

The Question of Chemical-Biological Weapon (CBW) Disarmament

The Challenge of Terrorism with CBW

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Course '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): oversees treaty implementation
- 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
 - Are required to adopt and implement *national legislation* – Article VII
 - Are 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
- **New uses of CW**
 - Non-state actor use of CW as a method of warfare in Iraq and Syria
 - Use of CW as an instrument of assassination (Malaysia; UK)

Open-Ended Working Group (OEWG) on Terrorism

- OEWG on Terrorism established by OPCW in December 2001
 - Recommendations adopted by unanimous decision of the Executive Council on 13 October 2017
- 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 CW use must be held accountable

OEWG on Terrorism – 2

- 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 too in accordance with his mandate and under the CWC provisions
 - Used for the first time in assassination incidents:
 - *Malaysia*: reference kit sent for analysis of VX nerve agent (2017)
 - *UK*: Two Technical Assistance Visits (TAV) to confirm findings of Novichok agent by national laboratory (2018)

BTWC and Prevention of Terrorism

- **Status**

- In force since 1975
- Third most successful weapon control treaty after CWC & NPT
 - 183 States Parties
 - 9 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
- No international organisation → no division of labour as under the CWC
- Focus on bilateral, intra- or interregional State Party interactions

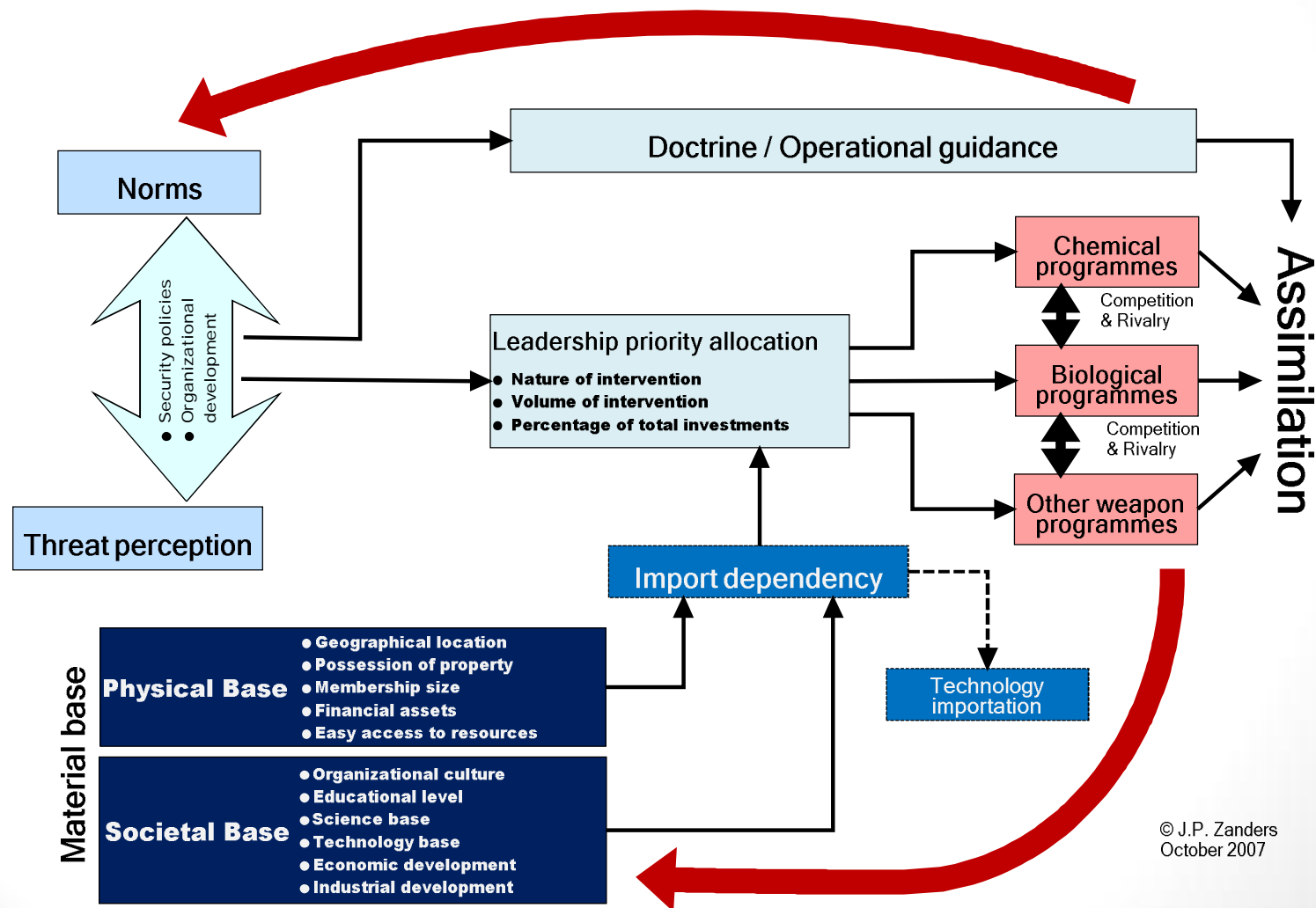
- **Emphasis on responsibilities by States Parties**

- 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 domestic or international transfer of CW or their components *to anyone* (Article III)

Terrorism: State party action is key

- Domestic implementation legislation for BTWC and CWC 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 activities that should fall under national legislation
 - Any form of acquisition, possession, storage and use of any items falls 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

Understanding the impact of national preventive measures



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
 - Application not limited 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

Bear in mind ...

... that the best regulatory
framework is of no use without
effective enforcement



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