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Marcus Evans Conference on CBRNE Defence Capabilities International Counter-Trafficking Cooperation

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1. The UN approach towards the problem of trafficking of CBRN material

The international concerns about chemical, biological, radiological and nuclear (CBRN) materials and weapons are not new issues. It was 1925 when the Geneva Protocol committed the signatory nations to refrain from the use of chemical and biological weapons after the employment of poison gas during World War I.¹ World War II witnessed the experiment of biological warfare, the use of poison gas and the deployment, for the first time in history, of nuclear weapons. Afterwards, the NATO and the Warsaw Pact nations produced a significant amount of chemical, biological and nuclear weapons during the Cold War, especially from the 1960s to the early 1980s. This escalation led the international community to make efforts to refrain states from developing capabilities in the area of CBRN weapons. The result was a network of interlocking treaties, organizations and multi-lateral inspections that aimed to prevent the proliferation of Weapons of Mass Destruction (WMD). In particular, the Treaty on the Non-Proliferation of Nuclear Weapons (opened for signature in 1968), the Biological Weapons Convention (opened for signature in 1972) and the Chemical Weapons Convention (opened for signature in 1993) were created to halt the spread of WMD.

The international focus on the political and strategic role of WMD decreased with the reduction of the worldwide nuclear arsenal as well as chemical and biological weapons, starting with the Strategic Arms Reduction Treaties in the 1990s.

However, moving into the 21st century, the world community's attention is drawn to a new alarming aspect of WMD: the illicit trafficking and criminal use of CBRN material and weapons.

There are two factors that make illicit trafficking in CBRN material an urgent issue. Firstly, a large risk or threat is posed by **non-state actors**, such as terrorist or criminal groups. As a result of several different factors, including the change of national boundaries, easier cross-border mobility, the dismantling of a major portion of the nuclear weapons programme in the former Soviet Union and the expansion of criminality, non-state actors may be potentially able to acquire CBRN materials,

¹ Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare

transform them into CBRN weapons and then use them as WMD. Even though there have been no cases in which terrorists successfully caused mass deaths through CBRN materials, a number of terrorist or criminal organizations have tried to develop and deploy WMD in the last few years.

Secondly, the **existing responses or strategies** are not suitable for the new threats posed by illicit trafficking in CBRN material. Up to now, legal norms and international treaties were the main instrument available to the international community for preventing a state from developing CBRN capabilities. Political leadership was also an available instrument to stop proliferation, including retaliation as the best deterrence for preventing a state from attacking another state with CBRN weapons.

However, the strategic validity of these instruments has become questionable with non-state actors, simply because there may be no address at which to deliver the response. Non-state organizations may be “invisible” actors that cannot be identified with a specific country or area, do not leave any warnings before launching a terrorist attack and leave the targeted country immediately after the CBRN attack. The use or the threat to use national or international countermeasures in case of a CBRN attack may be a powerless strategy against an enemy without a face. Not surprisingly, the Resolution 1540 of the UN Security Council, adopted in April 2004, claimed that illicit trafficking in CBRN weapons “adds a new dimension to the issue of proliferation and also poses a threat to international peace and security’.

In this respect, preventing violent non-state actors from obtaining CBRN materials, weaponising and using them as WMD seems to be not only the best strategy, but also the only one.

In line with these new challenges and priorities, the international community has re-shaped the political agenda. An important milestone in the international community’s efforts was the adoption of **Resolution 1540 by the UN Security Council** on 28 April 2004. The resolution focuses on combating the production, acquiring and use of weapons of mass destruction and their means of delivery by non-state actors. The resolution stipulates that all states shall refrain from providing any form of support to non-state actors that attempt to acquire WMD and shall adopt and enforce appropriate effective laws which prohibit any non-state actor from acquiring WMD and their means of delivery.

In April 2005 the UN General Assembly adopted the **International Convention for the Suppression of Acts of Nuclear Terrorism**. The Convention details offences relating to unlawful and intentional possession and use of radioactive material or a radioactive device, and use or damage of nuclear facilities. State parties are required to adopt measures as necessary to criminalize these offences.² It also requires State parties to

² Before this convention, the **Convention for the Suppression of Terrorist Bombings**, adopted by the UN General Assembly in December 1997, prohibited any person(s) from intentionally delivering, placing, discharging, or detonating an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system, or an infrastructure facility with the intent to cause death or serious bodily injury, or with the intent to cause extensive destruction of such a place, facility, or system, resulting in or likely to result in major economic loss.

“make every effort to adopt appropriate measures to ensure the protection of radioactive material, taking into account relevant recommendations and functions of the IAEA”. An important aspect of the Convention is its reference to the Radiological dispersal devices (RDD) or ‘dirty bombs’. These devices consist of radioactive material combined with conventional explosive. The explosive force triggers the dispersion of the radioactive material over a large area, causing potential serious damage to both human health and the environment.

More recently, on 8 September 2006, the General Assembly unanimously adopted the **United Nations Global Counter-Terrorism Strategy (A/RES/60/288)**. The Strategy reaffirms the international community’s firm resolve to strengthen the global response to terrorism. It is a unique global instrument that aims to enhance national, regional and international efforts to counter terrorism by elaborating a broad range of counter-terrorism measures, underpinned by the commitment to uphold the rule of law and human rights. In attempting to establish a new system of collective security, the strategy identifies a broad range of counter-terrorism measures, including the strengthening of States’ cooperation in combating CBRN trafficking, the development of a single comprehensive database on biological elements, the enhancement of border and customs control and the improvement of the inter-agency coordination in planning a response to terrorist attacks through WMD

This new UN strategy to combat terrorism has inspired a new sense of ownership across all Member States. Instead of designing countermeasures through legally-binding UN Security Council resolutions, terrorism is now confronted through an inclusive and holistic approach. In other words, this strategy is forged on consensus among all States.

To ensure overall coordination and coherence in the counter-terrorism efforts, the Secretary-General established in July 2005 the **Counter-Terrorism Implementation Task Force (CTITF)**. The CTITF is a coordinating and information-sharing body that serves as a forum to discuss strategic issues and ensure coherent action across the UN system in counter-terrorism. Chaired by the Office of the Secretary-General, it consists of 24 UN system entities working together under mandates from the General Assembly, the Security Council, and various Specialized Agencies, Funds and Programs (<http://www.un.org/terrorism/cttaskforce.html>).

2. UNICRI activities

UNICRI, a UN entity and a part of the Counter-Terrorism Implementation Task Force (CTITF), has attempted to contribute to the implementation of international agenda on the topic of WMD. With more than 35 years of international action, UNICRI has acquired a unique experience in dealing with crime and justice problems within broader policies for security governance, socio-economic change and development, and the protection of human rights.

In line with the UN policy in the field of CBRN threats, UNICRI has developed the worldwide programme *Strengthening International Cooperation to Combat Illicit*

Trafficking and Criminal Use of CBRN (chemical, biological, radiological and nuclear) Substances and Weapons. The aim of the Programme is to improve states' capabilities to prevent and combat the illicit trafficking and criminal use of CBRN material. More specifically, the programme aims to:

1. Strengthen the **exchange of information on CBRN** among national authorities and international organizations;
2. Develop a **CBRN unified analysis (5th approach)** that combines analysis on illicit trafficking and criminal use of CBRN material as well as other illicit material (such as drugs and small arms);
3. Improve **national expertise and responses especially on illicit trafficking of biological and chemical material** by transferring analytical outcomes as well as accumulated international and national experience.

The Programme envisages different regional initiatives: **Euro-Asia, Latin America/Caribbean, Africa, Southern and Eastern Asia**. In 2004 UNICRI has launched the Euro-Asian Initiative (Balkans, Eastern Europe, Caucasus and Central Asia) in cooperation with the European Commission (DG External Relations) and with the technical support of EUROPOL and the Southeast European Cooperative Initiative (SECI) Center. Furthermore, IAEA, OPCW and WCO supported the initiative by providing expertise in line with their technical mandate. OSCE also agreed to support the initiative by facilitating contacts with interested countries. Twenty-five countries from the Euro-Asian Region participated in the Euro-Asian Initiative. From 2004 to 2006 UNICRI collected data from these participating countries of the Euro-Asian Region (through a questionnaire, three workshops and bilateral talks involving countries' experts) and conducted a benchmark study of existing strategies to prevent CBRN trafficking. A *Report on New Members of the European Union and their Neighbouring Countries (AGIS Project)* and a *Regional Assessment Report* were the principal outcomes of the preliminary analysis stage. In addition to these reports, data from all countries of the Euro-Asian Region has been collected and elaborated in **Country Profiles**.

Some practical considerations will be made here on two aspects: the exchange of information and knowledge between States and International/Regional Organizations and the border control policies and standards.

3. The Exchange of information and knowledge

The collection and exchange of information between countries and international/regional organizations is fundamental in order to intercept illicit trafficking in CBRN material and to prevent terrorists from obtaining material suitable for a CBRN attack. In particular, when the first line of defence fails (preventing unauthorized persons from stealing or illegally acquiring or developing CBRN materials), the sharing and use of information become vital to prevent CBRN materials from falling into the hands of terrorists.

Obviously some information cannot be shared, especially when it concerns investigation procedures or other national interests. However, a rapid cross-border sharing of CBRN incidents (including the kind of material seized or stolen) may help quickly identify illicit routes and deliver an effective response. Since several authorities and agencies are involved within and between countries, it is necessary to establish clear channels of communication and allocation of responsibilities to ensure a rapid and effective flow of information and to optimize efforts. Failure to collect and share information between these bodies would make analysis more difficult and preventative strategy weaker.

At present, there are different obstacles that hamper an effective and rapid sharing of CBRN-related information. The problem can be considered from three different perspectives: within country, between agencies of different countries and between countries and international organizations.

At national level, a setback is represented by the **fragmentation of responsibilities**. Different authorities, which usually fall under different ministries' jurisdictions, are involved in the preventative steps. The list obviously includes authorities responsible for border control, crime prevention, security of laboratories, security of nuclear sites, import/export controls, and others. Even when there is a clear division of responsibilities, the number of hierarchies and bodies can cause difficulties for the coordination of efforts. The risk is an inability to optimize available resources, overlapping between responsibilities and power vacuums. Moreover, authorities responsible for preventative activities tend not to have fully adequate **channels of communication**. Frequent and radical changes in organizational structures and staffing tables also make intra-country cooperation more difficult.

Information flows between states can also lack coordination. First of all, there is a lack of common standards for collecting information. Each country has its own approach to reporting and sharing information on illicit trafficking cases. Sometimes incidents are not reported in a timely manner or not reported at all.

Secondly, the process and structures for sharing information need strengthening. Many efforts have been made to improve cross-country cooperation through bilateral and multilateral agreements. However there are still legal and policy barriers that hamper effective cooperation and the rapid exchange of information not only among similar agencies and authorities (such as customs or police of countries A and B) but above all among different agencies of different countries (such as customs in country A with the police in country B), especially if they fall under the jurisdiction of different ministries.

Between countries and international/regional organizations there is a two-way problem. International/regional organizations are not always aware of the priority needs of individual agencies at the country level. This is largely due to difficulties in keeping channels of communication functioning and in measuring all the risk factors related to illicit trafficking in CBRN materials. On the other hand, countries do not seem fully aware of what kind of assistance the international organizations can provide to meet their various needs. This hampers the ability of countries and

international/regional organizations to address international assistance in the appropriate way.

4. Border control policies and standards

Increased illicit trafficking in nuclear and radiological material in the early and mid-1990s prompted many countries to improve controls at their national borders. Radiation detectors and relevant training for the customs and border enforcement personnel were provided by the IAEA, the European Commission and other agencies to support local detection capabilities. Yet, there are still some problems that remain unsolved.

Because neutron and gamma radiation is relatively easy to shield, its detection poses a significant challenge, especially for highly enriched uranium (HEU), which has less energetic gamma-rays and weaker neutron emission than plutonium. In the case of legal shipments, it is difficult for a customs officer to verify if the type and amount of the material inside a shielded container actually correspond to what is stated in the customs declaration. The movement of transport containers is fragmented and difficult to monitor, especially in ports. Information on the content of the container, its owners and the places it is being shipped to and from are not always readily available. Physically opening and inspecting containers is a long and expensive process that cannot be done on a routine basis.

Few countries can claim full territorial or infrastructural coverage of CBRN detection, especially because of the high costs of detection technologies, the existence of gaps in the market (in particular in the case of detection of biological and chemical material) and, sometimes, the presence of the so-called “green” borders – large segments of land border between official border posts.

Another problem is the lack of harmonization across national legislations. Border control authorities do not always refer to the same documents (lists) when having to decide whether to admit or not certain kinds of materials into their territory. This is particularly the problem with the list of dangerous biological agents and pathogens.

The lack of harmonization of different national laws, leads to the development of different degrees of freedom when having to inspect private property. We should remember that detection technologies are inherently intrusive into privacy and can pose a challenge to freedoms and rights. Therefore, we should also be careful when considering the use of detection technologies. Particular attention should be paid to compliance with the protection of personal data and the right to privacy. The critical issue is finding the right balance between effective security and respecting civil liberties and international human rights.

5. UNICRI suggestion: a Knowledge Management System

In order to address problems above discussed, UNICRI has developed, in cooperation with the European Commission, the *Knowledge Management System on CBRN trafficking*. The aim of the system is to promote and improve the exchange of

information and knowledge among States, and between States and International/Regional Organisations through a permanent and standardised process of collection, management and dissemination of technical data and information on illicit trafficking of CBRN materials.

As shown in the figure below, this system should facilitate the interaction of the national experts and representatives from international/regional organisations through high quality and secure IT connections. The Knowledge Management System will assist the participating countries in:

- Promoting and improving the exchange of information and knowledge among countries, and between countries and international organisations. Through the system, the participating States will access to information that will help them fulfil their obligations in terms of United Nations Security Council Resolution 1540, paragraph 3 (point c and d), concerning the development of appropriate measures in the areas of effective border controls, law enforcement efforts to detect illicit trafficking of CBRN material, and national export controls and trans-shipment controls.
- Elaborating and promoting analytical tools to produce regional risk assessments and identify overall national vulnerabilities and needs on illicit trafficking of biological and chemical material.
- Improving countries expertise to prevent illicit trafficking of chemical and biological material by exploiting and managing experience and knowledge accumulated.
- Harmonise policies and measures to prevent incidents of illicit trafficking of biological and chemical material.

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