

## **THE VALUE OF UNIVERSALIZING THE CURRENT REGIME**

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July 2012

### **1. The Nuclear Security Threat**

The term “nuclear security “ is generally understood to mean 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. In short, mainly measures against nuclear terrorism.

Though a response to this threat has been a concern for States from the beginning of the nuclear age, focus on it has increased very significantly during the last 20-25 years. Among the reasons for this development are (1) the trend towards a much more widespread use of nuclear power which inevitably increases the risks, (2) the collapse of the Soviet Union and the ensuing insufficient control with some of its nuclear facilities and materials, (3) the September 11, 2001 terrorist attacks which demonstrated how ruthless some terrorist groups are in their choice of means, potentially including nuclear materials, as confirmed in some of their own statements, (4) evidence of clandestine international nuclear science and supply networks, and (5) the Fukushima accident and the lessons learned from it with regard not only to nuclear safety, but also to nuclear security.

For these and other reasons, there can be no doubt that there is a very real and growing risk. There is also no doubt that even nuclear terrorist acts of a relatively minor magnitude may have devastating impacts which exceed by far what we have seen until now in “conventional” terrorist attacks.

At the same time, it has become still more evident that in a globalized world most nuclear security threats are transnational and international. No State is immune to such threats, regardless of whether it has nuclear installations itself or not, and in many cases the effects of a nuclear terrorist attack would not be limited to one State’s territory.

Besides, globalization and technological development have contributed to creating a new and more complex situation in this field. While earlier it was mainly the industrialized world which could take conflicts to the third world, to some extent the opposite is also true today because of developments in communication, transport and weapons. Terrorists are able to act globally, often from a base in a so-called “failed State” in the third world.

Safe havens of this kind and States which do not effectively prevent terrorists from access to nuclear materials, or even support terrorist activities abroad, represent an obvious risk to security. But also States which generally have the will and the ability to maintain a good nuclear security standard may have shortcomings which could have been detected and eliminated through international advice, control or peer review.

The security of the international community depends on the steps taken by every single State in order to effectively protect nuclear installations and materials from being attacked or used by terrorists. If the threats are more than ever of a universal character, a universal response is required. It is a logical and timely consequence that the international community has become increasingly concerned about it and has put nuclear security high on the international agenda. As expressed in the introductory paragraph of the Communiqué from the 2010 Washington Nuclear Security Summit: “Nuclear terrorism is one of the most challenging threats to international security, and strong nuclear security measures are the most effective means to prevent terrorists, criminals, or other unauthorized actors from acquiring nuclear materials”.

Good results, illustrated by various international documents, commitments and declarations, have been achieved, and the political will to progress in this field is clearly stronger than ever before. Still, much remains to be done before an international regime which corresponds adequately to the threat is in place.

Generally, the growing international consciousness of States about the urgency of the matter needs to be transformed into international arrangements which to some degree may affect the traditional concept of national sovereignty. At the same time, universal participation in the international efforts is another prerequisite for the effectiveness of the regime. In the long term it is not sufficient to agree on stronger governance within groups of likeminded countries. Also more hesitant countries must be involved, if international governance is to become fully effective.

## 2. The Current Regime

Although the IAEA has a central and strong role in international cooperation on nuclear security, it is difficult to speak of a proper and coherent international regime today. The current regime consists of a patchwork of agreements, resolutions, guidelines, or declarations adopted in different forums with different composition and participation. Neither is there any comprehensive multilateral treaty on nuclear security in general.

There are few legally binding international instruments dealing with aspects of nuclear

security. The only binding agreement of this kind about protection of nuclear material is the Convention on the Physical Protection of Nuclear Material (CPPNM) which was adopted in 1979, entered into force in 1987 and now has more than 140 States Parties. The main focus of the Convention is on protecting nuclear material during international transport and on making certain offences, e.g. robbery of nuclear material and threat to use such material to cause death, punishable under national law, as well as obliging States to prosecute or extradite offenders. However, it became clear that stronger commitments, inter alia concerning protection of nuclear material in domestic use, storage or transport and enhanced international cooperation were needed, and an Amendment to the CPPNM to this effect was adopted in 2005. It will enter into force when 2/3 of the States Parties have ratified. According to the 2012 Seoul Nuclear Security Summit Communiqué the Participating States are seeking to bring the Amendment into force by 2014.

The other legally binding agreement in this area is the International Convention for the Suppression of Acts of Nuclear Terrorism from 2005 which entered into force in 2007 and now has almost 80 States Parties. It is primarily an international criminal law instrument which defines certain acts concerning nuclear installations and material or radioactive material as criminal offences and obliges States Parties to extradite or prosecute alleged offenders. It thus follows the pattern from most other anti-terrorism treaties, and, as to some extent also the CPPNM, focuses more on which steps to take after terrorist acts than on how to prevent them from happening.

A universally binding, but rather general, international document is UN Security Council Resolution 1540 (2004) which inter alia obliges States to refrain from supporting non-State actors that attempt to acquire, use or transfer nuclear, chemical or biological weapons and their delivery systems. States also have to combat illicit trafficking and brokering in such items and to establish effective export and trans-shipment controls. Resolution 1540 was a follow-up to Resolution 1373 (2001) which was adopted shortly after 9/11 and with its focus on preventing and suppressing financing and preparation of acts of terrorism, and its call for international cooperation about steps and strategies to combat international terrorism, including nuclear terrorism, was a swift and forceful reaction from the World Community.

The two resolutions were adopted under Chapter VII of the UN Charter and are therefore binding on all States. Apart from the significance of the Resolutions themselves, the Counter-Terrorism Committee (CTC) established under Resolution 1373 to monitor the implementation by States of the Resolution has become an important part of the UN structure in this field. The CTC has inter alia requested States to deny terrorists safe havens,

to prohibit the raising or transferring of funds for terrorist purposes, to freeze assets and to share information about possible terrorist activities.

In approving the IAEA Nuclear Security Plan for 2006-2009 the IAEA Board of Governors recognized these resolutions as integral parts of the Agency's legal framework and its nuclear security program of activities. The Agency assists States, upon their request, in carrying out the obligations under the two resolutions.

An important legally non-binding international instrument is the IAEA document Nuclear Security Recommendations on Physical Protection of Nuclear Material and Nuclear Facilities (INFCIRC/225/Revision 5) which provides guidance and recommendations on a variety of protection issues, including sabotage of nuclear materials or facilities. It sets the basic and widely accepted international standards for physical protection, and the recommended measures acquire a binding nature when they are included as compulsory in agreements between States as well as in IAEA's agreements with States on Projects and Supply or on Technical Assistance. The latest Revision of the original 1972 document reflects contemporary threats and the ensuing need to align the recommendations with the changed security standards set forth in the 2005 Amendment to the Convention on the Physical Protection of Nuclear Material (CPPNM).

The IAEA Code of Conduct on the Safety and Security of Radioactive Sources (originally from 2000, revised in 2003 in the light of 9/11) provides guidance to States on how to achieve a high level of safety and security of radioactive sources, to prevent unauthorized access or damage to, and loss, theft or unauthorized transfer of, radioactive sources, and to mitigate or minimize the radiological consequences of accidents or malicious acts. A Supplementary Guidance on the Import and Export of Radioactive Sources was developed to support the corresponding provisions of the Code. The two documents were adopted by the IAEA Board of Governors and General Conference in 2003 and 2004, respectively, and therefore have broad international support, though not having legally binding effect.

The UN Global Counter-Terrorism Strategy from 2006 was launched at a high level meeting of the UN General Assembly and marks the first time that the 192 Member States of the UN agreed on a common strategic approach to fight terrorism. The Strategy contains a plan of action to inter alia build State capacity to fight terrorism and to strengthen the role of the UN organizations. Specifically on nuclear terrorism the IAEA is encouraged to continue its efforts in helping States to build capacity to prevent terrorists from accessing nuclear or radiological materials. The political value of this legally non-binding and general text lies in its universality.

The current political focus on nuclear security is manifest in several other international initiatives and processes during the last decade, though not of a fully universal character.

The Global Initiative to Combat Nuclear Terrorism (GICNT) is a partnership of more than 80 States, co-chaired by the US and Russia, and with the IAEA as an observer. The States are committed to a number of principles in order to combat nuclear terrorism, consistent with obligations under international law. The commitments focus both on practical and legal steps to be taken and on information sharing. The GICNT which is open to States that share its common goals and are actively committed to combating nuclear terrorism on a determined and systematic basis, is mainly a political forum and framework aimed at promoting the effective implementation of existing legal documents.

The G-8 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction from 2002 is, as the title indicates, not only aimed at preventing terrorists or States that support them, from acquiring or developing nuclear weapons, missiles or related equipment. It covers all kinds of WMD and addresses also nonproliferation, disarmament and nuclear safety issues. Its contribution to international security consists not least in cooperation projects in Russia and Ukraine in areas such as the dismantlement of decommissioned nuclear submarines, the security and disposition of fissile materials and the transfer of former nuclear weapons scientists to peaceful civilian employment. The Partnership's mandate was to end in 2012, but has been extended. In addition to the G-8 States, the Partnership now includes a number of other, mainly Western, countries.

Last but not least, the Nuclear Security Summits in 2010 in Washington and 2012 in Seoul have been critical when it comes to raising international political awareness about and attention to nuclear security threats. The Washington Communiqué contains important statements and recommendations, and the Work Plan provides more detailed guidelines in support of them. The Seoul Communiqué identifies 11 areas of priority and importance and lists specific actions to be taken in each of them, e.g. the year 2013 for announcing actions to minimize the use of Highly Enriched Uranium and the target year 2014 for the entry into force of the 2005 Amendment to the CPPNM. Many other parts of the Communiqués could be highlighted because of their value as policy statements and recommendations, but equally important as the contents of the Summit texts is undoubtedly the fact that a total of now 58 leaders meet at Summits to discuss nuclear security in a strong manifestation of how seriously they take the threat of nuclear terrorism, and how urgent it is to take effective national and international measures against it. This political attention and call for concerted action is a message from the Summit process which creates hope for the development of international governance in this field.

### 3. Towards a strong universalized regime

The need for a strong and universalized nuclear security regime seems obvious. This is recognized both by Governments and civil society in most countries, and progress can be registered with regard especially to new international initiatives and processes. Yet, a breakthrough has still to come whereby commitments in this field are both deepened and broadened.

Deepened, because more concrete and detailed commitments for States are needed, including compulsory elements, and eventually some control mechanisms. Broadened, because nuclear security threats normally have an international dimension, and they must be dealt with at the corresponding level, involving literally the entire international community. However, experience shows that it will not be easy to prioritize both these aspects at a time. The stricter an international regime is, in the sense of compulsory elements, control mechanisms, etc, the more difficult is it to have it universally accepted and implemented, at least in the short term.

It is a paradox that in today's world, nuclear security remains basically the exclusive responsibility of individual States though you can hardly think of many greater risks and threats not only to your own security, but also to the security and welfare of other States. Nevertheless, this truly international threat is generally dealt with as if it were a purely domestic matter. This should change, and ideally States should accept an obligation to let an international body, mainly the IAEA, provide assistance, advice, evaluations, maybe even regular inspections, etc. to make sure that their nuclear security standard lives up to internationally recognized rules and guidelines.

How and where could this be achieved? There is certainly more than one possible answer to this question, and a combination of various models is also an option. But the crucial question which States would have to face in all cases would be whether they are ready to make concessions with regard to the traditional concept of national sovereignty, according to which many States regard a stronger internationally based governance system with certain compulsory features as interfering with internal affairs and national interests, even national security.

Nevertheless, there are quite a few agreements in international relations which actually go rather far even with regard to more sensitive areas than nuclear installations or materials used for peaceful purposes. To name just a few examples from the Organization for Security and Cooperation in Europe (OSCE): the 56 Participating States from Europe, North America and Central Asia have, within the OSCEs military dimension, agreed to provide

information to the other States about weapons and military structures and to give access to installations of a military character. Treaties adopted and administered in conjunction with the OSCE, like CFE and Open Skies, likewise contain far reaching mutual obligations concerning weapons and troops control, inspections and observations of military exercises, and observations by air. Also in other fields of international relations, e.g. the protection of human rights, there are numerous examples of agreements where States have accepted to be held accountable for the implementation of their commitments through international examination of country reports, country visits, access for citizens to complain to international organs, international judicial control, etc. Maybe national security interests are not at stake in these cases, but the human rights situation in a given country is undoubtedly a politically sensitive area.

So why not take some steps in that direction in the field of nuclear security as well? In any case, national sovereignty is a relative concept. Every time a country enters into an international agreement, it actually accepts to limit its sovereignty. But States conclude international agreements about all kinds of subjects anyway, normally because they see the benefits of other States doing the same. Theoretically, the risks involved and the corresponding potential interest among virtually all States to strengthen nuclear security in their own surroundings, should be a strong enough motivation to be more ambitious internationally and less cautious about national sovereignty.

However, if for some time to come it will not be possible to reach international consensus about a regime which is both strong and universal, there are still ways to take gradual steps towards this within the current regime.

The obvious place to look first for the universal process is the IAEA. For three main reasons: the IAEA has an almost universal membership, it possesses expertise, experience and decision-making mechanisms, and a universal process has already been taking place in the Agency for years. This has for example resulted in adoption of or contribution to most nuclear security instruments, and in Nuclear Security Plans (now in its third edition, 2010-2013) with a wide range of activities, e.g. provision of nuclear security services, education, risk reduction and security improvement. Thus, the IAEA is active both with regard to preparation of recommendations and guidelines and to practical and advisory functions.

In line with the need for universalizing the regime, the IAEA is organizing in July 2013 an "International Conference on Nuclear Security: Enhancing Global Efforts". The Conference is expected to provide input for the Nuclear Security Plan for 2014-2017, and the conclusions may include the concept of holding regular (e.g. every three years) international conferences on nuclear security, including a one day ministerial level meeting.

It may be considered whether such meetings could replace future Nuclear Security Summits after 2014, by offering a continued high level venue for political discussions at a universal level on the issue.

Among the IAEA goals for a sustainable global nuclear security framework are: 1) a globally agreed assessment of the threat and the steps needed to address it, 2) universally applicable security instruments covering nuclear and other radioactive material, supported by guidance documents to assist States, 3) IAEA services for all States to advise them on whether or not they are meeting the norms and standards set out in these instruments, 4) a comprehensive education and training program running from policy makers and managers to front line officers, and 5) a network of national and regional centers providing training, research and development, and technical support. These activities will cover all aspects of nuclear security, e.g. transport, forensics and physical protection and will be implemented with greater attention to the synergies between safety, security and safeguards.

With regard to effective implementation of these plans, the funding of the IAEA's nuclear security activities is crucial. The current budget of around 35 Mio USD is very modest, even for the existing responsibilities. An additional problem is that the large majority of that money comes from voluntary contributions to the Nuclear Security Fund, not from the regular IAEA budget, which of course makes multiannual planning difficult. The problem is linked to the reluctance among most Member States to raise the IAEA budget and more specifically also to the somewhat similar situation with regard to financing of Technical Cooperation, a high priority area for the developing countries while industrialized countries attach more importance to nuclear security. That problem can probably only be solved by a (difficult) compromise on financing of both these areas via the regular budget.

Some other activities in the IAEA, outside the specific nuclear security area, are nevertheless also of importance for reduction of the threat. This is the case with the safety and safeguards work and the efforts to reduce the use of Highly Enriched Uranium and, when possible, to replace it by Low Enriched Uranium. In addition, the development of multilateral approaches to the nuclear fuel supply, in particular the creation of mechanisms for assurance of such supply, so-called "fuel banks", can eventually contribute to nuclear security, though mainly serving other purposes. A significant achievement in this field was the decision by the Board of Governors in December 2010 to establish an IAEA Low Enriched Uranium (LEU) Bank for the supply of LEU to Member States.

In many ways it would seem logical if the IAEA to an even higher degree than now was **the** general international meeting place or hub for nuclear security issues, where high level political meetings take place, where principles and standards are elaborated and adopted,

where reporting and peer reviews take place, where lessons learned are shared, and from where both evaluation and follow-up missions are sent out. Much of this is being done already or is within reach, but in the end it is up to the Member States how much authority they are ready to provide the Agency with.

Here the comparative advantage of the IAEA as a universal organization may on the other hand also set some limits to what can be done and at what speed. Decision-making in a large organization with such a broad and diversified membership inevitably takes time and requires difficult compromises, not least on a sensitive issue like nuclear security. It may therefore be foreseen that while certain regions or groups of States may be ready to go relatively far in the direction of a stronger regime, a universalized regime at the same level, potentially anchored in the IAEA, may not be achievable in a near future.

Parallel to the work in the IAEA, some of the current processes and initiatives outside the Agency framework will therefore most probably continue with a view to agreeing on more ambitious steps than what at the present time can be agreed universally. Even if one comprehensive, cohesive and strong universal regime must clearly be the ultimate goal, parallel approaches of this kind may be the realistic way forward for some time to come. There should be no contradiction between a universal process, mainly based in the IAEA, and processes with a more limited number of participating States, e.g. defined by geography or acceptance of certain common goals and principles. The activities of such groups of States may, inter alia via their membership of the IAEA, inspire and influence States which at present are more reluctant towards a stricter regime. Ideally, at a certain point, the various processes should converge into one universal regime.

In this connection, it should be considered whether the various elements of a universal regime should be covered by a new general Convention, a kind of framework or umbrella agreement. Besides covering existing and new common commitments such a Convention might also introduce commitments and mechanisms of a more far reaching nature which not all States would be ready to accept at the outset. They might be included in annexes or protocols which could be adhered to on a voluntary basis. Such facultative regimes are well-known in international relations, e.g. with regard to acceptance of the obligatory jurisdiction of international courts or arbitration bodies in dispute settlement, the most prominent example of this kind being the International Court of Justice.

A Convention of this kind would seem almost indispensable, from both a political, legal and systematic viewpoint, once the international community is in basic agreement about main elements of a universal regime, and the mere start of discussions on it might help to move positions. On the other hand, if such discussions turned out to be premature because of too

little common ground from the beginning, they might have a negative effect on discussions in other venues. To avoid this, an option might be to start discussions within a smaller group of States which subscribe to certain common principles and goals for such a project.

Even if Governments and Organizations of course have the main roles in discussions and negotiations on nuclear security, also other actors are contributing actively and positively. The importance of a continuous involvement of the nuclear industry and its operators and practitioners is evident, both because of the technological development and the expansion of nuclear power. Likewise, many NGOs contribute to maintaining political, media and civil society focus on the urgency of the matter, while also suggesting possible ways ahead. Also with regard to these actors, broad international participation and coordination of efforts would seem beneficial to nuclear security.

#### 4. Summary

The value of universalizing the current nuclear security regime is evident, taken the potential international consequences of nuclear terrorist acts and the international character of much of today's terrorism.

In spite of high political attention to this threat, a strong, comprehensive and cohesive universal regime has not yet been created. While it may be difficult in the short term to have universal acceptance of a significant strengthening of international governance, important steps forward may still be taken both within the IAEA, as the universal organization in this field, and within more limited groups of States.

Decisive progress towards a more efficient regime, including some kind of compulsory elements regarding reporting, evaluations, peer reviews, inspections, etc., depends on the readiness of States to rely less on the traditional concept of national sovereignty. More flexibility in this sense may be easier to find among smaller groups of States than universally in a near future, but examples of more ambitious approaches to international governance could eventually influence the development of universal norms.

At a certain point it should be considered whether to create a general, universal framework or umbrella Convention which should cover existing and new commitments, and which might also include facultative annexes or protocols containing commitments or mechanisms open to States which would be ready to go further.