EXECUTIVE SUMMARY

Canada is currently involved in the multilateral negotiation of a verification Protocol for the *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons*. The effectiveness of the prospective Protocol depends in large part on the degree of intrusiveness of its verification regime. This will include, among other things, declarations, visits, and inspections of relevant sites in Canada. However, a balance must be struck between the need for in-depth verification and the protection of national security, commercial business information and the right of industry to engage in licit research and development, as well as other business activities in this field. Moreover, in order to ensure implementation of the compliance mechanism, the Protocol requires the creation of a National Authority to serve as a focal point for liaison between the States Parties and the Organisation provided for under the Protocol. These aspects are examined in this report.

Within Canada, many challenges will exist with respect to the implementation of the Protocol. On a purely legal level, some concern exist as to the constitutionality of regulating business activities by the federal parliament. Nevertheless, it has been argued that legislation enacted pursuant to the Protocol would be upheld as a proper use of the federal parliament's criminal law power. More significant concerns reside in the types of visits provided for under the Protocol and their potential infringement on the *Charter* provision guaranteeing against unreasonable searches and seizures.

The protection of commercially sensitive information is a priority for Canada and there are insufficient provisions in the Protocol to remedy loss suffered from revelation of, for example, a trade secret. Given the state of the industries most likely to be affected by the inspection mechanism, the loss of a trade secret could spell disaster for, as an example, a cutting-edge biotechnology company. However, this concern must not be overstated, as many of the reporting requirements generally require a reporting of activities rather than in-depth probing into scientific processes. Moreover, there are many provisions in the Protocol providing for the maintenance of confidentiality including the right for a State Party to manage the access of the inspection team to sensitive areas.

The National Authority that will be created pursuant to the Protocol will face many challenges, the first of which will be to ensure that the verification mechanism is properly implemented within Canada. To that end, several measures must be taken; they will include informing the relevant industries of their obligations, collecting the proper declarations, and assisting potential international inspections. The dissemination and gathering of declarations will constitute a primary task. The National Authority must also assist in the international visits and inspections. In view of this, proper composition and delineation of tasks have been emphasised by this report. It must also maintain relationships with other Federal institutions such as Health Canada and DND that have an interest and expertise in the subject matter of the Protocol. Moreover, not only must the National Authority enforce the parts of the Protocol for which it is responsible, but also foster compliance by undertaking outreach programmes and providing relevant and up-to-date information