

Information Circular

INFCIRC/740

Date: 20 October 2008

General Distribution

Original: English

Communication dated 4 July 2008 received from the Permanent Mission of Mongolia to the Agency concerning implementation of the law of Mongolia on its nuclear-weapon-free status

1. The Secretariat has received a Note Verbale dated 4 July 2008 from the Permanent Mission of Mongolia requesting that information pertaining to the law of Mongolia on its nuclear-weapon-free status be circulated as an information document.
2. The Note Verbale and, as requested therein, the attachment thereto, are circulated herewith for the information of Member States.



PERMANENT MISSION OF
MONGOLIA TO THE UNITED NATIONS
VIENNA

No. 08/58

The Permanent Representative of Mongolia to the International Organizations in Vienna presents his compliments to the Director-General of the International Atomic Energy Agency and has the honor to request the latter to have the information pertaining to implementation of Mongolia's Law on its nuclear-weapon-free status circulated as information documents of the sessions of the Board of Governors and the General Conference of IAEA under their respective agenda items.

The Permanent Representative of Mongolia to the International Organizations in Vienna avails himself of this opportunity to renew to the Director-General of the IAEA the assurances of his highest consideration.



July 4, 2008

International Atomic Energy Agency

Vienna

Information pertaining to implementation of the Law of Mongolia on its nuclear-weapon-free status

On February 3, 2000 the State Great Hural (parliament) of Mongolia adopted the Law of Mongolia on its nuclear-weapon-free status (hereinafter referred to as law on NWFS) as well as Resolution # 19 of the State Great Hural on measures to be taken in connection with the adoption of the said law. The text of the law has been circulated as IAEA General Conference document GC (44)/INF/19 on 20 September 2000.

On May 1, 2006 an inter-agency working group to appraise the implementation of the legislation was established by the decision of the Minister for Foreign Affairs of Mongolia. It consisted of representatives of the Ministry of Foreign Affairs, Ministry of Justice and Home Affairs, Ministry of Fuel and Energy, Ministry of Nature and Environment, Ministry of Defense, Nuclear Energy Commission /NEC/, State Specialized Inspection Agency, National Emergency Management Agency, General Intelligence Department, Customs General Administration and the "Blue Banner" non-governmental organization /NGO/.

The working group presented its findings and recommendations to the State Great Hural and Government of Mongolia. Upon instruction of the Government of Mongolia the report has been circulated as United Nations General Assembly document (A/61/293) in connection with the latter's consideration of agenda item "Mongolia's international security and nuclear-weapon-free status". The Government has also asked the Resident Representative of Mongolia to IAEA to have the parts of the report relevant to IAEA circulated as official document of the 52-nd session of IAEA's General Conference to be held in 2008.

Excerpt from "Progress report on the implementation of the Law of Mongolia on its nuclear-weapon-free-status"

Implementation of specific legal provisions

- Article 3.1.1 of the law NWFS defines "nuclear weapon" as any explosive device that is capable of releasing nuclear energy in an uncontrollable manner and that can be used for hostile purposes. Article 3.1.2 of the law defines "nuclear-weapon-free status" as a legal status of being free from nuclear weapons as well as from any threat or danger of nuclear weapon. In broader terms turning Mongolia into a nuclear-weapon-free zone (NWFZ) is important in promoting regional peace and security. That is why on 25 September 1992, President of Mongolia Mr. P. Ochirbat stated that "in the view of contributing to disarmament and enhance confidence in the region and world, Mongolia declares its territory as a NWFZ". In 14 years since the declaration, Mongolia is faithfully fulfilling its obligations under the NPT and the Additional Protocol. It is also working to ensure that its territory would be free of nuclear weapons at all time.

The international community fully supports Mongolia nuclear-weapon-free policy. Thus the General Assembly of the United Nations in its resolutions 53/77 D, 55/33 S, 57/67 and 59/73, in 1998, 2000, 2002 and 2004 respectively, called on all Members of the United Nations to cooperate with Mongolia in enhancing and ensuring its nuclear-weapon-free status.

- Article 4.1 of the law states that an individual, legal person or any foreign State shall be prohibited on the territory of Mongolia from committing, initiating or participating in the acts or activities related to nuclear weapons. Since Mongolia is already committed in this respect under the NPT, the law does not deal with this issue.

- Mongolia has not concluded any secret treaty or agreement with any other country in violation of Article 4.1.2 of the law that prohibits stationing or transporting nuclear weapons by any means.

- Article 4.1.3 prohibits testing or using of nuclear weapons. Mongolia has not done any nuclear testing, nor will it allow others to test on its territory.

- It is impossible to verify implementation of Article 4.1.4 of the law because the relevant authorities and specialists of Mongolia have little information on or experience in dealing with special nuclear weapon-grade radioactive material and wastes. Also it is technically unable to distinguish nuclear weapons special grade radioactive material from other similar material. Therefore, there is no information available on whether any individual, legal person or any foreign State has committed, initiated or participated in the acts or activities relating to transiting or dumping nuclear weapons grade radioactive material or nuclear waste on the territory of Mongolia.

In accordance with Mongolian law of 2000 on the prohibition of import and cross-border transport of dangerous wastes and their export, as defined in the Basel convention on the control of trans-boundary movements of dangerous waste and its disposal, dangerous wastes are wastes that negatively affect the health and genetics of humans and animals, produce diseases or pathologies in them and disturb the environmental balance. Implementation of this law needs both better trained personnel and as well as equipment.

- Article 4.2 of the law prohibits transportation through the territory of Mongolia of nuclear weapons, parts or components thereof, as well as of nuclear wastes or any other nuclear material designed or produced for weapons purposes. However, due to the lack of the necessary means as well as specialized and highly trained personnel, Mongolian authorities are unable to inspect all means of transport and goods crossing the State border or passing through Mongolian territory. According to para. 4 of Government resolution # 151 of 19 August 1998, the Customs General Administration has been assigned "to take measures to provide the permanently operating land ports of Buyant-Ukhua (recently re-named Chinggis Khaan), Zamyn-Uud and Sukhbaatar with fixed and mobile radiation control equipments". However, these land ports have not yet

been provided with the required equipment. The Customs General Administration installed fixed equipment to detect radioactive isotopes that could be hidden in luggages and other goods that only pass through auto-vehicle controls at land ports of Altanbulag, Selenge Aimag /2002/ and Tsagaannuur, Bayan-Ulgii Aimag /2005/. Other land ports do not have such fixed equipments. Therefore, it is necessary to install equipment to examine and detect radiation at the afore-mentioned international land ports as well as at railway and air cargo terminals as well as to train relevant customs personnel and border inspectors in this field.

There is no specific cooperation with the IAEA or other relevant organizations on personnel training and technical assistance in this particular area.

- Article 5.1 of the law states that the use of nuclear energy and technology shall be permitted only by the State administrative authority in charge of nuclear energy (i.e. by the Nuclear Energy Commission - NEC) and solely for peaceful purposes such as health care, mining, energy production and scientific research in accordance with the provisions of the international treaties to which Mongolia is a party as well as in conformity with the norms and principles of international law. During the first drafting of the law, Mongolia received comments from the Legal Branch of the IAEA. However, it has not cooperated with the IAEA on the implementation of the law since the latter was adopted in February of 2000.

NEC was established by Government resolution # 389 of 27 July 1962. The Commission's main functions are to draw up and implement a policy on the development of nuclear research and technology, on the use of radiation sources and on ensuring radiation protection and safety. Bearing in mind the new developments since 1962, the NEC statute was revised in December 2001.

As to the use of nuclear energy and technology solely for peaceful purposes, the Mongolian People's Republic (official name of Mongolia before 1992 Constitution) ratified in 1987 the conventions on Early Notification of a Nuclear Accident and on Assistance in the Case of a Nuclear Accident or Radiological Emergency. When doing so it made a reservation which stated that it did not consider itself bound by the provisions of the conventions concerning the procedures of the settlement of disputes arising from the interpretation or application of the conventions, and that the consent of all the parties to the dispute was required for their submission to arbitration or to the International Court of Justice. Mongolia withdrew these reservations in early 1990s.

On the other hand, Mongolia's southern neighbor-the People's Republic of China-when ratifying these two conventions made reservations to the effect that it did not consider itself bound by the dispute settlement procedures and that in cases of gross negligence by individuals who caused the death, injury, loss or damage, provisions of the conventions would not apply to the People's Republic of China. Mongolian northern neighbor -the Russian Federation - also made a reservation to the effect that the consent of all parties in each individual case is required for the submission of any dispute to the arbitration or to the International Court of Justice.

These two conventions were negotiated and adopted in a hurry, just after the 1986 Chernobyl Atomic Station accident. The reservations which socialist countries used to make upon accession to international conventions do not any more fit to the current post-cold war realities of globalization. According to such reservations, if an accident occurs in our neighboring country, Mongolia may submit the case to arbitration or the International Court of Justice only upon the consent of that neighboring country. In other words, Mongolia cannot refer the matter to the court without the consent of the neighboring country. Therefore, Mongolia needs to negotiate with the neighboring countries so that their reservations do not apply to Mongolia.

- Implementation of Article 5.2 of the law that states that “for the purpose of implementing Article 5.1 of the present Law and banning the dumping or storage in the vicinity of the borders of Mongolia of nuclear material or waste that might directly or in the long run indirectly adversely affect the safety of the population and the environment, Mongolia shall cooperate with the IAEA, other appropriate international organizations and the States that have nuclear programs”:

The conventions on Early Notification of a Nuclear Accident and on Assistance in the Case of a Nuclear Accident or Radiological Emergency envisage that States parties designate domestic authority to be in charge of regulating information transmission and information receipt as well as of requesting and rendering assistance in the case of nuclear accident, or release of radioactive substances through border of other countries and notify the IAEA and other States parties on the incident. In implementation of these provisions, Mongolia notified in 1987 the IAEA that the NEC is the national authority that is in charge of the above matters. It also informed IAEA in April 2004 that the State Specialized Inspection Agency would be the body in charge of storage and safety of radiation sources.

The NEC regulates the activities envisaged in the Asia-Pacific regional treaty on cooperation of nuclear scientific and technological research, development and training, in agreements of the International Joint Institute for Nuclear Research /IJINR/ and in IAEA agreements.

IJINR, which is based in Dubna, the Russian Federation, was established in March 1955. It is an inter-governmental, scientific research organization of the States parties. Mongolia is one of the founders of this institute. Over the past 50 years, 81 Mongolian scientists worked in IJINR and obtained high qualifications in the areas of theoretical and practical nuclear physics, nuclear electronics, computing, software and applicable mathematics. These Mongolian scientists are working today in the private and public sectors, and in the areas of education and scientific research. There are currently 9 Mongolian scientists working in IJINR.

Mongolian-Russian Joint Declaration on Cooperation of 1991 states explicitly that that two sides would cooperate in the field of environmental protection with a view to maintaining ecological security and preventing pollution of either country's territory.

However, the working group on implementation believes that there is no clear mechanism of information sharing between the two neighbors in the event of a nuclear accident or loss of radioactive substances.

- The National Security Council is entrusted to coordinate the implementation of a single State policy concerning the prohibited and permitted activities pertaining to the Mongolia's NWFS under Article 6.1.1. In the last 6 years the Council has not taken any steps in this respect.

- Implementation of Article 6.1.2 of the law pertaining to "institutionalizing internationally Mongolia's NWFS":

Since 1992 Mongolia has been pursuing a policy to institutionalize internationally its NWFS. The international community supports Mongolia's above policy. Thus, since 1998 United Nations General Assembly every second years has been adopting resolutions calling on UN member States to cooperate with Mongolia in consolidating its status. In October 2000, the five nuclear-weapon States made a joint statement providing political nuclear security assurance to Mongolia in connection with the status. This marked a significant first step in institutionalizing the status. Shortly thereafter, in September 2001, Mongolian experts, non-governmental experts of the five nuclear-weapon States as well as representatives of the United Nations met in Sapporo, Japan to address the issue of Mongolia's status. During the meeting the experts stated that in order to institutionalize its status, Mongolia needed to conclude a multilateral agreement on institutionalization of the status either with its two neighboring countries or with all the five nuclear-weapon States. Following-up on Sapporo recommendations, Mongolia submitted to its neighbors some proposals that could be included in the draft agreement. Since Mongolia received in summer of 2002 the consent of its neighbors in principle on concluding a trilateral agreement, no specific measure has been taken to follow-up on this issue.

- In order to implement the commitment contained in Article 6.1.3 on "taking an active part in the activities of the appropriate international organizations, exchanging information on the prohibited and permitted activities in Mongolia and providing information to national organizations", Mongolia submitted three declarations to the IAEA in accordance with the Additional Protocol. The declarations contained information on radioactive sources storage and dumping facility "Isotope Center" of the NEC, Mardai uranium mine where uranium ore was mined and the activities, location and capacity of businesses that have over the recent years been engaged in exploration of uranium deposits. However, no specific cooperation has been pursued with the IAEA or any other international organization to ensure the implementation of the present law. Within the IAEA Technical Cooperation Program, the Ministry for Nature and Environment, the State Inspectorate for Radiology and the Special Control of the State Specialized Inspection Agency and the NEC have started to jointly implement project MON/9/005.

- Though in accordance with Article 6.2 of the law the competent authorities of Mongolia have the right to gather information, stop, detain and search any suspected aircraft, train, vehicle, individual or group of persons on its territory, there is no information available regarding these issues.

- Under Article 6.3 of the law, the Ministry of Foreign Affairs is entrusted with monitoring compliance with the present law and the international commitments assumed by Mongolia in connection with its NWFS. The Ministry has not monitored the implementation of the legislation nor has it put forth any conclusion or proposal thereon.

- Article 6.4 of the law provides that non-governmental organizations or individuals may, within the mandate provided for by the legislation, exercise public oversight of the implementation of the law on NWFS and submit proposals thereon to the relevant State authority. In accordance with this Article the Blue Banner NGO was established in 2005 with the objective enable non-governmental entities exercise public oversight and submit proposals on NWFS to the relevant State authority. This organization was included on the working group to monitor implementation of the legislation and therefore it participated in its on an equal basis with other members of the group. The Blue Banner also has the objectives to cooperate with NGOs and oversight authorities of neighboring countries in ensuring non-dumping and non-transit of nuclear weapons grade radioactive material, nuclear waste and dangerous waste through Mongolia's territory and obtaining information on the safety of nuclear facilities in border regions of the neighboring countries.

- No specific measure was undertaken to ensure international verification of the implementation of the legislation in accordance with Article 7 of the law. Nor Mongolia has not carried out any specific action jointly with the two neighbors on this regard.

- As regards "liability for violation of the legislation on NWFS" covered by Article 8, other laws do not specifically provide any liability for illegal acts related to nuclear weapons.

However, some laws, in particular, the Criminal Code, Law on the Import, Cross-border Transportation and Export of Dangerous Waste, Law on Nature Protection, Law on Protection against Toxic Chemicals, Law on Radiation Protection and Safety provide for criminal and civil penalties for those who have carry out such acts as contamination of the environment with dangerous waste, transportation of dangerous wastes across State borders, contamination of the environment with toxic chemicals designated as chemical weapons and other wastes, transfer of toxic chemicals designated as chemical weapons to others, and violation of procedures for producing, exporting, importing, using, storing, transporting and dumping of radioactive sources.

- Article 9.1 of the Law states that if the vital interests of Mongolia are affected, the law may be amended or terminated". The law has not been amended.

Conclusion

Since the adoption of the law on NWFS and Hural resolution, some provisions, in particular the provision of Article 4.2 of the law that states that "transportation through the territory of Mongolia of nuclear weapons, parts or components thereof, as well as of nuclear waste or any other nuclear material designed or produced for weapons purposes shall be prohibited" has not been implemented. That is because Mongolia does not have practical possibility to monitor its implementation. Furthermore customs and border inspection authorities have insufficient know-how and the needed equipment to fully monitor transportation (or smuggling) of nuclear weapons, parts or components thereof, nuclear waste or any other materials through its territory.

Recommendations

1. Accelerate the policy to institutionalize Mongolia's NWFS by concluding an appropriate agreement with the neighbors... In order to do that draw up the revised draft agreement and present it to the governments of the two neighbors. If need be, ask professional advice from relevant IAEA bodies;

...3. Work to obtain assistance from international organizations or countries that can provide modern equipment for detection of transportation through the territory of Mongolia of goods, means of transport of nuclear weapons, parts or components thereof or of nuclear wastes;

...4. Train relevant customs and border inspectors to identify illegal transportation through the border of Mongolia of nuclear weapons, parts or components thereof as well as of nuclear waste or any other nuclear material designed or produced to be used for weapons purposes;

...5. Create mobile laboratory to improve customs control at temporary and permanent ports by acquiring the necessary assistance from other States or international organizations;

...6. Draw up a special plan and cooperate with IAEA, other organizations and UN members to acquire professional advice and training or retraining of personnel that are involved in implementing the national law and the two resolutions;

...7. Report regularly on the implementation of the law, the resolution and other legislative acts adopted in conformity with them. Identify the most effective methodology of monitoring implementation of the law and resolutions, and present recommendations thereon to the Ministry of Foreign Affairs and the Standing Committee of the State Great Hural for their guidance. Monitor and prepare the second report on the implementation of the law and resolutions in 2008.