
TABLE OF CONTENTS

<i>Acknowledgements</i>	<i>v</i>
<i>Table of Cases</i>	<i>xi</i>
<i>Table of Instruments</i>	<i>xxi</i>
Introduction	1
1. Background	1
2. The Argument.....	4
3. Chapter Overview	9
1. Defining Cyber Espionage.....	13
1. Introduction.....	13
2. The Intelligence Community	14
2.1. Sources of Information Collection.....	15
2.2. Open and Closed Sources.....	16
3. Cyber Espionage: The Copying of Confidential Data	17
4. Close and Remote Access Cyber Espionage	18
5. Secrecy and Cyber Espionage	19
6. Non-Consensual Information Gathering.....	20
7. Political and Economic Cyber Espionage and the Role of State and Non-State Actors.....	21
8. Cyber Espionage and International Law	25
9. Peacetime Cyber Espionage	26
10. Conclusion	27
2. Cyber Espionage and International Peace and Security	28
1. Introduction.....	28
2. Political Cyber Espionage.....	28
2.1. Realism.....	28
2.2. The International Society.....	31
2.3. Espionage and International Cooperation	36
3. Economic Cyber Espionage	41
4. Conclusion	46
3. Cyber Espionage and the Rules of Territorial Sovereignty, Non-Intervention and the Non-Use of Force.....	48
1. Introduction.....	48
2. The Rule of Territorial Sovereignty	49
2.1. Cyber Espionage and Control Over Cyber Infrastructure.....	51

viii *Table of Contents*

2.2. Cyber Espionage and the Performance of Inherently Governmental Functions.....	56
3. The Rule of Non-Intervention	61
3.1. <i>Domaine Réserve</i>	62
3.2. Coercion.....	63
4. The Prohibition on the Use of Force	65
5. Conclusion.....	68
4. Cyber Espionage and Diplomatic and Consular Law	70
1. Introduction	70
2. Cyber Espionage Against Diplomatic Missions and Consular Posts.....	71
2.1. The Inviolability of Diplomatic and Consular Premises.....	72
2.1.1. Premises.....	72
2.1.2. The ‘Special Duty’ to Protect Premises.....	77
2.1.3. Furnishings, Property and Means of Transport	80
2.2. The Inviolability of Archives and Documents	83
2.3. Freedom of Communication.....	86
3. The Use of Diplomatic Missions and Consular Posts for Cyber Espionage	89
3.1. Immunities for Diplomatic and Consular Officials.....	92
4. Conclusion.....	94
5. Cyber Espionage and International Human Rights Law	95
1. Introduction	95
2. The Extraterritorial Application of Human Rights Treaties	96
2.1. ICCPR	97
2.2. ECHR	101
3. The Right to Privacy.....	105
4. Restricting the Right to Privacy.....	109
4.1. In Accordance with the Law.....	109
4.1.1. Accessible	110
4.1.2. Foreseeable	110
4.1.3. Oversight	114
4.2. Legitimate Aim.....	116
4.3. Proportionality.....	119
5. Conclusion.....	121
6. Economic Cyber Espionage and the World Trade Organization	122
1. Introduction	122
2. Economic Cyber Espionage as a WTO ‘Measure’	125
2.1. ‘As Applied’ Challenge.....	125
2.2. ‘As Such’ Challenge	127

Table of Contents ix

3.	Nullification or Impairment of a Benefit	129
4.	Substantive Obligations under WTO Law	130
4.1.	Article 10 <i>bis</i> Paris Convention 1967	130
4.1.1.	Who Qualifies as a National?.....	131
4.1.2.	What Amounts to Unfair Competition?	132
4.1.3.	What Measures Must Members Adopt to 'Assure to Nationals' of Other Members 'Effective Protection' Against Unfair Competition?	135
4.2.	Article 39.2 TRIPS 1994.....	137
4.2.1.	Who Qualifies as a National?.....	137
4.2.2.	Article 39.2 and Trade Secrets	138
4.2.3.	The Nature of the Obligation Imposed by Article 39.2 TRIPS	139
4.2.4.	Extraterritoriality.....	140
5.	Non-Violation Complaints.....	141
6.	Conclusion.....	143
7.	Cyber Espionage and the Existence of Customary International Law Exceptions.....	145
1.	Introduction.....	145
2.	Customary International Law	148
3.	State Practice	149
3.1.	Duration.....	150
3.2.	Generality	150
3.3.	Uniformity	151
3.4.	Public Acknowledgment.....	152
3.5.	Assessment.....	155
4.	<i>Opinio Juris</i>	160
4.1.	Acquiescence and Protest	163
4.2.	National Legislation.....	167
5.	Conclusion.....	168
8.	Cyber Espionage and the Doctrines of Self-Defence and Necessity	170
1.	Introduction	170
2.	The Doctrine of Self-Defence	171
2.1.	Armed Attack	173
2.2.	Necessity	175
2.3.	Proportionality.....	177
3.	The Doctrine of Necessity	179
3.1.	Essential Interest	180
3.2.	A Grave and Imminent Peril	182
3.3.	No Other Means to Safeguard an Essential Interest.....	184

x *Table of Contents*

3.4. Non-Contribution	185
3.5. Balancing of Interests	187
4. Conclusion.....	190
Conclusion	191
<i>Bibliography</i>	196
<i>Index</i>	205