

Analysing the Project Precursor Bill

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Summary

To address the issue of Fentanyl-related deaths in the United States (US), the US House of Representative Michael McCaul introduced a bill for the Project Precursor Act on 11 May 2023 in the US Congress. The objective of the bill is to disrupt the international fentanyl supply chain. Interestingly, one of the provisions in the bill proposes to amend the Chemical Weapons Convention (CWC) to include each covered fentanyl substance on Schedules 1, 2, or 3 of the Annexure on Chemicals to the CWC. However, amending the CWC is a difficult process, given the current polarised geopolitical scenario. The article looks at the provisions of the Project Precursor bill and explains the procedure to amend the CWC, pointing to the challenges of doing so.

Introduction

The issue of Fentanyl deaths is reverberating in the US, with more than a million people dead since 2000 due to the overdose of the synthetic opioid.¹ To address the issue through legislation, Michael McCaul introduced the Project Precursor Bill on 11 May 2023 in the US Congress. The objective of the Bill is “to disrupt the international fentanyl supply chain and for other purposes.”² Interestingly, one of the provisions in the Bill proposes “to amend the Chemical Weapons Convention (CWC) to include each covered fentanyl substance on Schedule 1, 2, or 3 of the Annexure on Chemicals to the Chemical Weapons Convention.”³ What are the provisions of the Bill? What are the procedures for amendment of the CWC to include any chemical in the schedules of the Annexure on Chemicals to the CWC?

Bill for a Project Precursor Act

Title 1 of the bill, termed as “Department of State Bureau of International Narcotics And Law Enforcement Affairs, Bureau of Global Public Affairs, And Bureau of Intelligence And Research”, talks about a programme to be carried out by the Secretary of State, acting through the Assistant Secretary of the Bureau of International Narcotics and Law Enforcement Affairs, to build the capacity of Mexican law enforcement agencies to prevent transit, trafficking, and distribution of fentanyl and its precursor chemicals and analogues from Mexico to the US. The capacity-building programme covers a number of areas, such as a canine unit for drug detection, forensic chemist information exchanges, equipment, and drug profiling. It thus increases the number of hand-held synthetic drug detection devices, the

provision of equipment and training related to identifying and dismantling clandestine laboratories that produce synthetic drugs, chemical information-sharing between governments and among various agencies, maritime interdiction of synthetic drugs, and cargo container control and inspection, among others.⁴ Thus, the Bill proposes to train, educate and make the Mexican authorities better equipped to combat the trafficking of Fentanyl and other synthetic drugs.

Going further, the Bill seeks unclassified reports containing classified annexures, to check whether the capacity building programme ran as expected and whether the steps taken by the Mexican government to restrict Fentanyl trafficking yielded any positive results vis-à-vis the Fentanyl menace in the US. The Bill also proposes to launch a public relations campaign “*to delegitimise and humiliate, in the Mexican and the United States social consciousness, Mexican transnational criminal organisations involved in illicit fentanyl trafficking, as well as to permanently disrupt and cripple such organisations’ ability to recruit new members*” within six months of the date of enactment of the Act.⁵ Section 103 of the Bill aims to find out Chinese State and non-State actors’ connections in Mexico that are involved in the illegal import, production and transport of Fentanyl and its precursors. Title III, termed “Sanctions and Other Penalties”, of the Bill deals with the process of determining and reporting on the additional foreign opioid traffickers, imposition of penalties, sanctions on the perpetrators and waivers and exceptions, if any.

Title II, termed “Chemical Weapons Convention”, deals with actions for seeking to amend the CWC to include Fentanyl, including its isomers, esters, ethers, salts, and

salts of isomers, esters, and ethers into Schedule 1, 2, or 3 of the Annexure on Chemicals to the CWC. The Bill asks the Secretary of State to use the voice, vote and influence of the US to carry out the necessary amendment. The Bill stipulates that the Secretary of State submit the Report to Congress regarding the implementation of this section of the Bill within six months after the enactment. If this proposed Bill becomes a Law after being passed by both Congress and the Senate and after receiving the Presidential seal, what is the procedure to amend the CWC to add Fentanyl in the Schedules to the Annexures of the CWC?

Amendment Procedure of the CWC

Article 15 of the CWC⁶ deals with the amendments to the Convention. The text of the amendment is to be submitted to the Director-General for circulation to all States Parties and to the Depositary. However, only an Amendment Conference looks after the proposed amendment. If one-third of the State Parties notify the Director-General within a month of getting the amendment text that they support the amendment, an Amendment Conference is convened. The Amendment Conference is held immediately following the regular session of the Conference of the State Parties. It can also be convened earlier if member states demand it. However, it cannot be held within two months after the circulation of the proposed amendment. If an Amendment Conference adopts it by a positive vote of the majority with no negative vote, and when it is ratified by the members who had earlier cast a positive vote, then the amendment comes into force for all State Parties a month after the deposit of the instruments of ratification or acceptance by all the States Parties that had cast a positive vote. Thus, complete consensus is the key criterion for amendment of the CWC.

However, amending the CWC is a difficult process. It is very difficult to forge a consensus regarding the proposed amendment. Various countries have various interests in amending the CWC. The larger geopolitical interests also come into play when an Amendment Conference votes for the proposed amendment. The consensus becomes most difficult when the world is politically polarised and partisan divisions exist. The ongoing Ukraine conflict, Gaza conflict, Taiwan crisis, and Chinese belligerence towards its neighbours, to name a few, are dividing the world. They impact voting patterns of the State Parties in multilateral initiatives such as the CWC. In the recent incident at Salisbury, United Kingdom (UK), where the Novichok agent was used to neutralise a person, a blame game ensued between the UK and Russia.⁷ After much back and forth between the State Parties – especially between the West and Russia– the said chemical was added to Schedule 1 of the CWC. The cumbersome amendment procedure makes amendment even more tedious.

Conclusion

The Project Precursor Bill has a long way to go before the US will be able to propose an amendment to the CWC to add Fentanyl and its precursors into the Schedules. In the current geopolitical scenario, the US is on the opposite side of Russia due to the Ukraine War, and China is the US' long-term challenge. Therefore, any attempt to get the Fentanyl into the CWC Schedules is going to be a challenge for Washington. However, the CWC should strive to devise a mechanism by which they can insulate the amendment process from the larger geopolitical rivalries of the day, to face tomorrow's challenges.

Endnotes:

¹ Claire Klobucista and Mariel Ferragamo, "Fentanyl and the U.S. Opioid Epidemic",

Council on Foreign Relations, 22 December 2023, at <https://www.cfr.org/background/fentanyl-and-us-opioid-epidemic>

² "H.R.3205 - Project Precursor Act", The US Congress, 11 May 2023 at <https://www.congress.gov/bill/118th-congress/house-bill/3205/text>, accessed on 16 February 2024

³ Ibid

⁴ Ibid

⁵ Ibid

⁶ "Chemical Weapons Convention", OPCW, at <https://www.opcw.org/chemical-weapons-convention/articles/article-xv-amendments>, accessed on 16 February 2024

⁷ Stefano Costanzi and Gregory D. Koblenz, "Updating the CWC: How We Got Here and What Is Next", Arms Control Association, April 2020, at <https://www.armscontrol.org/act/2020-04/features/updating-cwc-we-got-here-what-next>, accessed on 4 April 2024