

Extra-Territorial Jurisdiction in the Context of Counter Nuclear Terrorism, China's Perspective

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Main points

- **China's perception of nuclear terrorist threats**
- **Nuclear Terrorism and Universal Jurisdiction**
- **Criminalization of Nuclear Terrorism in Chinese Law and Extra-territoriality**
- **Extra-territorial Jurisdiction of Export Control over Nuclear Items**

Nuclear terrorism: a realistic threat

- Such large scale terrorist attacks as 911 suggest that the terrorist groups will use, if they have, nuclear means for their “sacred” courses.
- China is facing potential terrorist threats from separatist and extremist groups. Some of them have links with Al Qaeda, and their behaviors are just as cruel as the latter.

Nuclear terrorism: a realistic threat

- Economic globalization has made it much easier to illegally acquire nuclear materials. The nuclear black market operated by Dr. A.Q. Khan is a good example in this respect.
- As the world's largest exporter and the second largest importer, China has been very well aware of the proliferation risks associated with the increase of international trade.

Nuclear terrorism: a realistic threat

- Reconnaissance of nuclear power around the world brings about more nuclear security challenges.
- China has the world's most ambitious nuclear power development plan. It has serious concern about the security of dozens of nuclear power plants being built across the country, which will be potential targets of terrorist attacks.

International cooperation against nuclear terrorism

- Non state actors such as terrorists are taking advantage of international network to transfer nuclear equipments, materials and techniques. In order to effectively fight against them, states must strengthen international cooperation.

China supports counter nuclear terrorism cooperation

- The established nonproliferation regimes such as NPT are mainly aimed at state players, and lack binding force over non state actors. In order to fill this legal gap, China has been actively involved in international efforts to strengthen the counter terror and counter proliferation regimes.
- Resolution 1373, Resolution 1540 and the International Convention for the Suppression of Acts of Nuclear Terrorism all get supports from China. In April 2010, President Hu Jintao attended the first Global Nuclear Security Summit in Washington to express China's serious concern about nuclear terrorism.

Nuclear terrorism and universal jurisdiction

- As far as nuclear terrorism is concerned, the concept of universal jurisdiction is far less controversial. Some scholars have published papers on the relationship between nuclear terrorism and universal justification. They suggest that universal justification has already been expanded to include nuclear terrorism.
- Chinese government does not use the term universal justification, but acknowledges that in order to combat international crime, it is necessary to introduce the obligation to extradite or prosecute.

Criminalization of Nuclear Terrorism in Chinese Law and Extra-territoriality

- Actions of terrorism and nuclear proliferation were first criminalized by the Criminal Law of PRC in 1997. In 2001 in order to implement the UN Security Council Resolution 1373, China amended the Criminal Law to make it more effective. The law is applicable extraterritorially in some cases.

Criminalization of Terrorism in Chinese Law

- Actions of terrorism were criminalized by the law. Article 120 of the law stipulates that
 - Whoever forms or leads a terrorist organization shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment;
 - persons who actively participate in a terrorist organization shall be sentenced to fixed-term imprisonment of not less than 3 years but not more than 10 years;
 - other participants shall be sentenced to fixed-term imprisonment of not more than 3 years, criminal detention, public surveillance or deprivation of political rights."

Criminalization of Nuclear Proliferation in Chinese Law

- Article 125 says “Whoever illegally trades or transports nuclear materials is to be sentenced to not less than three years but not more than 10 years of fixed-termed imprisonment; or not less than 10 years of imprisonment, life imprisonment, or death if the consequences are serious.”

Criminalization of Nuclear Proliferation in Chinese Law

- If a unit commits the crime, the unit will be fined, and its direct person in charge and other persons in charge are to be punished.

Criminalization of Nuclear Terrorism in Chinese Law

- Article 114 says: "Whoever ...spread radioactive substances, thereby endangering public security but causing no serious consequences, shall be sentenced to fixed-term imprisonment of not less than 3 years but not more than 10 years."

Criminalization of Nuclear Terrorism in Chinese Law

- Whoever ...spreads radioactive substances, thereby inflicting serious injury or death on people or causing heavy losses of public or private property, shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death."

Extra-territorial application of criminal law

- **According to the Criminal Law of PRC, there are three kinds of extraterritorial jurisdictions.**
 - the nationality approach
 - the protective approach
 - the “Universal jurisdiction approach” or international commitment approach

the nationality approach

- The law is applicable to PRC citizens who commit the crimes specified in the law outside the territory of the PRC. But those who commit the crimes, provided that this law stipulates a minimum sentence of less than a three-year fixed-term imprisonment for such crimes, may not be dealt with. (Article 7.) It is also applicable to PRC state personnel and military personnel who commit the crimes specified in the law outside PRC territory. (Article 7.) For example, according to this principle, China requests the US to extradite members of East Turkistan Movement captured during the Afghanistan War to China.

the protective approach

- The law is applicable to foreigners, who outside PRC territory, commit crimes against the PRC state or against its citizens, provided that this law stipulates. The precondition is that the crime will be sentenced to not less than a three-year fixed term of imprisonment. But if a crime is not punishable according the law of the place where it was committed, an exception is to be made. (Article 8.)

the “Universal jurisdiction approach” or international commitment approach

- It is applicable to the crimes specified in international treaties to which the PRC is a signatory state or with which it is a member and the PRC exercises criminal jurisdiction over such crimes within its treaty obligations. (Article 9.)
- Article 9 is widely regarded by academia as a landmark of accepting the principle of universal jurisdiction. But there is no unanimous agreement on this point.

- So China will exercise extra-territorial jurisdiction over nuclear terrorism cases if the crime is committed by Chinese nationals, or by foreign nationals against China's interests or it is within China's treaty obligations.

Extra-territorial Jurisdiction of Export Control over Nuclear Items

- To prevent nuclear items from falling into the wrong hands, administrative departments have made some regulations,
 - Regulations of the People's Republic of China on the Control of Nuclear Export, and control list;
 - Regulations of the People's Republic of China on the Control of Nuclear Dual-Use Items and Related Technologies Export, and control list;
 - Regulations of the People's Republic of China on Export Control of Missiles and Missile-Related Items and Technologies, and control list;
 - Regulations of the People's Republic of China on Administration of Arms Export, and control list.

Three principles of nuclear exports

- China adheres to three principles in its nuclear exports
 - guarantee for peaceful uses only,
 - acceptance of the safeguards of the International Atomic Energy Agency,
 - no retransfers to a third country without prior consent of the Chinese Government.

In order to effectively implement the three principles, China has taken various measures to control the end use of the exported goods.

End user and end use control

- When A Chinese exporter wants to export nuclear items and technologies, it must get an end use and end user certificate from the recipient. The certificate should clarify the end user and end-use of the imported materials or technologies, and expressly promise that without permission from the Chinese Government, it shall not use the relevant item provided by China for purposes other than the certified end-use, or transfer it to a third party other than the certified end user. MOFCOM get help form the embassies located in the country of import to verify these information.

“Catch-all” control.

- If the nuclear item or technology is not on the export control list, but the exporter knows or should know that there is a risk of nuclear proliferation, he is required to apply for an export license. The authority is required to make an overall assessment of the end-use and end-user of the item or technology to be exported and the risk of nuclear proliferation.

- To sum up, according to Chinese legislation, China has the right to exercise extraterritorial jurisdiction over nationals, foreign nationals and exported goods in the context of counter nuclear terrorism.
- In practice, China prefers to rely upon bilateral or multilateral cooperation, rather than extraterritorial application of its domestic jurisdiction, to deal with these security challenges.



Thank you!