
Research Report for MUNOH2014

Forum: Special Commission

Question of: The issue of espionage activities with a focus on the National Security Agency of the United States of America

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Introduction

On June 5 2013, the first media report based on documents leaked by Edward Snowden went viral. All over the world, people were shocked about the vast surveillance activities carried out by the United States' National Security Agency. Since then, following disclosures of top secret rated NSA documents revealed intensive spying practices not only against American citizens but also against international ones. In the next months, the accusations extended to the Canadian, Australian, New Zealand and British intelligence services. These five countries are bound by the UKUSA agreement and are commonly known as the "five eyes".

The disclosures caused aggravation in the diplomatic relations between America and its allies: the German parliament set up an investigation committee on the NSA's activities in the country and is discussing whether to question Edward Snowden as a witness. Due to leaked documents revealing spying against the Brazilian government Dilma Rousseff, the Brazilian President, cancelled her state visit to the USA, scheduled for October 2013. Edward Snowden, who sought asylum in Russia after his disclosures, is facing several criminal charges in the US. Among them are theft of government property and violation of the US's 1917 Espionage Act. NSA officials claim he has eroded national security by helping terrorists to cover their tracks and should therefore be punished.

Timeline of Events¹

2013

June:

- *The Guardian* publishes its first article, based on the documents leaked by Edward Snowden, concerning the gathering of telecommunication data of 120 million Verizon customers
- *Der Spiegel*, a German newspaper, reveals that the NSA had spied on several diplomatic missions of the EU, as well as on the Council of the European Union and the United Nations Headquarters in New York.

¹ A more detailed timeline can be found here: <https://www.eff.org/nsa-spying/timeline>

According to the newspaper the NSA also hacked into several Chinese universities and mobile-phone companies

- *The Guardian* and *The Washington Post* publish articles on the NSA surveillance program PRISM
- Revealed that the German intelligence service BND transfers vast amounts of metadata to the NSA
- Edward Snowden is charged with theft of government property

July:

- Snowden is granted Russian asylum for a period of one year
- The Brazilian newspaper *O Globo* reveals that the NSA collected millions of emails and calls of Brazilian citizens, including several government officials
- *O Globo* publishes an article on the NSA's espionage program FORNSAT
- Disclosed documents show that Australia and New Zealand have been contributing to the NSA's global analytic system XKeyscore

August:

- In a public address, Barack Obama claims that the US would not spy on Americans
- Evidence shows that the GCHQ has been tapping undersea fibre-optic cables. Reportedly, the British service has accepted a payment from the NSA over \$100 million between 2009 and 2012 as a quid pro quo for the intense cooperation between the two. This includes a backdoor in the GCHQ's database enabling the NSA to search it without a warrant
- According to an internal NSA report from 2010 the NSA set up task forces to study and crack the most famous smartphone operating systems iOS and Android

October:

- The British Prime Minister David Cameron threatens *The Guardian* with sending a DA-Notice in case the newspaper would continue to reveal further secret documents (a DA-Notice or Defence Advisory Notice is requesting editors to refrain from publishing information on certain subjects that could erode national security)
- The Canadian CSEC has been mapping the communications of Brazil's Mines and Energy Ministry
- The NSA has been collecting telephone data of 35 world leaders

November:

- *The Independent* reveals that the GCHQ maintained an interception station on the roof of the British Embassy in Berlin in proximity to

government buildings, enabling the collection of mobile phone calls and Wi-Fi data

2014

January:

- The British television broadcaster *Channel 4* and *The Guardian* report on the NSA program Dishfire which is collecting several hundred million text messages per day

February:

- According to NSA and GCHQ documents the IP addresses of visitors to the whistleblowing organization WikiLeaks (dubbed by the agencies as a “malicious foreign actor”) were collected in real time
- *The Guardian* reveals that the GCHQ (with assistance of the NSA) collected vast amounts of webcam images of users not suspected of wrongdoings under a program titled “Optic Nerve”. Up to eleven percent off these images were found to be sexually explicit

March:

- Disclosed that the Foreign Intelligence Surveillance Court granted the NSA to spy on German citizens as well as institutions without having any suspicion or the need to obtain a warrant

July:

- In Germany, an employee of the BND is arrested on suspicion of having shared classified documents with the NSA. As a result the CIA representative of the US embassy in Germany is expelled by the German government

Background & General Information

Important Surveillance Programs

Stellarwind

The Stellarwind program consists of four sub-projects:

- MAINWAY: a collection program for telephone meta data
- MARINA: a collection program for internet meta data
- NUCLEON: aimed at collecting content of phone calls
- PRISM: aimed at collecting content of internet traffic and providing access to internal systems of global internet companies

TEMPORA

Tempora is a surveillance program of the British intelligence service GCHQ in which several fibre-optic cables carrying the world's phone calls and internet traffic have been tapped. Intercepted data on internet content such as emails and Facebook entries is stored for three days, meta data for 30 days. The NSA is also having access to the collected data.

XKeyscore

XKeyscore can be used to analyse the NSA's gargantuan database of emails, chat transcripts and browsing histories of millions of internet users without authorization.

DROPMIRE

With DROPMIRE, the NSA bugged encrypted fax machines and infiltrated computer networks of 38 embassies worldwide. Among them are the EU mission in New York and its embassy in Washington D.C., as well as targets in Europe and the Middle East.

FORNSAT

FORNSAT processes satellite data of other countries like Britain, Japan and the Philippines.

Dishfire

A database collecting several hundred million text messages on a daily basis.

Project Chess

On June 13, the New York Times revealed that the internet-based calling service Skype began developing a program called "Project Chess", which makes it easier for the NSA to intercept chat transcripts and calls. Skype joined PRISM in February 2011.

Involved Intelligence Services

In most of its surveillance activities the NSA had been intensely cooperating with other intelligence agencies, particularly with those of the "Five Eyes". To them belong the Australian, British, Canadian, New Zealand and US American intelligence services.



The British GCHQ, for instance, launched plenty of programs deigned to "Master the Internet"². These intense operations included tapping North Atlantic fibre optic cables in order to intercept internet as well as telephone data.

Another agency cooperating with the NSA is Germany's CIA equivalent, the BND. According to the French newspaper LeMonde, the French intelligence service DSGE did also undertake mass surveillance which the newspaper called "illegal and outside any serious control."

² <http://www.theguardian.com/uk/2013/jun/21/gchq-cables-secret-world-communications-nsa>

Diplomatic Consequences

On July 6 2013, the Brazilian newspaper O Globo revealed intense spying operations in Brazil, which included bugging of the president's cell phone and intercepting her email traffic. As a consequence, Dilma Rousseff cried foul over the violation of her privacy and even cancelled her state visit to the USA which was scheduled for September that year. According to the newspaper other targets were key figures in the government and national businesses, chiefly in the state-owned oil company Petrobras.

In Germany the situation is highly controversial. Indeed, its chancellor Angela Merkel stated that she was appalled by the surveillance activities of the NSA and stressed that spying among friends is not acceptable. The parliament joined her criticism, set up an investigation committee on the NSA's activities in the country and sparked public debate whether to invite Edward Snowden as a witness. In contrast however, the German secret service BND has been actively sharing massive amounts of data with the NSA: In December 2012 alone, 500 million metadata records were handed over to the Americans. After pressure from the NSA, the BND has also been lobbying for a more relaxed interpretation of privacy laws. Due to this intense cooperation the BND was dubbed the "NSA's most prolific partner" in a NSA document. Besides the expulsion of a CIA official, the disclosures did not have any concrete consequences.

Issue of Legality

As there is proof that the United States of America has been bugging embassies worldwide, this should trigger uproar in the international community. The Vienna Convention on Diplomatic Relations of 1961 clearly states in article 22 that "the premises of a diplomatic mission, such as an embassy, are inviolate [...] The host country must never search the premises, nor seize its documents or property." Hence, the NSA's espionage activities evidently violate international law and an adequate reaction has to be found.

In addition, the NSA hacked into the United Nations' internal videoconferencing system breaking the Convention on the Privileges and Immunities of the United Nations (also known as the New York Convention). The treaty, which was adopted by the General Assembly in 1946, specifies that "UN premises shall be inviolable, and UN property shall be immune from search [...]".

Critics are crying foul over the myriad surveillance programs because they constitute a severe breach of the Human Rights. In Article 12 of the Universal Declaration of Human Rights it is stated that:

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

And as law-abiding people not suspect to any kind of crime were also targeted by the NSA, their programs are posing an arbitrary interference with the privacy of several million people worldwide.

Protest Movements

The disclosures led to a wave of public outrage resulting in the foundation of several social movements including “Restore the Fourth”, “Stop Watching Us” and “The Day We Fight Back”. According to these movements, the revealed espionage activities are a violation of the Human Rights. Campaigners from all over the world are demanding that intelligence services are audited in order to prevent future wrongdoings



The non-profit organisation, American Civil Liberties Union responded to the GCHQ’s collection of webcam images under its program Optic Nerve with: “This is a truly shocking revelation that underscores the importance of the debate on privacy [...] the scope of the government’s surveillance activities must be decided by the public, not secretive spy agencies interpreting secret legal authorities”.

Source: <http://latest.com/wp-content/uploads/2014/05/obama-nsa.jpg>

NSA Statement

The NSA severely criticized Edward Snowden’s actions which were inappropriate due to the fact that he put people’s lives at risk and posed a great threat to national security. The agency defends its surveillance programs because they are providing the participating governments with indispensable information on planned terrorist attacks and organized crime such as human trafficking. With the villains now knowing that their way of communication is not safe, the intelligence organizations are facing serious problems to tackle these illicit actions. Yet the NSA’s deputy director, Richard Ledgett, admitted that “people have legitimate concerns about the balance between transparency and secrecy” and that the NSA needs to be more transparent in the future.

Research Guide

In order to prepare for your country’s position you should answer the following questions.

Questions for the Delegate

- How did your government react on the reported NSA surveillance?
- Is your government considering such activities as a violation of the law, international treaties or Human Rights?

- Did the disclosures affect the diplomatic relations to the USA or its affiliates?
- Is your country's intelligence service conducting vast espionage programs?
- How can the international community respond in order to prevent such intensive surveillance in the future?
- What steps should be initiated to preserve the UN's immunities agreed in the New York Convention?

Relevant Treaties & UN Resolutions

- Universal Declaration of Human Rights
- Vienna Convention on Diplomatic Relations of 1961
- Convention on the Privileges and Immunities of the United Nations

Useful Links

- Electronic Frontiers Foundation
<https://www.eff.org/>
- *The Guardian*: NSA's secret tool to track global surveillance data
<http://www.theguardian.com/world/2013/jun/08/nsa-boundless-informant-global-datamining>
- New York Times: Project Chess
<http://www.nytimes.com/2013/06/20/technology/silicon-valley-and-spy-agency-bound-by-strengthening-web.html?pagewanted=2>
- Timeline of NSA Spying
<https://www.eff.org/nsa-spying/timeline>
- US spy affairs and Vienna Convention
<http://martenscentre.eu/blog/us-spy-affair-case-international-law>
- NSA official responds to Snowden in a Ted-Talk
http://www.ted.com/talks/richard_ledgett_the_nsa_responds_to_edward_snowden_s_talk#t-292566

Please send your position papers and resolutions to specialcom@munoh.de before the deadline on August 29.