

Abstract

According to the Geneva Convention 1949 and the Additional Protocol I of 1977, spy means “a member of the armed forces of a Party to the conflict, in the time of armed conflicts especially in the war on land, which may be the war between armed forces more than two states or between two internal factions in the same states.”

By all means, a member of the armed forces of a Party to the conflict, who is called a spy, secretly, in disguise or under false pretenses, seeks information in territory controlled by an adverse party or territory occupied by an adverse party with the intention of communicating it to the enemy.

However, it should be noted that although spies are a member of the armed forces, they are practically not in the uniform of the armed forces and don't carrying out their mission openly in the time of spy affairs, as a result they are not lawful combatants. Additionally, a member of the armed forces in any case that have a mission to obtaining the information of an adverse party should not be considered as spies, if they are captured by the enemy, for example, a member of the armed forces in reconnaissance mission or in the uniform.

In view of the legal status, any member of the armed forces of a Party to the conflict who falls into the power of an adverse Party while engaging in espionage shall not have the right to the status of prisoner of war since he disqualify to be lawful combatant and may be treated as a spy under municipal law of such State. In contrast, a spy who in the uniform of his armed forces or while he is not engaging in espionage, and if falls into the power of an adverse Party, should be considered lawful combatant and shall have the right to the status of prisoner of war.

It is also acknowledged that spy would not punished by Rome Statue of the International Criminal Court as a result of spy is not prohibited by the common law of war. However, it is generally accepted that spies shall be punished under the

military laws and criminal laws, considering by the state practices. Still, spy who falls in to the power of adverse party will be allowed to obtain fundamental guarantees, spies should be treated with humane treatment and humanely upon international humanitarian laws in all circumstance.

