Department of Foreign Affairs and International Trade
Ministère des Affaires étrangères et du Commerce international

Canada

The Role of Regional Control Measures in Strengthening the International Prohibition of Biological Weapons

Michael Crowley, Ian Davis and David Grahame

ISROP
INTERNATIONAL SECURITY RESEARCH AND OUTREACH PROGRAMME

PRISI
PROGRAMME DE RECHERCHE ET D'INFORMATION DANS LE DOMAINE DE LA SÉCURITÉ INTERNATIONALE

The Role of Regional Control Measures in Strengthening the International Prohibition of Biological Weapons:

A Preliminary Assessment of the Feasibility and Consequences of Establishing a European Union Biological Weapons Control Regime

Michael Crowley, Ian Davis
and David Grahame (BASIC)

Report Prepared for the International Security Research and Outreach Programme
International Security Bureau

December 2002

TABLE OF CONTENTS

PREFACE

The International Security Research and Outreach Programme commissioned a study on the role of regional control measures in strengthening the international prohibition of biological weapons. The report stemmed from that study. It is the product of a collaborative effort between three individuals, all of whom at the start of the project were part of the British American Security Information Council (BASIC). By the completion of the report, however, two of the authors – Michael Crowley and David Grahame – had moved to new organisations

The views contained in this report are those of the authors and do not necessarily reflect those of the Department of Foreign Affairs and International Trade or of the Government of Canada. Responsibility for any errors of fact or judgement rest with the authors alone.

The Department of Foreign Affairs and International Trade wished to acknowledge the work preformed under contract through the International Security Research and Outreach Programme in the preparation of this report by the authors: Michael Crowley, Ian Davis and David Grahame.

Department of Foreign Affairs and International Trade
125 Sussex Drive
Ottawa, Ontario, Canada

December 2002

EXECUTIVE SUMMARY

September 11, 2001 and the subsequent anthrax attacks and hoaxes have greatly increased global concern over the risk of biological warfare and bio-terrorism. However, the current US Administration appears to neither have confidence in the 1972 Biological and Toxin Weapons Convention (BTWC) nor will it participate in discussions to strengthen its provisions until the next review conference in 2006. Although the Bush Administration has made a number of useful alternative proposals, these fail to adequately address the main areas of concern in relation to BW proliferation: the situation in Iraq (and possible BW proliferation in other 'rogue states'); the legacy of the former Soviet Union's BW programme; and the threat of bio-terrorism. In particular, US proposals for 'military pre-emption' are no substitute for a comprehensive and cooperative multilateral approach to these concerns.

With the current impasse in developing a global approach, one alternative would be to develop regional approaches. This report explores the potential for a European BW Control Regime, centered on the EU, as a precursor to a strengthened BTWC regime. Such a European regime might be developed in two stages: starting with EU Member States and the EU Associate Countries, followed by the rest of Europe, including the Russian Federation. The SIPRI BW Inspection Project of the late 1960s provides a useful precedent.

Towards Greater EU Coherence on BW Issues

The development of common policies for the EU governing biological weapons issues is relatively new. Member states' policies traditionally fell within the remit of national sovereignty. This changed as a result of external and internal factors. External factors include the terrorist attacks on the United States, heightened general concerns about international terrorism and increased US unilateralism. The EU response has mainly been in the areas of public health, civil protection and research. In addition, EU diplomatic activity also increased, with a new initiative launched by the General Affairs Council in December 2001 to explore the implications of the terrorist threat on the non-proliferation, disarmament and arms control policy of the EU.

Internal EU reforms and integration processes over the past decade or more have also been crucial. BW control is an issue that straddles the three main policy pillars within the Community. Export controls on BW agents and organisms, for example, fall within the first pillar (the European Communities) setting up community procedures on economic matters, and there the Commission has a major role. However, because of their strategic sensitivity, such dual-use transfers also fall within the political sphere, and this takes them into the second pillar of the EU, that of the Common Foreign and Security Policy (CFSP). Questions of military deterrence of BW use also fall within this sphere. Finally, cooperation in response to bio-terrorism falls primarily in the third pillar, under Justice and Home Affairs, but may also require military responses under the second pillar.

Ultimately, however, national governments remain the dominant players through the Council of Ministers. The Council of the European Union agreed three 'common positions' in 1996, 1998 and 1999 in relation to the BTWC Review Conferences and Protocol negotiations. The EU's commitment to these measures was re-stated in two Council statements and a European Parliament resolution in 2001. In April 2002, the General Affairs Council adopted an ambitious and detailed list of 'Concrete Measures' aimed at developing an effective EU arms control, disarmament and non-proliferation agenda.

Four Strands for Enhancing EU Engagement on BW Controls

In considering the policy options the EU could implement to improve the current global BW regime, this report examines four main strands, which collectively provide a comprehensive response to the BW threat:

Strand 1: Strengthening BTWC Compliance and Verification
There are three key areas in which the EU could develop proposals to strengthen BTWC compliance and verification: investigation mechanisms; confidence building mechanisms; and increased transparency.

Inspections: Although it is very difficult to prevent or monitor the transfer of all technologies and R&D that could be used in BW, a good investigation team can usually uncover the knowledge necessary to judge that there is a significant risk of BW being developed. The US Administration's belief in the complete inefficacy of 'pre-emptive' investigations is not widely shared. Investigations envisioned under the Protocol, while not foolproof, would increase trust in and compliance with the BTWC. In the absence of agreement, however, this report considers two alternative ways forward for the EU:

- development of a regional legally binding inspections regime in three stages (beginning with bilateral visits and inspections arrangements between EU member states, followed by the adoption of the visits and inspections regime envisioned by the Ad Hoc Group (AHG) Draft Protocol Text, finally moving beyond the Protocol to incorporate more challenging inspections measures); and
- promotion of global verification regime that does not include the United States.

Confidence-Building Mechanisms (CBMs): CBMs are an important part of the BTWC. Proposed new and modified CBMs at the Fifth BTWC Review Conference were excluded from the draft Final Declaration, although Canada included them in its 2002 return, and has been encouraging other states to do likewise. However, participation by States Parties in CBMs remains unsatisfactory. This report recommends four main areas that should be advanced as a priority. It also recommends the development of a publicly available register of BW declarations by EU Member States and EU Associate Countries, and increased EU assistance to other countries in making returns.

Transparency: Parliaments of EU and Associate Countries have a variety of mechanisms to oversee or control weapons-related policies and practices. In relation to biological weapons, however, in most cases, national parliaments are provided with little detailed information. Reporting systems on BW research activities, by both states and the private sector need to be further developed and adopted as common practice across an enlarged EU.

Strand 2: Combating and Preventing BW Proliferation
There are three main mechanisms for combating and preventing BW proliferation: export controls; 'cooperative threat reduction' programmes; and controlling access to pathogens.

Export controls: Stringent national export controls are essential for preventing 'states of concern' and terrorists from acquiring the equipment, knowledge and materials they need to develop BW. Problems persist with the discriminatory nature of supply-side export controls, while globalisation trends limit their effectiveness. The EU Member States and some EU institutions are involved in the two main export control structures dealing with dual-use technologies: the Australia Group and the EU Dual-Use Regulation. Better co-ordination and information exchange

between the various working groups, and a greater willingness to co-ordinate an EU position within the Australia Group may be necessary.

Co-operative Threat Reduction (CTR): If proliferation of BW is to be controlled it is crucially important to enhance the security of national pathogen and bio agent stockpiles around the world, especially those within the ageing Russian Biological Research and Production Centres (BRPCs). The G8 pledge to spend up to $20 billion over the next ten years to help Russia and other nations dismantle their stockpiles of WMD, builds on earlier US CTR efforts. The EU should work to increase its support for CTR projects, particularly in the neglected BW sphere.

Protection of pathogens: Control measures on pathogens held by academic, research and public health institutions around the world are unacceptably varied. A proposed international 'Biosecurity Convention' would establish global rules governing access to dangerous pathogens and the physical protection of institutions authorised to work with them. The EU could lead by implementing such a convention within the Union.

Strand 3: Deterring BW Use

An effective deterrence posture may help ensure that even if proliferation occurs, the adversary will not use the capabilities amassed. Various members of the EU maintain their own national deterrence posture against BW use, but there is currently no EU or UN Resolution on this issue. The EU should push for an international commitment to counter and punish both states and individuals for BW use, or failing that, adopt a common position on the issue. In addition, the EU should take the first step towards international criminalization of individual BW use, by developing a regional EU Convention outlawing possession, manufacture, etc of BW.

Strand 4: Strengthening Civil Emergency Planning

Co-ordination of bio defences, at the local, national, regional and global levels needs to be improved. A European Commission programme launched in December 2001 has four main objectives: Establishing an EU wide co-ordination mechanism; Rapidly detecting and identifying agents and responding to attacks; Developing an inventory and guidelines for use of medicines and services; and Enhancing EU rules and guidelines and international links. A Task Force on Bio-terrorism has been set up to carry out the technical work necessary for implementation of the programme. Other EU initiatives might include: further harmonisation of bio defences with the EU Associate Countries and other OSCE states; further EU cooperation with the United States and Canada; the establishment of an EU agency in the area of communicable diseases; and the establishment of an EU scientific advisory group panel.

Towards A Three-Tier EU BW Control Regime

The policy measures discussed in this report are divided into three tiers:

Tier 1: (Immediate) Measures to enhance implementation of existing national measures and to deepen EU-wide cooperation:

- Enhancement of national implementation legislation within Member States;
- Establishment of an EU scientific advisory panel that meets regularly to inform Member States of developments in BW related sciences and technologies and to provide suitable recommendations and response measures;
- Establishment of a transparent and easily accessible CBM database for the EU member states and associate countries;
- EU provision of advice and aid to those nations incapable of completing CBMs;
- EU assistance to bring EU associate states into the Australia Group;

- Increased EU provision of technical assistance to establish or strengthen export control systems in third countries identified as a potential BW proliferation concern;
- Significant expansion of the EU Co-operation Programme for Non-Proliferation and Disarmament in the Russian Federation;
- EU promotion of an international Biosecurity Convention;
- EU promotion of an international deterrence posture;
- EU encouragement for the establishment of an international working group looking into BW criminalisation;
- Full implementation of the EU Programme of Cooperation on Preparedness and Response to Biological and Chemical Agent Attacks;
- Enhancement of measures in the area of safety and security, inventory and registration of relevant facilities in Member States; and
- Increased biodefense co-operation with the United States, EU Associate Countries and the Russian Federation.

Tier 2: (Medium Term) Development of common positions and legally binding measures:

- Developing a common position or European Convention on CBMs, including commitments to reciprocal visits and mandatory return elements;
- Developing an EU Biosecurity Convention;
- Developing a common position setting out an EU BW deterrence posture; and
- Developing an EU Criminalisation Convention for BW.

Tier 3: (Conditional) Development of a legally binding EU inspections and verification regime At the moment the prospect of developing such a regime appears extremely unlikely due to political difficulties, both internal and external. However, if stalemate continues to surround the BTWC process a radical alternative may be required.

Impact on the Biotechnology and Pharmaceutical Industries

The biotechnology and pharmaceutical industries represent a key commercial sector in the EU. It is unlikely that measures in the first two tiers would place much of a burden on business, but the third tier is unlikely to be welcomed by business on grounds of intellectual property rights (IPR). However, safeguards for on-site inspections could be designed to protect the IPR of European companies and to minimise the burden of 'red tape', especially if they are involved in consultations on its drafting. There are also likely to be potential benefits to industry: improvements in corporate responsibility and image; and protection of patents and compensation mechanisms.

Impact on the EU's Relationship with the United States

EU-US relations are currently strained over a wide range of issues, and are particularly acute over the future of the BTWC. However, a European regime does not necessarily have to be a further irritant. On the contrary, many of the first two tier commitments would tie closely into US objectives and approaches. However, moves towards the third-tier commitment of a multilateral, legally binding inspections regime, as envisioned in the Protocol, could be more problematic. The unwillingness of the United States to countenance the Protocol approach could translate into hostility towards any European regime based upon it. A European regime might also lead Washington to further disengage on the issue.

Impact on EU Associate Countries and Russia

The inclusion of EU Associate Countries and Russia in any European BW control regime would be a clear demonstration that the regime was open for expansion and could lead directly to other enthusiastic countries – such as Canada and the South American nations – joining up. This could rapidly expand co-ordinated and improved BW control measures across the globe. In addition, any inclusion of the EU associates and, above all, Russia would represent an important and valuable challenge for the European regime as these clearly represent 'higher-risk' states. An expanded EU regime could play a vital role in lowering proliferation risks and verifying the end of Russian offensive BW development.

The Role of Canada

The EU and Canada agreed on many of the key tenets of the BTWC protocol negotiations. Canada strongly supported the work of the AHG process and the concept of a legally binding Protocol, and its new BTWC Implementation Act (BTWCIA) will provide framework legislation, paralleling the Convention. A European regime could provide further opportunities for EU-Canadian cooperation, including the development of synergies between the BTWCIA and EU national authorities. Canada and the EU could also agree to open their facilities to inspection by each other.

The creation of an EU-Canadian association of national BW coordinating authorities and the harmonisation of EU-Canadian CBMs (in line with Canada's recent adoption of higher CBM standards) would be other practical steps. Expansion of the regime eastwards could involve Canadian participation modelled on either the 1992 Open Skies Treaty or the Ottawa Process against anti-personnel landmines. Canada could also be the bridge between Europe and the United States on the issue.

Conclusions, Recommendations and Next Steps

It is clear from this preliminary assessment that the EU is already adopting a strong leadership role in this issue. Civil emergency planning, export controls and the fight against terrorism, for example, are all areas that to some extent are already being coordinated at the EU level. However, the Member States and EU institutions will need to develop a stronger culture of co-operation between the full range of experts and interested parties, across the wide number of affected disciplines, including law enforcement, intelligence, science, education, industry and international diplomacy.

Moreover, much more debate is needed as to the scope and direction of any future EU BW control regime. At present, for example, there seems little enthusiasm among EU officials for developing investigative or reporting mechanisms among member states as means of promoting confidence in compliance with the BTWC. However, regional control, reporting and response measures in the European context could serve as a positive role model for other regions. This is a debate that is still in its infancy and needs to be broadened to include parliamentarians and other interest groups.

With the adoption of its 'concrete measures', the EU has already gone beyond the ad hoc mechanism stage in dealing with the BW threat. However, it is important that this high level of coordination on paper is translated into high-level cooperation in practice. The best way for the EU to approach the challenge would be a multilevel approach: gradually increasing and

strengthening EU legislation and co-operation, rather than immediately moving towards a legally binding inspections regime, although this is not ruled out in the medium to long term.

Potential benefits of an EU BW regime include: facilitating best practice among member states; creating a staging post for a global regime; developing expertise which could be used by the UN Secretary General (and others) to investigate allegations of non-compliance; engagement with Russia in working to control its huge and ageing BW infrastructure; and enhancement in the standing of the EU both in eyes of its citizens and 'abroad'. For these benefits to be realised, an EU regime will need to demonstrate that: there is significant utility in policing low-risk states; fears over national security violations and industrial espionage are misplaced; and European cohesion and national approaches to BW controls will be advanced.

RÉSUMÉ

Les événements du 11 septembre 2001 ainsi que les attentats et canulars à l'anthrax qui ont suivi ont beaucoup aggravé dans le monde les préoccupations inspirées par le risque de guerre biologique et le bioterrorisme. Cependant, l'administration américaine actuelle ne semble pas avoir confiance dans la Convention sur les armes biologiques et à toxines (CABT) et ne participera pas aux discussions visant à en renforcer les dispositions avant la prochaine conférence d'examen, qui aura lieu en 2006. Elle a proposé plusieurs options de remplacement intéressantes, qui ne répondent cependant pas aux principales préoccupations relatives à la prolifération des armes biologiques : la situation en Iraq (et le danger de prolifération dans d'autres « États voyous »), l'héritage du programme d'armes biologiques de l'ex-Union soviétique, et la menace du bioterrorisme. En particulier, la « prévention militaire » proposée par les États-Unis ne remplace pas une approche multilatérale globale et coopérative de ces questions.

Devant l'impasse actuelle des efforts visant à élaborer une approche globale, une autre option consisterait à définir des approches régionales. Ce rapport explore la possibilité d'un régime européen de contrôle des armes biologiques, centré sur l'UE, qui serait le précurseur d'un régime renforcé dans le cadre de la CABT. Un tel régime européen pourrait être instauré en deux temps : d'abord dans les États membres de l'UE et les pays associés, puis dans le reste de l'Europe, y compris la Fédération de Russie. Le projet d'inspection des armes biologiques du SIPRI, qui remonte à la fin des années 1960, est un précédent intéressant.

Vers une plus grande cohérence de l'Union européenne en ce qui concerne les armes biologiques

L'élaboration de politiques communes de l'UE concernant les armes biologiques est un phénomène relativement nouveau. Les politiques des États membres relevaient jadis du domaine de la souveraineté nationale. Cela a changé, sous l'effet de facteurs extérieurs et intérieurs. Les facteurs extérieurs sont notamment les attentats terroristes perpétrés contre les États-Unis, les préoccupations accrues concernant le terrorisme international en général, et la montée de l'unilatéralisme américain. L'UE a réagi principalement sur les plans de la santé publique, de la protection civile et de la recherche. Elle a aussi intensifié son activité diplomatique, le Conseil des affaires générales ayant amorcé une nouvelle initiative en décembre 2001 pour explorer les répercussions de la menace terroriste sur la politique de non-prolifération, de désarmement et de contrôle des armements de l'UE.

Les réformes internes opérées et les processus d'intégration suivis par l'UE depuis plus d'une dizaine d'années ont aussi été cruciales. Le contrôle des armes biologiques est une question qui recoupe les trois grands piliers des politiques de la communauté. Les contrôles à l'exportation des agents et organismes d'armement biologique, par exemple, relèvent du premier pilier (les Communautés européennes), à savoir la définition de procédures communautaires sur des sujets économiques et, à ce niveau, la Commission a un rôle majeur à jouer. En raison de leur sensibilité stratégique, cependant, ces transferts d'articles à double usage sont du domaine politique, ce qui les assujettit au deuxième pilier de l'UE, la politique étrangère et de sécurité commune. La dissuasion militaire de l'usage des armes biologiques entre aussi dans cette sphère. Enfin, la coopération face au bioterrorisme ressortit principalement au troisième pilier, celui de la justice et des affaires intérieures, mais peut aussi exiger des réponses militaires au titre du deuxième pilier.

Les gouvernements demeurent cependant les acteurs principaux par l'intermédiaire du Conseil des ministres. Le Conseil de l'Union européenne a adopté trois « positions communes » en 1996,

1998 et 1999 concernant les conférences d'examen de la CABT et les négociations sur le Protocole. L'UE a renouvelé son engagement en faveur de ces mesures dans deux déclarations du Conseil et dans une résolution du Parlement européen en 2001. En avril 2002, le Conseil des affaires générales a adopté une liste détaillée de « mesures concrètes » et ambitieuses devant constituer un programme efficace de l'UE en matière de contrôle des armements, de désarmement et de non-prolifération.

Quatre voies pour consolider l'engagement de l'UE en faveur du contrôle des armes biologiques

À propos des options auxquelles l'UE pourrait recourir pour améliorer le régime global actuel en matière d'armes biologiques, le rapport examine quatre voies principales qui, ensemble, constituent une réponse complète à la menace des armes biologiques.

1re voie : Renforcer l'application et la vérification de la CABT

Il y a trois domaines principaux où l'UE pourrait élaborer des propositions en ce sens : les mécanismes d'enquête, les mécanismes de renforcement de la confiance, et l'accroissement de la transparence.

Inspections : Bien qu'il soit difficile d'empêcher ou de surveiller le transfert de toutes les technologies et de toute la R-D susceptibles de servir à fabriquer des armes biologiques, une bonne équipe d'enquêteurs peut habituellement découvrir l'information nécessaire pour juger s'il y a risque appréciable que des armes biologiques soient mises au point. L'administration américaine croit que les enquêtes « préventives » sont totalement inefficaces, mais cette conviction n'est pas largement partagée. Les enquêtes envisagées dans le Protocole, bien qu'elles ne soient pas à toute épreuve, accroîtraient la confiance dans la CABT et favoriseraient son observation. Faute d'accord, cependant, le présent rapport examine deux lignes de conduite possibles pour l'UE :

- élaborer un régime d'inspections régional juridiquement contraignant en trois étapes (d'abord des visites bilatérales et des accords d'inspection entre États membres de l'UE, suivis de l'adoption du régime de visites et d'inspections envisagé dans le texte du projet de Protocole du groupe ad hoc (AHG), puis, au-delà du Protocole, l'incorporation de mesures d'inspection plus poussées);
- promouvoir un régime mondial de vérification qui n'inclurait pas les États-Unis.

Mécanismes de confiance : Les mécanismes de confiance sont un volet important de la CABT. Les nouveaux mécanismes et les mécanismes modifiés qui ont été proposés à la cinquième Conférence d'examen de la CABT ont été exclus du projet de Déclaration finale, mais le Canada les a inclus dans sa déclaration de 2002 et encourage les autres États à faire de même. Cependant, la participation des États parties aux mesures de confiance reste insatisfaisante. Le rapport recommande quatre grands dossiers à faire avancer en priorité. Il recommande également la production d'un registre public des déclarations d'armes biologiques des États membres et des pays associés de l'UE, et une assistance accrue de l'UE aux autres pays dans la préparation de leurs déclarations.

Transparence : Les parlements des États de l'UE et des pays associés disposent de divers mécanismes pour surveiller ou contrôler les politiques et pratiques relatives aux armes. En ce qui concerne les armes biologiques, dans la plupart des cas, cependant, les parlements nationaux reçoivent peu d'informations détaillées. Les systèmes de notification des activités de recherche sur les armes biologiques, tant des États que du secteur privé, doivent être développés et adoptés comme pratiques communes à l'échelle de l'UE élargie.

2e voie : Combattre et prévenir la prolifération des armes biologiques

Trois mécanismes permettent de combattre et de prévenir la prolifération des armes biologiques : les contrôles à l'exportation, les programmes de « réduction concertée des menaces », et le contrôle de l'accès aux agents pathogènes.

Contrôles à l'exportation : Des contrôles à l'exportation nationaux sévères sont essentiels pour empêcher les « États sources d'inquiétude » et les terroristes d'acquérir l'équipement, les connaissances et les matières nécessaires pour mettre au point des armes bactériologiques. Le caractère discriminatoire des contrôles à l'exportation (du côté de l'offre) fait encore problème, et la mondialisation limite leur efficacité. Les États membres et certaines institutions de l'UE participent aux activités des deux principales structures de contrôle à l'exportation qui régissent les technologies à double usage : le Groupe de l'Australie et le Règlement sur les biens à double usage de l'UE. Il faudrait peut-être une meilleure coordination et un meilleur échange d'informations entre les divers groupes de travail, ainsi qu'une plus grande volonté de coordonner la position de l'UE au sein du Groupe de l'Australie.

Réduction concertée des menaces : Pour contrôler la prolifération des armes biologiques, il est crucial d'améliorer la sécurité des stocks nationaux de pathogènes et d'agents biologiques dans le monde, particulièrement dans les établissements russes vieillissants de recherche et de production biologiques. L'engagement du G8 à consacrer jusqu'à 20 milliards $ d'ici dix ans pour aider la Russie et d'autres pays à éliminer leurs stocks d'armes de destruction massive prend appui sur les efforts de réduction concertée des menaces déjà accomplis par les États-Unis. L'UE devrait chercher à appuyer davantage les projets de cette nature, particulièrement dans le domaine négligé des armes biologiques.

Protection des agents pathogènes : Les mesures de contrôle des agents pathogènes appliquées par les universitaires, les instituts de recherche et les établissements de santé publique dans le monde sont d'une diversité inacceptable. Une « Convention sur la biosécurité » dont on a proposé l'adoption définirait des règles universelles régissant l'accès aux agents pathogènes dangereux et la protection physique des institutions autorisées à les manipuler. L'UE pourrait ouvrir la voie en mettant en œuvre une telle convention en son sein.

3e voie : Décourager l'utilisation des armes biologiques

Un dispositif de dissuasion efficace pourrait aider à faire en sorte que, même s'il y a prolifération, l'adversaire n'utilise pas les capacités acquises. Divers membres de l'UE maintiennent leur propre dispositif de dissuasion contre l'utilisation des armes biologiques, mais il n'y a actuellement aucune résolution de l'UE ou de l'ONU à ce sujet. L'UE devrait réclamer un engagement international à combattre et à réprimer le recours aux armes biologiques tant par les États que par les particuliers ou, à défaut, adopter une position commune sur la question. En outre, l'UE devrait franchir les premiers pas vers la criminalisation internationale de l'utilisation individuelle des armes biologiques en élaborant une convention régionale interdisant la possession, la manufacture, etc. de ces armes.

4e voie : Renforcer la planification civile d'urgence

Il faut améliorer la coordination des défenses contre les armes biologiques aux niveaux local, national, régional et mondial. Un programme de la Commission européenne lancé en décembre 2001 définit quatre grands objectifs : établir un mécanisme de coordination à l'échelle de l'UE, détecter et identifier rapidement les agents et réagir aux attaques, élaborer un répertoire de médicaments et de services et définir des lignes directrices concernant leur emploi, et renforcer

les règles et lignes directrices de l'UE et ses liens internationaux. Un groupe de travail sur le bioterrorisme a été constitué et chargé de réaliser les travaux nécessaires à la mise en œuvre du programme. D'autres initiatives de l'UE seraient possibles : harmoniser davantage les défenses contre les armes biologiques avec les pays associés à l'UE et les autres États membres de l'OSCE, intensifier la coopération de l'UE avec les États-Unis et le Canada, mettre sur pied un organe de l'UE dans le domaine des maladies contagieuses, et constituer un groupe consultatif scientifique de l'UE.

Vers un régime à trois volets de l'UE pour le contrôle des armes biologiques

Les mesures examinées dans le présent rapport se répartissent entre trois stades :

1er stade (immédiat) : Mesures visant à renforcer l'application des mesures nationales existantes et à approfondir la coopération à l'échelle de l'UE :

- Renforcement des lois d'application nationale dans les États membres;
- Établissement d'un groupe consultatif qui se réunirait régulièrement pour informer les États membres de l'évolution des sciences et des techniques relatives aux armes biologiques et recommander des mesures appropriées;
- Établissement d'une base de données transparente et accessible sur les mesures de confiance, à l'intention des États membres de l'UE et des pays associés;
- Prestation de conseils et d'assistance aux pays incapables d'instaurer les mesures de confiance;
- Aide de l'UE aux États associés à l'UE pour leur adhésion au Groupe de l'Australie;
- Prestation d'une aide technique accrue de l'UE pour établir ou renforcer des systèmes de contrôle des exportations dans des pays tiers qui inspirent des préoccupations au point de vue de la prolifération des armes biologiques;
- Expansion sensible du programme de coopération de l'UE pour la non-prolifération et le désarmement dans la Fédération de Russie;
- Promotion par l'UE d'une Convention internationale sur la biosécurité;
- Promotion par l'UE d'un dispositif international de dissuasion;
- Encouragement par l'UE de la constitution d'un groupe de travail international chargé d'examiner la criminalisation des armes biologiques;
- Mise en œuvre intégrale du Programme de coopération de l'UE pour la préparation et la réponse aux attaques biologiques et chimiques;
- Renforcement des mesures dans le domaine de la sûreté et de la sécurité, et recensement et enregistrement des installations pertinentes dans les États membres;
- Coopération accrue en matière de défense contre les armes biologiques avec les États-Unis, les pays associés de l'UE et la Fédération de Russie.

2e volet (moyen terme) : Élaboration de positions communes et de mesures juridiquement contraignantes :

- Élaboration d'une position commune ou d'une Convention européenne sur les mesures de confiance, y compris des engagements en faveur de dispositions prévoyant des visites réciproques et des déclarations obligatoires;
- Élaboration d'une Convention de l'UE sur la biosécurité;
- Élaboration d'une position commune définissant un dispositif de dissuasion biologique de l'UE;
- Élaboration d'une Convention de l'UE sur la criminalisation des armes biologiques.

3e volet (conditionnel) : Élaboration d'un régime juridiquement contraignant d'inspections et de vérifications de l'UE. En ce moment, les perspectives d'élaboration d'un tel régime semblent hautement improbables en raison de difficultés politiques, tant internes qu'externes. Cependant, si l'impasse persiste dans le processus de la CABT, une solution radicale s'impose peut-être.

Impact sur les industries biotechnologique et pharmaceutique

Les industries biotechnologique et pharmaceutique représentent une activité économique de premier plan dans l'UE. Il est peu probable que les mesures prises aux deux premiers stades imposent un lourd fardeau aux entreprises, mais celles du troisième stade seront sans doute mal accueillies, pour des raisons ayant trait aux droits de propriété intellectuelle. Cependant, il serait possible de formuler pour les inspections sur place des garanties qui protégeraient les droits de propriété intellectuelle des entreprises européennes et minimiseraient les formalités administratives, surtout si elles étaient consultées au sujet de leur élaboration. Ces mesures auraient sans doute aussi des répercussions positives pour l'industrie : amélioration de la responsabilité et de l'image de marque des entreprises, protection des brevets et mécanismes de compensation.

Impact sur les relations de l'UE avec les États-Unis

Les relations sont actuellement tendues entre l'UE et les États-Unis dans de nombreux dossiers, et particulièrement à propos de l'avenir de la CABT. Cependant, un régime européen ne serait pas nécessairement une nouvelle pomme de discorde. Au contraire, les engagements prévus aux deux premiers stades concorderaient parfaitement avec les objectifs et les positions des États-Unis. Cependant, au troisième stade, l'adoption d'un régime d'inspections multilatéral et juridiquement contraignant comme celui qui est envisagé dans le Protocole serait plus problématique. Le refus des États-Unis d'accepter le point de vue du Protocole pourrait se traduire par une hostilité à l'égard de tout régime européen s'en inspirant. Un régime européen pourrait aussi inciter Washington à se désengager encore davantage du dossier.

Impact sur les pays associés à l'Union européenne et la Russie

L'inclusion des pays associés à l'UE et de la Russie dans un éventuel régime européen de contrôle des armes biologiques montrerait clairement que le régime serait susceptible d'expansion, et pourrait inciter directement d'autres pays enthousiastes, tels le Canada et les pays d'Amérique du Sud, à y adhérer. Ce qui pourrait répandre rapidement dans le monde entier des mesures concertées et améliorées de contrôle des armes biologiques. En outre, l'inclusion d'États associés à l'UE, et surtout de la Russie, représenterait un défi important et positif pour le régime européen, car ce sont assurément des États à risque relativement élevé. Un régime de l'UE élargi pourrait jouer un rôle crucial en réduisant les risques de prolifération et en vérifiant l'arrêt de la mise au point d'armes biologiques offensives en Russie.

Le rôle du Canada

L'UE et le Canada étaient d'accord sur la plupart des grands principes des négociations sur le Protocole à la CABT. Le Canada a soutenu fermement le processus du groupe ad hoc et le concept d'un Protocole juridiquement contraignant, et sa nouvelle Loi de mise en œuvre de la convention sur les armes biologiques ou à toxines est une loi-cadre inspirée par la Convention. Un régime européen ouvrirait de nouvelles possibilités de coopération entre l'UE et le Canada, y

compris pour l'élaboration de synergies entre la Loi de mise en œuvre canadienne et les autorités nationales de l'UE. Le Canada et l'UE pourraient aussi convenir d'ouvrir leurs installations à l'inspection réciproque.

La création d'une association UE-Canada d'autorités nationales de coordination des armes biologiques et l'harmonisation des mesures de confiance (au niveau des normes plus élevées adoptées récemment par le Canada à cet égard) seraient d'autres mesures pratiques à envisager. L'expansion du régime à l'est pourrait comporter une participation canadienne inspirée soit du Traité « Ciel ouvert » de 1992, soit sur le processus d'Ottawa concernant les mines antipersonnel. Le Canada pourrait aussi servir de pont entre l'Europe et les États-Unis dans ce dossier.

Conclusions, recommandations et prochaines étapes

Il est clair, d'après cette évaluation préliminaire, que l'UE adopte déjà un rôle de chef de file dans ce dossier. La planification civile d'urgence, les contrôles à l'exportation et la lutte contre le terrorisme, par exemple, sont tous des champs d'activité qui dans une certaine mesure sont déjà coordonnés au niveau de l'UE. Cependant, les États membres et les institutions de l'UE devront se doter d'une culture plus forte de coopération entre les divers experts et intéressés, par-delà les nombreuses disciplines en cause : application de la loi, renseignement, science, éducation, industrie et diplomatie internationale.

De plus, il faudrait débattre beaucoup plus à fond l'ampleur et l'orientation d'un éventuel régime de contrôle des armes biologiques à l'UE. À l'heure actuelle, par exemple, les fonctionnaires de l'UE semblent peu enthousiastes face au projet d'élaborer des mécanismes d'enquête ou de rapport entre les États membres pour promouvoir la confiance dans l'observation de la CABT. Or, les mesures régionales de contrôle, de rapport et de réponse appliquées dans le contexte européen pourraient servir de modèles pour d'autres régions. Ce débat est encore au stade des premiers balbutiements et doit être étendu aux parlementaires et aux autres groupes d'intérêts.

Avec l'adoption de ses « mesures concrètes », l'UE a déjà dépassé le stade des mécanismes ad hoc dans la lutte contre les armes biologiques. Il est important, toutefois, que ce haut niveau de coordination théorique se traduise en pratique par une coopération de haut niveau. La meilleure façon pour l'UE de relever le défi serait une approche à plusieurs niveaux : développer et renforcer graduellement la législation et la coopération, plutôt que de rechercher immédiatement un régime d'inspections juridiquement contraignant, bien que cette solution ne soit pas exclue à moyen ou à long terme.

Un régime de l'UE relatif aux armes biologiques aurait notamment pour avantages de faciliter l'adoption de pratiques exemplaires dans les États membres, de servir de tremplin pour un régime universel, de produire une expertise à laquelle le secrétaire général de l'ONU (entre autres) pourrait faire appel pour enquêter sur les allégations d'inobservation, d'entretenir le dialogue avec la Russie sur le contrôle de son infrastructure gigantesque et vieillissante d'armes biologiques, et d'améliorer l'image de marque de l'UE tant aux yeux de ses citoyens qu'à l'extérieur. Pour que ces avantages se réalisent, il faudra montrer qu'il est avantageux de surveiller les États à faible risque, que les craintes relatives aux violations de la sécurité nationale et à l'espionnage industriel sont injustifiées, et que le régime favorisera la cohésion européenne et les approches nationales du contrôle des armes biologiques.

ACRONYMS AND ABBREVIATIONS

AG	Australia Group
AHG	Ad Hoc Group
APMs	Ant-Personnel Landmines
BRPC	Biological Research and Production Centres
BW	Biological Weapons
BTWC	Biological and Toxin Weapons Convention
BTWCIA	BTWC Implementation Act (Canada)
CBM	Confidence Building Measures (or Mechanisms)
CDC	Center for Disease Control and Prevention (US)
CFSP	Common Foreign and Security Policy (EU)
CODUN	Committee on Disarmament and Arms Control (EU)
CONOP	Committee on Non-Proliferation (EU)
CTR	Cooperative Threat Reduction
CWC	Chemical Weapons Convention
EPC	European Political Cooperation
EU	European Union
ICC	International Criminal Court
IPR	Intellectual Property Rights
JHA	Justice and Home Affairs (EU)
MTCR	Missile Technology Control Regime
NSG	Nuclear Suppliers Group
OECD	Organisation for Economic Cooperation and Development
OPCW	Organisation for the Prohibition of Chemical Weapons
OSCE	Organisation for Security and Cooperation in Europe
PhRMA	Pharmaceutical Research and Manufacturers of America
PSC	Political and Security Committee (EU)
QMV	Qualified Majority Voting
SIPRI	Stockholm International Peace Research Institute
TEU	Treaty of European Union
UNSCOM	United Nations Special Commission (to Iraq)
UNMOVIC	United Nations Monitoring, Verification and Inspections Committee (to Iraq)
WHO	World Health Organisation
WMD	Weapons of Mass Destruction

PART I: THE NATURE OF THE REQUIRED SOLUTION

1. Introduction and Aims

The Problem

The tragic events of 11 September 2001 coupled with the subsequent anthrax attacks and hoaxes have greatly increased global concern over the risk of biological warfare and particularly bio-terrorism. However, there is very little realistic hope that the current US Administration will reverse its stand and permit negotiations on a Protocol for the Biological and Toxin Weapons Convention (BTWC) to resume in the Ad Hoc Group in Geneva. It will be at least three years and possibly seven before any US administration will examine seriously the case for strengthening the BTWC with a legally binding instrument. What might be done during these coming years to make BW proliferation and use less likely and – perhaps – to prepare the way for a renewed effort to strengthen the global regime?

The suggestions being put forward by the United States[1] should be given serious consideration. Stronger domestic legislation to protect pathogens, improve biodefences and encourage ethical scientific conduct would be in order whether or not there is a Protocol. But none of the US ideas hold any real promise of solving the problem that the Bush Administration rightly puts at the centre of its concerns: that of states that have not joined the BTWC or that have joined it but appear not to be in compliance with its terms. For while Washington demands an end to non-compliance, it has refused to permit the development of an international regime of declarations, transparency visits and challenge inspections, which would do much to combat illicit biological weapon research and weaponisation, and would bolster the enforcement of the BTWC regime.

A direct approach to this problem through 'military pre-emption'—the threat or use of force to bring non-compliant states into line, if necessary by effecting a change of regime—is unlikely to be supported by the majority of states, now or in the foreseeable future. A role for military action, backed by the UN and combined with good intelligence and good clean-up operations, may very well work in specific circumstances and could do much to shore up BW international prohibition. However, such action should only be contemplated *in extremis* (especially when based on suspicion, as opposed to certainty, or use or possession) and is no substitute for a comprehensive and cooperative multilateral approach.

Washington's position, taken because of its concerns over national security, corporate intellectual property rights and enforceability, has left a dangerous gap in the international control regime – a crack that must be mended with increased political action in the coming weeks, months and years. In the long term, the EU Member states should seek to persuade the United States that such a limited approach is detrimental to Western security as it fails to provide an effective means of investigating and attacking non-compliance. An approach encompassing national, regional, and multilateral initiatives must be undertaken to provide a comprehensive control regime for biological weapons and their components.

---

[1] See John R. Bolton, Under Secretary for Arms Control and International Security, Remarks to the 5th Biological and Toxin Weapons Convention RevCon Meeting, 19 November 2001, http://www.state.gov/t/us/rm/janjuly/6231.htm ; President George W. Bush, Statement on Biological Weapons, 1 November 2001, http://www.state.gov/t/ac/rls/rm/2001/7907.htm

The Opportunity

In terms of BW controls, with the current impasse in developing a global approach, one alternative would be to develop regional approaches. Within Europe, such an approach would build on the leadership that European delegations consistently demonstrated in the Ad Hoc Group. A European regime could be developed in two stages. The first stage would encompass the EU Member States and the EU Associate Countries (although the latter may initially need to be precluded from some of the more sensitive aspects of the regime, as is currently the case for example with some of the operative mechanisms of the EU Code of Conduct on Arms Exports). The second stage would involve the rest of Europe, including the Russian Federation. The Organisation for Security and Cooperation in Europe (OSCE) may provide the vehicle for wider European development of such a regime (although its consensus-based decision-making and the likely opposition of the United States will be a formidable hurdle).

This proposal has a little-known historical precedent: the so-called BW Inspection Project, which was the first research project of the nascent Stockholm International Peace Research Institute (SIPRI).[2] SIPRI took over the project from Pugwash, which had initiated it in 1963. Looking for ways of stimulating multilateral BW disarmament, Pugwash had the idea of seeking to extend the declarations-plus-inspection BW controls of the Western European Union Armaments Control Agency into non-aligned and eastern Europe on a trial basis. The SIPRI pilot scheme (see Box 2 in section 4) involved inspections by small teams of well-known microbiologists to 14 research laboratories or production establishments in nine European countries (belonging to NATO, the Warsaw Pact as well as some non-aligned countries). The tentative conclusions that SIPRI drew at the time were that:

> a substantial measure of on-site verification would be possible, provided certain conditions were fulfilled-documentation, free access to all facilities and personnel, the possibility of visits at short notice or of 'permanent' inspection by resident inspectors or by exchange scientists cooperating with them.[3]

The project ended in 1971 when the BTWC negotiators decided to do without verification procedures. However, the existence of the project, and the political pressure it succeeded in generating, helped to lay the foundation for the establishment of the BTWC. Over thirty years later, Europe might again provide the precursor to a strengthened BTWC regime.

Objectives of the Report

This report seeks to examine the potential for a European BW control regime centred on the EU, its Member States and the EU Associate Countries. More specifically, the report:

- Seeks to define the usefulness and political feasibility of a BW regime among the EU Member States and EU Associate Countries, none of which is suspected of having an offensive BW programme;

---

[2] This paragraph is based on a private communication with Julian Perry Robinson, Harvard-Sussex Program, October 2002, and Chapter 5 of the book *SIPRI: Continuity and Change 1966-1996.* SIPRI: Solna, 1996, pp49-63.

[3] OP.Cit., *SIPRI: Continuity and Change.*

- Examines the range of issue areas that could be covered by such a regional regime including: verification procedures, export controls, deterrence, disease surveillance and biodefence;
- Identifies, through a mapping exercise of the possible options (from a legally binding protocol regime to a collection of political binding mechanisms), a range of policy alternatives for the EU Member States to consider;
- Explores how to draw all the former members of the Soviet bloc, and especially the Russian Federation, into the regime (including the relationship between any EU BW regime and the rest of Europe, as represented in the OSCE, and the process for developing engagement between the two groupings of states); and
- Considers the potential implications of a regional regime. How will it affect the European biotechnology and pharmaceutical industries? Could it damage the transatlantic relationship?

The report is divided into three parts. The first part examines the nature of the required solution, including an assessment of the current state of play in terms of international BW controls and key proliferation concerns. Part II examines in more detail existing EU plans and potential future solutions to the BW problematic, in four specific areas: strengthening BTWC compliance and verification; combating and preventing BW proliferation; deterrence against use of BW; and civil emergency planning. Some conclusions are then drawn as to the political realities and options for formalising EU activity in these areas in a three-tier BW regime.

Part II also considers the implications of an EU BW control regime on the wider Europe (including EU Associate Countries, the Russian Federation and the Commonwealth of Independent States), the United States and European pharmaceutical and biotech industries. It also contains specific reference to the constructive role that Canada might be expected to play. Part III contains conclusions and recommendations.

2. The Present Situation

The Political Environment

> The process that we've followed over these past seven years with the Ad Hoc Group has led us into a ditch and it's time to recognize that and to start thinking about other ways of moving ahead...We're not going to proceed with the draft protocol.
>
> John Bolton, U.S. Undersecretary of State for Arms Control and International Security, 11 January 2002[4]

The current impasse in negotiations surrounding the strengthening of the 1972 Biological and Toxin Weapons Convention (BTWC) stems from a fundamental disagreement over the utility of the so-called Ad Hoc Group (AHG) process, which was mandated in 1994 to draft a legally binding document to strengthen the BTWC. Over six years of detailed discussions culminated in March 2001 when the Chairman of the AHG, Ambassador Tibor Toth, circulated a draft Protocol text to encourage conclusion of the negotiations. This was comprehensively rejected by the new Bush administration, which not only refused the draft Protocol text but also dismissed the entire 'approach' of the Protocol. The US announcement was the precursor to the complete collapse of the negotiations, and effectively stalled the Protocol process.

Worse was to come in November and December 2001 at the Fifth Review Conference of the BTWC, the latest of the five-yearly meetings of States Parties to assess and strengthen the working of the Convention. On the last day of the meeting, only two hours before the scheduled end of negotiations, the United States unilaterally demanded the termination of the Protocol process. This US bombshell, announced without prior warning, created a rancorous atmosphere, prompting the suspension of the Conference for one year to allow time for 'cooling off.' States Parties agreed to resume the Conference for a two-week period beginning on 11 November 2002.

Washington's hostility to the AHG process stems from a combination of factors: some ideological (in keeping with the present trend towards unilateral pre-emptive approaches and an aversion to multilateral treaty-based solutions) and some economic (driven by the intellectual property concerns of the US pharmaceutical industry).[5] However, the bottom line is that re-engagement in international BW negotiations by the current US administration is unlikely at this stage and for the foreseeable future. Indeed, US diplomats are already pushing to cut short the reconvened review conference in November 2002, and are opposing any further treaty meetings until the next review conference scheduled for 2006.[6]

---

[4] The Biological and Toxin Weapons Convention: Challenges and Opportunities, Speech by John R. Bolton, Under Secretary of State for Arms Control and International Security, 11 January 2002. For full text see http://www.cns.miis.edu/cns/dc/011102.htm

[5] For further discussion on why the US administration is opposed to the AHG process, see *Disease by Design: De-mystifying the Biological Weapons Debate*, BASIC, November 2001, pp42-50. Available at http://www.basicint.org/pubs/Research/2001diseasebydesign1.htm

[6] David Ruppe, 'BTWC: With Threat, U.S. Pressures to End Review Conference Early', *Global Security Newswire*, 6 September 2002.

Box 1: US Proposals

On 1 November 2001 President Bush further outlined US thinking in a short statement on 'Strengthening the International Regime against Biological Weapons', in which he called on all Parties to:

- *Enact strict national criminal legislation against prohibited BW activities with strong extradition requirements.*
- *Establish an effective United Nations procedure for investigating suspicious outbreaks or allegations of biological weapons use.*
- *Establish procedures for addressing BTWC compliance concerns.*
- *Commit to improving international disease control and to enhance mechanisms for sending expert response teams to cope with outbreaks.*
- *Establish sound national oversight mechanisms for the security and genetic engineering of pathogenic organisms.*
- *Devise a solid framework for bioscientists in the form of a code of ethical conduct that would have universal recognition.*
- *Promote responsible conduct in the study, use, modification, and shipment of pathogenic organisms.*[7]

Since the collapse of the 2001 Review Conference, governments, academics and NGOs have been attempting to explore ways forward. Innovative thinking on the issue is certainly necessary if the substantial differences between the States Parties are to be resolved. As Tibor Toth has emphasized, "we must move forward. No one will be safer with the control regime lying dormant... what we need now is a modus operandi on how to move forward, to involve an overlapping set of interests."[8] The need for such progress has been reinforced by a number of worrying developments over the last year that have demonstrated the many weaknesses in the current BW prohibition regime.

The International Security Environment

There are currently three main areas of concern in relation to BW proliferation:

- the situation in Iraq (and possible BW proliferation in other 'rogue states');
- the legacy of the former Soviet Union's BW programme; and
- the threat of bio-terrorism, and in particular, the possibility of further anthrax attacks.

Each of these issues is briefly discussed in turn.

The Challenge of Iraq

Six 'rogue states' were named by the United States at the November 2001 BTWC Review conference as suspected of having BW programmes: Iran, Iraq, Libya, Syria, Sudan and North Korea. A handful of other countries were also suspected but not named by John Bolton, although

---

[7] Statement by the President, Strengthening the International Regime against Biological Weapons, 1 November 2001, For full text see http://www.whitehouse.gov/news/releases/2001/11/20011101.html

[8] Interview with Tibor Toth, *BASIC Reports*, February 2002. For full text see http://www.basicint.org/pubs/BReports/BR79.htm#Countries

a Pentagon report released in April 2002 identified India, China, Pakistan and Russia as suspect nations. In his speech to the Heritage Foundation in May 2002, John Bolton also added Cuba to that list.[9] Of course, allegations have been made in the recent past that the United States may itself have BW research projects that violate the BTWC.[10]

However, of all the suspect states Iraq provides the most pressing problem. In particular, the dangers to international security of the absence of stringent and stringently enforced BTWC verification procedures are now being vividly demonstrated over the present impasse concerning the re-admittance of the United Nations Monitoring, Verification and Inspection Committee (UNMOVIC) inspectors to Iraq to continue their work.

UNMOVIC was created through the adoption of Security Council resolution 1284 of 17 December 1999. It replaced the former UN Special Commission (UNSCOM) and is intended to continue with the latter's mandate to disarm Iraq of its weapons of mass destruction (chemical, biological weapons and missiles with a range of more than 150 km), and to operate a system of ongoing monitoring and verification to check Iraq's compliance with its obligations not to reacquire weapons prohibited to it by the Security Council.[11] In the face of concerted and sustained obstructionism, UNSCOM withdrew its staff from Iraq in December 1998. . As its former Executive Director, Richard Butler, has noted:

> Iraq's behaviour has illustrated another point of irreducible significance. In a world of sovereign States ... recalcitrance on the part of any State, refusal to provide the modicum of cooperation required by the Treaty regime, can be a major and possibly insuperable obstacle to the achievement of common objectives.[12]

Over the last few months there have been considerable diplomatic efforts to agree terms by which UNMOVIC could recommence work in Iraq. At the time of writing, the return of weapons inspectors to Iraq seemed close, although the head of the new inspections team, Hans Blix, had been persuaded not to re-enter Iraq without a new Security Council resolution establishing a tougher, more coercive inspection regime.

Continuing concern over renewed Iraqi WMD programmes is a major driver for regional and international instability. It is frequently cited as the main reason for a much-mooted invasion of Iraq. British Prime Minister Tony Blair has been clear in his assertion that as "simply turning our backs on weapons of mass destruction is not an option", confrontation with Iraq must be seriously considered. He goes on to argue that, "we will do it a sensible way, do it in a measured way, but we cannot allow a state of this nature [Iraq] to develop these weapons without let or hindrance". [13] When questioned whether he would still be in favour of toppling Saddam Hussein if inspectors were let back in, he replied:

---

[9] Judith Miller, 'Washington Accuses Cuba Of Germ-Warfare Research', *New York Times*, 7 May 2002.

[10] See, for example, 'When Is A Bomb Not A Bomb? Germ Experts Confront US', New York Times, 5 September 2001; and 'International Reaction to Secret U.S. Bio-Weapons Research Muted', *Arms Control Today*, October 2001.

[11] See UNMOVIC website for latest information http://www.un.org/Depts/unmovic/

[12] Richard Butler, Executive Director of UNSCOM, speech to the 7th Carnegie International Non-Proliferation Conference, 11-12 January 1999, Washington, DC.

[13] 'Blair faces MPs Anger over Iraq', BBC News Website, 10 April 2002. See http://news.bbc.co.uk/1/hi/uk_politics/1921702.stm

> If he lets the weapons inspectors back in unconditionally, any time, anywhere, any place, then of course that makes a difference to the situation, but there is absolutely no sign that he is prepared to do so. The weapons inspectors have got to go back in and be allowed to get on and do their job, but don't let's be under any illusions about this, for 10 years he has been in breach of United Nations security resolutions. You know for 10 years the weapons inspectors should have been in there, done their work, the weapons should have been destroyed.[14]

US plans for action against Iraq seem to be based on a more fundamental desire to end Saddam Hussein's rule with several senior administration figures suggesting that, even if the Iraqi WMD programmes did not exist, there would still be a clear need for enforced 'regime change.' As John Bolton put it "our policy at the same time insists on regime change in Baghdad... That policy will not be altered whether the inspectors go in or not".[15] Nonetheless, the need to combat potential Iraqi WMD use remains the Bush administrations most potent argument in favour of invasion. In one of his strongest hints about pre-emptive military action, President Bush stressed "one thing I will not allow is a nation such as Iraq to threaten our very future by developing weapons of mass destruction".[16]

The Iraqi possession of biological weapons is a major source of strategic instability, especially if one recalls the apparent ease with which the Iraqi regime managed to develop its BW arsenal during the 1980s. Although Iraq was 'forced' to join the BTWC in 1991, the lack of a strict verification regime supported by the full weight of the international community, meant that Iraq could experiment and extend its BW without the faintest of international opprobrium or action. Having said that, however, the full extent of Iraqi BW activities was unknown until UNSCOM found it in 1995. During the UNSCOM inspections Baghdad came to admit that it had produced 30,000 litres of biological agents – this included 19,000 litres of botulinum toxin and 8,400 litres of anthrax spores. Inspectors found traces of anthrax in several warheads from long-range al-Hussein ballistic missiles. They also uncovered around 200 air-launched biological bombs.[17]

The extent to which an EU BW regime might impact on the current impasse on inspections in Iraq is likely to be marginal at best. If the EU had a standing BW inspections team, for example, it might have been in a position to offer it as a core component to UNMOVIC. In turn, this might reduce the time needed to assemble a team of inspectors and analysts.[18] But while an EU inspection team from countries less hostile to Iraq, such as France, might have been more acceptable to the Iraqi authorities, the use of an inspection team that might be seen as sympathetic to Iraq is unlikely to find favour with the United States, and might be seen as undermining the authority of the UN to set the terms of specific inspection mandates. In any case the capability is not there.

---

[14] Interview with Tony Blair, *BBC Newsnight*, 15 May 2002.

[15] 'Bush dismisses Iraq Inspection offer', BBC News Website, 3 August 2002. See http://news.bbc.co.uk/1/hi/world/middle_east/2170275.stm

[16] 'Size of force on the ground key in plan for Iraq war', by Rowan Scarborough, The Washington Times, 26 April 2002. See http://www.washtimes.com/national/20020426-41274916.htm

[17] United Nations, document 214-S/1995/864, 11 October 1995, 771 as cited by Graham Pearson, 'The Threat of Deliberate Disease in the 21st Century', in 'Biological Weapons Proliferation: Reasons for Concern, Courses of Action', Henry L. Stimson Center Report No.24, January 1998.

[18] The chief UN weapons inspector, Hans Blix, is reported to have told the UN Security Council in September 2002 that it would take as long as two months to assemble and move a team of inspectors into Iraq. Betsy Pisik, 'Arms Inspector Says Organizing Team for Iraq Takes Two Months', *Washington Times*, 11 September 2002.

The BW Facilities of the Former Soviet Union: A Proliferators' Paradise?

The biological weapons programme of the former Soviet Union possessed capabilities far in excess of any such programme known to have existed elsewhere. These included genetically altered, antibiotic resistant pathogens and sophisticated delivery systems. Approximately 50 biological research and production centres (BRPCs) throughout the former Soviet Union devoted either all or part of their work to the programme. In the post Soviet era, former Soviet states drastically reduced and in some cases eliminated funding for these BRPCs. Thousands of BW scientists became unemployed or underemployed, and the facilities, weapons technology, and thousands of strains of pathogens at these BRPCs became vulnerable to theft, sale or misuse.

Concerns that such sites are a threat to both international security and the Russian people arise from three key factors:[19]

- *Concerns that Russia may still be involved in offensive BW activities:* There are continuing concerns as to whether the long-running Russian offensive BW programme has been completely terminated.[20]

- *Contamination of storage sites and surrounding areas:* Natural environments surrounding many former Soviet BRPCs may be affected due to widespread environmental pollution from BW agents.[21] This situation is exacerbated by the poor physical conditions of many BRPCs in former Soviet states. In the post-Soviet economic environment, many BRPCs have not been able to maintain advanced biosafety containment laboratories, and experts fear that accidental release of pathogens could occur at many of these sites.[22]

- *Potential for theft or illicit sale:* Many experts believe that biological weapons capabilities in former Soviet states could be vulnerable to theft or sale.[23] There are reports that the mafia and warring ethnic factions within Russia have tried to obtain biological weapons capabilities.[24] Personnel at BRPCs in former Soviet states are generally poorly paid, which could provide the motivation for staff to steal and sell dangerous pathogens,

---

[19] See 'Bioweapons from Russia, Stemming the Flow', Jonathan Tucker, *Issues in Science and Technology Online*, Spring 1999; Preventing Proliferation of Biological Weapons: US Assistance to the Former Soviet States, Congressional Research Service, 10 April 2002.

[20] See, for example, Petra Lilja, Roger Roffey and Kristina Westerdahl, *Disarmament or retention: is the Soviet biological weapons programme continuing in Russia?*, FOA/Umea, December 1999; and Zanders, French and Pauwels, 'Chemical and biological weapon development and arms control', *SIPRI Yearbook* 1999.

[21] For example, experts believe that the ground of Vozrozhdeniye Island in the Aral Sea has absorbed biological agents scattered during weapons tests. Furthermore, the Aral Sea is shrinking, and some fear that rodents might soon be able to travel between the Island and the mainland. See Preventing Proliferation of Biological Weapons: US Assistance to the Former Soviet States, Congressional Research Service, 10 April 2002

[22] US General Accounting Office, *Effort to Reduce Former Soviet Threat Offers Benefits, Poses New Threat*, GAO/NSIAD-oo-138, April 2000.

[23] ibid

[24] Ken Alibek and Stephen Handelsman, Biohazard: the chilling true story of the largest covert biological weapons program in the world – told from the inside by the man who ran it, (New York: Random House, 1999) pp176-177; Miller, Broad and Engelberg, Germs: Biological Weapons and America's Secret War (Simon and Schuster, 2001) p.211

weapons technologies, or instructions related to BW development and production. Seed cultures of pathogens might also be smuggled out of the BRPCs.

In June 2002, the *New York Times* painted a typical scene in its description of the Pokrov Biologics Plant and the security guarding the deadly viruses housed there:

> The plant's alarm system is 30 years old. The military garrison at Pokrov is gone, the guards now are mostly old men. Security for the virus freezers is a lock and a string with a seal of soft clay.[25]

This situation should demand intense international concern. It highlights some longstanding weaknesses of the BTWC regime, which was never intended to ensure physical protection for dangerous pathogens or create Co-operative Threat Reduction (CTR) schemes to lessen the proliferation danger created by previous illicit BW programmes.

Since the mid-1990s the United States has earmarked significant resources to tackle this problem throughout the former Soviet Union. Since 1995, more than forty BRPCs have been involved in cooperative projects with the United States. One example of such a program is the US Department of Defense's Biological Weapons Proliferation Prevention Program (BWPP) which has three major components – biosecurity and biosafety enhancements, collaborative research and facilities and equipment dismantlement. In FY2002 Congress appropriated $17 million to this program.[26]

Key members of the international community, including four EU Member States, agreed to join more fully in such initiatives through the Group of Eight's (G8) new Global Partnership.[27] Leaders of the G8 nations have agreed to spend up to $20 billion over the next 10 years to help Russia initially, and then other nations dismantle their WMD stockpiles. The agreement builds on the long-standing US Nunn-Lugar programme supporting the decommissioning of Russia's nuclear weapons. Provided that the pledges of support are realised and turned into concrete programmes, and that the right balance is struck between support for nuclear, biological and chemical CTR programmes, the Global Partnership has the potential to bring Russia's BW capabilities back within the realms of more accepted international norms and standards. As discussed later in section 5, an EU BW regime could be aligned with and play a central part in that effort.

The Anthrax Attacks: The New Reality of BW Use

On 4 October 2001, the US Centres for Disease Control and Prevention (CDC), and local public health authorities reported a case of inhalation anthrax in Florida. The victim, a picture editor for a tabloid newspaper, later died in hospital. The anthrax seems to have come from a letter sent to the newspaper's offices. Following screenings of co-workers and associates further cases of anthrax exposure were subsequently confirmed. The CDC later reported that the confirmed cases of anthrax had resulted from:

---

[25] 'Security Fears raised at Biological Factory', by Joby Warwick, *New York Times*, 23 June 2002.

[26] Preventing Proliferation of Biological Weapons: US Assistance to the Former Soviet States, Congressional Research Service, 10 April 2002

[27] Statement by G8 Leaders, 'The G8 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction', 27 June 2002, http://www.g8.gc.ca/kan_docs/globpart-e.asp

> Intentional delivery of B.anthracis spores through mailed letters or packages. These are the first confirmed cases of anthrax associated with intentional exposure in the United States and represent a new public health threat.[28]

Similar letters containing anthrax appear were sent to New York based news media and to the Washington office of Senator Daschle, the Democratic majority leader in the US Senate. Following the discovery of anthrax spores, news media offices, Senate and government buildings were evacuated, Congress was suspended and thousands of people were screened for exposure to the anthrax spores. During October and November 2001, the attacks caused five deaths and 17 non-fatal infections. Federal, state and local health departments have been working with the CDC to treat victims, undertake epidemiological investigations and environmental sampling and monitoring.

At the time of writing the FBI investigation is still underway. No one has as yet been charged or tried for these anthrax attacks.

These attacks vividly emphasise the very real threat biological weapons pose. Whereas the risk was previously perceived somewhat in the abstract, the considerable damage and confusion caused by the anthrax letters—an extremely limited attack against one of the best-prepared nations in the world—has given a small demonstration of the awful potential of BW. This warning is important and one that should be heeded by the international community. There are some encouraging signs that it has been. One western diplomat involved in the Fifth Review Conference noted, for example, that the anthrax attacks had "broken the taboo on biological weapons use and removed any complacency about the threat by making it far more immediate".[29] This comprehension of the reality of the threat needs to be maintained if innovation and compromise are to be fully harnessed to create a more effective international BW prohibition regime.

---

[28] 'Update: investigation of anthrax associated with intentional exposure and interim public health guidelines', October 2001, CDC, 19 October 2001 (http://www.cdc.gov/mmwr/preview/mmwrhtml/mm504a1/htm)

[29] 'Countries confront obstacles to strengthened BTWC', *BASIC Reports*, February 2002. See http://www.basicint.org/pubs/BReports/BR79.htm#Countries

PART II: EXISTING AND FUTURE EU SOLUTIONS

3. Towards Greater EU Coherence on BW Issues

The development of common policies for the EU governing biological weapons issues is a relatively new phenomenon. While common policies have been developed in some areas of EU policy (e.g. trade), member states' policies and regulatory mechanisms with regard to biological weapons (as with other weapons, both conventional and non-conventional) have traditionally fallen within the remit of national sovereignty.

There have been a number of previous studies that have focused on regulatory issues to do with non-proliferation of weapons of mass destruction.[30] However, most of this literature is only concerned indirectly with the everyday politics and administration of biological weapons controls, and even then, the focus is generally on East-West technology transfer or the proliferation of nuclear weapons or, to a lesser extent, chemical weapons.[31]

However, there is a surprising paucity of careful empirical studies of cross-national regulatory policies where the potential proliferation of biological weapons' agents and technologies is a central feature of the analysis.[32] Nonetheless, development of a coherent set of EU BW initiatives has recently begun, including common positions and coordinated EU approaches within the BTWC review conferences. These became possible as a result of both internal and external factors.

External Factors

The EU increased its BW activities in a number of areas following the events of September 11 and subsequent anthrax incidents, especially in relation to public health, civil protection and research.[33] Amplified fears of international terrorism also led to increased EU diplomatic activity on disarmament and non-proliferation, as reflected in a new initiative by the General Affairs Council in December 2001, exploring 'the implications of the terrorist threat on the non-proliferation, disarmament and arms control policy of the EU'.[34]

---

[30] See, for example, D. Carlton, *et al* eds, *Controlling the International Transfer of Weaponry and Related Technology*, Dartmouth, 1995; H. G. Brauch, *et al* eds, *Controlling the Development and Spread of Military Technology - Lessons from the past and challenges for the 1990s*, VU University Press, 1992; and J. Nolan, ed., *Global Engagement: Cooperation and Security in the 21st Century*, The Brookings Institution, 1994.

[31] Compendiums of national export control policies concerned with the proliferation of WMD, and particularly nuclear materials, have been published by a number of scholars. In particular, see the work of H. Müller, H (and the Peace Research Institute in Frankfurt), including his two edited volumes: *Nuclear Export Controls in Europe*, European InterUniversity Press, 1995; and *European Non-Proliferation Policy 1993-1995*, Brussels: European InterUniversity Press, 1996. Also see Camille Grand, 'The European Union and the Non- Proliferation of Nuclear Weapons', WEU Institute for Security Studies, *Chaillot Paper No.37* , January 2000.

[32]. An exception is the article by Daniel Feakes, 'The Emerging European Disarmament and Non-Proliferation Agenda on Chemical and Biological Weapons', *Disarmament Diplomacy*, July/August 2002.

[33]. Ibid, p 18.

[34] Council of the European Union, Conclusions of the 2397th Council Meeting – General Affairs, 15078/01, 10 December 2001.

The concerns outlined in section 2 above, in relation to Iraq, the BW stockpiles in Russia and the recent round of anthrax attacks, will have also played a part in spurring the EU into action. However some observers, such as Daniel Feakes,[35] posit that this initiative is also indicative of another, perhaps more important, external influence: the withdrawal of the United States from a number of international negotiations and its apparent ambivalence towards multilateral arms control. Arguably, this US unilateralism more than anything else has provided the impetus for the EU's increased activity on disarmament and non-proliferation over the past twelve months. As the US administration has appeared to lose faith in the utility of international agreements, the EU has become more vocal in its support of multilateral regimes and negotiations. This is implicit in a European Commission paper which states that:

> the danger is not of US isolationism but of unilateralism. A more cohesive Union, speaking with one voice or singing from the same hymn sheet, will be better placed to counter such tendencies.[36]

Getting the EU Member States to sing from the same hymn book let alone the same page has been difficult enough in the past, so it is worth pausing to review the progress of the Union in achieving greater cohesion in key policy areas that touch upon BW controls.

Internal Factors

Over the past decade or more the EU has been gradually developing and deepening its internal mechanisms in relation to a number of relevant policy areas, including trade and foreign policy. In seeking a comprehensive approach to controlling biological warfare agents and organisms at the regional level, policy responses will be required that cut across many disciplines and institutions. Indeed, it is an issue that straddles the three main policy pillars within the Community, as described below. In exploring how the EU might develop a comprehensive BW control regime, therefore, it is important to review the complex mechanisms and procedures that have developed within the Union.

Throughout the 1960s and 1970s, Community integration in the foreign policy and security fields played second fiddle to integration in the less contested field of economics. Over time, however, efforts to enhance European co-operation in foreign and security policy became more important. Under the European Political Co-operation (EPC)[37] process, member states were supposed to consult with partners before adopting final positions or launching national initiatives on all important foreign policy issues common to the Community. Over the years this co-operation gradually intensified and its scope broadened.

After the Cold War, the existing co-operative procedures in foreign and security policy were further codified in the Maastricht Treaty, which quite clearly distinguishes foreign and security policy from defence. At the Maastricht Summit in December 1991, the European Community

---

[35] Daniel Feakes, Op.cit

[36] European Commission, *Communication from the Commission to the Council: Reinforcing the transatlantic relationship: Focusing on strategy and delivering results*, COM(2001) 154 final, 20 March 2001.

[37] A set of procedural ground rules and common positions established in three reports agreed by Ministers (at Luxembourg in 1970; Copenhagen in 1973; and London in 1981), together with the accumulated experience of over two decades (during the 1970s and 1980s) of negotiations towards common political positions in a variety of international issues, provided the core dynamics of the EPC-style integration.

countries adopted a Treaty on Political Union, and a Treaty on Economic and Monetary Union, which together form the Treaty of European Union (TEU).[38] In essence, the Maastricht Treaty is structured around three pillars: the European Communities; a Common Foreign and Security Policy (CFSP); and co-operation in the fields of Justice and Home Affairs (JHA).[39]

The development of an EU BW control regime would impact on all three pillars. The regulation of the transfer (or export) of BW agents and organisms, for example, falls within the first pillar setting up community procedures on economic matters, and there the Commission has a major role. However, because of their strategic sensitivity, such dual-use transfers also fall within the political sphere, and this takes them into the second pillar of the EU, that of the CFSP.[40] Questions of military deterrence of BW use also fall within this sphere, where the procedures and responses are intergovernmental and normally require unanimity. Finally, cooperation in response to bioterrorism falls primarily in the third pillar, under law enforcement, but may also require military responses under the second pillar.

Much of the EU response to BW proliferation will fall within the second pillar, and this is arguably the least developed pillar within the EU at present. While the objectives of the CFSP are only defined in general terms, the TEU specifies that the common policy 'shall include all questions relating to the security of the Union, including the eventual framing of a common defence policy, which might in time lead to a common defence'.

Unfortunately, many of the concerns that applied to the system of EPC continued to hamper the effectiveness of the early years of the CFSP, including:[41]

- Slow and reactive foreign-policy decision-making and frequent failure of member states to agree common positions;
- Differing security objectives of member states; and
- Institutional and functional weaknesses.[42]

In the discussions that led to the 1997 Amsterdam Treaty,[43] a range of proposals to improve the functioning of the CFSP was discussed. The main obstacle to European co-operation on foreign policy issues was the unanimity requirement. Unanimity allowed the EU to present a united front externally (at least in theory), although a single member state could block or hold up agreement.[44] Various changes in voting methods were examined, with 'constructive abstention'[45] becoming the

---

[38] *The Treaty on European Union*, Office for Official Publications of the European Communities, 7 February 1992, Document No.1759/60.

[39] For a discussion of the principal features of the three pillars, see N. Nugent, *The Government and Politics of the European Union*, Third Edition, Macmillan, 1994, pp.64-81.

[40] Of course, all export control commitments undertaken by EU members in relation to dual-use BW items are implemented through national controls. This is unlikely to change in the near future, despite common positions and harmonised control lists within the EU and AG.

[41] For a recent summary of these concerns, see P. Gordon, 'Europe's Uncommon Foreign Policy', *International Security* 22, no.3, Winter 1997/98, pp.74-100.

[42] Despite the introduction (under Maastricht) of qualified majority voting in pre-established areas of common actions, most foreign policy decisions still required unanimity at that time.

[43] The Amsterdam Treaty was agreed in June 1997, formally signed in October 1997 and entered into force in May 1999 following ratification by all the member states.

[44] Often, there is no attempt to forge an EU response to even the most pressing foreign policy crises, as in the case of the UK Government's unilateral declaration of support for the US air strikes on Iraq in 1998. See Andrew Adonis, ' 'President' Blair takes EU bypass' *The Observer*, 15 February 1998.

[45] Under this Franco-German proposal, constructive abstention would allow an EU country to remain

front-runner leading up to the Amsterdam conference. This was part of a growing concept in the discussions known as 'flexibility'.

Flexible integration was being promoted in order to allow a federal core of states to move ahead without being delayed by weaker or unwilling ones. The resulting agreement within the 1997 Amsterdam Treaty for a limited form of flexibility has give the green light for much more differentiated EU options (in pillars I and III): occasional flexibility on the basis of unanimity (so that all member states approve a small number moving ahead); or more wide-ranging scope for flexibility on the basis of Qualified Majority Voting (QMV).[46] However, the draft clauses in the Amsterdam Treaty on flexibility in the CFSP (pillar II) were dropped in favour of a form of constructive absenteeism.

Thus, the outcome is that key foreign policy decisions (i.e. 'common strategies'[47]) will continue to be taken by the European Council (i.e. Heads of State and Government) acting unanimously, but subsequent details about how the policy is to be implemented (i.e. joint actions and common positions) may be taken by QMV. Countries unwilling to take part in a particular joint action will be able to operate 'constructive absenteeism' allowing the others to act in the name of the EU. However, if the constructive abstainers comprise more than one third of the weighted votes the decision will be blocked (under Article J.13(1)). Decisions without military implications will be taken by super QMV – that is, 62 votes in favour cast by at least ten member states—unless a national veto is invoked on grounds of 'important and stated reasons of national policy'(Article J.13(2)). The national veto clause was inserted at the insistence of the UK Government, and if invoked, the Council (i.e. Foreign Ministers) may vote by QMV to pass the matter up to the European Council for decision by unanimity.[48]

In addition to changes to the decision-making architecture, other new procedures agreed at Amsterdam include the establishment of a Policy Planning and Early Warning Unit in Brussels that will recommend new CFSP strategies and joint actions, and the appointment of a foreign policy figurehead (the High Representative for the CFSP) within the Council of Ministers.[49]

The EU 'Concrete Measures'

The instruments necessary for foreign policy cooperation among Europeans are now in place, although national governments remain the dominant players through the Council of Ministers.

---

outside a foreign policy initiative, such as sending soldiers on a peacekeeping mission, but would not enable that country to block such a decision or avoid contributing funds.

[46] There are stringent conditions before flexibility can be triggered, see A. Duff, *The Treaty of Amsterdam, Text and Commentary*, Federal Trust, 1997, pp.85-197.

[47] The Amsterdam Treaty introduces a new policy instrument of 'common strategies'. Although such strategies are not defined in the Treaty, the fact that they require agreement by the European Council suggests that they are intended to be more significant than common positions and joint actions. However, it remains to be seen whether this latest policy instrument will be put into practice more consistently than the previous 'General Guidelines from the European Council' provided for in the Maastricht Treaty. See the discussion by Andrew Cottey, *The European Union and conflict prevention: The role of the High Representative and the Policy Planning and Early Warning Unit*, Saferworld/International Alert, 1998, pp.21-23.

[48] A. Duff, *The Treaty of Amsterdam*, p.196.

[49] Former NATO Secretary General, Javier Solana was appointed to the new post of Secretary-General of the European Council and High Representative for the CFSP in June 1999.

Given the continuing intergovernmental nature of decision-making in this area, what has all this meant in practice in terms of developing a coherent approach to biological weapons?

Although 'common positions' have generally not been easy to agree, the EU Member States were able to agree three in relation to the BTWC Review Conferences and Protocol negotiations:

- Common Position 96/408/CFSP on 25 June 1996 relating to the preparation of the Fourth Review Conference;
- Common Position 98/197/CFSP on 4 March 1998 relating to progress towards a legally binding protocol to strengthen compliance with the BTWC and the intensification of work in the Ad Hoc Group to that end; and
- Common Position 1999/346/CFSP on 17 May 1999 relating to progress towards a legally binding Protocol to strengthen compliance with the BTWC, and with a view to the successful completion of substantive work in the Ad Hoc Group by the end of 1999.

The most recent Common Position is reproduced in full in Appendix 1. The EU's commitment to these measures was re-stated by the Council in July 2001:

> The Council expressed its concern over the risk of proliferation of biological weapons. It underlined the need for the early adoption of a legally binding protocol establishing an effective regime of compliance with the BTWC and noted the significant role played by the European Union in its drafting. The Council believed that the protocol should include the essential principles set out in Common Position 1999/346/CFSP in order to strike the right balance between compliance requirements, national security interests and the economic interests of the States party to the BTWC. Lastly, the Council considered that the adoption of the protocol would send positive signals demonstrating the international community's commitment to strengthen the multilateral disarmament and non-proliferation regime.[50]

These sentiments were again restated in the EU official statement to the Fifth Review Conference of the BTWC in November 2001.[51] In June 2001, the European Parliament also passed a resolution "almost unanimously" in favour of a strong compliance protocol to the BTWC.[52]

Following the suspension of the Fifth BTWC Review Conference, activity within the EU has focused on taking forward the initiative launched by the General Affairs Council in December 2001. Although the Belgian Presidency intended that a list of concrete measures would be drawn up to implement the initiative, the task of drafting the list fell to the Spanish Presidency. Two specialist working groups, CODUN (which is responsible for global disarmament and arms control issues) and CONOP (which is responsible for non-proliferation issues) drew up the initial list. The draft list was then considered by the Political and Security Committee (PSC) in March and was adopted by the General Affairs Council on 15 April 2002.[53] The four-page list, which is reproduced in full in Appendix 2, contains 42 proposals for action related to all aspects of arms control, disarmament and non-proliferation in each of the four areas listed by the Council: multilateral instruments; export controls; international cooperation; and political dialogue.

---

[50] Bulletin EU 6-2001, Common Foreign and Security Policy (6/23), See http://europa.eu.int/abc/doc/off/bull/en/200106/p106006.htm

[51] Statement by Belgium on behalf of the EU, Fifth Review Conference of the Parties to the BTWC, 19 November 2001. See http://www.brad.ac.uk/acad/sbtwc/btwc/rev_cons/5rc/statements/5RC-OS-EU.pdf

[52] 'European Parliament resolution on the Compliance Protocol for the Biological and Toxin Weapons Convention (BTWC)', PE 306.733, 14 June 2001.

[53] Op.Cit, Daniel Feakes, 'The Emerging European Disarmament and Non-Proliferation Agenda on Chemical and Biological Weapons'.

According to Daniel Feakes of the Harvard-Sussex Program, the list is:

> an ambitious step in the development of an EU arms control, disarmament and non-proliferation agenda. It is made all the more important by the apparent enthusiasm of the PSC, CODUN and CONOP to translate the proposals into actual activities. In this, it represents a quantum leap in EU policy, which had previously been characterised by a declaratory approach lacking measures to translate exhortations into practical solutions.[54]

It is significant then, that the list ends with the statement that:

> the Council will consider the adoption of common positions and joint actions to assure the effective implementation of the listed measures.[55]

Potential ideas for such 'common positions' and 'joint actions' are discussed in the next section.

---

[54] Ibid., p20.

[55] Council of the European Union, Conclusions of the 2421st Council meeting - General Affairs, 7705/02 (Presse 91), Luxembourg, April 15, 2002, pp. II-VI.

4. Four Strands for Enhancing EU Engagement on BW Controls

Having considered the difficulties facing the current BTWC system, as well as the recent strides made to improve political coordination within the EU, this section moves on to consider the various policy options the EU could implement to improve the current global regime. These options are multifaceted and will be considered in four main strands, which taken together, provide a comprehensive response to the BW threat:

- Strengthening BTWC compliance and verification;
- Combating and preventing BW proliferation;
- Deterring BW use; and
- Strengthening civil emergency planning.

The options are presented as concepts intended to generate thought and innovative approaches. While the conclusion of this section will consider the political realities of the current situation and the limits to what is currently feasible, one of the main intentions is to give proper consideration to some of the ideas that have rarely been seriously debated within the formal BTWC negotiations.

Strand 1: Strengthening BTWC Compliance and Verification

There are three key areas in which the EU could develop proposals to strengthen BTWC compliance and verification:

- investigation mechanisms;
- confidence building mechanisms; and
- transparency.

Investigations

It is very difficult to prevent or monitor the transfer of all technologies and R&D that could be used in BW. A myriad of different technologies are involved, including the agents themselves but also delivery systems such as the aerosol technologies necessary for weaponisation. Much of this is dual use and therefore identifying BW programmes from legitimate civil programmes can be difficult. Nonetheless a good investigation team can usually uncover the knowledge necessary to judge that there is a significant risk of BW being developed. This comes through examination of biological agents, but also through suspicious infrastructure and cover stories that simply do not add up.

The central issue of contention in the Ad Hoc Group process arose around US opposition to the investigations mechanisms envisioned by the draft protocol (see Appendix 3). When rejecting the flawed 'approach' to the Protocol in July 2001, US Ambassador Donald Mahley stressed that the regime would "not improve our ability to verify BTWC compliance" whilst putting "national security and confidential business information at risk".[56] In other words investigations would not be stringent enough to discover BW programmes but would provide hostile investigators with the

[56] Statement by the United States to the Ad Hoc Group of Biological and Toxin Weapons Convention States Parties, Ambassador Donald Mahley, 25 July 2001. See http://www.state.gov/t/ac/rls/rm/2001/5497.htm

opportunity for espionage and commercial theft. John Bolton at the Fifth Review Conference of the BTWC repeated such a line of argument, and the thinking behind it was fully expounded in a lecture Bolton gave in January 2002 to the Monterey Center for Nonproliferation Studies:

> I think the inspections provisions of the draft protocol were a bit like the story of the drunk looking for his keys under the light post. That's kind of the most positive thing you can say. As I indicated in my remarks earlier, I think the potential negative consequences of inspection regimes far outweighed any small amount of positive enforcement power there might have been.
>
> In the first Bush Administration, I helped participate in the writing of what then-Soviet Permanent Rep Vorontsov called "the mother of all resolutions," 687, creating, among other things, the UN Special Commission on the Destruction of Iraq's Weapons of Mass Destruction. Even after the first Bush Administration left office involuntarily, I followed the work of UNSCOM very carefully because of my interest in it. And what has struck me is that the most effective, strongest mechanism for international inspection in the chemical and biological field, supported by the highest levels of science and technology, the most explicit political commitment by the five permanent members of the Security Council, the most extensive intelligence support, and the most prostrate country its ever been applied to, nevertheless did not succeed in finding critical elements of Iraq's chemical and biological weapons program. And my conclusion is that the kinds of inspection mechanisms that were contained in the draft protocol which were pale shadows of UNSCOM were simply pursuing an illusion. And I think we have now conclusively established that that course is finished, and it's time to move on to something else.[57]

This is an important (if flawed[58]) argument as it suggests that the present administration is unlikely to accept any form of non-challenge or routine on-site investigation regime, due to the strongly held belief that it will be ineffectual in uncovering illicit BW programmes.

Bolton outlined an alternate methodology at the Fifth Review Conference. This stresses investigations *post* disease outbreak or BW use. According to Bolton, only in the atmosphere of concern engendered by such an event would inspections have a decent chance of success:

> The United States seeks to establish a mechanism for international investigations of suspicious disease outbreaks and/or alleged BW incidents. It would require Parties to accept international inspectors upon determination by the UN Secretary General that an inspection should take place. This would make investigations of such events more certain and timely. It would also allow us to acquire internationally what is likely to be the first hard evidence of either accidental or deliberate use of biological warfare agents and help ensure that any such event did not get covered up by the responsible parties.

---

[57] The Biological and Toxin Weapons Convention: Challenges and Opportunities, Speech by John R. Bolton, Under Secretary of State for Arms Control and International Security, 11 January 2002. For full text see http://www.cns.miis.edu/cns/dc/011102.htm

[58] UNSCOM did eventually uncover Iraq's clandestine BW programme, even though it took it four years to do so. Moreover, with inspectors roaming around, it would be certainly be difficult for a 'rogue state' to prepare a BW "first strike", as distinguished from hiding a clandestine research programme. For a more balanced approach to the work of UNSCOM, see 'Iraq: A Chronology of UN Inspections, And an Assessment of Their Accomplishments - An ACA Special Report', *Arms Control Today*, October 2002.

> We are also supportive of setting up a voluntary cooperative mechanism for clarifying and resolving compliance concerns by mutual consent, to include exchanges of information, voluntary visits, or other procedures to clarify and resolve doubts about compliance.[59]

However, under Article VI of the BTWC a similar mechanism establishing a UN Security Council investigation system already exists,[60] although it has never been utilised. The main difference is that under the US proposal, the UN Secretary General should have the power to launch an investigation on his own determination, while the existing mechanism relies on a decision by the UN Security Council, which means that it could be vetoed by one of the five Permanent Members (P5). These differences notwithstanding, considering the widespread concern that certain states have undertaken research and development of BW, we must ask ourselves why Article VI has never been invoked? Why for example did the United States refuse to invoke Article VI against the six states parties it accused of BW research and development at the BTWC Review Conference? Part of the reason may lie in the perception that the UN Security Council, and by extension the office of the Secretary General, are heavily constrained from acting by geopolitical considerations and the requirement of Security Council consensus.

Unfortunately, the US proposal for a Secretary General investigatory regime is likely to suffer from the same failings.[61] In addition, it has the clear flaw of only coming into effect after a potentially highly lethal and destabilising outbreak has already occurred. The proposed system's passivity could well be fatal.

The US administration's belief in the complete inefficacy of 'pre-emptive' investigations is not widely shared by other nations. Instead, the general view is that the investigations envisioned under the Protocol, while not foolproof, would increase trust in and compliance with the BTWC and would prevent wholesale violations such as those committed by the former Soviet Union. As the April 2002 UK Green Paper on strengthening the BTWC puts it:

> In areas of particular importance to the UK (declarations, visits, investigations and a professional inspectorate), the Protocol would have delivered significant benefits for transparency, monitoring and deterrence in key dual-use areas capable of misuse. It would have provided a much more effective mechanism than that available under the Convention's Article VI and the existing United Nations Secretary General system for dealing with cases of alleged use of CBW. It would as such help to deter and investigate suspected non-

---

[59] John R. Bolton, Under Secretary for Arms Control and International Security, Remarks to the Fifth BTWC RevCon Meeting Geneva, Switzerland, 19 November 2001

[60] BTWC article VI:

1) Any state party to this convention which finds that any other state party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the Security Council of the United Nations. Such a complaint should include all possible evidence confirming its validity, as well as a request for its consideration by the Security Council.

2) Each state party to this convention undertakes to cooperate in carrying out any investigation which the Security Council may initiate, in accordance with the provisions of the Charter of the United Nations, on the basis of the complaint received by the Council. The Security Council shall inform the States Parties to the Convention of the results of the investigation.

[61] On the other hand, the UN Secretary General launched successful CW investigations in Iraq in the 1980s, and Mozambique and Azerbaijan in the 1990s. Personal communication with Daniel Feakes, Harvard-Sussex Program, October 2002.

compliance, whether concerning the activity of a particular facility, an alleged use of biological weapons or a suspicious outbreak of disease.[62]

At the same time the UK government "judged that the safeguards in the Protocol's on-site provisions provided effective protection for legitimate activities and for national security and commercial propriety information"[63]. Similar support for 'pre-emptive' visits and investigations has been forthcoming from the EU. In its common position of 17 May 1999 (see Appendix 1), the Council identified follow-up visits, on-site clarification procedures and non-compliance investigations as essential elements to an effective Protocol. In order to achieve this there should follow the 'establishment of a cost-effective and independent organisation, including a small permanent staff, capable of implementing the Protocol effectively.'[64] The EU's commitment to these measures was reconfirmed by the Council's conclusions of 11 July 2001,[65] and by the EU official statement to the Fifth Review Conference of the BTWC.[66]

Ways Forward for Europe

Since the suspension of the review conference efforts have focused on finding compromise between the US position on investigations and that envisioned by the draft protocol. This is an important task, which may well bring results in November 2002. However, taking into account Washington's vehement opposition to 'pre-emptive' on-site inspections, this report will consider two alternative ways forward for the EU: development of a regional legally binding inspections regime; and promotion of global verification regime that does not include the United States.

A Legally Binding EU Inspections Regime

The most radical solution would be for the EU to form its own legally binding inspections regime, independent of the United States. As discussed in the introduction, a European inspection process has a precedent in the SIPRI pilot project of the late 1960s – see Box 2. A modern variant of this project could be developed in three main stages:

- *The formation of bilateral visits and inspections arrangements between various EU member states:* These would be voluntary and provide a chance to develop inspections mechanisms and arrangements trusted by all sides. The UK Green Paper considers "possible voluntary visits to be agreed between participating States Parties to facilities noted under the existing or revised CBMs, or indeed to any facilities that both sides agreed could be subject to visits, reciprocal or otherwise".[67] This concept could be developed to form an effective test bed for best practice and co-operative approaches to the problem.

- *The adoption of the visits and inspections regime envisioned by the AHG Draft Protocol Text*: Once confidence in the testing mechanisms has been developed and a network of

[62] 'Strengthening the Biological and Toxin Weapons Convention: Countering the Threat from Biological Weapons', UK Green Paper, April 2002. Copies of the Green Paper can be viewed at: http://www.fco.gov.uk/Files/kfile/btwc290402.pdf

[63] Ibid.

[64] Article Three of the Common Position of 17 May 1999, Council of the European Union (See Appendix 1).

[65] Bulletin EU 6-2001, Common Foreign and Security Policy (6/23), See http://europa.eu.int/abc/doc/off/bull/en/200106/p106006.htm

[66] Statement by Belgium on behalf of the EU, Fifth Review Conference of the Parties to the BTWC, 19 November 2001. See http://www.brad.ac.uk/acad/sbtwc/btwc/rev_cons/5rc/statements/5RC-OS-EU.pdf

[67] Op.Cit., UK Green Paper, April 2002.

bilateral relations established, the EU could move to incorporate a BW inspections regime into European law. A natural model for the regime could be drawn from that suggested in the draft Chairman's "composite text" during the AHG negotiations (see Appendix 3). While not formally accepted, these arrangements were supported by many of the States Parties and their adoption should be relatively straightforward (assuming, of course, that the EU member states were negotiating the protocol in good faith, and not hiding behind US objections). Such an approach would also provide an initial opportunity to test the AHG inspections model and whether it achieves the right balance between protecting national security/corporate intellectual property and allowing inspectors to uncover illicit BW programs. (Although there are not thought to be any of the latter within the EU, testing the inspection regime would still have some implicit value).

- *Moving beyond the Protocol:* From the base of the AHG structure, the EU regime could develop to incorporate more challenging inspections measures and see if these could be effectively balanced with national security/corporate intellectual property concerns. For example, the notice period that the inspectors have to give could be reduced or eliminated. Likewise, some of the hosting party's rights to control the work of the inspectors could be curbed or abolished. . One of the main difficulties of establishing inspections structures and guidelines during the AHG negotiations was the largely hypothetical nature of the debate. The European regime could act as a laboratory for the development of effective BW inspections techniques, although the high level of mutual trust between the EU member states would somewhat impair its ability to predict the ability of hostile nations to use an inspections regime as a tool for acts of mischief or aggression.

Box 2: The SIPRI BW Inspection Project, 1968-1971[68]

...SIPRI undertook an inspection experiment, exploring the possibilities of verification of a Biological Weapons Convention. Fourteen research laboratories or production establishments in nine European countries-countries belonging to NATO and the Warsaw Pact as well as some non-aligned countries-were inspected by small teams of well-known microbiologists. The aim of the experiment was to ascertain whether it is technically feasible to discover if production of BW agents on a scale of military relevance could be carried out in a non-secret microbiological research or production establishment. The estimate of what quantity would be militarily relevant was 10 kilograms of microbial paste or spores. The basis of this estimate was that it would be a sufficient quantity to make an attack over an area of a few square kilometres with an expectation of reaching a high proportion of the occupants of the area by direct contact. This is an extremely low estimate-really too low-of what is a militarily relevant quantity. The inspection technique employed was to enlist the cooperation of the laboratory, to arrange a visit well in advance and to send ahead a questionnaire saying what information would be wanted. The laboratory was then visited for a few days; during the visit the director and staff were interviewed and the establishment examined.

The idea of a positive experiment (i.e., an attempt by one team to develop a BW capacity in one of the visited laboratories, unknown to the other team consisting of inspectors) had to be given up because of the cost. It would have been necessary to convert the laboratory where production was

[68] Reproduced from *SIPRI: Continuity and Change ,1966-1996* , SIPRI: Solna, 1996, chapter 5, pp.49-63.

to be undertaken, with an expensive outlay on new equipment and safety facilities; one cannot lightly embark on the production of virulent pathogens.

The following question-here somewhat abbreviated-was asked of those who undertook the experiment:

> *Suppose that a laboratory has been subjected to a series of five inspections by the same team . . . how effective (expressed in per cent of complete) do you think that a subsequent visit would be in disclosing an ongoing secret evasion providing a military BW capability (10 kilos or more of highly virulent microbial paste, hundreds of grammes of botulinal toxin or an amount of rickettsiae or virus sufficient for an aerosol attack over many square kilometres)?*

The question was addressed to 77 scientists immediately or peripherally involved. Fifty-five replies were received, of which 51 provided a percentage figure in answer to the question. The mean of these answers was 60 per cent. Those not experienced in the inspection regime gave answers approximately 20 percentage points lower than those who had been directly involved. The average opinion, therefore, of those who gave a figure was that this kind of inspection had about a one-in-two chance of being successful.

A number of suggestions were made by the participants for ways in which the inspection process could be improved. The tentative conclusions which SIPRI drew were these: that a substantial measure of on-site verification would be possible, provided certain conditions were fulfilled-documentation, free access to all facilities and personnel, the possibility of visits at short notice or of 'permanent' inspection by resident inspectors or by exchange scientists cooperating with them.

To some extent this exercise was overtaken by events. The USSR, which had long argued that any convention would have to include chemical as well as biological weapons, changed its mind and agreed to a convention banning biological weapons alone. Furthermore, the Biological Weapons Convention, when eventually agreed in 1972, had no provisions for verification: there was the possibility of a complaint to the Security Council, which could order an investigation. However, the veto would make it impossible for there to be any investigation of a permanent member of the Council. The major powers clearly did not believe that there were on either side stockpiles of biological agents, with delivery systems ready, which could provide some massive military advantage.

Promoting the Verification Protocol at November 2002 Review Conference

Another strategy for the EU would be to push for an agreement at the renewed Fifth Review Conference to continue development of a legally binding protocol. It is unlikely that the United States (or a number of other states) would agree to this. However, as Nicholas Sims, has argued:

> Consensus is not sacrosanct and all BTWC review conferences have possessed the fall back provision for voting in Rule 28 ever since the rules were first devised in 1979.[69]

[69] See UN, Report of the Preparatory Committee for the 5th Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, BTWC/CONF.V/PC/1, Annex II, Draft Rules of Procedure, 1 May 2001, http://www.opbw.org

There is undoubtedly continuing strong support for the legally binding protocol amongst the large majority of States Parties. European and Latin American states can be seen as the core of a possible two-thirds majority to rescue the Protocol in November, especially after the Madrid summit of 17 May 2002. This EU meeting with the states of Latin America and the Caribbean issued a 33 page political declaration, the Madrid Commitment, which states:

> We will continue to work together for the complete eradication of chemical and biological weapons.[70]

And in the case of the BTWC:

> We underline that it is our conviction that the latter Convention is best enhanced by the adoption of a legally binding instrument to oversee the prohibition of the development, production and stockpiling of biological and toxin weapons and their destruction. We continue to support the objective of attaining a regime that would enhance trust in compliance with the Biological and Toxin Weapons Convention in accordance with the mandate of the Ad Hoc Group set up under the said Convention. [71]

As Nicholas Sims has further argued:

> the language is sufficiently specific to commit both Europe and Latin America to something closely resembling the Protocol. If they are genuine in this commitment – and there is no reason to doubt it – we have here the nucleus for a two-thirds majority in November and for the original signatories to the Protocol and hence members of the OPBW PrepCom. Significant levels of additional support from outside those two regions could be expected, based on their statements in 2001, from such States Parties as Australia, Canada, Japan, New Zealand and South Africa. [72]

However, it is doubtful that such theoretical support would be sought or realised at the November RevCon due to an unwillingness on the part of key states, such as the United Kingdom, to risk such a major diplomatic break with the United States in the current security climate. Nonetheless, it is an option worth considering for the future, especially if the November RevCon again ends in stalemate and postponement.

Confidence-Building Measures (CBMs)

CBMs were introduced at the Second Review Conference of the BTWC in 1986. Intended "to prevent or reduce the occurrence of ambiguities, doubts and suspicions, and in order to improve international co-operation in the field of peaceful bacteriological (biological) activities",[73] they included:

- Exchanging data on research laboratories that meet very high national or international safety standards;

---

[70] Conclusions of the Madrid Summit, May 2002. For full text see: http://europa.eu.int/comm/world/lac/conc_en/val_pos.htm

[71] Ibid.

[72] 'Route-Maps to OPBW: Using the resumed BTWC Fifth Review Conference', Nicholas Sims, June 2002. For full text see: http://www.brad.ac.uk/acad/sbtwc/other/simscBTWCb0702.pdf

[73] Second Review Conference Final Declaration, 8-26 September 1986.

- Sharing information on all outbreaks of infectious diseases or similar occurrences caused by toxins which deviate from the normal;
- Encouraging publication of results of biological defence research in scientific journals generally available to the public; and
- Promoting scientific contact, including joint research projects directly related to the Convention.[74]

These measures were strengthened and enhanced at the Third Review Conference in 1991, which also added two new CBMs:

- Declaration of past activities in offensive and/or defensive biological research and development programs; and
- Declaration of vaccine production facilities.[75]

In addition, Germany/EU and South Africa proposed new and modified CBMs at the Fifth BTWC Review Conference. While these proposals were not included in the Review Conference's draft Final Declaration, Canada considered them to be worthwhile, and included the new and modified CBMs in its 2002 return, and has been encouraging other states to do likewise.[76]

The CBMs that have so far been agreed by States Parties are politically binding measures, meaning that although the States Parties to the BTWC formally agreed to abide by them, they are not legally compelled to send in returns. Lacking this legal requirement, the implementation of the CBMs by the States Parties has been, in the words of the UK Green Paper, "disappointing, both in quantitative and qualitative terms. Many have been incomplete or inaccurate".[77] Likewise, uncontested text from the draft final declaration of the Fifth Review Conference noted that "participation with confidence building measures since last review conference has not been satisfactory nor universal and that not all responses have been prompt or complete".[78]

There seem to be three main reasons for this failure. First, there are few consequences for States Parties not participating in CBMs. There may be mild diplomatic criticism but there are no material punishments that can be brought into play, and as the CBMs are treated by most States

---

[74] The Biological and Toxin Weapons Convention, US Arms Control and Disarmament Agency (ACDA) Fact Sheet, 12 November 1996

[75] Ibid

[76] The new/modified CBMs, which were proposed in BWC/CONF.V/COW/WP.1 and BWC/CONF.V/COW/WP.23, include an expansion of data on research facilities to include those "designed or used to handle and work with biological agents causing disease and known or suspected to meet the classification criteria of Group 4 animal pathogens, as determined by each State Party for itself and specified in the Amendment to the International Animal Health Code adopted by the International Committee of the Organization Internationale des Epizootics during its 66th General Session (1998)"; an expansion of the exchange of information on any outbreak of infectious disease or any other disease caused by pathogens or toxins to include not only humans but also animals and plants; "the declaration relevant to the export and import of micro-organisms and toxins incorporates information on relevant legislation, regulations and procedures, including those on transfers of dual-use equipment, health and safety issues and penal legislation, as well as the changes therein"; and the extension of the declaration of production facilities (previously restricted to facilities producing vaccines for the protection of humans) to cover "animal vaccines, plant inoculants, microbially-based pesticides and biocontrol agents".

[77] Op.Cit., UK Green Paper, April 2002.

[78] Draft Final Declaration of the Fifth BTWC Review Conference, 7 December 2001 at http://www.acronym.org.uk/dd/dd62/62bwapp.htm

Parties as government-to-government communications that remain largely confidential, there is rarely any censure from the public and civil society.[79]

Second, the complexity of the CBM declaration forms and the depth of information that needs to be collected may have discouraged many countries from completing their returns. Indeed, Brazil has argued that the poor response to CBM suggestions is evidence of the difficulty of keeping track of the relevant industries.[80]

Third, states may feel that without legally binding declarations, follow-up measures for the information contained therein, and the ability to investigate allegations of non-compliance on site, compiling the necessary information for the CBMs is not worth the effort involved.[81]

While it is relatively simple to keep track of whether or not countries have submitted data, describing the contents of the data, and how they have changed over time, is more difficult. BTWC members have not devoted sufficient resources to manage the administrative work under the treaty. Consequently, the CBM documents are not officially translated and made available through the UN documents centre.

Comprehensive analyses of the data, which would presumably play the biggest role in building confidence, are difficult, time-consuming, and expensive. Some governments may be doing appropriate analyses and using them internally. Nonetheless, to enable these CBMs to fulfil their purpose, it would seem imperative that BTWC members commit the resources necessary to conduct such analyses and appropriate follow up.

The data derived from the CBM information exchange have to be used with caution. First, the quality of the data provided is extremely varied. Second, sometimes the information provided must be regarded with scepticism. Iraq, for example, stated in 1993 that it had no past offensive biological programme—a statement that has been shown by UNSCOM to be false. Third, not all States Parties to the BTWC have taken part in the information exchange. Finally, the fact that some countries provide data only rarely makes it very difficult to assess whether their returns are still accurate in later years.[82]

Ways forward for Europe

In a comprehensive working paper to the Fifth BTWC Review Conference,[83] the EU proposed a number of concrete measures for strengthening the CBM information exchange system. Likewise, the recent UK Green Paper suggested CBMs as a key area for improvement. The authors of this report recommend four main areas that should be advanced as a priority:

---

[79] It should be noted, however, that the status of the CBMs is not defined. The UK government, for example, has stated in an answer to a parliamentary question that they are "government-to-government" communications. On the other hand, the Australian return for 2002 has been posted on the internet. Because there is no accepted definition, existing practice tends to reflect different national 'freedom of information' standards.

[80] Marie Isabelle Chevrier and Iris Hunger, 'Confidence-Building Measures for the BTWC: Performance and Potential', *The Nonproliferation Review*, Fall-Winter 2000.

[81] Ibid.

[82] Ibid.

[83] Working paper submitted by the European Union, Fifth Review Conference of BTWC, BTWC/CONF.V/COW/WP.23, 27 November 2001.

- Establishment of a transparent and multilingual CBM database. The EU working paper "calls upon the United-Nations Secretary-General to set up a database, easy to consult, of States Parties' annual declarations";[84]
- Provision of advice and aid to those nations incapable, for technical or logistical reasons, of completing their CBM returns;
- Extension of the range of the CBM process to include possible reciprocal visits to facilities. Such an approach is mentioned in the UK Green Paper which considers "possible voluntary visits to be agreed between participating States Parties to facilities noted under the existing or revised CBMs, or indeed to any facilities that both sides agreed could be subject to visits, reciprocal or otherwise"; and[85]
- Making part or all of the CBM information exchange a legally binding element of the BWTC regime. Although this would require an amendment or protocol signed and ratified by a substantial number of the states parties, in the meantime, the EU could make such CBMs a legal requirement within the Union.

The EU should continue to advance these strands in international negotiations. However, it could also show leadership on the issue by implementing these measures at the regional level. The member states of the Union have been relatively good adherents to the CBM process. All but two—Greece and Portugal—have completed at least one CBM since 1987.[86] Likewise, of the 13 EU Candidate Countries only three—Cyprus, Iceland and Latvia—have not completed at least one CBM since 1987.[87] However, the EU could go much further, not least in voluntarily subscribing to the new and modified CBMs it proposed at the Fifth Review Conference. Including those and the above measures in future EU political and legal agreements could further help to advance them as international norms and provide a beneficial example to those outside the region.

In particular, the development of a publicly available register of BW declarations by EU Member States and EU Associate Countries would be a good starting point in terms of increased transparency, while the EU could assist other external countries in making returns by providing technical and other support, where necessary.

Transparency

Transparency is a crucial issue, but one that is often overlooked in relation to biological weapons. Parliaments of EU and Associate Countries have a variety of mechanisms to oversee or control weapons-related policies and practices of their governments. In some countries these are highly developed and effective. However, in most European states this is not the case, and especially in relation to biological weapons. In most cases, national parliaments are provided with little detailed information on defensive BW measures, for example. Reporting systems on BW research activities, by both states and the private sector need to be further developed and adopted as common practice across an enlarged EU.

---

[84] Ibid.

[85] Op.Cit., UK Green Paper, April 2002.

[86] The most recent BW CBM returns submitted by EU Member states: 2001 - Austria, Belgium, Finland, France, Germany, Italy, Netherlands, Spain and Sweden; 2000 – UK; 1998 – Luxembourg; and 1997 - Ireland and Denmark.

[87] The most recent BW CBM returns submitted by EU Associate Countries: 2001 - Bulgaria, Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Norway, Poland, Romania and Slovakia; and 2000 - Slovenia.

Transparency in BW-related activities is essential if governments are to be held accountable to their commitments contained in the BTWC and other control mechanisms. Increased transparency would allow, for example, parliament and the non-governmental community to play an important role in aiding governments' efforts to curb diversion of pathogens by providing oversight through research, questioning and reporting. Of course, there are arguments that transparency cannot be total, and in terms of both the scope and specificity, the optimal level of disclosure in relation to BW will require careful analysis. However, there needs to be an informed public debate on this question in EU and partner countries.

Strand 2: Combating and Preventing BW Proliferation

There are three main mechanisms for combating and preventing BW proliferation:

- export controls;
- 'cooperative threat reduction' programmes; and
- controlling access to pathogens.

Strengthening Export Controls

Export controls represent a useful, but controversial, tool in the nonproliferation toolbox. Indeed, Article III of the BTWC explicitly requires States Parties:

> not to transfer to any recipient whatsoever, directly or indirectly, and not in any way to assist, encourage, or induce any State, group of States or international organisations to manufacture or otherwise acquire any of the agents, toxins, weapons, equipment or means of delivery specified in article I of this Convention

Hence, stringent national export controls are essential to fulfil Article III obligations, and for preventing 'states of concern' and terrorists from acquiring the equipment, knowledge and materials they need to develop WMD. For this reason export controls are widely supported by the western nations, including those within the EU.

The EU working paper to the Fifth Review Conference of the BTWC called upon: "all States Parties that have not yet done so to adopt legislative and regulatory measures to ensure export-controls over dual-use items".[88] Likewise John Bolton stressed that: "we feel that the export control regime that the United States and its Australia Group [see below] partners have is a critical element in preventing the proliferation of biological weapons".[89]

At the same time there are two clear problems with seeking to control the transfer of sensitive technologies through export controls. First, there is the political dilemma of the discriminatory and exclusionist nature of supply-side controls. By regulating or prohibiting exports to non-members (mainly developing nations), such export control groups are perceived from the outside at best as hypocritical and at worst as carrying out a form of 'technological apartheid'. The Australia Group, for example, has been criticised on these grounds by China, India, Iran and

---

[88] Working paper submitted by the European Union, Fifth Review Conference of BTWC, BTWC/CONF.V/COW/WP.23, 27 November 2001.

[89] The Biological and Toxin Weapons Convention: Challenges and Opportunities, Speech by John R. Bolton, Under Secretary of State for Arms Control and International Security, 11 January 2002. For full text see http://www.cns.miis.edu/cns/dc/011102.htm

Pakistan.[90] Second, the sheer pace and diffusion of science and technology around the globe means that export controls can often only have a limited practical impact—at best, slowing down proliferation trends. This is particularly the case in the biological sciences.

The EU Member States and some EU institutions are involved in two main export control structures dealing with dual-use technologies (those which can be used for either weapons or civilian purposes): the Australia Group and the EU Dual-Use Regulation.

The Australia Group

All EU member states participate in the Australia Group (AG),[91] an informal, consultative gathering of nations established in 1985 that develops voluntary export controls to restrict three types of transfers:

a) chemical weapon precursors and toxic chemicals;
b) biological warfare agents and organisms; and
c) equipment and technology (including intangible technology) used in the production of a) and b).

Participants in the AG administer a common list of items subject to national export controls,[92] coordinate approaches to export licensing procedures, consult and exchange information on matters relating to export requests which could potentially aid in the proliferation of chemical and biological weapons, and brief non-group participants on the activities and purposes of the Group. Participants previously met in Paris each year with Australia in the chair, but future meetings (in 2003 at least) will take place in London.

In the biological sphere, the AG looks to control dual-use biological equipment, including plant pathogens, animal pathogens and certain biological agents. At a June 2002 meeting of the AG, controls were added on biotechnology that could be used to make biological weapons production equipment. As one official explained this addition controls "the equipment that can make the equipment".[93] The June 2002 meeting also agreed that all participants would implement a "catch-all" clause.

The EU Commission is also itself a fully-fledged participant in the Group and staff from the EU Council's General Secretariat sit with the EU Presidency delegation at AG meetings.[94] The Council, in its list of 'concrete measures' against nonproliferation, has argued for work on "improving the existing export control mechanisms"[95], including the AG.

---

[90] Eighth report of the House of Commons Select Committee on Foreign Affairs, 25 July 2000, for full text see:
http://www.parliament.the-stationery-office.co.uk/pa/cm199900/cmselect/cmfaff/407/40709.htm

[91] Of the EU candidate countries, Bulgaria, Cyprus, Czech Republic, Hungary, Poland, Romania, Slovakia and Turkey are also members of the AG. Estonia, Latvia, Lithuania, Slovenia and Malta remain outside of the Group.

[92] For the AG Common Controls List see http://www.australiagroup.net/agcomcon.htm

[93] 'Australia Group Concludes New Chem-Bio Control Measures', Seth Brugger, *Arms Control Today*, July/August 2002. See http://www.armscontrol.org/act/2002_07-08/chembiojul_aug02.asp

[94] Daniel Feakes, 'The Emerging European Disarmament and Non-Proliferation Agenda on Chemical and Biological Weapons', *Disarmament Diplomacy*, July/August 2002.

[95] Council of the European Union, Conclusions of the 2421st Council meeting - General Affairs, 7705/02 (Presse 91), Luxembourg, April 15, 2002, pp. II-VI.

The EU Dual-Use Regulation

A new EU Regulation and Joint Action on dual-use goods and technologies came into force on 1 July 1995.[96] The legal basis for the agreement was articulated within two linked texts: Council Regulation (EC 3381/94) gave the general framework; and a Joint Action (Council Decision 94/942/CFSP) contained a number of Annexes which specified the common list of dual-use goods covered by the regulation as well as a list of criteria by which authorisations would be granted or refused. This division of competence represented a compromise between the role of the Commission under Article 113 of the Treaty of Rome (Pillar I) and that of member states under Article 223 (Pillar II).

The Regulation sustains the idea of the Single European Market. As a rule, most dual-use goods on an agreed common list (Annex 1) are now allowed to circulate freely across EU territory, without the necessity of normal export procedures (licensing and customs controls etc).[97] As a quid pro quo for the free movement of dual-use goods, member states agreed a common set of rules for extra-EU exports. A community-wide licensing system was introduced as well as a so-called 'catch-all' clause for non-listed dual-use goods in relation to nuclear, biological and chemical weapons.[98] This clause requires exporters throughout the EU to:

- apply for a licence, if told by the authorities that a particular export of non-listed dual-use goods is being or may be used in connection with a WMD programme;
- inform the authorities (who will decide whether an export licence is required), if they are 'aware' that a particular export of non-listed dual-use goods is being or may be used in connection with a WMD programme; and
- apply for a licence, if they have 'grounds for suspecting' that the goods in question may be so used.

The new system also gives individual member states some continuing say in what dual-use goods leave their territory by the inclusion of consultation and safeguard measures. A Co-ordinating Group was introduced, for example, to oversee the application of the Regulation, composed of representatives of each member state and chaired by a representative of the Commission. End-use certification for exports of restricted goods was made a discretionary requirement, and although 'effective, proportionate and dissuasive' penalties must be introduced, the Regulation allows each member state to decide on the scope and nature of the penalties.

The Joint Action specified the items to be controlled. An extensive list of dual-use goods is contained in Annex 1 to the Joint Action – as summarised in Table 1. A licence is required for exports from the Community for all goods listed in Annex 1, and once issued, the licence is generally valid throughout the Community. The Annex 1 list integrates all of the items from internationally agreed controls of dual-use items, including the Australia Group (and MTCR, Nuclear Suppliers Group and the Wassenaar Arrangement).

---

[96] For a discussion of the protracted and difficult negotiations which led to the introduction of the EU Regulation and Joint Action on dual-use goods and technologies, see Ian Davis, *The Regulation of Arms and Dual-Use Exports: Germany, Sweden and the UK*, SIPRI/OUP 2002, pp45-82.

[97] Certain dual-use items are still controlled within the EU, as set out in preamble paragraph 7, Articles 11 and 21, and Annex IV of the Regulation. This has particular reference for BW as the AG adopted new controls in June 2002 on the regulation of BW agents between AG partners.

[98] There is a wide range of non-listed industrial goods and materials which are extensively traded for legitimate purposes but which may also be used, wholly or in part, in connection with a WMD programme. Including all these items in the control lists would have created a major burden on both industry and licensing authorities. However, this clause was a major source of disagreement during the negotiations, since only a few member states actually had such a clause in their existing national regulations.

Table 1: The EU Dual-Use Control List

Category[1]		*Item Numbers*[2]
0	Nuclear Materials, Facilities and Equipment	0A001 - 0E001
1	Advanced Materials, Chemicals, Micro-organisms and Toxins	1A001 - 1E203
2	Material Processing	2A001 - 2E201
3	Electronics	3A001 - 3E201
4	Computers	4A001 - 4E002
5	Part 1 - Telecommunications	5A001 - 5E101
	Part 2 - Information Security	5A002 - 5E002
6	Sensors and lasers	6A001 - 6E201
7	Avionics and Navigation	7A001 - 7E104
8	Marine	8A001 - 8E002
9	Propulsion Systems, Space Vehicles and related Equipment	9A001 - 9E991

Notes:

[1] Each category has five sub-categories, or 'product types':

- A Equipment, Assemblies and Components
- B Test, Inspection and Production Equipment
- C Materials
- D Software
- E Technology

[2] Each item in the list has a unique 5 digit number which consists of three elements: the first digit denotes the category, the second digit denotes the product type (letters A-E) within each category, and the last three digits denote the identification number (001-999) within the product type. Within the identification number, the first number denotes the grounds for export control (Wassenaar, MTCR, NSG etc.) and the last two numbers denote the type of control.

There is no negative or proscribed list of countries specified in the joint action, because of a lack of consensus on the scope of such a list. This means that member states will continue to decide to whom they will or will not export the controlled goods listed in Annex 1.

Intangible technologies initially remained outside the scope of the Regulation, and only blueprints and software were included in the Regulation and treated like goods. However, this changed with the introduction of a revised Regulation in June 2000.[99] The new Regulation entered into force on 28 September 2000 and the most significant change is that the new Regulation has a single legal base namely Article 133 (formerly Article 113) of the EC Treaty. This means that the common list of dual-use items subject to controls (Annex I of the Regulation) is no longer the subject of a CFSP decision (Pillar II) and instead competence is transferred to the Community (Pillar I). The

[99] *Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology*, published in the *Official Journal*, L159, Vol.43, 30 June 2000, pp1-215. The full text of the Regulation is also available at http://www.europa.eu.int/eur-lex/en/oj/2000/l_15920000630en.html

Regulation (and the lists) will also now be subject to qualified majority voting.

The other key changes include: extension of the catch-all clause to all military end use exports where the destination country is subject to an EU, OSCE or UN arms embargo; extension of the Regulation to cover intangible technologies; and improvements in administrative co-operation and improved information exchange mechanisms between member states and the Commission on licence denials, revocations and suspensions.

Overall, therefore, this Regulation has led to significant further harmonisation and strengthening of control procedures for dual-use items, including those in relation to biological warfare agents and organisms. However, for the foreseeable future there will continue to be elements of national discretion in the implementation of this new Community system of export controls, and a number of areas could be strengthened, as discussed below.

Indeed, the 'Concrete Measures' adopted by the General Affairs Council in April 2002 look at further strengthening of this Regulation and call for a consideration of "whether there are further regulatory measures that could be adopted to render the control system more effective regarding non-proliferation".[100] The dual-use regime is also part of the 'aquis' that the EU candidate countries are expected to build up by the time of their accession to the EU, an event which could happen in 2004 for a number of countries, although the Commission judges that "further alignment" is necessary for some candidates.[101] The Concrete Measures also expresses EU support for the membership of the candidate countries "in all export control regimes".[102]

Ways Forward for Europe

The Australia Group

Although AG applicants must be approved by consensus of AG Participants (and are evaluated on a case-by-case basis), the EU could assist the remaining associated countries not currently participating in the Australia Group (Estonia, Latvia, Lithuania, Slovenia and Malta) to become suitable candidates for participation. The benefits would be twofold: increased AG coverage of Eastern Europe and avoidance of disparities within the EU. If necessary, technical assistance could be provided to enhance export control systems within these countries to ensure that their participation in the AG would lead to a strengthened control regime.

The EU Dual-Use Regulation

The fact that dual-use agents and organisms (with biological warfare potential) are now in free circulation throughout the EU presents potential difficulties for verifying and safeguarding end-use. This situation is exacerbated by the variations in end-use and end-user provisions within the Union and even within individual member states.

The effectiveness of the Regulation also seems to be dependent on the implementation of appropriate co-operative enforcement practices by the licensing and customs authorities. While the EU does have substantial experience in harmonised customs policies, through such arrangements as Joint Customs Surveillance Operations (JSO),[103] the Single Administrative

---

[100] Council of the European Union, Conclusions of the 2421st Council meeting - General Affairs, 7705/02 (Presse 91), Luxembourg, April 15, 2002, pp. II-VI.

[101] Ibid.

[102] Ibid.

[103] Under this 1981 Council Regulation, any relevant authority can request information on customs or agricultural matters from another authority in another member state. One authority can also request another

Document (SAD) and the Integrated Community Tariff (TARIC), in the short-term at least, qualitative differences continue to exist in these areas between member states. A major problem in the EU in general is the high level of customs fraud (from smuggling etc) and some member states' customs regimes remain fairly primitive. The absence of a Community database of information on licences and sensitive end-users is a particular cause for concern. Although some intelligence dissemination does occur within the Australia Group and other nonproliferation regimes, and between individual member states on an ad hoc basis, a more co-ordinated and systematic approach by member states will probably be necessary in the future to ensure an effective external fence for biological agents and organisms.

It also remains to be established what other agreements, such as the Schengen Arrangement, and existing co-operative structures between police forces, intelligence services and justice ministries could offer in terms of co-operation between customs and licensing authorities in relation to BW control measures. These structures are mainly designed to prevent intra-community movement of terrorists, drug traffickers and criminals, but there may be scope to adapt them to the control of dual-use biological exports. After all, it was from Europe that Pakistan and Iraq obtained key items in their nuclear programmes during the 1970s and 1980s, and it will important for Europe to avoid a similar pattern in relation to BW.

In addition, although the Regulation places an increased responsibility on industry through the catch-all clause, the optional nature of the clause has resulted in considerable differences in its implementation and operation. Potential penalties for violation of the catch-all also vary widely between member states: in Germany, contravention of the catch-all can result in a prison sentence of up to 15 years, while in Denmark, Finland, Ireland and Greece a similar violation might only result in a two year sentence. Moreover, these national differences in the regulatory framework adopted for the catch-all are likely to be exacerbated by the differences in the practical application of the clause: some countries appear to be completely ignoring it, while others (such as the United Kingdom and Germany) implement it vigorously.

One of the main problems with the catch-all has been the different degree to which governments inform their exporters about sensitive end-users. In addition, the lack of information exchange between member states on sensitive end-users not only distorts competition but also defeats the purpose of the catch-all. To rectify this, the Commission recommended improved information-sharing between member states on sensitive end-users with a view to greater convergence of national guidance to exporters.[104]

Similarly, the failure to agree a common approach to sensitive destinations means that member states will continue to implement differing export policies to countries of concern. Such disparities and other differences (such as in end-use provisions and penalties) offer the potential for diversion of biological agents and organisms to the member states with the weakest controls.[105]

---

to keep watch on persons or places when they have reason to suspect illegal activities in these areas. 'Council Regulation (EEC) No 1468/81 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters', *Official Journal*, 2 June 1981, No.L144/1, as amended by Regulation (EEC) No 945/87, *Official Journal*, 2 April 1987, No L90/3.

[104] European Commission, *Report to the European Parliament and the Council on the Application of Regulation (EC) 3381/94 setting up a community system of export controls regarding dual-use*, Brussels, COM(98) 258 final, April 1998, pp.11-12.

[105] While there is *currently* little or no evidence (at least in the public domain) to suggest that the external fence is being breached by diversions to its weakest points, the covert nature of such transfers make it

Although the EU Dual-Use Regulation and the Australia Group appear to have different goals and agendas, it should be possible to improve the relationship between them. In, particular, better co-ordination and information exchange between the various working groups, and a greater willingness to co-ordinate an EU position within the Australia Group may be necessary, although further discussion and research should be undertaken to clarify the scope of the relationship between the two regimes in the first instance.

There can be no doubt, however, that the Regulation has had a knock-on effect beyond the EU. The United States, for example, has adopted the Annex 1 list as the basis for their own national product list, while a number of other states, including Canada,[106] Switzerland, Japan and Russia,[107] have introduced a similar catch-all clause – as did the Australia Group as a whole in June 2002.

Co-Operative Threat Reduction

If proliferation of BW is to be controlled it is crucially important to enhance the security of national pathogen and bio agent stockpiles around the world. Of particular concern are the 50 ageing Soviet/Russian Biological Research and Production Centres (BRPCs). As discussed in section 2, many of these are now dilapidated and poorly guarded. The status of some facilities that were involved in offensive activities is also unclear.

In the mid 1990s, the United States began engaging BRPCs throughout the former Soviet Union by developing cooperative projects aimed at preventing proliferation of BW capabilities. Although progress has been slow, there have been some significant achievements with the largest of the former Soviet bioweapons centres erecting fences and installing cameras.[108]

Congress and the Bush administration have demonstrated continued and growing support for US efforts to prevent proliferation of biological weapons from former Soviet states. Upon completing a detailed review of US non-proliferation and threat reduction assistance to Russia and the other former Soviet states, the Bush administration identified the 'Redirection of Biotechnological Scientists Program' as one of four programmes to be expanded.[109] In the National Defense Authorization Act for fiscal year 2002, Congress approved the President's $17 million request for DOD efforts in biological weapons proliferation prevention in Russia.[110] In the emergency supplemental appropriations bill passed after the September 11 attacks, Congress added another $30 million for:

> the purpose of supporting expansion of the Biological Weapons Redirect and International Science and Technology Centres programs, to prevent former Soviet biological weapons experts from emigrating to proliferation states and to reconfigure former Soviet biological weapons production facilities for peaceful uses.[111]

---

difficult to verify the situation with any certainty. Moreover, information about diversions often only comes to light several years after the goods have been exported.

[106] The Canadian catch-all regulations were introduced in April 2002. See http://www.dfait-maeci.gc.ca/~eicb/notices/ser135-e.htm

[107] The Russian catch-all regulations were introduced in January 1998. See *SIPRI Yearbook 1998*, p.398.

[108] Joby Warwick, 'Security Fears raised at Biological Factory', *New York Times*, 23 June 2002.

[109] White House Fact Sheet, December 27, 2001

[110] National Defense Authorization Act for Fiscal Year 2002, 28 December 2001, P.L. 107-107

[111] Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Appropriations Act, FY 2002, P.L. 107-117

Furthermore, in its 2000 report on the BW non-proliferation programmes, published before the anthrax attacks of October 2001, the US General Accounting Office estimated that the United States would spend around $220 million on BW non-proliferation between 2000 and 2004.[112]

In contrast, specifically European action in this crucial area has so far been minimal. Indeed, while an *EU Co-Operation Programme for Non-Proliferation and Disarmament in the Russian Federation*[113] was launched in December 1999, it focused solely on projects in the nuclear and chemical disarmament field. European involvement on BW has been limited to commitments by individual member states. Important progress has recently been made when the G8 (which includes four EU nations: the United Kingdom, France, Italy, Germany) pledged to spend up to $20 billion over the next ten years to help Russia initially, and then other nations, dismantle their stockpiles of WMD. This will include increased WMD site security and efforts to:

> minimize holdings of dangerous biological pathogens and toxins, based on the recognition that the threat of terrorist acquisition is reduced as the overall quantity of such items is reduced.[114]

Ways Forward for Europe

CTR fits closely with the European belief in multilateral solutions that address root causes of problems. With this in mind the EU should work to increase its support for CTR projects, particularly in the heretofore-neglected BW sphere. A positive intent can be witnessed in the 'concrete measures', which called for the EU to:

> Support and enhance, within the EU financial possibilities and building on already existing initiatives in the Russian Federation and other CIS, co-operation programmes for disarmament and non-proliferation with a view to:
>
> - Assist in the destruction of weapons of mass destruction and their means of delivery;
> - Assist in the disposition of the related released materials, including radioactive materials;
> - Reduce proliferation risks, i.e. through ISTC/SCTU coordinated programmes;
> - Improve the required legislative development and implementation (i.e. export control).[115]

This commitment needs to be implemented. Describing the *EU Co-Operation Programme for Non-Proliferation and Disarmament in the Russian Federation*, the European Commission notes that "additional projects may be defined in the course of 2002, in the same area as before or even diversifying into the non-proliferation field"[116]. Acting in close co-operation with the United

---

[112] US General Accounting Office. *Effort to Reduce Former Soviet Threat Offers Benefits, Poses New Threat*, GAO/NSIAD-oo-138. April 2000.

[113] EU Council Joint Action establishing a European Union Cooperation Programme for Non-Proliferation and Disarmament in the Soviet Union, 17 December 1999. See: http://europa.eu.int/comm/external_relations/cfsp/npd/cja99.pdf

[114] G8 statement, 'The G8 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction', 27 June 2002, available on line at: http://www.g8.gc.ca/kan_docs/globpart-e.asp

[115] Council of the European Union, Conclusions of the 2421st Council meeting - General Affairs, 7705/02 (Presse 91), Luxembourg, April 15, 2002, pp. II-VI.

[116] EU Council Joint Action establishing a European Union Cooperation Programme for Non-Proliferation and Disarmament in the Soviet Union, 17 December 1999. See: http://europa.eu.int/comm/external_relations/cfsp/npd/cja99.pdf

States and G8 programmes so as to avoid unnecessary overlap, the EU could use this as an opportunity to significantly expand its *Co-operation Programme*:

- Ensuring that it covers the vast and poorly guarded remnants of the Soviet BW programme;
- Securing a significantly increased provision of resources – financial, logistical and human; and
- Extending its scope to include other (non-Russian) former Soviet states.

Protection of Pathogens

Control measures on pathogens held by academic, research and public health institutions around the world are unacceptably varied. Some countries have already implemented domestic legislation to prevent potentially devastating pathogens reaching hostile hands.[117] However, there are thousands of laboratories throughout the world whose work with pathogens is still insufficiently regulated. Meanwhile more than 1,500 microbial culture collections sell or furnish micro organisms for research purposes,[118] often with insufficient investigation into their final destination.

One clear way of combating this would be to advance a new international 'Biosecurity Convention' as suggested by Michael Barletta, Amy Sands and Jonathan B. Tucker.[119] This would establish global rules governing those who have access to dangerous pathogens and the physical protection necessary in those institutions authorised to work with them. This concept was supported in the recent UK Green Paper which suggested the further exploration of:

> the feasibility and desirability of a new international agreement that would set standards for physical protection, containment measures and operating procedures for dangerous pathogens held or worked upon in academic, government, industrial or research laboratories.[120]

Ways Forward for Europe

First, the EU could promote the 'Biosecurity Convention' concept in international negotiations, including the upcoming resumed session of the Fifth BTWC Review Conference. Second, if international movement on this issue is slow, the EU could take the lead and implement a 'Biosecurity Convention' within the Union. This would demonstrate the benefits of the measure and provide a clear example of how a multilateral, international approach can work.

---

[117] See, for example, the UK The Anti-Terrorism, Crime and Security Act 2001; US legislation under which the Centers for Disease Control and Prevention began in 1997 to regulate interstate transfers of 36 particularly hazardous human pathogens and toxins, permitting such exchanges only between registered facilities that have legitimate reasons for working with these agents and that possess the necessary biosafety systems; and Canada's new BTWC Implementation Act (Bill C-55, Part 20), which is currently before the Canadian Parliament. The text of the Act is available at http://www.parl.gc.ca/37/1/parlbus/chambus/house/bills/government/C-55/C-55_

[118] William J. Broad, 'World's Largest Germ-Bank Union Acts to Keep Terrorists From Stealing Deadly Stocks', *The New York Times*, 23 October 2001

[119] http://www.thebulletin.org/issues/2002/mj02/mj02barletta.html

[120] 'Strengthening the Biological and Toxin Weapons Convention: Countering the Threat from Biological Weapons', UK Green Paper, April 2002. For full text see: http://www.brad.ac.uk/acad/sbtwc/other/fcobw.pdf

Strand 3: Deterring BW Use

Another element of any integrated system must be a framework of deterrence to ensure that even if proliferation occurs, the adversary will not use the capabilities amassed and that proliferation will be reversed. Various members of the EU maintain their own national deterrence posture against BW use. The UK stance, for example, is expressed in its Green Paper on BW:

> The UK believes that it is also essential to deter CBW use by assuring a potential aggressor of three related outcomes: CBW use will not be allowed to secure political or military advantage; it will, on the contrary, invite a proportionately serious response; and those at every level responsible for any breach of international law relating to the use of such weapons will be held personally accountable.[121]

How this 'deterrence by punishment' would actually be carried out is a complex and problematic issue, especially if one views 'a proportionately serious response' as involving the use of nuclear weapons. Nonetheless, the clear indication that BW use will not be tolerated and that those responsible will be punished is a useful element to the non-proliferation toolbox.

However, the EU's current deterrence structure suffers from two main weaknesses. First, national statements of deterrence by member states are not reinforced in multilateral and international forums. Rather than a united front on WMD non-proliferation issues, fragmentation and contradiction often seem to be the order of the day:

> ....while the Europeans are in principle united in their opposition to the proliferation of weapons of mass destruction, they seldom seem capable of agreeing to use their political and economic, even strategic weight in order to put pressure on countries that are known to produce or are potentially capable of producing such weapons. In this field Washington maintains sole, uncontested leadership, as the various regional crises involving weapons of mass destruction in recent years have clearly demonstrated.[122]

Crucially, there is currently no EU or UN Resolution underlining the general determination of the member states to counter any BW use or threat of use.

Second, individual responsibility for BW development and use has largely been ignored, with the overarching focus resting instead on breaches by states. Deterrence of 'rogue' scientists, generals and politicians—through emphasising the criminal responsibility of individuals who violate the prohibitions of the BTWC—has been sadly lacking.

Ways Forward for Europe

The EU should push for an international commitment to counter and punish both states and individuals for BW use. This concept has been promoted by Michael Quinlan and Lewis Dunn who suggest:

> What is needed is that the widest possible international constituency (preferably assembled around a security council resolution) should make a commitment to treat any use of weapons prohibited by the 1972 convention as a crime against humanity, beyond excuse; to regard any

[121] Op.Cit., UK Green Paper, April 2002.
[122] Camille Grand, 'The European Union and the Non-Proliferation of Nuclear Weapons', *Challiot Papers* 37, January 2000, p25.

> regime guilty of it, or of sheltering or supporting perpetrators, as having forfeited legitimacy; to pursue any such regime's leaders and any other participants individually as criminals; and to reverse any advantage secured by the crime, and succour its victims...
>
> Action on these lines could not eradicate the threat of biological weapons, but it would strengthen deterrence (and reduce the attractions of acquisition). Saddam Hussein and others would have to reckon with a greater likelihood of severe penalty not only for use but also for tolerance or support - hard to keep dependably concealed - of terrorist use. That is a contribution worth making to filling the vacuum in international strategy against biological weapons.'[123]

If this process cannot be advanced internationally—political bartering and international grudges would perhaps stymie the effort—the EU could display leadership through adopting a common position on the issue. Such a declaration would set out common deterrence principles amongst the member states. However, even within the EU difficulties between the more belligerent member states like Britain and France (with the nuclear option) and those with more pacific tendencies (such as Germany and Sweden) may prevent a political agreement being reached.

Notwithstanding the political difficulties, and the various, complex regional contexts of BW proliferation, setting out common EU deterrence principles would have some value. The main priority would be to stress the EU's economic rather than military weight. A military response by the EU, pre-emptive or retaliatory, is always likely to be a strategy of last resort (not least because it lacks the capability to do so), and even economic sanctions generally need to be 'smart' in order to be effective. The central plank of EU deterrence principles, therefore, might be the use of the EU's status as the leading trading power and provider of economic aid in the world to grant greater aid to 'virtuous' countries and those that return to the path of non-proliferation. By setting out such positive linkages—aid in exchange for a BW-free Iraq (if confirmed by inspections), for example—and implementing them consistently, the EU may develop into a more influential actor in the field of non-proliferation.

Another clear area for progress in Europe is the criminalization of BW offences. At the moment national criminal legislation regarding BW varies widely from country to country around the world, and the EU is no exception. The US administration has called for States Parties to:

> agree to enact national criminal legislation to enhance their bilateral extradition agreements with respect to BW offenses and to make it a criminal offense for any person to engage in activities prohibited by the BTWC.[124]

Since September 11, the efforts in this area among EU member states and the Commission have intensified. However, the efforts are more directed to ensuring that member states have taken sufficient legal measures on a national level, rather than drafting an EU-wide legal instrument. Although strengthening such national criminalization is an important development it may not be enough. For it is doubtful whether all states would enact appropriate penal legislation, leaving safe havens where BW users could seek sanctuary. Furthermore there is a danger that disparities in the detail of such legislation enacted may lead to inconsistencies between national

---

[123] 'The next big threat will be biological', Michael Quinlan and Lewis Dunn, 3 July 2002, The Guardian. See http://www.guardian.co.uk/comment/story/0,3604,748308,00.html

[124] Statement by the United States to the Ad Hoc Group of Biological and Toxin Weapons Convention States Parties, Ambassador Donald Mahley, 25 July 2001. See http://www.state.gov/t/ac/rls/rm/2001/5497.htm

jurisdictions. What is needed is a universal criminalization of individual involvement in BW by making such activities international crimes. Such a concept has gathered growing support. The UK Green Paper identifies, as a measure worthy of consideration:

> a new Convention that introduces criminal responsibility for any individual indicted for violating the prohibitions in the Biological and Toxin Weapons Convention or the Chemical Weapons Convention. States would be obliged to prosecute or extradite indicted individuals. For the UK, consideration of extradition to states outside the EU could be considered. [125]

The EU could seize the initiative in promoting this issue by:

- Establishing a working group, with clear timelines, to develop a draft international criminalization convention. This working group could consider a wide range of documents and models and extract the best elements from each of them, including relevant existing legal agreements, NGO draft conventions, and national legislation. The draft convention produced by the Harvard Sussex Program, for example, takes a comprehensive approach that goes beyond deterring use, to address the full range of BTWC prohibitions – see Box 3.

- Taking a first step towards international criminalization by developing a regional EU Convention outlawing possession, manufacture, etc of BW. The EU Convention could then either be the nucleus of an Ottawa style process with other countries such as Canada, New Zealand, Australia signing up, or it could go straight into the UN Process and be used as the model for the International convention very much as the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials was used as the basis for the UN Firearms Protocol.

Box 3: The Harvard Sussex Draft Convention

Since the Fourth Review Conference interest has developed in the possibility of enhancing the effectiveness of both the BTWC and the Chemical Weapons Convention (CWC) by making acts prohibited to states also crimes under international law. A treaty to create such law has been drafted by the Harvard Sussex Program, in consultation with an international group of legal authorities.[126] It is patterned on existing international treaties that criminalize aircraft high jacking, theft of nuclear materials, torture, hostage taking, and other crimes that pose a universal threat or are especially heinous. Such treaties create no international tribunal; rather their provisions for adjudication, extradition and international legal cooperation are aimed at providing enhanced jurisdiction to national courts, extending to specific offences committed anywhere by persons of any nationality.

The proposed treaty would make it an offence for any person—including government officials and leaders, commercial suppliers, weapons experts and terrorists—to order, direct, or knowingly render substantial assistance in the development, production, acquisition, or use of biological or chemical weapons. Any person, regardless of nationality, who commits any of the prohibited acts

---

[125] Op.Cit., UK Green Paper, April 2002.

[126] See: Matthew Meselson, 'Averting the exploitation of biotechnology', Harvard-Sussex Program, (http://www.fas.org/BTWC/papers/junemesel.htm); and 'Strengthening the Biological and Toxin Weapons Convention', *CBW Conventions Bulletin* no. 42, December 1998 (http://www.fas.harvard.edu).

anywhere in the world, would face the risk of prosecution or extradition should that person be found in a state that supports the proposed convention. Such individuals would be regarded as hostes humani generis (enemies of all humanity).

International criminal law to hold individuals responsible would create a new dimension of constraint against biological and chemical weapons. The norm against using chemical and biological agents for hostile purposes would be strengthened, deterrence of potential offenders, both official and unofficial, would be enhanced, and international cooperation in suppressing the prohibited activities would be facilitated.

The Fifth Review Conference could usefully encourage further examination of these proposals by the Sixth Committee of the UN General Assembly with a view to initiating a process to develop a legal instrument to ensure that breaches of the BTWC by individuals or groups are treated as an international crime.[127]

The Harvard Sussex Draft Convention was presented by The Netherlands to the Public International Law Working Group (COJUR) of the European Union at its meeting of 31st January 2002. The Workshop agreed that delegations would submit the proposal to their governments for consideration, along with the positive comments made by a number of delegations during the meeting.

Strand 4: Strengthening Civil Emergency Planning

The need to improve co-ordination of bio defences, at the local, national, regional and global levels is widely recognised. As the UK Green Paper affirmed:

> Such activities can and should be pursued co-operatively with other like-minded countries wherever possible and appropriate. Pooled resources, sharing experiences and information, joint training and co-ordination will help improve the efficacy of steps taken nationally.[128]

Likewise, the EU 'concrete measures' aim to:

> Improve preparation for international assistance in relation to the CWC and the BTWC to protect states against the use or threat of chemical and biological weapons in consistence with the decisions agreed upon by the European Council of Ghent.[129]

Any biological attack could easily spread beyond national borders and would require rapid multilateral responses. Likewise, pooling the resources of various states represents an invaluable means of sharing the technology and expertise necessary to deal with BW outbreaks. As the most

---

[127] Section taken from, Matthew Meselson and Julian Robinson, 'A draft convention to prohibit Biological and Chemical Weapons under International Criminal Law', Harvard Sussex Program on CBW Armament and Arms Limitation, Workshop on 'Biological Terrorism: An international criminal law approach', Airlie Centre, Warrenton, VA, 14-17 May 2002.

[128] 'Strengthening the Biological and Toxin Weapons Convention: Countering the Threat from Biological Weapons', UK Green Paper, April 2002.
For full text see: http://www.brad.ac.uk/acad/sbtwc/other/fcobw.pdf

[129] Council of the European Union, Conclusions of the 2421st Council meeting - General Affairs, 7705/02 (Presse 91), Luxembourg, April 15, 2002, pp. II-VI.

advanced multilateral governance system in the world it is both apt and necessary that the EU take a lead on this.

The EU Response to Date

> We [the EU] need to come up with a plan for improving health security – and we also have to coordinate international cooperation with our partners the candidate countries, the US, the WHO and the OECD... Clearly each Member State has its own emergency preparedness plan and we need to see how best these fit together and what co-ordination and information sharing is necessary. There is real added value to be gained through more effective and stronger co-ordination.
>
> David Byrne, EU Commissioner for Health and Consumer Protection, 7 November 2001[130]

Since September 11 there have been concerted efforts by the EU to improve its coordinated preparedness for BW attacks. In particular the European Council in Ghent on 19 October 2001 asked the European Commission to:

> Prepare a programme to improve co-operation between the Member States on the evaluation of risks, alerts and intervention, the storage of such means as well as covering the detection and identification of infectious and toxic agents plus the prevention and treatment of chemical and biological attacks.[131]

This programme was launched on 17 December 2001 and has four main objectives:[132]

- *Establishing an EU wide co-ordination mechanism:* This involves setting up an EU-level Health Security Committee as well as a multi-layered access network using secure telephone, fax and internet connections and operating 24 hours a day, 7 days a week.
- *Rapidly detecting and identifying agents and responding to attacks:* Amongst other measures this includes: creating an updateable list of BW agents, their characteristics and associated symptoms; drawing up directories of experts for each class of biological agent, with separate identification for those that can be deployed at short notice to assist in field and clinical investigations; and reviewing and updating the inventory of EU laboratory facilities with precise indication of their classification and surge capacities.
- *Developing an inventory and guidelines for use of medicines and services:* This comprises: evaluating existing stocks and production capacities for medicines dealing with BW; creation of stockpiling strategies and arrangements for creation of EU stand-by stocks for use in emergency; evaluation of capacity of each member state for treatment of BW cases; and identification of spare capacity that could be made available to other member states.
- *Enhancing EU rules and guidelines and international links:* This involves elaborating the rules and guidelines necessary within the EU to help contain any BW outbreak. These would include measures necessary to: restrict the circulation of people, products, produce and animals; provide authoritative advice to health authorities and health professionals;

---

[130] 'Commissioner Byrne to discuss responses to potential threat of bioterrorism at G7+ Meeting in Ottawa', EU Institutions Press Release, Brussels, 7 November 2001.

[131] Ibid.

[132] This information is drawn from Programme of Cooperation on Preparedness and Response to Biological and Chemical Agent Attacks, European Commission, Luxembourg, 17 December 2001. Full text is available at http://europa.eu.int/comm/health/ph/programmes/bio-terrorism/bioterrorism01_en.pdf

and restore vital health functions, water supplies and hygiene systems in case of damage or contamination. This objective also involves establishing appropriate links with other countries and international organisations such as the WHO.

The programme intends these objectives to be carried out over a timeframe of 18 months, beginning in May 2002. A Task Force on Bio-terrorism, comprising Commission officials and national experts, has been set up to carry out the technical work necessary for implementation of the programme.[133]

The Way Forward For Europe

Civil defence and preparing against bioterrorism is a substantial topic and the constraints of this report ensure that it can only be considered briefly. Nonetheless several recommendations can be made to build upon the good progress already made by the EU since September 11

First, the Programme of Cooperation needs to be carried through and fully implemented. It is essential that the good intentions of the EU post-September 11 have a practical impact further down the line.

Second, bio defences should be further harmonised with the EU Associate Countries and, in time, other European states within the OSCE, including the Russian Federation. On the 9 February 2002, the Czech Republic, Hungary, Poland, Slovakia, Austria, Slovenia and Ukraine signed a declaration committing themselves to a unified response in the event of a biological weapons attack within their borders. This agreement will facilitate cooperation in the diagnosis and treatment of outbreaks, the exchange of information, and the harmonisation of national legislation. A joint working group composed of two experts from each country was also to be established.[134] The EU could support this initiative, both politically (by including, for example, a representative of the EU Commission on the working group) and in terms of providing financial and technical support.

Third, further EU cooperation with the United States on this issue should be initiated. This potentially could provide an opportunity for strengthening the EU-US relationship, which as a result of increasing transatlantic discord in a number of areas in the past year or so (including the future of the BTWC and the AHG process) is at an all-time low. Transatlantic cooperation could be particularly useful for pooling necessary expertise and equipment, as well as mass purchasing of anti-BW medicines. Such cooperation should not be limited to the US alone, and indeed may be more profitably pursued with other like-minded countries in the Americas, especially Canada (as discussed in more detail below). The Ottawa Plan agreed by Health Ministers in fall 2001 might be a useful model for such cooperation.[135]

---

[133] For further information see:
http://europa.eu.int/comm/health/ph/programmes/bio-terrorism/bioterrorism02_en.html

[134] News Chronology, CBW Conventions Bulletin, No 56, June 2002

[135] A meeting between Ministers and Secretaries of Health and senior officials from Canada, France, Germany, Italy, Japan, Mexico, the United Kingdom, the United States and the Commissioner of Health and Consumer Protection, European Union on health security and bioterrorism took place in Ottawa in November 2001. The meeting discussed ways of improving coordination of health security of citizens, and to better prepare for and respond to acts of terrorism. Following the meeting, the participants issued a statement calling for concerted global action to strengthen the public health response to the threat of international biological, chemical and radio-nuclear terrorism. A follow-up meeting was held in London in March 2002. See
http://www.hc-sc.gc.ca/english/media/releases/2002/2002_14.htm

Fourth, the establishment of an EU agency in the area of communicable diseases should be considered. This would act as a focal point: to ensure full implementation of the Programme of Cooperation; to identify new areas in need of joint action and legislation; and to coordinate EU wide crisis planning and response. As David Byrne, EU Commissioner for Health and Consumer Protection, noted, the objective of such an agency must be to:

> exploit the existing expertise which already exists in the Member States to ensure that there is a Community-wide umbrella against threats which until very recently were considered to be unreal. An EU-wide mechanism or Agency would be a small but significant step in the right direction.[136]

Fifth, the establishment of an EU scientific advisory group panel should be considered. Briefings from scientists concerning BW issues already take place, both nationally and, when needed, on an EU level. But a standing panel would provide much greater coherence and continuity. Responsibility for such a panel, including its funding, would either lie with the member states or the Commission, and further consideration will be necessary about the best approach to take. If at the level of the Council, for example, would the panel be constituted at a working group level or higher? If, on the other hand, the Commission were to take the lead, which directorates would be responsible for it and at what levels?

---

http://www.hc-sc.gc.ca/english/media/releases/2002/2002_13.htm
http://www.hc-sc.gc.ca/english/media/releases/2001/2001_119e.htm

[136] 'Preparedness on Bio-terrorism', Speech by David Byrne, European Commissioner for Health and Consumer Protection, to the Agriculture Council, Luxembourg, 23 October 2001.

5. Towards A Three-Tier EU BW Control Regime

While it is highly useful to outline all the options and possibilities available in the creation of a European regime it is also necessary to grasp political realities and make some preliminary assessment as to what is actually achievable. Although there will clearly be differences of opinion among member state governments, European institutions, industrial groups and other opinion shapers on the *means* of achieving a common EU BW regime, there is likely to be a strong measure of consensus that any solution has to achieve three main objectives:

- *Security objectives* - the setting up of a strong BW regime within the Community will first and foremost be directed at preventing diversion of biological agents and organisms to unauthorised destinations and users, and protecting the security interests of the citizens of member states;
- *Economic objectives* – any solutions will need to balance security objectives with economic imperatives associated with the Single European Market. In general, the progressive removal of barriers to the free movement of dual-use goods (and especially the need for licensing) when traded within the Community is widely thought to have improved the international competitiveness of European industry. A solution that puts European pharmaceutical and biotech companies at a competitive disadvantage with competitors outside of the Community is unlikely to find favour; and
- *Harmonisation objectives* - through the setting up of a common EU system for addressing the threat of BW, this can be expected to lead to a progressive harmonisation of existing national BW control policies and procedures.

Indeed, in seeking to encompass complex technical aspects, as well as the convergence of foreign, security and trade policy interests, any EU BW control regime will be relatively unique in the history of multilateral arms control regimes (although it would be likely to share many of the characteristics of EURATOM).

Taking into consideration the current international security climate (discussed in Section 2) and the consultations with numerous policy makers and opinion shapers, the policy measures discussed in the previous section divide into three tiers:

- National measures and EU-wide joint actions that are non-controversial and are likely to be generally welcomed by member states;
- Politically binding common positions and legally binding conventions or laws related to BW controls; and
- A legally binding EU inspections and verification regime for biological weapons.

Tier 1: Enhancing implementation of existing national measures and deepening EU-wide cooperation

By enhancing the implementation of a number of existing national measures and developing greater coordination at the EU level, including moving towards harmonised national control measures in certain areas, the EU would be driving international improvements without risking diplomatic ruptures. Such an approach would strengthen international BW controls and would be relatively straightforward to implement. The following measures might be considered as falling within this first tier:

- Enhancement of national implementation legislation within Member States;

- Establishment of an EU scientific advisory panel that meets regularly to inform Member States of developments in BW related sciences and technologies and to provide suitable recommendations and response measures;
- Establishment of a transparent and easily accessible CBM database for the EU member states and associate countries;
- EU provision of advice and aid to those nations incapable of completing CBMs;
- EU assistance to bring EU associate states into the Australia Group;
- Increased EU provision of technical assistance to establish or strengthen export control systems in third countries identified as a potential BW proliferation concern;
- Significant expansion of the EU Co-operation Programme for Non-Proliferation and Disarmament in the Russian Federation;
- EU promotion of an international Biosecurity Convention;
- EU promotion of an international deterrence posture;
- EU encouragement for the establishment of an international working group looking into BW criminalisation;
- Full implementation of the EU Programme of Cooperation on Preparedness and Response to Biological and Chemical Agent Attacks;
- Enhancement of measures in the area of safety and security, inventory and registration of relevant facilities in Member States; and
- Increased biodefense co-operation with the United States, EU Associate Countries and the Russian Federation.

Tier 2: Developing common positions and legally binding measures
There are a number of issues identified earlier where the EU has an opportunity to advance innovative and necessary policies at the regional level. While global implementation of these policies should be the ultimate aim, the EU could provide clear leadership and momentum by embodying them in European law or in politically binding common positions. Measures that the EU Member States might wish to consider under this second tier, include:

- Developing a common position or European Convention on CBMs, including commitments to reciprocal visits and mandatory return elements;
- Developing an EU Biosecurity Convention;
- Developing a common position setting out an EU BW deterrence posture; and
- Developing an EU Criminalisation Convention for BW.

Tier 3: Establishing a legally binding EU inspections and verification regime.
At the moment the prospect of developing such a regime appears extremely unlikely due to political difficulties, both internal and external. The prime concern of EU Member States at present is to keep the United States involved in the current international process in the hope of reaching some sort of compromise at the resumed Fifth Review Conference in November 2002. In such an atmosphere many European officials see the concept of the EU 'going it alone' as unhelpful and unconstructive. However, if stalemate continues to surround the BTWC process a radical alternative may be required. With this in mind, the authors recommend that the concept of a legally-binding EU regime be further explored, particularly if the resumed Fifth Review Conference ends in suspension or collapse.

6. Implications of a Three-Tier EU BW Control Regime

This section provides a preliminary analysis of the potential implications of a Three-Tier EU BW regime on:

- European pharmaceutical and biotech industries;
- The EU's relationship with the United States; and
- The rest of Europe, especially the EU Associate States and the Russian Federation.

Further discussion among policy-makers and opinion shapers within the EU, United States and the wider Europe will be necessary, not only to develop some of the ideas further, but also to properly gauge the likely reaction of those international actors most affected by the proposals. This is something that BASIC is committed to facilitating – see the further discussion in section 7.

To conclude this section, the role Canada might be expected to play in supporting an EU BW control regime is also considered, in part, because this was a specific remit from the Department of Foreign Affairs and International Trade which is sponsoring the research, but mainly because, like the EU, Canada has been one of the more progressive states in the BTWC protocol discussions.

Impact on the Biotechnology and Pharmaceutical Industries

The biotechnology and pharmaceutical industries represent a key commercial sector of the European Union. As the European Commission notes:

> Life sciences and biotechnology have entered a stage of exponential growth, opening up a vast potential to move economies in Europe and globally towards more sustainable development and improved quality of life. They are therefore of strategic importance in Europe's quest to become a leading knowledge-based economy. Europe cannot afford to miss the opportunity that these new sciences and technologies offer. [137]

According to the Commission the EU now has 1,570 dedicated biotechnology firms, which employ 61,000 people. Annual expenditure on biotechnology research and development currently stands at 5 billion euros.[138] Several EU governments have heavily promoted biotechnology, in particular Germany, France, Ireland, the Scandinavian nations and the United Kingdom. As The UK Prime Minister Tony Blair recently put it: 'Biotechnology is the next wave of the knowledge economy and I want Britain to become its European hub.'[139]

Two of the keys to maintaining European competitiveness in this sector are the protection of intellectual property rights and the maintenance of an innovative environment unburdened by excessive bureaucracy. Would an EU BW Regime threaten these aims? It is unlikely that the first two levels would place much of a burden on business, but the third level, the development of an

---

[137] European Commission, 'Towards a Strategic Vision of Life Sciences and Biotechnology: Consultation Document', 4 September 2001.
[138] Ibid.
[139] 'Blair promotes Biotech industry', The Guardian, 17 November 2000.
See: http://www.guardian.co.uk/Archive/Article/0,4273,4092391,00.html

EU inspections and verification regime is unlikely to be welcomed by business on grounds of intellectual property rights (IPR) and the burden of 'red tape'

A Threat to Intellectual Property?

A key worry cited by the United States in rejecting the draft protocol negotiations was that the safeguards protecting corporate IPR would be 'insufficient to eliminate unacceptable risks to proprietary or national security information' during inspections.[140] This assessment followed heavy lobbying by the US pharmaceutical and biotechnology industries. As the Pharmaceutical Research and Manufacturers of America (PhRMA) argued:

> the most probable outcome of a routine inspection at one of its companies would be the loss of CBI [Confidential Business Information] and damage to a company's reputation.[141]

Bearing in mind these previous concerns would an on-site inspections regime within a EU BW regime fatally damage the corporate security of European biotechnology and pharmaceutical companies? There are two reasons for thinking that this problem can be overcome. First, EU countries generally believe, in contrast to the US administration, that the safeguards in the draft protocol would have been sufficient to protect the IPR of their companies. As the UK Green Paper puts it: 'we judged that the safeguards in the Protocol's on-site provisions provided effective protection for legitimate activities and for national security and commercial proprietary information.'[142] This greater belief in the safeguards could be transferred to the EU BW regime context.

Second, as the EU regime would initially only involve European nations and draw on EU inspectors, there would be less worry over aggressive espionage and corporate theft. While there is always the threat of this kind of activity, the multilateral web of trust established between the EU member states would undoubtedly militate against it.

Excessive Bureaucracy?

Avoidance of excessive bureaucracy and red tape is essential to maintaining the flexibility and innovative edge of the biotech and pharmaceutical industries. The biotech sector in particular is reliant on clusters of small businesses that depend on being truly entrepreneurial for their profitability. Europe already lags behind the US in this regard, according to the European Commission:

> In comparison with the US, the EU is a poor business environment for the development of high-risk/high-gain ventures such as dedicated biotechnology firms. While Europe now has the entrepreneurs themselves, the social and legal framework still tends to discourage risk-taking and business-creation. Obstacles include bankruptcy rules that may preclude further ventures, regulatory uncertainty, lack of liquidity in the risk capital markets as well as more

---

[140] Statement by the United States to the Ad Hoc Group of Biological and Toxin Weapons Convention States Parties, Ambassador Donald Mahley, 25 July 2001. See http://www.state.gov/t/ac/rls/rm/2001/5497.htm

[141] Industry's Role, Concerns, and Interests in the Negotiation of a BTWC Compliance Protocol *Gillian R. Woollett,* M.A., D. Phil.

[142] 'Strengthening the Biological and Toxin Weapons Convention: Countering the Threat from Biological Weapons', UK Green Paper, April 2002. For full text see: http://www.brad.ac.uk/acad/sbtwc/other/fcobw.pdf

mundane problems such as stigmatisation of failed entrepreneurs and barriers to the reintegration of entrepreneurial scientists into academic careers.[143]

Bearing in mind this situation it may seem unwise to add another layer of regulation to the European biotech market through imposition of an EU BW regime. Nonetheless, careful crafting of the regime could be expected to minimise the burden on business, especially if they are involved in consultations on its drafting. The chemical industry, for example, quickly recognised that other inspection requirements (fire safety, worker safety, etc.) were far more burdensome than the CWC, and led the way in selling the treaty to individual firms. In addition, the EU could offer limited subsidies to those companies involved in annual inspections and declarations.

Furthermore, US pharmaceutical and biotech companies are also subject to strong administrative measures of reporting and Food and Drug Administration inspections (as are EU companies which produce drugs to be sold in the US market), and thus an EU BW regime is unlikely to significantly alter the regulatory balance in favour of US companies. But this is clearly an area in which further research and discussion with industry representatives is needed.

Potential Benefits

In considering the impact on industry the focus is usually drawn to potential negative factors. However, there are at least two potential benefits to industry:

- Improvements in corporate responsibility and image; and
- Protection of patents and compensation mechanisms

Improving corporate image and responsibility

A major problem for the biotechnology and pharmaceutical industries has been the negative public image generated by recent controversies such as those over genetically modified food and the supply of cheap medical drugs to the developing world. A strong argument is being presented that new biological developments are bringing more harm than good. Participation in a European BW control regime would be an important opportunity for the biotechnology and pharmaceutical industries to show European citizens and consumers that they are concerned about the BW threat and are willing to deal with it seriously. It would clearly demonstrate social responsibility and concern for public safety, and could thus be a highly effective public relations coup.

Momentum for corporate social responsibility in other sectors has tended to come from companies themselves rather than being imposed by governments,[144] and it may pay European biotech and pharmaceutical companies to show similar leadership.

Protecting patents and agreed compensation structure

One largely overlooked element of the US anthrax attacks was the way in which it threatened the IPR crucial to the research and development of the biotechnology and pharmaceutical sectors. At the height of the crisis there was growing US Congressional pressure to lift the Bayer patent on the anti-anthrax drug Cipro and allow other companies to produce generic versions of the drug. The argument was forcefully put that the bioterror attacks constituted the 'national emergency or

---

[143] European Commission, 'Towards a Strategic Vision of Life Sciences and Biotechnology: Consultation Document', 4 September 2001.

[144] For example, the multinational oil company, Shell, was promoting sustainable development at the recent World Summit in Johannesburg.
See : 'There is no alternative' at http://www.shell.com/home/media-en/downloads/publications/

other circumstances of extreme urgency' under which the requirement to recognise international patents can be waived. Indeed, the Canadian government actually took this step, overriding the Cipro patent and ordering one million tablets from a local company, only to later reverse the decision. Hence an extremely limited bioterror attack almost precipitated a fundamental weakening of the IPR regime crucial to the growth of the pharmaceutical and biotechnology sectors. This should be of great concern to the industry and should spur, through pure financial logic, further efforts at regulation and control of materials.

As Ambassador Tibor Toth, Chairman of the BTWC Fifth Review Conference argued:

> The anthrax case raises questions which go to the core of the pharmaceutical industry operations. In the U.S. and Canada, for example, there were questions concerning the intellectual property rights which would potentially cost the pharmaceutical industry billions and billions of dollars, if precedents were created...These scenarios put in a different light the risk associated with early warning tools, namely the risks to intellectual property that would arise from a system of five visits a year maximum to national sites, as opposed to the effects to the industry of future anthrax attacks.[145]

Such considerations create the possibility for a mutually beneficial arrangement. On the one hand the pharmaceutical and biotechnology industries would participate fully in developing a European BW prohibition regime, helping to provide vaccine stockpiles, opening themselves up to on-site investigations, involve themselves closely in the CBM process. In return EU governments could legally guarantee that they would not override patents in times of crises, or provide insurance against such losses. The possibilities for such a deal should be fully explored.

Impact on the EU's Relationship with the United States

Relations between the United States and Europe are currently strained over a wide range of issues. The possible 'pre-emptive' invasion of Iraq, the thorny issue of 'nation building' and the future of the International Criminal Court (ICC) are all cause for transatlantic disagreement. Even the 'special relationship' between the United States and Britain seems strained as Downing Street insiders reveal their annoyance that they have won 'nothing' from President Bush despite their unstinting support for the 'War against Terror.'[146]

This transatlantic tension is particularly acute over the future of the Biological Weapons regime. The Bush administration's implacable opposition to the Ad Hoc Group (AHG) process and the concept of a legally binding Protocol has caused immense frustration due to the abrupt manner in which it dismissed over six years of painstaking and constructive dialogue and negotiation. In particular, many viewed the manner in which the US negotiating team reintroduced the issue of the future of the AHG only hours before the end of the Fifth Review Conference as an act of intentional sabotage. As Ambassador Tibor Toth, Chairman of the Review Conference, noted: "The U.S. proposal was quantitatively new for delegations... There had been no discussion of elimination of the AHG before the U.S. proposal".[147] The EU allies had apparently received no

[145] Quoted in *BASIC Reports*, No.79, February 2002.
[146] 'High Road to Baghdad', Richard Holbrooke, The Guardian, 29 August 2002. See http://www.guardian.co.uk/Iraq/Story/0,2763,782242,00.html
[147] 'Countries to Confront Obstacles to Strengthened BTWC', BASIC Reports, February 2002.

warning of the US move and were, according to one senior diplomat involved, "very annoyed".[148] Indeed, EU delegates were reportedly so upset that they boycotted a Western Group meeting with the US and gave priority to an EU meeting instead.[149]

While serious, these tensions are by no means terminal to EU-US collaboration on the BW control issue. Nonetheless, against this background it is important to have some conception of the likely consequences for transatlantic relations of a European BW regime.

Opportunities for Cooperation

A European regime does not necessarily have to be a further irritant to EU-US relations, nor should it automatically be portrayed as such. On the contrary, many of the measures previously mentioned in Levels 1 and 2 of commitment would tie closely into US objectives and approaches. Improved biosecurity and biodefences, criminalisation of individual offences, strengthened export controls and expanded Cooperative Threat Reduction are all goals that the US shares.[150] The impression that Europe is moving beyond fine words to concrete actions to deal with the threat should be welcomed by the US administration. Likewise, direct assistance both in securing and destroying Russian BW and in improving international biodefence measures will undoubtedly find support in Washington. While tension could arise over the form of some of these measures (e.g. the EU stressing implementation in international law, the US instead placing emphasis on national legislation) these difficulties should not be insurmountable in pursuit of the shared goal.

But Trouble Ahead?

However, moves towards the third-tier commitment of a multilateral, legally binding inspections regime, as envisioned in the Protocol, could be fraught with diplomatic danger. The unwillingness of the United States to countenance the Protocol approach could translate into hostility towards any European regime based upon it. Criticism would undoubtedly be forthcoming from some sectors of Washington who would pour scorn on the limited nature of the regime—its failure to include any states actually suspected of possessing BW and its lack of 'hostile' inspectors—as well as rapidly highlighting any controversy or mistakes associated with the regime. Such criticisms are likely to increase annoyance on the European side and could generate a downward spiral of accusation and mistrust.

Another key danger is that a European regime could lead Washington to further disengage on the issue. If Europe is perceived as 'going its own way', giving up on engagement and a universal, negotiated settlement then why should the United States compromise? Dialogue on the issue could break down and the global response to the threat could become terminally fragmented.

---

[148] 'US forces BTWC Conference to be Suspended without Agreement', Jenni Rissanen, The Acronym Institute, 7 December 2001.

[149] 'Anger After The Ambush: Review Conference Suspended After US Asks for AHG's Termination', by Jenni Rissanen, The Acronym Institute, 9 December 2001.

[150] See John R. Bolton, Under Secretary for Arms Control and International Security, Remarks to the 5th Biological and Toxin Weapons Convention RevCon Meeting, 19 November 2001, http://www.state.gov/t/us/rm/janjuly/6231.htm ; President George W. Bush, Statement on Biological Weapons, 1 November 2001, http://www.state.gov/t/ac/rls/rm/2001/7907.htm

Impact on EU Associate Countries and Russia

The inclusion of EU associate countries and Russia could represent one of the most fruitful achievements of any European BW prohibition regime. On the one hand, it would be a clear demonstration that the regime was open for expansion and could lead directly to other enthusiastic countries – such as Canada and the South American nations – joining up. This could rapidly expand co-ordinated and improved BW control measures across the globe. In addition, any inclusion of the EU associates and, above all, Russia would represent an important and valuable challenge for the European regime as these clearly represent 'higher-risk' states. Concerns and suspicions over BW developments in these countries, and especially Russia, are more substantial, and through their inclusion the regime could escape the charge that it is little more than fine words and stage-managed symbolism. In particular, Russia in still dealing with the remnants of the largest and most advanced BW programme the world has seen. The expanded EU regime could play a vital role in lowering proliferation risks[151] and verifying that Russian BW development has not continued into the post Cold War world.[152]

Reasons to be optimistic

Recent years have witnessed great strides forward in co-operative measures with the former nations of the Warsaw Pact. The clearest sign of this has been the widespread enthusiasm to join western security, economic and political structures – above all NATO, the EU and the OSCE.

Meanwhile, Russia itself has taken several positive, co-operative steps:

- *Improving relationship with western security structures.* Protestations at eastward expansion of western security organisations have died down and direct consultation and co-operation has emerged through the NATO-Russian council.
- *The success of CTR measures with the United States.* This programme has been enhanced and expanded through the recent G8 agreement to provide $20 billion to secure WMD materials in Russia. These measures have provided significant benefits on the ground and have been achieved with active Russian participation.

Moreover, there are also many positive lessons from European support for the Moscow Technology Centre and other initiatives, such as the opening of Russia's first plant to destroy chemical weapons in August 2002. The German government contributed 40 million euros ($40 million) for the construction of the $266 million plant at Gorny in the Saratov region.[153]

There may be trouble ahead...

However, despite such initial optimism, several key hurdles could emerge, hindering the inclusion of the associates and Russia. First, the EU may not be willing to foot the bill. Some of the measures under the regime could prove rather costly—physically securing the vast Russian BW stocks is the most obvious example. Prior history has suggested unwillingness on the part of the

[151] See earlier in this report, 'The BW Facilities of the Former Soviet Union: A Proliferators' Paradise?', Pgs 15-17.
[152] Concerns about continuing Russian BW development have been highlighted by numerous sources. For more information see 'Disease by Design: Demystifying the Biological Weapons Debate', by Michael Crowley, BASIC, November 2001, pgs 26-27.
[153] *Moscow Times*, 21 August 2002, p4.

EU to invest large sums in co-operative threat reduction measures. If the associates and Russia are to be successfully included this reluctance will have to be overcome. On the other hand, it will be nothing like as costly as securing or destroying Russian stocks of chemical weapons, which European governments are already heavily engaged in doing.

Second, Russia may not be receptive to the idea. Putin's positive line towards the West has put him under increasing domestic pressure, particularly from the army. According to Vyacheslav Nikonov, political analyst and President of the Politika Fund, "Putin has assumed a position that is more pro-Western than 90 percent of the Russian electorate and the elite are prepared to tolerate."[154] Indeed, the *Russia Journal*, a business weekly published in Moscow, recently noted that the contempt of most Russian military generals for Putin's friendship with America is taken for granted in Moscow.[155] With this in mind Putin has to carry out a delicate balancing act, promoting a more pro-Western foreign policy whilst trying to avoid domestic uproar. A European BW regime could pose serious difficulties in this context due to its failure to include the US. Why should Russia provide extra information about its biotechnology, or allow on-site visits to its facilities, while its great superpower nemesis escapes unexamined? Putin could have serious difficulties selling this to his domestic audience and while this problem is not insurmountable, especially if Russia is granted clear and tangible benefits in return for its co-operation, it will need to be factored in to any negotiations.

On the other hand, the EU would need to do about five years work on the first two tiers before deciding whether to go forward on a legally binding regime, and that would defer the 'Russian problem' until a very different future.

Third, a full, legally binding European inspections regime could well be construed by the US as a direct threat to its approach to BW prohibition, based on politically binding, national measures. This could, in turn, lead to a souring of relations and a situation similar, if also far less severe, to that we are currently witnessing with the ICC. The associate countries and Russia could be caught in the middle between European nations pushing strongly for them to join the new regime and the US placing tacit pressure on them to walk away.

The Role of Canada

Unlike the strained US-European relations, the friendship and level of cooperation between the European Union and Canada continues to blossom in a number of areas Both sides are sceptical of US policy towards Iraq, vigorously support and promote the concept of 'nation building' and the future of the International Criminal Court (ICC) and are party to a number of cooperative arrangements, from combating small arms proliferation to peacekeeping reforms.

EU-Canadian agreement is also strong with regard to the key tenets of the BTWC protocol negotiations. Like the EU, Canada strongly supported the work of the AHG process and the concept of a legally binding Protocol. In particular, the Canadian government has identified the following as important elements of a legally-binding compliance instrument:

- provision for mandatory declarations and notifications concerning certain facilities, materials, equipment and activities (this would include certain defence facilities);

[154] Eberhardt, D., 'Putin takes flack for Russia's 'disintegration', Newsmax, 25 February 2002.
[155] Ibid.

- provision for visits in relation to declarations, within established guidelines and time-frames;
- provision for short-notice fact-finding inspections, within established guidelines and time-frames, on any matter of concern regarding compliance with obligations under the Convention; and
- provision for multilateral information sharing, on a voluntary basis, to contribute to the efficacy of monitoring compliance with the Convention. [156]

On the opening day of the Fifth BTWC Review Conference, Canada's Ambassador for Disarmament, Christopher Westdal, made a statement that reaffirmed Canada's goals and priorities for the Conference.[157] Canada also tabled several working papers at the Review Conference. [158]

Moreover, Canada has taken – or is in the process of taking – a number of significant additional or parallel steps on BW issues. As mentioned in section 4, for example, Canada has implemented new and modified CBMs and has been encouraging other states to do likewise. Canada's eagerness to engage others and to do constructive work on the BTWC is also reflected in its creation of and continued support for the BTWC website.[159]

In addition, Canada's new BTWC Implementation Act, which is currently before the Canadian Parliament, will provide framework legislation, paralleling the Convention, and will prohibit biological weapons, as well as biological agents of types and in quantities that have no justification for peaceful purposes. It will also:

- provide a more complete legal basis for the regulation of dual-use biological agents; permit the establishment of a responsible implementing authority to oversee such regulations;
- help prevent the acquisition of biological weapons either by states which flout the international norm of the BTWC, or by criminals and terrorists;
- allow the appointment of inspectors to enforce the Act; and
- establish severe penalties for violations.[160]

The BTWCIA is structured in such a way that it could be used either to implement an eventual international agreement on BTWC compliance, should that possibility be realised, or if not, to proceed on a strictly national basis.

Further Opportunities for Cooperation

A European regime could provide further opportunities for EU-Canadian cooperation, including the development of synergies between the BTWCIA and EU national authorities. As was the case

---

[156] For a more detailed account of the Canadian position see the Canadian Position statement (at http://www.dfait-maeci.gc.ca/arms/chem&bio2-e.asp).

[157] Statement by Christopher Westdal, Ambassador and Permanent Representative to the Conference on Disarmament, Fifth Review Conference of the BTWC, Geneva 19 November 2001 (at http://www.dfait-maeci.gc.ca/arms/chem&bio4-e.asp).

[158] See (http://www.dfait-maeci.gc.ca/arms/chem&bio2-e.asp#6) and http://www.dfait-maeci.gc.ca/arms/BWC-CONF-V-COW-WP30-en.asp).

[159] The BTWC and Protocol website is maintained by the University of Bradford in the United Kingdom. See http://www.opbw.org/ .

[160] The text of the Act is available at: http://www.parl.gc.ca/37/1/parlbus/chambus/house/bills/government/C-55/C-55_ .

for the United States, many of the first and second tier measures (improved biodefences, export controls, biosecurity and criminalisation of individual offences) would closely align with Canadian objectives, but unlike the United States, Canada is likely to more supportive in efforts to multilateralise such initiatives through harmonisation of standards or implementation in international laws. Moreover, as indicated above, Canada is also likely to support moves towards the third-tier commitment of a multilateral, legally binding inspections regime, as envisioned in the Protocol. As a starting point, for example, Canada and the EU could agree to open their facilities to inspection by each other.

The creation of some type of EU-Canadian association of national BW coordinating authorities and the harmonisation of EU-Canadian CBMs (in line with Canada's recent adoption of higher CBM standards) would be other practical steps.

In terms of expanding the regime eastwards and involving EU Associate Countries and eventually the Russian Federation, the involvement of Canada may well be crucial, especially in the absence of US involvement. A precedent of sorts is the 1992 Open Skies Treaty, which was significant both for its originality and breadth. Rather than being negotiated on a bloc-to-bloc basis it included non-aligned and neutral states, and allowed countries as diverse as Canada, Hungary and Romania to play pivotal roles in the instigation and negotiation of the treaty. If the EU and Canada were to agree to mutual and open inspections of their BW facilities and common CBM standards, for example, this might be broadened to include other-like minded states in the same way as the Open Skies Treaty.

Another pertinent example of strong Canadian leadership is the Ottawa Process against anti-personnel landmines (APMs). Here the parallels with BW are much closer. In both cases, the aim is a global regime, but in the case of APMs Canada and others were willing to proceed without gaining unanimous support. While that is not the case as yet with BW, the clear advantage of this approach is that it can allow an arms control process to proceed and gain momentum, rather than getting trapped in negotiating differences and competing interests. If the process then manages to establish itself as an international norm, so the argument goes, nations that had originally dissented will slowly alter their views.

In the case of the Ottawa Process, rather than trying to hammer out a unanimous compromise approach in the Conference on Disarmament, the Canadian government took the initiative and proposed a treaty to establish a comprehensive global ban on the use, production, transfer and stockpiling of APMs. Such a complete ban was unacceptable to many of the major mine producing and stockpiling countries, and the United States, Russia, China, India and Pakistan all refused to sign the treaty. However, rather than attempting to bring these countries into the process through compromise, the comprehensive treaty proceeded without them. The Canadian government explained the thinking behind this process as follows:

> Naturally, Canada would like to see as many countries as possible sign the Convention. But in many ways, results are more important than process, and the Convention has already resulted in the establishment of a new norm against the use of AP mines...This convention will begin drying up the demand for mines severely reducing the profit motive for supplying mines. In fact, some experts argue that the international trade in anti-personnel mines has virtually ended. [161]

[161] Information Leaflet on the Ottawa Process.
For full text see: http://www.iansa.org/documents/research/res_archive/ngo17.htm

The Ottawa Process and Treaty have resulted in real changes in the international security environment. The legal trade in mines has almost totally collapsed. Although thirty-four countries are known to have exported antipersonnel landmines in the past, as of 2001 all of those nations, with the exception of Iraq, have made formal statements acknowledging that they no longer export APMs.[162]

However, this 'fast track' approach has its own difficulties, in particular in the non-inclusiveness of the process. By insisting on a comprehensive solution and refusing to engage in extended diplomatic compromise over the terms of the Treaty, many of the major powers have been excluded from the system and remain relatively free to maintain and use landmines. A vivid illustration of this flaw came recently with the extensive Indian mining of its border with Pakistan. Hundreds of thousands of APMs were laid along the full length of the 1,800-mile border and the minefields extend back three miles in places.[163]

Despite the unique threat and fundamentally different problem of control presented by biotechnology, there may be lessons that can be drawn from the experience of negotiating the Open Skies and Landmines Treaties which may be relevant to efforts to expand a European BW control regime beyond the EU member states. It is recommended that this be the subject of a future research report.

Finally, Canada could also be the bridge between Europe and the United States on the issue, encouraging the United States to return to dialogue in the search for a universal, negotiated settlement.

[162] http://www.mines.gc.ca/III_B-en.asp .

[163] India's deadly defence: the 1,800 mile long minefield', Simon Tisdall and Ewen MacAskill, *The Guardian*, 10 January 2002.

Part III: CONCLUSIONS, RECOMMENDATIONS AND NEXT STEPS

7. Conclusions, Recommendations and Next Steps

EU Member States are currently of the opinion that the strengthening of the BTWC through a global and multilateral regime can only be effective if this regime encompasses all States Parties, including the United States. The EU is putting all of its effort into achieving a successful outcome of the resumed Review Conference in November 2002. Few officials interviewed for this study were willing to speculate on possible EU actions might this successful outcome not be achieved.

However, it is clear from this preliminary assessment that the EU has the potential to adopt a strong leadership role on this important issue. Indeed, the Union is already doing so in many respects, both externally, through the development of common positions in relation to the BTWC review conferences and protocol negotiations, and internally, by acting in more concerted manner in many policy levels of this multifaceted problem. Civil emergency planning, export controls and the fight against terrorism, for example, are all areas that to some extent are already being coordinated at the EU level.

Thus, if, as is commonly expected, the Bush administration scuppers the November 2002 Review Conference, the EU seems well placed to step into the breach to develop further innovative approaches in the handling of BW problems and crises. However, the Member States and EU institutions will need to develop a stronger culture of co-operation between the full range of experts and interested parties, across the wide number of affected disciplines, including law enforcement, intelligence, science, education, industry and international diplomacy. In addition, the primacy of national policy-making will need to give way to greater harmonisation of the respective attitudes of the fifteen member states on many aspects of the BW control problematic.

Moreover, much more debate is needed as to the scope and direction of any future EU BW control regime. At present, for example, there seems little enthusiasm among EU officials for developing investigative or reporting mechanisms among member states (which are low risk states) as means of promoting confidence in compliance with the BTWC, given the burden this would place on their domestic biotech and pharmaceutical industries. However, as discussed in the main body of this report, regional control, reporting and response measures in the European context could serve as a positive role model for other regions. And the impact on the competitiveness of European biotechnological and pharmaceutical companies (which are already heavily regulated) may not be as severe as some anticipate, and could be mitigated by other compensatory mechanisms. In short, this is a debate that is still in its infancy and needs to be broadened to include parliamentarians and other interest groups with responsibility for safeguarding the wider public good.

With the adoption of its 'concrete measures', the EU has already gone beyond the ad hoc mechanism stage in dealing with the BW threat. However, it is important that this high level of coordination on paper is translated into high-level cooperation in practice. This is the minimum response that the issue deserves. This report suggests that more can be done, however, and that the best way for the EU to approach the challenge would be a multilevel approach: gradually increasing and strengthening EU legislation and co-operation, rather than immediately moving towards a legally binding inspections regime, although this is not ruled out in the medium to long term.

More specifically, the report suggests a number of specific proposals, some new and some not so new, that could help the progress of Europe's fight against the dangers of BW proliferation. These

proposals were set out under four key policy strands: strengthening BTWC compliance and verification; combating and preventing BW proliferation; deterrence against BW use; and civil emergency planning. At present, however, it is illusory to hope for total convergence among the fifteen in respect of all the ideas formulated under these policy strands. Instead, the authors suggest that the measures should be considered in three tiers:

Tier 1: (Immediate) Measures to enhance implementation of existing national measures and to deepen EU-wide cooperation:

- Enhancement of national implementation legislation within Member States;
- Establishment of an EU scientific advisory panel that meets regularly to inform Member States of developments in BW related sciences and technologies and to provide suitable recommendations and response measures;
- Establishment of a transparent and easily accessible CBM database for the EU member states and associate countries;
- EU provision of advice and aid to those nations incapable of completing CBMs;
- EU assistance to bring EU associate states into the Australia Group;
- Increased EU provision of technical assistance to establish or strengthen export control systems in third countries identified as a potential BW proliferation concern;
- Significant expansion of the EU Co-operation Programme for Non-Proliferation and Disarmament in the Russian Federation;
- EU promotion of an international Biosecurity Convention;
- EU promotion of an international deterrence posture;
- EU encouragement for the establishment of an international working group looking into BW criminalisation;
- Full implementation of the EU Programme of Cooperation on Preparedness and Response to Biological and Chemical Agent Attacks;
- Enhancement of measures in the area of safety and security, inventory and registration of relevant facilities in Member States; and
- Increased biodefense co-operation with the United States, EU Associate Countries and the Russian Federation.

Tier 2: (Medium Term) Development of common positions and legally binding measures:

- A common position or European Convention on CBMs, including commitments to reciprocal visits and mandatory return elements;
- An EU Biosecurity Convention;
- A common position setting out an EU BW deterrence posture; and
- An EU Criminalisation Convention for BW.

Tier 3: (Conditional) Development of a legally binding EU inspections and verification regime

Potential Benefits

Both the flaws of the current global BW prohibition regime and the need for innovative solutions are clear from the current international situation (discussed in section 2). However, does the concept of a European regional regime represent an effective way forward? The development of a three-tier EU BW control regime can be expected to have a number of benefits:

Facilitating best practice: An EU BW control regime would provide a process through which satisfactory solutions might be found to those problems that proved most difficult in the

negotiations of the Ad Hoc Group. Freed of the restraints posed by the United States on the one hand, and some of the Non-Aligned Movement nations on the other, Europe could construct its 'ideal' regime. Such a regime could aspire to high ambitions, developing solutions not only to the bio-defence and pharmaceutical problems, but also working out procedures to harmonise domestic legislation and to activate scientific associations, two of the important areas that the Geneva negotiations, for good reason, did not get into.

Staging post for a global regime: An EU BW control regime would create renewed momentum for a global, legally binding regime. The current Ad Hoc Group process is in danger of becoming permanently stalled and there is a clear and urgent need for leadership on the issue. A European BW control regime could be seen as a precursor to a global regime, offering the United States, Russia, China, India and others a working model of how a global regime could effectively enhance global security.

However, such a strategy is not without risk. Any mistakes implementing the regime would become powerful ammunition to opponents of a protocol, who can sit comfortably outside the system and find fault with it. This is particularly the case for the commercial proprietary information issue. The United States would collect any examples of information leakage from an EU regime as evidence supporting its decision on the protocol.

Developing expertise: An EU BW control regime would, if the third tier is implemented, eventually lead to the creation of a pool of trained BW inspectors and equipment, which could be used by the UN Secretary General to investigate allegations of non-compliance. Expertise and personnel could easily be transferred to create new regional BW regimes all over the globe.

Engaging with Russia: The development of an EU regime would provide an opportunity to engage with Russia in working to control its huge and ageing BW infrastructure. It would provide a channel for neighbourly negotiations through which Russia can convincingly demonstrate that it has irreversibly eliminated whatever is left of its illicit BW activities.

Enhancing the standing of the EU: An EU BW control regime would be an opportunity for EU institutions to deliver tangible gains to its citizens. The EU is often accused of dealing solely with esoteric economic or political issues, and this is an opportunity for the Union to develop an idea with practical and beneficial impact. It would also be an opportunity to show external critics (particularly in the United States) that the EU is capable of responding coherently to complex foreign policy and security issues. The 15 member states of the EU demonstrate on a daily basis innovative forms of relationships among states and among their citizens. Showing the rest of the world, and the United States in particular, what can be achieved to enforce the prohibition on biological weapons would be a challenge that other states may well seek to build upon.

Potential Pitfalls

The development of a three-tier EU BW control regime can also be expected to raise a number of challenges. In particular, there are four key questions that such a regime would need to successfully address:

- What is the utility in policing low risk states?
- How would an EU regime allay US fears over national security violations and industrial espionage?
- Would such a regime cause serious divisions between European states on BW-related issues?

- Would it place European biotech and pharmaceutical companies at a competitive disadvantage?

The utility in policing low-risk states: From the point of view of testing out declaration and inspection mechanisms that might eventually find their way into a protocol, there is only limited usefulness in applying them in EU countries, which are largely enthusiastic, open, cooperative and trusting. The real test of such measures is how they work when the country involved is closed, suspicious, confrontational and paranoid.

The clearest example of this comes from the experience of UNSCOM, as discussed in section 2, and detractors such as John Bolton commonly use UNSCOM as an example of the difficulties any potential inspections regime could face.[164] None of the member states in the EU regime would match Iraq in terms of obstructionism, and while this would be good for the smooth operation of a regional regime, it would place severe limitations on the wider significance of the inspections and declarations regime.

However, 'low risk' is not the same as 'risk free', and there have been suspicions levelled at EU Member States in the past. Most recently, for example, US Health and Human Services Secretary, Tommy Thompson, speculated in the *Washington Post* that France may have a store of the smallpox virus.[165] Moreover, routine inspection activity in other areas of WMD non-proliferation is also often targeted at low risk states under the principle of equity and inclusiveness. For example, most routine IAEA inspections each year are targeted at countries with the largest nuclear power programmes—Canada, Japan and Germany—rather than suspect states. Thus, greater transparency and policing of EU Member States may not be without its benefits.

US fears over national security violations and industrial espionage: As John Bolton told the Monterey Institute, one of the main US concerns with the draft protocol was "the risk of inspections by people who didn't particularly bear us the best wishes".[166] The United States consistently argued that it could be targeted through aggressive misuse of the system by 'rogue states' and inimical forces. The European regime would do nothing to overturn such doubts as it would involve states friendly towards each other and long used to advanced multilateralism and close alliance. There is simply not the same risk involved with EU facilities being inspected by EU inspectors. However, as the regime is extended eastwards to the former Soviet Union the utility of this aspect of the regime is likely to grow.

The impact on European cohesion and national approaches to BW controls: It is tempting to think that it would be relatively easy to set up an 'ideal' regime within the EU. But the attitude of the US administration has drawn attention away from the fact that opinions within the EU on what should be involved in a BTWC compliance regime are far from uniform. There were at times bitter differences in the AHG negotiations among EU members, especially on visits.

---

[164] The Biological and Toxin Weapons Convention: Challenges and Opportunities, Speech by John R. Bolton, Under Secretary of State for Arms Control and International Security, 11 January 2002. For full text see http://www.cns.miis.edu/cns/dc/011102.htm

[165] Quoted by David Ruppe, 'BTWC: With Threat, U.S. Pressures to End Review Conference Early', *Global Security Newswire*, 6 September 2002.

[166] The Biological and Toxin Weapons Convention: Challenges and Opportunities, Speech by John R. Bolton, Under Secretary of State for Arms Control and International Security, 11 January 2002. For full text see http://www.cns.miis.edu/cns/dc/011102.htm

Would they be able to come to agreement now? More bickering and intransigence would be deeply damaging to the concept of multilateral BW controls.

The impact on European biotechnology and pharmaceutical industries: These industries are essential sectors of the European economy and additional red tape and inspections could threaten their productivity, and a great number of jobs. Would the European regime merely add another debilitating layer of bureaucracy? This would depend on the nature and scope of the regime, but as discussed in section 6, the regime might also bring a number of benefits to industry, including improvements in corporate responsibility and image, protection of patents and compensation mechanisms.

Next Steps

This report is only a preliminary assessment of the feasibility and consequences of developing an EU BW control regime. Further discussion among policy-makers and opinion shapers within the EU, United States and the wider Europe will be necessary, to develop some of the ideas further, but also to properly gauge the likely reaction of those international actors most affected by the proposals.

In 2003 BASIC aims to develop and launch a full-scale research and advocacy project on biological weapons. Our strategic goal is to increase public awareness in North America and Europe of the problems and dangers of BW proliferation and the opportunities for developing national, regional and global responses.

BASIC's specific project objectives are:

- To work with US, Canadian and European organisations to build an effective transatlantic coalition to enforce prohibition of biological weapons;
- To act as a repository for new thinking on BW control issues and a centre of excellence in assessing the feasibility of new policy proposals and initiatives in this area;
- To encourage the US administration to rejoin negotiations for international and legally-binding measures to strengthen the BTWC;
- To facilitate a number of study groups for independently assessing the feasibility of current BW control proposals; and
- To seek development of stronger regional bio-weapon controls in the EU.

In this respect, our most immediate priority will be to organise the study groups early in 2003 to review the current state of play and opportunities in the light of the outcomes from the Fifth BTWC Review Conference, and to further explore some of the ideas outlined in this report. BASIC will be seeking partners, both governmental and non-governmental, for these study groups, and would welcome enquiries and suggestions for taking this project forward.

APPENDIX 1:
BTWC Protocol: European Union Common Position

COMMON POSITION

of 17 May 1999

adopted by the Council on the basis of Article 15 of the Treaty on European Union, relating to progress towards a legally binding Protocol to strengthen compliance with the Biological and Toxin Weapons Convention (BTWC), and with a view to the successful completion of substantive work in the Ad Hoc Group by the end of 1999

(1999/346/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and in particular Article 15 thereof,

(1) Whereas on 25 June 1996 the Council defined Common Position 96/408/CFSP relating to the preparation of the Fourth Review Conference of the Convention on the prohibition of the development, production and stockpiling of bacteriological (biological) and toxin weapons and on their destruction (BTWC)(1);

(2) Whereas on 4 March 1998 the Council defined Common Position 98/197/CFSP relating to progress towards a legally binding protocol to strengthen compliance with the Biological and Toxin Weapons Convention (BTWC) and the intensification of work in the Ad Hoc Group to that end(2);

(3) Whereas it is appropriate to review Common Position 98/197/CFSP, in order to contribute to promoting work in the Ad Hoc Group, with a view to achieving substantive progress by the end of 1999;

(4) Whereas it is appropriate to recall the Declaration by the Austrian Presidency on behalf of the European Union on the negotiations of a Protocol to the Biological and Toxin Weapons Convention (BTWC) of 22 December 1998;

(5) Whereas it is also appropriate to recall that the final Declaration of the Fourth Review Conference of States Parties to the Biological and Toxin Weapons Convention determined to strengthen the effectiveness and improve the implementation of the Convention through a legally binding instrument, and welcomed the establishment of an Ad Hoc Group open to all States Parties to negotiate a Protocol aimed at achieving this goal before the commencement of the Fifth Review Conference, which is to be held no later than 2001,

HAS ADOPTED THIS COMMON POSITION:

Article 1

In line with the decision of the Fourth Review Conference, the objective of this Common Position shall be to promote the conclusion of the negotiations, in the BTWC Ad Hoc Group, on a legally binding protocol establishing a verification and compliance regime that will effectively strengthen the BTWC Convention. In order to achieve this, it is imperative to complete all the stages necessary for the adoption of the Protocol by a special conference of States Parties in 2000.

Article 2

It is essential that, besides the allocation of the necessary time for the Ad Hoc Group, all participants in the negotiations work intensively towards the resolution of key issues. To achieve this goal by the end of 1999 the efforts undertaken by the chairman of the Ad Hoc Group and the Friends of the chair will be actively supported.

Article 3

Agreement shall be promoted, in particular in the negotiations, on the following measures which are both central to, and essential for, an effective Protocol to strengthen compliance with the BTWC:

- declarations of a range of facilities and activities relevant to the Convention, inter alia so as to enhance transparency,

- effective follow-up to these declarations in the form of visits, on the basis of appropriate mechanisms of random selection, so as to enhance transparency of declared facilities and activities, promote accuracy of declarations, and ensure fulfilment of declaration obligations in order to ensure further compliance with the Protocol,

- appropriate clarification procedures supplemented, if need be, by on-site activities whenever there is an anomaly, ambiguity or omission in a declaration submitted by a State Party, which requires such procedures. Appropriate clarification procedures shall also be followed whenever a facility meeting the criteria for declaration ought to have been declared but was not,

- provision for rapid and effective investigations into concerns over non-compliance, including both facility and field investigations,

- establishment of a cost-effective and independent organisation, including a small permanent staff, capable of implementing the Protocol effectively,

- provision for specific measures in the context of Article 7 of the Protocol in order to further international cooperation and exchanges in the field of biotechnology. Such measures shall include assistance to promote the Protocol's implementation.

Article 4

The action taken in support of the objectives set out in Articles 2 and 3 shall include:

- pursuit of joint positions in the negotiations, including where appropriate the tabling of specific papers and proposals for submissions to the Ad Hoc Group, in particular on the central areas and elements identified in Article 3,

- demarches by the Presidency, under the conditions laid down in Article 18(3) and (4) of the Treaty, with regard to States Parties, in order to urge their support for the objectives set out in Articles 1, 2 and 3,

- contacts between Governments of Member States and industry, supported by the Commission where appropriate, with the aim of furthering understanding between representatives of the European industry and those involved in the negotiations within the Ad Hoc Group.

Article 5

Member States shall also continue to promote the universality of the BTWC Convention.

Article 6

This Common Position shall take effect on the date of its adoption. It shall replace Common Position 98/197/CFSP.

Article 7

This Common Position shall be published in the Official Journal.

(1) OJ L 168, 6.7.1996, p. 3.

(2) OJ L 75, 12.3.1998, p. 2.

APPENDIX 2:

European Council Conclusions on a List of Concrete Measures with regard to the Implications of the Terrorist Threat on the Non-Proliferation, Disarmament and Arms Control Policy of the EU

Extract from the Provisional Version of the Report of the 2421st Council meeting on GENERAL AFFAIRS, 7705/02 (Presse 91), Luxembourg, 15 April 2002.

The Council adopted the following conclusions on a list of concrete measures with regard to the implications of the terrorist threat on the non-proliferation, disarmament and arms control policy of the European Union:

"At its extraordinary meeting on 21 September 2001, the European Council declared that terrorism is a real challenge to the world and to Europe and that the fight against terrorism will be a priority objective of the European Union.

In pursuing this priority objective, on 10 December 2001 the foreign ministers of the European Union launched a targeted initiative to respond effectively in the field of non-proliferation, disarmament and arms control to the international threat of terrorism, which focuses on multilateral instruments, export controls, international co-operation and political dialogue.

In implementing this targeted initiative the Council today adopts the following list of concrete measures:

CHAPTER I - Multilateral instruments

A. Support all activities related to the universalisation of existing multilateral instruments (i.a. CWC, BTWC,Geneva Protocol, NPT, CTBT, CCW and Ottawa Convention)

The EU as such and its Member States will:

1. Promote, at a political level, universal adherence to instruments relating to weapons of mass destruction (BTWC, CWC, Geneva Protocol, NPT, CTBT, Safeguards Agreements and Additional Protocols with the IAEA, CPPNM);

2. Lobby for the withdrawal of all relevant reservations on the Geneva Protocol;

3. Act at a political level in view of reaching a wider adherence and effective implementation of other relevant instruments in the field of conventional weapons.

B. Work for the effective implementation of the international instruments as well as political commitments world-wide

The EU as such and its Member States will promote:

1. Compliance with obligations and commitments under the international instruments as agreed by the States Parties, including - where the international instruments provide for- the

destruction of prohibited weapons, the prevention of their diversion and illegal use, as well as the prevention of diversion of their technologies;

2. Enactment and strict application of national implementation legislation as required by the international instruments;

3. Full implementation of the Non-Proliferation Treaty and of the Final Documents of the 2000 and 1995 Review Conferences to the Non-Proliferation Treaty;

4. Enactment of the provisions of the Convention of the Physical Protection of Nuclear Material (CPPNM) and encourage those concerned states to take into consideration relevant IAEA recommendations and to request, when appropriate, an IPPAS mission;

5. Timely, consistent and full implementation of reporting obligations imposed either by the international instruments or by the final reports of review conferences (Chemical Weapons Convention declarations, BTWC-CBMs, reports on the Amended II Protocol to the CCW, Article 7 reports regarding the Ottawa Convention) and the creation of necessary conditions for processing the resulting information (e.g. translate and process information coming from BTWC-CBMs in usable databases);

6. Implementation of confidence building measures like, inter alia, submission of national reports to the UN register on conventional weapons and expansion of the register;

7. Implementation of the United Nations' programme of action on the fight against the illicit trade in small arms and light weapons and of the OSCE document on SALW.

C. Support the work of the international organisations (e.g. OPCW, CTBTO, IAEA) in their endeavour, in particular by:

1. Reviewing the financial resources required by the international organisations in order to provide sufficient funding to enable them to discharge their monitoring activities, including those undertaken in the light of the new threats post September 11, and ensuring that the funds provided are used in the most effective way;

2. Sustaining and expanding the OPCW capabilities to conduct effective inspections especially challenge inspections and investigations into alleged use. More realistic and frequent training exercises, especially practice inspections, provide an ideal mechanism to maintain and enhance such capabilities;

3. Supporting the statutory activities of the IAEA and strengthening its work to assist Member States to deal with the following:
- physical protection of nuclear material and installations;
- safe and secure management of radioactive sources including the implementation of the code of conduct on the safety and security of radioactive sources;
- illicit trafficking in nuclear and radioactive material.

D. Reinforce, where needed, the multilateral instruments, in particular by:

1. Working actively to fill identified gaps in the current pattern of multilateral instruments in the field of disarmament, arms control and non-proliferation;

2. Review and, if needed, strengthen national implementation measures of multilateral instruments in the field of disarmament, arms control and non-proliferation;

3. Continuing efforts to promote the universalisation of the draft International Code of Conduct against ballistic missile proliferation with a view to its adoption before the end of 2002;

4. Continuing the efforts to promote the strengthening of the IAEA safeguards system through the signature and ratification of the Additional Protocols;

5. Speeding up completion by EU Member States of the necessary formalities to bring the IAEA Additional Protocols into force for the EU;

6. Making a special effort to overcome the stalemate in the Conference on Disarmament and promote the commencement of negotiations of a Fissile Material Cut-off Treaty;

7. Drafting of an international instrument on marking and tracing of SALW (i.a. French-Swiss proposal) as well as an international instrument on brokering as a priority;

8. Working for the successful conclusion of a reconvened 5th BTWC Review Conference in November 2002;

9. Working in favour or a successful and early conclusion of negotiations under way in Vienna to expand the scope and application of the Convention of the Physical Protection of Nuclear Material;

10. Strengthening the CCW, through the promotion of measures aimed at verifying compliance with the convention and its protocols, and through the development of legally binding instruments, especially on explosive remnants of war.

In order to achieve the aims contained in this Chapter, the EU and its Member States will exchange information about the results of demarches with a view to establishing a country focused database.

CHAPTER II - Export controls

The EU as such and its Member States will:

1. Assess appropriate ways of improving the existing export control mechanisms: Nuclear Suppliers' Group, Zanger Committee, Missile Technology Control Regime, Australia Group and the Wassenaar Arrangement, as a contribution in the fight against terrorism, in order to prevent the diversion by terrorists of any weapons or "dual use" items or technologies.

2. Establish or further develop EU co-ordinating mechanisms with the aim to improve information exchange practices in different export control regimes and arrangements, in order to provide accurate and up to date information on risks of proliferation involving non-state actors and states that support them.

3. Promote, within the regimes and arrangements, common understanding and strict adherence to their guidelines, principles and practices.

4. Promote the inclusion of "prevention of terrorism" in the objectives of all existing export control regimes and arrangements.

5. Promote, where applicable, in the framework of intensified out-reach activities, adherence to effective export control criteria by countries outside the existing export control regimes and arrangements.

6. Examine measures, in close co-operation with the Commission, to improve the enforcement of the common control system based on the Council Regulation (EC) No 1334/2000 on dual use items and technology and consider whether there are further regulatory measures that could be adopted to render the control system more effective regarding non-proliferation by, among others, the following measures:
- more regular exchanges of information between Member States (e.g. in the co-ordination group);
- examine implementation by Member States of controls on transhipment, transit and post-clearance, according to the provisions of the Community customs code.

7. Invite the relevant EU institutions to consider initiating a review of the denial notice system to ensure that is operating efficiently after more than three years since its inception.

CHAPTER III – International co-operation.

The EU as such and its Member States will:

1. Improve preparation for international assistance in relation to the CWC and the BTWC to protect states against the use or threat of chemical and biological weapons in consistence with the decisions agreed upon by the European Council of Ghent.

2. Provide, as appropriate, international assistance through the OPCW, in accordance with Article X of the Chemical Weapons Convention.

3. Continue its efforts to maintain and upgrade, where appropriate, a high level of physical protection on nuclear material and facilities, and to make use of the relevant provisions of the CPPMN regarding international cooperation in the case of misuse or theft of nuclear material.

4. Make full use, as regards sources and radioactive materials, of the provisions of the convention on assistance in the case of nuclear accident or radiological emergency.

5. Support and enhance, within the EU financial possibilities and building on already existing initiatives in the Russian Federation and other CIS, co-operation programmes for disarmament and non-proliferation with a view to:
- assist in the destruction of weapons of mass destruction and their means of delivery;
- assist in the disposition of the related released materials, including radioactive materials;
- reduce proliferation risks, i.a. through ISTC/SCTU co-ordinated programmes;
- improve the required legislative development and implementation (i.a. export control).

6. Study the possibilities for a targeted assistance programme on export controls for the Central Asian states.

7. Strengthen the co-operation in the field of destruction of SALW and other conventional weapons surpluses, as well as in facilitating the tracing of lines of supply.

CHAPTER IV - Political dialogue

The EU as such and its Member States will:

1. Intensify the political dialogue on disarmament, arms control and non-proliferation, in particular with countries in Asia and the Middle East.

2. Invite like-minded countries outside of the EU to join the effort to promote the universalisation of multilateral instruments.

3. Intensify and expand co-operation with candidate countries related to export control, with a view to improving their capacity to fulfil the requirements of common export control, and thus support in concrete terms their membership in all export control regimes. Raise more frequently export control issues with third countries in the context of political dialogue.

4. Promote the implementation of the relevant provisions of the UN Security Council resolutions and decisions.

5. Promote a strict implementation of UN, EU and OSCE arms embargoes.

The Council will consider the adoption of common positions and joint actions to assure the effective implementation of the listed measures."

Appendix 3:
Visits and Inspections Regime Envisioned by AHG Chairman's Draft Protocol Text[167]

To implement the inspections regime the Organisation for the Prohibition of Biological Weapons (OPBW) would be established. It would be located in either the Hague or Geneva and would employ about 250 people.

Visits
The OPBW would not be allowed to conduct more than 120 visits per year. They would be of three types:

'Voluntary assistance visits' – These would be carried out at the invitation of member states to help the requesting state obtain assistance with implementing the protocol, such as in the preparation of declarations.

'Randomly selected transparency visits' – These would be to facilities that the member states had declared and would comprise 50-75 percent of all visits conducted by the OPBW. They would aim to increase confidence in the accuracy of declarations and enhance transparency.

The chairman's text establishes a number of measures to protect the interests of the party hosting the transparency visit. Fourteen days before the visit, the hosting state would receive notice of the visit, including the visiting team's estimated time of arrival in the country and the facility to be visited. During the visit, the hosting party would 'have the right to take measures to protect national security and commercial proprietary information.' In addition, a visiting team, comprised of no more than four people, could only 'normally' bring into the visited facility instant developing cameras, voice recorders, protective equipment, and personal computers. Only the hosting party would operate the cameras, and the use of other equipment would be at the hosting party's discretion. The hosting state would receive copies of all information obtained during the visit.

'Clarification visits' – These could be carried out if, after an extensive consultation process, one state party still wanted to clarify an 'ambiguity, uncertainty, anomaly or omission' in another member state's annual declaration. The director-general would suggest to the state under scrutiny that it offer a visit to the facility in question. If such a visit is not offered within 21 days, the Executive Council of the OPBW could vote to impose it. The hosting state would receive seven days' advance notice, and the rules elaborated above to protected the visited state during transparency visits would apply.

Investigations
States Parties can request two types of investigations: field investigations and facility investigations. Field investigations could be launched in areas where the release or suspected use of biological agents has caused concern about a possible violation of the BTWC. Facility investigations could be conducted if there is concern that a particular facility is violating the convention. If the director-general approves the request, it may still require the Executive Council's approval:

---

[167] The following information is drawn from 'Executive Summary of the Chairman's Text', Seth Brugger, Arms Control Today, May 2001. This is available at http://www.armscontrol.org/act/2001_05/brugger.asp
Full copy of Chairman's Text available at http://www.armscontrol.org/pdf/BTWCprotocol.pdf

- A facility investigation would not proceed unless a simple majority of the Executive Council voted for it to go forward.
- A field investigation of alleged use of biological weapons on the territory of the requesting state-party would go forward unless three-quarters of the Executive Council voted to stop it.
- A field investigation of alleged use of biological weapons on the territory of another state-party would proceed unless a simple majority of the Executive Council voted to stop it.
- A field investigation of an outbreak of disease on the territory of the requesting state-party would go forward unless two-thirds of the Executive Council voted to stop it.
- A field investigation of an outbreak of disease on the territory of another state-party would not proceed unless a simple majority of the Executive Council voted for it to go forward.

A country would be given notice of a planned facility investigation at least 12 hours before the arrival of an investigating team in the country. It would have to provide the team access to the facility in question within 108 hours of being notified of the investigation. The investigating team could not exceed 25 members or break down into more than two groups, unless otherwise agreed by the investigated state. And such an investigation could not exceed 84 consecutive hours without agreement by the receiving state.

A state would receive notice of an impending field investigation at least 12 hours before the arrival of an investigating team in the country. The state would have to provide the investigating team—which could not exceed 30 members without the receiving state's approval—access to the area to be investigated within 48 hours of the team's arrival. The investigation could not go on for more than 30 days without an extension authorized by the Executive Council and agreed to by the receiving state-party.

As with visits, the text contains a number of measures to protect an investigated state. For example, as a rule, an investigating team would start its investigation with the least intrusive measures and progress to more intrusive measures 'only as required to fulfill its mandate.' In addition, the investigated state would have the right to protect national security and confidential information by using 'managed access' techniques, such as shrouding sensitive equipment or limiting the time the investigation team could spend in any area. The investigated state could also receive copies of all information gathered during the investigation.

The investigating team and receiving state would negotiate the nature and extent of access to an investigated area. But the receiving state would have 'the right to make the final decision' on such matters. During a facility investigation, the receiving state-party would have the explicit right to restrict access to 'particularly sensitive' parts of buildings 'not related to the investigation mandate.' However, if less than full access to an investigated area is provided during any investigation, the receiving state-party is expected to 'make every reasonable and feasible effort to provide alternative means to demonstrate compliance and to clarify the possible non-compliance concern.'

Protective measures also extend to the collection of material. The receiving state-party may request that certain samples, documents, or other materials not be removed if necessary to protect national security or commercial proprietary information. A receiving state could even refuse to allow an investigating team to take samples during a facility investigation.

The chairman's text also contains measures to prevent states-parties from abusing their right to request an investigation. When reviewing the investigating team's final report, if the Executive Council believes that abuse had taken place, it could take corrective measures such as suspending the rights of the abusing party to serve on the Executive Council or to request an investigation.

BIBLIOGRAPHY

Adonis, Andrew. 'President' Blair takes EU bypass' *The Observer*, 15 February 1998.

Alibek, Ken and Handelsman, Stephen. *Biohazard: the chilling true story of the largest covert biological weapons program in the world – told from the inside by the man who ran it*, New York: Random House, 1999.

Arms Control Association, 'Iraq: A Chronology of UN Inspections, And an Assessment of Their Accomplishments - An ACA Special Report', *Arms Control Today*, October 2002.

Arms Control and Disarmament Agency (US). 'The Biological and Toxin Weapons Convention', (ACDA) Fact Sheet, 12 November 1996.

Bolton, John R. Remarks to the 5th Biological and Toxin Weapons Convention RevCon Meeting, 19 November 2001.

Bolton, John R. Speech on 'The Biological and Toxin Weapons Convention: Challenges and Opportunities' 11 January 2002.

Brauch, H.G. *et al* eds. *Controlling the Development and Spread of Military Technology - Lessons from the past and challenges for the 1990s,* VU University Press, 1992.

Broad, William J. 'World's Largest Germ-Bank Union Acts to Keep Terrorists From Stealing Deadly Stocks', *The New York Times*, 23 October 2001.

Brugger, Seth. 'Australia Group Concludes New Chem-Bio Control Measures', *Arms Control Today*, July/August 2002Bush, President George W. Statement on Biological Weapons, 1 November 2001.

Butler, Richard. Speech to the 7th Carnegie International Non-Proliferation Conference, 11-12 January 1999, Washington, DC.

Byrne, David. 'Preparedness on Bio-terrorism', Speech to the Agriculture Council, Luxembourg, 23 October 2001.

Carlton, D. *et al* eds. *Controlling the International Transfer of Weaponry and Related Technology*, Dartmouth, 1995.

Chevrier, Marie Isabelle, and Hunger, Iris. 'Confidence-Building Measures for the BTWC: Performance and Potential', *The Nonproliferation Review*, Fall-Winter 2000.

Centre for Disease Control and Prevention, 'Update: investigation of anthrax associated with intentional exposure and interim public health guidelines', CDC, 19 October 2001.

Congressional Research Service, *Preventing Proliferation of Biological Weapons: US Assistance to the Former Soviet States*, CRS, 10 April 2002.

Cottey, Andrew. *The European Union and conflict prevention: The role of the High Representative and the Policy Planning and Early Warning Unit*, Saferworld/International Alert, 1998.

Council of the European Union, Conclusions of the 2397th Council Meeting – General Affairs, 15078/01, 10 December 2001.

Council of the European Union, Conclusions of the 2421st Council meeting - General Affairs, 7705/02 (Presse 91), Luxembourg, 15 April 2002.

Crowley, Michael. *Disease by Design: De-mystifying the Biological Weapons Debate*, BASIC, November 2001.

Davis, Ian. *The Regulation of Arms and Dual-Use Exports: Germany, Sweden and the UK*, SIPRI/OUP 2002.

Duff, A. *The Treaty of Amsterdam, Text and Commentary*, Federal Trust, 1997.

European Commission, *Report to the European Parliament and the Council on the Application of Regulation (EC) 3381/94 setting up a community system of export controls regarding dual-use*, Brussels, COM(98) 258 final, April 1998.

European Commission, *Communication from the Commission to the Council: Reinforcing the transatlantic relationship: Focusing on strategy and delivering results*, COM(2001) 154 final, 20 March 2001.

European Commission. 'Towards a Strategic Vision of Life Sciences and Biotechnology: Consultation Document', 4 September 2001.
European Commission. Programme of Cooperation on Preparedness and Response to Biological and Chemical Agent Attacks, Luxembourg, 17 December 2001.
European Union, Working paper, Fifth Review Conference of BTWC, BTWC/CONF.V/COW/WP.23, 27 November 2001.
Feakes, Daniel. 'The Emerging European Disarmament and Non-Proliferation Agenda on Chemical and Biological Weapons', *Disarmament Diplomacy*, July/August 2002.
Foreign and Commonwealth Office (UK). 'Strengthening the Biological and Toxin Weapons Convention: Countering the Threat from Biological Weapons', UK Green Paper, April 2002.
General Accounting Office (US), *Effort to Reduce Former Soviet Threat Offers Benefits, Poses New Threat*, GAO/NSIAD-oo-138, April 2000.
Gordon, P. 'Europe's Uncommon Foreign Policy', *International Security* 22, no.3, Winter 1997/98.
Grand, Camille. 'The European Union and the Non- Proliferation of Nuclear Weapons', WEU Institute for Security Studies, *Chaillot Paper No.37* , January 2000.
Group of Eight. 'The G8 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction', 27 June 2002.
Holbrooke, Richard. 'High Road to Baghdad', *The Guardian*, 29 August 2002.
Lilja, Petra, Roffey, Roger and Westerdahl, Kristina *Disarmament or retention: is the Soviet biological weapons programme continuing in Russia?*, FOA/Umea, December 1999.
Mahley, Ambassador Donald. Statement by the United States to the Ad Hoc Group of Biological and Toxin Weapons Convention States Parties, 25 July 2001.
Meselson, Matthew. 'Averting the exploitation of biotechnology', Harvard-Sussex Program, (http://www.fas.org/BTWC/papers/junemesel.htm).
Meselson, Matthew. 'Strengthening the Biological and Toxin Weapons Convention', *CBW Conventions Bulletin* no. 42, December 1998.
Meselson, Matthew and Robinson, Julian Perry. 'A draft convention to prohibit Biological and Chemical Weapons under International Criminal Law', Harvard Sussex Program on CBW Armament and Arms Limitation, Workshop on 'Biological Terrorism: An international criminal law approach', Airlie Centre, Warrenton, VA, 14-17 May 2002.
Miller, Judith, Broad and Engelberg, *Germs: Biological Weapons and America's Secret War*, Simon and Schuster, 2001.
Miller, Judith. 'Washington Accuses Cuba Of Germ-Warfare Research', *New York Times*, 7 May 2002.
Müller, H. *Nuclear Export Controls in Europe*, European InterUniversity Press, 1995.
Müller, H. *European Non-Proliferation Policy 1993-1995*, Brussels: European InterUniversity Press, 1996.
Nolan, J. ed. *Global Engagement: Cooperation and Security in the 21st Century*, The Brookings Institution, 1994.
Nugent, N. *The Government and Politics of the European Union*, Third Edition, Macmillan, 1994.
Pearson, Graham. 'The Threat of Deliberate Disease in the 21st Century', in 'Biological Weapons Proliferation: Reasons for Concern, Courses of Action', Henry L. Stimson Center Report No.24, January 1998.
Quinlan, Michael, and Dunn, Lewis. 'The next big threat will be biological', The Guardian, 3 July 2002.
Rissanen, Jenni. 'Anger After The Ambush: Review Conference Suspended After US Asks for AHG's Termination', The Acronym Institute, 9 December 2001.
Rissanen, Jenni. 'US forces BTWC Conference to be Suspended without Agreement', The Acronym Institute, 7 December 2001.

Ruppe, David. 'BTWC: With Threat, U.S. Pressures to End Review Conference Early', *Global Security Newswire*, 6 September 2002.
Sims, Nicholas. 'Route-Maps to OPBW: Using the resumed BTWC Fifth Review Conference', June 2002.
Stockholm International Peace Research Institute. *Continuity and Change, 1966-1996*, SIPRI: Solna, 1996.
Tisdall, Simon, and MacAskill, Ewen. 'India's deadly defence: the 1,800 mile long minefield', *The Guardian*, 10 January 2002.
Toth, Tibor. Interview in *BASIC Reports*, February 2002.
Tucker, Jonathan. 'Bioweapons from Russia, Stemming the Flow', *Issues in Science and Technology Online*, Spring 1999.
United Nations. Report of the Preparatory Committee for the 5th Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, BTWC/CONF.V/PC/1, Annex II, Draft Rules of Procedure, 1 May 2001.
Warwick, Joby. 'Security Fears raised at Biological Factory', *New York Times*, 23 June 2002.
Zanders, French and Pauwels, 'Chemical and biological weapon development and arms control', *SIPRI Yearbook* 1999.
Westdal, Christopher. Statement by the Canadian Ambassador and Permanent Representative to the Conference on Disarmament, Fifth Review Conference of the BTWC, Geneva 19 November 2001.

ISROP
INTERNATIONAL SECURITY RESEARCH AND
OUTREACH PROGRAMME

Non-Proliferation, Arms Control and Disarmament Division
Lester B. Pearson Building
125 Sussex Drive
Ottawa, Ontario
K1A 0G2

FAX: (613) 944-3105

E-MAIL: isrop-prisi@dfait-maeci.gc.ca

WEBSITE: http://www.dfait-maeci.gc.ca/
foreign_policy/arms/security-en.asp

PRISI
PROGRAMME DE RECHERCHE ET D'INFORMATION
DANS LE DOMAINE DE LA SÉCURITÉ INTERNATIONALE

Direction de la non-prolifération, du contrôle
des armements et du désarmement
Édifice Lester B. Pearson
125 promenade Sussex
Ottawa, Ontario
K1A 0G2

FAX : (613) 944-3105

COURRIEL : isrop-prisi@dfait-maeci.gc.ca

SITE WEB : http://www.dfait-maeci.gc.ca/
foreign_policy/arms/security-fr.asp