REGULATION OF THE PRIVATE SECURITY INDUSTRY

by

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SUMMARY

The regulation of the private security industry has been an issue of debate for a number of years in South Africa, as well as in the rest of the world. The debate mainly centers around issues such as the need for regulation in this Industry and the objectives of regulation. This thesis argues that regulation is of utmost importance in this Industry and furthermore, that the objective of regulation should be to set standards in the Industry. If this is the case, the protection of the public interest will be a natural result of regulating the standards.

In addition, this thesis argues for the inclusion of the private investigator into the scope of regulation and suggests that this sector should ultimately be regulated through the means of separate legislation. This thesis furthermore provides two models for the regulation of the private security industry in South Africa. These models are described as the Semi-Integrated Wide Model (SIWM) and the Fully Integrated Wide Model (FIWM). These two models provide Government with the option of regulating the Industry without alienating the latter. Government will still have the ultimate responsibility for regulation, but will allow the Industry to be central in setting standards and requirements. In this way, the Industry will not regulate itself and Government will have the ultimate responsibility of protecting the interests of the public and the State.

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ACRONYMS

ABI	-	Association of British Detectives
ANC	-	African National Congress
BSIA	-	British Security Industry Association
CIT	-	Cash-in-transit
CPF	-	Community Policing Forum
DMI	-	Division Military Intelligence
FMAA	-	Regulation of Foreign Military Assistance Act
FIWM	-	Fully Integrated Wide Model
GNU	-	Government of National Unity
ICD	-	Independent Complaints Directorate
IPCC	-	Illegal Practices and Communication Committees
NCCCD	-	National Centre for Computer Crime Data
NGO's	-	Non-governmental organisations
NIM	-	Network of Independent Monitors
NKP	-	National Key Point
PAC	-	Pan Africanist Congress
RDP	-	Reconstruction and Development Programme
SABSEA	-	South African Black Employers Association
SACOB	-	South African Chamber of Business
SAIDSA	-	South African Intruder Detection Services Association
SADF	-	South African Defence Force (now SANDF)
SANDF	-	South African National Defence Force

SANSEA	-	South African National Security Employers' Association
SAP	-	South African Police (now SAPS)
SAPS	-	South African Police Services (Formerly SAP)
SASA	-	Security Association of South Africa
SASFED	-	South African Security Federation
SAQA	-	South African Qualifications Authority
SGB	-	Standards Generations Body
SIWM	-	Semi-Integrated Wide Model
SOB	-	Security Officers' Board
SOIB	-	Security Officers' Interim Board
SPSS	-	Statistical Package for the Social Sciences
SSC	-	Security Service Company (China)
T&GWU	-	Transport & General Workers Union

KEY TERMS

ACCOUNTABILITY

CASH-IN-TRANSIT

COMMUNITY POLICING

ELECTRONIC SECURITY

GUARDING INDUSTRY

GEORGE-BUTTON MODEL

PRIVATE INVESTIGATORS

PRIVATE SECURITY INDUSTRY

REGULATION

SCOPE OF REGULATION

SECURITY OFFICERS' BOARD

PRIVATE POLICING

WIDTH OF REGULATION

LIST OF LATIN TERMS

sui generis	-	the only one of its kind
vice versa	-	conversely
et al	-	and others
per se	-	on its own

CHAPTER ONE

GENERAL ORIENTATION

1.1 Introduction

The Private Security Industry is an industry which has become indispensable, predominantly as a crime prevention asset, in both the South African and international policing environment. Despite becoming indispensable, it has been surrounded with controversy and countless arguments for and against its existence and the role it is supposed to play. The Private Security Industry is a *fait accompli*. It will not disappear overnight and it can't be wished away. To this end, the citizens of a country who can afford these services, will be utilising them to protect their lives and assets. Simultaneously governments are required to establish regulatory frameworks. Firstly to regulate the Industry, and secondly to determine the parameters of co-operation between the Private Security Industry and the public policing structures. The Industry itself has become a major contributor to the stability of both the South African society and economy. The current turnover of the Private Security Industry, as a whole, is in the region of R12 billion per annum, employing more than 170 000 security officers (SOIB: 2000a:15).

The Private Security Industry in South Africa and as an international phenomenon, has become an integral part of society. Owing to the nature of the Industry, it has

furthermore developed into possibly the most important, yet neglected role-player in the process of crime prevention.

1.2 Regulation of private security as a subject of research

According to Mouton and Marais (1992:59), the main purpose of research is to explore. In the context of this thesis, the purpose is to investigate and research the options which exist with regard to the regulation of the Private Security Industry, as well as to provide a possible model for the regulation of the Private Security Industry in South Africa. The exploration of the possibilities that exist with regard to the regulation of the Private Security Industry, will include a number of aspects, namely:

- To explore whether the Security Officers' Act (Act 92 of 1987) is an effective mechanism, enabling the Security Officers' Board (SOB) to regulate the Industry. In other words, does the Act make provision for the regulation of the Industry only in theory, or does it in actual fact only empower the Board to regulate the occupation of the security officer and not the Industry *per se*? An additional question, is what is meant by the term "regulation"?

- To determine if the first step in drafting legislation shouldn't be to determine commonly accepted objectives of regulation.

- To determine who should be included in the regulatory framework. In other

words, who should be included in the broad scope of the Private Security Industry. Should all sectors of the Private Security Industry be regulated under the Security Officers' Act (Act 92 of 1987), or should there be additional legislation to include sectors not previously included?

- To determine Government's responsibility in terms of the regulation of the Private Security Industry.

- To determine the main requirements of a regulatory framework for the Private Security Industry.

The role which private security has assumed in the broader role of protecting the public and crime prevention, has inevitably led to the private sector encroaching on the traditional role of the Government. This process has led to a number of issues being raised regarding exactly what role the Government has in crime prevention; Does Government only have to fulfil a role as a law enforcement agency? Does Government have a role to play in the regulation of the Private Security Industry? These questions were all raised in the process of assessing the need for new legislation to regulate the Private Security Industry. It was thus realised, that if one wants to regulate the Industry, it will be impossible to do so without:

- Understanding the history of the Industry,

- The regulatory problems facing the Industry,

- The reasons for the strained relationship between Government and the Industry,

- Doing a comparative study of international regulatory legislation and to lastly,

- Determine what the exact role division there should be in terms of crime prevention.

1.3 Objectives of researching the subject

The main issue being dealt with in this research project, is that of regulating the Private Security Industry. The main objective is consequently, to determine if a need exists for regulating the Private Security Industry, and if so, who is responsible for this regulating and to make a critical analysis of the current legislation regulating private security in South Africa. In this regard, this thesis indicates that the Security Officers' Act (Act 92 of 1987) exists mainly to empower the Security Officers' Board (SOB) to improve the occupation of security officer and the environment in which the security officer should operate, and not sufficiently empowering the SOB to fulfil its regulatory responsibility.

This thesis then has as its main objective, to provide a critical analysis of the Security Officers' Amendment Act (Act 104 of 1997), as well as the new Security Industry

Regulation Bill (Bill 12 of 2001). The purpose of the critical analysis will be to indicate the problematic areas for regulations, especially in the Bill, and even more importantly, to investigate the purposes of regulation, and how that should be translated into the relevant legislation. This thesis provides an alternative to the current regulatory authority proposed by the Government in the Bill. Lastly, the thesis also provides some additional aspects for assessing a regulatory model. The thesis will hence expand on the models used by specifically Button and George (Hakala:1998:70) in their efforts to examine the British Private Security Industry.

This research project then identifies the need for an in-depth study of the Industry, its relationship with the Government, the purpose and objectives of regulation and the main requirements of a regulatory framework. A detailed study of these issues does not only facilitate the current process in South Africa to draft new legislation for the regulation of the Private Security Industry, but should benefit other scholars of this subject to make assessments of regulatory frameworks for the Private Security Industry.

1.4 The research rationale

This thesis argues that the Private Security Industry should be regulated. It furthermore argues that the regulation should be compartmentalised and the regulatory authority empowered to perform its delegated functions. With the compartmentalisation of the regulation, it is meant that instead of looking for a blanket regulatory authority or an all-encompassing act to regulate the Industry, there should in fact be a clear distinction

between what should be the responsibility of the Industry and what should be the responsibility of Government. These responsibilities relate to specific issues including training, labour issues and fire-arms control. In addition to this compartmentalised approach, the thesis furthermore argues that the objectives of regulations should be determined before the process of regulation could begin. With the objectives of regulation, the following questions arise:

- Is the regulation there to protect the occupation of the security officer?
- Is it there to protect the public?
- Is it there to set standards in the Industry?
- Is it there to protect the interests of National Government?

This thesis argues that Government's apparent clear-cut responsibility towards its citizenry in terms of providing security and safety, is very much open for debate. It also argues that this role of Government varies as the socio-political and socio-economic circumstances change. One of the questions arising, is whether Government only has an indirect responsibility or does it still have a direct responsibility.

One of the arguments in terms of the indirect responsibility, is that if Government can't provide these services itself, the enforcement of standards is the only way in which

Government can uphold its side of the social contract.

One of the arguments regarding Government's direct involvement in the securing of the safety and security of the citizenry, is derived from the social contract. According to Willie Esterhuyse (Rapport: 4 July 1999), democracy in itself is a social contract and such a contract has no legal status. The absence of the legal status does not take away anything from the importance of this social contract, as the contract is "drafted" on the commitment people made towards each other. According to the social contract, the game of governance is played according to unwritten rules which are widely accepted by both the governors and those being governed. The better people understand the unwritten rules of the social contract, the better the game can be played, since the players are then aware of what is expected of them. Esterhuyse argues that the social contract can only be successful if the "soul" of the existence of such a contract is recognised.

The social contract, and according to Barker (1971:viii), consists of two fundamentals in the human mind, namely *liberty* and *justice*. The citizenry in effect gives up its *liberty* when it elects other individuals to govern and decide on their behalf. In return the citizenry expect *justice*. In the modern environment *justice* would be that citizens would not be victims of crime in their own environment and able to live free from fear as stated in the Bill of Rights, Section 12, of the South African Constitution (Act 108 of 1996). Barker subsequently echoes the sentiments of Esterhuyse, namely that Governments' responsibility with regard to safety and security is cemented in the mere

fact that South Africa is now a fully democratic society.

In the context of safety and security, the statements and arguments of both Esterhuyze and Barker imply that Government has the responsibility of providing a safe and secure environment. The principles of the social contract however have to a large extent been overtaken by the changes in democratic society. The modern society, with its expansion in population, wealth and the need of people to act individually, caused the role of Government to change accordingly. In the modern world, it would appear that the only role a government has in terms of safety and security is in terms of the international context and state security. This implies that personal security and the protection of one's assets have become, and as a matter of fact, has always been, one's own responsibility.

1.5 Research demarcation

The title of this thesis refers directly to the issue that it wants to address, namely the regulation of the Private Security Industry in South Africa. The thesis critically looks at the *what*, the *who* and the *why*. In other words, what is being regulated by the Act, who is being regulated by the Act and lastly why is there indeed a need for a regulatory framework for the Private Security Industry. The research focusses primarily on the South African security industry, as well as a detailed international comparison. The comparison comprises mainly security industry-related legislation from various states in the United States of America, Britain, Canada, Australia, New Zealand and the

Nordic countries.

Although this thesis takes a very critical look at the current legislation, it does not attempt to give a legal interpretation. This thesis is not an academic study in the science of law, but rather attempts to determine what the purpose of regulation should be, who should be regulated and what the depth of regulation should be. This thesis uses the Security Officers' Amendment Act (Act 104 of 1997) as its basis of reference, as this Act is presently the single most important instrument with regard to the regulation of the security industry. In addition this thesis uses the Security Industry Regulation Bill (Bill 12 of 2001) as the main indicator of Government's proposed route in terms of future regulation of the Industry. This thesis thus covers all aspects regarding the scope, width and depth of regulation. In terms of the depth of regulation, more detail is given to the occupation of the private investigator, as this subject has not been researched in South Africa. The same principles applying to the standards for the occupation of the private investigator can be made applicable for the "rest" of the Private Security Industry. Consequently, the subject of depth, in terms of the "rest" of the Private Security Industry, is not specifically addressed again in the Chapter dealing with the proposed regulatory framework for the South African Private Security Industry.

This thesis has, however, taken into account the fact that in a newly established democracy such as South Africa, legislation and legislative processes are very adaptable and a cut-off date had to be set to consider changes in legislation. It was hence decided

to use February 2001 as the last date to consider amendments to the Act, as well as changes in the proposed Security Industry Regulations Bill (Bill 12 of 2001). This date represents the date on which the Bill was published for public comment in the Government Gazette. There are, however, a number of references to the Bill before February 2001, as I was fortunate enough to have access to draft copies in my capacity as Senior Analyst in the National Intelligence Agency.

1.6 Research methodology

As far as could be determined, only in one case, postgraduate research work has been done on the issue of the Private Security Industry. The research was conducted by Hakala at the University of Leicester. Extensive academic research has, however, been done in the United Kingdom, Canada and the United States. This thesis draws comparisons with these academic works as well as some of the studies done by domestic non-governmental organisations (NGO's) such as the Network for Independent Monitors (NIM). A number of academic institutions in South Africa are indeed doing research into aspects of private security. These institutions include the Technikon Southern Africa and the Pretoria Technikon. No academic transcripts could, however, be obtained. It appears as if these research efforts are more focussed on aspects such as the training of security officers and the theoretical aspects of security *per se*. The SOIB has done extensive research since the second part of 1999 to compile a discussion paper on how the Industry should be regulated. The discussion paper was released in February 2000, and this thesis continuously comments on issues mentioned in the discussion paper.

1.6.1 Conceptualising the research

According to Chalmers's naive inductivism (Mouton and Marais: 1992: 59), objective research takes place when the researcher approaches the research task with an open and objective approach. In other words, data gathering should take place in a passive (receptive) manner. According to the theory of naive inductivism, the biggest threat to the validity of research is the fact that research is conducted with preconceived ideas or hypotheses. Although this argument of Chalmers might have some merit in the sense that research results could be manipulated to obtain the results projected or anticipated in the hypothesis stated by the researcher, it should be taken into account that with quantitative research, the results could easily be verified by other researchers using the same methodology. In the case of qualitative research, Chalmers's argument could therefore be true, but the answer obtained with the research will still need a theoretical backing. Manipulation can subsequently only go undetected to a certain point. After that point, those studying the results will be able to detect a certain bias.

This thesis comprises only of qualitative study and focusses on the issue of regulation, the theories on regulation and private security. The models of regulation and deductions will be made based on new and existing research regarding the regulation of the South African Industry. This thesis is mainly descriptive in as far as it presents a reflection of the current state of regulation in South Africa and also in its comparison of the South African legislation with similar international legislation. It is also exploratory in the sense that it looks to develop new models for regulation in South Africa and more

specific seek to include the regulation of the private investigation fraternity in the regulatory scope.

The qualitative research is furthermore based on the hypothesis that Government must have a direct hand in the regulation of the Industry and can't afford to let the Industry regulate itself. Popper (Mouton and Marais: 1992: 60) supports the hypothesis-based research and state as follows regarding the interaction between science and reality (reality being what you are able to observe) which directly leads to the problem statement (hypothesis):

> " ... especially when we are disappointed in our expectations, or when our theories involve us in difficulties, in contradictions, and these may arise either within a theory, or between two different theories or as a result of a clash between our theories and our observations".

In other words, if the researcher is able to bring the scientific and the reality to terms with each other, he/she will be able to formulate a realistic hypothesis which eliminates Chalmers's fear with regard to subjectivity during the data gathering or processing phase. According to Reddy (1987:55), a hypothesis is a proposition temporarily accepted as true in the light of what is, at the time, known as a phenomenon. Reddy continues by stating that a hypothesis should be adopted as a tool for action in the search for truth. Reddy (1987:58) goes on to identify the following advantages in using a hypothesis or more than one hypothesis for the purpose of an academic study:

- Hypothesis acts as a guide - a sort of guiding light during research
- It prevents blind or fruitless research
- It provides direction to research identifying which is relevant and which is not
- It links up related facts and information
- It serves as a framework for drawing meaningful conclusion

A hypothesis-based approach was subsequently adopted for the purpose of this study. The following are the most important hypotheses in this regard:

- Government has until now not been sufficiently involved in the regulation of the Industry.
- Government needs to be closely involved in the regulation of the Industry, although a clearly defined role has not been established by either the Industry or Government itself.
- Divergent opinions are expected in terms of the views on regulation from Government, the Industry, the different levels of employment in the Industry and from different sizes of companies in the Industry.
- The Industry can't be left alone to regulate itself.

An added aspect of the qualitative research conducted for the purpose of this study, is to evaluate the various definitions used in the regulation of the Industry. The current definition of private security, as used in the Act (Act 104 of 1997), needs to be

expanded to also include related sectors such as in-house, hybrid security companies and private investigators and private intelligence companies. The definition should also be examined in terms of the specific services rendered, such as guarding, electronic alarm installations, cash-in-transit and electronic countermeasures.

The gathering of information for the purpose of this research topic, will mainly be done through a literature study. The literature study can be divided into three distinct areas viz books, newspapers, Industry related magazines and academic journals. The second area will include official documentation from seminars, discussion groups, Government documentation and other official documentation generated from within the Industry itself. The third area refers to both South African and international legislation dealing with the regulation of the Private Security Industry.

In terms of the South African context, this thesis is very reliant on the second and third category as type of sources, as there is a very limited number of sources available on the South African Private Security Industry. In other words, this thesis mainly makes use of secondary sources. The literature review undertaken at the beginning of this research, reveals that most of the debates regarding the regulation of the Private Security Industry took place within the confines of the secondary sources.

The research is also heavily reliant on data gathering via electronic means i.e. the Internet. In this regard, reference reflects the Universal Resource Locator (URL) and the date on which the information was retrieved. In addition to the literature study,

information is gathered via unstructured interviews with selected role-players within the Private Security Industry.

1.7 Research challenge: The role of perceptions

One of the problems expected to be encountered in researching the security industry, is that there are several different perceptions regarding the Industry, the regulation of the Industry and more specific the functioning of the Security Officers' Board (SOB) and the Board members themselves. These different perceptions have a direct influence on available South African literature and other sources of information. Moreover, these perceptions also create a certain climate of expectation in terms of the results of research conducted on the current state of affairs within the Private Security Industry. It is especially the work of researchers such as Jenny Irish (Policing for profit : The future of South Africa's private security industry: 1999) and Sarah Blecher (Safety in Security? A report on the private security industry and its involvement in violence: 1996) who both previously involved with the Network of Independent Monitors in KwaZulu-Natal, which has created a negative perception of the Industry with key decision makers in South Africa. Media articles such as those carried by the **Mail and Guardian** with headings such as *"Like the fox guarding the chickens"* (Powell: Mail And Guardian:6 August 1999a), *"Apartheid army still in place"* (Powell: Mail and Guardian: 20 August 1999b) and *"Security industry crisis deepens"* (Powell and Ngobeni: Mail and Guardian: 27 August 1999) have for example added to perceptions regarding the impartiality and effectiveness of the SOIB.

To compound the situation, research papers, such as those conducted by Minnaar (1997), Blecher (1996) and Irish (1999), all submit to the premise that there has been a phenomenal growth in the Private Security Industry, that the Industry has been flooded by former security force members who are disgruntled with the new dispensation and that the majority of the security companies have motives other than doing the business they are supposed to conduct.

With regard to the perceptions created by researchers, Irish (1999:22) continues:

> "In 1990, 'Sybrand' Louis van Schoor, a private security guard and former policeman, was convicted of 22 counts of murder. This was not an isolated incident, and such abuses are common among certain elements in the industry."

These generalisations, seen in conjunction with the perception regarding former security force members, are some of the main factors contributing to the demonisation of the Industry. Evidence given at the Truth and Reconciliation Commission (TRC) hearings supported such allegations and added to the perceptions regarding the potential for destabilisation of the fledgling democracy or the existence of a covert subversive force. Such suspicions are, however, not totally unfounded, and originate from the fact that the Private Security Industry had been used during the apartheid rule as a vehicle for suppressing anti-government forces.

Drawn from own experience, it is clear from within the ranks of Government that a definite mistrust exists towards the Industry in terms of the previous misuse of the Industry by the South African Defence Force (Department of Military Intelligence) and the then South African Police (SAP). Certain sectors and companies during the end of the apartheid era advertised themselves as follows in an Industry related magazine (Grant:1989:94):

> "Who controls your labour force? ... This unrest could take the form of illegal strikes, subversion, intimidation, sabotage or management character assassinations perpetrated by Communist [sic] backed legal or illegal organisations ..."

These types of strong pro-apartheid Government sentiments were part of the image that was created regarding the purpose and intent of the Private Security Industry. Grant (1989:94) also states that it was common for the industry to be used by undercover agents at all levels of the industry.

Other aspects which have a direct influence on the paradigm regarding the Private Security Industry, include the perceptions that South Africa has a unique situation in terms of its Industry, that South Africa has an exceptionally large Industry and that the financial gains to be made in the Industry override all other business principles.

According to the Institute for Security Studies (ISS) (1996: 1-2), the following issues

drawn from perceptions of the Industry, necessitate the regulation of the Private Security Industry:

- Unequal or inadequate training of security company personnel;
- The absence of a strict and enforceable code of conduct;
- Dangers of vigilantism;
- Lax fire-arm control;
- Misunderstanding and abuse of powers;
- Sub-standard service provision which compromises public safety; and
- Involvement in crime and violence and implication in renewed allegations of third force activity.

The ISS (1996:1), further mentioned as their main concern that the security industry was growing juxtaposed to the fact that State resources for defence and security were declining. Furthermore, that the private industry was able to have a monetary client ration of R39 000:1, while the South African Police Services (SAPS) were only able to spend R209:1 per client. The sentiments echoed by the ISS can't be regarded as sufficient reason for revised regulation of the security industry. With regard to the specific issues referred to, all of the criteria mentioned above could for example also be listed when looking at the South African Police Service or the South African National Defence Force. This is especially true with regard to lax fire-arm control and inadequate training. The fact that the Industry has more money to spend per client than the State, is not an issue necessitating stricter regulation. It is only an indication of the reality that people are willing to spend a large portion of their annual income of their

personal safety. It is doubtful if people would have spent less on their private security even if the SAPS were able to spend more money per client.

Added to these aspects, is the reality that non-policing functions are being performed by the Private Security Industry. Currently, trained police officers are guarding buildings, important people and transporting prisoners whilst these policemen can arguably be used for inter alia visible policing and criminal investigations. According to Irish (1999:8), it is understandable that the public is confused about the different roles of the police and the Private Security Industry. Irish furthermore states that the public's confusion is exacerbated because security officers are wearing uniforms in some cases similar to those used by the SAPS. These observations made by Irish, should be seen in a very serious light. It reflects a perception that the South African public has to a great extent "accepted" the fact that the South African Police will never be in a position to be an effective crime combatting mechanism. The result of this "acceptance", is the move by the more affluent part of society towards private security. The consequence, if this is indeed the case, is that Government has perceivedly abdicated one of its prime responsibilities in terms of safety and security within a democratic state (once again rasing the issue of the social contract as mentioned earlier).

In addition to the arguments surrounding perceptions regarding the Private Security Industry, one subsequently also has to take into account perceptions regarding the inability of the South African Police Service (SAPS) to deliver an effective protection service. According to Cawthra (1997:163), the Police were seen as inefficient, badly

trained, ill-equipped and poorly led. It would be a mistake to suggest that the perceived growth of the Private Security Industry was not merely because of a rise in criminality and personal wealth, but also due to the inability to deliver the core services they have been allocated in both the Constitution (Act 108 of 1996) and the South African Police Services Act (Act 68 of 1995). One of the major aspects fuelling suspicion regarding the perceived inability of Government structures, is the inability to use financial resources to combat crime comprehensively.

1.8 Definition of key concepts

This thesis makes use of a wide variety of concepts and terminology which are referred to in legislation from the United States, Europe, Nordic countries and in Africa. As a result there will be a number of apparent synonyms which would in reality refer to different issues. Although there are detailed explanations in Chapters Five and Six of the definitions of the various occupations within the scope of the regulatory framework, the broad concepts will be defined hereunder. For the purpose of this thesis, the following terms are defined in this Chapter:

a. Private Security Industry

The term "Private Security Industry" refers to the all encompassing group of functions and resources used to protect the assets and safety of the public by a public entity. This takes place in most cases either in association with the similar function provided by

Government, or in the absence of the Government function. Bosch (1999:4) defines private security as: " ... those efforts by individuals and organisations to protect their assets from loss, harm or reduction in value, due to criminality".

b. **Private investigator**

The definition of a private investigator can be regarded as one of the most problematic in the scope of the Private Security Industry. The reason for this is that such a large number of functions performed by this fraternity, are also found in other job functions, such as forensic auditors, investigative journalists and heraldic researchers. The most important concepts which should form the basis of such a definition should be *the acceptance of money to conduct an investigation to obtain specific information*. The acceptance of money could be regarded as the most crucial issue, as it most importantly excludes Government employees from this category.

c. **Security service**

The definition of what constitutes a security service is of utmost importance for the purpose of this thesis. One first needs to establish these parameters before the regulation of the Private Security Industry can be argued. In this regard the Security Officers' Amendment Act (Act 104 of 1997) is very clear:

"security service means, subject to subsection (2), a service rendered by a person

to another person for a reward by -

(a) making himself or a person in his employ available for the protection or safeguarding of people or property in accordance with an arrangement concluded with such person; or

(b) advising such other person in connection with the protection or safeguarding of people or property in any manner whatsoever,

but does not include such a service rendered by an employee on behalf of his employer.

This thesis regards the definition above as inadequate and in Chapter Five this definition is discussed in detail. Alternatives to this definition are also provided in this Chapter.

The operational definitions of the various job occupations in the Private Security Industry are discussed in detail in Chapters Five and Six. In these Chapters, a comparison between a number of definitions are made in order to arrive at a workable definition for the South African context, and also to assist in the process to determine whether a specific occupational group should be included or excluded from the regulatory scope.

1.9 Division of research chapters

This thesis consists of a general orientation (Chapter One), six chapters dealing with the research material and a summary (Chapter Eight) which contains the most important research findings. A number of the findings and proposals are recorded in the relevant chapters for the purpose of easy reference and also to be close to the relevant arguments.

1.9.1 Chapter Two

The purpose of this Chapter, is to give an overview of the theoretical aspects dealing with the issue of private security and the resultant encroaching on the public policing sphere. The Chapter will furthermore examine concepts such as security, policing, private security and the meaning of accountability. In addition this Chapter looks at the scope of the South African Private Security Industry.

1.9.2 Chapter Three

Chapter Three is mainly an historic overview of the development and growth of the Private Security Industry in South Africa. This Chapter makes a clear distinction between three different periods in the private security history namely: The period before the promulgation of the Security Officers' Act (Act 92 of 1987). The period after the promulgation of the Act. The period after the promulgation of the Security Officers' Amendment Act (Act 104 of 1997). This Chapter makes an assessment of the problems

facing the SOB and SOIB in their efforts to regulate the Industry.

1.9.3 Chapter Four

This Chapter deals with the debate regarding the regulation of the South African Private Security Industry. It also looks at international models for regulating the security industry, as well as what should the objectives of regulation be. This Chapter also examines the proposals made by both Government and the Industry with regard to the future regulation of the Private Security Industry.

1.9.4 Chapter Five

This Chapter continues the premise that the protection of the public should be the main objective of any regulatory framework and relies on aspects of the Bruce-Button model to examine the South African Industry. The South African Industry is divided into three sectors, namely: guarding, electronic security and private investigator / intelligence. This Chapter argues which sub-sectors in the first two sectors should be included in the scope of regulation.

1.9.5 Chapter Six

This Chapter looks at the regulation of the private investigator / intelligence sector in South Africa. This sector has never been regulated before and is also not receiving any

specific attention in the Security Industry Regulation Bill (Bill 12 of 2001). This Chapter attempts to determine if it will at all be possible to include this sector effectively under the current regulatory framework, or if separate legislation should be drafted to effectively address this issue.

1.9.6 **Chapter Seven**

This Chapter argues that if the approach is adopted of regulating the standards in the Industry for the purpose of protecting the interests of the public, an approach of a joint regulatory venture between Government and the Industry is the most viable option in terms of the establishment of a new regulatory authority. This option, is a combination of the current regulatory model where there is no Government representation on the Security Officers' Interim Board (SOIB), and the Government proposal of a regulatory body with no Industry representation at all. It is expected that the move from one extreme situation to the next, will be counter-productive in terms of the effective regulation of the Industry. This Chapter argues, that if the approach is adopted of regulating the standards in the Industry for the purpose of protecting the interests of the public, an approach of a joint regulatory venture between Government and the Industry is the most viable option in terms of the establishment of a new regulatory authority. This Chapter presents two possible models for regulating the South African Private Security Industry.

1.9.7 Chapter Eight

This Chapter is mainly a summary of the proposals made in this thesis with regard to the regulation of the Private Security Industry in South Africa. Proposals with regard to specific issues, are mentioned in the discussion in an effort to give context to the proposal or finding. This Chapter highlights the most important aspects, and also makes proposals in terms of the preferred regulatory model presented in this thesis for South Africa.

1.10 Summary

One can't argue the seizure of existence of the Private Security Industry in South Africa. One can also not argue the fact of current gross inadequacies in the South African Police Services. What one can argue, is the majority argument that the growth in the Private Security Industry is mainly because of the inabilities of the Police to perform their duties.

The reason for the growth in the Private Security Industry, should be seen against the international phenomenon of returning to a system of private security and securing one's own interest. It is not only the case in terms of protecting your immediate environment and belongings, but even to the extent where one needs to protect a country and its sovereignty. This is evident in the rise of mercenaries and private armies such as Executive Outcomes (EO), Military Professional Resource Institute (MPRI) and Defence

Systems Limited (DSL). These companies merely provide a service. Whether this service is in the best interest of the broad population of a country or not - their loyalty lies with the client. This can be directly related to the Private Security Industry. The major concern is that profit is the major motive behind their involvement in policing. Since it is the traditional function of Government to provide policing, this thesis explores the ways in which Government can protect the interest of both its citizenry and the Industry.

CHAPTER TWO

POLICING: A THEORETICAL OVERVIEW

2.1 Introduction

The purpose of this Chapter, is to give an overview of the theoretical aspects dealing with the issue of private security and the subsequent influence on the public policing sphere. The Chapter furthermore attempts to define what is meant by the terms such as security, policing and private security. In addition, this Chapter includes the debate regarding democratisation and policing. Lastly, the Chapter explores the meaning *accountability* and the impact of this concept on Government's involvement in the regulatory process.

2.2 Historic overview of policing

If one tries to record the history of the development of the phenomenon of the Private Security Industry, it becomes clear that this development can't be seen in isolation from the development of the public security structures. It would be easier to refer to the transformation of the public police than the development of the Private Security Industry. Historically, it is clear that the earliest efforts to provide security, were private efforts and that the creation of public police forces mutated from the private

security structures. This is confirmed by Van Vuuren (Marais & Van Vuuren:1996:78), when he states that private security organisations have a longer history than the official public police service. The whole concept regarding the existence of private security before the emergence of the public security forces, still plays an integral part in the assessment of the current role of the private security and the public police service. If one looks at the issue of a role-division between these two entities, as well as the regulation of the Industry, it is clear that the historical development of these entities can't be ignored. It is probably also with the change-over from private security to public policing that the concepts of crime prevention and law enforcement became muddled and the role distribution a source of contention between these entities.

According to Johnstone (1992b: 5-6), it was in approximately 1880 when local police forces started to act on the concerns of the central state. Until then, local forces acted as extensions of local governments and performed mainly regulatory duties within the structures of an administrative state. These regulatory duties mainly meant inspections of markets, impounding of cattle, inspectors of weights and measures, inspectors of nuisances and even school inspectors. From the examples cited, it can be derived that the regulatory duties could also have been called law enforcement duties. These changes which took place in the mid 1800's are described by Philips (Johnstone:1992:6) as follows:

> "... signalled the change from a law-enforcement system dependent on unpaid JP's, parish constables and *ad hoc* watch forces, to one reliant on bureaucratic, uniformed, paid police forces."

Van Heerden (1994:21), states that the development of policing in England went through three important phases. During the first of these, every individual and group were responsible for the maintenance of social order. Later, constables were appointed to apply the laws in co-operation with and under the supervision of justices of the peace. Finally, an organised professional police force, of the kind we know today, came into being.

According to Van Heerden (1994:25), Colquhoun can be regarded as the architect of modern policing with his arguments that the only possible way of ensuring individual rights would be through a centralised police force. The title of the father of modern policing, however, goes to Sir Robert Peel under whose leadership the first organised police force was established.

One of Peel's most important arguments (Van Heerden:1994:26), was that the laws did not only make provision for the preservation of order, but also for the restoration of order by determining when, where, how and by whom this was done. He pointed out that suppression was not the primary purpose of policing in a democratic society and that it was, on the contrary, a social service with the primary task of crime prevention.

This statement of Peel makes it clear that the original idea of policing was more than just to be a law enforcement agency. Peel sees a definite role in crime prevention for the modern police service. The fact that the SAPS is not very successful in crime prevention, does not mean they should leave it to the Private Security Industry.

2.3 Policing

The view of traditionalists in Police Science (Botha et al. 1989:60), is that public police are concerned solely with the criminal element. It is their job to protect life and property and to keep the peace. This is done by investigating crimes, making arrests and giving assistance during trials. Van Heerden (1994:152), states it explicitly that crime prevention is the fundamental purpose of policing. In other words, to be pro-active as opposed to being reactive. According to Wilson (Van Heerden:1994:16), crime prevention is the primary function of the police and that crime prevention generally consists of those measures adopted by society for the purposes of strengthening its control over the behaviour of individual members.

In my opinion, there is a clear distinction between crime prevention (pro-active) and law enforcement (reactive). Law enforcement is part of crime prevention, but law enforcement alone can't prevent crime, as it is reactive by nature. Law enforcement does have a deterrent value, but the requirement is that social order should be protected before it is violated. Crime prevention is a much wider concept which includes aspects

such as environmental design, education, public involvement and numerous other social and political aspects. Law enforcement is by nature a one-sided affair imposed and maintained by Government, whilst crime prevention could be initiated and maintained from within public spheres. Van Heerden (1994:152), enhances these sentiments and states the following:

> "Since crime is a social phenomenon, crime prevention must be the responsibility of every section of society. Indeed, crime prevention is the responsibility of every citizen."

In modern times it would appear as if the traditionalist approach has prevailed, but not because they have presented better arguments or have been able to provide better frameworks for policing, but rather because the social, political and economic changes in society have led to the police only being able to take on the responsibility of law enforcement. The tapered down responsibility of the police has mainly been owing to an ever decreasing financial and manpower resources and also because the public is able to afford their own private security force.

The public police have become mainly involved in law enforcement, primarily because they are constitutionally obliged to investigate crimes that have taken place (Section 205(3): Act 108 of 1996). In contradiction to this, private security companies are only responsible for crime prevention (in the strict pro-active sense of the word) and does not have any responsibility after a crime was committed. Private security companies

can do reactive investigations, but they would still need the law enforcement structures to ensure prosecution. One can understand the preference of private security companies of entrenching themselves in the crime prevention arena as opposed to the law enforcement milieu.

This development has had a direct influence on the role and functions of the Private Security Industry and ultimately on the approach that should be adopted in the regulation of the Industry.

By stating that the traditionalist approach has prevailed, it is not argued that there is no role for the police in the crime prevention environment. According to Cavan (Van Heerden:1994:156), prevention was originally the sole justification for the existence of the police and although the repressive function has since then assumed dominance, there is still a strong preventative character in the repressive function. One could however argue, that the effect of the repressive function is only a part of the prevention of criminal activities. It is for this reason arguable that it is the visibility or actual presence of a police force which is the preventative measure and not the mere existence of the police service. Logically then, it is understandable why there has been a steady growth in the Private Security Industry.

According to Botha (Marais and Van Vuuren:1996:5):

> "Van Heerden reports that the prevention of crime is often supplanted by the investigation of crime on the grounds that law enforcement means *post facto* action and that the law does not make provision for preventative action. Such an attitude is out of place."

From the above it is clear that there is a division of opinions regarding whether a police force is firstly a crime prevention organ and secondly a law enforcement organ or *vice versa*. It appears though as if these arguments are mostly founded on the main functions of the police force at a specific point in time. In other words, depending on the point in a country's history when the argument was formulated, the argument was either for preventative or repressive policing. At this point in time, it appears to still be the case. It is therefore argued that in the current political, economical and socio-political climate, the SAPS in South Africa, is firstly expected to be a preventative police service. Because of the realities such as the SAPS's ability to perform this function, as well as issues such as the transformation of the SAPS and the large loss of manpower and financial resources, the SAPS has mainly been involved in the law enforcement environment. This has a two-fold impact. Firstly, the result is a strengthening of perceptions, by especially those who can afford private security, that the police are not able to perform its preventative functions. Secondly, it creates a continued gap for the Private Security Industry to expand and encroach on the preventative role of the SAPS.

In my opinion, the public expects the SAPS to be a law enforcement agency. People expect to see that criminals are caught and sentenced and hence measure the success and competency of the SAPS against statistics such as number of arrests, solving of high profile cases and the conviction rate of arrested criminals. According to Schönteich (1999:3,9), the number of prosecutions and convictions dropped by 40 percent between 1991 and 1996. In 1997, the conviction rate for serious violent crimes was as follows: murder (31%), car hijacking (18%) and rape (16%). Despite this decrease in convictions and prosecutions, the budget of specifically the South African Police Services increased from R2,93 billion in 1990/1 to R13,06 billion in 1996/97. This represents an increase of approximately 400 percent. One can argue that despite this increase of approximately 400 percent, the police have not been able to curb the crime rate or to present more visible policing structures.

One of the effects of the high crime rate, is arguably that the police service will be forced to use most of their resources on law enforcement. Consequently it will not have the human resources to provide visible policing, which could be seen as crime prevention. The nett result of this will be that even if the police succeed in increasing its conviction and prosecution rate, they will still be regarded as ineffective because they will still not be as visible to the public as private security forces. The SAPS is therefore to a large extent in a no-win situation and the Private Security Industry has an easy market to sell their skills to. The fact that the Private Security Industry has encroached on the role of visible policing and therefore crime prevention, will in future

have a continuous effect on the perceptions regarding the effectiveness of the police. This view is supported by Shearing and Stenning (Brogden and Shearing:1993:173), when they state that:

> "In these communities, disorder comes to mean such things as loss of profit, threats to the security of staff and customers and so on. In this story, the state police are seen as one player among many in the business of policing - and as the player who is very often the least important."

As mentioned earlier in this thesis, the SAPS has had a budget increase in excess of 400 percent with no, or very little decline in the reported crime incidents.

TABLE 2.1

BROAD SOUTH AFRICAN CRIME STATISTICS

CRIME	1994 - Reported cases	1998 - Reported cases	1999 - Reported cases	Percentage increase ('94 - '99)	Percentage decrease ('94 - '99)
Rape	42 429	49 280	51 249	20,8%	
Robbery	84 900	88 319	97 173	14.5%	
Burglary at businesses	89 058	94 102	92 789	4,2%	
Burglary (residential)	228 021	266 817	285 515	25,2%	
Theft of motor vehicles	104 302	107 513	103 502	0,8%	
Stock theft	45 137	40 490	41 781		7,4%
Car hijacking	12 860	15 111	15 447	20,1%	

Source: Adapted from South African Institute of Race Relations (2001:96-97)

Two important aspects become clear from the statistics provided by the South African Institute of Race relations. Firstly, there has been a steady increase in crime over the last five years. This, despite the fact that the SAPS has had a 400% budget increase and also that other state security organs such as the South African National Defence Force (SANDF) and National Intelligence Agency (NIA) were instructed to assist the SAPS in the fight against crime.

The second notable aspect is that in the case of burglaries at businesses and theft of motor vehicles has had a sharp decrease as opposed to the other crimes listed. One of the main reasons must be that businesses can afford to hire private security companies to provide 24-hour visible security policing, as opposed to residential owners where it can only be afforded by the more affluent people. In the case of motor vehicles, these figures represent the deterrence factor of private security measures such as alarm systems, immobilisers and satellite tracking systems. Crimes against the social fabric such as murder, rape and assault are far more difficult to provide effective crime prevention measures for.

Coming back to the point that the SAPS will always be measured in terms of their success with crime prevention, as opposed to their success with law enforcement, the increase in crimes such as rape, murder and assault will far outweigh the decrease in other crimes, even if it is mainly because of increased preventative policing by the

SAPS. One furthermore has to agree with Van Heerden, that crime prevention is the responsibility of the whole public - although only the SAPS get blamed for the increase in incidents of crime.

It is thus argued that the police will be required to act as law enforcers for a long time to come and that the role of crime prevention will be assumed by the private sector. The police's role in crime prevention efforts will possibly be "restricted" to their involvement in the public policing structures. This situation could possibly be reversed if the newly established Metropolitan Police Services are able to establish effective crime prevention programmes through visible policing. Their function would be to restore confidence in the State's ability to prevent crime and not to merely perform reactive policing duties.

2.3.1 **Policing in a democratic society**

The political changes, as well as the perceptions and realities regarding the future of policing and indirectly crime prevention in South Africa, placed a question mark over the issue of policing in the New South Africa. With the initial denial by Government that there has been a sharp increase in crime in South Africa since the early 1990's and more specific after 1994, the questions regarding policing were mainly focussed on the transformation[1] of the police force and distribution of the police resources to the areas

[1] In the South African political environment "transformation" refers to issues such as Affirmative Action and Employment Equity

previously not included in the police services. According to Albie Sachs (Brogden & Shearing:1993:viii):

> "Clearly the force (sic) has to be transformed from being an instrument of white domination, and regarded as such, into a protector of the peace and security of all South Africans, accepted as such. No longer can we have a racial caste in command of the police force. The policing talents and skills of members of the communities must be tapped, so that the force, from top to bottom, becomes a culturally dappled and humanly diverse as the society from which it is drawn."

These sentiments were echoed by former President FW de Klerk (Cawthra:1992:3), when he spoke to 500 senior policemen directly after his famous 1990 speech and said the following:

> "Up to now the police have been required to perform two types of functions. The one is to handle criminal situations - murder, rape, theft, etc. - the task of a police force all over the world. But you also had other tasks to fulfil, and that was a control function connected to a specific political party and the execution of its laws ... this is the political arena and we want to take the police out of it..."

From the above it is clear that the police, apart from the expected change to act as a police "service" and not a police "force", also has to cope with institutional changes to adapt to the new political dispensation. One of the methods employed by the SAPS trying to deal with the required changes, is by adopting a programme of community policing. The main difference between community policing and private security, lies in the fact that the former is still controlled by the Police, while the latter is not under control of the Police. The idea of community policing has unfortunately not been accepted in all circles.

According to Brogden (Brogden and Shearing :1993:5), community policing has come to represent not the defence of communities, as the term implies, but a form of policing that permits the police to keep a better watch over the community. Although these comments made by Brogden obviously refers to the community policing efforts in the pre-1994 era, there is a possibility that these perceptions could still exist in certain communities and resulting in a preference for private security structures as opposed to community policing structures. Co-operation agreements between public and private policing structures do not necessarily mean control by the public police, and leading to the subsequent potential for conflict between these two entities. According to Minnaar (1997:6):

> "It was indicated that there might occur feelings of marginalisation and abrogation of responsibilities if security companies took over the role and

function of policing in securing and providing safety to neighbourhoods. Such perceptions of public usurpation of policing duties might well have a negative effect upon the morale of police members."

Such comments made by Minnaar, at the time a senior SAPS researcher, is an indication of the distrust the SAPS would be, and is still approaching the potential for partnership policing with the Private Security Industry.

It became clear after 1994 that the South African Police (SAP) was not organised to combat serious crime, but were merely acting as the pre-1994 Government's apartheid law enforcer. The police were mainly organised to work against liberation movements and other anti-apartheid organisers. With the acceptance that the SAPS was not able to contain the increase of criminal activities and the increased presence of international organised crime syndicates, Government was forced into changing their thinking about the need and focus of policing in South Africa.

The new way of policing, is also very strongly influenced by the South African Constitution (Act 108 of 1996). South Africa has one of the most liberal Constitutions in the world. The emphasis on human rights, as stated in the Bill of Rights (Act 108 of 1996), to a large extent have added to the perception that criminals have more legal protection than those who are victims of the criminal activity, or those which are supposed to enforce the laws of the country.

According to Goldstein (Smit and Botha: 1990:36):

> "A democracy is heavily dependent upon its police to maintain the degree of order that makes a free society possible. It looks to its police to facilitate those aspects vital to a democratic way of life: to prevent people from preying on one another, to provide a sense of security to resolve conflicts and to protect free elections, freedom of assembly and freedom of movement. Yet the police is placed in an anomalous position. They are vested with a great deal of authority under a system of government in which authority is sharply curtailed."

Smit and Botha (1990:36), state their dual point of departure to be that democratic policing in itself may be a paradox and democracy and restrictions walk hand in hand - the more democratic a society, the more the restrictions are placed upon its police. The description provided by Goldstein and also by Smit and Botha fits into the description of security which refers to national security and not security in the sense where it refers to the presence of Assets, Threat and a Protector (A,T & P). It would therefore appear that the reference to policing in a democratic society, rather seeks to determine the balance in terms of protecting national security, than what it is focussed on determining the exact role of the police force in the public. It is possibly the answer to the latter question which would assist in finding the formula for an effective relationship between public police and private security.

Smit and Botha (1990:37), continue by stating that a police force could be a very uncomfortable institution in a democratic society and also, that a democracy can be very uncomfortable with a police force. In South Africa this is very true - given the history of the SAP prior to 1990 and even in the period up to 1994. The SAPS, has since the dawn of the new dispensation, been constantly subjected to criticism of the way it is performing its policing functions. The criticism is to a large extent a continuation of the criticism voiced against the SAP from the pre-1994 period. A large part of the current criticism against the SAPS however is based on the perception that the SAPS is not able to address the current high levels of crime.

2.3.2 **Basic elements of democracy-policing**

According to Berkley (Smit and Botha: 1990:37), there are some basic elements which constitute the democracy-policing conflict. These include: consensus, authority, power and contract.

a) ***Consensus***

Consensus is the precondition for any civilised government. In other words, the citizens of a particular country must agree on common goals and purpose, the procedures and also the institutions intended to preserve these goals and purpose. The law is regarded as the result of which the majority defines as being to the common

good of everyone in society. According to Smit and Botha (1990:37), the anomaly lies with the fact that the less the consensus, the more police power is needed. If one therefore refers back to the earlier statement that the more democratic a society, the more restrictions are placed on the police, it becomes obvious that the role of the police has to large extent been politicised. In other words, the police becomes part of the political system and not much part of the Criminal Justice System. In the case of South Africa, it is clear that in the period of no consensus (pre-1994) the Police Force was used to enforce the apartheid policies and to keep the National Party in power. In the post 1994 period, given a large measure of consensus, the SAPS appears to be hampered by legislation to effectively act against crime and corruption.

b) ***Authority***

Authority to police is delegated by society to their police institution. In the United Kingdom, this authority is embodied in an important policing principle, namely *policing by consent.* (Smit and Botha:1990:37). The authors continue by stating that policing in a democracy is conceived as resulting from the demands of those whom the activity is designed to serve. These principles of authority are also applicable to the Private Security Industry. The authority they have is only as much as they are mandated by their clients. One can therefore argue that the Private Security Industry can also be regarded as *policing by consent.*

c) ***Power***

According to Smit and Botha (1990:37), a policeman wields considerable power. This power also implies *participation in power* and *equality*. A police force however, does not easily permit participation and police officers do not meet citizens on an equal footing. A police officer has certain powers stemming from his position. He is also equipped with fire-arms and has the right to use them. This is not so in the case of the private security officer. They have no more powers than the ordinary citizen and are restricted to the same provisions as a normal citizen in the use of a fire-arm. It is acknowledged that they are in possession of lethal firearms, similar to those used by the Police Force, but they are far more restricted in the use of these weapons.

d) ***Contract***

Smit and Botha (1990:37), state that the contract aspect of democracy is historically perhaps the most significant element in democratic theory and that it depicts a society based upon a social contract. Individuals agree, as equals, to covenant together for their mutual benefit. They retain a right to withdraw from society and abrogate the contract when they see fit. It thus implies consensus, consent, participation and equality. The presence of a contract is possibly one of the main reasons why the Private Security Industry is far more successful in its crime prevention efforts. If a client is not satisfied that he or she is not receiving the service they are paying for, they simply

change service providers. In some cases service providers can even be held accountable if they are not performing according to an agreed contract. This is not the case with the police, where it appears as if as a lower level of accountability exists for the public police than for the Private Security Industry.

2.3.3 Security in a democratic society

South Africa became an internationally accepted democratic society in 1994 after the historic elections of 27 April 1994. The elections were the result of the famous speech by former State President FW de Klerk on 2 February 1990, which was followed by various multiparty discussions for the establishment of a Government of National Unity (GNU).

2.3.4 The need for a military policing style

An important aspect regarding policing in a democracy, and especially in a developing democracy, is that it is practically not possible to have a police service which operates on a public policing style of law execution. According to Reiner (Marks:1998:no page number), the effectiveness of public policing as a means of crime prevention remains an unanswered question internationally.

According to Marks (1998:no page number):

> "All communities need to be protected from crime and violence, and some state agency needs to have the legitimacy to use force when necessary. The police as both peace keepers and law enforcers are the most obvious body to do this ... The concern with developing democracy in Africa has to be grounded in an attempt to ensure state delivery as well as security and stability to citizens ... Early in the transformation process in South Africa, it was recognised that the quest for democracy is rendered extremely difficult where there is social disorder and conflict."

These sentiments are echoed by Du Preez (1988:4,10), when he states that the maintenance of public order is the primary objective of any police force. He continues that the restoration of order by reactive means implies that control should be enforced, even if it means the containment of freedom by means of arrest, interrogation, searches etc.

One should recognise that South Africa, after the transition to democracy in 1994, has steadily gone into a downward spiral with regard to public order. Many South Africans would admit that they are more concerned about their safety than ever before. According to Schönteich (1999:15-16), it is evident that between 1994 and 1997, South Africa has gone from 73% of residents feeling safe to 47% of residents feeling safe. The question should thus be asked if South Africa does not require a more militaristic approach in it policing style until such time the crime situation normalises. Reiner (Botha:1988:65),

states that the task of policing is too complex to define it only in terms of either a hard (military) or soft (service orientated) approach. Reiner continues by stating that it is more important to determine how these two styles will be mixed and who should be responsible for determining the appropriate mix. In South Africa, it appears as if there has been a shift from the one extreme to the other, from a militaristic (reactive) approach to a public policing (pro-active approach). This is an aspect which had a direct influence on the role of crime prevention assumed by the Private Security Industry, as well as the perceptions the public has regarding the effectiveness of the SAPS.

From the available literature used in this research project, it appears as if there is a contradiction in the conception of the term "community policing". The SAPS in their statements, appear to be conceptualising a system where the public are also responsible for the prevention of crime through reporting crime and being part of community policing projects. In contradiction to this, the international meaning of community policing rather seems to be referring to the police force becoming a police service - thus becoming more of a law executor. To some extent, it appears impossible for South Africa at this stage of the political transformation process to actually move towards the real meaning of community policing. Community policing should not entail citizens raising money for buying equipment for police stations and paying over-time to police officers to fulfil their law enforcement duties. It should mean visible policing to protect the public order. According to Trojanowicz and Carter (Ferreira :1996:no page number), excellent police community relations are just a by-product of community policing. It should be seen as an opportunity for the Government and the Police to attend to the "needs" of their

customers. Trojanowicz and Carter produced the following descriptive definition of what community policing should entail:

> "Community policing is a philosophy of full service personalized policing, where the same officer patrols and works in the same area on a permanent basis, from a decentralized place, working in a proactive partnership with citizens to identify and solve problems."

2.4 The private security concept

The explanation of the term "security" according to the Concise Oxford Dictionary (1964:1144), is "Over-confidence; Thing that guards or guarantees" and for the term "secure" (1964:1143), "untroubled by danger or apprehension, confident or unsuspecting".

The explanation which in the current South African context would be the most inappropriate explanation is that of *"over-confidence"*. In the context of the definition's explanation, *over-confidence* refers to being confident about one's environment in terms of being free of fear and feeling safe. Thus the need for security in South Africa stems from the need to feel *over-confident* in your own environment. Whose responsibility the provision of this level of security is, can be debatable to some extent, although one could argue that it lies in total with the democratically elected government. The key, however, lies in determining to what extent a government

should be held accountable for providing the environment for its citizens to feel *over-confident.*

This sentiment is echoed by Fischer and Green (1992:3) when they state the following:

> "Security implies a stable, relative predictable environment in which an individual or group may pursue its ends without disruption or harm and without fear of disturbance or injury"

It is thus clear that security refers to an *environment* or *state of mind* where a person is free of fear and confident that there is no threat within the immediate vicinity or area. Fisher and Green (1992:3) furthermore state the following with regard to the development of security:

> "Throughout history it is possible to trace the emerging concept of security as a response to, and a reflection of, a changing society, mirroring not only its social structure but also its economic conditions, its perception of law and crime, and its morality. Thus security remains a field of both tradition and dramatic change."

The point made by Fischer and Green, is very important in terms of understanding the evolution of both the public policing and private security internationally, and in South

Africa. The reality is that although one could accept a single definition for the term security, it would also be possible to apply this definition to various stages in history. The practical meaning of the term security however, will have a different meaning in different countries, different stages in history and moreover with the change of political regimes. The implication of especially the last situation, is that one will have to adapt the relevant legislation dealing with the provision of security to the citizenry.

In addition to the different meaning of security because of economic, political and social changes, a further broad differentiation could be made between personal security, national security, international security and physical security. In terms of national and international security, Buzan (1991:4-5) mentions that academics such as Wolfers and MacDonald have to some degree defined security as an "ambiguous symbol" and have dismissed security as an "inadequate" concept. Although one can argue that with regard to the debate in respect of private security, it is very possible to determine what exactly is meant, it should be taken into account that the Security Industry Regulation Bill (Bill 12 of 2001) does not only want to regulate the Industry for the purpose of protecting the public, but also to protect the interest of the State, and by implication national security. Consequently, without a clear definition in the Bill of what is meant "protecting the interest of the State", the real motivation behind the new legislation should be examined.

One can, however, question that the concept of security, as argued by academics such as MacDonald and Wolfers, is indeed referring to a broad and intangible concept of

security, but for the purpose of this thesis security refers to issues such as physical protection and loss control. In stating this, the definition draughted by Manunta (1999:58), is most applicable to this thesis and the issue of private security. Manunta states that *security is defined as a function of the presence and interaction of Asset (A), Protector (P) and Threat (T) in a given Situation (Si).* Manunta continues by stating that if this definition is accepted, the absence of one of the core elements (A, P or T) voids the concept of security of its significance: without an asset, there is nothing to protect; without a threat, there is no reason to protect; without a protector, there is no one striving for security.

Using this definition as the departure point for the reference to security, means this thesis refers to the existence of assets (property, intellectual property, information), the existence of a threat (crime and corruption) and the existence of a protector (the public police or the Private Security Industry).

2.4.1 **Private security in a democratic society**

As it has been determined what is meant by the term *security*, the next step would be to establish what is meant by *private security* and what the alternative to private security is. The obvious answer to the question of what is the alternative to private security, is *public security*. Public security would automatically imply the law enforcement agencies of a specific country. One would however not be able to deduct from this explanation that private security means *private law enforcement*.

One definition of private security is that of Bosch (1999:4), where he states that private security can be defined as: " ... those efforts by individuals and organisations to protect their assets from loss, harm or reduction in value, due to criminality." A more descriptive definition is, according to Gallati (McManus:1995:4), "the sum total of all those *preventative* (own italics) and *protective* (own italics) efforts provided by entities other than Government." There are, however, some instances where there is collaboration between private individuals and the public security structures which does not in principle amount to private security. These include specifically efforts such as neighbourhood watches and community policing efforts. These are merely joint crime prevention efforts and does not amount to private security *per se* as there are real difficulties in determining the territorial responsibilities of all the role players involved.

2.4.2 **Accommodating the Private Security Industry**

Accommodating the Private Security Industry in the criminal justice system can only take place within a unbiased regulatory framework. According to Schönteich (2000:28):

> "Since the 1960s the trend towards absolute state control of the criminal justice sphere has undergone a reversal in a number of developed capitalist states. Even more wealthier states, maintaining and expanding all aspects of a criminal justice system became too costly. Moreover, the private sector developed the expertise and capacity to provide specialised services more cost-effectively than

the state."

With the high levels of crime in South Africa, it is somewhat of a low point to still try and determine the ways and means in which the Private Security Industry could be accommodated within the Criminal Justice System. As Schönteich has indicated, this sector has already developed the specialised capabilities to fight crime more cost-effective than the State. The question regarding the motives for regulating the Private Security Industry thus repeatedly occurs. In addition, it is also questionable why Government has not set-up mechanisms for the effective use of the Private Security Industry in the prevention of crime - as one of the clear advantages of such an approach would be a monetary advantage for social upliftment programmes.

According to Minnaar (1997:4), the following advantages could develop from a partnership between the SAPS and the Private Security Industry:

- *Freeing up of police members*: If security personnel are used to guard government buildings, transport prisoners to court, used for security at sport events etc. more police members would be released for police and crime prevention duties at station level
- *Force multiplier*: If the services of security companies can be added to SAPS activities, this would act as a force multiplier in terms of combatting and preventing crime
- *Sharing of information*: If security companies enter a contract /

partnership with local police, they would be able to have access to crime information (statistics / identification of local crime "hotspots" [sic] and profiles of local criminals) upon which they would act. Likewise in pursuit of their daily activities, security companies obtain valuable information regarding crime which can be passed on or shared with the police. It is suggested here that not only this information be shared, but that the co-ordination of collection be placed on a formal and organised basis

- *Vehicles to investigate alarms*: Security company vehicles in the area can be delegated to investigate alarms. This would presume a direct radio link between a police radio control room and the security company vehicle
- *"Eyes and ears" of police*: Security personnel could well serve the function of being the eyes and ears of the police by passing on information on a regular basis to the police
- *Technological expertise*: Security firms can provide the police with expert advice and technological assistance with regard to CCTV, silent alarms, surveillance and detection equipment
- *Training assistance*: The SAPS would be able to provide assistance to security officers on a number of policing issues

A number of issues become clear when one examines the above-mentioned points by Minnaar. Firstly, it is clear that the Private Security Industry (PSI) is regarded as

subservient to the SAPS and not as an equal partner. This is especially evident in Minnaar's reference to the freeing-up of police officers. Minnaar clearly regards the prevention of crime as a "police-only" duty. It could be argued that the PSI could never be regarded as an equal of the SAPS, because they do not have the necessary executive powers. Their technical expertise, human resources, financial assets and operational experience however equal and in most cases surpass that of the SAPS and consequently they should be regarded as equal partners in a crime prevention partnership.

Secondly, it seems to be assumed that the SAPS currently have the major responsibility in terms of responding to alarms. It is acknowledged that the SAPS spends a large measure of time and resources in reacting to alarms. The matter of the fact is that the Police only respond to alarms in cases where the security company does not have its own armed reaction unit. This problem would therefore not be solved through entering into partnership with the PSI. It can only be solved through regulating alarm installation companies.

According to Reynolds (1994:no page number):

> "The effectiveness of private security forces is on display every day in Las Vegas and Atlantic City casinos, where old ladies serenely stumble around with large sums of cash in rooms crowded with gamblers, some of whom are less than model citizens. These ladies would not be nearly as safe on the streets

(patrolled by public police) of any major city, even if they had carried little or no money."

Although the example cited by Reynolds could be regarded as extreme, it does highlight the fact that private security initiatives can overall be regarded as more effective than public policing efforts. In 1992, US railroads employed 2,565 private police officers, and according to Reynolds (1994:no page number), these private police officers have managed a case clearance average of 30.9 percent as opposed to the 21.4 percent of the public police. The above 30 percent average is higher than what the public police have ever been able to obtain. These sentiments are echoed by Brooke (1996:no page number), when he states the following:

"In these days of governmental and corporate downsizing, the relationship between law enforcement and security is becoming increasingly important. Coupled with these budgetary constraints is the unfortunate impact of crime in this society. Even in the best of times, the police and the resources devoted to the criminal justice system have been unable to significantly reduce the rate and incidence of crime."

According to Sherman (Brooke:1996:no page number):

"A few developments are more indicative of public concern about crime, and the declining faith in the ability of public institutions to cope with it, than the

burgeoning growth of private security. Rather than approving funds for more police, the voters have turned to volunteer and paid private watchers."

In South Africa, one of the most recent examples is the use of private investigators when the SAPS are not able to solve high profile cases. According to media reports Slang Van Zyl, former Covert Collections Bureau (CCB) operative assisted the SAPS in a number of high profile criminal cases. These included a R2 million diamond theft case (Beeld:25 May 1998), the murder of a psychiatrist's wife (Beeld: 27 September 1997) and the abduction of a 7-year old girl (Beeld: 19 March 2001).

In his article, Brooke (1996:no page number), identifies different models in which the co-operation between the private sector and the public police could be established. These models include:

- ***Business Improvement Districts (BID's)***

  This model is based on improving the ageing and declining urban city centres and thereby improving public safety conditions. It supports taxing of businesses in the areas and with these funds hire cleaners, tour guides and security guards. It also makes provision for the feeding of the homeless. This model goes beyond the traditional functions of security, but is also fundamental to the perceptions of people that they are in a safe environment.

- ***Private security policing***

The example cited here, is that of Starret City housing project in New York. In this poor suburb, guards were hired by the management company responsible for the administration of the development. Over a period of twenty years, crime incidents were at a remarkably low percentage. According to Brooke (1996:no page number), the 1994 crime statistics for Starret City, with approximately 20 000 inhabitants were: 24 car thefts, 12 burglaries, 6 aggravated assaults, no rapes and 67 robberies. In the adjacent neighbourhood there were 2548 reported robberies for the same period.

An important aspect of the models proposed by Brooke, is the fact that it is not only focussed on developing an alternative to the public policing system. These models take into account the whole public and what should be done to bring about a change in the whole environment in which the public functions. This approach, if one looks at the Brooke models, is the only real solution for crime as internationally, public policing systems does not have the capacity to do more than the law enforcement role they are required to do. In terms of the South African situation, the efforts to accommodate the Private Security Industry should thus include an action programme of a total environmental safety programme and not merely delivering a physical security service such as guards or armed response.

Apart from the ideal situation as described above Schönteich (2000:30), lists the

following non-policing functions currently performed by the SAPS which could ideally be undertaken by the Private Security Industry:

- Court orderly duties
- Transporting prisoners
- Guards for premises and persons
- Radio control rooms
- Guarding crime scenes
- Manning the Criminal Record Centre
- Serving summonses
- Crowd control and security at private functions
- Training

In addition to the above, Schönteich also mentions some examples from the United States:

- In the 1960's the state of Florida contracted a private firm to supplement its police force investigative services
- In the 1970's the US Government contracted private security companies to provide skilled narcotics agents to the public forces
- San Francisco has a number of private police beats which are owned by "private patrol specialists". All of these specialists are skilled by a police training course, and have the right to carry a firearm and make arrests. They are paid

exclusively by businesses, homeowners and landlords on their beats or patrols.

Returning to the example of Starret City, Walsh and Donovan (1989:192), lists a number of tasks performed on a weekly and daily basis giving an indication of the tasks that to a large extent have gone amiss in the daily functioning of the SAPS. This strengthens the argument regarding the need for a Private Security Industry in the fight against crime. These tasks include:

- ❑ Checking in parking garages and lots
- ❑ Observe for illegal activity
- ❑ Check park and school grounds
- ❑ Follow suspicious persons
- ❑ Request identity of persons
- ❑ Patrol on foot
- ❑ Examine and test doors and windows
- ❑ Talk with people to establish rapport
- ❑ Investigate noise complaints
- ❑ Patrol vertically in buildings
- ❑ Secure buildings and laundry rooms
- ❑ Assist elderly and disabled persons
- ❑ Patrol areas which are potentially physically hazardous to residents
- ❑ Check vehicles for parking permits
- ❑ Request to general information questions

- ❑ Conduct security inspections
- ❑ Respond to sick or injured persons
- ❑ Give street directions

One can argue that some of the mentioned issues are not part of a policing duty. They do however form part of the broader concept of delivering a security service - exactly what the SAPS should be doing, and makes it clear to understand why the Starret City project is so successful.

2.4.3 **Accountability in the private security environment**

According to Sarre (1998:97), the issue of accountability in the Private Security Industry has hardly been explored. He argues this mainly because there is difficulty in trying to define "private" security and furthermore because there is a misunderstanding of the legal powers governing the private sector. The fact of the matter is that the Private Security Industry has a direct influence on the daily lives of citizens. The Industry is entrusted, and as this thesis argues, needs to be entrusted with even more of the functions traditionally performed by the public police. The purpose of a regulatory framework would thus overall be to ensure the accountability of the Industry for its actions.

It would appear from international legislation dealing with the Private Security Industry that Governments are attempting to create systems of accountability within the

Industry. The comparative analysis[2] made for the purpose of this thesis, as well as a critical analysis of the proposed South African legislation, however, have revealed that there are a number of efforts to create an accountable system without the inclusion of either the public or the Industry. Government regulation is only one of the ways in which the Private Security Industry could be regulated. According to Sarre (1998:99), the following options are available to ensure accountability in the Industry:

- Government regulation
- Civil law
- Criminal law
- Industry self-regulation
- Market-forces
- Accountability through Industry standards and third parties

The South African Government has opted for the route of Government regulation to ensure accountability in the Private Security Industry. It will however be a mistake to rely on a system whereby only one approach is followed. Government regulation will be ineffective if it is not used in conjunction with certain elements of Industry, self-regulation, civil law and criminal law. This thesis will as a result argue in the relevant chapters that a Government only approach is not to the advantage of Government, the Industry itself, consumers and the macro economy.

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2 Annexure A and B

2.5 Finding a balance between private and public police services

One of the more important questions regarding the whole regulatory framework, is with regard to the relationship between Private Security Industry and public police. This question mainly relates to the issue of the duties performed by the Private Security Industry. In this regard Micucci (1998:48), states that:

> "Two theoretical models have been formulated to explain the development of private security. The first envisages security as an adjunct to the police and to the criminal justice system ... The second model portrays security as a competitive and encroaching entity that erodes the state's monopoly over policing and justice and undermines the legitimacy of the police."

For reasons detailed in Chapter One and Three, it becomes evident that in the South African context, Government perceives the Private Security Industry within the parameters of the second model, namely a competitive and encroaching entity. This aspect has a direct influence on the meaningful potential of becoming an encroaching entity. The other side of the coin is that if a Government views the Private Security Industry as a competitive and not a complementary entity, finding the balance between these two entities becomes more difficult.

Cunningham and Taylor (1985:172) have drafted a model (Figure 2.1), which outlines

the continuum of security, order maintenance and law enforcement. This model could also be used to indicate areas where co-operation could either be developed between the Private Security Industry and the public police structures. This model, in addition to indicating the possible areas of co-operation between Private Security Industry and public police, also indicates where the traditional duties of public police have become an integral part of the duties now performed by private security forces.

FIGURE 2.1

CONTINUUM OF SECURITY, ORDER MAINTENANCE AND LAW ENFORCEMENT WORK

SECURITY			**ORDER MAINTENANCE /LAW ENFORCEMENT**
Monitor alarm equipment	Respond to alarms	Stake out areas	Criminal raids
Respond to service calls	Investigate complaints	Investigate crime	Interrogate suspects
Secure property	Report / Detect criminal acts	Patrol to prevent crime	Arrest violators
Control locks	Guard restricted areas	Access control	Patrol to preserve peace
Check ID badges	Escort visitors	Protect traffic	Search and seizures
Enforce miscellaneous rules	Protect property	Protect people	Uphold / enforce laws
GUARD			**POLICE OFFICER**

Source: Adapted from: Cunningham and Taylor (1985:172)

From Figure 2.1, it is clear that there are very little functions left to be fulfilled exclusively by the public police service. The private security has basically become

involved in all aspects of policing, excluding only those functions which require powers of arrest and seize and search. It is consequently safe to say that the public police has left, as its only exclusive domain, law enforcement. This phenomenon has to large extent been responsible for the disturbance of balance between what should be policed publically and what should be policed privately. It has also added to the tensions between private sector and public sector. According to the Report of the Task Force on Private Security (1976:19), the following barriers exist preventing an effective relationship between public police and Private Security Industry:

- Lack of mutual respect
- Corruption
- Lack of co-operation
- Lack of two-way communication
- Competition
- Lack of knowledge by law enforcement of the function, mission and problems of private security
- The failure of private security to speak with a unified professional voice, and
- The need for better formulated and articulated standards of professionalism on both sides

The problems identified in the United States (Report of the Task Force on Private Security:1976:19), can also be detected in South Africa. The aspect which is most applicable to the domestic situation, is the lack of knowledge regarding the private

security by the law-enforcement agencies. This is especially evident in the approach of Government with regard to the proposed new regulatory legislation (Security Industry Regulation Bill (Bill 12 of 2001), and also in documents dealing with the SAPS's approach (Minnaar: 1997) in terms of partnership policing.

According to the Hallcrest Report (Cunningham and Taylor:1985:172):

> "If one were to make a big pie of the protection of the wealth, health and welfare of a community, law enforcement would be a small part of the pie. Law enforcement which is basically manpower is now seeing a manpower shift to the private sector. But manpower is a small part of protection resources. A shift of protection resources to the private sector has already happened; cops only see the change in their turf."

2.6 Summary

This Chapter has proven that there is a clear distinction between law enforcement and crime prevention and that this difference has added to the different approaches adopted by the SAPS and the Private Security Industry. These differences have also added to the way in which people perceive the effectiveness of the SAPS.

In addition, this Chapter has come to the conclusion that accountability in the private security sector is not necessarily less than what is arguably found in the public policing

structures. It can even be argued that the Private Security Industry is even more attentive of the fact that they are accountable to their client base. There are also numerous examples, such as those cited at the 2000 Annual Bravery Awards hosted by the SOIB for registered private security officers, that these officers do not hesitate to act in the interest of not only their direct client base, but the broad public as a whole.

This Chapter furthermore makes it clear that the SAPS and the Private Security Industry can't afford to see each other as competitors. Both of these entities have vulnerable and positive aspects which are complimentary to the effectiveness of the broad approach against crime in South Africa. In order for this partnership to realise its full potential, these entities need to see each other as equal partners and not the one subservient to the other.

CHAPTER THREE

STATE OF THE SOUTH AFRICAN PRIVATE SECURITY INDUSTRY

3.1 Introduction

Chapter Three is mainly an historic overview of the development and growth of the Private Security Industry in South Africa. This Chapter makes a clear distinction between three different periods in the private security history: The period before the promulgation of the Security Officers' Act (Act 92 of 1987). The period after the promulgation of the Act. The period after the promulgation of the Security Officers' Amendment Act (Act 104 of 1997). This Chapter makes an assessment of the problems facing the SOB and SOIB in their efforts to regulate the Industry.

3.1.1 Historic overview

What makes the South African Private Security Industry *sui generis* from the other private security industries in the world? This question is largely answered by Irish (1999: 12), when she states that the Private Security Industry was largely initialised, and the growth stimulated, by the former National Party Government. In the rest of the world, growth stimulation came from public demand itself. It is ironic that the perceived sustainment and growth received from Government during the 1970's and 1980's is also today the Achilles heel of the Industry in the new millennium. Despite

the reality that the Industry did not expand on Government inputs alone, other stimulating factors seem to be lost in the equation when analysis takes place.

The historic development of the Private Security Industry in South Africa can basically be divided into three distinct periods. Firstly, the period before 3 April 1989 when the Security Officers' Act (Act 92 of 1987) was promulgated. Secondly, the period after the establishment of the Security Officers Board in September 1989. Lastly, the period after the establishment of the Interim Board in February 1999, which includes the current process of drafting a new regulatory framework for the regulation of the Industry. These periods to a large degree also coincide with the changing domestic South African political scenario. In the period preceding the establishment of the SOB, there seemed to be Government involvement in the Industry but not with the purpose of regulating the standards in the Industry, but rather to ensure that the Industry acts in the interest of the state.

After the establishment of the SOB in 1989, both the former and the new Governments left the Industry to fend for itself. After the 1994 elections, the focus shifted to Government's efforts to become more involved in the regulatory process. This process culminated in the Private Security Regulations Bill (Bill 12 of 2001) in February 2001. It subsequently appears as if the gradual shift to a democratic dispensation has meant a gradual shift to a more non-tolerant approach towards the Private Security Industry.

3.1.2 **Scope of the South African industry**

According to the Vice-chairperson of the SOIB, Prof. PJ Visser (Visser:1999:SASA Conference Address), the security industry had 164 666 registered security officers in August 1999. This figure includes security officers who are registered with the Board, but who might not be currently employed by a security company. This figure, however, excludes the so-called in-house security officers. In August 1999, The SOIB received 11018 individual applications for security officers per month and had a total of 8937 security service related companies registered. From this total of 8937, 4659 were active registered security businesses, 2944 registered active guarding businesses, 551 involved in the Cash-in-transit business and 783 involved in the armed response sector.

Table 3.1 is an indication of the number of employees in the average security company. These figures are of specific interest, as it clears the perception regarding the size and "cohesive threat" of the security industry to some extent. The fact that almost 80% of the companies consist of between one and five employees, does water down the perception that the Industry is this large homogenous force. When one takes into consideration that only **624** (5,4%) from a total of **11479** service providers (SOIB Statistics, February 2000) are employing more than fifty employees, it becomes increasingly difficult to regulate the Industry. The flip side of the coin, is that a total of 7182 (80,8%) of the service providers is employing between one and five employees. They then need to become the target for the regulation as they are the

companies most prone not adhering to regulation standards, labour standards and not giving a satisfactory service to the public. The main point is that the Industry is so diverse, that any regulatory effort should be constructed in such a manner, that it should be easy to operationalise and police by the relevant regulatory authorities.

TABLE 3.1

NUMBER OF EMPLOYEES PER SECURITY SERVICE PROVIDER

REGION	NUMBER OF EMPLOYEES PER SERVICE PROVIDER						
	<5	6-10	11-20	21-50	51-100	101-500	500<
UNK.	118	9	2	3	3	2	0
GAU	3956	161	186	204	104	135	33
MPUM	492	29	46	34	21	13	1
EC	656	51	51	48	18	19	1
WC	1253	77	59	70	45	38	3
NP	276	16	23	22	15	6	0
NWP	550	41	34	39	15	8	0
FS	325	34	22	21	13	5	1
NC	104	8	7	5	0	2	0
KZN	1547	105	74	91	67	48	8
TOTAL	9277	531	504	537	301	276	47

Source: Compiled from SOIB statistics (February 2000)

Apart from the varied sizes of security service providers, there are also big differences in the levels of training of security guards. This has a direct influence on the quality of service they can provide, their understanding of the regulatory framework and also on their accountability in the execution of their duties. Table 3.2 is an indication of the

varied levels of training in the Private Security Industry:

TABLE 3.2

LEVELS OF TRAINING IN THE PRIVATE SECURITY INDUSTRY

Number of active security officers	161 558
Percentage of security officers not registered with the Board	5.1%
Percentage of security officers with grade A training	4%
Percentage of security officers with grade B training	5%
Percentage of security officers with grade C training	31%
Percentage of security officers with grade D training	25%
Percentage of security officers with grade E training	22%
Percentage of security officers who are untrained	14%

Source : Compiled from SOIB provided statistics (February 2000)

The statistics provide a clear indication that the Private Security Industry is not a harmonious force with the potential of destabilising the South African democracy. Perceptions regarding the Industry have been one of the primary, if not the main influences behind the drive by Government to implement new legislation. Sadly, Government in their policy documents (Department of Safety and Security: 2000: Policy document on the future regulation of the Private Security Industry) have ignored the facts indicating the existence of a highly fragmented and competitive Industry. Schönteich (1999:2-3) however, does try to clearly put forward the advantages of using a well-regulated Private Security Industry:

- Private policing is re-emerging because of its flexibility and responsiveness to consumer demand
- According to the SAPS, it would be of use to everyone (Private Security Industry, municipal authorities, businesses, the public and police) to in some form or another make use of the resources offered by the Industry in the fight against crime
- Outsourcing brings about improvements in costs, quality, and service flexibility. Moreover, perceived disadvantages of outsourcing such as security risks, accountability problems, and corruption, are less likely in the competitive private sector than in state-owned monopolies

With regard to the issue of accountability, this thesis states that by increased representation from consumer and community groups, the overall accountability within the Industry will be increased. Although a general argument could be that the Industry is only accountable to the clients who pay them, many examples have shown that security guards, as police officers and other security officers, do not hesitate to act outside the interest of a paying client if they have to prevent crime or save lives.

3.1.3 Composition of the South African industry

The composition of the South African Industry, has had a direct influence on the regulatory success on both the SOB and the SOIB. The main influence on the composition of the Industry, was that the Act (Act 92 of 1987) did not adequately

define what constitutes a security service. The loophole allowed for numerous types of security services to be excluded from regulation. In South Africa, the following main types of security groupings can be found:

- *Contract security*: This group refers to the majority of the services described in this thesis, namely individuals and companies delivering a security service, as described in the Security Officers' Act Act (Act 92 of 1987), to a client for financial gain. Examples are companies such as Coin, Sentry and Khulani.
- *In-house security*: This refers to those security services delivered by employees to an employer only. In other words, both the person delivering the security service and the person receiving the security service are working for the same company or institution. This would for example include banks, Government departments (not SAPS and SANDF) and big corporations.
- *Local Government*: This sector is mentioned separate, although it could possibly be argued that this sector should also fall under the in-house sector as security service employees are also local government employees and they provide security services to the local government. Local governments, however, are in fact the third level of Government and therefore these employees are by implication Government employees. This creates a number of problematic situations with regard to the regulation of this part of the Industry.

The fact that until now, large distinctions have existed, not only between the various sectors described above, but also within these sectors itself, have added to the predicament of regulating this Industry. This thesis shows that the use of broad definitions to describe specifically what constitutes a security services has been one of the major loopholes in the regulatory legislation.

3.2 The Truth and Reconciliation Commission

The reason for referring to the final report of the Truth and Reconciliation Commission is because some of the perceptions regarding the Industry were to a large extent negated, especially with regard to the role security companies played in the apartheid years to support the National Party Government. Although the activities referred to in the TRC reports are obviously overlapping with the periods set-out to define the development of the Industry in South Africa, this period is highlighted separately to indicate the large impact of perception on the thinking regarding the drafting of the Bill (Bill 12 of 2001). In contradiction to expectations, the TRC report made very little reference to the actual activities of security companies in inter alia the fermenting of political violence, training of hit squads and other third force activities.

The Volume of the Truth and Reconciliation report dealing with political violence during the years of political negotiations, Volume Two, provides the best summary in terms of the perceptions that exist regarding the Private Security Industry. The report (TRC:1998a:709) states as follows:

> "... an investigation into front companies. The Private Security Industry in particular needs intensive scrutiny, as security companies frequently provided a cover for security force operatives".

When one reads this reference of the TRC to the Private Security Industry, a detailed investigation and subsequent reporting was expected in further Chapters of the Report. Reference, however is only made of two separate incidents, both in the former Ciskei. It can't be determined if this was because only these companies were mentioned in amnesty applications, or whether these were the only incidents revealed by TRC investigators and researchers. The fact of the matter is that very little proof came to the fore that private security companies were involved in third force activities.

Two references regarding the role of security companies during the rule of the previous Government in the TRC's final report (TRC:1998b:443) are made:

> "The homeland authorities had open links with vigilante groups and encouraged them to operate; this was particularly the case in Ciskei. The Ciskei government went so far as to make facilities available to vigilantes: the use of the Mdantsane stadium as base for the Green Berets in 1983, the use of a private camp for the Zwelitsha vigilantes in 1985 along with an MP to work with them, and the use of a military base and a private security company as trainers in the 1990's".

And in TRC Report (1998b:433):

> "When military ruler Brigadier Oupa Gqozo deposed Sebe's government, the use of state-sponsored vigilantes continued. When the clashes between Gqozo's government ANC supporters became increasingly bloody during 1992-94, Gqozo hired a private security company - Peace Force - to guard government installations and to recruit and train members of the governments's African Democratic Movement (ADM), which acted as a vigilante force ... this group was given training by Peace Force at the CDF military base on the coast ..."

Although the TRC's references to the role of security companies are limited and did not elaborate as expected, the mere fact that security companies were mentioned as a separate entity to investigate by the Commission, gave impetus to the fears of especially Government regarding the potential for an anti-democratic force in existence in the Industry.

3.3 The period preceding the Security Officers' Act (Act 92 of 1987)

The period preceding the promulgation of the Security Officers' Act (Act 92 of 1987), was marked by the Industry's involvement in the struggle against the "communist" and "socialist" threat. My perception is that the whole Industry seemed to be geared more to fighting terrorism and the effects of terrorism than being focussed on delivering a genuine private security service. This was mainly because of the political situation in

South Africa during the 1970s and 1980s.

One of the best indicators highlighting the security industry's approach during this period, and for the purpose of this study, possibly the only indicator of the climate within the security industry, is the Industry related media of the beginning 1980's. The unofficial mouth piece of the Industry was the **Security Focus** magazine which was first published in 1983.

Analysing the information characterising these magazines, one can come to the conclusion that the Industry could not have been willingly separated from either the political climate or the political Government at the time. In other words, the warped environment in which the South African society found itself by default, did not allow a "normal" security industry to develop and naturally evolve into regulation, control mechanisms and the protection of the status and occupation of the private security guard / operator.

The political climate was one of urban terrorism, rural terrorism, the "total onslaught" and a potential revolution. Taking into account that individuals with previous or serving links with the security force establishment were already making up a large percentage of the individuals either employed by, or with vested interests in the Private Security Industry. It was therefore easy for the doctrine of the "total onslaught" to cross-pollinate from the security force environment. The security industry could therefore not divorce itself from the political climate.

One of the arguments could be that the Industry only used the situation for the purpose of marketing strategies alone. It appears that they rather saw themselves as part of the buffer against these attacks and subsequently took on the responsibility of an auxiliary "terrorism" fighting system. Arguably in the post-apartheid period, it could be stated that the Private Security Industry has exchanged this role for the role of an auxiliary crime fighting system.

Articles "inciting" both the public and the Industry were published on a regular basis, and include examples such as the following:

- "Urban terrorism: State and business must work together" *(Own translation)* (Hough:1983:18-19)
- "ANC shifts emphasis to worker power" (Security Focus: 1988a)
- "PAC involved in terrorism acts" (Security Focus: 1988b)
- "ANC threats remain" (Security Focus: 1984a)
- "ANC turns to hiring criminals" (Security Focus:1984b)
- "Durban's growing arsenal of foreign weapons" (Security Focus: 1984c)
- "Ten sabotage targets disclosed by Minister" (Security Focus: 1984d)

The slant and inciting nature of these articles and most possibly literature from the early 1980's period, should not be seen in isolation, but in the context that the early and mid 1980's saw the height of the South West Africa / Namibia border war. It was

also during this period that the liberation armies stepped up their campaigns of urban terrorism with the planting of limpet mines and attacks on civilian and military installations.

With regard to the political involvement in the Industry, it is clear that it was part of the Government's plan to neutralise the threat against itself and that the Industry could not have expanded the way it did if Government did not endorse the Private Security Industry. It is not implied that the Industry was directly sponsored by Government or that the only reason for the growth in the Industry during the 1970s and 1980s was because of Government's involvement in the Industry. It is merely stated that Government's interest in the Industry was for its own purposes, and gave the Industry the impetus to become a major stakeholder in the South African public and private crime prevention environment. This included their involvement in the already murky political arena, earlier than would have happened if Government was absent in the stimulation of the development of the Industry.

From the above it appears as if Government, during the mentioned period, played an altogether negative role in the development of the South African Private Security Industry. The fact of the matter is that Government did not have any active regulatory involvement in the Industry until 1991, when they established a very suspect Board. Furthermore, they used the Industry to fulfil policing functions as the Police was used to perform "political" duties. The threat of terrorism most probably did have a direct influence in the growth of the Industry, but most probably not to the same scale as the

current influence of crime on the growth of the Industry. The Industry would in all probability have grown far more moderate than it did if it wasn't for the political climate of the early 1980's. One most probably would also have had earlier efforts to regulate the Industry, as there would have been earlier fears that they are encroaching on the Police's mandate.

3.3.1 Security Association of South Africa

According to the South African Security Federation (SASFED) (SASFED:1994:57), the Security Association of South Africa (SASA) was established in 1965, after a spontaneous demand from within the Industry for information and advice on industrial and commercial security. SASA is registered as a non-profit company and states clearly that it is not an employer-orientated company. Analysing the available sources, it appears as if SASA was the first attempt to regulate the Industry to some extent, albeit from within the Industry itself. These efforts can be compared to those by the British Security Industry Association (BSIA) to self-regulate the Industry in Britain (George and Button:2000:41-42). Similar to the domestic situation, the efforts in Britain regarding the regulation of the Industry were also initiated from the Industry itself.

According to SASFED (1994:57), the objectives of SASA are to prevent and protect the consumer against:

- Criminal, *subversive (own italics)* and hostile elements;
- Fire;
- Natural and man-made disasters;
- Operating disasters inherent in industrial processes.

Subversive, is placed in cursive to further motivate the argument that the Industry could not be separated from the political climate of South Africa. Notably, the objectives of SASA were drafted after the banning of liberation movements such as the African National Congress (ANC) and the Pan Africanist Congress (PAC), and the well-known Rivonia treason trial in 1960. If these objectives had been written before 1960, they would most probably only have referred to criminal elements. According to the then Minister of Defence, Magnus Malan (Security Focus:1984g):

> "As long as efforts are made in this country to overthrow our structure of Government by violence, we shall have to employ security guards, we shall have to spend money on security and we shall have to create security awareness on the part of the public at large".

According to SASA (Security Focus: 1984e, 1984f), the main reason why people had to join SASA, was because it was established to specifically foster and encourage ethical and professional standards in the Industry and the furthering of the interests of the security profession as a whole.

For the Industry, SASA (SASFED:1994:57) lists the following as their specific objectives:

- To promote the status of the security professional and to enhance the image of the security industry in the eyes of the public.
- To provide a representative body for mid and upper security personnel in the security industry.
- To link closely with the other providers of security in South Africa.
- To liaise with overseas associations and bodies relating to the security industry.
- To act as watchdog for the Industry in general
- To develop forums whereby knowledge, expertise and ideas can be exchanged to the mutual benefit of all.
- To provide advice and guidance on a wide range of security matters.
- To establish formal representation on relevant bodies such as the Security Officers' Board
- To provide regular seminars, meetings and exhibitions for the dissemination of information .
- To develop a wide range of benefits to address the needs of members.

In 1983, SASA (Security Focus:1983a) made a submission to the then Minister of Law and Order for a "licensing act" to be passed. SASA argued that once security officers were licensed, they could be given wider powers. These proposals regarding the licensing of security officers must have been the first efforts to regulate the Private

Security Industry. It is then to some extent true that the regulation of the industry came from within the Industry itself. One however, can only wonder about the motive behind the move to "license" the Industry.

There were various efforts from within the Industry to widen the powers of the security officer to such an extent that they can take over the normal policing function. These mainly include the efforts spearheaded by Mick Bartmann, former SOB Chairman and security company owner. Approximately sixteen years later it appears as if the Industry is still trying to take over the policing function juxtaposed to working in tandem with Government's policing institutions. It must be noted that the perception created by the Industry is specifically that of "taking over" certain policing functions and not merely becoming an addition to the current policing efforts. The impression is, however, not that this is done with any subversive intent, but only because of the huge financial gains to be made. These efforts are unfortunately "helped" by the SAPS's clear inability to cope with the high levels of crime.

In 1997, Mick Bartmann, Chairman of the SOB (Bartmann: 1997: 10) stated as follows regarding the Industry's efforts to ensure peace officer status to security officers:

> " I will persist in my endeavours to persuade our Minister to consult with the Minister of Justice to reconsider the submissions that certain categories of security officers as identified by their employers, be appointed as Peace Officers".

3.3.2 South African Security Federation (SASFED)

The South African Security Federation (SASFED:1994:no page number), was established in 1986 following a suggestion by the then Minister of Law and Order, Adriaan Vlok, that the security industry should get its act together and have one body to represent the multitude of associations that existed in the Industry.

In 1994, SASFED represented 20 national security organisations which included major groupings such as the Chamber of Mines, Council of Southern African Bankers, Local Authority Security Association of South Africa, South African Intruder Detection Services (SAIDSA), South African National Security Employer's Association (SANSEA) and the Security Association of South Africa (SASA). The Security Officers Board, only established in 1989, received observer status on SASFED.

SASFED states as its objective, to provide a single national focus for commercial and industrial security to liaise with Government and other parties as and when necessary. SASFED (1994:no page number) furthermore states that each member association retains its own character and independence and that SASFED decisions are only advisory and not binding.

Once again it is of interest to note the dateline regarding the sequence of events in terms of the formation of SASFED. It is also not clear why the Minister for Law and Order would instruct the formation of an umbrella security organisation if the drafting

of the Security Officers' Act (Act 92 of 1987), which made provision for the establishment of the SOB, was already underway.

3.3.3 South African National Security Employers' Association

The South African National Security Employers' Association (SANSEA), is the result of two organisations, one in Natal (now KwaZulu-Natal) and the other in Transvaal (now Gauteng), amalgamating in 1982 (SASFED:1994:no page number). SANSEA regards itself as the voice of the guarding Industry and commits itself to the following issues:

- Licensing of all security officers and security companies in the Industry
- Checking the bona-fides of applications, including fingerprints and criminal records
- Ensuring a satisfactory service to the public
- Ensuring service providers operate within the parameters of a Code of Ethics. (Stop the practice of fly-by-night companies)
- Improvement of training facilities
- Making representations in terms of the legislation regulating the Industry

These mentioned organisations, SASA, SASFED and SANSEA, can be regarded as the three main organisations representing the Industry in the period prior to the establishment of the SOB. As stated earlier in this Chapter, one needs to ask the

question regarding the need for the establishment of the SOB as these organisations already had as their objective the *de facto* regulation of the Industry. One can also ask questions regarding the continued existence of these organisations after the establishment of the SOB.

3.4 The National Key Points Act (Act 102 of 1980)

The National Key Points Act (Act 102 of 1980), should be regarded as possibly the second most important act playing a role in the dictation of regulation in the Private Security Industry. The impact and influence of the Act (Act 102 of 1980) on the regulation of the Private Security Industry, however, changed as the internal political situation changed and the national security views in terms of what should be regarded a national key point changed.

Once again reference is made to the then Minister of Defence, Magnus Malan (Security Focus:1984g):

> "As long as efforts are made in this country to overthrow our structure of Government by violence, we shall have to employ security guards, we shall have to spend money on security and we shall have to create security awareness on the part of the public at large".

The 1984 amendments to the original Act (Act 102 of 1980), were made because

owners of National Key Points (NKP) were the only ones able to appoint security personnel at the declared premises. This did not allow for NKP owners to hire commercial security guards. Minister Malan (Security Focus:1984g) argued that the 1984 amendments brought to the original 1980 Act were needed because of the following:

- It authorises the Minister of Defence to make regulations for the hiring of security guard services by key point owners.
- The amendment extended the new regulations to State key points in employing or hiring commercial security guards.

The Act (Act 102 of 1980), stipulates that the Minister of Defence may declare any place or area a national key point and upon doing so, he or she may regulate any private security company protecting the area. This regulation can include regulating the training of guards, determining requirements to be complied with by any person serving as a guard, and extending the powers of the guards, including to search and to seize. This means that the Minister of Defence can overrule all regulations stipulated in the Security Officers' Act (Act 92 of 1987) once a company or individual is employed or contracted at the National Key Point installation. This overruling of the standards and regulations determined by the SOB, has led to a dual standard in the security industry, not only in terms of the NKP guarding industry, but also in the "in-house" guarding industry.

One of the clearest examples of dual standards, is that of the minimum requirements for registration as a security officer. In terms of the Security Officers' Act (Act 92 of 1987), Section 12(b), a person may register as a security officer if he has not previously been found guilty of a Schedule One offence. The National Key Points Act (Act 102 of 1980), however, does allow for the appointment of security officers with a criminal record if the owner of the Key Point agrees to appoint such person on the owner's responsibility (NKP: 2000:15), (NKP: Undated:13). In the case of "in-house" security, there are also no regulations prohibiting the employment of security officers with criminal records. The reality of this dualistic approach is that guards who were either refused registration in the Private Security Industry by the SOB, or who can no longer serve in the Private Security Industry because of criminal activities, can just "cross the floor" to either the NKP guarding sector, "in-house" or local government environment. It is nonsensical that the NKP guarding industry, the Industry which is responsible for the national strategic assets of the country, have more lenient entry levels than the broad Industry.

According to Blecher (1996: 4), guards deployed at NKP's are trained for an additional two weeks longer than guards deployed on normal guarding duty in the civilian environment. It is, however, not clear if the two weeks are only in addition to the one week training required by the E-grade security officer. This in effect means that a guard with only three weeks of training is deployed with a fire-arm at a strategic security point. Blecher continues by stating that the current regulations are becoming more lax and it is common to find guards at National Key Points without any fire-

arms.

One of the most significant differences between security guards deployed at National Key Points and guards deployed in the broad Industry, is that NKP guards have powers to perform search and seizure functions, not only at the key point, but also within certain boundaries of the key point. Guards deployed within the broader Private Security Industry have no more powers than an ordinary citizen, hence the continued efforts by specifically Mick Bartmann to obtain peace officer status for certain categories of security guards.

According to the National Key Point Regulations, as drafted by the South African Defence Force (NKP: Undated:19), there are no reference to security officers having to adhere to a specific level of training according to the training standards set out by the Security Officers' Board. The NKP Regulations (NKP:Undated:21), lines out the following issues which need to be addressed during the training of a NKP security officer at a NKP training centre:

- Fire-prevention and fire-fighting measures;
- Handling of weapons, including fire-arms;
- Weapons which saboteurs, terrorists or subverters are likely, in the opinion of the protecting force, to use in respect of a Key Point;
- Medical first-aid measures;

- Rules of the South African private and public law, Internal Security Act and the Protection of Information Act;
- Physical education;
- Communications;
- Search; and
- Other subjects determined from time to time by the Minister.

Of interest is the third indent where mention is made to *saboteurs, terrorists* and *subverters*. One can once again sense the involvement of Government in a policy which could otherwise have developed in a more natural way. It is also possibly because of Governments' involvement in these regulations which led to training and admittance requirements as security officers being circumvented.

It is true, however, that Government in the process of circumventing the SOB's regulations, was indeed acting in contravention of their own regulations. The SOB was established by an Act passed by Government and the SOB was drafting regulations fitting into the parameters set by the legislation. The reference to *saboteurs, terrorists*, and *subverters* is also an indication that the National Key Points Act (Act 102 of 1980) was only passed to assist Government in their "total onslaught" policy. In other words, Government only passed the legislation with the main aim to create an extension for the Defence Force in the protection of Key Points and possibly not taking into account the more long-term development and protection of the specialised field of protection.

An added aspect in terms of the training, is the requirement stipulating all the NKP security officers to undergo refresher training equivalent to 50 periods per annum (NKP: Undated: 25). This section in the Regulations, is an aspect that should be considered in terms of the proposed new legislation for the regulation of the Private Security Industry. An added advantage of the refresher training, is the fact that the training is required to address those issues which are not encountered regularly during the year and requires training to achieve the prescribed standard.

The National Key Points Act (Act 102 of 1980), also makes provision for the training costs of NKP personnel to be deducted for tax purposes. In order to qualify for tax concessions, the course must be approved by the National Key Points Committee and the Department of Manpower (now the Department of Labour). The tax concessions were possibly made because the guards placed at NKP's, were recognised for doing the duty of the South African Defence Force and the South African Police. Based on this statement, one can possibly ask why are these concessions not extended to the rest of the Industry, as they are also fulfilling the task of the Police in terms of ensuring a secure environment for the citizens of the country?

3.5 The establishment of the Security Officers' Board (SOB)

When one looks at the objectives of SASA as described earlier in this Chapter, an organisation established in 1965, one need to ask the question: Why did Government

establish another umbrella organisation like the Security Officers' Board with similar objectives as those pursued by SASA? It is an obvious question to ask with no apparent answer. One can only raise a number of possibilities as to why Government saw the need for the establishment of the SOB.

One of the first explanations that springs to mind, is the fact that Government saw the necessity to take control of the Industry and therefore needed to create its own structures. If this was the case, the real agenda or motive behind such a move is unclear and open for speculation.

Another possible explanation, is that the Industry had the need for a more formal regulatory authority and they requested Government to legislate regulation for the Industry.

With regard to the first scenario, some critics would probably argue that Government supported the establishment of the SOB because they just acted within the parameters of their responsibility to the populace. A counter argument will also probably be that Government wanted to take control of the Industry because they saw it as an instrument to assist with the enforcement of the apartheid policies. My own perception is more in line with the latter statement, namely that Government wanted to take control of the Industry for their own purposes and not for any other democratic objective.

This perception is based on facts such as the composition of the first Security Officers' Board and the evidence that the State used individuals in the Industry for its own subversive and criminal activities.

One of the documented examples was the use of Dries (Brood) van Heerden (Head of Absa Bank Security) by members of the SAP Security Branch and notably by Eugene De Kock[1] to further covert activities of the previous Government.

The Security Officers' Act (Act 92 of 1987), was formally introduced to Parliament in 1984 and was accepted in 1987. The establishment of the Security Officers' Board came into effect five months after its promulgation on 3 April 1989 (Security Focus:1989a). According to the Act (Act 92 of 1987), its purpose is as follow:

> "To provide for the establishment of a board, to be known as the Security Officers' Board, to deal with and to exercise control over the occupation of security officer, and to matters incidental thereto."

The different interpretations of this introductory statement in the Act (Act 92 of 1987), will be discussed in detail in Chapter Seven when dealing with the depth and width regarding the regulatory role of the Security Officers' Board. According to Frans

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1 In his book "A long night's damage", De Kock notes a number of examples where he used Van Heerden to assist in fraudulent and covert activities. Van Heerden, however, acted on his own and not on behalf of the security company.

Lubbe (Security Focus: September 1989b), then SAPS member on the Board and later Registrar of the SOB:

> "The lack of discipline in the past ... has led to the necessity for steps to be implemented what was known as the Security Officers' Act. The initiative came from the Industry itself, the thinking being that order had to exist and be maintained, so that the Industry could be looked upon by all as an ally on which they could rely and trust".

From both the Act (Act 92 of 1987) and the comments made by Lubbe, it is not clear if the original regulatory objectives were to merely put a regulatory body in place, or specifically to protect the occupation of the security officer. My impression of the situation, is that regulation were merely implemented for the purpose of establishing Government control in the Industry and with no clear regulatory purpose. This argument is based on the fact that Government, despite the existence of both SASA and SASFED, which had similar regulatory objectives, still proceeded to establish the SOB with mainly Government representatives on the Board.

In April 1989, the then Commissioner of Police, Genl. Hennie de Witt, called for nominations for candidates to be appointed to the Board. According to the media (Security Focus: 1989c), the qualifying requirement for nomination to the Board was seven years of security industry experience. Furthermore, the Board was to consist of ten members comprising the following: six security officers selected by the Minister

for Law and Order, a commissioned police officer, a police officer referred to in a section of the Internal Security Act and two additional persons selected by the Minister. Lastly it was stated that the Board was to be truly representative of the security industry.

Following the request for nominations, the first Security Officers' Board was established in September 1989 and comprised the following individuals (Security Focus: 1989a):

- DE Ackerman (Chairman), Chubb Holdings
- FK Lubbe (Vice-Chair) South African Police
- JE Bishop, Coin Security
- JD de Bruyn, Internal Security, Department of Justice
- RL Jackson, Security Academy
- AB Kitshoff, Mobil Oil
- CS Macfarlane, Fidelity Guards
- DC Masterson, Total Security
- RK Sienaert, Siemens
- PW de Jager, SABC

The then Minister of Law and Order, Adriaan Vlok (Security Focus: 1989a), during his announcement of the newly established Board, made it clear that the Industry would no longer have to rely on the business of individuals and businesses only, but that

Government had also given the go-ahead for the use of private security companies for access control, advice and installation on security equipment and the guarding of Government buildings. Vlok added that this go-ahead from within Government circles was because of the trust relationship which existed between the Industry and Government.

An aspect of note with regard to the first elected Board, was that at least five of the ten members to the Board had previously been involved, or were actively involved, in the Security Forces (Bishop, Jackson, Lubbe, Du Bruyn, Kitshoff). This has fuelled the perception of the post-apartheid Government regarding the Industry being a host for third-force activities. In the case of Bishop, he was simultaneously the Chairman and Chief Executive of Coin Security and a serving member of the SA Army (Staff Officer of the 8th Armoured Division). This example strengthens the statement made earlier in this Chapter, namely that the initial driving force behind the Industry, namely Government, is currently the Achilles heel of the Industry, especially in terms of the credibility of the Board.

3.5.1 **Early regulatory efforts by the SOB**

Even though the Security Officers' Board was established in 1989, it did not effectively function from the word go. From what appears to be the first version of a Chairman's report (Ackerman: Undated), the SOB only started to function at the beginning of 1990, and only obtained finance for a basic infrastructure in April 1990.

Ackerman continues by stating that with the publishing of regulations in April 1990, resistence was encountered from the guarding sector.

If one considers that the Board was only effectively established and functional in 1990, it means that the Board is at the time of writing this thesis only functioning in its tenth year. It should to some extent be regarded as a mitigating factor when assessing the Board's performance. Another aspect of interest which becomes evident from the first Chairman's report, is that the Board had to obtain its own bridging finance to establish the infra-structure for starting the regulatory functions. One would have expected Government to be central in the provision of finance to establish the regulatory authority, taking into account that Government drafted the legislation to establish the SOB.

On the other hand, taking into consideration that Government most probably did not have clear regulatory objectives at the time of establishing the Board, it is understandable why they did not volunteer any financial assistance. The issue of funding, is in the process of finalising new legislation for the regulation of the Industry, coming to the fore again. Once again a situation has developed where Government wants to impose regulation on the Industry, but is not willing to foot the bill for the regulatory actions[2].

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[2] In a submission by the author to the Portfolio Committee on Safety and Security regarding the proposed Security Industry Regulation Bill, the problem of funding any regulatory authority whilst excluding the Industry was pertinently mentioned.

A further mitigating factor was that companies and security officers had until April 1991 to register in terms of the new legislation. The first SOB did not only have to deal with the implementation of the regulatory framework and the setting up of the infrastructure, but they also had to deal with resistence against regulation from within sectors of the Industry, especially from the guarding sector. These pockets of resistence from within the Industry remained an issue with the SOB and were later inherited by the Security Officers' Interim Board.

One of the main reasons for the Board's ineffectiveness must have been that the SOB was still not recognised by all the role players in the Industry and the Board itself was not sure of the way forward.

3.5.2 Problems facing the Security Officers' Board

The Security Officers' Board has been the target of criticism from both within and outside of the Industry. The criticism varied from charges of corruption, involvement in third-force activities and the inability to regulate the Industry. These problems, as well as the continued allegations that the Board was not representative of the whole Industry, to a large extent formed part of the driving force to ultimately replace the SOB with a Security Officers' Interim Board in February 1999. The question of representation of the Industry on the Board, refers to two issues. On the one hand it refers to the representation of the so-called Black business and on the other hand, to the representation of the different sectors which exist. The Board does not make

provision for specifically Black business enterprises, but it does not prevent participation by Black business in any way. The argument with regard to the representation of the various different sectors in the Industry, is true to some extent. This problem should, however, not be seen in isolation from the fact that there has been a very wide description of what constitutes a security service. For this reason there could not have been any pressure by any sector to ensure that they are represented on the regulatory authority.

According to Jenny Irish (1999:38), some of the problems exacerbating the problems of regulating the Industry are as follows:

- Several categories of security are excluded from regulation, in particular in-house security
- The Security Officers' Board lacks the power and capacity to enforce statutory regulations and its code of conduct for the Private Security Industry. Between March 1995 and March 1996, charges were brought against 21 private security companies, but none were deregistered.

Both these issues mentioned by Irish are valid points in terms of reasons for the perceived non-functioning of the Board. One gets the impression that the SOB was tasked to perform certain functions, but it was not equipped with the necessary powers to perform the expected duties. These sentiments are echoed by Patrick Ronan, Registrar of the Board and Prof. Hans Visser, Vice-Chairman of the Board

(Interviews: February 2000), when they state that the SOIB's regulatory function has been effectively curbed by the lack of willingness by the South African judicial system to prosecute and sentence offenders of the Security Officers' Act (Act 92 of 1987) and later the Security Officers' Amendment Act (Act 104 of 1997).

According to the Act (Act 104 of 1997), the following are the main regulatory functions of the Board:

- Maintain standards and regulate practises in connection with the occupation of the security officer
- Gather information relevant to his occupation as a security officer
- Take such steps as it may deem expedient or necessary in connection with the training of security officers
- Promote and encourage professionalism in the security services industry, the principles of democracy, transparency, equality, accessibility, the satisfaction of the needs of the community with regard to security services and the involvement of the community in the achievement of these objects
- To draw up an enforceable code of conduct for security officers which prescribes the procedures for its enforcement, including the imposition of differential penalties in respect of different categories of security officers

Although there is consequently a legally enforceable code of conduct for security companies and security officers, an array of problems exists which limits the actual

execution of these regulations. The most prominent problem, is that the Criminal Justice System does not give high precedence to the transgression of the Act (Act 104 of 1997) and therefore prosecutions hardly take place. The consequence is that only those companies and individuals who "willingly" place themselves under the Act, are being punished under the relevant regulations. In this regard, the SOIB has gone a long way in improving its identification and prosecution of offenders. Statistics provided by the SOIB (2000b:280 - 282) reveal the following with regard to regulatory processes:

TABLE 3.3

REGULATORY ACTIVITIES PERFORMED BY THE BOARD: JAN 1999 - MAR 2000.

	National investigation team	Western Cape	KwaZulu-Natal	Eastern Cape	Total
Number of full inspections	4038	1373	1333	1025	7769
Improper conduct enquiries initiated	630	346	192	244	1412
Enquiries finalised	381	88	55	76	600
Charges laid at the SAPS	101	35	21	21	178

Source: Adapted from SOIB: (2000b: 280 - 292)

From Table 3.3 one can see a sharp decline when comparing the number of inspections undertaken, to ultimately laying a charge against offenders. From the total of 7769

inspections undertaken, 1412 (18%) improper conduct enquiries were initiated. From this 600 (7,7%) were finalised and ultimately 178 (2,2%) of these cases were passed to the SAPS where charges were laid. There is unfortunately no indication of the number of these cases successfully prosecuted by the SAPS.

Table 3.4 is an indication of the rise in regulatory actions performed by the Board:

TABLE 3.4

INCREASE IN THE BOARD'S REGULATORY ACTIVITIES: NUMBER OF FINALISED IMPROPER CONDUCT ENQUIRIES

PERIOD	NUMBER OF FINALISED IMPROPER CONDUCT ENQUIRIES
August 1995 - July 1996	24
August 1996 - July 1997	114
August 1997 - July 1998	195
August 1998 - July 1999	513
August 1999 - March 2000	317

Source: SOIB: (2000b:282)

The perception regarding the SOIB's unwillingness to prosecute offenders in the Industry, is underlined by Blecher (1996:5) when she states the following:

"Over the last year the Board has brought 21 disciplinary charges against

companies and / or individuals and fines totalling up to R72 000 were imposed. Not a single security company has ever been deregistered pursuant to such a charge, *which is surprising given the extent of abuse within the Industry (own italics).*"

The last part of this statement made by Blecher referring to the *"extent of the abuse within the Industry"*, is a clear indication of the subjectivity existing outside the Industry regarding the functioning of the Security Officers' Board and the Industry as a whole. Once again, when one refers to the findings of the Truth and Reconciliation Commission, it is clear that individuals like Blecher are adding to the negative perception regarding the Industry with these sweeping and subjective statements.

A further indication of Blecher's subjectivity, is that she makes no reference to the complexity of the matter in terms of the ineffectiveness and apparent unwillingness of the Criminal Justice System to assist the SOB in the prosecution of the offenders. What Blecher furthermore fails to state, is that it is not the responsibility of the Board to ensure that the criminal process takes its course, but that the Board is merely responsible for laying the charges.

The fact of the matter is that the reason for non-action against these companies lies squarely at the door of Government. This does not mean that the Board does not have the responsibility and power to deregister a company - it only means that if a company wants to continue its business after it has been deregistered, it is the task of the

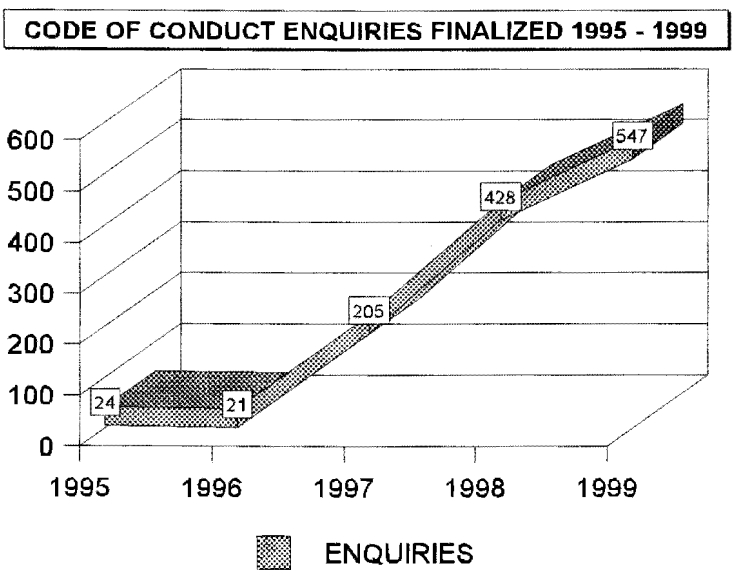
Criminal Justice System to prosecute the offenders. Lastly, with regard to the comments made by Blecher, one needs to keep in mind that not all offences warrant the deregistration of a company

An additional example of the way perceptions effectively hampered the SOB in the continuation of their functions, is that of Douglas Gibson, a Democratic Party Member of Parliament (MP). Gibson made a statement before the Parliamentary Portfolio Committee of Safety and Security that the Board is corrupt (Bartmann: 1997: no page number). After discussions between Gibson and Bartmann in Cape Town, Gibson retracted his comment publically before the Portfolio Committee. The fact of the matter is, however, that the statement made by Gibson, is an indication of the perceptions which existed and the high levels in Government where these perceptions were held.

It would thus appear as if perceptions can be regarded as one of the main stumbling blocks in the way of effective functioning of the Security Officers' Board. Statistics show that after the suspension of Frans Lubbe in the beginning of 1997 as the Registrar of the Board because of corruption and misconduct charges, there had been a significant increase in the regulatory function of the Board. This statement is supported by statistics on the number of code of conduct enquiries finalised indicated in Figure 3.1 hereunder. The figures provided here are different to those presented in Table 3.2, as the periods covered differ.

The statistics show a clear change in the regulatory approach of the Board after the appointment of Ronan, Smithard & Associates as the acting Registrars of the Board. The appointment was supported by the Board, but seems to have been spearheaded by the Chairman, Mick Bartmann. Previous associations between Ronan and Bartmann, as well as indications of joint business interests between the mentioned individuals, clouded the independence of Ronan in his capacity as Registrar, even before he started. The improvement in the regulatory function of the Board since 1997, was hence not given the credit it should have received or even improved the perceptions regarding the functioning of the Board.

FIGURE 3.1



Source: Own compilation (SOIB Statistics:2000)

An additional problem in terms of the perceptions which haunted the SOB, was that

Government currently fails to make a distinction between the pre-1994, in other words the pre-democracy role of the Industry, and the post-1994 role of the Industry. Government saw the Industry as a continuation of the so-called "Old Order". This statement is underlined by the Co-ordinator for Intelligence, Mr Linda Mti (Speech: 1997), when he states the following:

> "The intelligence services are guided by the desire to ensure that the letter and spirit of the Constitution, referred to earlier, is adhered to ... Their existence [*private intelligence*] is understood, not condoned. What is objectionable is the development of cover (sic) collection capabilities by the private intelligence companies, their usage of these capabilities in total disregard of the constitution and our legislation."

Mti further continued by stating:

> "We must note that the survival of the apartheid regime was anchored on the covert structures which were set up to look for the operatives of the liberation movement. Some of these structures and their activities formed the crucible of what is now generally viewed as the third force. The mushrooming of private security companies were driven mainly by former members of the security services. This gives rise to concern as some of the old covert structures have not yet been uncovered, audited and officially dismantled. There is therefore need to find these structures, for as long as they remain

underground, they will continue to pose the greatest danger to our democracy."

When one examines these remarks made by Mti, it becomes clear that Government itself had not made the paradigm shift of pre- and post-apartheid politics. These statements were made in 1997, and was still referring to the existence of a third force which wants to undermine the new democratic dispensation. This, despite the fact that there had been a peaceful transition to the new democratic order and no resistance of note from either the political rightwing or former security forces. The sentiments raised by Mti, are however still today the perceptions that exist in the Industry and have not only led to disbandment of the Security Officers' Board, but most probably also the replacement of the Security Officers' Interim Board. Mti's arguments also create the perception that the previous Government only had covert structures in the Private Security Industry. TRC revelations and media reports have shown that there is very little evidence of Mti's allegations. This point was stressed earlier in this Chapter (Section 3.2) regarding the investigations undertaken by the TRC.

3.5.3 **Government's perceived threat**

Linda Mti (Speech: 1997) listed the following issues as the greatest concerns which Government identified in the Private Security Industry:

- ❑ Weaponry they have in their possession
- ❑ Historical links with the previous regime's security services

- Involvement of the anti-Government elements who are using the infrastructure of the Industry to train, equip, channel and manage anti-constitutional and criminal activities
- Connections some of the actors in the private security companies have with foreign intelligence services and the similarity of objectives informed by their past co-operation in the Cold War era make them free game for exploitation for espionage activities
- Mercenary-type role in foreign affairs

When these issues are dissected into very specific concerns in terms of how these issues could be addressed through means of an improved regulatory framework, no clear Government focus can be detected. None of the issues mentioned by Mti can be addressed by means of redefining the parameters of the regulatory framework. All of the issues mentioned should be addressed, or has in the meantime been addressed by way of other legislation.

The concerns regarding weaponry are in the process of being addressed through the proposed Fire-arms Control Bill . Furthermore, the ultimate control responsibility lies with the SAPS and not with the Industry. Links with Foreign Intelligence Services should be addressed under the relevant espionage legislation. Mercenary activities are curbed by the Regulation of Foreign Military Assistance Act (Act 15 of 1998)(FMAA). In this case it should also be clearly defined whether companies involved in mercenary activities should be regarded as security companies.

A former company in this environment and one of the main targets when drafting the FMAA (Act 15 of 1998), namely Executive Outcomes (EO), could hardly be described as a security company. With regard to the historical links and the involvement of anti-Government forces, there is no regulation that can curb these activities. It is also true that Government has very little more than perceptions to support their concerns in this regard.

It is clear that the SOB was trying to regulate the Industry in an environment which did not allow it to gain any credibility. Government also signalled that it was not trusting the SOB, despite the fact that the members of the SOB were elected by the Minister for Safety and Security. This effectively placed the SOB in limbo. This stalemate between the SOB and Government, ended with the establishment of the Security Officers' Interim Board (SOIB) in February 1999.

3.6 Establishment of the Security Officers' Interim Board

As mentioned earlier in this Chapter, the Security Officers' Board came into operation in September 1989 as a result of the Security Officers' Amendment Act (Act 104 of 1997) passed on 3 April 1989. The major changes in the functions of the SOIB, as opposed to the SOB, are found in Section 2(2) and Section 3(jA) of the Amendment Act (Act 104 of 1997). Section 2, paragraph 2 of the Security Officers' Act (Act 92 of 1987) is replaced with the following in the Amendment:

"The objects of the Board shall be to exercise control over the occupation of the security officer, to maintain, promote and protect the status of that occupation, and to ensure that the Industry acts in the public interest, and to submit reports from time to time to the Minister on the regulation of the security officer industry".

The major changes and inclusions in terms of the responsibility and function of the Board as a result of this Amendment Act, are: *" to ensure that the Industry acts in the public interest"*[3], *"to submit reports from time to time to the Minister on the regulation of the security officer industry"* [4]and to advise the Minister on the *"establishment of a new permanent Security Officers' Board which shall be so constituted that provision is made for an increased representation of the security services industry and of the community"* [5].

The first inclusion can be debated extensively, in terms of whether it is the responsibility of the Board to ensure that the Industry acts in public interest, who determines what is the public interest and is it indeed only Governments' responsibility to ensure that the Industry act in the public interest.

3.6.1 **Reporting to the Minister for Safety and Security**

[3] Section 2(2)

[4] Section 2(2)

[5] Section 3(jA)

The second inclusion in Section 2, namely reporting to the Minister, is another aspect which needs to be re-considered. One needs to ask questions regarding the objectivity of reporting to the Minister and if there shouldn't be independent reporting of the Boards' activities. A major shortcoming in the requirements of the Act (Act 104 of 1997) for reports to the Minister[6] is that there is no clear indication as to what should be included in the report, who exactly should draft the report and what the intervals should be for the report to be submitted to the Minister.

A discussion with the Registrar of the SOIB (Ronan: Interview: February 2000), revealed that the Board itself decides what they want to include in the report to the Minister and also the frequency of the reports. Since the establishment of the Interim Board in February 1999, three reports had been submitted and were statistical reports. Two types of reports are currently being drafted by the SOIB. The one is a normal financial report and the second a statistical report on the regulation of the Industry.

Because of the statutory nature (Act 104 of 1997, Section 2(2)) of these reports, one would have expected that these reports would have rather been progress reports on the process to advise the Minister on the new regulatory framework. The truth is, however, that one could not only blame the SOIB that the reports were possibly not what was anticipated. Firstly, the Act (Act 104 of 1997), is very vague in describing what exactly should take place. Secondly, the Minister should have indicated what

[6] Section 2(2)

specific type of reports he requires as well as the frequency of the reports. The example of the written reports, is indicative of the many inadequate descriptions in the Act (Act 104 of 1997)[7]. Other examples include issues previously mentioned such as the "public interest".

3.6.2 Future composition of the Board (Section 3(jA))

The third major change in the Act (Act 104 of 1997), is that the SOIB must advise the Minster on the establishment of the new permanent Security Officers' Board. This in itself is a very contentious issue. Not only does the Act in Section 3*(jA)* clearly states that the Board should provide the Minister with advice on the establishment of the new permanent Board, but the Act goes as far as stating that provision should be made for increased representation of the security services industry and of the community. The first question arising from this section in the Act, is whether it is "normal" for an Act to be so binding in itself. In other words, does the Act create a situation whereby the drafters of the new legislation will find themselves bound to what the future regulatory framework should be composed of?

Informal discussions with Len Rasegatla, Secretary for the Secretariat of Safety and Security (Interview: April 2000), revealed that the Department of Safety and Security, which were given the task of drafting the new regulatory framework , was indeed

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[7] Specific reference is made to Section 2 of the Act.

concerned and confronted by Section 3*(jA)* in the Act. The conclusion reached after discussions with the State Law Advisors, was that the SOIB was only one of the avenues exhausted by the Miniser for Safety and Security in his effort to find the best new legislation to regulate the Industry.

Of interest is that the Act (Act 104 of 1997), pertinently makes reference to increased representation of the Industry. One would have thought that with all the perceptions Government had regarding the lack of control in the Industry, Government would have either looked at decreased representation from the Industry or at least specifically introduce the possibility of Government inclusion in a future regulatory authority in the Act.

During discussions with Rasegatla (Interview: April 2000), it became evident that Government has the intention to compose a new regulatory authority which excludes all Industry representation. This approach became clear when the new Security Industry Regulations Bill (Bill 12 of 2001) was introduced in February 2001. That is in direct contradiction to the Act and the stipulation of Section 3*(jA)*. The intricacy of such a move is firstly, that the Industry will not be represented on a board which is determining the way the Industry should operate. Secondly, from the discussions it was apparent that the foreseen structure would still have very limited, if any, representation from Industry. Although there appears to be no legal options the Industry can follow to ensure that they are represented on the Board, the impact of such a move will probably only be felt once large malfunctioning starts occurring in

the Industry.

According to the SOIB, the 1997 amendments were an indication that Government is serious about maintaining firm regulation of the Industry in terms of legal principles informed by values as *inter alia* professionalism, democracy, transparency, equality and accessibility (SOIB: 2000a: 22). This can be debated because Government, since the Act (Act 92 of 1987) was promulgated in 1989, had numerous opportunities to amend the Act to such an extent that Government itself could have taken responsibility in terms of the regulation of the Industry. The four amendments to the Act (Act 104 of 1997) will be discussed in Chapter four.

3.6.3 **The SOIB and its advisory role**

The SOIB was appointed in February 1999, fourteen months after the amendment was signed by former president, Nelson Mandela. The major difference between the Interim Board and the now defunct SOB, is that the Interim Board is tasked to provide both a regulatory and an advisory role (SOIB: 1999:1). The other major difference, is that the amendment includes the following provision: "*ensure that the Industry acts in the public interest*".

During an informal interview with Patrick Ronan, Registrar of the SOIB (Interview: February 2000), he made it clear that the inclusion of this sentence into the legislation, does not make it necessary for any other watchdog organisation / institution

to oversee the activities of the Industry, as this provides the Board with the mandate to regulate with the purpose of protecting public interests. In a SOIB Position Paper (SOIB:1999:2) however, it is clearly stated that it is not defined what is "public interest" or even what is the "Industry". It is hence problematic to understand how the Industry can act in the public interest if the basic aspect of clearing the definitions has not taken place. One would also not be able to correctly interpret the objectives of regulation if no clear definition of the mentioned concepts exists.

Ronan (Interview: February 2000), argues that the enforcing of training standards, the prosecution of offenders in the Industry and the ensuring of standards in the Industry *per se* means that the SOIB is indeed looking after the public interest. The flip side of the coin can also be argued. The same issues which Ronan addresses as being done for the sake of public interest, can also be done for the purpose of Industry interest. In other words, it is to the benefit of the Industry to have training standards, as employers know if they employ a Grade C guard, what he is capable of. It is to the benefit of the Industry if offenders are prosecuted as it eliminates the individuals in the Industry who are tarnishing its image.

It is to the benefit of the Industry if standards in the Industry are laid down and enforced, as it pushes the opportunists and fly-by-night companies out of the Industry. It is for this reason argued that the inclusion of "*ensure that the Industry acts in the public interest*" was placed hopelessly incorrect in the 1997 Amendment (Act 104 of 1997). It is not the task of the Industry to ensure that the Industry acts in public

interest. It is also not the task of the SOIB to be the watchdog overseeing that public interest receives attention in Industry operations. The role of protecting public interest lies with the Minister for Safety and Security and ultimately with the democratically elected Government.

The approach adopted by Government in the Amendment Act (Act 104 of 1997), is in direct contradiction with the result of the Security Industry Regulations Bill (Bill 12 of 2001). The reason for this statement, is that Government in the Amendment Act wanted the Industry to ensure that the Industry acts in the best interest of the public. In the Bill, Government's intends to act in the public interest, with the introduction of a regulatory authority with no Industry representation.

3.6.4 **Regulatory responsibility of the SOIB**

The Interim Board currently has a regulatory enforcement capacity of 27 investigators, of which the majority (13) are based in Pretoria. The rest are in the Western Cape (5), KwaZulu-Natal (5) and the Eastern Cape (3). In addition to the investigators, there are an additional three Training Services inspectors. During 1999 (SOIB Statisitics:2000), the Legal Services Division of the Interim Board conducted a total of 5800 full inspections of security businesses. According to the Interim Board, a total of 4852 security businesses had been registered by December 1999. This means that there was by implication more than one inspection per company during 1999 - a very commendable effort taking into account the inspector complement of only 30

inspectors. Subsequently, inspections had to take place at a rate of almost 16 inspections per day, if these inspectors were working every day of the year. If one closely examines the figures provided by the Interim Board, some questions could be raised regarding its validity. An aspect clearly arising from the figures provided, is that regardless of the composition of a future regulatory authority, inspection capacity will have to be measurably increased if such a body wants to expand the regulation of the Industry.

From these 5800 inspections completed during 1999, improper conduct enquiries totalling 1124 were initiated. A total of 473 queries were finalised and in 144 cases criminal charges were laid with the SAPS in respect of unregistered security businesses. This total of 144 cases is a vast improvement on the 24 cases finalised in 1996.

3.6.5 Code of conduct for security officers

The SOIB, acting under section 19(1) of the Act (Act 104 of 1997), has drafted a code of conduct for security officers to regulate the occupation of security officers. The code of conduct addresses the following specific issues:

- Duties towards the Board and the occupation in general
- Duties towards clients
- Duties towards the security forces

- Duties towards employees
- Duties towards employers

Of interest is the reference to the duties towards the security forces. According to this specific section in the Code of Conduct:

> " ... no security officer may unjustly cast reflection explicitly or by implication, upon the probity or professional reputation, skill, knowledge, service or qualifications of any security force or member of a security force ..."

The reason why this specific reference is of interest, is because the growth of the Industry has reportedly taken place explicitly because of the commonly accepted incompetence of the South African Police Services. The Industry has used this fact as possibly one of the most important strategies in their marketing campaigns. The perceived incompetence, not only of the SAPS, but the Government security structures as a whole, has also been one of the major driving forces behind the mushrooming of private investigator companies. Although the Code of Conduct implies otherwise, the Industry indirectly thrives on the perceived lack of skill, knowledge, service and qualifications of the official security services.

3.6.6 **Funding of the Board**

The current system of funding the activities of the Board, is one of the major aspects that would require consideration if Government decides to withdraw all Industry representation from the future regulatory authority. As stated earlier in this Chapter, the Board had to secure bridging finance to ensure that it can start with its regulatory functions. According to the SOIB (2000a: 93), the total cost for running this regulatory authority amounts to approximately R27 million per year. From this total, the only contribution from the State is the salary paid to the independent Chairperson. The following is a breakdown of the source of the Interim Board's funding:

TABLE 3.5

SOURCE OF FUNDING FOR REGULATION OF THE INDUSTRY

SOURCE OF FUNDING	PERCENTAGE
Active individual registered security officers	52%
Active registered security businesses	44%
Other income (rent, interest, other)	4%

Source : Own compilation (SOIB Statistics: 2000)

The funding from sources set out in the table above, is made up mainly through the following:

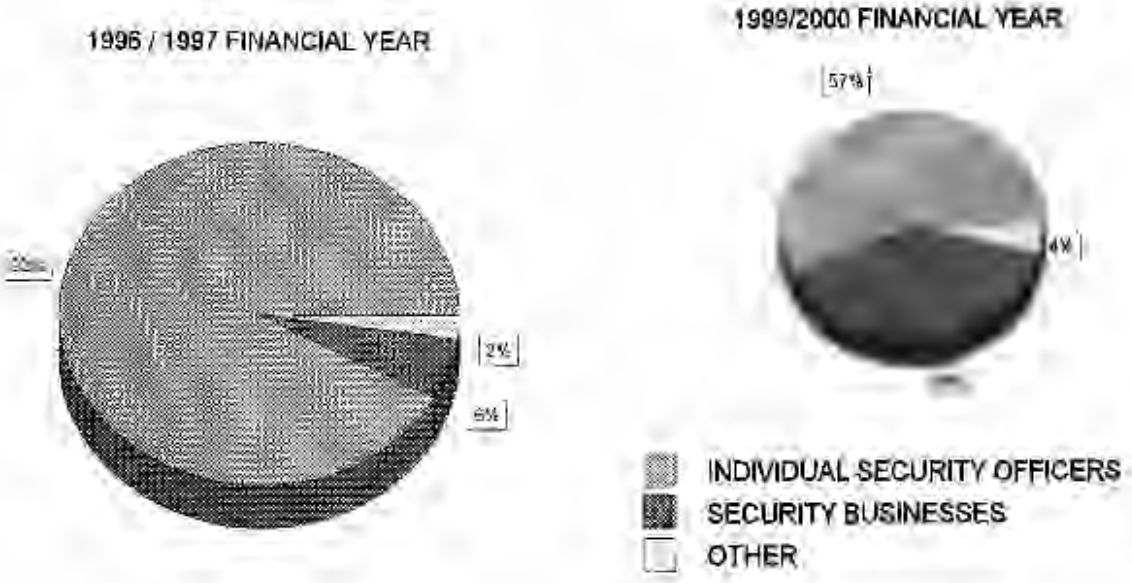
- Prescribed amounts in respect of applications for registration
- Annual amounts payable to the Board by members of the Industry
- Fines imposed on account of improper conduct

Up to 1998, the SOB was still charging individual security officers and security

providers (companies) exactly the same amount for both registration and yearly subscription fees. This led to a situation whereby individual security officers were contributing in the region of 92% of the annual income of the Board. It also meant that a company with five hundred guards were paying the same annual fees as an individual guard. The following Figure (Figure 3.2) is an indication of the source income of the Board after the amendment of the fees paid to the Board.

Figure 3.2

SHIFT IN INCOME FOR REGULATORY FUNDING



Source: Own compilation (SOIB Statistics 2000)

The 1998 changes resulted that the fees paid by companies increased from R35 for registration to R2000 and from R84 per year to R2400 per year respectively. One can only see the advantages of this increase, both for the regulator and for the individual security officer, as they were carrying the majority of burdens for regulating the Industry. For the regulator, it also mean the potential for increased income, as the efforts of detecting the non-paying service providers are increased.

The composition of the future regulatory authority will have a direct influence on how funds will be collected for future regulatory efforts. If Government decides to exclude the Industry, they will have to be prepared to pay the cost of R27 million per year for regulation.

Currently only about 50% of the moneys received ais utilised on actual regulatory activities, as opposed to only 23% in the 1996/7 financial year. This in an indication of how the Board has since 1997 made concerted efforts to increase fulfilling their regulatory mandate. As Figure 3.2 indicates, the Board has also succeeded in shifting the bill for regulation more effectively to the companies.

3.7 Summary

This Chapter has revealed the long road which the process of regulation in South Africa had to traverse in an effort to arrive at the point where the South African legislation can be regarded as one of the most comprehensive regulatory models in the

world.

It has also been evident that there has been serious interference by Government in the natural development of the regulatory process. This interference was exacerbated by the number of Governmental efforts to create new organisations within the Industry and also the misuse of the Industry by Government for their own political purposes. From the experiences of the Security Officers' Board, it also manifested that they did not receive either legal or infra-structural support to regulate the Industry. All regulatory efforts had come from within the Industry itself.

Lastly, the setting up of the Interim Board can only be seen as part of the broad transformation process in the new South Africa, as the Board is continuing in exactly the same vein as its predecessor. What can however be noted, is that specific individuals in the structure have more success with the regulatory efforts than other. In other words, if Government decides to "go it alone" with the new regulatory authority, it must ensure that individuals are appointed with the necessary knowledge of the Industry and the determination to regulate the Industry to the benefit of the security officers.

CHAPTER FOUR

THE REGULATION DEBATE

4.1 Introduction

This Chapter deals with the debate regarding the regulation of the South African Private Security Industry. There are a number of important issues that need to be answered before one reaches the stage where the scope and depth of the regulatory framework can be determined. With the scope of regulation, reference is made to which services should be included in the new framework, and by the depth of regulation reference is made to how much authority the regulatory body should have. The single most important question that needs to be answered is: Why do we need regulation, as it is already clear that it is to the detriment of both the public and the Industry to have regulation, just for the sake of having regulation? The same also applies to over-regulation or under-regulation.

4.2 The need for regulation

The purpose of regulation is central to the question of: Why do we regulate? The question should thus be posed: Is regulation for the protection of the Industry or for the protection of the public? After it has been determined, the next questions should be:

- Who should be responsible for regulating the Industry?
- What should the constitution of such a regulatory body be?
- What should the objectives and functions of such a regulatory body be?
- What should the powers of such a regulatory body be to enforce the regulations?

According to the Interim Board (SOIB: 2000a:41), the need for regulation is owing to the following:

> "It is self evident that persons placed in such a position of relative power over other members of society should be closely regulated and monitored to ensure that members of society are not harmed by them. Persons who are not even their clients rely on their integrity and competency".

Regulation, at its simplest, is described by Francis (George and Button:1998:2), as Government intervention. If one accepts this definition of Francis, it basically rules out the possibility of self-regulation by the Industry because regulation, by implication, means Government intervention. Because of the complex political history of the country and the history of the Industry, the question regarding who should regulate the Industry in South Africa, is subsequently more accurate if it asks: To what extent should Government be involved in the regulation of the Industry? In the period preceding the drafting of the Security Industry Regulation Bill (August 2000), there has been very limited involvement of Government in the regulation of the Industry. As

shown in the previous Chapter, Government itself had gradually, since the introduction of the Security Officers' Act (Act 92 of 1987) in 1989, reduced its role in the regulation of the Industry.

This Chapter thus looks very critically at the proposals made by both Government and the Industry and examines what are the commonalities, differences and where, if any, common ground can be obtained.

4.3 Does regulation lead to a better industry?

According to Irish (1999:34), the comprehensive regulatory model can be described as follows:

> "The state extends regulation beyond controlling the type of person who enters the industry. Substantive regulation is introduced to raise the standards and quality of service provided by the private security industry."

In terms of Irish's definition, referring to the advantages of a comprehensive regulatory model, it will be shown that there are a number of arguments from various role players questioning whether comprehensive regulation does indeed lead to the raising of standards in the Industry. It is also clear from other submissions made by Irish (SOIB:2000c:28) and the rest of the anti-Industry school of thought, that comprehensive regulation can't be separated from an independent regulatory authority

with no Industry representation. These sentiments are echoed by Government, although it appears as if the concept of independent regulation only refers to the exclusion of Industry and not "independent" in the true sense of the word.

Standaert (1999:8), argues that the level of mistrust within Government circles towards the Industry, plays a major role in the intensity of regulation. Standaert continues by stating the following:

> "The higher the degree of mistrust is clearly demonstrated by the treatment of the British Parliament of the industry in Northern Ireland as opposed to its treatment of the industry on the mainland. In England and Wales, there is no regulation of the industry, but in Northern Ireland, Parliament has enacted restrictions upon who can enter the industry and it has enacted these restrictions under the Northern Ireland (Emergency Provisions) Act."

In contradiction to this, Christianson (Cromer Post: 1980:26), states that the marketplace should be the place were the standards be determined. This implies that the regulatory standards should also be determined in the Industry. As stated earlier, comprehensive regulation implies that the standards are determined by Government. As proposed by a number of individuals both within and outside of the Industry[1], the future regulatory body should exclude the Industry.

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1 Jenny Irish, Jenny Ibbotson and the Department of Safety and Security

From own observations during Government discussions regarding the future regulation of the Industry[2], it is clear that Government is not necessarily in the best position to determine the standards, as the expertise to regulate the Industry rarely exists outside the Industry. This does not imply that there are not legal experts to draft legislation on the behalf of Government. It is merely stated that an in-depth knowledge of the Industry is required to determine the minimum operational standards of the Industry. Thus, in terms of setting standards in the marketplace, the obvious question which then arises is: Does this imply self-regulation, or is participation by the Industry in the regulatory authority sufficient? In the South African context it is clear that the second option is the only viable one.

4.4 The objectives of regulating the Private Security Industry in South Africa

This is an attempt to answer one of the most prominent questions posed in the process of assessing the current legislation, and also when one needs to draft principles for a new regulatory framework. The questions asked are: What are the objectives of regulation? In other words, do we need to regulate the Industry for the purpose of *protecting the public*, to control the *standards in the Industry*, to *determine national standards* in the case of countries with a federal dispensation? Or do we need regulation to *protect the traditional policing role of Government* or the so-called

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2 The author formed part of the Inter-Departmental Working Group formed on request of the Cabinet to draft the principles for the regulation of the Private Security Industry

national interest? These questions are fundamental in determining the approach towards the criteria of the new framework.

Standaert (1999:77), gives a very good indication of what the purpose of regulation should be, namely:

> "... there seems to be a universal concern with the two central concerns: the *public safety* and the *improvement of the industry*. These two goals work together in spiraling *(sic)* motion, each improving upon each other." *(Own italics)*.

Cromer Post (1980:26), supports the comments made by Standaert when she states the following:

> "In most cases regulations attempt to serve a two-fold purpose by protecting the public interest and reinforcing a positive, professional stance for the industry that enhances its growth ... The balance is normally not achieved when Governmental bodies create and implement regulation for regulation sake".

The second part of the statement made by Cromer Post, will be discussed in more detail when discussing the issue of the future composition of a regulatory body in Chapter Seven. Cromer Post (1980:28), sees an additional purpose of regulation, namely to create uniformity in the Industry. The uniformity she refers to is in terms of

the different US State laws. The fact that South Africa is a unitary state, dissolved the potential of this issue becoming a problem. Australia and the United States are examples of still having a situation where they do not have national legislation regulation the standards in the Industry[3].

The statement made by Standaert (1999:77), regarding the fact that public safety and improvement of the Industry should work together in motion, is very import, especially when one is establishing the basis for a new regulatory framework. *The questions asked are: Does one need to legislate both objectives to ensure that they happen. Do you only legislate the standards in the Industry and thereby imply that it will protect the public? Does one legislate specific issues that will protect the public and in the South African case, leave the issue of standards to the relevant line-functional departments?* A decision should be taken on which principles will form the premise of the new regulatory framework before issues regarding the scope of regulation can be drafted.

According to Cunningham and Taylor (1985:228), in the well-known Hallcrest report:

> "Some researchers agree that regulatory bodies of various industries often represent a 'problematic approach to solving social and economic transactions they are designed to improve'. However, the economic and social consequences of security personnel actions extend beyond simply the 'business

3 Australia and the United States are not unitary states and therefore the different states are allowed to set legislation to set their own standards.

transactions' covered by the regulatory controls of most other industries".

This point is reiterated by the Private Security Advisory Council to the Law Enforcement Assistance Administration (Cunningham and Taylor:1985:229):

> "In an occupation where error of judgement or incompetence can cause serious social and economic consequences, every effort need to be extended to embrace forceful remedies".

According to Siatt (1980a:7), regulation is not a dirty word. It only takes on the negative features when improperly applied, creating more problems and abuses than what it attempts to solve. He continues by stating that the Industry offers numerous opportunities for the abuse of power in terms of invasion of privacy and the isolation of the individual rights. According to him, few other industries have such a great need for regulation, but states that the Industry will lose much if regulation is not legislated. An additional important aspect, is the international tendency wanting Industry to be regulated. In a number of cases, the push for regulation comes from within the Industry itself to put the relevant systems in place. Siatt (1980b:23), states the following:

> "The intent behind any standard for regulation would be to insure a certain level of competent response by security personnel to any given situation".

This statement fits into Standaert's (1999:77) premise, that regulation is designed to basically address two issues, namely the protection of the public and standardising the Industry. Although Siatt sees regulation mainly as the tool to ensure standards in the Industry and not the protection of the public, this approach is typical from both the national as well as international security industries.

According to Patrick Ronan (SOIB:2000c:14), realistic goals of regulation include issues such as public interest, state interest, employee rights as well as the protection of the rights of security service providers who abide by the law. This approach considered by Ronan, is already much wider than the international phenomenon of only regulating standards in the Industry.

According to the Security Industry Regulations Bill (Bill 12 of 2001) Section 3(a-q), the following are the objectives of regulation as proposed by the South African Government:

- Promote a legitimate security Industry which acts in terms of the principles contained in the Constitution and other applicable law;
- Ensure that all security officers act in the public and national interest when rendering security services;
- Promote a security Industry which is characterised by professionalism, transparency, accountability, equity and accessibility;
- Promote stability of the security Industry;

- Promote and encourage trustworthiness of security officers;
- Determine and enforce minimum standards of occupational conduct in respect of security officers;
- Encourage and promote efficiency in and responsibility with regard to the rendering of security services;
- Promote, maintain and protect the status and interests of the occupation of security officer;
- Ensure that the process of registration of security officers is transparent, fair, objective and concluded timeously;
- Promote the performance of quality assurance and related regulatory functions in respect of the training of security officers and prospective officers;
- Encourage ownership and control of security businesses by persons previously disadvantaged through unfair discrimination;
- Encourage equal opportunity employment practices in the security Industry;
- Promote the protection and enforcement of the rights of employees in the security Industry;
- Ensure that compliance with existing legislation by security officers is being promoted and controlled through a process of active monitoring and investigation of the affairs of security officers;
- Protect the interest of the users of security services;
- Promote the development of security services which are responsive to the needs of consumers of such services and of the public;
- Promote the empowerment and advancement of women in the security Industry.

As can be seen from the above, the South African legislation is attempting to cover seventeen objectives in their new regulatory framework, a task which is totally impossible. It is furthermore clear that the South African Government has not gone through the process of deciding what exactly they want to regulate, or determined what is currently working well, and what just needs to be underpinned with legislation to ensure the regulatory authority can fulfil the task given to them. From the objectives listed by Government, it is also not clear if they give precedence to regulating the standards, regulating the occupation of the security officer or protecting the public.

4.4.1 Influences on the objectives of regulation

There are a number of issues which have a direct influence on the effectiveness of a regulatory framework. These influences could either exist because of historical events, political undertones, economical pressures or changes in social requirements. These issues include:

- The level of mistrust the Government has against the Industry. Earlier in this Chapter, the example of Northern Ireland was mentioned. According to Johnston (1992a:4), the Northern Ireland Emergency Provisions, Act 1987 Part 3, aims at preventing companies being used as a cover for terrorism and crime. In Chapter Three it was clearly established that there is currently a high level of mistrust against the South African Industry. This is especially clear in the

regulatory objectives written into the Bill (Bill 12 of 2001).

- The level of self-regulation already taking place within the Industry. This aspect to a large extent goes in tandem with the level of mistrust against the Industry. In addition to mistrust, however the effectiveness of self-regulation could only require supportive legislation, whilst ineffective self-regulation would require more drastic regulatory efforts.
- The perceived credibility of the regulatory authority, if the Industry is self-regulated. If there are major doubts from either within the Industry itself, Government or the public, regulatory efforts could easily be interpreted as efforts to either protect wrongdoers in the Industry or to act to the detriment of inter alia Government and the public.
- The typical problems encountered by the Industry which lead to the need for legislation or new legislation.
- The fast changing nature of the Industry would for example require a regular update on the definition of what should be considered as a security service. Ten to fifteen years ago one would not have considered issues such as computer security to develop into possibly the biggest sector in terms of monetary value of the Private Security Industry.
- The level of democratic maturity of a specific government.

In addition to the last aspect mentioned, is also one aspect referred to by Hakala (1998:15), as the so-called "social maturity" of security companies. This model is based on factors applied to 18 European countries by the Ligue Internationale des

Societes de Surveillance to assess private security operations in terms of their "social maturity". The lower score a country receives, the higher its maturity. The factors used in the comparison included the following:

- Legislation
- Wages
- Working hours
- Number of second job guards
- Guard training
- Trade union relations
- Market size

Hakala (1998:15), admits that the scientific value of the study can be questioned. It is still however an interesting view regarding the 'maturity' of security industries in Europe. The partial results are shown in Table 4.1.

TABLE 4.1

MATURITY OF SECURITY INDUSTRIES IN EUROPE

SUBJECT	COUNTRIES				
	Denmark	Finland	Norway	Sweden	UK
Legislation	0	0	0	0	2
Wages	1	2	1	1	2
Working hours	0	0	0	0	2
Second job guards	0	0	0	0	0
Guard training	1	2	2	0	2
Union relations	0	0	0	0	0
Trade associations	0	0	0	0	0
Market size	3	2	1	0	2
Total points	5	6	4	1	10
Placement	5/18	8/18	3/18	1/18	13/18

Source: Hakala (1998:16)

Although this table makes no reference to South Africa, or any other Industry outside the European environment, it has already been established that South African legislation can be regarded as superior to most European countries. The UK for example, had in the year 2000 only proposals regarding the future regulation of private security and no actual legislation. Furthermore, if one looks at the Nordic legislation mentioned by Hakala, one would also have to take into account that these countries do not have Industry representation in their regulatory structures. It is thus that the South African Private Security Industry is "mature" and that regulation should be drafted with that aspect in mind.

A number of international authors quoted in this Chapter, has already warned against the over-regulation of the Industry. One can go as far as stating that the South African industry can be classified as "mature" but that Government has not settled enough in the new democracy to accommodate a mature Industry.

It will be an over-ambitious effort to try and cover all the possible objectives one may have within the parameters of a single piece of legislation, because a number of these objectives are as a matter of fact the line-functional duties of Government departments. This problem is summarised from within the Industry by Ashley Thomas, Human Resources Director of Fidelity Corporate Services (FCS), the largest security company in South Africa, when he states the following in the FCS submission (2000:5) to the SOIB:

> "The Act should not have to legislate for the protection of company vs company, or the protection of employee vs employer, or employer vs employee. There is sufficient other legislation to give protection to these parties. If other ministerial departments through their respective statutes stand accused of incompetence in dealing with infringements of their own legislation, this should not be reason for the Security Officers' Board having to assume responsibility for upholding such legislation."

Thomas (FCS:2000:10), continues by stating that:

"The Act cannot be a 'catch all' legislation that subjugates all other legislation to inferior status and thereby makes them accountable to its agents, the Security Officers' Board".

4.4.2 Regulatory objective: Protecting the occupation of the security officer

The protection of the occupation of security officer or security practitioner, is discussed first as it is the objective of the current legislation regulating the Private Security Industry. The Security Officers' Amendment Act (Act 104 of 1997) clearly states the objectives of the Board in Section (2)(2):

"The objects of the Board shall be to exercise control over the occupation of security officer, to maintain, promote and protect the status of that occupation, and to ensure that the industry acts in the public interest, and to submit reports from time to time to the Minister on the regulation of the security officer industry."

It is important to keep in mind, that this section of the Act was amended in 1997 to include the part dealing with "acting in the public interest" and also "submit reports to the Minister". Previously, the Act only made reference to the protection of the occupation of the security officer. The Act also does not go as far as stating what exactly is meant by "acting in the public interest" or defining the "public".

It is thus clear that the interpretation of what should be regarded as "acting in the interest of the public" was left up to the interpretation of the SOIB. The question should be asked as to why this aspect was not clearly defined. This should have been the duty of Government to ensure that certain minimum specifications were drafted into the Act. It should only have been up to the SOIB to ensure that these minimum specifications were executed.

In the previous Chapter of this thesis, reference was made to Ronan's view that by regulating the standards, in the Industry it will indirectly lead to the protection of the public. Ronan confirms his earlier viewpoint by stating (SOIB:2000c:14):

> "In attempting to ensure that (the) public is only exposed to a trustworthy and legitimate security Industry, the Board is currently giving, this is the Interim Board, practical effect for the enforcement of a legislated Code of Conduct."

This statement thus confirms the SOIB's view that by regulating the standards in the Industry, the public is indirectly protected. More importantly, this implies that the main function of the regulatory body should be the protection and the promotion of the occupation of the security practitioner. This argument is supported in this thesis and is central in the drafting of proposals for a future regulatory body.

In contradiction to the above, Jenny Ibbotson, Director of Gray Security (SOIB:2000c: 79), states the following regarding the role of the regulatory body:

> "... and I think the objects [of the Act], the promotion and the protection of the status of the occupation of the security officers should be removed from the Act. ... the function of the Board is to make sure that security officers are trustworthy and competent, they're registered and trained and that therefore they deliver a service to the public that has those qualities to it. And they should not be there to protect the practitioner. The Board is not there to protect the practitioner."

From the above, it is clear that Ibbotson is in favour of the regulatory authority having the protection of the public as its purpose and not the protection of the occupation of the security officer. This view is also shared by other major role players in the Industry, such as Ashley Thomas from the Fidelity Services Group. Ibbotson is to some extent contradicting herself in her plea to remove the promotion and protection of the status of the occupation of the security officer from the Security Officers' Act. She is arguing that the function of the Board should be to ensure that the security officers are trustworthy and competent. This thesis argues that it is impossible to ensure competent and trustworthy security officers if one does not regulate the standards in the Industry. It is exactly the trustworthiness and the competency, which she and other role players such as Government require from security officers, that will inevitably lead to the protection and promoting the status of the occupation of the security officer. One could, however, argue that it is impossible to ensure trustworthiness and competency through regulation.

In support of the Ibbotson argument, Jenny Irish (1999:38), states that a flaw in the South African legislation regarding the regulatory objectives, is the fact that it sets as an objective to maintain, promote and protect the status of the occupation of the security officer. Irish continues by stating that legislation's primary function should be the protection of the public and not the protection of a particular trade. Neither Irish nor Ibbotson goes to the extent where they get into the practical details of how they would protect the public. The protection of the public can't only be obtained through the exclusion of the Industry from the regulatory body.

Government's approach in the drafting of the new legislation, is based on the fact that they want to protect the national interest, the public interest and also the Industry's interest. The Draft Policy Document (Department of Safety and Security:2000:19) states as follows with regard to the necessity to protect the Industry:

- Members of the Industry are protected from unscrupulous operators who damage the reputation of the Industry
- Employees of the Industry are protected from exploitation and abuses
- Growth within the Industry is not unreasonably inhibited

The protection of the Industry, as internationally stated in legislation[4], is to protect the standards in the Industry with regard to training and service delivery. What is referred

[4] See Annexure A and B

to by the Policy Document (Department of Safety and Security:2000:19) as the protection of the Industry, does not cover those objectives. The only reference to the protection of the Industry is in the Bill (Bill 12 of 2001), Section 3(h), which clearly states that the new regulatory authority should promote, maintain and protect the status and interests of the occupation of the security officer. The issues mentioned by the Policy Document can't be regulated. The aspect mentioned last, namely that growth within the Industry shouldn't be unreasonably inhibited, could be regarded by the Industry as move to clamp down on the natural expansion of the Industry based on demand from a public who does not receive the expected service from Government. Does it furthermore mean that Government has intentions to inhibit the growth of the Private Security Industry? If so, how are they going to do that?

4.4.3 **Regulatory objective: Protection of the public**

The protection of the public is regarded as the main objective of regulatory frameworks analysed in this thesis. In South Africa, as stated earlier, the protection of the public was only added to the legislation in 1997. The Security Industry Regulation Bill (Bill 12 of 2001), refers to the protection of the public in Section 3(b) and (p), although the last subsection only refers to the development of security services which are responsive to the needs of consumers of such services and of the public. As stated earlier, however, it is not clear in the Bill (Bill 12 of 2001) that the protection of the public is the main objective of regulation.

According to the Policy Document (Department of Safety and Security: 2000:19), the regulation of the Private Security Industry is necessary to protect the public interest in respect of ensuring that:

- The providers of security services deliver a professional service to their clients;
- The employees of security companies are adequately and appropriately trained; and
- All members of the Private Security Industry do not, at any time, present a danger to members of the public.

These issues raised by Government are clearly related to setting standards in the Industry. This can arguably be regarded as admitting that the regulation of standards ultimately leads to the protection of the public and Government should thus rather align regulation to the intention of setting standards as opposed to regulation for the protection of the public.

The Policy Document (Department of Safety and Security:2000:19), continues to state that the Private Security Industry has acquired certain capabilities and is undertaking operations which may infringe on every person's right to privacy and as such, infringe upon their constitutional rights. These practices must be limited by regulation to ensure the rights enshrined in the Constitution continue to be applied and protected and the interests of the public are looked after. One of the questions which arises from this approach adopted by Government, is if Government could not have achieved this

objective of protecting the public through already existing legislation. In addition, one can also ask the question whether Government itself has sufficient checks and balances in place to ensure the protection of constitutional rights through possible infringements by its own security apparatus.

In the Industry, distinction is made between the interest of the public and the interest of the consumer. One's immediate understanding is that these terms refer to exactly the same group of people. When reference is made to the consumer, it is made to those people and/or institutions who are *willingly* and *contractually* making use of the security services provided to them, for example a local government. In the case of the public - it refers to those people at large who are *unwillingly* in daily contact with the Private Security Industry, for example the individual at a shopping complex guarded by private security guards.

Initially the SOIB (2000a:40), did not differentiate between these, the consumer and the public, and saw the public as anyone coming into contact with the Industry. The distinction, however, does carry a certain merit as consumers have some say in the way they are "treated" by the Industry. In the SOIB's Policy Document (2000b:83-84), it softened its stance from the narrow definition regarding the meaning of the term public and realised that a distinction should be drawn between the consumer and the public.

This differentiation is important, both in terms of the composition of a future regulatory authority as well as the regulatory powers that should be granted to such a regulatory

body. With the current broad approach in terms of what "public" constitutes, the broad public only has to accept what they get. Subsequently, this thesis distinguishes between "consumer" and "public" in the proposals for the composition of a future regulatory body. Notable is that the Bill (Bill 12 of 2001), makes no reference at all to public and consumer representation despite the proposals for increased representation in the Act (Act 104 of 1997). According to Ibbotson (SOIB:2000b:83), she defines the "public" as follows:

> "[A]ny person, or community who should not reasonably be expected to assess the competence or trustworthiness of security staff; and who interacts with them on the street, in public buildings or in the vicinity of their homes and neighbourhoods".

This definition of Ibbotson clearly excludes the consumer of the security services, as consumers have the opportunity and the right to enquire at the regulatory authority regarding the status of the service provider.

4.5 Regulatory legislation in foreign countries

It is clear that one can't get a clear-cut distinction in the primary regulatory objective between the protection of the public and the protection of the occupation of the security practitioner. Making it even more difficult, is that one needs to make this distinction in the effort to draft legislation that will make the regulatory authority effective. As

stated earlier, it is difficult to understand how the Bill (Bill 12 of 2001) arrived at seventeen objectives they want to achieve with the same legislation.

The State of Texas, USA, seem to have found the right balance between the protection of the Industry and the protection of the public. According to Article 4413(29bb), the body regulating the Industry will have the following powers and duties (Private Security Act: Section 11):

- To determine the qualifications of licensees, registrants, and commissioned security officers as provided in this Act;
- To investigate alleged violations of the provisions of this Act and of any rules and regulations adopted by the board;
- To promulgate all rules and regulations necessary in carrying out the provisions of this Act; and
- To establish and enforce standards governing the safety and conduct of persons licensed, registered, and commissioned under the provisions of this Act.

The balance for the overt protection of the Industry, is provided in the same Act (Private Security Act) in Section 11(e), where it is stated that the Board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and speak on any issue under the jurisdiction of the board. In addition to this mechanism provided, the Private Security Act furthermore states in Section 50(A)(a), that the Board shall maintain a file on each written complaint lodged with the

board. The file must include:

(1) The name of the person who lodged the complaint;

(2) The date the complaint was received by the board;

(3) The subject matter of the complaint;

(4) The name of each person contacted regarding the complaint;

(5) A summary of the results of the review or investigation of the complaint; and

(6) An explanation of the reason the file was closed, if the agency closed the file without taking action other than to investigate the complaint

Section 50(A)(d) furthermore states that the board should at least quarterly, until final disposition, notify the person lodging the complaint and each person who is a subject of the complaint of the status of the investigation, unless the notice would jeopardise an undercover investigation.

The Texas legislation (Private Security Act), appears to find the balance between the protection of the Industry and the protection of the public. This is done by the enforcement of standards on the Industry by means of a well represented and empowered regulatory authority, and simultaneously creating the infrastructure for the public to, in a transparent process, raise their concerns about the Industry, whether it is individuals or companies.

The route followed by the State of Texas appears to be one of the most feasible options

as it is also used by the State of Utah (Private Investigator Regulation Act). According to Section 53-9-105 of the Act (Private Investigator Regulation Act), the Private Investigator Hearing and Licensure Board has the following powers and duties:

- To review all applications for licensing, registration, and renewals of licenses for private investigators and agencies and make recommendations to the commissioner for approval or disapproval.
- Review all complaints and make recommendations to the commissioner regarding disciplinary action.
- The board may take and hear evidence, administer oaths and affirmations, and compel by subpoena the attendance of witnesses and the production of books, documents, and other information relating to a formal complaint against or department investigation of a private investigator.

The main difference between the Texas and the Utah legislation, is that in the case of Texas, cases of misconduct instituted by the public are investigated by the regulatory authority itself. In Utah, cases of misconduct instituted against individuals or companies are referred to the Commissioner of the Department of Public Safety. My opinion is that the preferred option would be for misconduct investigations to be investigated from outside the ambit of the Industry. This would go a long way in strengthening the trust towards the Industry.

Closer to home, the Republic of Namibia states their intentions with regard to the

objectives of their regulatory authority very clearly in the Security Enterprises and Security Officers Act (Act 19 of 1998), Section 3(a)(b), namely to:

- Exercise control over security enterprises and the occupation of the security officer
- Maintain, promote and protect the status of security enterprises and security officers

The Security Enterprises and Security Officer Regulation Board (SESORB), has also created a mechanism according to Section 24(2) (Security Enterprises and Security Officers Act), in which members of the public can "in the prescribed manner", a term which is not clearly defined, also lodge complaints against individual security practitioners or security enterprises. These offences are both in terms of contraventions of the Code of Conduct drawn up by the SESORB or any offence in terms of Schedule 1 of the Security Enterprises and Security Officers Act (Act 19 of 1998). Schedule 1 offences, refer to major crimes such as high treason, sabotage, subversion, intimidation, rape, murder and a number of other issues similar to the Schedule 1 offences referred to in the Security Officers' Amendment Act (Act 104 of 1997). The challenge in this system lies in the SESORB itself implementing a monitoring system whereby licenced operators and enterprises are regularly re-checked to ensure that they are still complying with the minimum standards.

The Private Investigators and Security Guards Act (Act 48 of 1974), in New Zealand

in its introduction of the Act, possibly defines the balance that should be obtained in the best manner. The Act states as follows:

> "An Act to provide for the licensing of private investigators as a means of affording greater protection to the individual's right to privacy against possible invasion by private investigators, and to provide for the licensing of security guards as a means of ensuring so far as possible that those carrying on business as security guards are fit and proper persons to do so, and to regulate the conduct of business by private investigators and security guards."

This is a clear indication of the New Zealand intention - regulate the occupation to protect the public. According to Section 55(1) of the Private Investigators and Security Guards Act (Act 48 of 1974), any malpractice performed by a company or an individual the charges are handed to the Commissioner of Police for investigation. If the Registrar feels that the charges are serious enough, he can even suspend the licence of the company or individual until such time that the investigation has been completed.

This Section 55(1) of the Private Investigators and Security Guards Act (Act 48 of 1974), ensures the protection of the public, even in the case where there could be only doubts regarding the potential threat posed by a specific company or specific employee. One aspect which comes out as common denominator in the legislation mentioned (New Zealand, Utah, Texas and Namibia), is that all these Governments have made provision for a proper reporting and investigation channel in the case of misconduct in the

Industry.

4.6 Finding the balance in South Africa

In the previous Chapter, it was determined that there are a number of issues making the South African Private Security Industry *sui generis* from security industries in other countries. These aspects, however, more directly influenced the initial growth of the Industry as well as the perceptions which exist in Government and other circles. It has also been determined that with regard to the actual operation and functioning of the Industry, there is not much difference between South Africa and other countries. The initial Security Officers' Act (Act 92 of 1987) as well as the Amendment Act (Act 102 of 1997), have gone a long way in regulating the Private Security Industry. It is also clear that in terms of the broader issues, South African legislation is very competitive in comparison with international legislation.

In the process of trying to find the balance between protecting and promoting the occupation of security officer and protecting the interest of the public, the current legislation (Act 104 of 1997), does indeed make an effort to concurrently address these issues. Despite the appeals by members of the Industry, such as Ibbotson and Thomas (SOIB:2000c), that the protection of the occupation should be removed from the legislation, it is obvious that the international approach is to use the protection of the occupation, by inter alia standardising training, to ensure public protection and safety.

The missing aspect from the South African legislation, is the mechanism to ensure the protection of public interest. With mechanisms, reference is specifically made to channels whereby civilians could complain about unsound activities in the Private Security Industry, and more importantly, get feedback from an independent investigation.

The South African legislation (Act 104 of 1997) in Section 2(2), clearly states that the Industry should act in the public interest. The challenge, however, lies in the operationalisation of the objective because of political pressure and a general mistrust towards the Industry as a whole as well as the regulatory authority. There is furthermore a challenge for Government to have an objective interpretation of what should be regarded as "the public".

The SOIB has gone a long way in trying to give a tangible structure to the protection of the public. This effort has manifested in the establishment of the Illegal Practices and Communication Committees (IPCC's). According to the SOIB (2000b:233), these structures play a very important role in the regulation of the Industry. The IPCC's consist of members of the Interim Board, Department of Labour, employer organisations and employee organisations. With regard to the IPCC's, the following comments:

- Although the IPCC's has to some extent devolved the regulatory role, it has stopped short of allowing it to become a structure where the public can become

directly involved. In other words, it did not become a forum where members of the public could complain about the service they receive from a company or the irresponsible activities of members of companies.

- In terms of the future of partnership policing between Government and Industry, the IPCC's could be seen as the level where co-operation could be effectively established, especially if one could include the Community Police Forum's (CPF) and local SAPS liaison structures.
- The IPCC's are not recognised by the new proposed regulatory framework. This can be regarded as a major mistake. This was a golden opportunity to have legislated the protection of the public and even provide a forum for the public to state their fears or dissatisfaction in the presence of both Government and the Industry. This could have ensured that no issue regarding perpetrators in the Industry could have gone unattended.

The Bill (Bill 12 of 2001), does make provision for the establishment of a Complaints Office. According to Section 4(r):

> "establish a complaints office to receive, process, refer or deal with complaints regarding the quality of service rendered by security service providers in the prescribed manner."

It is however stopping short of indicating what mechanisms should be established to ensure public protection. The Bill does state that an independent board of enquiry must

be established. It would have been the ideal situation if the New Zealand approach was adopted, whereby potential serious offences would lead to the suspension of the service provider or the practitioner until the case is resolved. This would, however, require that the regulatory authority would need to react to claims made within a very specific period of time.

To use an old expression, the Bill (Bill 12 of 2001) has "thrown the baby out with the bath-water." The current Act (Act 104 of 1997), just needed strengthening by granting specific powers to the regulatory authority and providing a more detailed definition of what constitutes a security service. It appears as if the changes made to operational procedures at the Board since 1999 with the establishment of the Interim Board, were disregarded and that valuable proposals made by the Industry were ignored based on the origin of the proposals. It is clear that the balance between the two most important aspects regarding the regulation of the Industry, was not regarded as a symbiotic process.

4.7 The protection of the State's interest

In addition to the protection of the public and the protection of the occupation of the security officer, Government has made an additional category that needs to be protected (Department of Safety and Security: 2000: 14). Government subsequently stated that the regulation of the Private Security Industry is necessary to protect the *national interest* in respect of the following:

- Potential threats to state security as a result of criminality and so-called "third-force" activity;
- The potential impact of the conflict between the activities of private security companies operating outside the borders of the Republic and South African foreign policy, and the potential destabilisation of foreign nations; and
- The potential impact of and conflict between the activities of the private security companies operating within the borders of the Republic and the operational functions of the state security services in terms of potential internal destabilisation and the commission of acts contrary to Government policies.

The inclusion of this objective opens up a lot of debate regarding the motives of Government to amend the regulatory legislation. This is mainly because *national interest* translates into *national security*, and the latter is such a wide concept and open for abuse by Government, especially in "soft" states. The use of the concept *national security* was widely employed by the previous Government to rationalise the use of State agencies to abuse human rights. In this regard "soft states" refer to those Governments which are highly exposed to *a coup d'etat*, revolution, spiralling economic decline and high levels of corruption.

4.7.1 **Criminality and "third force activities"**

The first point regarding criminality and the "third force" in the Department of Safety and Security's Policy Document (2000:14), is unfounded in the sense that criminality

occurs in all sectors of the economic sphere and all job types and at all levels (blue collar and white collar).

Secondly, on the issue of the "third force", it has sufficiently been proved in Chapter Three that during TRC hearings and also in amnesty applications, security companies *per se* were not used by the former apartheid structures, but that individuals in the Industry, and most probably in the case of the current Government, are used to perform covert operations. These covert actions can't be regulated. They can only be controlled by Government themselves in terms of stopping not using the Industry's infrastructure to support their operations.

With regard to criminality, the answer does not lie within the parameters of a regulatory framework. Regulation will not prevent criminals from entering the Industry in an illegal manner. It will not prevent people already in the Industry of becoming criminals and it won't prevent people posing as members of the Industry to commit criminal activities under the guise of being security industry members. *Regulation can't prevent criminality*. If it could, Government would have to regulate every single sector of the economic environment to prevent criminals from entering the workplace. This would in turn mean that convicted criminals who have served their sentences, would not have the opportunity of returning to a normal lifestyle. In other words, Government would force criminals to return to criminal activities.

Criminality in the Private Security Industry is furthermore not an issue unique to the

South African industry. The issue regarding criminality in the Industry, is put into perspective in the British proposals for the regulation of the Private Security Industry (British Home Office:1999:4). Here it is stated that in the domestic British situation, the police, the public and people within the Industry itself are tired of less scrupulous companies and criminals tarnishing the image of the Industry. The potential threat posed to the wider public should be the overriding factor for the regulation of the Industry.

4.7.2 Security companies operating outside the borders of South Africa

The second issue with regard to the protection of the national interest, is that of security companies operating outside the borders of South Africa and also the parameters of its foreign policy, especially with regard to the potential for conflict and destabilisation of foreign nations. This reference is obviously aimed at the mercenary industry and not the Private Security Industry. The Policy Document (Department of Safety and Security:2000:14), fails to make a distinction between the various mutations of what could be termed "the security industry". One can clearly distinguish between what is commonly known and accepted as the Private Security Industry (guarding, CIT, armed response etc.), the mercenary industry (trained soldiers taking part in armed conflict such as the defunct Executive Outcomes) and the private investigator / private intelligence industry.

If security companies want to operate outside the borders of South Africa, they should

apply to do so through the National Conventional Arms Control Committee (NCACC), as prescribed in the Regulation of Foreign Military Assistance Act (FMAA) (Act 15 of 1998). This application is especially required if they want to provide a service in a foreign country which is at that stage involved in conflict. For example, if Coin or Gray Security wants to provide security services at mines in Angola, they would have to apply at the NCACC for permission. The FMAA, is at this stage so vague in terms of what is meant by service or assistance, that it implies even medicine dealers or clothing dealers that want to sell their goods in a country involved in civil war, need to apply to the NCACC.

The effectiveness of the FMAA is another issue of debate. Mercenary outfits merely move their operations to countries where this type of legislation does not exist. If a specific country wants to make use of mercenaries to keep them in power, they will not be prescribed by South African law, as to what and who they should make use of to do so. One such an example, is that of President Kabila of the Democratic Republic of the Congo who made use of mercenaries to seize power and is still making use of them to suppress opposition in the country. The regulation of mercenary activities can't be addressed successfully if it is not a global or at least a regional effort to stop mercenary activities. The fact of the matter is that those security companies operating outside the borders of the country, are already regulated by an Act (Act 13 of 1998) promulgated by Parliament.

4.7.3 The potential impact of conflict between private security companies and the operational functions of the state security services

The potential for conflict between the Private Security Industry and the State's security services will always be a reality. As the perceptions regarding the inability of Government to address crime increases, the potential for conflict between private and public security structures will also increase. Some of the problems which would compound the issue include:

- *Competition for human resources*: The Private Security Industry and in specific the private investigation fraternity is in a position to offer much better remuneration packages to SAPS members. This leads to tension because of a skills loss in the SAPS and also in some cases the subsequent loss of informer networks.
- *Turf-war*: The SAPS has traditionally been responsible for the investigation of crime. This is now a field open to an array of private security companies. The SAPS may easily feel threatened because of this "invasion" of their sole mandate. Moreover, further tension could develop through the publishing of successful private investigations in the media. The examples of Slang van Zyl previously mentioned in this Chapter serves as a case in point. Van Zyl was ignored by the Scorpions for a extended period of time when he offered assistance in a murder investigation.
- *Competition for intelligence*: Both private and State investigators compete to

provide the most accurate and timeous intelligence, and subsequently they compete for the same sources. Own experience proved that Government would easily revert to using a private intelligence company if they feel Government agencies do not have the capacity to deliver a timeous answer. One such example was the use of a private intelligence company to investigate the alleged plot to overthrow President Mbeki in May 2001. This event is a very good example where state and private intelligence companies competed for the same human and financial resources.

As stated before, issues of national security, or issues which might impact on the South African foreign, military or intelligence policy, should be addressed within those specific parameters and not within the ambit of regulating the Private Security Industry.

According to South (1988:135-136), the high level of competition or conflict can to a large extent be controlled through the regulation of "moonlighting" activities by police force members in the Private Security Industry. It is a well-known fact in South Africa that a large number of SAPS members "moonlight" in the Private Security Industry to bolster their low SAPS salaries. It is therefore unlikely that the regulation of "moonlighting" activities will prevent conflict between these two entities as illegal "moonlighting" will continue as a means of financial survival for SAPS members.

The mere existence of the Private Security Industry will always be a source of conflict between these private and public security structures. They will always be competing

on the level of crime prevention and crime investigation. This situation is exacerbated by the fact that these two activities have traditionally been the sole mandate of the SAPS. On the other hand, these activities have become the bread and butter to more than 170 000 private security officers.

4.8 Regulation and the sovereignty of the State

The policy document on principles regarding the regulation of the Private Security Industry states that (SOIB:2000b:14):

> "... there are significant issues with respect to the sovereignty of the South African State. South Africa is a sovereign state with a democratically elected government. The citizenry of the State has a set of expectations of government, and these expectations underpin the obligations to the citizenry. One of the key obligations of government is that of national security. National security is itself a key factor in the realisation of the national interest and the objectives of government. As such, the state can therefore not afford to contest issues of national security with the private security."

According to the above statement, Government recognises its obligation to the public to protect them. What is of interest, however, is the reference to the fact that Government can't afford to contest issues of national security with the private security.

The Policy Document (SOIB:2000b:15) continues by stating the following:

> "The private security industry can participate in matters of national security only at the request of the state and on a very limited scale. However, this involvement in issues of national security pertain specifically to the sphere of matters of crime and crime prevention. However, the nature of this competition should be such that it does not contradict or negate the sovereign mandate of Government."

Although crime and crime prevention do fall within the parameters of the definition of national security, one is immediately asking the question why Government would regard the Industry as potential competition in this environment. Government has failed its electorate in terms of the Bill of Rights guaranteeing a safe environment. The Industry has offered partnership in the battle against crime, and by Governments own admittance is far better equipped to fulfil the task. The reference to competition with Government does not have any merit or premise.

The reference to the sovereign mandate of the state is another aspect of debate. Hinsley (1986:5), argues that the whole meaning of the original intention of the description of the sovereignty of the state has changed to such an extent, because of the changing nature of the state as a whole, that it is actually only in the broader context of the international politics where sovereignty still applies. In the internal politics of a country it has become almost impossible to talk about the sovereignty of the State, as

the line between Government and body politics within the public has been diminished to a great extent.

4.9 Summary

This Chapter asked, and tried to answer, the question regarding what should the focus be of the new regulatory framework. In other words, the objectives that need to be obtained to ensure that the Industry could be regarded as an asset to the South African society and not as a liability.

It is evident that the international trend is clearly towards the regulation of the standards in the Industry and subsequently the creation of a mechanism to ensure that public safety can be effectively addressed. The proposed South African legislation has somehow moved away from this existing, or almost existing recipe towards an approach with seventeen objectives for regulation. It has clearly not been able to find the balance between protecting the practitioner and protecting the public. This situation, which will have a direct bearing on the future regulation of the Industry, can only be to the detriment of the whole public affected by the R12 billion Industry.

CHAPTER FIVE

THE SCOPE OF REGULATION

5.1 Introduction

In the previous Chapter, it became clear that the two major objectives of regulation are to protect the public against unscrupulous operators in the industry and to set certain standards in the industry. It has also been determined that these two objectives can't function in isolation of each other and are inter-dependant. Based on the previous Chapter, however, the hypothesis on which the proposals regarding the future regulatory body is based, is that the setting of the standards in the industry should be the primary objective and that the protection of the public will be a spontaneous result thereof. But saying this, it should be clearly understood that the protection of the public as a spontaneous result of regulating the standards, can only take place if sufficient structures for reporting and investigating abuse by the industry are catered for.

This Chapter focusses on the scope of the regulation. In other words, what should be defined under security services, and per definition be included in the regulatory framework. This Chapter relies largely on the George-Button model (Hakala: 1998:70), as a point of departure for assessing the possible inclusion of the various sectors. The model handles the structural formats of regulation, comparing three broad

characteristics, namely the width and depth of regulation and who is responsible for regulation. Based on an assessment of the current status of the industry in South Africa, it was decided to approach the task by differentiating between three major Industry sectors. These are the manned guarding sector, the electronic security sector and the private investigation sector. This last sector is addressed separately in the following Chapter.

5.2 Scope of regulation

According to Jenny Irish (1999:38), one of the major problems with the Security Officers' Amendment Act (Act 104 of 1997), is that several categories of security services are excluded from regulation, of which in-house security is the most notable.

The Security Officers' Amendment Act (Act 104 of 1997), Section 2, describes a security service as follows:

"security service" means, subject to Subsection (2), a service rendered by a person to another person for a reward by-

(a) making himself or a person in his employ available for the protection or safeguarding of people or property in accordance with an arrangement concluded with such other person; or

(b) advising such other person in connection with the protection or safeguarding of people or property in any manner whatsoever,

but does not include such a service rendered by an employee on behalf of his employer;

From the definition in the Act, it is clear that what is commonly referred to as in-house security companies, has been excluded. The Act clearly states in Section 2(a)(i) that the Minister may on the recommendation of the Board, define for the purposes of the Act any service other than a service contemplated in the definition of "security services" in Subsection (1) which a person renders to another person for reward, and which in the opinion of the Minister is in the interest of the occupation of security officer in the Republic, or is connected therewith as a security service. Per definition, this means that specific sectors of the industry which should already have been included before the process of drafting the new regulatory framework has started, could have been included, as there was sufficient latitude within the existing legal framework.

It is hence not completely correct for Government and other commentators to blame the Industry for the exclusion of certain sectors from regulation. It should be taken into account that these services could have been included at any stage the Minister was advised in this regard by the SOIB. One should see as an additional shortcoming that specific security occupations were not mentioned and defined by name in the legislation.

5.2.1 **Defining private security**

The process of determining the scope of the private security regulatory framework largely depends on the definition of private security. This is because the definition is the basis from which it should be determined what must be included in the legislation and what should be excluded. The SOIB (2000a:47), makes an important point with regard to the approach to determine the scope of the industry. This is the fact that when reference is made to the security industry, the reference seems to be in the narrow context of employers and employer associations. In other words, the fact that the Industry also consists of 160 000 employees, is sometimes lost in the equation of what resembles the security industry. This point made by the SOIB is very important when one approaches the regulation of the Industry, as it is important to keep in mind that the regulatory framework should not be limiting and prescribing the employers to such extent that it is to the detriment of the employees.

According to the Security Officers' Amendment Act (Act 104 of 1997), Section 1(a) and (b) as security service can be defined as follows:

" ... a service rendered by a person to another person for reward by-

(a) making himself or a person in his employ available for the protection or safeguarding of people or property in accordance with an arrangement concluded with such other person; or

(b) advising such person in connection with the protection or

safeguarding of people or property in any manner whatsoever

but does not include such a service rendered by an employee on behalf of his employer"

The SOIB (2000a:51), sees the current definition of "security service" as adequate because it contains the basic and fundamental elements of "protection and safeguarding of people or property", "reward" and "and arrangement with another". The Interim Board, however, in addition proposes that the definition should include that the "reward" could be either direct or indirect of nature. The argument for the inclusion of indirect rewards is to ensure that certain operators will not misuse community projects for their own financial benefit.

The SOIB (2000a:47), continues by stating that the scope of regulation should include the following for subjection to regulation:

- **Persons** (eg. employers, employees, managers and directors)
- **Activities and practices** (eg. the rendering of certain types of security services, and the manner in which this is done)
- **Occupations** (eg. security guard, electronic security technician, private investigator)
- **Sectors** (eg. the contract security sector, the in-house security sector, the guarding sector, the armed sector, the unarmed sector and further sectors identified in terms of other criteria)

- **Relationships** (eg. employer - employee, principal - contractor)
- **Objects or equipment** used in providing a security service

The Security Industry Regulation Bill (Bill 12 of 2001), opted for a definition which indicates the services to be included in the new regulatory framework. This approach adopted in the Bill is the preferred option - the only possible problem which could arise, is if specific services are excluded from the list of security services and those services should have been included in the definition. This thesis agrees with the approach adopted in the Bill, but argues in this Chapter the exclusion of some of the services listed and inclusion of some of the services excluded by the Bill. The Bill (Bill 12 of 2001), defines a security service as follows:

> " ... 'security service' means, subject to subsection (2), one or more of the following services or acts:
>
> (a) Protecting or safeguarding a person or property in any manner;
>
> (b) Giving advice in connection with the protection or safeguarding of a person or property in any manner;
>
> (c) Providing a reactive or responsive service in connection with the safeguarding of a person or property in any manner;
>
> (d) Performing the work of a private investigator;
>
> (e) Acting as a polygraphist;
>
> (f) Providing security training or instruction to a security officer or

prospective security officer;

(g) Installing, servicing or repairing security equipment;

(h) Monitoring signals or transmissions from electronic security equipment;

(i) Performing the work of a locksmith;

(j) Managing or supervising the rendering of the services referred to in paragraphs (a) to (i); or

(k) Creating the impression in any manner that one or more of the services in paragraphs (a) to (j) are rendered"

The approach of listing specific services for inclusion, was inter alia followed by the Australians (Security Providers Act) in the State of Queensland. Section 4(1) of the Security Providers Act defines a security provider as one of the following:

- Crowd controller
- A private investigator
- A security officer, and
- A security firm

In Canada, the Private Investigators and Security Agencies Act (Royal State of British Colombia: Chapter 374: Section 1), adopted a similar approach. A security business is described as one of the following:

- An alarm service

- An armoured car service
- A locksmith
- A private investigator
- A security consultant
- A security patrol

The British Government (British Home Office: 1999), states that the Private Security Industry encompasses a wide range of activities and occupations which brings individuals into contact with the public. It places them in a position of trust and the Government believes the individuals who carry out these roles should be licensed and regulated so the public can have confidence in them. Their proposal also mentions specific sectors which should be included, namely:

- Manned guarding, including the in-house sector
- Door supervisors
- Cash-in-transit
- Wheelclampers
- Guard dogs
- Neighbourhood guarding
- Patrolling services
- Alarms and CCTV

The British proposal (British Home Office:1999:19), specifically mentions a number of services that should in future be included:

- Private investigators
- Security consultants
- Locksmiths
- Keyholders
- Contract court enforcement officers

From comparative international legislation, it appears that the proposed route, namely that of specifically mentioning the relevant security services to be included in the regulatory scope, can be regarded as the best possible option to approach the problem of uncertainty with regard to what is included under regulation and what not. Annexure A to this Chapter is a comparison of a number of different pieces of legislation. In this comparison, only the Namibian legislation (Security Enterprises and Security Officers Act, Act 19 of 1998), still has a broad definition to describe what it sees as the security industry. Although there appears to be some difference in the description of the same activities in the various legislation, a broad agreement in terms of what should be regulated and what not seems to exist.

The only existing model, in terms of determining what the "perfect" scope of regulation should look like, is the so-called George-Button model developed by the British, Bruce George and Mark Button. The model basically divides the Private

Security Industry into eight different main categories. One of these categories, namely the manned guarding sector, is divided into a further five subsections. The George-Button model makes the following divisions (Hakala:1998:70):

- Manned guarding sector
  - Contract static guarding
    - (a) CCTV Surveillance
    - (b) Alarm monitoring
    - (c) Retail security
    - (d) Dogs / Dog handlers
  - Armed guarding
  - Armoured car operations
  - Door supervisors (bouncers)
  - Body guards
- Private investigators
- Security consultants
- Security system installers
- Locksmiths
- Security shredders
- Manufacturers and distributors of security equipment
- Security storage

The SOIB (2000b:103-128), adopted a broad approach in terms of what they see as

services that should be specifically included in the new definition of security services. Table 5.1 is a comparison of what the industry proposed to be included and what Government proposed in the Bill (Bill 12 of 2001).

TABLE 5.1

INDUSTRY vs. GOVERNMENT PROPOSALS FOR INCLUSION OF SECTORS IN THE SCOPE OF REGULATION

GOVERNMENT	INDUSTRY
Protecting or safeguarding a person or property in any manner	Protecting and safeguarding of property and persons in general
Giving advice in terms of the above	Security consultants and security advisors
Private investigators	Private investigations or intelligence services
Polygraphist	Polygraphist
Providing security training or instruction	Security training or instruction
Installing, servicing or repairing security equipment. Monitoring signals or transmissions from electronic security equipment	Advising on the installation of, and the monitoring of signals from, electronic equipment
Managing or supervising any of the above	Managers and supervisors of security businesses and security personnel
Creating the impression in any manner that one or more of the services mentioned above are rendered	
Locksmith	
	The provision of prison security, transport of prisoners and court-room related security
	Independent contractors or sub-contractors
	Services rendered by commercial 'house sitters'
	Reactive security
	Armed escort of valuables

	The activities of bouncers, crowd controllers and those providing control during special events
	Car-watch activities
	In-house security services

Source : Own compilation

The problematic situation with regard to the inclusion and exclusion of services, which developed from the broad South African definition, is not unique. According to Cunningham and Taylor (1985:117):

> "By its very nature the private security industry in the U.S. is ill-defined. In reality a number of distinct components compromise what may be termed 'private security'. In the broadest terms, the industry can be subdivided into two classifications: Services (human resources) and Technology (physical security product)."

The authors continue to state that it is easier to classify what should fit into the "services" category. The challenge is to find what exactly should be included in the "technology" category. In an effort to overcome this problem, Cunningham and Taylor (1985:119), have developed their own categories based on a systematic market analysis. This analysis consisted of eight steps, which most importantly included:

- Develop a classification scheme

- Obtain standardised definitions of each category

The classification system developed on the above-mentioned approach resulted into five broad categories of security services, as indicated in Table 5.2 below:

TABLE 5.2

CUNNINGHAM AND TAYLORS' CLASSIFICATION SYSTEM

PROTECTIVE SERVICES	Guard and Investigative
	Armoured Car and Courier
	Central Station Alarm Monitoring
MONITORING AND DETECTION EQUIPMENT	Electronic Alarm Systems
	Closed Circuit Television
	Electronic Article Surveillance
DETERRENT EQUIPMENT	Fixed Security Equipment
	Locking Devices
	Electronic Access Control
	Security Lighting
	Computer Security
	Security Fencing
FIRE DETECTION AND CONTROL EQUIPMENT	Smoke Detectors and Fire Detection Alarms
	Automatic Sprinkler Systems and Other Fire Control Equipment

Source: Compiled from Cunningham and Taylor (1985:120)

In the second version of the Hallcrest Report (Cunningham, Strauchs and Van Meter: 1990:127), there has been a significant increase in the number of categories identified in the Private Security Industry. The Hallcrest Report II makes the following distinctions:

- ❑ Proprietary Security
- ❑ Guard and Patrol Services
- ❑ Alarm Services
- ❑ Private Investigators
- ❑ Armoured Car Services
- ❑ Locksmiths
- ❑ Consultants
- ❑ Security Equipment Manufacturers and Distributing
- ❑ Other

Cunningham et al. (1990:190), provides an extensive list to what is included under the category of "other". These include security couriers, credit checks, data conversion, disaster recovery, document destruction, guard dogs, drug testing, eavesdropping detection, VIP protection, expert witness, forensic analysis, hostage negotiations, identification badges, insurance underwriting, market research, penetration testing, security personnel recruitment, property repossession, publishing, risk information service, security storage, security training, truth verification and uniform rental.

The new legislation proposed for the South African industry, has identified the loophole in the previous legislation and has included specific *security equipment* and specific security services in the definitions of the Security Industry Regulations Bill (Bill 12 of 2001). According to Section1, security equipment includes the following:

- Any type of safe, vault or secured container
- Satellite tracking
- Closed circuit television used for protection of persons or property
- Mechanical, acoustic or similar equipment designed or adapted to provide, or to be used mainly for, the detection of wrongdoing or the protection or safeguarding of people or property in general

5.3 Regulating the electronic security industry

With regard to the electronic industry, Cunningham et al. (1990:189), makes a clear distinction between the manufacturing and distribution of electronic equipment and electronic service revenues. The latter referring to the selling of electronic equipment, installation and maintenance. The proposed South African legislation (Bill 12 of 2001) does not make the differentiation and only refers to the *installing, servicing* and *repairing* of security equipment. The Bill also refers to the *monitoring* of signals or transmissions from electronic security equipment.

Initially, in the SOIB, discussion document (SOIB:2000a:65-66), the Board stated clearly that it is currently of the view that it is unnecessary to include manufacturers, importers and distributors of electronic or other security equipment. The Board, however, did see the need for regulation of those who *advise* on the installation of security equipment at premises or who *monitor* signals from such equipment and are / or involved in further steps on account of such monitoring. The Board continued by arguing that the inclusion of manufacturers, distributors and importers would result in an unreasonable wide scope of regulation not adequately covered by the basic objects of regulation and the basic meaning of "security service". In the SOIB's Policy Paper (2000b:121), it maintains the same viewpoint, but in addition specifically add that the installers of security equipment should also not be included in the scope of regulation.

According to Paul Wainstein from the Electronic Security Distributors Association (SOIB:2000c:57):

> "The electronic industry is quite large and in Rand terms is a substantial part of the 12 billion Rands (sic) that was talked about. It includes companies that are manufacturers, distributors, importers, installers, monitoring companies, close circuit TV, access-control and is a substantial part of the security industry ... as far as the scope of this Board, the electronic [industry] should definitely be a part of that and definitely have representation."

From the input given by Wainstein, it is clear that the electronic industry itself wants to be included in the scope of regulation. If one refers back to the George-Button model, it is also obvious that their approach to the scope of regulation includes the *installation, monitoring, repairing* and *distribution* of electronic equipment.

From Annexure A[1], the following can be concluded from the Acts, Bills and proposals studied:

- Seven out of the twelve countries (58%) have specifically included the installation and repair of security equipment in their legislation. This is in contrast to the ten out of twelve (83%) entities supporting the regulation or regulating the monitoring of signals from security equipment. None of the legislation made provision for the manufacturing or distribution of electronic security equipment, although New Zealand and the State of Virginia (USA), have regulations in place with regard to electronic equipment salesmen. These salesmen could perhaps be interpreted by other legislation as consultants.
- The argument posed by the Interim Board that the electronic security industry could possibly widen the scope of the regulatory body too much, does hold some water, but it is clear from the above comparison that the international norm tends to be in favour of stringent regulation of this large industry.

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1 Annexure A is at the end of Chapter 8.

This issue of regulating the electronic Security Industry is of cardinal importance if one wants to achieve the ultimate objective of protecting the public. It has been stated in the previous Chapter, as well as earlier in this Chapter, that the first objective of the regulatory body should be to set the standards in the Industry, resulting ultimately in the protection of the public. The regulatory authority can hence not ignore the electronic sector because regulation of this sector of the Industry will place an additional workload on the regulatory authority.

It can be accepted that the regulation in terms of the development and manufacturing of electronic security equipment falls outside the scope of regulation, mostly because these standards are set with international bodies such as the ISO9000. But, the selling and distribution of certain kinds of electronic equipment however can't be ignored. This equipment specifically includes audio and video surveillance equipment, as well as so-called de-bugging equipment. The selling and distribution of bugging and de-bugging equipment, as well as the provision of these services, should be stringently regulated. If one takes into account the already existing Prohibition of Monitoring and Interceptions Act (Act 127 of 1992), which only allows for the South African Police Service and the Intelligence Services (NIA and the South African Secret Service (SASS)) to conduct interceptions of communications, one almost fails to see the need for allowing the uncontrolled distribution and manufacturing of bugging and debugging equipment. It is subsequently argued that the electronic security industry should be broken down into smaller compartments and specific sectors of this vast industry should be regulated. If one looks at the comparative analysis (Annexure A), the following

should be included:

- Companies and individuals installing and repairing security equipment such as alarms and CCTV cameras
- Companies and individuals monitoring the signals from the mentioned security equipment such as alarm equipment
- Manufactures and distributors of bugging and debugging equipment, including covert video recorders and photographic equipment.
- Companies dealing in the computer security environment.

It appears if the final answer to this issue, will be to determine whether a difference can be made between trying to regulate the standards of the officers and the standards of the equipment installed. Considering the vast impact of this industry on the rest of the security industry in terms of their functionality, eg. radio equipment, monitoring equipment and other electronic security measures, it becomes obvious that one can't distinguish between the regulation of the standards of either the human security "equipment" used or the electronic security equipment installed. Two very conspicuous examples why this is stated, is the case of cyber security / cyber crime and the issue of false alarms and the subsequent issue of armed response to signals received from electronic alarms.

5.3.1 **The cyber industry**

Cyber or computer crime is one of the developments which came with the advancement of the computer industry as a whole. As a result of this, the efforts to secure one's computer environment against would be intruders, can't be separated from the rest of the Private Security Industry.

The National Centre for Computer Crime Data (NCCCD), predicted that in 1991, the most frequently used technologies would be access control (75% of all users), secure networks (61%), secure data base management systems (57%), audit analysis aids (54%), and anti-virus products (53%). The following table (Table 5), reflects the growth in terms of users of computer security technology in the United States between 1985 and 1991 (Cunningham et al:1990:63):

TABLE 5.3

USE OF COMPUTER SECURITY TECHNOLOGY: 1985 AND 1991

Technology	% of users 1985	% of users 1991	% of increase
Mainframe / Mini Access Control	61%	75%	123%
Smart Cards	5%	36%	720%
Call-Back Modems	17%	43%	253%
Data Encryption Standard Equipment	19%	47%	247%
Advanced Encryption	3%	29%	967%
Intrusion Detection Systems	8%	31%	388%
Audit Analysis Aids	19%	54%	284%
Secure Operating Systems	19%	57%	300%
Secure Networks	10%	61%	610%
Secure Database Management	11%	57%	518%

Anti-Virus Products	1%	53%	5300%

Source: Cunningham et al:(1990:63)

According to the Federal Bureau of Investigation, Computer Economic Inc. (Vatis:1999:1 - 4), estimated that damages in the first two quarters of 1999 from viruses has topped US$7 billion. Vatis continue by identifying the following spectrum of threats in the cyber environment:

- Sensitive intrusions
- Information warfare
- Foreign intelligence services
- Terrorism
- Criminal groups
- Virus writers
- Hactivism (politically motivated attacks on public accessible web pages)
- Recreational hackers
- Insider threat

It is not implied that South Africa is under a similar scale and type of attack in our cyber environment. What is merely stated, is the fact that similar to the changing face of policing in the modern society, there is already a changing face to the private security environment. The reality that it is not as visible as guards, armoured cars and armed reaction units, does not make it any less a part of the private security

environment.

According to the Hallcrest report (Cunningham et al:1990:79), it is important to respond to any threat or perceived threat with a carefully measured response. Although the statement made in the Hallcrest II report refers to the issue of counter-terrorism, it can also be used in the context of deciding what should be regulated and what not.

Moreover, by taking into account that the South African Government is mainly responding with new legislation for the regulation of the Private Security Industry based on their fears and perceptions of the industry (as discussed in Chapter 3), the scope of regulation should be based using the indicator of a "measured response". Nevertheless, by taking Government's fears into account or by taking the route of a more clinical approach in terms of regulating the standards in the industry or the protection of the public, one can't see the exclusion of the computer security environment. This environment should include individuals and companies involved in the following aspects:

- Password authentication
- The implementation and design of firewalls
- Data encryption
- Secure E-mail (SMIME)

- Secure Socket Layers (SSL)
- Digital Signature
- Digital certificates
- Secure Electronic Transaction
- Secure Messaging
- Smart Card Authentication
- Network Security Administrators
- Providing overall security architecture

A movement in this direction has already manifested in the form of draft legislation in the State of Oregon (Oregon Revised Statutes: Polygraph Examiners; Investigators), USA. In the USA, the Computer Network Privacy Bill requires all operators of computer networks to keep records on network users. These records include the identity of and personal information about an individual and are available to other users of the network. If a person's information is retrieved by a network user, that person will be informed that his or her information had been accessed.

5.3.2 **The alarm industry**

Alarms could be regarded as one of the most affordable and accessible aids for crime prevention. According to the British Security Industry Association (BSIA) (Finney:199:no page number), Britain experienced more than 1,6 million burglaries at domestic dwellings in 1997. It furthermore states that according to the British Crime

Survey in cases were burglaries were attempted, 59% were unsuccessful if an intruder alarm was installed on the property. This highlights the need for regulation of the whole spectrum regarding the electronic alarm industry namely the installation, selling, distribution and monitoring of this equipment.

According to the Report of the Task Force on Private Security (1976:165):

> "The most common problem with most types of alarm systems is false alarms. This drawback has lessened the alarm system's role in crime prevention. But it is not a problem without a remedy, because experience has demonstrated that where strict control by municipal government over alarm users exists, statistics show a reduction in false alarming."

The Hallcrest Report II (Cunningham et al:1990:282), estimated that by the end of the 1980's approximately ten percent of all residential properties had its own alarm system. They estimated that the number would double by the year 2000. Although there are no statistics available as to the percentage of South African households with alarm systems, it would be safe to assume that the percentage of house alarms in South African homes, especially in the traditional White residential areas has long since exceeded 20%. Alarms in South African homes, largely because of pressure from insurance companies, have effectively become the rule rather than the exception. What is however similar to the South African situation, is the fact that the alarm industry is not a cohesive, easily identifiable group. Alarm systems differ widely in size and

complexity, components used, clients serviced and business practices.

According to Von Arnim (Ottens et al:1999:94), only 15,2 percent of all households in America are protected by household alarms. From this total only 20 percent is connected to a control centre. The USA figure, is however, far higher than the European figure. John Finney, Technical Manager at the BSIA (1999:no page number), solicits for the British Standards authority to fall in line with the alarm standards set in the European Union. This is an indication of the attention given to the issue of standards of security equipment in Europe.

The major difference between the situation in the United States and in South Africa, is that the USA is now only in the process of contracting reaction to alarms to the private sector i.e armed response. In South Africa, armed response has developed in tandem with the alarm installation industry. The South African Police Services has, however, because of human resource and financial restraints, gradually stopped reacting to alarm signals received from private security companies. Some SAPS stations have stated clearly that they do not react to signals received from private security companies.

Irish (1999:23), states that according to the SAPS, 99,5 % of all alarms Police respond to, are false alarms. The SAPS furthermore stated that they were concerned about elements within the Private Security Industry which was not part of a recognised security association and furthermore did not maintain adequate standards. According to the SAPS in KwaZulu-Natal (Irish:1999:23), about two hours of the average police

officer's working day are wasted running around in response to false alarms belonging to private security companies.

5.4 The scope of regulation in the manned guarding sector

There seems to be no disagreement between the South African Government and the Industry with regard to the inclusion of the manned guarding sector into the proposed regulatory framework. The manned guarding sector forms the largest part of the Private Security Industry and has furthermore proven to be that part of the Industry, apart from the electronic security component, that has not yet reached a point of saturation in terms of market demands.

5.4.1 Defining the guarding sector

As was the case with the electronic security industry, the guarding industry needs to be well defined to ensure that all relevant services are included within the guarding sector and without any discrepancies. It would also be required to adhere to the standards set by the relevant Standards Generating Body (SGB) and the South African Qualifications Authority (SAQA). The Security Industry Regulation Bill (Bill 12 of 2001), refers to the guarding industry as follows:

- Protecting or safeguarding a person or property in any manner
- Providing a reactive or response service in connection with the safeguarding of

a person or property in any manner

The first reference clearly includes all forms of contract security, but erroneously it does not specify the different categories found in the broad manned guarding industry. The Bill goes a long way in eliminating any potential disputes regarding the inclusion or exclusion of these services, such as:

- Armed guarding,
- Unarmed guarding eg. car guards
- Cash-in-transit,
- In-house security guards,
- Body guards,
- Door supervisors or bouncers; and
- Dog handlers.

By listing the services mentioned above, the Bill addresses a gap previously identified in the Security Officers' Amendment Act (Act 104 of 1997). Comparative research has shown that the identification of specific occupations within a sector of the Industry, is the preferred option.

The second reference only includes the armed response sector. This is some improvement on the Security Officers' Amendment Act (Act 104 of 1997), Section 1(a), which only has a broad reference to the protection or safeguarding of people or

property because of the specific reference to the armed response sector.

There are definite advantages to specifying the sectors in the Bill, as opposed to "implying" the inclusion of certain sectors. These advantages include the following:

- There is no possibility of confusion as to what needs to be registered with the regulatory authority and what not,
- The relevant Standards Generating Body will know exactly which careers exist within this specific sector of the Industry and will thus be able to prepare specific standards for the careers and career paths for each specific job.

A classic example where the broad definition in the Security Officers' Amendment Act (Act 104 of 1997), has been attempted to be exploited by operators in the Industry, was the effort by industry giant, Fidelity Guards, to have the CIT employees demarcated as part of the transport sector and not the security sector (Fidelity Guards Holdings vs. Ronan, SOIB and the Minister for Safety and Security. Case 99/29987. High Court of South Africa). If Fidelity Guards were able to succeed in their application to the High Court, it would have effectively meant that employees were no longer required to have certain minimum qualifications, or to undergo a check in terms of criminal records. By implication the interests of the public would not have been protected.

Secondly, in terms of the careers and career paths for security officers, by naming the specific jobs within the broadly defined sector of guarding, it will enable the SGB to

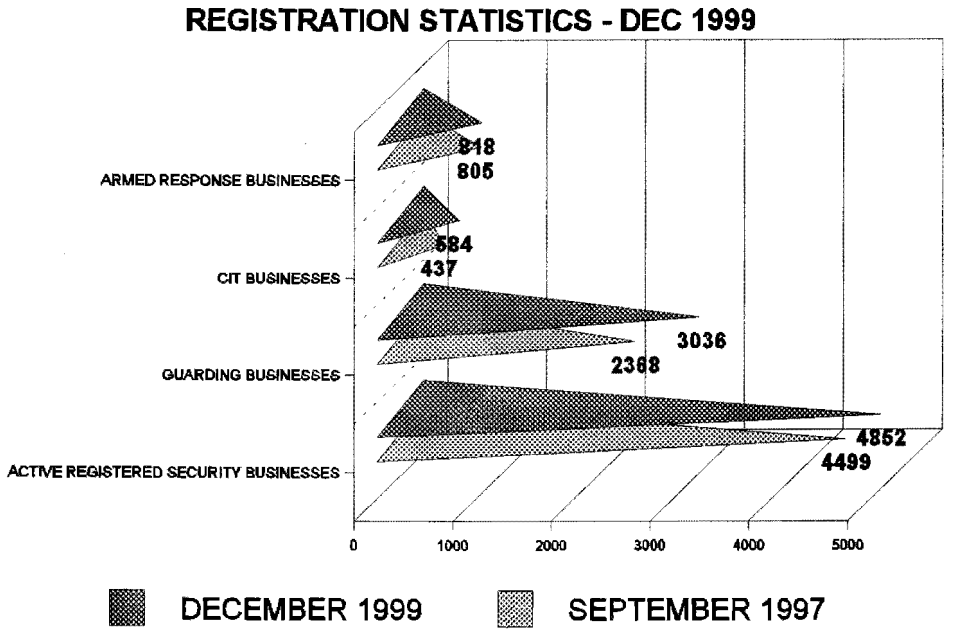
draft standards for each separate job description. The result of this will eventually mean that the current Grade A to E categories will be replaced with specific levels within each separate job description. It will in addition also mean that if a company wants to recruit body guards for example, they will eventually be able to select from specifically trained individuals and not from a broad category such as a Grade E or Grade D guard.

To summarise the issue of defining the scope of the manned guarding sector, it appears as if the proposed new definition in the Bill (12 of 2001) is clear enough. It would however have been enhanced if the specific services were mentioned. It is also proposed that cash-in transit services should also clearly defined as a separate category, as it has definite training requirements and appears to be the part of the sector mostly targeted by criminals. It is also arguable whether Closed Circuit TV surveillance and alarm monitoring can be included in the manned guarding sector, as proposed in the George-Button model. These services would be regulated more efficiently in the electronic security sector, where the operators are working in close co-operation with the technical environment.

5.4.2 **Scope of the guarding sector**

According to statistics provided by the Security Officers' Interim Board in February 2000, the broad industry has shown the following trends (Figure 5.4) since September 1997:

FIGURE 5.4



Source : Adapted from SOIB statistics (2000)

From the above statistics, it is clear that the guarding Industry, which according to these statistics was seen as a separate entity to the cash-in-transit (CIT) and armed response sector, is currently still experiencing a consistent degree of growth. The growth is both in terms of the guarding sector itself and the percentage of the overall market share. The guarding industry has grown by 9,9% from 1997 to 1999, as opposed to the decline of 2,3% of the CIT industry and the 1% of the armed response sector. The guarding sector has furthermore increased its overall share in the marketplace from 52,6% of registered security businesses to 62,5% in 1999. The

statistics with regard to the CIT and the armed response sectors, show an apparent decline. It should however be taken into account that the mergers of companies could have played a large role in influencing these statistics. In other words, although a decline in the number of active companies in these sectors is reflected, it is very possible that the same number of individuals are still employed by these sectors.

The growth reflected regarding the guarding sector, however, is most probably because of ever increasing demand for guards, armed or unarmed. Phenomena such as security villages, fenced-off suburbs and guards both within and outside shopping centres and parking garages have automatically increased the demand for service from this sector. These sentiments are echoed by Stenning and Shearing (c1980:228), when they remark that the size of the industry is not the reason for the attention given to this sector of the industry. They argue that of much greater importance is the pervasiveness of this sector. The probability that a person will thus encounter a private security officer in his day to day living, is greater than the probability to encounter a public police officer.

5.4.3 **In-house security**

One can't discuss the issue of the manned guarding sector, without taking in-house security into account. In the South African context, it can be safely said that both the security industry and the Government have realised the need for inclusion of this sector into the regulatory scope. In the Security Officers' Amendment Act (Act 104 of 1997), Section 1(b), the in-house sector was clearly excluded. This Section stated that: "

[security service] ... does not include such a service rendered by an employee on behalf of his employer."

During the Interim Board's seminar where the discussion document on the future regulation of the industry was debated, support for the inclusion of the in-house sector was echoed by a wide spectrum of the industry, including Ian Puller (Interim Board Member), Jenny Ibbotson (Gray Security), Harry York (Sentry Group and SAIDSA) and Randall Howard (T&GWU) (SOIB:2000c). From the business environment, and specific SACOB, there were indeed conflicting views regarding the inclusion of the in-house sector.

According to Bryan Adams (SOIB:2000c:46); "... there are obviously some very powerful organisations in and around organised business that are still trying to possibly prevent the inevitable from happening." The "inevitable" Adams is referring to, is the inclusion of the in-house sector into the regulatory framework. In addition, Adams states that the official view of SACOB is that in-house security should be included in a future regulatory framework because there is a "strong consumer view" to include the mentioned sector. This statement made by Adams, once again underlines the need to make a distinction between protecting the public's interests and protecting the consumer's interest - as they do differ.

The international comparison[2] revealed that most countries did not include the in-house sector in their regulation. It is only included in Virginia and Texas in the United States and Denmark. The British Government has proposed that it should be included in their planned legislation. It should also be noted that Virginia and Texas legislation only make provision for the inclusion of in-house security if the mentioned guards are armed. In China (Guo:1999:43), reference to "in-house" security means any private security other than security services provided by the public sector. Since 1994, the "in-house" security in China is being controlled by a national professional organisation, the Security Service Company (SSC). The SSC is controlled and led by the national police and has total control over training and recruitment aspects. In Australia, only two of the eight states have legislation which controls the activities of in-house security companies. These two states are Southern Australia and New South Wales (Prenzler and Sarre:1999:10).

According to Yoshida (1999:242), the Private Security Industry in Japan is functioning under Government control through the National Police Agency (NPA). The Japanese reference to in-house security is also somewhat different to the "accepted" Western definition of in-house. The Japanese refers to the placing of security guards on inter alia the production lines of factories. These workers have to execute both their production function and also fulfil their policing function. The Private Security Industry in Japan was boosted when a vacuum was created with the increased need for

[2] Annexure A at the end of Chapter Four

security officers who were not also required to fulfill a role in a production line.

5.4.3.1 **Implications of inclusion**

There are a number of important aspects which should be taken into account with the proposed inclusion of the in-house sector. This inter alia includes the continued relationship between the private security legislation versus the National Key Points Act (Act 102 of 1980) and the admission criteria for the in-house sector in terms of training standards. In addition, one would also need to ask questions regarding the placement of current in-house security guards on a ranking system in terms of training standards (Grade A - E).

The National Key Points Act (Act 102 of 1980), clearly states that all persons employed at a NKP are under the authority and regulations set by the Minister of Defence. It has also been highlighted that NKP guards are given more powers than the ordinary guards, especially in terms of search and seizure. Clearly, if one adopts a narrow approach to the definition of what constitutes a security service in the Bill (12 of 2001), it is clear that security officers deployed at NKP's should also fall under the regulatory control of the newly constituted regulatory body. The question posed is: Will the NKP guards still be considered as an exemption to the rule, or will they be included in the regulatory scope?

If it is still the intention to regulate the NKP guards under separate regulations than

those in the rest of the industry, it should be clearly stated in the Security Industry Regulations Bill (Bill 12 of 2001). It should also be considered that the National Key Points Act (Act 102 of 1980), should then be amended to include the specific entrance requirements both for individuals and companies, as required in the Bill (Bill 12 of 2001). If this is not done, it will inevitably create a similar situation as is currently the case with in-house companies, namely that the State itself undermines its own legislation by not being consequent in the implementation of standards and regulations. The rules and regulations with regard to guards deployed at NKP's should, by nature of the task at hand, be a higher standard than the rest of the industry.

Apart from the fact that there is no accurate estimation of the size of the in-house sector, there is also no official indication of the level of training which exists in the in-house sector as opposed to the Private Security Industry. Irish (1999:3), estimates that the industry consists of approximately 60 000 individuals, whilst Bosch (1999:16), estimates that the in-house sector could be as large as 170 000. The actual figures regarding the size of the in-house sector could in fact be regarded as irrelevant, as this sector will be included in the scope of the new regulatory authority. It will, however, be interesting from a comparative analysis point of view. The actual figures, once registration of this sector becomes compulsory, will give a true reflection of the ratio between private security and public police strengths.

5.4.3.2 **The implication for local government security structures**

The question being asked, is: Will the inclusion of the in-house sector have an important bearing on the future of local government security structures? Marais (2000:2), argues that because local authority security structures are not profit driven, they do not qualify as security services under the proposed definition for the latter as drafted by the SOIB. Local government security structures are thus by default excluded from the wider regulatory scope. Marais continues by arguing that local government security services are furthermore not rewarded for the services they provide and for this reason further excluded them from the Private Security Industry and the in-house sector.

According to the Bill (12 of 2001), the above arguments by Marais, do not justify the exclusion of local government security structures from regulation. It is clearly stated that a "security service" includes *protecting or safeguarding a person or property in any manner.* What is, however, a valid argument for the exclusion of local government security structures, is that these structures are part of the third level of Government and could for that reason not be regarded as a private security enterprise. The only circumstances under which private security companies deployed at local government security structures will fall under the regulatory scope of the new regulatory authority, is when services are contracted out to individuals other than those employed by local government. The main difference between local government security structures and other in-house security structures, is that the former employees

of these structures are indeed Government servants and not plain civilians. This is also clear in the South African Police Amendment Bill (Bill 39 of 1998), Section 64F(3), which states that:

> "Every member of a municipal police service is a peace officer and may exercise the powers conferred upon a peace officer by law within the area of jurisdiction of the municipality in question ..."

It is thus apparent that municipal police will have more power than the normal security officer, who does not have any more power than an ordinary citizen, apart from the security officer deployed at NKP's.

The Bill (Bill 39 of 1998) in Section 64E(c), also proposed the extension of the municipal police's role to the prevention of crime. This Section is to some extent in contrast to the proposed Section 64A(5), which states that the establishment of a municipal police service shall not derogate from the functions of the SAPS or the powers and duties of a member in terms of any law. The reason for arguing the existence of the contrast, is that crime prevention is in essence the SAPS's function. If the municipal police is to become responsible for crime prevention, how will it ensure that they are not going to infringe on the legal mandate of the SAPS? One of the possible answers will be to distinguish between crime prevention and crime investigation, with the latter being the sole responsibility of the SAPS. Municipal police will eventually be better equipped to deal with crime prevention, than would be

the case if they were to play a supporting role to the SAPS only.

In terms of the training standards of the municipal police, there is also a large difference in comparison with the Private Security Industry. This difference is underpinned in Section 64L (1), which states that the National Commissioner of the SAPS will be responsible for determining training standards. Currently, the Interim Board is responsible for the establishment of training standards and the Security Industry Regulation Bill (Bill 12 of 2001) in Section 3(j), also states that the new regulatory authority will be responsible for regulating and enforcement of training standards.

This issue raises an important question. Should there be a difference between the training standards of the Private Security Industry and the municipal police force if both these entities are involved in providing the same basic service namely the prevention of crime and protection of the public?

The SGB for Security has already been established. For this reason, it can't be that different bodies could be held responsible for the regulation of training standards in the two different environments. The Police Service Amendment Bill (Bill 39 of 1998), should thus rather provide for the standards to be determined by SAQA and not the Commissioner. This will result in the different occupations in both sectors, as well as in-house security, to be compatible as they are all on the same standard of training. The result will not only be positive in terms of setting the entry standards for every

occupation, but will also be a valuable asset when a joint operation for instance is planned between the public and the private sector, or when certain services need to be contracted out.

The last issue with regard to the Bill (Bill 39 of 1998), is that of the civilian supervision of the municipal police. The Bill specifies in Section 64(A) and (J) that a civilian committee must be appointed to oversee the activities of the municipal policing structure. This proposal is also in line with the proposal of Government to have an independent regulatory authority for private security. Similarly, the SAPS has the Independent Complaints Directorate as a civilian watchdog organisation.

5.4.4 **Car guards**

The inclusion of car guards has been raised by the SOIB in the policy document in their effort to open up the discussion as wide as possible with regard to what should be specifically included in the new regulatory scope. According to the Interim Board (SOIB:2000b:105):

> "The Interim Board has taken note of reports which suggest that the crime rate has generally gone down in places or areas where car watch activities are performed. Regulation should thus not be of a nature that these activities are discouraged. On the other hand, the public needs to be protected against the possibility that those with a proven criminal propensity act as 'car guards'.

> There have also been reports of gross exploitation of 'car guards' by some unscrupulous operators. It must be clear from all this that some form of regulation over car watch activities is required."

Two important issues are raised by the SOIB. One, the fact that the so-called car guard sector also has a criminal element amongst them. Incidents reported in the media such as the 1999 raping of a young girl by a group of car guards in Hatfield, Pretoria, underline these fears (Beeld:8 March 1999, Beeld 12 March 1999).

Two, car guards are being exploited by individuals, and thus require some protection from Government and the Industry. According to a report in the Mail and Guardian by Mabe and Deane (2000:15), car attendants in some Johannesburg suburbs are being charged as much as R10 a day to wear security-company vests. The Mail and Guardian further reported of incidents where car guards are paying up to R30 per day to secure their security-company vests.

Government, in the policy document on the future regulation of the Private Security Industry (Department of Safety and Security:2000:29), differentiates between the unemployed and the informal provision of these services and those provided by companies. The policy document only refers to the inclusion of the latter. The reason for excluding the unemployed and the informal sector, is because it would place an unnecessary financial burden on these individuals and furthermore it would be impossible to police this sector of the industry. The fact that the Policy Document does

not attempt to address the problem of the informal and unemployed sector, creates a loophole for unscrupulous operators to continue their operations.

The arguments contained in the policy document, deviate from the principles accepted and promoted by both Government and the Industry with regard to the objectives of regulation. Firstly, it specifically deviates from the principle of protecting the interests of the public. In this case the public refers to the general public who are almost "manipulated" into making use of these services provided by the unemployed and homeless. Secondly, the informal sector is not being protected from being extorted by unscrupulous operators.

It has already been determined[3] that in the informal sector, car guards have to pay between R10 and R30 per day for the "right" to be a car guard. The amounts payable per day, are exuberant in comparison with the amount of R7,98 per month payable by regulated[4] security officers to the SOIB. Government's argument that regulation will place unnecessary financial burden on these guards, is not true.

The policing of this sector can become a problem if the unemployed and informal sector are allowed to stay part of the car security industry. The answer of regulating this sector does not lie with the differentiation between the formal and the informal

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3 Referring to the Mail and Guardian articles written by Mabe and Deane

4 In this case "regulated" should be read as "protected"

businesses. The answer should rather be found in who should be made responsible for the regulation of this sector. From a practical point of view, with specific reference to the control of standards and the policing of this sector, it would most probably be effective to include this sector under the municipal police structures. My view is that companies and individuals who want to provide car-watch activities, should do so under contract from the local authority. Such a decision could have the following advantages:

- Local governments, in co-operation with the regulating authority, the SAQA and the Minister for Safety and Security, could establish a uniform criteria for the standards to be met by both individuals and companies in this sector
- Local governments could only make use of the unemployed sector. These individuals could become either council employees or contract workers. This will result in job creation and also the formal training of these individuals who could prepare them for other more structured employment, thereby adding to the Skills Development Program of the country. Car guards could be trained to the current Grade E level for security guards.
- If these individuals are employed by Councils, they could be trained in a number of other aspects such as monitoring of parking meters and issuing of parking tickets. Councils could even consider creating a dualistic approach of creating a job such as parking attendant who will have to both enforce payment of parking fees and visible security in parking areas. This will also enable normal traffic officers to be deployed to road policing and not to policing of

parking offences.

- Additional income can also be created for Government in terms of taxes. According to Mabe and Deane (2000:15), car guards earn between R30 and R100 per day. If one takes an average of R50 per day, they earn approximately R1500 per month, tax free. This amount is more than the minimum salary in a number of occupations in the formal sectors.
- Based on the sheer number of workers employed in this sector, the visible crime prevention efforts could be effectively enhanced.

The car-guard sector could hence be excluded from the regulatory control of the Private Security Industry, but should be regulated otherwise as this sector could develop into a very important tool of crime prevention and visible policing. From the above-mentioned points, it is clear that this sector could be best regulated in the local authority environment.

5.4.5 Cash-in-transit operators

The issue of cash-in-transit (CIT), has been a controversial issue in the South African private security environment. This sector has notably been one of the sectors which has directly questioned the scope of the current regulatory framework and has even challenged the SOIB in a High Court case. In Chapter Four it was found that the CIT sector is possibly the sector which most needs regulation because it does not only place its own employees in danger owing to the nature of their work, but also the public in

general. This sector thus needs special attention within the regulatory environment. By definition, the CIT sector clearly falls within the scope of the current and the proposed regulatory framework. The High Court (99/29987), however, in *Fidelity Guards Holdings vs Ronan, SOIB, and Minister for Safety and Security*, found that the CIT sector does fall within the scope of the manned guarding sector and hence under the regulation of the SOIB or the new regulatory authority.

Internationally[5], the CIT or armed escort sector is seen as part of the manned guarding sector. In British Columbia (Canada), Virginia and Texas (United States), New Zealand and in Norway, Sweden, Denmark and Finland however this sector is separately mentioned in their legislation.

George and Button (2000:58), in their analysis of the CIT sector in Britain, found that there are fundamental differences in the structure and characteristics in this sector and in the problems associated with it. One of the events in Britain which led to the expansion of the CIT sector, was the establishment of the National Lottery. With the launching of the lottery in South Africa during the beginning of 2000, one can expect a number of small merchants who previously did not make use of this service, will contract with this sector to collect the large sums of money spent on a weekly basis.

5 Annexure A

In their analysis, George and Button state that there is a clear distinction between the CIT sector and courier industry. This distinction is mainly based on the fact that CIT businesses *always* carry valuables, as opposed to the courier industry which only sometimes carries valuables. The CIT sector thus always needs special protection when they operate. This special protection includes heavy weaponry and armoured vehicles. Based on their observations, George and Button (2000:59), attempts to define the CIT sector as follows:

> "The provision of secure transportation services for valuables such as cash, coins and precious metals by predominantly full-time uniformed personnel in specially adapted vehicles."

In South Africa, with the process of new legislation still in progress, one would be tempted to include such a definition. There are, however, two issues of debate in this definition as proposed by the above authors. Firstly, the specific reference to *secure transportation* is problematic as this reference was used as the main argument by Fidelity Services to exclude the CIT sector from the regulatory scope. According to the Fidelity Services' submission (FCS:2000:6) to the SOIB:

> "FSG maintains its position on the cash-in-transit sector. This sector should not be included in the Act, as a demarcation ruling has been made that it falls under the transport sector and not the security sector."

Consequently including a definition for CIT under the proposed definition for security services, could result in renewed attempts to exclude this sector from the regulatory scope. In addition, is the reference to *specially adapted vehicles*. This, similar to the *secure transportation* reference, is an exclusionary reference. In other words, the reference could once again create the situation whereby companies or individuals who do not make use of specially adapted vehicles, would argue that they fall outside the regulatory scope.

Despite CIT operators in England and Wales not required to register with any regulatory body, these companies have subjected themselves to their own regulatory standards under the BSIA. Owing to the fact that a CIT company can lose up to a quarter of its total business when it loses a bank as a client, the standards in the industry are very high. The standards are furthermore "forced" by the insurance companies of these CIT operators. Some of the aspects which are taken into consideration when assessing the standards of the operator, include (George and Button:2000:61):

- Submission of audited accounts, sufficient insurance cover and a central administrative office
- Proper vetting of staff and adequately protected vehicles
- Relevant training standards
- Able to demonstrate proper operational procedure
- Able to produce all the proper documentation

The regulatory structure created by the British CIT sector, is problematic in the sense that it is the industry which regulates itself - the same issue which is perceived as one of the main problems in the South African Private Security Industry. In addition, without having access to the specific standards set by the BSIA, there is no indication as to what is meant by words such as *proper vetting, adequately protected* and *relevant training standards*, as these are terminology created in the absence of a national Government sanctioned standard.

In the United States, according to the Hallcrest report (Cunningham et al:1990:182), the armoured car segment is likely to be the most mature segment in the service sector. It has experienced substantial consolidation over the years, primarily because of mergers and acquisitions of armoured car companies. This phenomenon is similar to the situation in South Africa, where a small number of companies are dominating the market. A part of the banking industry even has their own CIT business. Another additional similarity to the US situation, is that most of the CIT businesses have diversified and also specialise in providing guarding services.

According to the Hallcrest Report II (Cunningham et al:1990:178), the CIT sector has both the highest annual revenue turnover and the highest number of employees per company in the US security industry. These figures are US$ 10,7 million and 214 employees per company respectively. The sector being the closest competitor, is the manufacturing sector with US$ 5,7 million and the guarding sector with 52 employees

per company. In the Nordic states, the CIT sector is also one of the leading, if not the major component of the security industry. According to Securitas AB (1999:24), the total market for CIT in Europe and North America is worth SEK 36 billion. Europe accounts for SEK 22 billion and North America SEK 14 billion. Opposed to the view portrayed in the Hallcrest Report which states that the CIT sector in the US has started stagnating, Securitas implies that the CIT sector is growing at an annual rate of 10 percent. This projection given by Securitas, appears to be higher than the real growth rate. As indicated earlier in this Chapter, the South African scenario only reflects growth of approximately 2,3 percent per annum.

5.4.6 **Other forms of manned guarding**

In addition to the large sectors discussed in the guarding sector, namely the contract security, in-house sector, car guards and cash-in-transit, there are a number of smaller sectors within the manned guarding sector which also warrant some discussion.

5.4.6.1 **House-sitters**

One of the forms of manned guarding which needs to be addressed, is that of the so-called "house-sitters". House-sitters refer to services rendered to inter alia banks to safeguard properties which were re-possessed and are unoccupied. According to the SOIB (2000b:106), the argument, mostly from Government, which is sometimes raised that a house-sitter is nothing more than a caretaker and should thus be excluded from

the regulatory scope, is not convincing. There is a significant element of safeguarding people and property involved. The Government in their policy document, once again distinguishes between individuals and contract guarding and states that only contract guarding should be included under the regulatory scope.

Although the size of this sector is unknown, by definition it can't be excluded from the regulatory scope. The imminent inclusion of in-house security, will also force banks and other businesses to have their house-sitters registered with the regulatory authority.

5.4.6.2 **Bouncers, crowd controllers and VIP protectors**

The activities of bouncers, crowd controllers, and VIP protectors, can't be excluded from the new regulatory framework. This statement is made on the basis of what is defined as a security service in the Bill (Bill 12 of 2001), namely *protecting or safeguarding a person or property in any manner.* According to George and Button (2000:60):

> "Door supervisors (or 'bouncers' as they are more commonly known) and stewards are often regarded by the mainstream of the private security industry as a peripheral sector, and possibly not part of the industry at all. A deeper analysis of their activities, however, reveals that they have clear security roles ... they are all engaged to varying degrees in order maintenance, crime prevention, loss prevention and protection."

The authors continue by stating that the activities of door supervisors contain all the core activities identified as being part of the manned guarding sector, namely: guarding, patrolling, searching, surveillance and the enforcement of rules and the law. These issues mentioned by the authors are from a theoretical point of view, enough to make out a case for the inclusion of this sector into the regulatory scope. There are however, other, more practical issues which make the inclusion of this sector of utmost importance. These include the historic and well-reported involvement of bouncers in the drug trade and violent attacks on individuals. A number of allegations have been made in the South African media regarding the involvement of bouncers in the urban violence in the Western Cape. Although the media articles could not substantiate their claims, they were adamant that bouncers were involved in a drug war in the Western Cape leading to violence (Die Burger:13 Oct 1999, Die Burger: 30 Sep 1999, Die Burger: 14 Oct 2000, Rapport:5 Dec 1999).

The South African scenario is not uncommon. According to George and Button (2000:64), the door supervision sector displays some of the worst problems associated with any sector in the Private Security Industry. This situation has led many large town and cities in Britain to some kind of regulatory scheme which is connected to the Public Entertainment Licence. During 1991, the town of Newcastle-upon-Tyne experienced 91 incidents of door supervisors involved in "gratuitous violence" or drug related offences. After the introduction of a door registration scheme, there were only 38 incidents in 18 months with the introduction of a regulatory scheme. Door supervisors can also become part of the fight against crime. One such example is that

of Northampton (George and Button:2000:1), where door supervisors are being used to collate information and evidence to be used in court cases, searching of customers, patrolling of the club at regular intervals and dealing with suspected cases of drug use and selling.

According to an example in the Home Office's proposals for the regulation of private security in England and Wales (British Home Office:1999:5):

> "The Policy Research Group paper 'Clubs, drugs and Doormen' found that in Liverpool and Newcastle door staff and criminal groups were controlling drug dealing in clubs. Consideration of the background of door supervisors in Northumbria revealed that 25 individuals had a total of 54 convictions for violence including murder and manslaughter. Other convictions included arson, threats to kill, kidnap, false imprisonment, firearm-related offences and handling stolen property."

Despite the SOIB's proposal that this sector should be included in the regulatory scope, it is not mentioned by name in the Bill (Bill 12 of 2001). This sector will require specific mentioning to ensure inclusion in the new legislation. As is the case with car guards, this sector of the industry could be a valuable asset in terms of crime prevention, specifically drug-related crimes.

Apart from the bouncing sector, VIP protectors and crowd controllers, should be

mentioned specifically in the new legislation. The reason for arguing along these lines, is that both the mentioned sectors are in continuous contact with the public and should thus maintain a high standard of training and professionalism. It is furthermore argued that both sectors are also performing a function traditionally performed by the State and for this reason should be included in the regulatory scope.

5.4.6.3 **Dog handlers**

Dog handlers, owing to the nature of the duties and services they perform, are part and parcel of the guarding industry. The regulatory scope of Virginia (Code of Virginia: Statutes relating to Private Security Services) in the USA, New Zealand (Private Investigators and Security Guards Act) and all the Nordic countries (Hakala:1998:56), have specific references to the dog guarding and dog handler section of the industry.

George and Button (2000:56), goes as far as distinguishing between *generalist* guard dogs and *specialist* guard dogs. The *generalist* dogs refer to animals which only have to look vicious and bark under certain circumstances. *Specialist* dogs are those which are used in drug and explosives operations. They continue that only one dog-training company is licensed according to the Home Office to keep supplies of explosives and drugs for dog-training purposes. According to Hakala (1998:58-60), regulation of dogs and dog handling can be found in the private security regulations of all four Nordic countries. There are, however, some differences in the way these countries approach regulation. The notable difference is Sweden, which clearly states that dogs

are only allowed to be a mechanism for self defence and will not be allowed to search for people and bombs. The dogs are also not allowed to be left alone in a fenced area without supervision. In addition, the guard dogs are subjected to a number of tests and have to be inspected and earmarked by a veterinary surgeon.

According to Hakala (1998:57), Swedish regulations require that a dog handler must undergo an additional 40 hour training session, which includes the following aspects:

- Handling the dog in different guarding situations
- Keeping up and develop the dog's performance
- Understanding the reactions and signals of the dog in provocative situations
- Understanding the dog's defensive tendencies
- Controling the dog's behaviour in an attack situation

These facts produced by the above-mentioned authors, raise questions with regard to the South African situation. According to John Greyvenstein (SOIB:2000c:60), South African dog handlers are mainly subjected to the regulations of the Animal Protection Act (Act 71 of 1962) and the Performing Animals Protection Act (Act 24 of 1935). This situation means that there is currently no protection of the status of a security officer who is a dog handler. This sector should also be specifically mentioned in the proposed regulatory framework, to ensure there is no uncertainty regarding the industry which they belong to. An additional reason why the inclusion of this sector is important, is that dogs are mainly used at strategic points such as airports and NKP's.

This fact increases the need for the inclusion of this sector.

5.5 Occupations not included in the guarding and electronic sector

Apart from the numerous occupational groups mentioned above, there are other occupations which can't be "forced" into either of the two broad sectors. These specifically include locksmiths, consultants, polygraph examiners, prison security and independent contractors.

5.5.1 Locksmiths

In South Africa, there is no agreement between the Industry and Government regarding the inclusion of this sector in the regulatory framework. Government is proposing the inclusion of this sector, whilst the Industry argues that the inclusion will broaden the regulatory scope unnecessary. The SOIB argues (2000b:123), that the occupation of a locksmith does not fall within the definition of what constitutes a security service. Despite the fact that the George-Button model does make provision for the inclusion of locksmiths in their regulatory scope, the British Home Office (1999:3), did not include this occupational group in their policy document, but referred this occupation for investigation in future regulatory frameworks.

In British Columbia (Private Investigators and Security Agencies Act) and in Texas (Private Security Act), there are specific references to the occupation of a locksmith in

their regulatory frameworks. The Private Investigators and Security Agencies Act, of BC Canada, defines a locksmith as follows:

- Makes, services, repairs and codes or recodes locks
- Cuts, makes, sells or otherwise provides restricted keys
- Cuts, makes, sells or otherwise provides keys from numerical or alphabetical codes or both
- Sells, services or repairs safes, vaults or strong boxes, other than common strong boxes
- Is a member of a class of person designated by the Lieutenant Governor in Council as locksmiths for the purposes of the BC Act

The Private Investigators and Security Agencies Act, however, excludes persons as locksmiths under the following conditions:

- Codes or recodes locks of which he or she is the owner, or that he or she has sold, or
- Cuts, makes, sells or otherwise provides a key from a numerical or alphabetical code or both, if the key is intended for use with a lock he or she has sold and the key is sold or provided to the owner of the lock

The Canadian (BC) legislation goes further than only defining what constitutes the activities of a locksmith and what not. In Section 10(6), the The Private Investigators

and Security Agencies Act states that a person can't hold a licence as a security employee if he / she is in the employee of both a private investigator company and a locksmith company, or in the employee of a security patrol company and a private investigator company. The same approach is also followed in the Texas legislation where it is stated in Section 8 of the Private Security Act that a locksmith is only regarded as a security officer if he also services detection devices or does investigations.

It is clear that the purpose of these sections is to prevent security officers from obtaining such powers that it will allow them to infringe upon the rights to privacy of other citizens. In the South African context, it is proposed that locksmiths should be included in the regulatory scope, even if it is under specific instances, such as the cases mentioned in Canada (BC) and Texas (USA). According to Hakala (1998:71) only Sweden has some kind of regulation for locksmiths in the form of prohibiting the selling of picklock tools. This route followed by the Swedish regulatory authority is very similar to the proposal made earlier in this Chapter with regard to the selling of certain electronic apparatus such as bugging and debugging equipment.

5.5.2 Security consultants and advisors

According to the Concise Oxford Dictionary (1964:262) a "consultant" can be described as "seeking information or advice from a person" or "to take into consideration". If one places the broad meaning of "seeking information or advice

from a person" into perspective, it is clear that a person could even act as a "consultant" without being registered as a consultant. In other words, a discussion between security service providers on a specific issue could be regarded as consulting. Does this imply that a security service provider should be registered as both a service provider and a security consultant? Another possible scenario, is that a Government department such as the NIA, who is responsible to advise para-statals and other Government departments on their internal security issues, would be required to register with the new regulatory authority.

The calls for the inclusion of security consultants by both the industry and Government, are stretching the regulatory role beyond what is realistically possible for a regulatory body of any magnitude. The main reason is that "consultant" itself is such a vast and sometimes even illusive concept, that its regulation will not be possible. The best alternative, is the regulation of electronic installations salesmen, as suggested earlier in this Chapter. The reason why this option is possible, is that the latter are in almost all cases employed by a specific electronic installation company as opposed to consultants who are mostly self-employed.

5.5.3 **Independent contractors**

According to the SOIB (2000b:116):

"In terms of current legislation a person is only regarded as rendering a security

service by making someone else available for the undertaking of security work or if the former makes an *employee* available for this purpose. In the experience of the Board this principle is in urgent need of review and change."

This effort by the Board to include the so-called independent contractors, is an excellent example of how the regulatory authority can protect the interests of the public by regulating the standards in the industry. If the use of subcontractors is allowed, it will create the situation whereby fly-by-night companies and unscrupulous operators will be given the opportunity to misuse individuals without the protection of the Board or the Basic Conditions of Employment and Wage Determination Act (Act 75 of 1997).

Government's attempt to address this issue, is set out in Section 2(a)(i) of the Bill (Bill 12 of 2001), where it is stated that:

" [the Minister may] define for the purposes of this Act any service other than a service contemplated in the definition of *security service* in subsection (1) which a person renders to another person for remuneration, reward, fee or benefit, and which in the opinion of the *Minister* is in the interest of the occupation of the security officer in the Republic, or is connected therewith, as a security service."

This to a large extent addresses the problem, as it is no longer required that the person who renders his services to a security provider, must be an employee of the service

provider in order to be registered with the Board. The person who renders the service, is seen as providing a security service if he / she is doing it for *remuneration, reward, fee or benefit*. The subcontractor sector is thus included. Both the current Act and the proposed legislation however clearly state that no person is allowed to render a security service if he / she is not registered with the Board. In other words, the use of subcontractors is technically speaking not legal, especially where the guards are not registered or receiving the minimum wages.

One other possible solution to this problem, lies within the ambit of co-operation between the consumers and the regulatory body. This could be done through the creation of a mechanism whereby consumers could request the regulatory authority to indicate the minimum requirements to be met by a security company when tendering for delivering a security service.

The regulatory authority could inter alia comment on the registration statistics regarding the number of guards registered, level of their training, as well as the minimum wages to be paid to the different levels of guards. This will enable the consumer to have a good idea of what a realistic tender should be and could eventually lead to the situation where unscrupulous operators and fly-by-nights would be eliminated even before they are awarded a contract. This would not only protect the consumer, but also security guards from being exploited as well as the image of security industry as a whole.

5.5.4 Polygraph examiners

Both the South African Government and the Interim Board in their policy documents call for the inclusion of the polygraph sector in the regulatory scope. Arguably, there is no clear-cut argument why this sector needs to be included, other than the fact that this service is either regarded as an investigative tool and that a number of polygraphists are also private investigators. The George-Button model does not specifically refer to the inclusion of this sector, neither is it regulated in any of the countries used in the comparative analysis of this thesis. The SOIB (2000b:123), furthermore admits that a minority view of the Board, as well as in the submission received from Fidelity Services Group, the inclusion of this sector is not favoured.

An important argument in favour of the exclusion of this sector from the regulatory scope is that there is no real security service in the sense of protecting either people or property. An additional aspect is that the findings of polygraph examination is not considered as court evidence. Lastly, a person could also call upon the Bill of Rights not to be subjected to such an examination. It is thus argued that this sector should not be included in the new regulatory scope. It does not constitute a security service and furthermore, there is sufficient legislation to protect the public against the use of this equipment.

5.6 Training institutions

According to the Interim Board (2000b:119):

> "The function of providing training or instruction is so closely related to the actual provision of a security service that a person performing this function should also be required to register and be regulated. Various forms of serious malpractices in the security training industry have highlighted the need for comprehensive and improved regulatory control."

Once again, if one applies the basic definition of what constitutes a security service, one has to argue that training institutions do not fall within the scope of the proposed regulatory framework. Secondly, the reference to malpractices in the industry is a valid argument for regulation, but not necessarily by a regulatory authority. One will have to look at the possibility that the same body, namely SAQA and the relevant SGB's, who will in future be responsible for the setting of standards, should also be responsible for the regulation of the training institution. It is possible that a future private security regulatory body will only be responsible for regulation in terms of ensuring that the qualifications submitted by a prospective security officer, were indeed obtained from an accredited training institution.

One can question the need for additional regulatory mechanisms to deal with the training of security officers and other security industry related occupations if this

responsibility has already been awarded to SAQA.

5.7 Summary

In conclusion it can be stated that the proposed regulatory framework of the South African Government is very broad and all-encompassing. It is, however, too broad to be effectively policed and monitored. The hallmark of a proper regulatory framework should be that it addresses problematic issues as well as obvious issues, but to such an extent that the legislation is practical and executable. If one compares the proposed legislation with the George-Button model, it is clear that the legislation is too broad in its approach. It is also lacking because it does not provide for the proper regulation of the electronic security industry. In that way, the legislation still hasn't adapted to the modern face of the Private Security Industry.

CHAPTER SIX

REGULATING THE PRIVATE INVESTIGATION SECTOR

6.1 Introduction

In the previous Chapter, the two most visible sectors of the Private Security Industry, namely the electronic security sector and the manned guarding sector, were discussed. The third sector, namely the private investigator and private intelligence sector, can be regarded as the "dark horse" of the industry in a number of ways. This is the situation largely because this sector mostly operates in the peripheral area between legality and illegality, and is also associated with movie-like characters who have no regard for Government law-enforcement agencies.

Looking at the aspect of regulating private investigation and private intelligence companies, one has to consider that these industries have never been regulated in the South African context. This means that an opportunity exists whereby an excellent regulatory framework can be developed. This is mostly because a number of lessons have been learnt from the process to develop a regulatory framework for the Private Security Industry. Furthermore, numerous other countries also have specific legislation regarding this sector which could be adapted for the South African situation.

This Chapter looks at how to approach the task of including this sector in the proposed new regulatory framework, or alternatively, to propose development of alternative legislation to regulate this industry. This Chapter furthermore focuses mainly on the regulation of the private investigation sector. Only a short reference is made to the need for regulation within the private intelligence organisations, as the same principles would apply to both sub-sectors.

6.2 Defining the private investigator

According to Button (1998:1), there are immense problems in trying to define "private investigator", because there are other occupations competing with it by undertaking similar activities. The statement made by Button is valid, but as we will see later in this Chapter, it is possible to define the private investigator by indicating which occupations should not be regarded as private investigators. The reason for the reference to occupations and not activities, is that the investigative activities are performed by different occupations. The difference lies in the usage of the information obtained and the payment received for discovering information through investigative means.

Once "private investigator" has been defined, it should be determined which activities must be regulated. Specific reference is made to activities, as they are usually, in terms of human rights and state security, the aspects of importance which need to be

addressed. These include activities such as covert surveillance, both human and electronic, unlawful entry and the distribution of information outside the borders of South Africa or to foreign clients.

6.2.1 Basis used for determining a definition

For the purpose of this study, the focus is on the legislation of the United States of America, as it is currently the most comprehensive legislation available. From the sum total of American states, only six states do not have comprehensive legislation to regulate the activities of private investigators or private detectives. From the total of six states, four have no legislation and two states, namely Alaska and Wyoming have legislation in specific cities or municipal districts[1]. The four states which do not have any legislation are Colorado, Idaho, Mississippi and Tennessee.

In addition to the American legislation, comprehensive legislation also exists in New Zealand, Canada and Australia

6.2.2 What should the definition include?

The question is thus asked, what should the ideal definition look like? It is a difficult question to answer, as all definitions can be criticised and every person has his or her

[1] Source is Annexure B. The Annexure was compiled by the author after studying original legislation.

own perceptions as to what the basic elements should constitute the most accurate definition of a private investigator or a private investigation service. As stated earlier, in the case of defining a private investigator, it is also important to describe which services are excluded. One of the examples, is the preamble to the Act in Arizona (Private Investigator and Security Guard Act), which reads as follows:

"Private Investigator means a person *other than a insurance adjuster or an on-duty peace officer (own italics)* as defined in section 1-215 who, for any consideration, engages in business or accepts employment to furnish, agrees to make or makes any investigation for the purpose of obtaining information with reference to ..."

This is also the approach in California (Private Investigator Act), where a private investigator is defined as follows:

"A private investigator within the meaning of this Chapter is a person, *other than an insurance adjuster (own italics)* subject to the provisions of Chapter 1 (commencing with Section 14000) of Division 5 of the Insurance Code ..."

The State of Florida (Private Investigative, Private Security and Repossession Services Chapter), goes one step further in their approach. Excluding the fact that they distinguish between a private investigator and private investigation in their definitions, the State also takes into account the broader issue of crime prevention and

investigation. The Florida definition reads as follows:

> "Private investigator means any individual who, for consideration, advertises as providing or performs private investigations. This does not include an informant who, on a one-time or limited basis, as a result of an unique expertise, ability, vocation, or special access and who, under the direction and control ... provides information or services that would otherwise be included in the definition of private investigation".

An example of a definition of private investigator, is found in the New Zealand legislation (The Private Investigators and Security Guards Act), and reads as follows:

> "[a private investigator] means a person who carries on any business, either by himself or in partnership with any other person, whereby-
>
> a. At the request of any person as a client of the business and not as a member of the public or any section of the public; and
>
> b. For valuable consideration - he seeks or obtains for any person or supplies to any person any information described in subsection(2) of this section.
>
> (2) For the purpose of this section, 'information' means any information relating to -
>
> (a) The personal character, actions, or behaviour of any person; or
>
> (b) The financial position of any person; or

(c) The occupation or business of any person, or

(d) The identity or whereabouts of any person - but does not include information contained in a public record"

The New Zealand definition basically covers most of the activities one would like to regulate. Other definitions, however, go much further in describing all the activities engaged in by this fraternity. The Security Industry Regulation Bill (Bill 12 of 2001), Section 1(1), defines the activities of the private investigator as follows:

"[a person who]

- Investigates and furnishes information regarding the identity, actions, whereabouts, movements, affiliations, associations, habits, personal character, reputation, trustworthiness, loyalty, occupation, previous employment, integrity, creditworthiness, transactions, financial position, life-history or background of another person without the consent or knowledge of such a person; or
- Searches for someone who has or is alleged to have committed a crime, delict, breach of contract or other wrongful act, or for any evidence of such wrongdoing; or
- Searches for missing persons, property or other assets, or the cause or responsibility for accidents, injuries or damage."

From the number of examples provided describing what a private investigator is, and which activities constitute a "private investigation", it can be said that the South African definition is very descriptive and comprehensive. It does however not include the most important aspect of what does not fall within the definition of "private investigator". For example, does an insurance adjuster also need to register with the proposed new regulatory authority?

The argument is that the mere inclusion of this fraternity, or any other sector, in the definition of what constitutes a security service, does not add to the effectiveness of the regulation of a specific sector or occupation. It is furthermore argued that the new act should clearly lay down certain additional mechanisms a specific occupation should be regulated with. It is foreseen that this mechanism would focus especially on training requirements and minimum entrance requirements.

6.2.3 What a private investigator is not

As stated under the previous point, the importance of defining the scope of private investigation, could be found in defining what should not be regarded as private investigation activities. There are a number of reasons why this is important, namely that certain activities performed, such as Government security clearances, insurance fraud investigations, investigative journalism and Government informants could be required to register with the relevant regulatory body. It is not clear if Government

indeed wants insurance adjusters and pre-employment screeners to be registered or if the drafters of the Security Industry Regulation Bill (Bill 12 of 2001), did not consider certain job categories for specific reasons be excluded from the regulatory framework.

The best example at this point in time, is the reference to the activities of sources and informants. As the definition currently stands, it does not only include the activities of these individuals, but by implication the activities of the handlers and Government agents themselves. The fact that these individuals are employed by Government, does not automatically exclude them from regulation. The Bill (Bill 12 of 2001), subsequently will specifically have to mention certain employment groups for exclusion from the regulatory framework without creating a situation whereby all in-house investigators would be exempted from registration with the regulatory authority.

The Private Investigators and Security Guards Act of New Zealand, states that no person shall be considered to be a private investigator if he supplies information to the Crown, police or local authority. This inclusion into the New Zealand legislation is a clear effort to ensure that informants and sources are being protected from exposure. The Act continues by mentioning a number of circumstances, additional to the supplying of information to the Crown, under which a person is no longer regarded as a private investigator. These include:

- The obtaining of information for cultural or historical purposes or for any purpose relating to education, literature or science;
- For any purpose relating to the dissemination of news or other information to the public or any section of the public;
- In the course of and for the purposes of engaging in or carrying on any occupation or business permit, or other authority, granted or issued to him under any other enactment; or
- The obtaining of information in relation only to the person by whom he is engaged or retained; or
- In the course of and for the purposes of the business of a bank, or of a credit bureau, or a debt collecting agency

Assessing the American, Australian and Canadian legislation which deal specifically with the regulation of private investigators, the following main categories have been identified as not being regarded as private investigators:

- *In-house investigators*: According to the Australian Security Providers Act, regulation excludes a person if he is the employee of a person who does not for reward obtain and give information. The legislation also excludes a person if he as an employee, obtains and gives information about another person
- *Credit reporting agents*: The Australian Security Providers Act, states that a person is excluded from regulation once his activities fall within the ambit of

the Invasion of Privacy Act of 1971. This exclusion is also detected in a number of American State laws. One such example is that of California. In the Private Investigator Act, Section 7522, it is stated that a person is excluded from private investigators' regulations when such a person is "engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons".

- *Providing information from existing records:* This exclusion found in the Australian legislation, is not very clear in terms of the occupations' exclusion from regulation. The Security Providers Act states the following: "The person [is excluded], for reward, gives information about another person from existing records in the person's possession or in the possession of the person's employer". Apart from the uncertainty regarding the exact meaning of this section, it is also unclear as to how this section would relate to the Australian *Invasion of Privacy Act* and also the general protection of human rights.
- *The activities of a legal practitioner.* Studies of all the legislation mentioned earlier in this section, revealed that activities of legal practitioners, specifically gathering of information for the purpose of a court case or other legal activities, are also excluded from the regulatory framework.
- *Accountant:* Similar to the activities of legal practitioners, activities of accountants and their employees are not included in the private investigator regulatory framework. One would, however, have to ask questions regarding the functioning of forensic auditors / investigators who are employed by large

companies such as KPMG, Deloitte & Touche and Price, Waterhouse Coopers who are actively involved in a process of determining if someone has committed a crime or breach of contract, aspects clearly stated as functions of a private investigator in the South African Bill. Taking into account that these companies perform investigations up to the point where these are handed to the SAPS for prosecution, one could argue that South African legislation should include forensic accountants / investigators in the regulatory scope.

- *Insurance adjuster*: Although insurance adjusters are also involved in a investigative field, they are regulated in most cases by specific legislation focussed on the insurance industry. In the Code of Virginia (Statutes Relating to Private Security Services:Section 9-183.2:Sub-section A4), insurance adjusters or claims adjusters as they are known in some states, are only required to register with the private investigator regulating authority if they are carrying fire-arms whilst performing their duties. Apart from the fact that these individuals in some cases carry weapons, they use the same type of collection techniques as a private investigator to obtain information. This makes the exclusion of these individuals a borderline case in terms of regulating their activities. In South Africa, it is furthermore common to find private investigators working for insurance companies, either as tracing agents to recover stolen property or to investigate insurance fraud. The Security Industry Regulation Bill (Bill 12 of 2001), in its definition of a private investigator, states the following:

"Searches for missing persons, property or other assets, or the cause or responsibility for accidents, injuries or damage".

This part of the definition clearly includes the activities performed by insurance adjusters, tracing agents and fraud investigators. Although one's initial reaction is to agree with the section, there is the counter-argument that these individuals are not providing a security service and should on that ground be excluded from regulation. The answer could possibly be found in regulating the techniques used for collection of information. Alternatively, the option should be investigated to include the activities under the relevant legislation regulating the insurance industry.

- *Journalist / Investigative reporter:* The most common difference between the activities of a private investigator and an investigative journalist lies in the end use of the information obtained. The journalist publishes his information for everyone to read and to form their own perceptions regarding the person or company reported on. The main objective for the journalist, is to inform society about a person's or a company's wrongdoings or hidden motives. The private investigator provides his services to a very specific client who pays for the specific information to be gathered. The use of this information is hence mostly not gathered for the "good" of the broad community.
- *Police officers and Government employees:* All the legislation studied for the purposes of this Chapter, clearly exclude police officers and other employees

of Government departments from registering with a regulatory authority. The Private Investigators Law, Section 8(b)(v) in Louisiana, USA, also clearly excludes undercover agents working with the United States, the Louisiana State, or any political subdivision. The issue of undercover agents and sources was discussed earlier in this Chapter. This exclusion of police officers and other Government employees does not distinguish between officials performing duties during their off-duty hours (moonlighting) and officials performing official duties. The Bill (Bill 12 of 2001) is very clear on this viewpoint in Section 21(5), where it is stated as follows:

> "Irrespective of any legal provision to the contrary, a person in the permanent employ of the Service [SAPS], the Directorate of Special Operations, the National Intelligence Agency, the South African National Defence Force or the Department of Correctional Services may not be registered as a security officer whilst so employed."

It is clear from the comparison between SA legislation and the comparison done in Annexure B, that this approach is very different from what can be regarded as the norm in Europe, the Nordic countries and the USA. The next Chapter will furnish more details about this aspect.

- A number of other occupations excluded are *financial raters, shoppers, forensic*

scientists, non-profit organisations involved in research and *individuals involved in genealogical research.*

From the above it is clear that there are a number of occupations resembling the activities performed by private investigators. In most cases the only difference is the purpose of the information gathered and the client. It is thus important that the legislation should state clearly which occupations would not be affected by the legislation. Such a definition would also assist in closing the loopholes with regard to exclusion of certain occupational groups. The Bill (Bill 12 of 2001), also is not clear in its application of the definition regarding the private investigator, whether a person is regarded as an investigator when he is involved in all the activities, or only one of the activities mentioned in Subsection (a) namely:

> "investigates and furnishes information regarding the identity, actions, whereabouts, movements, affiliations, associations, habits, personal character, reputation, trustworthiness, loyalty, occupation, previous employment, integrity, creditworthiness, transactions, financial position, life-history or background of another person without the consent or knowledge of such a person"

Activities such as determining trustworthiness, previous employment, creditworthiness and life-history of an individual could all be undertaken by a host of other occupations.

6.2.3.1 **The potential impact on Government regulating the private investigation sector**

The addition of the reference to informants is of interest to specifically law enforcement agencies and intelligence services of South Africa. Structures such as the SAPS's Crime Intelligence Unit and the Directorate for Special Operations (DSO) or Scorpions as they are commonly known, make use of informants to provide information regarding organised crime activities. This is also the case of NIA and SASS, who make use of informants to provide them with information on a wide array of issues.

The implication of not specifically excluding informants, is that they will have to be registered with the regulatory authority as private investigators. If one adds additional registration requirements such as the disclosure of files and collected information to the inspectors of the regulatory authority (as proposed in the Security Industry Regulation Bill), the consequence will be that informants and their information will become known to people other than the Government departments employing these individuals. The exclusion of this group should thus be clearly defined in the Bill, especially if one of the aims of the Bill is to protect the national interest.

The Louisiana legislation (Private Investigators Law), took these aspects into account with this exclusionary statement in section 3503(v), where it is stated that a person is

not included under the definition of a private investigator when:

> "Undercover agents working with the United States, this state, or any political subdivision while engaged in the performance of their official duties."

6.3 Development of the investigation industry

According to the Business Intelligence and Investigative Consultancy, Axiom, based in the United States, the origin of private investigators can be traced as far back as 300 years ago (Axiom: http://www.investigate.com.au/cs_detectives.html):

> "In 1692 the Highwayman Act was passed in Britain giving ordinary citizens the authority to become criminal chasers or 'private investigators' as they were later known. Unfortunately though, the task of freelance crime fighting attracted the type who mingled too closely with criminals, giving them the edge in spying out the underground for leads in a dangerous web of cat and mouse, often ending in death".

The title of "The Father of Private Investigation", however, belongs to the other side of the channel, namely a Frenchman, Eugene Vidocq (Axiom: http://www.investigate.com.au/cs_detecives.html). He was born in 1792 in Paris, spent time in jail for theft and ended up being the head of the Paris Sûreté (detective

branch). The Sûreté gave him the necessary tools and experience to eventually set himself up in 1836 as quite possibly the world's first *bona fide* private eye.

The examples used from the UK and France add to the perception that those private investigators in most instances were no better than the criminals under investigation. It was Allan Pinkerton, when setting up Pinkerton National Detective Agency in 1850, who "took the PI business out of the bedroom and in to the boardroom creating confidence in wide ranging capabilities of private detectives" (Axiom: http://www.investigative.co.au/cs_detectives.html). According to O'Toole (1978:21), the Pinkerton Agency in 1849, would:

> "[for a fee, the detective agency would] ... 'attend to the investigations [of] depredation, frauds and criminal offences; the detection of offenders, procuring arrests and convictions, apprehension or return of fugitives from justice, or bail; recovering lost or stolen property, obtaining information, etc.' It was the first private detective agency in America. The Private Sector had been born."

O'Toole (1978:22), continues by stating that Pinkerton, because of the prevention of an assassination attempt on the life of US President, Abraham Lincoln, was appointed in 1861 as the first official intelligence service in the United States. During this period, Pinkerton did not only perform espionage functions beyond the borders of the Confederates, but also conducted counter-intelligence operations in Washington.

Pinkerton also pioneered the field in terms of the use of photographs for criminal investigation and compiled the first "rogues" gallery. Currently Pinkerton (Pinkerton: http://www.pinkertons.com) boasts an annual revenue of US $2,5 billion and 125 000 employees in 32 countries.

According to the Hallcrest report (Cunningham et al:1990:187), the projected figure for private investigators in the United States was approximately 70 000 full-time investigators and approximately 15 000 companies. The report furthermore estimated that this industry would grow at 4,5% per annum. This is far less than the estimated growth of the guarding sector which grows at an estimated 12% per annum. According to George and Button (2000:46), the Association of British Investigators (ABI) has approximately 500 registered investigators. Reynolds (1994:no page number), investigated the reasons for the growth of the private investigation sector in the USA and states as follows:

> "One of the reasons railroads employ private police [the author refers to private investigators] is that public police tend to be less interested in recovery of property than arrests and convictions ... in 1992 railroad recovered 42.7 percent of the total value of stolen property, compared to 35.6 percent for public police. This is not surprising because the police are rewarded for arrests and convictions, not for recovery. Other industries have long recognised this fact and have depended heavily on private investigators."

The shift in focus of the investigation has also been discussed in the previous Chapter where it was stated that the guarding sector is focussed on the prevention of crime, as opposed to the SAPS focussing on resolving the crime after it has been committed. The focus of the SAPS is not necessarily because of a specific policy, but merely the fact that the SAPS is completely understaffed and under-resourced and does not have the capacity to effectively implement a crime prevention policy. With regard to the private investigation fraternity, skills such as asset tracing and investigating insurance fraud have added to the continued growth of this sector and have supported the statement made by Reynolds. Beatie (Johnston:1992b:9), also supports the statement made by Reynolds, and states as follows:

> "Probably the most striking difference between this system and our own ... was that there was little or no attempt at criminal detection. Crime was brought to the courts when victims prosecuted offenders. Officials did not go out to find it. Justices dealt with the evidence, but detection and apprehension of suspects was left to victims, who often went to great lengths to regain stolen property."

The duties performed by the private investigation sector had some parallels between the American and the European sectors. This was most notably in the development of the techniques employed and the types of clientele. In the USA, companies such as Pinkertons progressed from bounty hunting, to working for private companies whose cases were not a Government priority, to the establishment of photo galleries and also

the conducting of covert operations. A similar path was followed in the UK and in France by Jacques Vidocq (Gill and Hart:1996:277). The sector also became involved in investigating matrimonial affairs. This was an unfortunate move, as it led to the sector being placed in a bad light because of extortion rackets. Until today, the sector still suffers damage to its image because of the involvement in matrimonial investigations. According to Draper (Gill and Hart:1997:636) people find it hard to understand how anyone can, by choice, make a living out of prying into the lives of others.

According to Cohen (Johnston:1992b:9), eighteenth-century Massachusetts used a system of private settlement. He states that the reliance on private prosecutions has its attendant dangers, as for one thing the system was arbitrary and capricious. The system also had its benefits such as the fact that it was accessible to the wider working class people. This accessibility was despite the fact that it was costly for consumers. There is to some extent a parallel between the situation in the eighteenth century and the twenty-first century. Although private investigators are expensive, they tend to be more rewarding to their customers than the public system. Private investigators are used in a number of cases where the public investigative services are not in a position to provide a satisfactory answer to clients.

6.3.1 Perceptions regarding private investigators

Gill and Hart (1996:273-274), state that it is likely that private investigators have been accepted in the United States, whilst in the UK, private investigators are often considered as an obscure and suspicious curiosity. They argue that this is mainly owing to a nation's ability to either accept or reject the possibility of privately resourced secret policing.

Gill and Hart (1996: 274-275), furthermore state that there is definitely a more conservative British approach towards private investigators, as opposed to their US counterparts. The British perception of private investigators is equal to their perception of the so-called thief-takers who operated during the early 1800's. According to Nown (Gill and Hart:1996:275):

> "these thief-takers earned very little respect and public affection because of the widely-held suspicions that they were in league with the outlaws they were supposed to pursue. It is possible that, instead of reducing crime, early investigators-for-hire stimulated it."

Gill and Hart continue by drawing a correlation between the thief-takers and private investigators. The two aspects which they highlight, are that both of these occupations worked for paying clients, and that these individuals supplied *investigative* services as

opposed to the *preventative* services. The last issue is still today the main difference between this sector and the rest of the Private Security Industry. According to Gill and Hart (1996:275), as far back as 1785, with the introduction of the London and Westminister Police Bill, it was recognised that the payment of money for the delivery of a security service created a situation of "*immediate accountability to the client*". The whole principle of "*immediate accountability*" and not the profit of service delivery, could be regarded as the main driving force behind the effectiveness of the private crime investigation industry as opposed to the perceived ineffectiveness of Government crime investigation structures.

According to OJ Fourie (Security Focus:1999:24), the lack of adequate policing in South Africa has led to the growth of a new dynamic sector within the Private Security Industry - that of a professional investigator. These sentiments are echoed by former SAPS National Commissioner, George Fivaz (Rademeyer:2000: no page number), when he stated that private investigators will become increasingly involved in investigating economic and computer crimes.

6.4 South Africa's private investigators

The South African private investigation fraternity should possibly be compared with their British counterparts, as they are regarded in the same light. In other words, the perception of this occupation, is one of a former apartheid-era dirty tricks operator,

who has only privatised his previous business and is still on the prowl for making a quick buck and/or live from the proceeds of his criminal activities. Private investigators are also regarded as nothing more than matrimonial investigators and not regarded as a possible full-fledged partner in the Criminal Justice System.

These perceptions are, however, based on the fact that a number of former apartheid-era covert operatives and high profile SAPS members such as Abraham "Slang" van Zyl, Suiker Britz, Jack le Grange and General Basie Smit, have all entered this environment. The emergence of big companies such as Associated Intelligence Network (AIN), which is in direct opposition to the SAPS investigative units, has also added to the perception. The perception is further exacerbated by the fact that these private companies are far more effective than the SAPS units.

According to Security Focus (1999:24), the company of former SAPS member, Ockie Fourie, is worth over R32 million, and is also listed on the Johannesburg Stock Exchange. As stated by Andy Grudko (Interview: 24 January 2001), President of the South African Council of Investigators (SACI), the last attempt to determine the size of the industry was in 1992. According to those statistics, there were approximately 2000 investigators in South Africa, excluding in-house investigators, undercover investigators and retail investigators. Currently, SACI has approximately 130 members, including both individuals and companies that have registered. Because of this, it is almost impossible to determine the size of the industry, as membership of

SACI is completely voluntary. Grudko furthermore indicated that most of the businesses which start out new, only last approximately three months before they go bankrupt. The turn-over in this sector is thus extremely high, which adds to the need for lifting the entry barriers into this sector to protect both the public and the image of the sector.

6.5. Reasons for growth in this sector

According to Schönteich (1999:53-54), the reason for the expansion of the private investigation fraternity is mainly because of the following reasons:

- *By September 1997, only 65% (13 000) out of 20 000 detectives had undergone specialist training*. This should be seen against the background that a private company would not employ a person who has not completed specific training courses or who does not have specific investigative skills. Contrary to this, the SAPS for various reasons, including amalgamation of former statutory and non-statutory forces, has to contend with the large number of untrainable staff members. These include members who can't read, write, drive or speak English.
- *The investigation of crimes by the SAPS is inadequate*. The average workload of a detective is investigation of 140 separate cases simultaneously. Once again, this should be seen against the background of a private company in most

cases spending all of its resources on one case. The private company can't afford to have unfinished cases, as this would impact negatively on its image. It will thus decline cases if it does not have the capacity to utilise resources on the case. The SAPS can't decline a case. They have to accept all cases, despite their limited resources.

According to Grudko (Interview: 24/02/2001), the growth in the South African private security sector was bolstered by the migration of former military, intelligence and police officers to the private investigation sector. A number of these individuals saw it as an opportunity to export their trade acumen to the private sector. This exodus added to Government's perception that the Industry has the potential to host elements of the so-called "third-force".

6.6 Regulating the private investigation sector

According to Francis (1993:2), regulation occurs when the state constrains private activity in order to promote public interest. The question should thus be asked, which aspects of the private investigation environment could and should be included in the regulatory framework? The comparative study which included the United States, Canada and New Zealand[2] revealed that there are certain "non-negotiables" when a regulatory framework for private investigation is drafted. These include: training

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standards, entry standards, fire-arm training requirements and surety or bond requirements.

A number of issues were taken into account with the determination of the regulatory framework for this sector:

- Firstly, the question should be asked, as to whom can be regarded as private investigators, and exactly what actions need to be defined as private investigative activities? In other words, this industry needs to be clearly defined.
- Secondly, one needs to ask what exactly needs to be regulated. Do you want to regulate the occupation (standards), or the activities performed by these individuals? The expected response to this question will most probably be that the regulatory framework should regulate both these issues. One will, however, have to take into consideration that a number of illegal activities performed by private investigators are already covered under existing legislation and hence the policing function only needs to be addressed.
- Thirdly, after ascertaining the broad scope of the regulation, one needs to consider whether the regulation should form part of the Private Security Industry legislation, or whether this industry should be included in separate legislation.

6.7 Entrance requirements

Apart from training standards, entrance requirements are possibly the aspect with the most influence on the object of protecting community interests. Because of the activities of the private investigator, it is obvious that the entrance requirements should be different to that of the ordinary security officer. As is the case with security officers, requirements vary between different countries, and even within countries with a federal constitution.

The legislation in the United States is very specific in regulating activities of the private investigator. Gill and Hart (1996: 273-274), state clearly in this regard that the American private investigator has a definite position in the American criminal justice system and is regarded as a full partner in the process of crime investigation. This is not the case in either South Africa or the United Kingdom. The United States, however, places a lot of emphasis on the entry requirements of potential private investigators and also does a lot in terms of ensuring the standards of the industry. The legislation differs from state to state and varies on a number of different issues, most importantly, granting of investigative powers. These powers mostly allow a private investigator to only operate in his state of first registration - and very specific regulations with regard to private investigators wanting to work across the state borders.

The US legislation[3] distinguishes mainly between the following categories:

- Age requirements
- Residential status
- Criminal record status
- Investigative experience
- Scope of registration i.e. operatives and managers
- Licence validity period
- Training requirements
- Width of regulation i.e. only specific state or cross-border investigations
- Advertising requirements
- Use of fire-arms
- Use and display of identification cards

The above is a clear indication that South Africa should consider separate legislation to address specific requirements for effective regulation of the private investigation fraternity. The private investigator occupation needs far more stringent regulation because of the type of information that can be accessed. Private investigators are also becoming more involved in crime investigations and appearing as specialist witnesses during trials. The Security Industry Regulation Bill (Bill 12 of 2001), does not take into consideration that this sector needs a completely separate set of rules for regulation and

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that the requirements set out in the Bill are not adequate to address these concerns.

6.7.1 Age requirement

Contrasting to the Security Industry Regulation Bill (Bill 12 of 2001), which only makes provision for a minimum age for a security operator, US legislation draws a clear distinction between age requirements of private investigators and private security officers. The US legislation[4] even goes further in drawing an age barrier between the owner of a private investigator company and private investigators themselves.

The state of Arizona (Private Investigator and Security Guard Act) in Section 32-2422, does not differentiate between an employer, associate or business application. The minimum age for registration, is set at 21 years. In contradiction to this, the state of California (Private Investigator Act), has set the minimum age at 18 years. But, in addition to setting this age limit, the State has added two additional requirements which would in practice, make it impossible for an 18 year old to register as a private investigator. If a person applies for a licence to start a private investigation firm, he or she must in addition to the age requirement of 18 years, also provide proof of at least ten years of experience as a private investigator. The onus is furthermore on the investigator to provide proof of experience and in addition, the applicant will also be subjected to either a written or an oral examination.

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The second additional requirement, according to Section 7540 of the California Business and Professions Code (Private Investigator Act), is namely that if a person wants to register as a private investigator, he or she will be required to have had at least the following in terms of qualifications and or practical investigative experience:

- At least three years experience in investigative work. A year's experience shall consist of not less than 2000 hours of actual compensated work performed
- An applicant who holds a law degree or have completed a four year course in police science, criminal justice or criminal law, shall be required to have at least two years experience in investigative work

These stiff admission requirements in the state of California are also required in inter alia the states of Illinois, Indiana, Massachusetts, Maryland and Nevada[5].

6.7.2 **Residential status**

Without exception, the legislation of all these states requires the applicants of private investigator licences to be citizens of the United States of America. In some cases exceptions are made in terms of allowing a person with a valid working permit to apply for a licence. On this same issue it should also be noted that in most cases private investigators are only allowed to operate in the specific state in which they applied for

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their licence. Some of the legislation, however, does make provision for cross-border investigations. In California (Private Investigator Act) Section 7520.5, states that a person would only be granted permission for a period of 60 days to conduct an investigation which originated in the state where he or she applied for an investigator licence.

Owing to the fact that South Africa is not a federal state such as the United States, the problem of regulation in different states does not apply, This approach in terms of clearly allowing who can investigate within geographical boundaries could however be included in the South African legislation to address one of Government's fears, namely the use of the private security environment by foreign intelligence services. The inclusion of a section in legislation dealing with the requirements for foreign private investigators to operate on South African soil, will be the beginning to address the issue of both foreign intelligence operations and foreign industrial espionage.

6.7.3 **Criminal record status**

Current South African legislation (Security Officers' Amendment Act) and the Security Industry Regulation Bill (Bill 12 of 2001), clearly states that a person with a criminal record can't be registered as either a security officer or a private investigator. Legislation requires applicants to submit their fingerprints for the purpose of a background check by the regulatory authority.

In some cases in the United States, an applicant is also required to give permission to the regulatory authority to conduct a thorough background investigation to determine if the applicant does not have any criminal offences which he or she has not disclosed. Section 7525.1(e) of the Californian legislation (Private Investigator Act), states that a set of fingerprints will be forwarded to the Federal Bureau of Investigation (FBI) to conduct a national background check. The purpose of the national criminal check is supposedly to ensure that an applicant, who is convicted of a felony in one state, does not apply for an investigation licence in another state without revealing his convictions to the state where he is applying for his licence. These criminal offences mainly refer to violent crimes, alcohol and substance abuse.

In the State of Florida (Private Investigative, Private Security and Repossession Services Act), Section 493 6106(d), goes further than the expected criminal offences, when it states that:

> "Not to be a chronic and habitual user of alcoholic beverages to the extent that her or his normal faculties are impaired ... not found to be a habitual offender."

And in Section 493 6106(e), that a person has, or is not:

> "Not have been committed for controlled substance abuse or have been found guilty of a crime under Chapter 893 ... within a three year period immediately

preceding the date the application was filed ..."

These sections go beyond the offences as listed in Schedule One of the Security Officers' Amendment Act (Act 104 of 1997), and to some extent also cover the possibility of future criminals or unstable persons to be employed in the industry. These sentiments are also echoed by the State of Iowa (Private Investigator Agencies and Security Agents Act), in Section 80A.4, where it states that an applicant should comply with the following:

- ❑ Has never been convicted of a felony or aggravated misdemeanour
- ❑ Is not addicted to the use of alcohol or a controlled substance
- ❑ Does not have a history of repeated acts of violence
- ❑ Have not been convicted of illegally using, carrying or possessing a dangerous weapon
- ❑ Has not been convicted of fraud

The Security Industry Regulation Bill (Bill 12 of 2001), covers a wide scope of offences, which would disqualify a person from registering as a private investigator or a security guard. These offences include:

- ❑ High treason
- ❑ Sedition

- ❑ Sabotage
- ❑ Terrorism
- ❑ Public violence
- ❑ Arson
- ❑ Malicious damage to property
- ❑ Intimidation
- ❑ Rape
- ❑ Murder
- ❑ Robbery
- ❑ Culpable homicide involving the use of a fire-arm or any form of intentional violence
- ❑ Kidnapping
- ❑ Assault with the intention to cause serious bodily harm
- ❑ Child stealing
- ❑ Fraud
- ❑ Forgery or uttering of forged documents knowing it to have been forged
- ❑ Breaking or entering any premises, whether under common or statutory law, with the intention to commit an offence
- ❑ Theft whether under common law of statutory law
- ❑ Receiving stolen property knowing it to have been stolen
- ❑ Extortion
- ❑ Defeating the ends of justice

- Perjury, whether in terms of common law or statutory law
- Corruption in terms of statutory law
- Any offence involving illicit dealing in dependence-producing substances
- Any offence under statutory law involving an element of dishonesty
- Any offence in terms of the Domestic Violence Act, 1988
- Any offence in terms of the Explosives Act, 1956
- Any offence in terms of the Foreign Military Assistance Act, 1998
- Any offence under legislation pertaining to control over posession and use of fire-arms and ammunition
- Any offence in terms of the Interception and Monitoring Prohibition Act, 1992
- Crimen injuria
- Any offence in terms of statutory law involving cruelty to animals
- Any offence under any law relating to illicit dealing in or possession of precious metals or precious stones

Notably is the inclusion of offences committed under the Regulation of Foreign Military Assistance Act (Act 15 of 1998), the Interception and Monitoring Prohibition Act (Act 127 of 1992) and also the offence of breaking and entering with the intent to commit an offence. It is especially these last two offences, which will place a damper on techniques used by private investigators to collect information. The reference to the Regulation of Foreign Military Assistance Act (FMAA) is *inter alia* to prohibit cross-border intelligence gathering, intelligence training and military type of training, by

institutions other than Government. These actions could result in diplomatic embarrassment to South Africa.

The inclusion of drug and alcohol abuse should be considered under the list of offences as it is an indication of the character of the person applying for registration. The Bill (Bill 12 of 2001), only makes provision for the dealing in dependance-forming substances and not the use of these substances.

In my opinion, the offence should carry a "sundown" clause in terms of the period these offences should be taken into consideration for denying an applicant's registration request. Such a period could possibly vary between 3 and 10 years.

6.7.4 **Investigative experience**

As stated earlier in this Chapter, the current and proposed South African legislation does not require experience as a requirement for registration. The legislation only requires certain training standards - of which no differentiation is made between a private security officer and a private investigator.

In the State of Indiana (Private Detectives and Polygraph Examiners Act), Section IC25-30-1-8(2), it is stated as follows:

> "[an applicant is required to have]
>
> (A) experience in private detective work under a licensee, or its equivalent;
>
> (B) law enforcement experience;
>
> (C) a degree in criminal justice; or
>
> (D) any other experience relevant to the private detective business, as determined by the board ..."

The State of Indiana places a higher premium on the experience of an investigator than on obtaining course work requirements. This specific legislation does not have any reference to training requirements in terms of courses and minimum requirements. Complimenting this approach, is the legislation in the state of Arizona (Private Investigator and Security Guard Act) in Section 32-2422(c), where the "trade-craft" requirements are:

> "to have a minimum of three years of full-time investigative experience or the equivalent of three years of full-time investigative experience that consists of actual work performed as an investigator for a private concern, for the federal Government or for a state, country or municipal Government."

In addition to trade-craft requirements, no formal examinations or training requirements are required.

6.7.5 **Scope of registration**

The scope of registration refers to the different levels of employment in a private investigation company which need to be included under the regulatory framework. In other words, should the legislation only apply to the investigators themselves, or should it also include the managers and directors of a private investigations company? In this regard the USA legislation refers mainly to licensees and employers, and as indicated earlier in this Chapter, there is also a distinction between a registered investigator and a "trainee" investigator.

In terms of the management of a private investigator company, the state of Arkansas (Private Investigator and Private Security Agencies Act) Section 17-40-102(23), also distinguishes between an office manager and a branch office manager. The available legislation indicates that a person with no tertiary qualification and no previous investigative experience can't register as a private investigator, unless he or she undergoes at least three years of in-service training.

The US legislation[6] also distinguishes between the head office of a company and

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branch offices. A company needs to state in detail where these branches will be, who will manage them and in some cases the number of investigators to each branch are prescribed. Arizona (Private Investigator and Private Security Agencies Act), Section 32-2426 clearly states that a licensee may not establish a branch office unless a branch office certificate has been issued by the registrar. The legislation also requires the branch office to carry the same name as the main office.

The Arizona legislation (Private Investigator and Private Security Agencies Act), Section 32-2422(9)(c), by virtue of registering managers, associates and investigators, does create an additional advantage for regulation of the industry and ensuring of standards. This is done through the system whereby a manager is forced by legislation to give a report on a person either in training at the company, or any other employee when they want to register with the board. In addition, if a company goes out of business, the owner / director of the company is still compelled to provide all his employees with certificates stating the service period and skills they have acquired. This goes a long way in ensuring that an employee who is substandard or has the potential to damage the image of the industry, is not allowed to "float" between companies. It also gives the regulatory authority a good idea of the applicants' work experience before allowing a person to be registered.

Neither the Security Officers' Amendment Act (Act 104 of 1997), nor the Security Industry Regulation Bill (Bill 12 of 2001) makes provision for the compulsory

registration of owner, directors and managers of security companies. In the case of the private investigations industry, it is especially of utmost importance for these individuals to be registered and forced to re-apply within a specified period of time. By forcing the owners and managers of security companies to measure-up to certain standards, one automatically lifts to overall standards in the Industry.

6.7.6 **Licence validity**

The principle of setting a periodical limit to the validity of a licence is very effective in ensuring that rogue operators are not allowed to continue. The periodical limit also creates a mechanism whereby the regulatory authority is forced to review all qualifications of the employees in the company. This ensures that all training standards are adhered to and companies are less prone to overstepping sections in the legislation as they carry the risk of their licence not being renewed.

In Illinois, Section 1240.10 of the Private Detective, Private Alarm, Private Security and Locksmith Act, states that a person will be granted two periods of three years to sit and pass the necessary examinations for registration. In other words, the applicant has three years to sit the exam and is allowed a single extension of three years. If he fails to pass the exam within this six-year period, he is then compelled to register again and sit the exam immediately. A successful examination score is however only valid for six years. This means that every registered private investigator will be required to

sit the exam every six years. Chapter 80A.5 of the Iowa Code (Private Investigative Agencies and Security Agents Act), states that a private investigator and an investigation company should submit a renewal for a licence every two years. One of the major requirements to have a licence renewed, is to furnish proof to the Registrar of financial liquidity, specifically in terms of possible claims made against an investigations company. The two-year renewal period, is also required in the states of Indiana, Kansas and Louisiana[7], where the licence must be renewed before the 31st of December of that year.

It should, however, be taken into account that if a system of annual or bi-annual renewals is implemented, the regulatory authority will be required to have a streamlined administrative component to ensure that businesses will not be prevented from operations owing to administrative red tape. The regulatory authority should furthermore be in a position to speedily re-check all the credentials of an applicant, run a new criminal background check and lastly have an effective database to ensure that all complaints filed against a company are available on-hand for consideration and further investigation if necessary. Added to the administrative component, should be an effective appeal system, if an applicant wants to appeal against the non-renewal of a licence. Such a system is not currently available to the South African Private Security Industry. Although the SOIB has developed an effective electronic data management system to handle registration and qualification details, they are still

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heavily dependent on the SAPS to do a criminal background check - something which can take months to get feedback on an application. It is suggested that a licencing system should be introduced in the new legislation, but that an effective administrative system should be developed simultaneously. If the new regulatory body consists of mainly Government employees, access to criminal records should improve measurably.

6.7.7 **Training requirements**

Training requirements have to some extent been addressed under the discussion of entrance requirements, as these two issues link very closely in especially the US legislation. One of the dimensions added to the training of private investigators, which is not required in the training of private security officers, is that of an internship. Because of the already mentioned strict entrance requirements, a person without certain tertiary qualifications or former law-enforcement experience can't register as a private investigator, apart from registering as a trainee or an intern. In Section 493.6116 of the Florida Private Investigative, Private Security and Repossession Services Act, the whole procedure regarding the managing of an intern programme is described in detail. According to this legislation, all interns are required to register with the regulating authority. Furthermore, a company is not allowed to have more than six interns at a time and bi-annual reports on the progress of interns need to be submitted to the regulating authority.

The State of Kansas (Private Detective Licensing Act: Section 75-7b20), sets out the requirements and conditions prescribed by the Attorney-General to grant a private investigators licence. Although no specific reference is made to training requirements, the applicant is subjected to both a written and oral examination on his or her knowledge on the handling of fire-arms, legislation and the use of force. The Act's reference to the requirements for a training centre also does not indicate specific training requirements to be met.

The general approach one finds in the US legislation, and also from the requirements for registration set out in the same legislation, is that experience is held in much higher regard than a set curriculum presented by a training academy or institute. Where one does find an emphasis on curriculum training requirements, is where the use and carrying of fire-arms are involved. In this regard the US legislation is far more specific and demanding regarding standards than South African legislation. As stated earlier in this Chapter, the Bill (Bill12 of 2001),does not distinguish between the training and entrance requirements of private investigators and that of private security guards. Evidence has shown the need for a distinction on all levels between these two occupational groups.

The legislation (Private Detective Licensing Act: Section NAC 648.346), is even more prescriptive when it instructs what the core elements of the curriculum on fire-arms training should consist of. The curriculum must cover the following essential issues

including: legal, moral and ethical responsibilities of the safe carrying, handling and using of a fire-arm, the fundamentals of proper handling and shooting of fire-arms, the preparation for shooting at a firing range and the exercises to be used at a firing range. The legislation is furthermore very specific in stating that the training of the private detective must be with the same caliber of weapon the detective will be issued with in a working environment. In terms of ability to use the fire-arm, the Private Detective Licensing Act states as follows in Subsection 6 of Section 648.346:

> "The course of fire must require firing at least 30 rounds of live ammunition with a passing score of 75 percent, and must include shooting rounds of ammunition from a distance of three yards in 30 seconds, 10 rounds of ammunition from a distance of 7 yards and 10 rounds of ammunition from a distance of 15 yards in 30 seconds."

Of interest is the fact that the Private Detective Licencing Act goes to these extremes to legislate the standards of training, specific with regard to fire-arm training. One would expect that this type of prescriptions would rather find their way in the training standards set by the regulatory authority or in regulations of the Act. The positive aspect of the specifics included in the Act is that there can be no ambiguities with regard to the training standards. This also prevents a situation whereby a regulatory authority could be blamed by the Government for the fire-arms training standards of private security officers and private investigators. By legislating the training standard

requirements in such a way, it eliminates to a large extent the possibility of training institutions presenting substandard training courses. Furthermore, the information with regard to training standards are more accessible to potential clients - in order for them to know what level of trained officers they could expect.

The State of New Hampshire (Detective Agencies and Security Services Act), goes as far as legislating the specific institutions where the detectives or the security officer must complete the prescribed course. In section 106-F(a)(II), it is stated as follows:

> "Individuals shall be considered for qualification if they successfully complete one of the following courses:
>
> (E) Council of Fire-arms Instructor School
>
> (F) F.B.I. Fire-arms Instructor School
>
> (G) Smith & Wesson Fire-arms Instructor School
>
> (H) National Rifle Association Police Fire-arms Instructor Course
>
> (I) Equivalent courses as determined by the Commissioner of Safety on individual basis"

6.7.8 **Requirements for fire-arms**

The State of Kansas (Private Detective Licensing Act: Section 75-7b17), is very detailed in its requirements with regard to the use and carrying of fire-arms by private

investigators. These requirements entail the following:

- No licensee is allowed to carry his or her weapon concealed, unless a permit is obtained specifically for this purpose
- The applicant needs to convince the Attorney-General that the carrying of the fire-arm is necessary to protect the applicant's life or the property of a client or the applicant's property
- The applicant needs to provide proof of the completion of the required courses in the handling of fire-arms and the lawful use of force

In addition to the above requirements, a private investigator who fires a shot, for purposes other than target practice, test firing or fire-arm training, should report the incident to the Attorney-General within 24 hours of the incident. The issuing of a fire-arm licence is directly linked to the issuing of a private investigator licence. The revoking or suspension of the latter, immediately leads to the revoking of the fire-arm licence. Fire-arm licences are also only valid for one year and should be renewed simultaneously with the private investigator licence.

The state of Nebraska (Private Detective Statutes: Section NAC 648.345), is very prescriptive, both in terms of minimum requirements to be met in courses presented to potential users, as well as the requirements of fire-arms training instructors. With regard to training instructors, legislation clearly states the following minimum

requirements:

- ❑ Successfully completed the training course presented by the regulatory authority
- ❑ Has previously been employed as a peace officer and is registered with the regulatory authority
- ❑ Is at least 21 years of age
- ❑ Has not been convicted of any felony or crime involving the use of a fire-arm

As stated in earlier Chapters of this thesis, the alleged misuse of fire-arms by the Private Security Industry has been one of Government's major concerns regarding the potential threat posed to national security. The specific issues regarding the fire-arms in the industry, were the number of weapons in private ownership, poor control of weapons in the industry, the large caliber of weapons available to the industry and the fact that a number of individuals issued with fire-arms did not receive any fire-arm training at all. Most of these concerns are based on unsubstantiated allegations, and are furthermore fuelled by the perceptions Government has about the industry. From all the concerns, the one regarding poor training standards or no training at all, is the only one having substance.

Despite all these concerns, the Bill (Bill 12 of 2001), does not have any reference to specific fire-arms training. With the levels of serious violent crime stabilising at high levels, and occasional increases in specific crimes such as car-hijacking and cash-in-

transit robberies, private security companies are increasingly asking for better fire-arms to equip themselves against the attack of automatic and semi-automatic weapons. By legislating specific training standards and by strengthening Government's control over the issuing of licences, it could be considered improving the firepower of the Private Security Industry. Currently, private investigators are carrying and using fire-arms under the same control mechanisms as any other member of the public, whilst the probability of using them is far higher. They are not forced to undergo any specific training or have any specific skills in the use of fire-arms. It is thus suggested that the Bill should make a definite distinction between the training of a private security guard in the use of various calibres of weapons, and the use of more restricted calibres by private investigators.

6.7.9 Use and display of identification documents

The problem of use and display of identification cards by either private investigators or private security officers, has not been addressed in the current South African legislation or the new Bill (Bill 12 of 2001). This should be an essential aspect in terms of regulating the industry. It would be possible for inspectors to immediately determine if a person is registered as an officer, and if he is performing his duties he is qualified to perform. The carrying of relevant identification documents should be made mandatory to all private investigators and private security guards. Almost

without exception, the US legislation[8] requires officers to carry their licences with them and to produce their licences on request. Legislation in most states also specifically prescribes what information should appear on the cards, and in some cases, the material cards should be manufactured from.

In my opinion, the following essential details should be printed on the identification cards of private investigators and security guards:

- ❑ Biographical details of the officer / investigator
- ❑ Training courses passed
- ❑ Specific calibre of weapon training received
- ❑ Name of company employed with
- ❑ Medical details such as blood type and medical aid
- ❑ A recent photograph
- ❑ Registration number with the regulatory authority

6.7.10 **Bonds and sureties**

The thorny issue of bonds and sureties has been handled with a lot of circumspection during the process of discussing a new regulatory framework for the Private Security

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Industry in South Africa[9]. The main reason for this is that the creation of such a measure would immediately raise the entry standards. It could even result in a number of small operators not being able to start a security business. Concerns have also specifically been raised with regard to the possible hampering effect such measures could have on Black empowerment operators in the country. In view of the above it was understandable that the Bill (Bill 12 of 2001), did not make any provision for a liability fund. This can be regarded as one of the main shortcomings of the Bill.

If one looks at this issue, keeping in mind the objectives of the Act, which is inter alia to protect the community, you will have to measure the protection of the community against the consequences of lifting the entry barrier into the industry. It is thus to some extent a dilemma where the victim can't win. The protection of the public should in theory outweigh the barrier argument, but in practice Government does not want to be accused of preventing economic growth and entrepreneurship. It should, however, be taken into account that if a company can't afford to take out insurance of some kind to pay damages to a member of the public or a security guard when injured owing to security company activities, the company would possibly also not be able to pay its employees the minimum required wages and finance the business. Such a operator should thus, for the sake of the consumers, the public and its employees not be allowed

9 The author was involved in discussions as part of an inter-departmental working group established to determine the principles for regulation of the Private Security Industry. During these discussions the Department of Safety and Security argued that premium for an liability fund would place unnecessary financial burdens on the security officers.

to operate.

A further argument is that security companies and private investigators are infringing on the traditional terrain of the South African Police Services. They possibly have more daily contact with the public than the average police officer and are in more threatening situations than the average police officer. The SAPS is continuously being sued by people who have been injured owing to SAPS operations and activities and in most cases being compensated from Government coffers. According to the Institute for Security Studies (ISS) (2001:14) the Independent Complaints Directorate (ICD) received approximately 1237 complaints against SAPS members. From this total, 681 (55%) were in connection with deaths in police custody or as a result of police action. The ISS furthermore made the point that 25% of all convictions of SAPS members are for reckless driving and drunken driving.

With these large numbers in a police service smaller than the Private Security Industry, one can't see how the Industry can operate without strengthening itself to compensate the public for misconduct within the Industry.

Private Security, receiving a fee for the services they provide, should thus be forced by legislation to start a victim compensation fund to ensure that people who are injured through security activities are compensated. The fund should also be able to compensate the families of victims who are killed by Private Security activities. Such

a fund should ideally be administered by the regulatory authority and both employees and employers should be committed to the fund. The fund could furthermore be strengthened if a percentage of fines for improper conduct or transgression of the regulations are deposited in such a fund.

According to Section 32-2433(C), of the State of Arizona (Private Investigator and Security Guard Act. Arizona):

> "The bond shall be executed and acknowledged by the applicant and by a corporation licensed to transact fidelity and surety business in this state as surety. The bond shall be continuous in form and shall run concurrently with the license period. The bond required by this Chapter shall be in favor of the state for the benefit of any person injured by any acts of a private investigator, his agency or his employees and is subject to claims by any person who is injured to these acts"

Table 6.1 is an indication of the bond values required by some of the States used in this comparison[10]:

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TABLE 6.1

COMPARISON OF BOND REQUIREMENTS IN THE USA

STATE	AMOUNT	SECURITY REQUIRED
Arizona	US$ 2500	Bond
Florida	US$ 300 000	Insurance policy
Illinois	US$ 1 000 000	Insurance policy
Iowa	US$ 5000	Bond
Indiana	US$ 7000 US$ 100 000	Bond & Insurance policy

Source: Own compilation from legislation reflected in Annexure B

From the above figure, it is clear that insurance policies and bonds do not need to be excessive amounts. The effect of these bonds and policies however would create a greater sense of responsibility with both employees and employers. Most importantly the establishment of such a fund would create a mechanism to ensure that people who are in contact with the Industry on a daily basis could be compensated to some extent if they are injured, as opposed to the current situation where the changes of compensation, especially from the smaller operators, are basically zero.

6.7.11 **Naming of companies and advertising**

The main purpose behind inclusion of company names and advertising requirements in the legislation, is primary for the protection of the public interest and secondary for the

protection of the image of the industry. Neither the current nor the new South African legislation has any reference to these two important issues.

There is a twofold purpose for regulating the names used by private investigation companies. On the one hand it ensures that a company can't just close down one name and then continue on another name without the knowledge of the regulatory authority. Currently it is only required to make a name change at the Registrar of Companies. A company who has hence obtained a bad name through delivering inferior service, should not be allowed the latitude to just continue under a "trade as" name and by implication mislead consumers.

The second purpose of regulating the name used by a company, is to prevent the company from using a name which could give the impression to the public that the company is in a way connected to an official structure, or that it is performing official duties. The name should thus not include words such as "police", "agency", "service", "detective", "intelligence" or any other words which could create the impression that the company is acting as *de facto* policing structures. Neither the Security Officers' Amendment Act (Act 104 of 1997), nor the Security Industry Regulation Bill (Bill 12 of 2001), makes any provision for these restrictions on private security and private investigative companies. To me it is an important restriction to be placed on the Industry as it prevents them from creating and misusing the impression that they are a Government sanctioned crime prevention and investigation entity. The public should

at all times be aware of the fact that law enforcement, crime prevention and crime investigation are primary responsibilities of Government. Government can't allow names such; "police", "intelligence" and "enforcement" in private company names as it could be misleading to the public.

The above concept is not uncommon in the South African legislative system. The South African Police Services Amendment Bill (Bill 39 of 1998) in Section 64Q, states that no service of a municipality may contain the word "police" except for the municipal police provided for in the Amendment Act. It is thus an obvious omission from the Security Industry Regulation Bill.

A summary of legislation[11] from Kansas, Massachusetts and Nevada outlines the following principles with regard to advertising and the naming of private investigation companies:

- A licensee shall not conduct his business at any other place than the premises indicated in the application. As indicated previously, branch offices should have separate applications and should carry the same name as the main office.
- The name of the company shall be approved by the regulator. The name shall not contain words such as "police" or "fire" or any other name which denotes or implies any association with agencies of the Governments of the United

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States.

- No badges, patches or uniforms are allowed which in any way represent agencies of the Governments of the United States
- Advertisements should always reflect the registration details of the company and should not make any false representations
- Companies need to apply if they want to operate under a fictitious name. These names may, however, in no way lead to a situation where it can be confused with another company

6.8 Summary

As stated earlier in this thesis, the proposed South African legislation is trying to address so many issues, that it is almost reduced to a compilation of numerous pieces of legislation in an effort to address all the concerns of the role players involved in the process of determining the future scope and functions of the regulatory authority. By saying this, the inclusion of the private investigator is an excellent example of how the inclusion of certain issues was clearly not weighed up in terms of the application of the proposed legislation.

The private investigation industry in South Africa is one of the fastest growing sectors of the security industry. Legislation to ensure Government control over these activities is thus of immense importance. The approach to this task is, however, thus

far been haphazard and half-hearted. The reference to the inclusion of this sector into the future scope of regulation, abruptly ends with the reference to the private investigator by defining what constitutes a security service. If one earnestly wants to ensure that this profession does not infringe on the basic human rights of the people or businesses they investigate, and that standards in the industry are kept at acceptable standards for both Government and consumers, then the current effort can't be regarded as acceptable.

It is not anticipated that this specific occupation could effectively be regulated within the framework of the proposed legislation. The need and environment exist to address this sector in separate legislation which does not only cover all the aspects of private investigators and their companies, but also the activities of the commercial intelligence services. One would furthermore also have to look into the possibility of a separate regulatory authority as this private investigator profession would require more "policing" than the guarding and electronic sectors.

CHAPTER SEVEN

REGULATION: PROPOSED SCENARIOS

7.1 Introduction

In Chapter Four it was determined that regulation in the industry should have as its main purpose the protection of community interests. This is used as the premise for establishing a possible way forward in determining an unique regulatory model for the South African situation. This Chapter furthermore argues that the protection of the community will be a natural result of regulating and enforcing the standards in the industry and that an all-Government regulatory body will not necessarily be the only option to achieve the goal of protecting the community.

This Chapter argues that if the option is adopted of regulating the standards in the Industry for the purpose of protecting the interests of the community, an approach of a joint regulatory venture between Government and the Industry is the most viable option in terms of the establishment of a new regulatory authority. This option, is a combination of the current regulatory model where there is no Government representation on the Security Officers' Interim Board (SOIB), and the Government proposal of a regulatory body with no industry representation at all. It is expected that the move from one extreme situation to the next, will be counter-productive in terms of the effective regulation of the Industry.

7.2 Models for regulating the Industry

When assessing the current process of reviewing the regulation of the Private Security Industry in South Africa, two scenarios spring to mind. On the one hand, according to Minnaar and Mistry (1999:13):

> "Generally, an international comparative analysis reveals that the current South African regulatory framework is one of the most comprehensive in the world"; and

on the other hand, according to the British Government (British Home Office:1999:6):

> "Where these mechanisms are working well, the Government wants to underpin them with legislation rather than creating additional layers of bureaucracy".

The challenge to Government lies in finding the balance in terms of Government and Industry involvement in the construction of a new regulatory framework. As stated earlier, the maturity of both Government and the Industry plays an overriding role in how a review process will be approached. In addition, as stated in the Report on the Task Force on Private Security (1976:281), the regulatory framework should also not become an economic or operational hardship to the Private Security Industry. These sentiments are echoed by the SOIB in their Policy Paper (SOIB:2000b:92), when they

state that regulatory considerations should be informed by a balanced free market philosophy and fundamental rights recognised in the Bill of Rights. The Board states the following as to what regulation should not be:

- Make it unreasonably difficult for certain categories of security businesses - for example emerging businesses or small businesses, to enter the Industry and become financially viable
- Make it unnecessarily difficult for individuals, or certain categories of security officers, to register or stay registered as security officers
- Place unreasonable burdens and obligations on security businesses which could stifle acceptable business practices.
- Protecting or maintaining vested interests of certain security businesses in unacceptable ways
- Enforcing unrealistic standards or norms which do not sufficiently relate to the legitimate and acceptable objects of regulation, or which are not appropriate to the activities of particular categories of security officers.

It is also with these scenarios in mind that one needs to look at the different regulatory models identified by Irish (1999:34). These models include the non-interventionist, minimal regulation and the comprehensive regulatory model. They can be described as follows:

- *Non-interventionist*: The State does not take responsibility for regulating the Industry. It is left to the market to ensure adequate regulation occurs.
- *Minimal regulation*: The State introduces minimal legislation to regulate employees in the Industry. Such regulation may also set limited rules and standards for the Industry.
- *Comprehensive regulation*: The State extends regulation beyond controlling the type of person who enters the industry. Substantive regulation is introduced to raise the standard and quality of service provided by the Private Security Industry.

Hakala (1998:75), goes beyond the breakdown presented by Irish. He divides regulatory models into the following categories:

- Non-Interventionist Model, in which no statutory national standards exist for the major sectors of private security
- Minimal Narrow Model, in which only minimal standards exist and only parts of the guarding or private investigator sector are regulated
- Minimal Wide Model, in which minimum standards are applied to sectors extending beyond the manned guarding and private investigator sector
- Comprehensive Narrow Model, in which comprehensive regulations govern only parts of the manned guarding and private investigation sector
- Comprehensive Wide Model, in which comprehensive regulations govern the

Private Security Industry beyond the manned guarding and private investigator sector

The major distinction this thesis makes from these models presented by both Irish and Hakala, when presenting possible models for the South African environment, is that it attempts to define the level of inclusion of both Government and the Industry in a regulatory authority.

Irish (1999:34) continues by stating that in the late 1970s and during the 1980s, most countries moved away from the non-interventionist model to minimal regulation. In the 1990s, a growing number of countries moved from a minimal to a more comprehensive regulatory dispensation. Western Europe, parts of Australia, and some states in the US have introduced, or are considering the introduction of more comprehensive regulation. The reason for the move from non-interventionist to comprehensive regulation, can't be seen in isolation from the fact that the traditional sovereign role of Governments internationally, has changed extensively and the whole Criminal Justice System has become partially privatised. Consequently, the need for a more encompassing approach in terms of legislation exists.

As stated earlier in this Chapter, the objective for regulation should be the starting point of the debate regarding new legislation and the determination of a new regulatory framework. In South Africa, it is clear that we have also gone the full circle from the

non-interventionist model before the proclamation of the Security Officers' Act, to a minimal regulatory framework. Currently envisioned, is the introduction of comprehensive legislation to regulate the Industry.

South (1988:135 - 136), in making a comparative study of mainly European regulatory systems, concludes that these systems repetitively have common mistakes and shortcomings which are rather to the detriment of both the public and the Industry. These issues include:

- Firstly, the regulatory system focusses on the contract security side, specifically guards
- Secondly, there are concerns about "competition" between private security and public police. It is furthermore a high priority to forbid , or at least control "moonlighting" by police officers in the Private Security Industry, in their off-duty hours
- Thirdly, the breadth and lack of precision of regulations (rarely accompanied by a breadth of actual power and resources to back them up) have given rise to a degree of *discretion* in the implementation of the regulatory authority. This discretionary type of system has probably often worked to the advantage of the Private Security Industry.

These aspects mentioned by South are not only evident in current legislation to regulate

the Industry, but almost a case of *de ja vu* in terms of the Security Industry Regulation Bill (Bill 12 of 2001). An issue which raises a number of concerns regarding the effectiveness of the proposed Act, is the fact that the Bill is an effort to solve a number of problems in the Industry which could have been solved with already existing legislation and through normal line-functional duties. Also it raises concerns regarding the fact that sectors in the security industry are still open for "interpretation" by service providers.

7.2.1 **Industry self-regulation**

The reality that the Industry, has up to now, been *de facto* responsible for its regulation, was one of the major reasons for the prompted changes in legislation. In Chapter Three a detailed discussion on this issue revealed that the self-regulation of the Industry, was not because of forces within the Industry wanting to steer away from Government regulation, but rather owing to a lack of interest from Government to become effectively involved in the regulatory process. This situation has now created the perception that the Industry does not want to be regulated by Government because of sinister reasons. According to the Safety and Security Policy Document (Department of Safety and Security:2000:18):

> "It should be noted that there is an inherent contradiction between the interests of the private security industry and those of the state. While the state aims to achieve a stable and secure environment in which all threats to national security are either

neutralised or contained the Private Security Industry thrives and grows in conditions in which threats proliferate and manifest themselves in diverse forms. As such, the levels of crime should remain and a general sense of fear should prevail for the Private Security Industry to grow and thrive and to realise significant financial returns. It is this inherent contradiction which underpins the need for, and importance, of regulation of the industry, and even more significantly, the INDEPENDENT regulation of the industry."

From the above policy approach within Government circles, it is clear that there is a large measure of distrust against the Industry. As determined in Chapter Three, however, the basis for this mistrust is mostly founded on perceptions and not on a factual basis supported by well-documented offenses committed by security companies *per se*. The fact that the perception is based on nothing more than allegations and incidents committed by individual security officers, provided the basis for the argument that the Industry has to be regulated by an independent body. It also places a question mark over the proposal in the Security Industry Regulation Bill (Bill 12 of 2001), regarding the composition of the future regulatory body. The reality that the extent of mistrust towards the Industry by Government has a direct influence on the approach adopted by Government in their regulatory framework, is confirmed by Standaert (1999:7-8), when she states:

"where the private security industry has evolved as an alternative to the public police, the Governments have responded to the industry with a larger degree of

> mistrust ... These regulatory regimes primarily focus on the control of the industry rather than simply lowering the possibility of abuse and improving the quality of service."

It is especially this last part of Standaert's argument forming the basis of the questions posed in Chapter Four when the objectives of regulating the Industry were questioned. In other words, if the regulation of the Industry does not have the protection of the standards of the Industry as its main objective, one should be able to detect a relatively high level of mistrust from Government against the Industry.

The Department of Safety and Security (2000:19), implied that the security industry itself could be responsible for the generation of tension, conflict and fear in order to retain the viability of their business, and for this reason an independent regulatory authority is required. The assumption by the Department borders on implying that the current Security Officers' Board is responsible for fuelling violence and crime in order for the Industry to stay in business. Even if the Department is only implying that certain companies are involved in these types of criminal activities, it is not clear how the Department can prevent these actions by an independent Board. It was emphasised in Chapter Three that the regulation of the Industry can't prevent criminal activities in the Industry. In conclusion the Department argues (Department of Safety and Security:2000:31):

> "The protection of the public interest and the private security industry is the primary reason for the independent regulation of the industry. As such, those entrusted with the regulation of the private security industry must be persons without any connection with, or vested interest in, the private security industry."

The above statement made by the Department is ambiguous, because of their argument that the protection of the Industry and of the community can only be facilitated by the creation of an independent regulatory authority. It is not clear how you can act in the best interests of specific groups if you don't give them representation or structured channels to voice their concerns, and even more importantly, to receive feedback on their concerns. The same role players mentioned by the Department, namely the *public interest* and the *Private Security Industry*, are those mentioned in the Security Officers' Act (Act 104 of 1997), Section 3(Aj) as sectors requiring increased representation in the new regulatory authority. It is thus interesting to note that apart from the lack of Industry representation in the proposed regulatory body, there is also no accommodation for community representation in the new body. The Department, and consequently the State's departure point for the exclusion of the Industry from the future regulatory Board is therefore based on sandy foundations and perceptions.

Critics of the industry such as Irish, Ibbotson, and Standaert argue that the Industry can no longer be regulated by a body with Industry representation on such a body. Ibbotson (SOIB:2000c:41), argues that the State itself should undertake the regulation, for the

main purpose of protecting the interests of the public. Irish (SOIB: 2000c:28), supports this viewpoint by stating that industry representation on the new regulatory body will impact negatively on the ability of the regulatory body to act independently. This argument cited by Irish has been one of the main points of criticism against the current SOIB. The whole issue of the Board's lack of credibility, as discussed in Chapter Three, has mainly been based on the argument of Industry representation on the regulatory authority. The continued representation or lack of representation of the new regulatory authority will thus have an impact on the credibility of the new body whichever way Government decides to choose. Of note is the Standaert[1] (Personal e-mail correspondence dd. 15/03/2001), made a definite change in her approach regarding the issue of Industry representation on the regulatory authority when she states that Industry representation is necessary on a regulatory body. Standaert continued by saying:

> "Being in the United States and far from the realities of the South African situation at the time I prepared the report, I was unaware of the vital importance of this issue in South Africa."

This statement made by Standaert, more-over proves that Government, and especially the Department of Safety and Security, based their approaches on the composition of the regulatory body on perceptions, and not a detailed study of regulatory objectives.

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1 Correspondence attached as Annexure C

7.3 The Interim Board versus Government's view on self-regulation

The Security Officers' Interim Board in its discussion document (SOIB:2000a:72), clearly stated its position with regard to the representation, other than Industry representation, on the new proposed regulatory authority. The SOIB (2000a:72), is strongly of the opinion that direct State regulation (whether by a Government department or a regulatory board dominated by Government officials), is not the correct option for South Africa. The view of the SOIB is in direct opposition to the view portrayed in the Private Security Industry Bill (Bill 12 of 2001), with regard to Industry representation. The SOIB cites the following reasons why Government only, or Government dominated regulation, would not be the best option:

7.3.1 The historical position

The SOIB argues that there has always been significant Industry involvement in the regulatory body and that it has not been empirically proven that this model is so deficient that it should be totally abolished. The SOIB (2000a:31), continues by citing Bruce George, member of the British Parliament and campaigner for security industry regulation in the UK, stating that the current model of industry representation is working quite well. Unfortunately, the historical position counts just as much against the Industry, as the Industry wants it to count for it. The historical perspective is clouded with the perceptions mentioned earlier in this thesis and is consequently a moot point raised by the

SOIB. The historical position should, however, be taken into account by Government in terms of reaching an agreement with the Industry with regard to future representation on the Board.

7.3.2 Government-alone regulation is impractical and unrealistic

The Board argues that it will be impractical and unrealistic to attempt regulating the security industry without significant involvement from the Industry itself. The SOIB continues by stating that Industry representation will bring democracy, legitimacy and expertise to such a body This issue raised by the Industry is possibly the best argument why the Industry should be represented on the regulatory authority. This statement is based on the result of a comparative analysis of international legislation regarding the regulation of the Private Security Industry. See Table 7.1 for a summary of the analysis:

TABLE 7.1

GOVERNMENT REPRESENTATION ON REGULATORY AUTHORITIES

State / Country	Ultimate reporting to Government	Chairperson	Industry representation	Government representation
Canada (B.C)	Yes	Independent	Yes	Yes
Queensland (Aus)	Yes	Govt	No	Govt Dept. supplies full function
England / Wales	Yes	Independent	Yes	Yes
Ireland	Yes	Not indicated	Yes	Yes
Namibia	Yes	Industry / Govt	Yes	Yes

New Zealand	Yes	Solicitor / Barrister	No	Dept of Justice supply full function
Virginia (USA)	Yes	Not indicated	Yes	Yes
Texas (USA)	Yes	Independent	Yes	No
Arkansas (USA)	Yes	Government	Yes	Yes
Arizona	Yes	Government	Yes	Yes

Source: Own compilation[2]

The above figure clearly indicates that from the comparative analysis, only New Zealand and Queensland (AUS), do not have any Industry representation on its regulatory body. All other cases have Industry representation, although in some cases such as Texas, Industry representation is by far outweighed by community representation. Taking this into account, if South Africa should decide to adopt a model with some Industry and community representation, the Texas model could be used as a starting point for the development of a unique South African model.

7.3.3. **Public interest**

According to the SOIB, it has not been demonstrated why the public interest object of regulation, necessarily requires regulation by a Government department or Government officials. As argued earlier, the Security Officers' Amendment Act (Act 104 of 1997) in Section 3(a)J, clearly requires the increased representation of the Industry and the

[2] Sources are in Annexure B where a detailed analysis is made

community. Yet, in the proposed new regulatory body, Government itself makes no provision for any representation from the community itself. International legislation such as Arkansas, Arizona, Illinois and Texas all have a specific clause in their Acts providing for members of the community to form part of the regulatory authority.

7.3.4 Foreign jurisdiction

The SOIB states that in many foreign jurisdictions the industry is strongly involved in the regulatory body. The SOIB specifically cites the UK legislation as proposed by the British Home Office in their proposal titled: The Governments's Proposals for Regulation of the Private Security Industry in England and Wales.

7.3.5 The Security Officers' Act (Act 92 of 1987)

The SOIB quotes the Act which clearly states that the new Board should have increased representation of the security service industry and of the community. The SOIB continues by arguing that Parliament has already determined that regulation is not to be undertaken by a department or office of Government, but by an autonomous board. This argument is not valid. With this argument the Board is over-simplifying the issue. The Security Officers' Amendment Act (Act 104 of 1997), clearly states that there should be increased representation of the mentioned sectors. It does not specify which other sectors should be included or excluded. The main point of this argument should consequently only refer

to the prescribed increased representation of the Industry and the community. The statements regarding Government representation posed by the Industry, are also applicable to their arguments regarding the fact that Industry representation does not mean the exclusion of Government. The regulatory body, irrespective of its composition, will still ultimately be responsible to Government.

7.3.6 Strong Industry representation does not exclude State involvement

The SOIB argues that strong Industry representation on the regulatory body does not exclude State involvement and does not detract from the legal status of the regulatory body as an "organ of the State" in terms of the Constitution. The SOIB continues by stating that Board members are appointed by the Minister for Safety and Security and that the Minister must approve key decisions of the Board.

7.3.7 Conflict of interest of Board members

The Board argues that the possible conflict of interest of Board members, can be dealt with adequately through an enforceable code of conduct and that the drastic measure of excluding all industry representatives is a total overreaction. It is clear that the Board still sees itself as the best possible institution to regulate the Industry. It is also obvious that the Board does not see the need for Government representation, as the Board is a *de facto* extension of Government and is fulfilling a mandate given to it by the Security Officers'

Act (Act 104 of 1997).

The argument posed by specifically Government why they should be represented or why certain sectors should be excluded, raises some questions regarding the determination of Government to totally control the regulation of the Private Security Industry. There is, however, a clear understanding from the Industry that they will no longer be in a position to continue in the traditional manner. In other words, it is factual that the new regulatory authority should have representation from both the Industry, Government and the community.

It is clear from the international comparative analysis that the most workable solution lies in finding a balance between representation between the three most important sectors i.e. Industry, Government and the community. It is furthermore also clear that a Government department should have the ultimate responsibility for regulation. It does however not mean that they should take on such a vast task without creating a workable relationship with the Industry and community.

7.4 Government or Industry domination of the regulatory authority

Working from the premise that the main objective of regulation is to protect the interests of the Industry by setting standards in the Industry, information gleaned from the comparative analysis was used to determine the possible route to be followed in South

Africa. Recognition is given to the reality that South Africa's Private Security Industry is *sui generis* in a number of different ways. It has been considered with the drafting of the proposed regulatory authority, as well as that the Private Security Industry has a specific historical perspective and that it should be taken into account with the development of a new regulatory model.

7.4.1 Government or Industry dominated?

Firstly, it is clear that a model favouring either Government regulation or industry regulation, will not lead to a workable solution in South Africa. It is accepted that Government could go ahead and plainly enforce a Government-only regulatory authority. It is inevitable though that this approach would create more tension between Government and the Industry. Overall, such a move would be counter-productive to a number of issues such as Government / Industry relations, Government / Labour relations, crime prevention and international investor attitudes.

The international comparative analysis[3], in which 22 countries or states were compared in terms of regulatory legislation, revealed that 8 of the 22 countries opted for the total Government control option. These include Queensland (AUS), New Zealand, California, Iowa, Kansas, Massachuttes, Maryland and Minnesota. This represents just more than one third (36%) of the legislation covered. The number should however be put in

[3] Annexure B

perspective by stating that in addition from the mentioned legislation, half of it only applies to private investigators. These include California, Kansas, Maryland and New Jersey. That raises the question as to whether these states would not have incorporated members of the Industry onto their regulatory authority if they were regulating a wider scope. It also raises the question as to whether South Africa should not consider separate legislation for the private investigation fraternity.

Some of the legislation clearly indicated whether a Government is at all worried about the independency of the Chairperson of a regulatory authority. Legislation from Namibia, Iowa and Indiana[4] clearly states that the Chairperson could come from either the Industry or Government. This shows that there is no distrust from Government towards the Industry. As stated earlier, if trust exists between these two entities, it creates a healthy foundation for a national crime prevention strategy. All the legislation revealed that there is not a single country or state where Government does not have the ultimate responsibility. This opens up the argument that if a Government has an effective administrative system, it does not need direct representation or the majority representation on a regulatory authority, as it actually does have the power to have a final say in the actions and decisions of the authority.

[4] Annexure B

7.4.2 Government's arguments for Industry exclusion

The Security Industry Regulation Bill (Bill 12 of 2001), in Section 3 maintains the initial objectives of regulation, as stated in the Security Officers' Amendment Act (Act 104 of 1997), but in addition adds that the Industry should also act in the national interest. It is this reference to the *national interest*, which raises some suspicion regarding the real motivation for the dramatic changes in the regulatory dispensation. In other words, if one reads through the arguments posed by Government for the exclusion of the Industry from the new regulatory authority, it becomes clear that there are no valid arguments to substantiate Government's approach. At most there is a strong perceptual viewpoint based on nothing more than individual perceptions and individual interests. In addition, the Department of Safety and Security in the Policy Document (Department of Safety and Security:2000:10), advocates the following objectives of regulation: Protection of the Industry, protection of the State, protection of the employees and protection of the public. The Department however continues by stating that regulation should "adequately reflect the interests of Government".

One can, however, not see the inclusion of *national interest* into the Bill in isolation. This approach is not surprising if one takes into account the message portrayed by the Department of Safety and Security in their Policy Document on the Future Regulation of the Private Security Industry. In this document, the impression of an Industry with a high risk of destabilising the national security environment is created. Some of the ambiguous

statements include the following:

"Research shows that a significant portion of the South African private security industry is run by ex-military and ex-police officers ... the private security industry, by its very nature, gives rise to certain sensitivities because of the capacity of some business to be highly armed, to engage in investigations and to intercept and monitor voice-activated equipment. The concern raised is the capacity for abuse by some elements in the industry." (Department of Safety and Security:2000:9).

"It should be noted that there is an inherent contradiction between the interests of the Private Security Industry and those of the state. While the state aims to achieve a stable and secure environment in which all threats to national security are either neutralised or contained the private security industry thrives and grows in conditions in which threats proliferate and manifest themselves in diverse forms. As such, the levels of crime should remain and a general sense of fear should prevail for the private security industry to grow and thrive and to realise significant financial return." (Department of Safety and Security:2000:18).

"The private security industry has acquired capabilities and is undertaking operations which may infringe on every person's right to privacy and as such, infringe upon their constitutional right." (Department of Safety and Security:2000: 19).

From the above extracts a number of very important issues come to the fore regarding Government's approach to regulation. The reference to *"Research shows that a significant portion of the South African private security industry is run by ex-military and ex-police officers..."* is an ambiguous statement.

It is practically almost impossible to gather the data which would either support or disprove this statement. The only detailed data on the owners of private security companies is the data held by the SOIB which does not indicate whether a person has previously undergone military or police training. One can assume, that because of the history of South Africa, most White South African males between the ages of 31 and 55 had undergone either military or police training. This was owing to the fact that all males had to undergo compulsory military training ranging from 9 months to two years.

Besides, if one manages to determine from each company if either management of owners have had previous military or police training, the question could still be asked: So what? The fact that a person have previously been active in military or police service does not imply he or she is prone to anti-constitutional activities. Furthermore, once it has been determined how many individuals have had former military training, how do you quantify their attitudes to determine if they have extremist / anti-constitutional tendencies towards Government?

If it then has been determined that some of the individuals are not in full support of

Government, the question can once again be asked: So what? According to the Bill of Rights, Section 15 (Act 108 of 1996), every South African citizen has the right to freedom of religion, belief and opinion, and it furthermore states in Section 19, that every citizen is free to exercise political choices. The phantom of former military and police members in the Industry is not only based on individual perceptions, but is also unfairly discriminating against individuals owing to their background.

It is in addition clear that individuals such as Irish do not distinguish between private security companies and mercenary outfits when referring to the flow of former military employees to the Private Security Industry. According to Irish (1999:2):

> "Private security companies have even involved themselves in political conflicts taking place on the subcontinent. For example, erstwhile members of the South African Defence Force (SADF) were recruited by commercial security companies to assist both sides in the ongoing Angolan civil war."

Irish in her publication referred to the mercenary company, Executive Outcomes (EO) which officially ceased to exist at the end of 1998. EO did operate with mainly former South African Defence Force Special Force operators in Angola, Sierra Leone, the Democratic Republic of the Congo and even as far as Papa New-Guinea. One should, however, see these operations and the use of Special Force operators in context with the broader political situation of the late 1980's and early 1990's. At the same time South

African forces started to withdraw from Angola and Namibia (1988 - 1990), the political changes started taking place in South Africa with the famous 2 February 1990 speech of former President FW de Klerk and the subsequent unconditional release of Mr Nelson Mandela from jail.

These political moves, over a very short space of time, created a lot of uncertainty in the armed forces. When EO thus offered large payments for contract work in Angola, a territory well-known to Special Force operators, a large number of members joined their former colleagues and now directors of EO. This company, as well as other smaller companies were not security companies, but mercenaries fighting for the highest bidder. This confusion by academics and Government regarding the difference between a mercenary company and a security company, has added to the perception that security companies are a threat to national security. This is obvious in the Safety and Security policy document (Department of Safety and Security:2000:18) when they state:

> "The potential impact of the conflict between the activities of private security companies operating outside the borders of the Republic of South Africa and the South African foreign policy, and the potential destabilisation of foreign nations..."

Broad statements by the Department of Safety and Security, Blecher (1996:14) and Irish (1999:12-13), have been used as the point of departure to in future, regulate inter alia the flow of military and police personnel to the Industry. This is evident in Section 22(1)(f)

of the Security Industry Regulation Bill (Bill 12 of 2001), which proposes that an individual currently employed by the Security Services or Intelligence Services would be required to obtain a "clean bill of health" and any other information required by the regulatory authority, before he or she can be registered as a security officer.

As stated earlier, there is no evidence of research conducted and published by any institutions or individuals which have been able to establish a clear link between the background of members entering the Industry and the regulatory problems which have been identified in the Industry. In other words, it was not possible to prove a direct relationship between crimes committed by members of the Industry and the training / previous job background of these perpetrators. It is generally accepted by all the mentioned individuals that there is a natural flow from the armed forces to the Private Security Industry, but what is not correct is their deduction that:

> "... it is equally impossible to believe that they will now easily reform when most of their lives they have known little other than violence." (Blecher:1996:14).

It is for this reason argued that the State does not have any substantive reasons for the exclusion of the Industry from a future regulatory authority. As stated before, such an exclusion will be counter-productive for enhanced co-operation between the Industry and Government, especially in terms of the National Crime Prevention Strategy (NCPA).

7.5 An ideal regulatory authority for South Africa?

It is obvious that there is a myriad of reasons and arguments for the exclusion and inclusion of specific sectors from the future regulatory authority. This thesis argues that although there could be valid reasons for the division of representation by certain sectors in the Industry, there are enough international examples to prove that an ideal body should consist of both Industry and Government representation. The challenge furthermore does not only lie in finding a balance between the Security Officers' Amendment Act (Act 104 of 1997), which does not have any Government representation and the Security Industry Regulation Bill (Bill 12 of 2001) which does not have any Industry representation. The challenge lies in finding a composition which will ultimately serve the purpose of regulation, namely the protection of the interests of the community.

For the purpose of this thesis, two models have been developed which could be applied to the South African situation.

7.5.1 Model A (*Semi-Integrated Wide Model*)

This model to some extent still allows for the Industry to regulate itself as far as the standards in the Industry are concerned, but gives Government a larger and more prescribed role in setting of standards for regulation of the Industry. This model bears resemblance to some of the characteristics of the *Comprehensive Wide Model* as described

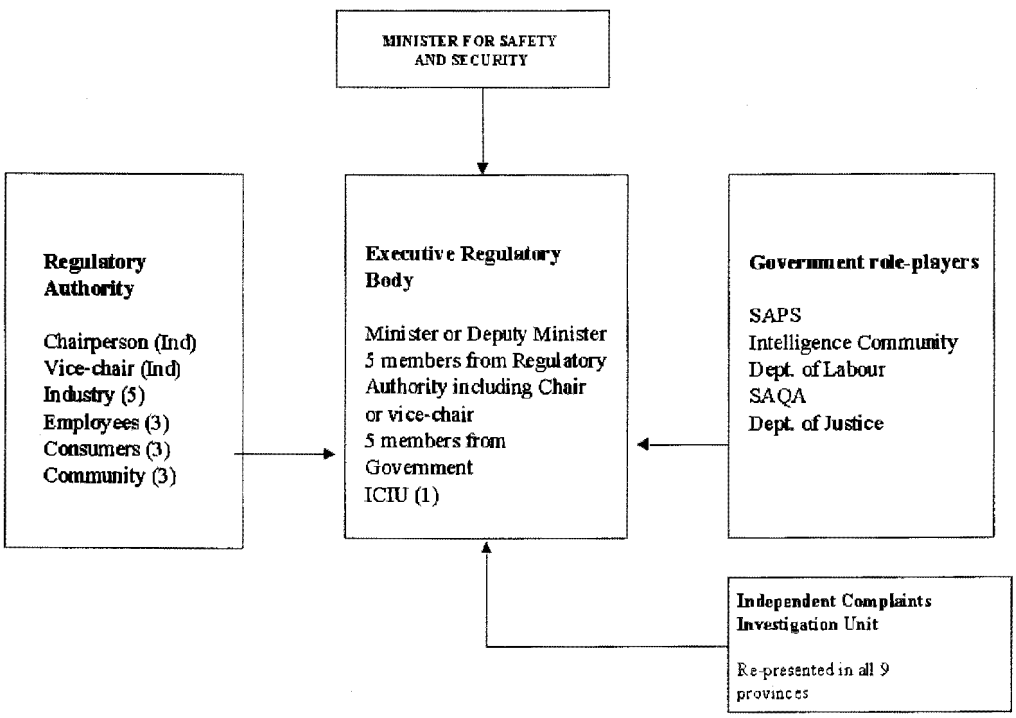
by Hakala (1998:75), although the definition given by Hakala does not contain any reference to the role, if any, of Government in the regulatory body. This model will hence be referred to as the *Semi-Integrated Wide Model (SIWM)*. My definition of this model is as follows:

The Semi-Integrated Wide Model refers to a model containing minimum specific standards in which the Industry must operate. The Industry is responsible for policing and maintaining of these standards with a specific role for Government in determining these standards. The SIWM has a soft approach whereby both requirements of Government and the private security sector are met in separate bodies, but Government still has the ultimate decision-making responsibility.

The SIWM allows for Government representation on the regulatory authority, but places more emphasis on industry and community representation. The control mechanisms for Government vest in the input they have in the setting of standards and the independent body for investigating claims of illegal practices in the industry. The independent body, will also be strongly based on regional / provincial grounds to ensure that cases can be investigated quickly and investigators can become familiar with the security operators in their environment. A schematic diagram of the SIWM looks as follows:

FIGURE 7.1

SEMI-INTEGRATED WIDE MODEL



As stated in the definition of the SIWM, this model is a soft approach to find common ground and understanding between the Private Security Industry and Government. It is for this reason an elaborate system trying to include as many role-players as possible. The regulatory authority is basically a continuation of the SOIB, but has made provision for inclusion of both consumers and community members. This body consists of three major separate bodies namely a Regulatory Authority (RA), a Executive Regulatory Body (ERB) and a Central Government Body (CGB). The Authority also provides for five members from the security industry as opposed to the three members provided for in the

current SOIB.

By doing this, the requirements as set out in Section 3(jA) of the Security Officers' Amendment Act (Act 104 of 1997), are fully met. This Authority makes provision for a Chairperson and a Vice-Chair appointed by Government. Although there is Industry representation, it is far outweighed by eleven to five members. This will ensure that the Industry will not be in a position to dominate the regulatory authority, but will still have enough representation to protect the needs and standards of the security employees. Even if the employees and the industry sectors decide to vote together on a specific issue, in which event it will result in an equal eight votes each, the Chairperson can refer the decision to the Executive Regulatory Authority where Industry will always be outnumbered by six to five votes, giving Government the ultimate decision on issues of concern.

The Government body representatives of all departments having a direct interest in the role and functions of the Private Security Industry, will have a forum where they will be able to discuss the issues of concern and would be able to table a joint effort at the Executive Regulatory Authority.

With regard to Model A, the composition from the Industry varies because there is only provision for five industry representatives as opposed to nine industry representatives in Model B. Hence one will have to take into consideration monetary values and personnel

complemencies of the various industries to determine the relevant representation quotas. The three main industry categories are basically similar to Model B. These are the guarding sector, the electronic security sector and a sector referred to as the "Other". The guarding sector refers to guards, cash-in-transit operators and armed response operators. The electronic security sector refers to installers, manufacturers and distributors. The "Other" sector refers to private investigators, locksmiths, VIP protectors, bouncers, dog handlers, trainers and training institutions. Taking this into consideration, the following is proposed:

TABLE 7.2

INDUSTRY REPRESENTATION: MODEL A

INDUSTRY REPRESENTATION: MODEL A	
Guarding Sector	2 representatives
Electronic Security Sector	2 representatives
Other Sectors	1 representative

Source: Own compilation

With regard to all these sectors, a rotational system is proposed whereby different sectors are allowed only a single term as representative on the Regulatory Authority. This will inevitable mean that the sectors classified as "Other" will be represented less frequent than those categorised under the other two sectors.

Also present in this regulatory structure is an Independent Complaints Investigative Unit (ICIU). For the purpose of the SIWM, this body will perform the watchdog function of

Government regarding the industry and should ideally be a line-functional part of either the SAPS or the Department of Justice. Complaints raised by members of the public, security operators and government departments would be investigated by such a body. The findings of such an investigation would be tabled at the Executive Regulatory Body for decisions on the appropriate actions to be taken against offenders. This would prevent the situation whereby industry representative on the Authority would have the opportunity to prevent action against individuals or companies. The fact that Government employees will make up the staff compliment, will assist in the process of establishing trust between Government and the Industry.

7.5.2 Responsibility of the Regulatory Authority (RA)

The Regulatory Authority (RA) will have the function of protecting the occupation of the security officer, as well as promoting the status of the occupation. On issues such as training standards, the regulatory authority will on the one hand play an advisory role and on the other hand ensure the training requirements are in step with the practical developments in the industry itself.

The regulatory authority will also be responsible for the functions of registration of security officers, managers and security companies. The RA will be responsible for its own "policing" duties to ensure all companies are adhering to the minimum registration and training requirements. Policing duties performed by the RA, will be in addition and

to some extent in anticipation of the policing duties performed by the ICIU. The main difference will be that the ICIU will act on complaints from the public, community and Government sectors, while the RA will be in a preventative mode.

The RA will be very similar in its activities to that of the current SOIB, except that it will have a more specific role in terms of advising Government on the standards in the Industry. The advisory role is different from the previous advisory role which was prescribed in the Security Officers' Amendment Act (Act 104 of 1997) where it is stated that the SOIB must advise the Minister for Safety and Security with regard to the establishment of the new regulatory body, the funding of the Board and further amendments to the Amendment Act. The foreseen advisory role is that of giving line-functional advice to ensure that standards in the industry is in line with the reality of doing specific security work. In other words, to prevent the regulatory body becoming a *de facto* academic body harming the actual security operator because of a lack of knowledge of the actual operational circumstances.

7.5.3 **Central Government Body**

The Central Government Body (CGB) is that role of the broad regulatory function which accommodates all the necessary Government departments where issues of concern regarding the industry could be raised, discussed and presented in a uniform manner to the Executive Regulatory Body (ERB). The CGB will also include members from the South

African Qualifications Authority (SAQA) and more specific, the relevant Standards Generating Body (SGB). Provincial representatives from the investigative units will also be represented on the CGB. This will allow for a free flow of information regarding complains lodged against companies, the outcome of these investigations, needs for changes in specific standard prescriptions and also needs for adaption training programmes.

The CGB will be the vehicle through which Government can ensure that the Industry acts in the national interest as stated in Section 3 of the Security Industry Regulation Bill (Bill 12 of 2001). This is opposed to the proposed dispensation, as described in the above-mentioned Bill, where Government opts for control over the Industry instead of just becoming a full partner in the regulatory process.

7.5.4 **Executive Regulatory Body**

The Executive Regulatory Body (ERB) should only be regarded as a stabilizer between the interests of the industry and that of Government. Despite the fact that Government will have the majority representation on such a body, it should not be used as a structure through which decisions can be forced through. Such a body would thus require responsible decision-making. Decisions should be based on the principle objective of regulation, namely to protect the standards in the Industry. If this objective is kept in mind, it will insure that biased decision-making will to a large extent be eliminated.

The ERB will furthermore be there to oversee the functioning of the RA, without direct interference in the sovereign decision-making of the regulatory authority. Ideally they should recommend changes to training curriculums, assess and adapt standards set for entry into the industry, endorse the withdrawal of licences, hear appeals regarding fines and withdrawal of licences. This body will thus give executive backing to the RA, which did not exist in the case of the SOIB who had to rely on the SAPS. This step will ensure a credibility to the regulatory system as a whole. In this regard Ronan (SOIB:2000c:15), states the following:

> "There are currently almost 200 outstanding criminal complaints that have been lodged by the Board with the South African Police Services. Some are going back as far as 1998. South African Police Services and Department of Justice lack of resources has led to this unsatisfactory state of affairs. In addition the inappropriate light penalties which have been handed down in the 21 successful criminal convictions are also a cause for concern."

7.5.5 Advantages and shortcomings of the SIWM

The SIWM is an effort to include a wide spectrum of role-players involved in or affected by the Private Security Industry. This model is, however, to a certain extent more of a "system" than a "model". This is mainly because of the effort to include all the role-players without taking away any autonomy. The following are some of the advantages

of this model:

- It allows for full participation of the industry in the regulatory body.
- It does not allow one party to be the totally dominant party, but still gives Government the final say in issues which they feel national security or the public at large need additional protection from the Industry
- Government departments have a continuous channel to raise and address their concerns regarding the Industry
- Complaints are investigated by a body independent from the Industry itself, namely the Independent Complaints Investigation Unit (ICIU) which will be staffed by Government employees

Specific shortcomings of this model include:

- This regulatory body could become too elaborate in its effort to accommodate all role-players in the Industry
- The Executive Regulatory Body (ERB) could end up as the conflict resolution body between Government and Industry. This will ultimately result in the ERB being regarded as biased either towards Government or the Industry - creating a situation of distrust between the parties and the various structures in this regulatory system.

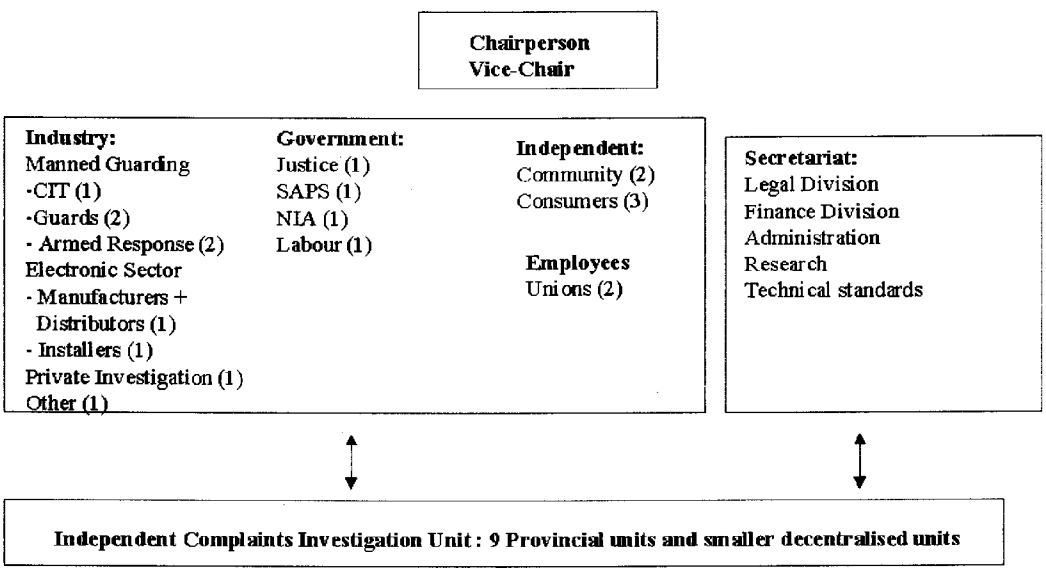
In conclusion, the Semi-Integrated Wide Model can be regarded as an effort to accommodate all role-players in the Private Security Industry. This model will allow for the Industry to still have a direct say in their own issues, but the ultimate decision and responsibility will lie with Government. The model will furthermore allow for Government to be responsible for policing the standards determined by both Government and the Industry. The model also allows for the ICIU to be provincially and regionally-based in order to speedily address concerns raised.

7.6 Model B (Fully Integrated Wide Model)

The Fully Integrated Wide Model (FIWM) differs from Model A in the sense that it only allows for a single regulatory body and not a regulatory system, as is the case with Model A. In other words, one body will have to take full responsibility for the regulatory function, addressing the needs of the community, the State and the Industry. The Fully Integrated Wide Model also allows for representation from all the relevant stakeholders involved willingly or unwillingly in the Private Security Industry, but in a single body with no conflict resolution body as is the case with Model A. The following is a schematic diagram of the FIWM:.

FIGURE 7.2

FULLY INTEGRATED WIDE MODEL



The FIWM, as can be seen from the above diagram, consists of a single body accommodating the Industry, Government, employees, the community and also consumers of these services. My definition of the FIWM is as follows:

The Fully Integrated Wide Model refers to a model whereby all the role-players affected by the Private Security Industry are represented on a single regulatory body. The responsibility of policing and maintaining of standards within the Industry is that of the whole body, whilst both the Industry and Government have specific roles for determining these standards. The FIWM is a model which will most effectively function in a mature

democratic society with little or no distrust between the Industry and Government.

This FIWM regulatory structure makes provision for an independent Chairperson and an independent Vice-chairperson. Furthermore, the structure makes provision for a secretariat providing the following services / divisions:

- *Legal division*: This division will assist in the investigative activities regarding the compliance of standards for both training and registration
- *Finance division*: This division will be responsible for financial services, accounts and managing of the structure's budget
- *Administration division*: This division will be responsible for general administration, record keeping of registration and company profiles. It will also administer the Information Technology structures
- *Research division*: This division will be responsible for doing research on developments in the international private security environment, especially with regard to legislation and legal issues which could affect the industry as a whole.
- *Technical standards division*: This division will operate closely with the Research division but will focus primarily on the electronic security sector. It will be up to date with the minimum international quality standards such as the ISO9000.

The regulatory structure has an Independent Complaints Investigation Unit (ICIU) which is different to the body proposed in Model A. The main difference is that the investigation

unit in this more mature model, does not prescribe to the investigators to be Government employees or members of either the SAPS or the Department of Justice. Preferably, independent investigators with no interests in the Industry should be appointed. It would, however, be more effective if this unit will have executive powers within the parameters of its specific task to prevent a similar situation as described by Ronan earlier in this Chapter.

One could also argue for the inclusion of the Head of the ICIU, the Registrar of the regulatory structure and a member from the relevant SGB to be included as members of the regulatory body. These members would, however, be limited to voting powers with regard to their respective fields of expertise. In other words, the representative from the ICIU would only be allowed to vote on issues concerning standards. The representative from the SGB would only be allowed to vote on training issues and the Registrar will not have any voting power.

7.6.1 Advantages and shortcomings of the FIWM

The FIWM offers a number of advantages as a regulatory model. These include:

- Participation of all role-players affected by the mere functioning of the Industry within a single functional body. This allows for clear communication between all role-players on issues of concern.

- Creating trust between the various role-players as all of the affected parties are "forced" to act *bona fide*.
- Creating the opportunity for the various sectors of the Private Security Industry to be represented on the regulatory body. New views are therefore regularly brought into the process and no-one sector can continuously act on behalf of the whole industry.
- The Complaints Investigation Unit which is totally independent resulting in the enforcement of regulatory legislation to be done fairly and consequently.

The only negative aspect which comes to mind with regard to this model, is that it will not be able to function in an environment where there is not an indication by all relevant role-players to accept responsibility for the regulation of the Industry. This model will also rely heavily on the maturity of the democratic dispensation of the country. In other words, there should be a high degree of trust between role-players in the regulatory authority in order for regulatory objectives to be achieved.

7.7 Distribution of Industry representatives

The number of representatives and the sectors represented on the proposed regulatory model, is based on the results from the division of the security industry in Chapter Five. In this Chapter, it was clearly stated that the three major sectors will be the manned guarding sector, the electronic security sector and the private investigative sector. The

approach adopted was to look at the methodology detected in the comparative international analysis, and specifically those countries whose legislation was based on the comprehensive wide model, as described by Hakala (1998:75). Almost one third of the countries studied (7/22), made provisions for any type of security services employee, as opposed to specifically mentioned security occupations to be co-opted on the regulatory authority.

From the US legislation[5], i.e. Arkansas, Florida and Illinois, one sees the inclusion of specific occupations which are also mentioned specifically under the description of security services. It hence appears to be the best option to name specific sectors to be represented on the regulatory authority, if Government follows the route of mentioning the specific sectors in the definition of security services.

For the purpose of Model B, the main sub-sectors in the manned guarding sector were identified as the cash-in-transit or armoured car sector, the guarding sector and the armed response sector. According to statistics from the SOIB (as reflected in Chapter One), 80,8 percent of all security providers employ less than 50 employees, with the majority of security companies employing less than 5 employees. This raised the question as to whether the composition should not accommodate this fact, and ensure representatives from both small and large companies. The reality of the situation is, however, that these smaller companies are in actual fact too small to have a say on behalf of the big

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companies. A large number of these companies are also continuously absorbed into the bigger companies. It is thus unrealistic to think that a company with 10 employees could represent a company such a Fidelity Services with more than 23 000 employees. Subsequently the distribution for the manned guarding sector is as follows:

TABLE 7.3

MANNED GUARDING DISTRIBUTION

MANNED GUARDING DISTRIBUTION	
Cash-in-transit services	1 representative
Guarding services	2 representatives
Armed response	2 representatives

Source: Own compilation

With regard to the electronic security sector, division is mainly made between the installers of security equipment and the manufacturers and distributors of electronic equipment. This sector was previously not represented on a regulatory body, but as indicated in Chapter Five, this is a very large portion of the security industry. It is thus suggested to give this sector individual representation on the regulatory authority. The division for representation from this sector is as follows:

TABLE 7.4

ELECTRONIC SECURITY SECTOR DISTRIBUTION

ELECTRONIC SECURITY SECTOR DISTRIBUTION	
Installers	2 representatives
Manufacturers and Distributors	1 representative

Source: Own compilation

In addition, Model B gives separate recognition to the private investigation fraternity. Although the exact extent of the size and monetary value of this sector is not known, the importance of setting standards in this sector is of utmost importance, subsequently the argument for including at least one member on the regulatory authority.

It is clear from the sectors listed above that a number of sectors have not yet been mentioned although they have been discussed for inclusion under the regulatory framework in Chapter Five. These sectors specifically include the following:

- Locksmiths
- VIP protectors, doormen and bouncers
- Dog handlers
- Trainers and training institutions

Model B acknowledges the need for these smaller groups in the security sector to be included in both the regulatory framework and the regulatory body. The regulatory body thus makes provision for one representative from these mentioned groups. Ideally the member representing this group should alternate between the different groupings, simultaneously to the alternation of the other members on the regulatory authority.

7.8 Employer organisation representation

The regulatory body does not make provision for any representation from security employer organisations. Although five countries surveyed in the international comparative analysis provide for this, and although the Security Officers' Amendment Act (Act 104 of 1997), makes provision for this kind of representation, the argument is that this will give an unfair advantage to the sectors of the Industry already represented. In other words, the Industry sectors are already represented by nominees representing the armed response, guarding or private investigators. By creating addition representation for employer organisations, it will effectively provide the security sectors with additional representation. An additional argument in this regard, that the issues most likely to be raised by employer organisations, is that of representation. This issue should rather be negotiated within the employer / employee forums, the Department of Labour and the Commission for Conciliation Mediation and Arbitration (CCMA). The argument of representation, is supported by Randall Howard, General Secretary of the Transport and General Workers Union (SOIB:2000c:21), when he states:

> "Secondly, that the industry as defined in respect of employees and employers, must be there on the basis of people representation. We don't see any need for distinction in any respect for fit and proper categories and all those issues we dealt with in the setting up of the Interim Board which effectively created space for employers to find additional representation in that context."

7.9 The issue of Government representation

The specific Government departments mentioned in this model are the Department of Labour, Department of Justice, South African Police Services and the National Intelligence Agency. These departments are regarded as the main stakeholders from a Government perspective in the process of regulating the Industry. As stated earlier in this Chapter, it has been determined that the SAPS does not have the capacity to act on the charges brought against companies and individual security officers by the SOIB. The following the inclusion of the SAPS and the Department of Justice onto the regulatory authority, will make them part and parcel of the system and charge them with responsibility to act and report to the rest of the regulatory authority.

The inclusion of the National Intelligence Agency will primarily be to investigate the concerns Government has over specific individuals and companies. Report back should also be to the regulatory authority on the outcome of the investigations. This will go a long way in solving the issue of mistrust between the Industry and Government. The NIA will be responsible for doing security clearances on all the members on the regulatory authority and could assist with the development and maintaining of an anti-corruption unit at the regulatory authority.

The Department of Labour will have to take responsibility for the line-functional issue of labour, which has up to now, been mainly taken care of by the SOIB. This view is

supported by the South African Black Employers Association (SABSEA), when they state that every single function within the SOIB or a future regulatory body, should be taken over by the Government which is equipped to deal with these specific functions.

According to Steven Dube, Chairperson of SABSEA (SOIB:2000c: 24), inspections could be done by the Department of Labour. Fire-arm control should be handled by the SAPS and training by the Department of Education. Dube furthermore argues that the Board should only consist of individuals who are focussed on handling issues of the Industry. Dube did not expand what he then foresees as "issues of the industry", and it is thus not clear what the regulatory body should be doing in practice. In addition, the issue of fire-arms control has never been the responsibility of the SOIB, but only that of the SAPS[6].

The issue of Government representation raises an additional issue, which is also raised by Randall Howard from the T&GWU (SOIB:2000c:22), stating:

> "But in a sense of principle we would support a Board that is not completely State owned and State driven because, in fact, if that is the case they should pay for it completely."

6 In 1997 the author was part of an interdepartmental team which investigated the threat posed by the Private Security Industry. During this period a detailed investigation was undertaken by the SAPS on instruction of the IDWG. All security companies investigated were in full compliance with the fire-arms regulations.

The issue raised by Randall, is one of the points which could in the run-up to the implementation of the Bill become a major stumbling block[7]. The fact is that it will be very difficult to justify the payment of monthly fees to a body which does not have any representation from either the workers or the employers. In this regard the SOIB has made a lot of progress in terms of moving the burden of funding the regulatory authority by the workers, to funding coming from security businesses.

According to the SOIB (2000b:272), in 1997 the Board depended on 92 percent of income to come from individual security officers. In the 1999/2000 financial year this figure was reduced to 57 percent with the security businesses contributing 39 percent. The corresponding figure in 1997 was six percent. It was also mentioned earlier in this thesis that the cost of regulation is in excess of R20 million per year. This viewpoint is also supported by Frank Alexander, Deputy Secretary General of the National Security Guards and Workers Union (SOIB:2000c:30), when he states that:

> "In terms of the representation of the Board, it's quite clear because of the financial contributions by employer and employee, there's nobody here who will convince me otherwise that they shouldn't be participating and they shouldn't be represented there, unless somebody can come up with something different, we will continue with that discussion."

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7 In a submission prepared by the author to the Portfolio Committee on Safety and Security in response to the Bill, this issue was indicated as one of the main problems that could hamper the smooth implementation of the Bill. It is also regarded as potential point of debate with regard to the Constitutional correctness of the Bill.

According to Harry York, CEO of Sentry Security (SOIB:2000c:29), if the main focus of regulation is not going to be the setting of standards and specific service deliverables, there is not a need for industry representation, but if the regulatory authority continues to fulfill the role of Government departments not fulfilling their mandate, then the SOIB should seize to exist and the regulatory authority should become a Government department. This viewpoint of York has been stated more than once in this thesis. It has been indicated at the beginning of this Chapter that the premise is that the objective of regulation should be the protection of standards in the industry. If that is the case, the regulatory authority can't be constituted without representation from the industry.

7.10 Appointment of Board members

The members appointed to the regulatory authority, whether it is in the Model A or the Model B scenario, should all be appointed on the basis of very stringent criteria. The criteria should not only be in terms of minimum qualifications and experience, but also performance agreements and maximum periods members can be appointed to serve.

7.10.1 Term as Board member

An important issue that needs to be addressed, is the term an individual will be allowed to serve as a Board member. Apart from indicating the term an individual may serve, it is also important to indicate whether a person may be re-elected for a consecutive term,

and under which conditions. From the comparative international analysis[8], only the State of Louisiana pertinently stated that there is no limit on the period which an individual may serve on the regulatory authority. It is not necessary to distinguish between representatives of either Model A or Model B, as qualifications and serving periods are similar. The comparative analysis revealed that the average period for serving on a regulatory authority is four years. In the case of Arkansas, Minnesota, Oregon and Utah, these members are not allowed to be re-elected.

Taking into consideration that especially from Industry's side, there will be a need for rotation in representation in order to accommodate the various sectors and role-players, the period of four years may be too long. One would, however, take into consideration that every change of administration could lead to a pause in the activities of the regulatory authority. According to Section 5(1) of the Security Officers' Amendment Act (Act 104 of 1997), a member of the Board shall be appointed for a period of three years and is eligible for re-election.

The Security Industry Regulation Bill (Bill 12 of 2001) in Section 8(1), states that a person will be appointed for a period of one year as a councillor to the regulatory authority. The Bill, however, fails to indicate the maximum period a person may be appointed as councillor. Taking into account international legislation, current and proposed legislation, the best possible option for South Africa is regarded as a two-year

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period for each member of the regulatory authority, excluding that of the Chairperson and Vice-Chairperson. The reason for this two-year period, is mainly to ensure that there is a healthy rotation of different sectors and individuals on the authority and to prevent the authority to become too set and rigid in its ways.

The regular rotation of individuals is also a preventative measure in terms of corruption. The implication is therefore that a member will not be eligible for re-election after his or her two-year period. A system could be developed where the person elected to follow up the current incumbent, should be appointed simultaneously with the serving incumbent. This would create a system of continuity, as the person-elect could act as an understudy to the incumbent and be kept abreast with matters of the regulatory authority.

In the case of the Chairperson and Vice-Chairperson, it will be more effective if these individuals could serve a single period of at least three years. The purpose of this will be to ensure continuity in the working of the regulatory authority during changing of other members of the authority. The Chairperson and the Vice-Chairperson, as stated earlier, will be totally independent from the Industry. The continuity they thus provide to the working of the authority, is very important. As is the case with other members of the regulatory body, these individuals can't be re-elected.

7.11 Regional representation

The issue of regional representation has been raised by various role-players attending inter alia the SOIB's Seminar on 18 April 2000 (SOIB:2000c:26, 32). These role-players included Steven Middleton from the Durban Metro Council and Gary van Staden from Coin Security. The argument they pose is that provincial representation is needed because of the vast size of the Industry.

It has been proposed in both regulatory models that the Independent Complaints Investigation Unit to be deployed in all regions, end even in smaller units if possible. To have regional representation will overburden a system which will already be top heavy in terms of representation. An approach which could be adopted by the Industry, would be to have regional branches which they themselves organise and manage. These branches could be used for the dissemination of information and information from the regulatory authority. Likewise it could also be used to raise issues of concern with the regulatory authority.

7.12 Selection of members from the community and consumers

The selection of members from the community to serve on the regulatory authority is not only proposed owing to the prescriptions in Section 3(jA) of the Security Officers' Amendment Act (Act 104 of 1997), but also, as argued earlier in this thesis, that all

members of the community are subjected to the activities of the Private Security Industry whether they want it or not. Because of the sheer number of private security officers as opposed to actual police officers, the community is in more frequent contact with private security officers. The inclusion of members from the community will thus not only for the first time affording normal citizens the opportunity to continuously voice their concerns regarding the Industry, but also to constantly remind both the Industry and Government that the ultimate objective of regulation will be to protect the public.

In terms of qualifications of community members serving on such a regulatory authority, the following should be kept in mind:

- More than 21 years of age
- No interests in the Private Security Industry
- A detailed understanding of the Industry and specifically the Act
- Preferably a qualification relating to the Criminal Justice System

With regard to consumers being represented on the regulatory authority, one will have to ensure that there is a clear understanding of the difference between consumer and members of the community. Earlier in this thesis, it was explained in detail that a consumer is a person / institution who utilises security services on a contract basis, whilst members of the community are mostly in contact with the Industry because of the day to day operations of private security officers. The possibility is very high that members of

the community will also simultaneously be consumers, following parameters for the defining of consumers to be drafted. This could include issues such as a monetary value of contracts, number of sectors involved in the contract, etc.

7.12.1 **Civilian oversight in the Industry**

The use and implementation of a civilian oversight body for the Private Security Industry can't be separated from the issue of community and consumer representation on the regulatory authority. The reason for this is because one has to ask the question whether it is necessary to have an additional civilian oversight body if there is already representation from both the community and the consumers on the regulatory authority.

In Model A and B in this thesis, provision was made for community representation. This is, however, not the case in the Security Industry Regulation Bill (Bill 12 of 2001), which does not make provision for either industry or community representation. In this case one could argue for a civilian oversight body. In the event of the South African Police Services, provision is made for an Independent Complaints Directorate (ICD) which consists of civilians investigating complaints lodged against the SAPS by members of the public.

Taking into consideration that the Private Security Industry is liable to commit very similar type of offences against the public, the introduction of a civilian oversight body should be considered. Such a civilian oversight body would not have as its role looking at regulatory issues, but only to investigate offences committed against the public by members of the Private Security Industry. Such a body would also investigate liability claims. Such claims would ideally be paid from the public liability fund as described in Chapter Six. Thus, in addition to registration requirements to be met by the private security officers and companies, contributions to a public liability fund, as required for private investigators, should also be made a mandatory requirement.

7.13 Summary

The Chapter clearly illustrated that the proposed composition of the regulatory authority in the Security Industry Regulation Bill, is based on perceptions in Government regarding the Industry, following the subsequent exclusion of the Industry from any new regulatory authority.

It has been determined that a regulatory model excluding either Government or the Industry will not be a long-term solution to the mistrust and regulatory problems currently plaguing the SOIB. The models provided in this Chapter show that there are indeed ways and means of addressing Government concerns and still accommodate the Industry in the day to day regulation of the Private Security Industry.

CHAPTER EIGHT

CONCLUSIONS AND RECOMMENDATIONS

8.1 Introduction

This thesis proved that the Private Security Industry is indeed an indispensable part of the broad strategy against crime and has furthermore become an integral part of personal security to the average member of the public. Private security has furthermore not only encroached on the traditional crime prevention and investigation role of Government agencies, it has also encroached on the privacy of each and every citizen.

It has also proved that there is a definite need for regulation of the Private Security Industry, and that the Industry can't be left to regulate itself, or that it can't be regulated by Government alone. It is clear from the comparative research done that the success of regulation lies in finding the balance between Industry and Government representation in the regulatory authority, and in addition, providing the regulatory authority with relevant structures to enforce the regulations.

8.2 Conclusions

This thesis has investigated a number of options for the regulation of the Private Security Industry. These options varied from the one extreme where there is no

regulation, to the next where there is total Government domination of the Industry.

This research project concludes that it is a fruitless exercise to merely look at various regulatory models and legislation and then to take part from each of these to try and create an effective regulatory system for South Africa. The research clearly indicates that it is of utmost importance to firstly determine the objectives of regulation, before legislating a regulatory framework just for the purpose of having a regulatory framework.

8.2.1 **Regulatory objectives**

This thesis has established that a regulatory framework is ineffective from the word go if there is no or very little consensus regarding the objectives of regulation. The main difference of opinion lies between those who see the protection of the public as the main objective of regulation and those who see the protection of the standards in the Industry as the main objective of regulation. This thesis comes to the conclusion that the major objective of any regulatory framework should be the regulation of standards. If this objective is achieved, the protection of the public would be a natural result of regulation. An additional result of this approach will also be the protection of the occupation of the security practitioner.

8.2.2 Regulatory legislation

This thesis has explored in detail the effectiveness of current regulatory legislation in South Africa, as well as the proposed legislation as set out in the Security Industry Regulation Bill (Bill 12 of 2001). The conclusion with regard to the South African regulatory framework is that only a number of adjustments to the current legislation were required and that there was no need for the drafting of new legislation. It is also clear from the Bill that the regulatory objectives were not established before the Bill was drafted.

It has furthermore established that the scope of the regulatory framework, as described in the Security Officers' Amendment Act (Act 104 of 1997), was inadequate for the purpose of regulating a number of occupations in the security industry.

It is thus clear that legislation should, in terms of the scope of regulation, preferably list the specific occupations it wants to regulate as opposed the giving broad definitions for broad categories of regulation.

The regulatory authority was furthermore hampered severely by the fact that they had to depend on the SAPS to prosecute offenders in the Private Security Industry. The regulatory authority which had no Government representation was subsequently even more isolated from using the SAPS to prosecute offenders.

It has also been determined during this research that in the process of drafting new legislation, no distinction was made between regulatory problems encountered with the Security Officers' Amendment Act (Act 104 of 1997), and the fears of Government with regard to the Industry. It is clear that these issues were not kept separate with the drafting of the Security Industry Regulation Bill (Bill 12 of 2001). The end result is a Bill with more than twenty regulatory objectives, a totally impossible feat to achieve.

In addition to the mentioned problem, drafters of the legislation failed to distinguish between private security companies and mercenary companies. The result is that they have tried to address problems in the mercenary environment in the Security Industry Regulation Bill (Bill 12 of 2001). Moreover, they have also flagged seperate issues as problems or potential problems of the Private Security Industry, whilst these problems are *sui generis* to the mercenary environment.

This fusion of issues, mainly owing to not addressing issues under the correct legislation, has been detected as a problem throughout the whole legislative drafting process. This includes the failure to separate regulatory issues with either line-functional issues of Government departments or other relevant legislation. Examples mentioned include control over fire-arms, mercenary activities, labour-related issues and training standard issues.

This thesis furthermore also proved beyond doubt that the Private Security Industry can't be allowed to function in an environment where the Industry is allowed to set the

rules for operation and is also the policeman to oversee to the adherence of those rules. The flip-side of the coin is that Government should accept that its responsibility goes further that the drafting and implementation of legislation. The answer clearly lies in both the Industry and Government taking collective responsibility for the state of the Industry and furthermore the level of service provided to the community.

8.2.3 **Regulatory requirements**

This thesis comes to the conclusion that there are a number of requirements to be met before legislation can be drafted to regulate the Private Security Industry. These include:

- Clearly define the objective of regulation
- Define the scope of regulation. In other words, which sectors need to be included in the regulatory framework
- Define the depth of regulation. In other words, what exactly do you want to regulate? Do you want to regulate entrance requirements? Do you want to regulate training standards? etc.
- Determine who needs to be part of the regulatory authority. Do you include or exclude Government? Do you include or exclude the Industry? Do you want public representation? etc.

A conclusion of this thesis is that Government did not go through all these action steps

when drafting the new regulatory framework. I am under the impression that Government started with the objective of taking over the regulation of the Private Security Industry and added all the other requirements to fit in with their single objective.

8.2.4 The relationship between the Private Security Industry and Government security structures

This thesis comes to the conclusion that the relationship between the Private Security Industry and Government security structures, is going to be furthermore strained with the implementation of new legislation, mainly because of the fusion of issues as previously mentioned.

Firstly, the inclusion of Section 21(1)(f) in the Security Industry Regulation Bill, which refers to the obtaining of a clearance certificate by a former member of the military, police or intelligence service before registration as a security officer, is a serious vote of no-confidence in the current employees of these services. This approach is in direct contradiction to the international trend where Government security service experience is highly regarded. In the South African context it is regarded as a negative factor. This approach could lead to security service employers closing the market-place for individuals who have no other training than security related occupations. In the face of Government's policy of affirmative action, employment equity and the scaling down of the Defence Force, this option should seriously be reconsidered as it widens the

possibility of unemployment for a large number of individuals. The biggest problem with regard to this approach of Government, is that the Bill does not specify what the clearance certificate should include and what should be regarded as disqualifying factors.

An additional aspect is that of "moonlighting" by specifically off-duty South African Police Service members. Whilst Government sees it as an absolute necessity to clamp down on these activities, the international trend is once again to allow this practice. This does not only create a situation where there is an individual present who knows the relevant laws and is allowed to make an arrest, it also negates the Industry argument for acquisition of peace officer powers to certain categories of security officers. Furthermore, it allows for police officers to earn extra money in a legal manner and makes them less susceptible to corruption and bribery. Additionally, "moonlighting" presents the average police officer with the opportunity to build a better relationship with the Private Security Industry and the community.

8.2.5 **Perceptions**

It has been established that perceptions had played a major role in both the approach to the task of drafting a new regulatory framework, as well as, the way in which Government has accepted the proposals from the SOIB with regard to the future regulation of the Industry.

Moreover, it has been established that the perceptions regarding the "subversive" and "criminal" elements in the Industry were based on incidents in the pre-1994 political arena, but that Government did not take into account the changes in the demographics of the Industry. Government has furthermore not made the very important difference between the Private Security Industry and the mercenary industry. A number of perceptions regarding activities in the Private Security Industry are a matter of fact owing to incidents in the mercenary environment.

A consequence to the perceptions which Government approaches the task of taking over the regulatory function of the Industry, is that mistrust between Government and the Industry will deepen - only to the detriment of the public and the security service employee.

8.3 Recommendations

Recommendations made in this thesis are based on the premise that regulation should take place with the major objective of regulating the standards in the Industry. In addition it accepts that neither Government nor the Industry can be solely responsible for the regulation of the Industry.

The thesis also had to use the Bill as published in February 2001 as the Bill drafted by Government. It is accepted that certain issues could have been addressed after February 2001 when consultation took place with a number or role-players.

8.3.1 Training

The training of private security practitioners should be seen as one of the major objectives of both Industry and Government. One of the issues not mentioned in the Security Industry Regulation Bill (Bill 12 of 2001), is the potential and requirements for refresher training courses as a mandatory requirement in the setting of standards in the Private Security Industry. This type of training would ideally include regular testing of knowledge regarding changes in legislation, new equipment and also fire-arm competency testing. Provision for this type of approach has already been detected in the National Key Point Act (Act 102 of 1980). Ideally one could also see incentives such as additional tax deductions for the refresher training of security officers.

Ideally there should also be a definite distinction between the training requirements of various occupations in the Private Security Industry as opposed to the current Grade A - E training courses. There should specifically be a clear distinction between occupations requiring a fire-arm and those which do not. Private investigators should also be subjected to an internship before they are registered as individual private investigators.

8.3.2 Effective complaints channel

No regulatory authority can be effective if they do not have the capacity to receive and investigate complaints regarding illegal conduct within the Industry. There should thus be an effective complaints channel, whether it is an anonymous facility or desk at the

regulatory body, does not matter. What is important, is that these complaints are investigated independently, feedback provided to the plaintiff and that offences should be publicised and prosecuted. An additional requirement for this complaints channel, is that it should be easily accessible to all levels of the public.

8.3.3 Scope of regulation

Two aspects are important with regard to the scope of regulation. Firstly, all occupations which need to be included in the scope of regulation, should be clearly named and defined as opposed to the use of broad definitions to describe categories of occupations. Secondly, the regulatory scope should not only include the security officers themselves, but also directors and managers of companies.

An important aspect with regard to the Bill's approach towards the regulation of the Industry, is the fact that not enough consideration is given to the importance of the private investigations sector. The research has shown that it is more effective to address the part of the Industry in separate legislation. In South Africa, it is proposed that this route should also be followed as private crime investigation is fast becoming a very large and lucrative part of the Industry.

With regard to the electronic sector, it is proposed that the scope should be widened to include the installing, servicing, distribution and monitoring of electronic equipment in the regulatory scope.

An additional proposal with regard to the scope of regulation, is that specific Government structures should be given the responsibility of regulating the activities of car guards. This thesis argues that they should not be included in the scope of regulation, but the need for control over these activities are urgently required.

In addition, it is proposed that the occupations known as bouncer, crowd controllers and VIP protectors be included in the regulatory scope. Apart from the fact that the activities of these individuals fall within the definition of what constitutes a security service, it is specifically the first grouping that is singled out both nationally and internationally as a potential breeding place for criminal elements in the Industry.

It is also proposed that locksmiths, independent contractors, security consultants and training institutions be required to register with the regulatory authority. Specific legislative sections will be required to ensure that Government sources and informants would not be required to register with the regulatory authority.

8.3.4 **In-house security**

In-house security has been adequately addressed in the Bill. An issue which however has not been addressed directly, and which will inevitably lead to a dispute between the regulatory authority and the Industry, is that of in-house investigators. Compounding the situation is the fast increasing occupation of forensic auditors. This group uses the same resources and methodology as a crime investigators but is rather seen as an

accountant than an investigator.

It is proposed that legislation should clearly include in-house private investigators and that forensic auditors be required to register once they start doing investigations with the purpose of criminal prosecution.

8.3.5 Age requirements

It is proposed that there should be a minimum age for entry into the Private Security Industry. The Security Industry Regulation Bill (Bill 12 of 2001), does make provision for this requirement, but makes no differentiation between the age requirements of security guards and private investigators. Comparative research has shown that if one wants to lift the entrance requirements of the Private Security Industry, one will be required to raise the minimum age requirement of this occupation. It is hence proposed that a private investigator should be at least 21 years of age. This would mean that an applicant would have completed at least a minimum of three years of experience or internship before registration would be granted.

In addition to the minimum entrance requirements, it is also proposed that a forced retirement age be implemented. There could be distinguished between different occupational groups, but in general security employees should not be older than 60 years, mainly because of physical dangers of the occupation.

8.3.6 Licencing

This thesis proposes that in addition to the normal registration of security officers and companies, there should be a system of annual re-registration. In the case of companies aspects such as the number of complaints against a company and the compliance with regulations should be taken into account before granting a renewal. In the case of security officers, additional requirements such as fire-arm competency, criminal record checks and complaints regarding public behaviour could be taken into account before granting a renewal.

Two aspects should, however, be taken into consideration if the annual registration of security employers and employees is considered. Firstly, there need to be an effective administrative system to handle the necessary correspondence and administrative implications. Secondly, there need to be an effective appeals system to protect the interests of the security practitioner and the public.

8.3.7 Display of insignia

It is proposed that the use of insignia resembling Government investigation or crime prevention structures, be explicitly prohibited in the regulatory legislation. Companies should furthermore not be allowed to use terminology such as: "police", "intelligence", "agency", "service" or "detective". Uniforms worn by security guards should also not be representative of those worn by the SAPS or SANDF.

An additional aspect with regard to the display of insignia, is that security guards and private investigators should not be allowed to perform their duties if they are not in possession of their registration documentation provided by the regulatory authority.

8.4 A model for South Africa?

In the South African context, it is proposed that the Fully Integrated Wide Model (FIWM), as described in detail in Chapter Seven be adopted for the regulation of the Private Security Industry.

This model makes provision for representation from both Government and Industry on the regulatory authority, but still allows Government to take ultimate responsibility for the protection of the public interest. The model furthermore fulfills the requirements of both public and consumer representation in the regulatory authority and allows for the independent investigation of complaints regarding the criminal or subversive activities of security practitioners or security companies.

In addition, this model allows for representation from different sectors in the Industry and does not allow one sector to speak on behalf of the whole Industry.

8.5 Regulating the regulator?

This thesis has throughout presented evidence of the damaging effect of perceptions with

regard to the effective functioning of the regulatory body. Whether these perceptions are from within the Industry, Government or the public, they have a definitive hampering effect on the regulation of the Industry. It is thus proposed that there should be an annual independent audit of the functioning of the regulatory authority. This report should be presented to the Minister for Safety and Security and should be used as the basis for further amendments to regulatory legislation or the appointment of new directors and chairpersons of the regulatory authority. One could furthermore argue that such an auditing committee would ideally consist of community members, appointed on the basis of the technical knowledge of the Industry. Such an audit performed by community members would strengthen the requirements for regulation in the interest of the protection of the community.

8.6 Accountability

This thesis makes out a strong argument for the establishment of a victim compensation fund. The purpose of such a fund would be to compensate individuals or their families who are affected through activities of private security companies or security officers. In the introduction of this thesis, it was mentioned that the public is in daily contact with the Private Security Industry, and more importantly, they don't have a choice about it. Thus, if members of the public are harmed through either the normal execution of duties, or through negligence, these members of the public should be compensated in a controlled manner from a fund managed by the regulatory authority.

8.7 Final comments and further research

This thesis has proven through research that the South African Private Security Industry is not so much different from the rest of the world. In essence we have the same problems, we do the same jobs and we have the same needs. It is thus argued that the South African Industry and Government can easily build on the international lessons learnt and don't need to try and re-invent the wheel of regulation. Once the objectives of regulation have been identified and clarified, the drafting of legislation will be a natural result of efforts to achieve the objectives. Currently the South African effort has not clearly established the objectives because of the fusion of Government fears, party-political priorities and regulatory problems. The bottom line is that a sign of goodwill is required from both sides of the spectrum to start building a trust relationship.

At the end of this research, it is clear that there is space for more research in terms of the Private Security Industry. This research would include issues such as:

- The principles required for creating a working relationship between the Private Security Industry and the SAPS
- The need for the differentiation of training requirements of the various occupations in the Private Security Industry
- The role and function of the private investigator in the South African Criminal Justice System

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ANNEXURE A

	SOIB	SA Govt.	QLD (AUS)	BC CAN	ENG. Wales	VIR USA	TEX USA	NZ	DK	FIN	N	S
Guarding*	√	√	√	√	√	√	√	√	√	√	√	√
In-house	√	√			√	√√	√√		√			
Consultants	√	√		√			√					
Private Investigators	√	√	√	√		√	√	√		√		
Polygraph examiner	√	√										
Training	√	√			√	√						
Install and repair of security equipment		√		√	√	√	√	√				√
Monitoring of signals from security equip.	√	√		√	√	√	√	√	√	√	√	
Managers and supervisors	√	√		√		√	√					
Locksmiths		√		√			√√√					√
Prison security	√											
Independent contractors	√											
House sitters	√											
Reactive security / armed response	√			√		√	√	√	√	√	√	√
Armed escourt	√			√		√	√		√	√	√	√
Bouncers and crowd control	√		√		√					√		√
Car watch	√											
VIP Protectors			√			√			√	√	√	√

Couriers				√		√	√					
Wheelclampers					√							
Dog handlers						√	√		√	√	√	√
Electronic security salesman						√		√				

LEGEND:

√ - YES
√√ - ONLY IF THE IN-HOUSE GUARDS ARE ARMED
√√√ - ONLY IF THE LOCKSMITH IS ALSO A PRIVATE INVESTIGATOR OR A SECURITY SERVICE CONTRACTOR

ANNEXURE B

State / Country	Govt. regulation	Chair : Govt.	Chair: Independ.	Civilian	Law en-forcement	Private invest.	Sec Co employer	Poly-graphist	Alarm installers	Any profession	Repossessor	Lock-smiths	Employees	Period as member	Total members
Queensland (AUS)	✔	✔	×	×	×	×	×	×	×	×	×	×	×	N/A	N/A
BC Canada	✔	×	✔	✔	×	×	×	×	×	✔	×	×	×	N/A	5
Eng / Wales	✔	×	✔	✔	✔	×	×	×	×	✔	×	×	×	N/A	8
Namibia	✔	✔	✔	×	×	×	✔	×	×	✔	×	×	✔	3*	9
New Zealand	✔	✔	×	×	×	×	×	×	×	×	×	×	×	N/A	N/A
Arkansas	✔	✔	×	✔	✔	✔	×	✔	✔	✔	×	×	✔	4	7
California[1]	✔	✔	×	×	×	×	×	×	×	×	×	×	×	N/A	N/A
Arizona	✔	✔	×	✔	✔	✔	✔	×	×	×	×	×	×	5	N/A
Florida	✔	✔	✔	×	✔	✔	✔**	×	×	✔	✔	×	×	5*	11
Illinois	✔	✔	×	✔	×	✔	✔	×	✔	×	×	✔	✔	4*	11
Iowa[2]	✔	✔	×	×	×	×	×	×	×	×	×	×	×	N/A	N/A
Indiana[3]	✔	✔	✔	✔	✔	✔***	×	×	×	×	×	×	×	2	6
Kansas	✔	✔	×	×	×	×	×	×	×	×	×	×	×	N/A	N/A

[1]Regulation is completely in the hands of the Department of Consumer Affairs

[2]Regulation is completely in the hands of the Department of Public Safety

[3]Both the Iowa and the Kansas legislation applies only to private investigators

State / Country	Govt. regulation	Chair : Govt.	Chair: Independ.	Civilian	Law en-forcement	Private invest.	Sec Co employer	Poly-graphist	Alarm installers	Any profession	Repossessor	Lock-smiths	Employees	Period as member	Total members
Louisiana	✔	×	✔	✔****	×	✔	×	×	×	×	×	×	×	No limit	7
Massachusetts[4]	✔	✔	×	×	×	×	×	×	×	×	×	×	×	N/A	N/A
Maryland[5]	✔	✔	×	×	×	×	×	×	×	×	×	×	×	N/A	N/A
Minnesota	✔	×	✔	✔	×	×	×	×	×	✔	×	×	×	4	5
New Yersey	✔	✔	×	×	×	×	×	×	×	×	×	×	×	N/A	N/A
North Carolina	✔	✔	×	✔	×	×	×	×	×	✔	×	×	×	8	10
Oregon	✔	×	✔	✔	✔	✔	×	×	×	×	×	×	×	4	5
Texas	✔	✔	×	×	✔	✔	✔#	×	×	×	×	×	×	N/A	11
Utah	✔	×	✔	✔	✔	✔	×	×	×	×	×	×	×	4	5

Abbreviations:

Govt	-	Government
Law enforcement	-	This refers to specific representation of members from a law enforcement agency
Private invest.	-	This refers to specific representation by private investigators
Sec Co employer	-	This refers to Security Company employers or owners
Repossessors	-	This refers to tracing agents and repossession agents
Period as member	-	Refer to the period a person may serve on the regulatory authority
Total members	-	This refers to the total amount of members serving on a regulatory authority

[4]In Massachusetts the sole responsibility for regulation lies with the Colonel of the state Police

[5]Maryland's legislation only applies to private investigators and is the responsibility of the Superintendent of State Police

Legends:

*	-	Members are eligible for re-election
**	-	The Florida legislation differentiate between small, medium and large companies
***	-	The Indiana legislation differentiates between one-man companies, companies smaller than 15, and companies bigger than 15
****	-	The civilian co-opted on the Louisiana legislation must be a qualified attorney
#	-	The reference to security company employers entails a broad spectrum not indicated in the break-up of this analysis. These inclu dog handlers, armoured car personnel, security service trainers and personal protectors

To: 'louis siebrits' <lls@ananzi.co.za>
From: "Ravenhorst, Patricia S." <pravenhorst@wyche.com>
Date: Thu, 15 Mar 2001 19:02:55 -0500

Subject: RE: Private security regulation

Dear Louis,

I have to admit that it has been quite a long time since I've had my head around this issue, but my sense regarding the composition of the regulatory body is much the same as your own. It was an area of research that I wish I had explored further after I completed my report for S&S. Being in the United States and far from the realities of the South African situation at the time I prepared the report, I was unaware of the vital importance of this issue in South Africa.

When I arrived in South Africa and began to have more in depth conversations with the personnel at S&S and at the SOB, it became readily apparent (to me) that the composition of the Security Officer's Interim Board was directly related to its difficulties in making decisions, reaching agreements, etc. I came to South Africa with the opinion that that having sufficient government and community representation on the Board was important in order to include stakeholders with a broader view to concerns of safety, interaction with the SAPS, etc. However, I was still surprised by the crippling effect caused by having a Board dominated by persons with direct interest in the industry. I'm not exactly sure why it had this effect, but by guess is that the personal/business interests made it difficult for Board members to come to an agreement that sufficiently accounted for the broader societal concerns raised by a growing private security industry.

I was also struck by the complete reversal of this situation that seems to be embodied in the bill submitted to Parliament in Feb. 2001. The pendulum has definitely swung the other way. My first reaction is that greater government control and involvement is preferable to greater industry control. This is especially true if there is a societal goal to guide this burdgeoning industry into a more responsible and positive role as well as into a better working relationship with the SAPS. However, there would be great value in having a least one industry representative sitting on the regulatory body. The difficulty I foresee in filling this position is establishing the criteria for choosing this representative. The industry is extremely varied and the interests divergent between small and large security firms, between sectors, between security providers and in-house security, etc. If you are reaching to make the recommendation for at least minimal industry representation, this issue must be first and foremost in your mind.

Unfortunately, I am not very well read on the issue of private investigators, but from what I have read most perceive PIs has having a unique role in the private security industry. In fact, several of the jurisdictions I studies only regulate PIs or they have a separate set of regulations governing their activities and credentials. This signals a heightened societal concern for PIs. The question regarding PIs that may be a little outside the scope of your interest that was intriguing to me was

the justice system's willingness to admit evidence obtained by PIs even if that evidence was obtained by means that the police could not have used. This due process issue becomes especially interesting when the police and PIs establish cooperative working relationships - Should the police be able to use PIs to circumvent due process restrictions placed on government activity? Should the courts admit this evidence? Should PIs have access to police information, databases, etc.? Just food for thought.

Now a little about me: I prepared the report while I was a law student at Duke University as part of Clinic Program at the law school. I then continued by work and research with the S&S in South Africa as an internship through the law school. I have since graduated from law school and I am an immigration lawyer at a small private business law firm in Greenville, South Carolina.

Please feel free to contact me again if you have any further questions or concerns. Please tell Mark hello for me. I heard that he may have gotten married and had a child. If this is true, please tell him congratulations and if it isn't, tell him that I hope it happens soon.

Kind regards,
Tricia

-----Original Message-----
From: louis siebrits [mailto:lls@ananzi.co.za]
Sent: Thursday, March 15, 2001 2:31 PM
To: pravenhorst@wyche.com
Subject: Private security regulation

Hi there,
Thank you for responding to my mail. I am not working for S&S, I work in another Govt. Department. I obtained a copy of your comparative analysis from Mark Shaw. It is called "Regulating the PSI: An international perspective".

My interest in the PSI is based on my current studies with the University of South Africa (UNISA). I am doing my doctoral thesis in the Criminology Department. The title is "Regulating the PSi in South Africa". My focus is looking on the real purpose of regulation i.e. the protection of the occupation, the protection of the community or the protection of the state's interest. In addition to that I also place a lot of emphasis on the regulation of private investigators.

My current chapter deals with the composition of a regulatory body, and more specific the inclusion / exclusion of the industry from such a body. My view is that you do need some industry representation, but that it should be the minority on the body. In SA is seems like we are moving from the one ultimate to the next. What are your specific feelings on the composition of a regulatory body?

I saw that you research were done under the auspices of Duke Intl Development. Where are you now and what are you doing for a living?

Regards

Louis Siebrits
