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Recommended Citation

McGruddy, Janine. "Multilateral Intelligence Collaboration and International Oversight." *Journal of Strategic Security* 6, no. 3 Suppl. (2013): 214-220.

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Janine McGruddy

Introduction

Since 9/11 the range of partners in the intelligence world that share information at the international level has grown exponentially. There seems to be little or no oversight at this level of sharing and this paper proposes several options for attaining some kind of oversight agreement between the intelligence agencies that collaborate in this way. This may also foster the development of international intelligence standards, the breakdown of asymmetric intelligence relationships and ultimately the creation of an international regime of intelligence sharing and a global forum for collaboration between trusted partners.

What is “multilateral intelligence collaboration”?

“Given the inherently secretive character of secret intelligence, there is immediately a tension between the need to maintain the secret, on the one hand, and sharing the secret – or operating in a more open and collaborative manner – on the other.”¹

Warren Tucker, Head of the New Zealand Security Intelligence Service.

The definition of multilateral intelligence collaboration used for this paper has been developed from the following definitions: A multilateral agreement is an accord among three or more parties, agencies, or national governments.² Intelligence as defined by Walshand adopted for this paper “is the collection, protection, and analysis of both publicly available and secret information, with the goal of reducing decision makers’ uncertainty about a foreign policy problem”.³ The oxford dictionary defines collaboration as being ‘the action of working with someone to produce something’. So multilateral intelligence collaboration for the purpose of this paper is an accord among three or more agencies or national governments working together to collect, protect and analyse information to reduce decision makers uncertainty about a foreign policy.

There is no denying the rate of change with regards to multilateral intelligence collaboration in the last ten years. The change has been both quantitative and qualitative, and improved intelligence co-operation has changed the way in which agencies work.⁴ Intelligence collaboration occurs when both sides can see potential benefits, be it from gaining information that helps complete the jigsaw, reducing the need for expensive surveillance in other countries, or more recently, less developed nations gaining precious aid resources.⁵

¹ Born, Hans, *International intelligence cooperation and accountability* (Milton Park: Routledge, 2011), 23.

² Define “Multi-Lateral Agreement,” available at: <http://www.businessdictionary.com/definition/multilateral-agreement.html>.

³ Walsh, James Igoe, *The international politics of intelligence sharing* (New York: Columbia University Press, 2010), 5.

⁴ Richard J. Aldrich, “Global Intelligence Co-operation versus Accountability: New Facets to an Old Problem,” *Intelligence and National Security* 24:1 (2009): 54.

⁵ Stéphane Lefebvre, “The Difficulties and Dilemmas of International Intelligence Cooperation,” *International Journal of Intelligence and CounterIntelligence* 16:4 (2003): 534, 537.

It is common knowledge that intelligence suffers from a paradox - it is only valuable when shared with those who need it, but the more it is shared the more it risks being compromised, and the lower its value.⁶ James Clapper, current Director of National Intelligence (DNI) in the USA describes getting this right as the 'sweet spot' between sharing and protecting information.⁷ The question is how do we decide who we trust enough to share with? From the beginning of human history, the idea that "the enemy of my enemy is my friend" has encouraged intelligence sharing between nations.⁸ In a globalised world the shared enemies of democratic nations have shifted from the boundaries of other nations (as epitomised by the Cold War) to more amorphous threats such as terrorism, human trafficking, and drug smuggling. Dealing with these international issues realistically requires an international approach – enter multilateral intelligence collaboration. A good example of this in action is the UKUSA agreement, a bilateral agreement between the U.S. and the UK born out of WWII that has evolved into a multilateral agreement including Canada, Australia, New Zealand and other third party nations, over time.⁹

Multilateral intelligence collaboration can bring a new light to these global problems by "bringing diverse perspectives together."¹⁰ This gives the nations involved in this type of collaboration the 'wisdom of the crowd' to deal with complex issues.¹¹ Another benefit of multilateral intelligence collaboration is the: "possibility of developing more common vocabularies for thinking about problems with fewer inter-cultural and international misunderstandings."¹²

No one country can effectively cover all the areas of interest that their intelligence collection requirements demand. By dividing up areas of responsibility amongst partner nations more ground can be covered in more depth than by working in isolation. It is also a fact of the current economic climate that no one nation can afford to pay the bill for comprehensive global intelligence collection.

Why is international oversight needed?

Oversight at the international level is needed because the globalization of intelligence directly creates an accountability deficit.¹³ The need for international oversight of multilateral intelligence collaboration and the issues at hand have been cited many times in a range of intelligence publications.¹⁴

⁶ Best, Richard A., & Library of Congress. Congressional Research, Service, 2011. Intelligence information need-to-know vs. need-to-share, 1.

⁷ Ibid.

⁸ Derek S. Reveron, "Counterterrorism and Intelligence Cooperation," *Journal of Global Change and Governance*, 1:3 (2008): 13.

⁹ "UKUSA Agreement," available at: http://en.wikipedia.org/wiki/UKUSA_Agreement; This is an excellent example of a long running multilateral intelligence collaboration agreement.

¹⁰ Roger Z. George, "Meeting 21st century transnational challenges: Building a Global Intelligence Paradigm," *CIA Center for the study of intelligence*, (2007): 151, available at: <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/csi-studies/studies/vol51no3/building-a-global-intelligence-paradigm.html>.

¹¹ "Wisdom of the Crowd," available at: http://en.wikipedia.org/wiki/Wisdom_of_the_crowd.

¹² George, Meeting 21st century transnational challenges, 151.

¹³ Elizabeth Sepper, "Democracy, Human Rights, and Intelligence Sharing," *Texas International Law Journal*, 46:1 (2010):171; Adam D. M. Svendsen, "The Globalization of Intelligence Since 9/11: The Optimization of Intelligence Liaison Arrangements," *International Journal of Intelligence and CounterIntelligence* 21:4 (2008): 672.

¹⁴ Maciej Osowski, "EU-US intelligence sharing post 9/11: predictions for the future," *e-International Relations*, (2011): 27; Scott, L. V., & Jackson, Peter, *Understanding intelligence in the twenty-first century*:

Wills et al in *understanding intelligence oversight* note the following four problems facing international intelligence cooperation.¹⁵ Firstly, this collaboration potentially poses significant risks to human rights. Intelligence services could use personal data in a way that violates human rights. They acknowledge that although as rule intelligence services tell a foreign partner how information they share can be used, in reality they have little control over its use.

Secondly, how do we know how the information was obtained? Has torture or other unlawful methods been used? If agencies are aware that collection probably violated human rights, does that make them complicit?

Thirdly, what if intelligence services are using collaboration with foreign partners as an excuse to avoid oversight of their own less than legitimate collection methods?

Finally, agency cooperation with foreign intelligence agencies has the risk of interfering with their state's foreign policy.

As we will see, despite the challenges (and there are many) of developing oversight at this level, for intelligence to be a legitimate part of democracy it needs to be accountable. Facing the challenges of international multilateral intelligence collaboration

There are of course in reality, many constraints on formal co-operation in the current situation.¹⁶ The nature and extent of intelligence co-operation may be influenced by several factors:¹⁷

- Differences in perceptions of a threat and the foreign policy objectives of the respective states.
- Asymmetrical power relations between states.
- Poor human rights records of a potential partner.
- Differences in legal parameters and standards.
- Third Party Rule or fear of disclosure of information.
- Abuse or misuse of intelligence that has been shared.
- Worries about defection.

These factors help to highlight the need for strong governance and oversight in intelligence collaboration. The issues listed above need addressing, for example, how do agencies in

journeys in shadows (London: Routledge, 2004), 20; Aldrich, *Global Intelligence Co-operation versus Accountability*, 27; Aldrich notes that this is an area that has long been identified 'as an area opaque to oversight'; Gill, Peter, *Policing politics: security intelligence and the liberal democratic state* (London: F. Cass, 1994): 217; Sepper, *Democracy, Human Rights, and Intelligence Sharing*, 171; "Apathetic oversight bodies combined with few statutory restraints make intelligence networks and their activities outside the domestic sphere the area of weakest oversight and thus accountability. As we will see, the failure to take transnational relationships into account can render statutes limiting intelligence activity in the domestic sphere practically toothless as well."

¹⁵ Wills, Aidan, & Geneva Centre for the Democratic Control of Armed Forces, *Guidebook: understanding intelligence oversight* (Geneva: Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2007), 25-26.

¹⁶ Tuzuner, Musa, *Intelligence cooperation practices in the 21st century: towards a culture of sharing*. (Washington, D.C.: IOS Press, 2010), 150; It is important here to acknowledge the informal information sharing that goes on at the global level, which no doubt has a big influence on intelligence product.

¹⁷ Lefebvre, "The Difficulties and Dilemmas of International Intelligence Cooperation," 534-536.

multilateral sharing arrangement deal with third party rule, (originator control – ORCON) which prevents the sharing of information with third parties without the prior permission of the original owner of the information in a multilateral intelligence sharing arrangement.¹⁸ This is where effective oversight may help address some of these issues and increase the legitimacy of multilateral intelligence agreements.

Despite the lack of discussion about the growing rate of international intelligence sharing arrangements, formal and informal, the importance of this work needs to be recognised and regulated to a degree, especially around oversight.¹⁹ Firstly, how do we deal with some of the above issues?

Whether at the national or international level, the quality of the intelligence depends on the quality of the source. Collaboration can help by confirming or corroborating information. Again, this is where data integration technology could prove to be a game changer.²⁰ Unfortunately, there is always the fear of defection by a state involved in information sharing. James Igoe Walsh, in his book *The International Politics of Intelligence Sharing*, seeks to provide a solution to the problem of defection by states in information sharing arrangements. He suggests that states seeking bilateral information sharing (as opposed to multilateral collaborative intelligence) should be in control of the other (subordinate) states intelligence gathering activities.²¹ He refers to this system as ‘hierarchy’, whereby the stronger state by means of ‘relational contracting’ has control of the weaker states intelligence operations.²² This is at face value a rational approach for powerful states to the problem of defection in intelligence sharing, but one that also adds to the asymmetry of current intelligence sharing efforts. While Walsh is correct in stating that oversight is necessary when intelligence sharing occurs to ensure authenticity, it seems that his focus is on one way information sharing (raw data) from the weaker to the stronger nation, rather than collaboration (intelligence collection, collaborative analysis and product development).²³

Governance and oversight of International Intelligence Collaboration

International intelligence collaboration has always been fraught with problems for authorities responsible for oversight, the scale of growth in this area since 9/11 has been such that Aldrich contends:

“The scope and scale of co-operation has resulted in a qualitative change that now renders traditional forms of accountability - rooted in the sovereign nation-state - increasingly outmoded and incomplete.”²⁴

Intelligence has undergone a revolution of sorts and is no longer the passive world of “Cold War bean-counting.”²⁵ Today’s intelligence product needs to provide enforcement agencies and policy makers with the knowledge of what immediate threats they need to respond to and

¹⁸ Born, *International intelligence cooperation and accountability*, 15, 5, 283.

¹⁹ Lefebvre, *The Difficulties and Dilemmas of International Intelligence Cooperation*, 528.

²⁰ An example of this type of technology being adopted by the “Five Eyes” multilateral intelligence sharing arrangement is Palantir technology; available at: http://en.wikipedia.org/wiki/Palantir_Technologies_for_more_detail.

²¹ Walsh, *The international politics of intelligence sharing*.

²² *Ibid*, 5.

²³ *Ibid*, 6.

²⁴ Aldrich, *Global Intelligence Co-operation versus Accountability*, 30.

²⁵ *Ibid*, 55.

disrupt, as well as those that require long term solutions.²⁶ At the same time, intelligence services are themselves under growing scrutiny from global civil society. In the absence of any established international institutions, Aldrich suggests that intelligence services would be wise to engage with these first glimmerings of global governance, rather than hide from them.²⁷

As Born *et al* note oversight is “good for [the] intelligence community as it can contribute to thoughtful crafting of intelligence operations, and more importantly, provide them with legitimacy.”²⁸

Perhaps a more multilateral approach to oversight of information sharing than Walsh’s hierarchy would result in a less asymmetrical relationship? Such an approach could start with a group of like-minded states, already sharing intelligence, widening their circle to work with other states in their specialist areas. As Walsh quite rightly points out, co-operating states that agree to specialise can together create a much stronger and more comprehensive intelligence picture/product than a state could ever achieve in isolation²⁹. Imagine many states co-operating and using the same software to share information on a secure platform. This would allow all members to analyse the data and share conclusions. This may initially only be used for less politically sensitive information sharing and collaboration, at the lower classified end of the scale, as trust and agreement on collection and sharing protocols are developed, and defection is less of a risk.

While defection by states in information sharing arrangements is a real concern, taking over the control of the process by the strongest state is not helpful in the long term for the development of mutual trust, and certainly not in the best interests of the weaker participating state. A more multilateral approach would require developing an agreed set of standards for education, intelligence collection and analysis and protocols for sharing and collaboration, and of course, a strong and effective oversight body.

What makes an intelligence oversight body strong and effective? Born *et al*³⁰ have come up with the five following key components:

1. Independence
2. Investigative powers
3. Full access
4. Able to maintain secrets
5. Support staff

As Reveron notes, a world free of suspicion may be an unreasonable demand, but “mutual trust, compatible systems, and common laws and policies are required” in order to effectively face global threats.³¹

²⁶ Ibid.

²⁷ Aldrich, *Global Intelligence Co-operation versus Accountability*, 55.

²⁸ Born, H., Johnson, Loch K., Leigh, I., Winkler, Theodor, & Mevik, Leif. *Who's watching the spies? : establishing intelligence service accountability* (Washington, D.C.: Potomac Books, 2005): 239.

²⁹ Walsh, *The international politics of intelligence sharing*, 7.

³⁰ Born, Johnson, Leigh, Winkler and Mevik, *Who's watching the spies*, 235-236.

³¹ Reveron, *Counterterrorism and Intelligence Cooperation*, 13.

To overcome the challenge of secure collaboration across a diverse group of allies, the United States developed a new information-sharing architecture called Combined Enterprise Information Exchange System (CENTRIXS).³² Similarly, Palantir have a suite of digital solutions for secure information sharing that are already being utilised by the ‘Five Eyes’ (Australian, Canadian, British, United States and New Zealand) nations for collaboration.³³ Effectively these types of systems enable digital multilateral collaboration by a range of partners.

These co-operating intelligence groups could also provide training and professional development for their members, along with opportunities to work in each other’s agencies. This type of professional reciprocity would have a homogenizing effect.³⁴ With more and more reciprocal relationships (e.g. intelligence collaboration and sharing) actors involved start thinking and acting more and more alike, leading to an emerging regime.³⁵ Taken further, this could lead to the standardisation of intelligence gathering, record keeping, civil rights protection and intelligence sharing along the line of the Industry ISO9000.³⁶ This would begin to address many of the barriers to information sharing mentioned earlier – simply put, if a state or agency will not answer to the standards, or at least prove that they are working towards attaining them, they cannot be part of the sharing arrangement. That would indeed be a game changer, and would most definitely require oversight by trusted parties. Aldrich suggests that collaborating states could provide: “Inspectors General with extended authority to operate in more than one country.”³⁷ As he points out, if states can agree on the complex information sharing agreements, then surely they can agree on criteria for investigating officers. He envisaged someone like a former head of national service, acting as a roving Inspector General. This person would be responsible for oversight of states involved in multilateral intelligence sharing arrangements.³⁸ Instead of a large and powerful state like the US providing oversight on a ‘trust us’ basis, (Walsh’s relational contracting concept) it could use ‘relational *sub-contracting*’. This could perhaps initially see trusted partners in a multilateral arrangement (e.g. ‘Five Eyes’) providing oversight services for newer intelligence sharing relationships, which could encourage trust, and be a less asymmetrical and hegemonic arrangement than Walsh’s solution.

Walsh suggests, at least in reference to European Union intelligence collaboration, that:³⁹

“Developing oversight mechanisms that more effectively allow member states to monitor each other’s collection and sharing activities and to punish violations would make the Union’s sharing arrangements more effective.”

One assumes that this approach would be just as beneficial for intelligence relationships between the United States and its allies as well?

Does oversight help or hinder intelligence agencies?

³² Ibid, 10.

³³ “Intelligence,” *Palantir*, available at: <http://www.palantir.com/solutions/intelligence/>.

³⁴ Tuzuner, *Intelligence cooperation practices in the 21st century*, 150

³⁵ Svendsen, “Connecting Intelligence and Theory,” 721.

³⁶ Tuzuner, *Intelligence cooperation practices in the 21st century*, 150; On the importance of informal channels in the reality of intelligence sharing.

³⁷ Aldrich, “Global Intelligence Co-operation versus Accountability,” 56.

³⁸ Ibid.

³⁹ Walsh, “Defection and Hierarchy in International Intelligence Sharing,” 180.

For those that are fearful of the effect of greater oversight of intelligence agencies, it is noted here that greater oversight of the Australian intelligence agencies:⁴⁰

“Appears to have increased staff morale, client satisfaction, and general efficiency. In addition, greater oversight has probably improved the image of the agencies with the public and improved their effectiveness and relevance, and thereby their image, within government itself.”

In order to create a future savvy international intelligence regime, the international intelligence community and their respective states need to embrace the type of multilateral intelligence collaboration described in this paper. For intelligence to be seen as a public good, oversight responsibility must be shared amongst all nations involved in multilateral agreements to avoid asymmetry in relationships. By encouraging standardised, high-level intelligence practice and collaboration, along with databases that can enable collaboration, a regime will be built that will benefit the intelligence community specifically, and society in general by helping to ensure best practice and reliable, quality intelligence product. The opportunities explored in this paper warrant further research, development and critical discussion by the Intelligence Community globally. As the primary audience for this paper is the people responsible for intelligence education, it would be great to see this conversation continue at the grassroots in the classroom.

⁴⁰ Geoffrey Weller, “Oversight of Australia's Intelligence Services,” *International Journal of Intelligence and CounterIntelligence* 12:4 (1999): 500.