

Taking Care of Business: International Law and Industrial Cyber Espionage

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Typology of Espionage

- *Political*: state-sponsored, political information
- *Economic*: state-sponsored, economic information
- *Industrial*: corporate theft of confidential business information

National Security

- Companies inhabit a competitive economic environment
- Need to access competitors' strategies - public and confidential information
- Cost of industrial espionage
 - Loss of revenue
 - Depleted ambition
 - Loss of customers
 - Indirect costs (security, insurance etc.)

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- Companies essential to economic success of the state:
 - Create jobs
 - Pay taxes
 - Attract investment
- Economic security and national security closely linked
- Thus, threat to companies = threat to economic security = threat to national security

Cyber-Enabled Industrial Espionage

- Cyberspace resource rich environment
 - Remote Access
 - Anonymous
 - Risk free
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- Cyber-enabled industrial = enhanced threat to national security

Confronting Industrial Espionage

- National law = ineffective in cyber
- International law?
 - Expressive value of identifying a breach of international law
 - Countermeasures
- International law and non-state actors?
- Obligation to prevent transboundary harm (*Alabama, Corfu Channel*)
- Applicable to cyberspace? UN GGE (2015)

The Due Diligence Standard

- *Knowledge* is crucial
 - Actual: unlikely where the practice is secret i.e. espionage
 - Constructive: ‘should have known’
- *Resources* available to state (*Armed Activities*)
 - Differentiated responsibilities
 - Due diligence is a dynamic standard
 - Obligation to warn/notify at a minimum (*Corfu*)

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- *Risk:*
 - Gravity: what is the value of the information targeted? And what is the scale of the industrial espionage?
 - Likelihood of occurrence: is industrial espionage widespread and systematic?

Conclusion

- Non-binding agreements have been concluded
- Skepticism over their success
- The role of international law as a binding legal framework