



Use of Nuclear Materials in Terrorist Crimes: A Comparative Study in the Criminal System of Iran, Afghanistan, and International Conventions

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Abstract

The expansion of the use of nuclear materials in various fields, including energy production, industry, and medicine, and the change in the strategy of terrorist groups towards the use of weapons of mass destruction, has increased the risk of the use of nuclear materials and devices by terrorists. Nuclear terrorism is a new and catastrophic form of terrorism, and although nuclear materials and devices have not been used as an example of nuclear terrorism, its potential risks have always been a cause of concern for the international community. Decision-makers in the international legal system first criminalized crimes related to nuclear and radioactive materials in the Convention on the Physical Protection of Nuclear Material, but the Convention on the Physical Protection of Nuclear Material was prepared to protect nuclear materials for peaceful use and did not include nuclear materials with military potential. Finally, the Convention for the Suppression of Acts of Nuclear Terrorism criminalized the use of nuclear and radioactive materials as nuclear terrorism. Given the increasing use of nuclear energy in Iran and the presence of terrorist groups in Afghanistan, as well as the concerns of Iran and Afghanistan regarding nuclear terrorism, this study seeks to analyze the crime of using nuclear and radioactive materials in the light of international conventions in the two penal systems of Iran and Afghanistan using a comparative approach. The findings of the study show that the use of nuclear and radioactive materials has been criminalized in the Convention for the Suppression of Acts of Nuclear Terrorism under the criminal behavior of using nuclear materials and devices. In addition, the convention has criminalized the use of nuclear facilities or caused damage to them as long as it causes the potential or actual release of radioactive materials. By criminalizing the use of nuclear materials, devices, and facilities in detail and making the above crimes absolute, the convention has adopted a strict penal policy against the above crimes. The Afghan legislator has criminalized the use of nuclear and radioactive materials for the first time in the Counter-Terrorism Law and then in the Penal Code as an example of nuclear terrorism. The Afghan legislator has criminalized the use of nuclear and radioactive materials under the title of use and dissemination of nuclear and radioactive materials. Although the use of nuclear materials can be



generalized to any type of use of nuclear and radioactive materials and includes all types of use of nuclear and radioactive materials, including dissemination, considering the application of the article, it seems that by criminalizing the dissemination of nuclear and radioactive materials, the Afghan legislator has criminalized radiological terrorism in addition to using. Although the criminalization of the use of nuclear materials in Afghan criminal law is a positive step towards combating this type of terrorism, the criminalization in Afghan criminal law seems to be objectionable in some respects in light of some principles of criminal law. Although the criminalization of the use and dissemination of nuclear materials can be generalized to instances of the use of nuclear devices, the extension of the above crimes to instances of the use of nuclear devices is contrary to the principles of criminal law, including the principle of strict interpretation of criminal laws. On the other hand, the restriction of the crime of the use of nuclear materials has weakened the Afghan criminal system against the above crimes. The Iranian legislator has not criminalized nuclear terrorism, including the use of nuclear and radioactive materials, independently and clearly. Although the criminalization of the dissemination of dangerous materials as an example of the crime of *Ifsade Fi al-Arth* and the drawing of weapons with the intention of killing people and property as an act of *Moharebeh* can be generalized to the dissemination of nuclear and radioactive materials as an example of nuclear terrorism, the extension of the above crimes to instances of nuclear terrorism seems objectionable in some respects. First, Islamic jurists have considered *Ifsade Fi al-Arth* to be a general and general term and have limited themselves to mentioning its examples. From the jurists' perspective, *Ifsade Fi al-Arth* does not have any legal basis as an independent criminal term and refers to any kind of sin or crime. Based on the principles of legislation, criminal behavior must be explained clearly and unambiguously in criminal laws, and consequently, the response to such behavior must also be clear and unambiguous. Criminalizing criminal behaviors such as spreading dangerous substances as an example of *Ifsade Fi al-Arth* in Iranian criminal law has no legal basis and is considered a type of comprehensive criminalization that is in opposition to the general principles of criminal law, including the principle of narrow interpretation of criminal laws. On the other hand, making *Ifsade Fi al-Arth* conditional on some specific legal conditions has caused many instances of spreading nuclear materials to be excluded from the scope of the crime of *Ifsade Fi al-Arth*. In Iranian criminal law, the dissemination of hazardous materials constitutes the crime of *Ifsade Fi al-Arth* when a person widely disseminates hazardous materials. The Iranian legislature has not determined how much dissemination of hazardous materials must occur to meet the criterion of widespreadness. Although the Convention for the Suppression of Acts of Nuclear Terrorism and the Afghan legislature has criminalized the dissemination of nuclear materials on any scale and size without specifying a specific amount of nuclear and radioactive materials, the Iranian legislature has adopted a vague, suspicious, and interpretable approach. In this regard, the criminalization method of the Convention and the Afghan Penal Code is precise and deterrent compared to the Islamic Penal Code.

Keywords: Nuclear Terrorism, Nuclear Material, Uranium, Nuclear Facilities, Isotope.

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