

How does the Draft Convention relate to Counter-Terrorism?

HSDC Briefing Paper 3

The Harvard Sussex Program
University of Sussex

Introduction

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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).¹ The Draft Convention therefore supports efforts to mitigate the threat of BCW terrorism through the development of a comprehensive and unified system for monitoring and deterring the development, production, acquisition, stockpiling, retention, transfer and use of biological and chemical weapons.

“September 11 and the Anthrax letters incidents in late 2001 have raised the international community’s awareness of the problem of terrorist use of biological and chemical weapons”

The Terrorist Threat

The possibility of terrorists acquiring and using chemical or biological weapons is not a new concern (for example, the Salmonella food poisoning case in Oregon in 1984, and the use of Sarin by the Aum Shinrikyo sect in Tokyo in March 1995 and their unsuccessful attempts to release botulinum toxin and anthrax in Japan in the early 1990s). However, September 11 and the Anthrax letters incidents in late 2001 have raised the international community’s awareness of the problem of terrorist use of biological and chemical weapons.

The International Response

Under Article IV of the BWC, each State Party is required, in accordance with its constitutional processes, to take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition or retention of biological weapons. Similarly, Article I, 1(d) of the CWC specifies that, 'Each State Party to this Convention undertakes never in any circumstances to assist, encourage or induce in anyway, anyone to engage in any activity prohibited to a State Party under this Convention.'

However, the challenges of achieving universalization and national implementation of the conventions, as well as the problem of the dual-use nature of the materials and equipment associated with BCW, mean that the BCW terrorism issue has continued to be a major concern of the international community.

The United Nations Security Council adopted resolution 1540 on 28 April 2004 in an attempt to address the risk of potential misuse by terrorists of weapons of mass destruction. The resolution "calls upon all States to adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use biological or chemical weapons". However, resolution 1540 falls short in several important respects (see Briefing Paper 2). It does not seek to create legislative harmony between states; it contains no provisions pertaining to jurisdiction; it contains no provisions dealing with extradition, legal assistance, etc.; and it applies to non-state actors only, rather than to all potentially culpable individuals (including, for example, those acting in an official capacity).

"The key challenge in countering BCW terrorism is the translation of the internationally agreed prohibitions contained within the BWC, the CWC, and UN Security Council Resolution 1540 into effective domestic measures."

The key challenge in countering BCW terrorism is the translation of the internationally agreed prohibitions contained within the BWC, the CWC, and UN Security Council Resolution 1540 into effective domestic measures. The Draft Convention would substantially further this goal through developing a more comprehensive and unified system for monitoring and eradicating the development, production, acquisition, stockpiling, retention, transfer and use of biological and chemical weapons.

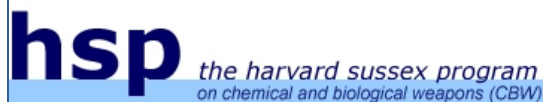
“The BCW terrorism challenge calls for coordinated approaches at the national and international level.”

The Draft Convention

The BCW terrorism challenge calls for coordinated approaches at the national and international level and the Draft Convention would further this goal 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.

Under the Draft Convention each State Party would be required to establish jurisdiction with respect to such crimes to all persons on its territory according to established principles of international law. Upon jurisdiction having been established a State Party would then be under an obligation to investigate, upon receiving information that a person alleged to have committed an offence may be present on its territory. The State Party in question would then be required either to extradite or prosecute (*aut dedere aut judicare*) any such alleged offender if satisfied that the facts so warrant.

The Draft Convention is therefore important to the problem of BCW terrorism because it develops a framework for internationally harmonized legislation that criminalizes the *individual* misuse of biological and chemical weapons.



Harvard Sussex Program
SPRU - Science and Technology Policy Research
Freeman Centre
University of Sussex
Brighton
East Sussex
BN1 9QE, UK

Tel: +44 (0)1273 678 172
Fax: +44 (0)1273 685 865
<http://www.sussex.ac.uk/Units/spru/hsp/Harvard-Sussex-Program-draft-convention.htm>

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