

# A national security policy for Malta

The Commission on National Security appointed by the Leader of the Opposition has prepared a report entitled *Is-Sigurtà Ta' Malta* (National Security) and submitted it to the MLP leader on 15 March. The media have already covered the press conference given by the chairman and members of the commission during which this report was launched.

Since then few indeed have been the non-partisan contributions made by members of the public on its contents. Recently, I have had the opportunity to read the report in question. In this short article, I would like to add some further points on the issue of national security from a legal perspective hoping to contribute towards a healthy discussion by your readers on the subject under review.

## National security

The legislation which regulates national security is that which in criminal law textbooks is usually found under the heading of "Crimes Against The State" and which would normally deal with offences of treason, sedition, disclosure of official secrets, espionage, sabotage, subversion, insurrection, *coup d'état*, terrorism, foreign interference, mutiny, and the like.

Maltese law has a number of provisions that regulate national security. These provisions are spread out in the Statute Book. No codification of these crimes has as yet been undertaken. The most important legislation is found in the Criminal Code which regulates, *inter alia*, treason, sedition, mutiny, and disclosing official information. Other enactments of interest in this field are the Official Secrets Ordinance which is mainly concerned with espionage, sabotage and the disclosure of official secrets, the Seditious Propaganda (Prohibition) Ordinance and other laws which contain one or a couple of provisions regulating crimes against the safety of the state (e.g. the Malta Armed Forces Act, the Police Ordinance, the Extradition

National security has many dimensions and does not relate only to war or armed conflict.

Kevin Aquilina LL.D asks what legislation should be enacted both to grant the necessary powers for our protection and to protect the individual from their misuse.

Act, the Carrier-pigeons Ordinance, etc).

This is, of course, the traditional approach to national security legislation. A new approach is however being advocated by the Report of the MLP Commission on National Security whereby the definition of the expression "national security" has been extended to include other crimes which pose a non-violent threat to the safety of the state.

## Non-violent crime

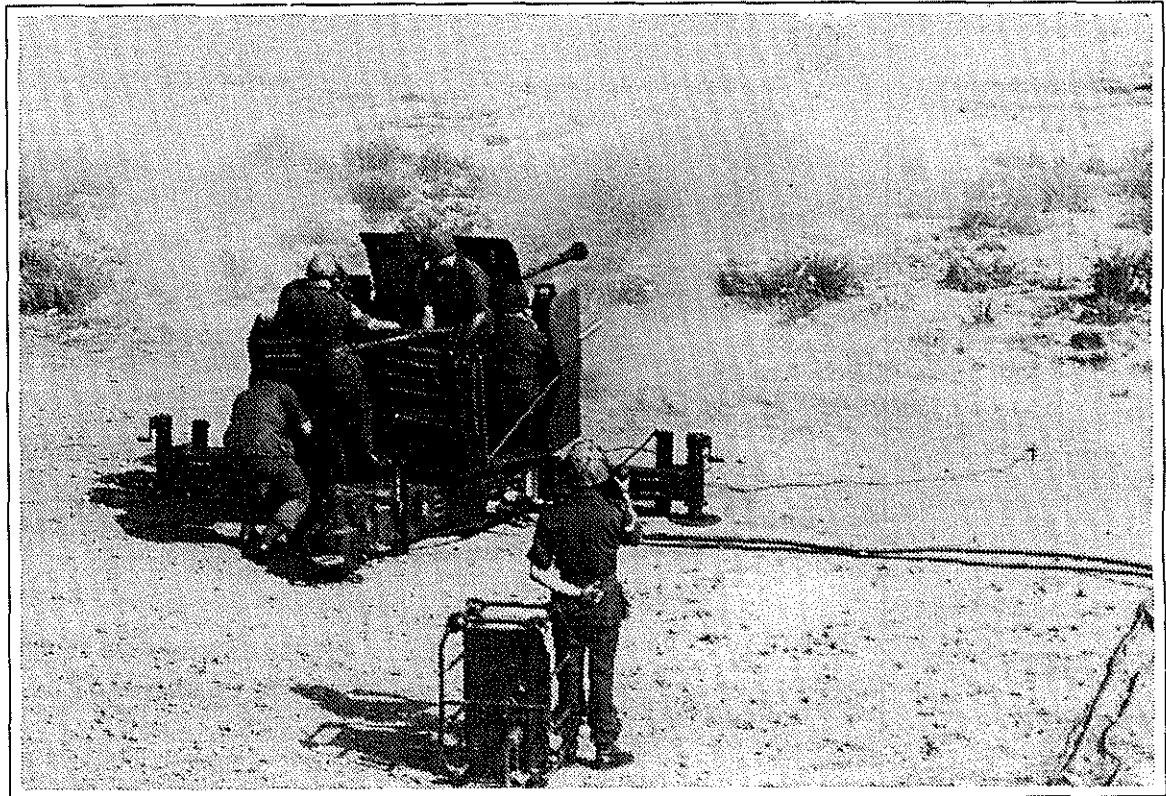
In these type of crimes, there is no resort to arms or to warfare even though the perpetration of these crimes may paralyse to a certain extent the proper functioning of the State of Malta or might prove to be embarrassing in the conduct of its international relations.

Some of these crimes which have been singled out by the commission are those concerning money laundering, contraband, drug trafficking, and trafficking in arms, women and children.

Indeed, some of these criminal activities are already covered by Maltese legislation but reform is becoming increasingly necessary. Others still need to be enacted. Thus, for example, the Immigration Act does not establish "prohibited classes" of persons who are to be refused admission to Malta on security grounds.

## Embryonic

Furthermore, enforcement powers currently granted to the police are still in an embryonic stage and are rather outdated. Thus,



Should the powers of the AFM be redirected to protecting Malta from those crimes which harm the State, but which do not constitute a violent overthrow of the Maltese Government?

the local police force does not have the power to intercept telephone communications, to examine mail for security purposes, to browse into income tax returns and examine other financial records such as bank accounts, to conduct electronic surveillance or surreptitious entries when it has reasonable suspicion that a crime against the safety of the State has been, is being, or is about to be committed.

Although the report does not adopt the Costa Rican solution of proposing the dismantling of the Armed Forces of Malta, it tries to achieve Aristotle's "golden mean" by steering between the two extremes - on the one hand, that of having an armed force which is entrusted with only purely military duties and, on the other, a force which mainly performs civilian duties in times of peace. The middle of the road approach would be to have some form of para-military organisation (perhaps like the *carabinieri* in Italy) which would cater for both con-

tingencies, making the AFM more flexible and perhaps even better placed to respond to threats to national security.

## Invasion deterrent

After all, it is very improbable that the AFM will ever be, whatever its manpower and whatever the amount of money spent in munitions, in a position to deter an armed invasion of Malta. Since the world is changing and there does not seem to be imminent territorial threats to Malta from foreign aggression, the report advocates the focusing on those types of crimes which in practice are indeed harming the State of Malta but which do not constitute a violent overthrow of the Government of Malta.

I would like to raise some other points which should be taken into account in subsequent discussions on the National Security Report:

1. What amendments have to be made to the Constitution of

Malta concerning neutrality and non-alignment in view of the changes which have occurred in the world by the fall of the so-called communist regimes in Eastern and Central Europe, the end of the Warsaw Pact and of the "Cold War", and the dissolution of the Soviet Union?

## Non-alignment

It seems that the concept of non-alignment has to be thought out more fully. Furthermore, if Malta does become a full member of the European Community, it is doubtful whether Malta may be able to continue its present policy of neutrality, especially if the EC adopts some form of European common defence policy to which Malta - as an EC member - would be bound. Such European common defence policy would surely run counter to the neutrality provision of the Constitution.

2. Legislation covering crimes against the State would have to be re-examined once again. Recently, Parliament repealed the Aircraft (Photography) Ordinance and enacted a law on hijacking but did not undertake a major review of the other provisions of Maltese law which regulate national security.

Indeed, the traditional offences against the State found in Maltese law are riddled with defects both

# The powers, duties and functions of a National Security Council

Continued from page 20

of form and content. As to the formal shortcomings, there is -

- a. a poor arrangement resulting in overlapping of, and inconsistency between provisions;
- b. excessive complexity and detail; and
- c. uncertainty as to scope and meaning.

With respect to content, the major defects are:

- a. the provisions are out of date and lacking in principle;
- b. some of the provisions infringe the human rights and fundamental freedoms provisions of both the Constitution of Malta and the European Convention on Human Rights contained in the European Convention Act.

3. What rights should be bestowed on the State for it to perform its functions as far as national security is concerned?

## Electronic surveillance

The rights which may be bestowed on the security forces which are to undertake national security operations are those concerning electronic surveillance, mail check operations, access to and use of confidential information held by any government department or other private company or person, physical surveillance, surreptitious, countering activities and undercover operations.

4. What rights should be afforded to the citizen so as to outweigh any abuse or misconduct by the security forces in the exercise of their functions under the law as mentioned in paragraph 3?

Certain legislation which might make the security forces more accountable if they are to be granted special investigatory powers would have to be enacted.

Moreover, the right to privacy and the right to information contained in the Constitution and the European Convention on Human Rights would have to be developed further.

New legislation would have to provide for a right to know, usually contained in a freedom of

information act, as well as for a privacy law and a data protection act.

Other remedies which might be afforded to the citizen are the settling up of an Ombudsman or, perhaps, a restricted version, such as a Police Complaints Board where members of the public could file complaints against policemen who might have abused their powers especially those in the Security Division which would be entrusted with national security operations.

Of course, such a board would have to be totally independent of the police force.

## Intelligence

Again, other remedies have to be afforded against abuse or misconduct by officers attached to the National Drugs Intelligence Unit.

Although information about this unit has been rather scarce, it is doubted how effective this unit will be if it restricts its activity solely to drugs intelligence and does not liaise with other government departments such as the Customs Department, the Police Force and the Armed Forces of Malta.

Perhaps its terms of reference should be widened to include all such threats to national security which are usually dealt with by a modern intelligence organisation.

The report concludes that a National Security Council should be set up which could be in a good position to coordinate and monitor the workings of government departments and agencies which work in this field or which might possess security-sensitive information.

## Sensitive

The report does not outline in detail the powers, duties and functions of the National Security Council. There is no proposal for the setting up of an intelligence organisation, and presumably the gathering of "intelligence" information will have to be performed by the departments which work under the supervision of the National Security Council.

These departments might be the Police Force, the Central Drugs Intelligence Unit, the Customs Department and the AFM.

The police would have to bolster up the Security Division so as to undertake those type of activities which, in other countries, are undertaken by the security and intelligence services.

As things stand today, the police are also responsible for immigration and have already the data necessary to control entry to and exit out of Malta.

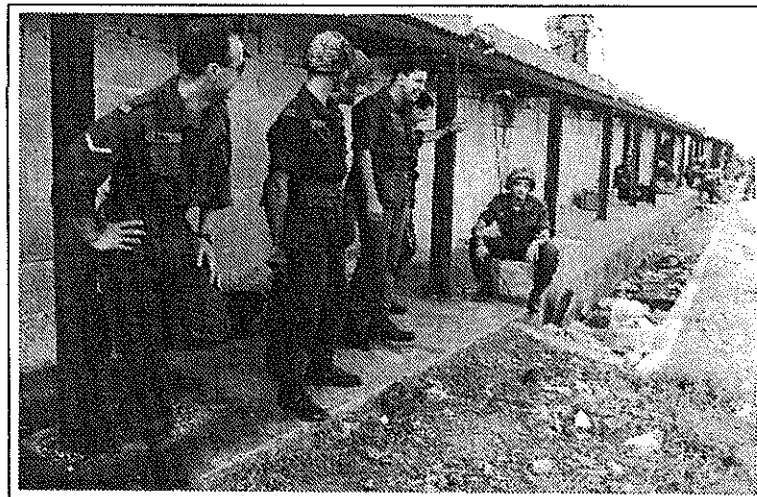
However, the AFM, the Central Drugs Intelligence Unit and the Customs Department will have to be called in to provide the infor-

mation which they may possess.

The report deals with a very sensitive and delicate topic: national security.

National security has many dimensions and does not relate only to war or armed conflict. The fact that Malta has not been at war since the Second World

War does not necessarily imply that national security should not be high on Parliament's agenda. Perhaps the time is ripe for both parties in the House of Representatives to form a Select Committee to study in depth and develop a national security policy for the Maltese Islands.



The role of the Armed Forces may need to be redefined within the policy which a National Security Council may determine