



National Security Law Report

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Russia's Security and Intelligence Services Today

by J. Michael Waller

The security and intelligence services of Russia, despite much fanfare, are little different from the Soviet Committee for State Security (KGB) from which they emerged, and have undergone few changes for the better. Following the attempted coup of August 1991 and in the midst of the Soviet collapse, the KGB was parceled into separate services along functional and geographic lines without being reformed.

Each of the 15 former Soviet republics, with the exception of the three Baltic states, inherited the republican KGB structures as their own security services, with the Russian Federation receiving the lion's share as well as the entire foreign intelligence service. What emerged was an intact apparatus throughout most of the former USSR. A brief sketch of the Russian services follows.

Ministry of Security (*Ministerstvo bezopasnosti*, MB). The most powerful of the Russian special services, the MB performs internal security functions. By early 1993 the MB had absorbed no fewer than 17 sections of the KGB, including those responsible for counterintelligence, border guards, military and police counterintelligence, transportation security, economic and industrial security, counter-organized crime, counter-narcotics, surveillance, security of bunkers and certain government buildings, analysis, military construction, technical laboratories, and the KGB Higher School which has been elevated in status as the new Academy for State Security. The MB also contains the former KGB departments for mail inter-

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More than 300 people took part in the June conference on Anarchy in the Third World, while thousands of others watched major portions on C-SPAN.

Record Crowd Attends

Anarchy Conference Praised by ABA President

For the second time in less than a year, a Standing Committee conference has drawn a record crowd. More than 300 people gathered at the International Club in Washington, D.C., on June 3-4 to hear eight panels of distinguished experts discuss problems associated with "Anarchy in the Third World," and to witness a surprise visit by ABA President Michael McWilliams, who praised the work of the Standing Committee (see box below).

Major factors in the success of the conference were the obvious timeliness of the topic and the exception-

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"This is an excellent conference. The American Bar Association is proud of the Standing Committee on Law and National Security for putting on these types of conferences, the most successful one of which, I believe, is this one here today and tomorrow."

**—ABA President
Michael McWilliams**

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ception, archives, wiretapping, investigations and training. It has the legal authority to monitor state, cooperative and private businesses in the transportation, industrial, and communications sectors; to monitor the mass media, to analyze social and political affairs, and to protect patents. Significantly, a spokesman for the MB acknowledges that the ministry also contains the "Administration for Combating Terrorism," which is the new name for the former KGB Fifth Directorate that had been responsible for political repression.

Security Minister Viktor Barannikov, a career police officer in the Ministry of Internal Affairs (MVD) who previously held posts as chief of the Russian Soviet Federated Socialist Republic MVD prior to the 1991 coup and USSR MVD chief afterward, has taken firm control of the former KGB internal units, conducted large-scale purges, and stacked the MB leadership with loyalists from the MVD. However, the purges appear to be designed to consolidate his control and are not signs of reform. Barannikov is a hard-liner who has surrounded himself with like-minded officers, the most notorious of whom is St. Petersburg MB chief Viktor Cherkasov, who was an especially zealous KGB Fifth Directorate officer in the 1970s according to Russian human rights activists.

Federal Agency for Government Communication & Information. This independent agency is comprised of the former KGB Eighth Chief Directorate (codes and ciphers), the Sixteenth Directorate (electronic intelligence), and the Communications Troops, and publicly likens itself to the U.S. National Security Agency (NSA).

Main Guard Directorate. Responsible for physical protection of Russian political leaders and foreign dignitaries, as well as security of certain government buildings, the Directorate is made up of the former KGB Ninth Directorate (Guards), the Alfa Troops of the former KGB Seventh Directorate, and an autonomous parliamentary guard unit that previously belonged to the MVD.

External Intelligence Service (SVR). Russia's foreign intelligence organ, the SVR is the former KGB First Chief Directorate. The SVR carried out internal reorganization to accommodate the collapse of the Communist Party, without changing its anti-Western essence. It no longer serves a political party, and financial constraints and the need for greater competitiveness dictated cuts in its bloated bureaucracy. Far-flung outposts in small Third World countries with little strategic value for Moscow's current needs were reportedly shut down as an unnecessary strain on re-

sources. Increased defections also forced some reorganization, according to SVR First Deputy Director Vyacheslav Trubinkov. A top SVR official, Lt. Gen. Vadim Kirpichenko, who once headed the KGB's Illegals Directorate (Directorate S), confirmed to the author the continued existence of the unit. Although SVR leaders pointedly state that they have abandoned the machinery of "active measures," Evgueni Novikov of Radio Liberty reported that the foreign intelligence organs absorbed the active measures apparatus and resources of the CPSU International Department.

Like the Ministry of Security, the SVR has no proven reformers in its upper ranks and has indicated an unwillingness to help emerging democracies in Central and Eastern Europe to track down former communist agents and spies. Said SVR Director Yevgeniy Primakov, "The intelligence service does not intend to provide former socialist countries with lists of agents who worked there." United States and West European counterintelligence report that although the SVR presence has been modestly reduced, aggressive espionage and recruitment efforts continue. Espionage by military intelligence (GRU) is reported to have increased significantly.

Civil controls

Spokesmen for the Russian security and intelligence services have made much of the fact that in 1992 the parliament enacted laws by which the services are governed. They tout this development as further evidence of Russia's break with its totalitarian past. However, the publicity is misleading. The main laws on security and intelligence were drafted in close collaboration with the responsible former KGB bod-

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Lack of Judicial Review Survives

Supreme Court Avoids Constitutional Challenge to Export Administration Act

by Ross L. Crown

The U.S. Supreme Court has refused to review a decision of the U.S. Court of Appeals for the Ninth Circuit upholding Congress' preclusion of judicial review under the Export Administration Act (EAA). A federal district court had found this provision to be an unconstitutional delegation of power by Congress to the Secretary of Commerce. In reversing that ruling, the Court of Appeals relied in large part on the notion that a broad delegation of legislative power to the executive is particularly justified in the realm of foreign policy and national security.

Ognian Bozarov, a Bulgarian trade official, was indicted for conspiracy to violate the EAA for arranging a shipment of computer disc manufacturing equipment to Bulgaria in 1981. Although the equipment appeared on the Department of Commerce Commodity Control List, no export license was obtained. After the goods were shipped in late 1982 and early 1983, a ten-count indictment was issued against Bozarov and four others.

Bozarov moved to dismiss his indictment primarily on the grounds that the EAA's preclusion of judicial review is an unconstitutional delegation of legislative power to the executive. The District Court agreed that the EAA's prohibition of judicial review is unconstitutional and granted the motion to dismiss.

Following the government's appeal of the District Court's decision, the Court of Appeals reversed in *United States v. Bozarov*.¹ In a unanimous opinion handed down last August, the court found that the EAA does not violate the nondelegation doctrine.

Addressing the District Court's ruling, the Court of Appeals first noted that the EAA authorizes the executive branch to impose export controls for reasons of national security, foreign policy, or domestic short supply. The EAA contains detailed procedures for the processing of applications for licenses to export controlled goods and provides that the Secretary of Commerce's denial of an export license "shall be final and is not subject to judicial review."² All functions exercised under the EAA are explicitly excluded from judicial review and from the protections of the Administrative Procedure Act.

The court proceeded to find that Congress can

properly prohibit judicial review of the Secretary's actions in exercising his authority under the EAA. In reaching this result, the court emphasized the fact that the EAA involves matters of foreign policy and national security. After noting that the Supreme Court has consistently held that foreign policy decisions are confined by the Constitution to the legislative and executive branches, the court reasoned that permitting Congress broadly to delegate decisions about controlled exports to an agency makes sense. Otherwise, it would be impossible for Congress to revise the Commodity Control List quickly enough to respond to fast-paced foreign policy developments. Moreover, the court saw the need for uniformity in the realm of foreign policy to be particularly acute for "it would be politically disastrous if the Second Circuit permitted the export of computer equipment and the Ninth Circuit concluded that such exports were not authorized by the EAA."³ Thus, because of the political nature of foreign policy decisions and the need for uniformity, the court concluded that the case for mandatory judicial review of the EAA becomes even less compelling.

Bozarov petitioned the Supreme Court for a writ of certiorari. The government opposed his petition on the grounds that Bozarov's contentions were not ripe for review. On February 22, 1993, the Supreme Court declined to hear Bozarov's appeal, leaving the Court of Appeals' opinion undisturbed.

Although the EAA has survived Bozarov's challenge, it is not likely to last long in its present form. The Act had been awaiting reauthorization since it expired in September 1990. On March 29, 1993, President Clinton signed only a short extension of the EAA through June 30, 1994. The purpose of this extension is to provide the Administration and Congress with an opportunity to collaborate on what Commerce Secretary Ron Brown said would be a "major refashioning" of the Act "that will not only reflect improvements in the export system already introduced by the Department of Commerce but also reflect the enormous changes in world conditions since the act expired."⁴

Mr. Crown practices law in Albuquerque.

Notes

¹ Bozarov's motion to dismiss also contended that the EAA violated the due process clause of the Fifth Amendment. Due to his finding that the EAA is unconstitutional under the nondelegation doctrine, the district judge did not reach this issue. However, the due process argument was considered and rejected by the Court of Appeals.

² 974 F.2d 1037 (9th Cir. 1992)

³ *Id.* at 1039 citing 50 U.S.C. App. §2412(e).

⁴ *Id.* at 1044.

⁵ 10 *Int'l Trade Reporter* 528 (BNA) (March 31, 1993).

Book Reviews

by Jackson H. Sharman III

Mark M. Lowenthal, *U.S. Intelligence: Evolution and Anatomy* (Center for Strategic and International Studies) (2d ed. 1992).

Hayden B. Peake, *The Reader's Guide to Intelligence Periodicals* (National Intelligence Book Center 1992)

Over the last two decades, the general subject of intelligence and national security has become a topic of extensive public discourse. The quality of that discourse has varied, to put it mildly. In general, stories of cloak and dagger exploits have alternated with poorly written exposes of real and alleged abuses by the intelligence community. Lay persons, academics, and practitioners have needed both a balanced, accessible book that can serve as a classroom text for students while demonstrating sufficient detail and sophistication to be of value to more experienced readers.

Two recent books fit this description admirably, however. They are Abraham Shulsky's *Silent Warfare: Understanding the World of Intelligence* (Macmillan/Brassey's 1992) and Mark M. Lowenthal, *U.S. Intelligence: Evolution and Anatomy* (Center for Strategic and International Studies 1992) (2d ed.) (hereafter *Evolution*). Mr. Shulsky's book will be reviewed in a future issue of the *Report*.

Mr. Lowenthal, a senior specialist in American foreign policy at the Congressional Research Service of the Library of Congress, has really written two books but placed them within the same binder. Part I ("The Evolution of U.S. Intelligence") is a history of the American intelligence community since World War II. Because Mr. Lowenthal covers approximately 50 years in under 100 pages, no particular era receives minutely detailed treatment; but he addresses most of the fundamental events and personalities of the modern United States intelligence community, and he articulates the most important points of connection between them. Chapter 8 ("Intelligence and the Post-Cold War World") is a brief but insightful review of recent issues such as intelligence in the Gulf War, the debate over the role of intelligence after the demise of the Cold War, and some often overlooked reorganization issues.

Part II of Mr. Lowenthal's book ("The Anatomy of U.S. Intelligence") is descriptive rather than historical. Mr. Lowenthal succinctly describes the roles of the various intelligence offices and agencies, as well as oversight bodies in the legislative and executive

branches. Mr. Lowenthal served in the Bureau of Intelligence and Research ("INR") at the State Department, and his historical and descriptive discussions occasionally betray a State Department bias. The favoritism is minimal, however, and does not detract from the overall balance of the book. Unlike many writers on intelligence and national security matters, Mr. Lowenthal writes gracefully and straightforwardly. He does not avoid legal issues entirely, although his discussion is happily free of much of the tiresome separation-of-powers overlay that appears in most oversight discussions.

Hayden B. Peake served as a professional intelligence officer in the United States Army, the Defense Intelligence Agency, and the Central Intelligence Agency. The 1992 edition of his *Reader's Guide to Intelligence Periodicals* offers an astonishing selection of journals and magazines dealing with every conceivable aspect of intelligence, from the mundane (*Political Science Quarterly*) to the curious (*Back Channels, A Journal of Espionage, Assassinations and Conspiracy*) to the indispensable (*National Security Law Report*). For each publication, Mr. Peake provides some background on the publication's history and editors or publishers; its general subject matter and approach; its physical description and manuscript requirements; and its subscription rates and editorial address. Mr. Peake divides his book into sections dealing with intelligence periodicals; intelligence-related periodicals; limited distribution intelligence periodicals; intelligence periodicals no longer in print; periodicals that occasionally contain intelligence articles; periodic bibliographies of intelligence literature; digital intelligence-related periodicals and databases; and general information services and databases with intelligence-related utility. Needless to say, Mr. Peake's book is not for the casual reader. For the intelligence practitioner, scholar, or student, the book is useful, interesting, and brings together what appears to be virtually every known datum about the intelligence-related publications.

Calendar of Events

August 8— 2:00-4:00 PM, Standing Committee "Presidential Showcase" Program on "The Role of Law in Preventing Proliferation of Weapons of Mass Destruction," ABA Annual Meeting, New York Marriott Marquis Hotel, 6th Floor, 1535 Broadway, New York City. Advance registration not required. For further information, contact Holly McMahon (see box, bottom of page 5).

Conference Tapes and Transcripts Available



The Standing Committee is offering audio cassette tapes in either compact cassette or microcassette format and transcripts of all of the panels and presentations at the Anarchy in the Third World conference. For further information, contact Holly Stewart McMahon at the Standing Committee (address below).

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ies. While it is customary for the security and intelligence services of democracies to help shape related legislation, the Russian services remain totalitarian in ideology and essence, and their influence in the legislative process serves only to perpetuate their privileged positions.

Moreover, the distinction between secret service agent and lawmaker overlaps. The parliament's joint Committee on Defense and Security, which handles security and intelligence matters, is dominated by lawmakers who are from the security, police, and military-industrial establishments themselves, and though a few are rather reformist, they are not inclined to challenge the sanctity of the armed bureaucracies they oversee. An irreconcilable conflict of interest exists. Furthermore, the Supreme Soviet is dominated by hard-liners who have little interest in meaningful reforms. Instead of seeking to balance the powers of the president, the Supreme Soviet is involved in a zero-sum struggle with President Yeltsin over who controls the enforcement and security mechanisms of the state.

Dr. Waller is director of the International Freedom Foundation's program to assist democratic reformers in the former Soviet Union to develop concepts of open and intrusive oversight of the security and intelligence services.

Anarchy Conference . . .

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al collection of speakers lined up by former Standing Committee Chairman John Norton Moore. In addition to outstanding luncheon addresses by Ambassador Max Kampelman and Representative Steny Hoyer—the panel on Somalia included former U.N. Envoy Ambassador Mohamed Sahnoun and former U.S. Ambassador to Somalia Robert Oakley; the Bosnia/Herzegovina panel heard statements from Croatian Ambassador Peter Sarcevic, Bosnia/Herzegovina's U.N. Ambassador Muhamed Sacirbey, and former U.S. Ambassador to Yugoslavia John D. Scanlan; a panel on strengthening the United Nations included former U.S. Ambassador to the U.N. Elliott Richardson and Ambassador Richard N. Gardner of Columbia Law School; and the final panel on humanitarian intervention included the Legal Counsel to the Chairman of the Joint Chiefs of Staff.

While there was some criticism of the program's title (some speakers preferring "Developing" World—although others suggested that in many problem areas the economic and political systems are deteriorating rather than "developing"—and also disagreement as to the causes, interrelationships, and solutions to many of the problems; there was widespread agreement that the post-Cold War world is facing a variety of very serious difficulties which are unlikely to be resolved in the absence of creative thinking and a new spirit of multilateral cooperation.

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The National Security Agenda

WHO Asks ICJ to Advise on Legality of Using Nukes—The World Health Organization passed a resolution at the World Health Assembly in May requesting an advisory opinion from the International Court of Justice on the legality of the use of nuclear weapons. Article 65 of the ICJ Statute permits any U.N. organ or specialized agency to request advisory opinions; however, the WHO legal advisor took the position prior to the vote that the subject matter of the request was beyond the legal mandate of the organization. The WHO was one of several UN organizations under pressure from private groups like the International Association of Lawyers Against Nuclear Arms, the International Physicians for the Prevention of Nuclear War, and the International Peace Bureau to seek such an advisory opinion. The request is not expected to be submitted to the Court before 1994.

DPRK Suspends NPT Withdrawal; Uncertainty Remains Over Key IAEA Inspections; Rodong 1 Missile Tested—On 11 June, only hours before North Korea's 90-day notice of withdrawal from the Nuclear Non-proliferation Treaty (NPT) was to take effect, Vice Foreign Minister Kang Sok Ju announced in New York that his government would "suspend as long as it considers necessary" its withdrawal from the treaty and would continue to allow the International Atomic Energy Agency to inspect "some" of its facilities. The announcement was hailed by some as ending a major proliferation crisis, and IAEA Director General Hans Blix announced that a comprehensive safeguard agreement permitting international inspection of DPRK nuclear sites "remained in force." However, on its face, the Pyongyang regime's actions leave serious reasons for concern. The underlying dispute stemmed from an IAEA insistence that it be allowed to inspect two suspected nuclear weapons sites at Yongbyon, and the DPRK announcement does not appear to have accepted such inspections. Further, by "suspending" rather than withdrawing its formal 90-day notice of withdrawal, North Korea will arguably be able to leave the treaty in the future without any further advanced notice. The *New York Times* (12 June) reported that the CIA believes North Korea may have already produced enough plutonium to make at least one nuclear weapon; and at the end of May North Korea reportedly successfully tested its new "Rodong 1" missile. Although the missile was flown only about 300 miles, it is estimated to have a range of 600-800 miles and sufficient payload and accuracy to deliver nuclear, chemical, or biological weapons effectively. The test was first made public on 11 June by Japan, where Defense Ministry officials were said to be "shocked." In a related development, Israeli Foreign Minister Shimon Peres announced on 14 June that he hoped to visit Pyongyang personally in an effort to block the sale of the new missiles to Iran, perhaps offering economic aid and diplomatic relations as an incentive; but whether Israel will be able to outbid oil-rich Iran—which has reportedly been negotiating with North Korea to purchase the missile—in an effort to influence Pyongyang is questionable. One possibly encouraging sign appeared on 22 June, when North Korea announced the cancellation of annual anti-American rallies marking the anniversary of the start of the Korean war on 25 June 1950.

Iran Calls for Moslem Unity in Acquiring Technology—*Tehran Radio* recently carried remarks made by President Akbar Hashemi Rafsanjani in opening the International Conference on Science and Technology in the Islamic World. Rafsanjani's theme was that the Islamic countries need to join efforts in the "vital and urgent" mission to obtain modern science and technology, including wooing back thousands of Moslem scientists and professionals living in voluntary exile in the West.