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NATIONAL MECHANISMS TO ESTABLISH AND MAINTAIN SURVEILLANCE OF MICROORGANISMS AND TOXINS, AND PROSPECTS FOR INTERNATIONAL COOPERATION¹

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Introduction

1. The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction governs the use and implementation of biological agents for military or offensive purposes in the context of non-proliferation among the Convention's signatory States.
2. In France, the Convention is transposed into national legislation by Law 72-467 of 9 June 1972, which prohibits the development, production, stockpiling, acquisition and transfer of biological agents and toxins whatever their origin and mode of production, and of types and in quantities not intended for prophylactic, protective and other peaceful uses.
3. The rapid expansion of biotechnologies has meant that biological agents are increasingly being used for peaceful purposes. Genetic manipulation of such agents can prove dangerous in some cases. Moreover, laboratories working with these biological agents can be a **potential source of supply for terrorist groups and organizations**. Recent events have shown that the international dimension of terrorism is closely linked to international trafficking and thus potentially to traffic in biological agents.
4. Apart from the political and legal consequences that may stem from an act of aggression using biological agents, the release into the environment, whether or not intentionally, of a highly pathogenic biological agent would at first pose a serious **public health problem**. This aspect **is not covered by the Convention**.

¹ Submitted by France and reproduced without change.

5. **Legislation on dual-use goods** addresses this situation only in part as it does not control exports to certain countries and cannot prevent a dangerous biological agent from being introduced into or used in the French national territory.
6. It is naturally inconceivable to prohibit biological agents research and development for prophylactic and diagnostic purposes. Biological agents can, however, represent a potential source of local supply for terrorist groups and organizations. A possible solution would hence be to **control flows and their use** in the national territory by introducing a **traceability and quality assurance system** for such agents.

French response to the illicit use of agents that are potentially pathogenic and hazardous to public health: proposed principles:

7. The French proposal consists of authorizing and **controlling the legal use** of microorganisms and toxins with a view to better monitoring and punishing illegal use.
8. Given that the illicit and/or fraudulent use of agents, pathogenic microorganisms and toxins is likely to be hazardous to public health, it was decided that **they should come under legislation on narcotics**. This legislation has two advantages:
 - a. It provides for **full traceability** of the use and flows of these microorganisms and toxins,
 - b. **and for the use of** a range of criminal rules and regulations **to combat use of and illicit traffic in these microorganisms**.

Controlling the illicit use of pathogens: concrete aspects

9. By placing special conditions on the use of pathogens **as regards activities relating to their production, conversion, applications, import, export, possession, transfer free of charge or against payment, acquisition, and transport. All these operations must be authorized beforehand by the Director General of the French Health Products Safety Agency (AFSSAPS). They can be authorized** for the sole purpose of manufacturing human and veterinary health products, **conducting research, and teaching. Such authorization** can only be given to a natural person.
10. **All acquisition and transfer operations are to be entered in a special register to be shown whenever requested by the competent authorities. The holder of the authorization is required to provide** an annual report summarizing **for each agent, microorganism, pathogen and toxin the quantities acquired and transferred, and the stockpiles possessed.**
11. **Finally, the French Health Products Safety Agency may send inspectors to check that legislation is properly implemented. Any theft or diversion is to be reported to the police.**
12. Anyone who fails to comply with these rules is liable to a minimum penalty of two years' imprisonment and a fine of 7,500 euros, and to the closure of the implicated establishment.

International prospects

13. This type of national regulatory approach is **complementary** to the Biological Weapons Convention. The BWC could be supplemented with an **annex on the pooling and putting in place of resources to combat illicit traffic** in microorganisms and toxins.
 14. The 1998 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances could be taken as a **model**. The annex to the Convention could, in particular, tackle the issues of international cooperation, extradition of traffickers, mutual assistance between the signatory States, and transfer of judicial proceedings.
 15. In addition, technically speaking, **a structure responsible for combating illicit traffic** in microorganisms and toxins that are potentially hazardous to human health could be set up and attached to the ECOSOC Functional Commissions. This would enable better international cooperation synergy on the issue, within the formal framework provided by the United Nations.
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