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Terrorists, WMD and Enforcement of Treaty Norms

Lisa Tabassi

lisa.tabassi@ctbto.org

Principal treaties

Treaties which only prescribe State behaviour/action:

- 1968 Nuclear Non-Proliferation Treaty (NPT)
- 1972 Biological Weapons Convention (BWC)
- 1993 Chemical Weapons Convention (CWC)
- UN Charter -- UN Security Council resolution 1540 (2004)

Treaties which also define offences:

- 1980 Convention on the Physical Protection of Nuclear Material
- 1999 Terrorist Bombings Convention
- 2005 Nuclear Terrorism Convention

Treaties & national law

- The treaty binds the State on the international level
- Treatment of treaties at the national level (in practical terms):
 - monist vision of the world: treaty norms have automatic legal effect nationally
 - dualist vision of the world: treaty norms must be incorporated into national legislation

Enforcing norms in respect of individuals

- Is the act a criminal offence punishable by law?
 - Definition of the crime
 - Penalty
- Is it enforceable?
 - Administrative measures
 - Resources (tools, training, personnel)

Case study: the CWC

- Articles II and VII require States Parties to:
 - adopt penal legislation and the “necessary measures” to implement the Convention
 - “not permit” any prohibited activities (implies positive enforcement action)
 - submit the legislation to the OPCW Secretariat
- Legislation received by OPCW Secretariat varied in scope

Making the problem visible

- Legislation Questionnaires:
 - Can you prosecute violations of the treaty norms?
 - Are dual-use chemicals are a list of controlled goods?
 - Is Customs enforcing the list?
- Result: CWC norms enforceable by 27% of States Parties

Addressing the problem

- 2003 OPCW Action Plan on National Implementation
 - required States Parties to adopt legislation by 2005
- 2004 UN Security Council resolution 1540
 - required ALL States to adopt legislation and administrative measures to prevent proliferation of nuclear, chemical and biological weapons among non-state actors

Results in the OPCW

- National implementing legislation (parliamentary acts) adopted by:
 - 2003 – 48% of States Parties
 - 2008 – 68% of States Parties
 - many bills still pending in parliaments
- Basic elements of the legislation:
 - defines chemical weapons
 - establishes the act as a criminal offence
 - requires reporting on production of dual-use chemicals and import/export controls

Is the legislation enforceable?

- Have the import-export controls been established and are they being implemented?
- Can Customs enforce them (tools and training to identify and seize contraband)
- Will Customs have access to intelligence information enabling them to intercept contraband?
- *2002 – 27% of States Parties; 2008 - 43%*

International Cooperation/Assistance

- “Each State Party shall cooperate with other States Parties and afford the appropriate form of legal assistance to facilitate the implementation of the obligations...”
- Effective investigations/prosecutions
 - arrests, gathering evidence, extradition
- Effective prevention of crime
 - information-sharing

THIS ASPECT REMAINS EMBRYONIC

Lessons learned: actual cases

JAPAN, 1995

Aum Shinrikyo gas attacks in Tokyo subway

- Constructed an elaborate chemical weapons production facility
- Group managed to produce sarin, VX, sulphur mustard, phosgene and hydrogen cyanide
- US customs authorities warned Japan of the group's attempts to acquire US sensitive equipment
- Japanese legislation was inadequate - only use was prohibited (not production) so Japanese police could not act upon the evidence
- Group placed under surveillance for 5 months and members were arrested after the attack
- Japanese parliament adopted stricter legislation 10 days after the attack

Lessons learned: actual cases

France 2002

- Plans to commit terrorist attacks in Paris, including chemical weapons attacks, were interrupted
- The accused had been producing ricin in his parents' spare bedroom
- Not all the jars of ricin have been found yet
- 25 persons were convicted, including the producer of the ricin who was sentenced to 10 years in prison

Lessons learned: actual cases

ITALY, 2002

- 3 Tunisian nationals with ties to Al Qaeda were convicted in Milan of trafficking in toxic chemicals and explosives and conspiracy to commit terrorist acts. Sentenced to 4-5 years prison each with expulsion from Italy upon release.
- Italy has amended its chemical weapons legislation twice since 1995 to eliminate loopholes and facilitate enforcement

Lessons learned: actual cases

USA 2004

- An informant told authorities that the accused wanted to produce chemical weapons and use them in Washington DC
- A sting operation was organised in which the accused tried to acquire precursors to make sarin from an undercover federal agent
- The accused was convicted in April 2006 of attempting to acquire chemical weapons, with the intent to use them

Lessons learned: actual cases

United Kingdom, 2005

- Trials ended in the 2004 case which started with 5 persons indicted for production of chemical weapons (ricin – Schedule 1 chemical) in a London apartment.
- Castor beans (ricin), cherry & apple seeds (cyanide) and recipes for making ricin, cyanide and botulinum were found in the apartment. Prosecution said plan was to cover doors and car door handles with ricin and other poisons.
- Tests for ricin were inconclusive and chemical weapons charges were dropped.
- One defendant was convicted of murder and conspiracy to commit a public nuisance by the use of poisons and explosives to cause disruption, fear or injury. Sentence: 17 years. 8 others cleared of conspiracy. Charges against 4 others dropped.

Lessons learned: actual cases

Jordan 2004

- Plans to attack Jordanian government buildings and the United States Embassy were interrupted by security forces
- Trucks carrying explosives and a mix of toxic chemicals were intended to create a toxic cloud
- Chemicals were purchased on the local market
- February 2006: nine persons were convicted and sentenced to death for planning a chemical weapons attack

Lessons learned: actual cases

NETHERLANDS, 2005 - Van Anraat case.

- Did not involve terrorism - van Anraat was a businessman supplying chemicals to Iraq for chemical weapons used in Iran and Iraq in the 1980s
- Valuable case for studying the impact on the supply chain of increasingly strict export controls on dual-use chemicals during 1984-1988

Assistance to States

- OPCW Action Plan did not “name and shame” States without legislation. Efforts were aimed at identifying where assistance could possibly be needed without stigma
- Assistance by OPCW Secretariat was widely sought
- Assistance by States Parties directly was difficult to arrange bilaterally or through the OPCW Secretariat

Effective assistance model

- 3-person teams (political/legal/technical) visited capital (upon request) to:
 - deliver outreach seminar
 - call upon all relevant ministries and parliament to foster support for measures
 - conduct drafting session(s) with the State's legislative drafter
 - plus follow-up comments on draft legislation
 - follow-up training for implementing agencies

= *long-term collaborative project*

Assistance providers

- Nuclear: IAEA, CTBTO PrepCom
- Chemical: OPCW
- Biological: ???
 - BWPP and Interpol projects discontinued
 - New UN Implementation Support Unit began work in 2007
- UNSC 1540 Committee (not itself an assistance provider) is increasing implementation support outreach to sensitize officials to 1540 obligations

The Bottom Line

- Is the act prohibited (including preparations, conspiracy, attempts)
- Is there an administrative structure with tools enabling prevention?
- Are there direct channels of communication between implementing agencies?
- Can States cooperate in investigations and prosecutions?
- Have safe havens been identified and targeted for assistance?

Conclusion

- Treaties are only the first step
- Implementation support and peer review in a collaborative spirit are key
- Implementation support requires long-term, sustained funding
- Could eventually lead to best practices discussions
- Ultimately falls within the broader good governance scheme, including addressing corruption

GOAL:

**NO SAFE HAVENS
FOR VIOLATORS**