

# 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 4<sup>th</sup> 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 that 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*



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