

Legal Cooperation to Regulate Non-State Nuclear Actor: An East Asian Perspective

Presented to the Workshop on Cooperation
to Control Non-State Nuclear Proliferation:
Extra-Territorial Jurisdiction and UN Resolution 1540 and 1373

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Contents

- International regime on counter-terrorism and non-State actor nonproliferation
- National control/jurisdiction, extra-territorial jurisdiction and international cooperation
- UNSC Res. 1373 vs. 1540
- Northeast Asian countries' responses

Non-State Actor Nonproliferation and Counter-Terrorism Regime

Regime	Year	Characteristics
ICSANT	2007	-Focus: counter-terrorism, nuclear terrorism -To prosecute or extradite terrorists -International legal cooperation
CPPNM (Rev.)	1987, ?	-Focus: nuclear material and facility security -To prosecute or extradite -International cooperation
GICNT	2006	-Focus: nuclear terrorism -Comprehensive, voluntary approach
PSI	2003	-Focus: state, non-state actor proliferation interdiction - Network, voluntary activities
UNSC Res 1373	2001	-Focus: counter-terrorism -Extraterritorial jurisdiction; no asylum or refugee status to terrorists
UNSC Res 1540	2004	-Focus: non-State actor proliferation -National nonproliferation legislations -International cooperation

Ratification Status in NEA

Regime	Korea	Japan	China
ICSANT (NTC) Ratify 39/sign 144	Signature: Y Ratification: N	Signature: Y Ratification: Y	Signature: Y Ratification: N
CPPNM (Rev.) Ratify 63/sign 115	Signature: Y Ratification: N	Signature: Y Ratification: Y	Signature: Y Ratification: Y
GICNT	Participation: Y	Participation: Y	Participation: Y
PSI	Participation: Y	Participation: Y	Participation: N

UNSC Res. 1373(2001.9)

- Terrorism constitutes a threat to international peace and security (Preamble)
- Decisions: To bring terrorists to justice as serious criminal offenders, and to punish them as seriousness crimes (Art. 2)
- Recommendations:
 - Not providing refugee status to asylum-seeking terrorists (Art. 3. f)
 - Not recognizing political motivation as grounds for refusing extradition (Art 3.g)

UNSC Res 1540 (2004)

- Gravely concerning the threat of terrorism and the risk that non-State actors acquire, develop, traffic in or use of WMD (Preamble)
- Decisions: To enforce appropriate effective laws prohibiting non-State actors from all WMD activities (manufacture, acquire, possess, develop, transport, transfer, use) in particular for terrorist purposes (Art. 2)
- Decisions: To develop and maintain effective law enforcement efforts against illicit international activities, through international cooperation when necessary (Art. 3. c)

'Extraterritorial Application' in 1540 National Report(2008)

Countries	States' Responses to 1540 Art. 3. c
Korea	No Comment
Japan	"We understand the Security Council resolution 1540 doesn't require us to implement the extraterritorial applicability of the Japanese domestic law."
China	No Comment
U.S.	No Comment

Legislation and Extraterritoriality

- In 2006, 14 States reported having legislative measures to penalize the involvement of non-State actors in the prohibited activities. By comparison, the data for all States now(2008) indicate that 63 States have such legislative measures. (1540 Cmt Report 2008)
- In 2008, 31 countries reported to have “Extraterritorial applicability” in illicit nuclear trade regulations. (1540 Cmt Report 2008)

Discussions

- European countries tend to accommodate the principle of ‘universal jurisdiction’ over terrorism like genocide, crimes against humanity, war crimes, piracy, etc. However, most Northeast Asian countries are less susceptible to the ideas of ‘universal jurisdiction’ and extraterritoriality. They employ mostly ‘national jurisdiction, and tend to limit the extradition to countries only with bilateral extradition agreements.
- In South Korea’s case, legislation on ‘terrorism’ and non-State actor proliferation are yet incomplete due to some political and legal technical reasons. In the meantime, criminal laws are applied to terrorism, and trade and export-control laws to non-State actor proliferation.
- It would take some time for Northeast Asian countries to accommodate fully the idea of extraterritorial jurisdiction of non-State actor proliferation.