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THE UK'S INTELLIGENCE AND SECURITY COMMITTEE

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Introduction

Until 1989 the United Kingdom's security and intelligence were legally and constitutionally invisible. That was the year in which Parliament legislated for the Security Service (MI5). Until then MI5's had rested from its formation in 1909[1] upon a non- statutory, prerogative, basis.

Up until the Security Service Act 1989 only the sketchiest details were public. Some details were published in 1963 in the report of a judicial inquiry into a notable political scandal (the Profumo affair). This revealed details of the administrative Charter governing the Security Service's work.[2], the Maxwell-Fyfe Directive- named after the Home Secretary who issued it in 1952. This brief document emphasised the role of the Service in the 'Defence of the Realm' and its duty to behave non-politically. The Service was, nevertheless, responsible to the Home Secretary and its Director-General had a right of access to the Prime Minister. The Security Service Act 1989 made no change to the constitutional arrangements - the Service was accountable only to ministers and not to Parliament. However the Act did provide an explicit statutory basis for the Service's work and so satisfied the objection that it was unable to conduct surveillance or gather personal information without violating human rights.

A similar statutory charter was provided for the Secret Intelligence Service (MI6, the intelligence service) and Government Communications Headquarters (GCHQ) by legislation in 1994- the Intelligence Services Act 1994. Unlike the previous legislation, this Act acknowledged the concerns over lack of parliamentary oversight by providing for all three agencies a statutory committee of parliamentarians, drawn from both Houses of Parliament. For many the legal powers of this Committee were a disappointment, certainly by comparison with the systems of oversight in other Westminster democracies that had been introduced in the early 1980s. However, as we shall see, despite its apparent lack of teeth, the Committee has been relatively successful in its first 7 years' operation (this part of the Act did not come into force until 1995).

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[1] The date of the formation of the Secret Service Bureau, the forerunner of both MI5 and the Secret Intelligence Service (MI6): C. Andrew, *Secret Service*, (London, 1986), 121 ff..

The arguments for and against Parliamentary oversight

Until 1994 successive governments had maintained that necessary secrecy meant that Parliament could be told virtually nothing of the work of the security and intelligence agencies. Indeed, remarkably, it was only in 1992 that the Major government had even officially acknowledged the existence of MI6. The 'GCHQ affair' in which the Thatcher government removed the right of workers at the signals intelligence agency to belong to a trades union in 1983[3] had drawn attention to that body somewhat earlier.

According to the official argument, the agencies were accountable to ministers- respectively, the Home Secretary in the case of the Security Service and the Foreign Secretary in the cases of SIS and GCHQ. The detail of how accountability worked could not (it was said) be revealed without compromise necessary secrets. Parliament and the public therefore lay outside the ring of secrecy and had no alterative but to put their trust in ministers, who were within it. The government argued that there were insuperable difficulties in the way of true answerability of ministers to Parliament for how they exercised their control.

Accordingly, a convention had grown up of refusing to answer Parliamentary Questions from MPs on matters concerned with the agencies or touching on national security.[4] Equally, non-disclosure of the money spent by the services had been condoned through the use of the 'Secret Vote' where a global figure without explanation or breakdown of the details was approved annually.[5] Despite occasional noises of protest from the Home Affairs Select Committee[6], the work of the agencies had received no attention from parliamentary select committees. The government had indicated that it would refuse to co-operate with any attempt by a select committee to conduct an investigation by making available witnesses; consequently any investigation would be still-born.

The government's claim of the need for blanket secrecy for the services was unconvincing because it was over-inclusive. It suggested that nothing could be revealed, even concerning the process of accountability and control of the services' work, or the adequacy of

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[2] See *Lord Denning's Report*, Cmnd. 2152 (1963).
[3] The decision was unsuccessfully challenged in the courts: *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374.
[4] L. Lustgarten and I.Leigh, *In From the Cold: National Security and Parliamentary Democracy*, (Oxford, 1994), 441-2.
[5] Lustgarten and Leigh, 447-450.

mechanisms to ensure that they stayed within the law. It was plainly unacceptable within a modern democracy for public officials and the use of public finances to be exempt from scrutiny in this way, especially considering the exceptional powers of surveillance and information gathering associated with security and intelligence agencies. When coupled with the traditional deference of the courts to the executive in matters of national security, the effect was to create a vacuum in which the agencies were subject to neither legal nor Parliamentary accountability.

Moreover, critics argued that other Westminster-style Parliamentary executive systems (notably Canada and Australia) had managed to overcome similar objections to establishing oversight mechanisms. In Canada' s case the Canadian Security Intelligence Service Act 1984 created a non-Parliamentary Committee (the Security Intelligence Review Committee) with a range of oversight and complaints functions, alongside an Inspector-General who reported to ministers on the performance of CSIS. In Australia a statutory Parliamentary Committee was established with oversight of ASIO (the security service)[7], although other agencies (ASIS, the intelligence agency, and DSD, the signals intelligence agency) remained outside this scheme until recent reforms.[8]

The UK government's extravagant arguments for secrecy were not sustainable, then. Two distinct catalysts for change can be mentioned.

First, the revelations of the former Assistant Director of MI5, Peter Wright. The government's protracted but futile world- wide legal attempts to prevent publication of his book *Spycatcher* during 1986-88[9] highlighted the over-blown nature of the claim that all the work of security and intelligence agencies had to be shrouded in secrecy. In the Australian courts Wright's lawyers pointed out to devastating effect the many occasions on which MI5 had lifted the veil of secrecy by briefing journalists or condoning or ignoring well-sourced revelations when it suited them to do so. In the ensuing furore the government was unable to demonstrate that it had taken a consistent approach and from that time onwards claims of national security by ministers have been treated by Parliament and the public with considerable scepticism. The European Court of Human subsequently held that the actions of the UK courts in

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[6] First Report from the Home Affairs Select Committee for 1992-3, *Accountability of the Security Service*, HC 265; and see the Government response Cm. 2197 (1993).
[7] Australian Security Intelligence Organization Act 1979; Australian Security Intelligence Organization Amendment Act 1986.
[8] Intelligence Services Act 2001 (Cth).
[9] For a detailed account of the litigation: S. Bailey, D. Harris and B.Jones, *Cases and Materials on Civil Liberties*, (5th ed., 2002, London) ch. 6

suppressing publication by newspapers of allegation from Wright breached the right of freedom of expression under the European Convention.[10]

Secondly, a further series of legal challenges under the European Convention on Human Rights forced a modernisation of the legal regime governing the agencies. It became apparent that the UK would be found to be in breach of the Convention unless legislation was introduced. Although the ECHR permits restriction of rights such respect for private life (Article 8 of the Convention) where necessary in a democratic society in the interests of (inter alia) national security, this is with the important pre-condition that the restrictions must be authorised by law. The prerogative basis of MI5's administrative Charter, the Maxwell-Fyfe Directive, was insufficient for this purpose, since it could be changed without reference to Parliament and established no formal legal limits or controls. Moreover, the Convention system required there to be some legal mechanisms, even if these were not courts proper, for dealing with complaints about abuses and violation of rights. The 1989 Act introduced a Tribunal and a Commissioner, each with very limited powers- a model followed in the 1994 Act and later modifications.

The government estimated – correctly as it turned out in later challenges- that these token mechanisms would satisfy the Convention system. The mere passing of the 1989 Act, although it came after the events in question, was treated as sufficient reason by the Convention organs to take no further action in two cases brought involving alleged surveillance and recording of personal details by the Security Service. [11] In a later case where the Act's complaints machinery had been used unsuccessfully by an applicant, the Commission of Human Rights found that the statute struck a reasonable compromise between the requirements of defending democracy and the rights of the individual. Accordingly, it held that the complaint was manifestly ill-founded.[12]

Legal change did not at first lead to greater Parliamentary oversight. The 1989 Act established a legal basis for the Security Service and for supervision of the ministerial powers to authorise interference with property (so-called warrants to 'bug and burgle') by a Commissioner, together with a tribunal to which complaints could be brought, but went no further. It was not until 1994 that the Major government acceded to the call for scrutiny by a committee representing a *cross-section* of Parliamentary opinion. The Intelligence and

[10] *Observer and Guardian v UK* (1991) 14 EHRR 153.

[11] Resolution DH(90) 36 of 13 December 1990. Ironically, the two complainants, Harrriet Harman and Patricia Hewitt are now both ministers in the Blair government.

[12] *Esbester v UK,* App. No. 18601/91, 2 April 1993. See also *G, H, and I v UK*, (1993) 15 EHRR CD 4.

Security Committee, established under section 10 of the 1994 Act, comprises 9 members drawn from both the House of Commons and the House of Lords, whose task is to examine the expenditure, policy and administration of all three security and intelligence services.

The constitutional and legal basis of the Committee:

The Intelligence and Security Committee is constitutionally unique. Parliamentary Select Committees are invariably established on a non-statutory basis (under the Standing Orders of Parliament), with a membership approved by Parliament itself, and report to Parliament. On all three points this committee is different. The Intelligence and Security Committee is a statutory committee. Its members are appointed from both Houses of Parliament (the House of Commons and the House of Lords) by the Prime Minister after consultation with the Leader of the Opposition. The committee also reports to the Prime Minister, although, subject to editing, its reports are *subsequently* laid in Parliament.

In all these respects the Committee is designedly *not* a Parliamentary Select Committee. In view of the way that the Committee has operated and the government has responded these differences may amount to little in practice, but they are intended to underline and reinforce the long-standing argument by governments of all political persuasions that the security and intelligence agencies are accountable to ministers and not to Parliament directly.

The committee's statutory brief is 'to examine the expenditure, administration and policy' of the three services.[13] These terms have been carefully chosen in order to preserve an exclusion zone around security and intelligence *operations*. The legislation impliedly concedes what had previously been denied - that it was impossible to separate policy and operational matters in order to allow review by the committee. However, in a sense the earlier objection is correct: any discussion of policy that is not entirely hypothetical must raise operational issues.

An example will make this clearer. In the wake of September 11 there have been reports from the US that the Executive Order preventing the CIA from engaging in assassination has been rescinded. The UK government has in the past declared that intelligence officers are not permitted to kill in performance of their duties. Suppose that the Committee wished to explore whether this remains the position. The question would be what limits exist, if any, to the actions in a foreign state (murder is unlawful according to English law under extra-

territorial jurisdiction) that may be authorised by the Foreign Secretary under the 1994 Act. Is this a matter of policy or operations? The Act itself, which deals with ministerial authorisation in section 7, sets no limits. If the Foreign Secretary had informed MI6 and GCHQ in advance of the factors relevant to the grant of permission and any self-imposed limits, such as a ban on assassination, then, arguably, this would constitute a policy. If, however, there was no prior position but a request to authorise assassination of known terrorists had been refused, then it could be argued to constitute an operational matter The practical result in terms of the Service's actions would be identical, but in the first situation the Committee would competent to investigate whereas in the second it would not. Similar points could be made about virtually any technique employed by the agencies, whether of recruitment, surveillance, agent running, information gathering or disclosure.

The policy/operations distinction is reflected in the powers of the Committee. The agency heads may refuse to disclose what is described as 'sensitive information'.[14] This is defined in the Act to include information that might lead to the identification of sources, other forms of assistance given to the agencies, or operational methods. A second category of 'sensitive information' concerns past, present, or future specific operations. (Thirdly, information provided by a foreign government which does not consent to its disclosure is included.) Within these categories refusal is *discretionary*. The head of one of the three agencies may disclose the information if satisfied that is safe to do so.[15] Moreover, the responsible minister may order disclosure to the Committee in the public interest notwithstanding[16], so over-ruling the agency head concerned. From a certain point of view, however, the status of the Committee's requests for information is enhanced, since the demands that it makes have statutory backing, unlike those of a conventional Parliamentary Select Committee.

Some shortcomings in the Committee's brief can be noted. Unlike the United States, there is no tradition in the United Kingdom of confirmation by the legislature of the appointment of key officials. The executive alone is responsible. Consequently, the appointments of heads of the agencies are made by ministers (presumably advised by the head of the civil service, the Cabinet Secretary) but without reference to the Committee's members. There are limits also to the committee's information-gathering powers that are not obvious at a first glance at the Act. It may request 'information'. It does, not have, however, power to demand particular

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[13] Intelligence Services Act 1994 (hereafter, 'ISA'), s. 10(1).
[14] ISA, schedule 3, paragraph 4. In addition, ministers have power to withhold 'non-sensitive' materials on grounds similar to those that apply to select committees: ISA, schedule 3, para. 3(4).
[15] ISA, schedule 3, paragraph 3(2).
[16] ISA, schedule 3, paragraph 3(3).

documents, even those referring to the policy, administration or expenditure of the agencies. According to news reports the difference became crucial in one investigation, that into the handling of the Mitrokhin archive: it was only under the pressure from minister's (who had asked the Committee to investigate in the first place) that the agencies agreed to hand over documents as such, rather than summaries. Moreover, there is no right to see officials from the security and intelligence agencies at a level lower than the Director or Director-General.

The Committee is required by law to produce at minimum an annual report, which is delivered to the Prime Minister and, thereafter, published, with any deletions agreed on security grounds.[17] The Prime Minister again has several levers in this process- the timing of publication is effectively with him rather than the Committee. In practice the impact of the report can be diluted by publishing the government's response at the same time. A manipulative Prime Minister could use the control over timing to publish the report when public attention is distracted by other, more pressing, concerns. Significantly, the Committee has complained of unnecessary delay in publishing some of its findings.[18] Moreover, in the event of disagreement between the Committee and the Prime Minister over material to be deleted from the report, the latter can insist, although to do so would probably be counter-productive if it led to public dissent from the members of the Committee.

The Committee in operation

Although the legislation was passed in 1994 the Committee did not come into operation until the following year and it had little opportunity to embark on a substantive programme of work before the 1997 election. It produced a brief report calling for examination of the implications of the government's proposal (subsequently implemented in the Security Service Act 1996) to add to the powers of the Security Service a power to assist in the investigation of serious crime.[19] However the bulk of the committee's work date to date has fallen during the 1997-2001 parliament and it is this that this account will concentrate upon. This period also represented an important change since, unlike the previous administration, from the start of the new Blair government ministers were accustomed to sharing oversight of the services with the newly-established Committee.

The membership of the Committee remained nearly constant for the duration of the 1997-2001 Parliament and was an intriguing mixture of parliamentarians. Eight of the nine

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[17] ISA, s. 10(6) and (7).
[18] Intelligence and Security Committee, *Annual Report for 1999-2000*, Cm. 4897, para. 103.

members were from the House of Commons- the sole peer was a former Conservative Law Officer, Lord Archer. The Committee was chaired by an experienced Conservative Member of Parliament, Tom King- who had substantial security and defence experience from spells spent as Secretary of State for Northern Ireland and Minister of Defence. Another member of the Committee, also Conservative, Michael Mates, MP had a military background and had been a junior defence minister. Equally, though, the Committee included one Labour MP, Dale Campbell-Savours, who had taken a close interest in security matters as an outsider and had been a prominent critic of the lack of accountability of the services (and of the new legislative arrangements). Also highly experienced was Alan Beith, MP, the Deputy Leader of Liberal Democrats - the political party which had championed parliamentary accountability for security and intelligence agencies earlier than any other. At the other end of the experience range was Yvette Cooper, a new Labour MP with no previous experience of government or Parliamentary committees, and one of the youngest parliamentarians from the 1997 intake. She left the Committee during 1999-2000 on being promoted to ministerial office (ministers are debarred from membership of the Committee). To all appearances the Committee had been constructed to work in a bi-partisan fashion, in view of the fact that it was chaired by a prominent member of the Parliamentary opposition, and to be representative of a range of different Parliamentary interests, including those highly sceptical of the entire process.

The Committee was reconstituted after the 2001 election, due largely to individuals leaving parliament, although four of the nine members from the pervious parliament remain. Tom King had retired and was replaced in the chair by Ann Taylor, a Labour MP who was a former Chief Whip (the senior government business manager in the House of Commons in effect).

The Committee's working method was to begin by familiarising itself with the agencies by meeting heads of the services and by visiting the various premises in which MI5, MI6 and GCHQ are housed. They seem to have encountered little resistance from officials who were, if anything, keen to establish a new source of legitimacy for their work with a committee representative of Parliament, rather than just government. It is perhaps significant also that the services themselves were in a transitional period both following the ending of the Cold War and the transition to peace in Northern Ireland. In this context no doubt the Committee could be seen as useful allies in battles within government over budget priorities at a time when there was a risk of cut-backs due to the changing political situation. In any event good working relationships seem to have been established quickly.

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[19] *Report on the Security Service's Work Against Organised Crime*, Cm. 3065 (Dec. 1995).

From the start the Committee has been pro-active. In an early report it warned that it expected to be 'properly and promptly informed' by the agencies of their activities, rather than merely responding to requests for information; in this the Committee were consciously following the Congressional oversight model, rather than the more responsive mode contemplated in the legislation.[20] It publishes an annual programme of work, which it follows from year to year, as well considering topics which may emerge between annual reports in ad hoc reports. It has tended to meet frequently (often weekly during the Parliamentary session). Typically it interviews several dozen witnesses each year, and takes part in international liaison and exchanges, both by visiting oversight agencies abroad and receiving such visits (these have included many European and former Soviet bloc countries, the US and the other Commonwealth states).

A key issue in the development of the Committee's work has been the acquisition of a pro-active investigative capacity. Without this facility the Committee would be able to hear evidence from witnesses but have no way in which to dig deeper into the performance of the agencies. The 1994 Act made no provision for investigations of this kind, whether by the Committee or any independent official, such as an Inspector-General. It might be argued that, in view of the Committee's limited remit, investigation as such was unnecessary, since it would venture into operational matters.

Nevertheless, the Committee argued that, compared to the oversight arrangement in other countries, it lacked direct ability to investigate the agencies activities. Although generally satisfied with the level of co-operation that it had received in requests for access to information, the Committee argued that a power of independent verification would give added authority to its findings and so strengthen public confidence in the oversight system.[21] The government conceded the issue without making a formal change to the powers of the Committee.[22] The result then was a compromise in that the Committee stopped short of calling for the creation of an independent statutory investigator, such as an Inspector - General, but the government has agreed that the agencies would co-operate with an Investigator who works for the Committee. The appointment is a part-time one. The

[20] Intelligence and Security Committee, *Annual Report for 1995*, Cm. 3198 (1996), para. 37.

[21] Intelligence and Security Committee, *Annual Report for 1997-98*, Cm. 4073, paras 67-9

[22] *Government response to the Intelligence and Security Committee's Annual Report 1997-98*, Cm., 4089, para 21.

incumbent being a retired Deputy Chief of Defence Intelligence.[23] Defence Intelligence is not within the Committee's statutory remit and, thus, the Committee was able to appoint someone with intelligence expertise but without loyalty to one of the agencies overseen under the Act.

The Investigator is 'tasked' by the Committee as part of its annual programme of work to investigate and report to it on certain topics. Thus, for, example, in 2001-2 the Investigator was asked to investigate scientific and technical research and development supported by the agencies, how the roles discharged by Inspectors-General in other countries were met in the UK, recruitment, retention and career development in the agencies, and to review the US Report 'A Review of FBI Security Programs'.[24]

The Committee's experience of investigations since this reform was introduced in 1999 has led it conclude:

> 'The addition of an Investigator has allowed us to pursue issues in greater depth than if we had to rely on out efforts and resources. While the Investigator does not have an IG's powers, in practice the Agencies have proved most co-operative; the knowledge that they can call for operationally sensitive material to be removed from the Investigator's report before it goes to the Committee report encourage them to be frank.[25]

This comment perhaps captures the sense of pragmatic compromise in these arrangements. From a rigorous democratic perspective this is oversight by licence, rather than as of right. The fact that material by excluded from the Investigator's report *to the Committee*, which is itself unpublished, may appear curious in view of the fact that the Committee itself works within the ring of secrecy. No indication is given of how common this practice is. In essence the arrangement allows the Committee to be satisfied that someone responsible to *it* can confirm the accuracy of information it has received without members seeing for themselves all the details.

It is clear that the Committee is also working well beyond its strict legal remit in terms of agencies overseen. The Committee has encountered no apparent opposition in investigating the work of Joint Intelligence Committee and the Intelligence Co-ordinator, parts of the

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[23] Intelligence and Security Committee, *Annual Report for 1998-9*, Cm. 4532, para 84.
[24] Intelligence and Security Committee, *Annual Report for2001-02*, Cm. 5542 (June 2002), paras 93 ff..

intelligence machinery which although closely linked to the agencies are outside the statutory framework.[26] Similarly, it has taken evidence from a number of government departments which are in effect the security and intelligence agencies' 'customers', that is the users of intelligence produced by them.

A recent instructive example that shows the ability of the Committee to conduct an in-depth and independent investigation is the report on intelligence and threat warnings preceding the Bali bombing of 12 October 2002.[27] On the face of it the report went considerably beyond the statutory remit of the Committee, since it concerning specific intelligence available in relation to a specific event. Moreover, in the conduct of its inquiry the Committee examined all the relevant intelligence, intelligence assessments and travel advice available before the attack i.e. it was given access to intelligence files as well as interviewing witnesses. The explanation is that the initiative for the inquiry seems to have come either wholly or in part from the government itself, which wanted to be able to substantiate the claim that no specific warning of a threat had been received which should have been made public. To make this claim credible it was necessary for it to be investigated by an independent body. Hence, it was the *Foreign Secretary* who announced to the House of Commons that the Committee was conducting an inquiry and that all material would be made available to it.[28]

Despite this unusual set of events the Intelligence and Security Committee produced an independent report sharply critical of the Security Service (the agency responsible formulating and distributing terrorist threat assessments). The Committee exonerated officials from the claim that there had been specific information of the attacks that had not been passed on. It concluded authoritatively that there had been no such information and, therefore, the attack could not have been prevented. However, it found that the Security Service had been guilty of a 'serious misjudgement' in failing to issue a higher level of threat warning in response to reports of Al Quaeda activity in Indonesia, that attacks on tourists in nightclubs were under discussion, and in the light of a failed grenade attack on a US diplomatic residence.

If the Bali report is a success story, then there are also some glaring omissions from the published work of the Committee. Foremost among these is the silence of the Committee on

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[25] *Annual Report for 2001-2*, para 17
[26] ibid., paras. 8 ff. .
[27] Intelligence and Security Committee, *Inquiry into Intelligence, Assessments and Advice prior to the Terrorist Bombings on Bali 12 October 2002*, Cm 5724 (2002).
[28] HC Debs., 21 October 2002, cols. 21-24.

the allegations of the former Security Service officer David Shayler, finally convicted in 2001 under the Official Secrets Act for his revelations concerning the agency, and his counterpart from MI6, Richard Tomlinson. The allegations of incompetence and abuse made by these two insiders have received no public investigation. The reason is apparently that the Committee did not wish to encourage 'whistle-blowers' who break the law. Instead, the Committee has taken a close interest in the personnel policies of the agencies. The un-stated implication is that these cases are instructive only because of the failure to handle them in-house, rather than because of the substance of the allegations. And yet if the Committee is prepared to listen only to officially-sanctioned evidence, it is arguably depriving itself of a valuable source of information.

Among the concerns that the Committee has expressed in its reports is a recurring argument that ministers should be more directly involved in overseeing decisions of the agencies. This theme has surfaced in two different contexts.

In its annual reports the Committee has drawn attention to the inactivity of a Ministerial Committee on Intelligence Services, which in theory looks at the policy of the agencies together by approving annual budgets and National Intelligence Requirements under the Prime Minister's chairmanship.[29] In practice, the Ministerial Committee seems to be if not moribund at least in hibernation (it did not meet between 1995 and 2000). The government's response is that there is little point in the Ministerial Committee meeting merely for the sake of it and that the committee would be convened if there were substantive business to discuss. It has undertaken however, that the Ministerial Committee will meet at least annually in future.[30] This does, however, give the picture of agencies responsible to the relevant departmental minister but otherwise left largely to their own devices and free of active intervention by ministers.

A second area of concern to the Committee is more specific, but is also illustrative of unease over whether ministers are kept fully in the picture. As part of its investigation (at the government's request) of the agencies' role in handling information from the KGB defector, Vasili Mitrokhin, the Committee examined decisions not to prosecute spies in UK public

[29] Intelligence and Security Committee, *Annual Report for 1999-2000*, Cm. 4897 (November 2000), para. 19.
[30] *Government Response to the Intelligence and Security Committee's Annual Report for 1999-2000*, Cm. 5013 (December 2000). The Committee's, *Annual Report for 2001-02, Cm. 5542 (June 2002),* para. 10 expressed continued concern that a formal meeting had still not been convened, although the same group of ministers had met regularly with security officials regularly post September 11.

bodies who had been exposed as a result.[31] One of these cases, that of Melita Norwood, came to prominence mainly because the press were fascinated by the possibility that an 87 year old grandmother might be prosecuted for espionage. The allegations in question were very old: they related to Norwood's activities while she was employed as a secretary by the British Non Ferrous Metals Research Association in the 1930's, although she had continued to pass information to the Soviet Union until her retirement in 1972. The Committee's concern was that ministers had not been properly informed of her case so that the decision not to prosecute had not been taken by the responsible minister, the Attorney-General, when Norwood's importance became apparent from the Mitrokhin material in 1993. By the time the Attorney-General heard of the case in 1999 prosecution was in effect barred because any court would treat proceedings as an abuse of process in view of the failure to act sooner. Consequently, the Committee recommended better systems for liaison between MI5 and the Law Officers- a recommendation accepted by the government. The same report of the Committee found that successive ministers had not been properly briefed by officials over (the MI6-sponsored) plans to publish material derived from Mitrokhin.

Another area in which pressure by the Committee produce concessions from the government concerned the treatment of security files on individuals[32], especially those investigated as so-called 'subversives'. With the ending of the Cold War the services had embarked on a programme of destruction of these files, which it no longer had any use for. The Committee first indicated its concern that the Security Service was destroying files, which were valuable historical records (and might incidentally cover-up its own part in a controversial programme of information gathering) without any independent advice[33] in its annual report for 1997/8. The government responded by asking to the Lord Chancellor's Advisory Committee on Public Records advise on the criteria for retention of files on grounds of historical interest.[34] Critical speeches made by several members of the Committee during the House of Commons'

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[31] Intelligence and Security Committee, *The Mitrokhin Inquiry Report*, Cm. 4764 (June 2000); *Government Response to the Intelligence and Security Committee Report into the Security and Intelligence Agencies' handling of information provided by Mr Mitrokhin*, Cm. 4765 (June 2000).

[32] In 1998 The Home Secretary disclosed that of 725,000 files opened since 1909 by the Service 285,000 had been destroyed (110,000 of these in the early 1990s). The then current holding of 440,000 files included 290,000 personal files of which 20,000 were active; 13,000 of these related to UK citizens (divided approximately equally between terrorism and the Service's other current interests, espionage weapons-proliferation and serious crime): H.C. Debs, vol. 317, cols. 251-4 29 July 1998. The Intelligence and Security Committee disclosed that the Secret Intelligence Service (MI6) in 1998 held 86,000 files (75 % were closed) of which approximately half related to UK citizens, although they were not files whose subject-matter is individuals: *Annual Report of the Intelligence and Security Committee for 1997-98,* Cm.4073 (1998), para. 52.

[33] Details of the criteria for the destruction of files were given in an earlier statement: HC Debs, vol. 305, col. 520, 20 January 1998; see also *MI5: The Security Service* (3rd ed., London, 1998), 24-25.

[34] *Government Response to the Annual Report of the Intelligence and Security Committee for 1997-98* , Cm.4089 (1998), para. 16.

debate on the Committee's report elicited an undertaking from the Home Secretary to look again at the whole question.[35] It was subsequently agreed that officials of the Public Record Office with the appropriate security clearance would, in future, be invited to examine files which had been earmarked for destruction by the Security Service.[36] This provided an element of external scrutiny to ensure that historical records were not being destroyed. It was a clear instance where the Committee's persistence paid off.

One area in which the Committee and the government have had a long-running disagreement is the publication of budgets for the individual agencies, rather that a total 'Single Intelligence Vote'. The Committee has consistently argued that publication of the information is not sensitive, at least provided it is not done every year. The Committee has gone so far as to record in its report the agreement of the agency heads to publication.[37] It is plain, however, that the government chose to remove the relevant figures from the published report. After protest at the government's continued intransigence[38], the Committee seems to given up on the issue- it is not mentioned in its report for 2001-2.

Similarly, the Committee has consistently argued that in order to perform its role it requires access in full (rather than to the, edited, published version) of the reports of the Commissioners who check the legality of ministerial warrants under the 1994 Act and for interception of communications (where requests can be made by the Services). The government has opposed this in principle, although it has indicated that it is prepared to discuss specific requests. As a compromise, the Committee has met with the judicial Commissioners but it still maintains that it needs to see the reports in full.[39]

Conclusion

There can be little doubt that the Intelligence and Security Committee can be counted a success on several levels.

Firstly, at a presentational level, the existence of the Committee has largely assuaged calls for more public accountability of the security and intelligence agencies. It is true that there remains the constitutional objection that the Committee is not responsible to Parliament as

[35] HC Debs. vol. 318, col. 649-650 (3 Nov. 1998).
[36] *Annual Report of the Intelligence and Security Committee for 1998-99* , Cm.4532 (November 1999), paras. 76 ff.
[37] Intelligence and Security Committee, *Annual Report for1999-2000*, Cm. 4897 (November 2000), paras.43 ff..
[38] Intelligence and Security Committee, Interim *Report for2000-01 Cm . 5126 (March 2001), para. 26.*

such. For this reason the Home Affairs Committee has continued to call for the Intelligence and Security Committee be replaced with a Parliamentary Select Committee.[40] However, even it has conceded that the existing Committee is a significant improvement on the previous arrangements and has paid tribute to its work.

Secondly, the Committee has plainly succeeded in establishing good working relations with the security and intelligence agencies. There is little indication in the annual reports of the Committee of friction or conflict, or of any attempt by the agencies to frustrate or obstruct any line of investigation. The nearest indication is an introductory remark (in a published letter from the retiring Chairman to the Prime Minister) that SIS apparently found it 'more difficult' to be frank with the Committee than did the other services.[41] It is significant, perhaps, that the government evidently trusted the Committee sufficiently to ask if to investigate two matters which involved access to considerable *operational* detail (and which were therefore well outside the Committee's statutory powers)- the handling of the Mitrokhin Archive and intelligence prior to the Bali bombing. Moreover, the Committee has succeeded in behaving in a non-political fashion so that its criticisms of the agencies have generally been responded to in a constructive fashion. Equally it has proved a safe environment. There have been no leaks of information from Committee to the press - something which would have severely damaged working relations with the agencies.

Thirdly, the Committee has worked well despite its relatively weak powers. This may be in part because the agencies were aware that withholding information in accordance with the strict terms of the Act would inevitably have produced public and Parliamentary calls for increased investigative powers.

Equally, though, the Committee's reports contain many deleted passages where excisions have either been negotiated or insisted upon by the Prime Minister. Compared to the published reports of the Security Intelligence Review Committee in Canada, they are much less informative. The UK Intelligence and Security Committee's reports are sometime left with a reassuring feeling that the Committee has been active but without its full findings and recommendations being published. This, however, is the recurrent difficulty of oversight- how to reconcile effectiveness with giving a public account.

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[39] Intelligence and Security Committee, *Annual Report for2001-02, Cm. 5542 (June 2002), paras. 29 ff.*.
[40] Home Affairs Select Committee, *Accountability of the Security Service*, June 1999, HC291

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[41] *Annual Report for 1999-2000*, Cm. 4897, v.