



Laurence Meyer (Paris 1), Robin Caballero (HU zu Berlin/Paris 1) and Milan Tahraoui (MPIL Heidelberg) have organised a colloquium on digital surveillance and cyber espionage with a French and German cross-perspective. This event took place from 22 September to 23 September at the Maison de la Recherche in Paris, within the framework of [HeiParisMax](#), together with the Centre Interdisciplinaire d'études et de recherches sur l'Allemagne ([CIERA](#)), the Institut des Sciences Juridique & Philosophique de la Sorbonne ([UMR 8103](#)) as well as the deutsch-französisches Doktorandenkolleg zur Rechtsvergleichung im Öffentlichen Recht ([DFDK](#)). Eight young researchers in law and political sciences, coming from Germany and France, gathered to discuss the topic of this colloquium with the Franco-German fil rouge during the two-days event.

On the 22th September, the colloquium was inaugurated by a speech of Professor Evelyne Lagrange (Paris 1 Pantheon-Sorbonne) followed by the screening of a cinema masterpiece dedicated to the topic of espionage: "Spione" by Fritz Lang (1928). Bastian Gascho (Deutsche Film- und Fernsehakademie, Berlin) then discussed the film whereby the *Kontinuitäten und Bruchlinien in der filmischen Repräsentation zwischen „analoger“ und „digitaler“ Spionage* were stressed on. After a debate, the participants were invited to continue their discussions at a nice [Art Nouveau restaurant](#) nearby (Quartier de l'Odéon).



The following day was dedicated to the contributions of the 8 participants, with a focus in the two first panel (morning session) on topics dealing with the legal regulation of security and intelligence services in Germany and in France, under the moderation of Pr. Anne Peters (MPIL Heidelberg). First, Dr. Christian Djeffal (Humboldt University zu Berlin), after introducing the subject of his presentation (how to implement IT security through law) by referring to the famous metaphor of the Panopticon, explored which regulatory approaches could be employed both to improve the protection of persons under (mass) surveillance and imposed upon them obligations to protect themselves vis-à-vis other persons.



Dr. Thorsten Wetzling and Sophia Simon (Stiftung Neue Verantwortung, Berlin) then addressed the ongoing reform of the BND in Germany from a political sciences' perspective, i. e. focussing on the institutional design of this reform. The two speakers gave a critical overview of the reform (at the time of writing of this report) envisaged in Germany, by

questioning in particular the effectiveness of oversight mechanisms that will be organised under German law.



In the 2nd panel, Franziska Bantlin (Albert-Ludwigs-Universität Freiburg) provided the audience with an analysis of the parliamentary and judicial modes of control of the intelligence agencies existing in Germany. She made clear her finding that the Parliamentary Committee and the G10 Commission cannot be regarded as offering a level of independence comparable to that of a court. Félix Tréguer (Sciences Po & Quadrature du Net) then concluded the morning session with an investigation into a forgotten provision in the recently adopted so-called French Intelligence Bill. This provision that exists under French law since 25 years, provides the French Intelligence agencies with numerous surveillance capacities authorising them to target “Hertzian communication”. The speaker argued that this provision seems to permit until now the existence of an overly broad loophole. The critical assessment made by Félix Tréguer was somehow confirmed by the subsequent decision of the French Conseil Constitutionnel that has been rendered on 21 October 2016.



In the afternoon session, two panels were dealing with the topics of the colloquium from the viewpoint of international and European law, with the moderation of Pr. Emanuel Castellarin (Strasbourg University). Layla Kristina Jaber (Ruprecht-Karls-Universität Heidelberg) delved into the matter of determining to which extent member States of the ECHR are bound by international human rights law, under the convention in light of digital surveillance practices. In that regard, one of urgent challenges identified by the speaker is the adaptation of several rights existing under the Convention to the digital environment. In a second presentation, Sahra Golghalyani (Georg-August-Universität Göttingen) focused on issues relating to the applicability and the interpretation of Art. 17 of the ICCPR in the context of international surveillance of digital communications. After giving an extensive view on those two facets of Art. 17, she took explicitly position in favour of the conclusion of bilateral agreements between states rather than relying on a new protocol adapting Art. 17 to our global digital time.

In the last panel, Milan Tahraoui (MPIL Heidelberg) made his contribution by highlighting some of the complexities attached to the extraterritorial human rights protection applied to international digital surveillance practices beyond the issue of the applicability of the provisions of the ICCPR and ECHR. He argued that the “maturation” of the extraterritorial question within this context and with respect to human rights, could also serve

controversial aims such as serving economic interests of cyber powers or increasing the re-territorialisation of the Internet.

Finally, Clément Perarnaud (Sciences Po Grenoble/Universitat Pompeu Fabra) gave a presentation focusing on the Privacy Shield, from a political scientist perspective. He concluded by pointing out that the political preferences of the Franco-German couple with regards to data protection and surveillance have played a decisive role in the shaping of this new data protection framework, which in several aspects reflects the inconsistencies of both the French and German governments in this field.

