

# **An evaluation of the concept of national security as determined by the South African Constitution and its interpretation by the State Security Agency**

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## **PREFACE**

I take this opportunity to convey my sincere appreciation to my supervisor Dr Barend Prinsloo for his motivation, extreme patience and guidance during my research.

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Soli Deo Gloria

## ABSTRACT

**Key terms:** National Security, Security, South African Constitution, Civilian Intelligence Services, White Paper on Intelligence, Intelligence Oversight, Intelligence Mandate, State Security Agency, SSA.

National Security as a phenomenon is not well defined in the South African context, with the result that it is interpreted and applied differently by academia and civilian intelligence organisation alike. The concept evolved historically and became a point of contention among various theoretical schools of thought within the theoretical field of security studies (as a subfield of international relations) as well as within the *real politik* interpretation and application amongst practitioners within the civilian intelligence community.

The concept of national security was dissected etymologically to indicate the link between the *national* part of the concept and the link to the concept of *state*. It was indicated that concepts such as *state* and *sovereignty* developed in their current form from the Treaties of Westphalia. It was argued that Westphalian state had to defend itself and as such a rudimentary national security concept was formed, with the state as the referent object. This concept of national security evolved and came to dominate the academic debate during the Cold War. The Realist approach with its state-centric approach to national security came under pressure with the end of the Cold War by the subsequent ring of various other security approaches. An academic debate between the various approaches and their varied views on what national security entails, ensured that the concept of national security would remain a contested concept for the foreseeable future.

In the South African context a historically realist approach was followed by the South African government during the Apartheid years and a more human security approach was developed by the Liberation organisations. This was evident with the end of Apartheid and how the human security concept permeated documents such as the White Paper on Intelligence and most importantly the South Africa Constitution. A micronarrative analysis indicated that both human

and state centric security are prevalent in the Constitution. Analysis has indicated that an intelligence organisation like the State Security Agency (SSA) had difficulties in interpreting and operationalising these two types of security approaches. This has led to intelligence embarrassments and uncertainty with regards to mandate. This was exacerbated by political infighting, policy uncertainty and corruption under the Zuma administration. An evaluation of the SSA's interpretation was done by considering the main intelligence legislation and how national security was defined within these pieces of legislation and lastly how this correlated with what was determined by the SA Constitution.

It was evaluated that the SSA's understanding and interpretation of national security as determined by the SA Constitution was incorrect. There discrepancies between the Constitution and the SSA had a serious impact on the operations of the SSA. This has led this research to make recommendations to the SSA how these discrepancies can be mitigated.

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# CHAPTER 1: AN EVALUATION OF THE CONCEPT OF NATIONAL SECURITY AS DETERMINED BY THE SOUTH AFRICAN CONSTITUTION AND ITS INTERPRETATION BY THE STATE SECURITY AGENCY

## 1.1 Introduction

National Security as a phenomenon is not well defined in the South African context, with the result that it is interpreted and applied differently by academia and civilian intelligence organisation alike. The concept evolved historically and became a point of contention among various theoretical schools of thought within the theoretical field of security studies (as a subfield of international relations) as well as within the *real politik* interpretation and application amongst practitioners within the civilian intelligence community (Buzan, 1991:27; Bourne, 2014:2).

In Security Studies Theory, the meaning and importance of *national security* are disputed among the various theoretical approaches. The Realist School is unified and rational, for example, and champions the state, with national security as its highest priority; in contrast with the state and non-state actors of liberalism, which involves a disaggregated approach and conflicts with various agendas that are deemed more important than national security (Viotti & Kauppi, 1999:10). It is thus plausible that the conceptualisation of national security could be problematic and could lead to a number of opposing academic views. For instance, Wolfers (1952:481), as a realist, argues that the concept of *national security* is ambiguous and might have various meanings. Rotchild (1995:53), a neorealist, argues that there has been further development of the concept after each of the global war events, and that one follow-up event takes certain elements into the next; perhaps eluding to a constantly changing concept.

According to Viotti and Kauppi (1999:487), national security entails “issues dealing with the survival, welfare, and protection of a state”. This explanation of national security provides some working definition, but the debate on a working definition in the international relations theoretical domain seems to be a long and protracted one that has been in existence for quite some time.

In this regard, Mangold (1990:1) notes that it is difficult to find a working definition. Huntington (1957:3), a realist, refers to “national security policy”, which has the aim of ensuring the safety of a nation’s political, social and economic institutions. Leffler (1990:143) and Baldwin (1997:5) indicate that the redefining of security and national security has become a popular focus point, with almost every scholar publishing articles on security and the need to redefine it.

The neorealists Krause and Williams (1996:229) identify the need for redefining security as a post-Cold War event. Buzan (1991:25-26), also a neorealist, points out that security ranks as the most prominent of problems facing humanity and argues that for national security to be understood, it would be necessary to analyse the concept of security, because it is considered to be underdeveloped. Buzan (1991:29) furthermore is of the opinion that the concept of security involves much more than just a concentration of state power, and observes that military threats are no longer the only threat to national security, because any political, societal, ecological and economic factors can become a threat to national security (Buzan, 1991:119).

These ambiguous interpretations of national security by civilian intelligence organisations in contemporary constitutional democracies often result in the misinterpretation of their respective mandates, which in turn has serious repercussions for the role and functions of civilian intelligence.

### **1.1.1 National security in the South African context**

The following theoretical view is reflected in the Constitution of the Republic of South Africa (1996) (hereafter the “Constitution”) and provides for a more inclusive view of national security. Chapter 11 of the Constitution provides four guiding principles that govern national security in South Africa:

- (i) *“National security must reflect the resolve of South Africans, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life*

- (ii) *The resolve to live in peace and harmony precludes any South African citizen from participating in armed conflict, nationally or internationally, except as provided for in terms of the Constitution or national legislation.*
- (iii) *National security must be pursued in compliance with the law, including international law.*
- (iv) *National security is subject to the authority of Parliament and the national executive.”*

These four guiding principles might appear simplistic in their construction, but they have come into being due to historical reasons and they imply a holistic, inclusive approach to national security, especially with reference to human security. Historically in South Africa, especially during the P.W. Botha administration, human security was not essentially the main focus. Security structures were given a prominent/central role in the South African government by the then Prime Minister P.W. Botha when he came to power in 1978 (Swilling & Phillips, 1989:136; Roherty, 1992:80).

The security structures included the military, police, civilian and intelligence organisations, fused into the State Security Council (SCC), which was responsible for a “coordinating and binding force” capable of coordinating responses to threats against the state (the state being defined as an entity comprising a territory, population, the presence of a government, sovereignty and a comprehensive jurisdiction (Van Niekerk et al., 2001:48)). It essentially consolidated political power in the Office of the Prime Minister (Swilling & Phillips, 1989:137; Pottinger, 1988:42-44).

For the purposes of this study, national security will be defined in accordance with the views purported by the South African State Security Agency (SSA). These will be discussed below.

### **1.1.2 National security in the SSA**

The SSA was created in 2009 by combining all the former civilian intelligence structures – the National Intelligence Agency (NIA), The South African Secret Service (SASS), The South African National Academy of Intelligence (SANAI), The National Communications Centre (NCC), The

Office for Interception Centres (OIC) and the Electronic Communications Security (Pty) Ltd – under one command and control structure (News24, 2009:1 & SSA, 2016:1). The main reason for this restructuring was reportedly to refocus intelligence priorities, streamline administrative processes, centralise the budget and enhance overall operational effectiveness (Cwele, 2009:1).

To legitimise the restructuring, certain pieces of legislation had to be amended and created. The General Intelligence Laws Amendment Act (Act 11 of 2013) provided the basis for the creation of the SSA, while the National Strategic Intelligence Act (Act 39 of 1994), the Intelligence Services Oversight Act (Act 40 of 1994) and the Intelligence Services Act (Act 65 of 2002) were amended and the Electronic Communications Security (Pty) Ltd Act (Act 68 of 2002) was repealed.

These pieces of legislation stipulate the legal requirements for satisfying the creation of a civilian intelligence structure, but do not necessarily provide a full understanding of the concept of national security, which is central for these newly created structures. It should be noted that the National Strategic Intelligence Act (Act 39 of 1994) provides for the National Intelligence Coordination Committee (NICOC). The act provides for Defence Intelligence, the South African Police Service (SAPS) and the civilian intelligence service to be part of NICOC. The act however also allowed for any government department or agency to be co-opted on a temporary on a permanent basis (National Strategic Intelligence Act (Act 39 of 1994). Defence Intelligence focuses on foreign military intelligence and may not focus internally, the SAPS will utilise its crime intelligence structure and the civilian intelligence agency is to identify any threat or potential threat to South Africa and report national strategic intelligence to NICOC (National Strategic Intelligence Act (Act 39 of 1994). The civilian intelligence agency, SSA's main mission is: *"To provide critical and unique intelligence on threats and opportunities for the government to advance South Africa's national security interests in a changing global environment"* (SSA, 2018). The SSA is the agency that is tasked with focusing on national security threats, both internally and externally and is as such the main focus of this research.

Nathan (2010:195) and Dearlove (2010:47) argue that the nature of intelligence structures, the secrecy and acquiring of confidential information, coupled with the close proximity of intelligence structures to political power/leaders, create an opportunity for abuse. Nathan (2010:196) explains that intelligence services sometime experience challenges when governments change from authoritarian to more democratic systems.

The national security environment of South Africa has experienced various transitions, as is especially clear in the ever evolving intelligence structures. O'Brien (2011:2) observes that the Republic of South Africa has an intelligence dispensation or structures which are constantly evolving due to various historical aspects, such as the changes in government and the threats to these governments, whether perceived or real (O'Brien, 2011:5). Lowenthal (2012:4) argues that when used in this context, intelligence largely refers to national security.

In accordance with O'Brien's (2011:2) view on the evolving intelligence structures, Nathan (2010:196) notes that the South African intelligence dispensation went through major transformation/evolving initiatives in 1994, after the end of apartheid. High priority was assigned to the declarations of the Freedom Charter (signed on 26 June 1955) on equality, human dignity, peace and security (Freedom Charter, 1955). It was a certainty that when new structures and baseline documents were to be produced, the Freedom Charter's declarations would be given prominence. This impact is clearly visible in the White Paper on Intelligence (1994), which was written during this transformation period for intelligence services and the Interim Constitution (Act 200 of 1993). Both documents focus on a more democratic state based on equality, human dignity, peace and security.

The White Paper on Intelligence (1994) provided some clarity on how the new intelligence dispensation would be restructured following the apartheid era. It also pointed out that the national security focus of the intelligence dispensation of the previous minority government was flawed, because it represented an undemocratic society (White Paper on Intelligence, 1994). The paper

furthermore made provision for a “new national security doctrine” and reflected the theoretical frameworks for what the term national security should imply.

The traditional, almost exclusively military strategic view towards national security was considered as too restrictive and inadequate, and a more inclusive view of national security had to be considered, one which should reflect an approach which include threats to political, socio-economic and environmental factors. Aspects like sustainable economic development, social justice and a collective approach to conflict management were proposed (White Paper on Intelligence, 1994).

The same sentiments were reflected in the White Paper on Defence (1996), which described national security as a broadened all-encompassing concept that focused intensely on individual securities and no longer on one security dominated by military and police actions. These documents laid the foundations for the guiding principles that govern national security as stipulated in the South African Constitution (Act 108 of 1996). These guiding principles must be read against the background of the Freedom Charter (1955), which seeks to address the injustices of the past and which was entrenched in the Preamble, Founding Provisions and Bill of Rights of the Constitution of the Republic of South Africa (1996). These principles permeate the Constitution of South Africa and are visible in most of its chapters.

With these founding documents and legal framework in place, a firm basis was laid for a new intelligence dispensation in South Africa. It seemed that the intelligence environment was functioning well within its mandate and according to the Constitution, until 2005, when it came to light that some misconduct occurred outside the mandate of the intelligence apparatus, which was later to be revealed as Project Avani (Nathan, 2009:26; Cepik & Ambros, 2014:542).

An evaluation of Project Avani revealed the internal political struggle in the ruling party, which led to this misconduct; and it identified certain instances where the intelligence services believed they could operate outside the boundaries that were set by the Constitution (Nathan, 2010:205; Cepik & Ambros, 2014:542). It was argued that the constitutional dispensation was under threat due to

the prevalence of intelligence officials acting outside the set boundaries (Nathan, 2010:207). The concept of national security was thus not clearly defined, with the result that unscrupulous intelligence operatives could interpret it in ways that would make it possible for them to function outside their mandate.

The Inspector General of Intelligence Report (2006:18) on Project Avani dually pointed out that South Africa's young democracy cannot afford instances where the Constitution is ignored and national security is utilised as an excuse for abuse. The Matthews Commission (2008:7), which ran concurrently with the Inspector General of Intelligence Report (2006), was established by the then Minister of Intelligence, Mr Ronnie Kasrils, with the aim to enhance the control mechanisms of the civilian intelligence structures to ensure compliance within the Constitution. The commission's report (2008:48-49) clearly confirms the supremacy of the Constitution and the rule of law and rejects the viewpoint that it is legitimate for intelligence operatives to operate outside the law.

Against the backdrop of political changes and the classification of the Matthews Commission report, further changes were envisaged to the intelligence structures and to the interpretation of national security, as was apparent in the 2009 budget speech of the Ministry of State Security (the new name for former Ministry of Intelligence) on 1 July 2009. The budget speech highlighted the aspects of human security, but also points out the reality of the post-1994 era: national security has changed after the democratic transition, and needed to be re-evaluated. The 2009 budget speech confirmed this re-evaluation (Budget Speech, 2009). The State Security Speech (2009) highlighted what the Matthews Commission (2008) pointed out, namely that national security should include both the traditional views and a more holistic approach of including human security, with an interdependence between the two.

On 16 March 2012, at the Ad Hoc Committee on the General Intelligence Laws Amendment Bill (National Assembly), Dennis Dlomo, Acting Director General of the Department of State Security, responded to a question about the mandate of the intelligence services with regard to national

security and the definition of national security. His response indicated that the State Security Agency (SSA) had a working definition for national security as defined in the State Information Bill (Parliamentary Monitoring Group, 2012). This definition was centred on the more traditional military-centric view of national security.

During a hearing by the National Assembly Ad Hoc Committee on the General Intelligence Laws Amendment Bill on 28 March 2012, the then Minister of State Security, Minister Cwele, pointed out that the Matthews Commission Report had no status in government (Parliamentary Monitoring Group, 28 March 2012). This is unfortunate, as the report addressed the issue of national security, intelligence mandates and the primacy of the Constitution.

Furthermore, the Minister of State Security, in his keynote speech at the Human Rights and National Security Seminar on 10 April 2015, said that the prevalent historical views of national security are inadequate and that the non-traditional threats should be included in a more comprehensive approach to security (Mahlobo, 2015). This emphasised the importance of a more human-centred approach to security, and contributed to the ambiguity of the term. The definitions of national security in the General Intelligence Law Amendment Act (Act 11 of 2013) are very wide and vague. There appears to be constant conflict between the historically accepted view of national security and the new, more human-oriented view of security.

## **1.2 Problem statement**

The preliminary literature survey that was conducted, reveals that civilian intelligence organisations in South Africa subscribe to a historical interpretation of national security that is poorly defined and underdeveloped. This misconception could result in infringements of the mandate given to the civilian intelligence structures by the Constitution. National security as envisaged by the Constitution should be addressed through a holistic, inclusive approach – not separate from or in conflict with human security, human rights and the fundamental freedoms enshrined in the Constitution.

However, the South African civilian intelligence does not seem to be alone in their multiple interpretations of national security. In the United States of America (USA) there also seems to be a historical tendency to overstep the constitutional mandates. Examples include the Report of the Office of the Secretary of Defense Vietnam Task Force in the 1970s, later named the Pentagon Papers in the media (US National Archives, 2011). The leaked internal CIA document named Family Jewels highlighted the CIA abuses and the overstepping of their mandate (CIA, 1973). The Snowden leaks (Greenwald, 2013:1) also showed that the US intelligence community was not alone in overstepping their mandates: the Five Eyes alliance – which includes the United States National Security Agency (NSA), the United Kingdom's Government Communications Headquarters (GCHQ), Canada's Communications Security Establishment Canada (CSEC), the Australian Signals Directorate (ASD), and New Zealand's Government Communications Security Bureau (GCSB) – were all part of a collective electronic collection programme (Nyst & Crowe, 2014:51). The United Kingdom also had investigations into the conduct of its intelligence services (Bowcott, 2014:1) for breaching its mandates.

Because of the various views and definitions of national security, the civilian intelligence community understands numerous issues under the concept national security. The Constitution stipulates that national security is the domain of Parliament and the Executive. If the Executive should decide that national security is to protect political power, the oversight functions of Parliament would hopefully prevent this. However, if the oversight is a mere “rubber stamp” in such a scenario, the consequences could be devastating. Intelligence structures would be politicised and the operational guidelines on what is constitutional, could be negated. This ambiguous interpretation of national security by civilian intelligence organisations in contemporary constitutional democracies results in misinterpretation of their respective mandates, which in turn has serious repercussions for the role and functions of civilian intelligence.

The main question to be answered through this study is: *Is the understanding of the concept of national security by the State Security Agency consistent with the implied meaning contained in the SA Constitution?*

### **1.3 Research questions**

Based on the above-mentioned problem statement, the following questions are posed:

- 1.3.1 What are the different theoretical interpretations of the concept national security and what are the perspectives on national security in the South African Constitution?
- 1.3.2 How does the SSA interpret national security legally and operationally and are there any discrepancies between the provisions of National Security as contained in the Constitution and the way it is interpreted by the SSA?
- 1.3.3 Should the SSA align its interpretation of national security differently, to match the provisions of national security as contained in the SA Constitution?

### **1.4 Research objectives**

The objectives of this study are as follows:

- 1.4.1 To establish and evaluate the different theoretical interpretations of the concept national security and to determine and conceptualise the different perspectives on national security in the Constitution of South Africa.
- 1.4.2 To understand and determine the legal interpretation of national security as operationalised by the SSA and to identify any discrepancies between the interpretations of the provisions of national security as contained in the Constitution, and the way it is interpreted by the SSA.
- 1.4.3 To provide recommendations, if needed, to align the interpretation of national security within the SSA with the provisions of national security in the SA Constitution.

## **1.5 Central theoretical statement**

In line with the guiding principles in the Interim Constitution (1993) and the Constitution (1996), various pieces of legislation were produced to govern the intelligence services in South Africa. Articles 209 and 210 of the Constitution make provision for national legislation to be enacted to stipulate the powers, functioning and monitoring of the intelligence services. Subsequent legislation enacted provided for the structures of the intelligence services, such as the National Strategic Intelligence Act (Act 39 of 1994); the Intelligence Services Act (Act 65 of 2002); and the oversight of the intelligence services in the Intelligence Services Oversight Act (Act 40 of 1994).

On the concept of national security, the Matthews Commission (2008:52) reiterated that national security, as provided for in the Constitution, should be approached holistically; and not separate from or in conflict with human security, human rights and the fundamental freedoms as provided in the Constitution. The Commission's report (2008:53) also concluded – like the Inspector General of Intelligence Report (2006:18) – that constitutional rights cannot be violated on the grounds of national security; and that violations of these rights must only be allowed in the most severe cases, with the proper oversight and within the law.

Buzan (1991:26) concurs that, generally, the term national security is misunderstood and underdeveloped. National security is no longer a traditional, almost exclusively military strategic concept that focuses on military threats to the territorial sovereignty of the state (White Paper on Intelligence, 1994) and involves more than the mere concentration of state power (Buzan, 1991:29).

The ambiguity of the term national security in the academic sphere and in the South African civilian intelligence service leads to the misinterpretation of the mandate of the civilian intelligence service. This further creates the opportunity for civilian intelligence structures to be politicised, as every action or operation can be sanctioned as an act of national security. A clearly defined concept of national security which is in line with the constitutional dispensation is needed in the

South African civilian intelligence context, to provide clear guidance to the civilian intelligence organisations.

## **1.6 Research methodology**

Specific methodological steps were followed to provide the necessary components for the evaluation of the SSA's understanding of national security as implied in the Constitution:

- The first of these was the conceptualisation of the term national security in security studies as a subfield of international relations. This conceptualisation was made with consideration of the various theoretical fields and the historical development of the concept. An evaluation of these various theoretical interpretations was done. This was achieved through a literature research of the ample available literature. The various perspectives of the concept national security, as provided for in the South African Constitution, was determined by a micronarrative analysis as to determine the various security approaches contained within the Constitution.
- The second of these steps was a clarification and discussion as to how the SSA operationalised and interpreted the concept of national security. Factors impacting on these interpretations were addressed such as the historical evolvement of the intelligence structures and political developments. For this clarification and discussion, existing legislation, media releases, official documents and scholarly articles on the matter were analysed. This analysis was then utilised in consideration of the micronarrative analysis of the Constitution to evaluate the discrepancies between the two viewpoints. The evaluation took into consideration definitions of national security as contained in existing acts, bills, media statements, media articles and provisions in the Constitution.
- The last methodological step was to consider the discrepancies that were identified and make possible recommendations as to mitigate the misalignment between in the interpretation of national security as perceived by the SSA with the provisions of national security in the South African Constitution.

### 1.6.1 Literature Overview

The end of the Cold War brought about various degrees of change, firstly governments needed to adjust from a bi-polar international system to a multi-polar system. In the academic discipline of Political Studies and especially in the subfield Security Studies many of the dominant approaches came under pressure as new approaches and research challenged their supremacy. The end of the Cold War brought challenges to especially to the realist approach with its state centric view with the state as the referent object. As this research focuses on national security the evolution of this concept would be consider through the various theoretical approaches. The literature on national security also reflected the pre-and post-Cold War thinking on the subject matter.

In considering primary theoretical sources there is a vast volume of work that deal with international relations and the subfield of security studies, providing views on the historical development of the concept *national security*. The publication *People, States & Fear, an agenda for international security studies in the post-cold war era* by Professor Barry Buzan gave insight into how security and national security have changed.

Prof Buzan, a main member of the English School, along with the contributions of a few other collaborators were responsible for some of the following works as *Peace, power, and security: contending concepts in the study of international relations*, Buzan, *What is security?* Buzan, & Hansen, L., *The evolution of international security studies*, Buzan, Weaver, O. & de Wilde, J. *Security, a new framework for analysis* and Buzan, B. & Little, R, *International systems in world history; remaking the study of international relations*. These views would eventually lead to the securitisation theory of the Copenhagen School. The Copenhagen School focused on creating a security issue by the articulating it as such. The once aspect that is clear from this body of work is that the concept national security is contested.

During the Cold War scholars such as Wolfers (1952:481) indicated the concept of national security was ambiguous and might have had various meanings. Many other scholars such as

Haftendorn (1991:3), McSweeney (1999:13), Duvenhage (2010:17), Laborie's (2011:01) are of the same opinion as Wolfers (1952:481). Buzan et al. (1998:1) and Collins (2010:8) have found that debate on security is divided between the old traditionalist view centred on military aspects and the state on the one hand, and arguments to include other types of security as well on the other hand. Buzan et al. (1998:2) indicate that this divide is due to a dissatisfaction that developed with the narrowing in the field of Security Studies due to the military and nuclear obsessions during the Cold War.

Buzan (1991:29), Floyd (2007:333), Williams (2008:2) and Schäfer (2013:5) indicated that security is a "contested concept", implying that when the concept is discussed or debated, its meaning and utilisation stay unresolved. Krause and Williams (1996:229) found that the security has been the subject of considerable debate and that attempts to broaden and deepen the scope beyond its traditional have raised fundamental theoretical arguments.

The debate between the various theoretical approaches and the challenge after the Cold War to predominance of the realist approach is clear. In the body of work on theoretical approaches to national security it was also important to note that it was not only national security that was conceptually challenged. Concepts of sovereignty and the Westphalian state were also challenged Maritain (1950:343) & Ferreira-Snyman (2006:1).

In their document, *International systems in world history, remaking the study of international relations*, Buzan and Richard Little also provided views on how international relations are evolving, as well as a new historical perspective on international relations. Ken Booth and Nicholas Wheeler's *The Security Dilemma* explained the uncertainty in international relations that provides the main pillars for national security. Other important works include *Contemporary Security Studies* by Alan Collins, *Security Studies and Introduction* by Paul Williams (ed.), *The Insecurity Dilemma, national security of Third World States* by Brain Job, and *Understanding Security* by Mike Bourne.

Numerous articles on intelligence, security and national security have appeared in accredited academic journals. Examples of these journals include *Review of International Studies*, *Mershon International Studies Review*, *Political Science Quarterly*, *The Journal of American History*, *Security Dialogue*, *International Relations*, *Intelligence and National Security*, *Economic and Political Weekly*, *Foreign Affairs*, *Daedalus*, *The International Lawyer*, *The World Today*, *International Journal on World Peace*, *World Politics*, *Rivista di Studi Politici Internazionali*, *Journal of Peace Research* and *Democracy and Security*.

It was also important to note that a whole new body of work has been established on the new approaches to security, that is challenging the *status quo*. Human security and environmental security have embedded itself as mainstream approaches. The United Nations Security Council (UNSC, 1992) and the United Nations Secretary General (UNSG, 1992) provided further impetus on human security. Literature by; The United Nations Development Programme (UNDP, 1994:22), Rothschild (1995:54), King and Murray (2002:587), Ogata and Cels (2003:274), Waisová (2003:63), Buzan and Hansen (2009:36), Tsai (2009:21), Newman (2010:78), Bourne (2014:180), (UNDP, 2014:181) all promote or indicate that human security places human beings as the primary referent object of security.

The aforementioned body of work provided insight into the theoretical approaches on national security, the various nuances in the different approaches to security and the new security approaches. The discussion of the various approaches also included how these approaches was incorporated within the Constitution (1996). The literature on the theoretical approaches within the Constitution is confined but the Constitution provided the necessary input on national security from a South African perspective.

This research also considered the SSA within its intelligence environment and there is a growing body of work on intelligence (Hughes-Wilson, 2004:353, Kahn, 2006:132, Gill & Phythian 2012:10, Kemp, 1984:497, Sheldon, 1989:7, Russel, 1999:6, Lerner & Lerner, 2004:412, Sheldon, 2011:49, & Musco, 2016:1025) and the South African intelligence environment side,

(Hepple, 1969:436-439, Grundy, 1983:12, Pottinger, 1988:42-44, Venter, 1989:184-185 Swilling & Phillips, 1989:137, Heywood, 2002:131-132, Herbst, 2003:81 O'Brien, 2011:8, Pfister, 2007:3, Nathan, 2010:196, O'Brien, 2011:22-29, Africa 2012:107, Spector, 2013:1, Segell, 2018:7). O'Brien (2011) provided detailed historical information on the development of the South African intelligence structures, providing perspectives on circumstances as to why structures evolved as they did. Nathan (2010) provided a critical overview of how the new intelligence environment is losing its grip on what national security constitute. Africa (2012) provides insight on the inner workings of the SSA and the mistakes that were made in the restructuring of the intelligence organisations and how their mandates were ambiguous allowing for a type of mission creep outside the set boundaries.

For the analysis of the mandate of the SSA and its understanding of national security various pieces of legislation and White Papers were utilised; the White Paper on Intelligence (1994), White Paper on Defence (1996), The Intelligence Services Act (Act 38 of 1994), The General Intelligence Laws Amendment Act (Act 11 of 2013) provided the basis for the creation of the SSA, while the National Strategic Intelligence Act (Act 39 of 1994), the Intelligence Services Oversight Act (Act 40 of 1994) and the Intelligence Services Act (Act 65 of 2002) were amended and the Electronic Communications Security (Pty) Ltd Act (Act 68 of 2002) was repealed. These legislative documents provided insights as to how national security is perceived by the SSA.

Various speeches and public statements by senior personnel from the Ministry of State Security and the SSA also provided insight as how national security is perceived but also in how many cases there were contradictory statements.

Databases consulted for information included:

- JSTOR
- Ebsco Host
- LexisNexis

- Emerald
- Catalogue of Books: Ferdinand Postma Library
- Government Gazettes
- South African Legislation

In considering the body of work studied and researched no one has undertaken this type of study and thus making this type of study the more relevant.

### **1.6.2 Data analysis and integration**

Qualitative research was done exploring the various sources available on the subject matter, and specifically in consideration of the research objectives. This allowed for a general overview of the various theoretical approaches. In the case of the micronarrative analysis of section 198 of the Constitution, the governing principals of national security, it were analysed searching for indicators as to what security approach was prevalent. The analysis was conducted by integrating the theoretical knowledge gained of what human and state centric security approaches contains. This allowed for a detailed evaluation and consideration of the narrative in the principles of national security as contained in the Constitution.

### **1.7 Ethical considerations**

Ethical considerations did not apply to this research, as the research was based based on publicly available information. No infringements of any rights or breaches of confidentiality occurred due to the nature of the study.

### **1.8 Limitations of the study**

The environment of secrecy in which the SSA operates and the concealment of information and data, placed limitations on this study. Access to official documentation of the SSA was limited to open source information. This had the effect that insight into the inner workings of the SSA were

limited. The classification of documents such as the National Security Strategy (NSS) limited the insight as how national security was defined in policy guidance documents and how threats are perceived.

## **1.9 Significance of research**

The study intended to clarify the concept of national security in a constitutional democracy and to provide a conceptual framework for civilian intelligence to interpret national security holistically. The research found that just as in the academic domain, national security as a concept is misunderstood, in the public domain and especially in the SSA. The SSA, as the civilian intelligence service of the Republic of South Africa carries the responsibility to gather intelligence internally and externally on any threat or potential threat to national security (The National Strategic Intelligence Act (Act 39 of 1994)). Historical facts have already indicated that when operationalising their understanding of national security, the SSA overstepped their boundaries which led to the infringement of constitutionally protected rights. It was demonstrated when executive power is not restricted by proper oversight, the influence creates an environment where it becomes impossible for intelligence organisations to avoid political interference. It also allows for any possible incident or opponent to be classified as a threat to national security. This in itself provides dangerous precedents to undermine the constitutional order and a danger to South Africa's democracy. An intelligence agency without the necessary full understanding of national security can create chaos. It is in this regard that the understanding of national security by the SSA is of such importance as it will function as a guide as to how the SSA will operationalise their conduct of intelligence.

From a theoretical perspective it was affirmed that the various theoretical approaches with their different views on what national security entails, ensure, that as a concept, national security will stay a contested concept for the foreseeable future. It was found that the Constitution was constructed via a constructivist approach with the aim to create a better and new society from the apartheid legacy. It was determined that the Constitution contains both human and state centric

security, but that the SSA's interpretation was based only on state security. It was also found that this interpretation was reflected in the definitions of national security as contained in current security legislation. This allowed for an interpretation and operationalisation of national security in contradiction with the Constitution's meaning. This contradiction, it was found, allowed for policy incoherence, mandate uncertainty and opened the SSA for undue political interference. The study then made recommendations as to how the current state of affairs could be mitigated.

### **1.10 Chapter layout**

- Chapter 1: Provides an overview as to what this research is focused on. Creating the necessary background as to why national security as concept in the South African context, needs more research.
- Chapter 2: Chapter two is focused on the concept of national security, consideration is given to aspects such as the origins and historical evolvement of the concept. The concept is also discussed in consideration of the different theoretical approaches. The Constitution, its construction and its close relationship with constructivism are discussed followed by a micronarrative analysis of the Constitution to determine what security approaches are prevalent.
- Chapter 3: This chapter focuses on determining how the SSA interpret and operationalise the concept of national security. This determination is done by evaluating all the various pieces of legislation, public documentation and public speeches. This evaluation is then measured against the micronarrative analysis of the Constitution's national security perspective. The chapter then centres on the determination indicating that there is a discrepancy in that the SSAs' interpretation is in contradiction with the concept of national security as contained in the Constitution.

- Chapter 4: This chapter concludes the research by indicating how the research has answered the main research question. It also provides possible recommendations as to how the divergent views and its consequences can be mitigated.

## **CHAPTER 2: NATIONAL SECURITY, DIFFERENT THEORETICAL APPROACHES, CONCEPTUALISATION AND THE DETERMINATION BY THE SOUTH AFRICAN CONSTITUTION**

### **2.1 Introduction**

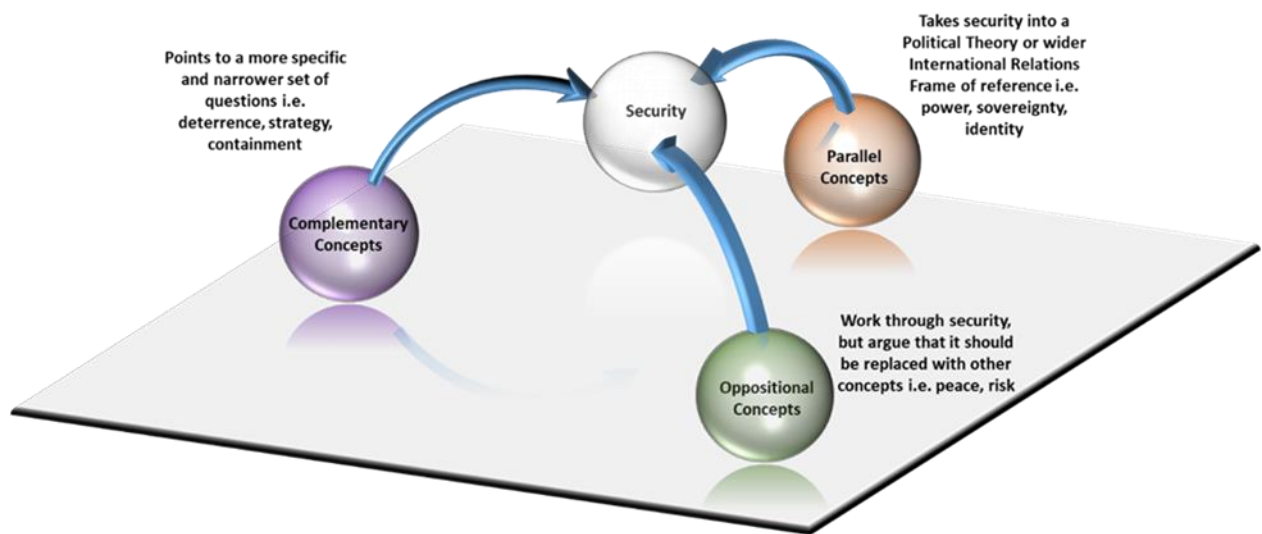
The introductory chapter of this research indicated that the term *national security* is central to this research. This implies that, firstly, the term *national security* is to be understood within its originating field of International Relations, but especially in the sub-field of Security Studies. The latter sub-field has evolved from this originating base to a separate study field within the larger academic discipline of Political Studies. This understanding is to provide a framework for further analysis and for conceptualising the term. This analysis will give consideration to the historical evolution of the term in the different theoretical fields. Secondly, a determination and conceptualisation of national security in the constitution of South Africa will be sought. The first focus will be on the etymology of the term *national security*.

### **2.2 Etymology of the term *national security***

The term national security consists of two separate words, *national* and *security*. National is derived from the Latin word *natio*, which means “birth/nation/people”. This later evolved into nation from Old French, and in the 1500s into *national* (Ayto, 1990:361, Google, 2016; The Latin Dictionary, 2016 & Online Etymology Dictionary, 2016). *Security* is derived from the Latin *secures* (from *sē* – without and *cūra* – care), later *securitas* (*security/safety*) and in Old English *securite* and Old French *sécurité* (Ayto, 1990:465, Del Rosso, 1995:183; Google, 2016 & Online Etymology Dictionary, 2016). The etymology of the term *national*, as indicated above, incorporates a close relationship with the term *nation*. Baradat (1988:9) and Couloumbis and Wolfe (1990:59) indicates that the term nation is sometimes used to refer to the *state* or *country*. Baradat (1988:9) argues that this use of the term is incorrect, as the term nation has no political implication but rather is a social concept. The *state*, however, is a political term. Couloumbis and

Wolfe (1990:59) explain that the *nation* as a concept focuses on a common ethnic and cultural identity of a specific group of people, whereas the state functions as political unit that is defined by a specific territory, population and an autonomous government. This government has effective control of the territory and its population, no matter the homogeneity or heterogeneity (Couloubis & Wolfe, 1990:60).

The effective control, as indicated by Couloubis and Wolfe (1990:60), includes the state's sole power to use force (Wesson, 1985:11 & Heywood, 2002:129). These aspects, which are referred to by Wesson (1985:11), Couloubis and Wolfe (1990:59) and Heywood (2002:129), form part of the concept *sovereignty*. Analysis of literature on the concept *sovereignty* indicated that it is a concept that seems to be contested in the International Relations Theory environment. Maritain (1950:343) and Ferreira-Snyman (2006:1) point out that *sovereignty* is not a clearly defined concept and that this has led to various different theoretical viewpoints, discussions and arguments. Booth (1991:313) describes *sovereignty* as one of the concepts that faces the same challenges as *security* in the study field. Buzan and Hansen (2009:14) also note that sovereignty is an important concept, but suggest that to understand security, its adjacent concepts should also be noted. They classified these adjacent concepts into three groupings: complementary concepts (deterrence, strategy and containment as examples), parallel concepts (power, sovereignty and identity as examples), and oppositional concepts (peace and risk as examples). Buzan and Hansen (2009:15) are of the opinion that by taking this framework of security plus three adjacent concepts, a structured conceptual analysis could be conducted of literature that are not directly linked to Security Studies, or what they call "*conceptually silent*". This implies that some of the adjacent concepts and its literature are nor directly linked to the debate on security, they are "conceptually silent" on security. They can however inform and enlighten the debate by providing insights on how an outcome of the debate might affect them.



**Figure 2-1: Security's adjacent concepts (constructed from Buzan & Hansen (2009:14)).**

It is of importance, however, to note that *sovereignty* has its origins in the Peace Treaty of Westphalia (Hertz, 1957:477, Buzan & Hansen, 2009:24 & Krasner, 1996:115, Wallerstein, 2004:43). Articles 64 and 65 of the Peace of Westphalia provided the groundwork for the modern state, its sovereignty and the international system of states (Treaty of Westphalia, 1648; Holsti, 1988:80).

Mijalković and Blagojević (2014:50) observe that the Treaty of Westphalia, which introduced the concept of the modern state, its sovereignty and a rudimentary international system between states, is also considered as the origin of the concept of national security. Mijalković and Blagojević (2014:50) argue that the new Westphalian state had to defend, what they define as, its new prerogatives (territory, sovereignty, foreign policy interests, and national economy) from external armed attacks, internal threats, internal and external intelligence subversion and economic constraints. The proposition that the Westphalian state was the beginning of national security might evoke some criticism from students of history, taking in consideration the early city-states and empires that were more than capable to utilise force and defend themselves (Buzan

& Little, 2000:169). It is nevertheless important to note that the national component of national security is linked to the state.

Pitsoane (1993:31) argues that the core elements of national security is military power, the territorial survival of the state and sovereignty. The explanation of the national component is that the state's security had to be defended from threats. In this context, it is to be understood that when national security is addressed, there is a threat against the state's security. In the traditional or realist sense this is logical, because the state is central and principal, and national security is the most important factor (Viotti & Kauppi, 1999:6). Buzan and Hansen (2009:11) and Williams (2008:7) maintain that the nation/state was always the analytical and normative referent object and that by securing the state, other referent objects could also be secured, and many authors have observed that national security should actually be referred to as state security.

It is the security part of national security that is problematic in Security Studies, however. Buzan and Hansen (2009:11) highlight the fact that security always seemed to be a hyphenated concept: "Security is always a 'hyphenated concept' and always tied to a particular referent object, to internal/external locations, to one or more sectors and to a particular way of thinking about politics", for example national, cyber, economic, environmental or human security.

Buzan (1991:26-28) in his earlier work, *People, States and Fear*, remarks that security as a concept is underdeveloped. Buzan (1991:29), Floyd (2007:333), Williams (2008:2) and Schäfer (2013:5) indicated that security is a "contested concept", implying that when the concept is discussed or debated, its meaning and utilisation stay unresolved. Krause and Williams (1996:229) found that the security has been the subject of considerable debate and that attempts to broaden and deepen the scope beyond its traditional have raised fundamental theoretical arguments.

Wolfers (1952:481) shows that during the Cold War, the concept of national security was ambiguous and might have had various meanings. Haftendorn (1991:3) concurs with Wolfers (1952:481) on the ambiguity of national security as a concept. McSweeney (1999:13) also

describes security as an elusive term. Laborie's (2011:01) views are similar to those of Wolfers (1952:481) and McSweeney (1999:13), and he explains that security a controversial subject of which the meaning depends on the observer's cultural perceptions. Buzan et al. (1998:1) and Collins (2010:8) have found that debate on security is divided between the old traditionalist view centred on military aspects and the state on the one hand, and arguments to include other types of security as well on the other hand. Buzan et al. (1998:2) indicate that this divide is due to a dissatisfaction that developed with the narrowing in the field of Security Studies due to the military and nuclear obsessions during the Cold War.

Baldwin (1997:13-16), Williams (2008:5), Tomé (2012:2) and Bourne (2014:2) likewise argue that to understand security as a concept, its construct should be considered, as well as the cohesion between security, the referent object and achieving security for the referent object.

### **2.2.1 The construct of security**

According to Ullman (1983:133), security is defined and validated by the threats against it, the value of which is not realised until it is threatened. He defines a threat as follows:

*"... a threat to national security is an action or sequence of events that (1) threatens drastically and over a relatively brief span of time to degrade the quality of life for the inhabitants of a state, or (2) threatens significantly to narrow the range of policy choices available to the government of a state or to private, nongovernmental entities (persons, groups, corporations) within the state."*

Ullman's argument on what a threat entails focuses on the state, but also alludes to an expansion of security to include human and other types of security, other than the traditional military view. Bourne (2014:1) states that security is about life or death and the factors that ensure a continued existence. Buzan (2010) also suggests that security is about survival, an existential threat to the designated referent object, traditionally the state. Collins (2010:2), concurring with Buzan (2010), argues that security has to do with the threats to survival.

Terrif *et al.* (1999:1) state that security is feeling safe from harm or danger. Jackson-Preece (2011:14) classifies security as a core value of human life. Williams (2008:5) indicates that security is associated with threats against cherished values, which might endanger a particular referent object in the future. Adams (2015:5) defines security as freedom from threats to survival and prosperity. Von Boemcken and Schetter (2016:1) argue that in a world of perceived uncertainty, there is a need for more security, but that the term is contested area.

Zwierlein and Graaf (2013:47) state that:

*“Security is a concept long associated solely with notions of national security, but in recent decades, the concept has emerged in social science as a more general concept denoting, on the one hand, objective and subjective safety in a variety of contexts and on various levels”.*

In all the aforementioned explanations of security, a threat against a designated referent object is clearly indicated. If not addressed, the threat possesses the ability to negate the existence – hence the security – of the designated referent object. Prinsloo (2016:2-4) emphasises that the most important factor surrounding security is to understand its relation concerning the referent object, and that the referent object determines the meaning of security.

### **2.2.2 Security and the referent object**

Buzan (1991:42) explains that the concept of security cannot exist without a referent object. Williams (2008:7) also agrees that it is most important to identify the referent object, as without it, no threat can be identified and any discussions about security would be futile. According to Williams (2008:7) the debate about the ultimate referent object is an ongoing issue in Security Studies. Williams (2008:7) describe various approaches concerning the ultimate referent object, among others the historical/traditional approach that views the state as being the ultimate referent object. This view has come under pressure, however, especially from scholars who favour human security, placing the human/individual first. Buzan (1991:49) argues that the individual is the most basic unit to which the concept of security can be applied.

In this regard of the individual being the most basic unit, Hudson (2007:1) indicated that when it comes to foreign policy, the origin of international relations entails the events which occur between nations and across nations, and that foreign policy is based on human decision making as individuals or groups. Underlying social science research seeks to understand human reaction to and perceptions of the world around them, but also to provide support for the individual as the basic concept (Buzan, 1991:49).

Williams (2008:7) points out that it would be problematic to decide which group of humans to protect, and that to this end another approach should be considered, for example the society approach according to which humans need to belong to a group. An alternative approach suggested by Williams (2008:7) is the level of analysis problem, which focuses on a framework of analysis that considers the appropriate referent object for various levels. This analysis allows for the observation of the interactions of the international system as a whole (Singer, 1961:80). Tamaki (2015:1) observes that level of analysis approach allows for a micro-breakdown of the complex international system to allow for easier understanding.

According to Graeger (1996:109), in the search for a more comprehensive concept of security, focus has shifted to a more individualistic human-orientated security and in the process, the whole environment is taken into consideration – this led to the development of environmental security. Graeger (1996:109) emphasises that the degradation of the environment is a threat to all life on earth, and that this phenomenon necessitates environmental security. Likewise, Mathews (1989:162) also suggests that the concept of security should be broadened to include environmental security issues as it transcends national borders.

Williams (2008:9) notes that when the meaning of security has been established and its focal point has been identified, it is necessary to determine what is considered a security issue for this specific referent object. This is known as the *security threat agenda* (Williams, 2014), which involves the placing of the referent object in context and determining the specific threats. Prinsloo

(2016) points out that a security issue is firstly linked to the identified threat against the referent object, and secondly to the risk a threat poses to a referent object.

### **2.2.3 Achieving security for the referent object**

According to Williams (2008:9) the question of how security can be achieved, implies a knowledge base on what security means, what it entails and who the main actors are. He further states that perceptions and methods of thinking about security and secure environments, will impact on how security policies will be proposed. Buzan (1984:111) and Williams (2008:9) are also of the opinion that the concept of total security is unattainable, as all aspects of humanity involve insecurities. Lakhany (2006:37) and Williams (2008:9) indicate that although the state is usually the provider of security, non-traditional/non-state actors can be role-players in providing security as well. Bruderlein (2000:2) also emphasises that non-state actors are vital in providing security especially human security.

In light of the above arguments and their impact on the providing of grounding for Security Studies, it is important to take note of the various theoretical approaches that will influence the way in which the concept of security will be approached. Prinsloo (2016:4) concludes that the theoretical approach chosen by the Security Studies practitioner will alter the referent object and the decisions made about it. The various theoretical approaches are considered below.

### **2.2.4 Remarks on national security**

As was indicated above, national security is a contested concept and the debate on it is an ongoing issue in the study field of Security Studies. Two opposing views have developed in this field of study, namely the traditionalist, military state centric view, and the expansionist view focused on expanding the concept.

During the Cold War, the traditionalist military state centric view had dominance. The end of the Cold War era saw an erosion of this dominance and a movement to a more inclusive or expanded concept of national security. The concept evolved to include a more humane approach that

included any factor that threatens the survival of humans. Food, safety and climate, for example, were therefore included as security factors. Several arguments have been made, however, that when the state has been secured all the other factors will be secured as well. The arguments on national security become more problematic when they involve *realpolitik*, theory and everyday use by politicians. Political statements on “threats to the state” or “it is a national security issue” by a political leader is the proverbial “loaded gun”.

The political statement carries with it an implication of a state-centric approach but also implies that due to the national security nature of the issue at hand, there is a veil of secrecy. There are various examples of politicians who have used this to protect themselves, their political affiliations or interest. In this type of political discourse the conceptual clarity can be distorted and may affect the way in which legislatures define concepts in legislation and policy. Various pieces of legislation can define concepts in either of the various political approaches, but the intent was for a different idea. As explained above, the word *national* in the term *national security* refers to the state, and the use and purpose of the term in political discourse creates a conundrum. The various theoretical approaches will be considered below.

### **2.3 Theoretical approaches**

Security Studies is a study field in the academic discipline of Political Studies; and Political Studies in turn is an academic discipline in scientific branch of the social sciences. Similarly, International Relations is also a study field in the academic discipline of Political Studies. All the disciplines in Political Studies use the same theoretical approaches, such as realism, liberalism, peace studies, Marxism, critical security studies and constructivism, to name but a few. Walt (1998:30) explains the study of international relations as protracted competition between theoretical schools. Three of these theories will be described in the sections below: realism (2.3.1), liberalism (2.3.2) and social constructivism (2.3.3).

### **2.3.1 Realism**

Walt (1998:31) indicates that realism was the most dominant theoretical approach during the Cold War as it provided simple answers for the policy issues of the day. Glaser (2013:16) explains that realism is a theory in international relations that mainly focuses on how states achieve security and that it is considered the most dominant theory in international relations. Glaser (2013:16) also points out that realism consist of various sub-theories and arguments.

Heywood (1997:126) and Viotti and Kauppi (1999:6) provide some commonalities for realism, but Glaser (2013:16-17) identifies seven commonalities in the realism group of theories:

- the anarchy of the international system,
- power as a defining feature of the international community,
- states are unitary actors,
- states are rational actors,
- states assess each other in terms of power and capabilities,
- states are the main actors in the international system, and
- states exist in an international system that is about competition and war.

These seven commonalities illustrate that the state plays a major role in the theory of realism. The state is considered the referent object for realism.

### **2.3.2 Liberalism**

Morgan (2013:34) and Bourne (2014:42) indicate that liberalism enjoyed its golden age after the First World War, under President Woodrow Wilson, with a world aspiring to end all major warfare, only to be confronted by the Second World War and the Cold War. Morgan (2013:34) also

indicated that after the Cold War a resurgence occurred in the theoretical approach. Morgan (2013:34-36) and Viotti and Kauppi (1999:7) distinguish various characteristics of liberalism:

- liberalism is fundamentally optimistic with cooperation possible for peace,
- the international system is not inherently conflict ridden and is evolving
- it consider states as the main actors, but also includes other actors,
- the behaviour of states is explained as the perceptions, preferences and decision-making of an elite grouping in each state as related to its specific political system, and
- international politics change character depending on the actions, decisions and objectives of the various role-players.

In the liberal approach to security, there may be several competing referent objects (Prinsloo, 2016:6).

### **2.3.3 Social constructivism**

Social constructivism or constructivism had its origins in the 1980s and was oppositional to neorealism, but was founded on the idea that all the concepts in international relations are socially constructed (Bourne, 2014:51 & Wendt, 1995:71). Jackson and Sorenson (2006:165) contend that everything in the social world in which humans live, is made by them: all the thoughts, concepts, beliefs and ideas create an understanding between humans and especially between groups of humans, such as states. Jackson and Sorenson (2006:165) explain that the social world consists in part of physical entities such as states, but the physical entity matters only in so far as its meaning is derived from the intellectual element that uses it.

Wendt (1992:396) argues that this is a fundamental principal of constructivism, and he explains that humans act towards objects by means of their understanding of the object. Wendt (1992:397) further postulates that “[it] is collective meanings that constitute the structures which organize our

*actions*". According to Wendt (1995:72) these structures shape the actor's identities and interest. Berger and Luckmann (1966:195-196) conclude that this is the concept of structures and identities in which the social interaction creates identity. Agius (2008:56) observes that when knowledge and practices are shared, they produce norms, and that norms are part of identity formation. Checkel (1999:83) points out that norms assist states in determining their interests.

The materialist view and ideational view are also important components of the constructivist view (Jackson, 2006:165). The materialist view emphasises power and national interest as the driving force in international relations, whereas the ideational view is that ideas matter, the "*intersubjective beliefs*" shared widely among people (Jackson, 2006:165-166). Prinsloo (2016:8) points out that these norms, values and shared identity become the referent object.

#### **2.3.4 Remarks on theoretical approaches**

In the above sections, an overview of different theoretical approaches has been given and it was pointed out how each theoretical approach defines its referent object. All the theoretical fields were affected by the end of the Cold War: paradigms had to be changed, discarded or re-aligned to adjust to the new international environment. Concepts like sovereignty, the Westphalian state and security came under pressure as this realignment was constructed. The state was no longer accepted as the major referent object that defined security in military and territorial terms. Instead, the individual, in the form of human security, became the central focus. It remains problematic to define the concept of security, as the theoretical shifts and debates are constantly taking place.

The slow re-alignment between the state-centric approaches and more traditionalist theories and the new approaches give rise to complicated policy discussions and applications, especially for institutions of state dealing with security. It is in this evolving environment that the South African Constitution was constructed. The new Constitution was to provide a baseline for a society that would prevent all the injustices of the past. It seems somewhat idealistic, but it carried the hopes and dreams of many generations. On the one hand there are idealistic views and on the other

hand the traditionalist realpolitik, with both views incorporated in the Constitution. One such category of institution is the intelligence services.

## **2.4 The South African Constitution**

During the 1990s, when the SA Constitution was conceived, a few interlinking theoretical approaches prevailed. The first was the theory in international relations of neoliberal institutionalism, which is premised on the argument that the right set of institutional incentives will necessarily improve international cooperation (Barkin, 2010:17). For the drafters of the SA Constitution this premise was required to ensure South Africa was accepted among the international community post-apartheid. The failure of internal negotiations prior to the first democratic elections in 1994 led to internal conflict in South Africa (O'Malley, 2004)).

The realist power politics practiced by the internal negotiators became relative, rather than being absolute, and the use of power in this political context was in fact ineffective. The reason is that realist power politics is relational and not about pure military might; in politics power is about getting other actors to do what you want to do, which cannot be attained if the actors are destroyed (Barkin, 2010:18-19). The internal conflict led to the establishment of the United Nations Observer Mission in South Africa (UNOMSA), with the purpose to observe and report on the transition from apartheid in South Africa to a non-racial democratic society. Notably, UNOMSA called on South Africa's National Peace Accord (NPA), signed on 14 September 1991, which established a comprehensive framework to end violence and facilitate socio-economic development and reconstruction (UNOMSA, 2017). Through this discourse, negotiations continued and peaceful elections were held in 1994.

The keyword here is "discourse". In essence, discourse analysis is an engagement with meaning and the linguistic and communicative processes through which social reality is constructed. Discourse can therefore be defined as, basically, the space where intersubjective meaning is created, sustained, transformed and, accordingly, becomes constitutive of social reality (Holzscheiter, 2014:144).

Within the theory of constructivism, discourse has been used to explore the creation and effect of human rights norms; to investigate the powerful conjunction of knowledge and discourse in environmental politics; or to understand processes of identity-building and its transformation (Holzscheiter, 2014:145). The result was that the Interim Constitution as well as the final Constitution signed in 1996 (SAHO, 2017), contained theoretical views from neoliberal institutionalism (Bond, 2000:16), power realism as well as social constructivism. The Constitution itself can thus be described as being constructivist in nature as it provides the rights, norms and values for a new democratic South African society.

South African society – like most other international societies – arose from the Cold War to a changed global environment where every state was redefining and realigning its priorities. As was already indicated in the introductory chapter of this research, South Africa, as most other states during the Cold War, was focused on the traditionalist, realist, state-centric view of security. This was even more the case in South Africa, as the country was under international sanctions, fighting a proxy war in Angola and a low-intensity conflict in Namibia, and it was under pressure from liberation organisations. This reflected in the prominent role given to security structures in the South African government especially during the reign of the then Prime Minister P.W. Botha: when he came to power in 1978, high priority was given to the protection of the state (Swilling & Phillips, 1989:136; Roherty, 1992:80).

The liberation organisations placed a high premium on equality, human dignity, peace and security, as was later contained in the Freedom Charter (Freedom Charter, 1955). These principles would then also be entrenched in the Preamble, Founding Provisions and Bill of Rights of the Constitution of the Republic of South Africa (1996). The liberation organisations were more focused on the human security approach, as opposed to the apartheid government's state-centric approach. Both are contained in the Constitution.

### **2.4.1 Security approaches in the SA Constitution**

This research, as one of its objectives, set out to determine and conceptualise the different perspectives on national security in the Constitution of South Africa. In the above discussion, it became clear that the Constitution follows two different security approaches, namely state-centric security and human security. An understanding of both the human and state-centric approaches is necessary to enlighten the micro-narrative analysis of the Constitution. Accordingly, these approaches will be discussed in the sections below.

#### **2.4.1.1 Human security**

Bourne (2014:180) Buzan and Hansen (2009:36) indicate that human security places human beings as the primary referent object of security. Newman (2010:78) argues that for security policy and analysis to be legitimate and effective in a human security environment, the individual must be the referent and primary beneficiary. Buzan and Hansen (2009:36) argue that when human beings are made the primary referent object, the implication is that issues dealing with poverty, hunger and underdevelopment should be included in security studies.

Ogata and Cels (2003:274) suggest a conceptual shift to *people needs security* instead of other security concerns, embracing the movement away from state centric security. Tsai (2009:21) observes that human security is a “*multi-level, wide-ranging security concept [and] it includes both the traditional and non-traditional elements of security*”. Buzan (1991:49), as mentioned above, is of the opinion that the individual is the most basic unit to which the concept of security can be applied. Bourne (2014:181) explains that human security is a more recent development, which rose in prominence after the Cold War, and that the United Nations (UN) played a significant role in articulating it. Rothschild (1995:54) points out that after every global conflict there is a reconfiguration and a renewed interest in the concept of security, and that after the end of the Cold War, human security became the new idea.

On 31 January 1992 at the end of its 3046<sup>th</sup> meeting, which was held at the heads of state level, the United Security Council (UNSC) released a statement via the *Note by the President of the Security Council* (UNSC, 1992). This Note was a summary of the 3046<sup>th</sup> meeting that was held under the title *The responsibility of the Security Council in the maintenance of international peace and security*. It noted the end of the Cold War and the more favourable circumstances in which the UNSC could discharge its main responsibility concerning the maintenance of international peace and security (UNSC, 1992). What was of importance, however, was a request to the UN Secretary-General (UNSG) to prepare a report on how to strengthen and improve the UN mandate for preventative diplomacy, peacekeeping and peace-making (UNSC, 1992). On 17 June 1992 the UNSG responded to the UNSC request with a report named *An Agenda for Peace* (UNSG, 1992).

The UNSG report (paragraph 16) states that “Each [state] has a special and indispensable role to play in an integrated approach to human security” (UNSG, 1992).

Although the report made human security the focus point, it still recognised the state as the ultimate enabler of human security, while also recognising the pressures building against state sovereignty:

*“... The foundation-stone of this work is and must remain the State. Respect for its fundamental sovereignty and integrity are crucial to any common international progress. The time of absolute and exclusive sovereignty, however, has passed; its theory was never matched by reality. It is the task of leaders of States today to understand this and to find a balance between the needs of good internal governance and the requirements of an ever more interdependent world. Commerce, communications and environmental matters transcend administrative borders; but inside those borders is where individuals carry out the first order of their economic, political and social lives ...”* (UNSG, 1992).

This paragraph from the UNSG report placed human security as a central focus point on the international agenda, but it was a UN specialised agency that cemented the idea of human security.

Rothschild (1995:56), King and Murray (2002:587), Waisová (2003:63) and Bourne (2014:181) mention that in 1994, a UN specialised agency, the UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP), enhanced the ideas of human security even further. The UNDP report, *Human Development Report 1994*, in the first sentence of its introductory chapter, indicated that there can be no peace in the world if humans do not feel secure in their daily lives (UNDP, 1994:1). In chapter two of this report, which was aptly named *New Dimensions in Human Security*, security as a concept is assessed as being too narrow, focusing only on the traditional military threats (UNDP, 1994:22).

The report further notes that for ordinary people, security means “protection from the threat of disease, hunger, unemployment, crime, social conflict, political repression and environmental hazards” and it emphasises that “[i]n the final analysis, human security is a child who did not die, a disease that did not spread, a job that was not cut, an ethnic tension that did not explode in violence, a dissident who was not silenced. Human security is not a concern with weapons – it is a concern with human life and dignity” (UNDP, 1994:22).

The UNDP (1994:22-23) report identifies four main characteristics of human security:

- i. It is universal (crime and narcotics, for instance, affect everybody – both rich and poor – across the globe),
- ii. It is interdependent (an incidence in one country affects people in other areas),
- iii. It is easier to ensure it through early prevention (earlier actions – for instance in basic health care – could have had an impact on the HIV/AIDS pandemic) and
- iv. It is people-centred (focusing on how humans function in society).

In discussing the concept of human security the UNDP (1994:24) report further states that “freedom from fear and freedom from want” are central to the concept of human security and that the concept of security must be changed. The first change is to move away from a total focus on territorial security to a people-centred approach and secondly to move away from security through military intervention to sustainable development (UNDP, 1994:24). The report lists a number of categories of human security (UNDP, 1994:24-25): Economic security, Food security, Health security, Environmental security, Personal security, Community security and Political security.

The UNDP report provided the impetus on a global stage to highlight human security. The UN made several other inputs on human security, especially after the above-mentioned UNDP report (HSU, 2009:8-9 & HSU, 2014:7-8):

Thus, the UN was active in forwarding the agenda of human security. Krause (2005:2-3) argues that the utilisation of human security by the UN, NGOs and other international organisations is not just a labelling exercise, but is changing how states and decision makers are thinking about security. Human security is needed in response to the complexity and the interrelatedness of both old and new security threats – from chronic and persistent poverty to ethnic violence, human trafficking, climate change, health pandemics, international terrorism, and sudden economic and financial downturns. Such threats tend to acquire transnational dimensions and move beyond traditional notions of security that focus on external military aggressions alone (UNTFHS, 2009:6). Human security is also based on a multi-sectoral understanding of insecurities. Therefore, human security entails a broadened understanding of threats and includes causes of insecurity relating to economic, food, health, environmental, personal, community and political security, for instance (UNTFHS, 2009:6).

Krause (2005:3) also indicates that the shifting of the referent object from the state to the individual has created interesting debate between state security and human security. Zambelli (2002:174) reports that the debate did not take place only in the UN, but that it spread to regional

organisations that are now incorporating human security approaches into their agendas. What is of importance, however, is that the referent object is now the individual.

#### **2.4.1.2 State security**

The state security or state-centric security approach has been the centre point of discussion in this research for the purpose of analysing the term *national security*. As was indicated, the state is central in this approach and was especially dominant in the realist approach (Singh & Nunes, 2016:102). It enjoyed a very strong position during the Cold War era and the state was the referent object, or the object to be secured (Lin, 2011:13 & Tripp, 2013:1). As mentioned above, Glaser (2013:16-17) identifies seven commonalities in the realism group of theories:

- anarchy prevails in the international system,
- power is a defining feature of the international community,
- states are unitary actors,
- states are rational actors,
- states assess each other in terms of power and capabilities,
- states are the main actors in the international system and
- states exist in an international system that is about competition and war.

#### **2.4.1.3 Micro-narratives on security approaches in the Constitution**

In view of the arguments above, it is hypothesised that human and state security approaches are prevalent in the Constitution. A micro-narrative analysis of chapter 11 of the Constitution should provide ample proof to support this hypothesis. Chapter 11 of the Constitution provides four guiding principles that govern national security in South Africa:

- (i) *“National security must reflect the resolve of South Africans, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life.*
- (ii) *The resolve to live in peace and harmony precludes any South African citizen from participating in armed conflict, nationally or internationally, except as provided for in terms of the Constitution or national legislation.*
- (iii) *National security must be pursued in compliance with the law, including international law.*
- (iv) *National security is subject to the authority of Parliament and the national executive.”*

The four guiding principles will be unpacked and analysed below:

The first principal is: *“National security must reflect the resolve of South Africans, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life”.*

The etymology of the term *national security* was discussed in 2.2 above, and it was shown that the meaning of the term underlines the security of the nation, and therefore of the state. Furthermore, the term must include the *resolve of all South Africans as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life* – this reflects the *human security* part. The narrative indicating “to be free from fear and want” echoes the UNDP (1994:24) report, which describes the two major components of human security as “freedom from fear and freedom from want”.

*The resolve to live in peace and harmony precludes any South African citizen from participating in armed conflict, nationally or internationally, except as provided for in terms of the Constitution or national legislation.* In this narrative, the phrase *peace and harmony* reflects the prevalence of human security. Conflict prevention and the prevention of destabilisation by prohibiting

qualified persons from being deployed as enablers of conflict, also reflect a human security aspect.

*National security must be pursued in compliance with the law, including international law.* In this narrative “national security” might be pursued within the set rules. In the realism paradigm, state security functions in the anarchy of the international system. According to the United Nations, international law is to prevent conflict at all cost, saving and protecting lives, and therefore a human security consideration.

*National security is subject to the authority of Parliament and the national executive.* The constitution provides organs of state the power to determine what threatens the state. Just as there are some conceptual difficulties with the term *national security*, the interpretation of what it constitutes in the hands of politicians might be problematic. This, however, gives power to the state and falls within the state-centric approach.

As the Constitution was constructed from the lessons that were learned from South Africa’s past and the global searches for the idealistic “free from want and fear” that were prevalent at the time, it is understandable that the issue of human security would be dominant. The application of realpolitik still favours the traditionalist state-centric view. When considering national security, the Matthews Commission (2008:52) clearly recommended a holistic approach which was not in conflict with human security.

## **2.5 Conclusion**

This chapter dealt with the definition of national security and of security in particular. The concept of security was closely linked to the Westphalian state, which focused on external military threats and held state sovereignty in high regard. It was indicated how events in international relations affected manner in which security is perceived, especially during and after the Cold War. Various arguments were discussed, indicating that the traditional, state-centric, military-threat view was no longer the dominant approach to security, and an overview was given of the various theoretical

approaches in Security Studies and of how security and its referent object are understood. It was demonstrated that the current tendency is to follow an approach in which the individual is the ultimate referent object of security. Intelligence as a policy-making tool was discussed and its role in the security apparatus of a state was explained. All this provided a better understanding of the development of security as a concept, how it is encapsulated in the various theoretical approaches, and how intelligence is linked to security. It was also demonstrated in the micronarrative analysis of the Constitution that a constructivist approach was followed. The abuses of the past under a realist state centric approach, allowed for the construction of a society and a Constitution, with the ideals of a more human security approach. In demonstrating that both state and human security approaches are contained in the Constitution, a constructivist balance was constructed, a new society that can learn from the old, but also add the new for a better society.

This information which was explored in this chapter will assist in chapter three when the state security agencies are discussed in terms of their understanding of national security as determined by the Constitution.

## **CHAPTER 3: THE INTERPRETATION OF NATIONAL SECURITY BY THE SSA VIS-À-VIS THE SA CONSTITUTION**

### **3.1 Introduction**

The previous chapters indicated the difficulties concerning the conceptualisation of the term *national security* and the various interpretations in the different theoretical approaches as to what security entails. National security was also examined as it is formulated in the Constitution and it was hypothesised that both human and state security are contained in the Constitution. Through micronarrative analysis it was determined that both human and state security are prevalent. The concept national security is utilised by any department within the security cluster, one of which is the civilian intelligence services. The civilian intelligence services in South Africa are called the State Security Agency (SSA). Due to their unique focus on intelligence, this chapter will elaborate on the links, interactions and implications of the emphasis on national security and intelligence. The focus of this chapter is thus to understand and determine the legal interpretation of national security as it is operationalised by SSA and to identify any discrepancies between the interpretation of the provisions of national security as contained in the Constitution, and the way it is interpreted by the SSA.

Chapter 11 of the Constitution makes provision for the security services, of which the intelligence services form part, and by implication the intelligence services are therefore already involved in the security environment. It is necessary to deal with the concept of intelligence to contextualise the SSA and the environment in which it operates. In explaining this environment it would be necessary to provide a brief historical background on intelligence in South Africa. It is also necessary to indicate that internationally there is a tendency among intelligence agencies to transgress their set mandates.

### 3.2 The concept *intelligence* explained

There are very few states that do not utilise intelligence services to collect information on the intentions of other states and role players to negate any security threat against it. Intelligence also helps to reduce the uncertainty. Herz (1950:157) and Wheeler and Booth (2008:1) discuss this uncertainty in international relations as the Security Dilemma. Horowitz (1995:395) and Wills (2010:11) indicated that for governments to deal with this uncertainty, they made intelligence part of the decision-making process. This utilisation of intelligence as one of the tools to counter the uncertainty is not a new phenomenon, as ancient civilisations such as the Egyptians, Sumerians, Mesopotamian city-states, the Greek city states, the Roman Empire and the Mongol Empire used it extensively (Kemp, 1984:497, Hughes-Wilson, 2004:24, Sheldon, 1989:7, Russel, 1999:6, Lerner & Lerner, 2004:412, Sheldon, 2011:49, & Musco, 2016:1025).

The famous Chinese general, Sun Tzu, wrote in his 6th century work *The Art of War* that intelligence is important as it assists leadership in the decision-making process, to act before the enemy has a chance to react (Keegan, 2000:34):

*“... When you want to attack an army, besiege a city, or kill a person, first you must know the identities of their defending generals, their associates, their visitors, their gatekeepers, and their chamberlains, so have your spies find out ... If an item of intelligence is heard before a spy reports it, then both the spy and the one who told about it die ...”* (Sun Tzu, 1988:172).

The Cold War serves as an example of how intensively intelligence could be used, and Hughes-Wilson (2004:352) describes it as the first real intelligence war. Hughes-Wilson (2004:352) argues that the role players involved in the Cold War engaged each other in such a manner as to ensure a victorious outcome without the need for an atomic holocaust. This allowed for an enhanced role for intelligence organisations in determining the intentions and capabilities of the opposing side (Hughes-Wilson, 2004:353, Kahn, 2006:132).

The above shows that intelligence is closely related to concepts such as security. As was discussed in chapter 2, intelligence – just as security and national security in particular – is not a concept that can easily be defined. Gill and Phythian (2012:10) indicate that it is difficult to define intelligence as a concept and that any accepted defined concept will have to go beyond the “stealing of secrets”, because intelligence organisations engage in more than just that. They make an important point, however, in that intelligence must be considered as a means to an end, with the end being security. Gill and Phythian (2012:10) argue that security is relative, and as such the purpose of intelligence is to bestow a relative security advantage. They furthermore indicate that intelligence should enhance security by providing the customer with a predictive power on which to base its policy decisions (Gill & Phythian (2012:11). The Office of the Director of Intelligence (ODNI) of the United States defines intelligence as follows:

*“Intelligence is information gathered within or outside the U.S. that involves threats to our nation, its people, property, or interests; development, proliferation, or use of weapons of mass destruction; and any other matter bearing on the U.S. national or homeland security. Intelligence can provide insights not available elsewhere that warn of potential threats and opportunities, assess probable outcomes of proposed policy options, provide leadership profiles on foreign officials, and inform official travelers of counterintelligence and security threats”* (ODNI, 2018:01).

This definition seems biased to the traditional state-centric view of security, but includes some non-traditional elements such as threats to its people.

Gill and Phythian (2012:19) define intelligence as:

*“the umbrella term referring to a range of activities- from planning and information collection to analysis and dissemination – conducted in secret, and aimed at maintaining or enhancing relative security by providing forewarning of threats or potential threats in a manner that allows for the timely implementation of a preventative policy or strategy, including, where deemed desirable, covert activities.”*

The aforementioned definition by Gill and Phythian (2012:19) was criticised for focusing on the defensive uses of intelligence. In response, the definition was adapted to read as follows: *“the mainly secret activities – targeting, collection, analysis, dissemination and action – intended to enhance security and/or maintain power relative to competitors by forewarning of threats and opportunities.”* This definition reflects on the security dilemma and the uncertainty associated with the dilemma. Intelligence is thus a mechanism that is utilised by states to ensure that they have enough intelligence to make informed decisions to avert or counter any actions that might be detrimental to its security.

In a more South African context the White Paper on Intelligence has the following definition on intelligence:

*“... intelligence refers to the product resulting from the collection, evaluation, analysis, integration and interpretation of all available information, supportive of the policy- and decision-making processes pertaining to the national goals of stability, security and development. Modern intelligence can thus be described as ‘organised policy related information’, including secret information ...”* (White Paper on Intelligence, 1994).

These various definitions express the nexus between intelligence and national security. It involves the need to know the unknown, to predict and to provide a degree of certainty in an insecure world and it must providing policymakers with just the right critical foreknowledge to make the correct decisions to avert a security threat.

### **3.3 National security in South Africa during the Cold War and apartheid**

The Cold War, which stretched from 1947 to 1991 (Heywood, 2002:131-132), covered several South African administrations: those of Field Marshall J.C. Smuts, Dr D.F. Malan, Mr J.G. Strijdom, Dr H.F. Verwoerd, Mr B.J. Vorster, Mr P.W. Botha and Mr F.W de Klerk. In South Africa the intelligence infrastructure was also influenced by the bi-polar events of the Cold War and as such has developed in an anti-communist regime. At the time South Africa faced liberation

movements, funded mostly by the Communist side in the Cold War, and this ensured clandestine assistance from Western intelligence services to their South African counterparts (Herbst, 2003:81 & O'Brien, 2011:8).

During the era of Dr H.F. Verwoerd, decolonisation was taking place and South Africa was unprepared for these events, especially the violence that erupted after the independence in the former colony known as the Belgian Congo (Pfister, 2007:3). Dr Verwoerd depended on his department of foreign affairs and its officials for intelligence (Pfister, 2007:3). In this time period military intelligence and republican intelligence were created (Grundy, 1983:12 & Pfister, 2007:3). The republican intelligence was an extension of the security police. After Mr B.J. Vorster became prime minister in 1966, he centralised the organisation in his office, allowing it to grow more powerful in government structures. The name was later changed to the Bureau of State Security (BOSS) and it was fully integrated into the newly established (1972) National Security Management System (NSMS), with the State Security Council (SCC) as a centralised controlling body (Hepple, 1969:436-439, Grundy, 1983:12, Venter, 1989:184-185, Pfister, 2007:4, O'Brien, 2011:22-29,). In the aftermath of the information scandal/Muldergate (Marsh, 1991:82-86) which saw the demise of the political careers of Mr Vorster and Dr Connie Mulder (Minister of Information) and also the end of the influence of BOSS (Spector, 2013:1 & Segell, 2018:7).

During this period the new South African Prime Minister, Mr P.W. Botha, came to power and intelligence and security structures gained more prominence in the decision-making structures (Swilling & Phillips, 1989:136; Roherty, 1992:80). Under Mr Botha, BOSS's name was changed twice, first to Department of National Security (DONS) and later to the National Intelligence Service (NIS) (Pfister, 2007:24-25). The military's role in it increased, due to Mr Botha's previous position as Minister of Defence (1966-1980) (Pfister, 2007:4). The roles of the NSMS and SSC structures were enhanced and it included the police, military and civilian intelligence organisations. The SCC was responsible for coordinating efforts to mitigate any threat against the state. The whole SCC structure was, however, also an essential consolidation of political power in the Office of the Prime Minister and later the Office of the Executive President (Swilling

& Phillips, 1989:137; Pottinger, 1988:42-44). What is of note is that the structures and concentration of power were generated around a national security strategy named “Total Onslaught”. In an interview president P.W. Botha stated:

*“... I predicted that there was a Total Onslaught against South Africa. I said so in parliament – there is a Total Onslaught, psychological, political, economic and military. And I said that we should develop a Total Strategy against it ... In the eighties the onslaught against South Africa was bigger than before. It was an onslaught that manifested itself in South Africa, in Angola, in the fall of the Portuguese regions and was inflamed by international powers ...”* (Stemmet, 2005:17).

The main instigator of these threats against the South African state was seen as Communism (Stemmet, 2005:18). In the Internal Security Act (Act 74 of 1982) the definition of Communism is quite extensive, in that includes the originators of Marxist writings by name and any form of communism or permutation thereof, but it is also very descriptive in indicating the link between outside powers, with the same teachings, and their role in threatening the political dispensation South Africa.

The Total Onslaught idea was firstly built on an attempt to distance the then government's racial conception of security to a wider concept that was to include the whole population (Johnston, 1991:151). Johnston (1991:151) also argues that this enlarged concept of security became the justification for the authoritarianism, reform and militarisation of the South African society (Murray, 1987:1). The “Total Onslaught” concept was institutionalised by the centralisation of the executive power in the Botha presidency, military personnel were active in all levels of policy making and the NSMS (referred to above) was established (Johnston, 1991:151).

With the end of the Cold War, the international dynamics changed and this impacted on South Africa. The political situation in South Africa, influenced by events in the international arena as well as internal and external factors, went into a state of transition under the then president, Mr F.W. De Klerk. Before discussing the intelligence structures in transition, however, it is necessary

to review the situation of national security in the South African Constitution. This will create a sounder understanding of the two main approaches in the opposing sides, which were now forced to cooperate, and the impact on the transition period.

### **3.4 National security in post-apartheid South Africa**

In chapter two of this research, national security in the Constitution of South Africa was explored and conceptualised. It is necessary to summarise the findings of the research, to enhance understanding of the South African intelligence structures in transition. The findings were based on a hypothesis that both human and state security approaches were prevalent in the Constitution. A micronarrative analysis of Chapter 11 of the Constitution substantiated the hypothesis that both approaches were prevalent.

Due to South Africa's past, it is understandable that human security would be contained in the Constitution. As there are still real world threats to the state as well, the state-centric approach would also appear. Realpolitik application still favours the traditionalist state-centric view. The Matthews Commission (2008:52), when considering national security from an intelligence perspective, clearly indicated that a holistic approach should be taken and this should not be in conflict with human security. This lack of a holistic approach impacted on the way the intelligence structures evolved, transformed and applied their craft. The main focus of intelligence services, as was indicated above, is to provide information to policy makers on threats to national security. Vitkauskas (1999:10) argues that for an intelligence service to be effective, its mandate must be clear and not as it was during the Cold War, when "*national security*" could be defined as anything. Chapter 11 of the Constitution provides the principles guiding "national security" and establishes intelligence services as part of the security services of South Africa, indicating the integral role it plays in securing South Africa. It should also be noted that the Constitution provides for the national executive in conjunction with parliament to be in control of national security. The president, as head of the national executive, can appoint the heads of intelligence services. It

could be argued that if the executive power has alternate motives, it would then be easy to manipulate the process and control the intelligence services.

### **3.5 South African intelligence structures in transition**

As the De Klerk administration moved into a negotiated settlement, the evolving political dispensation affected all spheres of government and as a result the old existing intelligence structures came up for a full review after the transition to full democracy in 1994. These transition periods can be challenging for intelligence services, especially when transiting from an authoritarian to a more democratic system (Nathan, 2010:196). O'Brien (2011:2-5) observes that the Republic of South Africa has an intelligence dispensation or structures which are constantly evolving due to various historical aspects, such as the changes in government and the threats to these governments, whether perceived or real. In accordance with O'Brien's (2011:2-5) view on the evolving intelligence structures, Nathan (2010:196) notes that in 1994, after the end of apartheid, the intelligence dispensation in South Africa went through major transformations. These transformations were to be based on the values of a new society that is grounded on equality, human dignity and peace and security, which is constructed from the Freedom Charter (1955). The declarations of the Freedom Charter were incorporated in the new structures and baseline documents, as is evident in the White Paper on Intelligence (1994) and the Interim Constitution (Act 200 of 1993).

The White Paper on Intelligence (1994) provided some idea of how these new intelligence structures would be envisaged after the apartheid era. The document also commented on the old national security outlook, which it considered flawed and unrepresentative (White Paper on Intelligence, 1994). The document furthermore provided for a new approach to national security, as the old state/military centric view was considered inadequate. The new approach would be a more inclusive approach to national security, one that would include socio-economic, environmental, social justice, sustainable economic development aspects, and proposed a more collective approach to conflict management (White Paper on Intelligence, 1994). The same

principles were reflected in the White Paper on Defence (1996), which styled national security as one that is no longer dominated by a military view on security but as a broadened concept that focuses on individual security.

These various white papers formed the basis on which the guiding principles on national security was formulated and contained in the Constitution of the Republic of South Africa (1996). The guiding principles must be considered against the Freedom Charter (1955), which main aim was to address the injustices of the past. These principles were incorporated in to Constitution of the Republic of South Africa (1996) and permeate the whole document, but are especially visible in the Preamble, Founding Provisions and Bill of Rights. These principles also set the groundwork for the intelligence structures to be transformed.

The new intelligence services came in to being on 1 January 1995 with an amalgamation of the NIS, the Pan African Security Services (PASS), the Department of State Security (DIS), the Venda National Intelligence Service (VINS), the Transkei Intelligence Service (TIS), the Bophuthatswana Intelligence and Internal Service (BIIS), and the National Intelligence Agency (NIA) and the South African Secret Service (SASS) (Africa, 2012:107).

New pieces of legislation were tabled to make provision for the amalgamation. The Intelligence Services Act (Act 38 of 1994), for example, determined that the amalgamation was intended *“[t]o regulate the establishment, organisation and control of the National Intelligence Agency and the South African Secret Service; and to provide for matters connected therewith”*.

The National Strategic Intelligence (Act 39 of 1994) was legislated with the aim: *“To define the functions of members of the National Intelligence Structures; to establish a National Intelligence Co-ordinating Committee and to define its functions in respect of intelligence relating to the security of the Republic; and to provide for the appointment of a Co-ordinator for Intelligence as chairperson of the National Intelligence Co-ordinating Committee, and to define his or her functions; and to provide for matters connected therewith”* (National Strategic Intelligence (Act 39 of 1994).

Although this act does not define the term “national security”, it does refer to *national security intelligence* and *national strategic intelligence*. The act defines these terms as follows:

“ ‘*national security intelligence*’ means intelligence which relates to or may be relevant to the assessment of any threat or potential threat to the security of the Republic in any field; ‘*national strategic intelligence*’ means comprehensive, integrated and estimative intelligence on all the current and long-term aspects of national security which are of special concern to strategic decision-making and the formulation and implementation of policy and strategy at national level” (National Strategic Intelligence (Act 39 of 1994).

The definition of *national security intelligence* refers to “*any threat or potential threat to security of the Republic in any field*” and the deduction can be made that the security mentioned here, refers to the state as the referent object, but the fact that security is understood to be in “*any field*” indicates a widening perception of security.

The second piece of legislation was the Intelligence Services Oversight Act (Act 40 of 1994), which made provision for “*the establishment of a Committee of Members of Parliament on Intelligence and to define its functions; and for the appointment of Inspectors-General of Intelligence and to define their functions; and to provide for matters connected therewith*” (Intelligence Services Oversight Act (Act 40 of 1994).

Africa (2012:107) indicates that although much thought went into the negotiations before these pieces of legislation, little or no attention was given to the mechanics of intelligence and that the intelligence structures would have to do this by themselves. In 2003, a Ministerial directive named “*NIA’s mandate and operational policy*” was produced and focused on five distinct areas for expanded collection: political intelligence, economic intelligence, organised crime and corruption, border intelligence and special events (Africa, 2012:117). This was later criticised as a reason for operational uncertainty with regard to the mandate (Africa, 2012:117).

There were various other changes to legislation up to the point in 2009 when the SSA came into being. Minister Sisulu instituted changes under the Intelligence Services Act (Act 65 of 2002), that created an Intelligence Academy (SANAI), a training oversight board, a council on conditions of service (ISC) and electronic communication were reorganised (Intelligence Services Act (Act 65 of 2002)). Minister Kasrils, who followed Minister Sisulu as Minister of Intelligence, oversaw the intelligence environment at a challenging period for South African politics, with various faction battles within the ruling party affecting government functionality, but which specifically impacted on the intelligence service. It is thus now important to focus on two documents – the Project Avani Report and the Matthews Report – that were produced during the time of Minister Kasrils, as it sheds light on what occurred in the intelligence services.

### **3.5.1 Project Avani and the Matthews Commission**

The Office of the Inspector General of Intelligence released its report on surveillance activities (Project AVANI) of the NIA on 23 March 2006 and the Ministerial Commission on Intelligence released their report – *“Intelligence in a Constitutional Democracy”* – to the Minister of Intelligence on 10 September 2008 (Inspector General of Intelligence Report, 2006:01 and The Matthews Commission, 2008:1). Both these reports were requested in response to embarrassing intelligence mistakes. One of the first of these embarrassing incidents was revealed on 20 November 1999, when newspaper headlines focused on an amateurish placement of a surveillance camera in front of the German Embassy in Pretoria (De Wet, 1999:01). Denials were issued by everyone who could have been involved, but all the evidence pointed to the intelligence agencies. Although this incident was embarrassing in itself, it would be the political infighting in the ruling party that would have the biggest impact on the intelligence structures.

The Inspector General of Intelligence (2006:3) did an investigation into the legality of the surveillance operations carried out by the NIA on Mr Sakumzi Macozoma, and later expanded it to include the whole Project Avani, Political Intelligence National Stability Assessment Project. Mr Macozoma approach the then Minister of Intelligence and requested that the NIA should stop

their surveillance of his family and himself (Brümmer & Sole, 2007:1). The basis for the surveillance, according to NIA, was that it suspected French foreign intelligence was attempting to recruit Mr Macozoma, and that he was part of a counter-intelligence project, Project Fairwood (Brümmer & Sole, 2007:1 & Mbanjwa, 2007:1). The end of this crisis saw the Director General of NIA and two other officials relieved of their duties (Matthews Commission, 2008:26). What was of importance, however, is that the intelligence apparatus was misused and Project Avani indicated that misconduct by intelligence operatives occurred outside the set mandate for the intelligence structures (Nathan, 2009:26; Cepik & Ambros, 2014:542). This misconduct indicated that there was a grouping in the intelligence community that felt they could operate outside the set parameters of their mandate and the Constitution and thereby could become a threat to the constitutional dispensation (Nathan, 2010:205-207; Cepik & Ambros, 2014:542).

The Ministerial Review Commission on Intelligence Final Report, *Intelligence in a Constitutional Democracy*, provided its final report to the Minister of Intelligence on 10 September 2008 (Matthews Commission, 2008:2). The Review Commission was established to “*strengthen mechanisms of control of the civilian intelligence structures in order to ensure full compliance and alignment with the Constitution, constitutional principles and the rule of law, and particularly to minimise the potential for illegal conduct and abuse of power*” (Matthews Commission, 2008:9).

The second chapter of the Commission focused on the “*Key Principles and Perspectives on Security and Intelligence*”, indicating that intelligence services are given special powers that must be used responsibly as it can easily be misused. It is also argued in this chapter that the Constitution is the ultimate guideline on how national security should be approached (Matthews Commission, 2008:10). The third chapter focuses on the 1994 White Paper on Intelligence that set the framework in place for a new intelligence dispensation focusing on democracy, the rule of law and the holistic approach to security. The White Paper on Intelligence is also criticised for not providing policies on intelligence operations and functions. These were only provided in interdepartmental documents that were classified. Apart from this lack of policy guidelines, the White Paper is also criticised for providing a mandate that is too wide for NIA:

*“The broad mandate has led to a lack of clear and consistent focus, created pressure for analytical breadth rather than depth and left the Agency over-extended. It also creates the risk that NIA neglects its most important and difficult function, which is to identify, analyse and forewarn government about violence and other extreme threats that entail criminality”* (Matthews Commission, 2008:11).

The fourth chapter dealt with the ministerial control over intelligence and there was some criticism of areas that were not covered adequately by legislation (such as how intelligence is shared, intelligence should only be shared with ministerial approval, intelligence shared with the presidency must be shared with the minister, and access to the president by heads of intelligence structures should be regulated) (Matthews Commission, 2008:12). The fifth chapter deals with the Inspector-General of Intelligence, how its role should be confined to an ombud function and how the oversight of intelligence failures should be determined in the oversight structures such as the presidency, the ministry, the oversight committees and parliament. Chapters six to eight deal with the mandate of NIA, the conducting of intrusive operations and the interception of electronic communications. Chapters nine to twelve deal with internal control and policies, financial controls and oversight, institutional culture, transparency, secrecy and the provision of information (Matthews Commission, 2008).

The Matthews Commission’s Report was an excellent document that addressed many of the inadequacies that were identified due to the Project Avani debacle. Its recommendations would have remedied many of these shortcomings (Duncan, 2018:1 & Watson, 2018:1). One of the most important recommendations was a new White Paper on Intelligence to address the weaknesses in strategy, policy and institutional arrangements. Aspects that should be covered by the new White Paper on Intelligence, according to the Matthews Commission, should be:

- *“The mandates, functions and powers of the intelligence organisations, including oversight of, and controls over, their powers to infringe constitutional rights.*

- *Executive control and accountability, and the relationship between the intelligence services and the President, Cabinet and the Minister for Intelligence Services (hereafter “the Minister”).*
- *Civilian oversight, including oversight by the Joint Standing Committee on Intelligence (JSCI) and the Inspector-General of Intelligence (hereafter “the Inspector-General”).*
- *The relationship between the different intelligence organisations in South Africa, the co-ordination of intelligence and the functions of the National Intelligence Co-ordinating Committee (NICOC).*
- *Relations with foreign intelligence services and sharing intelligence about South African citizens with foreign governments.*
- *Secrecy and transparency, covering both the provision of information and the protection of information.*
- *The institutional culture of the intelligence services and ensuring respect for the Constitution and the rule of law.*
- *The process of preparing a new White Paper should include consultations by the Minister and parliamentary hearings and debate following a call for public submissions” (Matthews Commission, 2008:290).*

The report was, however, caught in the middle of political turmoil in the ruling party, which saw president Thabo Mbeki forced to resign in September 2008, followed by the resignation of various other ministers (Percival, 2008:1).

### **3.5.2 The State Security Agency and national security**

On 10 May 2009 Mr Zuma, the new president, announced his new cabinet. The Ministry of Intelligence was changed to the State Security Agency (SSA), headed by a Minister of State Security (Merten, 2015:1). The new Minister of State Security, Dr Siyabonga Cwele, was quick

to rearrange the intelligence structures. The main reason forwarded for this restructuring, was to streamline administrative processes, refocus intelligence priorities, enhance overall operational effectiveness and centralise the budget (Cwele, 2009:1). On 11 September 2009, a proclamation (59 of 2009) by the president saw the first amendments to the schedules of the Public Service Act (1994), in which the names of the old intelligence structures were removed and the new SSA designations were inserted (South Africa, 2009:5). The presidential proclamation was followed by a ministerial notice in which the necessary name changes and positions were affected (South Africa, 2009a:3-16).

The SSA came into being in 2009 through an amalgamation of all the former civilian intelligence structures and by placing them in one command and control structure. These structures were the South African Secret Service (SASS), the National Intelligence Agency (NIA), the National Communications Centre (NCC), the South African National Academy of Intelligence (SANAI), the Office for Interception Centre (OIC) and the Electronic Communications Security (Pty) (News24, 2009:1 & SSA, 2016:1).

To legitimise the restructuring, certain pieces of legislation had to be amended or created:

- The General Intelligence Laws Amendment Act (Act 11 of 2013) provided the basis for the creation of the SSA,
- the National Strategic Intelligence Act (Act 39 of 1994), the Intelligence Services Oversight Act (Act 40 of 1994) and the Intelligence Services Act (Act 65 of 2002) were amended
- the Electronic Communications Security (Pty) Ltd Act (Act 68 of 2002) was repealed.

These new, amended and repealed legislation, however, did not address the problem of what national security is and how the SSA will operationalise it, due to a lack of specific and clear policies and guidelines.

In his 1 July 2009 budget speech, Dr Cwele indicated further possible changes to the intelligence structures and a different approach to national security. The budget speech identified the human security aspects, but indicated that in the post-apartheid era and the transition to democracy, national security evolved and needed to be re-evaluated (Cwele, 2009:2). The budget speech highlighted aspects as contained in the Matthews Commission, for example that national security should include the more traditional views, but also a more holistic approach (Matthews Commission, 2008:67) of including human security, with an interdependence between the two. The threats identified in the speech, were indicative of this new approach:

*“This is particularly necessary given the threats we face today. They originate both in the domestic and foreign arena; they stem from state and non-state actors; and they are interconnected, wide-ranging and know no borders. These threats encompass poverty, underdevelopment; environmental degradation, food insecurity and increased competition for scarce natural resources; pandemics and disease; and human and natural disasters. They include intra and inter-state conflict; terrorism; nuclear, chemical and biological weapons proliferation; espionage; subversion; sabotage; trans-national syndicated crime and corruption; smuggling and human trafficking; critical infrastructure and systems failure. These threats, if realised, pose a danger to the survival of our constitutional order; the integrity of our state; the growth of our economy; and the well-being and livelihoods of our people ...”* (Cele, 2009:2).

Thus, the non-traditional security aspects such as human security and environmental security are covered, as well as the traditional security of the threats to the state. The speech also highlighted the approach to national security:

*“... Develop a common approach to deal with the threats to national security. Our approach to national security since 1994 has largely been determined by the requirements associated with our democratic transition. However, South Africa and the world have since changed. We therefore need to re-evaluate our strategic interests and what might threaten them. As part of this process, we need to ensure that we are better organised and have the requisite capacity to respond with*

*speed and precision to major threats. In the next five years, we will prioritise the finalisation of the National Security Strategy to guide our common approach in upholding national security. This will also spell out a management system that will ensure that all the capabilities of our government and nation are effectively harnessed and coordinated to better deal with threats confronting us ...”* (Cwele, 2009:3).

The problem with the statement is that the National Security Strategy (NSS) is a highly classified document and thus no one outside the intelligence structure can comment or critique the approach and definitions contained in the document.

The Zuma administration’s intelligence restructuring and that of the old Botha administration are similar in that neither addressed the operational vagueness within the intelligence structures, but was more concerned with centralising political control over the intelligence services.

In the 2010 budget speech, Dr Cwele, South Africa and the rest of the world were focused on the Fifa World Cup that was to be held in South Africa, but of importance was that he indicated that the restructuring of the intelligence services were complete, that the White Paper on Intelligence was to be reviewed and that the NSS were in progress (the NSS was approved in 2013 by Cabinet and classified Top Secret (Mahlobo, 2016:6). The latter document most likely would contain a definition on National Security. The review of the White paper on Intelligence was a recommendation of the Matthews Commission (Matthews Commission, 2008:75). After the intelligence structures were consolidated into one organisation, it would seem to be a “business-as-usual” approach, notwithstanding the criticism aimed at the Intelligence organisations. All the recommendations to assist the intelligence organisations seem to have been ignored. It should also be noted, however (as was indicated above), that all this occurred against the backdrop of President Zuma consolidating his power. This was apparent in the contradiction of what was being said by the Minister of State Security and by the legislation governing it. The minister, as indicated above, in his 2009 budget speech indicated the new approach to national security (Cele, 2009:2). On 15 March 2012, however, Mr Dennis Dlomo, Acting Director General of the

Department of State Security, in response to a question by the Ad Hoc Committee on the General Intelligence Laws Amendment Bill (National Assembly) on the mandate of the intelligence services with regard to national security and the definition of national security, responded that there was a working definition as contained in the State Information Bill (Parliamentary Monitoring Group, 2012). The State Information Bill and the General Intelligence Laws Amendment Act defines national security as follows (State Information Bill, 2010 & General Intelligence Laws Amendment Act, 2013):

*“national security” includes the protection of the people of the Republic and the territorial integrity of the Republic against—*

- (a) the threat of use of force or the use of force;*
- (b) the following acts:*
  - (i) Hostile acts of foreign intervention directed at undermining the constitutional order of the Republic*
  - (ii) terrorism or terrorist related activities;*
  - (iii) espionage;*
  - (iv) exposure of a state security matter with the intention of undermining the constitutional order of the Republic;*
  - (v) exposure of economic, scientific or technological secrets vital to the Republic*
  - (vi) sabotage; and*
  - (vii) serious violence directed at overthrowing the constitutional order of the Republic;*
- (c) acts directed at undermining the capacity of the Republic to respond to the use of, or the threat of the use of, force and carrying out of the Republic’s responsibilities to any foreign country and international organisations in relation to any of the matters referred to in this definition, whether directed from, or committed within, the Republic or not, but does not include lawful political activity, advocacy, protest or dissent;*

The only mention of South Africa's people was in the start, where reference is made to *the protection of the people of the Republic*. The rest of the definition is based on the old state-centric approach of national security (Klaaren, 2015:291). The Matthews Commission is clear that the Constitution allows for both a state-centric and human security that are not in conflict with each other (Matthews Commission, 2008:52-53). The fact that the Minister of State Security maintains that the Matthews Commission has no status in government, leads to the conclusion that the report by the Commission is totally ignored. Furthermore, during a sitting by the National Assembly Ad Hoc Committee on the General Intelligence Laws Amendment Bill on 27 March 2012, Minister Cwele, pointed out that the Matthews Commission Report had no status in government (Parliamentary Monitoring Group, 27 March 2012).

In 2015 the new Minister of State Security in his address at the Human Rights and National Security Seminar indicated historical views of national security are inadequate and that the non-traditional threats should be included in a more comprehensive approach to security (Mahlobo, 2015). This is once again contradictory of what is reflected in legislation. Also in 2015, the media group Al-Jazeera revealed a large volume of classified documents from the SSA (Jordan, 2015:1). These documents shed light on various intelligence failures, competition between intelligence organisations and major trading partners attempting to steal state secrets. The SSA also decided in 2015 to use jamming devices during the State of the Nation address to prevent signals from leaving Parliament (Davis, 2015:1). The Supreme Court of Appeal subsequently declared this unconstitutional and unlawful in 2016 (BusinessTech, 2016:1).

In a speech on 4 October 2016 at the Mpumalanga Safety and Security Summit, minister Mahlobo referred to the non-traditional security aspects that must be addressed, but then referred back to the fact that national sovereignty cannot be secured if emerging threats are not assessed (Mahlobo, 2016:5). The minister also indicated in his speech that there certain role players are involved in undermining national security. He identified these role players as follows:

*“These actors are in mass media, non-governmental organisations and community based organisations, foreign multinational companies, funders of opposition, religious and student organisations, prominent and influential persons ...” (Mahlobo, 2016:5).*

The identification of almost anybody as an opponent of the state creates the impression that there is lack of directed intelligence at the SSA, with no clear picture of what a security threat is.

If the history of the intelligence structures since 1994 are considered it would seem that when the new intelligence dispensation was formed, the lack of operational direction accumulated over several years, during which a constitutional based intelligence service should have formed. The fact that political infighting between two camps could contaminate the intelligence organisations so that they could be used in this manner, could be a sign that the organisations lack a true understanding of what their set mandate were, as described the Constitution. The amalgamation of the various organisations in 2009 to form the SSA made sense from a command and control point of view, and probably financially even more so. The problems with the organisations and their mandates were inherited by the SSA, however. The amalgamation must also be seen against the political environment, where the Zuma administration was consolidating power. Nathan (2010:195) and Dearlove (2010:47) argue that the nature of intelligence structures, and the secrecy and access to clandestine information coupled with the close proximity of intelligence structures to political power/leaders, create an opportunity for abuse. It is, however, not just the SSA that appears to have difficulties in understanding and operationalising its mandate – a comparison with the US intelligence structures provides ample proof of this.

### **3.5.3 Summary**

The similarities between the intelligence history of South Africa and that of the USA, are quite evident. There is a before and after Cold War period, which saw changes in the intelligence environment of both jurisdictions. The abuses that took place during the Cold War were largely revealed and actions were taken to remedy this. Mr Barry Gilder, a former coordinator of the

National Intelligence Coordination Committee (NICOC), states that when the intelligence community was changed, two different groups were placed together, with

*“different philosophies, different ideologies, and different understandings of what a post-apartheid government should look like and do, what its foreign policy should be, what its security concern should be ... We had to build our services on the basis of what existed. And when you have intelligence services that are created after that background, after that history, you end up with mixed professionalism ... Human beings staff intelligence services. We sometimes mess up ...”* (Jordaan: 2015:1).

Prof. Jane Duncan observed that South Africa looked at the US post 9/11 for how to reform and decided to utilise centralisation, which is problematic since centralisation without the necessary transparency can lead to abuses. Another aspect that was addressed by Prof. Duncan is the fact that the new centralised organisation (SSA) took on human security as a doctrine, which can be dangerous for new organisation in a young democracy, and that human security can be problematic as it is *“analytically incoherent”* (Jordaan: 2015:1).

The SSA, just like its international counterparts, has overstepped its mandate due to a lack of clear operational definitions, procedures and internal controls. Political interferences creates havoc in any organisation that has to take its prime direction from a Constitution. The SSA was created by including the agencies and personnel that were already at the centre of attention due to their abuse of their powers.

When considering the four guiding principles in the Constitution (as discussed in the previous chapter), the acts by the SSA and its predecessors have room for improvement:

- *“National security must reflect the resolve of South Africans, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life.*

- *The resolve to live in peace and harmony precludes any South African citizen from participating in armed conflict, nationally or internationally, except as provided for in terms of the Constitution or national legislation.*
- *National security must be pursued in compliance with the law, including international law.*
- *National security is subject to the authority of Parliament and the national executive”*  
(Constitution, 1996).

“The SSA’s acceptance of a definition of national security that still uses the traditional state-centric view, negates the human security component, as determined by the Constitution. The constant contradictions by the SSA media releases and statements, which advocates human security but represent something different, show the policy incoherence. A clear conceptualisation is needed to determine for the SSA what national security pertains. The Matthews Commission has identified a need for holistic view, with one approach complementing the other, and not a constant competition between the two. By jamming the signals in parliament, the SSA showed its ignorance of the Constitution, but also laid bare an arrogance and a perception of being above the law. The high levels of secrecy surrounding the intelligence organisations are also contradictory with the Constitution’s ideas of freedom. There must be more openness, especially towards the oversight bodies. Oversight and control have been a major point of contention among the intelligence services.

The Constitution, in article 199, is clear on what is expected of the security services, of which the intelligence services form part. Article 199 states the following:

*“Establishment, structuring and conduct of security services*

199. (1) *The security services of the Republic consist of a single defence force, a single police service and any intelligence services established in terms of the Constitution.*

- (2) *The defence force is the only lawful military force in the Republic.*
- (3) *Other than the security services established in terms of the Constitution, armed organisations or services may be established only in terms of national legislation.*
- (4) *The security services must be structured and regulated by national legislation.*
- (5) *The security services must act, and must teach and require their members to act, in accordance with the Constitution and the law, including customary international law and international agreements binding on the Republic.*
- (6) *No member of any security service may obey a manifestly illegal order.*
- (7) *Neither the security services, nor any of their members, may, in the performance of their functions—*
  - (a) *prejudice a political party interest that is legitimate in terms of the Constitution; or*
  - (b) *further, in a partisan manner, any interest of a political party.*
- (8) *To give effect to the principles of transparency and accountability, multi-party parliamentary committees must have oversight of all security services in a manner determined by national legislation or the rules and orders of Parliament.”*  
(Constitution, 1996).

Sub-paragraphs 5 to 8 prohibit the influence of political parties in the intelligence services and the obeying of illegal orders; and demand that oversight based on democratic design with transparency and accountability should occur. The intelligence services seem to have failed dismally with regard to paragraph 5, which requires members of the intelligence service to be trained in their Constitutional obligations and how to act accordingly. It would seem that these baseline principles set out in the Constitution were ignored.

### 3.6 Conclusion

It was shown that *national security* is a difficult concept to define and that it is still evolving. It was indicated that intelligence has been used since ancient times. It has evolved to become part of the decision matrices that states use to limit uncertainty in the chaotic international system. It was shown how in the South African context, the Cold War era influenced the apartheid intelligence services and how political struggles in a ruling party can affect the future of intelligence services. It was also shown how dominant political figures can control intelligence services to their personal benefit. The end of the Cold War saw the end of apartheid and a transition to democracy that would have an impact on the intelligence services. A new approach, away from state-centric national security, was adopted and it included human security. These fundamentals were contained in the new Constitution. It was also discussed how the new intelligence agencies were diverted away from their mandates due political power struggles in the ruling party and how these structures were utilised in these conflicts. It was also indicated how the concept of national security as contained in the Constitution and the White Paper on Intelligence, which held a holistic view on intelligence, created conceptual problems for the intelligence agencies. There were indications of transformations in the intelligence services but it involved a power consolidation, rather than any expansion of the understanding of the set mandates.

The SSA's understanding of national security appears to be the state-centric view only. They protect the state, but in doing so, they also protect the political party and its leader. The reason for this is possibly that the organisations that were amalgamated after 1994, all came from the Cold War era. They were therefore naturally focused on the well-being of the state and were at the time of amalgamation still transforming and making paradigm shifts. Another possible reasons are insufficient and unclear operational procedures, instead of clear guidance on what the new national security entailed. Furthermore, there is a lack of efficient oversight, with incompetent politicians in oversight committees and ombud positions. A political dispensation that allows corruption to infiltrate all government systems, is also a contributing factor.

It was also indicated that US intelligence agencies, like their South African counterparts, overstep the boundaries of their mandates. The restructuring and centralisation of the organisations in the two countries are comparable. The US oversight mechanisms seem to be more diligent than their South African counterparts, however. There also seem to be more openness in the US intelligence community and more interaction with institutions, the academia and civil society on many issues. The South African experience, in contrast, seems to be one of secrecy.

The South African Constitution and the White Paper on Intelligence created the necessary philosophies to guide national security in South Africa. The lack of specifics might have been an oversight in such a young democracy. This lack of specifics resulted in discrepancies about what national security is, which permeated the intelligence system. These conditions, combined with the Zuma administration that was determined to consolidate power and prevent effective government, prevented the SSA from developing an institutionalised understanding.

The final chapter of this study will make certain recommendations on how the SSA can remedy the current state of affairs.

## **CHAPTER 4: CONCLUSION AND RECOMMENDATIONS FOR ALIGNING THE DIFFERENT INTERPRETATIONS OF NATIONAL SECURITY**

### **4.1 Introduction**

The main focus of this study was on the understanding and evaluating the concept of national security and its interpretation by the SSA, and to determine if this interpretation is consistent with the concept as it is contained in the Constitution. This was found not be the case.

The interpretation of national security through theoretical approaches and determining and conceptualising it by means of the Constitution, provided a basis for determining how the SSA operationalised and legally interpreted the concept of national security. Having established the SSA's interpretation of national security, the focus shifted to the discrepancies between the SSA's interpretation and the concept as it is dealt with in the Constitution.

### **4.2 Discrepancies and recommendations**

This chapter will highlight the discrepancies and offer certain recommendations for aligning the two variant interpretations of the concept of national security and will present concluding remarks.

#### **4.2.1 The conceptualisation of national security**

It was determined in Chapter two that the conceptualisation of *national security* by the various theoretical approaches are quite diverse. It was concluded that after the Cold War, concepts such as national security and sovereignty came under pressure in the various areas of study. The dominance of the realist approach of a military state-orientated concept of national security was challenged, but it would also lead to increased debate in the various theoretical approaches on what security – and national security in particular – entails. The interpretations of the concept are therefore dependent on the interpretation of the policymaker on national security. The different interpretations of the concept are also evident in subsequent legislations (see sections 3.5.2.). To

rectify this, it is recommended that a common or universal definition is crafted and consistently utilised throughout the security cluster in South Africa, especially to guide the legislation of the SSA.

#### **4.2.2 The SSA's interpretation of the concept of national security**

Having established that the Constitution includes both human- and state-centric security, it was necessary to discuss how the SSA understood national security and how they implemented it. To contextualise the SSA's understanding of national security, it was indicated in section 3.2 how the concept of intelligence and national security are interlinked. It was discussed how intelligence forms part of the South African security apparatus, as determined by the Constitution, and that intelligence has become an integral part of policymakers' decision-making matrixes. The problem with the SSA's approach was that its definitions of only a state-centric approach was creating policy incoherence as indicated section 3.5.2. The Minister was creating expectations on a new human security approach but legislation provided different definitions of state-centric approaches. It was argued in sections 3.4 and 3.5 that the SSA's interpretation of national security, their actions, public statements and sponsored legislation are all contrary to what is contained in the Constitution.

The SSA is comfortable with the state-centric view on national security and does not seem to have difficulty in conceptualising it, or defining it in legislation. It is the human security part, however, that is problematic and in this regard reference was made to Prof. Jane Duncan. She argues that it can be dangerous for the SSA to tackle a concept such as human security – which she describes as “analytical incoherent” – in a very secret, centralised and politically unstable young democracy such as South Africa. In a quick comparative analysis between the SSA and its US counterparts, as mentioned in section 3.5.3, the SSA is not the only intelligence organisation that has difficulty in staying within the boundaries of its mandate. The recommendation is once again a universal acceptable definition within the South Africa Security cluster.

### **4.2.3 The SSA and secrecy**

In section 3.5.2, it emerged that secrecy surrounding the SSA is conducive for creating an environment for abuse due to the nature of its work. History has indicated (see section 3.3) that secrecy can be abused. It is recommended that the SSA create more opportunities to interact with the public, building trust and be more open about the workings.

#### **4.2.3.1 Documentation**

Policy documents are overclassified, and it is recommended that the SSA should lift the secrecy when concepts such as national security are to be discussed. An open academic advisory structure should be created for the security apparatus, and the debate should be open for qualified academics in Security Studies and other appropriate fields to participate. This should most probably include constitutional and legal experts. This will create a more holistic approach towards the concept of national security and align the understanding of national security with that of the Constitution. The recommendation pertaining to secrecy also applies to documents such as the NSS (see section 3.5.2). This baseline document drives the focus of the SSA with regard to potential threats. If a consensus could be reached in the NSS about what national security for South Africa entails, the threats would be much more easily be defined. This will ensure the alignment of the SSA's view on national security with that of the Constitution. An education mechanism could possibly be included to educate oversight mechanisms, key political personnel and the public on what national security entails, to prevent the abuse of the concept. In addition, a civic awareness should be created, that can lead to a better trust relationship with the SSA.

### **4.2.4 The White Paper on Intelligence**

Section 3.5 indicated that the White Paper on Intelligence provided for a more holistic view of national security and how new dispensation after apartheid would approach national security and intelligence. It was indicated in sections 3.5.1 and 3.5.2 that the Matthews Commission Report advised that a review was necessary because there was insufficient guidance and because

mandates were too wide. It is thus recommended that a review panel or commission be appointed to review the White Paper on Intelligence so that it makes provision for a holistic approach to national security, and so that it specifies the practical implications for the intelligence community.

#### **4.2.5 Legislation**

This study has indicated in section 3.5. that the various pieces of legislation (the National Strategic Intelligence Act (Act 39 of 1994), the State Information Bill, and the General Intelligence Laws Amendment Act (Act 11 of 2013)) which are sponsored by the SSA, contains definitions that are aligned with the realist approach or state-centric view. It is recommended that after the first two recommendations have been applied, proposals for a review of the security legislation should be made to align the definitions with the new definitions of national security that incorporates both the human- and state-security views.

From a theoretical point it could be concluded that the above-mentioned contradictory laws would not have contained the realist state-centric definition of security if the SSA had shown awareness of the constructivist theoretical foundation of the Constitution. As was discussed in sections 3.5.2 and 3.5.5, the implication of these contradictory laws was that the SSA had a policy incoherence that left the organisation rudderless and vulnerable and which allowed it to be used in political infighting. Furthermore, the speeches and declarations by its leadership reflected the contradiction between what was determined by the Constitution's constructivist views (a balanced approach including both human and state security) and the realpolitik demands of state-centric security. The state-centric realist approach was even further enhanced by the Zuma administration, which came under pressure and started to see any criticism as a threat to the state.

#### **4.2.6 Oversight**

Section 3.5.1 highlights the recommendations by the Matthew Commission on the lack of oversight in the intelligence environment. This lack of oversight has contributed to the policy

incoherence and the abuses in the SSA. It is recommended that oversight mechanisms such as the Inspector General and Joint Standing Committee on Intelligence should be more robust in their role and duties. It should be considered to allow civil society to play a more active role in the oversight function, and it should also be considered to involve experts in the area of Security Studies in the process. The oversight committee should especially scrutinise operations that are labelled under a general term as a threat to national security.

#### **4.2.7 Appointment of key personnel**

The discussions of Project Avani and the Matthews Commission in section 3.5.1 highlighted the fact that personnel were relieved of their duties due to the abuse of their power. It is recommended that appointments to these sensitive positions should be scrutinised by Parliament and civil society to prevent abuses of the system. Furthermore, an oath of allegiance to the Constitution could be instituted for the security structures as an attempt to institutionalise and create a culture of adherence to the legality of the Constitution.

#### **4.2.8 Political neutral**

In section 3.5 the traditional phase of the intelligence structures was discussed. Historical events which led to the merging of the components to form new intelligence structures, were highlighted. What was important in these events, however, was the new legislation that was formulated to create these new structures and the definitions of national security. It was of note that the definitions, notwithstanding the White Paper on Intelligence, were mostly state-centric. It was therefore deduced that realpolitik still favoured the realist- or state-centric approach to national security and that human security was still a new and vague concept. It was also argued that there was no real operational guidance for intelligence structures as to what their mandate was with regard to national security. This uncertainty opened the intelligence structures for abuse.

In section 3.5.1, with reference to Project Avani and the Matthews Commission, it was shown how political infighting has infiltrated the intelligence structures. This political interference, combined

with the uncertainty surrounding the mandate and national security, was responsible for the failure of the structures. Both the reports of Project Avani and the Matthews Commission were briefly discussed, with Project Avani focusing on more operational weaknesses that can be attributed to mandate, whereas the Matthews Commission made several recommendations.

#### **4.2.9 Theoretical conclusions**

As was indicated, the constructivist approach was dominant in the creation of the Constitution and as such was prevalent in the national security views of the Constitution. The holistic view of national security in the Constitution entails a combination of both state-centric and human security.

The SSA followed a realist approach to national security, with the state as the referent object to be secured. In this approach the referent object was distorted, however, due to a lack of understanding of the Constitution, no clear conceptualisation of what national security entails, political interference, corruption and a lack of oversight. The state as referent object was replaced by a political leader and that leader's support structures. Any criticism or attempts against the political was interpreted as threats against national security. The Minister of Security illustrated this in a speech in 2016 (see 3.5.2), where the media and civil society are portrayed as threats against national security.

If the SSA took the constructivist root, their definitions of and approaches to security might have included the holistic view of both state and human security. The realist argument that if the state is secure, all other referent objects would be secured as well, is not appropriate in the case of South Africa where the abuses of apartheid left a void with regard to human security. Therefore the constructivist approach was used when the Constitution was written, with a definition of national security reflecting a realignment with the inclusion of human security. These definitions were to be reflected in any interpretation by the SSA of national security and how it is utilised by the SSA.

### 4.3 Conclusion

This study focused on an evaluation of the concept of national security as determined by the South African Constitution and its interpretation by the SSA. The outcome of this evaluation was that the SSA's understanding of the concept of national security was in contradiction to that of the Constitution. In its interpretations, its practical approach to intelligence operations, its definitions, its sponsored legislation and its public approach, the SSA reflected a contradictory and ill-defined understanding of the concept of national security.

During this evaluation, national security as a concept was appraised from an etymological point to provide the basis for an understanding of the concept. Through this understanding it could be clarified that the term *national security* consists of two words, with the word *national* being linked to the concept of *nation* and later having evolved to include the state. The concept of the state was later clarified through the Westphalian Treaties linking the state to the concept of sovereignty, associating the state with an identity and a constructivist idea. The rudimentary state had to fend for itself and it was argued that this also resulted in the creation of the concept of *national security*. This realist approach was dominant before and during the Cold War. The realist dominance during the Cold War illustrates how theoretical approaches are affected by real-life events. At the end of the Cold War this theoretical dominance was challenged by various other theoretical approaches. This academic debate also created a focus on the conceptualisation of national security. Because of the varied opinions based on different theoretical approaches, the concept has remained an item of dispute in the academic field of Political Science.

All the various theoretical approaches present a view on national security, but there is still much space for further analysis. This possible lack of a comprehensible and undisputed concept might be the cause of a knowledge vacuum in intelligence structures, which may result in misinterpretations. Nonetheless, it is clear that the South African Constitution is more aligned with constructivism. Other legislation should be reviewed to bring it in line with this theoretical approach as well.

The recommendations above firstly focus on the academic void in discussions about the concept of national security, which is characterised by secrecy and over classification. Expertise outside the SSA should be involved. Secondly, the White Paper on Intelligence should be reviewed in an open manner, with a more practical approach to the implementation of the security approaches contained in the Constitution. Thirdly, legislation must be aligned with the definitions of *national security* as explained in the first recommendation above. The fourth and fifth recommendations respectively involve enhanced oversight and the appointment of the correct leaders in the SSA. This will support the alignment of the interpretation of national security by the SSA with the provisions of national security in the SA Constitution.

The recommendations contained in this study may have practical effects for how the SSA and the intelligence community operate and may enhance a common understanding of national security throughout the security cluster in South Africa. It is essential to effect these changes to ensure that the SSA follows a human-centred security approach, as prescribed by the South African Constitution.

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