

PREVENTION AND SUPPRESSION OF TERRORIST AND OTHER CRIMINAL ACTS INVOLVING RADIOACTIVE SOURCES UNDER THE INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF ACTS OF NUCLEAR TERRORISM

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Abstract

The International Convention for the Suppression of Acts of Nuclear Terrorism is the only legally binding international agreement in the area of security of radioactive sources. Its main provisions include the criminalization of certain conduct involving radioactive sources and the establishment of jurisdiction over such offences. The Convention also facilitates international cooperation in this field. Given the transnational nature of the threat posed by nuclear terrorism and the impact of a terrorist or other criminal act involving radioactive material that could be suffered well beyond national borders, the universalization and the effective implementation of this Convention remains an important goal. The United Nations Office on Drugs and Crime has been providing a wide range of support in that regard, including outreach through national, regional and global workshops, legislative assistance, and capacity building for criminal justice officials. The Office drew several lessons from this considerable experience, which underline the importance of a tailored approach for a specific country or region; cooperation and coordination with other assistance providers; the usefulness of combining both legal and technical approaches; and the crucial role of training for criminal justice officials.

1. INTRODUCTION

Radioactive sources are in worldwide use and have a number of applications that are necessary to improve the quality of people's lives, including in the fields of agriculture, industry and medicine. The risk of radioactive sources being used for terrorist or other criminal purposes, however, is one of the greatest challenges of our time and can lead to potentially disastrous consequences for human health and life, property and environment. The International Convention for the Suppression of Acts of Nuclear Terrorism (ICSANT) [1] is the only legally binding international legal instrument in the area of security of radioactive sources.

2. SCOPE

ICSANT was adopted by the United Nations General Assembly in 2005 and entered into force two years later, after the twenty-second instrument of ratification was submitted to the depositary – the UN Secretary-General. The Convention has a broad scope of application, as specified in Article 1 which contains definitions of key terms. Firstly, it covers all radioactive sources and other radioactive material, which include those used or retained for both civil and military purposes. Secondly, nuclear facilities are also within the scope of ICSANT and include all types of nuclear reactors as well as “any plant or conveyance being used for the production, storage, processing or transport” of radioactive sources and other types of radioactive material. Thirdly, the Convention covers nuclear explosive devices as well as devices containing radioactive sources, such as radioactive material dispersal devices (RDDs) and radiation-emitting devices (REDs).

3. MAIN PROVISIONS AND BENEFITS OF JOINING

Apart from providing common definitions, ICSANT sets out a minimum baseline for legal frameworks on the security of radioactive sources and for combatting radiological terrorism. The key elements of this baseline include the following: the criminalization of certain conduct; establishing jurisdiction over such offences; international cooperation mechanisms; and preventive measures to ensure the security of radioactive material.

States Parties to ICSANT are required to criminalise several actions involving radioactive sources and associated facilities. Among others, these actions include the possession or use of radioactive sources, RDDs or REDs; making RDDs and REDs; and using or damaging nuclear facilities in a manner which releases or risks the release of radioactive material. To qualify as an offence under ICSANT, the conduct needs to satisfy three criteria. More specifically, it should be: unlawful (i.e., committed in the absence of a legitimate justification); intentional (i.e., committed deliberately); and committed with a specific intent, as provided for in the text of the Convention. Insofar as the actions listed above are concerned, the specific intent is to cause death, serious bodily injury or substantial damage to property or the environment, or to compel a natural or legal person, an international organization or a State to do or refrain from doing an act (so called terrorist motivation).

Alongside the criminalization provisions, ICSANT provisions on jurisdiction help reduce the existence of safe havens for criminalised acts and their perpetrators. In particular, every State Party is obliged to establish jurisdiction over the offences referred to above when, among others, they are committed in the territory or by a national of that State. Furthermore, the Convention reduces the risk of impunity for perpetrators by requiring a State Party, in the territory of which the alleged perpetrator is present, to either prosecute or extradite her/him to another State Party that claims jurisdiction over the offence. Taken together, the aforementioned provisions help magnify the deterrent effect on potential perpetrators.

Cooperation among States is crucial for combatting radiological terrorism. For example, an offence may be committed in one country by a national of another country who eventually is arrested and detained in a third country. ICSANT thus contains provisions that facilitate international cooperation in several areas, such as information sharing on preparations or commission of offences; investigation of offences; criminal and extradition proceedings; and seizing control of or otherwise handling radioactive sources which were the object of an offence.

Lastly, the Convention reinforces the need for the establishment of a strong national nuclear security regime and requires States Parties to “take every effort to adopt appropriate measures to ensure the protection of radioactive material” in line with relevant recommendations and functions of the International Atomic Energy Agency (IAEA).

In addition to reducing the likelihood of safe havens for offences involving radioactive sources and their perpetrators, the harmonization of legislation across jurisdictions, and enhanced international cooperation, there are several other benefits that States can derive as a result of joining ICSANT. Firstly, a national legal framework based on the Convention enhances national, regional and international security. Secondly, ICSANT is complementary to other two main international legal instruments in the field of nuclear security – the Convention on the Physical Protection of Nuclear Material (CPPNM) [2] and its Amendment [3]. As previously mentioned, ICSANT has a broader scope of application which, among others, covers, in addition to nuclear material, radioactive sources in civilian and military use as well as associated facilities. Thirdly, ICSANT provisions offer common definitions and require States Parties to adopt minimum standards in the field of security of radioactive sources, based on IAEA guidelines. In general, the Convention is to be considered not as a limitation, but rather as a baseline upon which States Parties may adopt additional measures at their discretion in order to enhance their legal framework against radiological terrorism.

Joining ICSANT also benefits States by contributing to their compliance with obligations under several UN Security Council resolutions (UNSCRs), such as UNSCRs 1373 [4] and 1540 [5]. For example, operative paragraph 2 of the former resolution requires Member States to “deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens”, ensure that these terrorist acts are considered as “serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts,” and ensure that those participating in such acts are brought to justice. Under UNSCR 1540, States have an obligation to establish and enforce laws prohibiting non-State actors to “manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery” for terrorist and other purposes, as well as finance or otherwise contribute to these activities.

4. CHALLENGES TO UNIVERSALIZATION AND EFFECTIVE IMPLEMENTATION

While in force since 2007, ICSANT still lacks universal adherence and currently counts with 118 States Parties. As long as ICSANT is not universally implemented, it is hard to achieve the aim of ensuring that there is no safe haven for terrorists or other criminals using radioactive sources and other radioactive material. The United Nations Office on Drugs and Crime's (UNODC) long experience of interaction with a large number of States shows that there are three major groups of challenges preventing States from joining the Convention: lack of political will, awareness and resources.

For some States, joining ICSANT may fall in line long behind other, more pressing priorities. These include, for example, overcoming consequences of long-lasting political turmoil and building a sustainable political system; resolving conflicts with neighbouring countries; and fighting extreme poverty and ensuring economic development in general. The lack of political will may also be manifested through the absence of a national authority or officials that would push forward with the adherence to ICSANT. This factor may be complicated by intervening parliamentary elections or changes in government. Given that the process of joining the Convention may require coordination and cooperation among numerous stakeholders, the role of such advocates is crucial.

Many States are not aware, or lack proper understanding of, ICSANT provisions. For example, there are often misconceptions that States with no high-activity radioactive sources or nuclear material or facilities are safe from acts of nuclear terrorism, or that becoming a party to the Convention would entail a considerable financial burden. Furthermore, the plethora of international legal instruments against terrorism (currently nineteen), many of which have similar and sometimes overlapping provisions, may cause complacency on part of States. Some States may therefore be mistakenly convinced that provisions on criminalization, establishing jurisdiction, extradition and other provisions adopted under another legal instruments are sufficient to cover cases of nuclear and radiological terrorism.

One of the roadblocks for joining ICSANT is limited resources and capacity within a country. In this context, States often refer to a lack of human resources (including high turnover of staff), financial or technical capacity for incorporating ICSANT provisions into national legislation or effectively enforcing them. Sometimes there is no sufficient knowledge or no other resources for offering training opportunities to national officials who would be in charge of implementing ICSANT. Lack of awareness of internationally available assistance only reinforces the negative impact.

Many of ICSANT States Parties still face difficulties in effectively implementing its provisions. The most cited reasons in this context are outlined above and include the existence of competing priorities, lack of capacity and resources at the national level.

5. UNODC ASSISTANCE

International efforts play a crucial role in assisting States to overcome the above-mentioned challenges. UNODC is the key assistance provider with regard to ICSANT and is currently implementing two relevant projects in the field of radiological security. One project, funded by the European Union and jointly implemented with the UN Office of Counter-Terrorism, promotes the universalization and effective implementation of ICSANT. Another project, funded by Canada, supports the universalization of international legal frameworks related to nuclear security, including ICSANT, CPPNM and its 2005 Amendment.

UNODC has been conducting a panoply of activities aimed at universalising ICSANT and enhancing the effectiveness of its implementation among UN Member States. The promotion of adherence can take the form of national, regional and international seminars and workshops, webinars as well as country visits and expert missions. Given the complementarity and synergies among ICSANT, the CPPNM and its Amendment, some outreach events cover all these instruments and benefit from the long-standing and fruitful cooperation between UNODC and the IAEA – within their respective mandates. One example is the first joint seminar to promote the universalization of the CPPNM Amendment and ICSANT, which was held in Vienna, Austria, in November 2021.

A wide array of training tools developed by UNODC have contributed to increased awareness of ICSANT and improved capacity of the criminal justice systems of its States Parties to effectively criminalise, investigate, prosecute and adjudicate cases of nuclear terrorism. Technical assistance tools related to ICSANT, and to the

international legal framework against radiological and nuclear terrorism in general, include a legal training curriculum module, eLearning modules, a webinar series, a manual of fictional cases, and a mock trial. UNODC also launched a website entirely dedicated to ICSANT (www.unodc.org/icsant), which is available in all six official UN languages and hosts all relevant information and existing resources on the Convention. Lastly, UNODC conducts – upon request - reviews of national legislation adopted in implementation of ICSANT's criminalization provisions.

6. LESSONS LEARNED

The vast experience accumulated by UNODC in providing technical assistance to UN Member States makes it possible to draw several lessons learned regarding international efforts to facilitate universalization and effective implementation of ICSANT. First, different States and regions often have varying priorities, resources and levels of preparedness as concerns adherence to, and implementation of, ICSANT, not to mention varying security threat landscapes. A tailored approach for a specific country or region is therefore instrumental for providing effective and efficient assistance.

Second, cooperation and coordination with the IAEA and other technical assistance providers is crucial. Leveraging each other's expertise and joining forces in the pursuit of a common goal help maximise resources, avoid overlaps and fast-track the achievement of results.

Third, ICSANT provisions are of a complex nature and contain technical definitions and requirements to introduce nuclear security measures, among other things. States also need to take into account the complementary and mutually reinforcing provisions of the CPPNM and its Amendment, when it comes to implementing ICSANT. Hence the need to combine both legal and technical approaches to outreach and capacity building activities, and to engage the whole spectrum of national stakeholders: parliamentarians, criminal justice actors (judges, prosecutors, law enforcement officers), representatives of several ministries (justice, interior, foreign affairs), and nuclear regulatory authorities – to name a few.

Fourth, it is important to offer training opportunities to criminal justice officials so that they could familiarise themselves with issues related to a field (radiological security) which might at first appear complex and not easy to grasp.

7. CONCLUSION

Security of radioactive sources is not a destination, rather a continual path of constant enhancements and improvement. By seeking to establish a common legal framework, ICSANT lays down a solid foundation for this path. By joining forces around this framework, States, UNODC and other relevant international stakeholders can work together towards a world free of radiological terrorism.

REFERENCES

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