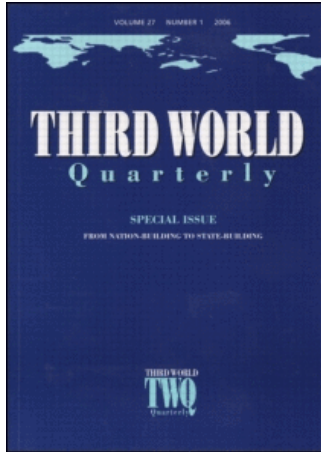


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### A Preference for Deference: reforming the military's intelligence role in Argentina, Chile and Peru

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# A Preference for Deference: reforming the military's intelligence role in Argentina, Chile and Peru

GREGORY WEEKS

*ABSTRACT* In the past decade an effort to reform the military's role in defence institutions such as intelligence services has been underway across Latin America. Utilising the cases of Argentina, Chile and Peru, this article will argue that reform has occurred, but has been limited in terms of expanding civilian authority, and will offer a means of understanding the dynamics of intelligence reform. In particular, incentives for civilians to pursue complicated reform have been absent. The military's proven ability to operate its own intelligence agencies constitutes a disincentive. To examine the dynamics of reform, the analysis centres on three variables: the number of institutions involved in overseeing intelligence, the degree of presidential control, and whether military intelligence activities are overseen by the civilian government.

This article centres on a puzzle. In the past decade an effort to reform the military's role in defence institutions such as intelligence services has been underway across Latin America. It has been a largely quiet affair, receiving relatively scant public attention, though sometimes considerable legislative and academic debate. The potential political impact of such reforms is, however, substantial. Given the endurance of procedural democracy—referring to the existence of competitive elections—in most of the region, which offers potential electoral rewards for politicians, there have been ample opportunities for democratic reform and in the area of intelligence politicians could presumably take aim at the military's participation in unpopular organisations with secret budgets and histories of domestic spying. Why is it, then, that reform efforts have proved so incomplete?

Utilising the cases of Argentina, Chile and Peru, this article will argue that reform has occurred, but has been limited in terms of expanding civilian authority, and will offer a means of understanding the dynamics of intelligence reform. In particular, incentives for civilians to pursue complicated reform have been absent. The military's proven ability to operate its own intelligence agencies constitutes a disincentive. To examine

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the dynamics of reform, the analysis centres on three variables: the number of institutions involved in overseeing intelligence, the degree of presidential control, and whether military intelligence activities are overseen by the civilian government.

After the attacks of 11 September 2001 a renewed interest in intelligence and counter-intelligence emerged throughout Latin America as well as in the USA. More specifically Latin American militaries and the US government called for a greater role for the military in gathering intelligence on potential terrorists and in regional sharing of intelligence information, while Latin American governments have often agreed that strong intelligence agencies are necessary to fight terrorism.<sup>1</sup> This makes intelligence reform a key issue for civil–military relations.

In the Chilean case the civilian government created a new National Intelligence Agency (ANI) in 2004 but would not challenge the autonomy of individual military intelligence organisations. In Peru the Directorate of National Intelligence (DINI), created in late 2005, limits presidential power but the military's autonomous intelligence services were minimally affected and the extent of reform remains unclear. Finally, a 2001 Argentine law built upon previous legal foundations to establish very clear limits on military activities in the Secretariat of Intelligence, but the context of the Argentine success suggests that it will be difficult to replicate elsewhere.

### **Civilian incentives to reform the military's role in intelligence**

The idea that civilian governments and the armed forces have certain interests is uncontroversial. Defining those interests, however, is fraught with difficulty, and the use of rational choice theory in analyses of Latin American politics has spurred considerable debate. Its basic premise—that politicians will make rational and strategic calculations about policy choices to ensure re-election—has intuitive appeal. Fundamentally it means that politicians will pursue reform when doing so will either 1) allow a shifting of resources to their district; or 2) be sufficiently popular to enhance their image, either of which would boost re-election chances. Given the endurance of procedural democracy in Latin America, in which voting—and voters' interests—matter, we would expect such rational calculations to lead to significant progress towards civilian supremacy over the military when politicians could make a compelling case to voters about the concrete benefits.

The democratisation of the military's role in intelligence is a good case study for a choice-based model, because reform has the potential to benefit politicians who vote for it. Funds diverted from intelligence activities can be directed to high-profile programmes and, perhaps more importantly, since intelligence agencies played a major role in repressing internal dissent, reforming them could boost a politician's image. In all three countries studied here, intelligence agencies and the military's role within them had become infamous, with well publicised abuses of civil liberties.

Initial rational choice studies of Latin American civil–military relations concentrated on electoral incentives, which was an extension of the large

literature on Latin American legislatures and elections.<sup>2</sup> Yet this type of analysis has been criticised for tending to ignore the strong effect of disincentives. Some disincentives are electoral in nature but, with regard to civil–military relations they are often not connected to elections or votes at all. Instead, they stem from concerns about political stability, domestic and international perceptions of the country's democracy, and the appearance of governmental weakness.<sup>3</sup> For example, politicians' desire to avert political violence can lead them to make decisions that may directly impede their re-election.<sup>4</sup> In addition, the 're-election assumption' may not hold because members of congress use their position as a springboard to other employment.<sup>5</sup> As reviews of rational choice theory have noted, a key drawback with the electoral thesis is that it is based too narrowly on the literature on US politics.<sup>6</sup> Although theoretical cross-pollination is a worthy goal, Latin America is experiencing far more political instability than the USA, which changes the incentive structures for politicians, and nowhere is this more evident than in civil–military relations.

Hunter argues that, in areas where military prerogatives have not been challenged, the answer can still be found within rational choice theory.<sup>7</sup> Either the issue at stake did not provide an immediate political benefit, or challenging military prerogatives would represent too much of a distraction from other matters that would provide such a benefit (especially in economic terms). However, this leaves unclear precisely on which issues civilian governments are unable to pursue reform successfully, even when it can be reasonably argued that electoral incentives (including economic) are present, and how unsuccessful reform can affect civil–military relations. As Geddes points out, rational choice analysis works only when 'plausible goals can be attributed to actors a priori'.<sup>8</sup>

Focusing on the area of intelligence, this article argues that civilian indifference must also be added to the analytical mix. Even when electoral benefit is arguably present, the difficulty of restructuring entire institutions requires a high level of expertise, interest and time commitment. Civilian inattention to defence policy, or what Pion-Berlin and Trinkunas have described as 'attention deficits', is ubiquitous in Latin America.<sup>9</sup> Historically across the region civilians have been uninterested in defence issues, a situation that has not changed significantly. Learning the complexities of defence policy provided no electoral benefit, material payoff or career enhancement, and these assumptions have not changed appreciably. Defence ministries have been small and weak, with major decisions made in the executive branch or by the military leadership itself.

Since the military has a more narrow focus on national security, while civilians must address a much wider range of issues, there is a strong disincentive for civilians to become experts in defence.<sup>10</sup> If the armed forces attach high salience to the given issue, this adds greater debate as well, since the military leadership will contest encroachments on their prerogatives. Civilian policy makers will therefore be even more likely leave the details to them. Intelligence reform is especially difficult, because it involves the co-ordination of multiple intelligence agencies, specification of authority

between the military and the executive, legislative and judicial branches, and legal restructuring, all within the context of promoting national security while assuring human rights. Many other areas of civil–military relations do not require the same level of complexity. For example, cutting spending, eliminating prerogatives or removing amnesties may well be politically explosive and contentious, but politicians need not acquire technical expertise to accomplish them.

One question, however, remains unanswered. In what circumstances is civilian indifference overcome and institutions successfully restructured and reformed? Civilians in Latin America consistently prefer to defer to military expertise with regard to defence policy. This attitude changes when the military is viewed as incapable of using its expertise, but even then is relatively weak. In short, civilian indifference can be overcome when civilian policy makers perceive the military as not competent to perform the task.

For Latin American militaries participation in intelligence has often been a central mission for many years, and so they have developed—often without civilian guidance—their own agencies, operations, norms and strategies. During the Cold War the widespread perception that communism posed a threat to institutional order expanded the scope of the military's role in intelligence gathering, especially (but not exclusively) in countries with recent experiences with military governments. Much, if not most, of such efforts centred on the country's own citizens, as the military tapped phones, opened mail, made arrests, conducted interrogations and even killed prisoners. A mere decade after the USSR's collapse, the attacks on the USA reinforced the military's view that its participation in intelligence was an essential element in the protection of vital national interests.

The need for legal reform is especially noteworthy in the context of new threat perceptions after the terrorist attacks of 11 September 2001, as the armed forces once again have taken a more active role. In practice this means a prominent role for the armed forces in response to the potential for terrorist activity. In Latin America the use of the military in internal missions is not automatically a problem for democracy.<sup>11</sup> A dilemma arises, however, when the military is engaged in an activity for which the legal scope of its action remains largely untouched by civilian governments.

### **The military's role in intelligence and democracy**

The vast literature on control over intelligence has focused primarily on consolidated democracies and the problems in the relationship between elected officials and intelligence services, while oversight over military activities is taken as a given. What such analyses do not address, therefore, is the simultaneous struggle to reform intelligence services while reducing the scope of military autonomy *vis-à-vis* elected officials.

To understand the specific dynamics of intelligence reform and the military, this article will adapt Bar-Joseph's model of 'control systems' over intelligence, which outlines the variables of 'means' and 'participation'.<sup>12</sup> 'Means' refers to the manner in which intelligence is controlled, either

personal (where intelligence agencies respond to the dictates of an individual, usually the president) or constitutional (where the agencies' activities and reporting are grounded in law). Participation refers to whether intelligence is controlled by one branch of the government (unilateral) or more than one (multilateral). Bar-Joseph concludes that intelligence intervention in politics is lowest when the outcome is constitutional–multilateral, and highest at personal–unilateral. This is a useful conceptual platform for understanding the military's role.

Since his work focuses on democracies (the UK, Israel and the USA) Bar-Joseph's model does not account for potentially non-democratic military participation in intelligence. His analysis provides useful nuance for democracies, but since he lumps 'most Third World countries' into a single category, there is no distinction made between them. In the context of countries with recent experiences with democratisation and/or efforts to establish civilian control over the armed forces, the addition of the military's role is essential, and so it is necessary to add a third variable, 'military', for which there is either 'oversight' (military intelligence activities are accountable to elected civilian authorities) or 'autonomy' (where activities are not accountable).

Table 1 shows the outcomes of different intelligence arrangements, with six different possible control systems for the armed forces. In dictatorships the structure of control is personal–unilateral–autonomy, since the executive (in the Latin American context, usually a military officer) is perhaps answerable to a military elite, but not to any other institution. The most propitious for democracy is constitutional–multilateral–oversight, in which the binding rules exist, more than one institution has input and military activities are overseen by elected authorities.

Especially in authoritarian regimes personalistic presidential control (ie personal) is compatible with military autonomy. The result is that presidents decide what information they require, and the armed forces are free to gather it in whatever manner they wish. Although they receive presidential orders, they are not necessarily constrained from gathering further intelligence and can use a wide range of means without concerns about accountability.

The outcomes for the three countries are outlined in Table 2.

TABLE 1. Intelligence Control Systems

	Participation	
	Unilateral	Multilateral
Means		
Personal	Autonomy (no democratic control) Oversight (highly unlikely)	Autonomy (weak control) Oversight (democratic control)
Constitutional	Autonomy (weak democratic control) Oversight (democratic control, strong executive)	Autonomy (weak democratic control) Oversight (strong democratic control)

TABLE 2. Intelligence outcomes

Country	Dates	Organisation	Outcome
Chile	1973–90	DINA/CNI	Personal–unilateral–autonomy
	1990–2004	DISPI	Constitutional–unilateral–autonomy
	2004–present	ANI	Constitutional–unilateral–autonomy
Peru	1990–2000	SIN	Personal–unilateral–autonomy
	2001–04	CNI	Personal–unilateral–autonomy
	2005–present	DINI	Constitutional–multilateral–autonomy
Argentina	1976–83	SIDE	Personal–unilateral–autonomy
	1983–88	SIDE/ <i>ad hoc</i> laws	Constitutional–unilateral–control
	1988–2001	SIDE	Constitutional–multilateral–control
	2001–present	SI	Constitutional–multilateral–control

### Intelligence reform in Chile

The Chilean military, like its Latin American counterparts, has had a prominent intelligence role. Even before the 1973 coup the military considered the gathering of intelligence as part of its organic role within society, since it believed constant vigilance was critical to maintaining a well functioning body politic. In fact, before the coup the military was the only state actor engaged in intelligence gathering (the army's intelligence service dates to 1891). After 1973 the military's ideological war made intelligence a central element in General Augusto Pinochet's hold on power. The Dirección de Inteligencia Nacional (DINA) was responsible for torture and murder, and was even at the forefront of fostering South American intelligence co-ordination under Operation Condor. The structure was personal–unilateral–autonomy, since Pinochet himself directed intelligence activities without any further oversight, even from the other members of the ruling military junta. It became the Centro Nacional de Información (CNI) in 1977, and after the transition to civilian rule in 1990 was dismantled.

The weight of all this history would suggest that reform of military intelligence should have been a prominent way for centre-left politicians to gain popularity and votes in the post-authoritarian era. Expanding civilian control over intelligence could easily be framed as a critical and courageous measure to protect democracy from military interference. A proposal to eliminate military agencies could, furthermore, be touted as a money-saving measure. If the electoral incentive held, then politicians could provide voters with both a moral and an economic rationale for reform. Reforming intelligence was routinely part of the centre-left *Concertación* coalition platforms.

The idea of creating a new intelligence agency had been floated several times after the transition from military rule was completed in 1990. For civilians the goal was to centralise intelligence gathering in an institution that would be controlled by the president. In the absence of such an institution each military branch had its own intelligence services, ultimately answerable only to the individual commander in chief. Thus for years the military had

been effectively governing itself, and was viewed as competent in terms of organising and running intelligence. The military, however, was not amenable to adding civilian oversight. In the mid-1990s there were even several cases of civilian government officials being spied on. In 1995 President Eduardo Frei sent a proposal to the Defence Commission of the Chamber of Deputies to centralise intelligence with more civilian control, but the military's supporters ensured that it died in committee.

The attacks on the USA sparked several interrelated developments. The most prominent was a political initiative by Christian Democrats, supported by the armed forces, to legislate a new national intelligence agency that could gather information to counter terrorist activity. In early October 2001 the Chilean Congress began debating the creation of the ANI.

A serious problem facing any reformer is the persistently decentralised nature of Chilean intelligence. Six autonomous organisations work with little formal connections to each other. Each branch of the armed forces (army, navy and air force) operates its own agency, as do the National Police, Investigations (which is the investigative arm of the police) and the Directorate of Public Security and Information. The army's Dirección de Inteligencia del Ejército (DINE) has been the most implicated in spying on civilians. Former members of the CNI had filled its ranks, and in the early 1990s a special congressional committee heard testimony that problems with DINE were chronic and unresolved.<sup>13</sup> Such problems persisted, usually involving spying on members of the executive or legislative branches. Democratic reform would require, if not eliminating the military agencies, then at least passing oversight legislation and placing a civilian in charge of them. Since the entire structure had been in place for years, it would be more difficult to make radical changes.

In November 2003 a bumbling operation in southern Chile highlighted again how little control civilians had over military activities. Two army officers broke into an Argentine consulate in southern Chile and were discovered photocopying documents. Although they were eventually arrested, they remained out of civilian hands and their activities remained military secrets, under the jurisdiction of a military court.<sup>14</sup> Military intelligence activities, even those that compromised foreign relations, were not subject to civilian oversight.

The new ANI was intended to replace the Dirección de Seguridad Pública e Informaciones (DISPI), created in 1993 under the auspices of the Ministry of the Interior. DISPI's function was simply to receive information and provide reports to the president about threats to public order. Like DISPI, the ANI would have no operational function, but rather would collect information from already existing intelligence groups. Proponents argued that the Chilean state would finally have an effective source of counter-intelligence to deal with foreign spies operating on Chilean soil.<sup>15</sup> This was of particular interest to the *Carabineros* (Chile's national police) who were charged with combating the trans-shipment of drugs, particularly in the north.

Throughout the debate over the agency's creation, however, no challenge emerged to the existence of military intelligence agencies or their autonomy.



Instead, the ANI would simply ‘co-ordinate’ the activities of all six organisms.<sup>16</sup> Article 20 of the law explicitly states that ‘the conduct of military intelligence services corresponds to the appropriate military institution to which they belong’ while Article 21 asserts that the ‘objectives’ of those services ‘will be set by the respective commanders in chief, in accordance with the criteria of national defence policy’.<sup>17</sup> To make the point even more clear, Article 34 stipulates, ‘internal control will be supervised by the head of each intelligence organism that comprises the system’. In other words, the army navy, and air force will continue to determine to a large degree what their intelligence services should do, and the ANI will simply serve as a vehicle for sharing information.

In addition, the armed forces argued that the new agency would require a training programme, for which they suggested military locations.<sup>18</sup> Initially, the military had been highly supportive of the ANI’s creation; the director of the army’s intelligence service called it a sign of ‘national growth’ which should not be confused with ‘ghosts from the past’.<sup>19</sup> As the debate continued, however, this military support gradually began to sour.

In particular, the government pushed to keep the agency’s scope limited, whereas many in the military believe that, to counter terrorist threats, it must be given a broader mandate. As one army officer put it, there was concern that it would take a terrorist attack for the agency to be expanded.<sup>20</sup> This view was not limited to the army, as a retired air force colonel who teaches intelligence courses at the air force’s academy reiterated the point that the ANI as proposed was too weak.<sup>21</sup> Soon after the ANI began to take shape, the military stopped giving it public support. As long as it did not encroach on existing military prerogatives, however, no effort was made to impede its development.

In May 2003 the Senate approved the ANI’s creation by a vote of 35 to two (with five abstentions). The debate focused primarily on its possible operative functions. Members of the *Concertación* warned against internal surveillance, while the right expressed its confidence in the armed forces. Senator Baldo Prokurica, a member of the conservative Independent Democratic Union (UDI) party, tied closely to the military government, noted that concerns about spying should be allayed because of the law’s emphasis on the ‘internal control’ of each military branch, which would ensure the protection of individual liberties.<sup>22</sup> No senators, regardless of party, questioned the current autonomy of those branches, which remained off the table.

The question of ‘internal control’ is cloudy. In early December 2003 the Senate’s Defence Committee argued that the agency should be under the direct control of the president. This position ran counter to both the right and the armed forces, which did not want the possibility of the position becoming too close to the office of the president. Nonetheless, the Committee voted to provide the ANI with the power to enact measures against terrorism and narcotrafficking.<sup>23</sup> In addition, any such activity—such as tapping phone lines—involving ‘national security’ would be conducted *solely* by the intelligence services of the armed forces. Permission would be required from an Appellate Court, but the armed forces successfully lobbied to allow a

military judge to grant the same permission.<sup>24</sup> Yet even this insertion of an operative component did not appear to satisfy the armed forces, as there were no public responses of approval and scepticism continued.<sup>25</sup> Ironically the military wanted a more multilateral control system, arguing that unilateral control would foster abuse of presidential power, while President Ricardo Lagos pushed for unilateral control. Congressional participation would be limited to an intelligence committee in the lower house, which could request reports on the service's activities. Precisely how much information would be required was left vague, thus establishing 'the mere formality' of control and 'leaving in ignorance Senators and all citizens of the country'.<sup>26</sup> In fact, a member of the House of Deputies with extensive defence expertise noted that the legislature has been shut out of the intelligence process.<sup>27</sup>

The structure of the ANI is therefore constitutional – unilateral – autonomy, where rules govern it, but it remains largely under the control of the president in the context of continued military autonomy. As such, it does not advance civilian supremacy over the armed forces. Indeed, the ANI currently appears to represent a lose-lose outcome for the government. It does not bring individual military intelligence services under civilian control; it raises suspicions among many with recent memories of the dictatorship's use of intelligence for repression; and it does not even pass muster with the military itself, which views it as ineffectual.

### **Intelligence reform in Peru**

In Peru the history of military involvement in intelligence demonstrates similar problems with regard to civilian control as in Chile, but with different antecedents since the abuses did not occur during a military government. Peru's experience with military rule (from 1968 to 1980) was initially reformist and, although it became increasingly authoritarian, it was less repressive than the dictatorships in Argentina and Chile. Although Peruvian intelligence co-operated with Argentina on one Operation Condor manhunt, its participation became known and was roundly denounced within the country.<sup>28</sup> Instead, the post-authoritarian government of President Alberto Fujimori (1990–2000) launched an aggressive campaign against the Shining Path guerrillas during the 1990s, which brought intelligence to the fore long before 11 September 2001.

The Shining Path (*Sendero Luminoso*) is a Maoist organisation, dedicated to overthrowing the Peruvian political system and eliminating all vestiges of capitalism. Led by Abimael Guzmán, it declared war in 1980 and, until his capture in 1992, was a highly efficient and violent insurgency. The military's intelligence role grew as it became apparent that conventional counter-insurgency methods tended to alienate the rural population even further.<sup>29</sup> Especially after Fujimori took office, military intelligence was used more extensively.

The military has been in full control of intelligence since the 1960s, when the first agencies were created to combat the insurgencies that began in 1965. In 1991 Fujimori tried to modify the Servicio de Inteligencia Nacional (SIN)

to place it under greater presidential control (eg more unilateral) and to assert that 'the Public and Private sectors will obligatorily give to the National Intelligence System the information and documents that it requires for National Defense and Security. Noncompliance with this disposition will incur penal responsibility'.<sup>30</sup> Congress successfully blocked the measure, but in 1992 Fujimori dissolved the legislature in a 'self-coup' that would eliminate any type of intelligence oversight for the next eight years. Decree-law 25695 in 1992 gave the SIN ministerial status and placed it directly under presidential control.<sup>31</sup> The result was a personal–unilateral–autonomy system, since even after new elections were held for Congress later in the year, ultimate control remained entirely in the president's hands.

Centralised under the control of presidential adviser Vladimir Montesinos, the SIN quickly moved against Peruvian politicians as well, gathering incriminating information that was used for blackmail and extortion. The 'means' were almost entirely personal, with intelligence chiefs working directly for Fujimori himself for what were often illegal purposes.

As Fujimori's closest ally, Montesinos worked closely first in the background, and then as 'shadow' director of the SIN (without an official title). He cultivated many connections within the military, even wielding power over promotion decisions, such that the SIN 'slowly began to swallow the armed forces'.<sup>32</sup> Through Montesinos Fujimori successfully bribed, blackmailed and/or intimidated politicians to support his policies. The use of the intelligence apparatus was central to that effort (a video of Montesinos offering a bribe helped bring down the Fujimori government in 2000).

Although in the 1990s Peru did not have a military government, the operation of the SIN paralleled Chile's DINA in many respects. It was unilateral, personal and autonomous, and it operated extensively within the country to attack and intimidate domestic political enemies under the guise of national security. Montesinos reported only to the president without any restrictions on his activities. There were few restraints placed on the military's actions, as it had wide latitude to do what was necessary to carry out the goals set forth by Fujimori and Montesinos.

Shortly after Fujimori fled the country in 2000 (Montesinos was arrested, and in 2002 convicted of 'usurpation of powers' and sentenced to nine years in prison) the new government passed Law 27351 in October 2000, which deactivated the SIN. The ostensible intent was to create a new agency that would reflect the democratic principles of a post-Fujimori era.

From a rational choice perspective the political incentives for democratic reform were present, since the SIN had become a notorious reminder of the abuse of power; therefore it would be reasonable to expect public acclaim for politicians who reined it in. Montesinos was already in prison and in 2001 and 2002 he would be joined by the former chief of the SIN, along with former directors of the intelligence arms of the army and air force, all for human rights violations.<sup>33</sup> These were politically popular detentions, and framed as examples of Peru's democratisation.

Efforts to reform intelligence more than cosmetically, however, ran into military resistance. Since the armed forces had monopolised intelligence for

so long, they did not wish to allow greater civilian oversight.<sup>34</sup> The armed forces had been central to the war against guerrilla groups like the Shining Path, and therefore considered their intelligence role as critical to national security. From a civilian standpoint they had demonstrated considerable expertise, despite the corruption and charges of abuses.

Less than a year later, in July 2001, the Consejo Nacional de Inteligencia (CNI) came into existence through Law 27479. Its characteristics, however, differed little from its predecessor. It remained unilateral, since the new law did not allow for oversight beyond the executive branch. Congress was mentioned only in the context of being briefed on issues 'when required' and in its capacity of approving the intelligence budget, which would remain secret.

Furthermore, it remained as personal as the SIN. The position of intelligence chief became a revolving door based on presidential whim, alternating military officers and political cronies, and the longest tenure between 2001 and 2004 was seven months. In the three year period there were seven changes. It also became infamous for scandal. In 2003 President Toledo named his personal attorney (César Almeyda) as director. He was forced to resign three months later and went to prison on corruption charges. The first post-Fujimori director, retired Admiral Alfonso Panizo, returned in late 2003, but then was ousted after the president's phones were found to have been tapped, with recordings given to the media. The director between September 2003 and March 2004, retired General Daniel Mora, resigned when an intelligence plot against the Interior Minister (and former CNI director himself) Fernando Rospigliosi, was uncovered. Given his publicly anti-military stance, Rospigliosi's nomination was deeply unpopular with the armed forces, and so he had served only five months. Thus the agency became synonymous with personalistic control and politicisation.

After seven years of work Peru's Truth and Reconciliation Commission released its final report in mid-2003, covering the political violence that had plagued the country between 1980 and 2000. It argued specifically for reforming the military's role in intelligence, arguing that the military's spying on domestic enemies had led to abuses.<sup>35</sup>

In late 2003 the Toledo administration announced that the CNI would be restructured, with 'major surgery'.<sup>36</sup> By early 2004 the CNI had lost all credibility and Toledo's approval ratings were in single digits. In March 2004 he announced that the CNI was being 'suspended' and would be reconstituted within 90 days (at that point the new director had been in his post only a week). The president said simply that the CNI had been 'born bad' and was 'contaminated' by the past.<sup>37</sup>

Article three of the presidential decree suspending the CNI made clear that the armed forces and national police would continue to gather and analyse intelligence, under the direction of the Joint Command of the Armed Forces. Furthermore a separate decree named a retired admiral as temporary administrator. The military therefore offered no criticisms, as its ability to continue operating was not affected. Thus military autonomy persisted even

in the absence of an overall intelligence structure. At the deadline of 90 days in June 2004 the president issued a new decree granting another 60 days.

In fact, over a year would pass before a new intelligence law was passed. In 2005 the Peruvian Congress approved law number 28664, the creation of the National Directorate of Intelligence (DINI), which would comprise one component of a larger System of National Intelligence (SINA).<sup>38</sup> The new version shifted authority towards the legislature, thus potentially decreasing the likelihood of the presidential abuses of the past. In particular, the law established a congressional commission on intelligence, which would have the right to request classified or unclassified information from any component of the SINA.

Although Congress has the legal authority to request information, the law does not provide for control over the military's intelligence activities. Instead, article 9 stipulates that the Joint Command of the Armed Forces will 'direct, co-ordinate and centralise its own production of intelligence'. Article 7 does provide for a Council of National Intelligence to co-ordinate the activities of the SINA's components, but it only serves for 'orientation of intelligence activities' and does not establish control. The law does not provide for any oversight over military activities, or provide accountability mechanisms for military personnel.

According to article 20.2, in the case of 'special operations' approval must be obtained from at least one member of a special *ad hoc* two-member committee appointed by the Supreme Court. 'Special operations' are defined as those that 'suppose the transgression of certain citizens' rights for reasons of national security' but this left undetermined which rights it covers, and therefore it remains to be seen whether it constitutes an effective barrier to abuse.

As in Chile, the Peruvian congress did not encroach significantly on military autonomy. A critical difference, however, is that a badly weakened Peruvian president, who had already been criticised for personalising the CNI, ceded authority to the legislature. The new SINA and DINI have only just been created, and can technically be categorised as constitutional–multilateral–autonomy, which results in weak control. An essential question is whether the congress ultimately exerts its legal control over intelligence.

### **Intelligence reform in Argentina**

Unlike its Chilean and Peruvian counterparts, the Argentine military was bruised and battered in the post-authoritarian era, which began in 1983. Disastrous economic policy, humiliation in a war with the UK, and a legacy of horrific repression from the 1976–83 dictatorship all contributed to a situation in which civilians had a much broader mandate to enforce reforms. Military resistance did come in the form of four coup attempts (in 1987, 1988 and two in 1990) but these never had the support either of the entire corps or of any significant civilian group.<sup>39</sup> Especially after 1990 military opposition was met with punishment (eg budget cuts and reforms curtailing military prerogatives) without civilian fear of backlash.

Unlike in most Latin American countries the context of implosion of military rule allowed post-authoritarian governments to pass sweeping legislation limiting the armed forces' participation in intelligence. Previously the military enjoyed broad autonomy in gathering intelligence and the Secretariat of State Information (SIDE), an organisation (dating to 1946) under presidential control that ostensibly oversaw intelligence and presidential control, was little more than a bureaucratic shell. This would change in the 1970s, when the armed forces—led by the army—took full control over intelligence.

After the transition many military leaders resisted encroachments on their intelligence capabilities, arguing that the multidimensional nature of post-cold war threats required an active military presence.<sup>40</sup> Ultimately, however, the military could not overcome public pressure for reform. From a civilian point of view not only had the military targeted its own citizens, but its leadership had been unable to perform its duties, and was seen as largely incompetent. The general perception that the military should not be granted autonomy in intelligence gathering persisted. Although SIDE remained in existence, changes were made. The 1988 National Defence Law was the most prominent, as articles 4 and 15 differentiated between national defence and internal security, and expressly prohibited the military from gathering intelligence related to internal political issues.<sup>41</sup> Those activities were reserved for the police and coast guard. In 1992 the Internal Security Law (number 24059) also established mechanisms of congressional oversight for all activities related to internal security.

Nonetheless, over time there was significant political disagreement about the nature and scope of intelligence oversight, which hampered the development of a coherent oversight structure. Unlike in Chile and Peru, historically the Argentine military had operated on a largely *ad hoc* basis, without any effort to build a clear legal framework.<sup>42</sup> This provided an important opportunity for civilians to restructure the entire intelligence system. The lag time between 1983 and 1988, then again between 1988 and 2001, reflected intense political and academic debate, and a greater commitment than in Chile and Peru not only to be precise about oversight and accountability, but also to limit the influence of the armed forces. Nonetheless, critics claimed that the pace of change was slow because the government had tacitly agreed to limit reforms as long as the military remained out of politics, an unspoken bargain to prevent further conflict.<sup>43</sup> The armed forces continued to call for a return of a greater role in internal intelligence, and in fact the Menem government increased the intelligence budget.<sup>44</sup>

In November 2001 the Argentine National Congress passed the National Intelligence Law (number 25520).<sup>45</sup> It changed SIDE into the Secretariat of Intelligence (SI), placing it at cabinet level (despite the name change, it is often still referred to as SIDE). The president names its director, but is not required to obtain congressional approval. Article 5 provides clear guidelines for requiring judicial approval for any information interception (such as wire tapping). Article 31 created a new bicameral congressional commission that would oversee the funding and activities of intelligence services.

The army, navy and air force continue to operate their own intelligence services, in addition to a co-ordinated organisation—J-2 Intelligence—managed by the Joint Staff of the Armed Forces and the National Directorate for Strategic Military Intelligence, which produces military intelligence under the direction of the Ministry of Defence.<sup>46</sup> Each military agency produces its own intelligence specifically on operational and tactical issues but, according to the National Defense Law, depends in ‘direct and immediate form’ on the minister of defence. Autonomy, therefore, is much more limited than in Chile and Peru.

The Argentine case fits the constitutional–multilateral–control categories, resulting in strong democratic control. Although the state has broad prerogatives to gather intelligence about fellow Argentines (which has become a bone of contention regarding numerous politicians being wire tapped, including former president Carlos Menem) these activities are not carried out by the armed forces. The country will doubtless continue to face the challenge of eliminating executive abuse of intelligence services, but such reform will be aimed at the police.

The ability of the Argentine government to rein in military intelligence is certainly beneficial to democracy, but also raises the issue of whether such a success can be emulated elsewhere in the region. In particular, given the nature of the transition in 1983 and the perception of incompetence, Argentina experienced the most propitious Latin American context for eroding military influence, yet politicians took six years to enact a law limiting the military’s role in internal security, and 18 years to finalise a law on the overall intelligence apparatus. These delays resulted from a combination of political disagreements, military resistance, civilian inexperience in defence issues and pressing economic crises that shifted attention away from institutional reform. Given that most Latin American countries face similar obstacles in far less positive political conditions (not only in terms of domestic civil–military relations, but also of post-9/11 pressures to increase the military’s role in intelligence), political leaders will probably find similar reforms difficult to pass.

### Conclusion

Intelligence reform is a useful test of rational choice analyses of civil–military relations. Given the abuses of intelligence agencies, politicians would logically enjoy broad public support for reducing military autonomy and even cutting their budgets. However, in the area of civil–military reform such incentives are not necessarily present. Not only does the military consider intelligence to be extremely important to its own mission, but reforming it requires considerable civilian time, effort and expertise. As long as civilian policy makers believe the military is capable of organising and carrying out intelligence activities, there is greatly reduced incentive to enact fully democratising reform. Combined with an already existing lack of interest in defence issues, this helps to account for why democratising intelligence reform has been slow and uneven, with few successes in enhancing accountability over military intelligence.

In Chile the military regime created highly autonomous military intelligence agencies that continue to elude civilian oversight, despite numerous examples of spying on government officials and even on foreign consulates. Reform efforts, spurred on by the aftershock of 9/11, led to the creation of an agency that allows the armed forces to conduct virtually any intelligence activities they wish, and empowers the executive *vis-à-vis* the legislature, which is granted little oversight capacity.

In Peru various efforts to break the pattern begun by Fujimori and Montesinos met with failure for years. Even abolishing the old SIN had no effect on the existence of a personalistic agency with military activities beyond civilian control. Unlike in Chile there was more public clamour about reforming intelligence, since intelligence institutions were also infamous for being a political tool of the president. Nonetheless, the newly established intelligence service addressed presidential power, but not military autonomy.

The Argentine case was the most propitious for democracy and civilian supremacy over the military. Popular mobilisation against the excesses of the dictatorship enabled civilians to dismantle the military's intelligence apparatus and construct another that explicitly limited the military's prerogatives. The disincentives present elsewhere in South America were absent. Even that reform, however, required 18 years to come to complete fruition.

One unfortunate result of disincentives has been for many presidents and members of Congress not to enact truly democratising reform. Gathering and analysing intelligence remain important missions for armed forces in the region, albeit for varying reasons. In Peru the existence of a grassroots guerrilla organisation convinced the armed forces of the need for continued monitoring of domestic enemies. In Chile the attacks of 11 September 2001 put intelligence back on the political agenda even in the absence of any domestic threat to public order.

Perhaps, as some rational choice analyses have suggested, an essential element in overcoming military resistance in the democratic era is for civilians to make a better public case for reform. However, this solution would have to entail greater civilian attention to complex defence matters. Latin American militaries, in conjunction with the US government, have been pressing for a strong military presence in intelligence, while counter-views have been much less prevalent, especially outside academic circles. Outside Argentina the logical bases for popular support have not been transformed into widespread pressure for democratic change. Even within Argentina that pressure was not strong enough to achieve rapid results.

A final conclusion can be drawn, namely that intelligence reform *per se* is not automatically beneficial to democratic civil–military relations. The reform itself must include several dimensions, taking absolute control out of the hands of the president, establishing legal guidelines for oversight and establishing civilian authority over the activities of military intelligence. Otherwise the resulting control system will reflect weakened civilian leadership. Competitive elections have produced presidents and legislatures, but electoral incentives have yielded uneven results.



## Notes

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