STATE CBW USE IN ASSASSINATIONS

Chemical and Biological Weapons:
The Interconnectivity of Norms
Justus-Liebig University Gießen and CBWNet
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Glenn A. Cross, PhD

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NORMS?

- Commonly accepted attributes of norms
  - Non-legally binding, commonly accepted codes of conduct or expected behaviors by nations; constrains state behavior
  - Can be (but non-necessarily) codified in international agreements
  - Socially constructed out of shared belief systems within a specific context
  - Contextual changes stress norms
    - Contextual changes affecting norm relevance may alter norm acceptance
    - Loss of norm acceptance results in norm evolution (to remain relevant) or norm collapse (norm replacement)
  - Violations of the norms likely do not abrogate the norm, but
    - Continued violations without significant repercussions may call into question the norm's relevance
    - Create exceptions to the norm, allowing for specific types of state behavior

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NORM ACCEPTANCE

Norm acceptance is measured by

- Universality
  - Number of states accepting the validity of the norm
- Discursive support
  - Statements/declarations in support of the norm
  - Lack of statements/declarations challenging the validity of the norm
- State behavior
  - Adherence to the norm vs. behaviors/actions contrary to the norm
  - Efforts to promote/ensure accountability
- Responses to norm violations
  - Effective
  - Consistent

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NORM EVOLUTION

- Norms are constantly changing
- Evolutionary pressures ensure that norms remain relevant
- Norm Death Cycle
  - Evolutionary failure leads to norm weakening or collapse
  - Weakened/collapsed norms are eventually replaced
- Effect of Silence on Norm Evolution
  - Does silence in the face of repeated violations signal
    - Normalization of State behavior within the norm?
    - Rejection of the norm/norm weakening?

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QUESTIONS

- Are norms linked?
  - For example: is there a relationship among all, or some, of the norms underpinning IHL?
  - Is so, what effect does the erosion/collapse of any of these norms have on the CBW norms?
    - Does the collapse of the assassination norm open a door for CBW use in assassinations
- Are "Soft" norms with ambiguous definitions and no verification or attribution rules inherently weak norms?
  - Norms prohibiting BW use are strong, but the BWC is "soft." Article I especially is reliant on understanding intent
- Role of secrecy
  - Does secrecy (and a lack of transparency) erode the norm or confidence in the norm?
  - *Pas vu, pas pris*—if a norm violation is undetected, has the norm been violated?
- Memory as mobilizing support for norms
  - Does the lack or loss of memory weaken support for a norm?

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STATE BEHAVIOR AND NORM EVOLUTION

- A State may discursively accept and support a norm while behaving contrary to that norm
- Lack of overt State rejection of a norm often interpreted as State acceptance of the norm
  - A norm not challenged is a strong norm
- If the behavior is ineffectually challenged or the behavior continues without negative consequences
  - Is the norm weakened?
  - Is the norm evolving—an exception created in the norm by States' (mis)behavior?
- Role of uniformity in State behavior as a condition of rule-making
  - Extensive and representative criteria
- Efforts to promote or reinforce accountability can sustain or even strengthen a norm

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STATE BEHAVIOR

- If State behavior contrary to the norm is undetected, is the norm weakened?
  - *Pas vu, pas pris*
- Impact on Norm, if
  - The international community is unable to detect specific violations of the norm
    - Detection not possible
    - Attribution is not possible
    - Response is not universal or timely
  - An inability of the international community to effectively respond to specific violations of the CBW norms
    - Modify State behavior
    - Statement by violator State accepting responsibility for the violation and guarantees to no longer violate the norm

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CBW NORMS

- Norms against use of poisons reach back to antiquity
- International agreements against CBW use emerged out of World War I
  - Codified in the1925 Geneva Protocols
  - Focused on prohibiting chemical and biological weapons use by signatory states in war
    - Significant number of reservations for CBW use in retaliation
- Biological and Toxins Weapons Convention (1975)* prohibits the development, production, stockpiling, and transfer of BW
  - BW use prohibited in the 1925 Geneva Protocols
- Chemical Weapons Convention (1997)* prohibits the development, production, stockpiling, transfer, and use of CW
- Strength of CBW norms
  - Near universality
  - Use of Chemical, Biological Weapons Unacceptable in Any Context (UN First Committee, October 2021)

* Date treaty came into force

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WEAKNESSES OF CBW NORMS

- BWC Article I especially relies on interpretations of intent
  - As one legal scholar of the BWC noted, you can drive a truck through Article I
  - Dependent on how a State defines its activities
  - Noncompliance concerns rarely raised in BWC SP conferences
- OPCW is transitioning its focus from disarmament to nonproliferation. Challenges to this transition include
  - Challenge inspections untested—likely because of high political costs
  - Attribution rules instituted after Syrian CW use have identified Syrian government actors, but no accountability for use
  - Attribution efforts aimed at Russian CW use in assassination have proven feckless
- Neither the BWC nor CWC explicitly addressed CBW use in assassinations at the time these conventions came into force
  - Focus was on preventing military CBW use in armed conflict
- Question: Have the norms expanded to include the prohibition of CBW use in assassinations?

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WARTIME ASSASSINATION PROHIBITIONS

- Grotius condemned the use of treachery or perfidy in killing
  - Protection from assassination only covered sovereigns
- Lieber code (later General Order #100) prohibited the singling out of specific individuals (murder) or the placing of bounties
- 1874 Brussels Conference outlawed "treacherous attempts on the life of an enemy" (no explicit connection to assassination)
- 1899 and 1907 Hague Conferences prohibited treacherously killing or wounding individuals belonging to the hostile nation or army
- 1949 Hague Protocols outlawed killing, injuring, or capturing an adversary by resort to perfidy
  - Perfidy—use of a ruse or deception intended to engender a sense of trust or protection on an unwitting adversary

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PEACETIME PROHIBITIONS

- Peacetime assassinations historically condemned as murder
  - Murder is almost universally criminalized in domestic and international law
- Assassination of a foreign leader in peacetime without provocation is a *prima facie* violation of international law and domestic criminal law
- Factors to consider
  - Foreign leader
  - Peacetime
  - Lack of provocation

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US ASSASSINATION PROHIBITION

- No US Federal statute prohibits assassination
  - Executive Order 12333 Section 2.11-- *Prohibition on Assassination.* No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in assassination
  - Term assassination in EO 12333 is not further defined
    - "Political" assassination understood to be banned; ban on "simple" assassination less clear
  - Covert action endangering life is permitted

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PERSPECTIVES ON ASSASSINATIONS

- Long history of assassinations since the end of World War II
- Historically, assassinations have not been publicly acknowledged or justified
- Redefinition: Assassinations now termed "targeted killing"
- Since 2001, a dramatic rise in "targeted killings" has taken place
  - Increase in international repression, including assassinations
- "Targeted killing" self-justified as preventive or pre-emptive self-defense or in the national interest by Israel and US
- Normative constraints on assassinations have eroded significantly since 2001 and likely have collapsed

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STATE USE OF CBW IN ASSASSINATIONS

- Nations (both autocratic and liberal democracies) have used or planned/attempted to use CBW in assassinations since the end of WWII
- Use here includes:
  - Planning
  - Preparations
  - Attempted Assassination
  - Successful Assassination
- Assassination here includes
  - Political Murder
  - Extrajudicial killing
  - Targeted killing

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SCALE OF CBW USE

- During the post-WWII period, 14 states* are assessed as having used CBW agents in assassinations
- Over 100 known incidents of State involvement in CBW use in assassinations since the end of World War II
- These numbers are conservative
  - Unknown number of unacknowledged/unidentified incidents may have taken place
- In almost all cases, individuals were targeted. In a few cases, a group was targeted
- 24 known cases occurred after the conventions came into force

*Includes cases of Soviet/Russia use of CBW in assassination combined
**Romania likely used CBW agents based on unconfirmed, single-source reporting

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WHICH STATES?

State sponsors of CBW use in assassinations include

- The US, France, and the UK
- Russia* and four eastern European states
  - Bulgaria, Czechoslovakia, East Germany, and Yugoslavia
- Iraq and Israel
- North Korea
- South Africa and Rhodesia
- Chile

*Includes cases of Soviet use of CBW in assassination

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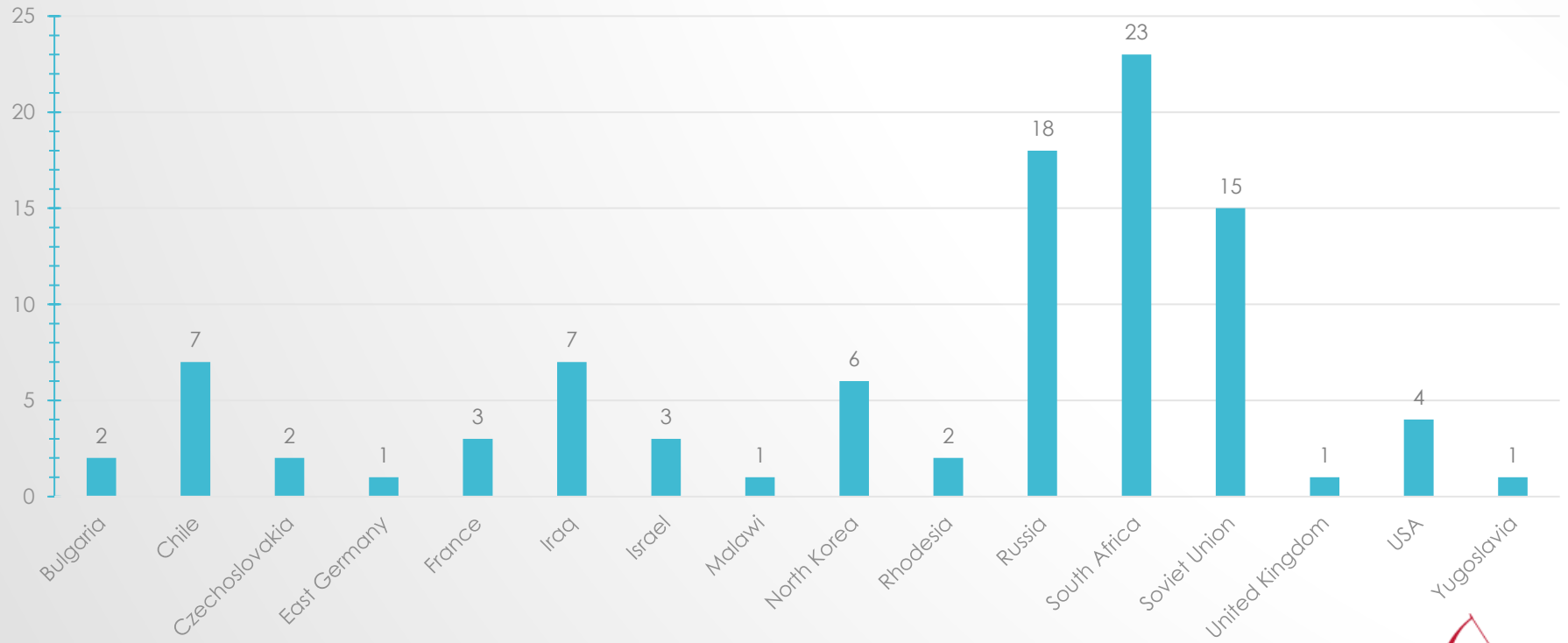
STATES INVOLVED IN CBW ASSASSINATIONS

of Assassinations by State



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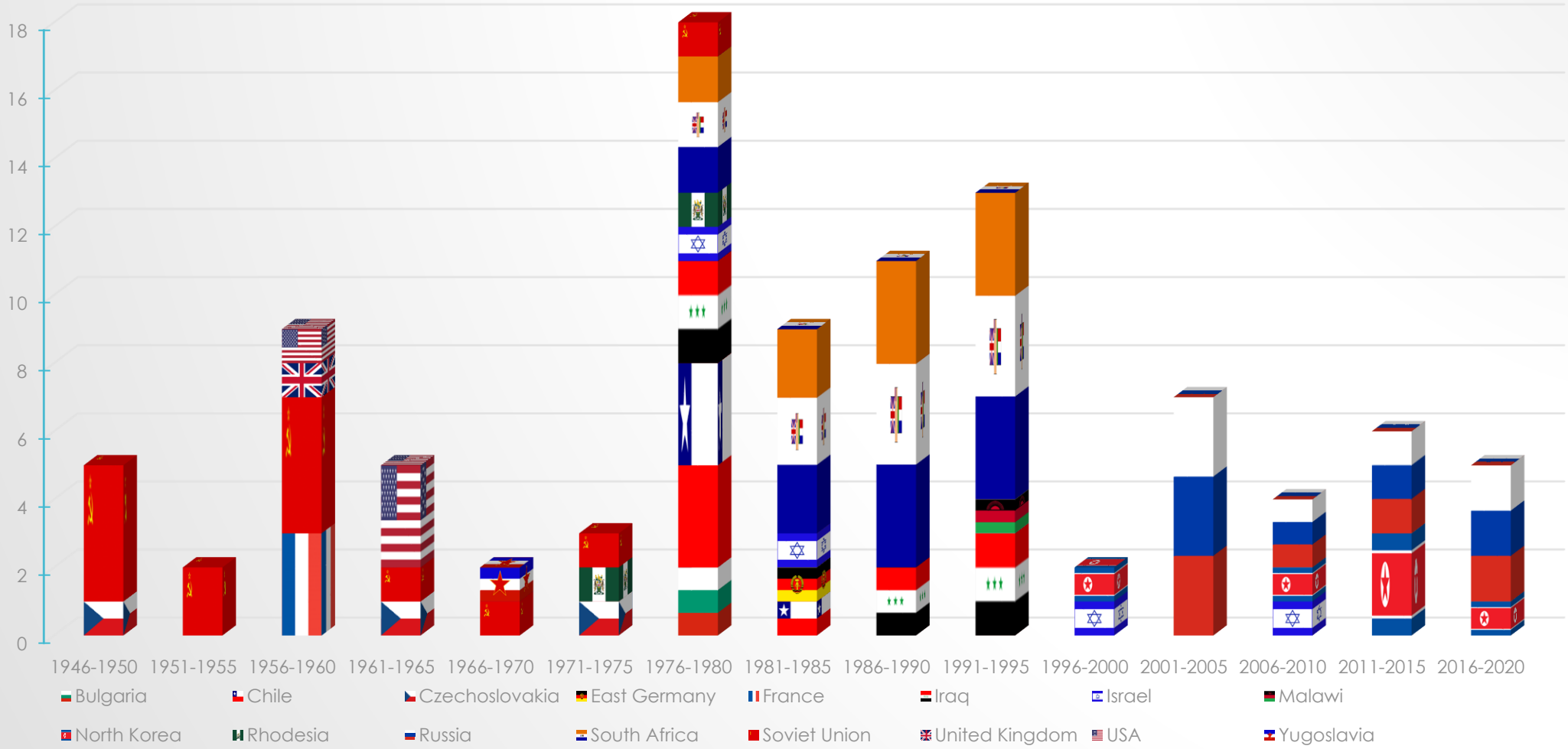
WHEN



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USE

Most efforts to use CBW in assassinations by States

- Existed for only short durations
- Most were resource intense
- Almost all involved the intelligence services

- Question—Given the resources involved, why would a State develop a CBW assassination capability for a single operation?

- Most known efforts involved CW use; known BW use was extremely rare
  - Of the known BW agents used, most were toxins—either paralytics (ex: curare), cardiac glycosides (inducing fatal heart attacks), or ricin

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PATTERNS OF USE

- Targets of the Soviet Union, eastern European States, North Korea, Rhodesia, South Africa, and Chile were regime opponents, dissidents, and defectors
- Targets of the US and Western European States were largely anti-colonial, nationalist leaders of nations emerging from colonialist rule

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MOTIVATIONS

Why Use CBW Agents in Assassinations

- Attacks on "hard targets" (i.e., those targets otherwise well-defended or inaccessible)
- In many cases (not all), goal was plausible deniability
  - With plausible deniability, the act is known, but attribution is difficult
- In many, if not most cases, the goal is for the cause of death to appear natural (*"pas vu, pas pris")*
- In some cases, deterrent messaging was a second-order effect when the cause of death was known and attributable

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EFFECTIVENESS OF CBW ASSASSINATIONS

Effectiveness of CBW use in assassinations is hard to judge

- Most known cases are failures (either operation or political failures)
- Likely, unknown cases have occurred that were successful. The number of these unknown cases likely will not be known for some time
  - A great many false positives
  - Unknown number (possibly large) of unidentified successes

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CONSTRAINTS

- In general, constraints are more effective against weaker states than stronger ones
  - Great Powers likely can absorb the "cost" of sanctions and other penalties
  - Strong allies can prevent or mitigate these "costs" for allies and proxies
    - Example: Syria
- Norms prohibiting CBW use have not been effective in constraining past State use of these agents in assassinations
- Diplomatic responses to CBW use also are relatively short-lived
  - Reciprocal diplomatic expulsions are "par for the course"
- Sanctions have been ineffective punishments
  - Largely short-term
  - Costs readily absorbed
- Public revulsion at CBW use in assassinations is short-lived except possibly in democratic societies

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LOOKING FORWARD

- Russia and North Korea are likely to continue targeting regime opponents
- Israel likely retains the capability to use CBW agents against terrorist targets
- Low-cost, short-term penalties to date on CBW assassinations likely is an ineffective deterrent to future CBW use in assassinations
- States likely will consider CBW use in assassinations, if the situation warranted
  - Sanctions and condemnation are weak deterrents, especially if assassinations can be plausibly denied
- Scientific and technical advances (nanotechnology, robotics, synthetic biology, personalized medicine, etc.) may incentivize increased use of CBW in assassinations
- New technologies may make CBW use less detectable; attribution is likely to become more difficult

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QUESTIONS?

HOW TO CONTACT ME

E-Mail: glenn@crossbowanalytics.com
Twitter: @CrossbowLLC
Website: http://crossbowanalytics.com