
A STUDY OF THE RESTRUCTURED ITALIAN INTELLIGENCE
AND SECURITY SERVICES

Prepared by Dr. Vittoriofranco S. Pisano

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A STUDY OF THE RESTRUCTURED
ITALIAN INTELLIGENCE AND SECURITY SERVICES

Introduction

The most recent legislative measure adopted by the Republic of Italy to safeguard national security in compliance with the democratic principles of the Constitution of 1947 is Law No. 801 of October 24, 1977, on the Formation and Organization of the Intelligence and Security Services and the Regulation of the State Secret.^{1/}

A number of factors have led to the reform of the intelligence and security services. First, actual or alleged abuses by the previous intelligence services and also the judicially-held unconstitutionality of certain national security legislation^{2/} have had an effect. In addition, the increasing number of subversive and terrorist organizations in Italy and the escalation of political violence throughout the country have played a part. Moreover, there is mounting concern over hypothesized foreign links to domestic terrorist groups.^{3/}

^{1/} See Appendix I for an English translation of the text of this law.

^{2/} Constitutional Court Decision No. 86 of May 24, 1977, has made unconstitutional some provisions relating to state secrecy contained in articles 342 and 352 of the Code of Criminal Procedure; Gazzetta Ufficiale della Repubblica Italiana [official law gazette of the Republic of Italy], No. 148, June 1, 1977, p. 4061.

^{3/} Background on Italian terrorism and related problems is given in Appendix II.

Law No. 801 is too recent for observations to be made at this time on its effectiveness. In fact, the restructured intelligence and security services are still in the process of being organized.^{4/} At this early stage, perhaps an analysis of the new legislation, including its sphere of application and possible problem areas, can most accurately be made in the light of the Italian system of government, of the role and implications of the multi-party system, and of the experience of earlier intelligence and security services. In order to provide background for the ensuing discussion of the new law, these areas will be examined first.

The Italian System of Government: A Parliamentary System^{5/}

The Republican Constitution of 1947 is a compromise document drawn up by the political forces elected to the Constituent

^{4/} An article in Corriere della Sera, January 14, 1978, p. 2, indicated that the newly established services would become operational toward the end of May of this year, but subsequent press articles have referred to administrative and logistical problems that could cause delays.

^{5/} The following texts offer extensive and analytical treatment of the Italian Constitution and governmental institutions: G. Balladore Pallieri, Diritto Costituzionale (Milano, 1972); P. Barile, Istituzioni di Diritto Pubblico (Padova, 1975); C. Mortati, Istituzioni di Diritto Pubblico, I and II (Padova, 1975); and P. Virga, Diritto Costituzionale (Milano, 1975). For a concise treatment of the same topic in English, see: M. Cappelletti, et al, The Italian Legal System, Ch. 2, p. 53-85 (1967); V. S. Pisano, An Introduction to Italian Government (1977) and Italy's Republican Constitution, on Its Thirtieth Anniversary (1977).

Assembly that had contributed to the defeat of the Fascist regime. These included the Christian Democrats (Catholics), Socialists and Communists (Marxists), and members of several minor parties ranging from the National Democratic Union to the Action Party.^{6/}

Their single common purpose was to prevent the recurrence of Fascism, whose dictatorial rule over 20 years had established an all-powerful executive branch of government. In order to achieve this, the Constituent Assembly, composed of all these parties, adopted for Italy a parliamentary system characterized by the pre-eminence of the legislative branch. This was also done to assure a more incisive role for these parties and their discordant platforms.^{7/}

The Republican Constitution confers the legislative power upon a bicameral Parliament consisting of the Chamber of Deputies

^{6/} For a complete listing of parties represented at the Constituent Assembly, the percentage of votes received, and the number of seats obtained, see Presidenza del Consiglio dei Ministri, Servizio Informazioni e Proprietà Letteraria, I Governi Italiani dal 1943 al 1975, 47 (Roma, 1975). The same publication provides complete data on all subsequent national elections through 1972, as well as the composition of all governments (cabinets) from July 25, 1943 to November 23, 1974. It also includes brief historical summaries of that period.

^{7/} A survey of the centrifugal forces of this period is provided from different perspectives by G. Galli, Il Difficile Governo 9-73 (Bologna, 1972) and F. Leoni, Storia dei Partiti Politici Italiani 561-607 (Napoli, 1975).

and the Senate of the Republic, whose powers and functions are virtually identical. The Parliament is the only central organ of the Italian government elected directly by the people. In turn, it elects the President of the Republic, who is the head of state. The head of the government, however, is a role assigned by the Constitution to the President of the Council of Ministers. In accordance with the parliamentary system, each Chamber of Parliament is also empowered to grant or deny a vote of confidence to the government, which consists of the President of the Council of Ministers and of the Ministers. Whenever this approval is not granted or is withdrawn, the government must resign.

In addition to the power to make laws and to the powers already discussed, the Chambers may declare a state of war and confer the attendant powers on the Council of Ministers; authorize the ratification of international treaties by the President of the Republic; approve the budget presented by the Council of Ministers; make inquiries into matters of public interest; impeach the President of the Republic, the President of the Council of Ministers, or any member of the Council; and elect five judges to the Constitutional Court and seven members to the Superior Council of the Magistrature.

The Council of Ministers is a collegiate organ. Its members are jointly responsible for the acts of the Council and are also individually responsible for their own Ministries (departments). The President of the Council of Ministers, often referred to as the Prime Minister, is appointed by the President of the Republic, who also appoints the Ministers at the proposal of the Prime Minister. Although the Prime Minister and the other Ministers are almost invariably members of the Parliament, this is not a constitutional requirement. The Prime Minister, as the head of the government, or chief executive, must maintain "unity of political and administrative control" by promoting and coordinating the activities of the Ministers. The position of the Prime Minister has been interpreted, however, as having preeminence over the other Ministers, but not one constituting hierarchical superiority.^{8/}

In addition to having the power to appoint the Council of Ministers, the President of the Republic may also dissolve one or both Chambers of Parliament in order to call new elections. This is considered an extreme measure to be used sparingly, and only twice have both Chambers been dissolved. However, all acts of the President of the Republic must bear the countersignature of the

^{8/} A. M. Sandulli, Manuale di Diritto Amministrativo 260 (Napoli, 1974).

Minister or Ministers who propose the act and assume responsibility for it.

The Republican Constitution has been subject to criticism because of two major structural and operational defects. In the first place, the overwhelming predominance of the legislative over the executive branch reduces governmental efficiency and authority. Second, there is the de facto transfer of decision-making power from the Parliament to the political parties, which after political compromise and barter concur on policies and measures outside of the Parliament itself.^{9/}

The Influence of the Multi-party System on
Governmental Stability and Efficiency

The collapse in 1943 of the Fascist regime and its one-party system brought about the legal and public reemergence of many political groupings in Italy. Although some party labels have undergone periodic changes, basically the same political organizations represented at the Constituent Assembly of 1946-47 are

^{9/} See G. Conserva, ed., Costituzione della Repubblica Italiana (Roma, 1974).

still active more than 30 years later in the country and/or in the Parliament.^{10/}

The national elections of 1948, the first to be held under the present Constitution, gave an absolute majority to the Christian Democratic Party (DC) in the Chamber of Deputies. (The feat has never been repeated by this Party, nor equaled by any other party.) However, Alcide De Gasperi, who was then the leader of the Party and the Prime Minister, realized that the DC electoral returns of 1948 were not representative of a homogeneous political philosophy, but were the result of the electorate's domestic and international perceptions of the 1948 political climate. Consequently, already at that early stage and notwithstanding the absolute predominance at that time, De Gasperi opted for a broad parliamentary and governmental coalition consisting of the centrist parties--the Christian Democrats, Social Democrats, Liberals, and Republicans.

^{10/} For a detailed and critical treatment of Italian political forces over the past 30 years, see G. Andreotti, Intervista su De Gasperi (Roma-Bari, 1977); D. Bartoli, Gli Italiani nella Terra di Nessuno (Milan, 1976); L. Preti, Il Compromesso Storico (Milan, 1975); and R. Ronchey, Accadde in Italia 1968-1977 (Milan, 1977).

The centrist formula of government generally remained viable throughout the subsequent national elections until 1962.^{11/} However, in spite of the relatively homogeneous policies of the centrist parties, 13 governments succeeded one another during this period. A shift in emphasis from economic reconstruction and industrial expansion to social reforms and an effort to broaden the majority and to isolate the Italian Communist Party (PCI) led to the opening to the left in 1962-63. This was accomplished once again through a party coalition system in the Parliament and in the government. The small Liberal Party was dropped and the larger Socialist Party was picked up as a coalition partner (initially only in the Parliament). Excluding a brief return to centrism in 1972-73, which included two governments, both headed by Prime Minister Andreotti, 14 governments succeeded one another from the original opening to the left in 1962 through the national elections of June 1976.

The returns of these last national elections have reduced the gap between Italy's two major parties, the DC and the PCI. The former, which has consistently retained a relative majority, received 38.7% of the vote, while the latter polled 34.4%, a 7.2%

^{11/} For a history of centrism, see G. C. Re, Fine di Una Politica (Bologna, 1971).

increase over the previous national elections of 1972. The other parties generally suffered election losses.

The stalemate caused by these returns, coupled with the refusal of the Socialist Party to govern with the DC unless the PCI was to be included, created an anomalous situation that was temporarily resolved by resorting to a new formula called the "non no-confidence" vote. This meant that an all DC membership government was formed by Prime Minister Andreotti through a pre-arranged abstention from the vote of confidence by the Communist, Socialist, Social Democratic, Republican, and Liberal parties. (It was the first time the PCI did not vote against the government in Parliament.) This government lasted from August 1976 to January 1978. Following a 2-month governmental crisis and Communist demands to become part of a governmental coalition, another all DC membership government (also headed by Prime Minister Andreotti) received the parliamentary vote of confidence on March 16, 1978. It was Italy's 31st government under the Republican Constitution. For the first time since the promulgation of this Constitution, the PCI is now part of a parliamentary coalition supporting the government. However, it does not hold governmental posts. The present parliamentary coalition, representing approximately 90% of the members of Parliament,

includes, besides the DC and the PCI, the Socialists, Social Democrats, and Republicans.

To date, all one-party governments since the enactment of the Republican Constitution have been DC governments because of the continued relative majority status of this party. At the same time, the record indicates that they have been "caretaker" cabinets, pending the finalization of coalition-type agreements. It is an interesting precedent that when the opening to the left was inaugurated in 1962, the Socialist Party at first supported the government in the vote of confidence--just as the PCI is doing at this time--and then the following year it became part of the center-left governmental coalition.

The degree of stability the present parliamentary arrangement will bring to the government cannot be predicted. This coalition cannot be considered in any way homogeneous, since the two major parties share a 30-year relationship ranging from confrontation, at best, to antagonism, at worst.

To the degree that Italian governmental efficiency is directly related to governmental stability, it has suffered from the instability created by the intertwined workings of the parliamentary system and the multi-party system. The drawbacks of these systems are aggravated in Italy by the existence of proportional election

laws that facilitate the presence of centrifugal forces in the Parliament.

The operational difficulties of the multi-party system are compounded by the presence of various factions within the Italian political parties.^{12/} The PCI has been able to minimize this internal problem because of its structure of "democratic centralism" and also because it enjoyed until 1976 the benefits of being an opposition party, at least at the national level. The other parties, especially the DC, have had to reach many internal compromises in order to pacify their various factions. The proliferation of Ministers, Ministers without Portfolio, and Undersecretaries in the government is to a great extent attributable to the need of the governing coalitions to satisfy the representation demands of the various coalition parties as well as of the factions within each party.

The impact of the multi-party system has also been felt at the purely legislative level by way of the compromises that the various parties and party factions have had to reach in the drafting and passage of legislation. Internal party factions have often allied themselves with other parties, rather than with the other

^{12/} A brief but detailed study on party factions, especially within the DC, is offered by A. Lombardo, "Sistemi di Correnti e Deperimento dei Partiti in Italia," in Rivista di Scienza Politica, No. 1 (Bologna, 1976).

factions of their own party, to achieve desired results at the parliamentary level.

Also, the committees of each Chamber, as well as joint committees, reflect proportional party representation. The meetings of the committees are generally held in closed session and consequently offer added occasions for political barter and compromise.

As a general rule, all decisions of major importance to be made by the Parliament are reached in advance through interparty contacts, barter, and compromise.

Predecessors of the Newly Instituted Intelligence and Security Services

Since the latter part of the 1960's, at least, the Italian intelligence services have been subject to coverage, criticism, and speculation in the media and other Italian circles.

One observer of the Italian intelligence community opens an article on this topic with the following allegation, as translated from the Italian:

The security services, from SIFAR to SID, are [and have] been involved in all of the most obscure events of the last years: from slaughters to CIA funding; from anti-worker espionage to international industrial [espionage]; from trafficking in weapons to commissions on

military spending to privileged relations with state industry; from the polluting of political life (with the entire arsenal of [personal] files, extortions, briberies, and violations [of private or privileged information]) to the[ir] presence, as actors or abettors, in subversive attempts complemented by the sabotage of judicial investigative proceedings into these criminal events.^{13/}

This sort of apparent blanket condemnation of the intelligence services is usually shared and publicized by the Italian left. The author of the above quotation generally refers the reader throughout the article to the works or statements of persons associated with the left.

Commentators not linked to the left have stressed, rather, the misuse of institutional functions by individual high-ranking officials of the intelligence services in the pursuit of their personal interests,^{14/} as well as the influence and exploitation exercised over these services by outsiders.^{15/}

^{13/} S. Amorosino, "I Servizi di Sicurezza," in Politica del Diritto, No. 3-4, p. 383. (Bologna, 1976).

^{14/} See D. Bartoli, supra note 10, at 163-203.

^{15/} See R. Trionfera, "SIFAR Patata Bollente" and "Dal Petrolio al Tritolo" in the August 24 and 26, 1976, issues, respectively, of Il Giornale Nuovo (Milan).

Whatever the role or connection of the Italian intelligence services in the perpetration of subversive or other criminal acts, a judgment eventually will be handed down by the courts, where the proceedings are currently pending.^{16/}

The newly instituted intelligence and security services draw their origin from the Military Information Service (Servizio Informazioni Militari - SIM) instituted in 1927 under the Fascist regime. SIM was subordinate to the Deputy Chief of Staff of the Army for the performance of strictly military functions and to the Undersecretary of War for the performance of duties of a non-military nature.^{17/} SIM, whose sphere of action was generally limited to military objectives, is credited with operational efficiency. This included the forecasting of the Anglo-American landing in North Africa, a contingency not considered by German intelligence. However, this service often was not consulted by Mussolini and the

^{16/} Various proceedings against indicted subversives of the left and of the right have been joined before the Court of Assizes of Catanzaro. The trial is concerned with criminal events, among others, dating back to 1969. The Court is also investigating the existence of connections with the intelligence services.

^{17/} G. Pillon, Spie per l'Italia 28-29 (Roma, 1968). Additional information relative to the internal structure of SIM is provided in these pages. The rest of the book is devoted to the narrative of various operations conducted by SIM. The Fascist regime also ran a secret police--separate from SIM--called OVRA, which was abolished with the fall of Fascism.

military hierarchy. SIM was dissolved in 1944 and was replaced for a few years by a small intelligence office within the General Staff.^{18/}

The actual successor to SIM was the Armed Forces Information Service (Servizio Informazioni Forze Armate - SIFAR) instituted on September 1, 1949, under the Ministry of Defense as a military intelligence service for the army, navy, and air force, as opposed to SIM, which had been primarily connected to the army. Also, in contrast to its predecessor, SIFAR became increasingly concerned with internal security in a general sense and consequently stepped into the political sphere. In spite of the lack of means that had been available to SIM and the restrictions imposed by democracy, SIFAR gradually extended its sphere of action to areas previously within the specific competence of the police.^{19/} In the early 1950's, SIFAR responded to the Cold War atmosphere in the conduct of its internal security operations and therefore directed considerable attention to the Italian left.

Deviation from institutional purposes took place within SIFAR in 1955 under the command of General Giovanni De Lorenzo and

^{18/} D. Bartoli, supra note 10, at 167-168.

^{19/} For a descriptive analysis of the structure of the Italian police forces and of the judicial police function, see Appendix III.

thereafter under the two succeeding commanders he was instrumental in appointing. De Lorenzo's own highly successful career drew at one time or another the political support of the entire left, but at its end he was in the ranks of the "neo-Fascist" members of Parliament.

De Lorenzo exceeded the authority of SIFAR in collecting private information on various public figures and private citizens. This information and other illicit activities contributed to the enhancement of his private interests and personal career. He has also been accused of having planned and adopted special measures for the staging of a coup d'état during June-July 1964, by which time he had become the commander of the Arma dei Carabinieri. However, the findings of a parliamentary investigative committee revealed the absence of any activity aimed toward that end. A minority report to the contrary was submitted by the Communists and other leftist members of the committee.^{20/}

^{20/} D. Bartoli, supra note 10, at 168-179. Other commentaries on SIFAR include: R. Trionfera, SIFAR Affair (Rome, 1968) and R. Zangrandi, Inchiesta sul SIFAR (Rome, 1970). These two works examine SIFAR from different political perspectives. The latter work was published by the PCI's Editori Riuniti (its publishing company). The parliamentary investigative committee majority report is contained in Camera dei Deputati, V Legislatura, Doc. XXIII, N. 1, Commissione Parlamentare D'Inchiesta Sugli Avvenimenti del Giugno-Luglio 1964, Relazione (Roma, 1971).

The abuses of SIFAR introduced by De Lorenzo led to cleanup operations that included the transfer of several officers out of the more sensitive offices. The intelligence service was renamed the Defense Information Service (Servizio Informazioni Difesa - SID) in 1965.^{21/} Pursuant to President of the Republic Decree No. 1477 of November 18, 1965, the intelligence service was ...to carry out, through its offices and units, intelligence duties relating to the protection of the military secret and to every other activity of national interest for the defense and security of the country; and to take appropriate measures for the prevention of actions harmful to the defense potential of the country.

A Ministry of Defense circular of June 25, 1966, assigned to SID the following operational duties:

- to collect at home and abroad all useful information for defense and national security;
- to organize and conduct operations against foreign intelligence activities and against every other activity

^{21/} Atti Parlamentari, Camera dei Deputati, VII Legislatura, No. 696-385-1033-1086-1087-A, Relazione della Commissione Speciale Concernente Istituzione e Ordinamento del Servizio per la Informazione e la Sicurezza 4 (Roma).

that might be dangerous or damaging to national defense and security;

--to follow and keep abreast of the political, economic-industrial, military, and scientific condition of foreign countries of interest;

--to insure the protection of the military secret and other state secrets.^{22/}

The SID structure included three basic branches: section "I" was for intelligence collection abroad and political and military espionage; section "S" was for the processing and analysis of data provided by section "I"; and section "D" was for counterespionage, including all operations in Italy. Moreover, section "D" was territorially subdivided into 23 counterespionage groups commanded by a field-grade officer of the Carabinieri.^{23/}

Three additional intelligence services connected to SID (previously to SIFAR) were retained at the army, navy, and air force levels for the limited purposes of intelligence collection and

^{22/} The above quoted Presidential Decree and Defense Ministry Circular are drawn from Relazione, supra note 20, at 1361-1362.

^{23/} Supra note 13, at 390-391.

analysis at their respective levels. These were termed SIOS [Servizio Informazioni Operativo Situazione].^{24/}

The history of SID is also characterized by accusations. Apparently it often operated amorally under the command of General Vito Miceli, who later became a "neo-Fascist" deputy in 1976. Some SID informers became involved in judicial investigative proceedings relating to actual or presumed rightist conspiracies. At the same time, there were delays in the preparation of reports by SID on these rightist conspiracies. It still has not been determined judicially whether SID agents had infiltrated these subversive groups to participate in, or to report on, their activities.^{25/}

Elements of the Italian political spectrum have also linked SID to obscure American and NATO designs. One such allegation states:

...SID with the passing of the years became more and more, within the NATO context, the executive arm of the American service [a reference to CIA, mentioned earlier]. Until such time...when it [SID] was dismembered (because of the fear that it might lead a "national policy" with respect

^{24/} Relazione, supra note 20, at 1365-1366.

^{25/} D. Bartoli, supra note 10, at 179 ff.

to the Middle East question) so that the American [intelligence] services are the only ones left operating in our country.^{26/}

On the positive side, a series of successful institutional operations were conducted by SIFAR and later by SID against domestic spies and foreign agents from the Warsaw Pact countries.^{27/}

No evidence is available on a frequent allegation of recent years regarding involvement on the part of the Italian Armed Forces and police forces in efforts to overthrow the government or subvert democratic institutions. Apart from the fact that there is no tradition in Italy of military intervention in civil affairs, no substantiation has been offered to date on plans or operations by any major military or police unit directed at subverting Italian democracy. Judicial proceedings are currently pending against individuals or small groups that lack any operational association with either the armed forces or the police forces, or have too unsuitable a role within these forces to bring about the kind of armed intervention capable of destroying democratic institutions.

^{26/} M. Sassano, SID e Partito Americano 41 (Padova, 1975).

^{27/} See V. Araldi, Guerra Segreta in Tempo di Pace 287-311 (Milano, 1969) and E. Altavilla, La Battaglia degli Stregoni 107-113 (Milano, 1965).

The Italian Intelligence and Security Services Under the New Law

As previously indicated, the Italian intelligence and security services have been restructured by Law No. 801 of October 24, 1977. This law has introduced four major innovations: (1) a more stringent oversight of these services by both the government and Parliament; (2) the separation of intelligence and internal security functions into two services; (3) an additional separation of intelligence and security functions from judicial police functions; and (4) new regulations governing state secrecy. Following is a detailed explanation of these changes.

1. More stringent oversight.

The President of the Council of Ministers (the Prime Minister) is now responsible under Law No. 801 for intelligence and security policy, as well as for the top supervision of the intelligence and security services. He is also empowered to issue directives on organization and operations to these services and to control the application and protection of state secrecy.

The Prime Minister is assisted by the Interministerial Committee on Intelligence and Security instituted by this law. The committee is chaired by the Prime Minister and includes the Ministers of Foreign Affairs, the Interior, Clemency and Justice, Defense, Industry, and Finance. It advises the Prime Minister on general

directives and fundamental objectives of intelligence and security policy and makes proposals. The Prime Minister may invite other Ministers, the directors of the intelligence and security services, and civilian and military officials and experts to the meetings of the Interministerial Committee.

In addition to the Interministerial Committee, Law No. 801 calls for an Executive Committee for the Intelligence and Security Services (CESIS) and places it under the direct authority of the Prime Minister. CESIS provides the Prime Minister with all data needed to coordinate the intelligence and security services, as well as processed and analyzed intelligence information. Liaison with foreign intelligence/security services is also conducted by CESIS.

The Prime Minister, or an Undersecretary of State appointed by him, presides over CESIS. The Prime Minister also determines the composition of CESIS, except for the directors of the intelligence and security services who are members by right. Although the law calls only for a general secretariat, it authorizes the Prime Minister to organize whatever other offices are strictly necessary. The general secretariat is headed by a public official of the highest administrative rank, who is appointed by the Prime Minister and may be dismissed by him, after the opinion of CESIS is heard.

The government, consisting of the President of the Council of Ministers and the Ministers, must report in writing every 6 months to the Parliament on intelligence and security policy, as well as on its results.

Law No. 801 also provides for a parliamentary committee comprised of four deputies and four senators, to be appointed by the Speaker of each Chamber according to the principle of proportionality (i.e., party representation in the Parliament). The purpose of this committee is to monitor the application of the principles set forth in this law.

The parliamentary committee is entitled to request basic information on the structure and activities of the intelligence and security services from the Prime Minister and CESIS. It can also make observations and recommendations.

If the Prime Minister avails himself of the power to claim the need for state secrecy, which he must briefly substantiate, the parliamentary committee may refer the matter, after an absolute majority vote, to each Chamber of Parliament for the necessary political evaluations.

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

2. Separation of intelligence and security functions.

The intelligence service, termed by Law No. 801 as the Service for Intelligence and Military Security (SISMI), is assigned all intelligence and security functions pertaining to Italian military defense. SISMI also carries out counterespionage duties.

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

The director of the service and the other functionaries to be indicated in the table of organization of SISMI are appointed by the Minister of Defense, subject to the concurring opinion of the Interministerial Committee on Intelligence and Security.

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

Law No. 801 provides for the continued existence of those units and offices responsible for intelligence, security, and estimates that now operate within each armed force or corps of the State. At the same time, the law explicitly restricts the functions of these units and offices to duties of a technical-military or military-police nature to be exercised within the specific confines of each armed force or corps. These activities must also be conducted in

strict liaison with SISMI. Finally, the new law repeals letter g) of article 2 of President of the Republic Decree No. 1477 of November 18, 1965 (see page 17).

The security service, termed by the law as the Service for Intelligence and Democratic Security (SISDE), is assigned all intelligence and security functions for the defense of the Italian democratic state and of the institutions established by the Constitution.

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

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

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

Matters relating to personnel strength and organization, as well as to the juridical and economic status of personnel assigned to CESIS, SISMI, and SISDE, respectively, are regulated by the Prime Minister, the Minister of Defense, and the Minister of the Interior, subject to the concurring opinion of the Interministerial Council on Intelligence and Security and of the Minister of the Treasury.

Law No. 801 further provides for and regulates the utilization of public means and infrastructures by CESIS, SISMI, and SISDE. It also imposes upon SISMI and SISDE the duty to assist and cooperate with each other.

Individuals whose record does not guarantee their fidelity to democratic and constitutional principles are barred by the law from permanent or occasional employment in CESIS, SISMI, and SISDE.

3. Separation from judicial police functions.

Under the new law, assignment to CESIS, SISMI, and SISDE is not compatible with the status of an officer or agent of the judicial police.^{28/} Consequently, personnel who would hold that status in their parent organization are suspended from that status during the period of assignment to either of the three entities indicated above.

28/ See Appendix III.

In derogation to standard directives and procedures, the members of the intelligence and security services must channel their reports exclusively through their superiors to the directors of the pertinent services, who will in turn report to the Ministers of Defense and of the Interior, respectively, as well as to the Prime Minister.

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

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

Law No. 801 specifically repeals all regulations and/or internal directives contrary to its provisions. It also prohibits the performance of any intelligence or security activity outside the instrumentalities, procedures, competences, and objectives called for by this law.

4. New regulations on state secrecy.

The matter of state secrecy is also regulated by Law No. 801. This law imposes the "state secret" on all acts, documents, information, activities, and other things whose disclosure is capable of damaging the State and its international agreements. The law excludes from the "state secret" those events directed at subverting constitutional order.

Law No. 801 further imposes upon all public officials the duty to abstain from testifying on matters covered by state secrecy. If the prosecuting authority does not consider the pertinent matter subject to state secrecy, it questions the Prime Minister, who must reply within 60 days whenever he intends to uphold the "state secret."

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

Concluding Remarks

Most observers would probably agree that the governmental and parliamentary oversight of the Italian intelligence and security services is per se a positive innovation. It could help to prevent possible abuses by officials of the intelligence/security services or by other officials--or even by influential private citizens--who might otherwise exploit these services to their personal benefit. In setting up this plan of oversight, Italy is utilizing the experience and intelligence models of other countries, as seen in the report of the Special Committee that examined the various bills introduced in Parliament before the passage of Law No. 801.^{29/}

This measure, however, may create problems in view of the Italian system of government and the workings of Italian politics, whose characteristics have been examined above. For one thing, the operational effectiveness of the newly restructured Italian intelligence and security services could become directly proportional to the stability of the government. Recurrence of endemic governmental crises of the past could easily paralyze the functioning of these services. Malfunction or even paralysis could result from foreseeable events ranging from the too-frequent appointment and

^{29/} Supra note 21, at 4-6.

dismissal of administrative heads of CESIS, SISMI, and SISDE, to changes in intelligence and security policy following the formation of new parliamentary majorities and/or the succession of each Prime Minister and cabinet.

To date, the Prime Minister has always been a Christian Democrat. But even if this trend were to continue--and possibly serve as a stabilizing force--the position of the Prime Minister with regard to these services will still be conditioned by the Interministerial Committee on Intelligence and Security established by Law No. 801. The composition and powers of this committee could create difficulties for the proper functioning of the services, especially under coalition governments. Because of Italy's record of them, one can expect the Interministerial Committee to include, in most cases, ministers from different parties whose ideologies and platforms may be discordant. It is not inconceivable that the two most important members of the Interministerial Committee--the Minister of Defense and the Minister of the Interior--may belong in the future to parties as far apart as the DC and the PCI.

Similar reservations may be expressed in regard to the newly established parliamentary oversight committee. This committee consists of four deputies and four senators appointed by the Speaker of each Chamber in proportion to party representation.

In fact, the current committee membership includes four Christian Democrats, three Communists, and one Socialist.^{30/}

The extensive composition of the Interministerial Committee and the parliamentary committee--as well as the diversified party affiliations of committee members, already seen in the parliamentary committee--also raises the possibility of unauthorized disclosure of classified information and proceedings. In this connection, a number of political experts and ordinary observers reject or cast doubt on the new image of the PCI, especially with respect to its recent NATO commitment.^{31/}

Moreover, the fact that the government must also report biannually to the Parliament on intelligence and security policy, and its results, virtually involves the entire Council of Ministers and all of Parliament in sensitive matters falling under intelligence and security.

The second innovation introduced by Law No. 801--the separation of intelligence and security functions--brings Italy even

^{30/} Corriere della Sera, January 23, 1978, p. 2 (Milan).

^{31/} The position of the PCI on past and present issues is well recorded by A. Rizzo, La Frontiera dell' Eurocomunismo (Roma-Bari, 1977). For past and current PCI attitudes on NATO, see J. E. Dougherty and D. K. Pfalzgraff, Eurocommunism and the Atlantic Alliance (1977); V. S. Pisano, Italian Communism and NATO (1977).

closer to the system adopted in other countries. In Italy's case, the success of this innovation will depend on the degree of cooperation between SISMI and SISDE and between the Ministers of Defense and of the Interior. It will also depend on the overall stability and homogeneity of the government. The functions of the two services are also likely to overlap each other, particularly because of the threat currently posed by domestic terrorism--which may have foreign links--and by agents of foreign terrorist organizations operating against foreign targets located on Italian territory.^{32/}

The additional separation of the intelligence and security services from the judicial police is also in keeping with foreign models. This innovation of Law No. 801 may have two drawbacks, however. First, the change requires a high degree of cooperation between the services and the various national police forces. It could happen, instead, that this separation will create a form of bipolarization with SISMI and the Carabinieri on one side and SISDE and the P.S. on the other.^{33/} Moreover, a certain degree of flexibility will be lost, and occasions for security leaks will be increased.

^{32/} See Appendix II.

^{33/} See Appendix III.

The regulation of state secrecy by the new law may result in friction between the Prime Minister and the supporting parliamentary coalition or other sectors of the Parliament. This would contribute to upsetting the generally precarious equilibrium of Italian politics.

In conclusion, the major shortcoming is possibly posed by the fact that the new intelligence/security system and structure may impose restrictions and/or courses of action of a political rather than technical nature on the Prime Minister. This would be detrimental to the institutional functions and efficiency of these services. Obviously, much will depend on the implementing regulations of Law No. 801, which may be able to insure standard operating procedures despite the workings of Italian politics.

APPENDIX I ^{34/}
TRANSLATION FROM THE ITALIAN

Law No. 801 of October 24, 1977.

Formation and Organization of the Intelligence and Security
Services and the Regulation of the State Secret. ^{35/}

The Chamber of Deputies and the Senate of the Republic have approved;

THE PRESIDENT OF THE REPUBLIC

Promulgates

the following law:

Art. 1.

The President of the Council of Ministers is vested with top supervision, general political responsibility, and coordination of intelligence and security policy in the interest and defense of the democratic state and of the institutions established by the Constitution as the foundation [of the State].

The President of the Council of Ministers sets forth the standards and issues all necessary directives for the organization and operation of activities pertinent to the purposes referred to in the preceding paragraph; supervises the application of the criteria relating to imposition of the state secret and to the selection of the [appropriate] organs vested with jurisdiction; exercises control over the state secret.

^{34/} Translated by V. S. Pisano.

^{35/} Gazzetta Ufficiale della Repubblica Italiana [official law gazette of the Republic of Italy], No. 303, November 7, 1977, p. 8055.

Art. 2.

An Interministerial Committee on Intelligence and Security is hereby established at the Presidency of the Council of Ministers. [It carries out] the functions of consultation and recommendation for the President of the Council of Ministers on the general directives and fundamental objectives to be pursued within the scope of the intelligence and security policy.

The Committee is chaired by the President of the Council of Ministers and is comprised of the Ministers of Foreign Affairs, the Interior, Clemency and Justice, Defense, Industry, and Finance.

The President of the Council of Ministers may invite to the meetings of the Interministerial Committee, as participants, the directors of the Services referred to in articles 4 and 6 below, civilian and military authorities, and experts.

Art. 3.

The Executive Committee for the Intelligence and Security Services (CESIS) is hereby instituted [and is] directly subordinate to the President of the Council of Ministers.

The Committee [is charged with] the duty of furnishing to the President of the Council of Ministers--for the purpose of [insuring] the actual execution of the functions assigned to him by article 1-- all necessary information for the coordination of activities of the

Services instituted by articles 4 and 6 below; the analysis of the information transmitted by the Services aforesaid; the estimate of the relevant situation. The Committee is also charged with coordinating liaison with the intelligence and security services of other States.

The Committee is chaired by the President of the Council of Ministers or, subject to his delegation, by an Undersecretary of State.

The general secretariat of the Committee is assigned to a functionary of the public administration possessing the status of dirigente generale [executive general], whose appointment and dismissal are at the discretion of the President of the Council of Ministers after having heard [the advice of] the Interministerial Committee referred to in article 2.

The President of the Council of Ministers determines the composition of the Committee, to which must belong the directors of the Services referred to in articles 4 and 6 below, and institutes those offices strictly necessary to carry out the [Committee's] activities.

Art. 4.

The Service for Intelligence and Military Security (SISMI) is hereby instituted. It carries out all intelligence and security

functions for the military defense of the independence and integrity of the State against every danger, threat, or aggression. Moreover, SISMI carries out espionage functions for these purposes.

The Minister of Defense, to whom the Service is subordinate, determines the organization [of the Service] and supervises its activity in accordance with the orders and directives of the President of the Council of Ministers, pursuant to article 1.

The director of the Service and the other functionaries indicated in the directives on the organization are appointed by the Minister of Defense, subject to the concurring opinion of the Inter-ministerial Committee referred to in article 2.

SISMI must transmit to the Minister of Defense and to the Committee referred to in article 3 all information received or otherwise in its possession, the analyses and estimates of the situation, the [reports of] operations, and everything that pertains to its activity.

Art. 5.

The units and offices [organic or attached] to each armed force or armed corps of the State that are responsible for intelligence, security, and situation [analysis] carry out duties of an exclusively technical-military nature and [duties] as military police within the

restrictions [applicable to] the individual armed force or corps. They operate in strict liaison with SISMI.

Letter g) of article 2 of President of the Republic Decree No. 1477 of November 18, 1965, is hereby abrogated.

Art. 6.

The Service for Intelligence and Democratic Security (SISDE) is hereby instituted. It carries out all intelligence and security functions for the defense of the democratic state and of the institutions established by the Constitution as the foundation thereof against anyone who makes an attempt upon them, and against every form of subversion.

The Minister of the Interior, to whom the Service is subordinate, determines the organization [of the Service] and supervises its activity in accordance with the orders and directives of the President of the Council of Ministers, in accordance with article 1.

The director of the Service and the other functionaries indicated in the directives on the organization are appointed by the Minister of the Interior, subject to the concurring opinion of the Interministerial Committee referred to in article 2.

SISDE must transmit to the Minister of the Interior and to the Committee referred to in article 3 all information received or otherwise in its possession, the analyses and estimates of the situation, the [reports of] operations, and everything that pertains to its activity.

Art. 7.

The personnel of each of the Services instituted by articles 4 and 6 and of the Committee referred to in article 3 is made up of civilian and military employees of the State who are to be transferred, with their consent, to exclusive employment in the Services aforesaid, as well as personnel employed directly. Under no circumstances may the Services engage, on a permanent or occasional basis, members of Parliament; regional, provincial, or municipal councilors; magistrates; clergymen; and professional journalists.

The composition of the Committee referred to in article 3 and of each Service, the conditions and procedures for the reassignment of public employees to the administration to which originally assigned, the juridical-economic status, and the conditions and procedures for the transfer of personnel hired directly [by the Committee and by each Service] to another administration of the State are established, respectively, even in derogation from all existing

directives, by the President of the Council of Ministers, by the Minister of Defense, by the Minister of the Interior, subject to the concurring opinion of the Interministerial Committee referred to in article 2 and in concert with the Minister of the Treasury. The juridical and economic status of the personnel of the Committee referred to in article 3, and of the Services referred to in articles 4 and 6, cannot, however, be lower than that of the corresponding status in public [administration] employment.

The Committee and the Services instituted by articles 3, 4, and 6 may utilize in accordance with determinations by the President of the Council of Ministers, subject to the recommendation of the Ministers of Defense and of the Interior, respectively, and in concert with the other interested Ministers, the material and infrastructures of any State administration.

SISMI and SISDE must collaborate and assist each other.

Art. 8.

Persons who, because of [their] subversive conduct or actions in regard to democratic institutions, cannot be relied upon for scrupulous fidelity to the values of the Republican and anti-Fascist Constitution may not belong, on a permanent or occasional basis, to the Committee referred to in article 3 and to the Services referred to in articles 4 and 6.

Art. 9.

Those belonging to the Committee referred to in article 3, and to the services referred to in articles 4 and 6, do not hold the status of officers or agents of the judicial police; those who hold such status under the juridical structure of the administration to which they belong are [temporarily] relieved of [such status].

In derogation from the common provisions, those who belong to the Services are required to report, through their superiors, exclusively to the directors of the Services who [in turn] report to the Minister of Defense and to the Minister of the Interior, respectively, and at the same time to the President of the Council of Ministers through the Committee referred to in article 3.

The directors of the Services instituted by articles 4 and 6 are required, moreover, to furnish to the jurisdictionally competent organs of the judicial police the information and evidence relative to acts that appear to be crimes.

Compliance with the requirements referred to in the preceding paragraph may be delayed, subject to the directives of the Minister having jurisdiction, with the explicit consent of the President of the Council of Ministers whenever this is strictly necessary in the pursuance of the institutional purposes of the Services.

All the officers and agents of the judicial police must cooperate so far as possible with the agents of the Services.

Art. 10.

No activity, however conducive to intelligence and security, may be carried out outside of the instrumentalities, procedures, competences, and objectives called for by the present law.

All internal and regulatory directives contradictory to or however incompatible with the present law are hereby abrogated; the new directives must be issued immediately by the competent organs.

In the first application of this law, and until the formation of the personnel lists of the Services called for by articles 4 and 6, the Services aforesaid will employ, in accordance with the provisions of article 8, the personnel of the services existing to date within the Ministries of Defense and of the Interior (SID and SdS).

These services, however, shall cease to operate within six months from the entry into effect of the present Law and all the materials, documentation, and technical facilities shall become, subject to the determination of the President of the Council of Ministers after having heard [the advice of] the Ministers of Defense and of the Interior, part of the Services instituted by articles 4 and 6, in accordance with the competences and functions assigned to them.

Art. 11.

The Government must present to the Parliament a biannual report in writing on intelligence and security policy and on the results obtained therefrom.

A parliamentary committee comprised of four Deputies and four Senators, appointed by the Speakers of the two branches of Parliament on the basis of criteria of proportionality, exercises control over the application of principles established by the present Law.

To this end, the parliamentary committee may request from the President of the Council of Ministers and the Interministerial Committee referred to in article 2 information on the essential guidelines for the structure and activities of the Services and submit recommendations and observations.

The President of the Council of Ministers may uphold before the parliamentary committee, by summarizing the essential reasons, the necessity of safeguarding the secrecy of information [whose disclosure would] in his judgment exceed the purview of the preceding paragraph.

In this case, if the absolute majority of the members of the parliamentary committee deems secrecy to be unwarranted, the parliamentary committee reports to each of the Chambers for the necessary political evaluations.

The members of the parliamentary committee are bound to secrecy regarding the information acquired and the recommendations and observations submitted pursuant to the third paragraph [of this article]. The proceedings of the committee are subject to secrecy.

Art. 12.

State secrecy covers the acts, documents, information, and all other things whose disclosure is liable to cause detriment to the integrity of the democratic State, even with respect to international agreements, to the defense of the institutions established by the Constitution as the foundation [of the State], to the free exercise of the functions of the constitutional organs, to the independence of the State from other States and its relations with the latter, to the military preparedness and defense of the State.

Art. 13.

The words "political or military secret" contained in the first and second paragraphs of article 342 of the Code of Criminal Procedure are replaced by the words "state secret."

The words "takes action pursuant to the third paragraph of article 352" contained in the second paragraph of article 342 of the Code of Criminal Procedure are replaced by the words "takes action pursuant to article 352."

Art. 14.

The heading of article 351 of the Code of Criminal Procedure is amended as follows: "Right to abstain from testifying and prohibition to interrogate as determined by professional or official secrecy."

The first paragraph of article 352 of the Code of Criminal Procedure is inserted as the second paragraph in article 351 of said Code.

Art. 15.

Article 352 of the Code of Criminal Procedure is replaced by the following:

"Obligation to abstain from testifying and prohibition to interrogate as determined by the state secret.

Public officials, public employees, and those in charge of public services must abstain from testifying and must not be interrogated on whatever [matters] are subject to the State Secret.

If the prosecuting authority considers the statement made by any of the above-mentioned persons regarding secrecy to be without foundation, it must seek [the views] of the President of the Council of Ministers, who must reply within 60 days of receipt of the request if he intends to confirm [the secrecy]. In such case there will be no prosecution for the felony [defined] by

article 372 of the Criminal Code and, if knowledge of whatever [matter] subject to the state secret is essential, the prosecuting authority shall declare discontinuance of the proceedings because of the existence of a state secret."

Art. 16.

The President of the Council of Ministers must inform the parliamentary committee mentioned in article 11 of the present law of every case of confirmation of a state secret, pursuant to article 352 of the Code of Criminal Procedure, giving a summary of the essential reasons. If an absolute majority of the members of the parliamentary committee deems the imposition of secrecy unfounded, [the committee] reports to each of the Chambers for the necessary political evaluations.

Art. 17.

The President of the Council of Ministers informs the Chambers of every case of imposition of a state secret, together with the relevant justification, pursuant to articles 11 and 15 of the present law.

Art. 18.

Until the date of promulgation of a new organic law relative to the matter of secrecy, the situations regulated and punished by

Book II, Title I, first and fifth chapters of the Criminal Code concerning internal or international political secrecy, must be [considered] with reference to the definition of secrecy pursuant to articles 1 and 12 of the present law.

Art. 19.

The expenditures relative to the Committee referred to in article 3 and those of the Services instituted by articles 4 and 6 must be entered in a specific register--entitled "Interministerial Committee on Intelligence and Security"--to be instituted in conjunction with the estimate of expenditures of the Ministry of the Treasury.

The President of the Council of Ministers, subject to the recommendation of the Interministerial Committee on Intelligence and Security, determines, by his own decrees, the amounts to be appropriated for CESIS for organizational and operational expenditures, and for SISMI and SISDE for organizational and operational expenditures, as well as for classified disbursements to be entered, respectively, in the financial estimate of the Presidency of the Council of Ministers and of the Ministries of Defense and of the Interior. The Minister of the Treasury, on the basis of the above provisions [and] by his own decrees, shall attend to the required

budget variations. Classified disbursements are entered under the pertinent items and are not subject to reporting.

With the initial application [of the present law], the appropriations already made for analogous reasons in the financial estimates of the Ministries of the Interior and of Defense are entered in the register aforesaid. The Minister of the Treasury is authorized to make necessary variations in the budget; where necessary, they may also apply to debits.

The present law, bearing the State Seal, shall be entered in the Official Collection of the Laws and Decrees of the Republic of Italy. It must be obeyed and enforced as the law of the State.

Done at Rome this 24th day of October 1977

LEONE

ANDREOTTI -- COSSIGA --

BONAFACIO -- RUFFINI

-- STAMMATI

Seen by the Keeper of Seals [Minister of Justice]: BONIFACIO

APPENDIX II

THE PROBLEM POSED BY TERRORISM ^{36/} FOR THE ITALIAN INTELLIGENCE AND SECURITY SERVICES

Introduction

The incidence of terrorism in Italy makes this phenomenon the country's most visible and disquieting present-day problem. The threat that terrorism poses to internal security and domestic tranquility, the hypothesized foreign terrorist connections, and the special means required to fight this type of criminality make ordinary police operations inadequate. Consequently, the imperatives of public order and national security are generally seen as calling for efficient Italian intelligence and security forces to operate in this field of crime prevention and national defense.

An estimate cited by a conservative Milan weekly indicates that 2,200 separate acts of terrorism took place in Italy in 1977, as opposed to 164 in 1968.^{37/} Another study conducted by the Italian Communist Party (PCI) on the same problem cites 2,013 "serious violent incidents" of terrorism for the year 1977, as opposed to 1,198 for the previous year.^{38/} These figures are not only high, but also reflect a considerable escalation.

A recent report published by Time on Italian terrorism points to the work of "115 identifiable extremist political

^{36/} By V. S. Pisano.

^{37/} Il Settimanale, No. 2, January 18, 1978, p. 14-16 (Milan).

^{38/} Corriere della Sera, February, 17, 1978, p. 1 (Milan).

movements, splinter groups, and urban guerrilla commandos, 94 belonging to the far left and 21 to the neo-Fascist right."^{39/} Moreover, the findings of the above-cited PCI study reflect that there are in Italy today approximately 700-800 terrorists living clandestinely, and approximately 10,000 individuals who are often armed and given to violent actions, arson, and pillage.

The more prominent terrorist organizations of the left include the Red Brigades, the Armed Proletarian Nuclei, Front Line, Armed Struggle for Communism, and Armed Wage Earners for Communism.^{40/} Following the forcible dissolution of the New Order and National Vanguard, the more important terrorist groups of the right appear to gravitate around some of the Rome and Milan sections of the Italian Social Movement,^{41/} a small political party often termed "neo-Fascist."

The Red Brigades: A Case Study

A long series of terrorist acts perpetrated by the Red Brigades (Brigate Rosse - BR)--most recently the Moro abduction and murder--have generated frequent and lengthy coverage of this criminal organization by the Italian and international media. The BR,

^{39/} Time, January 23, 1978, p. 35.

^{40/} Supra note 37.

^{41/} Il Settimanale, No. 3, January 25, 1978, p. 21-22 (Milan).

which sign their "communiques" with the salutation "For Communism," constitute an instructive case study. The BR have displayed such effective organization, planning, and operations, and committed so many serious acts of political violence, that a number of hypotheses have been formulated with respect to their objectives, as well as their domestic and foreign links.

The Origin of the Red Brigades and Their Terrorist Record^{42/}

The Red Brigades were born of Italy's student and labor union unrest of the late 1960's. Renato Curcio, a former sociology student, presently on trial and allegedly the founder of this terrorist organization, is reported to have broken away with some followers in 1969 from a leftist extraparliamentary group in Milan for the purpose of conducting independent action by violent means.

In 1970 and 1971, the terrorist attempts of the BR were limited to firebombings of private property and industrial plants in the Milan area. In March of the following year, a Milan industrial executive was kidnapped by the BR and subsequently "tried." That same year, BR leaflets appeared bearing such slogans as "Strike

^{42/} The information contained under this heading is abstracted primarily from Corriere della Sera, March 17, 1978, p. 6 (Milan). It has been updated with daily information from subsequent issues of the same paper, as well as from issues of Il Giornale Nuovo (Milan), The New York Times, The Washington Post, and Foreign Broadcast Information Service (Western Europe).

at the heart of the State," "All power to the armed people," and "Strike one to educate one hundred." The recurring theme of all BR writings appears to be always the same: "Cause the contradictions to erupt, force the State to cast off its mask."

Also in 1972, the BR sphere of action expanded from the Milan area to the industrial triangle of Genoa-Turin-Milan, while BR terror tactics graduated from the sporadic to the systematic. A conservative trade union leader was abducted and "tried" in Turin in February 1973. In June and November of the same year, two industrial executives were abducted and "tried" in Milan and Turin, respectively. The same fate befell a magistrate in Genoa in April 1974.

The BR suffered a temporary setback in 1975 when Renato Curcio was captured by the police, who were aided by an infiltrator. In the ensuing police hunt for BR hideouts, a Carabinieri NCO was killed, but additional BR members were arrested. However, on May 16 of the same year, Curcio was "liberated" by a BR commando. He was later recaptured, but on the same day of his escape, a local Christian Democratic Party leader was shot in the leg by the BR in his Milan law office. This was the first of a long series of shootings in the legs, a typical BR trademark. In June, during a skirmish between the Carabinieri and the BR, who were holding an industrialist,

Curcio's wife--a fellow terrorist--lost her life. Another industrial executive was kidnapped on October 22.

In 1976, the BR began to carry out deliberate murders. The attorney-general of Genoa lost his life in an ambush, together with two members of his police escort. The proceedings against the jailed BR members in Turin were postponed because of intimidation. A series of arson attempts on industrial plants followed. Following the example of the BR, minor leftist terrorist groups also came to life in 1976 and are still active.

Just as the proceedings against the jailed BR members in Turin were about to resume in March 1977, two more victims lost their lives there to the BR. On March 12, a police intelligence NCO was assassinated, and in April the President of the Turin Bar Association was also murdered. Apparently, the purpose of this last killing was to intimidate judges and jurors, and the trial was, in fact, once again postponed. Between June 1 and 3, three journalists were shot in the legs, including the editor of the conservative Milan daily, Il Giornale. Approximately 20 other individuals met with the same fate in the course of the summer. These included various party officials, small businessmen, and managers. In November 1977, the BR assassinated the assistant editor of Turin's daily La Stampa.

The 1978 statistics are indicative of further escalation with respect to the intensity of BR operations, and to the importance of their targets. A judge was murdered on February 14. Shortly thereafter, another police intelligence NCO was assassinated. On March 16, Aldo Moro, former Premier and incumbent Christian Democratic Party Chairman, was abducted in Rome on his way to Parliament to participate in the vote of confidence for the new cabinet. In the attack, all five members of his police escort were murdered. After 54 days of captivity and the government's refusal to release 13 terrorists facing trial, Moro's corpse was found on May 9 in the center of Rome. In the time between Moro's abduction and the finding of his body, 2 prison guards were killed and 10 additional individuals were shot in the legs. The police, on their part, were able to wound and capture a BR terrorist.

At this writing, a new phase of terrorist activity may be under way. On May 11, the Milan Branch manager of New York's Chemical Bank was shot in the legs. This was the first time an employee of an American firm became the victim of a leftist attempt. Another such attempt on American property took place on the following day. There is apparently some doubt as to whether these last crimes were perpetrated by the BR or by Front Line, another leftist terrorist group.

The Composition and Organization of the Red Brigades^{43/}

By the end of 1977, the Italian police had arrested 150 BR members, including 7 women, and at least one more has been apprehended since then. A minimum of 22 are still fugitives from justice. In May 1978, over 20 suspects were taken into custody.

The members of the BR emanate from nearly every region of Italy, and seven of them are foreign-born Italians. Their regional origin is principally northern, however. They generally share a middle-class background and their average age is 26. The majority of them have, as a minimum, a high school diploma. Many are university students, and five hold doctorates.

Another characteristic is that most of them at one time belonged to the Italian Communist Party and/or to an extraparliamentary party of the Left.^{44/}

The Italian police have identified at least 36 BR hide-outs, all located no farther south than Rome.

^{43/} Unless otherwise specified at the end of each paragraph, the information contained under this heading is abstracted from Corriere della Sera, March 12, 1978, p. 2 (Milan), as subsequently updated from the same sources indicated at 42/.

^{44/} A. Silj, "mai piu senza fucile" 161 (Firenze, 1977). The entire book is instructive, especially several of the individual case studies.

If the revelations of the recently captured "brigadist" Cristoforo Piancone are to be believed, the BR consist of 1,500 members divided into four territorial groups independent of one another. The headquarters of these groups are located in Milan, Genoa, Turin, and Rome. The 1,500 figure represents only the cadre of the organization. Candidates are closely screened and after a probation period are trained for one year.^{45/}

Hypotheses Offered by the Media on the Objectives and Links of the Red Brigades

The effectiveness of the BR organization and operations has stimulated a vast amount of speculation regarding their political objectives and possible links to domestic institutions or foreign states.

One view links the BR to the Italian Communist Party (PCI). The following considerations have been submitted in support of this hypothesis.

The language of the Red Brigades is generally recognized as reflecting hard-line Communist parlance. In fact, Rossana Rossanda, formerly of the Italian Communist Party (PCI) and now a member of the Manifesto (a political group to the left of the PCI),

45/ Il Giornale Nuovo, April 28, 1978, p. 1 (Milan).

has stated that the language of the BR is that of the PCI of the 1950's. She went on to say that "it's like leafing through a family album."^{46/}

A commentator writing for the conservative Milan weekly Il Settimanale has observed that whenever the BR leaflets attack the PCI, they never call it by name, but refer to it as "Berlinguer's party." (Berlinguer is generally considered to be a moderate Communist.) This observation leads the same commentator to another consideration: behind Berlinguer there may be another face of the PCI, one committed to Stalinism and opposed to any form of collaboration with democratic parties.^{47/}

Along these lines, a statement by BR member Piancone is of interest: "In the event of a violent governmental repression against terrorism, the PCI will guarantee our physical survival. The legalitarian attitude adopted by the PCI will never allow the State to adopt measures against us [that are] too strong."^{48/}

Still another observer has noted that only two assaults carried out by the BR were against the PCI and added that the "Red

^{46/} Il Giornale Nuovo, March 29, 1978, p. 1 (Milan).

^{47/} Il Settimanale, No. 16, April 19, 1978, p. 10-11 (Milan).

^{48/} Supra note 45.

Brigades are fueled by an ideological hatred of the Italian order, and the PCI is the foundation of that ideology."^{49/}

An American specialist on the Italian scene who does not subscribe to the so-called PCI connection theory has stated, however, that the "Red Brigades do have a quarrel with the PCI, but it is quite different from their war against the Christian Democrats. The Red Brigades wish to destroy the Christian Democrats, while they want to rejuvenate Italian communism."^{50/}

Except for these statements, there is no public evidence of PCI connections with the BR. Moreover, it has been pointed out that if such a link does exist, it would prove counterproductive for the PCI. The reason is not only because of the PCI's condemnation of the BR, but also because such link would conflict with the legalitarian and democratic image the PCI has endeavored to project both in Italy and abroad, especially since the 1976 general elections.

Other observers hypothesize that international connections do exist between the BR and terrorist groups of other nations, as well as between the BR and the governments of foreign nations.

^{49/} George F. Will, "Toward Totalitarianism, Again," in The Washington Post, May 14, 1978.

^{50/} M. Ledeen, "Aldo Moro's Legacy," in The New Republic, May 13, 1978, p. 24-25.

Indirect evidence of links between Italian terrorists and the intelligence services of Czechoslovakia, East Germany, and the Soviet Union has increasingly been discussed in the Italian and foreign media.^{51/} Frequent references have been made to the training and sojourn of Italian terrorists in Czechoslovakia and Cuba,^{52/} as well as to their systematic use of East European weapons and munitions.^{53/} The 147 anti-German acts of political violence perpetrated in Italy last year following the Mogadishu raid and the Stammheim incident have been considered too numerous to be spontaneous.^{54/} The existence of contacts between the BR and the Baader-Meinhoff gang^{55/} (and just recently the Palestinians)^{56/} has also been alleged. More recently, at least one article argumentatively referred to former Italian Communist partisans who took refuge in

^{51/} Il Settimanale, No. 47, November 23, 1977, p. 16-19 (Milan); also more recently, M. Ledeen, "Inside the Red Brigades: An Exclusive Report," in New York, May 1, 1978, p. 36-39.

^{52/} Il Settimanale, No. 48, November 30, 1977, p. 14-15 (Milan); M. Ledeen, "Italy Awaits Caesar," in The New Republic, January 7, 1978, p. 16-20.

^{53/} Il Settimanale, No. 50, December 14, 1977, p. 15 (Milan); Corriere della Sera, March 12, 1978, p. 2 (Milan).

^{54/} Id., Il Settimanale.

^{55/} Supra note 52, Ledeen.

^{56/} Il Giornale Nuovo, April 27, 1978, p. 1 and 7 (Milan).

Czechoslovakia following terrorist activities perpetrated by them from 1946 to 1950.^{57/} Moreover, the Italian press has often reported comments of various Italian public figures who indicated knowledge of or belief in the international connection.

On the other hand, captured BR member Piancone has declared that the BR receive no outside financial support,^{58/} and Giancarlo Pajetta, spokesman of the PCI foreign office, has ruled out links between Italian terrorism and East European states.^{59/}

While all of the foregoing is subject to further investigation, since it ranges from circumstantial evidence to hearsay, it would appear that the historic leader of the BR, Renato Curcio, considers the role of the BR within an international context. On one occasion he stated: "Italy is the weak link of the democratic system of the West. The Federal Republic of Germany is the strongest." Later on he added: "In Germany kidnappings serve the purpose of intimidation; in Italy they must give the final push to an agonizing regime."^{60/}

^{57/} Il Settimanale, No. 15, April 12, 1978, p. 14-15 (Milan).

^{58/} Supra note 46.

^{59/} Foreign Broadcast Information Service (Western Europe), L4, March 31, 1978.

^{60/} Il Settimanale, No. 44, November 2, 1977, p. 14-15 (Milan).

Still another hypothesis links the BR to the "forces of reaction" or to subversive rightist designs. In fact, these forces were accused of the Moro abduction by the Soviet news agency Tass on the day it occurred.^{61/} The Tass allegation is in line with the PCI's traditional contention that terrorism is a rightist phenomenon. Recently this tendency has been criticized by Senator Ugo Pecchioli, the PCI's expert on public order, who also conceded the existence of leftist terrorism.^{62/} However, even more recently, in the course of a television broadcast on May 11, 1978, PCI Secretary-General Berlinguer stated that the "Communists follow this reasoning with respect to the accomplices of the Red Brigades: their objectives are the same [as those] of the reactionary forces. Police investigations and activities must therefore be directed also toward this sector."^{63/}

On May 10, 1978, the day Moro's body was recovered, the Soviet Government followed up on the previous Tass contention and asserted that the "slaying of Aldo Moro was aimed at forestalling a

^{61/} See Foreign Broadcast Information Service cable traffic, May 16, 1978.

^{62/} Corriere della Sera, February 17, 1978, p. 1 (Milan).

^{63/} Il Giornale Nuovo, May 12, 1978, p. 2 (Milan).

governing coalition between Italian Communists and Christian Democrats."^{64/}

No public evidence exists, however, of the aims and composition of the "forces of reaction." Moreover, whatever the intentions of the BR, the standing of the PCI as a political force in Italy did not diminish during the traumatic Moro captivity.

The Need for Effective Intelligence and Security Services

It may be safe to assume that if any classified information has been collected on Italian terrorist groups, it is of limited value, at least for the time being. This assumption is based on the fact that Italian terrorists in general, and the Red Brigades in particular, are scoring more operational successes than are the law enforcement agencies. The media seem to be unanimous on the need for effective intelligence in order to counteract terrorism.

The discordant theories submitted by the media also require additional substantiation, which can be provided by suitable intelligence and security operations.

Ultimately, the effectiveness of the restructured Italian intelligence and security services--at whatever time they become

^{64/} "Soviets Say Assassins Hope to Forestall Rome Coalition," in The Washington Post A21, May 11, 1978.

operational--will be measured on their success in answering unresolved questions and in being instrumental in repressing domestic and/or foreign terrorism in Italy.

APPENDIX III

THE ITALIAN LAW ENFORCEMENT STRUCTURE AND THE JUDICIAL POLICE FUNCTION 65/

The Structure of Italian Police Forces

In accordance with the Republican Constitution of 1947, Italy is a unitary state. Local bodies of government--regions, provinces, and municipalities--enjoy limited legislative and regulatory powers, which must be exercised "within the limits of the general fundamental principles established by the law of the State."^{66/}

Consequently, police forces organized at the local levels of government have limited resources and carry out administrative functions that generally deal with traffic control and the enforcement of local ordinances.

The primary law enforcement effort is conducted, instead, at the national level by five major police forces, whose jurisdiction in relation to the enforcement of the Criminal Code and complementary statutes extends to the entire national territory.

These national police forces are organized and administered by the respective ministry (department) of the executive branch to which they are assigned by law, but for purposes of public

65/ By V. S. Pisano.

66/ Art. 117, Constitution of the Republic of Italy.

order, security, and safety their operations are coordinated by the Ministry of the Interior.

The national police forces are comprised of the following:

1. The Arma dei Carabinieri (Carabinieri) is vested with both military and civil jurisdiction. In conjunction with its military jurisdiction, it operates as the military police branch of the Italian Armed Forces. Because of its essentially military composition and structure, it falls under the Ministry of Defense. With respect to its civil jurisdiction, it has full police powers over the civilian population throughout the State. Specific civil responsibilities of this police force include the maintenance of order in the courts. For the performance of law enforcement functions, this force has a "territorial" organization consisting of a General Headquarters and three divisional headquarters. Each of the three has subordinate brigades, legions, groups, companies, and stations. The stations, which are the smallest territorial unit of the force, are located in nearly every municipality. Besides these, a special brigade is specifically assigned duties in conjunction with public order and civil disturbances. The Carabinieri is the most extensive organization of all the Italian police forces.^{67/}

^{67/} For a detailed description and analysis, see Scuola Ufficiali Carabinieri, Sinossi di Tecnica Professionale (Roma, 1975).

2. The Corpo delle Guardie di Pubblica Sicurezza (P.S.) is organized under the Ministry of the Interior, whose structure and responsibilities do not have an American counterpart. This Ministry is responsible for public order, security, and safety. It exercises its functions at the local level through a system of Prefecture, which are established in each of the 94 provinces and represent in their respective area of jurisdiction the executive branch of the central government. In addition to supervising the police, the Prefects, who head the Prefecture, perform many administrative duties that overlap those of other ministries and agencies. In cases of "urgent necessity," the Prefects are empowered to adopt special measures in the public interest. In police matters, each Prefect is assisted by a Questore, who is also an official of the Ministry of the Interior, as well as the chief of police in each province. As such, he is in charge of the Questura (police headquarters). The P.S. is the police force at the immediate disposal of the Ministry of the Interior and its peripheral organs, which draw upon the other police forces to perform their public order functions. The officers and men of the P.S. are generally under the operational control of the Questura or of its subordinate precincts, known as Commissariati.^{68/}

^{68/} G. Landi, et al, Manuale di Diritto Amministrativo 341-3 (Milan, 1971).

3. The Guardia di Finanza is employed under the guidance of the Ministry of Finance. Although it shares jurisdiction over enforcement of criminal laws with the Carabinieri and the P.S., it is specifically organized for the prevention and repression of crimes related to tax evasion.^{69/}

4. The specific function of the Corpo degli Agenti di Custodia is the maintenance of order within institutions of confinement. Its employment, under the Ministry of Clemency and Justice, is usually limited to the interior and perimeter of state prisons and other confinement facilities. On the outside, courtrooms included, prisoners are usually escorted by the Carabinieri.^{70/}

5. The specific responsibility of the Corpo Forestale dello Stato is analogous to that of the U.S. Park Police. It falls under the Ministry of Agriculture and Forestry.

The Judicial Police: A Police Function

Under the Italian system of law and criminology, law enforcement is considered from the perspective of four technical functions: security police, administrative police, judicial police,

^{69/} Id. at 344.

^{70/} Id. at 343-344.

and confinement police.^{71/} The first two functions fall under the purview of the pertinent executive departments of the government, while the other two are subject to the jurisdiction of the judicial branch.

Consequently, the term judicial police is purely functional. The same is true of the "status of judicial police" assumed by elements of the police forces and other governmental entities, including public officials, in the conduct of repressive police activities following the commission of a crime.

The Italian Code of Criminal Procedure distinguishes between "officers" and "agents" of the judicial police. It confers the status of officers to the Public Security officials of the Ministry of the Interior; to the field-grade officers, company-grade officers, and non-commissioned officers of the Carabinieri, P.S., Guardia di Finanza, and Corpo degli Agenti di Custodia; and to the mayors of municipalities where none of the previously indicated officers are stationed. Moreover, the Code confers the status of agent to the enlisted men of the Carabinieri, P.S., Guardia di Finanza, Corpo degli Agenti di Custodia, and to the provincial and municipal policemen.

^{71/} Supra note 67.

In addition to the members of the police forces indicated above, the Code recognizes as judicial police officers or agents all other persons charged by complementary laws and regulations with the investigation of specific classes of crimes. The status of such individuals as judicial police officers or agents is limited to the performance of their responsibilities in connection therewith.^{72/}

As a result, there are two categories of officers and agents of the judicial police. The first includes officers and agents generally vested with police powers in relation to every type of crime. The second category includes, instead, a wide variety of public officials vested with power to investigate and repress only specific criminal offenses.

Purely by way of illustration, officers of the second category include the officers and non-commissioned officers of the Corpo Forestale dello Stato and of the Corpo dei Vigili del Fuoco (Firefighters); certain consular representatives overseas; customs officials; provincial and municipal technical officials; clerks-of-court with respect to registration tax laws; postal inspectors; labor inspectors; port authority officials; airport directorate

^{72/} Art. 221, Code of Criminal Procedure, in S. Vasta, ed., I Quattro Codici (Piacenza, 1977).

officials; and captains of vessels. As a rule, judicial police agents of this category are subordinates of the above officials.^{73/}

Individuals occasionally called upon to assist the judicial police (e.g., interpreters and technicals experts) are considered "auxiliaries," but do not assume the status of judicial police officers or agents. Nor are private citizens in the performance of a "citizen's arrest" recognized as operating, even for the duration of such activity, as judicial police.

The judicial police have been organized primarily for the purpose of providing the office of the prosecutor with a viable means of uncovering crimes, searching for criminals, collecting evidence, and performing other operations in the interest of forestalling further consequences arising from the commission of a criminally illegal act. The judicial police, therefore, must be distinguished, both conceptually and practically, from police functions directed at crime prevention.

The Code of Criminal Procedure places the officers and agents of the judicial police under the direction and supervision of the office of the prosecutor. The Procurators-General of the

^{73/} For a comprehensive listing of judicial police officers and agents of the second category, see S. Di Filippo, La Polizia Giudiziar (Torino, 1970).

courts of appeal and the Procurators of the Republic head the judicial police in their respective districts. The highest ranking officer of the judicial police must report to the prosecutor in each district. No transfer, suspension from judicial police functions, or promotion of judicial police officers and agents may take place without the concurrence of the prosecutor to whose district they are assigned.

Since the judicial police receive directives from the Procurator-General, the Procurator of the Republic, and the Praetorial Judge in each court of appeal district, they must, in the event of conflicting orders, abide by the directives of the highest or higher ranking prosecutor.

It is worth noting that the Arma dei Carabinieri, which has the most extensive organization in Italy, has established, in the form of specialized units, judicial police "detachments" in each court of appeal district and judicial police "squads" in tribunal and praetorial court districts.

Except as provided for by the new law on the intelligence and security services, the members of the national police forces vested with judicial police functions do not lose their judicial police status when assigned to other police duties such as those of security or administrative police. Obviously, while assigned to or

performing other duties, they are not under the supervision of the office of the prosecutor, but report to their ordinary chain of command.

Because of the protection afforded by the Constitution to the individual rights of citizens and aliens subject to Italian jurisdiction, the functions of the judicial police are comprised of two classes of acts: (1) those they can perform of their own initiative and (2) those they can perform as directed by, or with the participation of, the judiciary.

The judicial police are therefore charged with the autonomous performance of the following institutional responsibilities:

- a) to gather evidence of the crime or preserve traces thereof;
- b) to interrogate persons arrested or detained;
- c) to conduct lineups (in the presence of defense counsel);
- d) to make necessary sketches of the scene of the crime;
- e) to question witnesses;
- f) to interrogate suspects not under arrest or detention;
- g) to conduct inspections;

h) to take notice of the appointment of defense counsel or, in the absence of voluntary appointment, to request the prosecutor to appoint one ex officio;

i) to apprise defense counsel of all acts at which he has the right to be present; and

j) to transmit immediately to the prosecutor the record of interrogations, seizures, inspections, and searches.

No additional acts may be performed autonomously by the judicial police.

With respect to the second class of acts, the responsibilities of the judicial police, whose performance requires an order of the prosecutor or of the competent court, include searches, seizures, entry to telephone offices and installations, verbal summonses, and the execution of coercive judicial measures.

In the absence of a warrant, which is always issued by the judiciary, the judicial police must or may arrest or detain a person in accordance with the following rules:

1) Arrest by the judicial police is mandatory whenever an individual is caught flagrantly committing an offense punishable by confinement for a term of at least 3 years or by life imprisonment.

2) Arrest by the judicial police is optional whenever an individual is caught flagrantly committing an offense punishable by confinement for a term of at least 2 years, or for a term of not less than 6 months in the case of certain categories of criminals.

3) Detention by the judicial police is permitted whenever these conditions are met: there are grounds to believe that the suspect will flee; there is strong circumstantial evidence against the detained person; and the crime is one for which a mandatory warrant of arrest is prescribed. Moreover, in cases of detention, the judicial police must immediately apprise the office of the prosecutor, who is responsible for upholding the detention.

Finally, there are certain acts that the judicial police may perform in cooperation with the prosecutor. These are primarily administrative. For example, officers of the judicial police are often called upon to act as secretary to the prosecutor in the drawing up of records.

Ordinary breaches of professional conduct by the officers and agents of the judicial police are subject to disciplinary action by the office of the prosecutor to which they are assigned. For

violations of the law, however, the members of the judicial police
are subject to ordinary criminal proceedings.^{74/}

^{74/} For an exhaustive study of the position and role of the
judicial police in the administration of criminal justice, see
G. Leone, Manuale di Diritto Penale (Napoli, 1975).

END