

*JURISDICTIONAL
CHALLENGES OF
BIO VIOLENCE*

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WHY BIOVIOLENCE IS DIFFERENT

- Hard to track
- Easy to move
- Repeat attacks – *reload*
- Contagious attacks – inherently global threat
- Difficult to distinguish from natural pandemic

For same reasons, bio-agents perfectly serve terrorists' interests

UNIQUE JURISDICTIONAL CHALLENGES re BIO

- Defining the elements of the “crime”
- How can responsibility be attributed
- How can evidence be usefully collected
- How can law enforcement optimally operate

DEFINING ELEMENTS OF THE CRIME

- Where did the various elements occur?
 - Easy: Actual release of lethal pathogens
 - Hard: Extent of joint criminal enterprise
 - Collection or diversion of pathogens?
 - Supply of critical equipment or knowledge?
 - Processing pathogens and loading into device?
 - Transport of agents to release sites?
- Need new international criminal legal standards for aiding, abetting or conspiring to commit biocrimes

ATTRIBUTION OF RESPONSIBILITY

- How to diagnose many different agents; some natural
- Forensic techniques are of limited efficacy
 - No international standards re diagnostics
 - Collection, shipment of samples is legally complicated
- Potential liability for errors
 - Liability for diagnosticians
 - Liability for providers of countermeasures
- Need to develop international life science standards to serve as basis for insurance coverage & civil liability

TRANSNATIONAL EVIDENCE COLLECTION

- Lack of common evidence gathering standards
 - Difficult to sustain chain of custody, transport
 - Legal barriers to sample sharing- Biodiversity Convention?
 - Unclear how cutting edge bio investigation techniques comport with modalities of legal cooperation, extradition, etc.
- Need to promote conduits for data exchange and analysis
 - Develop multilateral information centers for detecting bioviolence
 - Promote institutional linkages, coordination modalities, standards, & strategies to leverage information for detection & response
 - Standardize access & use limitations and proprietary rights

BARRIERS TO OPTIMAL LAW ENFORCEMENT

- Inconsistent, gap-ridden national legislation (UNSCR & BWC art. 4 are helpful but insufficient)
- Police are untrained and ill-equipped
 - Lack of sophistication re bioscience & pathogen recognition
 - Lack clear modes of cooperation with public health
 - Challenges: Privacy and command & control
- Need for expanded surveillance to identify anomalous conduct that hints at a need for more information
 - Gather vast and diverse information about where biological science activities take place, linked with data about criminal networks
 - Measures should be consistent with human rights & civil liberties

PROPOSAL: Strengthening Legal Infrastructure

- Jurisdictional laws should allow for nations with cutting edge legal & technical systems to act when critical
 - Deny application of political or official defenses
 - Extend jurisdiction over to legal entities (corporations) and persons or entities outside State territory
- Implement legal cooperation modalities with other States and IO's (WHO, WCO, FATF, NATO, etc)
- Establish common investigation standards
 - Scope of authority to search, seize items; prosecutorial use
 - Protect privacy and confidential data of authorized bio-scientists

CONCLUSION

- Challenges presented by non-state actors committing bioviolence are unique
- Jurisdictional challenges are transnational and interwoven with substantive challenges
- Protocol on International Legal Cooperation? Useful models:
 - DNA evidence
 - European convention on cybercrime
- ISBI is dedicated to working on these issues!