

Criminalizing Bioterrorism

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Biological weapons development is prohibited by the BWC.¹¹² All 165 nations that signed the treaty agreed that they will not develop or stockpile biological agents or toxins “of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes.”¹¹² Therefore, if a nation were to develop biological weapons, it would violate international law. But what if an individual developed a biological weapon would that person be guilty of a crime?

In 2001, the answer was “not necessarily.” The BWC was the only legal commitment most nations had regarding biological weapons, and when it was originally signed in 1972, it was thought that individuals would

develop biological weapons only at the behest of a government, not acting as individual non state actors.¹¹³ In 2001, if non state actors were arrested after committing a bioterrorist attack, they could be charged with murder or attempted murder, but the activities they would have engaged in before an attack weaponizing pathogens or distributing equipment critical to making a bioweapon might not have been illegal in most nations.¹¹⁴ Without the laws to declare certain activities off limits, law enforcement authorities may not have been able to stop an attack before it occurred. Moreover, many law enforcement agencies were either only slightly aware of the threat of bioterrorism or did not know whether action could be taken to prevent such a crime.

The necessity for a more uniform legal approach to non state actors gained prominence in early 2004, when Abdul Qadeer Khan (or “A.Q. Khan”), the designer of Pakistan’s nuclear program, was revealed to have provided designs and centrifuge technology to aid nuclear weapons programs in Iran, Libya, and North Korea.¹¹⁵ In response, in April 2004, the UN Security Council adopted UN Security Council Resolution 1540 (UNSCR 1540), which states that the “proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constitutes a threat to international peace and security.”¹¹⁶ The resolution required all UN member states to modify their internal legislation to make it illegal for an individual or non state actor to gain access to biological, chemical, and nuclear weapons, related materials, or the means of delivering those weapons.

Now, in 2012, law enforcement officials worldwide have a much greater ability to interdict and prosecute individuals for biological crimes, including during the planning stages, and they have much greater awareness of the

threat of bioterrorism. This chapter describes Sloan Foundation efforts that helped bring about this important change. The foundation funded an international workshop that addressed criminalization of bioterrorism and an Interpol led project that initiated education and training for law enforcement agents around the world. UNSCR 1540 provided additional incentives for nations to engage with Interpol on the Sloan supported projects. This work is now considered so important to global law enforcement that Interpol member countries continue to fund and support that work on their own.



An International Criminal Law Approach to Bioterrorism

The Airlie House Workshop

“In 2012, it seems kind of silly to be talking about making bioterrorism a crime, it is such a given,” noted Barry Kellman, director of the International Weapons Control Center at the DePaul University College of Law, in a February 2012 interview, “but at the time [in 2001] it was not at all viewed that way. Bioterrorism was not criminalized in most countries.”¹⁷ Instead of being seen as a crime, Kellman explained, a biological weapon was considered a violation of an arms control treaty and, therefore, a political matter. “This

becomes an enormous problem when dealing with non state actors, as terrorists do not care about arms control agreements.”¹¹⁷

This problem was addressed in May 2002, when the DePaul International Human Rights Law Institute and the Global Security Institute gathered fifty people at the Airlie House outside Washington, DC, for the multi day Workshop on Biological Terrorism: An International Criminal Law Approach.¹¹⁸ The Sloan Foundation sponsored the workshop, which started with the premise that to prevent bioterrorism, law enforcement tools were needed to investigate and interdict terrorist preparations. The goal was to stimulate discussion of legal initiatives that could eventually become part of a convention or treaty to prevent bioterrorism and aid law enforcement in bringing bioterrorists to justice.

Given that acquisition of biological weapons by non state actors would be an international problem, the workshop was international, with participants from Jordan, Italy, Georgia, Argentina, Brazil, Ukraine, Russia, India, Zimbabwe, the United States, and other nations. Academic and policy centers were represented, as were international organizations such as the Red Cross and Interpol. During the meeting, participants focused on topics that included smuggling, customs enforcement, and law enforcement investigations intended to prevent a biological crime from being committed.

Part of the agenda focused on discussion of the “Draft Model Convention on the Prohibition and Prevention of Biological Terrorism,” written by Kellman, which put forth the notion that states should criminalize the hostile use of biological agents, develop a licensing system for legitimate biological activities with dangerous pathogens, establish an international mechanism to

promulgate biosafety and biosecurity standards, and strengthen international information gathering to thwart illegal activity.¹¹⁹

In April 2003, the Sloan and MacArthur Foundations funded a second workshop, Preventing Disease Weaponization: Strengthening Law Enforcement and National Legislation, which was organized and chaired by Kellman.¹²⁰ Fifty participants from all over the world came to the Palais des Nations in Geneva, Switzerland, to discuss and formulate strategies to promote “bio criminalization,” which referred to making the *development* of biological weapons a crime in national codes of law.¹²⁰ According to Kellman, bio criminalization next appeared on the international agenda of the 2003 BWC Expert Meeting focused on “National mechanisms to establish and maintain the security and oversight of pathogenic micro organisms and toxins” that took place in August 2003.¹²¹

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Kellman continued his work on this issue by delivering more than one hundred briefings on bio criminalization to international organizations, NGOs, and officials from the United States and other governments. These briefings and the discussions they sparked helped shift the international approach to bioterrorism away from arms control to emphasize criminal law instead. That shift was one of the key objectives of the Airlie workshop. The criminalization effort dovetailed with the broader UNSCR 1540, as 1540 required all nations to have in place legislation to respond to non state actors. As Kellman explained, “The ideas in [UN Security Council Resolution] 1540 and the ideas we were talking about were precisely synonymous. . . . 1540 was advocated by people who were at the Airlie House workshop. . . . The fact that the Security Council took that action was an incentive” for nations

to criminalize bioterrorism and to become more aware of the threat of bioterrorism.¹¹⁷

After the May 2002 Airlie workshop, Kellman went to Lyon, France, to meet with Interpol's secretary general, Ron Noble. They agreed that laws were needed to criminalize bioterrorism and that another critical need was greater police awareness of the threat and what could be done about it. Noble and Kellman joined forces to establish what became the Interpol police training program. Kellman continued to work closely with the Interpol team and participated in Interpol led workshops in Africa, Asia, the Americas, and Ukraine. In collaboration with the McGeorge School of Law, Kellman also led Sloan funded workshops on bio criminalization in Nairobi, Moscow, and Brussels.^{117,122,123}

Kellman cautioned that although substantial progress has been made, the work on this issue is not complete because laws are useless without people trained to prosecute and enforce them. Training must be entrenched and constant because people retire and move on. Nonetheless, Kellman observed, "We have much better infrastructure and laws than we had a decade ago."¹¹⁷



Teaching the World's Police about Bioterrorism

Interpol's Work on Bioterrorism Prevention and Response

With 190 member nations, Interpol is the world's largest international police organization.¹²⁴ The organization's mission is to facilitate global police coordination.¹²⁴ Interpol does not make arrests, and there is no jail at the member headquarters in Lyon, France. Rather, Interpol helps law enforcement agencies from all over the world track transnational criminals and provides extensive databases of individual criminals and crime trends to member nations. Interpol has been an invaluable resource to law enforcement agencies worldwide in their investigations of art thefts, child pornography, endangered animal trafficking, financial crimes, and, starting in 2005, bioterrorism.¹²²

Interpol's bioterrorism awareness efforts were launched in March 2005 with the largely Sloan Foundation funded Global Conference on Preventing Bioterrorism¹²⁵ in Lyon. This conference was the largest international gathering of police that had ever been held. It was attended by more than 500 senior officials and experts from 155 countries and 16 international organizations.¹²⁵

In his opening remarks, Ron Noble said of bioterrorism: "There is no criminal threat with greater potential danger to all countries, regions, and

people in the world than the threat of bioterrorism. And there is no crime area where the police generally have as little training as they do in preventing or responding to bioterrorist attacks.”¹²⁶ The meeting attendees agreed to an Interpol program to improve that situation.

The Sloan Foundation’s support allowed Interpol to develop its capacity to counter bioterrorism by raising awareness among law enforcement agencies all over the world, developing police training programs, and strengthening law enforcement for biological crimes. Interpol created a dedicated bioterrorism unit responsible for developing a plan to bolster national and international capacity to counter the threat of bioterrorism.¹²²

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To raise awareness, Interpol drafted its *Bioterrorism Incident Response Guide* in 2007, which has been revised and updated several times, and created an e learning module and materials for police academies. Interpol also held nine week long regional workshops on bioterrorism prevention and response throughout Asia, Africa, the Middle East, Eastern Europe, and Latin America. “At the regional workshops, we brought together the scientific community, health and regulatory agencies, and law enforcement,” said Noble, and they made sure that the participants “knew one another’s names and phone numbers and e mail addresses.”¹²⁷

According to Noble, Interpol was acutely sensitive to the concerns of scientists who might worry that the police would perceive their legitimate work as criminal. He offered assurances that police recognized that the scientific community could best manage its own work, and asked the

scientists to be aware of “this other community out there that could attempt to use [science] for really bad purposes.”¹²⁷ Interpol’s workshops enhanced cooperation and understanding between law enforcement and scientific research centers in member countries.

Interpol also conducted four multi country tabletop exercises involving law enforcement, public health, and customs personnel. In 2010, Interpol cosponsored a fifth tabletop exercise with the Netherlands. The tabletop exercises centered on hypothetical bioterrorism scenarios involving the spread of plague and monkeypox at international sporting events and airports. As of September 2011, approximately 586 police officers from 130 countries have been trained or have taken part in the tabletop exercises.

Interpol has done this work as police budgets for dealing with everyday crime are under increasing pressure, explained Mitchell Stern, Interpol’s CBRNE (chemical, biological, radiological, nuclear, and explosives) program manager.

If you are a police officer working on the African plain, you might be more focused on cattle rustling. If you’re an officer working in a high murder jurisdiction, you are focused on homicide. . . . If someone comes along and says, “Bioterrorism is something you have to pay attention to, but it will take a lot of training and equipment before you can even do the investigation,” a working police executive will nod and say, “I see your point, but I have someone who just stole 150 head of cattle.”¹²⁸

To support police organizations that do not have the resources to devote to bioterrorism, Interpol established in house capacity to provide technical

assistance and back up to police officials who have questions. Interpol offers practical suggestions for law enforcement agencies as well, said Stern: “If you know who is selling castor beans in your jurisdiction, you can set up a benign tripwire program for someone who might seek to distill ricin from those castor beans.”¹²⁸

Today, the program that began with Sloan Foundation support is funded through mandatory and voluntary contributions from member countries and other agencies, such as the FBI and the US State Department. Interpol’s accomplishments and the continuation of the training program are substantial achievements, but there is always more to do. In addition to continued training, more needs to be accomplished in the realm of the law itself. Not all nations, for instance, now have the laws needed to prosecute bioterrorism in its planning stages, and not all have serious penalties for conspiracy to commit biological crimes. Ultimately, though, explained Noble, “We are better prepared than we were in 2001, and better prepared than we’ve ever been.”¹²⁷

