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CHAPTER 10

CHEMICAL, BIOLOGICAL, RADIOLOGICAL, AND NUCLEAR WEAPONS

10.1 INTRODUCTION

Chemical, biological, radiological, and nuclear weapons—often referred to as WMD—and their delivery systems present special law of armed conflict problems due to their potential for indiscriminate effect. This chapter addresses legal considerations pertaining to the development, possession, deployment, and employment of these weapons.

10.2 NUCLEAR WEAPONS

10.2.1 General

There are no rules of customary or conventional international law prohibiting States from employing nuclear weapons in armed conflict. In the absence of an express prohibition, the use of nuclear weapons against enemy combatants and other military objectives is not unlawful. Employment of nuclear weapons is subject to the following principles:

1. The right of the parties to the conflict to adopt means of injuring the enemy is not unlimited.

2. It is prohibited to launch attacks against the civilian population as such.

3. Distinction must be made at all times between combatants and civilians to the effect the latter be spared as much as possible.

Given their destructive potential, the decision to authorize employment of nuclear weapons should emanate from the highest level of government. For the United States, authority resides solely with the President.

Commentary

The DOD Law of War Manual states:

6.18 Nuclear Weapons

There is no general prohibition in treaty or customary international law on the use of nuclear weapons. The United States has not accepted a treaty rule that prohibits the use of nuclear weapons *per se*, and thus nuclear weapons are lawful weapons for the United States.

The law of war governs the use of nuclear weapons, just as it governs the use of conventional weapons. For example, nuclear weapons must be directed against military objectives. In addition, attacks using nuclear weapons must not be conducted when the expected incidental harm to civilians is excessive compared to the military advantage expected to be gained.

6.18.1 U.S. Policy on the Use of Nuclear Weapons. The United States has developed national policy on the use of nuclear weapons. For example, the United States has stated that it would only consider the use of nuclear weapons in extreme circumstances to defend the vital interests of the United States or its allies and partners. In addition, the United States has stated that it will not use or threaten to use nuclear weapons against non-nuclear weapons States that are party to the Nuclear Non-Proliferation Treaty and in compliance with their nuclear non-proliferation obligations.

6.18.2 Nuclear Weapons and Arms Control Obligations. Nuclear weapons are regulated by a number of arms control agreements restricting their development, testing, production, proliferation, deployment, use, and, with respect to specific types, possession. Some of these agreements may not apply in times of war. Guidance on nuclear arms control agreements is beyond the scope of this manual.

6.18.3 AP I Provisions and Nuclear Weapons. Parties to AP I have expressed the understanding that the rules relating the use of weapons introduced by AP I were intended to apply exclusively to conventional weapons. Thus, Parties to AP I

> have understood AP I provisions not to regulate or prohibit the use of nuclear weapons. Although the United States is not a Party to AP I, the United States participated in the diplomatic conference that negotiated AP I based upon this understanding.
>
> 6.18.4 Authority to Launch Nuclear Weapons. The authority to launch nuclear weapons generally is restricted to the highest levels of government. The domestic law and procedures concerning nuclear weapons employment are beyond the scope of this manual.

Furthermore, the United States has stated: "There is no general prohibition in treaty or customary international law on the use of nuclear weapons per se, and thus nuclear weapons are lawful weapons for the United States."[1]

The law of war governs the use of nuclear weapons, just as it governs the use of conventional weapons:

> The new guidance makes clear that all plans must also be consistent with the fundamental principles of the Law of Armed Conflict. Accordingly, plans will, for example, apply the principles of distinction and proportionality and seek to minimize collateral damage to civilian populations and civilian objects. The United States will not intentionally target civilian populations or civilian objects.[2]

Further:

> The United States has long taken the position that various principles of the international law of armed conflict would apply to the use of nuclear weapons as well as to other means and methods of warfare. This in no way means, however,

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1. Written Statement of the Government of the United States of America, June 20, 1995 at 21, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226 (July 8). [hereinafter Written Statement].

2. Secretary of Defense, Report on Nuclear Employment Strategy of the United States Specified in Section 491 of 10 U.S.C. at 4–5 (June 2013).

> that the use of nuclear weapons is precluded by the law of war.[3]

> As far back as 1965, the United States supported a UN resolution stating that "all governments and other authorities responsible for action in armed conflicts should conform at least to the following principle . . . that the general principles of the Law of War apply to nuclear and similar weapons."[4]

> For example, nuclear weapons must be directed against military objectives. In addition, attacks using nuclear weapons must not be conducted when the expected incidental harm to civilians is excessive compared to the military advantage expected to be gained.

10.2.2 Treaty Obligations

Nuclear weapons are regulated by a number of arms control agreements restricting their development, possession, deployment, and use. Some of these agreements (e.g., 1963 Limited Test Ban Treaty) may not apply during time of war.

10.2.2.1 1971 Seabed Arms Control Treaty

The 1971 Seabed Arms Control Treaty is a multilateral convention that prohibits emplacement of nuclear weapons and mines on the seabed and the ocean floor or in the subsoil thereof beyond 12 nautical miles from the baseline from which the territorial sea is measured. The prohibition extends to structures, launching installations, and other facilities specifically designed for storing, testing, or using nuclear weapons. It does not prohibit the use of nuclear weapons in the water column, provided they are not affixed to the seabed (e.g., nuclear-armed depth charges and torpedoes).

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3. Written Statement, *supra* note 1, at 21.

4. Edward R. Cummings, Acting Assistant Legal Advisor for Politico-Military Affairs, *Remarks at Symposium at Brooklyn Law School*, Sept. 25, 1982, 3 CUMULATIVE DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 1981–88, 3421, 3422.

Commentary

The Seabed Arms Control Treaty emerged from the Committee on Disarmament, negotiated by the United States and the Soviet Union, with input from other nations.[5] UN General Assembly Resolution 2660 (XXV) adopted the final draft on December 7, 1970 by a vote of 104 to 2 (El Salvador and Peru), with two abstentions (Ecuador and France). The Seabed Arms Control Treaty was opened for signature on February 11, 1971 and entered into force on May 18, 1972.

Article I of the Seabed Arms Control Treaty states:

> 1. The States Parties to this Treaty undertake not to emplant or emplace on the sea-bed and the ocean floor and in the subsoil thereof beyond the outer limit of a sea-bed zone, as defined in article II [coterminous with a 12-mile outer limit], any nuclear weapons or any other types of weapons of mass destruction as well as structures, launching installations or any other facilities specifically designed for storing, testing or using such weapons.
>
> 2. The undertakings of paragraph 1 of this article shall also apply to the sea-bed zone referred to in the same paragraph, except that within such sea-bed zone, they shall not apply either to the coastal State or to the sea-bed beneath its territorial waters.
>
> 3. The States Parties to this Treaty undertake not to assist, encourage or induce any State to carry out activities referred to in paragraph 1 of this article and not to participate in any other way in such actions.

Article III of the Treaty permits verification through observation by the States parties of the activities of other States parties, so long as observation does not interfere with such activities. If, after observa-

5. Conference on the Committee on Disarmament, Report, U.N. GAOR, 25th Sess., 1749th mtg., U.N. Doc. A/8059 (1970).

> tion, there exist reasonable doubts, further procedures for verification may be reached, including inspections. An appropriate report shall be circulated to other parties upon completion of other procedures for verification by the party that initiated the action. Review Conferences are to be held every five years[6] and were conducted in 1977, 1983, and 1989. In 1989, it was agreed that the next review conference would be held no earlier than 1996, but in 1992 the Conference on Disarmament determined that there was no need for a fourth review conference.[7]

10.2.2.2 Outer Space Treaty of 1967

The Outer Space Treaty of 1967 is a multilateral convention that prohibits the placement in Earth orbit, installation on the moon and other celestial bodies, and stationing in outer space in any other manner, of nuclear and other WMD. Suborbital missile systems are not included in this prohibition.

Commentary

> Article IV of the Outer Space Treaty provides: "The moon and other celestial bodies shall be used by all States Parties to the Treaty exclusively for peaceful purposes. The establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military maneuvers on celestial bodies shall be forbidden."
>
> The DoD Law of War Manual states:
>
> > 14.10.2 Application of International Law to Activities in Space.

6. Treaty on the Prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof, art. VII, Feb. 11, 1971, 23 U.S.T. 701; T.I.A.S. 7337; 955 U.N.T.S. 115

7. *See* Treaty on Prohibiting the Emplacement of Nuclear Weapons on the Seabed and Ocean Floor, 10 INTERNATIONAL LEGAL MATERIALS 145 (1971); Louis Henkin, *The Sea-Bed Arms Treaty—One Small Step More*, 10 COLUMBIA JOURNAL OF TRANSNATIONAL LAW 107 (1990).

14.10.2.1 *Treaties Specifically Addressing Space Activities*. The United States is a Party to certain treaties that address space activities. The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (Outer Space Treaty), imposes restrictions on certain military operations in outer space (*i.e.*, it does not exempt military spacecraft or military space activities from its purview). The Outer Space Treaty provides for State responsibility for the activities of non-governmental entities in outer space, including the moon and other celestial bodies.

Other treaties that specifically address space activities include:

- Agreement on the Rescue of Astronauts, the Return of Astronauts, and the Return of Objects Launched into Outer Space;
- Convention on International Liability for Damage Caused by Space Objects; and
- Convention on Registration of Objects Launched into Outer Space.

Certain provisions of these treaties may not be applicable as between belligerents during international armed conflict.

14.10.2.2 *Application of General International Law to Activities and Use of Outer Space*. The Outer Space Treaty reaffirms the duty of States Parties to comply with existing international law in carrying out activities in outer space. Article III of the Outer Space Treaty provides that "States Parties to the Treaty shall carry on activities in the exploration and use of outer space, including the moon and other celestial bodies, in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international cooperation and understanding."

Although existing international law, such as the Charter of the United Nations, generally applies to States Parties' activities in outer space, international law that prescribes certain conditions for national claims of sovereignty does not apply to outer space because outer space is not subject to national appropriation.

Certain treaties apply only in certain geographical locations (such as a State's own territory), and thus might not create obligations applicable to a State's activities in outer space. However, law of war treaties and the customary law of war are understood to regulate the conduct of hostilities, regardless of where they are conducted, which would include the conduct of hostilities in outer space. In this way, the application of the law of war to activities in outer space is the same as its application to activities in other environments, such as the land, sea, air, or cyber domains.

14.10.3 Outer Space Treaty Restrictions on Military Activities. The Outer Space Treaty imposes restrictions on certain military operations in outer space.

Other treaties may also impose restrictions on military activities in outer space. For example, the Treaty Banning Nuclear Testing in the Atmosphere, Oceans, and Outer Space (Limited Test Ban Treaty) prohibits nuclear weapon test explosions in outer space.

14.10.3.1 *Restriction on Nuclear Weapons and Other Kinds of Weapons of Mass Destruction in Outer Space*. Article IV of the Outer Space Treaty provides that "States Parties to the Treaty undertake not to place in orbit around the Earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space in any other manner."

The prohibition on placing weapons of mass destruction "in orbit around the earth" refers only to their placement in full orbit around the Earth; thus, the Outer Space Treaty does

not ban the use of nuclear or other weapons of mass destruction that go into a fractional orbit or engage in suborbital flight. For example, intercontinental ballistic missiles (ICBMs) will travel a portion of their trajectory in outer space; but because ICBMs would enter outer space only temporarily, their entry into outer space with nuclear warheads would not violate this prohibition. By contrast, some arms control treaties have prohibited the production, testing, or deployment of systems, including missiles, that place nuclear weapons or other weapons of mass destruction into either full earth orbit or a *fraction* of an earth orbit.

In addition, this rule in Article IV of the Outer Space Treaty does not establish any prohibitions with respect to weapons that are not weapons of mass destruction (e.g., anti-satellite laser weapons or other conventional weapons).

14.10.3.2 *Restrictions on Military Activities on the Moon and Other Celestial Bodies*. Article IV of the Outer Space Treaty places certain prohibitions on military activities on the moon and other celestial bodies: (1) the establishment of military bases, installations, and fortifications; and (2) the testing of any type of weapons; and (3) the conduct of military maneuvers.

These activities are prohibited only on the moon and other celestial bodies, not in outer space itself.

Article IV also recognizes the unimpeded right to: (1) the use of military personnel for scientific research or other peaceful purposes on outer space missions; and (2) the use of any equipment or facility necessary for the peaceful exploration of the moon and other celestial bodies.

14.10.4 General Use of Outer Space for Peaceful Purposes. The United States has expressed the view that outer space should be used only for peaceful purposes. This view is consistent with the Preamble to the Outer Space Treaty.

The United States has interpreted use of outer space for "peaceful purposes" to mean "non-aggressive and beneficial" purposes consistent with the Charter of the United Nations and other international law. This interpretation of "peaceful purposes" is similar to the interpretation given to the reservation of the high seas for "peaceful purposes" in the LOS Convention.

For example, observation or information-gathering from satellites in space is not an act of aggression under the Charter of the United Nations and, thus, would be a use of space for peaceful purposes. Similarly, lawful military activities in self-defense (e.g., missile early warning, use of weapon systems) would be consistent with the use of space for peaceful purposes, but aggressive activities that violate the Charter of the United Nations would not be permissible.

Article IV of the Outer Space Treaty provides that "[t]he moon and other celestial bodies shall be used by all States Parties to the Treaty exclusively for peaceful purposes." Article IV specifies restrictions on military operations on the moon and other celestial bodies.

14.10.5 Outer Space Treaty Provisions on Cooperation, Mutual Assistance, and Potentially Harmful Interference. Article IX of the Outer Space Treaty provides that in the exploration and use of outer space, States Parties shall be guided by the principle of cooperation and mutual assistance and shall conduct all their activities in outer space with due regard to the corresponding interests of all other States Parties. For example, States should conduct their activities in space with due regard for the rights of other States to have their space systems pass through, and conduct operations in, space without interference.

Article IX of the Outer Space Treaty also requires States Parties to undertake "appropriate international consultations" before proceeding with any activity or experiment planned

> by it or its nationals in outer space if that State Party has reason to believe that its activity or experiment would cause potentially harmful interference with the activities of other States Parties in the peaceful exploration and use of outer space. Conversely, a State Party that has reason to believe that an activity or experiment planned by another State Party in outer space would cause potentially harmful interference with its activities in the peaceful exploration and use of outer space may request consultation concerning the activity or experiment.

In addition, Article I of the Nuclear Test Ban Treaty provides:

> Each of the Parties to this Treaty undertakes to prohibit, to prevent, and not to carry out any nuclear weapon test explosion, or any other nuclear explosion, at any place under its jurisdiction or control:
>
> (a) in the atmosphere; beyond its limits, including outer space; or under water, including territorial waters or high seas . . . .

See the narrative on the Outer Space Treaty prepared by the United States Arms Control and Disarmament Agency.[8]

10.2.2.3 1959 Antarctic Treaty

The 1959 Antarctic Treaty is a multilateral convention designed to ensure that Antarctica, defined to include the area south of 60 degrees south latitude, is used for peaceful purposes only. The treaty prohibits, in Antarctica, any measures of a military nature (e.g., the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapons). Nuclear explosions are specifically prohibited. Ships and aircraft at points of discharging or embarking personnel or cargoes

8. UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY, ARMS CONTROL AND DISARMAMENT AGREEMENTS: TEXTS AND HISTORIES OF THE NEGOTIATIONS 52 (1990).

in Antarctica are subject to international inspection. This treaty does not affect in any way the high seas freedoms of navigation and overflight in the Antarctic region.

Commentary

On May 2, 1958, the United States extended to the eleven other countries that participated in the Antarctic program of the international geophysical year an invitation to participate in a conference to consider the conclusion of a treaty on Antarctica. All eleven countries accepted the invitation, including Argentina, Australia, Belgium, Chile, the French Republic, Japan, New Zealand, Norway, the Union of South Africa, the Union of Soviet Socialist Republics, and the United Kingdom of Great Britain and Northern Ireland. The representatives of the twelve countries drafted the Antarctic Treaty and signed it. President Dwight D. Eisenhower called it a "significant advance toward the goal of a peaceful world with justice." The Treaty incorporates the basic purposes of the U.S. proposal and provides practical means for their fulfillment. The instrument is designed to further the purposes and principles embodied in the UN Charter. Article one dedicates Antarctica to peaceful purposes only.

The Treaty prohibits measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of maneuvers, and the testing of weapons. It specifies that military personnel or equipment may be used in Antarctica for scientific research or any other peaceful purpose. The United States and a few other countries have used military logistic support to conduct their Antarctic programs. Article 2 of the Treaty provides that freedom of scientific investigation in Antarctica and cooperation towards that end shall continue. Article 3 promotes international scientific cooperation, including the exchange of scientists between expeditions and stations in Antarctica. The parties shall make each other informed of their plans for scientific programs into Antarctica and shall make freely available scientific observations.

Article 4 of the Treaty specifies that the States parties do not renunciate any claim to sovereignty in the region. Likewise, no acts or activities constitute a basis for asserting, supporting, or denying a claim or create any rights of sovereignty in Antarctica.

See the narrative on the Antarctic Treaty prepared by the United States Arms Control and Disarmament Agency.[9]

10.2.2.4 Treaty of Tlatelolco

The Treaty of Tlatelolco is an agreement among the Latin American countries not to introduce nuclear weapons into Latin America. The treaty does not prohibit Latin American States from authorizing nuclear-armed ships and aircraft of nonmember States to visit their ports and airfields or to transit through their territorial sea or national airspace. The treaty is not applicable to the means of propulsion of any vessel.

Protocol I to the Treaty of Tlatelolco is an agreement among non-Latin American States that exercise international responsibility over territory within the treaty area to abide by the denuclearization provisions of the treaty. France, the Netherlands, the United Kingdom, and the United States are parties to Protocol I. For purposes of this treaty, U.S.-controlled territory in Latin America includes Guantanamo Bay in Cuba, the Virgin Islands, and Puerto Rico. The United States cannot maintain nuclear weapons in those areas. Protocol I States retain competence to authorize transits and port visits by ships and aircraft of their own or other armed forces in their Protocol I territories, irrespective of armament, cargo, or means of propulsion.

Protocol II to the Treaty of Tlatelolco is an agreement among several nuclear-armed States (China, France, Russian Federation, the United Kingdom, and the United States) to respect the denuclearization aims of the treaty, to not use nuclear weapons against Latin-American States that are party to the treaty, and refrain from contributing to a violation of the treaty by State parties.

9. *Id.* at 20.

Commentary

See the narrative on the Treaty of Tlatelolco prepared by the United States Arms Control and Disarmament Agency.[10]

10.2.2.5 Additional Nuclear Weapon-free Zones

Although not currently ratified by the United States, several additional treaties seek to create nuclear weapon-free zones. Those treaties are:

1. The 1985 Treaty of Rarotonga (South Pacific)
2. The 1995 Treaty of Bangkok (Southeast Asia)
3. The 1996 Treaty of Pelindaba (Africa)
4. The 2006 Treaty of Semipalatinsk (Central Asia).

10.2.2.6 1963 Limited Test Ban Treaty

The 1963 Limited Test Ban Treaty is a multilateral treaty that prohibits the testing of nuclear weapons in the atmosphere, in outer space, and underwater. Over 100 States are party to the treaty, including Russian Federation, the United Kingdom, and the United States (France and China are not parties). Underground testing of nuclear weapons is not included within the ban.

Commentary

Article 1 of the Nuclear Test Ban Treaty (or Limited Test Ban Treaty) provides:

> Each of the Parties to this Treaty undertakes to prohibit, to prevent, and not to carry out any nuclear weapon test explosion, or any other nuclear explosion, at any place under its jurisdiction or control:

10. *Id.* at 64.

> (a) in the atmosphere; beyond its limits, including outer space; or under water, including territorial waters or high seas . . . .

See the narrative on the Nuclear Test Ban Treaty prepared by the United States Arms Control and Disarmament Agency.[11]

10.2.2.7 1968 Treaty on the Nonproliferation of Nuclear Weapons

The 1968 Treat on the Nonproliferation of Nuclear Weapons is a multilateral treaty obligates nuclear-weapons States to refrain from transferring nuclear weapons or nuclear-weapons technology to nonnuclear-weapons States It obligates nonnuclear-weapons States to refrain from accepting such weapons from nuclear-weapons States or from manufacturing nuclear weapons themselves. The treaty does not apply in time of war, and parties may withdraw from the treaty if the supreme interests of a nation are at stake.

Commentary

Article I of the Nuclear Non-Proliferation Treaty provides:

> Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.

Article II provides:

> Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire

11. *Id.* at 52.

> nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.

See the narrative on the Nuclear Non-Proliferation Treaty prepared by the United States Arms Control and Disarmament Agency.[12]

10.2.2.8 Bilateral Nuclear Arms Control Agreements

The United States and Russian Federation (as the successor State to the USSR) are parties to a number of bilateral agreements designed to either restrain the growth or reduce the number of nuclear warheads and launchers and reduce the risk of miscalculation that could trigger a nuclear exchange. Among these agreements are:

1. Hotline Agreements of 1963 and 1971

2. Accidents Measures Agreement of 1971

3. 1973 Agreement on Prevention of Nuclear War

4. Threshold Test Ban Treaty of 1974

5. 1976 Treaty on Peaceful Nuclear Explosions

6. Strategic Arms Limitation Talks (SALT) Agreements of 1972 and 1977 (SALT I—Interim Agreement has expired and SALT II was never ratified)

7. Intermediate Range Nuclear Forces Treaty of 1988

8. Strategic Arms Reduction Treaties (START) of 1991 (START I) and 1993 (START II). The START initiated the process of physical destruction of strategic nuclear warheads and launchers by the United States, Russian Federation, Ukraine, Belarus, and Kazakhstan (the latter four being recognized as successor States to the USSR for this purpose).

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12. *Id.* at 52.

On 14 June 2002, the Russian Federation announced its withdrawal from START II. On 24 May 2002, the United States and Russian Federation concluded the Strategic Offensive Reductions Treaty, whereby they had agreed to reduce and limit their respective strategic nuclear warheads to an aggregate number not to exceed 1,700–2,000 for each party by 31 December 2012. In April 2010, the United States and Russian Federation signed the New START, which entered into force on 5 February 2011 and has a 10-year duration. The United States and the Russian Federation agreed to extend the treaty until 3 February 2026. Like the START before it, New START continues efforts to reduce and limit nuclear warheads and launchers. In 2019, the United States withdrew from the Intermediate Range Nuclear Forces Treaty.

Commentary

On April 8, 2010, the United States and Russia signed the New Strategic Arms Reduction Treaty (New START), which limited each side's nuclear strike capabilities to:

- 700 deployed intercontinental ballistic missiles (ICBMs), deployed submarine-launched ballistic missiles (SLBMs), and deployed heavy bombers equipped for nuclear armaments;
- 1,550 nuclear warheads on deployed ICBMs, deployed SLBMs, and deployed heavy bombers equipped for nuclear armaments (each such heavy bomber is counted as one warhead towards this limit); and
- 800 deployed and non-deployed ICBM launchers, SLBM launchers, and heavy bombers equipped for nuclear armaments.

The Treaty does not limit conventional weapons or non-deployed ICBMs and SLBMs. It includes measures to conduct on-site inspections and exhibitions, exchange data, and provide notifications related to strategic offensive weapons and facilities covered by the Treaty. The agreement also has terms to facilitate employment of national technical means for monitoring and verification and exchange of missile telemetry flight data on up to five tests per side, per year.

New START entered into force on February 5, 2011. Both parties met the Treaty's central limits by the implementation deadline on February 5, 2018. On February 3, 2021, the United States and Russia agreed to extend New START through February 4, 2026, as permitted by the Treaty.

On February 3, 2021, Secretary of State Anthony J. Blinken issued the following media statement:

> Extending the New START Treaty ensures we have verifiable limits on Russian ICBMs, SLBMs, and heavy bombers until February 5, 2026. The New START Treaty's verification regime enables us to monitor Russian compliance with the Treaty and provides us with greater insight into Russia's nuclear posture, including through data exchanges and onsite inspections that allow U.S. inspectors to have eyes on Russian nuclear forces and facilities. The United States has assessed the Russian Federation to be in compliance with its New START Treaty obligations every year since the Treaty entered into force in 2011.

See the narratives of the bilateral nuclear arms control agreements prepared by the United States Arms Control and Disarmament Agency.[13]

10.3 CHEMICAL WEAPONS

International law prohibits the use of chemical weapons under any circumstances.

Commentary

The Chemical Weapons Convention (or CWC) prohibits active chemical weapons agents and substances, which are categorized in three schedules. Schedule 1 includes materials that have previously been used as weapons. Schedule 2 includes dual use substances that

13. *See id.* at 31, 122 ("Hot Line" Agreements), 118 ("Accidents Measures" Agreement), 177 (Threshold Test Ban Treaty), 184 (Threshold Test Ban Treaty 1974), 191 (1976 Treaty on Peaceful Nuclear Explosions), 345 (Intermediate Range Nuclear Forces Treaty of 1988).

pose risks as weapons, but also have civilian applications. Schedule 3 covers substances and materials with less but not trivial risk, such as precursors. The chemicals in each schedule are subject to separate provisions regarding declarations of materials in inventory, destruction of weapons, and regulation of international and verification mechanisms.

The DoD Law of War Manual states:

> 6.8.3 Chemical Weapons. Chemical weapons are subject to a number of prohibitions.
>
> 6.8.3.1 *Definition of Chemical Weapons*. Under the Chemical Weapons Convention, chemical weapons mean the following, together or separately:
>
> > (a) Toxic chemicals and their precursors, except where intended for purposes not prohibited under this Convention, as long as the types and quantities are consistent with such purposes;
> >
> > (b) Munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (a), which would be released as a result of the employment of such munitions and devices;
> >
> > (c) Any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b).
>
> *Toxic chemicals* refer to any chemical that through its chemical action on life processes can cause death, temporary incapacitation, or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions, or elsewhere. Chemicals that only cause harm to plants, such as herbicides, are not covered. In addition, toxic chemicals intended for purposes

not prohibited by the Chemical Weapons Convention are also excluded, so long as they are of a type and quantity consistent with these purposes that are not prohibited.

Precursor means any chemical reactant (including any key component of a binary or multicomponent chemical system) that takes part at any stage in the production by whatever method of a toxic chemical. *Key component of a binary or multicomponent chemical system* means the precursor that plays the most important role in determining the toxic properties of the final product and reacts rapidly with other chemicals in the binary or multicomponent system.

Equipment specifically designed for use directly in connection with the employment of such munitions and devices only applies to equipment designed solely for use with chemical weapons and does not, for example, include equipment that is designed also for purposes that are not prohibited.

6.8.3.2 *Prohibitions With Respect to Chemical Weapons*. Chemical weapons are subject to a number of prohibitions. It is prohibited:

- to use chemical weapons;
- to develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone;
- to engage in any military preparations to use chemical weapons; and
- to assist, encourage, or induce, in any way, anyone to engage in any activity prohibited to a Party to the Chemical Weapons Convention.

These prohibitions apply in any circumstances. For example, chemical weapons may not be used in international armed conflict and non-international armed conflicts. Similarly,

chemical weapons may not be used in retaliation after a State has suffered from a chemical weapons attack, even if that attack has been conducted by a State that is not a Party to the Chemical Weapons Convention.

6.8.3.3 *Obligation to Destroy Certain Chemical Weapons and Chemical Weapons Production Facilities*. In addition, a Party to the Chemical Weapons Convention has an obligation to destroy chemical weapons or chemical weapon production facilities it owns or possesses or that are located in a place under its jurisdiction or control. If U.S. armed forces encounter chemical weapons or chemical weapon production facilities during armed conflict, U.S. national authorities should be notified as soon as practicable. In addition, with due regard for safety and security considerations, reasonable efforts should be made to secure and retain information regarding the chemical weapons.

6.8.3.4 *Certain Uses of Toxic Chemicals Not Prohibited*. The Chemical Weapons Convention does not prohibit the use of toxic chemicals and their precursors for certain purposes. Toxic chemicals and their precursors that are used for these purposes are not considered chemical weapons, so long as they are of a type and quantity consistent with these permitted purposes. These purposes include:

- industrial, agricultural, research, medical, pharmaceutical, or other peaceful purposes;
- protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;
- military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; and

- law enforcement, including domestic riot control purposes.

Seeking to develop and use means of protection against chemical weapons is permissible, provided such protection is not intended to facilitate the use of chemical weapons or for other purposes prohibited by the Chemical Weapons Convention.

10.3.1 Treaty Obligations

Prior to 1993, the Geneva Gas Protocol of 1925 for the Prohibition of the use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (1925 Gas Protocol) was the principle international agreement in force relating to the regulation of chemical weapons in armed conflict. The far more comprehensive 1993 Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction prohibits the development, production, stockpiling, and use of chemical weapons, and mandates the destruction of chemical weapons and chemical weapons production facilities for all States that are party to it. Specific chemicals are identified in three lists, referred to as Schedules. The CWC does not modify existing international law with respect to herbicidal agents. The CWC forbids the use of riot control agents (RCAs) when employed as a method of warfare. The United States is a party to both treaties.

Commentary

The United States is party to the Chemical Weapons Convention, which prohibits the development, production, acquisition, stockpiling, retention, transfer, and use of chemical weapons. The Convention also requires the destruction of all chemical weapons and chemical weapons production facilities. In addition, the Convention prohibits the use of riot control agents (RCAs) as a "method of warfare." The United States ratified the Chemical Weapons Convention on April 25, 1997 and the Convention entered into force for the United States on April 29, 1997. The Convention has a verification regime that relies on data declarations, inspections of declared facilities (initial, routine, and closeout), continuous and non-continuous chemical

> weapons destruction monitoring, investigation of alleged chemical weapons use, and challenge inspections (CIs). The Organization for the Prohibition of Chemical Weapons receives and reviews declaration updates, and its Technical Secretariat Inspection Teams conduct inspections. The United States has submitted a national declaration, which is updated as required. Schedule 1 chemical weapons storage and destruction facilities in the United States and its territories are subject to routine inspections and continuous monitoring. U.S.-controlled facilities—including facilities outside the United States (OUT-U.S.), public vessels and state aircraft, and geographically separated units (e.g., ground force units participating in peacekeeping operations)—could be subject to a CI on relatively short notice. All DoD components must be prepared to host a Chemical Weapons Convention challenge inspection.[14]

Commanders may be required to submit to challenge inspections on board U.S. warships:

> One potential operational effect on the United States, as a State Party to the CWC, is the potential for access to public vessels or state aircraft, or geographically separated units (either as direct objects of a CI or entities within the CI perimeter), by inspectors for the very narrow purpose of conducting a CWC CI. Additionally, military facilities located outside the United States are subject to inspection. Since the CWC applies to any area under the jurisdiction or control of a State Party, there may be circumstances in which commanders are required to submit to an inspection both inside and outside the United States. As a State Party to the CWC, the USG has an obligation to demonstrate compliance with the provisions of the Convention. This demonstration may require that the United States provide access to a military facility, public vessel or state aircraft, or geographically separated unit subjected to a CI. Commanders, however, have the obligation to man-

14. *See* CJCSI 2030.01E, Chemical Weapons Convention Implementation and Compliancy Policy Guidance (Apr. 12, 2023).

> age access to protect sensitive systems and prevent unauthorized disclosure of classified, sensitive, and proprietary information.[15]

"Under no circumstances are commanders to permit an inspection without notifying their chain of command."[16] Further, "[f]or inspections of DoD facilities, public vessels or state aircraft, or a geographically separated unit, the unit commander retains ultimate responsibility for the safety and security of their command."[17] The right of "managed access" is to be employed "when providing access to military facilities or public vessels, state aircraft, and geographically separated units."[18] Public vessels and state aircraft may be subject to CIs "even though they may be in international waters or airspace at the time the CI is announced. Unless otherwise directed by their operational controlling authority, "commanders are not to permit a CI of their ship or aircraft while under way or airborne."[19]

SECNAVINST 5710.27A, Department of the Navy Readiness for Challenge Inspections under the Chemical Weapons Convention, states:

> a. Department of the Navy (DON) policy is to comply with the obligations of the CWC. This does not diminish or modify established requirements to comply with Navy and Marine Corps safety and security regulations and directives. During a challenge inspection, the DON's objective is to demonstrate compliance, when and if required, and to protect sensitive, proprietary and classified information.
>
> . . . .
>
> c. CWC challenge inspections do not alter existing DON command relationships or the operational chain of command. Commanders, Commanding Officers, and Officers in

15. *Id.* at Enclosure A ¶ 2.a.(2).
16. *Id.* at Enclosure A ¶ 2.b.(1).
17. *Id.* at Enclosure A ¶ 2.b.(2).
18. *Id.* at Enclosure A ¶ 2.b.(7).
19. *Id.* at Enclosure A ¶ 2.b.(8).

> Charge and Masters of USNS/MPS vessels, (hereinafter referred to as "Commanding Officers") of Navy and Marine Corps installations facilities, ships, submarines, aircraft, USNS vessels, and MPS designated for a challenge inspection shall coordinate such inspections and procedures with their chain of command. Once notified of a potential challenge inspection, Commanding Officers of ships and aircraft squadron commanders shall coordinate any departure or other movement of ships, aircraft, and naval forces with their operational chain of command. Ships and aircraft normally will not be required to remain in a U.S. or foreign port or airfield longer than their scheduled departure time solely to accommodate a challenge inspection.
>
> > (1) Commanding Officers are responsible under Navy Regulations for the routine conduct of operations, control of access, safety of visitors, protection of national security information, and compliance with U.S. Government obligations under international agreements. Only the Commanding Officer will exercise command authority at inspected DON or DON-controlled installations, bases, and facilities, or DON ships, submarines, aircraft, USNS vessels, and MPS.[20]

10.3.2 Riot Control Agents

The CWC defines RCAs as any chemical, not listed in a Schedule of the CWC, that can produce rapidly in human's sensory irritation or disabling physical effects that disappear within a short time following termination of exposure. States agree not to use RCAs as a method of warfare. The CWC does not define the term. The United States ratified the CWC subject to the understanding that nothing in the CWC prohibited the use of RCAs in accordance with EO 11850, Reunification of Certain Uses in War of Chemical Herbicides and Riot Control Agents.

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20. SECNAVINST 5710.27A, Department of the Navy Readiness for Challenge Inspections under the Chemical Weapons Convention, ¶ 5 (Dec. 3, 2018).

Commentary

See the U.S. Senate Hearing on Riot Control Agents, held on September 27, 2006.[21]

10.3.2.1 Riot Control Agents in Armed Conflict

Under EO 11850 and RCAs, the United States renounced the first use of RCAs in armed conflict, except in defensive military modes to save lives, in situations such as:

1. Riot control situations in areas under effective U.S. military control, to include control of rioting POWs

2. Situations in which civilians are used to mask or screen attacks and civilian casualties can be reduced or avoided

3. Rescue missions in remotely isolated areas involving downed aircrews and passengers or escaping POWs

4. Protection of convoys in rear-echelon areas from civil disturbances, terrorist activities, or paramilitary operations.

Such employment of RCAs by U.S. forces in armed conflict requires presidential approval.

The United States considers the prohibition on the use of RCAs as a method of warfare applies in international and non-international armed conflict, but it does not apply in normal peacekeeping operations, law enforcement operations, humanitarian and disaster relief operations, counterterrorist and hostage rescue operations, noncombatant rescue operations, and any other operations not considered international or internal armed conflict. CJCSI 3110.07D, Guidance Concerning Employment of Riot Control Agents and Herbicides, provides further guidance.

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21. *U.S. Policy and Practice with Respect to the Use of Riot Control Agents by the U.S. Armed Forces: Hearing Before the Subcommittee on Readiness and Management Support of the Senate Committee on Armed Services*, 109th Cong. 784 (2006).

Commentary

The DoD Law of War Manual states:

> 6.16 Riot Control Agents
>
> The use of riot control agents is subject to certain prohibitions and restrictions. Riot control agents are widely used by governments for law enforcement purposes (such as crowd control), but are prohibited as a method of warfare.
>
> 6.16.1 Definition of Riot Control Agents. *Riot control agents* mean any chemical not listed in a Schedule Annexed to the Chemical Weapons Convention, which can produce rapidly in humans sensory irritation or disabling physical effects that disappear within a short time following termination of exposure. Riot control agents include, for example, tear gas and pepper spray, but generally are understood to exclude the broader class of non-lethal weapons that may sometimes be used for riot control or other similar purposes, such as foams, water cannons, bean bags, or rubber bullets.
>
> The United States does not consider riot control agents to be "chemical weapons," or otherwise to fall under the prohibition against asphyxiating, poisonous, or other gases, and all analogous liquids, materials, or devices.
>
> 6.16.2 Prohibition on Use of Riot Control Agents as a Method of Warfare. It is prohibited to use riot control agents as a method of warfare. The United States has understood this prohibition not to prohibit the use of riot control agents in war in defensive military modes to save lives, such as use of riot control agents:
>
> - in riot control situations in areas under direct and distinct U.S. military control, including controlling rioting POWs;

- in situations in which civilians are used to mask or screen attacks and civilian casualties can be reduced or avoided;

- in rescue missions in remotely isolated areas, of downed aircrews and passengers, and escaping prisoners; and

- in rear echelon areas outside the zone of immediate combat to protect convoys from civil disturbances, terrorists, and paramilitary organizations.

These uses are as articulated in Executive Order 11850. Even though Executive Order 11850 predated the Chemical Weapons Convention (which could have created legal obligations that were inconsistent with Executive Order 11850), interpreting the Chemical Weapons Convention consistent with Executive Order 11850 was a condition of the Senate giving its advice and consent to ratification of the Chemical Weapons Convention. Thus, Executive Order 11850 has remained an important part of U.S. policy on the use of riot control agents.

In addition to being permitted in war in defensive military modes to save lives, it is not prohibited to use riot control agents in military operations outside of war or armed conflict. Specifically, the United States has taken the position that riot control agents may be used in the conduct of:

- peacetime military operations within an area of ongoing armed conflict when the United States is not a party to the conflict;

- consensual peacekeeping operations when the use of force is authorized by the receiving state, including operations pursuant to Chapter VI of the United Nations Charter; and

- peacekeeping operations when force is authorized by the Security Council under Chapter VII of the United Nations Charter.

10.3.2.2 Riot Control Agents in Time of Peace

Employment of RCAs in peacetime is not proscribed by either the 1925 Gas Protocol or the 1993 Chemical Weapons Convention and may be authorized by the SECDEF or, in limited circumstances, by the commanders of the CCMDs. Circumstances in which RCAs may be authorized for employment in peacetime include:

1. Civil disturbances in the United States, its territories, and possessions.

2. Protection and security on U.S. bases, posts, embassy grounds, and installations overseas, including riot control purposes.

3. Law enforcement:

   a. On-base and off-base in the United States, its territories, and possessions

   b. On-base overseas

   c. Off-base overseas when specifically authorized by the host government.

4. Noncombatant evacuation operations.

5. Security operations regarding the protection or recovery of nuclear weapons.

10.3.3 Herbicidal Agents

Herbicidal agents are gases, liquids, and analogous substances that are designed to defoliate trees, bushes, or shrubs, or kill long grasses and other vegetation that could shield the movement of enemy forces. The United States considers use of herbicidal agents in wartime is not prohibited by either the 1925 Gas Protocol or the 1993 Chemical Weapons Convention,

but formally renounced, in EO 11850, the first use of herbicides in time of armed conflict, except for control of vegetation within U.S. bases and installations or around their immediate defensive perimeters. Use of herbicidal agents during armed conflict requires presidential approval. Use of herbicidal agents in peacetime may be authorized by the SECDEF or, in limited circumstances, by commanders of the CCMDs. See CJCSI 3110.07D for further guidance.

Commentary

Executive Order No. 11850 (Renunciation of certain uses in war of chemical herbicides and riot control agents) provides:

> The United States renounces, as a matter of national policy, first use of herbicides in war except use, under regulations applicable to their domestic use, for control of vegetation within U.S. bases and installations or around their immediate defensive perimeters, and first use of riot control agents in war except in defensive military modes to save lives such as:
>
> (a) Use of riot control agents in riot control situations in areas under direct and distinct U.S. military control, to include controlling rioting prisoners of war.
>
> (b) Use of riot control agents in situations in which civilians are used to mask or screen attacks and civilian casualties can be reduced or avoided.
>
> (c) Use of riot control agents in rescue missions in remotely isolated areas, of downed aircrews and passengers, and escaping prisoners.
>
> (d) Use of riot control agents in rear echelon areas outside the zone of immediate combat to protect convoys from civil disturbances, terrorists and paramilitary organizations.[22]

22. 40 Fed. Reg. 16187, 3 C.F.R. (1971–75 Comp. 980) (Apr. 10, 1975).

The DoD Law of War Manual states:

> 6.17 Herbicides
>
> The United States has renounced, as a matter of national policy, first use of herbicides in war except use, under regulations applicable to their domestic use, for control of vegetation within U.S. bases and installations or around their immediate defensive perimeters.
>
> 6.17.1 Definition of Herbicide. An herbicide is a chemical compound that will kill or damage plants. Herbicides that are harmless to human beings are not prohibited under the rule against the use of poison or poisoned weapons.
>
> 6.17.2 Chemical Weapons Convention and Herbicides. The Chemical Weapons Convention does not add any new constraints on the use of herbicides. The Chemical Weapons Convention addresses toxic chemicals that cause death, temporary incapacitation, or permanent harm to humans or animals, rather than plants. Moreover, even if an herbicide were such a toxic chemical, its use would likely be for a purpose not prohibited by the Chemical Weapons Convention.
>
> 6.17.3 ENMOD Convention and Herbicides. Under certain circumstances, the use of herbicides could be prohibited by the ENMOD Convention. However, the use of herbicides to control vegetation within U.S. bases and installations or around their immediate defensive perimeters has been understood by the United States to be permitted under international law.
>
> 6.17.4 Authority Under Domestic Law to Employ Herbicides in War. Use of herbicides in war by the U.S. armed forces requires advance Presidential approval. Additional regulations govern the use of herbicides.

10.4 BIOLOGICAL WEAPONS

International law prohibits all biological weapons or methods of warfare, whether directed against persons, animals, or plant life. United States domestic law prohibits the use of biological weapons for any purpose, including antimateriel purposes. See 18 U.S.C. § 175 *et seq*. Biological weapons include microbial or other biological agents or toxins—whatever their origin (i.e., natural or artificial)—or methods of production.

Commentary

The DoD Law of War Manual states:

> 6.9 Biological Weapons
>
> Biological weapons, including bacteriological and toxin weapons, are subject to a number of prohibitions and restrictions.
>
> 6.9.1 Biological Weapons—Prohibition on Use as a Method of Warfare. It is prohibited to use bacteriological methods of warfare. This prohibition includes all biological methods of warfare and the use in warfare of toxin weapons. For example, it is prohibited to use plague as a weapon.
>
> A prohibition against the use of biological weapons may be understood to result from U.S. obligations in the Biological Weapons Convention to refrain from developing, acquiring, or retaining biological weapons.
>
> Bacteriological or biological warfare is prohibited, at least in part, because it can have massive, unpredictable, and potentially uncontrollable consequences.
>
> 6.9.1.1 *Toxin Weapons*. The term *toxin* refers to poisonous chemical substances that are naturally produced by living organisms, and that, if present in the body, produce effects sim-

ilar to disease in the human body. Toxins are not living organisms and thus are not capable of reproducing themselves and transmissible from one person to another.

Toxin weapons have been regulated in connection with biological weapons because they have been produced in facilities similar to those used for the production of biological agents. However, even toxins that are produced synthetically, and not through biological processes, fall within these prohibitions. Substances that are classified as "toxins" for the purpose of applying the requirements of the Biological Weapons Convention may also be classified as "chemical weapons" that are subject to the requirements of the Chemical Weapons Convention.

6.9.2 Biological Weapons—Prohibition on Development, Acquisition, or Retention. It is also prohibited to develop, produce, stockpile, or otherwise acquire or retain:

- microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective, or other peaceful purposes; or

- weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

6.9.3 Biological Weapons—Prohibition on Transfer or Assisting, Encouraging, or Inducing the Manufacture or Acquisition. It is also prohibited to transfer or to assist, encourage, or induce others to acquire biological weapons.

The exchange of equipment, materials, and scientific and technological information for the use of bacteriological and biological agents and toxins for peaceful purposes, such as the prevention of disease, however, is not restricted.

See also the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction.[23]

10.4.1 Treaty Obligations

The 1925 Gas Protocol prohibits the use of biological weapons in armed conflict. The 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (1972 Biological Weapons Convention or BWC) prohibits the production, testing, and stockpiling of biological weapons. The BWC obligates States that are a party thereto not to develop, produce, stockpile, or acquire biological agents or toxins of types and in quantities that have no justification for prophylactic, protective, or other peaceful purposes, as well as weapons, equipment, or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict. All such materials were to be destroyed by 26 December 1975. The United States, Russian Federation, and most other North Atlantic Treaty Organization and former Warsaw Pact States are parties to the 1925 Gas Protocol and the 1972 Biological Weapons Convention.

Commentary

See the narratives prepared by the United States Arms Control and Disarmament Agency.[24]

10.4.2 U.S. Policy Regarding Biological Weapons

The United States considers the prohibition against the use of biological and toxin weapons during armed conflict to be part of customary international law and thereby binding on all States whether or not they are parties to the 1925 Gas Protocol or the 1972 Biological Weapons Convention.

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23. Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Apr. 10, 1972, 26 U.S.T. 583, 1015 U.N.T.S. 163.

24. UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY, *supra* note 8, at 129.

The United States has formally renounced the use of biological weapons under any circumstance. Pursuant to its treaty obligations, the United States has destroyed all its biological and toxin weapons and restricts its research activities to development of defensive capabilities.

10.5 RADIOLOGICAL WEAPONS

Radiological weapons include radiological dispersal devices and radiological exposure devices. A radiological dispersal device is an improvised assembly or process—other than a nuclear explosive device—designed to disseminate radioactive material to cause destruction, damage, or injury. A radiological exposure device is a radioactive source placed to cause injury or death. Radiological weapons are not considered to be militarily useful for a State-sponsored military, but may be desirable for non-State actors and terrorist organizations wishing to inflict psychological and economic damage.

Commentary

Appendix A of JP 3-41, Chemical, Biological, Radiological, and Nuclear Response, states:

KEY LEGAL, STRATEGY, AND POLICY DOCUMENTS AND INTERNATIONAL PROTOCOLS

1. Legal, National Strategy, and National Policy Guidance

a. **Key Executive and Legislative Guidance.** The following documents are key references when addressing the DSCA mission area, to include CBRN response.

(1) **The White House Notice,** *Continuation of Emergency with Respect to Weapons of Mass Destruction*. Reissued every year since 1994, the notice concerns EO 12938, Proliferation of Weapons of Mass Destruction, and as amended, that a national emergency exists because of the worldwide threat posed by the proliferation and potential use of WMD.

(2) **PPD-1,** *Organization of the National Security Council System*, establishes the process and structure for the national security council system.

(3) **HSPD-1,** *Organization and Operation of the Homeland Security Council*, established the Homeland Security Council to ensure coordination of all HS-related activities among the executive departments and agencies and promote the effective development and implementation of all HS policies.

(4) **HSPD-3,** *The Homeland Security Advisory System*, provides the guidelines for a comprehensive and effective means to disseminate information regarding the risk of terrorist acts to federal, state, local, tribal, and territorial authorities and the American people. In 2011, DHS replaced the color-coded alerts of the HS Advisory System with the National Terrorism Advisory System, designed to more effectively communicate information about terrorist threats by providing timely, detailed information to the American public. This document establishes the five threat conditions and their respective protective measures.

(5) **DOD Strategy for CWMD** states that DOD seeks to ensure that the US and its allies and partners are neither attacked nor coerced by actors with WMD. It outlines three end states: no-new WMD possession, no-WMD use, and minimization of WMD effects. The strategy also establishes countering WMD priority objectives for the DOD, defines an approach for achieving them, and identifies essential activities and tasks.

(6) **HSPD-5,** *Management of Domestic Incidents*, assigns the Secretary of the DHS as the PFO for domestic incident management to coordinate the USG's resources utilized in response to, or recovery from terrorist attacks, major disasters, or other emergencies.

Additionally, HSPD-5 established the NIMS to provide a consistent nationwide approach for federal, state, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents.

(7) **PPD-8,** *National Preparedness*, is aimed at strengthening the security and resilience of the US through systematic preparation for the threats that pose the greatest risk to the security of the nation, including acts of terrorism, cyberspace attacks, pandemics, and catastrophic natural disasters.

(8) **Federal Strategic Guidance Statement for Chemical Attacks in the United States.** The strategic guidance statement, issued pursuant to HSPD-8, Annex 1 (National Preparedness), guides USG efforts in addressing chemical attacks based on the applicable National Planning Scenarios along with threats of attacks using other possible chemical weapons.

(9) **HSPD-9,** *Defense of United States Agriculture and Food*, establishes a national policy to defend the agriculture and food system against terrorist attacks, major disasters, and other emergencies.

(10) **HSPD-10,** *Biodefense for the 21st Century*, outlines the essential pillars of our biodefense program and provides specific directives to further strengthen the significant gains put in place during the past three years. These pillars include threat awareness, prevention and protection, surveillance and detection, and response and recovery, which include response planning, mass casualty care, risk communication, medical countermeasures, and decontamination.

(11) **HSPD-14,** *Domestic Nuclear Detection*, seeks to protect against the unauthorized importation, possession, storage, transportation, development, or use of a nuclear explosive device, fissile material, or radiological material in the US, and to protect against attack using such devices or materials against the people, territory, or interests of the US.

(12) **HSPD-15,** *US Strategy and Policy on the War on Terror[ism] (U)*, discusses the coordination of all instruments of national power to meet six US goals for the war on terrorism: deny terrorists resources, enable partner nations to counter terrorism, combat WMD, defeat terrorists and their organizations, counter support for terrorism in coordination with partner nations, and establish conditions that counter ideological support for terrorism.

(13) **HSPD-18,** *Medical Countermeasures Against Weapons of Mass Destruction*, describes the principles from which national guidance is derived for addressing the challenges presented by the diverse CBRN threat spectrum, optimizing the investments necessary for medical countermeasures development, and ensuring that USG activities significantly enhance domestic and international response and recovery capabilities. Mitigating illness and preventing death from CBRN threats are the principal goals of the USG medical countermeasure efforts.

(14) **PPD-17,** *Countering Improvised Explosive Devices*, establishes and implements measures to prevent, protect against, respond to, recover from, and mitigate attacks using IEDs and their consequences at home and abroad.

(15) **HSPD-20,** *National Continuity Policy*, establishes a comprehensive national policy on the continuity of USG structures and operations and a single national

continuity coordinator responsible for coordinating the development and implementation of federal continuity policies. The policy establishes "national essential functions," prescribes continuity requirements for all executive departments and agencies, and provides guidance for state, local, territorial, and tribal governments and private sector organizations in order to ensure a comprehensive and integrated national continuity program that will enhance the credibility of the USG national security posture and enable a more rapid and effective response to and recovery from a national emergency.

(16) **HSPD-21,** *Public Health and Medical Preparedness*, establishes a national strategy for public health and a medical preparedness strategy which builds upon principles set forth in HSPD-10, *Biodefense for the 21st Century*. The directive sets forth policy enabling the provision of public health and medical needs of the American people in the case of a catastrophic health incident through continual and timely flow of information and rapid public health and medical response that marshals all available nation capabilities and capacities in a rapid and coordinated manner.

(17) **HSPD-22,** *Domestic Chemical Defense (U)*, establishes a national policy and directs actions to strengthen the ability of the US to prevent, protect from, and respond to, and recover from terrorist attacks employing toxic chemicals and other chemical incidents.

(18) **The NSS and the National Military Strategy (NMS).** The NSS establishes broad strategic guidance for advancing US interests in the global environment through the instruments of national power. The NMS describes how the USG will employ military forces to protect and advance US interests.

(19) **The National Strategy for HS.** Prepared for the President by the Office of Homeland Security, this document lays out the strategic objectives, organization, and critical areas for HS. The strategy identifies critical areas that focus on preventing terrorist attacks, reducing the nation's vulnerabilities, minimizing the damage and recovering from said attacks.

(20) **National Strategy for Countering Biological Threats.** Issued by the National Security Council, this strategy guides efforts to prevent acts of bioterrorism or other significant outbreaks of infectious disease by reducing the risk of misuse of the life sciences or derivative materials, techniques, or expertise that will result in the use or intent to use biological agents to cause harm. It also complements existing policies, plans, and preparations to advance the USG's ability to respond to public health crises of natural, accidental, or deliberate origin.

(21) **National Strategy for Combating Terrorism.** Expands on the National Strategy for HS and the NSS by expounding on the need to destroy terrorist organizations, win the war of ideas, and strengthen America's security at home and abroad. While the national strategy focuses on preventing terrorist attacks within the US, this strategy is more proactive and focuses on identifying and defusing threats before they reach our borders. The direct and continuous action against terrorist groups can disrupt, degrade, and destroy their capability to attack the US.

(22) **National Strategy for Pandemic Influenza.** Issued by the Homeland Security Council, this strategy presents the USG approach to address the threat of PI. It outlines how the nation prepares, detects, and responds to a pandemic by documenting the responsibilities of federal, state, and local governments;

private industry; international partners; and American citizens.

(23) **Strategy for HD and DSCA.** This strategy establishes strategic guidance for securing the US from direct attack by using an active, layered defense construct. Expands on the DSG by establishing a lead, support, and enable construct in organizing DOD objectives. Provides specific objectives to support managing the consequences of CBRN and bulk HE use resulting in mass casualties.

(24) **FAA of 1961.** Establishes DOS as the LFA for USG assistance to a foreign country during a disaster and describes the procedures for conducting that relief as well as the congressionally authorized funding.

(25) **Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act** (USA PATRIOT Act of 2001 [as amended]). This act enhances domestic security against terrorism. It eases some of the restrictions on foreign intelligence gathering within the US and affords the US intelligence community greater access to information discovered during a criminal investigation.

(26) **The Robert T. Stafford Disaster Relief and Emergency Assistance Act, (Title 42, USC, Sections 5121–5207).** The Stafford Act provides for assistance by the USG to the states in the event of natural and other disasters and emergencies. It is the primary legal authority for federal participation in domestic DR. Under the Stafford Act, the President may direct federal agencies, including DOD, to support DR. DOD may be directed to provide assistance in one of three different scenarios: a Presidential declaration of a major disaster, a Presidential order to perform emergency work for the preservation of life

and property, or a Presidential declaration of emergency.

(27) **The Economy Act of 1932 (Title 31, USC, Section 1535).** The Economy Act authorizes federal agencies to provide goods or services on a reimbursable basis to other federal agencies, when more specific statutory authority to do so does not exist.

(28) **PCA (Title 18, USC, Section 1385).** This statute limits the use of federal military personnel to perform civilian law enforcement activities. The PCA generally prohibits the use of US Army and US Air Force active duty (Title 10, USC) personnel for civilian law enforcement activities, except as authorized by the US Constitution or by statute. Additionally, DOD policy extends the prohibitions of the PCA to US Navy and US Marine Corps active duty (Title 10, USC) personnel. DODI 3025.21, *Defense Support of Civilian Law Enforcement Agencies*, details express statutory exceptions to the PCA, such as the Insurrection Act and emergency assistance involving WMD, which, upon appropriate notifications and approval, allow for the otherwise prohibited use of federal military personnel to support civilian law enforcement activities during civilian led-CBRN response operations.

(29) **Title 10, USC (Armed Forces).** Title 10, USC, provides guidance on the Armed Forces. Guidance is divided into five subtitles. One covers general military law and one each for the US Army, US Navy, US Marine Corps, the US Air Force, and the RC. Chapter 18 (Sections 371–382) of Title 10, USC, is entitled and governs Military Support for Civilian Law Enforcement Agencies. Title 10, USC, Section 375, directs SecDef to promulgate regulations that prohibit "direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search,

seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law."

(30) **Title 14, USC (Coast Guard).** Sections 1, 2, 19, 88, 89, 99, 141, and 143, define the statutory authority of the USCG during HS missions.

(31) **Title 32, USC (National Guard).** Specifically, Title 32, USC, authorizes the use of US federal funds to train NG members, while they remain under the C2 of their respective state governors. In certain limited instances, specific statutory or Presidential authority allows for NG forces to perform DOD operational missions funded by the USG under Title 32, USC, authority, while they remain under the C2 of the governor. Examples of those exceptions include the employment of WMD-CSTs, HD activities, and the President of the United States-directed airport security mission.

(32) **Memorandum of Understanding Between the Intelligence Community, Federal Law Enforcement Agencies, and the DHS Concerning Information Sharing, 4 March 2003.** This agreement provides a framework and guidance to govern information sharing, use, and handling among the following individuals and their agencies: Secretary of Homeland Security, Director of National Intelligence, the Attorney General, and any other organization having federal law enforcement responsibilities (other than those that are part of the DHS). The agreement mandates minimum requirements for information sharing, use, and handling and for coordination and deconfliction of analytic judgments.

(33) **Memorandum of Agreement Between the Department of Defense and Department of Homeland Security on the Use of US Coast**

Guard Capabilities and Resources in Support of the National Military Strategy, 23 May 2008. This agreement provides for the identification of certain national defense capabilities of the USCG and improves the process by which the USCG serves as a force provider for DOD missions.

(34) **NRF.** The NRF focuses on response and short-term recovery, and articulates doctrine, principles, and architectures by which the US prepares for and responds to all- hazard disasters across all levels of government. The NRF and supporting annexes are available at www.fema.gov/nrf.

(35) **Inter-Departmental Memorandum of Understanding for Foreign Consequence Management Preparedness and Response.** The purpose of this MOU is to synchronize and integrate USG foreign consequence management (now ICBRN-R) efforts. The MOU details the USG's goals and objectives relating to foreign consequence management (now ICBRN-R) and provides policy relating to roles and responsibilities of departments and agencies to prepare for and respond to a CBRN incident on foreign soil.

(36) **National Strategy for Biosurveillance.** This strategy articulates an overarching goal supported by core functions. Through a deliberate emphasis on the identified core functions and enabling focus areas, the aim is to enhance the Nation's ability to detect, track, investigate, and navigate incidents affecting human, animal, and plant health, thereby better protecting the safety, well-being, and security of the American people.

b. **Key DOD Guidance.** The following discussion identifies a number of key documents to make commanders

and planners more aware of material that may assist in the planning and execution of the CBRN mission areas.

(1) **UCP.** The UCP provides basic guidance to all unified CCDRs, establishes their missions and responsibilities, delineates the general geographical AORs for GCCs, and specifies functional responsibilities for functional CCDRs.

(2) **DSG.** DSG establishes and directs how to accomplish broad strategic objectives. Provides HD implementation guidelines.

(3) **DOD Strategy for CWMD.** The pursuit of WMD and potential use by actors of concern pose a threat to US national security and peace and stability around the world. The 2014 DOD Strategy for Countering Weapons of Mass Destruction represents the DOD's response to this global WMD threat. It specifies desired end states, prescribes priority objectives, delineates a strategic approach for achieving those objectives, and outlines the CWMD activities and tasks necessary for success.

(4) **National Military Strategic Plan for the War on Terrorism.** This plan constitutes the comprehensive military plan to prosecute the global war on terrorism for the Armed Forces of the United States. It is the plan that guides the contributions of the CCMDs the Military Departments, combat support agencies, and field support activities of the US to protect and defend the homeland, attack terrorists and their capacity to operate effectively at home and abroad, and support mainstream efforts to reject violent extremism.

(5) **DODI 2000.12,** *DOD Antiterrorism (AT) Program.* This instruction updates policies and assigns responsibilities for implementing the procedures for the

DOD AT program. It establishes CJCS as the principal advisor and focal point responsible to SecDef for DOD AT issues. It also defines the AT responsibilities of the Military Departments, commanders of CCMDs, DOD agencies, and DOD field activities. Its guidelines are applicable for the physical security of all DOD activities both overseas and in the homeland.

(6) **DODI 3025.20,** *Defense Support of Special Events*. This instruction provides definitions for a special event and support and outlines policy guidelines and responsibilities for DOD support of special events. It allows for the DOD component to designate a special events coordinator who is charged with providing timely information and technical support to the ASD (HD&GS).

(7) **DODD 2060.02,** *Department of Defense (DOD) Combating Weapons of Mass Destruction (WMD) Policy*. This directive recognizes the need for the Services to be prepared to support CWMD operations and directs Services to organize, train, and equip their forces to support them.

(8) **DODD 3025.18,** *Defense Support of Civil Authorities (DSCA)*. This directive provides guidance for the execution and oversight of DSCA when requested by civil authorities approved by the appropriate DOD official or as directed by the President. It authorizes immediate response authority for providing DSCA when requested and authorizes emergency authority for the use of military force under dire situations.

(9) **DODI 3025.21,** *Defense Support of Civilian Law Enforcement Agencies*. This instruction provides guidance on DSCA activities for civil disturbances and civil disturbance operations, including response to terrorist incidents, and covers the policy and procedures

whereby the President is authorized by the Constitution and laws of the US to employ the Armed Forces to suppress insurrections, rebellions, and domestic violence under various conditions and circumstances. Planning and preparedness by the USG and the DOD for civil disturbances are important due to the potential severity of the consequences of such incidents for the nation and the population.

(10) **DODD 3150.08,** *DOD Response to Nuclear and Radiological Incidents*. This directive promulgates policy and assigns responsibilities for DOD CBRN response to US nuclear weapon incidents and other nuclear or radiological incidents involving materials in DOD custody IAW the guidance in NSPD-28, *US Nuclear Weapons Command and Control, Safety, and Security*; the NRF; and the NIMS.

(11) **DODD 5100.46,** *Foreign Disaster Relief (FDR)*, details DOD policy for conducting DR operations which covers the scenarios of foreign consequence management (now ICBRN-R) and DOD-led CBRN response on foreign soil.

(12) **DODD 5200.27,** *Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense*. This directive establishes the Defense Investigative Program general policy, limitations, procedures, and operational guidance pertaining to the collecting, processing, storing, and disseminating of information concerning persons and organizations not affiliated with DOD.

(13) **DODD 5240.01,** *DOD Intelligence Activities*. This directive is the primary authority used as guidance by DOD intelligence personnel and those performing an intelligence or counterintelligence function to collect, process, retain, or disseminate information concerning US persons.

(14) **DOD 5240.1-R,** *Procedures Governing the Activities of DOD Intelligence Components That Affect United States Persons*. This regulation sets forth procedures governing the activities of DOD intelligence components that affect US persons, to include the collection, retention, processing, and dissemination of US persons' information.

(15) **Department of Defense Manual (DODM) 3150.08-M,** *Nuclear Weapon Accident Response Procedures (NARP)*. This manual is issued under the authority of DODD 3150.08, *DOD Response to Nuclear and Radiological Incidents*. It provides a concept of operations as well as functional information necessary to execute a comprehensive and unified response to a nuclear weapon accident. It provides information for planners and response elements to understand the overall response concept and roles of DOD and the Department of Energy/National Nuclear Security Administration.

(16) **DODI 3020.52,** *DOD Installation Chemical, Biological, Radiological, Nuclear, and High-Yield Explosive (CBRNE) Preparedness Standards*. This instruction implements policy, assigns responsibilities, and prescribes procedures to establish and implement a program for a worldwide DOD installation hazard response to manage the consequences of a CBRN and bulk HE incident. It provides guidance for the establishment of a CBRN and bulk HE preparedness program for emergency responders at all DOD installations. It also prescribes that DOD installation emergency responders must be prepared to respond to the effects of a CBRN or bulk HE incident to preserve life, prevent human suffering, minimize the effects of incident hazards, and protect critical assets and infrastructure.

(17) **DODI 2000.21,** *DOD Support to International Chemical, Biological, Radiological, and Nuclear (CBRN) Incidents*. This instruction establishes policy and assigns responsibilities for DOD support to the United States Government response to international CBRN incidents.

(18) **DODI 3001.02,** *Personnel Accountability in Conjunction with Natural or Manmade Disasters*. This instruction establishes policy and assigns responsibilities for accounting and reporting of specified DOD-affiliated personnel, within CONUS and outside CONUS, following a natural or man-made disaster.

(19) **DODI 6055.17,** *DOD Installation Emergency Management (IEM) Program*. This instruction is a reference for response of a DOD installation to a CBRN incident.

(a) Establishes policy, assigns responsibilities, and prescribes procedures for developing, implementing, and sustaining installation emergency management (IEM) programs at DOD installations worldwide for "all hazards" as defined in the glossary. Establishes the goals of the DOD IEM Program as follows:

1. Prepare DOD installations for emergencies.

2. Respond appropriately to protect personnel and save lives.

3. Recover and restore operations after an emergency.

(b) Aligns DOD emergency management activities with NIMS, the National Preparedness Guidelines, and the NRF.

(c) Establishes the DOD Emergency Management Steering Group.

(20) **DODI 6200.03,** *Public Health Emergency Management within the Department of Defense*. Establishes DOD guidance IAW applicable law and ensures mission assurance and readiness by protecting installations, facilities, personnel, and other assets in managing the impact of public health emergencies caused by all-hazards incidents.

(21) **CJCSI 3121.01,** *Standing Rules of Engagement/Rules for the Use of Force for US Forces (Classified)*. This instruction provides the SRUF to be employed by US forces in a Title 10, USC, status performing DSCA missions.

(22) **CJCSI 3125.01,** *Defense Response to Chemical, Biological, Radiological, and Nuclear (CBRN) Incidents in the Homeland*. This instruction provides operational and policy guidance and instructions for US military forces responding to domestic CBRN and bulk HE incidents. This instruction applies only to domestic operations. This instruction is of specific importance to the geographic CCMDs with domestic CBRN and bulk HE responsibilities. It identifies that domestic support encompasses both deliberate and inadvertent CBRN and bulk HE situations including terrorism, acts of aggression, industrial accidents, and acts of nature. It recognizes that these operations may be conducted by US military forces under immediate response authority and in support of the designated LFA.

(23) **CJCSI 3214.01,** *Defense Support for Chemical, Biological, Radiological, and Nuclear Incidents on Foreign Territory*. This instruction provides guidance for US military forces supporting USG-led foreign consequence management (now ICBRN-R) operations and DOD-

led CBRN response operations in response to a CBRN incident.

(24) **Guidance for Employment of the Force (GEF).** The GEF and the Joint Strategic Capabilities Plan (JSCP) inform DOD how to employ, and in part manage, the force in the near term. The GEF provides strategic planning guidance and identifies security cooperation focus areas for campaign planning—both foreign language for US forces and English skills for allies.

(25) **JSCP.** The JSCP provides guidance to the CCDRs and the Joint Chiefs of Staff to accomplish tasks and missions based on current military capabilities. It apportions limited forces and resources to CCDRs, based on military capabilities resulting from completed program and budget actions and intelligence assessments. The JSCP provides a coherent framework for capabilities-based military advice provided to the President and SecDef.

2. Key International Legal Documents

a. Canada-United States (CANUS) Agreements

(1) **Integrated Line of Communications (ILOC) Agreements.** The CANUS ILOC agreements facilitate cooperation in training and operations and provides for reciprocal logistical support, supplies, and/or services in non-routine situations.

(2) **Canada-US Agreement for Enhanced Military Cooperation.** Under this agreement, both countries work together on contingency plans for defending against and responding to possible threats in Canada and the US including natural disasters and potential terrorist attacks.

(3) **Temporary Cross-Border Movement of Land Forces Between the United States and Canada Agreement.** This agreement provides principles and procedures for temporary cross-border movement of land forces between the two nations.

(4) **Canadian–United States Regional Emergency Management Agreements.** Emergency management officials in Canada and the US have regional mutual assistance agreements to manage emergencies or disasters when the affected jurisdiction(s) requests assistance in response to natural disasters, technological hazards, man-made disasters, and civil emergencies. These agreements are compliant with the *Agreement between the Government of the United States and the Government of Canada on Cooperation in Comprehensive Emergency Planning and Management*. These agreements promote unity of effort with civil authorities in planning and executing military support to civilian authorities. Three regional agreements implement regional emergency management mutual assistance covering specific states and provinces:

(a) Pacific Northwest Emergency Management Agreement.

(b) Prairie Region EMAC.

(c) International Emergency Management Assistance Memorandum of Understanding.

(5) **Joint Radiological Emergency Response Plan (JRERP).** The CANUS JRERP establishes the basis for cooperative measures to deal effectively with a potential or actual peacetime radiological incident involving Canada, the US, or both countries. The JRERP will apply whenever a potential or actual ra-

diological incident occurs that can affect both countries or, although affecting one country, is of a magnitude that the affected country may need to request assistance from the other. The JRERP is designed to:

(a) Alert the appropriate federal authorities within each country of the existence of a threat from a potential or actual radiological incident.

(b) Establish a framework of cooperative measures to reduce, to the extent possible, the threat posed to public health and safety, property, and the environment.

(c) Facilitate coordination between organizations of the federal government of each country in providing support to states and provinces affected by a potential or actual radiological incident.

(6) **Inland Pollution Contingency Plan,** June 1998. The US EPA and Environment Canada recognize that there is a high probability that there will be a spill or other release of oil or hazmat along the common border between Canada and the US. The CANUS Joint Inland Pollution Contingency Plan provides for cooperative measures for dealing with accidental and unauthorized releases of pollutants that cause or may cause damage to the environment along the shared inland boundary and that may constitute a threat to the public health, property, or welfare. The Inland Plan is made up of five regional annexes or regional plans.

b. **Military Agreements**

(1) **CANUS Civil Assistance Plan.** The CANUS Civil Assistance Plan provides a framework for the

military of one nation to provide support to the military of the other nation in the performance of DSCA operations.

(2) **Quadripartite Standardization Agreements (QSTAGs).** The military forces of the US, United Kingdom, Canada, Australia, and New Zealand have agreed to adopt certain standard operational concepts in various QSTAGs. The military forces further agreed to consult and wherever possible, reach mutual agreement, before introducing changes to these agreements.

(3) **North Atlantic Treaty Organization (NATO) Standardization Agreements (STANAGs).** STANAGs are promulgated by the Director, NATO Standardization Agency. No departure may be made from these agreements without informing the tasking authority in the form of a reservation at the time of ratification. Ratifying nations have agreed that national orders, manuals, and instructions implementing these STANAGs will be developed. The aim of these agreements is to provide guidelines to commanders about operational issues. Participating nations agree that NATO armed forces will adopt the standards outlined in each agreement.

c. **SPP.** The SPP agreement, designed to reduce barriers to trade and facilitate economic growth while improving the security of the continent, was signed on 23 March 2005 by the President of the United States, the Prime Minister of Canada, and the President of Mexico. DHS and the HS Council are the lead agencies for the agreement's security components, with DOD as a supporting agency. The SPP Action Plan addresses goals and objectives associated with HS to include "protection, prevention, and response." This includes a dual-binational (US/Canada and US/Mexico) objective on emergency management cooperation to develop and implement

joint plans for cooperation in incident response, as well as conduct joint training and exercises in hazard response. This includes the development of a plan to build and strengthen mechanisms, protocols, and agreements for communicating and coordinating hazard response for mutual assistance and cooperation in the event of natural and technological/industrial disasters or malicious acts involving CBRN and bulk HE devices and hazards.

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e. **International Agreements that Affect US CBRN Activities with Mexico**

(1) **Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.** The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal is the most comprehensive global environmental agreement on hazardous and other wastes. While the US is not a party to the agreement, it is a signatory and conducts activities with many of the convention's 178 parties to help protect human health and the environment against the adverse effects resulting from the generation, management, transboundary movements, and disposal of hazardous and other wastes.

(2) **Convention on the Transboundary Effect of Industrial Accidents.** This convention applies to the prevention of, preparedness for, and response to industrial accidents capable of causing transboundary effects, including the effects of such accidents caused by natural disasters, and to international cooperation concerning mutual assistance, research and development, exchange of information, and exchange of technology in the area of prevention of, preparedness for, and response to industrial accidents.

(3) **International Convention on Oil Pollution Preparedness** provides emergency response planning for oil pollution incidents.

(4) **The Organization for Economic Co-Operation and Development Guiding Principles for Chemical Accident Prevention, Preparedness, and Response.** A comprehensive document to help public authorities, industry, and communities worldwide prevent and prepare for accidents involving hazardous substances resulting from technological and natural disasters, as well as sabotage.

(5) **Mexico-US Joint Contingency Plan Preparedness for and Response to Emergencies and Contingencies Associated with Chemical Hazardous Substances in the Inland Border.** Also referred to as the Inland Border Plan, its purpose is to protect the health, human safety and the environment, providing joint and coordinated responses to significant chemical hazardous substances contingencies or emergencies that affect the inland border area between Mexico and the US. It provides a mechanism for cooperation between Mexico and the US to provide response to a chemical hazardous substances contingency or emergency that may resent a significant threat for both participants or that affects one of them in such a way that justifies the notification of the other participant or RFA.[25]

25. JP 3-41, Chemical, Biological, Radiological, and Nuclear Response, at A-1 to A-13 (Sept. 9, 2016).