

ICSANT 10th Anniversary Event

Vienna, 5 December 2017

Co-Chairs Summary

EXECUTIVE SUMMARY

On December 5, 2017, Canada in cooperation with the United Nations Office on Drugs and Crime (UNODC) hosted over 100 representatives from 47 countries in Vienna, Austria, for a meeting of States Parties and Signatories marking the 10th Anniversary of the Entry into Force of the International Convention for the Suppression of Acts of Nuclear Terrorism (ICSANT), a key legal instrument of the international nuclear security architecture. The discussions at this meeting demonstrated the importance of ICSANT for all States, emphasized key obligations under ICSANT, and highlighted synergies and differences with other relevant nuclear security legal instruments, namely the Convention for the Physical Protection of Nuclear Material (CPPNM) and its Amendment.

Participants shared information on national models for the implementation of ICSANT obligations, challenges and lessons learned related to implementation, as well as efforts to promote universal adherence to ICSANT. The exchange of experiences and best practices is part of a wider effort to universalize nuclear security legal instruments in order to forge a global nuclear security architecture that is not only strong and resilient, but also sustainable. In this regard, States Parties and Signatories were reminded of the importance of fostering strong communication and cooperation at regional and international levels, and that we are only as strong as the weakest link in the security chain in the effort to prevent and respond to nuclear terrorism, and that cooperation efforts among States should match the nature of the threat.

Meeting Overview

In light of the persistent and evolving worldwide threat of nuclear terrorism, mutually reinforcing national and international initiatives have been major priorities in the effort to enhance global nuclear security, given its trans-border nature. One such area of work includes strengthening legal frameworks that underpin and sustain a nation's nuclear security architecture. As a key legal element of the international nuclear security architecture, universal adherence to ICSANT remains an important goal.

On December 5, 2017, over 100 representatives from 47 ICSANT States Parties and Signatories met in Vienna, Austria to recognize the 10th Anniversary of the entry into force of ICSANT. The following summary provides an overview of the presentations and discussions at this meeting, which demonstrated the importance of ICSANT for all States, emphasized key obligations under ICSANT, and highlighted synergies and differences with other legal instruments. Participants also shared information on national models for the implementation of ICSANT obligations, challenges and lessons learned related to implementation, and ongoing efforts to promote universal adherence to ICSANT. Participants were provided with a practical take-home exercise that captured the meeting's scenario-based panel discussion, for participants to send back to capitals for consideration and use at the national level to help advance implementation efforts and national coordination.

Key Findings

1. All States must contend with the transnational nature of the threat posed by acts of nuclear terrorism. Universalization of the ICSANT and the CPPNM/A can benefit all countries by facilitating international cooperation, including the exchange of information on nuclear security threats and prosecution or extradition of suspects believed to have committed offenses within the meaning of the conventions.
2. There are important synergies between ICSANT and some of the key international legal instruments against nuclear terrorism, namely the CPPNM and its Amendment. Both conventions are complementary, as they are not sufficient on their own to effectively improve States' ability to address the threat posed by nuclear terrorism.
3. ICSANT addresses important threats not covered by the CPPNM and its Amendment, including acts of nuclear terrorism involving radioactive materials. This is particularly important since most countries use such materials for industrial, medical, or other purposes, including those without a nuclear program.
4. ICSANT, when fully implemented, provides a common, minimum baseline standard for legal frameworks on nuclear security. This can help deter terrorist acts and reduces the likelihood of safe havens for such acts. Relying on common definitions of acts associated with nuclear terrorism may also facilitate discussions and information sharing among law enforcement agencies. All these benefits grow more useful as more countries accede to and implement relevant nuclear security conventions, ICSANT in particular.
5. There are multiple ways to implement ICSANT and the CPPNM and its Amendment and their criminalization provisions into domestic laws. Models provided by other countries may provide guidance for States Signatories looking into the ratification and implementation process.
6. States Parties to ICSANT should designate and report competent authorities and liaison contacts to the United Nations per Article 7; paragraph 4: *"States Parties shall inform the Secretary-General of the United Nations of their competent authorities and liaison points responsible for sending and receiving the information referred to in the present article. The Secretary-General of the United Nations shall communicate such information regarding competent authorities and liaison points to all States Parties and the International Atomic Energy Agency. Such authorities and liaison points must be accessible on a continuous basis."* These points of contact are an essential element of the coordination mechanism among national and international stakeholders to ensure an effective response against acts of nuclear terrorism.
7. States Parties should also create and support opportunities for furthering dialogue between law enforcement, legal and technical experts, foreign affairs and liaison officers, and other relevant stakeholders on what, when, how, and with whom to exchange relevant information under ICSANT, including benefits and challenges of releasing sensitive information related to an investigations.
8. States Parties should consider building senior policymakers' awareness of the concepts of mutual legal assistance as noted in the treaty, to include national procedures for requesting and authorizing such assistance and, if applicable, significant differences between such

assistance in situations of nuclear terrorism versus any other types of investigation or judicial proceedings.

9. States Parties should ensure that criminalization penalties for acts involving the willful, unauthorized acquisition, possession, use, transfer or transport of radioactive materials are appropriately encoded into national law and should create opportunities to exchange information with partner countries on this subject specifically.
10. The UNODC, IAEA, UNODA and UNSCR 1540 Committee offer a wealth of resources to States Signatories to help them develop their national approach to ratifying the Convention and to implementing the provisions into their national legislation, accessible upon request. Resources and support also exist for non-signatory States wishing to accede to ICSANT.
11. States Parties should use the opportunity offered by the 2021 Review Conference of the Amended CPPNM to enhance complementarity in the implementation of the conventions and advance the universalization of ICSANT.
12. All States are susceptible to changing political priorities and are often constrained by limited resources. By integrating sustainability principles within States' national nuclear security strategies, States may better ensure that the nuclear security regime will continue to be effective over time and is ready to adapt to changing circumstances, internal and external.

Opening Session

1. The meeting was Co-Chaired by H.E. Heidi Hulan, Ambassador and Permanent Representative of Canada to the International Organizations in Vienna, and Mr. Mauro Miedico, Chief, a.i., Terrorism Prevention Branch, Division for Treaty Affairs at the UNODC. Mr. Yury Fedotov, the Executive Director of the UNODC, delivered additional welcoming remarks via video message. The Canadian and UNODC Co-Chairs conveyed their welcome to participating countries to commemorate the 10th anniversary of the 2007 entry into force of ICSANT and promote its universalization. The Co-Chairs explained that universalization efforts include the provision of expert advice, sharing best practices among State Parties and Signatories, and raising awareness about the available tools and resources to support ratification and implementation.

2. The Co-Chairs noted that countries must continue to work together to confront the threat of nuclear terrorism, including by extending the Parties to ICSANT beyond the over 100 nations that have joined the instrument to date. The Co-Chairs further underscored that the collective goal should be universalization and full and complete implementation of ICSANT, and that meetings such as this – which sustain and extend the “corporate memory” regarding the Convention and its objectives beyond the core Group of States having drafted this key nuclear security instrument – are an important part of the long-term effort on universalizing ICSANT and its provisions. Ambassador Hulan underlined the importance of fostering strong communication and cooperation between states and organizations at the regional and international levels, and that States are only as strong as the weakest link in the security chain, such that cooperation efforts must match the trans-border nature of the threat of nuclear terrorism.

Session 1: Overview of Key Obligations under ICSANT and Synergies and Differences with Other Legal Instruments

3. In Session 1, Mr. Mauro Miedico from the UNODC’s Division for Treaty Affairs moderated a panel focused on the key obligations under ICSANT, along with the synergies and differences ICSANT has with other legal instruments. The panel included Ms. Maria Lorenzo Sobrado, a Programme Officer and Focal Point for Chemical, Biological, Radiological and Nuclear (CBRN) Terrorism with UNODC, Ms. Christelle Drillat, from the Office of Legal Affairs at the International Atomic Energy Agency (IAEA), and Mr. Greg Koster, Legal Counsel from Canada’s Department of Justice. The panel underlined the complementary nature of the two Conventions and the critical importance of full implementation of the provisions of ICSANT and the Convention on the Physical Protection of Nuclear Material and its 2005 Amendment (CPPNM/A) into national law. The moderator emphasized the need for States Parties to each convention to nominate national points of contact for both instruments and provide that information to the UN and IAEA, respectively.

4. The UNODC provided an overview of the legal obligations under ICSANT. The IAEA supplemented this information with an overview of the complementary provisions in the CPPNM and its 2005 Amendment, especially as it related to criminalization requirements, jurisdiction, international cooperation, and definitions of key terms. Adherence to both instruments addresses gaps and reinforces the benefits from implementing each convention. The conventions include a number of complementary common elements, including: criminalizing and making punishable certain offenses; requiring states to establish jurisdiction under prescribed

conditions, including quasi-universal jurisdiction to deprive safe havens, and facilitating international cooperation.

5. ICSANT covers certain acts involving both nuclear and other radioactive material, which is an important distinction as radioactive materials, are widespread and commonly used by countries for industrial, medical, agricultural, or other purposes. ICSANT further calls for States to establish jurisdiction over a relevant offense in many instances, creating a system of quasi-universal jurisdiction. The Convention on the Physical Protection of Nuclear Material and its 2005 Amendment (CPPNM/A) has a complementary scope to the ICSANT, addressing, *inter alia*, physical protection requirements, transport security, and criminalizing the illicit possession of nuclear material irrespective of intent. In this way, the CPNNM/A lays the foundation for a minimum level of physical protection of nuclear material in domestic use, storage and transport and of nuclear facilities but does not focus on radioactive material.

6. Canada shared its national experience with legislative implementation of the criminal provisions found in ICSANT. This served as an illustrative example of the synergies between ICSANT and the CPPNM/A. Canada highlighted that the similar provisions across these two instruments were adapted into the Canadian legal code, with 38 criminalization requirements clustered into four broad offenses (e.g. “harm”, “compel”, “crime”, and “threat” offenses). Canada’s example further illustrated the complementary nature of the two Conventions.

Session 2: Scenario-Based Panel Discussion - Applying National Implementation Measures to Illicit Activities

7. Session 2 focused on the application of national implementation measures related to the provisions of ICSANT on the prosecution of illicit trafficking of nuclear and radioactive material, and was moderated by Mr. Koster. The session opened with a joint presentation by Slovakia and Canada on the outcomes of the 2017 “Vigilant Marmot” exercise. This exercise was co-hosted by the Government of Canada and the Republic of Slovakia under the auspices of the Global Initiative to Combat Nuclear Terrorism (GICNT), in Bratislava, Slovakia, in January 2017. In their presentation, Ms. Nathalie Semblat the Deputy Director for Nuclear and Radiological Security for Global Affairs Canada’s Weapons of Mass Destruction Threat Reduction Program and Mr. Ladislav Szakállos, a First Lieutenant from the Ministry of the Interior of the Slovak Republic, reported on the outcomes of the discussions during the event, which underscored the value of the CPPNM and its 2005 Amendment, ICSANT, and implementation of strong legal criminalization provisions to deter and successfully prosecute and adjudicate illicit trafficking of nuclear and other radioactive materials.

8. Co-presenters noted that participants in the “Vigilant Marmot” exercise felt that while there is no single correct way to implement the conventions on a national level, models provided by other countries and existing assistance mechanisms can provide guidance on national implementation. In reporting outcomes from the exercise and discussing next steps, participants supported continued international discussion and collaboration on implementation challenges, observing that the ambiguity surrounding key concepts not defined in the conventions, such as the credibility of a threat and intent, have important implications for invoking relevant provisions of the conventions and that effective and coordinated international response to a nuclear security incident is supported by universalization of these legal instruments.

9. The presentation was followed by a scenario-based panel discussion with four expert panelists: 1st Lt. Szakállos of Slovakia; Dr. José Luis Delgado Crespo, Deputy Director General

for Political Affairs, Ministry of Foreign Affairs of Mexico; Dr. Nobumasa Akiyama, from the Permanent Mission of Japan to the International Organizations in Vienna; and Mr. Jonathan Herbach, a Senior Policy Officer at the Ministry of Foreign Affairs in the Netherlands. The discussion focused on hypothetical scenarios in Slovakia, Mexico, Japan, and the Netherlands that illustrated the diversity of threats across regions, and the complicated legal considerations under ICSANT across different jurisdictions.

10. These considerations included questions over criminal intent, how communication across States Parties would unfold, sharing of evidence across jurisdictions, and prosecution across borders where terrorist or accomplice actors may fall under different jurisdictions that may or may not be ICSANT States Parties. Notwithstanding differences across States, there are common themes in the national implementation of ICSANT provisions, as a baseline for discussions for law enforcement, as well as common definitions that are key elements of the offenses. A take-home exercise that captured the scenario examined during the meeting was provided to participants for further thought and to possibly send back to capitals for consideration and use at the national level.

Session 3: Panel Discussion - Potential Models, Challenges, and Lessons Learned

11. Session 3 included presentations outlining national models for the implementation of ICSANT, and was moderated by H.E. Rafael Mariano Grossi, Ambassador of the Argentine Republic and Permanent Representative to the International Organizations in Vienna. The panel consisted of Ms. Patricia O'Brien, a Program Director for Nuclear Smuggling Detection and Deterrence at the Department of Energy of the United States of America, and Professor Lawrence Dim, Director-General and Chief Executive Officer at the Nigerian Nuclear Regulatory Authority.

12. Speakers shared challenges and lessons learned based on their national implementation experience. Professor Dim gave a presentation that summarized Nigeria's nuclear activities and explained the development of national measures since signing and ratifying the ICSANT in September 2012, including the establishment of a Nuclear Security Support Center and amending its *Terrorism Prevention Act (2011)* and *Terrorism Prevent Amendment Act (2013)*, to criminalize, investigate, and prosecute acts of terrorism. Professor Dim also noted the development of a national counter terrorism strategy that includes efforts to implement a framework for national-level coordination in preventing and responding to nuclear terrorism. Professor Dim flagged one of the key challenges in Nigeria's implementation of its ICSANT obligations was the domestic awareness and understanding of the gap in the existing legal framework and the necessity of amending the existing legislation on terrorism to take into account nuclear security. Professor Dim also suggested that steps should be taken to promote regional cooperation and mutual assistance in areas covered by the ICSANT through training and discussion, such as on extradition, information sharing and coordination of investigation efforts. He encouraged regional neighbors to engage on this issue and to consider working together and sharing information under the provisions of the ICSANT.

13. Ms. O'Brien focused on the role of national legal frameworks in institutionalizing and sustaining a State-level commitment to nuclear security, including by, *inter alia*, establishing and empowering competent authorities; providing continuity of human and financial resources; and establishing mechanisms for national and international coordination and cooperation. She noted that full implementation of ICSANT provisions should be promulgated through a national

legislative and regulatory framework that includes laws, regulations, administrative measures, and operational documents such as protocols for agency and interagency procedures in specific nuclear security situations.

14. Representatives from India and the Russian Federation intervened to note the success of the ICSANT since it opened for signature in 2005. Both emphasized that ICSANT strengthens the international legal framework to prevent, detect, deter, and respond to acts of terrorism by supporting implementation of national measures on criminalization and prosecution and provides a framework for international coordination and legal assistance to partner countries.

Session 4: Panel Discussion - Universal Adherence to ICSANT: International Efforts, Training, and Assistance Resources

15. Session 4 included a panel discussion moderated by Ambassador Hulan, focused on international efforts, training and assistance resources available to States seeking to improve national implementation of ICSANT provisions. Speakers in this session included Mr. Joaquin Zuckerman from UNODC, Mr. Scott Purvis of the IAEA Division of Nuclear Security, and Mr. Ismail Balla of the UN Office of Disarmament Affairs, representing efforts to support national implementation of the nuclear security architecture under UN Security Council Resolution 1540.

16. The UNODC provided examples of its assistance efforts to Member States in areas such as awareness-raising; assistance in drafting or reviewing national legislation; training of criminal justice and law enforcement officials on effective implementation of international legal instruments; and in enhancing international cooperation in criminal matters related to nuclear terrorism. The UNODC further noted its counter-terrorism legal training curriculum module on the international legal framework to counter chemical, biological, radiological and nuclear terrorism and added that it can also be found online.

17. The IAEA's Division of Nuclear Security has developed a comprehensive suite of technical assistance tools that support State implementation of obligations under ICSANT and other international legal instruments, upon request. These tools are open to all Member States. The IAEA also discussed its bilateral engagement with states through Integrated Nuclear Security Support Plans (INSSPs), which include a review of the implementation of the international legal instruments related to nuclear security and counter terrorism. The UNODA emphasized again the need for States that have signed or ratified ICSANT to take action to fully implement the provisions of ICSANT into their national legal codes. Participants were reminded of the importance of continuing their support for both the UNODC and IAEA in their effort to help States implement and universalize these complementary instruments.

Concluding Remarks

18. Co-Chairs Ambassador Hulan and Mr. Mauro Miedico expressed thanks to all participants for their active engagement throughout the day's event. Both expressed hope that the perspectives shared on the panels and discussions reviewing the implementation of ICSANT be useful to States' efforts to more effectively universalize these nuclear security instruments.

19. In reviewing the day's discussions, the Co-Chairs noted in particular the following areas for

future work:

- At the national level, while noting good progress in getting 112 States Parties since ICSANT was adopted in 2005, panelists reiterated the need for ICSANT universalization.
- States have important obligations under ICSANT, including the need to ensure its provisions are integrated into national legal codes, noting in particular the need to integrate appropriate criminalization provisions and the principle of extradition or prosecution into national legislation. (Note: ICSANT has both synergies and differences with other legal instruments, and countries should take into account these in national efforts to develop or improve national legal frameworks.)
- States Parties to ICSANT and CPPNM/A should nominate national points of contact for both legal instruments and provide that information to the UN and IAEA, respectively.
- States were asked to continue supporting both the UNODC and IAEA in their effort to help States implement and universalize these complementary instruments, and to make resources available in this regard.

20. The Co-Chairs emphasized that future efforts should also focus on collaboration to promote and improve the implementation of the international framework for combatting terrorism. They noted a need to identify models and implement mechanisms for sharing information and legal assistance under ICSANT.

21 The Co-Chairs suggested States Parties to the ICSANT should keep in mind the discussions in light of upcoming meetings on other key legal instruments related to nuclear security. In particular, in 2021, the IAEA will host the first Review Conference of the CPPNM/A, which will be an opportunity to review the implementation of the Convention, which has many shared provisions with ICSANT.

22. The two Co-Chairs welcomed the reaffirmation of participating Governments' support for ICSANT and for efforts to enhance and reinforce the global nuclear security architecture.

A note on procedures for ratification of ICSANT from the UN Office of Legal Affairs

As of the date of this meeting, December 5, 2017, ICSANT has 115 signatories and 112 Parties. The UN Secretary-General is the depositary of ICSANT, along with more than 560 multilateral treaties concluded in the framework of the UN. The Treaty Section of the UN Office of Legal Affairs, located in New York, is the sole office that discharges the depositary functions of the Secretary-General. This means that any instrument of ratification, acceptance, approval or accession must be sent to the Treaty Section (or the UN Legal Counsel or the Secretary-General himself) for its deposit with the Secretary-General. No other office may accept such instruments in deposit on behalf of the Secretary-General. The date of deposit, which will determine the entry into force of the Convention for the State, is the date of receipt by the Treaty Section (or the Legal Counsel or the Secretary-General). The Treaty Section website (<https://treaties.un.org>) also contains more general information on all the depositary functions of the Secretary-General.

As per the law of treaties, instruments of ratification, acceptance, approval or accession must be signed by the Head of State, Head of Government or Minister for Foreign Affairs, and must include the following: (a) the title, date and place of conclusion of the treaty concerned; (b) the full name and title of the signatory; (c) an unambiguous expression of the intent of the Government, on behalf of the State, to consider itself bound by the treaty and to undertake faithfully to observe and implement its provisions; (d) the date and place where the instrument was issued; and (e) the signature.

Model instruments of ratification, acceptance, approval or accession may be found on the Treaty Section's website at:
https://treaties.un.org/Pages/Resource.aspx?path=Publication/ModelInstruments/Page1_en.xml

Information concerning the status of the Convention, including the list of Parties, texts of declarations, reservations and objections, as well as the electronic certified true copy of the Convention, also may be found on the website of the UN Office of Legal Affairs, Treaty Section, at:
https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsq_no=XVIII-15&chapter=18&Temp=mtdsq3&clang=en