Preventing Terrorist Use of CBW

The role of international disarmament treaties

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Terrorist Use of WMD
Sources of the norm against CBW

- **International treaties**
  - 1925 Geneva Protocol
    - Bans the use of CBW in war
  - 1972 Biological and Toxin Weapons Convention (BTWC)
    - Totally bans development, production and stockpiling of BW and toxins
    - Ban on use explicitly referred to at 4th Review Conference (1996)
  - 1993 Chemical Weapons Convention (CWC)
    - Totally bans development, production, stockpiling and use of CW and toxins

- **UN Security Council resolutions**
  - UNSC Resolution 1540 (2004)

- **National laws**

- **Professional and scientific codes of ethics and conduct**

- **Industry standards and best practices**
CWC and Prevention of Terrorism

• **Status**
  • In force since 1997
  • As good as universal
    • 192 States Parties
    • 4 non-States Parties: DPRK, Egypt, Israel, South Sudan (+ Palestine)

• **International organisation**
  • OPCW = community of states parties
  • Technical Secretariat of OPCW: assists with treaty implementation

• **Division of labour between OPCW and States Parties**
  • OPCW verifies declarations and monitors & assists with compliance
  • States Parties
    • Required to adopt and implement national legislation – Article VII
    • Responsible for all treaty-relevant activities on its territory and by its nationals anywhere (extraterritoriality) – Article VII, §1
    • Cannot allow the domestic or international transfer of CW or their components to anyone – Article I, §1(a) and (d)
BTWC and Prevention of Terrorism

- **Status**
  - In force since 1975
  - Third most successful weapon control treaty after CWC & NPT
    - 174 States Parties
    - 22 non-States Parties (most in Africa)

- **No international organisation**
  - Implementation Support Unit (ISU)
    - 3 persons
    - Facilitates interactions among States Parties
      - Includes offers and requests for assistance
  - Focus on bilateral, intra- or interregional State Party interactions

- **Emphasis on responsibilities by States Parties**
  - No formal compliance verification; reliance on national reporting
  - States Parties nevertheless
    - Are responsible for all treaty-relevant activities on its territory and by its nationals anywhere (extraterritoriality)
    - Are required to adopt and implement national legislation (Article IV)
    - Cannot allow the domestic or international transfer of CW or their components *to anyone* (Article III)
Domestic treaty implementation

- **Domestic implementation legislation is key to prevention**
  - International treaty obligations became applicable to
    - Any natural or legal person (e.g., companies) operating on the territory of the state party or territories under its control
    - Any national entity operating abroad, irrespective of location
  - Three steps are required:
    - Criminalisation of acts prohibited under the BTWC and CWC
    - Penalisation of violations
    - Effective enforcement

- **Types of acts that should fall under national legislation**
  - Any form of acquisition, possession, storage and use of any items the fall under the definition of a biological and toxin weapon under the BTWC and chemical (and toxin) weapon under the CWC
  - Any assistance given to another entity with regard to previous point
  - Relevant technology transfers (exports and domestic transfers)

- **Other tools that may contribute to prevention**
  - Professional codes, codes of conduct and promotion of ethical standards
  - Biosecurity and –safety measures
  - Chemical security and safety measures (including infrastructure protection)
  - Education: introduction of issues in curricula
General Purpose Criterion (GPC)

- **Pillar of prohibition in BTWC and CWC**
  - Article I of BTWC
  - Article II of CWC (and referred to in other parts of the convention)

- **Addresses the problem of dual-use technologies**
  - Not the technology as such is banned, but the purpose to which that technology will be applied
    - Addresses for instance many toxic chemicals, pathogens and toxins used industrially or commercially
    - Rules are applicable to any past, present and future toxic chemical, pathogen or toxin, irrespective of its mode of production
    - Not to any specific list!

- **Contribution of GPC to prevention**
  - If included in domestic legislation, then law enforcement agencies do not have to wait until a crime has been committed to act
  - If there is no legitimate purpose for the possession of certain technologies (agents, equipment, etc.), then a violation against the national implementation legislation has been committed
Assistance

• **Under the BTWC**
  • May be requested by a state party
  • Offers of assistance by other state parties
  • Coordination / matching via the ISU

• **Under the CWC**
  • Part of the tasks undertaken by the Technical Secretariat of the OPCW
  • Direct assistance
  • (Regional) Training courses

• **UNSC Resolution 1540 (2004)**
  • Language covers Article IV of BTWC and Article VII of CWC
  • Applies to all UN Member States, not just parties to BTWC and CWC
  • Assistance offers available, coordinated by 1540 Committee.
Bear in mind ...

... that the best regulatory framework is of no use without effective enforcement
Recalling where science, industry and military art converged
Challenging entrenched positions

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