

The International and National Legal Context for Safeguards

International Nuclear Safeguards Engagement Program
(INSEP)

Agenda: Sub-regional Workshop for SQP Countries

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Overview

- International Framework and Obligations
- IAEA Safeguards
- International vs. National Framework
- National Frameworks and State Characteristics
- Case Studies
 - Inspections
 - Reporting
 - Establishing National Authority

International Framework & Obligations

- Variety of international goals and mechanisms to promote nonproliferation:
 - Export Control Regimes
 - Physical Protection
 - Global, Regional and Bilateral Agreements
- IAEA: entered into force in 1957 to further nuclear technologies and international cooperation, while curtailing military use

IAEA Statute

- Article III.A.5: Functions
 - To ensure that Agency assistance only used for peaceful purposes
 - To apply safeguards to ... any bilateral or multilateral arrangements at the request of the parties
 - ... any nuclear activities of a State at its request
- Article XII: Safeguards
 - Design, health and safety, records, inspections
- Safeguards system developed from 1959 onwards
 - INFCIRC/26
 - INFCIRC/153
 - SQP
 - INFCIRC/66 Rev.2
 - INFCIRC/540

IAEA Safeguards

- These safeguards aim to:
 - Detect any diversion of declared nuclear material in declared facilities or Locations outside Facilities (LOFs)
 - Detect any undeclared production or processing of nuclear material in declared facilities or LOFs
 - Detect any undeclared nuclear material or activities in the State as a whole

States' Obligations

- States obligations after concluding an agreement
 - Accept safeguards on all source or special fissionable material in all peaceful nuclear activities -INFCIRC/153 (Corr.), para. 1
 - Ensure that safeguards will be applied on all source or special fissionable material in all peaceful nuclear activities
 - *Which means:*
 - Cooperating with IAEA
 - Establishing a system of accounting and control
 - Providing information and access
- IAEA produces extensive guidance on these subjects to strengthen safeguards efforts

International Framework

- NPT: Under Article III, all non-nuclear weapons states are required to conclude a Comprehensive Safeguards Agreement (CSA)
- IAEA: CSA or an item specific
 - Additional Protocol
 - Small quantities protocol
 - Model texts for all of these agreements, but concluded individually
- CSA: 182 States
- Additional Protocol: 129 States
- Recently entered into force in Cameroon and Côte d'Ivoire

International vs National Framework: VERTIC's Approach and Aims

- We use tailored case studies to facilitate learning and experience-sharing across countries;
 - Explain different national approaches to implementation;
 - Demonstrate how key requirements are implemented across different countries
- Awareness-raising across governmental sectors
- Building an online database to host our research to date and increase understanding internationally
- We do not assess or judge compliance

National Frameworks: Country Attributes

- Legal system:
 - Monist: Agreement would be applied directly to law
 - Dualist: Agreement would have to be supported by national legal framework, supporting all areas
 - Both types will have supporting domestic legislation
- Legal Tradition and Practices
- State of Legislative Development
- Region
- Resources
- Nuclear profile and future plans

Analytical Approach

Our Analysis focuses on national legislation:

- Laws/Decrees/Acts;
- Regulations, schedules, control lists;
- Other official documents related to implementation:
 - Application forms, licenses, terms and conditions documents, guidelines, bulletins, declarations, etc.;
 - Drafts of new legislation

Case Studies

- Building blocks: key legal provisions required to permit or facilitate safeguards implementation:
 - Definitions, prohibitions, and obligations that must be included in national legislation;
 - Source: Agreements, guidelines, best practices;
- 3 Key Areas:
 - Establishing a Authority;
 - Provision of Information;
 - Provision of Access to IAEA Inspectors
- Presenting examples on Reporting, Inspections, Establishing State Authority
- Frequently asked questions

Case Studies States

- **Viet Nam:** AP 2012, No SQP. Civil Law
- **New Zealand:** AP 1998, SQP: 2006, 2014 (R).
Common Law
- **Singapore:** AP 2008, SQP: 2005, 2008 (R).
Common Law
- **Senegal:** AP 2006 (signed), SQP: 2005, 2010
(R), Civil Law
- Further experiences from partner states

Inspections: Access

- **Viet Nam:**
 - Law on Atomic Energy, 2008
 - Article 26. Responsibilities of heads of organizations or individuals licensed to perform radiation jobs
 - *6. To create conditions for examiners and inspectors to perform their tasks of examination and inspection of safety and security: to supply sufficient necessary information when requested by a competent state agency.*
 - Aspect of licensing, different areas throughout to re-iterate commitment
 - Fairly flexible language

Inspections: Access

- **Singapore**

- Radiation Protection Act: Warrant for IAEA inspection 25
 - *(1) The Director-General may apply for a warrant on behalf of an IAEA inspector or a national inspector where the consent of the person who owns, or who is in control of, any premises to enter the premises for the purposes referred to in section 20 cannot be obtained or where the person refuses to give such consent.*
- Not only allowing inspection, but giving enforcement strength
- IAEA mentioned explicitly

Inspections: Diplomatic Privileges

- **New Zealand:**
 - Diplomatic Privileges (IAEA) Order 1960 (SR 1960/162).
 - *“The Director for Radiation Safety may appoint international inspectors for a specified period, providing he/she is satisfied that the IAEA has designated the person as an inspector.”*
 - *“this Order specifies that the agency shall have immunity in relation to its property and assets, wherever located and by whomsoever held, from search, requisition, confiscation, expropriation, or any other form of interference.”*
 - Order specifically to cover these aspects of inspections

Reporting

- **New Zealand:**
 - Radiation Protection Bill 2016:
 - *“If a person holding a source licence...believes that an incident has occurred that has resulted in, inter alia, unintended loss of radiation, he/she must notify the Director for Radiation Safety as soon as possible and take mitigating action.”*
 - *“must keep records in accordance with Section 38 and must ensure that the records are made available to the Director when requested.”*
 - *“The Director may, for the purposes of this Act (which include ensuring New Zealand's compliance withCSA and associated Protocols) disclose any of this information to the Ministry for Foreign Affairs and Trade and any ...which implicitly includes the IAEA...information on the loss of any nuclear material to make available to the IAEA”*
 - Specifically mentions compliance with CSA

Reporting

- **Example:**
 - Licensing Application:
 - Initial application including types of radioactive sources and levels
 - Mandate not in specific law or regulation, avoids legal process but still upholds agreement
 - How could this be improved on?

Independence of Authority

- **Senegal**
 - Article 6 of Law 2009-14, Security of Nuclear Material and Radioprotection:
 - Creation of radioprotection authority, under Prime Minister, announcing independence
 - Article 18 of Decree No. 2010-893, Organisation and Functioning of the Authority
 - *“The Director-General may...use the services of qualified firms or contacts for evaluation or inspection review exercises. However, the ARSN must ensure that they are independent from operators whatever their origin.”*
- Acknowledges expertise and connection between services, but requires independence

Independence of Authority

- **Viet Nam**

- Decree No. 20/2013/ND-CP

- “14. Regarding inspection, examination and corruption prevention and fighting...

- *a) To guide, examine and inspect the implementation of policies and laws....professional operation in specialized inspection and handle violations as prescribed by law;*

- *b) To settle complaints, denunciations and recommendations of organizations and individuals ...to receive citizens and implement the corruption prevention and combating in accordance with regulations.”*

- Decree establishing authority, detailing role, combat corruption instead of ensure independence

Thank you for your Attention

- For additional information:
 - Larry MacFaul, Programme Director for Verification and Monitoring (larry.macfaul@vertic.org)
 - Assistance on IAEA Safeguards and Nuclear Security
 - Scott Spence, Programme Director for National Implementation (scott.spence@vertic.org)
 - Assistance on BWC, CWC, Nuclear Security and UNSCR 1540