

# Why is international criminalization of BCW needed?

HSDC Briefing Paper 1

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## Introduction

The need for international criminalization is motivated by the urgency of concerns raised by biological and chemical weapons as potential instruments of terror, coercion and mass killing, whether in the hands of warring nations or of non-state entities. The Draft Convention supports efforts to eliminate these weapons globally and to prevent the hostile exploitation of dual-use technologies in the biological and chemical fields through the maintenance and enhancement of the moral, political and legal constraints and prohibitions against biological and chemical weapons.

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## The Draft Convention

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*“Adoption and widespread adherence to the Draft Convention would create a new dimension of constraint against biological and chemical weapons”*

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*The Draft Convention on the Prevention and Punishment of the Crime of Developing, Producing, Acquiring, Stockpiling, Retaining, Transferring, or Using Biological or Chemical Weapons* (“Draft Convention”) seeks to create an international legal regime establishing individual criminal liability for offences involving biological and chemical weapons (BCW). This would differ from current international legal obligations that have a limited focus at the level of State activities and those State actors involved.

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*“International criminalization would serve to place the problem of biological and chemical weapons in its proper context – as a threat to all humanity.”*

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Adoption and widespread adherence to the Draft Convention would create a new dimension of constraint against biological and chemical weapons by employing international criminal law to provide a level of jurisdiction to national courts against individual offenders where they are present in the territory of any State Party to the convention.

Such individuals would be regarded as *hostes humani generis*: enemies of all humanity. International criminalization would therefore serve to place the problem of biological and chemical weapons and the potential for hostile exploitation of biotechnology in its proper context - not only as a threat to the security of individual States but also a menace, now and in the future, to all humanity.

## Building on the Current Regime

Existing international conventions that prohibit BCW are directed primarily at the actions of States and address individual responsibility only to a limited degree. The three multilateral conventions that specifically govern this field are the Geneva Protocol 1925 (hereinafter “GP”), the Biological Weapons Convention 1972 (hereinafter “BWC”), and the Chemical Weapons Convention 1993 (hereinafter “CWC”). The Draft Convention builds upon the GP, BWC and CWC by providing a comprehensive framework for criminalizing the individual misuse of biological and chemical weapons.

Although both the BWC and CWC require each State Party to outlaw activities on its territory that are prohibited under the conventions, only the CWC explicitly requires each State Party to enact penal legislation to this effect, applicable also to the activities of its nationals elsewhere.

The BWC and CWC both stop short of requiring a State Party to establish criminal jurisdiction over foreign nationals present on its territory who have used biological or chemical weapons outside of its territorial jurisdiction, and neither convention contains provisions addressing extradition.

The Draft Convention would address these shortcomings by making it a crime under international law for any person, regardless of official position, to develop, produce, acquire, stockpile, retain, transfer, or use biological or chemical weapons; to assist, encourage, induce, order, or direct anyone to engage in any such activities; or to threaten or engage in preparations to use such weapons.

The Draft Convention would also help to remove any jurisdictional inconsistencies that currently exist between States when dealing with BCW violations. Discordant attempts by individual States to enact national legislation addressing biological and chemical weapons can be no substitute for concerted efforts towards international criminalization. Such crimes are often international in scope and, consequently, effective prosecution and enforcement will often require international efforts, especially when the national States of such offenders are unable or unwilling to prosecute them.

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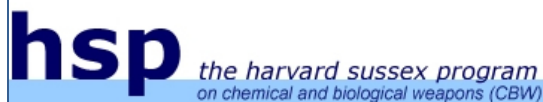
*“Discordant attempts by individual States to enact national legislation addressing biological and chemical weapons can be no substitute for concerted efforts towards international criminalization.”*

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By establishing these actions as international crimes and providing a framework within which States Parties can exercise jurisdiction over such crimes, the Draft Convention creates a more comprehensive and unified system for monitoring and eradicating the development, production, acquisition, stockpiling, retention, transfer and use of biological and chemical weapons. In particular, the Draft Convention provides guidelines for how States threatened by the use of biological and chemical weapons can proceed when other States are unwilling to enforce these prohibitions or do not recognize these actions as crimes under their domestic laws.

## Strengthening the Norm

The implementation of the Draft Convention would help to strengthen the norm against biological and chemical and enhance the moral, political and legal constraints against biological and chemical weapons. Deterrence would also be enhanced, and international co-operation in suppressing the prohibited activities would be facilitated.



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