

*Siegfried Beer***EDITORIAL****KEEPING ESPIONAGE AND THE NSA IN PERSPECTIVE****Siegfried Beer,**

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Espionage is an historical phenomenon; spy organizations have become its inevitable consequence since about the 1870s. Their outlook was originally foremost military; the civilian dimension was added shortly before, or in the case of the FBI, shortly after World War I. The interwar years were indecisive, not only for America. At the latest since 1939/41 it has become clear: intelligence is here to stay. So, in 2013, no amount of fussing, threatening or naive wishful thinking is going to erase that reality, a presence fortified since the beginning of the Cold War. Just a reminder: the CIA was founded in 1947, the KGB in 1954. Both had precursors. Winning World War II against aggressive dictatorships in Germany and Japan taught the Americans how important code-breaking against enemy states could be. This is why, on the whole, there is a great continuity for American intelligence organizations since Pearl Harbor at least. 9/11 assured it to remain in place, most likely in perpetuity.

Soon after World War II the fear of a “nuclear Pearl Harbor” led to the establishment of the secretive National Security Agency (NSA), at first mainly directed against the Soviet Union and the People’s Republic of China, but soon also against the codes of other nation states. Perhaps one could claim: the United States, first as one of two super-powers, then since 1990/91 as the world’s sole remaining hyper-power, became obsessed with knowing pretty much everything on a global dimension. Was there anything that could not be of potential significance? The rapid

advancement of technology over the decades of the Cold War and into the internet age since the 1990s favored the penetration not only of state communications, but of private communication as well. This was not restricted to the United States: everybody who could afford it followed suit. In the 1990s the urgency seemed to lessen somewhat. In the U.S. Congress there was serious discussion about deconstructing the national security state, even of abolishing the CIA. For a short while state surveillance and state secrecy appeared under serious attack. A Democrat senator from New York even led a campaign against government secrecy and for a more liberal statutory regulation of classified information.<sup>1</sup> The Pearl Harbor fear had seemingly dissipated. 9/11 changed all that in a swoop. American intelligence had once more failed to predict a pre-meditated attack on the state and everything the country stood for. The Government had ignored warnings about a terrorist assault on the homeland.

The NSA was given a renewed charter to track Al-Qaeda’s communication network. It probably meant looking for no more than several hundred people in the midst of a 7-billion global population and for perhaps a few thousand leads among billions of messages. In other words, it became the quest of the NSA to discover the proverbial needle in the global haystack. The need for PRISM and several other cooperative monitoring programs was born. These could be built on the ECHELON experience of the pre-9/11-era. The American Intelligence Community was given

extended surveillance rights and soon thereafter high unlimited resources. Everybody and everything was potentially suspect. There was not just fear, nor mere paranoia, it was declared reality: its name was War on Terror. We know that most terrorisms over the centuries eventually ended, sooner or later. The War on Terror in consequence of 9/11 may never end. But does this necessarily mean the suspension of civil rights? My proposition is that it does not have to be if the empowered surveillance authorities remain sensitive to constitutional principles. The protection of citizens from unlawful observation is crucial. Internal safeguards within intelligence to that effect must be secured and enlarged upon, even in the necessary pursuit of criminals and terrorists. Preventing Organized Crime and deterring terrorism will remain the goal of any national security state, hegemonic as in the case of the U.S. or merely observing on the sidelines like Austria. These goals of fighting crime and terror are pursued in national and international contexts; they also pertain to individual citizens. Security is indivisible and intelligence organizations charged with these tasks must be seen in historical and current perspective. Indifference to the letter and spirit of the constitution should not be tolerated.<sup>2</sup> Control mechanisms need to be put in place to avoid misuse or even carelessness in the area of constitutional and human rights. It can be done and it must be done; the Snowden affair may yet end constructively.<sup>3</sup>

To the Austrian parliamentarians who addressed themselves to these issues in a particularly non-spectacular session of the House on November 21, 2013, I can only reiterate: spying is here to stay, no matter the verbal theatricality of Peter Pilz, the screaming fits of H.C. Strache or the naive “no-spy-agreement” wishes of Beatrix Karl. Of more than twenty speakers on the so-called NSA-scandal that day, not even a handful had done their homework on the genuine nature and necessities of intelligence in the 21st century. Mine was a depressing visit to the visitor’s gallery. The level of insight into an admittedly complex topic and the lack of perspective beyond short-time party-political interest were indeed remarkable. Austrian politicians must be capable of doing better than that.

I remain convinced that democratic governments do not have to sacrifice constitutional freedoms in order to win the war against terror and organized crime. We may, however, have to give up the claim for 100% protection of privacy by the state, when millions of us do that daily and voluntarily by feeding the Facebook drawers with banal as well as with intimate information the NSA would never be interested in for a second. I am certain that despite the media and America-bashing hype of the last months, 99,99% of the world’s population is safe from de facto personal surveillance. I take the remaining risk of falling into the 0,01% category any day for the sake of creating a general sense of security, collective or individual.

## ENDNOTES

<sup>1</sup> Cf. Daniel Patrick Moynihan, *Secrecy: The American Experience* (New Haven, CT 1998) and Philip H. Melanson, *Secrecy Wars. National Security, Privacy, and the Public’s Right to Know* (Dulles, VA 2001).

<sup>2</sup> Cf. Philip Bobbitt, *Terror and Consent. The Wars for the Twenty-First Century* (New York 2008), 541.

<sup>3</sup> Cf. my recent guest commentaries: Siegfried Beer, Die vielen Missverständnisse im NSA-Skandal, in: Die Presse, 3.10.2013; id., Viel Lärm um wenig Neues. Die sonderbare NSA-Hysterie, in: DiePresseamSonntag, 10.11.2013.