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**INTERNATIONAL PREVENTIVE AND COUNTER-MEASURES AGAINST
THE CHEMICAL AND BIOLOGICAL TERRORISM**

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Introduction

Weapons of mass destruction (WMD) (1) belong currently to the most destructive weapons constructed by human being. They were designed to kill a large number of people and to cause extensive material damage. During the Cold War the proliferation of WMD was connected mainly to state actors in the context of ideological competition between superpowers, the USA and the USSR. The intense proliferation of WMD led to the creation of vast stockpiles of WMD that were influencing international relations for decades. During the Cold War the nuclear war between the superpowers was perceived as the most compelling security threat. [2]

The security threat of non-conventional terrorism (3) was connected only to states sponsoring terrorism that could potentially provide terrorist groups with WMD during the Cold War. Nevertheless, concrete events of non-conventional terrorism can be identified back in the 1970s and proved the incoming trend. To most significant examples of WMD terrorism belong following incidents. In 1973 the left-oriented terrorist group Symbionese Liberation Army used cyanide against two employees of an American school and killed one of them. In 1984 the Kult Rajneeshpuram infected food in a restaurant in Oregon in the US by the bacteria of salmonella and poisoned more than 700 people. These attacks were perpetrated by primitive chemical and biological weapons. However the most serious WMD terrorism attack in the history occurred in 1995 when the Japanese cult Aum Shinrikyo used chemical weapon sarin in Tokyo subway and killed 12 people and intoxicated more than 5000. [4]

The end of bipolarity did not lead to the expected positive change of the international security environment. On the contrary, new security threats and challenges connected to the WMD proliferation occurred. New trend was marked by the increase in the number of proliferators of WMD on state and non-state level. Particularly dangerous became the efforts of terrorist groups. Their primary aim became to achieve a large number of casualties that creates a global atmosphere of fear and influences the public opinion psychologically on the global level. [5] This was demonstrated by the most lethal multiple terrorist attack perpetrated by Al-Qaeda on 11th September 2001 against the US. In consequence of the changed character of current terrorist groups and continued proliferation of WMD, the interconnection of both security threats is still present. A terrorist attack with sophisticated nuclear, chemical or biological weapons would probably have profound consequences on international security. Therefore the global fight against any efforts of terrorist groups to acquire and use WMD became priority of security strategies and doctrines. Its success will definitely influence the character and extent of the WMD terrorism threat in the future.

Under these circumstances the aim of the article is to analyse main legal and institutional instruments of global chemical and biological non-proliferation and disarmament regimes that have an impact on the fight against the WMD terrorism. The article critically evaluates their contribution to preventing and countering of the chemical and biological terrorism and identifies their main shortcomings that hinder the success in the elimination of the chemical and biological terrorism threat.

Preventing and Countering the WMD Terrorism

Concrete historical examples of WMD terrorism attacks proved that especially western societies are vulnerable to them. As a result, demands on the complex fight against the WMD terrorism threat are rising. However it is problematic as it is closely connected to the character of current terrorist groups. Specific terrorist groups follow extreme goals and do not hesitate to use more violent non-conventional methods to achieve them, including WMD. Moreover, concrete terrorist groups and organizations have capabilities to acquire and use non-conventional weapons. These are the primary reasons why preventing and countering the WMD terrorism have become one of the priorities of the international community since the mid-1990s. [6] The character of this security threat is essentially influenced by the efficiency of international multilateral measures and cooperation in the complex fight against the terrorism agenda.

The fight against the terrorism can be generally defined as “long-term activities that include the use of non-military instruments and methods in the ultimate extent.” [7] These are mainly diplomatic, political, economic and legal instruments, international cooperation, implementation of preventive and repressive measures etc. Their primary aim is to prevent and counter terrorist acts. In this context, main elements of the fight against WMD terrorism are:

1. Measures to prevent the proliferation of nuclear, chemical and biological weapons, materials, technologies and know-how;
2. Measures to secure existing weapons, materials and technologies arsenals;
3. Repressive instruments criminalizing illegal activities connected to WMD proliferation for the purpose of terrorism. [8]

The first two groups of measures include international legal norms and international institutions that are integral parts of the global non-proliferation and disarmament regimes. They are preventive measures as they prevent the proliferation of nuclear, chemical and biological weapons, provide for the security of nuclear, chemical and biological materials and for the effective protection of facilities for the WMD production. In the context of the WMD terrorism their primary aim is to prevent terrorist groups and organizations to acquire and use nuclear, chemical and biological weapons, materials and technologies to achieve their aims. Such a scenario would have in fact catastrophic impacts on international security.

The third group of instruments includes international legal norms and institutions to counter the WMD terrorism that are repressive in nature. Their aim is to constitute mechanisms that enable states to prosecute and punish perpetrators of WMD terrorism acts. These instruments concretely criminalize illegal activities with nuclear, chemical and biological weapons, materials and technologies perpetrated by non-state actors, including terrorists. The effective fight against WMD terrorism demands the mutual compliance of all the three groups of international instruments.

The following chapters deal with the main international legal and institutional instruments of the global non-proliferation and disarmament regimes that contribute also to the fight against the chemical and biological terrorism.

Major Legal Instruments

The Chemical Weapons Convention

In order to prevent chemical terrorism, the chemical non-proliferation and disarmament regime plays a significant role. Its substantial element is the multilateral Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (the Chemical Weapons Convention, CWC) that was adopted in 1993 (entry into force in 1997). Its main aim is a complex elimination of all sorts of chemical weapons. In this context the CWC can be considered as an important instrument in the chemical terrorism prevention.

The CWC does not deal with the chemical terrorism directly. According to the Article I. of the treaty the State Parties have the obligation not to use, develop, produce, otherwise acquire, stockpile or transfer chemical weapons to anyone. In addition to that they have the commitment not to help and assist to anyone in any activity that is prohibited by the CWC. In the context of the chemical terrorism prevention, another commitment of State Parties is relevant. It is a commitment to secure and destroy all chemical weapons and to destroy all chemical weapons production facilities under the jurisdiction of the State Party. [14] The obligations stated above have only indirect connection to the prevention of chemical terrorism as the destruction of chemical weapons and the prohibition of their production eliminate one of the potential means of chemical terrorism. The observance of these obligations by State Parties has the potential to eliminate the security threat of chemical terrorism.

However, not only chemical weapons can be misused by non-state actors. More probable is the misuse of toxic chemicals and their precursors. According to the Article VI. of the CWC State Parties have the right to develop, produce, acquire, stockpile, transfer and use toxic chemicals and their precursors (15). At the same time they have the commitment to adopt all necessary measures to ensure that all toxic chemicals and precursors under their jurisdiction are used in accordance with the CWC. [16] Especially these provisions are significant for the chemical terrorism prevention as an effective control and verification mechanism of a State Party has the potential to prevent and eliminate the efforts of non-state actors to acquire and use toxic chemicals and precursors for the purpose of terrorism.

Among the CWC provisions that can be applied to the chemical terrorism prevention, the CWC contains also provisions regarding its countering. According to the Article VII. of the CWC State Parties are obliged to prohibit and not to permit anyone under their jurisdiction to perform activities that are in violence of the CWC. At the same the State Parties are obliged to adopt sanctions to punish such activities. [17] State Parties decide about the implementation of the CWC on national level. The main benefit of these CWC provisions is the fact that State Parties are obliged to create a legal monitoring mechanism to control toxic chemicals and their production facilities. Within this mechanism State Parties are required to provide for the physical protection of chemical facilities that de facto serves as a prevention of any terrorist groups efforts to acquire and use toxic chemicals to achieve their goals. On the other hand, the fight against the chemical terrorism is strengthened through the

commitment of State Parties to adopt repressive measures against acts and activities that violate the CWC and at the same time to cooperate with other State Parties to the CWC in investigation and prosecution of criminal acts violating the CWC. However, one of the shortcomings of these provisions is the fact that State Parties decide about the implementation of them. As a result the criminal law adopted by State Parties is not unified and has different effectiveness. Another significant problem is that some State Parties have not adopted effective law for the implementation of their commitments arising from the CWC yet. [18]

Therefore to strengthen the international regime of the CWC in the chemical terrorism prevention it is inevitable to expand the jurisdiction of the treaty (19). The main challenges in this area are primarily states beyond the regime that are at the same time developing a civilian or a military chemical programme. In this situation the CWC is not able to serve as a relevant measure in the prevention of the chemical terrorism as the development of a chemical programme may provide potential sources of weapons for terrorist groups.

The Biological and Toxin Weapons Convention

As in the case of chemical terrorism, there is no international treaty that deals directly with the bioterrorism. Its prevention is indirectly dealt within the Convention on the Prohibition on the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (BTWC) that was adopted in 1972 (entry into force in 1975). The BTWC as the international multilateral disarmament treaty is the core of the biological non-proliferation and disarmament regime. It was the first international treaty that prohibited one category of WMD and included provisions relevant for the non-proliferation of biological weapons.

Significant provisions of the BTWC for the bioterrorism prevention are those that prohibit biological weapons. According to the Article II. of the BTWC, State Parties are obliged to destroy or divert to peaceful purposes all biological agents, toxins, weapons, equipment and means of delivery (20) under their jurisdiction. Their destruction or diversion to peaceful purposes has to be completed as soon as possible, ninety days after the BTWC entry into force at the latest. [21] Another relevant article for the bioterrorism prevention is the Article III. of the BTWC according to which State Parties have the obligation not to transfer directly or indirectly to anyone biological agents, toxins, weapons, equipment and means of delivery that are banned by the BTWC. At the same time they have the obligation not to assist, encourage or induce any state, group of states or international organizations to produce or acquire them. As according to the CWC, State Parties commit themselves through the BTWC ratification to adopt all necessary measures to prohibit and prevent the development, production, stockpiling, acquiring or retention of biological agents, toxins, weapons, equipment and means of delivery banned by the BTWC, within their territory and under their jurisdiction. [22] This provision indirectly deals with countering the bioterrorism. On the other hand as a shortcoming of the BTWC can be considered the fact that the treaty does not oblige State Parties to adopt sanctions measures to punish illegal activities with biological agents and toxins that violate the BTWC.

The most serious shortcoming of the BTWC is the fact that it did not anchor any control or verification mechanism (23) that would monitor the observance of State Parties commitments and would be able to verify the destruction of biological weapons stockpiles, the compliance of State Parties activities regarding biological agents and toxins with the BTWC, the fulfilment of State Parties obligations regarding the prevention and punishment of illegal activities with biological agents and toxins on their territory and under their jurisdiction that violate the BTWC (24). On the other hand, the BTWC did not anchor the establishment of an institutional structure that would implement the BTWC provisions or sanctions mechanism and would investigate any complaints about BTWC violations. In compliance with the BTWC State Parties have the right to submit a complaint to the UN Security Council to investigate an alleged BTWC violation by any State Party. In the area of obligations fulfilment, the BTWC anchored the commitment of State Parties to cooperate mutually in solving of any issues regarding the BTWC. The evaluation of the fulfilment of obligations takes place in the Review Conference that is held every five years. [25]

Despite the fact that biological weapons present a serious security challenge as the risk of their potential misuse by terrorist groups is very high, there is no complex international treaty that would deal explicitly with preventing and countering the bioterrorism. On the other hand, the BTWC is still a significant instrument in the elimination and regulation of biological weapons. In order to strengthen its political value it is inevitable to expand its jurisdiction on other states and firstly on those states that are suspected of the military biological programme development.

Major International Institutions

The Organization for the Prohibition of Chemical Weapons

The Organization for the Prohibition of Chemical Weapons (OPCW) presents the control and verification mechanism for the CWC. This specialized international organization was established in 1997 with the aim to perform activities in the area of chemical disarmament, non-proliferation of chemical weapons, protection against toxic chemicals and international cooperation.

Within its broad agenda, the OPCW is active in the prevention and fight against the chemical terrorism. One of the OPCW indirect functions in the prevention of chemical terrorism is to monitor the situation in the proliferation of chemical weapons. This includes activities connecting to gathering declarations of State Parties to the CWC about the possession of chemical weapons and facilities for their production. [35] In addition to this activity, the OPCW controls the destruction of chemical weapons and dismantling of their production facilities as well as controls old and abandoned chemical weapons. The OPCW simultaneously monitors and controls the physical protection and safety of declared chemical weapons of State Parties to the CWC that are examined regularly. [36] These activities are significant for the prevention of the chemical terrorism as the reduction of chemical weapons and their safety means the elimination of potential sources for the chemical terrorism. However a serious challenge in this issue is the fact that the real destruction of declared chemical lags behind fixed schedule deadlines.

Another important function of the OPCW able to contribute to the chemical terrorism prevention is the verification of observance of Member States commit-

ments. It covers monitoring of civilian chemical facilities. Most of toxic chemicals and their precursors that could be potentially used for the purpose of terrorism are used in civilian sector. Therefore the CWC verification mechanism deals with monitoring and verification of their use. [37] State Parties to the CWC producing toxic chemicals, their precursors and other chemicals (38) are obliged to declare them to the OPCW (39). On the ground of the declaration the monitoring within the verification mechanism is authorized. The OPCW has the right to perform inspections in Member States to verify the compliance with the CWC. Member States have the right to initiate inspections against other Member State in case of any doubts about its compliance with the CWC. Such inspections cannot be refused by the Member State. [40] In addition to that, the OPCW monitors the commerce with specific dual-use chemicals that could be potentially misused for the production of chemical weapons.

Another function of the OPCW relevant to the chemical terrorism prevention covers monitoring, gathering of information and assistance in building of national mechanisms for the protection of chemical facilities, assistance in the implementation of commitments of State Parties to the CWC regarding criminalization of activities that violate the CWC, informing about the export and import of chemicals and building of national programs for the protection against chemical weapons. [41] In addition to that the OPCW contributes to the prevention of chemical terrorism through consultations and assistance to Member States, exchange of scientific and technical information, promotion of cooperation with relevant international institutions etc.

Conclusion

Currently there is a general agreement on international level that the chemical and biological terrorism presents a compelling global security threat. This is proved by several international agreements, institutions, initiatives, programmes and projects that are aimed at its preventing as well as at its countering. They create an international regime that has the potential to eliminate efforts of terrorist groups and organizations to acquire and use chemical and biological weapons to achieve their goals. The article focused on the significant legal and institutional instruments of global chemical and biological non-proliferation and disarmament regimes that contribute to the complex fight against the chemical and biological terrorism.

When assessing the effectiveness, the regime of the CWC can be considered as effective. On the one hand, the treaty eliminates chemical weapons through the prohibition to possess and use them. On the other hand, the treaty created the verification and implementation mechanism – the OPCW that performs complex activities for the promotion of the prevention of chemical terrorism. It is namely the monitoring of the situation in the chemical weapons proliferation, monitoring of their production and destruction, monitoring of civilian chemical facilities and commerce of dual-use chemicals that are highly risky in the context of the chemical terrorism. Moreover the OPCW provides the expert assistance for Member States in the implementation of their commitments on national level arising from the CWC. However a serious shortcoming of the CWC regime is the fact that the treaty does not anchor any sanctions mechanism against a State Party violating the CWC. Another shortcoming presents the absence of any legal norm or provision dealing directly

with preventing and countering the proliferation of chemical weapons for the purpose of terrorism.

Less effective instrument is the BTWC and its international regime. Its main contribution is the fact that the treaty prohibits the possession and use of biological weapons. However it does not anchor any verification mechanism of the treaty as an institution that could verify State Parties' compliance with the BTWC or enforce the implementation of the treaty by State Parties. In addition to that, the BTWC does not deal with the prevention and the fight against the bioterrorism directly.

Both international regimes constituted by the CWC and the BTWC, face the same shortcoming, namely the fact that the treaties were not ratified by key proliferators of WMD. Their chemical and biological arsenals are therefore excluded from the international control and monitoring. This means that it is unable to verify their use only for civilian purposes on the one hand. On the other hand it is impossible to verify their safety and protection against any potential efforts of non-state actors to acquire and use them. [42] For these main reasons the international non-proliferation and disarmament regimes are insufficient in the complex fight against the chemical and biological terrorism.

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