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Research Report

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Inseparable, but Not Equal

Assessing U.S.–EU Relations in the Wake of the NSA Surveillance Affair

Johannes Thimm

The revelations about the data collection and espionage activities of the National Security Agency (NSA) have left their mark on transatlantic relations. In the beginning of 2013, the future of relations between the United States and the European Union looked bright, fueled by optimism about the negotiation of a transatlantic free trade area. Since then, tensions have risen over leaked information about the NSA's actions. The dispute is significant beyond the immediate issue of surveillance because it draws attention to the enduring asymmetries in the transatlantic relationship. Discussions about its decline notwithstanding, the U.S. upholds its claim to global leadership and continues to rely on controversial security measures in the name of fighting terrorism. Despite their initial indignation at the revelations, the leaders of European governments have offered conflicting and ineffective responses. In the intelligence field as well as the EU's broader relationship with the U.S., Europe does not seem prepared to challenge the status quo. This poses questions about the nature of future transatlantic cooperation.

Europeans like to see themselves as equal partners in the transatlantic partnership. This is truer in some areas of the relationship than in others. Trade negotiations take place on equal footing, since the economies of the EU and the U.S. are roughly equal in size, and decisions concerning the common market are the European Commission's responsibility. In contrast, in military and defense matters, the U.S. plays in its own league. Nobody in Europe even aspires to match its role as a global military power. Traditional foreign policy is located somewhere between these two extremes.

The importance of the surveillance affair lies in the fact that it touches on so many

aspects of foreign policy. The bulk collection of EU citizens' private data, in blatant disregard of EU regulations, not only violates the sovereignty of each member state and the EU as a whole, it also interferes with European systems of justice. The bugging of EU institutions and policy makers violates international norms and rigs the game of traditional diplomacy. And the alleged economic espionage has the potential to skew economic competition in favor of the U.S. In all of these areas, the NSA's activities reveal asymmetries between what each side is capable of and authorized to do. They also increase the power gap further in favor of the U.S. The excuse that "every-

body spies” rings hollow. Just imagine the U.S. reaction if German intelligence had tried to tap the U.S. President’s phone. What is even more telling than the NSA’s activities themselves is the timid response from European governments, especially in contrast with the much more assertive reaction from the government of Brazil.

Cooperation and conflict under conditions of asymmetry

How then should Europe cope with the situation? The first step is to welcome the new insights as a badly needed reality check. It is time to seriously reassess romanticized notions of “transatlantic friendship.” Washington’s view of its European allies is, first and foremost, instrumental. Europe may be useful in some respects, but it is not seen as an equal partner. Europe still tends to see the transatlantic relationship as unique, and perhaps rightly so. By the standard of Karl Deutsch’s classic concept of the security community, whose defining feature is that war between its members is unthinkable, there is nothing to worry about. However, recent events somewhat challenge the idea of the transatlantic security community as a *Wertegemeinschaft*, a community based on common values. This is especially true if we place the NSA affair in the context of how to fight terrorism. Surveillance is not the only issue where there is a gap between what the U.S., on the one hand, and most of Europe, on the other hand, consider to be legitimate means for fighting terrorism. The list also includes targeted killings, indefinite detentions, and trials of terrorist suspects by military commissions. It was a deliberate choice by European governments to remain silent on these issues in the past years. After all, there are real dilemmas involved in fighting terrorism, and why poison the atmosphere when Europe itself did not always have good answers to the challenges terrorism poses? Yet, many controversial practices in the “War on Terror” that were once thought of as exceptional – if not il-

legal – are being institutionalized in U.S. law and practice. With the surveillance affair, Europeans are, for the first time, directly and broadly affected. Avoiding conflict over controversial issues out of a false sense of loyalty is not the right approach.

If the EU wants to remain credible as a normative power, its representatives should speak up. This, however, requires a minimum of consensus among the member states and a break with past practices of aiding U.S. agencies in circumventing European data protection regulations.

The fact that many intelligence services in Europe feel they have closer ties to the U.S. agencies than with those of other EU members, facilitates the U.S. strategy of *divide et impera* (divide and rule). The most promising initiatives for meaningful steps to counter U.S. surveillance practices are currently emerging from EU institutions such as the European Parliament and the Commission; however, the member states’ support is often lacking.

Realistically assessing Obama’s record

The U.S. government’s assertiveness in the intelligence field may seem paradoxical. After all, the political process in the United States is dysfunctional and characterized by gridlock, as demonstrated by last year’s government shutdown. Political polarization and a struggle within the Republican Party about its future direction make it difficult or impossible for the White House to implement a number of reforms that are necessary to keep the country competitive. On issues as diverse as paying its bills to reforming its entitlement programs, the U.S. government seems unable to implement a coherent policy.

But at the same time, the national security state has continued to expand. Contrary to the allegations of his critics in the U.S., President Barack Obama is not prepared to give up Washington’s claim to global leadership. Among the continuities of U.S. foreign policy is the notion of “Ameri-

can exceptionalism” – the belief that the United States is a force of good in the world, even if the means it chooses to accomplish its ends are problematic.

Also not accurate is the prevalent view that President Obama has somehow fallen victim to an intelligence community that has gotten out of control. During his tenure, funding for intelligence agencies and special forces within the military has increased. At several points during his presidency, Barack Obama was confronted with a clear choice of whether or not to curtail the NSA’s powers. Instead, he has expanded them. While the intelligence-industrial complex has certainly become a powerful political player, the President was certainly aware of the developments and bears responsibility. His response to the recent report by the President’s Review Group on Intelligence and Communications Technologies (www.whitehouse.gov/sites/default/files/docs/2013-12-12_rg_final_report.pdf) will show whether or not his position has changed in the face of public scrutiny and international criticism. The group goes further than many expected with its recommendations for substantial reforms of the NSA’s practices.

Areas of cooperation: The Middle East and North Africa

Part of a European reassessment of transatlantic relations should be a sober analysis of how Europe and the U.S. can cooperate under conditions of asymmetry. Common interests should not be assumed by default, but established through careful consideration. There are good reasons to work together on issues of common concern and when interests converge. One of the most pressing common challenges is the turmoil in the greater Middle East and North Africa (MENA). With the West’s influence waning, the only chance to have any impact at all is for Western countries to cooperate closely when engaging in the MENA region. The U.S. cannot turn its back on the region’s many crises any time soon, even if the

Obama administration declared its intention to reduce U.S. engagement in the MENA region and to shift attention toward Asia. For Europe, the problem is in some respects even more urgent: The instability is located in its immediate neighborhood and has direct repercussions on Europe, for example through refugee flows into the EU. The U.S. and Europe share many fundamental and long-term goals in the MENA region: to end the civil war in Syria; to work toward a stable and democratic government in Egypt; to prevent Iran from building nuclear weapons; and to facilitate a negotiated settlement of the conflict between Israel and the Palestinians within the framework of a two-state solution. Americans are tired of military interventions, and – at least under the current administration – Washington wants to avoid military involvement in Syria and Iran as much as the Europeans do.

Western influence on the events unfolding in the Middle East is limited. Especially the internal dynamics of conflicts such as those in Egypt and Syria can hardly be controlled from the outside. Despite these limits, the impact of the West in the region can be maximized if Western countries coordinate their actions. Under current circumstances, the White House is often closer to European positions on Middle East issues than Congress. So Europe can back the White House position to help it deal with domestic constraints. But in some situations, more independent European positions might do more to help the President accomplish important goals. Two examples: Domestic politics complicate the U.S. government’s ability to pressure Israel to participate in good faith negotiations with the Palestinians on a two-state solution. Europe should continue to insist that such a negotiated solution is in Israel’s own interest, and that a failure to compromise on settlements will isolate Israel internationally in the long run. Reactions to the EU directive, which limits the ability of Israeli organizations active in the occupied territories to apply for grants, prizes, and financial in-

struments funded by the EU (2013/C 205/05), shows that such signals do not go unnoticed.

With respect to the negotiations on the Iranian nuclear program, there is a risk that the U.S. Congress will continue to call for more sanctions against Iran, thereby undermining the current window of opportunity for meaningful negotiations. Europe's task here is to insist that a successful strategy cannot rely on sticks alone but also needs carrots. The best chance to keep an overzealous Congress in check is to make it clear that Europe will not participate in any tightening of sanctions as long as the negotiations between the EU3 + 3 and Iran remain constructive. A closely coordinated "good cop/bad cop" strategy between Europe and the U.S. – with the U.S. being the good cop *vis-à-vis* Israel in the negotiations about the occupied territories and the bad cop in the nuclear negotiations with Iran, with Europe playing the respective opposite roles in close coordination – would maximize the West's influence to reach common goals. It would also show that, although preferences may not be identical, cooperation can be in the mutual interest.

TTIP: Only good for transatlantic relations if done right

The surveillance affair has also led to a partial reassessment of the negotiations of the Transatlantic Trade and Investment Partnership (TTIP). Only a year ago, TTIP was seen as the central issue on the transatlantic agenda for the coming years and carried great expectations. Although calls by some in Europe to cancel negotiations in the wake of the NSA affair did not succeed, European enthusiasm about the free trade area has cooled somewhat. One reason is the concern that eavesdropping on communication inside the EU will give the U.S. an unfair advantage in the negotiations. But more important is the realization that trade is not the solution to the most important transatlantic controversies. Many of the initial hopes associated with TTIP were

unrealistic. Some claimed that the reduction of trade barriers would not only lead to more commerce and economic growth, but that the partnership could serve as a kind of economic NATO, strengthening ties in areas beyond trade. Such high expectations are problematic because they can facilitate a dynamic that seeks an agreement at all costs. Legitimate concerns, for example about the proposed investor-state dispute-settlement mechanism (which would allow businesses to claim compensation from governments in certain circumstances), may be ignored if the success of TTIP negotiations is charged with being the litmus test for the enduring relevance of the transatlantic partnership.

Furthermore, if the trade talks are characterized by the same pattern evident in the reaction to the surveillance affair, with the U.S. able to play EU member states off against each other, Europe has much to lose. For instance, if harmonizing privacy and data protection standards means giving way to lower U.S. standards, the interests of EU citizens would not be served well. Even though the EU's standards of regulation are not necessarily always higher than U.S. requirements (environmental and consumer protection standards tend to be higher in the EU, whereas financial regulation is stricter in the U.S.), the principle of recognizing each other's standards will often mean, in practice, that the lower standards prevail.

European negotiators should not rule out the possibility that no agreement can be reached. Only with the option of letting the talks fail will they have a strong negotiating position. Members of the U.S. Congress will not hesitate to vote against TTIP if its members conclude that the treaty is not in their constituents' interests, and neither should the European Parliament. To support a bad agreement out of concern for transatlantic relations would certainly do more harm than good.

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