Introduction

The Harvard Sussex Draft Convention (hereafter the draft convention) is an initiative developed by the Harvard Sussex Program on Chemical and Biological Weapons (CBW) to examine the contributions that international criminal law might make to strengthening the regime against CBW. Building on existing legal precedents and international agreements, it is proposed that a new international treaty be created, one which would confer on national courts jurisdiction over individuals present in their national territory, regardless of their nationality or official position, who order, direct, or knowingly render substantial assistance to the use of CBW anywhere. Such a treaty would specifically define acts involving CBW as international crimes, like aircraft hijacking or torture, thereby creating a new level of constraint against CBW.

Given the growth of new science and technology and the attendant challenges of compliance and verification of the treaty regime, the need to develop the idea of individual criminal responsibility is becoming increasingly apparent and the time might now be ripe for meaningful discussion of moving the draft convention forward into the domain of public policy.

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Strengthening the Regime

Any development, production, acquisition or use of chemical and biological weapons is the result of decisions and actions of individual persons, whether they be government officials, commercial suppliers, weapons experts or terrorists. However, the international conventions that prohibit CBW (the Biological Weapons Convention of 1972 (BWC) and the Chemical Weapons Convention of 1993 (CWC)) are directed primarily to the actions of states and address the matter of individual responsibility to only a limited degree.

Article IV of the BWC and Article VII of the CWC require each state party to prohibit activities on its territory that are prohibited to a state party. The CWC explicitly requires each state party to enact penal legislation to this effect, applicable also to activities of its own nationals anywhere. Nevertheless, the BWC and the CWC stop short of requiring a state party to establish criminal jurisdiction applicable to foreign nationals on its territory who commit CBW offences elsewhere – and neither convention contains provisions dealing with extradition. Moreover, only a minority of states parties have in fact enacted the legislation required of them and, among those that have done so, there is wide divergence in the scope of the new laws.

What is needed is a new treaty, one that defines specific acts involving CBW as international crimes. Adoption and widespread adherence to an international criminalization convention would thereby strengthen the norm against CBW and create a new level of constraint by holding individual offenders responsible and punishable should they be found in the territory of any state that supports the convention.

Implementing the Proposal

In conformity with the procedure by which other international criminalization conventions have come into being, a group of sponsoring states might submit the proposed convention or a similar draft in the form of a resolution for consideration by the UN General Assembly, seeking its referral to the Sixth (legal) Committee of the Assembly for negotiation and preparation of an agreed text. This might be completed in a year, in time for the following session of the Assembly. Following a resolution of commendation by the Assembly, the agreed convention would be opened for signature. After ratification by a specified number of
states, it would enter into force. Alternatively, a regional or other grouping of states might convene a diplomatic conference with a view to producing an agreed text that could then be opened for signature and ratification by any state wishing to do so.

Moving the draft convention into the domain of public policy will require careful consideration and preparation. To support this, HSP has been engaged in a number of activities to disseminate the international criminalization idea.

Recent Activity

The HSP website has recently been updated with a number of new resources and further information on the draft convention: http://www.sussex.ac.uk/Units/spru/hsp/Harvard-Sussex-Program-draft-convention.htm

The website now contains translations of the draft convention in five of the six official languages of the United Nations (Russian to follow). It also contains a draft of the legal commentary, a closely footnoted 52-page document, which provides legal analysis of the text of the draft convention. In addition, a number of documents providing background, statements of support and official statements of recognition have been gathered on the website.

A presentation on the draft convention was given at the Stanley Foundation civil society event “Resolution 1540: At the crossroads” held on 1 October 2009 at the UN headquarters in New York City in conjunction with the official Comprehensive Review of the Status of Implementation on Resolution 1540 conducted by the 1540 Committee (30 September – 2 October 2009). The presentation explored the relevance of international CBW criminalization to the implementation of Resolution 1540. It was argued that the draft convention would assist member states in implementing aspects of their legal obligations pertaining to Resolution 1540 and would help to remove jurisdictional inconsistencies between states.

2 The paper can be found at: http://www.stanleyfoundation.org/1540/HSDC_and_1540.pdf
Finally, a number of briefing papers are currently being drafted to support the draft convention idea and will be added to the website in due course. These briefing papers will explore a number of issues, including why international criminalization is needed; how it complements existing initiatives (such as Resolution 1540 and the Rome Statute); and how it relates to counter-terrorism.

**Future plans**

In order to further promote the draft convention and to consider strategies for taking it forward, HSP plans to convene a symposium on the draft convention in June 2010. The symposium is also intended to provide a platform for wider thinking about international criminalization of CBW and to engage experts and key people in countries that might actively promote the idea. Further details of this symposium will be made available in due course and will be advertised in a forthcoming special edition of *The CBW Conventions Bulletin*.

Proceedings of the symposium, together with other resources on the draft convention, will then be published as an information pack to aid subsequent dissemination.

**Contact Us**

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