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United Nations Office on Drugs and Crime

**FICTIONAL CASES RELATED
TO OFFENCES UNDER THE
International Convention for
the Suppression of Acts of
Nuclear Terrorism (ICSANT):
A MANUAL**



UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

Fictional Cases related to Offences under the International Convention for the Suppression of Acts of Nuclear Terrorism: a Manual



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Introduction

The International Convention for the Suppression of Acts of Nuclear Terrorism was opened for signature in 2005 and entered into force in 2007. It requires each State party to adopt such measures as may be necessary to establish as criminal offences under its national law certain specified offences relating to the possession, use or threat of use of nuclear or other radioactive material or a device and damage to nuclear facilities in a manner that releases or risks the release of radioactive material with the intent to cause death or serious bodily injury or substantial damage to property or to the environment. It also requires each State party to adopt such measures as may be necessary to establish as criminal offences under its national law certain specified offences relating to the threat of use of or unlawful demands for access to nuclear and other radioactive material or nuclear facilities. Further, it obligates States parties to establish jurisdiction over the offences under certain circumstances and to afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set out in the Convention.

Cooperation under the Convention includes exchanging information in accordance with national law related to the detection, prevention, suppression and investigation of offences set out in the Convention. The Convention also requires States parties to take certain measures related to the handling of radioactive material, devices and facilities seized following the commission of an offence set forth in the Convention.

The International Convention for the Suppression of Acts of Nuclear Terrorism is one of the various instruments that make up the global nuclear security regime. The global nuclear security regime also comprises, among others, the Convention on the Physical Protection of Nuclear Material and the Amendment thereto. Each instrument focuses on different threats posed to nuclear security. Although sometimes overlapping, the various legal instruments complement and supplement each other. An understanding of how the different instruments work together is best achieved from an analysis of their distinctive areas of focus. In the case of the International Convention for the Suppression of Acts of Nuclear Terrorism, the focus is intentional and unlawful conduct involving nuclear or other radioactive material, radioactive devices or nuclear facilities, with a certain intent.

The activities that constitute criminal conduct under the International Convention for the Suppression of Acts of Nuclear Terrorism are set forth in its article 2. Although the offences described in that article are set out in four distinct provisions, there are numerous different activities that would fall within its scope and, as such, are criminal offences under the Convention. Given the requirements for cooperation under the Convention, harmonizing the criminalization of the offences established by the Convention across different jurisdictions is fundamental for its effective implementation.

It is important to bear in mind two essential elements underlying every criminal offence under the Convention: (a) the general intent to carry out the activity described in the Convention as an offence; and (b) the special intent to cause harm with such activity. Any activity carried out without both types of intent may qualify as a criminal offence under another instrument, but would not be an offence under the Convention. Thus, criminal activities that are carried out either without the intent to carry out such activities or without the intent to cause the harm specified in article 2 of the Convention with such activities would not qualify as offences under the Convention, even if serious harm were to have been caused. Ascertaining intent is thus fundamental to prosecuting offences under the Convention.

The present manual is focused on article 2 of the Convention and the various types of conduct that States parties to the Convention need to criminalize under national law are examined in detail. An analysis is provided of fictional cases designed to illustrate the main elements of the offences established by the Convention.

Exercises will consist of: (a) a concise description of a fictional case focused on a distinctive feature of the Convention; (b) a series of questions; and (c) an analysis of the case in the form of answers to the questions posed.

Terms defined under the Convention shall be understood to have the meanings ascribed to them under the Convention.

Definitions

The present section provides several definitions as specified in article 1 of the International Convention for the Suppression of Acts of Nuclear Terrorism, accompanied by additional comments. Given the similarities between the Convention and the Convention on the Physical Protection of Nuclear Material and the Amendment thereto, definitions provided in the latter will also be considered.

Device

“Device” means:

- (a) Any nuclear explosive device; or
- (b) Any radioactive material dispersal or radiation-emitting device which may, owing to its radiological properties, cause death, serious bodily injury or substantial damage to property or to the environment.

Under the International Convention for the Suppression of Acts of Nuclear Terrorism, a device is to be understood in conjunction with radioactive substances and its ability to disperse radioactivity.

Nuclear facility

“Nuclear facility” means:

- (a) 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;
- (b) Any plant or conveyance being used for the production, storage, processing or transport of radioactive material.

The definition of a nuclear facility in the International Convention for the Suppression of Acts of Nuclear Terrorism is different from the definition in the Amendment to the Convention on the Physical Protection

of Nuclear Material.¹ It is broader, as it is not limited to a reactor or facility located on a particular site and includes any conveyance used for the storage and transport of nuclear material. For example, a vehicle transporting radioactive sources to a hospital would be considered a “nuclear facility” under the International Convention for the Suppression of Acts of Nuclear Terrorism but not under the Amendment to the Convention on the Physical Protection of Nuclear Material.

Nuclear material

“Nuclear material” means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore residue; or any material containing one or more of the foregoing;

Whereby “uranium enriched in the isotope 235 or 233” means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.

The same definition is ascribed to the term “nuclear material” under the Convention on the Physical Protection of Nuclear Material.

Radioactive material

“Radioactive material” means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment.

Each of the following qualifications translate into qualifications of quality and quantity and thereby exclude material with radiological or fissile properties which are not likely to cause significant harm:

- (a) “and which may cause” (i.e. a mere probability suffices);
- (b) “owing to their radiological or fissile properties” (i.e. these properties must be the cause of harm);
- (c) “serious injury or substantial damage”.

¹ In the Amendment, “nuclear facility” is defined as 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.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:
 - (a) Possesses radioactive material or makes or possesses a device:
 - (i) With the intent to cause death or serious bodily injury; or
 - (ii) With the intent to cause substantial damage to property or to the environment;
 - (b) Uses in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material:
 - (i) With the intent to cause death or serious bodily injury; or
 - (ii) With the intent to cause substantial damage to property or to the environment; or
 - (iii) With the intent to compel a natural or legal person, an international organization or a State to do or refrain from doing an act.
2. Any person also commits an offence if that person:
 - (a) Threatens, under circumstances which indicate the credibility of the threat, to commit an offence as set forth in paragraph 1 (b) of the present article; or
 - (b) Demands unlawfully and intentionally radioactive material, a device or a nuclear facility by threat, under circumstances which indicate the credibility of the threat, or by use of force.
3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.
4. Any person also commits an offence if that person:
 - (a) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of the present article; or
 - (b) Organizes or directs others to commit an offence as set forth in paragraph 1, 2 or 3 of the present article; or
 - (c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

SCENARIOS

Each of the following scenarios is designed to illustrate distinctive features of the criminalization requirements under the International Convention for the Suppression of Acts of Nuclear Terrorism. Although the scenarios are fictional, some descriptions of access to radioactive materials are based on actual events.

I. Unlawful and intentional (article 2 (1))

Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally: [...]

➤ **Scenario I.A.** Four armed persons from country XYZ hijacked a private truck that had stopped at a gas station. On the outside of the truck there were no visible indications of the contents or that the truck contained hazardous materials. The truck, however, was carrying a heavy piece of machinery used in cancer treatment from a hospital to a radioactive waste storage facility located near the border with country ABC. The theft set off global alerts because the stolen equipment contained a highly radioactive cobalt-60 source. There were fears that the source could be used in the making of a dirty bomb if it was acquired by terrorists.

Within hours, officials from country ABC announced that the material had been located in the country's territory, some kilometres past the border with country XYZ. The thieves were arrested.

From past police records and upon thorough investigation, police officials could establish that the thieves were common criminals who made a living from the resale of stolen goods.

1. Was the possession by the thieves of the cobalt-60 radioactive source intentional?
 2. If the answer to question 1 was affirmative, would the theft qualify as an offence within the meaning of the Convention if the thieves were planning to resell the stolen equipment to a scrap metal dealer?
-

➤ **Scenario I.B.** After months of rummaging through scrap metal yards in neighbouring countries, a group of terrorists from country XYZ who were interested in obtaining radioactive material to make a dirty bomb managed to find an old radioisotope thermoelectric generator in a scrap metal yard near the border of country ABC. The generator contained radioactive strontium-90.

The terrorists purchased the generator from the scrap metal dealer, disassembled it and were in the process of building a radioactive dispersal device when their hideout in country XYZ was raided by police. The terrorists were all arrested.

The police had been alerted about the group some months before, when its members had first started looking through scrap yards and questioning employees. The police had been monitoring the group's members and their activities ever since. The members were known in their village for their intimidating conduct, which often involved violence or threats of violence.

1. Does the fact that the terrorists purchased abandoned equipment from a scrap dealer make their possession of the radioactive material located inside the equipment lawful?
 2. Is the making of a dirty bomb sufficient proof of the intention to cause death, serious bodily injury or substantial damage to property or the environment?
-

➤ **Scenario I.C.** News began to spread in the village about some peculiar material that had been found by one of the villagers. Person1 had been walking through an abandoned building when he came across a room filled with old medical equipment. Among the equipment was a sophisticated-looking, albeit old, machine that attracted his curious mind. With the help of friends, Person1 disassembled the machine and, after much effort, managed to free what appeared to be a battery. The battery had been perforated during the retrieval efforts and a deep blue light could be observed from one of the holes. Using a screwdriver, Person1 pried open a slot on the capsule and was able to retrieve some of the glowing contents. Soon afterwards, Person1 and his friends became very ill. Families of those affected began to speculate that the material had supernatural evil powers as contact with the capsule and its contents had had such a serious effect.

Person2, one of the family members of Person1, decided to go to the abandoned building and take some of the contents of the capsule. Aware of its potential to cause harm and of the potential danger, Person2 took precautions to shield herself when collecting contents from the capsule. Person2 subsequently placed small amounts of the material found in the capsule in an envelope and sent the envelope inside a small package addressed to the consul of country ABC, which had recently denied her visa application.

The package arrived at the consulate the following day where it was opened by the consul's secretary. He immediately reported the bizarre package to the authorities who, after conducting some analysis, detected traces of caesium137. Shortly thereafter, the consul's secretary fell gravely ill, and died the following month.

When Person2 was apprehended, she was in complete shock. She said that she had had no intention of causing death with her actions.

1. Does the fact that Person2 did not know that the material in question was radioactive and only stole it because of its alleged supernatural evil powers still qualify under the Convention as intentional possession or use of radioactive material?
2. What indications, if any, are there of Person2's intent to cause death or serious bodily injury?

II. Possession (article 2 (1) (a))

Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally possesses radioactive material or makes or possesses a device: (a) with the intent to cause death or serious bodily injury; or (b) with the intent to cause substantial damage to property or the environment [...]

➤ **Scenario:** Six armed persons from country XYZ seized a private truck that had stopped at a gas station. The thieves had been tipped off that the truck was carrying two pieces of equipment used in cancer treatment and containing caesium-137 from a hospital to a radioactive waste storage facility located near the border with country ABC.

The thieves were part of a criminal organization that engaged in legitimate commercial activities, such as tourism and domestic trade, to mask their illicit activities. The criminal organization had long sought to obtain radioactive sources in order to extract the contents and dump them into a river used as source water for a treatment plant in country ABC. The aim was to create panic and chaos in country ABC, which was in constant conflict with their own country, XYZ. The authorities of country XYZ and the authorities of country ABC were notified of the theft.

Within hours, officials from country ABC announced that the material had been located in the territory of country ABC, some kilometres past the border with country XYZ. The thieves were arrested.

Following extensive investigations, police officials were able to determine that the thieves had intended to dump the radioactive content of the source into the river in order to contaminate the water supply of country ABC.

1. Is mere possession (i.e. possession not followed by any subsequent actions) an offence under the Convention?
 2. As the criminal act was suppressed before execution, is the application of the Convention still relevant?
-

III. Use (article 2 (1) (b))

Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally uses in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material: (a) with the intent to cause death or serious bodily injury; or (b) with the intent to cause substantial damage to property or the environment; or (c) with the intent to compel a natural or legal person, an international organization or a State to do or refrain from doing an act.

↳ Scenario:

In country XYZ, which lacked a proper radioactive waste management infrastructure, a group of environmental activists from neighbouring country ABC had been monitoring the activities of an irradiation facility. They had insider information on the exact location of equipment at the facility.

Taking advantage of a holiday season and reduced security measures, the activists managed to break into the facility and steal a calibration device.

They then took it to the building of the nuclear regulatory authority of country XYZ and demanded that the authorities ensure proper disposal of the device as well as of the remaining disused calibration equipment located at the facility. The activists were subsequently arrested.

The activists had no prior police records and further investigation established that they had committed the theft to prove the vulnerabilities of the facility's physical protection measures and the inadequate waste management infrastructure of country XYZ.

1. Do the actions described in the scenario qualify as the offence of use of radioactive material or do they fall under the offence of possession of radioactive material? Otherwise, could they be both? Alternatively, do the actions not qualify as an offence under the Convention?
 2. Is the willingness to assume the risk of causing harm equivalent to the intent of causing harm for the purposes of the Convention?
-

IV. Credible threat (article 2 (2))

Any person also commits an offence if that person threatens, under circumstances which indicate the credibility of the threat, to commit an offence as set forth in paragraph 1 (b) of the present article.

↳ **Scenario:** Three members of Movement1 in country ABC made global headlines for breaking into a military facility believed to be one of the most secure facilities in the world. The facility was devoted to the fabrication and storage of weapons-grade uranium and had in place strict security measures, including extensive video-surveillance devices, motion detectors, perimeter fences and hundreds of security officers.

Concerned by the episode in country ABC, Professor1, a university professor of nuclear physics in country DEF, started questioning the physical protection measures of nuclear facilities in neighbouring country XYZ, which also possessed nuclear weapons. Professor1 doubted that country XYZ had in place even a third of the security measures of country ABC.

She started writing letters expressing her concern to governmental authorities in country XYZ. After months of waiting for a response, Professor1 approached different non-governmental organizations and leaders of activist movements, including Movement1, encouraging them to support her cause. The leader of Movement1 considered it a perfect opportunity to expand the movement worldwide and agreed to co-sign a letter to the Government of country XYZ.

In the letter, Professor1 and Movement1 gave the Government a two-month deadline to take effective measures to begin the process of eliminating the nuclear weapons of country XYZ. They also warned that failure to take the requested measures would result in security breaches throughout the country's nuclear facilities. Their stated aim was to expose the country's inadequate security measures, even if that meant risking the release of radioactive substances in the process.

1. Is there a distinction between the general concept of a credible threat and a threat within the meaning assigned to the term under the Convention, i.e. a threat made under circumstances that indicate the credibility of the threat?
 2. Which of the following additional information, if any, would be needed for the threat to qualify as an offence under the Convention?
 - (a) Information on Professor1's affiliations, friends and family status that point to radical beliefs;
 - (b) Police records or any employment records indicative of Professor1's conduct and any misdemeanours;
 - (c) Professor1's activity on social media that proves her radical beliefs or links her to extremist groups;
 - (d) All or any combination of the above;
 - (e) None of the above.
-

V. Attempt to commit an offence (article 2 (3))

Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

➤ **Scenario:** Director1 is the director of a food sterilization facility. He has been working there for over 20 years and he is well aware of all the activities and operations required for the safety and security of the equipment and materials stored at the facility.

Director1 lives in a residential area of city C (in country ABC), and for months has been involved in a dispute over the property line with his neighbour, Diplomat1, a retired diplomat from country XYZ who spends a few months a year in city C. The dispute led to a lawsuit, which ended in the dismissal of Director1's claim and a court injunction ordering him to refund all the legal fees that the defendant (Diplomat1) had incurred.

Director1 refused to accept the outcome of the court proceedings and devised a plan to take revenge on his neighbour. One day, after the process of storing new equipment containing radioactive sources received for use in the facility, Director1 took one of the new caesium-137 sources from the storage room, hid it in his office and removed the reference to that source from the inventory, to make it look as if it had never been received.

Camera recordings of the day showed the suspicious behaviour of Director1 and, after routine checks, the source hidden in his office was located.

Following extensive questioning, Director1 admitted to having hidden the source in order to later use it to resolve the dispute with Diplomat1. It was unclear whether Director1 was intending to use the source to inflict harm on his neighbour or to contaminate his property.

1. Would the described actions qualify as an attempt under the Convention?
2. Would it make a difference to the qualification of the offence if Director1 had managed to take the source home with him and engage in active preparations to harm his neighbour or contaminate his neighbour's property?

VI. Participation as an accomplice (article 2 (4) (a))

Any person also commits an offence if that person participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of the present article.

➤ **Scenario:** Employee1 was appalled by the mysterious death of her fellow co-worker, Employee2. Employee2 had been a labour union activist and had repeatedly raised concerns about poor corporate practices related to safety and security in the nuclear fuel fabrication facility where both employees worked.

Supposed violations of health regulations included exposure of workers to contamination, faulty respiratory equipment and improper storage of radioactive samples. On the day of her death, Employee2 was to meet a journalist to discuss her findings and concerns.

Employee1 and Employee2's widower were determined to prove that the mysterious death of Employee2 was not accidental and that her concerns about the poor safety and security practices had been well founded and needed to be addressed.

Taking advantage of the lax security measures at the facility, Employee1 managed to smuggle out three finished plutonium pellets. She inserted the pellets into shielded boxes, which she packaged and later passed on to Employee2's widower for delivery to the embassy of another country, where Employee1's uncle worked in the mailroom.

The uncle was instructed to alert authorities upon opening the first layer of packaging, which contained full disclosure of the dangerous contents and a request that the nuclear facility's numerous safety and security violations be addressed. The message concluded with the text "In honour of the work and life of Employee2".

1. What degree of involvement in the commission of an offence is required for a person to qualify as an accomplice under the Convention?
2. Does intention play a role in the qualification of a person as an accomplice?

VII. Other ways of contributing to an offence (article 2 (4) (c))

Any person also commits an offence if that person in any other way contributes to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

✎ **Scenario:** Unhappy with the rapidly changing demographics in his university as a result of the university's integration policies, Student1 decided to take matters into his own hands. He formed a group of like-minded fellow students to discuss how to most effectively send a message to the university's dean and to students from nationalities and ethnic backgrounds that were not similar to those of Student1 and members of his group.

Over the course of several months, the group wrote anonymous letters to the dean and the university's admissions staff, as well as to certain students. The group also distributed flyers throughout the university and left messages in bathroom stalls. The letters and flyers included xenophobic statements and threats to perpetrate attacks using radioactive substances.

The following year, Student1 befriended Student2, who was studying molecular pharmacology and had access to toxic materials stored in a secure location within the university's biophysics laboratory. Student2 sympathized with Student1's xenophobic views and noted that the university had not taken any action to address the numerous complaints made by members of Student1's group. Student2 agreed to steal and hand over to Student1 two lead-encased vials containing an iodine-125 solution. Student2 also provided Student1 with instructions on how to handle and avoid direct exposure to the solution.

Student1, with the help of group members, set out to target and contaminate the food and beverages of students of other nationalities and ethnic backgrounds. The group hoped to injure those targeted and thereby persuade the university to take their complaints seriously and understand that students of certain nationalities were not welcome and would not be safe at the university.

Twenty-five students were affected by the food and beverage contamination. The transgression was discovered when three PhD students showed surprisingly high levels of radiation upon undergoing a routine measurement prior to commencing their experiments in the university's biophysics laboratory. Months later, one student developed irreversible damage to her thyroid gland.

1. Which offences under the Convention have been committed?
2. Who would qualify as an accomplice and who would qualify as contributing to the commission of the offence? Is there a difference?

VIII. General

➤ **Scenario:** A group of terrorists had been studying the activities of a renowned international supplier of industrial gamma projectors in country ABC for some time. The members of the group carried out extensive research on the staff of the supplier's facility and managed to obtain information on the type of packaging, delivery schedules, transportation routes and relevant security protocols. The terrorists obtained some of the information through informal discussions with targeted staff by posing as interested licensed buyers, but the more crucial information was obtained through the extortion of key employees.

After a failed attempt to bypass security protocols during a scheduled transport, two members of the terrorist group were detained and charged with attempted robbery.

Aware that one of the consignments was scheduled for delivery to a construction company in country XYZ, other members of the terrorist group started to monitor the activities of the construction company. Security measures in that company were significantly less strict than at the facility described above.

On the day that the equipment was delivered to the construction company, the terrorists broke into the company's storage area and stole two gamma radiography devices. Each of them contained high activity of 150 Ci of iridium-192, selenium-75 and ytterbium-169 radioactive sources.

The terrorists managed to smuggle the equipment back into their country of origin, country ABC. Disguised as sound engineers, they transported the devices through the security checkpoints of a rally in support of a presidential candidate. The candidate's security team caught the terrorists as they were attempting to arrange the radiography devices on the stage to target the candidate during the rally.

Following extensive investigations, it was determined that the perpetrators belonged to a major covert terrorist organization that operated in different areas within the country, including the capital. The organization posed as a not-for-profit religious entity and even managed to receive substantial funding from members of one political party who were aware of the intentions of the organization. The politicians, however, deliberately avoided asking questions and having too much information that could involve them in any wrongdoing.

The terrorist organization was attempting to derail the presidential candidate's success by compromising her long-term health through overexposure to radiation. It was the first time that the terrorist organization had involved radioactive material in its activities. The terrorists were trying out new methods that they believed could have a significant impact while remaining undetected and difficult to trace.

1. Which offences covered by the Convention were committed?
 2. Which actions can serve as evidence of the different types of intent in the commission of the offences?
 3. Who would qualify as an accomplice and who would qualify as contributing to the commission of the offence?
-

RESPONSES

➤ Scenario I.A.

Question 1: Was the possession by the thieves of the cobalt-60 radioactive source intentional?

No. While the theft itself was clearly intentional, from the information provided it is not likely that the thieves were aware that the truck they had stolen carried machinery used in the treatment of cancer.

Cobalt-60 is a radioactive isotope and qualifies as radioactive material under the definition in article 1 of the Convention. Cobalt-60 radioactive sources have a number of industrial and medical applications, among which is the treatment of cancer. Cobalt-60 sources used in radiotherapy equipment are available in 1.5 cm and 2 cm diameters and are incorporated into the equipment in a sealed compartment.

The thieves were said to have been common criminals and the truck was a private truck that, contrary to regulations, had no visible signs or labels indicating that it was carrying radioactive material.

As long as the thieves remained unaware of the contents of the truck, their possession of radioactive material was clearly not intentional and therefore would not likely satisfy the criteria set forth in article 2 (1) to qualify as an offence under the Convention.

The case illustrates that unintentional possession is possible. It may also occur when scrap metal dealers purchase or receive for disposal obsolete equipment without being aware of the radiation sources it may contain.

For the Convention to be applicable, however, intentional possession of radioactive material should not be limited to a person's scientific knowledge of radioactive properties. Depending on the case and national laws, it would suffice that the offenders have the intention of possessing the (radioactive) material because of properties that they are aware could cause death, serious injury or substantial damage.

Question 2: If the answer to question 1 was affirmative, would the theft qualify as an offence within the meaning of the Convention if the thieves were planning to resell the stolen equipment to a scrap metal dealer?

No. The intent to cause harm would be missing.

Despite indications to the contrary, for the purposes of this question, it is to be assumed that the thieves were aware (or became aware) that the truck they had stolen contained radioactive material. The thieves were thus unlawfully and intentionally in the possession of radioactive material – as stated in article 2 (1) of the Convention.

However, the following two-fold “intent” should be present in order for the conduct to qualify as an offence under the Convention: *(a)* the intent to commit the offence; and *(b)* the intent to cause harm.

In the present case, it is stated that the thieves were common criminals who made a living from the resale of stolen goods. If in fact their sole intention was to make a profit, the intention of causing death, serious bodily injury or substantial damage to property or to the environment would not be present, and thus the criteria set forth in article 2 (1) *(a)* (i) and (ii) would not be satisfied.

Hence, although the thieves were unlawfully and intentionally in possession of radioactive material, the offence would not qualify as criminal under the Convention as there was no intent to cause the above-mentioned specific harm.

Both the (general) intent to commit the offence and the (special) intent to cause a specific harm with the radioactive material in possession are required for the offence to fall within the scope of the Convention.

WHY IS THIS IMPORTANT?

Both general and special intent are fundamental for an offence to qualify as an offence under the Convention. Actual harm or damage is not.

It is possible to further expand the scenario by supposing that the radioactive source under the control of the perpetrators had caused harm without any intention on their part and as a result of an accident or owing to the perpetrators' negligence or ignorance. Although inflicting such harm may still constitute an offence under other national laws, it would not qualify as an offence under the Convention.

➤ Scenario I.B.

Question 1: Does the fact that the terrorists purchased abandoned equipment from a scrap dealer make their possession of the radioactive material located inside the equipment lawful?

No. The possession of radioactive material, as defined in article 1 of the Convention, is always illegal if the person in possession of the material is not licensed or authorized by a regulatory authority to handle the material. Even in the case of orphan sources, their abandonment by the licensed or otherwise authorized entity was not lawful; the discovery and purchase of such sources at a later stage by an unauthorized person or group does not legitimize their possession. Orphan sources that are found should be reported to the competent government authorities to secure their proper storage or disposal and prevent the public or the environment from being exposed to radiation hazards.

In the present case, the possession of radioactive material was thus illegal and intentional. The intentionality was clear at the outset, as the purchasers of the material had been looking through scrapyards in search of abandoned equipment that could contain a radioactive source. In addition, they were caught in the act of making a dirty bomb.

The radioisotope thermoelectric generator that was purchased from the scrap metal dealer in the scenario contained a strontium-90 source. Strontium-90 has applications in medicine and industry and, as a soft metal, is an isotope of concern in fallout from explosions of nuclear weapons and explosions due to nuclear accidents or acts of nuclear terrorism.

Question 2: Is the making of a dirty bomb sufficient proof of the intention to cause death, serious bodily injury or substantial damage to property or the environment?

Yes. While what constitutes sufficient proof will ultimately be determined by a court of law in the application of national laws, there can be no doubt of a person's intention in the making of an explosive device capable of dispersing radioactive substances into the environment. A radioactive dispersal device poses a significant threat to the well-being of others and to the environment, and its detonation would cause harm.

Possible difficulties that could be encountered in proving intention under the Convention could be the qualification "serious" when referring to the intended bodily injury and the qualification "substantial" when referring to the degree of intended damage to be caused to either property or the environment. While the potential or actual harm could indeed be serious and substantial, what qualifies as an offence under the Convention is the intention to cause such serious or substantial harm.

Indications of the intention to cause serious or substantial harm could be found in the amount of radioactive material possessed and in the size of the device made.

↳ Scenario I.C.

Question 1: Does the fact that Person2 did not know that the material in question was radioactive and only stole it because of its alleged supernatural evil powers still qualify under the Convention as intentional possession or use of radioactive material?

Yes. The object and purpose of the Convention are to prevent and suppress criminal conduct involving radioactive material. It suffices for the person to know that the material is dangerous and for the person to be interested in the material because of the danger it poses.

The specific intent, i.e. the intent to cause serious harm with radioactive material, contributes to qualifying the act as an offence under the Convention.

In the present case, Person2 was well aware of the danger posed by the “supernatural evil” material. In fact, it was precisely because of such properties that Person2 sought to use the material against an adversary.

Person2’s use of material that could cause significant harm upon contact was intentional.

The radioactive material contained in the capsule was caesium-137 chloride, also referred to as caesium-137 salt. Like cobalt-60 sources, sources based on caesium-137 are highly radioactive and have a wide range of medical and industrial applications. The design of a sealed radioactive source generally consists of a cylindrical stainless steel capsule with the radioactive material inside and the size of the capsule used in medical equipment can be as small as a few millimetres.

Question 2: What indications, if any, are there of Person2’s intent to cause death or serious bodily injury?

Intent alone is not easy to prove and requires a close analysis of all related actions.

In the present case, it was specified that Person2 was a family member of Person1, who had initially discovered the radioactive material and who shortly thereafter became very ill, as did the friends who had helped him in the task of disassembling the old radiotherapy equipment.

Fully aware and because of the effects of the (radioactive) material, Person2 went to the place where the orphan source had been left behind and took certain safety precautions in order to avoid direct contact with the source or its contents.

Person2 then proceeded to conceal the envelope with the caesium-137 salt into a bigger package as a measure to ensure that the contents affected only the addressee or his immediate subordinates.

Whether the actual intention was to cause death or serious bodily injury will depend on the consequences that Person2 witnessed in Person1 and his friends. Since Person1 became very ill and Person2 took precautions to protect herself, the information provided in the case indicates that at least serious bodily injury was intended.

➤ Scenario II.

Question 1: Is mere possession (i.e. possession not followed by any subsequent actions) an offence under the Convention?

No. While the unlawful and intentional possession of radioactive material may qualify as an offence under general criminal law, the unlawful and intentional possession of radioactive material is only an offence under the Convention if such possession is attained with the special intent of causing death, serious bodily injury or substantial damage to property or the environment.

Under the Convention, once radioactive material is in the hands of an unauthorized individual, it is the intent of the individual that determines whether the individual's actions should be criminalized under the Convention. Actions subsequent to unlawful and intentional possession are therefore of relevance in clarifying the intent.

Question 2: As the criminal act was suppressed before execution, is the application of the Convention still relevant?

Yes. The Convention does not require full execution of an act of nuclear terrorism in order to qualify as an offence under it. The object and purpose of the Convention are not only to suppress and investigate criminal conduct, but also to detect and prevent it. States achieve these through national implementation measures that adequately identify and penalize various types of conduct that qualify as offences under the Convention. Proper national criminalization of offences under the Convention not only addresses the criminal activity as such but also helps to discourage others from using radioactive material in furtherance of criminal objectives.

➤ Scenario III.

Question 1: Do the actions described in the scenario qualify as the offence of use of radioactive material or do they fall under the offence of possession of radioactive material? Otherwise, could they be both? Alternatively, do the actions not qualify as an offence under the Convention?

The offence described in the scenario does not clearly qualify as an offence under the Convention, but the case is not that simple.

Article 2 (1) (a) is the only provision in the Convention that expressly deals with the unlawful and intentional possession of nuclear and radioactive material. For such possession to be an offence under article 2 (1) (a), it must be linked to the special intent of causing death, serious bodily injury or substantial damage to property or the environment, which is not the case in the present scenario.

The environmental activists' intention was to come into possession of the calibration equipment containing disused^a radioactive sources and thereby demonstrate that it was possible for radioactive material to end up in the hands of unauthorized third parties. By doing so, the activists planned to highlight the vulnerabilities of the physical protection measures in place and the need for proper waste management.

Despite their intention to raise public awareness to improve the security of radioactive waste, it should be remembered that the Convention does not concern itself with the substance of claims or demands made. Nor does the correctness or justifiability of a claim or demand have any bearing on whether an action qualifies as an offence under the Convention. Rather, under its article 2 (1) (b) (iii), the Convention focuses on unlawful and intentional conduct

➤ Scenario III.
(continued)

with the intent to compel another to take a particular action. This article, however, deals with use, not possession.

It could possibly be argued that, since the possession was made for demonstration purposes, such possession was, in fact, a form of use. Moreover, article 2 (1) (b) criminalizes such acts where a person uses radioactive material “in any way”. This serves to highlight the importance of the harmonization of the national implementing laws enacted by the States parties to the Convention.

While the action may not be directly covered by the criminalization provisions of the Convention, it may well fall within the object and purpose of the Convention. It will ultimately be the decision of the States parties whether, in addition to implementing the required criminalization provisions established by the Convention, they also include additional provisions that help fulfil the object and purpose thereof.

^a A disused source is a radioactive source that is no longer used, and is not intended to be used.

WHY IS THIS IMPORTANT?

The possibility of different perspectives on what constitutes an offence under the Convention underscores the importance of having clarity and uniformity across the different jurisdictions of States parties.

Accidents involving radioactive sources used in industry and medicine have proved to have devastating consequences. Many States, therefore, opt to enact exhaustive laws and regulations to prohibit the possession of radioactive sources (and equipment containing such sources) without a valid licence and to prevent the use of radioactive material contrary to authorized purposes.

➤ Scenario III.
(continued)

Question 2: Is the willingness to assume the risk of causing harm equivalent to the intent of causing harm for the purposes of the Convention?

While it is the prerogative of national courts to examine the specific circumstances of a case and apply domestic laws, the answer should be “yes” insofar as radioactive material is concerned.

The possession and use of radioactive material are highly regulated for a reason, which is to protect human health, property and environment from the lasting and devastating consequences of ionizing radiation.

In many jurisdictions, reckless behaviour that may result in the loss of life or injury to others or damage to property and/or to the environment is equivalent to intentional commission of the respective offence. The unlawful and intentional possession or use of radioactive material can be considered to constitute reckless behaviour.

In the case at hand, the activists’ possession of the radioactive sources for demonstration purposes was reckless due to the inherent risk posed by radioactive sources. The activists were aware of those risks.

Scenario IV.

Question 1: Is there a distinction between the general concept of a credible threat and a threat within the meaning assigned to the term under the Convention, i.e. a threat made under circumstances that indicate the credibility of the threat?

Yes. The general concept of a credible threat is more open to interpretation and can be based on subjective elements such as the credibility of the person making the threat and the psychological conditions of the person who is threatened. Under the Convention, however, credibility is evaluated from an objective perspective, or the circumstances that indicate the credibility of the threat. These circumstances generally encompass a person's ability to access radioactive material and carry out threats.

In other words, a question that could be asked under the general concept of a credible threat is as follows: are the perpetrators serious? Under the Convention, the main question asked is: could they realistically carry out their threat?

Circumstances that indicate the credibility of a threat in cases where radioactive substances are involved require prompt action by the competent authorities to mitigate and eliminate the risk. Time is of the essence when threats qualify as credible for the purposes of the Convention.

Question 2: Which of the following additional information, if any, would be needed for the threat to qualify as an offence under the Convention?

- (a) Information on Professor1's affiliations, friends and family status that point to radical beliefs;
- (b) Police records or any employment records indicative of Professor1's conduct and any misdemeanours;
- (c) Professor1's activity on social media that proves her radical beliefs or links her to extremist groups;
- (d) All or any combination of the above;
- (e) None of the above.

The answer is "None of the above". While any of the additional information would be helpful for clarification purposes, additional information is not needed for the threat to qualify as an offence under the Convention.

Members of Movement1 had managed to break into a military facility in country ABC that was believed to be one of the most secure facilities in the world. Together with Professor1, they were threatening to break into nuclear facilities in country XYZ, which did not have in place even a third of the security measures in country ABC. Professor1 was a university professor specialized in nuclear physics and consequently had substantial knowledge of radioactive properties, handling, storage and other safety and security requirements. These circumstances not only are indicative of the credibility of the threat but also denote a risk that must be promptly addressed and avoided.

↳ Scenario V.

Question 1: Would the described actions qualify as an attempt under the Convention?

No. Director1 hid (allegedly for later use) the caesium-137 source. The unauthorized and intentional taking of the radioactive source could already be considered as Director1's possession of the material, with a specific intent.

As a top-level manager in charge of a highly regulated facility, Director1 was fully aware of the dangers posed by the caesium-137 source and of the safety and security measures and regulations in place to minimize the associated risks. His breach of those measures is also indicative of an ulterior motive and would constitute an action towards the fulfilment of such motive.

The actions described can be qualified as unlawful and intentional possession of the material with a specific intent; however, an attempt to actually use the material cannot be inferred from the information available.

Question 2: Would it make a difference in the qualification of the offence if Director1 had managed to take the source home with him and engage in active preparations to harm his neighbour or contaminate the neighbour's property?

Yes. The offence would fall under article 2 (1) (a) rather than under article 2 (3). In other words, the offence would be possession of, rather than attempt to possess, radioactive material with the intent to cause either serious bodily injury or substantial damage to property.

WHY IS THIS IMPORTANT?

Activities that qualify as offences under the Convention may have elements that fall under various provisions. This does not mean, however, that various offences are committed under the Convention with one single action or series of related actions. For example, the use of radioactive material referred to in article 2 (1) (b) implies the possession of such material, which is an offence under article 2 (1) (a). Moreover, threatening to use radioactive material that is in the unlawful possession of the individual making the threat could be considered as part of the circumstances making the threat credible, but could also serve as evidence of the special intention required in order to make the possession an offence under article 2 (1) (a).

It will ultimately be up to each State party to determine how to penalize the different offences according to the risks posed to security. Actions falling under different offences would normally be penalized according to the offence posing the gravest threat to security.

These distinctions also highlight the importance of cooperation and coordination among the different States parties when adopting laws to implement the Convention.

➤ Scenario VI.

Question 1: What degree of involvement in the commission of an offence is required for a person to qualify as an accomplice under the Convention?

Question 2: Does intention play a role in the qualification of a person as an accomplice?

Article 2 (4) (a) of the Convention, which establishes participation as an accomplice as an offence, does not elaborate on what the term “accomplice” encompasses or on the degree of involvement that would differentiate an accomplice from the actual perpetrators under article 2 (1), (2) and (3) of the Convention.

However, article 2 (4) (c) of the Convention, which covers other ways of contributing to offences under article 2 (1), (2) or (3), states that such contribution should be intentional and either made with the aim of furthering the general criminal activity or purpose of the group or made in the knowledge of the intention of the group to commit the offence or offences concerned. Consequently, there can be no doubt that, under the Convention, an accomplice must also be considered as having the knowledge of the plans to commit an offence under article 2 (1) and the intention to participate in such offence.

A general definition of the term “accomplice” is the following: a person who knowingly, voluntarily and intentionally unites with the principal offender in committing a crime and thereby becomes punishable for it.

A similar meaning can be considered to apply to the term “accomplice” under the Convention to explain why no further elaboration was deemed necessary and to reconcile the offence of participating as an accomplice with the one described in article 2 (4) (c), dealing with contribution to an offence.

Under the Convention, therefore, an accomplice is a person who unites with the principal offender in the commission of an offence under article 2 (1)–(3). In other words, the accomplice commits the offence together with the principal offender. However, it is possible to have multiple principal offenders who are accomplices from the perspective of their relation to the other principal offenders. This would be determined by the national courts.

➤ Scenario VII.

Question 1: Which offences under the Convention have been committed?

1. Possession (article 2 (1) (a))	Student1 and Student2
2. Use (article 2 (1) (b))	Student1 and the members of the group who also contaminated beverages and food.
3. Participation as an accomplice (article 2 (4) (a))	Members of the group who also contaminated beverages and food. ^a
4. Other way of contribution (article 2 (4) (c))	Student2
5. Credible threat (article 2 (2) (a))	Student1 and members of the group who used radioactive material to send strong message of further harm.

Question 2: Who would qualify as an accomplice and who would qualify as contributing to the commission of the offence? Is there a difference?

As set forth in the response to question 1 of this scenario, the members of Student1's group who also contaminated beverages and food would qualify as accomplices to the offence committed by Student1.

Student2, however, provided Student1 with the iodine-125 solution to be further used for contamination purposes. Student2's actions would thus qualify as a contribution to the offence committed by Student1 and the members of his group.

Iodine-125 is a radioisotope of iodine and its medical uses range from nuclear medicine imaging to radiotherapy. Iodine-125 is commercially available in a dilute sodium hydroxide solution and a significant quantity of the solution would be required to qualify as radioactive material under the Convention.

The difference between an accomplice and a person who contributes to the offence lies in the level of involvement. The accomplice acts in conjunction with the principal offender and the person who contributes acts only at a certain point in time, but not in the actual commission of the offence.

^a As indicated above, a national court could also decide that they are co-offenders under article 2 (1) (b), depending on the available evidence.

➤ Scenario VIII.

Question 1: Which offences covered by the Convention were committed?

Attempt (article 2 (3))	<ul style="list-style-type: none"> The two individuals who were arrested during the first attempt to steal the consignment containing radioactive material. The individuals who were arrested trying to bypass security at the presidential rally.
Participation as an accomplice (article 2 (4) (a))	<ul style="list-style-type: none"> Individuals working for the terrorist organization in committing the offences under the Convention.
Other way of contribution (article 2 (4) (c))	<ul style="list-style-type: none"> Supplier's employees who succumbed to extortion and failed to report the unlawful demands from the perpetrators. Politicians financing the activities of the terrorist organization. <p>For more details, see the response to question 3 of this scenario.</p>

Question 2: Which actions can serve as evidence of the different types of intent in the commission of the offences?

General intention to possess	<ul style="list-style-type: none"> Members of the terrorist group during the research phase. The two individuals who were arrested during the first attempt to steal the consignment containing radioactive material. The individuals monitoring the activities of the construction company who received the consignment. Members of the group who hijacked the company's truck containing devices with the radioactive material.
General intention to use	<ul style="list-style-type: none"> Members of the group during each step of implementation of the terrorist organization's plan. The individuals who were caught mounting the gamma radiography devices on stage.
General intention to participate as an accomplice	<ul style="list-style-type: none"> Members of the group during each step of implementation of the terrorist organization's plan.
General intention to contribute	<ul style="list-style-type: none"> Employees of the supplier who succumbed to extortion and failed to report the unlawful demands from the perpetrators. Politicians financing the activities of the terrorist organization. <p>For more details, see the response to question 3 of this scenario.</p>
Specific intention to cause harm	<ul style="list-style-type: none"> Members of the group during each step of implementation of the terrorist organization's plan. The individuals who were caught mounting the gamma radiography devices on stage.

WHY IS THIS IMPORTANT?

General and specific intent can at times be observed in the context of the same action of an individual. Both are needed for an action to qualify as an offence under the Convention.

Since the object and purpose of the Convention are to prevent and suppress criminal conduct using radioactive material, early identification of both types of intent is essential. Identification of a general intent would already be a reason for alert and investigation. Such investigation could then reveal key elements that would indicate that the action concerned also serves as evidence of the specific intent to cause harm.

In the case at hand, each step of an offence could serve as evidence of both the general intent to commit an offence and the specific intent to cause harm with such offence, even if, due to prompt investigation, the terrorist organization's plans were uncovered.

With the descriptions of what constitutes an offence, article 2 of the Convention also helps to identify which suspicious activities merit investigation and cooperation among the States parties to the Convention, as further specified in article 7.

Question 3: Who would qualify as an accomplice and who would qualify as contributing to the commission of the offence?

As set forth in the response to question 1, the individuals working for the terrorist organization participate as accomplices in the offences being committed because they are not acting independently, but rather as a group in the implementation of a higher authority's plans.

The response to question 1 also contains two examples of contribution to the commission of the offence, which merit further analysis.

Observation of the offence elements included in article 2 (4) (c) of the Convention, which criminalizes the contribution to the commission of offences, reveals that not every type of assistance would qualify as such contribution under the Convention.

For the contribution to constitute an offence under the Convention:

- (a) The offence committed must be carried out by a group of persons acting with a common purpose. Offences committed by individuals are thereby excluded;
- (b) The contribution must be intentional;
- (c) The contribution must be made:
 - (i) With the aim of furthering the general criminal activity or purpose of the group; or
 - (ii) In the knowledge of the intention of the group to commit the offence or offences concerned.

In the case of the employees who succumbed to extortion and supplied information that enabled the terrorists to track the consignment and attempt to penetrate security protocols, it is questionable whether the criteria listed under (b) and (c) above would be met. The employees' general intention was to avoid the exposure of the personal information with which they were being extorted. In doing this, the individuals were furthering their own aims of keeping personal information confidential. However, it must have been

clear to them what the purpose of the group was and that the information they provided would contribute to the terrorist activities. That said, there is no doubt of the effectiveness of the contribution of the employees and of the need for such a contribution to be addressed by other mechanisms available to the competent authorities.

The substantial financing of the organization closely connected with the terrorist group by politicians is more problematic. Intentionally turning a blind eye may not suffice to excuse them from meeting the criteria of contributing with the aim of furthering the general criminal activity or purpose of the group. This holds especially true since the members of the political party were aware of the organization's suspicious activities and deliberately avoided asking too many questions.

ANNEX

International Convention for the Suppression of Acts of Nuclear Terrorism

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

Recalling the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations of 24 October 1995,

Recognizing the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,

Bearing in mind the Convention on the Physical Protection of Nuclear Material of 1980,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations,

Recalling the Declaration on Measures to Eliminate International Terrorism annexed to General Assembly resolution 49/60 of 9 December 1994, in which, inter alia, the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States,

Noting that the Declaration also encouraged States to review urgently the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter,

Recalling General Assembly resolution 51/210 of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism annexed thereto,

Recalling also that, pursuant to General Assembly resolution 51/210, an ad hoc committee was established to elaborate, inter alia, an international convention for the suppression of acts of nuclear terrorism to supplement related existing international instruments,

Noting that acts of nuclear terrorism may result in the gravest consequences and may pose a threat to international peace and security,

Noting also that existing multilateral legal provisions do not adequately address those attacks,

Being convinced of the urgent need to enhance international cooperation between States in devising and adopting effective and practical measures for the prevention of such acts of terrorism and for the prosecution and punishment of their perpetrators,

Noting that the activities of military forces of States are governed by rules of international law outside of the framework of this Convention and that the exclusion of certain actions from the coverage of this Convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws,

Have agreed as follows:

Article 1

For the purposes of this Convention:

1. "Radioactive material" means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment.
2. "Nuclear material" means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore residue; or any material containing one or more of the foregoing;

Whereby “uranium enriched in the isotope 235 or 233” means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.

3. “Nuclear facility” means:

(a) 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;

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

4. “Device” means:

(a) Any nuclear explosive device; or

(b) Any radioactive material dispersal or radiation-emitting device which may, owing to its radiological properties, cause death, serious bodily injury or substantial damage to property or to the environment.

5. “State or government facility” includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of a Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

6. “Military forces of a State” means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security and persons acting in support of those armed forces who are under their formal command, control and responsibility.

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:

(a) Possesses radioactive material or makes or possesses a device:

(i) With the intent to cause death or serious bodily injury; or

(ii) With the intent to cause substantial damage to property or to the environment;

(b) Uses in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material:

(i) With the intent to cause death or serious bodily injury; or

(ii) With the intent to cause substantial damage to property or to the environment; or

(iii) With the intent to compel a natural or legal person, an international organization or a State to do or refrain from doing an act.

2. Any person also commits an offence if that person:

(a) Threatens, under circumstances which indicate the credibility of the threat, to commit an offence as set forth in paragraph 1 (b) of the present article; or

(b) Demands unlawfully and intentionally radioactive material, a device or a nuclear facility by threat, under circumstances which indicate the credibility of the threat, or by use of force.

3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

4. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of the present article; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1, 2 or 3 of the present article; or

(c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 9, paragraph 1 or 2, to exercise jurisdiction, except that the provisions of articles 7, 12, 14, 15, 16 and 17 shall, as appropriate, apply in those cases.

Article 4

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

3. The provisions of paragraph 2 of the present article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.

4. This Convention does not address, nor can it be interpreted as addressing, in any way, the issue of the legality of the use or threat of use of nuclear weapons by States.

Article 5

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its national law the offences set forth in article 2;

(b) To make those offences punishable by appropriate penalties which take into account the grave nature of these offences.

Article 6

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature.

Article 7

1. States Parties shall cooperate by:

(a) Taking all practicable measures, including, if necessary, adapting their national law, to prevent and counter preparations in their respective territories for the commission within or outside their territories of the offences set forth in article 2, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or knowingly provide technical assistance or information or engage in the perpetration of those offences;

(b) Exchanging accurate and verified information in accordance with their national law and in the manner and subject to the conditions specified herein, and coordinating administrative and other measures taken as appropriate to detect, prevent, suppress and investigate the offences set forth in article 2 and also in order to institute criminal proceedings against persons alleged to have committed those crimes. In particular, a State Party shall take appropriate measures in order to inform without delay the other States referred to in

article 9 in respect of the commission of the offences set forth in article 2 as well as preparations to commit such offences about which it has learned, and also to inform, where appropriate, international organizations.

2. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.

3. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material.

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.

Article 8

For purposes of preventing offences under this Convention, States Parties shall make every effort to adopt appropriate measures to ensure the protection of radioactive material, taking into account relevant recommendations and functions of the International Atomic Energy Agency.

Article 9

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

- (a) The offence is committed in the territory of that State; or
- (b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or
- (c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

- (a) The offence is committed against a national of that State; or
- (b) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or
- (c) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or
- (d) The offence is committed in an attempt to compel that State to do or abstain from doing any act; or
- (e) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its national law in accordance with paragraph 2 of the present article. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2 of the present article.

5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its national law.

Article 10

1. Upon receiving information that an offence set forth in article 2 has been committed or is being committed in the territory of a State Party or that a person who has committed or who is alleged to have committed such an offence may be present in its territory, the State Party concerned shall take such measures as may be necessary under its national law to investigate the facts contained in the information.
2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its national law so as to ensure that person's presence for the purpose of prosecution or extradition.
3. Any person regarding whom the measures referred to in paragraph 2 of the present article are being taken shall be entitled:
 - (a) To communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;
 - (b) To be visited by a representative of that State;
 - (c) To be informed of that person's rights under subparagraphs (a) and (b).
4. The rights referred to in paragraph 3 of the present article shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.
5. The provisions of paragraphs 3 and 4 of the present article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 9, paragraph 1 (c) or 2 (c), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.
6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 9, paragraphs 1 and 2, and, if it considers it advisable, any other interested States Parties, of the fact that that person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 of the present article shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 11

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 9 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.
2. Whenever a State Party is permitted under its national law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1 of the present article.

Article 12

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.

Article 13

1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.
2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.
4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 9, paragraphs 1 and 2.
5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

Article 14

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their national law.

Article 15

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 16

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 17

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of testimony, identification or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under this Convention may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent; and
- (b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of the present article:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 18

1. Upon seizing or otherwise taking control of radioactive material, devices or nuclear facilities, following the commission of an offence set forth in article 2, the State Party in possession of such items shall:

(a) Take steps to render harmless the radioactive material, device or nuclear facility;

(b) Ensure that any nuclear material is held in accordance with applicable International Atomic Energy Agency safeguards; and

(c) Have regard to physical protection recommendations and health and safety standards published by the International Atomic Energy Agency.

2. Upon the completion of any proceedings connected with an offence set forth in article 2, or sooner if required by international law, any radioactive material, device or nuclear facility shall be returned, after consultations (in particular, regarding modalities of return and storage) with the States Parties concerned to the State Party to which it belongs, to the State Party of which the natural or legal person owning such radioactive material, device or facility is a national or resident, or to the State Party from whose territory it was stolen or otherwise unlawfully obtained.

3. (a) Where a State Party is prohibited by national or international law from returning or accepting such radioactive material, device or nuclear facility or where the States Parties concerned so agree, subject to paragraph 3 (b) of the present article, the State Party in possession of the radioactive material, devices or nuclear facilities shall continue to take the steps described in paragraph 1 of the present article; such radioactive material, devices or nuclear facilities shall be used only for peaceful purposes;

(b) Where it is not lawful for the State Party in possession of the radioactive material, devices or nuclear facilities to possess them, that State shall ensure that they are placed as soon as possible in the possession of a State for which such possession is lawful and which, where appropriate, has provided assurances consistent with the requirements of paragraph 1 of the present article in consultation with that State, for the purpose of rendering it harmless; such radioactive material, devices or nuclear facilities shall be used only for peaceful purposes.

4. If the radioactive material, devices or nuclear facilities referred to in paragraphs 1 and 2 of the present article do not belong to any of the States Parties or to a national or resident of a State Party or was not stolen or otherwise unlawfully obtained from the territory of a State Party, or if no State is willing to receive such items pursuant to paragraph 3 of the present article, a separate decision concerning its disposition shall, subject to paragraph 3 (b) of the present article, be taken after consultations between the States concerned and any relevant international organizations.

5. For the purposes of paragraphs 1, 2, 3 and 4 of the present article, the State Party in possession of the radioactive material, device or nuclear facility may request the assistance and cooperation of other States Parties, in particular the States Parties concerned, and any relevant international organizations, in particular the International Atomic Energy Agency. States Parties and the relevant international organizations are encouraged to provide assistance pursuant to this paragraph to the maximum extent possible.

6. The States Parties involved in the disposition or retention of the radioactive material, device or nuclear facility pursuant to the present article shall inform the Director General of the International Atomic Energy Agency of the manner in which such an item was disposed of or retained. The Director General of the International Atomic Energy Agency shall transmit the information to the other States Parties.

7. In the event of any dissemination in connection with an offence set forth in article 2, nothing in the present article shall affect in any way the rules of international law governing liability for nuclear damage, or other rules of international law.

Article 19

The State Party where the alleged offender is prosecuted shall, in accordance with its national law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 20

States Parties shall conduct consultations with one another directly or through the Secretary-General of the United Nations, with the assistance of international organizations as necessary, to ensure effective implementation of this Convention.

Article 21

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 22

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other State Party by its national law.

Article 23

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months of the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may, at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 of the present article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 24

1. This Convention shall be open for signature by all States from 14 September 2005 until 31 December 2006 at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 25

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 26

1. A State Party may propose an amendment to this Convention. The proposed amendment shall be submitted to the depositary, who circulates it immediately to all States Parties.

2. If the majority of the States Parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States Parties to attend such a conference to begin no sooner than three months after the invitations are issued.

3. The conference shall make every effort to ensure amendments are adopted by consensus. Should this not be possible, amendments shall be adopted by a two-thirds majority of all States Parties. Any amendment adopted at the conference shall be promptly circulated by the depositary to all States Parties.

4. The amendment adopted pursuant to paragraph 3 of the present article shall enter into force for each State Party that deposits its instrument of ratification, acceptance, accession or approval of the amendment on the thirtieth day after the date on which two thirds of the States Parties have deposited their relevant instrument. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day after the date on which that State deposits its relevant instrument.

Article 27

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 28

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarters in New York on 14 September 2005.



UNODC

United Nations Office on Drugs and Crime