The Question of Chemical-Biological Weapon (CBW) Disarmament

The Challenge of Terrorism with CBW

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Terrorist Use of WMD
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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 conduct and ethics**

- **Industry standards and best practices**
The Chemical Weapons Convention

**Status**
- In force since 1997
- As good as universal
  - 193 States Parties (weapon control treaty with largest adherence)
  - 4 non-States Parties: DPRK, Egypt, Israel and South Sudan

**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)
CWC and Prevention of Terrorism

• **Terrorists and non-state actors**
  - Not explicitly foreseen in the CWC
  - Focus of CWC is on states
    • Conception of CW use in armed conflict was essentially major warfare between states
      • E.g. First World War; Iran – Iraq war
      • Aum Shinrikyo incidents happened after conclusion of CWC negotiations
        • CWC opened for signature in January 1993; entered into force in April 1997

• **Open-Ended Working Group (OEWG) on Terrorism**
  • Established by OPCW in December 2001
  • Recommendations adopted by unanimous decision of the Executive Council on 13 October 2017
Principal elements in OEWG recommendations

• Treaty scope expanded to actors other than states
  • Any CW use anywhere at any time by anyone is unacceptable and contrary to the CWC
  • Those responsible for the use of chemical weapons must be held accountable

• Other elements
  • Need for states parties to fulfil their *national implementation* obligations, in particular by means of adopting national criminal and penal legislation covering natural and legal persons on their territory
  • Technical Secretariat to provide *legal and technical assistance*; as well as *emergency assistance*
  • Director-General to provide *technical assistance* in connection with CW use by a non-state actor in accordance with his mandate and under the CWC provisions
BTWC and Prevention of Terrorism

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

• **No international organisation**
  - Implementation Support Unit (ISU)
    • 3 persons
    • Facilitates interactions among States Parties; including 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 (CBMs)
  - 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, imports 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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