
Adventure into Peacetime Intra-Alliance Espionage: Assessment of the America-Germany Saga

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Abstract

Peacetime espionage is often employed by states as a means of acquiring information about competitor states in the international system. However the practice is not limited to competitor states. In a world where security concerns are an ever-present consideration for state action, acts of espionage normally reserved for use against enemies are also used against ally states. The basic premise is that while alliances are able to foster mutual trust and cooperation, they do not conclude that an ally will always be trust-worthy and faithful, most especially, when it involves issues of national interest. The international system and a need to safeguard one's own interests and population mean that espionage, even against an ally, will remain a necessary state function and all states should therefore remain vigilant against attempts at infiltration of their state secrets. The question of peacetime intra-alliance espionage and the consequences thereof has yet to be answered and it is the purpose of this research to fill that intellectual gap. This research will look at traditionally allied countries, with a long record of cooperation, and not competing states. To achieve this, the case from 2013 of two North Atlantic Treaty Organisation (NATO) allies, Germany and the United States (US), are our main focus. Lessons worth drawing from this, by NATO small states members, shall be discussed.

Keywords: Peacetime espionage, Intra-alliance espionage, Edward Snowden, Germany, United States (US), NATO.

Introduction

In June 2013, former American National Security Agency (NSA) contractor, Edward Snowden, leaked to various media outlets information detailing large-scale Internet surveillance programmes undertaken by the NSA. The purpose of these

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surveillance programmes was to acquire Internet-based communication of foreign nationals, ostensibly to identify and prevent terrorist attacks against the United States of America (USA).

However, of concern to diplomatic relations were revelations that, “The National Security Agency monitored the phone conversations of 35 world leaders after being given their numbers by an official from the US government departments, according to a classified document provided by whistle blower, Edward Snowden”¹.

Furthermore, in October of the same year, it was brought to light that “The US has been spying on German Chancellor Angela Merkel’s mobile phone since 2002”². It was also divulged that the American Embassy in Berlin had been used as a listening station capable of intercepting German government tele-communications. It was reported that an elite surveillance unit run by the NSA and Central Intelligence Agency (CIA), known as the Special Collection Service (SCS), “operates its own sophisticated listening devices with which they can intercept virtually every popular method of communication: cellular signals, wireless networks and satellite communication”³. The SCS in Germany “works undercover in shielded areas of the American Embassy and Consulate offices, where they are officially accredited as diplomats and, as such, enjoy diplomatic privileges and immunities to look and listen to people’s conversations unhindered”⁴.

The German political establishment reacted with much anger once details of the spying against them were uncovered. An immediate response by then German Foreign Minister, Guido Westerwelle, was to summon the US ambassador to a meeting in order to discuss the spying allegations.⁵ Following the publication of details about her personal mobile phone being the target of NSA surveillance, Chancellor Merkel and her foreign minister observed that America’s “spying on

¹ “NSA monitored calls of 35 world leaders after government official handed agency rolodexes of numbers, claims latest Snowden leak”, *The Daily Mail*, October 24, 2013, <<http://www.dailymail.co.uk/news/article-2475535/NSA-monitored-calls-35-world-leaders-government-official-handed-agency-rolodexes-numbers-claims-latest-Snowden-leak.html#ixzz38HhgJzs9>>, 23 07 2014.

² McGuinness D., “US bugged Merkel’s phone from 2002 until 2013, report claims”, *BBC News*, October 27, 2013, <<http://www.bbc.com/news/world-europe-24690055>>, 10, 06 2014.

³ “Embassy Espionage: The NSA’s Secret Spy Hub in Berlin”, *Der Spiegel*, October 27, 2013, <<http://www.spiegel.de/international/germany/cover-story-how-nsa-spied-on-merkel-cell-phone-from-berlin-embassy-a-930205.html>>, 10 06 2014.

⁴ Ibid.

⁵ Irvine C., “Germany summons US over Angela Merkel phone spying row”, *The Telegraph*, October 27, 2013, <<http://www.telegraph.co.uk/news/worldnews/europe/germany/10401565/Germany-summons-US-over-Angela-Merkel-phone-spying-row.html?fb>>, 10 06 2014.

close friends and partners is totally unacceptable. This undermines trust and this can harm our friendship”⁶.

Despite international law spreading its tentacles to some issue areas such as business transactions, health issues, the environment, the maritime arena and even warfare, it has had little impact on intelligence gathering⁷. Peacetime espionage and intra-alliance intelligence in particular lacks any type of regulation within the international system. Diplomacy in respect of *acta de jure imperii* (government public activities) is often directly at odds with espionage and intelligence gathering, which are by their very nature, operations that are undertaken under a cloud of secrecy between states⁸.

While it is an ‘open-secret’ that most, if not all, states undertake espionage activities, whenever a state is formally identified as employing covert means to obtain information about another state, it often raises issues which require a diplomatic reaction from both states in order to proffer a solution. When the target of such espionage is an ally, this adds more confusion because there is no regulation to peacetime espionage on what can be spied on⁹. The intersection between diplomatic communication, modern tele-communications capability, security, counterterrorism and intelligence gathering is becoming more complex for states to navigate in the maintenance of positive diplomatic relations.

There exists a tense relationship between the intelligence gathering objectives of states and the maintenance of diplomatic relations in the international system, particularly between nations that have alliances with one another. Peacetime espionage and spying on of allies within the ambit of international relations is a matter which contemporary stakeholders within the international community have to grapple with in order to harmoniously integrate 21st century technology

⁶ Arcega M, “NSA Spying Could Complicate US-Europe Trade Talks”, *Voice of America*, October 25, 2013, <<http://www.voanews.com/content/nsa-spying-could-complicate-us-europe-trade-talks/1777428.html>>, 10 06 2014; Embassy Espionage, (note 3).

⁷ Sulmasy G and Yoo J., “Counterintuitive: Intelligence Operations and International Law”, *Michigan Journal of International Law* 28 (Spring), 2007, p. 625-638.

⁸ Boas G., *Public International Law*, Cheltenham and Northampton: Edward Elgar, 2012, p. 270; Detter I., *The Law of War*, Farnham Surrey: Ashgate, 2013, p. 458. Also see Dugard J., *International Law: A South African Perspective*, Cape Town: Juta, 2005, p. 239.

⁹ Kapp M., “Spying for Peace: Explaining the Absence of the Formal Regulation of Peacetime Espionage”, A Paper submitted in partial fulfilment of the requirements for the M.A. degree in the Committee on International Relations, University of Chicago, 2007, <<http://www.google.co.za/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CBsQFjAA&url=http%3A%2F%2Fresearch.policyarchive.org%2F8193.pdf&ei=Pqvku4yXLEfy7Abxm4CICw&usg=AFQjC NFN5HWTBto-2hJyaEN8DSrejX8zzg&bvm=bv.72676100,d.ZWU>>, 10 06 2014.

and capabilities, with 20th century norms and practices which continue to inform diplomatic practice.

We intend to look into the place of espionage in international politics based on realist, liberalist and constructivist theoretical frameworks. Employing these theories, hopefully, will shed more light on espionage and international law. We shall also present data in the form of various responses to the exposition of NSA espionage in Germany. Lastly, this paper shall present the findings of the research and provide a list of recommendations that is generic for small NATO member states as well.

1. Theoretical framework

The theoretical framework situates the theoretical to locate a theoretical basis for espionage and integrates a theoretical basis for international law, which is a companion aspect to this study. It stands to reason that the performance of espionage or any other activity has to have some legal ramifications irrespective of whether espionage itself is regulated or not by the law. Most of the activities, which are part and parcel of conducting espionage, have legal consequences. Based on this, it is the intention of this section to interrogate realist, liberalist and constructivist theories vis-à-vis the US espionage adventure in a NATO member state.

Realism in international relations is one of the preeminent theoretical perspectives that inform the study. This theory is not a homogenous group with scholars agreeing about everything. In particular two schools of realism are present in the approach, namely “classical realism” and “neo-realism”, with a number of scholars (Raymond Aron, EH Carr, Robert Gilpin, John Hertz, Henry Kissinger, Stephen Krassner, Hans Mongenthou, Susan Strange and Kenneth Waltz) at the forefront of those particular schools. Realist thought contains much variety from Thucydides to Waltz¹⁰.

This approach to international relations is of the opinion that states spy on one another according to their relative power positions in order to achieve self-interested goals¹¹. For this school, one of the defining characteristics of the

¹⁰ Amusan L., “International Relations and the Concepts of Liberal Democracy: A Critique”, *UNIOSUN Journal of Politics and Society* 2 (1-2), 2011, p. 188-208.

¹¹ Armstrong D., Farrell T., and Lambert H., *International Law and International Relations*, Cambridge: Cambridge University Press, 2012. Also see, Baker C. D., “Tolerance of International Espionage: A Functional Approach”, *American University International Law Review* 9 (5), 2003, p. 1091-1113.

international system is the state of anarchy under which all states ought to ensure their survival and pursue their interests. Such anarchy often forms the basis for the belief that espionage is a necessary state function. Realists do not argue that espionage is morally justified; but rather that states do not need to morally justify it in the first place in a state of 'nature' where power politics is the prime objective of actors¹². Under the anarchic conditions of the international system, states have a self-responsibility to prioritise the survival of their population's territorial integrity and government survival. In a state of nature, nations cannot appeal to any reliable source of support outside themselves¹³. To this end, realists do not consider 'moral' virtue when taking action, or rather; moral virtue is not an explicit consideration when carrying out an action. This explains why "It is naive to expect that a stable international order can be erected on normative principles embodied in international law"¹⁴. A state that eschews espionage to comply with a moral duty puts its interests at risk, and this, given the nature of the international sphere, could be fatal¹⁵. Viewed according to this perspective, the information garnered through acts of espionage justifies the actions, when carried out towards the guaranteeing of state security and advantage.

However, liberalism emerged as a challenge to realism, which came to dominate international relations post-World War II. It has also undergone an evolution similar to that of realism, and can thus be characterised under the broad categories of classical liberalism and neo-liberalism. Some of the proponents of this school are Normal Angel, Michael Doyle, Francis Fukuyama, David Held, Stanley Hoffman, Richard Rosecrance, and Woodrow Wilson among others¹⁶.

Differing with their realist counterparts, liberals do not fundamentally believe that the international system is anarchic. Rather, the international system is currently mutually dependent and interconnected to such a high degree that the world no longer resembles a proverbial wild west where one can do as they please in the name of security. It is the basis of Keohane's and Nye's (1987) interdependence theory, which is of the position that changes or events in any single part of a system will

¹² Bitton R., "The Legitimacy of Spying Among Nations", *American University International Law Review* 29 (5), 2014, p. 1009-1070; Mongenthau H. J., *Politics among Nations: The Struggle for Power and Peace*, New Delhi: Kalyani Publishers, 2012.

¹³ de Mesquita B., *Principles of International Politics: People's Power, Preferences, and Perceptions*, Washington DC: CQ Press, 2003, p. 520.

¹⁴ Krasner S. D., "Realist Views of International Law", *American Society of International Law*, 96, 2002, p. 265-268, <<http://www.jstor.org/stable/25659786>>, 12 11 2014.

¹⁵ Bitton, (note 12) p. 1009-1070.

¹⁶ Amusan, (note 10) p. 190.

(sensitive effect) produce some reaction from, or have some significant consequence for, other actors in a system, whether they like it or not¹⁷. Liberals foresee a slow but inexorable journey away from the anarchic world the realists envision, as trade and finance forge ties between nations, and democratic norms spread¹⁸. The worldview is also one where states have a collective responsibility in ensuring prosperity and safety. Thus it is not only left to affected states to ensure their own, limited, security. Liberalism highlights the cooperative potential of mature democracies, especially when working together through effective institutions¹⁹. In this light, cooperative states operating with transparency could be seen as not fundamentally requiring espionage. However an explicit liberal position either endorsing or condemning espionage is lacking in the available literature. Some of the liberal positions with regard to cooperation and global governance suggest a conflict between espionage and the goals of transparency and cooperation which liberals champion. Many liberals also believe that the rule of law and transparency of democratic processes make it easier to sustain international cooperation, especially when these practices are enshrined in multilateral institutions as opined by liberal internationalists²⁰. It can be said that liberals place value in the ability of international organisations to provide the required stability within the international system and thus the need for espionage in such a setting would be less pertinent amongst states. However it should be noted that an organisation that deals with matters pertaining to peacetime espionage does not as yet exist.

On the other hand, constructivism is a relatively more recent addition to international relations theory. At the crux of the theory is the belief that foreign policy is and should be guided by socio-ethical standards²¹. Norms form a central

¹⁷ Keohane R. O. and Nye J. S., "International Interdependence and Integration" in Viotti P. R. and Kauppi M. V., eds., *International Relations Theory: Realism, Pluralism, Globalism*, New York: Macmillan, 1987, p. 361-398.

¹⁸ Snyder J., "One World, Rival Theories", *Foreign Policy* November/December, 2004, p. 52-62.

¹⁹ Amusan, (note 10) p. 188-208.

²⁰ Keohane and Nye, (note 17) p. 394-395.

²¹ For more information on constructivism school, see the following scholars position on the theory: Adler E., "Seizing the Middle Ground: Constructivism in World Politics", *European Journal of International Relations* 3 (3), 1997, p. 319-363; Carlsnaes W., "The Agency-Structure Problems in Foreign Policy Analysis" in Carlsnaes W. and Stefano G., eds., *Foreign Policy Analysis Volume IV*, London: Sage Publications, 2011, p. 165-198; Fierke K. M., *Critical Approaches to International Security*, London: Polity, 2015; Fierke K. M., "Constructivism" in Dunne T., Kurki M. and Smith S. eds., *International Relations Theories: Discipline and Diversity*, Oxford: Oxford University Press, 2007, p. 166-184; Houghton D. P., "Reinvigorating the Study of Foreign Policy Decision Making: Toward a Constructivists Approach" in Carlsnaes W. and Stefano G, eds. *Foreign Policy Analysis Volume IV*, London: Sage Publications, 2011, p. 133-161; Nau H. R., *Perspectives on International*

part of this theory and according to constructivists; norms have a critical role in the affairs of states in the international system. Constructivists believe that debates about ideas are the fundamental building blocks of international life (Houghton, 2011)²². In this regard, constructivists distinguish themselves from their realist and liberal counterparts, who tend to be more concerned with pursuing power and global democracy respectively. Constructivists contend that their theory is deeper / more critical as opposed to the problem-solving realist and liberalist position because it explains the origins of the forces that drive those competing forces. Of relevance to this study is the adoption of this theory that is described as a “journey without a map”. The theory further explains the organic relationship between conservative and 21st century security discussions. The same brought about the emergence of critical security studies with the intention to widen academic discussion on some security issues that were not covered before. This position is aptly placed in a proper perspective by Fierke, as he is of the opinion that:

Emergence of critical security studies (CSS) signalled a further deepening of the debate, raising questions about the relationship between the traditional theories and methods of security studies and the security practices of states, on the one hand, and highlighting the politics of security, on the other²³.

Security, in line with constructivist theory, is a property that a state may have or not expressed in a quantifiable material perspective. Politics is perceived as an open-ended process of contestation of what security is all about. Hence this school considers security as property and social construction. With regard to espionage, the importance that constructivists attach to norms and values during state interactions informed some of the earlier views held by constructivists regarding espionage. For example: “[US] Secretary of State Henry Stimson denigrated espionage on the grounds that ‘gentlemen do not read each other’s mail’”²⁴. This reflects the constructivist notion that norms and values play a critical role in international relations. In accordance with a constructivist perspective, the prevailing norms of the international system would therefore inform the permissibility of espionage or whether it is deemed inappropriate in the international system. However it should be noted that norms are not fixed. They go through changes all the time. What

Relations: Power, Institutions, Ideas, Washington DC: CQ Press, 2012; Wendt A., *Social Theory of International Politics*, Cambridge: Cambridge University Press, 1999.

²² Houghton, (note 21).

²³ Fierke, 2015, (note 21) p. 1.

²⁴ Snyder, (note 18).

was deemed acceptable behaviour 100 years ago; may not be the case today. Thus a concrete position on espionage from a constructivist is always in flux, reflecting the normative preferences of the day.

2. Espionage in international politics

Espionage on its own is a subject within the study of strategic studies, an integral part of international relations, which has been analysed in a countless number of scholarly investigations. However, its related cousin, namely peacetime espionage and the exercise thereof towards allied nations, does not appear to have found the same volume of expression in scholarly output. This could have made it a complex adventure as the three theories espoused above fail to capture the problem under consideration. In perusing the literature available on peacetime intra-alliance espionage, one quickly recognises that the subject is for the most part broken down into two component parts: peacetime espionage and spying between allies. This is based on the realist position that argues that the end justifies the means.

Literature on peacetime espionage tends to initially focus on its permissibility and legal status. This subject is important because while espionage carried out during times of war is clearly regulated by The Geneva Conventions (1949, 1977) and Vienna Convention on Diplomatic Relations (1961), espionage during peacetime is less clearly defined or addressed by an international law. On this matter one finds that, almost unanimously, authors remain puzzled as to the lack of explicit legal expression or rather regulation of peacetime espionage. An example of this is articulated by David Perry²⁵ as he observes that there is no body of rules in the law of nations that focus on the legality (or illegality) of espionage. This equally affects the coding system on Unmanned Aerial Vehicles (UAV) (drones), which can be employed both during war and peacetime.

UAV are an advanced means of collating information about other states, as has been newly introduced in journalism. Militarily, it is a reconnaissance strategy against friendly and unfriendly states. At the same time, though argued by a UAV-adherent that it was a means of self-defence, which is permissible under international law; at the same time it violates all known laws of war such

²⁵ Perry D. L., “‘Repugnant Philosophy’: Ethics, Espionage, and Covert Action”, *Journal of Conflict Studies*, Spring, 1995, <<http://www.scu.edu/ethics/publications/submitted/Perry/repugnant.html>>, 28 08 2015.

as protection of non-combatants and territorial integrity. Questions that are left unanswered are whether the use of drones is consistent with the twin principles of *jus ad bellum* and *jus in bello*²⁶.

A survey of the literature related to peacetime intra-alliance espionage will often begin with a review of the work of Alexander (2008)²⁷. His work features prominently in the work of other authors and serves as a launching point for an introduction on the subject. Alexander identifies a significant lack of in-depth examination of intra-alliance espionage and the consequences thereof within the study of international relations. He refers to the lack of study as “the missing dimension to the missing dimension”²⁸. Reasons posited by him for the lack of scholarly attention to the subject are two methodological challenges the subject presents. “The first is that the most sensitive types of collection operations – and this must largely be operations against allies or domestic targets in one’s own country – often leave no written record for the scholar to trace”²⁹. The second is that the most sensitive types of assessments – against allies – are more likely to be destroyed after use, weeded later or at least withheld from declassification for extraordinary lengths of time. This reflects concern that writings about the subject will jeopardise the alliance in question³⁰. However, despite the methodological challenges, new studies such as this have to be undertaken in order to advance the study of intra-alliance espionage for geo-political and economic interests.

The Edward Snowden, 2013 leaks are a rare occasion when the classified records of intelligence operators become available for scholars to look at and interrogate without any government censorship.

Peacetime espionage is the subject of various investigations related to its justification or reasons why it remains a state endeavour irrespective of its ill-defined legal nature. Security features prominently amongst the works of various authors as a reason why peacetime espionage is necessary and ‘normal’ in a realist global system³¹, offering security as the primary reason for peacetime espionage.

²⁶ Byman D., “Why Drones Work: The Case for Washington’s Weapon of Choice.” *Foreign Affairs* July/August, 2013, p. 42; Cronin A. K., “Why Drone Fail: When Tactics Drive Strategy”, *Foreign Affairs* July/August, 2013, p. 54; Kaag J. and Kreps S., *Drone Warfare*, London: Polity, 2014, p. 78-79.

²⁷ Alexander M. S., “Introduction: Knowing your Friends, Assessing your Allies - Perspectives on Intra-alliance Intelligence”, *Intelligence and National Security* 13 (1), 2008, <<http://dx.doi.org/10.1080/02684529808432460>>, 19 11 2014.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Pfaff T. and Tiel J. R., “The Ethics of Espionage” *Journal of Military Ethics*, 3 (1), 2004, <<http://dx.doi.org/10.1080/15027570310004447>> 13 06 2014.

They make the point that intelligence gathering is an ongoing, necessary function for states to engage in and thus attempts at espionage are to be expected all the time, particularly by those participants in the intelligence services irrespective of whether it is peacetime or otherwise. According to them “what gives a nation a right to possess information that the other side regards as secret is that if it did not possess it, its national security would be severely compromised and its citizens would be placed at great risk”³². However, when referring specifically to intra-alliance espionage they observe that certain acts specifically; incitement, bribery and blackmail, of the most extreme nature are clearly out of bounds with allied nations.

Conceptualising the problem from a neo-liberal perspective, a further survey reveals a recurring justification of peacetime espionage as an instrument that encourages cooperation between nations by being a means through which states can achieve transparency during interactions with other countries. Espionage is a means by which a state’s true intentions or rather actions can be established³³. It creates a cooperative opportunity for parties with similar functional interests to negotiate mutually beneficial outcomes³⁴. However Baker does not refer to intra-alliance espionage and therefore his writings and findings are premised on competitor states, which make his position less relevant to our discussion.

There seem to be a number of authors who agree with the view that espionage is not simply a means to unscrupulously attain secret information, but rather it is a tool used in the international system to build mutual trust. Kapp³⁵ argues that espionage allows states to determine and verify the intentions of other states for the purpose of trust building and promotion of cooperation. Espionage thus, despite having negative connotations, is actually according to some authors, an instrument for stability and peace to satisfy the national (core) interest of a state. At any given time from the 1940s, America has been critical of her allies in Europe and hardly considers their interests despite their much publicised “special relationship”.³⁶

Bitton³⁷ equally views peacetime espionage as a tool that assists in fostering cooperation by bringing about transparency between states. He observes that

³² Ibid.

³³ Baker, (note 11); Kapp, (note 9); Bitton, (note 12); Golan U., “Relying on a Splintered Reed? Intelligence about Allies and Partners”, *Strategic Assessment* 4 (3), 2011, p. 71-90.

³⁴ Baker, (note 11).

³⁵ Kapp, (note 9).

³⁶ Chomsky N. and Vltchek A., *On Western Terrorism: from Hiroshima to Drone Warfare*, London: Pluto Press, 2013, p. 161-162.

³⁷ Bitton (note 12).

“true peacetime espionage...is driven by the fear that a seemingly unthreatening neighbour is a proverbial wolf in sheep’s clothing.” The security threat that is an ever-present fixture of considerations about peacetime espionage also makes up part of Bitton’s assessment as to the need for the activity. In Bitton’s view, the inability to verify what a competitor state is up to can lead to a serious preoccupation with security, which may border on state paranoia. Unawareness and inability to predict with precision a neighbour’s intention necessitates continuous, paralyzing defensive readiness at the border and the use of all available defence systems³⁸. To avoid such a scenario, states resort to espionage in order to establish whether there ought to be a reason for concern or not, as it serves as a transparency-enforcing device that resolves an otherwise irresolvable political conflict between liberal and non-liberal nations³⁹. However, once again the ‘missing dimension’ as referred to by Alexander is evident in this study. There is no direct investigation about allied states conducting peacetime espionage against one another. Studies such as Bitton’s and others similar to it, focus on competitor nations rather than states which are part of an established alliance with one another.

However, some authors are aware of and make reference to the potential pitfalls that spying on an ally can potentially come with. It should not be taken for granted that all states will appreciate espionage as a means towards verification and building of mutual cooperation. Pelican⁴⁰, with reference to states seeking information and employing peacetime cyber-espionage, observes that “information comes at a cost, however, whether in manpower, treasure, or the potential loss of amicable relations with fellow countries”. Although it is argued that some states may change their attitude towards others if they are found to be spying, this possible consequence is hardly ever mentioned by most authors. This is perhaps because all states are believed to spy on other states and therefore such a reaction would be seen as extremely hypocritical.

Golan⁴¹ views espionage directed at allies as a common phenomenon in the world of intelligence and statecraft; however, Golan offers a unique perspective on the peacetime intra-alliance espionage subject by making a distinction between alliances themselves. According to Golan, there exist ‘traditional’ alliances and ‘newer’ alliances. The distinction is made by observing “allies/partners that do not

³⁸ Bitton (note 12).

³⁹ Ibid.

⁴⁰ Pelican L., “Peacetime Cyber-Espionage: A Dangerous but Necessary Game”, *Catholic University Journal of Law and Technology*. 20 (2), 2012, p. 363-390.

⁴¹ Golan, (note 33).

represent a threat and are unlikely to become an enemy, though there is an interest in conducting relevant surveillance, as opposed to allies/partners that are liable to become future enemies". This signal to the tradition of German's foreign policy of the Aryan race that contributed to the two World Wars, and the need for America to pre-empt such may lead to espionage and undiplomatic conduct. Therefore the latter make up allies against whom it is important to continue intelligence gathering irrespective of peacetime or alliance. This is a work that represents an attempt to further the study of peacetime intra-alliance espionage.

Easley⁴² is another study on intra-alliance espionage. His study is perhaps one of the most pertinent pieces in terms of spying on allies as it refers directly to the exposition by Edward Snowden of the US NSA's activities. First and foremost, Easley⁴³ argues that espionage directed towards allies is necessary based upon the premise that an alliance does not imply blind trust. Thus, according to him, countries, even allies, should spy on one another. Easley further makes a distinction between two types of betrayals illustrated by an incidence of spying by an ally being exposed. Firstly, in a bid to actualise a state's national interest, an undiplomatic conduct may take place in host states. The other he refers to as political betrayal, which, according to him, is less a matter of national security and more an issue of one government causing embarrassment to the leaders of another, especially in the eyes of their domestic audience.⁴⁴ This distinction infers that where cases of espionage only detected by the intelligence personnel of a state and the information was then confined to only government and the intelligence services, the levels at which such incidents would become a diplomatic issue would be greatly reduced, if they at all become an issue. The reason, presumably, is the fact that all states routinely conduct espionage against one another despite alliances.

Therefore, it is less a surprise that there is a need for the NSA to embark on information gathering on political elite of other states. It is apt, then that decision makers in any state can expect to be spied on.

In a world where espionage is seemingly ubiquitous, it does stand to reason that the highest and most important of decision makers ought to anticipate that competitors will make attempts at gathering the information they hold. Thus

⁴² Easley L., "Spying on Allies", *Survival: Global Politics and Strategy* 56 (4), 2014, p. 141-156.

⁴³ Ibid.

⁴⁴ Boyd-Barrett O., Herrera D., and Baumann J., "Hollywood, the CIA and the 'War on Terror'" in Freeman D. and Thissu D. K., eds., *Media & Terrorism: Global Perspectives*, London and Los Angeles: Sage, 2012, p. 116-133; Easley, (note 42).

the intelligence agencies of every state have to make certain that they protect the information held by its most senior citizens.

A search through the literature on peacetime intra-alliance espionage does not yield a significant amount of works, pointing to a serious lack of study on the subject. The consequences of such activities are not articulated in a scholarly manner and thus the subject has been left vacant in the aisles of studies of international relations. The overwhelming number of studies focusing on peacetime espionage suggests that it is an instrument through which states are able to verify each other's actions and levels of adherence to agreed upon behaviour. However, these are often arrived at from studies that look at peacetime espionage between competing states or states with differing orientations, such as liberal states versus non-liberal states. Alliances on the other hand are established on the basis of shared values and interests. They are also premised upon an understanding that cooperation and transparency are necessary to ensure the success of the alliance. Therefore the use of espionage as a tool fostering cooperation, trust and transparency is redundant, when allied countries can simply inquire their allies about particular information they require.

3. American espionage saga in Germany: any lesson for NATO's small states?

Based on the above interrogation of peacetime intra-alliance espionage, it is essential to look into the need for the US to plant surveillance in Berlin, as the two states' security understanding is beyond any equivocation. Though, as discussed under the likely theoretical positions on the need for spying on friendly states, realists are of the view that because of the nature of the international system of a Hobbesian approach, every state needs to jealously guide and guard its national interest. Though the concept of national interest remains misty in the study of international relations, at the same time, there are immutable issues that should be protected irrespective of the system of government in place. These are territorial integrity, protection of citizens both at home and abroad, and if the economic situation permits, there is a need to protect economic development. Based on the series of security, economic and social relations between the US and Germany, it was expected that the two should be natural allies as displayed in a release by the US European Command (USEUCOM). The publication describes Germany as a trusted friend that always protects American interests, and Berlin provides a

military base for both the Africa Command and European Command of the US Army. The state also housed America's largest Department of Defence medical facility outside America. The hospital cares for American soldiers wounded in Iraq and Afghanistan. Not only this, as their trust goes beyond a mere military base, but Germany also plays host to the largest military training centre outside the US. The two also cooperate in the war against terrorism: because of joint military training in American bases in Germany, they always work hand-in-hand in peace operations.

Liberal and neo-liberal students of international relations are of the opinion that democratic states hardly go war against each other. At the same time, liberalists are of the view that a high degree of economic interdependence in neo-liberal society brings peace and tranquillity⁴⁵. This, by extension, is believed to have gingered mutual respect, observation of the rule of law and basic tenets of international law. From this observation, it is difficult to locate the need for espionage conduct by the US in Germany. Analysis of US actions in Germany may not be understood when situating the same through liberal theory as pushed forward by students of Washington Consensus.

Though the CSS contends that what determines a state's behaviour is far away from the liberalist and realist's school, as the two are perceived as relations based on wealth and power respectively⁴⁶. The theory sees a state action through social norms and that there is need to reflect critically on the historical conditions of a state's actions and reactions. Also worth looking into in this theory are the material and ideological conviction of a state. Constructivist could be viewed as a middle ground that explains social facts as against the static world of *apriori* and social egoists that focus on material interest as if other intangible ingredients of power such as prestige, cultural domination and psychological pre-eminence were not part of a state interest's at the global level⁴⁷. Therefore, for academic interpretation of America's spying enterprise in Germany, there is a need for interrogation of both anarchy and economic hierarchy among social classes. As mentioned above, the concept of the Aryan Race that led to World War II and the economic power of the Berlin government is a source of concern for America. The state is the most developed country in Europe, followed by France, in terms of financial and military powers. As a "uni-polar moment", America may not trust Germany as

⁴⁵ Amusan L and van Wyk J. "The Complexities of Bilateral Relations: the Nigeria-South Africa Relationships (2000-2006), *Politeia* 30 (1), 2011, p. 38-55.

⁴⁶ Griffiths M., *Fifty Key Thinkers in International Relations*, London and New York: Routledge, 1999, p. 107.

⁴⁷ Fierke, 2007, (note 21) p. 171.

pushed forward by the realist school. At the same time, the economic base of the country together with its level of research and development in the post-Cold War period after the unification of the two Germanys is a miracle for America. Despite the complex nature of the two states' relations, and in spite of the constructivist school's ability to explain "the climate of fear" displayed by the US on the future of Germany's development, the theory could not explain the clandestine surveillance against the Berlin government.

If Germany could experience this from the US, the question worth asking concerns the future of the small states in Europe that are members of NATO. Many of these states were formally under the umbrella of the Warsaw Pact under the Union of Soviet Socialist Republics (USSR). Besides the fact that America will see these states and their political and economic elites as spies for the socialist world, they will be closely monitored and compromise their security settings. The need for economic and military assistance from America will compromise their security power over their territory. Former communist states such as the Czech Republic, Slovenia, Estonia, Latvia, Lithuania and Poland need not doubt their state porosity towards America's surveillance. Turkey, a member of NATO, should not always expect *perfect* relations with the US, though its import on the security of the West is invaluable, at the same time, being an Arab state and the proliferation of terror attack at the global level may increase Washington's spying activities in the state. A majority of NATO members from Eastern Europe are developing states that are undergoing structural adjustment policy, political precariousness and social imbalance. Nearly all of them rely on politico-economic hand-outs from the US. Technologically, they are recently coming out of the communist hangover with all the ramifications of dependency syndromes. The question now is, where is the sovereignty and equality in NATO? Worth asking also is the relevance of the Article 5 trigger clause of the organisation's charter in an international regime of unequal exchange and power relations between developed and developmental states? As long as technological innovation, by extension, the knowledge economy, as opposed to the agrarian and manufacturing sectors, dominates the 21stst century, the small states of the military regime will look towards America for development for the next decade⁴⁸.

Based on the above statements that were released by decision makers of both states, the American ambassador, John Emerson, was summoned on 24 October

⁴⁸ Williams M., "Rethinking the Developmental State in the Twenty-First Century", in Williams M., ed., *The End of the Developmental State?* Pietermaritzburg: University of KwaZulu-Natal Press, 2014, p. 1-29.

2013 to meet the then German Foreign Minister, Guido Westerwelle to explain how the saga would not lead to a permanent mistrust between the two states. In March 2014 the German government established a parliamentary board of inquiry, which submitted a set of questions to the American government for a response. However a year later, the American government had yet to reply to the questions. Thirdly, the German government then went on to establish a parliamentary investigation committee on NSA surveillance. The hearings were established in order to thoroughly probe the information leaked within two years. Fourthly, the German government took the extreme step by declaring the station chief of the Central Intelligence Agency (CIA) *personal non-grata*. This action followed the arrest by German police of a German intelligence operative who was passing information over to the NSA. The expulsion was later described by Hans-Christian Strobele, an official in Germany's Green Party as a necessary symbolic act to show our friends on the other side of the Atlantic how serious this matter is⁴⁹.

If we are to refer back to Easley's distinction between two types of betrayals by an ally, we have 'strategic defection' (which is when an ally takes action they know will seriously harm the other parties national interests) and 'political betrayal' (which is more a case of one government embarrassing the other in front of their domestic audience). It would appear that in the beginning Angela Merkel did not view the matter as a strategic defection. When it seemed as though the NSA's greatest crime was monitoring the Internet and phone traffic of citizens, the reaction of the government was subtle. However, the strategic nature of the betrayal was later impressed upon the government when Germany realised that even their own equipment had been targeted. The matter also took a political twist when Merkel was accused of showing concern when personally involved. The Spiegel reports, "the German website Der Postillon published a satirical version last Thursday of the statement given by Merkel's spokesman, Steffen Seibert: The chancellor considers it a slap in the face that she has most likely been monitored over the years just like some mangy resident of Germany⁵⁰. These sentiments though do not appear to have lasted as Merkel took a consistently hard stance against the Americans throughout 2014. In a survey conducted by *YouGov* a polling institute, sixty-two percent of Germans approved of Merkel's stance to the matter⁵¹.

⁴⁹ Miller G. and Kirchner S., "Germany orders CIA station chief to leave over spying allegations", *The Washington Post*, July 10, 2014, <http://www.washingtonpost.com/world/europe/germany-expels-us-intelligence-station-chief-over-spying-allegations/2014/07/10/dc60b1f0-083c-11e4-8a6a-19355c7e870a_story.html>, 6 11 2014.

⁵⁰ Embassy Espionage, (note 3).

⁵¹ Ibid.

During the course of events surrounding the Snowden revelations it was mentioned on a number of occasions that Germany would like to become a part of the “5 eyes” intelligence sharing network comprising of the US, England, Canada, Australia and New Zealand. The “5 eyes” is a network of English speaking countries that routinely share intelligence amongst each other. However, no progress has seemingly been made in this regard. This came after Germany had unsuccessfully attempted to bargain a no-spy agreement with the US. But the Obama administration made it clear that the U.S. did not have a no-spy agreement with any country, so that would not be an option⁵². The scandal led to a short self-introspection by the government and the intelligence community pondering whether it had been too trusting of the Americans by being too naïve. The level of overall surprise by the Germans would suggest that they were very surprised and, therefore, had not anticipated this type of action at all. “A year ago (2013), there was already debate between the agencies, the Interior Ministry and the Chancellery over whether Germany should be taking a harder look at what American agents were up to in the country. But the idea was jettisoned because it seemed too political⁵³.”

When one observes the reaction of the Americans to the matter, it appears that once the espionage was exposed, they were taken aback by how betrayed the Germans felt. The American position towards espionage is a general assumption that everyone is doing it and therefore no one’s feelings will get hurt when it is revealed that an ally has been spying on another. However, from personal apologies by Obama to Merkel and a fundamental restructuring of the data retention capabilities of state intelligence agencies, the United States seemingly appreciates that some of its actions were excessive particularly towards an ally.

Actions such as wiretapping and surveillance from an embassy are clearly not permissible according to the Vienna Conventions and are illegal in terms of international law. The monitoring of the personal cell phone of Angela Merkel is also excessive when considering the close levels of cooperation that had been prevalent between Germany and the US. Such actions in particular seem to have embarrassed the US and hence it quickly withdrew, apologised and restructured its data retention policies.

A number of American tech companies experienced declines in their user base owing to fears that user privacy laws are not being respected. The distrust

⁵² Epstein J., “Obama: No ‘no spying’ agreements”, *Politico*, November 2 2014, <<http://www.politico.com/story/2014/02/nsa-spying-foreign-countries-103382.html>>,. 10 06 2015.

⁵³ Embassy Espionage, (note 3).

for Americans also manifested in a general scepticism towards the Trans-Atlantic Trade Agreement, which was being heavily negotiated at the time. Prior to the revelation of spying, polls indicated a generally favourable attitude towards the agreement amongst most Europeans, including Germans. However, once the news about the spying was revealed, most Europeans attitude towards the agreement had changed.

Conclusion

Peacetime espionage is an activity that all states currently perform with the objective of intercepting any threats against the state and protecting its population. It would appear that part of the trick in successful espionage is knowing who to keep tabs on in the first place. The German political and intelligence communities believed, in line with the liberal perspective, that because they were allies with the United States, they would not be a target of American spying. The fact that both countries are members of NATO (an international regime that ought to ensure stability between the two) further provided Germany with a sense of security against being spied on by a fellow alliance member. The post-9/11 America has been preoccupied with a realist view of the international system in maintaining its security, so Germany should have not been as passive with its own surveillance. However, it should be noted that the Americans have to date have not been seen to have maliciously used any information they have gathered from their German allies. Through NATO and USEUCOM, US being the arrowhead of the military alliance, the use of drones and other intelligence gathering methods during peacetime seems to be more than enough for America to spy on Germany unnoticed as opposed to unilaterally stationing information collating equipment on the soil of Berlin in the guise of self-defence and early warning motives. Not only that this is against any known explanation by liberal internationalists as discussed above, it is a source for concern among small member states. The question that remains obscure is whether the small states such as Lithuania, the Czech Republic, Latvia, Slovenia and Slovakia can challenge America's hegemonic power over them considering their linkages with the *uni-polar moment*. As discussed above, there is no doubt that security of the small states has been compromised based on the Westphalian sovereignty paradigm because of Washington's preponderant power over these states. Turkey, a link between the Arab world and Europe, is a state that is strategically located but always at the mercy of the US. America's ambition to remain *primus inter-pares* in the comity of nations will continue gingering its security concern in Europe.

This would have explained the on-going political capriciousness in Ukraine based mostly on the rivalry for sphere of influence between the Soviet and the US.

The high levels of betrayal expressed by the German political establishment at the height of the scandal reveal a distrust, which will likely never go away. The trust, which America once had, as evidenced by the low levels of suspicion towards American activities in Germany, will never be attained again. This is in line with Boyd-Barrett *et al.*⁵⁴ when they observe that “covert operations, thriving on secrecy, are deeply problematic for democracy, regularly counterproductive to public interest and frequently amoral and/or criminal”.

Therefore, as NATO allies, it would appear that they still have the same, shared values and that has not been changed by the exposure of spying activity. Going by the CSS position, security is an integral part of politics and the concept of norms and values are not static, they change with time based on technology and political development and history. This could have inspired America to engage in security surveillance of a trusted partner. The relationship has not been negatively altered, although less trust exists between the two allies. Spying on a close ally can therefore be seen to instil a level of awareness in your ally that they must always be vigilant. Trust but verify. One should not believe simply because they are allies that their partner will not turn against them; the international system is based upon self-interest and states should not suspend that awareness and vigilance.

⁵⁴ Boyd-Barrett et al., (note 44) p. 117.