵³ Unlike in English, months of the calendar are not capitalized in Danish.

⁵⁴ Hansen, P. H. “Upstairs and Downstairs: The Forgotten CIA operations in Copenhagen” p. 686.

⁵⁵ Davidsen-Nielsen, *Spionernes Krig*. p.39.

⁵⁶ Davidsen-Nielsen, *Spionernes Krig* p. 17.

⁵⁷ Davidsen-Nielsen, *Spionernes Krig* p. 123.

⁵⁸ Davidsen-Nielsen, *Spionernes Krig* pp. 124-125.

⁵⁹ In 1941 Arne Sejr (1922-1998) was one of the founding members of the “Student Intelligence Service”, a resistance organisation during the German occupation of Denmark. Sejr fled to Sweden in 1943. In 1948 he established “The Firm” with Niels Frommelt and was an active anti-communist for the remainder of his life, it was acknowledged in obituaries that his level of involvement in Danish post-war intelligence would likely never be known. (see. E.g. *Information*, 30 Juli 1998)

⁶⁰ Niels Frommelt (1921-2008), born Niels Thürmer Larsen, was part of the “Student Intelligence Service” and was arrested by the German occupation forces in 1943 and was interred in concentration camps from September 1943 to March 1945. Alongside “the Firm” Frommelt was also a key person in the development of “Stay Behind” groups in case of Soviet occupation of Denmark (obituary, *Kristeligt Dagblad*, 18 January 2008).

⁶¹ Hansen, *Firmaets Største Bedrift*, p.52

⁶² Hansen, *Firmaets Største Bedrift*, p. 51.

recruit, train and maintain potential stay-behind networks in the event of a Soviet invasion and occupation of Denmark, most probably in the context of a wider offensive into Western Europe.⁶³ The stay-behind programme was conducted largely in collaboration with the Danish government, with active support from a number of Danish politicians, including the future Danish Prime Minister H.C. Hansen has been cited as encouraging these efforts.⁶⁴ Recruitment for these was handled by Niels Frommelt on journeys throughout the country as he drew on war-time contacts.⁶⁵

Once the stay-behind networks had been laid down, their mission was purely to lie fallow until activated, presumably in the event of a general war in Europe against the USSR. Confined to such inactivity, a certain measure of ‘mission-creep’ began to take place that led to Denmark’s first proper intelligence scandal. During the 1950s the Firm undertook a number of CIA-sponsored grey propaganda operations, and at least one operation that involved both unauthorized surveillance and black propaganda.⁶⁶ The operation in question began in January 1952, and entailed planting listening devices in the home of the vice chairman of the Danish Communist Party, Alfred Jensen, and his wife, Ragnhild Andersen.⁶⁷ The pair were, at the time, members of the Danish parliament and as such should have enjoyed parliamentary immunity from official surveillance. The couple’s conversations were recorded by The Firm, and translations of conversation transcripts were sent to the U.S. embassy in Copenhagen.⁶⁸ The transcriptions furnished the readers with insights into the Communist Party intentions and inner workings. These were also provided to a psychological warfare team that had been established within the Firm.⁶⁹ These insights were then used to fashion forged letters from and to key members of the Danish Communist Party composed of a mixture of factual material drawn from the recordings, and deceptive falsification. These were then employed to foment divisions and dissent within the Party, and to foster a more general atmosphere of paranoia amongst its membership. This disruptive action campaign was subsequently credited with contributing to, if not actually directly causing, the

⁶³ The evolution, operation and consequences of these stay-behind cells, initially recruited mainly from alumni of the Danish resistance, is currently the subject of growing scholarly and popular investigation in Denmark. See, e.g. Heiberg, M. *Stay-Behind og Firmaet*.

⁶⁴ I. Philipsen, “The congress for cultural freedom in Denmark” p.239.

⁶⁵ Hansen *Firmaets Største Bedrift*, pp.60-61.

⁶⁶ Hansen, “Upstairs and Downstairs”, p.685

⁶⁷ Hansen, “Upstairs and Downstairs” p. 691.

⁶⁸ Hansen, “Upstairs and Downstairs” p. 691.

⁶⁹ Hansen, *Firmaets Største Bedrift* p.161

party to splinter in 1958.⁷⁰ This operation was terminated in 1959, on the orders of Erik Husfeldt who as a member of the Firm appeared to be its main liaison with the official Danish government.⁷¹ Like Jensen, Husfeldt was a member of an association of former resistance operators called the ‘Danish Freedom Council’.⁷² The activities of the Firm were not made public until 1975, when a retired Prime Minister, Jens Otto Krag, accidentally made revealed its existence during an interview with a journalist.⁷³

Significantly, another participant in the Firm’s extralegal adventures was one Kjeld Olesen. Olesen would later become a Social Democrat politician and member of parliament, Minister of Defence, and eventually Foreign Minister over the course of the 1970s and 80s. Olesen also played a role in a different private intelligence organisation, *Arbejdernes Informations Central (AIC; ‘Information Centre of the Labour Movement’)*, which was financed by the Labour movement and staffed with loyal members of the Social Democratic party, which governed Denmark from 1947-1982, with the exception of eight years. The role of the AIC was to ensure that communist attempts to infiltrate the Labour movement and to organise in work place were thwarted.⁷⁴

The creation of the AIC and the Firm must be seen in the domestic and geopolitical context surrounding Denmark’s post-war liberation. Denmark’s political class had lived through the taking of the police, Nazi occupation and in a number of cases had fought against that occupation in the Danish Resistance. The nation emerged from this sustained crisis to be confronted by Soviet bombing of the German military presence on, and then extended occupation of, the Danish island of Bornholm over 1945-1946. Then, almost immediately after the series of Soviet-controlled seizures of power in Central and Eastern Europe culminated in February 1948 the Czechoslovak coup, Denmark was confronted by rumours of a similar Soviet attempt subsequently known as the 1948 ‘Easter Crisis’. Soviet communism therefore presented a very real, clear and present danger to the country’s leadership in those early, opening years of the Cold War.⁷⁵

⁷⁰ Hansen, “Upstairs and Downstairs” p.692-693.

⁷¹ Heiberg, *Stay-Behind og Firmaet*.

⁷² Hansen, “Upstairs and Downstairs”. Danish Freedom Council was an umbrella for various resistance groups during the German occupation of Denmark. Many of its members became ministers in the “liberation” government May 1945- October 1945, although Husfeldt was instead a delegate at the formation of the UN in 1945. The Council and its members sporadically took part in Danish post-war political debate, but mostly as individuals.

⁷³ Davidsen-Nielsen, “*Spionernes Krig*”.

⁷⁴ For a discussion of the creation of AIC and its relationship with PET, see Schmidt, R., *PET’s Overvågning af Arbejdsmarkedet* pp.29-31; 57-68.

⁷⁵ Hansen, “Upstairs and Downstairs: The Forgotten CIA operations in Copenhagen”, p.687.

Adolescence

During the 1960s the public awareness of the intelligence community would be dominated by an acute controversy over the issue of ‘registration’. This was fundamentally shaped by the legacy of German occupation during the Second World War. During the mid-1930s the police intelligence section, then designated Department D, had begun registration work generating a substantial volume of files on certain politically active individuals.⁷⁶ However, even before the 1940 invasion, Department D had been penetrated by German Gestapo. As a result, when the Germans abandoned the Molotov-Ribbentrop pact and invaded Russia in 1941, the German authorities, working through the loose occupation of the so-called Collaborative Government (lit: *Samarbejdsregeringen*), used the Danish police and Department D’s to arrest and detain some 300 high-ranking Danish communists.⁷⁷ Subsequently, during the 1950s, the then-head of PET was subjected to intense media scrutiny over what became known as the “black archives”(lit: *sorte arkiver*).⁷⁸ This escalated into something of a public furore in 1954 when it was alleged that the head of PET had access to records of some 200,000 citizens. A decade later the furore escalated into outright scandal. Despite a change in leadership, it was still alleged that the head of PET had records on a very large number of citizens. In 1964 it was alleged that there were ‘registrations’ on up to 400,000 people – a tenth of the entire population of Denmark.⁷⁹ There is some debate surrounding the validity of this number, with some arguing that it was only 40,000 citizens with “damning” recordings based on political activity.⁸⁰ Others have argued that the number was “not entirely wrong”.⁸¹ Regardless of the accuracy of the exact number, the debates around the registrations caused some measure of ‘moral panic’⁸² over the practice. In the period from 1945-1963, PET practice had been to register all members of the Danish Communist Party, as well as individuals subscribing to the Communist Party daily newspaper “Land og Folk”

⁷⁶ Davidsen-Nielsen, *En højere sags tjeneste*.

⁷⁷ Davidsen-Nielsen, *En højere sags tjeneste*.

⁷⁸ Davidsen-Nielsen, *En højere sags tjeneste*, pp. 40-42.

⁷⁹ R. Schmidt, R. Mariager, and M. Heiberg, *PET – Historien om Politiets Efterretningstjeneste fra den Kolde Krig til Krigen mod Terror*.

⁸⁰ R. Schmidt, R. Mariager, and M. Heiberg, *PET – Historien om Politiets Efterretningstjeneste fra den Kolde Krig til Krigen mod Terror* p. 186. The authors argue for the number being inflated by reference to total number of filings in the archives, as files were archived for “non-damning” evidence.

⁸¹ Davidsen-Nielsen, *En højere sags tjeneste* p.97. No concrete evidence is presented for this line of argument.

⁸² For a discussion of the significance of moral panics in the establishment of intelligence oversight, see Davies, P.H.J. “Britain’s Machinery of Intelligence Accountability” pp.135-140.

(translation: Land and People), and individuals travelling to the Warsaw Pact countries.⁸³ This was based on the conviction that the USSR would recruit Danes based on ideological affiliation.

In principle, the Danish agencies were under strict instructions not to register entirely legal political activity, since 1953 explicitly protected by the Danish Constitution Article 71. A Ministry of Justice circular to chiefs of police regarding intelligence activities of May 31, 1947 stated clearly that registration should be done according to “the usual practice”.⁸⁴ What this meant was if there were specific national security reasons for concern, such as contact with foreign intelligence personnel, and not “solely on grounds of legal political activity”. Indeed, instructed and “where such registrations had been made [on political grounds, they should be destroyed”.⁸⁵ Similarly, a 1953 instruction for the head of PET contained a warning to reduce registration to that which was “strictly necessary”.⁸⁶ This 1953 instruction was amended on November 30, 1968, to add the phrase “registration of Danish citizens must not take place solely on the grounds of legal political activity”.⁸⁷ But these controls were soon to prove woefully inadequate as well as simply superficial and somewhat unconvincing.

As elsewhere in the developed world, Denmark in the 1960s was undergoing a significant post-war demographic and thereby political change. By the 1960s, Danish politics was becoming increasingly shaped by politicians and an electorate who had not lived through the German occupation or the Soviet crises of the late 1940s.⁸⁸ The very notion of registration was, moreover, becoming unacceptable in principle. The government responded to public concern by convening an independent oversight body to review PET’s practice of registrations in the form of a Control Committee for the PET (*Justitsministeriets kontroludvalg for PET*) under the Ministry of Justice. The Committee was headed by Arne Magnus Wamberg, a senior civil servant from the Danish Ministry of the Interior and so become commonly referred to as the Wamberg Committee. Its mandate was to “monitor PET’s registrations and the passage of personal information”.⁸⁹

⁸³ Schmidt, Mariager, and Heiberg, *PET* p. 173.

⁸⁴ Laursen, *Politiets Efterretningstjeneste 1945-1968* pp.48-49.

⁸⁵ Davidsen-Nielsen, *En højere sags tjeneste*. Bilag B: Justitsministeriet, København, den 31. maj, 1947, 5 ktr. 1946 nr. 298. Vedrørende Politiets særlige efterretningsvirksomhed opstilles følgende retningslinier, original text in Danish, translation provided by authors, p.380.

⁸⁶ Davidsen-Nielsen, *En højere sags tjeneste*. Bilag C: 30. November 1963 Hans Hækkerup [minister of Justice] Instruks til Chefen for Politiets Efterretningstjeneste p.384.

⁸⁷ Davidsen-Nielsen, *En højere sags tjeneste*. Bilag D: Knud Thestrup [Minister of Justice] Tillæg til instruks af 30. november 1953 p.386.

⁸⁸ Lidegaard, *Krag* p.500.

⁸⁹ PET-Kommissionen, *Indledning* p.119.

The Wamberg Committee was something of a political compromise with advocates of a parliamentary control committee, primarily from of the Socialist People's Party and the wider left-wing, and the government's aversion to such a development.⁹⁰ It consisted of Wamberg and three members appointed by the government. This allowed the established and dominant 'four old parties' (*de fire gamle partier*) of Danish politics that have been continuously represented in the Danish Parliament since 1905 and from which all Danish Prime Ministers so far have come (the Conservatives, the Liberals, the Social Democrats and the Social Liberals) to determine the membership of the Wamberg committee and manage its political and ideological complexion.⁹¹ In essence, Denmark's the first intelligence oversight body amounted to little more than a stratagem of domestic political appeasement, one that remained firmly under the administrative and political control of the government and established political elites.⁹²

Coming of Age: Denmark's 'Year of Intelligence'

In the fall of 1968, the Danish intelligence community was struck by yet another a scandal. In October, a group of students at Copenhagen University had discovered an FE intercept station in the basement of a University building and made their discovery public knowledge in a series of pamphlets.⁹³ The installation was part of a SIGINT operation aimed at procuring copies of all "state telegrams" including those sent by foreign representatives in Denmark, as well as those from international cables passing through the station.⁹⁴ In other words, the FE was conducting wiretap operations against diplomatic envoys, the legality of which was questionable at best. According to the Danish post museum:

The installation apparently worked as a communications hub with its close proximity and cabled connection to the General Post Office on Købmagergade in Copenhagen, from where it was possible to tap most of the telecommunications going to and

⁹⁰ Schmidt, , and Heiberg, *Historien om Politiets Efterretningstjeneste fra den Kolde Krig til Krigen mod Terror*.

⁹¹ Laursen, *Politiets Efterretningstjeneste 1945-1968*. The Danish newspaper 'Aktuelt' reported on the law draft allowing for the formation of the control committee.

⁹² Schmidt, Mariager, and Heiberg, *PET – Historien om Politiets Efterretningstjeneste fra den Kolde Krig til Krigen mod Terror* p.189.

⁹³ Davidsen-Nielsen, *Spionernes Krig* pp.163-165.

⁹⁴ Davidsen-Nielsen, *Spionernes Krig* p. 167.

coming from abroad. The media-covered inspection of the basement on 24 October showed it containing advanced equipment for tapping of radio-communication, telegraph and telex. Such equipment must necessarily be designed in a way so that the party performing the surveillance cannot be heard by those using the communication lines; yet employees and students at the university had several times wondered why there was noise and strange sounds on the telephone lines.”⁹⁵

The operation had been conceived and approved in the 1950s chiefly to provide advance warning of possible Soviet hostilities. For reasons that remain unclear, however, it had not commenced actual operation until the summer of 1965. It has been asserted that Jens Otto Krag had been informed of the operation when Minister of Defence in 1963, and that this contributed to a degree of resistance to open investigation of the case on his part as Prime Minister, and on the part of his Social Democratic party, while story was in the headlines from 1968 to 1970.⁹⁶ Inspired by the 1964 ‘sit in’ at Berkeley University, this student uprising against the conditions at the university unwittingly revealed the presence of the listening station.⁹⁷ The listening station, and the wider affair, have since carried the name of the locality where it took place – Kejsersgade.

The Kejsersgade incident was problematic on a number of levels. To start with, the FE intercept operation had been running illegally without the required court order mandated by the 1849 Constitution. Slightly bizarrely, however, the main controversy surrounding its work was not the legality of the operation, but the fact that it had been so closely compartmentalised that only select ministers and other top officials had been alerted to the operation’s existence, without even being told about the venue in which it was taking place.⁹⁸ Indeed, the entire Kejsersgade affair was dismissed in the media by FE head Erik Fournais as “trivial”, even as ministers and agency heads were privately drafting plans to handle the fallout.⁹⁹ The Kejsersgade revelations brought to light some successful outcomes of the SIGINT station’s work such as the arrest of a group from the Trotskyist Socialist Youth

⁹⁵ Jacob Westergaard Madsen. ‘Kejsersgade’ *Enigma* <https://www.enigma.dk/artikel/kejsersgade/> (last accessed 2/06/2021). Translation by the authors.

⁹⁶ Lidegaard, *Krag* p.498-499.

⁹⁷ “Studenteroprøret i ’68” in *Københavns Universitet website* Full text available (in Danish) at: <http://universitetshistorie.ku.dk/overblik/1900-2000/studenteroproer-1968/> (last accessed 10/09/2017). A brief summary is provided in the English version of the website, accessible at: http://introduction.ku.dk/presentation/history/important_years/ (last accessed 10/09/2017)

⁹⁸ Davidsen-Nielsen, *Spionernes Krig* p.169-170

⁹⁹ Davidsen-Nielsen, *En højere sags Tjeneste*.

Forum who had been stockpiling explosives stolen on their behalf by a member of the Danish armed forces.¹⁰⁰ But the successes were soon eclipsed by media stories about Kejsergade's role in wider, allied intelligence activities such as NATO's SIGINT 'security chain', the role and leadership in the operation of the US National Security Agency and associated operation of other NSA-affiliated stations and FE-operated intercept and radio direction-finding stations located elsewhere in Denmark.¹⁰¹

Public furore surrounding the Kejsergade incident notwithstanding, and lasting damage to the reputation of the intelligence community arose from the failure to successfully prosecute those involved in the bomb plot in court.¹⁰² Some further arrests led to allegations of PET agent provocateurs inciting those involved to violence in the first place.¹⁰³ Combined with the registration dispute, a pervasive climate of distrust regarding the intelligence agencies and their work took form, especially with regard to effectiveness of not of the relationship between the agencies and their political masters. That suspicion was not unfounded, as another 1968 incident goes to show.¹⁰⁴ The Conservative Minister of Justice, Knud Thestrup, either had not been very clearly briefed by the intelligence agencies, or they had outright lied to him. He had recorded in his diary in April, 1968, that the only individuals subjected to registrations on political grounds were national socialists and communists, and these registrations were removed after five years.¹⁰⁵ This was far from the reality.

With the registration controversy regaining momentum as part of a wider public concern about the intelligence community, in the fall of 1968, an official declaration was issued reiterating that "registration was not permitted solely on the grounds of legal political activity", and that any such records were to be destroyed.¹⁰⁶ In response, PET undertook frenzied effort to copy the existing registrations onto microfilm before the hardcopies could be destroyed. These microfilms were then sent to the "safest possible" storage, the Danish embassy in the US. According to the widow of PET agency head Arne Nielsen this occurred in the spring of 1970, half a year before his death.¹⁰⁷ Ironically, however Arne Nielsen's

¹⁰⁰ Davidsen-Nielsen, *En højere sags Tjeneste* pp.140-142.

¹⁰¹ Davidsen-Nielsen, *En højere sags Tjeneste* pp.142-143.

¹⁰² Schmidt, Mariager, and Heiberg, *Historien om Politiets Efterretningstjeneste fra den Kolde Krig til Krigen mod Terror* pp.197-198.

¹⁰³ Ibid. pp. 198-199.

¹⁰⁴ An interesting counter-hypothesis is put forward by Hansen, "Offentlighedens tillid til efterretningstjenesterne", pp.211-212 in which it is argued that the general high levels of trust in the Danish society also encompass the intelligence agencies.

¹⁰⁵ Davidsen-Nielsen, *En højere sags tjeneste* pp.136.

¹⁰⁶ Davidsen-Nielsen, *En højere sags Tjeneste* pp. 133-134.

¹⁰⁷ Davidsen-Nielsen, *En højere sags Tjeneste* pp. 147-148.

obituary in the news credits him with being: “the first intelligence agency head to realise the necessity of not closing his work off to the public”.¹⁰⁸

Stabilisation and Maturation

The period 1970 to 1975 was marked by the continued rumblings in the press of the ‘registration debate’, but it was marked by a period of expansion for the intelligence agencies. PET was expanded to about twice the number of staff in the previous decade.¹⁰⁹ The period after 1975 was also marked by increased cooperation with foreign intelligence services, such as the recruitment of Oleg Gordievsky in concert with SIS, and other operational collaborations with both Mossad and Shabak.¹¹⁰ Despite successes on the foreign intelligence front, at home the intelligence community wrestled with unwanted publicity arising from another bout of intelligence private enterprise run by one Hans Hetler, and the exposure of a Soviet influence operation involving the author Arne Herløv Petersen.

During the mid-1960s Hans Hetler had run yet another a private intelligence operation carrying out what amounted to being *unofficial* registrations of members of unions and political parties. When FE instructed to stop registration of political activists it proved willing to comply officially but sought to work around the prohibition unofficially. In 1969 the agency contacted Hetler and employed him to unofficially conduct registrations of various union members and political parties.¹¹¹ The connection with Hetler ended in 1973 when his handler left FE for the private sector and FE director Erik Fournais directed the collaboration with Hetler to end. This was revealed in a series of newspaper articles in the summer of 1977 and resulted in the creation of a tribunal to review the matter of registrations by FE.¹¹² The findings were broadly similar to those in 1968 for PET – that registration was not permissible on grounds of political membership alone.

A few years later in November of 1981, PET arrested Arne Herløv Petersen on charges of “mild espionage”¹¹³, few might have imagined the embarrassment it would cause.¹¹⁴ PET had

¹⁰⁸ Davidsen-Nielsen, *En højere sags Tjeneste* p. 161.

¹⁰⁹ Davidsen-Nielsen, *En højere sags Tjeneste* p. 170.

¹¹⁰ Andersen, *En PET-chefs erindringer* pp.531-535.

¹¹¹ Toft-Nielsen, *Hetler – Spionen fra Højre* pp.79-85.

¹¹² Heiberg, et al., *Regeringserklæringen og PET's registreringer på det politiske område 1968-1989* p.175.

¹¹³ Danish Penal Law distinguishes between two types of espionage, “normal” (up to 16 years imprisonment) and “mild” (up to 6 years imprisonment), see Vestergaard, “Påvirkningsagenter. Om spionageparagrafer mv.”.

¹¹⁴ Heiberg, *KGB's Kontakt*, p.10.

been observing Petersen for some time, since the early 1970s, but in 1981-1982 he was considered an “agent of influence”.¹¹⁵ PET had been made aware of his role by Oleg Gordievsky, after his recruitment in the mid-1970s.¹¹⁶ The material provided by Gordievsky suggested that KGB rezidentura intended to use Petersen as an agent of influence in its ‘active measures’ use of the anti-nuclear movement.¹¹⁷ It bears noting that Gordievsky had made very clear to his contacts in PET that there was the distinct possibility that rezidentura reports had been exaggerated to enhance Petersen’s standing.¹¹⁸ Despite Gordievsky’s reservations it was decided that an anti-nuclear campaign orchestrated by the Soviet 2nd secretary, Vladimir Merkulov, but to be carried out by Petersen, was too troublesome to allow beyond the planning phase.¹¹⁹ The result was the expulsion of Merkulov and arrest of Petersen. Petersen never made it to trial; the charges were withdrawn by the new Minister of Justice, Ole Espersen, for reasons that remain unclear.¹²⁰ By the same token, Petersen has since published several books in his defence but has never offered a clear account of his relationship Soviet diplomats whose embassy was several hours drive from where he lived.¹²¹

Growing up

The closing years of the Cold War witnessed the establishment of the next main component of Denmark’s oversight apparatus, the parliamentary intelligence committee or *Kontroludvalget*. Consistent with previous oversight developments, Kontroludvalget’s creation was prompted by yet another intelligence scandal, the ‘Polish affair’ of 1987. The ‘Polish affair’ started out as very public ‘loud flap’ following a blown FE operation inside the Soviet Bloc, although FE has never officially avowed that operation.¹²² In 1987, FE reportedly mounted a clandestine reconnaissance operation using two FE officers taking photographs of military installations in Poland.¹²³ The two officers came to the attention of

¹¹⁵ Heiberg, *KGB’s Kontakt*, p. 22. It was subsequently determined that he was registered by the KGB as a “confidential influence contact”.

¹¹⁶ Davidsen-Nielsen, *En højere sags tjeneste* p.191.

¹¹⁷ Heiberg, *KGB’s Kontakt- og Agentnet i Danmark*, p.34.

¹¹⁸ Ibid. pp. 34-37. The section describes the tense relationship between the *rezidentura* and the Centre, as explained by Gordievsky.

¹¹⁹ Davidsen-Nielsen, *En højere sags Tjeneste*.

¹²⁰ Davidsen-Nielsen, *En højere sags Tjeneste* p. 246.

¹²¹ Mechlenborg, “Herløv versus PET” in *Kristeligt Dagblad* (27/02/2010), full text available at: <https://www.kristeligt-dagblad.dk/kultur/her1%C3%B8v-versus-pet> (last accessed 10/09/2017). The article is a critical review of a book by Arne Petersen. In 2019 Petersen sued the government for the return of copies of his diaries which were copied when he was arrested. In 2010 these copies were deposited in the National Archives by PET. At the time of writing the case is on-going.

¹²² Davidsen-Nielsen, “Afspænding og fortsat kold krig 1967-1989”, pp.79-80.

¹²³ Davidsen-Nielsen, *Spionernes Krig*, p.260-261

the Polish police entirely by accident when they attempted to run away from a security guard on one of their photographing trips. They were subsequently arrested before they could destroy the undeveloped film in the cameras.¹²⁴ The Danish authorities tried their best to portray the incident as one of two tourists caught up in a misunderstanding, as had been the intended cover. However, the development of the pair's photographs made that story untenable, and they were forced to confess on camera. Despite this, the Danish Foreign Minister, Uffe Ellemann-Jensen (a former employee of FE) insisted on the charade of sticking to the cover story despite the escalating public furore triggered by the incident.¹²⁵

The end result of the subsequent media scandal and political debate that followed was the creation of Denmark's parliamentary intelligence committee in 1988. Consistent with more general practice amongst Denmark's parliamentary committees, Kontroludvalget consisted of members from the political parties represented in parliament but limited to only one representative for each of the five largest parties in the Danish Parliament.¹²⁶ Unlike the other parliamentary committees, Kontroludvalget has access to government materials classified at 'secret' (orig.: 'hemmelige'), although its actual internal records are only caveated 'confidential' (orig.: 'fortroligt').¹²⁷ However, unlike (for example) British and American legislative intelligence oversight bodies, Kontroludvalget is not fully 'within the ring of secrecy' and is not permitted access to 'top secret' materials. Indeed, there is no member of the Danish parliament outside cabinet with access to top secret at all.¹²⁸ It appears likely that even the confidential records of the Committee will be at best patchy during its formative period because of a somewhat haphazard start in which, according to review by the European Parliament, the "committee's members were not interested in keeping records".¹²⁹ The Committee's ability to provide credible lustration of the Danish intelligence machine is also seriously limited by the fact that its members are sworn to

¹²⁴ Davidsen-Nielsen, *Spionernes Krig* p. 262.

¹²⁵ Davidsen-Nielsen, *Spionernes Krig* 264.

¹²⁶ M.E. Hansen, "Committee Assignment Politics in the Danish Folketing" and "Distributing Chairs and Seats in Committees: A Parliamentary Perspective".

¹²⁷ M. Heiberg *et al*, *Regeringserklæringen og PET's registreringer på det Politiske Område 1968-1989* p.247. See especially footnote 574: Jf. Kommissionens arkiv: *Brev fra Udvalget vedrørende Efterretningstjenesterne til Kommissionen*, 24. August 2007.

¹²⁸ Directorate-General for Internal Policies, *Study: Parliamentary Oversight of Security and Intelligence Agencies in the European Union*. 119, see table 3. Similarly see table 4, p. 127, for restrictions on access for 'Kontroludvalget'

¹²⁹ Heiberg, et al., *Regeringserklæringen og PET's registreringer på det politiske område 1968-1989*.

secrecy.¹³⁰ The only avenue of warning available to the committee is reporting their findings to the relevant cabinet minister, or directly to the Prime Minister.¹³¹ Moreover, the usual parliamentary tools available to a committee of public hearings, questions to ministers and publication of report on legislative bills were not made available to Kontroludvalget.¹³²

With the end of the Cold War, the Western intelligence agencies saw a change in priorities. Denmark was no different. With the demise of the USSR there was a gradual change in the requirements from decision-makers and the agencies were targeted for downsizing. That being said, FE made the transition into the post-Cold War with greater success than PET. Foreign and defence intelligence quickly acquired a renewed significance with FE tasked with to operational intelligence support to successive Danish deployments abroad during UN interventions into the Balkan brush-wars of the 1990s, and then the NATO-led campaign in Afghanistan after 9/11.¹³³ PET, which had always faced persistent doubt and distrust in wider civil society, found the post-Cold War domestic political climate ever less amenable. Absent the ideological threat of Communism and on the wake of widespread demographic changes across Western Europe, PET increasingly appeared out of place in the New World Order of the 1990s. The result of this scrutiny was the establishment of the PET commission in 1998, much to the chagrin of the intelligence community. Despite arguing for “a growing need to identify and understand the conflicts arising from ideological, religious, social and ethnic reasons both international and domestic”¹³⁴, PET found itself scathingly described by one CIA officer as an agency “almost completely devoid of minorities” and a country whose historical development had resulted in “an ethnically and culturally homogenous society”.¹³⁵

Amidst the public debates and disputes around the role and work of Denmark’s intelligence agencies, two commissions were established dealing with intelligence matters. The Parliamentary PET Commission was established in 1999 after media reports allegations about historical transgressions by PET, shortly before the Ministry of Justice had convened its own inquiry in the form of the Wendler Pedersen Commission in 1998. Each was

¹³⁰ PET-Kommissionen, *Indledning*. 154.

¹³¹ Directorate-General for Internal Policies, *Policy Department C Study*, p.134. Table 5 lists the powers and methods available to the oversight committee.

¹³² PET-Kommissionen, *Indledning*.

¹³³ Davidsen-Nielsen, *Spionernes Krig*.

¹³⁴ Davidsen-Nielsen, *En højere sags Tjeneste*, p.339. Translated by author.

¹³⁵ Davidsen-Nielsen, *En højere sags Tjeneste* p.339. There is considerable irony in a CIA officer taking this view in light of Syed’s criticism of CIA’s own monotone monoculture as expressed in his *Rebel Ideas: The Power of Diverse Thinking*.

mandated to review to review different aspects of the Danish intelligence community. While the PET Commission was concerned with past actions between 1945-1991, the Wendler Pedersen Commission was convened to review the legal framework governing registration activity by both PET and FE, and the extent to which it was to be possible for individuals find out whether they were registered with one of the services. As such, it was specifically not mandated to review the “question of strengthened control with the intelligence agencies”, especially significant in light of the state of the parliamentary oversight for the period.¹³⁶ Instead the mandate was “for suggestions to a more uniform regulation of PETs agency with a view to clarifying the framework for PETs activities and modus operandi”.¹³⁷ The Commission presented its findings in 2012, in the form of a six-hundred-page report which provided much of the groundwork for two agencies to be subsequently placed on a statutory footing the following year. Furthermore, the conclusions of the Wendler Pedersen Commission for a successor to the Wamberg Commission to be regularized as the TET. The eventual Oversight Board came into existence as a special independent monitoring board on 1 January 2014.¹³⁸ It has five members appointed by the Minister of Justice after consultation with the Minister of Defence. Its chair must be a High Court judge is appointed by recommendations of the Presidents of the Eastern and Western High Courts of Denmark. The remaining four members are appointed after consultation with Kontroludvalget, i.e. the parliamentary oversight committee.¹³⁹ The Oversight Board is somewhat limited in what it can do, and not least in ensuring cooperation from the government, from its inception there have been several examples of the Ministry of Justice dragging its feet with regards to ensuring that information is provided. The problem with the legal scope of TET came even clearer to light in late 2019 when one or more whistleblowers contacted TET with information that FE might have kept records back from TET. TET has produced a report to the Minister for Defence on this issue and it is on-going at the time of writing. At the same time, TET also called for an expansion of their role in relation to what the Board can and cannot do in terms of oversight and a thorough revision of the legal framework governing especially FE and the relationship with TET.¹⁴⁰

¹³⁶ Justitsministeriet, “*Betænkning 1529 om PET og FE*” p.406. Instead this was to be discussed between the government, the Parliamentary Control committee, and Parliament.

¹³⁷ Justitsministeriet, “*Betænkning 1529 om PET og FE*” p. 407.

¹³⁸ The legal basis for this can be found here: <https://www.retsinformation.dk/eli/ft/201212L00162> (last accessed 26/08/2021).

¹³⁹ See <https://www.tet.dk/om-tilsynet/?lang=en> (last accessed 26/08/2021).

¹⁴⁰ See <https://www.tet.dk/wp-content/uploads/2020/08/PRESSEMEDDELELSE.pdf> (last accessed 26/08/2021).

Conclusion

The Danish system of intelligence oversight, therefore, evolved in a series of fits and starts, and in a fundamentally ad hoc fashion. This disjointed, discontinuous process results from the fact, despite the parallels with Great Britain, the Danish case shares far more in common with the experience of the United States. Although, compared to both Great Britain and the United States, the ambience of secrecy and mystery surrounding the agencies, especially FE, has proven more persistent and can be seen to have hampered the evolution of effective oversight and review. Despite the central importance of the EU and European transnational institutions in Denmark's political and economic life, changes in international standards of transparency have had relatively little impact on the governance of Danish intelligence. Rather, the main drivers behind intelligence oversight have been the succession of public scandals and controversies that dogged the post-war Danish agencies. The resulting process of creating oversight and control conforms most fully to Loch Johnson's 'fire-fighting' concept of increasing oversight and control.¹⁴¹

To no small degree, the succession of scandals over 'registration', unauthorized communications intercepts and bungled foreign reconnaissance operations reflected the same sort of generational change in political consensus that the Church investigation acknowledged in the USA in 1976.¹⁴² The political ethos of the post-war Danish equivalent of the 'baby boomers' was profoundly different from the generation that had established the post-war Danish intelligence community. Survivors and witnesses to occupation and resistance, to the day the Nazi's 'took the police' and the shift to a renewed sense of threat from Soviet interests in the Baltic inevitably viewed national and political exigencies and the role of legal compliance in a different light from their progeny. But the transition from one generation forged by occupation and resistance to one shaped by post-war peacetime values of accountability and scrupulous legal compliance cannot be seen as a sole driver to the disjuncture between agencies created at the turn of the 1950s and civil society at the cusp of the 1970s. It is easy to overlook the fact that modern Denmark never had any equivalent to the British concept of Royal Prerogative that had covered so much UK intelligence activity prior to the turn of the 1980s. Just over a century before, Danish 1849 Constitution had laid

¹⁴¹ Johnson, "A Shock Theory of Congressional Accountability for Intelligence"

¹⁴² U.S. Government, "Final Report of the Select Committee to study governmental operations with respect to Intelligence Activities" pp.8-11.

down the regulatory standards for investigatory powers against which both PET and FE would eventually be found wanting. Denmark might be a constitutional monarchy the UK rather than a Madison-Hamiltonian republic, but its constitutional history actually moved it closer to the latter in many respects important for the conduct and control of intelligence activities.

Constitutional analogies notwithstanding, Denmark's oversight reforms have generally proven both piecemeal and limited in purview. The nominal legislative oversight offered by the Kontroludvalget remains fundamentally subject to both core executive authority and is hampered by not having the same tools available to them as the for other parliamentary committees. Its lack of transparency in its work makes it hard to establish exactly what it contributes with and whether it makes a difference apart from ensuring that a tick mark can be placed beside a broad question on whether there is generic legislative oversight of the intelligence service in Denmark. Oversight measures in Denmark appear to have evolved more as what has been termed a 'security blanket' of legitimation and partisan compromise¹⁴³ than genuine transformations in governance. Like the previous commissions of inquiry, the Kontroludvalget has proven yet another political half-measure demonstrating ever more clearly a fundamental balance of power in Denmark's political institutions that is weighted in favour of the core executive rather than the legislature. Despite the creation of TET in 2014, there is still a clear deficit in the democratic oversight and control of intelligence in Denmark and the mechanisms for oversight and control remains very much incompletely formed and a work in progress. Given the nature of the public scandals that have dogged the Danish intelligence community over the decades the limited scope and detail of the resulting oversight architecture is somewhat surprising. While it has been possible in this discussion to characterise and locate Danish intelligence oversight in the wider literature and international body of experience in the field, many questions remain unanswered and the subject is rich in potential for further, future research. There is a need to develop a better understanding of the political structures and dynamics that have, variously, enabled and impeded reform. On the other hand, the degree to which basic public levels of trust in the agencies and their competence may have contributed to or limited demands from the electorate for more substantial reform remains an open question.¹⁴⁴ After all, failings in oversight should not necessarily be seen as an indictment of the efficacy of the Danish

¹⁴³ Glees, Davies and Morrison *The Open Side of Secrecy* pp.27, 169-170.

¹⁴⁴ F.S. Hansen, F.S. "Offentlighedens tillid til efterretningstjenesterne", pp.211-212.

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intelligence community because, of course, like agencies elsewhere, it is mainly the faults and failings that will be laid bare by flaps and scandals, whereas successes most often have to stay hidden. Consequently, there is much still much work to be done to properly understand the evolution and operation of Danish intelligence and its governance.

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