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Legal Deficiencies of International Treaties on Nuclear Terrorism

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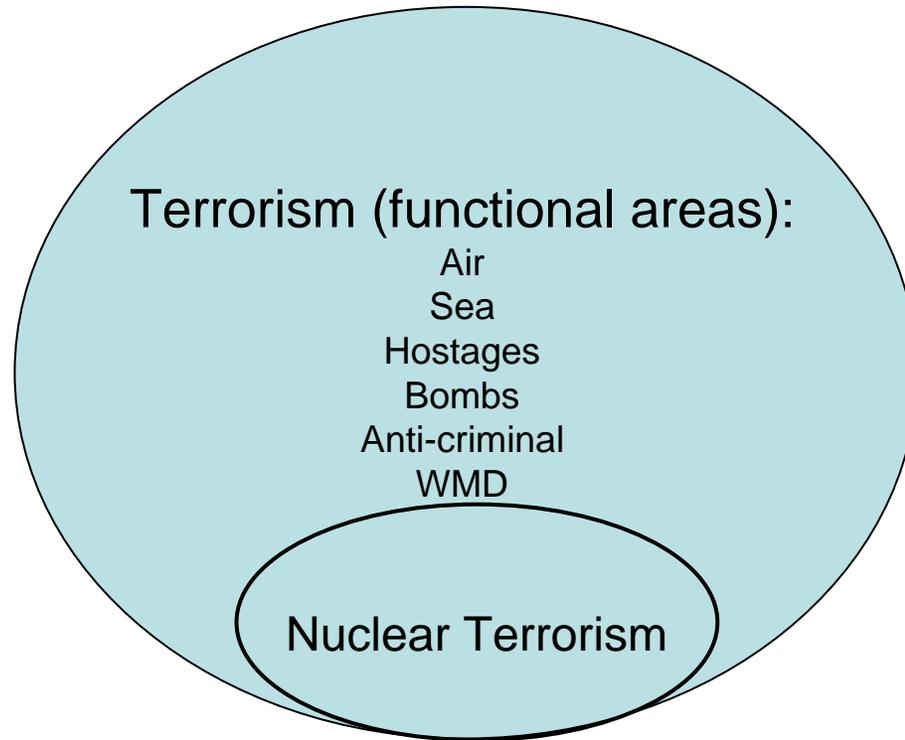
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International Law and nuclear terrorism: definitions and countermeasures





International Treaties on Terrorism

- AIR:
 - Tokyo 1963 Convention on Offences and Other Acts Committed on Board of Aircrafts
 - Hague 1970 Convention on Suppression of Unlawful Seizure of Aircraft
 - Montreal 1971 Conventions on Suppression of Unlawful Acts Against the Safety of Civil Aviation
 - Montreal 1988 Protocol on Suppression of Unlawful Acts of Violence In Airports

- SEA:
 - 1988 UN Law of the Sea, provisions on Piracy
 - Rome 1988 Convention on Safety of Maritime Navigation
 - 1988 Protocol on Safety of Fixed Continental Shelf Platforms



- HOSTAGES:
 - New York 1977 Convention on Crimes Against Diplomatic Agents
 - New York 1979 Convention Against the Taking of Hostages

- BOMBS:
 - New York 1997 Convention on the Suppression of Terrorist Bombings

- ANTI-CRIMINAL:
 - International Convention for the Suppression of the Financing of Terrorism
 - 2000 Convention on Fight Against Organized Crime

- NUCLEAR:
 - New York 2005 Convention for the Suppression of Acts of Nuclear Terrorism
 - Vienna 1980 Convention on the Physical Protection of Nuclear Material



Common Features of International Treaties on Terrorism:

- Advantages:

Detailed definition of Acts of Offence relevant for each separate functional area. These reflect different nature of terrorism in each area and provide different responses.

- Disadvantages:

Lack of determination at international level of rules of prosecution and punishment of suspected and offenders.

Discrepancies between national laws of States Party to these International Treaties result in application of different measures of prosecution and punishment of suspected and offenders.



Case study:

- **ANALYSIS OF INTERNATIONAL CONVENTIONS ON NUCLEAR TERRORISM:**
 - New York 2005 Convention for the Suppression of Acts of Nuclear Terrorism
 - Vienna 1980 Convention on the Physical Protection of Nuclear Material

Vienna 1980 Convention on the Physical Protection of Nuclear Material

Definition of Acts of Offence:

Article 7 (1): “The intentional commission of:

- (a) Any act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or sustainable damage to property;
- (b) A theft or robbery of nuclear material;
- (c) An embezzlement or fraudulent obtaining of nuclear material;
- (d) An act constituting a demand for nuclear material by threat or use of force or any other form of intimidation;
- (e) A threat:
 - (i) To use nuclear material to cause death or serious injury to any person or substantial property damage, or
 - (ii) To commit an offence described in sub-paragraph (b) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;
- (f) An attempt to commit any offence described in paragraphs (a), (b) or (c); and
- (g) An act which constitutes participation in any offence described in paragraphs (a) to (f)

Vienna 1980 Convention on the Physical Protection of Nuclear Material

Punishment:

Article 7 (2):

“Each State Party shall make the offences described in this article punishable by appropriate penalties which take into account their grave nature.”

Article 8 (4):

“... each State Party may, consistent with international law, establish its jurisdiction over the offences set forth in article 7 when it is involved in international nuclear transport as the exporting or importing State.”

Article 9:

“Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take appropriate measures, including detention, under its national law to ensure his presence for the purpose of prosecution or extradition...”

Article 10:

“The State Party in whose territory that alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.”

New York 2005 Convention for the Suppression of Acts of Nuclear Terrorism

(1) Definition of Acts of Nuclear Terrorism:

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

New York 2005 Convention for the Suppression of Acts of Nuclear Terrorism

(2) Definition of Acts of Nuclear Terrorism:

Article 2 (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.

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.

Article 2 (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...

New York 2005 Convention for the Suppression of Acts of Nuclear Terrorism

Punishment:

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.

Preamble: “...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”



Objectives:

- Universalization of anti-terrorist laws and notions through implementation of provisions of respective International Treaties
- Harmonization of national laws on
 - Prosecution and
 - Punishment of suspected and offenders