



THE
WILBERFORCE
SOCIETY

The National Security Council and the Prime Minister

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With thanks to:

Professor Christopher Andrew, Lord Wilson of Dinton

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1. Abstract

This paper addresses the ongoing debate over the functions of the UK's National Security Council, established by David Cameron in 2010. Locating the NSC's formation in wider debates on the UK's constitution, the executive authority of the Prime Minister within Cabinet government, and the role of military intelligence in policymaking, it proposes two major changes to the NSC's role and its associated regulatory framework.

Firstly, it is proposed that the NSC be placed on a statutory footing as an amendment to current legislation in the Intelligence Services Act (1994). Defining the NSC's existence and requiring its decision on certain executive powers such as the declaration of war would, in this paper's estimation, act as a valuable constitutional check on Prime Ministerial power.

Secondly, a strengthened framework is proposed for the regulation of the NSC by Parliament, though the Intelligence & Security Committee. The case is made that, if national security in the 21st century may be defined as a public confidence that normal life may be conducted without personal or national danger, the public interest is served by more open scrutiny of high-level security policy, thereby increasing public confidence and accountability.

2. Introduction

The United Kingdom's National Security Council was formed in May 2010 as one of the first acts of the new coalition government. Its foundation won extensive support, as an enviable vehicle both for the coordination of national security in its increasingly prominent 21st-century role, and as a reassertion of the longstanding tradition of collective government. The UK at present possesses a world-class national security apparatus, highly developed since the Cold War, and free from many of the problems associated with the more extensively codified and thus more litigious security structures in allies like the USA. The innovations of the NSC are however, in this study's estimation, incomplete.

When questioned (in a talk) by the authors, David Miliband, former UK Home Secretary, likened the NSC to 'an expensive and shiny Rolls-Royce, whose owner spends all their time polishing it and very little time behind the wheel'. The implication is clear; the NSC is an essential vehicle to coordinate UK national security apparatus in the chaotic and asymmetric world of the new century, but its current deployment falls short of its potential. A senior intelligence official expressed to the authors his wholehearted belief that it 'works'. At the same time however, the NSC is not an obligatory body. It may be circumvented by the Prime Minister if he wishes to take executive action alone, and it lacks a strong regulatory framework in Parliament to hold the NSC's and the Prime Minister's decisions to account if this is perceived as necessary. Fully embracing the NSC's potential would reap dividends for the UK's national security, as well as budgetary efficiency, in establishing it as the executive-level counterpart to the UK's world-class intelligence apparatus.

This study acknowledges the multiple benefits accorded by the new NSC. It begins by examining the past problems in collective government which the NSC was designed to address, and evaluates its effectiveness so far in doing so. It proposes two major changes to this apparatus. Firstly, placing the NSC on a statutory basis as an amendment to existing Intelligence

Services legislation would make it an obligatory part of decision-making in Number 10 and the Cabinet, acting as an effective constraint on the ‘presidential’ authority exercised by some Prime Ministers. Secondly, we propose closer regulation from Parliament of the NSC and wider national security apparatus. The Intelligence & Security Committee currently operates on an unconventional basis, operating for good reason on different terms to most Parliamentary Select Committees. We propose strengthening the ISC as a higher-profile regulator, in the national interest, of the NSC, the Joint Intelligence Committee, as well as their respective secretariats.

As a brief pamphlet, this paper is designed to offer tentative thoughts on policy changes to the current functions of the NSC and its regulators. It is hoped that the changes it suggests, most of which could easily be achieved through subordinate legislation, might be given further thought by the relevant policymakers. The Wilberforce Society was founded to promote dialogue between ambitious students and leading policymakers and commentators. We hope this paper provides one such opening.

Summary of proposals:

Proposal 1: Placement of National Security Council on statutory basis. Achieved, in order of preference, by:

- i. Writing the NSC and its functions into an amendment to the Intelligence Services Act (1994)
- ii. Enacting the above by subordinate legislation, and empowering each subsequent Prime Minister to reaffirm their commitment to the NSC’s statutory role.
- iii. Placing specific functions of the NSC, rather than the existence of the committee itself, into primary or subordinate legislation. The minimum requirement here is that a declaration of war on Royal Prerogative must be made in consultation with the NSC.

Proposal 2: Strengthening the investigative and regulatory powers of the Intelligence and Security Committee, by:

- i. Associating the ISC and its strengthened powers with the NSC in statute, to establish the ISC as the recognised regulator of the NSC’s use of intelligence in strategic planning.
- ii. Increasing the ISC’s independence from the Prime Minister, to establish its role of scrutiny of executive decision-making on matters of national security through (or without) the NSC.
- iii. Increasing the public profile of the ISC, in particular its scrutiny of the NSC and its secretariat.

For further information about this paper or about the work of The Wilberforce Society, please contact George Bangham at chairman@wilberforcesociety.co.uk or visit www.thewilberforcesociety.co.uk.

3. Before 2010: the problems the NSC was designed to solve

Tony Blair and Afghanistan: the Prime Minister's executive authority

As Prime Minister, Tony Blair could call upon an unusual level of 'presidential' authority, supported as he was by significant support both in No. 10, the Cabinet and in Parliament. New Labour saw collective government as 'a sign of weakness', as Peter Mandelson stated in 1996.¹ Their project once in power was therefore to build the policymaking and executive strength of Number 10.

This approach has not been unknown in the past; Margaret Thatcher likewise asserted Number 10's control over all government policy, boosted by immense personal authority and popularity. It is a feature of the loosely-defined constitutional role of the UK Prime Minister that the executive authority of the office is defined to a significant extent by the nature of its incumbent. As Lord Wilson of Dinton testified to the Iraq Inquiry, however, Mrs Thatcher's approach to collective government differed subtly from Mr. Blair's. 'She did accept the need for the system and for collective decision taking', including proper minuting of cabinet meetings. After 9/11 it has been suggested that Mr. Blair's executive style reverted to an unprecedented level of 'sofa government'.²

Sir John Chilcot's Iraq Inquiry heard in 2011 that, between 9/11 and mid-January 2002, the Cabinet Secretary attended and noted 46 Ministerial discussions on the subject of Afghanistan. Of these, 13 were in Cabinet, 4 being 'very short', 12 were in Cabinet Committees (in particular that called DOP(IT), which was set up 'as a kind of War Cabinet'), and 21 were ad hoc.³ To generalise therefore, it is precisely this ad-hoc type of cabinet government which the NSC was designed to combat. Beside its advantages for better policy co-ordination between Whitehall departments, and associated cost-savings, the NSC provides a regular forum for Cabinet to discuss all matters pertaining to National Security, respecting due process in collective government. In theory, this would oblige a future Prime Minister with personal authority on a par with Tony Blair to take a more collective route through decision-making on conflicts like Afghanistan.

This paper therefore recognises the enormous potential of the NSC to co-ordinate national security 'as a principle for organising government'.⁴ Such increased prominence for national security in decision-making will be discussed below. With regard to the executive authority of the Prime Minister, we argue that the new post-9/11 paradigm of 'wicked' threats to national security gives weight to calls for constitutional checks on the office's authority. It is often asserted that collective government cannot guarantee the production of the best decision in every case. It does, however, make the best decision most likely.

The role of intelligence in policy formulation

A historical examination of New Labour's post-9/11 shift in collective government demonstrates the transition to a new paradigm for intelligence over the past two decades. The

¹ Mandelson, *The Blair Revolution* (1996).

² Lord Wilson, *Evidence to Iraq Inquiry* (25 January 2011)

³ Lord Wilson, *Evidence to Iraq Inquiry* (25 January 2011)

⁴ Edwards, C., *National Security for the Twenty-first Century* (Demos, November 2007).

predictable, symmetric and stable threat of the Cold War has been replaced by a far more chaotic system. As Charlie Edwards' Demos paper of 2007 explained:

*“The common, unifying, external threat of nuclear war has been replaced by a plethora of security challenges such as trafficking and organised crime, international terrorism, energy security, pandemics and illegal immigration. They are dangers that are present, but not clear.”*⁵

Immediately after 9/11, Tony Blair embraced the necessities of this new threat by development of his close advisory circle at in Number 10. As Lord Wilson explained to the Iraq Inquiry, ‘intelligence was particularly important’, hence every meeting, both ad hoc and in Cabinet, would begin with ‘a review of what we had got from intelligence’.⁶ By consequence, Sir Richard Dearlove (Head of SIS) and Sir Stephen Lander (DG of the Security Service) were usually present, increasing their engagement at the political as well as assessment level. This new security threat is clearly acknowledged in the UK's National Security Risk Assessment (part of the National Security Strategy, 2010), where Tier 1 risks, classed by a combination of magnitude and likelihood, comprise cyber attack, international military crisis (including non-state actors), international terrorism and a major accident or natural hazard.

This paper thus acknowledges the existing trend whereby intelligence and national security play an increased role in the formulation of government policy. It supports this trend in decision-making, highlighting that a more chaotic and asymmetric threat necessitates greater use of intelligence in strategic policy. It also argues that this trend must be reinforced by statute; that only by codifying this procedure can the UK guarantee that intelligence, given its newly-central place in policy, will be processed by the established forms of collective government. The risk otherwise is that the increased policymaking role for intelligence feeds directly into Number 10 policy, without being obliged to pass through open discussion at the NSC. Unless open cabinet discussion of these matters takes place, the possibility remains of executive decisions like the much-criticized declaration of war in Iraq being made, without full collective approval.

An immediate objection to codifying the role of intelligence in policymaking might be that this sets a dangerous constitutional precedent. Potentially, it could be the first step in a far-reaching (though piecemeal) codification of all government procedure, contrary to the most central traditions of British cabinet government. This is fundamental constitutional debate is, however, one into which this study does not enter. The authors believe that National Security should be regarded separately from other government procedure. The protection of the nation against existential threats is the primary responsibility of the government to its people, since without this security no other functions are secure. Hence the proposals set out below on National Security must not stand or fall by the precedent they might set for other areas of government.

⁵ Edwards, C., National Security for the Twenty-first Century (Demos, November 2007).

⁶ Lord Wilson, Evidence to Iraq Inquiry (25 January 2011)

4. The new regime: evaluation of the NSC

Prime Ministerial executive authority – e.g. UK withdrawal from Afghanistan

Section 2 discussed the potential merits of the NSC as a check on the ad hoc style of ‘sofa government’ used by Tony Blair to maintain his highly centralised executive control over New Labour policy. As has already been suggested, the National Security Council model is meant to provide a standing Cabinet committee through which major decisions on security and defence policy must be routed. This is demonstrably not always the case.

Since autumn 2010 the UK government has been committed to a withdrawal of its troops from Afghanistan by 2015. As the Foreign Affairs Select Committee’s investigation into *The UK’s foreign policy approach to Afghanistan and Pakistan* made clear however, this policy change was reached via a confusing and piecemeal process, indicating a lack of clear consultation with the NSC. Their report issued a caustic summary of the decision-making process surrounding the withdrawal from Afghanistan, declaring it ‘imperative that the Government explains what prompted such a significant change in policy’, and ‘why the decision to announce a deadline for British combat withdrawal in 2015 was not taken within the National Security Council’.⁷ This case-study amply illustrates the risks inherent in such non-collective decision making:

“157. We conclude that the Government’s policy statements on the withdrawal of combat forces are inconsistent and we invite it to explain why there was such a sudden and dramatic shift in policy in favour of an arbitrary deadline. We recommend that in its response to this Report, the Government explains what political and international factors prompted the Prime Minister to decide upon 2015 as a deadline, what the security rationale is, what advice he received from the military in advance of this decision, and what consultations the UK had with the US on this specific issue.”

This case thus demonstrates two problems with the current regime. Firstly, major policy decisions like the withdrawal from Afghanistan have been made by members of the National Security Council, but not in the National Security Council, as the Foreign Affairs Select Committee’s findings make clear. This questions the degree to which the NSC has really provided a consultative check on Prime Ministerial executive authority. Secondly, this decision-making regime may produce ill-considered policy that is detrimental to UK interests. Their report considered the prudence of public announcements by ISAF members of their withdrawal dates; some sources expressed concern that ‘securing the trust of the Afghan people would be difficult if the West was perceived to be on the verge of leaving Afghans to fend for themselves’, and that ‘that the decision had provided a psychological boost to the Taliban by signalling a lack of long-term western commitment to the mission’.⁸ The Committee also voiced concerns that ‘Pakistan may feel that its security interests in connection with Afghanistan are not being adequately addressed by the West’, inviting the possibility of further degradation of relations with Pakistan, a geopolitically critical ally. There are of course domestic and

⁷ Foreign Affairs Select Committee, *The UK’s foreign policy approach to Afghanistan and Pakistan* (9 February 2011)

⁸ *Ibid.*

international political benefits to this decision as well, however the Foreign Affairs Select Committee's judgment that this method of decision-making carries inherent risks should be carefully noted.

Also worthy of note was the nature of Number 10's response to the Foreign Affairs Select Committee:

"The decision that UK forces would be out of combat by 2015 was made by the Prime Minister following discussions with a number of senior Ministers and after his first visit to Afghanistan as Prime Minister."

There was therefore no attempt at denial or defence of the decision to bypass the NSC. As the journalist James Kirkup asked in response, 'What is the point of the National Security Council?', if in large scale decisions such as this the Prime Minister remains free to bypass it.⁹

The National Security Strategy and the Strategic Defence and Security Review

RUSI analyst Gwyn Prins has criticised the NSC for its primary focus on cutting the budget deficit rather than long-term national security. A suggestion voiced among military circles is that the NSS and the SDSR should be documents that first evaluate the UK's strategic security needs and then finds the means to fit them into a target budget.

War in Libya – the NSC as a war Cabinet

The recent military engagement in Libya has shown the NSC as being capable of adapting to the exigencies of a short-term kinetic military campaign. However, the failure of the NSC, whose top concern is long-term strategic planning, to develop an adequate strategy and exit plan for Libya has shown that there is arguably some weakness in NSC prioritization. Foreign policy and meetings with the NSC took up, by the government's own admission, over 50% of the Prime Minister's time. With respect to Libya, it seems the NSC spent far too little effort assessing contingencies and end-games in favour of spending the majority of its time responding to events as they occurred.

5. Proposals: a statutory role for the National Security Council

Placing the NSC in statute would ensure it is a "sustained innovation", to borrow a phrase used by Lord Owen in his evidence before the Foreign Affairs Select Committee. A statutory NSC would guarantee that long-term national security and intelligence assessments are independent of political considerations. It would also allow the NSC to be better able to assess opportunities, to build trust between policy makers and the national security community, to separate policymakers' 'portfolios' from the exploratory work of the assessments staff, to move away from overriding emphasis on situational awareness, and to foster the accumulation of institutional knowledge and expertise

⁹ Kirkup, James, 'What exactly is the point of David Cameron's National Security Council?', *The Telegraph Blogs* (4 May 2011)

A statutory NSC would also allow for a smooth transition between successive governments.

In the same way that preventative care is more cost effective than reactive care in the healthcare provisioning industry, it is far more important to reduce uncertainty about the future than know what has happened in the recent past. As Thomas Fingar states in "Reducing Uncertainty: Intelligence Analysis and National Security", the goal is to identify important streams of development, how they interact, what drives the process, and what signs may indicate a change of trajectory. The ultimate goal is to shape the future, not to predict what it will be.

We propose defining the NSC's current composition and its current duties — to assist in preparing an annual National Security Strategy and Strategic Defence and Security Review — in statute. We would also like to explicitly enshrine in statute the role of the NSC as the Government's instrument for coordinating and executing national security policy. We would also like to define the role of the National Security Adviser (NSA) as the senior civil servant on the committee and as the chief of the National Security Council Secretariat.

Implementation of the proposal (see appendix for draft statute)

Rather than writing minute details of the NSC into statute, this proposal is best implemented in broad terms. We suggest that 'There shall be' an NSC, and that the Prime Minister shall have a duty to pass subordinate legislation on the composition of the NSC at the start of every Parliament. We do not propose an exhaustive list of the NSC's powers. This avoids the problem of restrictive codification, which is not in the tradition of the UK's constitution. During the course of our research, several lawyers and constitutionalists raised concerns that this could set a precedent for placing other Cabinet committees on a statutory basis. Whatever one's opinion on the merits of the UK's uncodified constitution, there is a strong argument that it is illogical to codify only the NSC in detail, but no other comparable bodies, such as committees on the economy.

Limiting the Prime Minister's personal authority to go to war, which exists de facto on account of the Royal prerogative, is perhaps the main objective of placing the NSC on a statutory basis. We suggest as a minimum therefore that this role of the NSC should be placed in statute. This means that the NSC must approve the decision to take military action, and that it must be fully accountable to Parliament for this decision. The only caveat to this comes in covert or non-conventional military action, such as special forces operations; in this case it might be necessary on the grounds of national security to keep decision-making secret. The 'national interest' grounds for codifying the NSC do not apply in this case.

We would also like to put the National Security Council Secretariat on a statutory basis and give it adequate staffing as determined by the NSA and the Prime Minister. We propose expanding the NSC Secretariat's secondment powers and give it the capacity to form dynamic committees, sub-committees, and task forces consisting of civil servants across government and dependent on the national security exigencies determined by the PM and NSA. The NSC Secretariat would also be given a statutory ability to commission its own reports.

Finally, we would like to recommend the findings of the Justice and Security Green Paper of 2011 and formalise them in statute via amendments to the Intelligence Services Act of 1994. We would also like to expand its jurisdiction to broadly cover the NSC so as to ensure

parliamentary oversight over the broader national security community and not just over the intelligence services.

6. Proposal: better regulation of the NSC

Strengthened Parliamentary oversight via the Intelligence and Security Committee, linking its regulatory role more explicitly to the NSC

The current regime provides for Parliamentary scrutiny of the agencies and other national security structures by the Intelligence and Security Committee, created under the Intelligence Services Act 1994. It takes evidence on the expenditure, administration and policy of the agencies, with consultation from the Home Office, FCO, National Security Adviser, Chief of DIS, Chairman of the JIC and others. It is not a Committee of Parliament, however, reporting directly to the Prime Minister (under the provisions of the ISA 1994), whose responsibility it is to publish its reports and present them to Parliament. The Prime Minister is required by statute to publish the ISC's annual reports, and has no power to change their contents, though redactions may be made on matters of operational capability or other matters of National Security. Having initially started within the Cabinet Office, the ISC has now moved to its own premises, with its own Secretariat, avoiding the potential conflicts of interest in its scrutiny of the Cabinet Office.

As the ISC's response to the October 2011 Justice and Security Green Paper made clear:

“Given the lack of other forms of independent oversight, it is essential that both the Commissioners and this Committee have the powers and resources necessary to carry out this work effectively and to compensate for those other forms of public security to which the intelligence agencies are not subject.”

This report therefore endorses the Green Paper's call for a greater public profile for this intelligence oversight. This will require three parts: the placement of more powers of the ISC on a statutory footing as a Committee of Parliament, greater public awareness of the work of the ISC Commissioners, and an increase in their powers of scrutiny. As the Green Paper suggests, this could involve *“adding a general responsibility for overseeing the effectiveness of operational policies to the statutory remit of the Intelligence Services Commissioner”*. We propose that this is enacted by more explicitly associating the ISC's regulatory role with the NSC's operational and strategic functions.

Potential problems with these proposals

Despite its ad hoc and non-codified origins, there are significant advantages to the fluidity of the UK's constitution with regard to national security. Winston Churchill's phrase 'muddling through' summarizes a general approach to government which is often quite rightly construed as inefficient. The alternative apparatus used in many other countries however demonstrates the benefits of the UK regime. As Professor Christopher Andrew emphasised during the course of the research for this paper, nowhere other than the UK can such rapid decisions on matters of National Security be reached. The USA quite probably took such a long time to carry out the assassination of Osama bin Laden since (in part) this type of decision must, in the USA, pass

through numerous legal and bureaucratic checks. In the UK by contrast, there is no need for formal ‘executive order’; the Prime Minister is in effect imbued with the sovereign’s prerogative to take such decisions themselves. The UK nonetheless remains an agile and resourceful contributor to international military and intelligence actions, as evidenced by the formation of targeting task forces shortly after the declaration of a no-fly zone over Libya. The extent to which such authority must be exercised collectively remains, as has been argued by this report, a matter contingent on the personal political strength of the Prime Minister at the time.

Professor Andrew’s warning over the nature of this proposal on the regulation of the NSC is thus critical. If its role is too heavily codified, it risks losing the light-footed flexibility typical of UK constitutional matters (in some interpretations at least), and becoming mired in USA-style legalistic and bureaucratic delay. The authors maintain nevertheless that a clearer statutory role for the NSC, and its accompanying regulation, would increase the likelihood in future of major national strategic decisions occurring by due process in collective government.

7. Long-term implications of these proposals

The NSC as a check on Prime Ministerial authority

These policy proposals are primarily motivated by what we regard as the shortcomings of the UK constitution in providing for sufficient collective decision-making over Iraq. As has been emphasized, we applaud the steps taken to address this problem by the formation of the NSC. In its current form however it does not go far enough in this capacity; our proposals aim to add force to the NSC’s role as a constitutional check on Prime Ministerial authority, particularly with regard to the declaration of war.

The changing nature of the UK’s security threat in the 21st century

In making these proposals, the authors intend to use the NSC as a test case for greater accountability and transparency in cabinet government. This should not be taken however as a precedent for the placement of other cabinet committees in statute. We believe that National Security, particularly in the novel and chaotic threat environment of the early 21st century, is a uniquely important part of the government’s responsibility to the citizens of the United Kingdom. Thus these proposals imply that the government’s first priority should be the security of the state against existential threats, and the security of its citizens from harm. The holistic approach taken by the NSC ensures that the threat assessment is wide-ranging; national security is defined as broadly as economic and environmental threats.

There is clearly an ever-present threat of the ‘gigantism’ inherent in the USA’s national security architecture when further statutory requirements are created. The proposals made above are designed however to ensure the maximum flexibility, and maximum prospect for rapid executive action by the government, whilst curbing some of the stronger executive powers of the Prime Minister. As has been emphasized, collective government does not guarantee that good decisions will be made, but it maximizes their likelihood. In the ‘Age of Uncertainty’ set

out by the National Security Strategy of 2010, a chaotic and multi-polar world characterized by a greater number of unknowable ‘mysteries’ than knowable ‘secrets’ in military intelligence,¹⁰ it is imperative that all necessary measures are taken to provide high-quality all-source analysis for high-quality government decision-making. By these means, the chances are maximised that the UK will continue to possess an effective and world-class apparatus for the maintenance of national security.

Appendix: Rough Draft Statute

1 The National Security Council

There shall continue to be a National Security Council under the authority of the Prime Minister; and subject to subsection (2) below, its functions shall be —

(a) to be the instrument by which the Prime Minister may coordinate and execute policy as it relates to national security

(b) to assess and advice threats and opportunities as they relate to national security, and to deliver counsel to its constituent members

(2) The functions of the National Security Council be exercisable only—

(a) in the interests of national security, with particular reference to the defence and foreign policies of Her Majesty’s Government in the United Kingdom; or

(b) in the interests of the economic well-being of the United Kingdom; or

(c) in support of the prevention or detection of serious crime.

(3) The National Security Council shall consist of—

(a) The Prime Minister

(b) ———

2 The National Security Adviser

¹⁰ On the distinction between ‘secrets’ and ‘mysteries’ see Hennessy, P. *The Secret State* (2nd ed. 2010) p. 371.

(1) The operation of the National Security Council shall continue to be under the control National Security Adviser appointed by the Prime Minister

(2) The operation of the National Security Council Secretariat shall continue to be under the control National Security Adviser appointed by the Prime Minister

3 *The National Security Council Secretariat*

SCHEDULE 1 CONSEQUENTIAL AMENDMENTS

The Intelligence Services Act of 1994

(ISC related statutory changes)

About the Wilberforce Society:

The Wilberforce Society was founded in 2009 by students at the University of Cambridge. It is the University's student-run think tank, and aims to provide a forum for dialogue between students and leading policymakers.

This core aim is achieved by three key functions: the promotion of public policy debate amongst the wider student body, the publishing of students' policy research to a professional audience, and reaching out to policymakers across the UK to work with students on the formulation of new policy.

For further information on the society, its events and the possibility of commissioning policy research, please visit www.thewilberforcesociety.co.uk or email chairman@wilberforcesociety.co.uk