

INTELLIGENCE OVERSIGHT IN THE UK: THE INTELLIGENCE AND SECURITY COMMITTEE

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This is my first speaking engagement as Chairman of the Intelligence and Security Committee. I am very pleased to be sharing a platform with those who have been studying or working with the Committee for rather longer.

I have to say that my first contact with the Intelligence Agencies left me rather concerned. It was in 1982 on my first day as a junior Minister in the Foreign Office. I was informed by my Private Secretary that a gentleman from MI6 wished to see me.

An unsmiling figure entered the room. He informed me that it was his duty to indoctrinate me. At that time we were still fighting the Cold War, and the term “indoctrination” was what I assumed was a Soviet, not a Western, practice. I was soon enlightened.

How the Committee has evolved

I am new to the ISC, but I have been following the progress of the Committee over the years with something of a vested interest.

As Defence Secretary in John Major’s Government I took part in the discussions in the early 1990s that led to the 1994 Intelligence Services Act and the establishment of the Intelligence and Security Committee. As Foreign Secretary I, of course, had responsibility for both SIS and GCHQ.

In the 1990s the drive towards greater openness as regards Intelligence was seen as quite radical. The Agencies were pretty wary about having to account to a bunch of Parliamentarians. That was understandable when you consider that this was the first time that SIS and GCHQ’s existence had been even acknowledged, and the Security Service had only been ‘out in the open’ for five years.

As the Committee has evolved over the past 16 years, however, the Agencies appear to have grown to trust the Committee with their information, to respect its independence and also to recognise the value of being accountable.

The relationship of trust with the Agencies has been contributed to by the Committee by ensuring that its Members abide by the necessary security practices and protocols, and do not do or say anything in public that would put in danger the men and women who work protecting our security and national interest.

That the Agencies are held to account removes some of the suspicion and conspiracy theories surrounding them, although we all know there are those who will cling persistently to whatever is their own particular conspiracy theory.

This is not a problem entirely peculiar to the Intelligence Agencies. I remember as a Minister in the 1980s asking a trade unionist whose union was in dispute with the Government whether he and his colleagues saw the Government's strategy as a conspiracy or a cock-up. "We see it" he replied "as a cocked-up conspiracy".

The Committee's early reports in the 1990s focused on events which now seem very dated to us in today's climate, and when viewed against the threats we now face.

Some issues have not faded into the past however. In May 1995 the Director General of the Security Service told the Committee that monitoring Irish Groups and their supporters "was the Service's biggest single commitment of resources". The Committee's 1996 Annual Report reported that GCHQ was having problems recruiting and retaining highly skilled IT staff. Some 15 years later, these are both still very much live issues.

Whilst the main focus of the Committee in the early years was how the Agencies had adapted following the end of the Cold War, this has changed. The security landscape is transformed. During the Cold War the security of the state was, primarily, about protecting our national independence and territorial integrity from the potential aggression of other states, in particular the Soviet Union.

Today there is no threat of conventional war against the United Kingdom. Instead, the security of the state is threatened by international terrorism and the heavy loss of life that it could inflict upon us. The internal security of our citizens and the protection of their lives and liberty has become as important as the external security of our territory and of its borders.

It was of course 9/11 that marked that transformation. The Agencies, having been scaled down in the 1990s, had to begin expanding again after 9/11 – and it was at an unparalleled rate.

The Single Intelligence Account is today double what it was eight years ago. In 2001/02 it was just over £1 billion, and today it stands at £2 billion. This is reflected in an increase in staff: the Security Service, for example, grew by 40% between 2006 and 2009.

Remit of ISC

For this reason finance and administration are, quite properly, a key part of the Committee's remit, and are no less important than policy. They are essential in holding the Agencies to account. And it is of course all the more important in the current financial climate that we scrutinise how, and on what, they spend their money.

So when projects such as the Cabinet Office's SCOPE Phase 2 have to be abandoned, we investigate to see whether such a costly failure could have been avoided.

But the remit of the ISC has advanced far beyond "policy, administration and resources" as laid down in the 1994 Act that created the Committee. Although we do not seek, as a general rule, to investigate specific operations of the Agencies the Committee has considered it right to do so on a number of occasions and the Agencies have fully co-operated with these investigations.

The 1994 Act allows the Agencies to provide the Committee with sensitive information (about sources, operational methods, foreign intelligence material, etc) at their discretion, where they consider it safe to disclose it. It is a sign both of their trust, and of their awareness of the importance of

accountability, that they have, over the years, provided the Committee with this information, over and above the statutory requirements.

Detainees & Binyam Mohamed

The ISC, for example, first raised the issue of detainees with the then Prime Minister, Tony Blair, on 10 June 2003. Since then the Committee has written four reports focussing on the treatment and transfer of detainees held overseas: *The Handling of Detainees by UK intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq* (published in 2005); *Rendition*, published in 2007; a special Report on Binyam Mohamed sent to the Prime Minister in March 2009; and a Report on the draft Guidance to intelligence officers on handling detainees sent to the Prime Minister in April this year.

The fact that the ISC reported on Binyam Mohamed, an individual, may have caused some surprise since it is rightly the role of the Investigatory Powers Tribunal - an independent body drawn from senior members of the judiciary and legal profession - to investigate individual cases.

However the ISC does, on occasion, consider individual cases where they are key to unlocking the wider policy issues behind them, and that was why the Committee looked into the case of Binyam Mohamed. During its inquiry into Rendition the ISC considered four cases of rendition dating back to 2002 (including that of Binyam Mohamed) to illustrate the Agencies' developing awareness of the US Rendition programme.

Following that Inquiry, in May 2008, the Director General of the Security Service told the Committee that new information had come to light about the Binyam Mohamed case. Members decided that this raised further questions about the policy and procedures of the Agencies, so they re-opened their investigation. The Committee examined the original source material, brought the Heads of the Agencies, the Foreign Secretary and the Home Secretary back in and questioned them again, closely.

The Committee wrote to the Prime Minister in March 2009 with its findings. It said that the case of Mr Mohamed was significant in what it showed about the policies of the Agencies. It reported that: "*It brings into sharp focus some very difficult ethical questions that go to the heart of how the UK as a country responds to the terrorist threat... how to reconcile the need to obtain vital*

intelligence to protect the British public, with the need to ensure that an individual's human rights are not infringed".

The report was clear that this was a matter of Government policy, not Agency operation, and it therefore recommended to the Prime Minister that the policy be set out in clear and simple terms.

This led to the publication of 'Guidance to Intelligence Officers on the Handling of Detainees' by the new Government on 6 July this year.

Gibson Review & Green Paper

When the Guidance was published, the Prime Minister also announced the Gibson Review, which will examine allegations of Agency complicity in the alleged mistreatment of UK nationals and UK residents detained overseas in counter-terrorism operations. The investigatory work undertaken by the ISC over the years has made an important contribution to this area, and we will be providing Sir Peter with the results of our own inquiries, including the two unpublished reports on Binyam Mohamed and on the draft Guidance.

The Prime Minister also announced in July that work would begin on a Green Paper setting out proposals for how sensitive information is handled in a wide range of judicial proceedings. This is an area that, as we know, has implications when it comes to intelligence sharing with our allies. It is therefore of paramount importance.

The UK must be able to share and receive intelligence or we will be isolated and vulnerable. And if we are to receive intelligence then we have to be able to do so in confidence. Intelligence which has been provided by other countries cannot be released without their agreement, or we simply will not get the intelligence in the future. In the Binyam Mohamed case, for example, US intelligence was highly relevant and it therefore had to be for the US to disclose that information, not the UK.

The Green Paper will therefore be absolutely key in determining how the Agencies are going to be able to work in the future. The Committee has been asked by the Prime Minister to look closely at the issues involved and to contribute to the Government's preparation of the Green Paper.

Review of 7/7

Another example of the Committee's radical extension of its oversight work was the Committee's investigation into the 7 July London bombings. The Committee's inquiry was tangible evidence of a determination to unearth the facts and review the evidence – and I mean operational evidence.

The *Report into the London Terrorist Attacks on 7 July 2005* was published in March 2006. This was a wide-ranging Report which looked at the context, the threat, the threat level system, and intelligence coverage.

What this Report could not do, at that time, was comment in detail on what the Agencies knew about two of the bombers. That was for good reason: to do so would have prejudiced the CREVICE trial and was, therefore, sub judice. All the Report could say at that time was that the Security Service had come across two of the bombers before "*on the peripheries of other investigations*".

Once the CREVICE trial had concluded, the Committee were able to re-open the investigation and detail the links between the CREVICE plotters of 2004 and the July 7 bombers. The Committee's report "*Review of the Intelligence on the London Terrorist Attacks on 7 July 2005*" addressed the question "*if these men had been seen before, why weren't they stopped?*"

It was a lengthy and detailed investigation. The Committee started from first principles, going back to the highly classified original source material, reviewing operational documents, transcripts, police action logs, recordings, and hundreds of photographs. And then they questioned those involved again. The Committee considered every aspect of what MI5 and the police knew and what they did, and whether the judgements they made, and the actions they took, were reasonable in the circumstances.

The Report contained explanations, where relevant and appropriate. But it also contained criticisms where they were justified. It was both objective and independent and assessed the evidence on its merits.

Even so it did not, of course, satisfy everyone. However, what the ISC has not done in the past – and will not do in the future – is play to the gallery. The ISC examines the evidence, looks at the facts and draw its own conclusions. The Committee is not in the business of finding fault, or 'playing the blame game', just for the sake of it.

The events of 7/7 are now the subject of an Inquest. It is to be hoped that this will bring finality for the sake of those injured and the relatives of those who were killed on that day.

Oversight of the DIS, Cabinet Office and the Office for Security and Counter-Terrorism

Whilst the Committee's more high-profile Reports, such as those I have just mentioned, concentrated on the Security Service and to a lesser extent SIS, the reach of the ISC has also gone beyond the Agencies named in the 1994 Act and has expanded over the years to cover the wider intelligence machinery.

The Agencies do not work in isolation, and the Committee discovered early on that their inquiries needed to be wide-ranging. The ISC therefore also examines the work of the Defence Intelligence Staff, at the request of the House of Commons Defence Select Committee who recognised that they would be unable to because they did not have access to highly classified material. And the ISC also examines the Office for Security and Counter-Terrorism in the Home Office.

Furthermore, the Committee also now oversees those parts of the Cabinet Office which form part of the central intelligence machinery. The Committee has in the past expressed concerns about who has responsibility for national security matters within the Cabinet Office, and about the separation of roles. The appointment of Sir Peter Ricketts as National Security Advisor, and his new role as Principal Accounting Officer overseeing the Single Intelligence Account, is a welcome development. Sir Peter Ricketts has, indeed, been the first witness to be examined by the members of the ISC in the current session.

We are now looking at new developments such as the National Security Council which brings together foreign policy, defence policy, intelligence and homeland security as well as domestic security issues into one place. One of the consequences of the creation of the National Security Council is that the three chiefs of the Agencies, who attend its weekly sessions, have far greater contact and interchange with the Prime Minister and Secretaries of State than was possible in the past. The ISC will be looking to see whether

this helps provide, as it should, a seamless web of coherent strategy linking the Government's priorities with those of the Intelligence agencies.

Looking ahead – SDSR and CSR

Of course it is not just the National Security Council. We now have a new Strategic Defence and Security Review, and there is a new budget, following the Comprehensive Spending Review.

It is clear that the Agencies will have to find new ways of working if they are to find the necessary savings. The Agencies have already achieved considerable progress at collaboration and the sharing of information. They compare, favourably, with their sister agencies in some other countries. But greater collaboration is essential not only in today's fiscal climate: the sharing of intelligence and the development of a single intelligence strategy across Government is essential if terrorism and other threats are to be defeated.

One of the welcome developments coming from the SDSR and CSR is the extra funding of over half a billion pounds for cyber security. Cyber security is a Tier 1 threat in the National Security Strategy. It is the kind of threat to national security that could not have been imagined 16 years ago when the ISC was established.

Nevertheless the ISC will be monitoring how this new money is distributed between the numerous organisations working on cyber security. The Committee's last Annual Report, for 2009-2010, made it clear that Members were concerned about duplication in this area.

The Powers and Independence of the ISC

I turn, finally, to the powers and independence of the Intelligence and Security Committee. The ISC has existed and evolved over 16 years. It is timely that, at the beginning of a new Parliament, its powers and its status should be reviewed.

I consider, first, the unique status of the ISC, an independent committee of Parliamentarians, but one created by statute and with direct access to the Prime Minister. The reasons of national security which explain this unique status are well understood and remain largely valid.

The ISC must, however, not just be entirely independent in law and in the eyes of its own members. That independence must, in practice, be fully respected by all government departments and the ISC perceived to be fully independent, both by Parliament and by the public.

The ISC has, in the recent past, been deeply concerned about these issues. My predecessor, as Chairman, raised them in the House of Commons during the debate on the Intelligence Agencies and the issue was addressed in robust terms in the ISC's last Annual Report.

There, clearly, have been difficulties in the past but I sense a determination by all those with responsibilities in this field to ensure that they are not repeated. The new Committee will be considering in the near future whether and, if so, what changes might be necessary not simply to secure the independence that we have, but, also, to ensure that it is perceived as such by Parliament and the wider public.

A second issue is the media, and its relevance to questions of oversight. The impact of new media in the past decade has been considerable. Today, news outlets have hours to fill and web pages to update. The public expects instant news, all the facts, and a running commentary.

For the Agencies, and across the intelligence community as a whole, this poses real challenges. The level of interest, comment and scrutiny is relentless... and growing. The work of the Agencies and the wider intelligence community is under constant examination in the courts, in the media and by society at large.

The Agencies are sensitive to this growing pressure for those in the lead to speak out, to emerge from the shadows and explain what they do, and why they do it. The Heads of all three Agencies have each spoken in public recently about the challenges they are facing.

There has been similar interest as to whether some of the work of the ISC could be in the public domain. The vast majority of the work of the ISC has to be done in secret, or there simply wouldn't be any point. However, as a Committee we are, of course, mindful of the public interest. The public interest is, of course, different from "the public are interested". There are, inevitably, serious constraints. However, we will want to consider whether

any of the evidence hearings of the Committee could, responsibly, be heard in public or whether, given the necessary constraints, that would be seen as merely symbolic.

A third issue is the range of oversight of the ISC. The 1994 Act authorises the Committee to examine the Security Service, the Secret Intelligence Service and GCHQ. No mention is made of a wider role. In practice, as I have said, our remit has extended over the years to the DIS, the Cabinet Office intelligence functions and other intelligence activities within Government. Consideration will need to be given as to whether the legislation now needs to be amended to recognise these changes and give the ISC explicit oversight of the intelligence community as a whole.

The fourth issue is, perhaps, the most important. Under the Intelligence Services Act the Agencies can, at their own discretion, refuse to make sensitive information available to the ISC. While such a decision can be overruled by the Secretary of State if he considers it desirable in the public interest, it still remains a formidable power.

In practice, the Agencies have not used this power to deny the ISC the information it has sought. Instead they have concluded that, as the Act permits, it is safe to provide information even though it is sensitive. However, the question has to be asked whether it is any longer acceptable for the formal position to remain as it is spelled out in the 1994 Act.

These provisions, which give the Agencies such powerful discretion, were included in order to reassure the Agencies at a time when parliamentary oversight was completely novel. That consideration is no longer relevant. Either the ISC should be entitled to see any information it requests from the Agencies or, if some safeguard was thought to be necessary, the power of the Prime Minister or Secretary of State to order the withholding of information should be more than adequate.

Looking ahead

However we decide to move forward, I know that the Agencies value our oversight role. They *want* the public to know that there is an independent body holding them to account, and asking the difficult questions.

And for our part, we will continue to be critical where we see failures or shortcomings. It is our duty to speak out so that these can be addressed.

But equally we must champion the Agencies and give praise where it is due. The Committee is not, and never will be, a voice of the Agencies. However we can seek to bridge the gap between their silence and the public's right to know, and provide a fair and – crucially – independent assessment and evaluation of the vital work that they do on behalf of us all.