SIGINT INTELLIGENCE TRANSNATIONAL ACTIVITIES IN FRANCE AND EUROPE: TRANSNATIONALISATION, OVERSIGHT & THE ROLE OF COURTS

24th, 25th & 26th September 2018

Sciences Po - CERI

En partenariat avec

Université Paris Nanterre
Queen Mary University of London
IRM Institut de recherche Montesquieu
Université de BORDEAUX
This international colloquium is organized at the initiative of the ANR-UTIC for the first two days and for the third day is the result of a collaboration between CERI and Queen Mary University London (QMUL). It looks at the communications surveillance practices of police and intelligence services, in particular in France but also at the European and transatlantic levels. It surveys today’s technologies for collecting and analyzing communications, the use of these technologies by law enforcement agencies as well as the political and legal controversies they trigger.

The goal of the colloquium is to examine the reconfiguration of contemporary surveillance, the way it is redefining the limits of democracy as well as state sovereignty. To grasp the stakes surrounding communications surveillance, the project’s transdisciplinary approach relies on both Engineering Sciences and Social Sciences. The project’s supervisors are Didier Bigo at Sciences Po CERI, who is also UTIC’s coordinator, Sébastien Laurent (Centre Montesquieu de Recherches Politiques - CMRP) and Laurent Bonelli (Université Paris Nanterre).

The different panels will examine how national security and its relationship to fundamental rights are transformed both by the global nature of Internet traffic and by the modes of cooperation developed by public and private actors involved in surveillance. It seems that communications surveillance is no longer national and public. Data collection and transfers take place at the transnational scale between different agencies from different countries, with the support of private corporations.

In this context, the first two days will analyze how are alliance systems and power relationships evolving? What is the role of public-private hybridation in this process? What happens to the reason of State when the collection and processing of data takes place on a transnational scale? How a fair and effective oversight is possible?

The third day, we will, in collaboration with QMUL, discuss how European Courts with their judgements on right of privacy set the limits of surveillance?

These are complex questions since the actors of surveillance have conflicting interests. They also act under the constraint of multiple and sometimes contradictory legal frameworks, which are in turn shaped and mobilized by social movements attached to the protection of fundamental rights.
LES ACTIVITÉS TRANSNATIONALES DES SERVICES DE RENSEIGNEMENT D’ORIGINE ÉLECTROMAGNÉTIQUE ET DIGITALE EN FRANCE ET EN EUROPE: MUTATIONS EN COURS

SIGINT INTELLIGENCE TRANSNATIONAL ACTIVITIES IN FRANCE AND EUROPE: A CHANGING LANDSCAPE

ANR UTIC – 24th of September 2018
CERI – Salle de Conférences
56, rue Jacob – 75006 Paris

14h00-14h30 | Welcome by Alain Dieckhoff (director, CERI/Sciences Po)

Introduction by Didier Bigo (coordinnateur du projet ANR UTIC, CERI/Sciences Po, France), Laurent Bonelli (Université Paris Nanterre, France) and Sébastien Yves Laurent (Université de Bordeaux – IRM, France)
in French – simultaneous translation in English

ANR – 3 ans de recherche: « Savoir et comprendre les activités couvertes par le secret : Que savons nous ? Comment ? Qu’avons-nous le droit de savoir? »

ANR — 36 month of research: "Knowing, Understanding Activities Covered by Secrecy: What Do We Know, How Do We Know, What Do We Have the Right to Know?"

14h30-16h30 | PANEL — “SIGINT INTELLIGENCE - LAW AND TECHNOLOGY: KNOWING AND UNDERSTANDING OF SECURITY TECHNOLOGIES, SECRECY AND NATIONAL SECURITY”
in French and in English - simultaneous translation

Chair: Gilles Favarel (CERI/Sciences-Po, France)

Participants: Philippe Guillot (Université Paris 8)
– « Panorama et usage des techniques d’interception et de surveillance »
Maxime Kheloufi (Université de Bordeaux, France)
– « Secret des correspondances et protection des données : la CJUE adoubera-t-elle la loi renseignement ? »
Bill Robinson (The Citizen Lab, University of Toronto, Canada)
– “Interceptions and Sharing of Information: Canadian Practices”
Claudia Aradau (King’s College London, UK)
– “Algorithmic Reason and the New Government of Self and Other”

Comments: Bertrand Warusfel (Université Paris 8, France)
TABLE RONDE — « LES MODES DE CONNAISSANCE DES ACTIVITÉS DE RENSEIGNEMENT »

Certains modes de connaissance tiennent à l’expérience d’anciens acteurs qui veulent transmettre les routines des pratiques de leur métier et communiquent vers l’extérieur par le récit de leurs mémoires, l’enseignement ou vers le grand public, d’autres modes de connaissance tiennent à l’analyse historique des institutions, aux rapports des organismes de contrôle, aux investigations journalistiques et aux différentes mises en scandale des lanceurs d’alerte ainsi que des enquêtes sur des pratiques illégitimes en démocratie. Les deux modes de connaissance, par l’intérieur et par l’extérieur apportent des éléments différents mais qui tous ont une valeur heuristique, levant en partie, mais en partie seulement le secret qui entoure les activités des agents.

Chair: Philippe Hayez (Cour des comptes, France)

Participants:
- Alexandre Rios-Bordes (Université Paris Diderot, France)
  - “Une effraction au passé ? L’ethnographie historique des méthodes clandestines”
- Sharon Weill (PSIA/Sciences Po, France)
  - “Security Services Representation in Trials”
- Anne Charbord (international human rights lawyer)
  - “Working for the UN”
- Guy Rapaille (Comité permanent de contrôle des services de renseignement et de sécurité - Comité R, Belgique)
  - “Le SIGINT et son contrôle en Belgique”
- Aurélien Gloux-Saliou (Commission nationale de contrôle des techniques de renseignement - CNCTR, France)
  - “Le rôle des commissions de contrôle des services, l’exemple français”

16h30-17h00 | Coffee break

17h00-18h30 | TABLE RONDE — « LES MODES DE CONNAISSANCE DES ACTIVITÉS DE RENSEIGNEMENT »

in French and in English - simultaneous translation

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  - “Le rôle des commissions de contrôle des services, l’exemple français”

18h30-19h30 | Cocktail
PANEL 1 — “GLOBAL ALLIANCE, NATIONAL SOVEREIGNTY: SHARING SECRET INFORMATION DILEMMAS”
in English
Collaboration between SIGINT agencies over the world: a Global North alliance led by the 5 eyes and concentric circles or a transnational guild based on the capacity of extraction of information from internet sources

Alex Macleod (Université du Québec à Montréal – UQAM, Canada)
Thorsten Wetzling (Stiftung Neue Verantwortung – SNV, Germany)

– “Double Allegiance? The Case of the BND, a German Exception or a New Pattern?”
Steven Loleski (The Citizen Lab, University of Toronto, Canada)
– “Bulk Collection, Targeted Attacks, and Global Surveillance: Interoperability and Operational Cooperation among the Five Eyes”
Ronja Kniep (Wissenschaftszentrum Berlin für Sozialforschung – WZB, Germany)
– “Beyond the Five Eyes: the Limits of Sharing and Cooperation in Transnational Sigint Networks”
Didier Bigo (CERI/Sciences Po, France)
– “The Transnational Guilds of Extraction of Information in the Field of Sensitive Intelligence: Beyond National Security, the Case of the Five Eyes Plus Network”

Comments: Andrew Neal (University of Edinburgh, UK)
How has the relationship between large, consumer-facing tech companies (Google, Amazon, Facebook, Apple, Microsoft, etc.) with intelligence and law enforcement agencies evolved since 2013? Has civil society been successful in advancing the rule of law when it comes to secret state surveillance?

Bertrand de la Chapelle (Internet & Jurisdiction Policy Network, France)
Félix Tréguer (Institute for Communication Sciences - ISCC, France)
— “(Re)configuration of Public-Private Assemblages in Internet Surveillance (Case-studies on the US and France)”
Matthias Schulze (Stiftung Wissenschaft und Politik – SWP, Germany)
— “Wannacry Aabout the Tragedy of the Commons? Problems of Global Vulnerability Disclosure and Information Sharing”
Lina Dencik (Cardiff University, UK)
— “Surveillance Realism, Resistance and the Limits of Techno-solutionism”
Grace Eden (Manchester Metropolitan University, UK)
— “Technical Standards and the Making of Surveillance Infrastructures”

Chair: Bertrand de la Chapelle (Internet & Jurisdiction Policy Network, France)

13h00-14h30 | Lunch

14h30-16h00 | PANEL 3 — “AUTORITÉ ET LÉGITIMITÉ DU RENSEIGNEMENT : LOGIQUES D’ACTIONS DES SERVICES DANS LA SURVEILLANCE DES ÉTRANGERS ET DES CITOYENS »
en français

Chair: François Thuillier (ANR UTIC-CERI/Sciences Po)

Participants:
Laurent Bonelli (Université Paris Nanterre, France)
— « Renseignement et nouvelles technologies : des pratiques sociales à un espace des positions institutionnelles »
Bernard Voutat et Hervé Rayner (Université de Lausanne, Suisse)
— « Légitimité et contestation du renseignement : enseignements tirés du cas Suisse »
Jean Paul Hanon (Ecoles de Saint-Cyr Coëtquidan – ESCC, France)
— « La fabrique du renseignement intégré en Allemagne »
Gilles Sainati (Tribunal de Grande Instance, Toulouse, France)
— « Les interceptions de sécurité, le point de vue d’un juge »
Anthony Amicelle (Université de Montréal, Canada)
— « L’autorité au quotidien des services de renseignement financier »

Comments: Francesco Ragazzi (Leiden University, The Netherlands)

16h-16h30 | Coffee break
Intelligence operations may infringe human rights. How, in democratic regimes, to frame the limits? Are national oversights strong enough? In case of joint intelligence operations, what could be a transnational model of oversight?

Chair: Benoit Pelopidas (CERI/Sciences Po, France)

Participants:
- Elspeth Guild (Queen Mary University of London – QMUL, UK)
  — "Antiterrorism and Human Rights in Europe, What Kind of Oversight?"
- Félix Blanc (Fundação Getulio Vargas – FGV, Brasil)
  — "Extraterritorial Intelligence and Global Oversight"
- Kilian Vieth (Stiftung Neue Verantwortung, Germany)
  — "Legal Safeguards and Oversight Innovation for Bulk Surveillance of Foreign Communications"
- Rob Walker (University of Victoria)
  — "Liberties, Securities and the Delimitation of Intelligence?"

Comments: Valsamis Mitsilegas (Queen Mary University of London – QMUL, UK)
Philippe Bonditti (Université Catholique de Lille, France)

18h00-19h00 | LAUNCH OF THE BOOK “ANTITERRORISM AND HUMAN RIGHTS”
BY ELSPETH GUILD AND DIDIER BIGO
in English

Commentary:
- Laurent Bonelli (Université Paris Nanterre, France)
- Kurt Graulich (former member of the German Federal Administrative Court, Humboldt University, Berlin, Germany)

Response:
- Elspeth Guild (Queen Mary University of London – QMUL, UK)
- Didier Bigo (CERI/Sciences Po, France)
**INTERROGATING THE RIGHT TO PRIVACY & THE LIMITS OF SURVEILLANCE**

Queen Mary University London, UK — CERI-RESO/Sciences Po, France — 26th of September 2018

CERI — Salle de Conférences
56, rue Jacob — 75006 Paris

**9h30 – 10h00 | Welcome coffee**

**10h00-10h30 | INTRODUCTION**

Elspeth Guild (Queen Mary University of London – QMUL, UK)
— “The Two European Supra-national Courts and the Right to Privacy”

In this opening session we will set the stage for the day’s proceedings. The key issues will be set out in particular: the relationship of the two courts and their approaches to the right to privacy; the challenges and opportunities regarding privacy and electronic surveillance which the two courts are currently facing. In each of the four panels which follow, specific aspects of these challenges and opportunities will be developed.

Elspeth Guild (Queen Mary University of London – QMUL, UK)

10h30 – 12h00 | PANEL 1 — “DOMESTIC SURVEILLANCE AND EUROPEAN COURTS”

In this first panel, we will examine four judgments, two each from the ECtHR and the CJEU on permissibility of domestic surveillance measures by public bodies in the pursuit of anti-terrorism and/or serious crime objectives in light of the right to respect for privacy. Each judgment will be examined regarding the limits of state surveillance which each of the courts places on public bodies. The arguments that have been made by the parties and the courts’ appreciation of them in each judgment will be analysed and compared. The reasoning of the courts’ judgments will be set out and examined. The panel will reflect on the coherence and consistency of the judgments and the reasoning of the courts in each of the judgments. Consistency between judgments of the same court and among the four judgments will be central to this panel.

Chair: Elspeth Guild (Queen Mary University of London – QMUL, UK)

Judgments: (i) ECtHR: Zakharov, Szabó; (ii) CJEU: Tele2, EU Canada PNR

Panelists: Lorna Woods (University of Essex, UK) and Jean-Philippe Foegle (Université Paris Nanterre, France) (Zakharov), Máte Dániel Szabó and Susie Alegre (independent consultants) (Szabó), Orla Lynskey (London School of Economics – LSE, UK) and Mara Wesseling (University of Amsterdam – UVA, The Netherlands) (Tele2) Elif Mendos Kuskonmaz (Queen Mary University of London – QMUL, UK) and Arianna Vedaschi (Bocconi University, Italy) (EU Canada PNR)

Comments: Kurt Graulich (Humboldt University of Berlin, Germany)
**PANEL 2 — “EXTERNAL SURVEILLANCE AND EUROPEAN COURTS”**

*In this second panel, we will look at the judgments from and the pending litigation before the ECtHR and the CJEU on different schemes of external surveillance. By external surveillance we mean surveillance which extends beyond the jurisdiction of the state and engages the privacy of individuals who may or may not live in the states whose agencies are collecting, manipulating and sharing their data. It covers inter-state cooperation to share personal data and state-private sector arrangements for personal data sharing in a transnational setting.*

Chair: Didier Bigo (CERI/Sciences Po, France)

Judgments: (i) ECtHR: Weber and Saravia, Big Brother; (ii) CJEU: Schrems, EU Canada PNR

Panelists: Kurt Graulich (Humboldt University of Berlin, Germany) (Weber and Saravia)
Lorna Woods (University of Essex, UK) and Scarlet Kim (Privacy International, UK) (Big Brother)
Jeremy Heymann (Université Lumière Lyon 2, France) and Elaine Fahey (City University of London, UK) (Schrems)
Elif Mendos Kuskonmaz (Queen Mary University of London – QMUL, UK) and Ricardo Rodrigues de Oliveira (European University Institute, Italy) (EU Canada PNR)

Comments: Théodore Christakis (Université Grenoble Alpes, France)

**13h30 – 14h30 | Lunch**

**PANEL 3 — “BIOMETRICS, INTERNET, AND EUROPEAN COURTS”**

*In this third panel, we will consider cases involving the use of different types of information about individuals, and the extent which that information is protected under European privacy law. Some authorities are seeking to differentiate certain types of data with the objective of isolating elements which escape the definition of personal data, and hence the protection of the right to privacy. Among these efforts to escape the rules of privacy are the definitions of location, traffic, and subscriber information; the latter alleged to be considered as outside the scope of those rules. To what extent is there support for such efforts in the judgments of the ECtHR and the CJEU? Answering this question is of great importance because types of information for which public actors seek vary exponentially as information gathering, sharing, and manipulation have been made easier. Particularly, biometrics is becoming a central instrument for interoperability and platforms of integration providing elements of de-anonymization of previously anonymized data, rendering the task of the Courts more complex. This is a graving challenge both now and for the future.*

Chair: Marie Laure Basilien-Gainche (Université Jean Moulin Lyon 3, France)

Judgments: (i) ECtHR: S and Marper; (ii) Digital Rights Ireland, Google Spain, EU Canada PNR

Panelists: Nóra Ni Loideain (Institute of Advanced Legal Studies, UK) and Marie Laure Basilien-Gainche (Université Jean Moulin Lyon 3, France) (Digital Rights Ireland)
Niovi Vavoula (Queen Mary University of London – QMUL, UK) and Evelien Brouwer (Vrije Universiteit Amsterdam, the Netherlands) (S and Marper)
Jeremy Heymann (Université Lumière Lyon 2, France) and Orla Lynskey (London School of Economics – LSE, UK) (Google Spain)
Arianna Vedaschi (Bocconi University, Italy) and Ricardo Rodrigues de Oliveira (European University Institute, Italy) (EU Canada PNR)

Comments: Ségolène Barbou des Places (Université Paris 1 Panthéon-Sorbonne, France)
In this final panel, we will take stock of the pending litigation before national courts on surveillance measures of certain states, and make educated guesses on their possible results. This panel will also examine key aspects of recently adopted national legislation that engages the issues developed in the previous panels.

Chair: Valsamis Mitsilegas (Queen Mary University of London – QMUL, UK)


Panelists:
- Marie Laure Basilien-Gainche (Université Jean Moulin Lyon 3, France) and Félix Tréguer (Institute for Communication Sciences (ISCC), France) (France – 2015 Intelligence Act)
- Lorna Woods (University of Essex, UK) and Scarlet Kim (Privacy International, UK) (UK – Investigatory Powers Act)
- Kurt Graulich (Humboldt University of Berlin, Germany) and Thorsten Wetzling (Stiftung Neue Verantwortung, Germany) (Germany – BND law)
- Théodore Christakis (Université Grenoble Alpes, France) (USA - CLOUD Act)

Comments: Jeremy Heymann (Université Lumière Lyon 2, France)

Conclusions:

Elspeth Guild (Queen Mary University of London – QMUL, UK)