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Brazil Responds to U.S. Spying with International Diplomacy and Domestic Lawmaking

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The September revelations that the US National Security Agency (NSA) included Brazil on its list of spy targets continue to fuel political drama in the country’s foreign and domestic policy, including a UN resolution on the right to digital privacy and congressional debates about a landmark Internet privacy bill. The spying scandal’s most immediate outcome, the unprecedented indefinite postponement of President Dilma Rousseff’s official state visit to the US, initially slated for Oct. 23, remains in limbo (NotiSur, Oct. 11, 2013). Political analysts speculate that it is unlikely to be rescheduled before the end of Rousseff’s first term, which concludes in January 2015.

Information about the NSA spy program was leaked by former contractor Edward Snowden to Guardian journalist Glenn Greenwald, a US citizen who lives in Rio de Janeiro, and swiftly picked up by the Brazilian media. The timing coincided with the annual UN General Assembly meeting, providing Rousseff with an international bully pulpit from which she criticized the US for "meddling" and declared, "Tampering in such a manner in the affairs of other countries is a breach of international law and an affront to the principles that must guide relations among them, especially among friendly nations."

However, Rousseff’s strident words, some of the harshest criticism of US espionage policy leveled by an ally, were denounced as hypocritical in early November, when the Folha de São Paulo reported that the Agência Brasileira de Inteligência (Abin) spied on the foreign diplomats of four countries, including the US, in 2003 and 2004. She countered by arguing, "It’s a very different matter when you violate sovereignty and human rights, not only private means of communication, but also telephone calls and privacy, not only of heads of state, but also individuals and businesses, all within a process that can't be justified as part of the fight against terrorism." What Abin did while spying on Iranian, Iraqi, and Russian diplomats, as well as monitoring a building leased by the US Embassy in Brasília, "was totally different," she affirmed.

Brazil raises international profile pushing for privacy rights

Following Rousseff’s UN General Assembly speech, Brazilian diplomats have taken concrete steps to push for a broad international consensus against spying to the level undertaken by the NSA. On Nov. 13, Paulo Nogueira Batista, the country’s representative on the administrative council of the International Monetary Fund (IMF), called a meeting to discuss US espionage, although details have not been made public about the content of that meeting and IMF President Christine Lagarde did not attend.

Later in November, Brazil and Germany, the other US ally that sharply criticized US spy tactics, successfully maneuvered a resolution defending the right to privacy in the digital age from committee to the General Assembly. The resolution was approved, over US opposition, on Nov. 26. It is overwhelmingly expected to pass the General Assembly during December voting.
Although the vote is nonbinding, the UN Special Rapporteur on the right to freedom of opinion and expression Frank La Rue issued a statement in support of the resolution, suggesting, "To demonstrate their commitment to protect privacy and to ensure people can communicate freely, states can start by immediately revising their own laws and the role of the judiciary, in order to correct serious gaps that exist in most national legal frameworks."

Critics, however, argue that the resolution was watered down from its initial tone, specifically by removing a claim linking privacy violations to human rights violations. Indeed, the US delegation ultimately applauded the final resolution, as did the Brazilian delegation. A published statement from Itamaraty, the Brazilian Ministério das Relações Exteriores (MRE), said the resolution's goal is "to promote a discussion about protecting the right to privacy in the context of digital communications databases and online vigilance."

The weakened resolution may serve to provide political cover for Rousseff without further damaging US-Brazil relations, which have vacillated wildly under Partido dos Trabalhadores (PT) leadership. From the heights of US President Barack Obama publicly calling former Brazilian President Luiz Inácio Lula da Silva (2003-2011) "the most popular politician on Earth" in April 2009, they plummed to a nadir at the end of Lula’s term in 2010 after he visited Iran. That pattern appears to be repeating itself under Rousseff, as the highlight of Obama’s visit to Brazil in March 2011 has become overshadowed by the spying allegations and subsequent cancellation of Rousseff’s reciprocal visit.

Foreign alliances remain at the heart of the contentious US-Brazil relationship. Carlos Alberto Montaner, a columnist with The Miami Herald, wrote in September about a conversation he had with a former US ambassador to Brazil. The unnamed ambassador ticked off a series of international leaders who are unfriendly to the US but embraced by Brazil’s political leadership: "The friends of Luis [sic] Inácio Lula da Silva, of Dilma Rousseff and the Workers Party are the enemies of the United States: Chavist Venezuela, first with (Hugo) Chávez and now with (Nicolás) Maduro; Raúl Castro’s Cuba; Iran; Evo Morales’ Bolivia; Libya at the time of Gadhafi; Bashar Assad’s Syria." This list served as the answer to the column's title, "Why we spy on Brazil."

**Satellite purchase proceeds, but Congress delays Internet bill**

On the domestic front, Rousseff promised to shore up Brazilian telecommunications in order to protect citizens’ private information. First, on Oct. 13, she announced that the federal government would shift from Microsoft Outlook, a widely popular email program, to Expresso, a new platform under development by Brazilian data processing firm Serpro. Microsoft has already been notified that the Brazilian government will not renew its license, and they plan to switch federal workers over to the new, more secure email system by the second half of 2014. The government intends to release a publicly available version for everyday citizens.

To further take control of its telecommunications infrastructure, on Nov. 28 the state-owned telecom firm Telebras announced a US$560 million contract to purchase a satellite. Telebras partnered with Embraer, the Brazilian aerospace conglomerate, to purchase the state-of-the-art equipment from Thales Alenia Space, a French-Italian company. Arianespace, a European company, will launch the Defense and Strategic Communications Geostationary Satellite (SGDC) system and then transfer the technology to Brazilian companies under the supervision of the Agência Espacial Brasileira (AEB).
Telebras President Caio Bonilha said, "The SGDC system not only will meet the needs of Telebras' National Broadband Program (PNBL) and the strategic communications of the Brazilian armed forces but it is also an opportunity for Brazil to ensure the sovereignty of its strategic communications in both the civilian and military areas."

However, a parallel legislative effort, to pass a landmark Internet privacy bill, has temporarily stalled. The law has been debated for several years but gained urgency in light of the NSA spying allegations, and President Rousseff urged Congress to fast track the legislation. It now appears that it will not be voted on before the Brazilian Congress enters summer recess in December, and debate will resume in February 2014.

The ruling PT coalition is divided on whether to require major players like Facebook, Google, Yahoo, and Microsoft to store Brazilian users’ information at data centers inside the country. There is also disagreement about requiring net neutrality, whereby Internet service providers cannot favor certain Web sites over others for faster connections.

The law, officially the Marco Civil da Internet and dubbed Brazil’s "Internet Constitution" by then minister of justice Luiz Paulo Barreto, was first drafted in May 2007 by Ronaldo Lemos, a professor at the state Universidade Federal do Rio de Janeiro (UFRJ) and project leader for Creative Commons Brazil, the national chapter of the international movement in favor of digital rights and progressive intellectual property law. He is opposed to the data-center requirement, noting, "It doesn't make sense because the data circulates on the Internet and passes through other jurisdictions."

Frost & Sullivan, a consultancy, estimates that it costs an average of US$60.9 million to build a data center in Brazil, much higher than other large countries in the Americas, such as Mexico (US$48.7 million) and the US (US$43 million). "The main reasons for the cost being so high in Brazil are the price of electricity, the efficiency of the Internet network, and taxes. The increase in cost will be passed on to consumers, and this could affect the competitiveness of Brazilian businesses," argued Lemos.

Even the bill’s author, Alessandro Molon, a PT deputy from Rio de Janeiro, opposes the data-center requirement, as does the country’s largest political party, the Partido do Movimento Democrático Brasileiro (PMDB). The combined pressure may force President Rousseff to cave on this point, but she is insistent about the importance of net neutrality, which telecommunications companies oppose because it will prohibit them from offering preferential pricing according to download speeds and Internet usage.

Now on hold for at least another three months, the Marco Civil is slowly falling from grace as a potential international model to a model of how not to regulate the Internet, according to Lemos. "We could end up with a law that gives up on net neutrality and forces companies to have data centers in Brazil," he said. "This would be worse than espionage. We would be giving a business sector, the telecommunications companies, the power to decide the future of the Internet in Brazil."

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