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Sanctions as a Legal Deterrence Mean in the National Physical Protection Regime (CN-254-76)

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Content

- ❑ Introduction
- ❑ Definition, Purposes and Importance of Sanction
- ❑ Definition, Assumptions and Types of Deterrence
- ❑ Deterrence and Impact of Deterrent Measures in Physical Protection Regime
- ❑ Difference between Deterrence and Prevention
- ❑ Challenges Facing Sanction to Deter Adversaries
- ❑ Current Situation of the Egyptian Legislation
- ❑ Conclusion and Recommendations

Introduction

Physical Protection Regime Strategy relies on two elements to achieve its objectives, these elements are deterrence and defeat of adversaries.

Deterrence can be achieved by more than one mean or measure, one of them is SANCTION.

Definition, Purposes and Importance of SANCTION

Sanction definition: is a punitive measure that the law imposes for the performance of an act that is proscribed or for the failure to perform a required act.

* ***Sanction*** has many purposes, one of them is ***deterrence***.

* ***Sanction*** is the mean by which individuals are forced to respect the law and to prevent committing the crimes.

* ***Sanction*** could be used as a measure to **manage nuclear security risks**.

Definition, Assumptions and Types of DETERRENCE

Deterrence definition: is a tool for instilling an understanding of the expected adverse consequences - to the people - in case of committing the crimes.

Deterrence has two key assumptions:

- * First, specific sanction imposed on offenders will deter and prevent them from committing further crimes.
- * Second, fear of punishment will deter and prevent others from committing similar crimes.

Definition, Assumptions and Types of DETERRENCE

Cont.

Based on these two assumptions, there are two types of deterrence caused by sanctions: **specific or individual deterrence** and **general deterrence**.

* ***Specific or individual deterrence***: applies to offenders and aims to discourage them from committing any crimes again.

* ***General deterrence***: applies to the general public and aims to discourage persons other than the offender from committing any similar crime.

Deterrence and Impact of Deterrent Measures in Physical Protection Regime

- ***Deterrence in physical protection regime:*** aims to create a difficult environment for committing malicious acts by developing and implementing effective deterrent measures to convince the adversary that :-
 - The malicious act would be too difficult,
 - The success of the act too uncertain, or
 - The consequence of the act to the adversary too unpleasant to justify the undertaking.

Difference between Deterrence and Prevention

* ***Deterrence*** - as a legal term- is dedicated / applied either to the general public to prevent them from committing crimes or to the previous criminals to prevent them from re-committing crimes by making them afraid of punishment.

So, ***deterrence*** is dedicated to address the human factor not the crimes.

* ***Deterrence*** relies on sending messages about the difficulty of committing any crime in existence of the implemented deterrent measures.

Difference between Deterrence and Prevention

Cont.

- ***Deterrence*** has direct effect to the adversary (detering him/her) and indirect effect to the crime (preventing the crimes).
- So, deterrence comes first before prevention.

Difference between

Deterrence and Prevention

Cont.

* ***Deterrence*** is considered as a goal or strategy, but not as a function for patrols or others, because achievement of *deterrence* is not depending only on one side (patrols) so, what if the adversary is under the influence of drugs or alcohol and cannot weigh the consequences of his/her actions!

Then, nothing can deter the adversary because his/her mind is absent, in this case you have to prevent the adversary not to deter him.

* **On the other hand**, prevention can be a function, because prevention happens to the physical acts.

Challenges Facing Sanctions in Deterring Adversaries

1. Lack of knowledge (unaware) of punitive provisions (includes sanctions).
2. Inappropriateness (Unsuitable) of sanctions to the grave nature of criminal act and for the offenders.
3. Sanctions will not work alone, it should be complemented with a strong physical protection system to have a good deterrence.

Effectiveness of Deterrence

Certainty of punishment

Enhancing the probability of detection of the adversaries

Role of Police/guards
(Main Function)

Enhancing the role of police /guards
(promoting nuclear security culture)

Role of Physical protection system
(PPS)

Enhancing the capabilities of PPS (especially detection system)

Appropriateness of sanction

Appropriateness of sanction for the grave nature of the criminal act

Role of Legislator

Imposing tighten / strict sanctions for serious crimes

Appropriateness of sanction for the adversaries (offenders)

Role of Judge (Court)

Determining the appropriate sanction for offenders according to circumstances of each case

The Current Situation of the Egyptian Legislation

Before issuing the Egyptian Law No. 7 of 2010 that regulating nuclear and radiation activities, the *sanctions* imposed for criminal acts in the nuclear field didn't exceed three years in prison.

* **Egyptian legislator** decided to impose a severe *sanctions* for serious criminal acts that involving nuclear material or other radioactive material and their associated facilities or activities, which commensurate with the severity of the crime, its consequences, offender's purposes and time of committing the crime.

Current Situation of the Egyptian Legislator

Cont.

So, the Egyptian legislator has set special provisions for criminal liability about violation of the rules stipulated in Law No. 7 of 2010, which differ from those stipulated in the Egyptian penal code.

* The Egyptian legislator tighten sanctions in case of committing a criminal act for **terrorist purposes** or **during transportation** or the death of one or more persons.

* The law states that "If there is a more stringent penalty in any other national law, this penalty shall be applied"

Conclusion and Recommendations

- **Sanction** is the mean by which individuals are forced to respect the law and to manage potential risks.
- **Deterrence** is a tool for instilling an understanding of the expected adverse consequences in case of committing the crimes.
- ***Deterrent measures in physical protection regime*** aim to create a difficult environment for committing malicious acts.
- ***Physical Protection Regime Strategy*** relies on deterring and defeating the adversaries.
- **Effectiveness of deterrence** relies on enhancing the certainty of punishment and appropriateness of sanction.

Conclusion and Recommendations

Cont.

- * Increasing the scope of punitive acts.
- * Imposing appropriate sanctions to punitive acts and for the offenders.
- * Raising awareness of workers of punitive acts and their sanctions will lead to reduce insider threats.
- * Enhancing the certainty of punishment.
- * Tighten the sanctions for insiders.



Thanks for your attention