



Making the criminal provisions of the CPPNM and ICSANT punishable offences in national law

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CPPNM at a glance

- The Convention for the Physical Protection of Nuclear Material (CPPNM) opened for signature in 1980 and entered into force in 1987.
- 145 Parties, 44 Signatories
- Depositary is the Director General of the IAEA
- It only covers ‘nuclear material’ (Article 1(a)) and applies to such material while in domestic use, storage and transport, as well as in international transport (Article 2)
- Article 5 requires States Parties to:
 - identify a point of contact responsible for protecting nuclear material, and to notify this to the IAEA
 - provide co-operation and assistance in the event of theft, robbery or any other unlawful taking of nuclear material

CPPNM – prohibitions

- Article 7 requires States Parties to criminalize and penalize the following activities involving nuclear material that are committed intentionally:
 - unlawful receipt, possession, use, transfer, alteration, disposal, or dispersal, which could cause death, injury or property damage (Art. 7(1)(a));
 - theft or robbery (Art. 7(1)(b));
 - obtaining nuclear material through embezzlement or fraud (Art. 7(1)(c));
 - demanding it by threat or use of force (Art. 7(1)(d)); and
 - threats to use it to cause death, injury or property damage, or threats to steal or rob nuclear material in order to compel a natural or legal person, international organisation or State to do or refrain from doing any act (Art. 7(1)(e)).
- Article 7 also requires States Parties to criminalize and penalize attempts and participation (Art. 7(1)(f)-(g)).

CPPNM – establishing jurisdiction

- Article 8 requires States Parties to exercise jurisdiction over the offences in Article 7 when they are committed:
 - in a State’s territory or on board a ship or aircraft registered in the State (Art. 8(1)(a));
 - when the offender is a national of the State (Art. 8(1)(b)); and
 - when the offender is present in the State’s territory and they do not extradite him (Art. 8(2)).
- States Parties are also given the option in Article 8(4) to exercise jurisdiction over Article 7 offences when they are involved in international transport of nuclear material as the importing or exporting state.

CPPNM – other relevant provisions

- Articles 9 to 12 ensure that perpetrators of crimes involving nuclear material will be detained and prosecuted or extradited, in line with their national legislation and agreements with other States.
- Article 13 requires States Parties to provide one another assistance in criminal proceedings related to enforcement of the Convention.
- Article 14 requires States Parties to inform the IAEA of its laws and regulations to implement the Convention.

CPPNM – the 2005 Amendment

- The Amendment was adopted by a diplomatic conference in July 2005.
- Will only enter into force when it has been ratified by two-thirds of the States Parties to the CPPNM (it has 57 contracting States so far).
- When it enters into force, it will add the concepts of protection of ‘nuclear facilities’ and ‘sabotage’ of nuclear facilities and material to the CPPNM.

CPPNM – the 2005 Amendment

- It would replace Article 5 and add the IAEA to those notified about theft, robbery or other unlawful taking of nuclear material, as well as expand the scope of international co-operation to include threatened or actual acts of sabotage of nuclear facilities or material.
- It would replace Article 7(1) and add the following concepts:
 - damage to the environment from unlawful acts involving nuclear material (Art. 7(1)(a) and (g)(i));
 - carrying, sending or moving nuclear material into or out of a State without lawful authority (Art. 7(1)(d));
 - unlawful acts (and threats) directed against a nuclear facility, or acts interfering with the operation of a nuclear facility (Art. 7(1)(e) and (g)(i));
 - organizing or directing others to commit prohibited activities (Art. 7(1)(j)); and
 - prohibited activities committed by groups of persons acting with a common purpose (Art. 7(1)(k)).
- New Articles 11A and B would disallow ‘political offences’ for the purposes of extradition and mutual legal assistance, and allow a State to prevent mutual legal assistance and extradition in certain cases.



ICSANT at a glance

- The International Convention for the Suppression of Acts of Nuclear Terrorism (ICSANT) opened for signature on 14 September 2005 and entered into force on 7 July 2007.
- 79 States Parties and 115 signatory States
- Depositary is the Secretary-General of the United Nations
- ICSANT is based on the principle of prosecuting or extraditing those who commit criminal acts involving radioactive material, and it calls for the effective prosecution of individuals or groups who possess or use radioactive material with the intent specified in the Convention.

ICSANT – implementation

- Article 2 lists a number of acts, which must be criminalized and punished by appropriate penalties pursuant to Article 5; while
- Article 6 requires States Parties to adopt any necessary measures to ensure that the criminal acts within the scope of ICSANT are not justifiable by political, philosophical, ideological, racial, ethnic, religious or other considerations.

ICSANT – prohibitions

- Under Article 2, the unlawful and intentional commission of the following acts must be criminalized and punished:
 - possessing radioactive material with the intention to cause death, serious bodily injury or substantial damage to property or the environment;
 - possessing or making a nuclear explosive device or radioactive material dispersal or radiation-emitting device to cause death, serious bodily injury or substantial damage to property or the environment;
 - using radioactive material, a nuclear explosive device or a radioactive material dispersal or radiation-emitting device to cause death, serious bodily injury or substantial damage to property or the environment, or for terrorist purposes; and
 - using or damaging a nuclear facility in a manner which releases or risks the release of radioactive material to cause death, serious bodily injury or substantial damage to property or the environment, or for terrorist purposes.

- States must also criminalize and punish certain threats, demands and attempts, as well as participating as an accomplice in, organizing or directing others, or otherwise contributing to the criminal acts prohibited by ICSANT.

ICSANT – establishing jurisdiction

- Article 9 requires States Parties to exercise mandatory jurisdiction over the offences in Article 2 when they are committed:
 - in the State’s territory (Art. 9(1)(a));
 - on board a vessel or aircraft under the State’s jurisdiction (Art. 9(1)(b)); or
 - by a national of the State (Art. 9(1)(c)).

- States Parties may also exercise optional jurisdiction when the offence is committed:
 - against a national of the State (Art. 9(2)(a));
 - against a State or government facility of that State abroad (Art. 9(2)(b));
 - by a stateless person who has his or her habitual residence in the territory of the State (Art. 9(2)(c));
 - in an attempt to compel the State to do or abstain from doing any act (Art. 9(2)(d)); or
 - on board an aircraft which is operated by the Government of the State (Art. 9(2)(e)).

CPPNM (and Amendment) and ICSANT – challenges in their implementation

- A lack of universality in their membership, including in SE Asia;
- A possible perception among States Parties and non-States Parties alike that they do not have to implement effective controls on nuclear and other radioactive material if they only have limited quantities of such materials for peaceful purposes or do not possess nuclear weapons or;
- A possible lack of awareness in governments of the CPPNM (and Amendment), ICSANT and UN Security Council Resolution 1540 and their requirements and obligations, as well as a potential lack of political will to implement these instruments;

CPPNM (and Amendment) and ICSANT – challenges in their implementation

- Limited or no technical, human or financial capacity for drafting implementing laws and regulations, training relevant officials, or enforcement;
- Difficulty maintaining momentum in the implementation process due to turnover in staff, elections and changes in government, or internal or external conflicts; and
- Competing legislative, parliamentary, budgetary or economic priorities.

But adhering to and implementing CPPNM and ICSANT has important benefits...

- States will be able to investigate, prosecute and punish any offences, including preparatory acts, associated with nuclear and other radioactive material committed by non-State actors such as terrorists.
- States will be able to better monitor and supervise any activities, including transfers, involving nuclear and other radioactive material.
- States will enhance their national security and public health and safety.
- States with good laws and regulations will strongly signal to other States and potential investors that they are a safe and responsible location for activities involving nuclear and other radioactive material.
- States' implementation obligations under the CPPNM (and Amendment) and ICSANT and UN Security Council Resolution 1540 will be satisfied.
- States will be able to comply effectively with international reporting requirements.

And assistance to adhere to and implement CPPNM and ICSANT is available...

- IAEA Office of the Legal Adviser (OLA): OLA supports States in developing comprehensive nuclear law governing nuclear safety, nuclear security, safeguards and liability for nuclear damage. OLA provides legislative assistance and advice to States on drafting specific legal provisions that meet their international commitments and obligations in the nuclear field.
- UNODC Terrorism Prevention Branch (TPB): TPB focuses on providing assistance to States, upon request, in the legal and related aspects of counterterrorism, especially for ratifying and implementing the international legal instruments against terrorism, including ICSANT, and strengthening the capacity of the national criminal justice systems to apply the provisions of these instruments in compliance with the principles of the rule of law.
- VERTIC's NIM Programme provides cost-free assistance to interested States for adhering to and implementing certain C-B-R-N conventions and related legal instruments, including CPPNM (and Amendment) and ICSANT. Such assistance covers ratification or accession (adherence), in addition to reviewing and commenting on existing draft legislation or providing assistance in the drafting of new legislation during workshops in capitals (implementation).

Practical process for developing implementing legislation

- Nominate a national Point of Contact to be responsible for the process:
 - Ministries of Foreign Affairs, Defense, Health, Environment, Trade, Nuclear Regulatory Agency (or the equivalent)
- Identify which obligations are already covered by existing legislation through a legislation survey (VERTIC has started this for the RN legal instruments)
- Confirm which approach to implementation best suits the State's situation:
 - One stand alone draft law, amendments to several laws ...
- Convene an awareness-raising workshop for national stakeholders to explain:
 - why implementation is needed
 - the drafting process and action plan
 - to get support for subsequent enforcement

Practical process for developing implementing legislation

- Convene a legislative drafting workshop involving:
 - Key Ministries: Foreign Affairs, Health, Environment, Defense, Justice, Trade and Industry, Nuclear Regulatory Authority (or equivalent)
 - Legislative drafting assistance providers (IAEA, UNODC, VERTIC)
- Agree on an Action Plan: a timetable for reviewing and finalizing the draft
- Liaise with partners who can help support the adoption of the draft law through Parliament



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