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LEGAL STATUS OF SPIES IN INTERNATIONAL LAW

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The life of spies is to know, not to be known.

-George Herbert

INTRODUCTION

The legal status of spies or the legality of espionage has been the subject of ongoing legal debate in the international community, and the topic is crucial for policymakers, legal professionals, intelligence agencies, and diplomats involved in national security and the international relations. This paper involves a detailed analysis of the legal rights and duties of individuals who engage in espionage, as well as the legal protections that are afforded to them under international law. Espionage, which has been utilized as a method of gathering intelligence throughout history, raises significant legal questions regarding state sovereignty, national security, human rights, and international cooperation. Governments frequently engage in intelligence activities aimed at gathering information to safeguard national security, support military operations, or aid law enforcement efforts. These activities are typically conducted covertly, and there may be limited legislative oversight and control over their effectiveness. International Humanitarian Law (IHL) draws a clear differentiation between intelligence

activities and espionage. Intelligence activities encompass the lawful collection of information collected by uniformed members of the armed forces, aiming to assess the situation and evaluate the adversary's options. In contrast, espionage, or spying, entails covert or deceptive information gathering methods.

The discussion on the legality of espionage during peacetime has mainly focused on whether there are any international laws that prohibit the collection of foreign intelligence in such circumstances. Those who support permissive views argue that in the absence of such rules, espionage operates in a legal vacuum, and states can spy on each other without any restrictions. It means that if one state engages in espionage, another state has the right to do the same. This highlights the main issue, i.e., what is the status of espionage in international law?

International espionage is the act of obtaining confidential or strategic information held by one state on behalf of another state, usually related to military, security, or economic matters. This traditional view of espionage has now expanded to include spying on individuals and corporate entities. In the past, spying was carried out physically, but now, most espionage activities occur in cyberspace in the modern era.¹ Despite its secretive nature, the practice of espionage has been gradually recognized and regulated under international law.

In general, spies are not recognized as a distinct legal category under international law. Instead, they are subject to the same legal principles that apply to all individuals, including the principles of sovereignty, non-intervention, and respect for human rights. This means that, if a spy is caught in another

¹ Dubuisson, François ,&Verdebout, Agatha (2018). Espionage in International Law. *obo in International Law*. doi: 10.1093/obo/9780199796953-0173

country, they may be subject to arrest, detention, and prosecution under the laws of that country. One of the key challenges in defining the legal status of spies is determining whether their activities are lawful or not. In some cases, espionage may be seen as a legitimate form of intelligence gathering that is essential to a country's national security. However, in other cases, it may be seen as a violation of a country's sovereignty and a threat to its security.

One of the most famous examples of the legal status of spies is the case of *Francis Gary Powers*, a US Air Force pilot who was shot down over the Soviet Union in 1960 while flying a reconnaissance mission. Powers was eventually released as part of a prisoner exchange, but his case raised important questions about the legality of espionage activities.

In his book *"International Law: Cases and Materials"*, Professor Lori Damrosch notes that "spies are not accorded any special status under international law."² Similarly, Professor Antonio Cassese, in his book *"International Law"*, argues that "spies have no special status under international law and are subject to the jurisdiction of the state in which they are found."³

HISTORICAL BACKGROUND OF ESPIONAGE IN INTERNATIONAL LAW:-

The use of espionage has a long history, dating back to ancient times. However, it was during the early modern period that the practice began to take on its modern form. As states began to compete with each other for power and influence, the use of spies became increasingly common as a means of gathering information about the activities of other countries.

² Damrosch L. F. Henkin L. Pugh R. C. Schachter O. & Smit H. (2001). *International law : cases and materials* (Fourth). West Group.

³ D'ASCOLI, S. (2004). ANTONIO CASSESE, *International Criminal Law*, Oxford, Oxford University Press, 2003, pp. 472., *The Italian Yearbook of International Law* Online, 14(1), 497-501. doi: <https://doi.org/10.1163/221161304X00217>

In his book "*International Law*," Professor Antonio Cassese notes that "the law relating to espionage is not entirely settled" and that there is still significant debate about the legal status of spies under international law. Similarly, in his book "*Espionage and International Law*," Professor Peter Stamatopoulos argues that "the legal status of spies remains one of the most contentious issues in international law."

Michael Schmitt, a prominent legal scholar on international law, says that the modern understanding of espionage is derived from the 16th century when states started to recognize the sovereignty of other states and adopted the principle of non-intervention in the internal affairs of other states.⁴ One of the earliest examples of the legal status of spies can be found in the case of the Marquess of Montrose, who was executed in 1650 for espionage during the English Civil War. Montrose was accused of spying for the Royalist forces against the Parliamentarians and was ultimately sentenced to death for his activities.⁵

In the years that followed, the legal status of spies continued to evolve. However, it was not until the 20th century that the legal status of spies began to be addressed in a more systematic manner. The 1929 Geneva Convention, which established rules for the treatment of prisoners of war, also recognized the legal status of spies who were captured during wartime.

⁴ Schmitt, M. N., & Watts, S. (2016). Beyond State-Centrism: International Law and Non-state Actors in Cyberspace. *Journal of Conflict & Security Law*, 21(3), 595–611. <https://www.jstor.org/stable/26298218>

⁵ Bennett, R. (2017). "A Candidate for Immortality": Martyrdom, Memory, and the Marquis of Montrose. *Interdisciplinary Perspectives on Mortality and its Timings: When is Death?*, 33–47.

THE DEFINITION OF SPIES IN INTERNATIONAL LAW:-

While the term “spy” is not explicitly defined in international law, it generally refers to an individual who engages in covert activities on behalf of a state, with the aim of gathering intelligence or carrying out other tasks that further the State's interests.⁶One example of a definition of spies is provided by Professor Lori Damrosch in her book *“International Law: Cases and Materials”*. She defines a spy as “an individual who secretly and intentionally seeks to gather intelligence or perform other activities for a state or organization in order to further its interests”. This definition highlights the key elements of espionage, including secrecy, intentionality, and the goal of furthering a state's interests.

Famous scholars have also weighed in on the definition and legal status of spies. For example, Hugo Grotius, a Dutch jurist who lived in the 17th century, argued that spies were "enemies of all" and should be punished as such. Similarly, in the 20th century, the International Court of Justice noted that espionage activities could be seen as a violation of a state's sovereignty and that states have the right to take measures to protect their security and interests.

It is worth noting that not all activities carried out by individuals on behalf of a state necessarily qualify as espionage. For example, diplomatic officials may engage in a wide range of activities, including negotiating treaties, attending conferences, and gathering information through open sources. These activities are generally considered to be lawful as long as they are carried out in a transparent and lawful manner. The definition of a spy is an important issue in international law, as it can determine the legal status of individuals engaged in espionage

⁶ See Article 46 of the 1977 *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts* (Additional Protocol I).

and the treatment that they are entitled to receive. However, there is no universally accepted definition of a spy in international law, and the definition has evolved over time.

THE LEGAL STATUS OF SPIES IN INTERNATIONAL LAW:-

While spying during wartime is not considered a violation of International Humanitarian Law (IHL) or Customary International Law (CIL) and does not give rise to legal grievances between nations under international law, there is a limited legal safeguard for individuals involved in such activities if they are apprehended. The wearing of a military uniform by espionage agents is necessary to avoid being classified as a spy.⁷ In contrast to soldiers in uniform, war spies apprehended in civilian attire or an enemy uniform have no legal right to prisoner-of-war status. Not wearing a uniform while gathering intelligence does not necessarily render an individual a spy, however, but it places the burden of proof upon the suspect.

The subject of espionage during times of war has long been addressed by international law; the 1874 Brussels Declaration, as an early example, recognized the existence of spies during armed conflicts and established fundamental principles governing their activities. It underscored the importance of conducting espionage within certain parameters, such as respecting the secrecy of correspondence and prohibiting the use of treacherous means. But that of espionage during peacetime has yet to be addressed. Even when an international event is obviously involved, peacetime espionage has always been viewed as a domestic legal matter. As a result, the current rules of war serve as a good foundation for the international legal regulation of intelligence collected during peacetime. In the rules of war, espionage is governed by distinct

⁷ Beck, N. J. (2011). Espionage and the Law of War. *American Intelligence Journal*, 29(1), 126–136. <http://www.jstor.org/stable/26201929>

and consistent principles. During times of armed conflict, International Humanitarian Law (IHL) sets out certain rules regarding espionage. Spies who are captured by a belligerent party may be subjected to legal proceedings, detention, or other measures as permitted by the laws of war. However, the exact treatment of captured spies may vary depending on the specific circumstances, national laws, and the practices of the capturing state. Under International Humanitarian Law (IHL), spies are generally considered to be individuals who clandestinely gather information for one belligerent state with the intent of transmitting it to another belligerent state. Espionage activities can take various forms, such as gathering military intelligence, infiltrating enemy territory, or engaging in covert operations. Building upon this foundation, the 1907 Hague Convention IV⁸ provided a more explicit definition of spies. The convention also acknowledged the potential for punishment, including the possibility of the death penalty, for spies captured in the act.

Subsequently, the 1929 Geneva Convention⁹ addressed the treatment of spies within the context of prisoners of war. It affirmed that individuals engaged in espionage, particularly those operating in disguise or using false documents, could be deprived of the privileges and protections afforded to regular prisoners of war. This distinction aimed to prevent abuse and ensure compliance with the laws of war. Furthermore, the Additional Protocols to the Geneva Conventions, adopted in 1977, expanded upon the legal framework for spies. These protocols reinforced the principles of humane treatment and respect for the life and dignity of all persons involved in armed conflicts, irrespective of their status. They emphasized the

⁸ Hague Convention Regulations Respecting the Laws and Customs of War on Land, October 18, 1907.

⁹ Geneva Convention IV, August 12, 1949, in Roberts and Guelff, Documents on the Laws of War, Oxford University Press, 2004

prohibition of torture, cruel treatment, or outrages upon personal dignity, applying these principles to spies as well.

Outside the context of armed conflict, the legal status of spies is not explicitly addressed by international law. However, states have the sovereign right to enact domestic laws that criminalize espionage and establish penalties for those involved in such activities. For example, we have The Official Secrets Act 1923, which addresses espionage and unauthorized disclosure of classified information in India, which is a domestic law specific to the country. It provides the legal framework for investigating, prosecuting, and penalizing individuals involved in espionage. It states that actions which involve helping an enemy state against India are strongly condemned. Additionally, there are international human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR), that provide protections for individuals, including spies, regarding fair trial rights and protection against torture or cruel, inhuman, or degrading treatment.

Spying combines monitoring and surveillance with active intelligence gathering and data analysis to discover what is occurring relative to the government or corporate interests.¹⁰ There has been a lot of debate as to who a spy is? Some scholars refer to them as intelligence officers, surveillance officers, case officers, intelligent agents, secret agents, informers, etc. Imprecise definitions of spying have led to acquittal in many cases.

One such case that came into highlight due to imprecise definitions is of *Gary Francis Powers*, the pilot of an American U-2 spy plane. The occurrence made it necessary to understand the current situation of strategic reconnaissance more

¹⁰ <https://www.dataversity.net/data-surveillance-monitoring-spying-personal-privacy-data-gathering-world/>

clearly.¹¹The CIA finished creating the U-2 photo-reconnaissance aircraft in 1955. One of the earliest technological systems created specifically for strategic intelligence missions was the U-2. From 1956 to 1960, U-2 flights flew over Soviet territory on a regular basis, gathering information that was extremely valuable to American military and political planners.

The Soviet Union shot down an American U-2 aircraft in 1960, and the pilot, CIA pilot Gary Powers, was taken captive. Prior to the shootdown, the US government consistently denied photo overflights, just as it was customary for governments to deny their espionage agents' knowledge of an event. Denial was common, although the act of espionage was not illegal per se, but it was seen as an unfriendly act against the states. The Soviet Union maintained that the plane was a spy plane and the pilot was a spy. After much probing from the Soviet Union, the US finally accepted that it was an act of espionage to monitor military developments in Russia. Today, of course, these tactics are replaced by technologies that work without endangering any person's life.

The legal position of spies involved in wartime activities has evolved over time, primarily through the actions of warring parties across centuries and the progressive development of international legal principles. Prior to the codification of customary practices in treaties, belligerent parties historically imposed severe punishments on captured spies. In 1999, Pakistan executed Sheikh Shamim, nearly ten years after he was arrested on charges of spying.¹² Allegedly, he was caught “red-handed” near the Pak-India border for spying. Ravindra Kaushik¹³, an Indian Spy, the fabled Black tiger of RAW¹⁴ was

¹¹ Demarest, G. B. (1995). Espionage in international law. *Denv. J. Int'l L. & Pol'y*, 24, 321.

¹² Shah, K. M. (2017). (Spy) games nations play.

¹³ Manoraj, V. (2019). Jadhav (India v. Pakistan): The Case of Two Winners. Available at SSRN 3436835.

sentenced to death in 1985 for spying but was later commuted to life in prison. In November 2001, Kaushik succumbed to pulmonary tuberculosis and heart disease and died in the New Central Multan Jail.

Then there is the case of Kulbhushan Jhadav, which has garnered significant attention in the realm of international law, particularly with respect to the legal status of spies. Kulbhushan Jadhav, an Indian national, was apprehended in Pakistan in 2016 and accused of engaging in espionage activities and participating in subversive acts.¹⁵ This case has brought forth pertinent inquiries surrounding the treatment of spies, their entitlements, and the legal obligations of states in such circumstances.¹⁶ The case highlights several pivotal facets pertaining to the legal status of spies:

- I) Recognition of Spies: The case underlines the recognition that individuals involved in espionage activities may be designated as spies in accordance with national legislation and established international practices. Kulbhushan Jadhav faced allegations classifying him as a spy, with accompanying charges of engaging in actions against the state of Pakistan.
- II) Rights and Protections: The case has generated considerable attention regarding the imperative nature of ensuring equitable treatment, due process, and the safeguarding of rights for individuals accused of espionage. Concerns have been raised

¹⁴ Swami, P. (2023, April 11). *The cost of being an Indian spy. What happened to Ravindra Kaushik, R&AW's Black Tiger*. ThePrint. <https://theprint.in/opinion/the-cost-of-being-an-indian-spy-what-happened-to-ravindra-kaushik-raws-black-tiger/1511104/>

¹⁵ Rao, P. S. (2016). The Jadhav case (2017): India and Pakistan before the International Court of Justice. *Indian Journal of International Law*, 56(3-4), 379–403.

¹⁶ RITU, R., & KUMAR, A. (2020). The Right to Consular Access in Light of Kulbhushan Jadhav Case.

regarding the lack of consular access and transparency in the legal proceedings involving Kulbhushan Jadhav, resulting in international legal challenges regarding his rights and the obligations of the detaining state.

- III) Diplomatic and Legal Disputes: The Kulbhushan Jadhav case has engendered a diplomatic and legal dispute between India and Pakistan. This had involved legal proceedings before the International Court of Justice (ICJ), wherein India sought redress and asserted violations of the Vienna Convention on Consular Relations pertaining to consular access for Jadhav.¹⁷
- IV) State Responsibility: The case underscores the responsibility of states to ensure the protection of individuals within their jurisdiction, including those accused of espionage. The legal status and treatment of spies bear implications for bilateral relations, diplomatic engagements, and the fulfillment of international obligations between states.

Status of individual spy under IHL:-

The current definition of a "spy" closely aligns with the definition outlined in the Lieber Code of 1863 and the 1874 Brussels Declaration. According to this definition, a spy is an individual who covertly seeks information with the intention of communicating it to the enemy while operating in disguise or under false pretenses.¹⁸ Article 22 of the 1874 Brussels Declaration provides: "Soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for

¹⁷ Gunawan, I. Q. ANALYSIS OF THE ILLEGAL ARREST CASE OF KULBHUSHAN JADHAV UNDER THE PAKISTAN MILITARY COURT THROUGH ICJ.

¹⁸ Geneva Convention IV, Art. 5, August 12, 1949, in Roberts and Guelff, Documents on the Laws of War, Oxford University Press, 2004, p. 303.

the purpose of obtaining information, are not considered spies.”¹⁹ The 1907 Hague Rules, which deal with spies in a similar way, remain good law, including the prohibition on prosecuting spies for previous acts of espionage (as long as they had already rejoined their army) and the prohibition on punishing a spy without trial.²⁰ The Geneva Convention of 1949 instituted additional safeguards for protecting persons accused of espionage, including “trial with counsel, an appeal process after the penalty is imposed, and a six-month waiting period before a death penalty can be carried out.”²¹

Unlike individuals who clandestinely gather information while in the uniform of their armed forces, spies captured in the act are not eligible for prisoner-of-war status under international humanitarian law (IHL). Consequently, captured spies forfeit their right to communicate, and if the execution was permissible prior to the outbreak of armed conflict, they could be subject to execution provided that they are first afforded a trial by the belligerent.²²

The definition of a "spy" and the rule that war spies are not entitled to prisoner-of-war status are entrenched principles of Customary International law (CIL) that have stood the test of time. They represent longstanding norms that govern the legal status of spies in armed conflicts. The states also follow these principles. For example, Germany's Military Manual (1992) defines spies as "persons who clandestinely or on false

¹⁹ Project of an International Declaration concerning the Laws and Customs of War, Brussels, 27 August 1874, Article 22.

²⁰ Geoffrey B. Demarest, *Espionage in International Law*, 24 Denv. J. Int'l L. & Pol'y 321, 332 (1996).

²¹ Geoffrey B. Demarest, *Espionage in International Law*, 24 Denv. J. Int'l L. & Pol'y 321, 336 (1996); *see also* Convention (IV) Relative to the Protection of Civilian Persons in Time of War, art. 75, Aug. 12, 1949, 6 UST 3516, 75 UNTS 287.

²² Beck, N. J. (2011). Espionage and the Law of War. *American Intelligence Journal*, 29(1), 126–136. <http://www.jstor.org/stable/26201929>

pretenses, i.e., not wearing the uniform of their armed forces, gather information in the territory controlled by the adversary."²³ Moreover, the Military Manual (1993) of the Netherlands defines spies with reference to Article 29 of the 1907 Hague Regulations and states that this definition implies that combatants gathering information in uniform are not considered as spies.²⁴ In essence, states consistently enact legislation and adopt measures that conform to the maximum degree of deterrence permissible under international law and their respective criminal statutes.

It is evident that the laws of war acknowledge the legitimate necessity of gathering intelligence and do not seek to prohibit this practice altogether. Instead, the focus of the law is primarily on punishing acts of treasonous spying while recognizing that activities such as technical intelligence gathering, which involve minimal personal deceit, do not warrant individual punishment under the laws of war.

Rights and Obligations of Spies under International Law:-

Under international law, the rights and obligations of spies are subject to several key considerations. While spies engage in clandestine activities to gather information, they are not granted the same legal protections as uniformed combatants or civilians. Spies may face prosecution and punishment for their actions, as their activities often involve breaching the sovereignty of other states and engaging in acts that undermine national security. However, even though spies may be treated as criminals, they are entitled to certain fundamental human rights, such as protection against torture, cruel treatment, and arbitrary

²³ Germany, *Humanitarian Law in Armed Conflicts – Manual*, DSK VV207320067, edited by The Federal Ministry of Defence of the Federal Republic of Germany, VR II 3, August 1992, English translation of ZDv 15/2, *Humanitäres Völkerrecht in bewaffneten Konflikten – Handbuch*, August 1992, § 321.

²⁴ Netherlands, *Toepassing Humanitair Oorlogsrecht*, Voorschrift No. 27-412/1, Koninklijke Landmacht, Ministerie van Defensie, 1993, p. III-5.

detention. Additionally, states have an obligation to ensure that any legal proceedings against spies are conducted fairly and transparently, respecting the principles of due process. Balancing the legitimate interests of states in protecting national security with the fundamental rights of individuals involved in espionage remains a complex and delicate task within the framework of international law.

Immunity of Spies from Prosecution and the Role of Diplomatic Immunity:-

Spies who are operating under the cover of diplomatic missions are generally immune from prosecution under the principle of diplomatic immunity. Diplomatic immunity is a legal principle that provides protection to diplomats and their families from arrest, detention, and prosecution in the host country. This principle is designed to facilitate diplomatic relations between countries and to prevent harassment of diplomats by the host country.

However, diplomatic immunity does not necessarily extend to spies who are posing as diplomats or who are engaging in activities outside the scope of their diplomatic functions. In such cases, the host country may be entitled to take legal action against the spies.

THE PROSECUTION OF SPIES UNDER INTERNATIONAL LAW:-

Spies can be prosecuted under international law for multitude of reasons, such as violating the laws of the host country, engaging in acts of espionage during peacetime or wartime, and engaging in activities that threaten the national security of the host country. While international law recognizes the need for states to protect their national security interests and combat espionage, it also imposes certain limitations and safeguards to ensure fair treatment and respect for fundamental rights.

The specific legal framework for prosecuting spies can vary depending on the national laws of each state and the applicable international conventions and treaties. However, some common principles apply. One key international convention is the 1907 Hague Convention IV, which addresses the laws and customs of war on land and recognizes that spies are subject to punishment for their acts of espionage. Another significant international instrument is the 1929 Geneva Convention, which focuses on the treatment of prisoners of war and establishes that spies when captured, do not have the same rights and protections as lawful combatants. The 1949 Geneva Conventions and their Additional Protocols further develop the legal framework by outlining the obligations of states in ensuring humane treatment and due process for individuals involved in armed conflicts, including spies. Additionally, national laws play a crucial role in defining and prosecuting spies, as states have their own criminal codes and intelligence laws that address espionage offenses and the legal procedures for investigating, prosecuting, and punishing spies. Thus, the legal framework for prosecuting spies involves a combination of international conventions, such as The Hague and Geneva Conventions, and domestic laws that aim to balance national security concerns with the protection of individual rights and due process.

International law provides guidelines on the treatment of spies and their prosecution. For instance, the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to a fair trial for all individuals, including those accused of espionage. The Geneva Conventions also provide for the humane treatment of prisoners of war and those accused of espionage. The International Criminal Court (ICC) may prosecute individuals for war crimes, including espionage if the activities were committed in the context of an armed conflict and are aimed at damaging the national defense of the enemy.

States have the authority to investigate and apprehend spies within their jurisdiction. Once apprehended, spies are subject to legal proceedings that may involve charges related to espionage, treason, or violation of national security laws. The exact charges and penalties can differ among states, reflecting their domestic legal systems and policies.

Examples of the prosecution of spies under international law can be found in various historical and contemporary cases. These cases highlight the complex legal and diplomatic considerations involved in prosecuting individuals involved in espionage, as well as the ongoing debates surrounding balancing national security concerns and individual rights. One notable case is the conviction of Aldrich Ames, a former CIA officer²⁵ who was arrested in 1994 for spying for the Soviet Union and Russia. His actions resulted in severe damage to intelligence operations and the loss of valuable assets. Another example is Ana Montes, an intelligence analyst for the US Defense Intelligence Agency, who was arrested in 2001 and pleaded guilty to spying for Cuba²⁶. Her espionage activities spanned over a long period and had significant repercussions for national security. Richard Miller, an FBI agent, was also involved in espionage and was arrested in 1985 for passing classified information to the Soviet Union. Similarly, Robert Hanssen, an FBI agent, was arrested in 2001 for spying for Russia, causing substantial harm to US intelligence efforts.²⁷ Additionally, the case of Julius and Ethel Rosenberg, convicted

²⁵ Carr, C. (1994). Aldrich Ames and the conduct of American intelligence. *World Policy Journal*, 11(3), 19-28.

²⁶ De La Cova, A. (2007). *True Believer: Inside the Investigation and Capture of Ana Montes, Cuba's Master Spy*: Carmichael, Scott W.: Annapolis: Naval Institute Press, 187 pp., Publication Date: March 2007.

²⁷ Smith, R. (2016). *Review of The Billion Dollar Spy: A True Story of Cold War Espionage and Betrayal*.

of spying for the Soviet Union²⁸ in the 1950s, remains a prominent example. These cases demonstrate the serious legal and diplomatic considerations involved in prosecuting individuals engaged in espionage activities, as well as the inherent tensions between national security concerns and individual rights. In most cases, the trial of spies is conducted in secret to protect the confidentiality of intelligence sources and methods. The accused spy is usually charged with espionage, and the burden of proof lies with the prosecution to establish the guilt of the accused beyond a reasonable doubt. The defendant has the right to an attorney, and evidence obtained through illegal means is generally not admissible in court.

It is important to note that the prosecution of spies is subject to the principles of fair trial, due process, and respect for human rights. While spies may face severe consequences if found guilty, they are entitled to certain fundamental rights, including the right to legal representation, the presumption of innocence until proven guilty, and protection against torture or cruel treatment.

CONTEMPORARY ISSUES IN THE LEGAL STATUS OF SPIES:-

The legal status of spies in contemporary times presents intricate challenges as technological advancements and evolving espionage methods complicate the application of traditional legal frameworks. The issues such as cyber espionage, State-sponsored hacking, and safeguarding individual rights in the face of national security concerns shape the ongoing discourse surrounding the legal status of spies.

I. The impact of technological advancements on the legal status of spies:-

The use of technology in espionage has created new challenges for the legal status of spies. In the past, espionage

²⁸ Roberts, S. (2008). Figure in Rosenberg Case Admits to Soviet Spying. *New York Times*, 11, A1.

was primarily conducted through human intelligence and physical surveillance. However, with the increasing use of technology, spies are now able to collect intelligence remotely, through methods such as hacking, cyber espionage, and social media exploitation.

These new forms of espionage raise questions about the legality of the methods used and the rights of the individuals or organizations targeted. For example, the use of malware to gain access to a target's computer systems may violate laws relating to unauthorized access or computer misuse. Additionally, the use of social media to collect intelligence may raise concerns about privacy violations and the ethics of deception.

To address these challenges, many countries have enacted laws that specifically address cyber espionage. For example, the United States has passed the Computer Fraud and Abuse Act (CFAA) and the Economic Espionage Act (EEA) to prosecute cyber espionage. The CFAA criminalizes unauthorized access to protected computers, while the EEA criminalizes the theft of trade secrets. Similarly, the European Union has implemented the General Data Protection Regulation (GDPR) to protect the privacy of individuals.

II. The relationship between the legal status of spies and human rights considerations:-

The legal status of spies is closely linked to human rights considerations, particularly the right to a fair trial and protection against torture and mistreatment. The use of torture or other forms of coercion in the interrogation of suspected spies has been widely condemned and is prohibited under international law.

In addition, the use of secret courts and secret evidence raises concerns about due process and the right to a fair trial. In many cases, the evidence against suspected spies is classified or cannot be disclosed in open court, making it difficult for the accused to mount a defense.

To address these concerns, some countries have established special procedures for the prosecution of espionage cases. For example, in the United States, the Foreign Intelligence Surveillance Act (FISA) allows for the use of secret courts to issue warrants for surveillance or search operations related to national security. However, the use of such procedures has also been criticized for lacking transparency and potentially violating due process rights.

Overall, the legal status of spies is a complex issue that requires balancing national security interests and human rights considerations. It is crucial to ensure that the rights of suspected spies are protected while also safeguarding national security interests.

CONCLUSION:-

In conclusion, the legal status of spies in international law is a multifaceted and dynamic subject that has evolved over time. International conventions, treaties, and customary practices have sought to define and regulate the activities of spies while balancing the interests of states and the protection of individual rights. The recognition of espionage as a legitimate intelligence-gathering activity, the punishment of traitorous spying, and the acknowledgment of state responsibilities towards captured spies are key principles that emerge from the legal framework. However, contemporary challenges such as cyber espionage, State-sponsored hacking, and ensuring due process rights for accused spies continue to shape the ongoing discourse. As the landscape of technology and global security evolves, it is imperative for legal scholars, policymakers, and practitioners to engage in a comprehensive and ongoing examination of the legal status of spies to address emerging issues and strike a balance between national security and individual rights within the framework of international law.

In recent years, there has been a growing debate about the legal status of spies. Some argue that espionage should be

considered a crime against humanity, while others argue that it is a necessary part of international relations. The debate is likely to continue for some time, and it is still being determined how the legal status of spies will ultimately be resolved.

However, it is essential to have a clear understanding of the legal issues involved in order to develop effective policies to protect national security. In the 21st century, espionage is becoming increasingly complex and challenging, and it is important for governments and legal systems to be prepared to address the new challenges that it poses.

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