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!