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

April 4-5, 2011

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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

<table>
<thead>
<tr>
<th>Regime</th>
<th>Year</th>
<th>Characteristics</th>
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</thead>
</table>
| 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

<table>
<thead>
<tr>
<th>Regime</th>
<th>Korea</th>
<th>Japan</th>
<th>China</th>
</tr>
</thead>
<tbody>
<tr>
<td>ICSANT (NTC)</td>
<td>Signature: Y Ratification: N</td>
<td>Signature: Y Ratification: Y</td>
<td>Signature: Y Ratification: N</td>
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<tr>
<td>Ratify 39/sign 144</td>
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<tr>
<td>CPPNM (Rev.)</td>
<td>Signature: Y Ratification: N</td>
<td>Signature: Y Ratification: Y</td>
<td>Signature: Y Ratification: Y</td>
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<tr>
<td>Ratify 63/sign 115</td>
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<tr>
<td>GICNT</td>
<td>Participation: Y</td>
<td>Participation: Y</td>
<td>Participation: Y</td>
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<td>PSI</td>
<td>Participation: Y</td>
<td>Participation: Y</td>
<td>Participation: N</td>
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UNSC Res. 1373(2001.9)

• Terrorism constitutes a threat to international peace and security (Preamble)

• Decisions: To bring terrorists to justice as serious criminal offices, 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)

• 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)

<table>
<thead>
<tr>
<th>Countries</th>
<th>States’ Responses to 1540 Art. 3. c</th>
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</thead>
<tbody>
<tr>
<td>Korea</td>
<td>No Comment</td>
</tr>
<tr>
<td>Japan</td>
<td>“We understand the Security Council resolution 1540 doesn’t require us to implement the extraterritorial applicability of the Japanese domestic law.”</td>
</tr>
<tr>
<td>China</td>
<td>No Comment</td>
</tr>
<tr>
<td>U.S.</td>
<td>No Comment</td>
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</table>
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.