

Troubled Ties: Snowden, Germany and the NSA

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Germany's high court has spoken: Edward Snowden will not be physically coming to the country to give evidence to a parliamentary committee on National Security Agency operations.[1] The efforts had been spearheaded by the Greens and Left parties, who were told that the issue was an administrative one that had to be heard by the Federal Court of Justice, rather than the Federal Constitutional Court based in Karlsruhe.

The government argued by way of contrast that allowing Snowden onto German soil would hamper international relationships, notably with the United States. It would also corner the government in Berlin: extradite Snowden, or face the unpleasant transatlantic music.

Germany straddles the divide between client state status, which is heavily focused on security arrangements with Washington, and its own development as a power in Europe. As *Der Spiegel* (Jun 18) noted, the NSA has been a vigorously active in Germany for decades, with Snowden's documents revealing that "Germany is the agency's most important base of operations in continental Europe." [2] With that activity has come extensive cooperation with Germany's foreign intelligence agency, BND, and its domestic counterpart, the BfV.

Within Germany, a strong sentiment exists about Snowden, who has proven to be a catalyst in the surveillance debate. Snowden has been popularised by businesses, street art, installations, pop songs and posters (*Wall Street Journal*, Sep 24). MoTrip, the German hip-hop artist, raps about US surveillance in "Guten Morgen NSA": "I know you're monitoring my cellphone, I'm talking and meeting with Manning and Snowden." [3] Concern and outrage was also spiked by the efforts of US intelligence operators to tap the phone activity of Chancellor Angela Merkel.

But every allegation published, and every bit of evidence cited, has been met by suggestions that the whistleblower remains a destabilising influence, whose presence may well impair German-US relations. Authorities have preferred to give the cold shoulder to the Snowden phenomenon, even as they offer conciliatory suggestions of receiving his testimony via video link from Moscow.

The prosecutors involved in the case on NSA intercepts of Merkel's information have so far come to naught, though this is unsurprising, given the distinct lack of cooperation from German or US intelligence sources.

The language of Germany's top public prosecutor Harald Range is illustrative, revolving around an obsession about the authenticity of the documents used: "The document presented in public as proof of an authentic tapping of the mobile is not an authentic surveillance order by the NSA. There is no proof now that could lead to charges that Chancellor Merkel's phone connection data was collected or her calls tapped" (*The*

Guardian, Dec 12). The prosecutor further suggested that the material did not come from an NSA database.

Range has, instead, taken aim at the magazine's supposed lack of cooperation. He had "asked the reporters at *Spiegel* to answer questions about the document or to provide it to us. But the newsmagazine, citing the right of the press to refuse to give evidence, did not comply."

Spiegel duly responded, claiming that it never asserted that the document on tapping Merkel's phone was an original one. "*Spiegel* has consistently stated that its journalists viewed the contents of an NSA document and reported on the details contained therein. The magazine has made this clear throughout its reporting on the issue" (*Spiegel*, Dec 13).[4]

The magazine further went on to suggest that Range's statements made a vital, and misleading imputation. "There is a risk that Range's statement could be viewed as some kind of finding in his investigation and create the false impression that *Spiegel* somehow concocted its own documents." The smokescreen of public authority is wafting across discussion about Snowden's legacy.

It should not be forgotten, in the context of the Merkel phone saga, that the Chancellor herself confronted President Barack Obama about the allegations. She was met by a bland statement which refused to deny that such spying on the Chancellor had taken place in the past. Then came the arrest of a German intelligence agent accused of spying on the United States, and the expulsion by German authorities of the CIA's station chief.[5]

In July this year, the poor state of relations between Berlin and Washington was incidentally acknowledged by the presence of Denis R. McDonough, Obama's chief of staff in Berlin, who engaged with his German counterpart in "intensive talks on the state of bilateral relations and future cooperation" (*New York Times*, Jul 22).[6]

The case for not allowing Snowden into Germany is based on illusory concepts of impairment and disruption – that state relationships and the perceived harmony, or compliance they entail, takes precedence over the relationship between the government and its electors.

This recipe gives us one grand paradox: to protect the state against encroachments, its own sovereignty can be rented, concealed by surveillance pacts of sharing and cooperation that favour a powerful partner. The intelligence business has become a runaway train, defiant of the social contract.

Little surprise should be felt at the fact that neither Washington nor Berlin have made genuine strides towards an equal intelligence sharing relationship on the level of the Five Eyes agreement. Nor were efforts to make a "no-spy" agreement with the US successful. Germany remains almost too significant to have an "equal" relationship with, meaning that any dance with the United States will continue to take place with cool hands and a distant grip. Snowden, in the meantime, will receive yet another prize – the Carl von Ossietzky prize from the International League for Human Rights, based in Berlin.

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Notes

- [1] <http://www.stern.de/politik/deutschland/nsa-untersuchungsausschuss-klage--wegen-snowden-vernehmung-abgewiesen-2159607.html>
- [2] <http://www.spiegel.de/international/the-germany-file-of-edward-snowden--documents-available-for-download-a-975917.html>
- [3] <https://www.youtube.com/watch?v=HcDgEtET1Dw>
- [4] <http://www.spiegel.de/international/germany/nsa-german-federal-prosecutor--seeks-to-discredit-spiegel-reporting-a-1008262.html>
- [5] <http://www.nytimes.com/2014/07/11/world/europe/germany-expels-top-us-intelligence--officer.html>
- [6] http://www.nytimes.com/2014/07/23/world/europe/germany-obama-merkel-mcdonough-nsa.-html?_r=0

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