

Amendment of APPRE for Ratification of the International Conventions

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1. Introduction

Both the international community and the IAEA have been making efforts to strengthen the global regime on nuclear security. As a result of these efforts, two conventions regarding nuclear security were issued by the UN and IAEA—the International Convention for the Suppression of Acts of Nuclear Terrorism (NTC) and the Amendment to Convention of Physical Protection of Nuclear Material (CPPNMNF). The NTC entered into force in 2007, but the CPPNMNF still has not yet been enacted. In the work plan released after the 2010 Nuclear Security Summit (which was held in Washington D.C) these conventions were mentioned as important tools against nuclear terrorism. The purpose of these conventions was to prevent malicious acts against radioactive materials and nuclear facilities. The article also specifies strong penal provisions. Many countries which had ratified these conventions had to revise or change their domestic acts or laws in order conform to these new international regimes. The ROK signed these two conventions in 2005; however, it has not ratified them yet. The government has a plan to ratify them before the 2012 Nuclear Security Summit, which will be held in the ROK. Each article in the conventions should be reviewed thoroughly in terms of their effects on the domestic legal and institutional systems. The penal provisions regulating the conventions should especially be carefully scrutinized since their effects are considerable. In this paper, we compared the penal provisions in the conventions with the ROK's laws and selected the provisions that are not specified in the ROK's legal system. The proposed articles for amendment to the APPRE are also suggested.

2. Overall features of the conventions

2-1 NTC

The Nuclear Terrorism Convention (the first draft of which was proposed by Russia in 1997) was the first anti-terrorism convention adopted since the September. 11, 2001 terrorist attacks in the USA. The NTC has two main goals: to criminalize the possession or use of nuclear materials for the purpose of committing terrorism and to facilitate international cooperation among states to prosecute those offenders. The NTC mandates that parties enact domestic legislation that would criminalize possession or use of radioactive materials to accomplish the following objectives: "cause death or serious bodily injury," "damage to property or to the environment," or "compel [states, individuals,

and organizations] to do or refrain from doing an act." The NTC also requires that appropriate penalties be assigned to these offenses and that certain legal defenses to such acts, such as ideological or religious obligation, should not be available under domestic law. The NTC is comprised of 28 articles and was entered into force in 2007.

2-2 CPPNMNF

The Amendment constitutes an important milestone in international efforts to improve the physical protection of nuclear material and facilities. The Amendment is vital to nuclear security and will have a major impact in reducing the vulnerability of States to nuclear terrorism. Whereas the obligations for physical protection under the CPPNM covered nuclear materials during international transport, the Amendment extends the scope of the CPPNM to also cover the physical protection of nuclear material in domestic use, in storage and during transport, and of civilian nuclear facilities. It also includes 12 principles of physical protection endorsed by the IAEA in 2001. The CPPNMNF consists of 23 articles and 2 annexes and has not yet been entered into force since it has not been ratified by 2/3 of the states parties to the convention.

3. Penal Provisions

The conventions call for states to develop an appropriate legal framework that criminalizes nuclear terrorism-related offenses, investigate alleged offenses and, as appropriate, arrest, prosecute, or extradite offenders. Penal provisions specified in the conventions are as follows:

1. NTC

- (a) Possesses radioactive material or makes or possesses a device
- (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
- (c) Threatens, under circumstances which indicate the credibility of the threat
- (d) 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.
- (e) Organizes or directs others to commit an offence
- (f) In any other way contributes to the commission of one or more offences

2. CPPNMNF

- (a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alternation, disposal or dispersal of nuclear material
- (b) a theft of nuclear material
- (c) fraudulently obtaining of nuclear material
- (d) an act which constitutes the moving of nuclear material into or out of a State without lawful authority;
- (e) an act directed against a nuclear facility, or an act interfering with the operation of a nuclear facility
- (f) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation

4. Review Results

4-1 Comparison with Domestic Act

There are three acts under which nuclear terrorism related offences are punishable in the ROK--criminal law, the atomic act and the APPRE (Act of physical protection and radiological emergency). Most of the penal provisions stipulated in the conventions (as listed in the third chapter) such as: unlawful acts constituting possessing, using, disposal, theft, carrying and embezzlement of radioactive material (including nuclear material) are specified in them. However, some provisions are not clearly defined in the domestic acts such as: offence by person to compel a natural or legal person, an international organization or a state to do or refrain from doing an act. Table 1 shows the comparison of penal provisions specified in the conventions with the ROK's domestic act.

Table 1. Review Results

Penal Provision in the Conventions	Domestic Act	Necessary for amendment
Use and storage of radioactive materials	Article 57, 65, 117 and 118 in Atomic Energy Act, Article 47 and 48 of APPRE	Non-Necessary
Use and manufacturing of equipment related to Nuclear terrorism	Article of 172-2 in Criminal law	Non-Necessary
Unlawful use and damage of nuclear facility and Transportation of radioactive materials	Article 115 in Atomic energy act and article of 172-2 in criminal law	Non-Necessary
Unlawful act of those who have authority	Article of 172-2 in criminal law	Non-Necessary
Threats against natural or	None	Necessary

international organization and states		
Attempt of crimes	None	Necessary
Crime by group	None	Necessary

4-2 Proposed Amendment

There are two ways to reflect penal provisions in the conventions that are necessary for amendment in the ROK's legal framework, creating a new act or revising the existing act. After some debate, it was recommended that the existing act should be revised. The problem, however, is to decide what act should be amended. Considering the objectives and contents of each act, it was suggested that only the APPRE be revised. Compared with other acts, the APPRE has articles specifying penal provisions related nuclear terrorism. It already includes strong punishment against crimes involving radioactive materials and equipment. A person who harms other person under this act can be sentenced to life in prison (it is more severe than that of the new act established in Japan which was created to ratify the NTC). Currently, proposed articles for reflecting the penal provisions that should be included in the ROK's legal framework are being prepared. These proposed articles will be examined thoroughly to determine if there are any contradictory parts with other acts in terms of both legality and technical implementation.

5. Conclusion

Nuclear terrorism is one of the threats to international security and the two conventions, the NTC and the CPPNMNF, can be the most effective means to prevent malicious acts against radioactive materials and nuclear facility. The Communiqué and the Work Plan adopted at the Washington Summit had also mentioned that they should be entered into force as soon as possible. As a host country for 2012 Nuclear Security Summit, the ROK has a responsibility to establish a legal framework that will incorporate both conventions. Efforts have been made to accomplish this and it is expected that the results will be released soon.

Acknowledgement

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REFERENCES

- [1] International Convention for the Suppression of Acts of Nuclear Terrorism (NTC), 2005
- [2] Amendment to Convention of Physical Protection of Nuclear Material (CPPNMNF), 2005