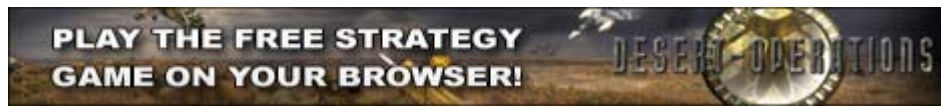


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Researcher says ICC needs stronger biological, chemical weapons provisions

by [Paul Tinder](#) on November 13, 2009



Marlies Glasius

This month, the States Parties to the International Criminal Court will come together in The Hague to prepare for their review of the Rome Statute, the ICC's governing document, in Uganda in 2010. The primary goal of this meeting is to assess how the ICC and its governing documents can be improved, wrote Malcolm Dando, a biologist, who researches international security at the University of Bradford's Department of Peace Studies in the United Kingdom. He wrote this column for the Bulletin of the Atomic Scientists.

Although it is rare for biological and chemical weapons to be considered in general discussions about the ICC, Marlies Glasius, an international relations expert at the University of Amsterdam, recently revisited the potential for these weapons (and more broadly, weapons of mass destruction) to be criminalized within the Rome Statute and whether there was a role for the anti-biological and chemical weapons civil society community in making this happen.

The concern shouldn't be whether the small community of anti-biological and chemical weapon advocates is aware of the ICC and its potential to enhance Biological and Toxin Weapons Convention (BWC) and Chemical Weapons Convention (CWC) provisions. Instead, it's how to ensure that civil society is present and vocal at the meetings on the ICC's governing statute."

One might argue that this debate is academic — the use of WMD would certainly cause the types of death and injury that should come under the purview of the ICC even without specific mention.

But Glasius counters that without explicit criminalization of WMD, a prosecutor might be inclined to steer clear of a "politicized" investigation defined by implicit, rather than explicit, interpretations of the Rome Statute. On this point specifically, she indicates that it may be possible to make progress toward including WMD language in an updated Rome Statute.

For example, Belgium and other states have proposed that explicit references be made to the BWC and CWC in the ICC weapons clauses. Furthermore, the Coalition for the Criminal Court has suggested that, regardless of the outcome of the Belgian proposal, "the facilitators should consider the creation of a permanent working group on weapons, methods and

means of warfare" in order to cope with the constant developments (e.g., in the life sciences revolution) that require legal attention.

Although several non-ICC member states — China, India, Israel, Pakistan, Russia and the United States — won't have a vote in these meetings, it's worth noting that they may have observers in Uganda and therefore will be kept in the loop when it comes to negotiations and outcomes.

Gladius' optimism, however, is overshadowed by her analysis of why the criminalization of WMD in the Rome Statute was left out in the first place. As she put it, although civil society played an important role in establishing the ICC a decade ago, "strong language on biological and chemical weapons was easily deleted ... simply because no one, either among states or in civil society, was making much of a case for it. The small anti-biological and chemical weapons community . . . appears to have been largely unaware of the ICC negotiations."

In my opinion, the anti-biological and chemical weapons community, while depressingly small, is aware of the ICC. A cursory review of the admittedly small literature--particularly the Chemical and Biological Weapons Conventions Bulletin (CBWC Bulletin)--produces numerous editorials and articles on the relationship between the two treaties and the ICC.

A draft treaty to comprehensively criminalize biological and chemical weapons was published in 1998 and considerable effort had been expended to obtain advice and support from international legal authorities and states.

An editorial accompanying this draft clearly stated the reasons why such a treaty was required: "The BWC and CWC do not attempt to make the development, production, possession or use of biological and chemical weapons an international crime for which states establish jurisdiction over prohibited acts regardless of the place where they are committed or the nationality of the offender, nor do these treaties contain provisions dealing with the extradition of suspects."

Widespread adoption of a convention such as this draft treaty, or a similar development of the Rome Statute, would add to the web of preventive policies that help minimize the potential for the development and use of these weapons in the future. Individuals who carried out such activities would do so knowing their actions had international, legal ramifications.

So the concern shouldn't be whether the small community of anti-biological and chemical weapon advocates is aware of the ICC and its potential to enhance BWC and CWC provisions. Instead, it's how to ensure that civil society is present and vocal at the meetings on the Rome Statute in order to demonstrate support for sensible improvements in the ICC governing documents regarding biological and chemical weapons arms control.

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