

NUCLEAR SECURITY – PART OF REGIONAL SECURITY

Legal framework

International Legal Framework for Nuclear Security

- What is “nuclear security”?

The prevention and detection of, and response to, theft, sabotage, unauthorized access, illegal transfer or other malicious acts involving nuclear material, other radioactive substances or their associated facilities

International Legal Framework for Nuclear Security

- Responsibility for nuclear security rests entirely with each State
- There is no single international instrument that addresses nuclear security in a comprehensive manner
- The legal foundation for nuclear security comprises international instruments and recognized principles that are implemented by national authorities
- Security systems at the national level will contribute to a strengthened and more universal system of nuclear security at the international level

IAEA Security related instruments (BINDING)

- **Convention on the Physical Protection of Nuclear Material and the 2005 Amendment thereto**
- **Safeguards Agreements between the Agency and States Required in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons**
- **Model Protocol Additional to Agreement(s) between State(s) and the Agency for the Application of Safeguards**
- **Convention on Early Notification of a Nuclear Accident**
- **Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency**
- **Convention on Nuclear Safety**
- **Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management**

IAEA Security related instruments (non-binding)

- Code of Conduct on the Safety and Security of Radioactive Sources (INFCIRC/663)
- Guidance on the Import and Export of Radioactive Sources (INFCIRC/663)
- The Physical Protection of Nuclear Material and Nuclear Facilities (INFCIRC/225/Rev.4)
- Physical Protection Objectives and Fundamental Principles (GC(45)/INF/14)
- Code of Conduct on the Safety of Research Reactors (GOV/2004/4 and Corr.1)

IAEA Security related instruments (non-binding) (cont'd)

- **International Basic Safety Standards for Protection against Ionizing Radiation and for the Safety of Radiation Sources (Safety Series No. 115)**
- **Regulations for the Safe Transport of Radioactive Material – 2005 Edition (Safety Series No. TS-R-1)**
- **Legal and Governmental Infrastructure for Nuclear, Radiation, Radioactive Waste and Transport Safety—Requirements (Safety Standards Series (No. GS-R-1)**
- **Safety Requirements on Preparedness and Response to a Nuclear or Radiological Emergency (Safety Standards Series No. GS-R-2)**
- **Emergency Notification and Assistance Technical Operations Manual (ENATOM); Joint Radiation Emergency Management Plan of the International Organizations (JPLAN); IAEA Response Assistance Network (RANET 2006)**
- **TECDOC Series**
- **Handbook on Nuclear Law**

Other international and regional instruments (BINDING)

International Conventions

- Treaty on the Non-Proliferation of Nuclear Weapons
- International Convention for the Suppression of Terrorist Bombings (UNGA Resolution 52/164, Annex) (1997)
- International Convention for the Suppression of Acts of Nuclear Terrorism (UNGA Resolution 59/290) (2005)

Regional Agreements

- Regional Non-Proliferation and Nuclear Weapons Free Zone Treaties

United Nations Security Council Resolutions

- 1373 (2001), *Threats to international peace and security caused by terrorist acts*
- 1540 (2004), *Non-proliferation of weapons of mass destruction*

Conventions not under IAEA auspices

The Treaty on the Non-proliferation of Nuclear Weapons (NPT)

In force since 5 March 1970, almost universal

Nuclear-Weapon States (NWSs)

- Not to provide nuclear weapons or nuclear explosive devices to NNWS (Art. I)

Non-Nuclear-Weapon States (NNWSs)

- Not to acquire nuclear weapons or other nuclear explosive devices (Art. II)
- Accept Agency safeguards on all nuclear material in the State (Art. III.1)
- Conclude CSA within 18 months (Art. III.4)

Rights and Obligations of All States Parties

- Inalienable right to develop research, production and use of nuclear energy for peaceful purposes (Art. IV.1)
- Obligations: Not to transfer nuclear material and special equipment to NNWSs except subject to IAEA safeguards (Art. III.2); to facilitate and participate in the fullest possible exchange of equipments, materials and scientific and technological information for peaceful uses (Art. IV.2); and pursue negotiations in good faith on cessation of arms race and on disarmament (Art. VI)

Regional Non-Proliferation and Nuclear Weapons Free Zone Treaties

- At present, the following regional treaties have been concluded:
 - *The Tlatelolco Treaty* for Latin America (in force since 1968)
 - *The Rarotonga Treaty* for the South Pacific (in force since 1986)
 - *The Bangkok Treaty* for Southeast Asia (in force since 1997)
 - *The Pelindaba Treaty* for Africa (opened for signature 1996, not yet in force)
- States Parties undertake, inter alia, to use nuclear material and facilities exclusively for peaceful purposes and are required to accept the application of comprehensive IAEA safeguards to verify that undertaking

United Nations Conventions

- International Convention for the Suppression of Terrorist Bombings (UN General Assembly resolution 52/164, Annex) (1997)
- International Convention for the Suppression of the Financing of Terrorism (UN General Assembly resolution 54/109, Annex) (1999)
- International Convention for the Suppression of Acts of Nuclear Terrorism (UN General Assembly resolution 59/290) (2005)

Implementation of the Binding and Non-binding Instruments

There are 7 fundamental elements of national legislation relating to nuclear security

- Regulatory Authority
- Licensing
- Inspection
- Enforcement
- Criminalization
- International Cooperation
- Import/Export Controls

Implementation of the Binding and Non-binding Instruments

The Regulatory Authority

- Issues regulations and guidance
- Issues, amends, revokes authorizations
- Conducts inspections, visits and carry out complementary access
- Verifies compliance
- Grants exemptions
- Releases from regulatory control
- Provides access to information
- Maintains a register
- Communicates with other domestic authorities
- Cooperates and communicates with international organizations

Implementation of the Binding and Non-binding Instruments

Licensing

- Prohibit the carrying out of any “activity” unless previously authorized by the Regulatory Authority
- Specify the activities requiring an authorization (licence/notification)
- Establish procedures for dealing with applications for authorizations
- Identify prime responsibility for the implementation of the security of nuclear material, facilities, radioactive sources
- Establish requirements for persons or organizations to provide information/support to the Regulatory Authority

Implementation of the Binding and Non-binding Instruments

Inspection

Require any person performing regulated “activities”:

- to grant access to duly authorized inspectors to all premises/facilities where activities are carried out with a view to:
 - Obtaining information
 - Verifying compliance
 - Investigating incidents
 - Interviewing relevant personnel
 - Inspecting equipment
 - Taking environmental samples
- to grant access within prescribed time limits
- to provide support to designated inspectors so that they can carry out the necessary activities to fulfil their duties

Implementation of the Binding and Non-binding Instruments

Enforcement

- Grant authority to the Regulatory Authority to enforce compliance with the requirements laid down by the legal framework (e.g. licence suspension/revocation; fines)
- Detail procedures for determining and exercising enforcement actions (e.g. powers to seize or detain, bar or restrict access)
- Prescribe criminal penalties in case of serious violations

Implementation of the Binding and Non-binding Instruments

Criminalization

As a separate matter, the State's domestic legislation should:

- make certain acts punishable offences by appropriate penalties
- establish jurisdiction over such offences
- take appropriate measures, including detention, to ensure alleged offenders' presence for prosecution and extradition

Implementation of the Binding and Non-binding Instruments

International Cooperation

National legislation should ensure that States:

- inform as soon as possible other States which appear to be concerned.
- exchange information with each other, the IAEA and other relevant international organizations
- co-ordinate efforts through diplomatic and other agreed channels
- render assistance if requested
- ensure the return of recovered material
- identify and make known to each other their point of contact for these matters.

Implementation of the Binding and Non-binding Instruments

Import/Export Controls: Key Elements

- a system of State supervision of transfers of specified materials, equipment and other items through authorization or licensing;
- verification measures to ensure that transferred commodities are not diverted from their authorized uses;
- measures to ensure that necessary information on the functioning of the export and import control system is available to stakeholders, including persons engaged in nuclear commerce;
- a listing of controlled materials, equipment and other items subject to control; and
- a system of enforcement for violations of export or import requirements.

Legislative drafters need to ensure that all relevant elements are included in the law.

Implementation of the Binding and Non-binding Instruments

Import/Export Controls: Multilateral Mechanisms

- Guidelines of the NPT Nuclear Exporters' Committee (Zangger Committee) (INFCIRC/209)
- Nuclear Suppliers Group Guidelines (INFCIRC/254)
- PSI (Proliferation Security Initiative)

IAEA Legal Support to Member States

- Legislative assistance activities are available for all regions concerning all branches of nuclear law
- The “3S” concept recognizes the interface and interrelations between nuclear safety, nuclear security and safeguards as well as liability for nuclear damage
- Member States are advised in the areas of nuclear safety, nuclear security and safeguards in a structured and coordinated manner. By the “3S” approach, not only the domestic legal framework of a given State in the area of nuclear law is enhanced but also a uniform message to Member States on how they should develop their national nuclear laws is conveyed

IAEA Legal Support to Member States

Advisory Missions Relevant to Nuclear Security

Under Nuclear Security Plan for 2006-2009:

- INSServ: International Nuclear Security Advisory Service
- IPPAS: International Physical Protection Advisory Service
- ITE: International Teams of Experts

Other missions:

- RASSIA: Radiation Safety and Security Infrastructure Appraisal
- ISSAS: IAEA State System of Accounting for and Control of Nuclear Material Advisory Service

CONCLUSION

- The legal framework for nuclear security is a broad, comprehensive and coherent body of law with concrete rights and obligations
- Responsibility for nuclear security rest entirely with the States. The more national systems that are in place, the more effective the international system will be
- The IAEA provides advice and assistance upon request