



Legal Perspectives of Air Espionage In Today's Globalized Scenario: A Critical Appraisal

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KEYWORDS	ABSTRACT
Air Espionage, Role of technology, Aid to Air Espionage, Escalating challenges, Air & Space Laws.	<i>Espionage is not the modern-day concept. Rather it has its roots got established since the time immemorial. However, the literal meaning of the term is to peep into the internal affairs of the other nation. This means that it is the absolute violation of the principle of non-interference, which is so stated under Article 2.4 of the UN Charter of 1945. However, this age-old practice is not restricted to any single method for its conduct. Now-a-days there has been several other methods available through which this prohibited act is practiced by any of the nation. Today the territorial distance has no more be the bar to interfere into the sovereignty and integrity of any other nation. The authors by virtue of this research paper will likely to bring on the certain methods through which this restricted act of espionage is practiced under the newly emerging discipline of law, which is Air Laws. Furthermore, this paper will also bring into the limelight the recent trends so followed by the developed nations to spy over the working of the other developed as well as both under developed and developing nations. Such paradigms are the glared matters of the daily headlines. In addition to this, the authors will also be going to reflect through this research paper the various surveillance programmers conducted by the accorded nations to get an access to the confidential information, concerned with any other nation. Last but not the least the authors will try to bring out the nexus between the advancement of the technology has played crucially a two-fold role in snooping as well as curtailing the upsurge of the Air Espionage.</i>

I. Introduction

“For our intelligence community to be effective over the long haul, we must maintain the trust of the people of the developed nations, and people of the underdeveloped or the developing nations around the world.”

-Barrack Obama

Air and Space law is comparatively a novel discipline in the field of international law. Since

the time immemorial there have been evidences that over the global platform the major topic for the discussion over the said platforms revolves around the national security. It is the established principle that each member state over the global platform has to remain within the spheres of its own sovereignty. Be the said nation is the member to any agreement or not with the other nations, still the concerned nations have to adhere to the principles of non-interference. The said principle is

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also enshrined in the UN charter of 1945 as well. It dictates and thereby restrains the nations to interfere into the internal affairs including the sovereignty, integrity and territorial limits of the particular nations. Therefore, despite of the said established principle the nations are allowed to protect themselves from the unreasonable interference of the other nations. Consequently, are allowed to have their own plans for securing the same.

Therefore, espionage is now-a-days considered as the product of the said security reasons. The term espionage has the two-fold significance under the international laws. Firstly, espionage can be put in use in an affirmative manner as well. If the act of spying is done by reserving oneself within the territorial limits of the nation to which that particular spy belongs then it is permitted under international laws. It is done to keep the check on the activities of the neighbouring nations for the purpose of securing the protection of the international borders. However, when the same practice is followed by falling oneself within the territorial limits of the nation to which that concerned individual who is assigned for the commission of the said act then the same act is breaching the substantial principle of the international laws. However, the concept of the Air Espionage is in its infancy stage. It has yet to cover the long journey to secure its place in the international affairs across the international borders. However, there are several instances that surveillance through various Unmanned Aerial vehicles is found by one nation belonging to their

enemy nation. Even the developing nation like that of India has for several times found such surveillance satellites revolving around the jurisdiction of the outer space and also including those of drones as well as Unmanned Aerial vehicles roaming around within its territorial limits found to be of the enemy nation. The basic idea behind the usage of these technologically advanced gadgets so as to keep the check on the working activities of the concerned or the particular nation.

II. Outbreak of the Concept of Air Espionage

The concept of espionage has got its roots strengthen in the current scenario. Different nations have cited their interests as per the usage and the gravity of the aftermath effects of the espionage activities against the target nations. Variant states have described the usage of these espionage activities in such a manner that it is portrayed over the global platform as the secrecy of the commission of the said activities. However, there are sources available which are defining the evolution of concept of the espionage on a whole. The concept of espionage has its traces imprinted during the times of World War I. Espionage has always evinced to be useful for the military purposes. History reveals the certain advantages as well as disadvantages associated with the usage of the said acts following under the shade of espionage. What is in the ancient era done for the benefit of the military purposes from the ground is now done with the usage of highly technologically, politically, socially advanced gadgets. Such devices which are accompanying the security enforcement personnel are forming the part and

parcel of the modern day concept of Air Espionage. Even the development in arena of espionage under Air Laws is also encouraged by the usage of technology including the concept of cyber-enabled espionage. During the times of both the World Wars, it is the state which sponsors the activities forming the part and parcel of the espionage. But in the modern day it is not only the state leader who are stressing on the commission of such acts which are prohibited under international law. But it is evident from the modern-day practices that the state sponsored espionage has lost its significance in the present time. Its place has been replaced by the present day practices falling the part and parcel of the concept of the espionage under Air and Space laws. In addition to this the Air espionage if committed within spheres of its own jurisdiction then the same is legally sanctioned under the international laws making the working of the intelligence agencies more transparent and reliable under international laws.

III. Defining Espionage Under Air Laws

As described by the author earlier the basic reason of the commission of the activities which forms the part and parcel of the espionage under international laws is to depict the wide range of the initiatives taken up by the administrative unit of the particular nation for the purpose of enabling the effective governance machinery. The espionage under the general parlance shall mean the general acts of surveillance which are so conducted by the government or the administrative of the concerned nation against the target nation. The respective nation which aspires to conduct such surveillance

acts can make the use of technologically advanced mechanical units such as Unmanned Aerial Vehicles, use of drones etc. In addition to the concerned nation can also make the use of human resources to extract the information which can be at its best used against the target nation.

More particular the forerunners of the particular nations put the cell phones of the suspected persons on tapping including wiretapping to have the information of every single bit of the terrorist activities, if are being conspired by the enemy nations. For an instance U.S personnel so recruited for the execution of the operation of the killing of the Osama Bin Laden the leader of the Al-Qaida group, had made the usage of the satellite images to detect the presences of the Osama Bin Laden in Pakistan. This is among one of the classic instances of the usage of the espionage as a surveillance act for gathering the information to curtail the rising upsurge of the terrorist activities in the respective nation. However, the usage of satellite images as the part of the surveillance activities was put in use for the very first time to detect the conduct of nuclear activities in another nation or the enemy nations. In addition to the availability of the technologically advanced resources for the purpose of the execution of the surveillance activities the particular nation is also required to be very well equipped with the effective military capabilities. The surveillance through the electrical sources has its very well-established history of being used during times of war as well as its usage is also accessed by the diplomatic agents as well for building and strengthening the international

relations with the other nations across the international borders over the global platform.

IV. The Affirmative Approach of International Law for Permitting the Espionage

There are some scholars and political thinkers who had suggested as well as placed their reliance over the theory that international law should be read in a such a sense that it has affirmatively recognized the permissive approach of the spying or the practice of any other surveillance activities forming the part and parcel of espionage under international law. Not only this, but also in order to support their view, these scholars have given their hypothetical evidentiary remarks by stating that the acts of the surveillance which were forming the part and parcel of the espionage under international laws is the precursor as well as the integrated part of the states right of self-defense. This means if one goes by the perception of the then scholars under the international law then the acts of surveillance so conducted by the various states against the other nations are to be considered as the legalized right of self-defense of the respective state under international laws. Well to accept this theory in the modern times is little bit difficult to fit in. however if this theory is accepted in the modern scenario, then all the acts including the usage of arms, armaments and other kind of artillery by one state against another state will likely to considered as the legalized act of self-defense under international laws. In addition to this as per this said theory then the all the states would be legally allowed to collect information including the gathering of the confidential information as well by the one nation

in respect of another nation under the shade of self-defense under the international laws.

According to these scholars considering the espionage and certain other acts of surveillance to be legalized under international will likely to mean that the rights of the state as to secure the self-defense will be deviated if the usage of such acts of surveillance is not permitted under international laws. If the right of self-defense of one state is given protection under international laws, then there are chances for the other states to expect the similar protection under international laws across the various international borders over the global platform. However, there are certain other scholars under international laws who had recognized that if the states are showing their interests in legalizing the usage of the certain acts of the surveillance under international laws then this will likely to mean that the states have the right to engage themselves in the conduct of the certain acts which are recognized as a legal under the international laws over the global platform. There are even certain evidences which had evinced the said fact that in order to secure the protection of their respective nations the sovereign leaders or the forerunners of the particular state had allowed the practice of certain surveillance activities which are forming the part and parcel of the espionage under international laws to be permissible under the similar branch of the same discipline under the head of international laws. Even the former president of U.S.A Barrack Obama had also brought into the limelight the significance of the above stated approach in the form of following

stated words,

“Few doubt the legitimacy of spying on hostile states. Though legitimacy and legality are not identical, this is a relatively bold affirmation that the United States spies, at least on non-friendly states. British Prime Minister David Cameron reportedly pointed out at a European Union summit that spying capabilities have prevented many terror attacks. The former French foreign minister, Bernard Kouchner, stated, “The magnitude of the eavesdropping is what shocked us. Let’s be honest, we eavesdrop too. Everyone is listening to everyone else.”

In order to support the above stated approach, the respective scholars had brought the evidences on the table signifying the approach by stating the fact that the act of one nation to enter into the agreement with that of another nation over the concept of spying largely signifies the fact that either the states allow the usage of such acts of the surveillance or it does not prohibit the said usage. In both the statements the response is affirmative in nature. To conclude one can, rely on the said fact that there are evidences which had evinced the presence of the affirmative response of the international laws permitting the usage of the certain acts of surveillance which forms the part and parcel of the espionage under international laws. However, there are certain other scholars who had placed their reliance on the present-day fact negating the pursuance of the acts of the surveillance which are forming the part and parcel of the espionage under the new branch of the international laws namely Air Laws.

V. The Question of Espionage Under Air Laws

The fact that whether the usage of the Unmanned Aerial vehicles, drones and other technologically advanced tools meant to be used for conducting the acts of the surveillance which forms the part and parcel of the espionage under Air Laws are permitted or prohibited under international laws is of grave importance. However, the significant convention namely the Hague Convention of 1899 brings into limelight the approach of the international laws with regard to espionage under Air Laws. The said convention states that “espionage involves the collection of information clandestinely or under false pretenses.”

In addition to this the said convention also describes that the commission of any acts which constitutes the activities of surveillance under international laws and therefore forms the part and parcel of the espionage under Air Laws falls within the ambit of the espionage as defined by the Hague Convention of 1899. It is also to be noted as stated by the author earlier as well that unless and until the operation of such tools of espionage is conducted within the territorial spheres of the particular nation and therefore does not hamper the radar of the target nation unlawfully, its usage is therefore to that extent is permissible under international laws. This will subsequently mean that the nations can make the use of unarmed civilian aircrafts as long as it is not interfering with the internal affairs of the target nations and thereby not infringing their territorial limits as well. Therefore, as long as the usage of the said tools for espionage in conducting in general and as far as to

the extent the said usage is understandable the said usage is permitted under international laws. The Hague Convention has further stressed on a point that the usage of the tools of the espionage is wrong per se only domestically rather not internationally. To complement the above stated assertion, Hague Convention had stated that the moment one nation aspires to make the usage of the high-altitude surveillance acts it therefore violates the domestic laws of the target nation thereby interfering within the internal matters of the respective nation. However, Hague Convention has also come up with the provision that if the acts of surveillance are planned to be committed during the peace time, then the said activities of surveillance cannot be considered as wrong under international laws. On a contrary if the commission of such acts which forms the part and parcel of the espionage under Air Laws is comparatively considered as in violation of the international laws. However, the International Customary Laws does not support the acts of surveillance neither in the times of peace nor during the times of war under international laws. Therefore, such act of surveillance which forms the part and parcel of the espionage under Air Laws is therefore condoned by the International Customary Laws. However, there are certain scholars who are of the view that the espionage is the act which is strictly prohibitive in nature under international laws. The reason behind this approach can be that such acts of surveillance violate the domestic law of that nations against which such acts of surveillance are committed by another nation.

VI. Conclusion

The world today is witnessing the intersection between the two-fold phenomenon. Primarily it was urged by the international community at large to make the use of electronic and technological advanced tools to gather the information and also act as a major source of communication amongst the common mass at large. Secondly the administrative wing of the concerned nations has come up with the stern policies to plumb the usage of the said technologically advanced tools. However, the basic idea behind the advent of these restrictive policies is to adhere to the principle non-interference over the global platform. Because sooner or later these resources indeed serving the communicative purpose have also begin to make their usages in the surveillance processes as well. This in turn has evinced to be of infringing nature across the international borders. Therefore, it can be concluded by saying that the usage of the acts forming the part and parcel of surveillance under Air Laws is permitted up to the extent it is not violating the domestic laws of the target nation. The moment it is found to be infringing nature then its practice is prohibited rather not allowable under the international laws.

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