

ANTON LUBOWSKI SECOND INVESTIGATION REPORT

The present investigator took over this file from Ms. Pitman on 2.5.1997. She has dealt with this matter from the beginning, I believe, with the assistance of Supt. Swart. She has drawn up a memorandum (undated) which contains her investigative proposal. Much of the proposed investigation has already been done. This memorandum is intended to outline the history of the case more fully, to consider the present level of investigations, and to suggest further action.

THE INCIDENT

Anton Lubowski was an advocate of the Namibia Supreme Court and lived in Windhoek. He seems to have been a well-known public figure, mainly due to his membership and active role in SWAPO. He defended in so-called terrorist cases, participated in SWAPO demos and was incarcerated six times under security legislation. Those that knew him say that he was deeply committed to the SWAPO's cause. On 12 September 1989 he was attacked by unknown gunmen outside his home in Klein Windhoek. At least eight shots were fired at him from his rear with an AK 47. The fatal wound was to the back of his head. The assassins made their get-away in a red car. He died on the scene, at about 20h30. The details of the shooting are not known.

At the time of his death Namibia was in a state of transition to independence, and the elections were being prepared. UNTAG had already moved in on 1 April 1989, but the RSA was still in charge and had a vested interest in the outcome of the elections.

NAMIBIA INVESTIGATIONS

CRIMINAL TRIAL

On 13 September, after a tip-off from the people with whom he was lodging, Donald Acheson was arrested. He is an Irish National. While in police custody, he made statements which revealed that he was operating in Windhoek as a clandestine agent at the instruction of South Africans who later were revealed as GCB operatives. The case was investigated by Col. Jumbo Smit. The investigation culminated in the arraignment of Acheson on a charge of murder. The evidence available to the A.G. is set out fully in the inquest judgment of Levy, J at pp.78-106. Levy J concluded that there was a very strong prima facie case and that an acquittal would have been extremely doubtful.

On 18.4.1990 Acheson appeared in court for trial. The A.G asked for a postponement, in order to obtain the extradition of Chap Maree and Staal Burger from the RSA, in order to join them as co-accused. He also wanted to secure the presence of F. Barnard, Slang van Zyl, Willie Knox and Calla Botha as witnesses. In this he failed. On 15 May an application for further postponement for the same reasons was denied by Mahomed, J and the charges were thereupon withdrawn. Acheson was thereafter deported to the RSA.

INQUEST

In May 1993 a newspaper report, based on allegations by the former Task force member Rooinasie, led to a new police investigation. A docket was prepared and eventually a formal inquest was held before Levy, J. On 24.6.1994 he delivered judgment.

Rooinasie and another askari presented a story that Lubowski had been killed by a conspiracy of senior Namibian police officials. They were however exposed as utter liars and this story was rejected in toto. (judgment pp.27-78).

The judge then considered the evidence which the A.G. had had available against Acheson and concluded that there was a strong case against Acheson. (pp. 105-106). It is clear that he doubted the correctness of the A.G.'s decision.

Next, he dealt with new evidence obtained after the aborted trial. This included the affidavits which the SAP had obtained from Barnard et al during their detention in the Webster case. He also had available the Harms Commission findings and the diary of Wouter Basson, which described in veiled terms a CCB operation at the time of the murder and fitted in with Acheson's statement. While this provided no new evidence on the execution of the murder itself, it did corroborate that the CCB was involved in dirty tricks in general and with Acheson in particular. (pp. 106-127).

Further, there was oral evidence by one Charles Neelse and Johan Niemoeller to the effect that they had spied for the CCB in Namibia and among other things had photographed Lubowski's house. Before Harms, J evidence had been led that in an action against a target there was a preparatory phase including the monitoring of the target's movements. Their handlers were Staal Burger ("Nick Verbeek") and Barnard ("Verwey").

The inquest judgment concluded:

- cause of death: multiple shots with an AK 47, one shot in the head;
- prima facie Donald Acheson shot and killed the deceased;
- prima facie the CCB initiated and was involved with the murder, and the following CCB members were accomplices:
 - Ferdinand Barnard;
 - Leon Andre Maree;
 - Daniel Ferdinand du Toit Burger;
 - Wouter Jacobus Basson;
 - Johan Niemoeller;
 - Carl Casteling Botha;
 - Pieter Johan Verster;
 - Abram van Zyl;
 - Charles Neelse;
 - Chief Inspector Ignatius Willem Terblanche.

Because Acheson is now believed to be in Europe, and the other perpetrators are in the RSA, no further prosecution has been initiated in Namibia.

RSA INVESTIGATIONS

POLICE INVESTIGATION

Four months prior to Lubowski David Webster had been murdered in the RSA, in a similar way. It was at the time of these investigations that Col Jumbo Smit of Windhoek came to Johannesburg to investigate Acheson's claims. He spoke to Ferdinand Barnard and his previous employer Willie Smit and learnt that Barnard had claimed to be a hitman and that he had killed Webster. He conveyed his findings and suspicions to the Webster murder

investigator, W/O Rousseau. Rousseau knew that Barnard and Botha had been arrested a short time ago for keeping observation on an activist Bruce White. In view of this, and Acheson's disclosures, he decided to arrest Barnard, Botha, Maree, Burger and Verster i.t.o.s 29 Act 74/ 82. While in detention, or when threatened with detention (Verster) they made statements and in this way the police discovered the existence of the CCB for the first time.

The SAP did not investigate the Lubowski murder as such, but the material they provided assisted the inquest hearing in Namibia, as shown above. They did not uncover any leads.

HARMS COMMISSION

This commission into alleged irregularities, e.g. hit squad activities by RSA security forces was instituted by FW de Klerk after mounting public pressure: within a short time frame disclosures had been made about Viakplaas operations (Nofomela) and the CCB (Acheson). It started its work in January 1990. Inter alia it raided various CCB premises and thoroughly exposed that organization. Initially it was not tasked to investigate cross-border activities, but later its brief was extended to investigate whether Lubowski was a paid MI agent, but not how he had been killed. Magnus Malan had made the claim that Lubowski was an agent in parliament on 26.2.1990 and 1.3.1990, and claimed that therefore the military would not have killed him.

The military (Genl.Badenhorst) made submissions in camera to the commission. Most of what was said is secret to this day, but Judge Harms did make public which documents had been submitted to him to prove the payment to Lubowski of certain informer's fees. Somehow it had been made public that the alleged payments to Lubowski had been made through the CCB Front Company Global Investments, and the need for secrecy had fallen away. Judge

Harms was convinced that Lubowski had in fact worked for MI, and had received in June 1989 as a reward the sum of R 100 000. This finding is disputed to this day by the lawyers for Mrs. Lubowski.

Judge Harms was not asked to investigate the murder; significantly, however, he specifically found that although Lubowski's murder had been a setback to MI this did not absolve the CCB, which operated independently and was probably unknown to MI.

TRC INVESTIGATION

With the appointment of the TRC a new opportunity arose to look into Lubowski's death, and it has been seized by his family. Although we do not (yet) have a victim statement by the (divorced) widow we do have a comprehensive submission by her lawyer, Mr. Julian Knight in which he requests a thorough investigation of both the murder and the alleged spying activities of Lubowski. He is of the view that these allegations are a lie and form part of a cover-up of unknown facts. He has also provided a long list of suggested investigations, on which Ms. Pitman has relied heavily. It should be mentioned that Mr. Knight wishes to institute an action against the Minister of Defence for compensation.

The TRC Investigation team has obtained many documents. A summary would include:

- ◆ S vs. Acheson: copy of bail application;
- ◆ S vs. Acheson : application for remand.
- ◆ inquest: copy of Niemoller's evidence;
- ◆ inquest: copy of judgment;
- ◆ inquest: copy of RSA documents submitted to Levy.J;

- ◆ copy of CCB members' court action for better retrenchment deals. This includes Verster, Niewoudt and 21 applicants applying under aliases;
- ◆ documentation on Jalc Pty Ltd, a CCB(?) operation in Ciskei/Transkei;
- ◆ documents from the Registrar of Companies on various CCB front companies;
- ◆ CCB : file on its establishment, guidelines and procedures in general;
- ◆ file of press clippings;
- ◆ Notes by Julian Knight, Louise Flanagan;
- ◆ various general papers on clandestine activities;
- ◆ affidavit (from Goniwe inquest) by Genl. AJM Joubert: HSADF knew of CCB.

The team has also endeavoured to obtain the full banking record that allegedly proves payment to Lubowski of MI money. The bank claims it no longer has such records. It has obtained a useful statement by a highly-placed DCC officer on the general structure and use of Front Companies for the CCB and DCC.

ANALYSIS OF EVIDENCE

PERPETRATORS

1. At the inquest hearing a theory was put forward that police officials of Namibia were responsible. This was thoroughly discredited.
2. The only other possible perpetrators implicated by available evidence are those mentioned by Levy, J and listed above. Their participation, briefly stated, was probably as follows:
 - ◆ Acheson: part of actual hit squad;
 - ◆ Barnard: recruited Acheson; handler of Neelse; claims he was in Cape Town at time of murder;
 - ◆ Maree: Acheson's handler; probably part of hit squad (no evidence); in charge of operation;
 - ◆ Burger: Maree's regional commander, and part of planning, possibly execution;
 - ◆ Basson: CCB co-ordinator for region 6 (RSA); Harms seized his diary which was referred to above. Part of planning, subsequent instructions to Acheson;
 - ◆ Niemoller: paid CCB "unconscious" member, spied on Lubowski, probably unaware of assassination plan but may have suspected it;
 - ◆ Botha: cell member of Chap Maree. Involvement unknown;
 - ◆ Verster: CCB director, had to approve all CCB operations, only link between lower ranks and SADF command structure;
 - ◆ Van Zyl: cell member of Maree. Involvement unknown. According to E. de Kock he was in Windhoek at the time of the murder and knows all about it;
 - ◆ Neelse: employed by Niemoller as driver and part of spying activities. Used by CCB via Niemoller and also directly. Paid agent. Assisted Acheson with info, transport before murder (?);
 - ◆ Terblanche: Policeman who had been informed by Neelse that he knew of efforts to kill SWAPO leaders, including Lubowski. He failed to act on this info and is guilty by omission.

MOTIVE

The true motive is unknown, but the evidence points to an assassination plot by the CCB. They had kept Lubowski under observation because he was a key SWAPO member. His death conceivably was part of a larger plan to disrupt SWAPO in its run-up to the election.

Other CCB actions were petty acts, such as burning or sabotaging UNTAG vehicles. What precisely was hoped to accomplish is not clear, and in my view there may in fact have been poor information, groundwork and thinking behind the murder. There is hearsay that Lubowski had had a fall-out with SWAPO, that they suspected him of fraud' and that he was becoming disillusioned with them. If any of this is true he was no key figure. Certainly there were more prominent SWAPO leaders that were not harmed.

EVIDENCE

1. Against Acheson:

There is sufficient circumstantial evidence against him to warrant a prosecution, though none that places him on the scene itself. This is dealt with in Levy J's judgment. For our purposes it is important that he himself revealed the CCB link to the Namibia police. That was the first break in the CCB security shield. While in s 29 detention, Barnard and others admitted that Acheson was initially recruited by Barnard and thereafter handled by Maree. Acheson admitted the spying but denied the killing. He also admitted attempts to poison a newspaper editor Gwen Lister and assistance in vehicle sabotage by explosives.

2. Against CCB members:

The only evidence to link them with Lubowski is the following:

- ◆ Acheson's allegation that the CCB were his employers;
- ◆ Niemoller and Charles Neelse's allegations that the CCB used them as unconscious members for spying on Lubowski;
- ◆ Barnard's admission during detention that he recruited Acheson;
- ◆ other s 29 statements that Lubowski was one of Maree's projects and that he was Acheson's handler;
- ◆ a claim by Eugene de Kock (amnesty application pp.754-756) that on the day after the murder Sakkie van Zyl (we think this is Abram van Zyl) called him from Windhoek, saying that he should look at the news and that they were busy with operations there. De Kock found this call strange as it came out of the blue.

In summary there is no hard evidence, just a string of allegations, mostly denied afterwards. I will compile a more complete list of who said what and when and to whom if it comes to public hearings.

AVENUES OF FURTHER EXPLORATION

1. The Namibia police proceeded in their investigation from the scene of the murder in routine fashion. In this they had success, but the judicial system failed when the RSA did not co-operate with the A.G. Namibia by extraditing perpetrators and witnesses. In hindsight one might argue that their A.G made a serious error of judgment in not prosecuting Acheson. That offered the best, indeed the only chance Namibia had to get at least at part of the truth.

Retracing the steps of that investigation serves no purpose. There is no reason to suspect a cover-up, and in any event all key-players are in Namibia. I am told, however that there is an eye-witness now living in Namibia who was contacted by the then National investigation unit. I do not know with what result. This might warrant further steps.

2. The suspects have not applied for amnesty in this matter (they admit between them 4 other incidents: an Athlone bombing, an attempt on Minister Omar's life, the monkey fetus placed in Archbishop Tutu's garden and monitoring Gavin Evans). At this moment I have not yet received their applications. For these other acts they claim to have received an earlier indemnity. They have thus declared their hand and are unlikely to reveal the full extent of their knowledge at this stage. They have been described as accomplished and unabashed liars (Goldstone) and are trained, one presumes, in disinformation.

3. A second possible approach is to try and unravel the CCB involvement. Most of this was done by the Harms Commission and later by the Goldstone commission. They have painted the broad picture. What is lacking is detail on specific operations. The CCB was disbanded finally in 1992 and all known premises were raided. Their front companies, as far as they were known have been disbanded. Their task has reverted I believe to the DCC, which has always co-existed with the CCB. Thus there is no address to turn to today. The suspects have all spoken to or filed statements with the Harms Commission where they denied all involvement. Links found between the CCB and Lubowski's death along this line were Basson's diary, and the link Barnard-Acheson.

4. A third possible approach is to focus on the angle of Lubowski's alleged MI involvement. This is the approach taken by the TRC team. A brief summary of the current state of affairs follows.

- The claim that Lubowski worked for MI was made by Magnus Malan on 26.2. 1990 and 1.3.1990 in parliament;
- it was proved to Judge Harms to his satisfaction, but in camera and to the dissatisfaction of every-one else;
- the full extent of what Harms was told has been kept secret;
- what he revealed was the existence of three cheques, totalling R 100 000, paid in June 1989 into two separate Lubowski accounts, allegedly as payment by MI for services rendered. The money was channelled through a CCB front company. We have only copies of those cheques, with partly blanked out information. He was also shown original requisition forms, and deposit slips and microfiche.

In evaluating this evidence several possibilities have to be considered:

1. The payments were never made but were later faked as part of some cover-up. In this case the finger points at MI involvement in the murder.
2. The payments were made. Here a number of possibilities arise:

2.1 The payment was made by MI. It could have been for unknown services as agent. It could have to do with Vito Pallazolo for whom Lubowski tried to obtain a residence permit and who might have links with MI. In this scenario he might still have been killed by the CCB, because they did not liaise directly with MI and unwittingly acted at cross-purposes. It also does not follow that MI did not want him dead for a number of possible reasons;

2.2 The payment was made on the alleged dates by MI but only with the intention of framing Lubowski or as smokescreen. Since MI and the CCB operated completely separately it would have required high-level synchronization to achieve this.

2.3 The payment was made, but not by MI. It could have been payment for services by a client - Vito Palazolo? In this case MI, looking for a smokescreen became aware of the payment and manipulated it to their advantage.

2.1 strikes me as the most straightforward explanation. The other possibilities smack of over-elaborate deviousness. Why use a money transaction as a smokescreen? Why not simply keep silent? Why drag MI into the scandal of the day at all when no-one even thought of them? Certainly it did little to bail out the CCB. If it was not a MI money transaction, why was the true payer never discovered? Why would MI accept the risk that the true payer might come forward and expose them? Would the banks collaborate to present false deposit slips? On the face value, all paperwork was in order. MI volunteered the documents. Why look for elaborate cover-ups in the first place? The reason is that everyone agrees it was most unlikely that Lubowski would ever assist MI, who were part of a system he openly despised.

This leads to the question whether MI did not use (and pay) Lubowski with or without his knowledge for work other than spying. This is where the Palazzolo brief becomes relevant. Palazzolo, according to press reports had been in a Swiss gaol on serious drug charges. He was suspected of being an influential Mafia member. Reputedly he had connections in several Secret Services. This shadowy figure was seen by Lubowski in prison with a view to arrange residency for him in Ciskei, which he subsequently obtained. This led to a scandal also investigated by Harms, as Nat MP Peet de Pontes had assisted in procuring the permit. Palazzolo's millions may have been the incentive.

The thought now occurs that MI undertook to pay Lubowski on behalf of Palazzolo. The briefing attorney Prisman of Cape Town says he did not handle the payment. Nothing is known about a connection between MI and Palazzolo, but the press speculated along these lines.

The possibility referred to above, that MI had nothing to do with the payment - or Palazzolo - but used the transaction for their own purposes, seems as farfetched as a real link.

Investigating the so-called paper chain may or may not reveal an MI angle to the affair. But it will not throw light on the actual murder, unless new leads are uncovered. It may serve to clear Lubowski's name of MI slander, as the relatives see it, but that is not the aim of the TRC. It may throw light on the extent of military involvement in dirty operations, and that might fall within the ambit of the TRC brief.

PROVISIONAL CONCLUSIONS

1. Lubowski was killed in a CCB action. The details are not known, but the evidence is strong enough to use this as working hypothesis in our investigation. The list of perpetrators includes some or all of those listed by Levy, J supra.
2. MI may or may not have been involved. Involvement is likely if Magnus Malan's claims are found to be false, i.e. if the payment of R 100 000 is not what it purports to be. In this case the CCB were not originators of the plan, but its executors. The idea came not from the bottom up (Maree) but from the top down (DMI).
3. While in this shadowworld all is possible, the most logical conclusion in my view is that MI was not involved and bona fide tried to prove this to judge Harms. The reasons are given above. Another reason is that the CCB action seems to have been rather unsophisticated in some way. MI surely could have done a clean professional job leaving no clues.

INVESTIGATION PROPOSAL

1. I consider a new proposal necessary in order to re-assess our strategy because
 - ⚡ Time is running out;

- ◆ Much time has been spent on the paper trail: as regards the CCB, by establishing a picture of their front companies; as regards MI, by establishing the veracity of the R100 000 payment. I do not see how this will take us much further.;
- ◆ I suggest we short-circuit that avenue by going directly to the source, where we will have to go eventually anyway.

2. I suggest that we hold s 29 hearings and issue subpoenas to the following:

- the CCB members Verster, burger, Maree, Barnard and van Zyl;
- DMI as he then was;
- Vito Palazzolo;
- attorney Prisman;
- Mrs Lubowski;
- Genl. Eddie Webb.
- If the need is felt to go into the CCB again, we might add to this list attorney Penzhorn, Magnus Malan and others.

3. I further suggest that these hearings are preceded by the following investigation:

- obtain all CCB members' amnesty applications;
- a last attendance on Standard Bank to obtain an affidavit;
- interview with Capt. Louw, DMI. This has already been arranged;
- attend on A.G to see if they have useful documents or info;
- interview with Palazzolo and Prisman;
- interview with the unknown Namibia witness;
- interview Veenendal who has info, according to Kobus ;
- establish the role of Veenendal and Horst Klenz in the matter. We have no documents on this angle at all, if it is an angle.

4. Follow up as necessary from these investigations.

This report is submitted for discussion and authorization.

ADV. D. F. MALAN
29 May 1997