Arbeitstitel: "Intelligence Gathering and Use in International Society"

Overview

The gathering of intelligence and its use (subsequently abbreviated as "IGU") is a well-documented and widely observed phenomenon in societies across time and space (although the precise definition of the term remains contested). This project proceeds from a broad definition of the term, encompassing the gathering, evaluation, dissemination and use of information relevant to decision-making. That the term IGU is used should not obscure the fact that the underlying phenomenon is far from novel and has been discussed, in one form or antoher, by numerous scholars and writers in the past.

The way in which IGU is organized in various societies and the extent to which each society establishes limits on such an activity is – it can be presumed – distinct because its regulation is the (dynamic) outcome of multiple variables, including deep-seated cultural values and institutional (political or economic) histories and narratives.

The research question underlying this research project is, ultimately, what, if any, limits have developed on IGU by various actors in international society, and in particular under international law. Moreover, the project seeks to understand how and why such limits have developed and where they are likely to lie in the future. Additionally, the project seeks propose a normative vision of a law of IGU for international society.

There is considerable support for the proposition that IGU – in various contexts - is both a systemically beneficial and a deeply problematic phenomenon.The benefits of IGU for individuals and societies are almost too obvious to require extended discussion. For example, on the most basic level, it appears clear that knowing more about what animates those we interact with improves communication and coordination (the basis and details of this proposition will be developed later, in the course of the research project). Moreover, it is a plausible proposition that there is a close relationship between IGU and the law, even if the precise nature of this relationship is surely complex. Finally the prima facie problematic aspects of IGU appear to be no less evident than its benefits. Thus, IGU raises important questions about human agency and freedom, and about values such as human dignity, equality, and procedural and distributive justice.

The uncertainties as to the balance of benefits and harms from IGU and their distribution within and across various societies is presumably one (of possibly several) reasons why IGU has always been a bone of contention and continues to be hotly debated today. As technological progress has made even total surveillance into a (at least theoretically) conceivable reality, the public (and other) debate on the question has only become more acute in recent times.

The focus of this project is IGU in international society and under international law. But the project seeks to draw not only on international practice, and comparative and international law (areas in which practice has been accumulating recently) but also seeks to analyze various other contexts in which IGU is relevant – both as sources of comparative analysis and as stand-alone legal-historical studies.

While IGU in international society, e.g. IGU conducted by states or governments is surely a different type of activity from, for example, IGU in the domestic sphere, it could be beneficial to try to uncover patterns and links that drive the normative development in these seemingly unrelated areas. On the one hand, these various areas are connected by institutional and personal features: thus, the institutions or individuals designing and implementing IGU on various levels could well be (nearly) identical. On the other hand, at least an intuition that deeply ingrained cultural or psychological factors influence the design and implementation of IGU appears to be justified. At the same time, there is a lot to be learned from differences in how IGU is designed and operates across different societies when it comes to learning more about IGU in international society.

For, as mentioned at the outset, it appears that IGU in international society is but one manifestation of an activity that has been observed across time and place, thus inviting a comparative study.

Suggested Structure of the Project Outcome:

1. Introduction (Methodology, Framework)
2. IGU: A Historical Analysis
3. Private Transnational IGU
4. IGU in International Law
5. A Normative Vision of the Law of IGU in International Society

Bibliography:

I will proceed on the basis of the limited but useful basic bibligraphy provided by Haggerty and Trottier (Kevin D. Haggerty and Daniel Trottier (eds.), "Public and Private Surveillance" (Oxford Bibliographies Online, 2012) (DOI: 10.1093/OBO/9780195396607-0031)).

Additionally, my research will rely on a number of additional materials, including primary sources, such as domestic and international court records, treaties, U.N. documents, and similar materials.