

Don't be vague

*William Hague MP
and others*

On Monday 10 June 2013, the Foreign Secretary made an urgent statement to the House of Commons on the work of the Government Communications Headquarters (GCHQ). This followed Edward Snowden's revelations about PRISM, the US National Security Agency's covert surveillance programme. Mr Hague was reluctant to acknowledge the source, as these excerpts from the day's Hansard show.

The Secretary of State for Foreign and Commonwealth Affairs (Mr William Hague)
... the Intelligence and Security Committee's work is one part of the strong framework of democratic accountability and oversight that governs the use of secret intelligence in the United Kingdom, which successive Governments have worked to strengthen. At its heart are two Acts of Parliament: the Intelligence Services Act 1994 and the Regulation of Investigatory Powers Act 2000.

The Acts require GCHQ and the other agencies to seek authorisation for their operations from a Secretary of State, normally the Foreign Secretary or Home Secretary. As Foreign Secretary, I receive hundreds of operational proposals from the SIS and GCHQ every year. The proposals are detailed: they set out the planned operation, the potential risks and the intended benefits of the intelligence. They include comprehensive legal advice describing the basis for the operation, and comments from senior Foreign Office officials and lawyers. To intercept the content of any individual's communications in the UK requires a warrant signed personally by me, the Home Secretary, or by another Secretary of State. This is no casual process. Every decision is based on extensive legal and policy advice. Warrants are legally required to be necessary, proportionate and carefully targeted, and we judge them on that basis.

Considerations of privacy are also at the forefront of our minds, as I believe they will have been in the minds of our predecessors. We take great care to balance individual privacy with our duty to safeguard the

public and the UK's national security. These are often difficult and finely judged decisions, and we do not approve every proposal put before us by the agencies. All the authorisations that the Home Secretary and I give are subject to independent review by an Intelligence Services Commissioner and an Interception of Communications Commissioner, both of whom must have held high judicial office and report directly to the Prime Minister. They review the way these decisions are made to ensure that they are fully compliant with the law. They have full access to all the information that they need to carry out their responsibilities, and their reports are publicly available. It is vital that we have that framework of democratic accountability and scrutiny ...

This combination of needing a warrant from one of the most senior members of the Government, decided on the basis of detailed legal advice, and such decisions being reviewed by independent commissioners and implemented by agencies with strong legal and ethical frameworks, with the addition of parliamentary scrutiny by the ISC, whose powers are being increased, provides one of the strongest systems of checks and balances and democratic accountability for secret intelligence anywhere in the world ...

It has been suggested that GCHQ uses our partnership with the United States to get around UK law, obtaining information that it cannot legally obtain in the United Kingdom. I wish to be absolutely clear that that accusation is baseless. Any data obtained by us from the United States involving UK nationals are subject to proper UK statutory controls and safeguards, including the relevant sections of the Intelligence Services Act, the Human Rights Act 1998, and the Regulation of Investigatory Powers Act ...

... We have strengthened the role of the ISC through the Justice and Security Act 2013, to include oversight of the agencies' operations as well as their policy, administration and finances. We have introduced the National Security Council so that intelligence is weighed and assessed alongside all other sources of information available to the Government, including diplomatic reporting and the insights of other Government Departments, and all that information is judged carefully in deciding the Government's overall strategy and objectives ...

The British people can be confident in the way our agencies work to keep them safe. Would-be terrorists, those seeking to spy against this country or those who are the centre of organised crime should be aware that this country has the capability and partnerships to protect its citizens against the full range of threats in the 21st century, and that we will always

do so in accordance with our laws and values, but with constant resolve and determination.

Douglas Alexander MP (Paisley and Renfrewshire South) (Lab): ... I shall quote back to the Foreign Secretary his words in a BBC interview yesterday:

‘if you are a law abiding citizen of this country going about your business and your personal life, you have nothing to fear – nothing to fear about the British state or intelligence agencies listening to the contents of your phone calls or anything like that.’

This assertion, however, assumes that the state is either incapable of error or incapable of advertent or inadvertent wrongdoing. Surely, on reflection, the Foreign Secretary will accept that law-abiding citizens of this country also want to know and be assured of the fact that the agencies of government are themselves law-abiding ...

It is in this spirit, not of condemnation but of concern, that I would like to ask the Foreign Secretary some questions about the recent allegations first revealed by *The Guardian* on Friday of last week about the existence and operation of the so-called Prism programme administered by the NSA ... Earlier this morning, the Chair of the Intelligence and Security Committee, the right hon. and learned Member for Kensington (Sir Malcolm Rifkind), gave his account of the legal framework that would govern British intelligence agencies’ use of intercept data. He said:

‘If the British intelligence agencies are seeking to know the content of emails about people living in the UK then they actually have to get lawful authority. Normally that means ministerial authority. That applies equally whether they are going to do the intercept themselves or whether they are going to ask somebody else to do it on their behalf.’

Will the Foreign Secretary confirm whether that account of the current legal framework is both complete and accurate?

In his statement, the Foreign Secretary has just stated: ‘Any data obtained by us from the United States involving UK nationals are subject to proper UK statutory controls and safeguards, including the relevant sections of the Intelligence Services Act 1994, the Human Rights Act 1998 and the Regulation of Investigatory Powers Act 2000 [RIPA].’ Will he now set out the relevant sections of those Acts, and confirm whether this explanation means that any data obtained by us from the US, involving UK nationals, are authorised by ministerial warrants and overseen by the intercept commissioner, as set out by RIPA?

Specifically, what legal framework applies in the following two cases? First, when a request is made by the UK to an intelligence agency of an international ally for the interception of the content of private communications, will he confirm whether this process is governed by individual warrants signed by the relevant Secretary of State and approved by the intercept commissioner as set out in part I of RIPA? Secondly, will he address the specific issue of when a request is made by the UK to an intelligence agency of an international ally, not to seek intercept, but instead to search existing data held by that agency on the contents of private communications, and, in particular, the legal process that will be adopted in such an instance? In that circumstance, will he confirm whether this process is also governed by individual warrants signed by the relevant Secretary of State and approved by the intercept commissioner as set out in part I of RIPA?

Will the Foreign Secretary confirm that, with respect to intelligence sharing with allies, the UK Government operate on the basis of the assumption that information held by, for example, the US Government, has been obtained in accordance with the law of that country? If that is the case, what steps has he taken, or will take, to confirm that any processes currently in use by the NSA continue to adhere to this legal safeguard? ...

William Hague MP: ... The right hon. Gentleman was right to say that he supports information sharing with our allies. The position on the legal framework is exactly as I set out in my statement: any data obtained by us from the United States about UK nationals are subject to the full range of Acts, including section 3 of the Intelligence Services Act 1994 and the RIPA provisions, set out in sections 15 and 16, which regulate that information gathering must be necessary and proportionate and regulate how the agencies must handle information when they obtain it.

On the right hon. Gentleman's further questions about how authority is given, I cannot give him, for reasons that I cannot explain in public, as detailed an answer as he would like. I would love to give him what could actually be a very helpful answer, but because circumstances and procedures vary according to the situation, I do not want to give a categorical answer – in a small respect circumstances might differ occasionally. But I can say that ministerial oversight and independent scrutiny is there, and there is scrutiny of the ISC in all these situations, so, again, the idea that operations are carried out without ministerial oversight, somehow getting around UK law, is mistaken. I am afraid that I cannot be more specific than that.

Later, in answer to another questioner, Mr Hague said: ... there may well be occasions over the coming years when we will need to update and improve those procedures, to take account of changes in technology. I do not exclude that at all, but it re-emphasises the importance of applying our law in our country, which the agencies can be relied on to do ...

Diana Johnson (Kingston upon Hull North) (Lab): One of the key motivations for the reform of the Intelligence and Security Committee was to help with transparency and to engage with the public and give confidence. Can the Foreign Secretary say whether any ISC report on Prism will be published, containing redactions that are as limited as possible?

Mr Hague: I cannot give an assurance that reports on these issues will be public because, as I argued in my statement, there is an important role for secret intelligence. Our deliberations about that must therefore be secret.

US uses NATO headquarters to spy on EU?

'... The telephone lines and computer networks of EU offices in Brussels were tapped by the American National Security Agency (NSA) under its so-called Prism surveillance programme, *Der Spiegel* reports, based on new documents leaked by fugitive whistleblower Edward Snowden. An NSA document from September 2010 describes Europeans as specific targets, the German magazine says.

In addition, a series of bogus phone calls to the Justus Lipsius building, which hosts the EU Council, were traced back to Nato headquarters in Brussels where NSA agents are based, indicating an attack on the EU communications security, *Spiegel* writes ...

'As soon as we saw these reports, the European External Action Service made contact with the US authorities in both Washington DC and Brussels to seek urgent clarification of the veracity of, and facts surrounding, these allegations,' foreign policy chief Catherine Ashton said in a statement. Her New York and Washington delegations send diplomatic cables classified up to the level of 'Secret'. The designation covers texts which could 'seriously harm' EU interests, 'raise international tensions' or 'threaten life' and 'public order' if they get out.

For his part, European Parliament chief Martin Schulz said EU-US relations risk serious harm.

'I am deeply worried and shocked about the allegations of US authorities spying on EU offices. If the allegations prove to be true, it would be an extremely serious matter which will have a severe impact on EU-US relations,' he said in an emailed statement.

EU justice commissioner Viviane Reding [on 30 June] told an

The ISC makes a variety of reports, some of which are published and redacted, as the hon. Lady says. The ISC will have to consider the format of its report, but I cannot guarantee that its findings will be public ...

Rehman Chishti (Gillingham and Rainham) (Con): I very much welcome the statement by the Foreign Secretary. On the sharing of intelligence by GCHQ, will he clarify whether the United Kingdom provides location intelligence to the United States in relation to drone strikes in Afghanistan and Pakistan?

Mr Hague: As I explained in my statement, successive Governments have not commented on the details of how we use intelligence information. My statement was about the legal framework that governs such matters and the values that we uphold. I cannot and will not comment on what intelligence we share with other countries.

audience in Luxemburg that 'partners do not spy on each other'. She also questioned the future of the recently-launched EU-US free trade talks.

'We cannot negotiate on a giant transatlantic market when there is even the slightest suspicion that our partners are spying the offices of the negotiators,' she said.

The Greens in the European Parliament have demanded the talks be immediately suspended and resumed only after a long-delayed EU-US data protection deal has been signed. Finnish EU affairs and trade minister Alexander Stubb is against the move, however.

'First it should be determined what has actually happened. Free trade talks largely follow their own path. Negotiations are carried out largely on the basis of openly available information,' he told Finnish broadcaster Yle.

Meanwhile, the German attorney general has started its own inquiry about the legality of the US and British spy programmes. **Germany is the most spied-upon among EU countries, with some 500 million phone calls, emails and SMS-es tapped into each month by the NSA, according to the documents seen by *Der Spiegel*.** By comparison, France has about 2 million such communications snooped upon each month, the magazine says.

Considered by US intelligence as a 'target' and a 'third-class country' – a designation for a lower-ranked partner than the UK or Canada – Germany still hosts several US military bases dating from the Cold War and has had to account for the so-called Hamburg cell of Al-Qaeda operatives, which carried out 9/11.'

Mr Ben Bradshaw (Exeter) (Lab): Given the rather different approaches to privacy and data protection in Europe and the United States, what assessment has the Foreign Secretary made of the potential for this controversy to impact on the successful outcome of the EU-America free trade deal, and what are the Government doing to prevent it from having such an impact?

Mr Hague: I have no evidence of any such impact. Over the coming days, the Government and our European partners will be putting great effort into ensuring that rapid progress is made on a transatlantic trade and investment partnership. I see no reason why the questions raised in the media over the past few days should have a significant impact on that ...

Later, in answer to another questioner, Mr Hague said: ... I did not refer in my statement to the discussions on a communications data Bill, but there is a strong case for updating the tools we have at our disposal. Means of communication are changing more rapidly than at any time in the history of the world, which means that the range and nature of threats change. We must be careful to do that work, and the whole House should give fair consideration to such proposals ...

There will be a constant need to update what we are able to do, without being diverted from the basic principle of ensuring that our intelligence gathering is on what is necessary, and that it is proportionate, targeted and always legal. Our laws do not provide for indiscriminate trawling for information through the contents of people's communications. We do not need to change those basic principles, but we sometimes need to change aspects of the legal framework and where we are able to get information from. That work must go on in the coming years.

Mr David Winnick (Walsall North) (Lab): Considering all the dangers for the individual concerned, why should we believe that the American whistleblower is telling a pack of lies? If a lot of what he is saying is true, then surely law-abiding citizens who are a million miles from any threat involved with terrorism should indeed be fearful.

Mr Hague: As you will have noticed, Mr Speaker, I have not commented on the individual concerned. I am not going to get into a running commentary on this or any other leak. It is not possible for any Government to do that while respecting the need to maintain the secrecy of our intelligence work. I do not want to get into that now, but I stress again the very strong legal framework in this country. I believe people can have confidence in that ...

Dr Julian Huppert: Many British people use the online tools affected by Prism and many British companies will have commercially sensitive data

on there – many people in government as well. The Americans are partly protected, but what rules are there on the collection of British data by the NSA or the uses that those data can be put to after they have been collected?

Mr Hague: The House will understand that I cannot speculate about the content of any leak or what has been argued in newspapers over the past few days, but we do have our own clear legal framework – the Regulation of Investigatory Powers Act 2000, the Intelligence Services Act 1994 and the Human Rights Act 1998, all of which apply to data obtained by this country through co-operation with the US, just as they apply to any data we obtain ourselves. I think that people can be confident about that.

Caroline Lucas (Brighton, Pavilion) (Green): Given that EU data protection laws currently offer no protection against backdoor US surveillance of this sort, will the Foreign Secretary commit to pushing for stronger measures in the current EU proposals, or does he agree with the Justice Secretary, who is reported to have said that plans to strengthen protections for UK citizens and businesses from such unwarranted spying are ‘mad’?

Mr Hague: I think that the hon. Lady might be quoting the Justice Secretary slightly out of context, in that he will have been referring to other aspects of the proposals. I cannot give her any guarantee that these controversies make it easier to agree proposals for EU directives, but I will go with my right hon. Friend the Justice Secretary on these matters ...

Mr Ronnie Campbell (Blyth Valley) (Lab): I think that 99% of the British public would agree that this is not about gathering information on terrorists. It is about the little fella – the fella who might be organising a demonstration against a rotten Government policy, or a trade unionist such as Len McCluskey or even Bob Crow organising a strike. I was involved in the 1984 miners’ strike, mind, and there was some funny intelligence work done then.

Mr Hague: I can only speak about the legal framework operating now on the basis of two Acts of Parliament, in 1994 and 2000, and I can assure the hon. Gentleman that if the Home Secretary and I were signing off interception warrants on political grounds, we would be in a great deal of trouble with the intercept commissioner and the ISC. The hon. Gentleman can be reassured about that ...

Mr Dennis Skinner (Bolsover) (Lab): Following on from what my hon. Friend the Member for Blyth Valley (Mr Campbell) said, and the fact that GCHQ has been involved in trade union disputes for a long time, can the Foreign Secretary give me an assurance? He will not explain precisely

how this interception takes place on the advice of a Minister; but surely, if the Prime Minister of the day in 1984 said that the miners and the NUM were the ‘enemy within’, would that not give the green light to GCHQ to intervene in every single coalfield? Because that is what we believed.

Mr Hague: We are in a different century now – we are 13 years into the 21st century. The challenges are different and the focus of the intelligence agencies is different from decades in the past and very different, of course, from during the Cold War. It is important for Opposition Members below the Gangway to start to move with the times ...

Mr William Bain (Glasgow North East) (Lab): Can the Secretary of State spell out to the House the precise difference between the legal framework applicable to the obtaining of intercept data by our intelligence services and that which applies to the use by our intelligence services of information obtained by their counterparts overseas?

Mr Hague: The legal framework is the one I have set out. The Acts that I have referred to, passed by Parliament, apply to all the intelligence gathered by the agencies. The hon. Gentleman will know that, for instance, section 3 of the Intelligence Services Act 1994 confers particular powers and roles on GCHQ, so these things are governed by the same Acts of Parliament. Procedures differ, of course, in many different situations. It is because I cannot describe all those situations in public that I cannot go into exactly what that means for procedures in every case. I therefore cannot go as far in reassuring the hon. Gentleman or the shadow Foreign Secretary as they would like, but if they could see the full details of what happens, I think they would take an enormous measure of reassurance from it ...

Mr Tom Watson (West Bromwich East) (Lab): For clarity, will the Foreign Secretary tell us whether he was told how the NSA collects this information, and on what date he was made aware of the Prism project?

Mr Hague: I go back to what I have said about being unable to confirm or deny leaked information. I am not commenting at all on information that has appeared in the newspapers. There might be leaks in the future from who knows what agency, and I would take the same view in such circumstances. We cannot conduct ourselves in these matters by commenting on every leak that takes place. The Intelligence and Security Committee will be able to look at these questions, but I cannot tell the hon. Gentleman in public the answers to the questions that he is raising.

Rory Stewart (Penrith and The Border) (Con): Because this type of secret operation involves not just a legal problem but a difficult balancing of security and liberty, we should do more to explain what we are doing. An American citizen would have the right to an answer to the question that

my hon. Friend the Member for Gillingham and Rainham (Rehman Chishti) asked about location information being offered for American drone strikes. Unless we begin to explain more to the public, secret operations will not be sustainable in the long term. The public must understand and, through understanding, consent.

Mr Hague: I go a certain way with my hon. Friend on this. There is a need to explain to the public in this country more than we have done for decades about the role of secret intelligence, its purpose and what it achieves. However, I do not think that will mean that we are able to describe in detail how our co-operation with other countries works on operational matters, for many obvious reasons. It would make it more difficult for us to protect this country if other people knew the exact techniques that we used. Also, other countries would be less willing to share their intelligence with the UK if they thought that we were not good at keeping it to ourselves. But we certainly need to raise public awareness of the need for what we do, and I started to do that in my speech on this subject in 2011. Perhaps today's statement will also have that effect ...

Paul Flynn (Newport West) (Lab): The Cathy Massiter case proved that, 50 years after the last war, intensive surveillance of peace activists, trade unionists and left-wing parties had failed to turn up a single spy, but it was discovered that in that same period, more than 20 members of the Secret Intelligence Service were spying for the Soviet Union. Since then, we have had untruths on weapons of mass destruction and a Government cover-up to this House on the handing over of prisoners to oppressive regimes to be tortured. Is the Foreign Secretary telling us today that the only people now under surveillance are the guilty? How does he manage that?

Mr Hague: I am telling the hon. Gentleman and the House about the many checks and balances and the strong legal framework. On all the controversies that he lists about the past – and they are controversies rather than necessarily facts – it would be fair to point out that there has been a constant process under successive Governments of improving how the intelligence agencies work. After the controversies over the use of intelligence in the Iraq war, for instance, we saw the Butler report, which has substantially changed the way intelligence is presented to Ministers and the way that Ministers decide. I referred in my statement to the creation of the National Security Council and to intelligence being given its due but proper weight alongside other information and considered in the round. The hon. Gentleman should take heart from the fact that such improvements take place.

Duncan Hames (Chippenham) (LD): It is good to know that our legal

framework is not lost on the Foreign Secretary. He tells us that there are no grounds for suggesting that GCHQ obtained information from the United States that it could not obtain legally in the UK. Is it also the case that there are standard procedures in place sufficient to prevent that from happening?

Mr Hague: What I have argued is that the idea of GCHQ setting out to circumvent UK law by co-operation with other countries is baseless. UK law is applied to the data it receives, even if it is received from the United States, because ministerial oversight and independent oversight is all there. Part of the purpose of that oversight is to ensure that the misuse of the powers and the role of GCHQ does not take place.

Mr Angus Brendan MacNeil (Na h-Eileanan an Iar) (SNP): The term is always used that the intelligence services always operate within a ‘legal framework’. Is the Foreign Secretary certain that ‘legal framework’ always means ethically and within the law, and that peaceful democratically elected political parties in the UK are not involved?

Mr Hague: Well, yes it does mean those things. It means that the legal framework is properly applied and what the agencies do has to be targeted, necessary, proportionate and authorised. It also has to be for the purposes set out in the relevant Acts of Parliament in the interests of national security, the country’s economic well-being or the prevention of serious crime and the protection of the country from it. These are the purposes of our intelligence agencies – and they stick to them.

Dr Sarah Wollaston (Totnes) (Con): Is the Foreign Secretary absolutely confident that, if a member of staff working at GCHQ had real concerns about wrongdoing among colleagues, the channels exist for that member of staff to have their concerns heard without needing to go to the media?

Mr Hague: Yes, absolutely. In such a case, concerns can be raised through the management structure. There is also the Investigatory Powers Tribunal, to which members of the intelligence services can take complaints or concerns without having to do so in public ...

Mark Pritchard (The Wrekin) (Con): I join the Foreign Secretary in praising the professionalism and dedication of the staff of both the SIS and GCHQ. Edward Snowden, the CIA official who leaked the information, said that had he leaked it because he wanted to stand up against oppression and stand up for liberty. Is there not a perverse paradox that that gentleman made those claims not from Washington or London, but from the People’s Republic of China?

Mr Hague: Having earlier set myself the rule of not attacking the conduct of other nations, I am not going to break that rule now, but other people will be able to comment on this particular individual and his role. It is, of course,

important for everyone who works for the agencies to remember that part of their responsibility is to uphold the laws of their country, and that in the case of the United States and the United Kingdom, those laws are designed to protect the lives and liberty of the citizens of those countries. That seems to have been too easily forgotten over the last few days ...

Mr Dominic Raab (Esher and Walton) (Con): I welcome the reassurances given by the Foreign Secretary. I merely seek clarification of one point. If the UK is intercepting e-mails of British citizens, it requires a warrant from the Secretary of State, but that vital check is not in place when communications are received under Prism. Does the Foreign Secretary accept that Prism can be used quite legally to sidestep the level of safeguards that apply to UK-sourced intercept? How do we mitigate that risk?

Mr Hague: Again, I do not want anything that I say to be taken as a comment on information that has been leaked over the last few days, but the Intelligence and Security Committee will be able to study the issues raised by it, including the issues raised by my hon. Friend. That is the proper forum. I have already stressed the way in which ministerial and independent oversight applies to our relations with other intelligence agencies, including those in the United States, and my hon. Friend should therefore not jump to any conclusions about the absence of such oversight and authority.