



The Legality of International Espionage Based on the Nature of the Target and the Perpetrator

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Abstract: The legality of espionage—the clandestine collection of human intelligence—between states during peacetime has not yet been pacified. While international war treaties address espionage, there are no treaties for espionage during peace, a period during which espionage is a common phenomenon. The purpose of this study is to investigate the legality of

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international espionage through an inductive approach and a bibliographic monograph procedure. The Hague Convention of 1907 and the Vienna Convention on Diplomatic Relations of 1961 are analyzed. The latter prohibits a number of acts and actions that would be carried out during espionage, such as the opening of diplomatic bags and correspondence, surreptitious entry, and data searching in archives and documents. The analysis shows that espionage in peacetime is prohibited against the diplomatic corps, their families, and their employees. The absence of prohibition of espionage in international treaties (with the exception of the diplomatic corps), in association with the universal practice of espionage by states, leads to the conclusion that espionage carried out between states is legal, even during peacetime. Therefore, it is lawful for states to conduct espionage operations against other governmental authorities, military personnel, scientists, researchers, and others. The authors also concluded that the nature of the target and the perpetrator determines the legality, or lack thereof, of international espionage. Espionage carried out by or against a diplomatic corps may lead to diplomatic, economic, transport, communication, or even legal sanctions.

Keywords: espionage, international relations, national security, peace, treaties, war

Introduction

Since the beginning of recorded history, *espionage*, defined as the “intelligence activity directed towards the acquisition of information through clandestine means,” has been used in diplomacy and war.¹ Today, there are several

disciplines of intelligence collection—including signals intelligence (SIGINT), open-source intelligence (OSINT), imagery intelligence (IMINT), geospatial intelligence (GEOINT), measurement and signature intelligence (MASINT), and human intelligence (HUMINT)—but in the past, there were no technological means for intelligence gathering, only collection by human sources.² Indeed, HUMINT “represents the oldest and most elemental form of intelligence activity.”³ Therefore, this article will deal solely with HUMINT. It will also use the definition of *spy* adopted by the Hague Convention of 1907, which details the laws and customs of war on land (Hague IV):

A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavours to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.⁴

Consequently, espionage refers to obtaining, or the attempt to obtain, information under false pretenses or clandestinely, with the intention of communicating it to a hostile or adversary party, by human sources. In other words, it is the clandestine collection of HUMINT.

Although the use of espionage in foreign policy is an old and universal practice, this topic is not well addressed by international treaties. While international war treaties address espionage, there are no treaties for espionage during peace, a period during which espionage is a common phenomenon.⁵ Despite the common occurrence of espionage in modern international relations, its legal status remains unclear.⁶ It is therefore an enigma for scholars of international law.⁷

For some academics, espionage would be permitted, as “state practice and *opinio juris* created a customary exception to territorial sovereignty.”⁸ Others believe that “peacetime espionage can violate international law.”⁹ For others still, this discussion would make no legal sense, and the question of if, when, and how information should be collected, analyzed, and delivered would be of no importance.¹⁰ But these authors, in addressing the issue, do not focus on the nature of the target and the perpetrator—a point that may be important for analysis.

This doctrinal dispute continues and can negatively impact the resolution of concrete cases of international espionage. Discovery of intelligence operations could lead to escalation due to states doubling down, causing an international crisis to arise from an espionage incident.¹¹ As international crises risk turning into war, there is concern, especially if the parties to the conflict choose or stumble on the worsening of relations.¹² However, a legal resolution to an espionage incident can prompt deescalation.

International law aims to establish rules for relations between states and reduce armed conflicts between them.¹³ Indeed, as one scholar argues, “peace is the main purpose of modern international law.”¹⁴ Advancements in the understanding of espionage in international law may favor the definitive resolution of the doctrinal controversy and the resolution of conflicts between states.

The purpose of this study is to investigate the legality of international espionage. Would international treaties allow espionage? If so, under what circumstances? This study presents an inductive approach, which starts from particular data, sufficiently verified, to infer a general truth. It also uses the bibliographic monograph procedure—bibliographic, as it is based on already

published material, and monographic, since it studies certain individuals to obtain generalizations.¹⁵ Primary sources—the international treaties themselves—are used.¹⁶

This article initially presents the dual aspect of espionage and the Lotus principle.¹⁷ It then discusses the Hague Convention of 1907 and the Vienna Convention on Diplomatic Relations of 1961. The main argument highlights the absence of a prohibition on espionage in international treaties. Finally, the article concludes that espionage carried out between states is legal, even during peace, with an exception applied to the diplomatic corps. The authors also conclude that the nature of the target and the perpetrator determines the legality, or lack thereof, of international espionage.

The Dual Aspect of Espionage¹⁸

The human conduct of obtaining secrets from a human source or asset is considered a crime in many countries, but according to some legal scholars, such as Hugo Grotius, Thomas Hobbes, and Lassa Oppenheim, the use of spies and espionage by states is not.¹⁹ The views of these legal scholars are linked to the philosophical tradition of natural law theory, and although they do not necessarily reflect current legal norms or doctrines, they have had a lasting impact on international law.

As a rule, acts of espionage by agents occur within the victim country and are therefore subject to domestic legislation. At the international level, what applies are the customs of international law and international treaties. According to these scholars, this gives rise to the duality of espionage: that while agents can be punished, states cannot.

During wartime, the penalty for espionage is usually death, but in peacetime, imprisonment is more common. Spies with diplomatic coverage are usually expelled from the victim country, while the illegal ones—that is, those without diplomatic coverage—remain imprisoned. These can eventually be exchanged for spies captured by the opposing country in so-called “spy swaps.”²⁰

The Lotus Principle

The Vienna Convention on the Law of Treaties of 1969 defines a *treaty* as “an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”²¹

The same convention also establishes that “every treaty in force is binding upon the parties to it and must be performed by them in good faith.”²² This is the application of the legal principle *pacta sunt servanda* (agreements are binding on treaty parties and must be kept).²³ This means that a state party to a treaty is obliged to comply with it, to do what the treaty determines, and not to do what the treaty prohibits.

The violation of a treaty may lead to diplomatic or even legal sanctions to the violating state. A breach of a treaty may lead to its termination or suspension, to “complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication,” or to diplomatic relations being reduced or even ceasing altogether.²⁴ Although the severance of diplomatic relations is a unilateral act, “international organizations may, as a measure of collective sanction, resolve that their members sever diplomatic relations with a state.”²⁵ Legal

consequences may also occur, as the jurisdiction of the International Court of Justice (ICJ) extends to cases submitted to it by the parties and in particular to matters covered by the Charter of the United Nations or by treaties and conventions in force.²⁶

If, on the one hand, what is prescribed in a treaty obliges the signatory states to comply with it, on the other hand, what is *not* prescribed follows the Lotus principle. According to the Lotus principle, if there is no explicit prohibition, states are free to adopt the principles they consider most appropriate.²⁷ This means that restrictions on states cannot be assumed but must be present in treaties signed by states or customary in international law.²⁸

The Lotus principle emerged in the Permanent Court of International Justice (PCIJ) during the *SS Lotus* trial in 1927. A collision at sea between the French ship *Lotus* and the Turkish ship *SS Bozkurt* resulted in the deaths of eight Turkish citizens. Turkey tried and sentenced the French officer commanding the *Lotus* at the time of the accident. France sued Turkey in the PCIJ, claiming that Turkey did not have jurisdiction to arrest and prosecute the French officer.²⁹ The PCIJ declared that “every state remains free to adopt the principles which it regards as best and most suitable.”³⁰ In other words, since there was no international rule prohibiting the application of Turkish jurisdiction, Turkey had not violated any rule in international law. So emerged the Lotus principle, which is a fundamental part of international law.³¹

In short, at the international level, a practice can only be prohibited to states if it is prohibited by customary international law or by treaty. It is now necessary to study how international treaties address espionage.

International Treaties Related to Espionage

The Hague Convention

The Hague Convention of 1907, which details the laws and customs of war on land (Hague IV), establishes that “the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.”³² It also devotes an entire chapter (II) to definition and treatment of spies. Article 29 defines a *spy* as someone “acting clandestinely or on false pretences, to obtains or endeavours to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.”³³

The Hague Convention therefore defines and regulates espionage but does not prohibit it. According to the U.S. Department of Defense’s *Law of War Manual*, “law of war treaties that regulate, but do not prohibit, spying, recognize implicitly that belligerents may use this method of warfare.”³⁴ Consequently, “spying during armed conflict is not a violation of international law” by belligerents states.³⁵ But is there a provision for the use or prohibition of espionage during peacetime in international treaties? According to the *Newport Manual on the Law of Naval Warfare*, “there is no international law rule prohibiting espionage.”³⁶ However, although there is no explicit prohibition, many acts of espionage are prohibited in certain situations.

The Vienna Convention

The Vienna Convention on Diplomatic Relations of 1961 does not prohibit espionage in literal terms, but it presents a series of articles of protection and guarantees to the diplomatic mission that prevent the execution of espionage actions against it.³⁷

The premises of the mission are declared inviolable by Article 22, as well as furniture, other goods, and means of transport. The same article also imposes on the receiving state the obligation to protect mission premises “against any intrusion.”³⁸ Article 30 extends the inviolability and protection guaranteed to the mission premises to the private residence of the diplomatic agent.³⁹ The guaranteed protection of premises and residences prevents the execution of surreptitious entry, an operational technique that, although high-risk, and even more so in the case of an embassy, can bring results to collection.⁴⁰ Archives and documents are protected by Articles 24 and 30, so that their reading or copying by agents of the receiving state implies a violation of the treaty.⁴¹ The official correspondence of the mission, whether by electronic or physical means, including the use of a courier, are also protected by the treaty, which prevents their interception.⁴² Finally, the diplomatic agent enjoys inviolability, and it is the duty of the receiving state to protect and respect them, their freedom, and their dignity.⁴³

While the convention does not directly prohibit recruiting, it does stipulate that the receiving state must take all necessary measures to prevent any attack on the person or on their freedom and dignity and that they must be treated with due respect.⁴⁴ A person who steals information from their organization/country to deliver to an opposing organization/country and/or perform tasks for that adversary is obviously acting with indignity, as they are betraying the people and institutions that trusted them. This is why spies and traitors have been so despised since ancient times. The consequences of becoming a spy are so severe that even during war a captured spy does not have the right to be considered a prisoner of war.⁴⁵ The indignity of being a spy thereby becomes evident. As a result, to recruit or propose to someone

that they become a spy is to hurt their dignity. It is therefore concluded that the treaty prohibits recruitment among the diplomatic corps by the receiving state.

Other members of the diplomatic corps and their family members, to a greater or lesser extent, are also protected by the treaty and “enjoy the privileges and immunities.” Employees, nationals, or permanent residents of the receiving state also have immunity to the extent granted by the treaty, but in such a way that the diplomatic mission is not affected.⁴⁶

Ultimately, the Vienna Convention prohibits a number of acts and actions that would be carried out during espionage, such as the opening of diplomatic bags and correspondence, surreptitious entry, and data searching in archives and documents. Even though the convention does not directly prohibit recruitment, by protecting the diplomat’s dignity and imposing due respect on them, it prevents them from being the target of a recruitment operation and other espionage acts and actions. Consequently, it is evident that the Vienna Convention indirectly prohibits espionage against the diplomatic corps, their family members, and their employees.

It is clear, then, that the nature of the target of espionage makes all the difference. As the diplomatic corps is protected against acts of espionage, its occurrence is illegal, but because there is no similar prohibition for other targets, such as government authorities, military personnel, scientists, or researchers, the use of espionage by the adverse state is legal, even if the acts of the agents themselves are illegal and punishable by the target country.

While the Vienna Convention protects the diplomatic corps, it also prohibits it from engaging in espionage-related activities. Although there is provision for the diplomatic functions of gathering information about the

receiving country, only legal means can be used.⁴⁷ There is also a legal provision for the duty to respect the country's laws, not to interfere in internal affairs, and not to act in a way that is incompatible with the function of the diplomatic mission.⁴⁸

Just as the nature of the target of an act of espionage makes a difference, so too does the nature of the agent who carries it out. Prohibitions on the diplomatic corps from violating local laws and from interfering in the internal affairs of the receiving state implies a violation of the treaty if members of the diplomatic corps carry out acts of espionage. This prohibition is relevant and has a direct impact on the way in which states carry out espionage, because, according to Professor Anthony Glees, director of the Centre for Security and Intelligence Studies at the University of Buckingham, "every embassy in the world has spies."⁴⁹

In accordance with traditional state practices, intelligence officers are sent abroad with or without diplomatic cover. Diplomatic coverage is gained by holding an official position in the diplomatic corps, and if the officer is found to be violating local laws by spying, their diplomatic status guarantees immunity from criminal prosecution. Generally, the officer is declared *persona non grata* and expelled from the country. But those without the protection of official coverage and diplomatic immunity can be arrested and prosecuted under domestic criminal laws.⁵⁰ Using the jargon of international espionage, "those without diplomatic immunity are called 'illegals' and . . . those with diplomatic coverage are called 'legals'."⁵¹ Illegals are extensively trained due to the risk of capture, which implies imprisonment or even the death penalty.⁵² If an effective ban were implemented for members of the diplomatic corps to spy, international espionage would change its profile. With

only illegals acting, the activity would be more dangerous for intelligence officers.

Violation of the prerogatives and/or duties of the diplomatic corps may lead to diplomatic or even legal sanctions to the violating state. These diplomatic sanctions include the declaration of *persona non grata* and subsequent expulsion of a diplomat involved in espionage activities, as occurred recently between Russia and the United Kingdom.⁵³

Legal consequences may also be illustrated by the case of United States of America v. Islamic Republic of Iran (1980) at the ICJ. The invasion of the U.S. embassy in Tehran by Iranian students in 1979 was denounced by the United States to the ICJ, which condemned the government of the Islamic Republic of Iran “to make reparation to the Government of the United States of America for the injury caused to the latter by the events of 4 November 1979.”⁵⁴

While this analysis shows that espionage during peacetime is prohibited against the diplomatic corps, their families, and their employees, this article ultimately argues that in the absence of treaties prohibiting spying against other governmental authorities, it is lawful for states to conduct spying operations against other governmental authorities, military personnel, scientists, researchers, and others.

This article indicates that the legality of espionage is linked to the nature of the target and the perpetrator. The authors deduce that international espionage is legal as long as it is not carried out by or against the diplomatic corps.

So What?

In 2018, U.S. Secretary of Defense James N. Mattis declared that competition between great powers such as Russia and China, not terrorism, was the primary focus of U.S. national security.⁵⁵ Seven years later, Russia and China discussed strengthening ties immediately after U.S. president Donald J. Trump's second inauguration.⁵⁶

In this environment of rising tensions with China and Russia, espionage will play a vital role for the United States to reduce international tension, favor sound policy choices, and counter adversaries' intelligence operations.⁵⁷ In such an environment, there is a growing need for information gleaned from assets, and therefore an increased need for espionage and a higher risk of discovery of operations. Studies such as this, which point out the legality of international espionage as long as certain conditions are respected, contribute to the legal and peaceful resolution of international crises that may occur.

The results of this study recommend that espionage operations do not target members of the diplomatic corps, their families, or their employees, and these individuals should never be considered as perpetrators. Espionage operations that respect this limitation may be understood as legal from the viewpoint of international law, and diplomatic crises resulting from discovery of these operations can be resolved peacefully.

Conclusion

Since the dawn of humanity, the use of espionage aimed at decision making on political and military actions has been a custom. The Hague Convention of 1907 established that the employment of measures necessary for obtaining

information about an enemy and/or adversary country are considered permissible and implicitly recognize the use of espionage. The Vienna Convention on Diplomatic Relations of 1961 grants the diplomatic corps a series of protections and guarantees that, in practice, prevent espionage against and by the diplomatic corps, even if there is no literal prohibition.

The absence of prohibition of espionage in international treaties, with the exception of the diplomatic corps, leads to the conclusion that espionage carried out between states is legal, even during peacetime, with the exception applied to the diplomatic corps. Espionage carried out by or against the diplomatic corps may lead to diplomatic or even legal sanctions, such as the total or partial interruption of economic, transportation, or communication relations; the reduction or even cessation of diplomatic relations; or even a trial at the ICJ. The authors also conclude that the nature of the target and the perpetrator determines the legality, or lack thereof, of international espionage.

¹ Col Mark L. Reagan, USA (Ret), ed., *Counterintelligence Glossary: Terms and Definitions of Interest for Counterintelligence Professionals* (Washington, DC: Department of Defense, 2014), 130; and Deborah Susan Bauer, "Marianne Is Watching: Knowledge, Secrecy, Intelligence and the Origins of the French Surveillance State (1870–1914)" (PhD diss., University of California, LA, 2013), 63.

² Allan Liska, *Building an Intelligence-Led Security Program* (Waltham, MA: Syngress, 2015), <https://doi.org/10.1016/B978-0-12-802145-3.00002-8>.

³ Saul Mauricio Rodriguez-Hernandez, "Intelligence, Human," in *Encyclopedia of Military Science*, ed. G. Kurt Piehler (Thousand Oaks, CA: Sage, 2013), 674, <http://dx.doi.org/10.4135/9781452276335.n229>.

⁴ Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land (The Hague, Netherlands, 1907, entered into force 26 January 1910), Article 29, hereafter Hague IV.

⁵ This includes the Geneva Convention of 1949 relative to the protection of civilian persons in time of war and the Hague Convention of 1907 on laws and customs of war. Patrick C. R. Terry, " 'The Riddle of the Sands': Peacetime Espionage and Public International Law," *Georgetown Journal of International Law* 51, no. 2 (2020): 377.

⁶ Jared Beim, "Enforcing a Prohibition on International Espionage," *Chicago Journal of International Law* 18, no. 2 (2018): 647–72.

⁷ Inaki Navarrete and Russel Buchan, "Out of the Legal Wilderness: Peacetime Espionage, International Law and the Existence of Customary Exceptions," *Cornell International Law Journal* 51, no. 4 (2019): 897–98.

⁸ Kevin Jon Heller, "In Defense of Pure Sovereignty in Cyberspace," *International Law Studies* 97, no. 1 (2021): 1432.

⁹ Terry, "The Riddle of the Sands," 898.

¹⁰ Asaf Lubin, "The Liberty to Spy," *Harvard International Law Journal* 61, no. 1 (2020): 185–243.

¹¹ Jacob Otto and William Spaniel, "Doubling Down: The Danger of Disclosing Secret Action," *International Studies Quarterly* 65, no. 2 (2021): 500–11, <https://doi.org/10.1093/isq/sqaa081>.

¹² David E. Banks, "The Diplomatic Presentation of the State in International Crises: Diplomatic Collaboration during the U.S.-Iran Hostage Crisis," *International Studies Quarterly* 63, no. 4 (2019): 1163–74, <https://doi.org/10.1093/isq/sqz055>.

¹³ Derar Fares Masoud, "The Effectiveness of International Law in Resolving International Armed Conflicts," *Journal of Law, Policy and Globalization* 91 (2019): 117–29, <https://doi.org/10.7176/JLPG/91-15>.

¹⁴ Shelly Aviv Yeini, "Promoting Peace in International Law: Bringing States to the Mediation Table," *Columbia Journal of Transnational Law* 58, no. 3 (2020): 628.

¹⁵ Eva Maria Lakatos and Marina de Andrade Marconi, *Fundamentos de Metodologia Científica* [Fundamentals of Scientific Methodology], 5th ed. (São Paulo, Brazil: Atlas, 2003) 109; and Cláudia Regina Silveira, *Metodologia da pesquisa* [Research Methodology], 2d ed. (Florianópolis, Brazil: Publicações do IF-SC, 2011).

¹⁶ Eliav Lieblich, "How to Do Research in International Law?: A Basic Guide for Beginners," *Harvard International Law Journal Online* 62 (2021): 58.

¹⁷ The dual aspect of espionage is derived from the fact that it is illegal for agents to conduct espionage but legal for states use it. The Lotus principle states that restrictions imposed on states cannot be presumed but must be present in treaties signed by states or in customary international law.

¹⁸ This issue is further explored in the following sections, particularly in relation to international treaties and the reasons that states are generally not held accountable.

¹⁹ A *human source* is defined as "a person from whom information or services are obtained." Reagan, *Counterintelligence Glossary*, 296. An *asset* in human source operations is defined as "a recruited source." Reagan, *Counterintelligence Glossary*, 18. See Lassa Oppenheim, *International Law: A Treatise*, 2 vols. (London: Longmans, Green, 1912); Thomas Hobbes, *De Cive* (London: R. Royston, 1651); and Thomas Hobbes, *Leviathan or the Matter, Forme and Power of a Commonwealth Ecclesiastical and Civil* (London: Andrew Crooke, 1651).

²⁰ Alfredo Ribeiro Pereira, "Ten Lessons We Can Learn from the Illegals," *American Intelligence Journal* 41, no. 2 (2024): 71, 77.

²¹ Vienna Convention on the Law of Treaties (Vienna, Austria, 1969, entered into force 27 January 1980), Article 2.

²² Vienna Convention on the Law of Treaties, Article 26.

²³ Jiang Zhifeng, "*Pacta Sunt Servanda* and Empire: A Critical Examination of the Evolution, Invocation, and Application of an International Law Axiom," *Michigan Journal of International Law* 43, no. 3 (2022): 745, <https://doi.org/10.36642/mjil.43.3.pacta>.

²⁴ Vienna Convention on the Law of Treaties, Article 60; *Charter of the United Nations* (New York: United Nations, 1945), Article 41; and T. S. Woolsey, "The Consequences of the Severance of Diplomatic Relations," *American Journal of International Law* 10, no. 1 (1916): 116–17, <https://doi.org/10.2307/2187367>.

²⁵ Shirley V. Scott, *International Law in World Politics: An Introduction* (Boulder, CO: Lynne Rienner, 2004), 24.

²⁶ *Statute of the International Court of Justice* (The Hague, Netherlands: International Court of Justice, 1945), Article 36.

²⁷ Caterina Milo, "Russian Diplomatic Espionage in Italy: The Biot Affair and International Law," *Italian Review of International and Comparative Law* 1, no. 1 (2021): 179.

²⁸ *Public Sitting Held on Wednesday, 15 November 1995, at 10 a.m., at the Peace Palace, President Bedjaoui Presiding, in the Case in Legality of the Use by a State of Nuclear Weapons in Armed Conflict (Request for Advisory Opinion Submitted by the World Health Organization) and in Legality of the Threat or Use of Nuclear Weapons (Request for Advisory Opinion Submitted by the General Assembly of the United Nations)* (1995) (testimony of Michael Matheson, principal deputy legal advisor of the U.S. Department of State), 60.

²⁹ *The Case of the S.S. "Lotus" (France v. Turkey)*, Permanent Court of International Justice (PCIJ) Rep., Ser. A, No. 10 (1927), 5–6, hereafter *France v. Turkey*.

³⁰ *France v. Turkey*, 19.

³¹ Jackson Nyamuya Maogoto and Steven Freeland, "Space Weaponization and the United Nations Charter Regime on Force: A Thick Legal Fog or a Receding Mist," *International Lawyer* 41, no.4 (2007): 1103; and Robert L. Bridge, "International Law and Military Activities in Outer Space," *Akron Law Review* 13, no. 4 (1980): 664. In addition to the *SS Lotus* trial, this principle was also invoked by the ICJ in the case of *The Republic of Nicaragua v. The United States of America*, International Court of Justice (ICJ), Military and Paramilitary Activities in and against Nicaragua Merits, Judgment (1986) ICJ Rep 14.

³² Hague IV, Article 24.

³³ Hague IV, Article 29.

³⁴ *Department of Defense Law of War Manual* (Washington, DC: Department of Defense, 2023), 154.

³⁵ James Kraska, Raul Pedrozo, and Michael N. Schmitt, "Annotated Supplement to the Commander's Handbook on the Law of Naval Operations," *International Law Studies* 102, no. 1 (2024): 12–17.

³⁶ James Kraska et al., "Newport Manual on the Law of Naval Warfare," *International Law Studies* 101 (2023): 127.

³⁷ Vienna Convention on Diplomatic Relations (Vienna, Austria, 1961, entered into force on 24 April 1964).

³⁸ Vienna Convention on Diplomatic Relations, Article 22.

³⁹ Vienna Convention on Diplomatic Relations, Article 30.

⁴⁰ *Surreptitious entry* is defined as "unauthorized entry in a manner which leaves no readily discernible evidence." Reagan, *Counterintelligence Glossary*, 309. This is usually carried out to steal information or documents and/or to install wiretaps or environmental eavesdropping.

⁴¹ Vienna Convention on Diplomatic Relations, Articles 24 and 30.

⁴² A *courier* is defined as "a messenger . . . responsible for the secure physical transmission and delivery of documents and material." *Dictionary of Military and Associated Terms* (Washington, DC: Department of Defense, 2016), 57. See also Vienna Convention on Diplomatic Relations, Article 27.

⁴³ Vienna Convention on Diplomatic Relations, Article 29.

⁴⁴ *Recruitment* is defined as "the deliberate and calculating effort to gain control of an individual and to induce him or her to furnish information or to carry out intelligence tasks for an intelligence or CI [counterintelligence] service." Reagan, *Counterintelligence*, 270.

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- ⁴⁵ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva, Switzerland, 12 August 1949), Article 46.
- ⁴⁶ Vienna Convention on Diplomatic Relations, Article 37.
- ⁴⁷ Vienna Convention on Diplomatic Relations, Article 3.
- ⁴⁸ Vienna Convention on Diplomatic Relations, Article 41.
- ⁴⁹ "When Is a Diplomat Really Just a Spy?," BBC News, 27 March 2018.
- ⁵⁰ Catherine Lotrionte, "Countering State-Sponsored Cyber Economic Espionage under International Law," *North Carolina Journal of International Law* 40, no. 2 (2014): 460–61.
- ⁵¹ A. John Radsan, "The Unresolved Equation of Espionage and International Law," *Michigan Journal of International Law* 28, no. 3 (2007): 622.
- ⁵² Pereira, "Ten Lessons We Can Learn from the Illegals," 71.
- ⁵³ Joe Devanny, Ciaran Martin, and Tim Stevens, "On the Strategic Consequences of Digital Espionage," *Journal of Cyber Policy*, 6, no. 3 (2021): 431, <https://doi.org/10.1080/23738871.2021.2000628>; Michael Sheils McNamee, "UK Expels Russian Diplomat after Spying Row," BBC News, 6 February 2025; and Vicky Wong, "Russia Expels Two More British Diplomats," BBC News, 10 March 2025.
- ⁵⁴ *United States Diplomatic and Consular Staff in Tehran*, Judgment, ICJ Reports (The Hague, Netherlands: International Court of Justice, 1980), 46.
- ⁵⁵ "Mattis: U.S. National Security Focus No Longer Terrorism," BBC News, 19 January 2018.
- ⁵⁶ Vladimir Isachenkov, "Russia's Putin and China's Xi Discuss Their Close Ties in Chat after Trump's Inauguration," Associated Press, 21 January 2025.
- ⁵⁷ Kyle S. Cunliffe, "Hard Target Espionage in the Information Era: New Challenges for the Second Oldest Profession," *Intelligence and National Security* 36, no. 7 (2021): 1018, <https://doi.org/10.1080/02684527.2021.1947555>.