

## Status of espionage from the perspective of international laws with emphasis on countries' diplomatic and consular relations

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**Abstract:** Today, espionage is a complex process which is done in various fields. Espionage is current not only between countercurrent countries in terms of political opponents, but also between countries that are friendly and cooperative in the global arena. Evolutions dominating the international society and increase of international relations and connections unavoidably intensify the need of espionage activities in such way that espionage is known as one of the strategies of governments and in fact, the governments have accepted the existence of informational services and espionage activities, in a way that confidential documents of the governments about spies' exchange indicate that espionage has been accepted as a custom in the international laws. Despite the importance of international legal aspects of espionage, up until now it hasn't been reviewed from this perspective much. The present research is an attempt to review espionage from the perspective of the international laws with emphasizing on the diplomatic relations of the countries.

**Key words:** Espionage; International laws; Countries' diplomatic relations; National safety

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### 1. Introduction

Concept of espionage in the international laws presents a comprehensive and preventive definition of espionage which can be generalized to all types of espionage is not possible. Aside from this, espionage's spatial and time realm varies based on the case; however, the concept of espionage from the perspective of international laws can be reviewed from two general dimensions of classical international laws and modern international laws.

The concept of espionage in international laws that comes to mind at first is the discussion of espionage armed conflicts which has long been discussed. Article 29 of the 1907 Hague regulations defined a spy as follows: a spy is who secretly or under false issues acts to collect and transfer information for the enemy in the operational region of the enemy. Then, in the process of development of international laws, the concept of espionage went through some changes as well. With the approval of the protocol of supporting the victims of international armed conflicts (1997), it was attempted to reduce the inclusion of individuals under the title of spy and to exclude the dressed civilians and military men from the definition of espionage. Article 46 of the above protocol can be mentioned which has only included members of armed forces under the title of espionage. It is possible that the image would be that definition of espionage in armed conflicts and reviewing its laws

are not efficient; because nowadays, one of the basic principles of the contemporary international laws is sanction of the war and prevention of using force. But nonetheless, international laws have made waging war legitimate and legal in some cases despite the acceptance of the principle of banning using force and sanction of the war (Bigdeli, 1380). Therefore, the international laws and regulations governing espionage in this field is also crucial.

Concept of espionage in this perspective is based on the occurrence and development of espionage in various domains and realms which has complicated it. By removing the geographical borders and sovereignties' fading away and conversion and promotion of domestic issues such as human rights to international ones, dramatic industrial improvements in various fields, especially in spatial affairs has been the reason for which other subjects of international laws and espionage are not only limited to armed conflicts and we also see the occurrence and appearance of espionage in various branches of the international laws such as human rights, diplomacy, space and etc. espionage will include its own particular definition in each of the above branches; of course not in terms of nature, because all of the espionages have secretly searching for secrets about the competition or the enemy in common, but in some cases some differences are seen in the subject of scope of how to achieve information and news in the espionage. A clear instance which can be referred to is espionage in terms of space's international laws.

### 2. Types of espionage in international scene

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Crime of espionage is reviewed under various titles in the texts of criminal law and analysis of the criminal rights. According to this, espionage is divided into various types that we review the espionage in this issue in the form of four general and applicable titles.

a-Military espionage

b-Economic espionage

c-Sources – environmental espionage

d-Political – cultural espionage

### **2.1. Military espionage**

In fact, the purpose of military espionage is to enhance military security against military threats of the opposite government. The basic issue of military security is based on war and force tools. The specific security purpose in this domain is: preventing the occurrence of war and in case of happening winning in it. Undoubtedly, the most effective tool which can be efficient is achieving information by using spies. With acquired terms many of the military threats and aggressions can be neutralized. Perhaps it is assumed that having military interactive technology is more effective than any other tool, but we shall pay attention that more conventional weapons become a part of modern wars and despite prohibitions of laws in order to limit using them, this process is continued. Chemical weapons, which are specifically called atomic bombs of the poor, seem prepared to be used (Mandel, 1379). Improving espionage and informational capabilities, which has a significance that is no secret to anyone, will be just like a war or military means which will add to the countries' defending power in military conflicts.

Military espionage not only shows its positive impacts in huge military savings and reduces arms trade, but it also makes the identity of enemies' threats clearer and adds to international cooperation in exchanging information.

### **2.2. Economic espionage**

Economic espionage has been mentioned increasingly in the post-war world as an effective factor in security. Countries have focused all of their attempts and power on achieving a strong economy which is the main origin of power in the international arena and based on this, activating informational services and collecting and obtaining information and news and economic espionage in the international arena depends on a number of factors. The most important factor is accessibility to high technology, occupying large markets and accompanying the opponent with ourselves. The help and aid of espionage organization for accessing particular economic and commercial information of countries will be the guarantee of permanence and success of the countries. Economic espionage is a reality that all of the components of global system are strongly dealing with it and its development is still consistent with organizing newer dimensions and coordinate. Informational services, with having

their specific accessibilities and facilities in the field of information and the most movement and acceleration that it has gave to the motor of growth and development of societies in the shortest possible time and this process is momentarily changing.

### **2.3. Sources – environmental espionage**

Given the newness of this dimension of espionage and the varying encounter of security analyzers with it, separation between sources and environment requires a more accurate explanation. Issues of environmental security which is in association with environmental espionage has a global present more than issues of security of sources and the exchanges among various national interests haven't been in the form of a sum of zero in this field as much either and that is why for cooperation between nations, they seem more prepared. Probably the shortage of sources, especially short-time sources in its turn, occurs more than environmental deprivation and demolition. In recent years, the war of the Persian Gulf shows that the important consequences of security of sources about oil; whereas, the war of Vietnam was also considered as a war that contained important environmental consequences in the field of deforestation and destruction of plants.

### **2.4. Political – cultural espionage**

It is among dimensions that have been in the classification of types of espionages less than other items. In the first look it might seem odd, because we have combined political and cultural espionage in the dimension of one unit. In fact, some of the analyzers tend to separate them from one another and at least to some extent, this is caused by this claim that only in a few cases the governmental and social borders are in compliance with each other. In addition, at the beginning it might seem that political power and cultural tolerance are the opposite of one another, because in multicultural societies, rooted ethnic units are considered as a threat for the position of integrated policies of the government.

Identifying the threats and obtaining information through spies in this dimension is more difficult than other dimensions, because:

1-The foundation of cultural – political identities of a country is often not clear.

2-Dynamic nature of social identities makes identification of this matter difficult that in fact, which of the threats are considered as the factor of change.

Global evolutions indicate that obtaining cultural information have far more vital and crucial role than political information, because the increasing importance of cultural identity in the era after the cold war has filled the gap caused by reduction of clearness and importance of political identity which itself has happened under the influence of increase of ambiguity in the roles of the government.

### 3. Espionage and diplomacy

Vienna's convention on diplomatic relations forces the diplomats not to intervene in domestic affairs of the receiver government and a diplomatic mission shall not use unrelated issues and in any case, it shall follow the laws of the present commission or the other laws of public international laws or any kind of particular agreement among the transmitter and receiver countries (Forcase, 2011).

Nevertheless, the accurate performance of a diplomatic mission includes other things including: considering all of the legal terms, using evolutions in the receiver country and reporting it to the transmitter country.

There are several legal warnings about collecting information for the diplomats. The government might explicitly prevent collection of information due to presentation of illegal activities. This issue cannot be understood easily. But how a law can be coordinated with Vienna's commission? Such law will use legal methods which are an exception for rejecting the predicted performance by this convention. This is not a specified method that would reconcile by guaranteeing the convention on diplomatic free relations, for official purposes and freedom of movement and travel in its own realm except for in regions that have national security.

Most of the problems are associated with the classification of the series of human espionage sources and electrical espionage. By using a diplomatic mission, audio espionage has been prohibited in convention as an illegal activity; for example mobile communications that its implementation is even applied in the laws of the government itself, still no one can be stopped or its execution cannot be prevented without a decree. Breaking privacy through listening is absolutely out of the scope of legal methods of information collection in any country. Therefore, having access to human capitals in a sensitive security section might be violation of the secrets of the laws of that country. In total, espionage through a diplomat might be limited through international laws; of course not because of prohibition of expressing such activities, but rather due to the type of espionage outside of the scope of diplomatic performance. It can be noted that nonetheless, international laws do not impose the punishment of diplomats explicitly. While a diplomat does espionage activities, consequently it will have a reaction by the receiver government that the convention, as a response to violation of the diplomat himself, introduces him as an undesirable element. Nonetheless, the receiver government states that: activities of a diplomat had been in contrast with the tasks of the diplomat and this government claims that these activities themselves are a violation of international laws.

There are some cases in which the governments refer to the convention protocol about the differences associated with the interpretation or implementation of the content of this convention in

the espionage before referring to the international court of justice.

International court of justice, about Tehran's hostage (espionage at the time of peace), believes that: "when the tasks of a diplomat are based on all of the legal evolutions and methods and terms in the receiver country, espionage and interference in the domestic affairs of the countries end. Nonetheless, with the government's permission, announcing the diplomat as an undesirable element totally exists in the vote of the court. In other words, an accurate definition of diplomat's tasks is not required, because the governments define these tasks by considering their standards with maintaining their authorities in it.

A few number of university interpreters condemn the opinion of some governments that claim that espionage is illegal in the international laws and they support this argument that espionage (extraterritorial) is an issue of customary international laws.

### 4. Governments' espionage: violation of human rights or international laws

In the past year, the United States, as a part of the program 5-eye alongside with England, Canada, Australia and New Zealand has done a systematic supervision throughout the world of communicative data. Therefore, the domestic laws are often able to protect people's privacy, but we shall move towards international laws of human rights in order to protect the right of privacy.

United Nations General Assembly has recently announced the resolution of retaining the right of privacy in the digital age in the general assembly that in the global declaration of human rights and civil and political international treaty has been confirmed. Article 12 of the global declaration of human rights has been presented that: nobody shall be exposed to the intractable intervention in their private life, family affairs, their correspondence or home, and their honor reputation shall not be attacked. Everyone has the support of law against such interventions and attacks.

In fact, the sentences of law in ICCPR<sup>†</sup> have referred to the intractable and illegal interventions. These words tell us that NASA's espionage is in fact illegal or intractable. The word illegal refers to the committee of UN human rights means that "no intervention can be done unless in the predicted cases in law."

Nonetheless, even if such systematic espionage was legal in terms of domestic laws, any kind of violation of privacy shall still be in accordance with the regulations, purposes and ends of ICCPR.

Committee of UN human rights refers that: intractable interventions can also develop the differences. Even the intervention based on law's provision shall be in accordance with the regulations, purposes and ends of treaty, but in any

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<sup>†</sup> Convention on Civil and Political Rights

case, it shall also be rational and logical in particular conditions.

Therefore, government still considers espionage the violation of international laws about legality their espionage program; specifically if the espionage was optional. The meaning of the definition of intractable is that the intervention shall be proper for requirements of any circumstance.

Therefore, given the necessities, they shall consider a purpose which is more important than violation of law. In other words, if people accept that their privacy has been invaded, they would need to have security and protection. The governments argue that such intervention is essential for protecting the right of privacy for protecting life, security and other damages such as children's pornography.

Nevertheless, by considering the need and necessity of proportion, an important question would be created: do these global systematic and social protections really protect people? Despite the huge costs and scales of this program, still supervision hasn't been able to do something in order to stop terrorism.

If this program is not able to make world safer; perhaps there is a secret incentive behind these programs. Without any proof, these programs do not protect people, and it seems that these programs are violation crime of international law of human rights.

Naturally, the right of privacy is associated with the right of freedom of speech. People most probably speak honestly; if they are sure that their private speeches are guaranteed. If client's confidence in lawyer, conversation of Dr with patient, speech of a journalist with a source, the reason of popularity of a supporter for his followers suffer when their privacy is in danger.

The right of protecting privacy can be understood as an essential need for realization of freedom of speech. Intervening privacy of individuals can limit free growth and exchange of ideas directly and indirectly. Special reporter of freedom of speech and belief argues that:

Supervision of communications shall be considered as a really sudden action which interferes with rights of freedom of speech and protecting privacy and threatens the bases of a democratic society. When the governments state that espionage explicitly benefits our friends and supports our values, if these activities were violation of human rights; this would be a step backward itself (Asher and Hirsch, 2014). In the discussion of diplomacy and espionage, we see the interactions of espionage and diplomacy. The basic conflict of interests between the transmitter government and receiver government has led to establishment of moderated regulations and rules based on interests against countries. By considering the need of the transmitter government for achieving fundamental and strategic news and information about the conditions and position of the receiver government through legal methods of efficiency of achieving

information through a diplomatic institution provides the suspicion of espionage to some extent.

By considering the mentioned issues, this topic arises that whether espionage is permitted in the current era or is a science against international rules and regulations? In response, we must say that espionage shall be reviewed from two time dimensions; espionage at the time of armed conflicts and espionage at the time of peace. There is no doubt in espionage legitimacy at the time of armed conflicts. This is the right of the hostile government to have access to some information of their opponent government and no international responsibility is applied to this action either and up to now, none of the international courts, specifically criminal international courts, have stated something about using spies in the responsibility sentences issued for the hostile government. But at the time of peace, the discussion of espionage is the place to pause. In the first and general look, there is this deduction that espionage at the time of peace, since the action is against the interests of sovereignties, it can't be accepted in terms on international standards; although this approach is accurate, but security arrangement has led to some changes in this view. Thus, the international law, whose purpose is to maintain international peace and security, won't prescribe espionage in some cases and that is when international peace and security are damaged or are being damaged. Therefore, we can say that although prescribing espionage at the time of peace is not an absolute matter, but in some cases that international peace and security require this, espionage becomes legitimate. The point that can be mentioned is that espionage in the respect of maintaining international security in all of the branches of international law is necessary.

Now with accepting this issue that espionage is permitted in cases of violation of international peace and security, this question arises that which institution will prescribe espionage? As a response, we shall say that by considering the fact that the UN is responsible for maintaining international peace and security, or rather Security Council (Article 42 of the UN Charter), this council will be permitted to obtain strategic information and news of its required purposes whether before operation or at the time of operation; because espionage and obtaining military information and news is a necessity for a purposeful military operation and with having access to such strategic information, military actions even by UN Security Council will remain ineffective or unproductive.

Blind and aimless espionages and control shall not ever be considered and the international standards of the human rights emphasize that if controlling a citizen was necessary, this has to be with the complete supervision and confirmation of a court so that it would be specified that how much the probable advantages of these programs is superior to its damages. Despite attainment of several improvements in the field of technology, the laws in this field haven't changed and updated yet. Privacy is

one of the known evidences of the human rights that the governments were responsible for maintaining and respecting it; thus, there isn't a justification for violating it in internet communications or conversations.

## 5. Recommendations

1. In the current era, given the dramatic developments in information technology and the promotion and development of international law, the need of a comprehensive international document is felt more than ever. Existence of such document will guarantee the rights of diplomatic representatives in doing duties in the recipient country. At the same time, the security of the recipient country and the domicile country will also be maintained alongside with diplomatic freedoms.
2. It is necessary to review some of the international documents that have reviewed espionage punishments to the extreme, including the fourth Geneva Convention associated with supporting civilian persons at the time of war. This convention considers the death penalty permitted for the spies.
3. With the general acceptance of espionage as one of the actions of the governments, it is expected that in the future, we will see creation of legal regulations for supporting and controlling spies as governmental agents. Therefore, when espionage is spoke of in these conventions, we will then understand what is the espionage phenomenon and to what extent the governments are aligned in accepting the espionage phenomenon and until the time that this process is not done, we can't talk about the next steps.

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