

Talking export controls

with **MARIETJE SCHAAKE, MEP**

WorldECR: You have previously spoken about a mismatch between the EU's foreign policy goals, which often include condemnations of countries that abuse human rights, and its trade policies, which allow that multi-billion Euro markets, such as that of surveillance technologies, remain largely unregulated. What – if anything – can be done to bridge this gap?

Marietje Schaake: The EU doesn't have a silver bullet to solve all problems related to how authoritarian countries use different kinds of surveillance technologies to spy upon human rights activists or journalists. However, in those areas where the EU can make a difference we need to use all those tools which we have at our disposal. Controlling the export of surveillance, hacking, tracking and tracing technologies from EU-based companies to countries where human rights violations are well documented, is one of these measures. This is a crucial measure in order to develop a coherent, norms-based European foreign policy. The Hacking Team revelations of the past summer² have highlighted the harm done with the help of EU-made systems. These are systems that are built, marketed, sold and serviced [in order] to repress. The urgency of the need to draft smart regulations has become clear once again. European companies, and licencing authorities assessing trades, need to be held to account for the deals and decisions they make.

WorldECR: The EU Commission has recently launched a public consultation on its export control policy as part of a review of Regulation 428/2009 and the EU Council is expected to publish soon its own conclusions on the state of the reform process so far. However, some have argued that things are not moving fast enough to counter the rapidly evolving proliferation of new technologies. Is it realistic, given the



Marietje Schaake has served as a Member of the European Parliament for the Dutch Democratic Party ('D66') with the Alliance of Liberals and Democrats for Europe ('ALDE') political group since 2009. She is the ALDE Coordinator for the International Trade committee ('INTA') and spokesperson for the ALDE Group on the Transatlantic Trade and Investment Partnership ('TTIP').

Schaake also serves on the committee on Foreign Affairs ('AFET'), where she focuses on strengthening Europe as a global player. She works on the EU's neighbourhood policy, notably Turkey, Iran and North Africa and the broader Middle East. In the subcommittee on Human Rights ('DROI') she speaks on human rights and coordinates the monthly human rights resolutions for ALDE. Her work has sought to include digital freedoms in EU foreign policy. Furthermore, she is a Vice-President of the delegation for relations with the United States and a substitute member on the delegation with Iran.

way that policy is made in Europe, to expect legislation to keep pace with perceived needs?

Marietje Schaake: Indeed the process is very slow. I can submit the same input I submitted to the consultation held in 2011. It is very worrying that Member States and the Commission are dragging their feet. This way, the EU is increasingly out of step with the rapid development of surveillance technologies.

On substance, there's another challenge here. Defining the type of technologies that need to be controlled is a double-edged sword. Define them too broadly and you might end up controlling legitimate tools for security researchers, but if you define them too narrowly you risk not catching all relevant new types of technologies. One way of escaping this potential trap is to focus on the bigger market picture: How are these technologies marketed and sold? Who are the buyers? It is this angle I'm exploring in the European Parliament. We need to combine specifics on systems, and the context in which they will be used. By assessing the trade transaction we can ensure that research and other legitimate uses are not hindered.

WorldECR: Technology giants such as Google have recently expressed

concerns regarding proposed controls of intrusion and surveillance items, arguing that there is an inherent conflict between regulations that limit free exchange of information and the security research community, which relies on a system of 'trial and error' to make the web safer. Who's got it right?

Marietje Schaake: I would strongly hope that my main goal – preventing the trade in spyware to authoritarian regimes and making this industry more transparent – is shared by the computer security community and technology giants like Google alike. Although Google seems to fear any regulation in any sector, there's no inherent conflict there. It must be clear that a more effective export control policy must not hamper the legitimate and necessary transfer of technologies and information needed for the development of security products or research. We can create a smart export control regime. The EU (and other countries, notably the U.S.) need to work together with experts from the field to make sure that the right definitions and categorisations are used and to make sure that the right products are targeted. As a liberal, I would never support overregulation, especially not in this sector; but it is abundantly clear that the huge market in the trade in harmful technologies is a very real

Links and notes

¹ <http://www.marietjeschaake.eu/2015/02/call-for-input-on-report-human-rights-and-technologies/>

² <http://www.wired.com/2015/07/hacking-team-leak-shows-secretive-zero-day-exploit-sales-work/>

problem which needs to be addressed. The status quo is unacceptable. I wish more people chose to be part of a good solution instead of opposing the options on the table.

WorldECR: As we understand it, the EU Parliament has been debating whether to introduce 'human rights' restrictions

often a licence for a certain product to a certain destination is refused in one Member State, only to be granted in another. This creates a non-transparent and fragmented market, which in turn leads to a weakening of the EU's common position and an incoherent foreign policy. This delegitimises the EU and weakens our

role in foreign policy (and Federica Mogherini)?

Marietje Schaake: The deal between the EU3+3 and Iran is historic, for the world and for the Iranian people. The EU's leading role, in chairing the negotiations, was instrumental in reaching the deal. Now that the hurdle of the negotiations is largely out of the way, space opens up for more political focus on other important topics. It is now key to seek cooperation and progress on other pressing issues such as human rights, counter terrorism and regional stability. The deal must lead to a broader agenda, which should lead to a much better quality of life for people in Iran. The EU must keep on pushing to achieve this.



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on exports of dual-use items for some time now. Just recently, the Netherlands has taken the lead on this with a new human rights provision for encryption items. However, there seems to be some reluctance on the EU governing side to follow suit, since the concept of 'human rights' can be subjective, politicised and difficult to quantify. What's your view on how this can be approached constructively?

Marietje Schaake: Restrictions based on security concerns can be as subjective as restrictions based on human rights concerns. That's not the core of the problem. Human rights should indeed play a larger role in the decision process of export control authorities on whether or not to grant licences. I congratulate the Dutch for taking the lead. When referring to human rights, it is important that it is clear what we mean: for example, by including specific references to relevant human rights conventions. The European Commission has introduced the concept of 'human security' in its communication on export control policy. We will build on this in the upcoming review.

WorldECR: In many respects, the EU policy on trade and export controls is hampered by lack of consensus – and divergent interests – between Member States. What, do you think, are the negatives attached to that?

Marietje Schaake: We have seen time and again that European governments and their export control authorities do not cooperate enough to ensure a coherent and transparent European export control system. Too

position on the world stage. Meanwhile, ever more sophisticated systems are made in Europe and used to repress.

WorldECR: Do you think that there should be greater openness/centralisation around the issue of export control and sanctions enforcement in Europe: for example, more information about penalties imposed by regulators being in the public domain, centralised licensing of exports – or at least more standardised procedures? Or would these be steps too far – incursions on national sovereignty – at least for the moment?

Marietje Schaake: We need to get rid of the system where the butcher certifies his own meat. More transparency and centralisation of the export control regime will be one of my prime goals in the upcoming review of the dual-use regulation. By creating more openness, accountability can be ensured. Centralising the licensing procedures would go a long way to removing the competition between the Member States and ensuring a more coherent and therefore legitimate EU-wide system. We will have to see how far others are willing to go in this, but it is at least clear that Member States and the European Commission are starting to see that there are serious problems in the current situation. I hope they will be prepared to be more ambitious compared to the last review.

WorldECR: What is your response to the recently agreed JCPOA? Is it fit for purpose? What did it say about the EU's

WorldECR: You have previously mentioned that the EU must pursue a 'broader agenda' in the Middle East region. What would that entail?

Marietje Schaake: Since the Arab uprisings in 2011, the EU has reacted too slowly and without conviction to the current crisis in the Middle East. The multiple crises have serious implications for the EU, in terms of security, economy and human rights issues. Therefore, the EU should be leading the effort to find a durable solution to the myriad of problems that the region faces, from the Middle East Peace Process, to the war in Syria and the crisis in Libya. We also witness an increasingly authoritarian Egypt, heightened tensions between Saudi Arabia and Iran and the civil war in Yemen. One crucial first step would be to take diplomacy efforts, and to ensure enough funding for the humanitarian crisis of historic proportions. Until now, Europe has sadly let the U.S. and Russia lead negotiation efforts, while the Middle East is our backyard. Additionally, we need a more effective – and thus common – defence policy; the same goes for migration and asylum. The EU has to choose a stronger presence on the global stage if it wants to remain relevant and maintain a leading position.

WorldECR: As a Member of the EU Parliamentary Committee on International Trade, you are also a spokesperson on the Transatlantic Trade and Investment Partnership ('TTIP'). What, in your view, are the positives and negatives of TTIP?

Marietje Schaake: TTIP is an

opportunity for the EU and the U.S., the world's most open democratic economies, to jointly set and enforce high standards across the world and strengthen the global rules-based system. A trade deal between the two largest economies in the world has the ability to make new rules with regard to what we jointly cherish, such as human rights, the environment, consumer protection and animal welfare.

TTIP should also create more economic opportunities for European companies on the American market, which is still closed to them in some important areas. There are also many concerns about TTIP, with regard to transparency for example and the infamous Investor State Dispute Settlements ('ISDS'). These must be addressed, both by the European Commission and the Member States. The negotiators are nowhere near any final agreement, so for the time being we should be discussing what kind of TTIP we want, and solving problems where they exist. For me, that means working towards a good TTIP which brings real benefits to European citizens and that is what I am pushing

for from the European Parliament. Given we have a final vote once the negotiations are finished, the



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Commission listens to the European Parliament. They know we have teeth and we can bite!

WorldECR: You are also Vice-President of the delegation for relations with the United States in the European Parliament. Do Europe and the U.S. share the same security and financial goals when it comes to global trade?

Marietje Schaake: For both the EU and the U.S., a global trading system based on rules and agreements is very important. This system is crucial for our exporting and open economies,

this system is under pressure, Russia's actions are a prime example. Strengthening the global system and enforcing the rules that states have agreed to is therefore very much a joint goal. While the EU and the U.S. are strong allies, it is also clear that the precise goals and interests and the way we approach them may differ. Even within the EU this is all too often the case. When it comes to sanctioning Russia, politically the EU and the U.S. agree, but economically the consequences are much stronger for the EU than for the U.S. market.

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