



MODEL PROVISIONS ON NUCLEAR SECURITY, PHYSICAL PROTECTION AND ILLICIT TRAFFICKING

The model criminal provisions set out in this document cover the offences set forth in the International Convention for the Suppression of Acts of Nuclear Terrorism (ICSANT) and in the Convention on the Physical Protection of Nuclear Material (CPPNM) and the Amendment thereto, and as such were prepared jointly with the International Atomic Energy Agency.

The rationale for the merger is that the offences to be found in these Conventions deal with the same offences to a great extent. This document addresses them in an integrated and coordinated manner.

General suggestions for legal drafters

1. Definitions should be set out in the first part of the respective national law.
2. Ancillary offences such as attempt, participation, contribution and other ancillary conduct should also be incorporated in the relevant offences.
3. The following acts may be criminalized by referring to either radioactive or nuclear material, taking into consideration:
 - That the definition of ‘radioactive material’ in the ICSANT includes ‘nuclear material’;
 - That the CPPNM only requires States Parties to establish as offences acts committed in relation to “nuclear material used for peaceful purposes”, whereas the ICSANT has an expanded scope of application covering “radioactive material” in general.

Article ##. Handling of Radioactive/Nuclear Material and Devices

(1) Whoever, without lawful authority, receives, possesses, transfers, alters, or disposes of radioactive/nuclear material or possesses a device:

(a) with the intent to cause:

(i) death or serious bodily injury; or

(ii) substantial damage to property or to the environment; or

(b) which causes or is likely to cause death or serious injury to any person or substantial damage to property or to the environment shall be punished with penalties which take into account the grave nature of those offences.

(2) Whoever commits:

(a) a theft or robbery of radioactive/nuclear material;

(b) an embezzlement or fraudulent obtainment of radioactive/nuclear material;

(c) an act which constitutes the carrying, sending, or moving of radioactive material into or out of a State without lawful authority shall be punished with penalties which take into account the grave nature of those offences.

(3) Whoever threatens to commit an offence set forth in para. 2(a) of this Article in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act shall be punished with penalties which take into account the grave nature of those offences.

(4) Whoever demands radioactive/nuclear material or a device by threat, or by use of force, or by any other form of intimidation, under circumstances which indicate the credibility of the threat shall be punished with penalties which take into account the grave nature of those offences.

NOTE: The specific intention to “cause death or serious bodily injury”, etc., contained in para. 1(a), reflects language used in the ICSANT. Such intention is not found in the CPPNM, which requires, instead, that the acts in question “cause or are likely to cause” such death, injury or damage. The intent language used by the CPPNM is reflected in para. 1(b). States that are Parties to both ICSANT and the CPPNM are advised to adopt both paras 1(a) and 1(b) for full consistency with their overall treaty obligations.



States that are Party to only one of the two legal frameworks should choose either para. 1(a) or 1(b), depending on which convention they are bound by. The meaning of 'device' appears in Article 1.4 of the ICSANT.

Article ##. Use of Radioactive/Nuclear Material

(1) Whoever, without lawful authority, uses or disperses in any way radioactive/nuclear material or uses or makes a device:

(a) with the intent to cause:

- (i) death or serious bodily injury; or*
- (ii) substantial damage to property or to the environment; or (b) to compel a natural or legal person, an international organization, or a State to do or refrain from doing an act; or (c) which causes or is likely to cause death or serious injury to any person or substantial damage to property or to the environment shall be punished with penalties which take into account the grave nature of those offences.*

(2) Whoever threatens to commit the offence set forth in para. (1) of this Article shall be punished with penalties which take into account the grave nature of those offences.

NOTE: See commentaries to the previous article. In addition, for reasons related to the legal practice followed by a number of States, it is proposed to deal with 'handling' and 'using' offences in two separate articles. This preference is also motivated by the fact that some States might prefer to apply different sets of penalties, lighter in the case of 'handling' and more severe in the case of 'using'. States may of course decide otherwise, and regroup all of the relevant offences according to their specific criminal policies and legal structures.

Article ##. Offences Relating to Nuclear Facilities

(1) Whoever uses or damages a nuclear facility, interferes with its operation, or commits any other act directed against a nuclear facility in a manner which releases or risks the release of radioactive material:

(a) with the intent to cause:

- (i) death or serious bodily injury; or*
- (ii) substantial damage to property or to the environment; or*

(b) with knowledge that the act is likely to cause death or serious injury to any person or substantial damage to property or to the environment by exposure to radiation or release of radioactive substances (unless the act is undertaken in conformity with the national law of the State Party in the territory of which the nuclear facility is situated),

(c) to compel a natural or legal person, an international organization or a State to do or refrain from doing an act shall be punished with penalties which take into account the grave nature of those offences.

(2) Whoever threatens to commit an offence set forth in para. (1) of this Article shall be punished with penalties which take into account the grave nature of those offences.

(3) Whoever demands a nuclear facility by threat or by use of force or by any other form of intimidation, under circumstances which indicate the credibility of the threat shall be punished with penalties which take into account the grave nature of those offences.

NOTE: The proposed article contains the criminalization requirements of the ICSANT in relation to 'nuclear facilities'.

To the extent that States choose to implement the ICSANT only, the term 'nuclear facility' is taken to mean, as a minimum:

- Any nuclear reactor, including reactors installed on vessels, vehicles, aircraft or space objects for use as an energy source in order to propel such vessels, vehicles, aircraft or space objects or for any other purpose;

- Any plant or conveyance being used for the production, storage, processing or transport of radioactive material.

The above definition of 'nuclear facility' differs from the one contained in the Amendment to the CPPNM, which includes:



“[A] facility (including associated buildings and equipment) in which nuclear material is produced, processed, used, handled, stored or disposed of, if damage to or interference with such facility could lead to the release of significant amounts of radiation or radioactive material”.

The difference in the definition of ‘nuclear facility’ would have practical as well as legal implications in respect of paras (1)(b) and (3) above.

It should also be noted that the Amendment to the CPPNM introduces the definition of ‘sabotage’ as any deliberate:

“[A]ct directed against a nuclear facility or nuclear material in use, storage or transport which could directly or indirectly endanger the health and safety of personnel, the public or the environment by exposure to radiation or release of radioactive substances.”

Such acts are considered offences in accordance with the Amendment to the CPPNM unless the act is undertaken in conformity with the national law of the State Party in the territory of which the nuclear facility is situated.

Establishing jurisdiction Article ##. Jurisdiction

[Name of State] shall have jurisdiction over the offences set forth in [cite relevant article] as follows:

- (a) When the offence is committed within the territory of [name of State] or on board a ship or aircraft registered in [name of State];*
- (b) When the alleged offender is a national or permanent resident of [name of State];*
- (c) When the alleged offender is present in the territory of [name of State] and is not extradited to any other State asserting jurisdiction;*
- (d) When an act is done outside [name of State] if the act is done in the course of international transport of nuclear material in a case where it is the State where the shipment originates or the State of ultimate destination.*

NOTE: As regards international nuclear transport, the State where the shipment originates (exporting State) and the State of ultimate destination (importing State) should have the same respective meanings as they have in the CPPNM.

Extradition Article ##. Extradition (for States Requiring an Extradition Treaty)

The offences set forth in [cite relevant article] shall be considered as extraditable offences pursuant to any extradition treaty between [name of State] and any other State or between [name of State] and any State Party to the Convention on the Physical Protection of Nuclear Material and its Amendment.

Article ##. Extradition (for States Not Requiring an Extradition Treaty)

The offences set forth in [cite relevant article] shall be considered as extraditable offences, subject to the laws and procedures of [name of State].

Article ##. Penalties

Links to examples of penalties imposed for the commission of any of the offences cited above can be found on UNODC’s SHERLOC website:

<https://sherloc.unodc.org/cld/v3/sherloc/>