Spy
A person is considered a spy when, acting clandestinely or on false pretences, he obtains or
endeavours to obtain military information in enemy-controlled territory.
A spy caught in the act must not be punished without previous trial. A spy who, after
rejoining the army to which he belongs, is subsequently captured by the enemy, is treated
as a **prisoner of war**[^1] and incurs no responsibility for his previous acts of espionage.
A member of the armed forces who gathers or attempts to gather information in enemy-
controlled territory may not be considered as engaging in espionage if while so acting he is
in the uniform of his armed forces; he will be entitled to **prisoner-of-war**[^1] status. The
special case of members of the armed forces resident or non-resident in enemy-occupied
territory is governed by specific rules.

Espionnage
The word commonly applied to the efforts made in territory under enemy control by a party
to the conflict to collect all information on the enemy that may be useful to the conduct of
the war in general and to that of hostilities in particular. Espionage as international law
understands it is clandestine and takes place under false pretences. The collection of
information by members of the armed forces wearing their own uniform is not espionage,
but intelligence activities.

The word espionage is also applied to the collection by States, in peacetime as well as in
time of war, of political and military information regarding each other.

OUTLINE

Chapter 6. I. 3. a) spies [2]

LEGAL SOURCE

definition of a spy

HR, 29 [3]

PI, 46 [4]

espionage permissible

HR, 24 [5]

civilians committing espionage

GCIV, 5 [6]

PI, 45/3 [7]

status and treatment

HR, 29 [8]–31 [9]
death penalty in occupied territory

CASES

United States, Ex Parte Quirin et al. [12]

Afghanistan, Code of Conduct for the Mujahideen (Arts 12-18) [13]

Iran, Victim of Cyber warfare [14]

Switzerland, The End of Private Armies [15]

ECCC, Detention Sites in Cambodia [16]

