

Building trust through verification



Stopping chemical and biological weapons proliferation through rule of law

Scott Spence
CBW Legal Officer

Non-state actors and the Chemical Weapons Convention

“National implementation also contributes in an important manner to the Convention’s ability to deal with changes in the security environment or in science and technology that may affect its operation. It contributes to meeting new challenges, including the threat or possible use of chemical weapons, as defined by the Convention, by non-state actors such as terrorists”.

- Report of the Second Review Conference, para. 9.73

Non-state actors and the Biological Weapons Convention

“The States Parties to the [BWC]...solemnly declare:

... that terrorists must be prevented from developing, producing, stockpiling, or otherwise acquiring or retaining, and using under any circumstances, biological agents and toxins, equipment, or means of delivery of agents or toxins, for nonpeaceful purposes...”

*- Report of the Sixth Review Conference, Final Declaration,
para. vii*

Chemicals as a weapon: Tokyo sarin gas attack 1995

- Non-state actors: Members of Aum Shinrikyo sect
- Weapon: sarin, a deadly nerve agent
- Dispersion: five attacks, two subway lines, 900 ml of sarin in plastic packets
- 12 people killed
- 50 severely injured
- Nearly a thousand had temporary vision problems

Disease as a weapon: US anthrax attacks 2001

- Non-state actors: Unknown perpetrators
- Weapon: Anthrax bacterium
- Dispersion: letters
- 5 deaths
- 17 other infections

Legal building blocks to prevent chemical and biological weapons proliferation

***First**, define the weapon properly to ensure maximum coverage:*

– **Chemical weapon**

Toxic chemicals and their precursors, except where intended for purposes not prohibited under this Convention, as long as the types and quantities are consistent with such purposes...

– **Biological weapon**

1. microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;
2. weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

Legal building blocks to prevent chemical and biological weapons proliferation

Second, prohibit and punish certain activities:

– **Chemical weapons:**

- Development, production, acquisition, stockpiling, retention, direct and indirect transfers
- Use
- Preparations (attempts, conspiracy, threats, financing, etc.)
- Using riot control agents as a method of warfare
- Transfers of Schedules 1 and 2 chemicals to States not Party to the CWC
- Unlicensed activities involving Schedule 1 chemicals
- Transfers of Schedule 3 chemicals without an end-user certificate

Legal building blocks to prevent chemical and biological weapons proliferation

Continued: prohibit and punish certain activities:

– **Biological weapons:**

- development, production, acquisition, stockpiling, retention, direct or indirect transfers
- Use
- Preparations (attempts, conspiracy, threats, financing, etc.)
- Unlicensed activities involving controlled or select pathogens (e.g., anthrax, botulinum, ebola, plague, salmonella, etc.)

Legal building blocks to prevent chemical and biological weapons proliferation

Third, extend the reach of the prohibitions:

- *to natural and legal persons,*
- *and ensure that the prohibitions also apply **extraterritorially** (e.g., on the basis of nationality of perpetrator, nationality of victim, impact on State interests, etc.) and that a political defense is inadmissible*

Legal building blocks to prevent chemical and biological weapons proliferation

Fourth, secure and verify activities involving scheduled chemicals and controlled (or select) pathogens:

– **Scheduled chemicals:**

- Annual reporting on the previous year's activities and anticipated activities for the coming year (for ultimate verification by OPCW)
- Licensing for all Schedule 1 activities and for Schedules 2 and 3 chemicals activities above certain thresholds
- Permits for any imports and exports of all scheduled chemicals (including customs/border controls and checks)
- Obligatory international inspections by the OPCW Inspectorate (and national inspections for those States that decide to have them)

Legal building blocks to prevent chemical and biological weapons proliferation

Continued: Secure and verify activities involving scheduled chemicals and controlled (or select) pathogens:

– Pathogens:

- Controlled (or select) agent lists based on threat to public health and safety and national security (e.g., WHO risk-based approach; Australia Group lists for biological agents, animal and plant pathogens and dual-use technology)
- Licensing for individuals and laboratories involved in controlled agents activities, including transfers (and prohibiting licenses for certain persons)
- Personnel background checks and physically secure labs (externally and internally)
- Biosecurity and biosafety training for personnel
- Notification of loss or theft

Legal building blocks to prevent chemical and biological weapons proliferation

Continued: Secure and verify activities involving scheduled chemicals and controlled (or select) pathogens:

– **Pathogens:**

- Comprehensive record-keeping
- Internal and international transfers control through permits (including customs/borders controls and checks of documentation, including end-use certificates, and through detection equipment)
- Secure transportation (approved carriers, secure containers and packaging, labeling, shipment tracking, etc.)

Legal building blocks to prevent chemical and biological weapons proliferation

Fifth, legislative enforcement to ensure non-proliferation of chemical and biological weapons:

– **Chemical weapons:**

- Intrusive, obligatory international inspections of scheduled chemical facilities (and, increasingly, facilities producing discrete organic chemicals) by the OPCW Inspectorate (Some States choose to have a national inspection capability)
- National Authority (an obligatory liaison with the OPCW and other States Parties)
- Law enforcement officials including customs and other border officials, sea and air port authorities, police
- Chemicals industry and forensic laboratories
- International co-operation on judicial and criminal matters

Legal building blocks to prevent chemical and biological weapons proliferation

Continued: legislative enforcement to ensure non-proliferation of chemical and biological weapons:

– Pathogens:

- National inspections of laboratories and other facilities where controlled pathogens may be found (there is no international regime in place for international inspections)
- Responsible authority (States are encouraged, though not obligated, to designate a national point of contact to the BWC's Implementation Support Unit)
- Law enforcement officials including customs and other border officials, sea and air port authorities, police
- Disease surveillance; response capability in the event of a natural, accidental or intentional outbreak (law enforcement; health officials and doctors; Ministries of Health, Environment and Agriculture, etc.)
- Biotech industry and forensic laboratories
- International co-operation on judicial and criminal matters

In summary:

- Legislation and regulations are the building blocks for prohibiting and preventing proliferation of chemical and biological weapons, while facilitating legitimate activities involving particularly dangerous chemicals and pathogens and toxins

- The legal building blocks to prevent CB weapons proliferation include:
 - Comprehensive definitions
 - Prohibitions and punishments
 - Extending the reach of the prohibitions domestically as well as extraterritorially
 - Chemical and biosecurity through control lists (the starting point) licensing, reporting, inspections and import/export controls, and
 - Border and internal enforcement and international legal co-operation

Building trust through verification



Thank you!

Scott Spence
CBW Legal Officer
VERTIC

scott.spence@vertic.org

+ 31 628 798 339

www.vertic.org