



Universiteit Utrecht

Strengthening the International Legal Framework for Nuclear Security

Jonathan Herbach

Utrecht University

Centre for Conflict and Security Law

Why focus on the international legal framework?

IF:

- Nuclear security is a State responsibility

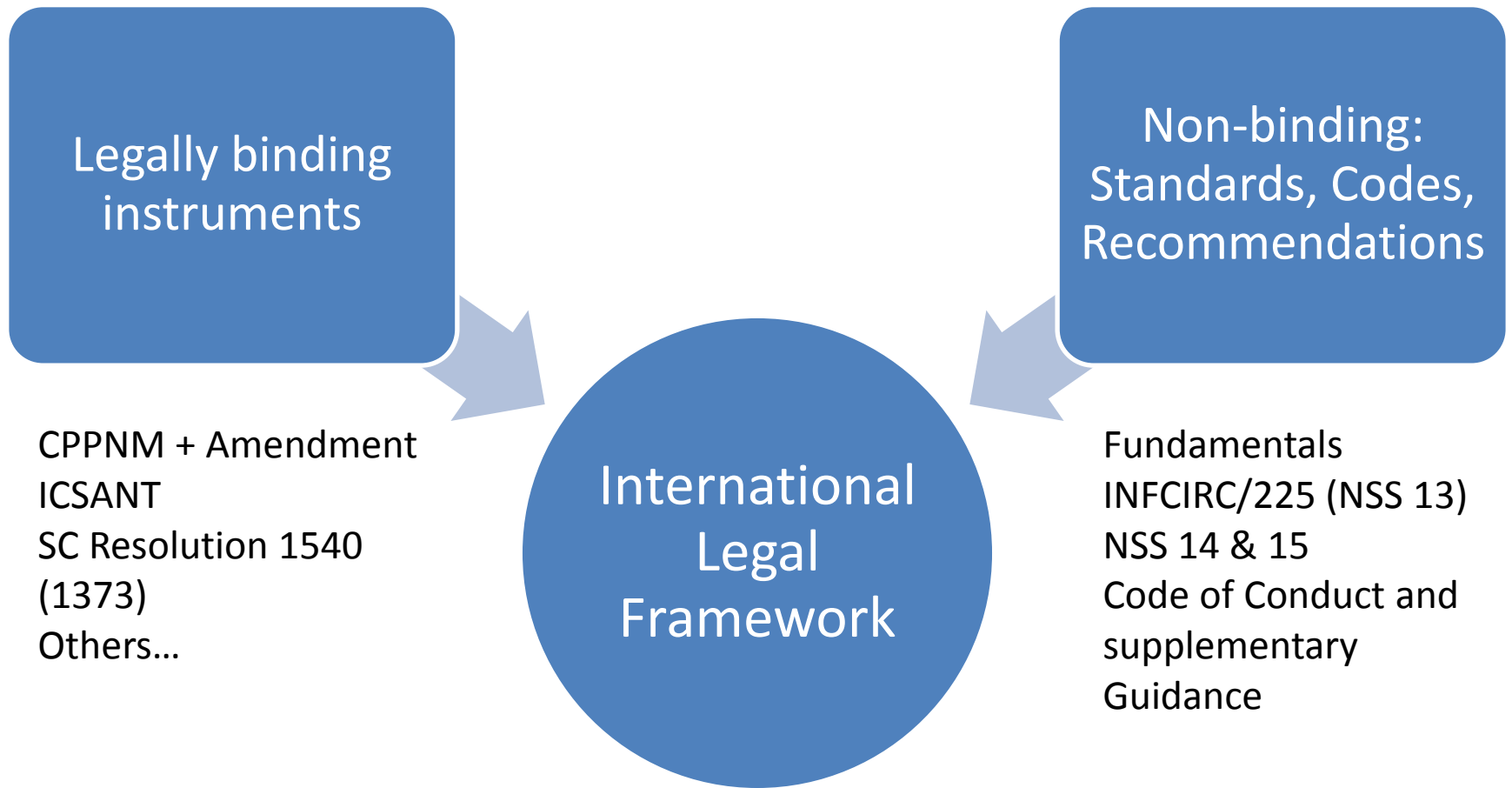
AND

- International law is limited: fragmented, weak (or no) compliance control and central enforcement

THEN:

- Guidelines, standards, political agreements, etc. may be sufficient or preferred

Structure of the Legal Framework



Why This Structure Makes Sense for Security

- Non-binding instruments
 - Flexibility (INFCIRC/225 updated four times since 1975 in light of changing circumstances)
 - Provide greater technical detail
 - Domestic sensitivities
- Underpinning of hard law essential
 - Creates obligations and codifies norms for which parties can be held accountable

Relationship: Legally Binding and Non-Binding

Safety


- CNS: Preamble
- Joint Convention: Preamble, Art. 4 & 11
- Precursor: Early Notification/Assistance Conventions

Security

- CPPNM Amendment: Preamble
- ICSANT: Art. 8, 18

Not Always a Concrete Separation

INFCIRC/225 made legally binding



IAEA
Atoms for Peace


Information Circular

INFCIRC/834
Date: 16 January 2012
General Distribution
Original: English, Spanish

Agreement between the International Atomic Energy Agency, the Government of Chile and the Government of the United States of America Concerning the Transfer of Enriched Uranium for Two Research Reactors

1. The text of the Project and Supply Agreement between the International Atomic Energy Agency, the Government of Chile and the Government of the United States of America Concerning the Transfer of Enriched Uranium for Two Research Reactors is reproduced in this document for the information of all Members of the Agency. The Agency's Board of Governors approved the text of the Agreement on 10 March 2011. The Agreement was signed by the authorized representatives of Chile on 16 December 2011, the United States on 13 July 2011, and by the Director General of the IAEA on 16 December 2011.
2. Pursuant to the Article XI of the Agreement, the Agreement entered into force on 16 December 2011, upon signature by the representatives of Chile, the United States and the Director General of the IAEA.

Project and Supply Agreements



INF

INFCIRC/267
March 1979
GENERAL Distr.
Original: ENGLISH

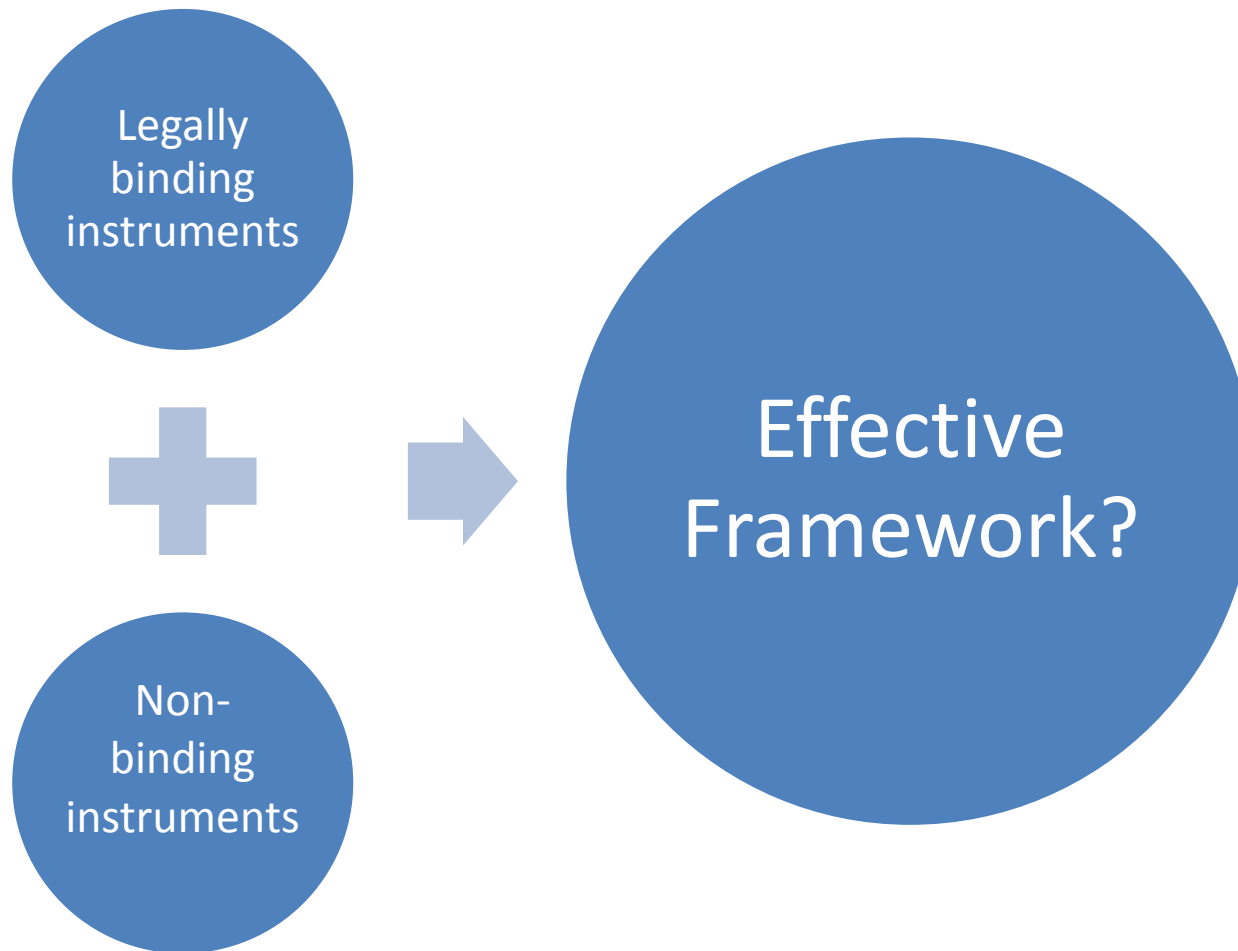
THE REVISED GUIDING PRINCIPLES AND GENERAL OPERATING RULES TO GOVERN THE PROVISION OF TECHNICAL ASSISTANCE BY THE AGENCY

Latest Status

1. The Revised Guiding Principles and General Operating Rules to Govern the Provision of Technical Assistance by the Agency were approved by the Board of Governors on 21 February 1979. The text is reproduced herein for the information of all Members.
2. The provisions established by the Board of Governors on 24 September 1977 for the application of safeguards in relation to the granting of technical assistance are also reproduced in the Annex to the Revised Guiding Principles and General Operating Rules.

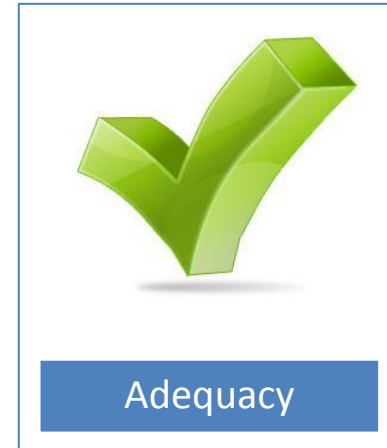
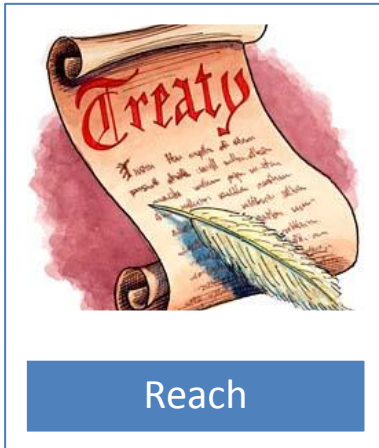
Revised Supplementary Agreements for the Provision of Technical Assistance

But, at the moment...



Does It Work?

- Key indicators:



- Strengthening the legal framework should focus on enhancing these three elements

Steps Taken (1): Amendment



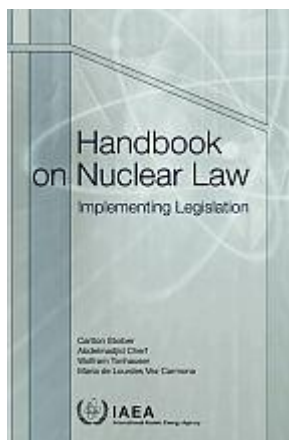
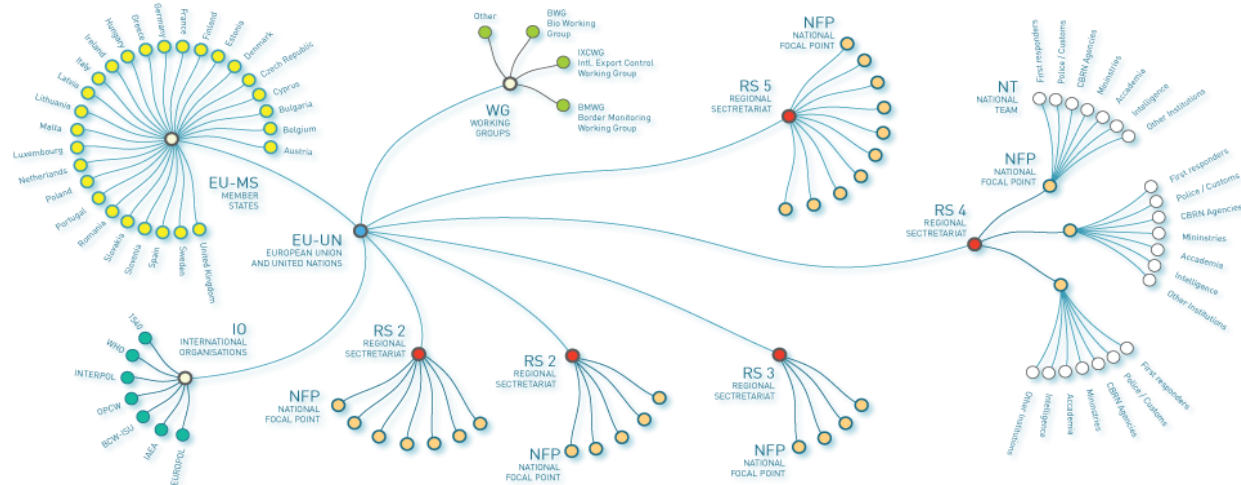
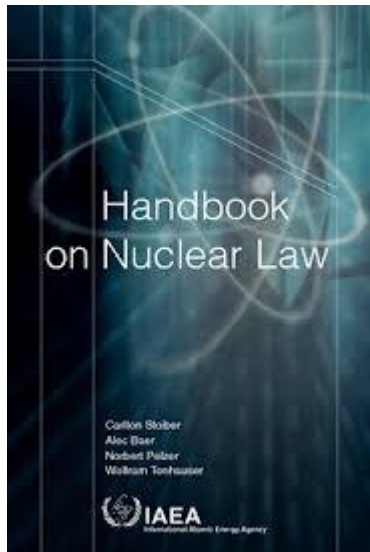
CPPNM (Entry into force: 1987)

- Physical protection measures for nuclear material (for peaceful purposes) in international transport
- Criminal offences: not limited to international transport
- International Cooperation

2005 CPPNM Amendment (Entry into force: Pending)

- Physical protection measures extended to domestic use, storage and transport (nuclear material) and to nuclear facilities (peaceful use) + Fundamental Principles
- Criminal offences: + sabotage and illicit trafficking
- International Cooperation: expanded

Steps Taken (2): Supporting Expanded Reach



International Conference on Nuclear Security: Enhancing Global Efforts
2 July 2013



Making Use of What There Is



Means

- Information sharing (Art. 14 CPPNM)
- Review Conference process (Art. 16 CPPNM)
 - ☐ periodic reports, additional info, compliance analysis (confidence-building measures)
- Consultation (Art. 5 CPPNM)

Results

- Enhancing Transparency
- Encouraging Trust
- Compelling Compliance

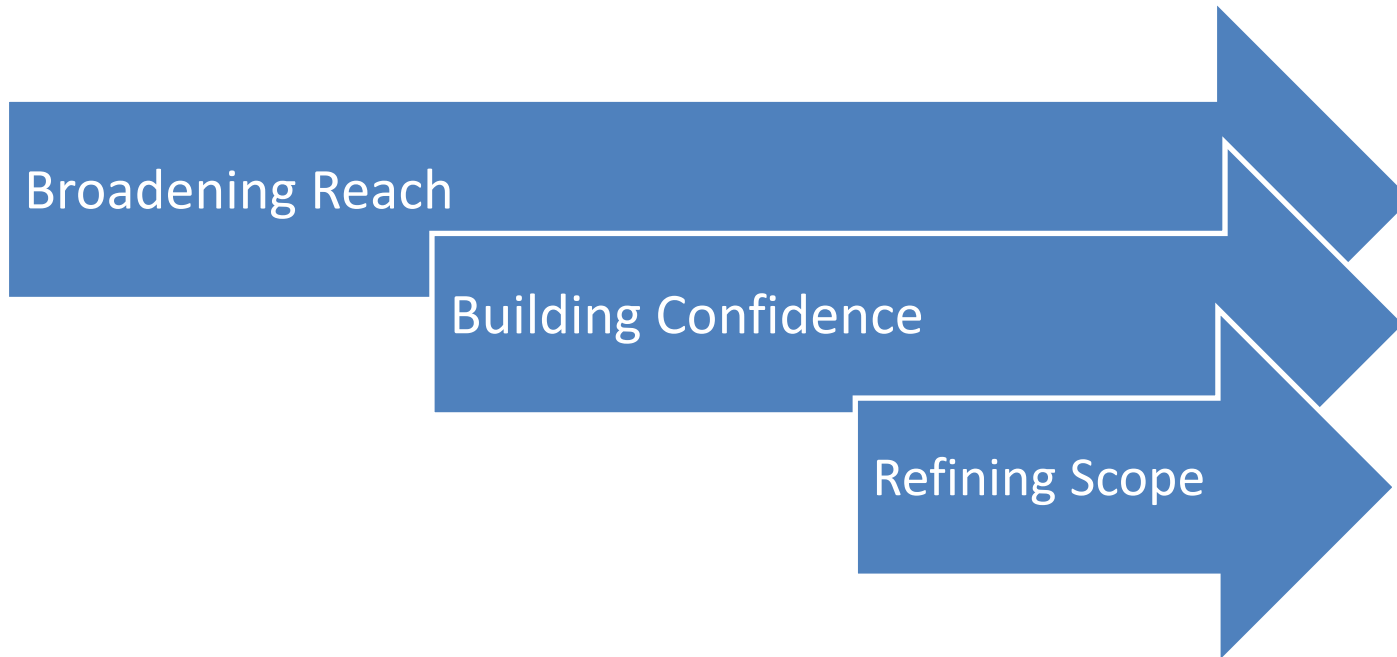


Addressing What Is Missing



- Proper balance between legally binding and non-binding?
- Matter of identifying gaps
 - Civil vs. military use
 - Security of sealed radioactive sources and other radioactive material (covered *primarily* in non-binding instruments)
 - Compliance?
- Options
 - Encourage comprehensive national nuclear security regime (ICSANT Art. 8, NSS no. 13-15)
 - Legally binding instrument for radioactive sources (possibility has been raised on a number of occasions)
 - Verification?

Goal



E
F
F
E
C
T
I
V
E
N
E
S
S

So, why focus on the international legal framework?

- Nuclear security is a State responsibility
 - **Each State has a fundamental interest in high standards in every other State**
- International law is limited: fragmented, weak (or no) compliance control and central enforcement
 - **Form of commitment (legal obligation) provides guarantees; benchmarks and procedures hold parties to account and build confidence**
- Guidelines, standards, political agreements, etc. may be sufficient or preferred
 - **Not without legal underpinning**

A strong, effective legal framework – centered around legally binding commitments:

- 1) provides the foundation for broadening and deepening cooperation; thereby supporting
- 2) the sustainability and further development of nuclear security efforts.

Thank you