

University of Nebraska - Lincoln

DigitalCommons@University of Nebraska - Lincoln

College of Law, Faculty Publications

Law, College of

1998

INTERNATIONAL SECURITY: MULTIPLE ACTORS, MULTIPLE THREATS

Jack M. Beard

University of Nebraska College of Law, jbeard2@unl.edu

Follow this and additional works at: <https://digitalcommons.unl.edu/lawfacpub>

Beard, Jack M., "INTERNATIONAL SECURITY: MULTIPLE ACTORS, MULTIPLE THREATS" (1998). *College of Law, Faculty Publications*. 160.

<https://digitalcommons.unl.edu/lawfacpub/160>

This Article is brought to you for free and open access by the Law, College of at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in College of Law, Faculty Publications by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

INTERNATIONAL SECURITY: MULTIPLE ACTORS, MULTIPLE THREATS

The panel was convened at 11:10 a.m., Friday, April 3, by its Chair, Jack Beard, who introduced the panelists: Samuel M. Witten, Assistant Legal Adviser, U.S. Department of State; Steven E. Kaplow, Assistant General Counsel, Central Intelligence Agency; and Marc Weller, University of Cambridge.

COUNTERING THE THREAT POSED BY NON-STATE ACTORS IN THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION

*by Jack Beard**

The collapse of the Soviet Union created unprecedented opportunities for non-state actors to obtain access to nuclear, biological and chemical weapons and their delivery means, often referred to as weapons of mass destruction (WMD). In particular, access to nuclear weapons and related materials, technology and expertise has raised serious concerns. As noted in the *1997 Counterproliferation Review Committee Report to Congress*:

The chilling reality is that nuclear materials, technologies, and expertise are more accessible now than at any time in history—due in part to the dissolution of the Soviet Union and the region's worsened economic conditions and political instabilities. This problem is exacerbated by the increasing diffusion of modern technology through the growth of the world market, making it harder to detect illicit diversions of materials and technologies. . . . The list of potential proliferators is not limited to states with nuclear weapons ambitions. There are many non-state actors, such as separatists and terrorist groups, criminal organizations, and individual thieves who could choose to further their cause by using fissile or non-fissile (but radioactive) nuclear materials.¹

Non-state actors are increasingly making the WMD threat a domestic as well as an international concern. Louis Freeh, the Director of the Federal Bureau of Investigation (FBI), recently told the U.S. Congress that "the FBI views the proliferation of Weapons of Mass Destruction as a serious and growing threat to our national security. . . . The FBI has experienced an increase in the number of cases involving terrorist or criminal use of WMD. . . ."²

Recognizing the serious threat that WMD proliferation poses to both U.S. national security interests and international peace and security, the U.S. Government has initiated several programs through various agencies to prevent non-state actors and other parties from obtaining, manufacturing, or retaining such weapons. These programs are consistent with the continuing primary goal of the United States: preventing proliferation.³ The U.S. Department of Defense plays a key role in supporting all facets of national

*Associate Deputy General Counsel (International Affairs), U.S. Department of Defense; Adjunct Professor of Law, Georgetown University Law Center, Washington, D.C. The views presented are those of the author and do not necessarily reflect the official policy or position of the Department of Defense or the U.S. Government.

¹1997 UNDER SEC'y OF DEF. COUNTERPROLIFERATION PROGRAM REV. COMMITTEE ANN. REP. TO CONG., at 3-2, 3-3.

²Before the House Appropriations Comm. on Commerce, Justice, State, Judiciary, and Related Agencies, 105th Congress (March 5, 1998) (prepared statement of Louis J. Freeh, Director, FBI) (available in LEXIS, NEWS Library, FEDNEW file).

³OFFICE OF THE SECRETARY OF DEFENSE, PROLIFERATION: THREAT AND RESPONSE 53 (Nov. 1997).

counterproliferation policy, including assisting other countries in countering the proliferation threat presented by non-state actors through international proliferation prevention programs.

Among these early proliferation prevention or counterproliferation initiatives were various activities under the "Nunn-Lugar" or Cooperative Threat Reduction (CTR) Program.⁴ Through the CTR Program, the Department of Defense has provided assistance to the states of the former Soviet Union (FSU) for various authorized purposes, including "[p]rograms to prevent the proliferation of weapons, weapons components, and weapons-related technology and expertise."⁵

Early CTR counterproliferation activities included assistance to Russia in facilitating the safe and secure storage and transportation of nuclear weapons and improving systems of control, accounting and physical protection of nuclear material. In addition, the Department of Defense concluded CTR export control agreements with counterpart ministries in countries such as Ukraine⁶ and Kazakhstan.⁷ These agreements addressed the WMD proliferation threat posed by non-state actors by providing guidance on establishing and implementing export control regimes; improving export enforcement programs; providing classroom and on-site training for officials involved in licensing, enforcement and other activities; advising on the drafting of export control legislation and implementing regulations; and providing computerized systems and related training to improve tracking of controlled items.

In recent years, the character, scope and size of several U.S. Government counterproliferation programs have significantly changed, largely in response to the increased threat posed by non-state actors. These changes are reflected in the list of new countries now eligible to receive U.S. counterproliferation assistance, new legislative authorities enacted by the U.S. Congress, and new forms of assistance.

For many years, the CTR Program provided assistance for WMD destruction and counterproliferation activities solely to the four FSU states in which nuclear weapons were located (Belarus, Kazakhstan, Russia and Ukraine). However, on March 4, 1997, seven additional FSU states were certified as eligible to receive CTR assistance.⁸ CTR assistance

⁴The first CTR legislation, sponsored by Senators Sam Nunn and Richard Lugar, was enacted in 1991. Congress has amended and expanded this initial effort on an annual basis. See Soviet Nuclear Threat Reduction Act of 1991, 22 U.S.C. § 2551 note; Former Soviet Union Demilitarization Act of 1992, 22 U.S.C. §§ 5901–5931; Cooperative Threat Reduction Act of 1993, 22 U.S.C. §§ 5951–5958; National Defense Authorization Act for Fiscal Year 1995, Pub. L. No. 103-337, title XII; National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104-106, title XII, 22 U.S.C. § 5955, note; National Defense Authorization Act for Fiscal Year 1997, Pub. L. No. 104-201, title XV; and National Defense Authorization Act for Fiscal Year 1998, Pub. L. No. 105-85, title XIV. DoD is responsible for the management of the CTR Program and all CTR funding is provided exclusively from Department of Defense appropriations. Since its inception in 1991, Congress has authorized over \$2 billion for the CTR Program.

⁵22 U.S.C. § 5952(b)(3).

⁶Agreement Between the U.S. Department of Defense and the Expert and Technical Committee of the Cabinet of Ministers of Ukraine Concerning the Provision of Assistance to Ukraine Related to the Establishment of an Export Control System to Prevent the Proliferation of WMD from Ukraine, Dec. 5, 1993, State Dep't No. 94-39, 1993 WL 642434 (entered into force Dec. 31, 1993).

⁷Agreement Between the U.S. Department of Defense and the Ministry of Defense of the Republic of Kazakhstan Concerning the Provision of Assistance to the Republic of Kazakhstan Related to the Establishment of Export Control Systems to Prevent the Proliferation of WMD, Dec. 13, 1993, State Dep't No. 94-33, 1993 WL 642423.

⁸On March 4, 1997, the Secretary of State, acting on behalf of the President under § 1203(d) of the Cooperative Threat Reduction Act, title XII of Pub. L. No. 103-160, 22 U.S.C. § 5952(d); § 1412(d) of the Former Soviet Union Demilitarization Act of 1992, title XIV of Pub. L. No. 102-484,

in these newly certified FSU states has focused on counterproliferation programs and the promotion of military and defense relations. Since March 1997, major agreements have been concluded by the United States with several of these newly certified FSU states, creating a bilateral legal framework for the provision of CTR and other assistance for a variety of new counterproliferation activities.⁹

One of the first newly certified FSU states to conclude a counterproliferation agreement with the United States was the Republic of Georgia. This action was strongly supported by the Clinton administration as part of a "strong commitment to assisting Georgia's efforts to address non-proliferation and export control concerns and to develop a modern military under civilian control and a viable border guard."¹⁰ Noting the importance of the expansion of CTR and related programs to the Republic of Georgia, Secretary of Defense William Cohen remarked after signing the Georgia Counterproliferation Agreement, on July 17, 1997:

Today we're taking a historic step of extending the cooperative threat reduction plan and program and other defense cooperation plans to Georgia. The CTR program has forged broad-ranging programs in the former Soviet Union to help reduce the risk of proliferation. The extension of this program is going to ensure that Georgia remains a "sturdy brick" in the wall holding back the spread of weapons of mass destruction.¹¹

The Georgia Counterproliferation Agreement reflects a new emphasis on creating viable border guard and export control organizations through new types of assistance projects. For example, under this agreement, the Department of Defense and the Georgian State Border Guards recently concluded a CTR Implementing Agreement to provide patrol boats and related training to Georgia to prevent WMD proliferation along Georgia's Black Sea coast.¹² Increasingly sophisticated equipment and technology are being provided to participating states to help detect and prevent WMD proliferation.

22 U.S.C. § 5902(d); and § 502 of the FREEDOM Support Act, Pub. L. No. 102-511, 22 U.S.C. § 5852; certified the following countries as eligible to receive CTR and FREEDOM Support Act assistance for the first time: the Republic of Armenia, the Azerbaijani Republic, the Republic of Georgia, the Kyrgyz Republic, the Republic of Moldova, Turkmenistan, and the Republic of Uzbekistan. (Although Kazakhstan, Russia, and Ukraine were also certified, Belarus and Tajikistan were not.) Certification on file with the ASIL.

⁹Recent agreements include: Agreement Between the U.S. Department of Defense and the Ministry of Defense of the Republic of Uzbekistan Concerning Cooperation in the Area of the Dismantlement of WMD, the Prevention of Proliferation of WMD, and the Promotion of Defense and Military Relations, June 27, 1997, State Dep't No. 97-124, 1997 WL 574350; Agreement Between the U.S. Department of Defense and the Ministry of Defense of the Republic of Moldova Concerning Cooperation in the Area of the Prevention of Proliferation of WMD, and the Promotion of Defense and Military Relations, June 23, 1997, State Dep't No. 97-123, 1997 WL 574349; Agreement Between the United States of America and Georgia Concerning Cooperation in the Area of the Prevention of Proliferation of WMD, and the Promotion of Defense and Military Relations, July 17, 1997 (entered into force Nov. 10, 1997), State Dep't No. 98-1, 1997 WL 813208 [hereinafter Georgia Counterproliferation Agreement].

¹⁰Joint Statement on Republic of Georgia-United States Relations, 33 WEEKLY COMP. PRES. DOC. 1105 (July 18, 1997).

¹¹*Defense Department Briefing*, Federal News Service, July 17, 1997, available in LEXIS, NEWS Library, FEDNEW File.

¹²Implementing Agreement Between the Department of Defense of the United States of America and the State Department of the State Border Guards of Georgia Concerning the Provision of Assistance to Georgia of Export Control Systems to Prevent the Proliferation of WMD, Jan. 30, 1998 (entered into force Feb. 17, 1998). Agreement on file with the ASIL.

Recent counterproliferation agreements with Georgia, Moldova and Uzbekistan also reflect the expansion of programs enacted by the U.S. Congress to address the WMD threat posed by non-state actors. One such program is the International Border Security (IBS) program.¹³ Also referred to as the "DoD/U.S. Customs Service Counterproliferation Program," the IBS Program is managed by the U.S. Department of Defense in consultation with the U.S. Customs Service. Its stated purpose is to "train and equip customs officers and border guards in the former Soviet Union, Eastern Europe, and the Baltic states to prevent, deter, and investigate incidents involving the trafficking of [WMD] and related materials."¹⁴

Broad language supporting the IBS and other programs is found in each of the recently concluded counterproliferation agreements with Georgia, Moldova and Uzbekistan.¹⁵ Through these agreements, the Department of Defense, as the designated executive agent for the United States, seeks to further its stated objectives for the IBS Program: to assist in establishing a professional cadre of border enforcement personnel in participating states; to enhance the ability of customs and border guards in those states to detect and interdict WMD and related materials; and to establish long-term official working relationships between U.S. Government agencies and customs/border guards in those states.¹⁶ These objectives are particularly well suited to respond to the threat posed by non-state actors in the unauthorized transfer of WMD in these countries.

Another recently authorized program, the DoD/FBI Counterproliferation Program,¹⁷ complements the IBS Program by training and equipping the officials responsible for the interdiction of WMD in the Baltic states, Eastern Europe and the FSU. Specifically tailored to deter non-state actors, the program is authorized to "expand and improve United States efforts to deter the possible proliferation of and acquisition of weapons of mass destruction by organized crime . . . in Eastern Europe, the Baltic countries, and states of the former Soviet Union."¹⁸ To achieve these goals, this joint DoD/FBI program assists in developing enforcement mechanisms to deter, prevent and investigate WMD threats and incidents.

While CTR assistance is restricted by law to FSU states, assistance under the DoD/U.S. Customs and DoD/FBI Counterproliferation Programs is also available to the Baltic states and Eastern Europe. For this reason, the United States is actively seeking to conclude agreements with these states to assist them in countering the threat posed by non-state actors related to the unauthorized transfer of WMD. The first country in Eastern Europe to conclude such a counterproliferation agreement with the United States was Romania.¹⁹

¹³The National Defense Authorization Act for Fiscal Year 1997, Pub. L. No. 104-201, § 1424. § 1424(a) authorizes the Department of Defense to "carry out programs for assisting customs officials and border guard officials in the independent states of the former Soviet Union, the Baltic states, and other countries of Eastern Europe in preventing unauthorized transfer and transportation of nuclear, biological, and chemical weapons and related materials."

¹⁴PROLIFERATION: THREAT AND RESPONSE, *supra* note 3, at 57.

¹⁵A recently concluded agreement also provides assistance under this program to Kazakhstan. *See* Agreement Between the U.S. Department of Defense and the Ministry of Defense of the Republic of Kazakhstan Concerning Cooperation in the Area of the Prevention of Proliferation of WMD, Nov. 18, 1997, State Dep't No. 98-5, 1997 WL 813242.

¹⁶PROLIFERATION: THREAT AND RESPONSE, *supra* note 3, at 57.

¹⁷The National Defense Authorization Act for Fiscal Year 1995, Pub. L. No. 103-337, § 1504(e). Reprogrammed prior year Department of Defense funds were recently made available for this initiative.

¹⁸Pub. L. No. 103-337, § 1504(e)(3)(a).

¹⁹Agreement Between the U.S. Government and the Government of Romania Concerning Cooperation in the Area of Counterproliferation of WMD, and the Promotion of Defense and Military Relations, signed on March 30, 1998 (pending entry into force). Agreement on file with the ASIL.

Speaking at the Pentagon after the agreement with Romania was signed, on March 30, 1998, Secretary of Defense Cohen said:

The spread of deadly chemical and biological weapons or nuclear weapons pose[s] a serious threat to the United States and to all peace-loving countries. . . . Romania and the United States realize that we have to do all that we can to prevent terrorists or rogue nations from acquiring and using such weapons, and this agreement is going to make us partners in that campaign.²⁰

Although public attention often focuses on more prominent U.S. Government efforts to deal with rogue states that already possess or are developing WMD, the proliferation threat posed by non-state actors is real and growing. The cooperative measures required to address this threat often involve long-term and systematic efforts to train and equip the customs officials, border guards and law enforcement personnel of foreign states, and improve the export control regimes in those states. While these efforts do not often capture the public spotlight, they are highly significant. Through such international proliferation prevention programs, the U.S. Government is forging important new relationships with foreign states to more effectively address the WMD threat posed by non-state actors.