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## Arms Control Abandoned The Case of Biological Weapons *Nicole Deller and John Burroughs*

Despite their genetic linkage and an overlap in key senior officials, the two Bush administrations have diverged strikingly in their national security strategies. This has been most clearly evident in the varying approaches of the two administrations to the lethal challenge of weapons of mass destruction. It is too often forgotten that with the collapse of the Soviet Union in 1991, the newly independent states of Ukraine, Belarus, and Kazakhstan emerged overnight as atomic powers, each inheriting large stockpiles of nuclear-tipped missiles. The Bush I team, relying on the arms reduction treaty (START) it had successfully negotiated with Moscow, secured the monitored destruction of these deadly arsenals through an unjustly forgotten instrument, the 1992 Lisbon Protocol.

As pertinent and also often forgotten is the Chemical Weapons Convention, which George H. W. Bush personally helped shape as vice president in the Reagan administration. At the time, Bush startled fellow diplomats with the breadth of the verification regime he proposed. When the treaty was given final form at the end of his own administration, it included the most comprehensive and intrusive monitoring system ever agreed upon in the field of arms control.

In contrast, President George W. Bush has eliminated prior requirements for verified destruction of strategic nuclear missiles in the 2002 U.S.-Russian Strategic Offensive Reductions Treaty. He has also withdrawn from the Anti-Ballistic Missile Treaty and has rejected the Comprehensive Nuclear

Test-Ban Treaty. More surprisingly, George W. Bush has refused to apply the model developed by his father for the verified elimination of chemical weapons to the grave threat of biological arms.

This rejection of multilateralism and verified arms control was foreshadowed by disagreements in the first Bush administration concerning the 1992 "Defense Planning Guidance" document and by the 1997 debate over ratification of the Chemical Weapons Convention. A draft of the defense planning document, written under the direction of Undersecretary of Defense for Policy Paul Wolfowitz (currently deputy secretary of defense), emphasized the need for overwhelming U.S. global military superiority, and rejected internationalism, declaring that "we should expect future coalitions to be ad hoc assemblies, often not lasting beyond the crisis being confronted." This thesis was rejected by the White House, and the reworded draft "recasts American military preeminence as a catalyst—not an alternative—to collective action."<sup>1</sup>

This division within the Bush I team persisted during the eight Clinton years. When the Chemical Weapons Convention came up for Senate consideration, its rejection was advocated by Dick Cheney, now vice president, and Douglas Feith and Richard Perle, now key advisors to Secretary of Defense Donald Rumsfeld. The Senate nevertheless approved the convention, although it added conditions regarding U.S. compliance with inspections that have been cited as a precedent by other states seeking to limit scrutiny.

Under President George W. Bush, this antipathy to arms control and multilateralism became the dominant sentiment. As the author Frances FitzGerald writes, “what had been a minority position in the first Bush administration had become a majority position in the second”—a process palpably accelerated by the terror attacks of September 11, 2001.<sup>2</sup> Nowhere is this change clearer than in the appointment of John Bolton as undersecretary of state for international security and arms control. A longtime ideological ally of North Carolina’s former Republican senator, Jesse Helms, Bolton has seemed no less vehement in his dislike of multilateralism. At the latter’s confirmation hearing, Senator Helms called Bolton “the kind of man with whom I would want to stand at Armageddon.” And for his part, with Helmsian scorn, Bolton once remarked that “if the United Nations Secretariat building in New York lost ten stories, it wouldn’t make a bit of difference.”<sup>3</sup>

A Yale-educated attorney, Bolton served on the Bush I team as assistant secretary of state for international affairs. During the Clinton administration, he vigorously joined in the mounting assault on multilateralism, both as a vice president of the American Enterprise Institute, a conservative think tank, and as a prolific author, his tenor suggested by the title of a law journal article he published in 2000: “Is There Really ‘Law’ in International Affairs?”<sup>4</sup> His views were thus scarcely unknown when his name came up as a likely member of the new Bush team. In a mostly straight party vote, Bolton was confirmed by the Senate, 57–43.

This background sheds some light on the mentality that resulted in a refusal to strengthen the Biological Weapons Convention (BWC) while emphatically demanding that “states of proliferation concern” renounce weapons of mass destruction.

#### *The Biological Weapons Protocol*

In 2001, Bolton played an instrumental role in disrupting negotiations to create a regime

to monitor states’ compliance with the existing ban on possession of biological arms contained in the Biological Weapons Convention. During the Nixon administration, the United States, together with Britain, initiated negotiations on the BWC. Prompted in part by U.S. use of defoliants in the Vietnam War, public pressure for the elimination of both chemical and biological weapons was mounting, and the two countries saw biological arms as having little military utility. At the same time, they saw an international agreement as a means of denying a weapon of mass destruction to poor countries while retaining their own ultimate deterrent, nuclear weapons.<sup>5</sup> Entered into force in 1975, the BWC nominally prohibits states from developing or possessing biological agents for other than peaceful purposes; it also prohibits the development or possession of weapons capable of delivering such agents. Unlike the Chemical Weapons Convention, however, it establishes no mechanisms to give institutional life to the ban on possession, such as inspections or declarations—that is, a formal accounting of research facilities and the destruction of stockpiles.

In the early 1990s, the weakness of the BWC was dramatically exposed. The Russian government admitted that the Soviet Union had a massive biological weapons program, expanded shortly after Soviet ratification of the BWC, and United Nations inspections revealed that Iraq had had an extensive program prior to the Gulf War. There was a clear need for a verification regime for the BWC. It was also recognized, however, that creating such a regime would be difficult. The treaty allows states to possess biological weapons agents in small amounts for such “biodefense” purposes as the development of vaccines and protective gear, yet even small amounts of such agents are militarily significant. And even when carried out in good faith, such research programs may verge on weapons development. A verification regime was believed to be worthwhile, nonetheless,

to promote transparency and compliance, reinforce the norm of nonpossession, and establish internationally accepted procedures for responding to suspected violations.

In an effort to meet this challenge, BWC member states began negotiations in 1995 on a supplementary agreement, or “protocol.” Seven years of intensive work yielded a draft with three principal mechanisms: declarations of national biodefense programs and other biological research and production facilities, including commercial ones; site-check visits to encourage truthful declarations; and challenge inspections to investigate allegations of noncompliance.

The Clinton administration participated in the negotiations but did not take a leading role. Despite the administration’s proclaimed support for a protocol, the Commerce and Defense Departments sought to limit intrusions into pharmaceutical and biotech companies and into the extensive U.S. biodefense programs. In another sign of its conflicted and less than energetic approach, the Clinton administration conducted few feasibility tests as to whether the proposed regime would effectively detect bioweapon programs and adequately protect sensitive information.<sup>6</sup>

On assuming office, and following intensive interagency deliberations, the Bush administration reversed the course taken under Clinton. In July 2001, U.S. negotiator Donald Mahley announced that the United States rejected the draft protocol and would not participate in further negotiations. He explained that it “will not enhance our confidence in compliance and will do little to deter those countries seeking to develop biological weapons, [and] would put national security and confidential business information at risk.”<sup>7</sup> Other countries then declined to go forward with negotiations.

Yet, revealingly, less than a year earlier Mahley had expressed confidence that the draft protocol contained adequate safeguards for sensitive information. The Defense Department did voice concerns that other

states or terrorists could learn about U.S. vulnerabilities. But critics of the administration’s policy speculate that the main reason for the opposition to the protocol may be that the United States is reluctant to open its biodefense program—which includes activities kept secret for years—to public scrutiny.<sup>8</sup> Revealing the existence and nature of these projects could cause embarrassment to the United States because some are arguably barred by the BWC. Also, if misperceived as the beginnings of an offensive program, they may encourage other states to undertake weapons development.

In September 2001, the *New York Times* reported on several secret U.S. biodefense projects, including the attempts to build a bio-bomb, create a superstrain of anthrax, and construct a bioweapons lab out of commercially available material.<sup>9</sup> The administration said such activities were permissible defensive work carried out for purposes of threat assessment. Nevertheless, the United States has labeled other states as biological weapons proliferators without providing proof of anything near this level of weapons-related activity.

As to the likely effectiveness of the draft protocol, it is certainly true that its provisions on declarations and inspections are relatively weak as compared to the Chemical Weapons Convention. This is due in no small measure to stated U.S. positions. The United States insisted on limiting the scope and number of facilities to be declared.<sup>10</sup> It also favored a cumbersome, time-consuming procedure for launching an investigation of a facility suspected of noncompliance, which could afford the opportunity to clean up a suspect facility prior to its inspection.<sup>11</sup> These and other weaknesses caused some experts, like Amy Smithson of the Stimson Center, to oppose the draft though they supported the creation of a verification regime.<sup>12</sup>

However, if the Bush administration’s concern was that the draft needed to be strengthened, it could have pushed, with a

high likelihood of success, for further revision. Its blanket opposition points to the conclusion that the administration simply saw the protocol as yet another mandatory—and therefore unpalatable—multilateral regulation. The conclusion is strengthened by the administration's subsequent refusal to consider negotiating agreements of narrower scope—for example, one requiring national prosecution of individual violators or one establishing a procedure for challenge inspections.

### *Combating Bioterrorism*

The decision to jettison the protocol, and the revelations about U.S. biodefense activities, came shortly before the terrorist attacks of September 11 and the anthrax attacks that killed five people. These events made combating bioterrorism a top U.S. security priority and instigated dramatic increases in government spending to improve the ability of state and local health systems to respond to a biological attack and for biodefense work. The latter includes research on vaccines, diagnosing and treating disease outbreaks, and “improving our understanding of how potential bioterrorism pathogens may be weaponized, transported, and disseminated.”<sup>13</sup> The budget for fiscal year 2003 for “defending against biological terrorism” is nearly \$6 billion.<sup>14</sup>

In the aftermath of 9/11, many expected that the United States would also focus on international legal instruments and other multilateral measures to address the threat of bioterrorism. But when John Bolton addressed the fifth review conference of the BWC in November 2001, he reaffirmed the administration's earlier position. Bolton began by “naming names,” identifying Iraq, Iran, North Korea, Libya, Syria, and Sudan as operators of secret biological weapons programs. With respect to the protocol, Bolton emphasized that “we must do better” than a regime that would still allow “cheaters.” He called upon states to make biological weapons-related activity a punish-

able crime, a step already generally encouraged by the BWC, but made no mention of a treaty that would require states to proscribe and prosecute such activity. A model for an agreement already exists in the treaties on aircraft hijacking, terrorist bombings, and the financing of terrorism. He also called upon states to establish standards for the secure handling of pathogens and to develop a code of conduct for scientists. He suggested a voluntary system in which states could resolve compliance concerns “by mutual consent,” and a mechanism for international investigations of suspicious disease outbreaks or alleged bioweapon incidents that does not appear to go much further than a United Nations General Assembly initiative already in place. Finally, he called for the strengthening of national and international capabilities to respond to outbreaks of disease.

Just hours before the conference ended, Bolton shocked the assembled diplomats by introducing a surprise proposal to formally terminate the process for negotiating a verification protocol or less comprehensive instruments.<sup>15</sup> To avoid a bitter end to the conference, it was agreed that the meeting be adjourned and reconvened a year later, in November 2002. The Bush administration then dropped its insistence on formal termination of the negotiating process, which remains suspended. With U.S. concurrence, the conference agreed to hold annual meetings on a separate track to discuss measures in the areas that Bolton had identified.<sup>16</sup> Any action on these topics will not even be considered until the next BWC review conference in 2006.

In the view of many observers, states should be encouraged to criminalize biological weapons-related activity and to set national standards for the secure handling of pathogens.<sup>17</sup> Despite the Bush administration's current attitude, looking down the road such measures could serve as a foundation for international agreements and for an international agency to oversee biological

weapons-related activities. But such measures must complement, not be a substitute for, a legal regime that, like those already in existence for chemical and nuclear power facilities, would subject commercial and governmental biological research facilities to international monitoring.

*Counterproliferation v. Multilateralism*

The arguments against the biological weapons protocol, like those that were made against ratification of the Chemical Weapons Convention and the Comprehensive Nuclear Test-Ban Treaty, reflect the fundamental concern that global security treaties frequently punish the good guys. It is argued that they obstruct efforts by the law-abiding United States to improve its military capabilities, yet they cannot detect all cheating states. Further, they instill false confidence: simply because states proclaim themselves to be in compliance, make declarations and allow inspections, and participate in international conferences as members in good standing of treaty regimes does not mean that they are not cheating.

Yet the fact that there are law breakers is not a sufficient reason to scuttle the law. It does suggest that better enforcement is needed. In the case of the biological weapons protocol, the United States opposes a regime that would dramatically augment capabilities to detect violations of the existing ban on biological arms. It is certainly true that states should not be assumed to be in compliance merely because they have ratified a treaty, and assessments of compliance should be based on U.S. intelligence and other sources as well as on information from verification procedures. The accusation that arms control regimes encourage complacency cannot be ignored, but the benefits of such regimes outweigh this risk. As for restricting U.S. military capabilities, as Bush Senior recognized, this is a price that must often be paid to ensure other states' cooperation in strengthening international security.

The abandonment of the biological weapons protocol is a consequence of a security strategy that relies less on global norms and international institutions and more on a posture of "counterproliferation"—the threat or the use of force, including resorting to preventive war, in order to deter and combat nuclear, biological, and chemical threats or attacks. This strategy is profoundly unwise. Aside from the staggering military expenditures involved, it is not effective in preventing the diversion of weapons of mass destruction or their components to terrorists. That requires the cooperation of other states, which will not be forthcoming in a system based on threat rather than reciprocity. In some cases, as the North Korean one seems to illustrate, states may decide to acquire nuclear weapons or other weapons of mass destruction so as to deter a possible U.S. attack, rather than to forswear such weapons.

Perversely, the emphasis on counterproliferation has resulted in a reinforcement of the U.S. nuclear threat. In the "National Strategy to Combat Weapons of Mass Destruction," released in December 2002, the Bush administration stated that the United States "reserves the right to respond with overwhelming force—including through resort to all of our options—to the use of WMD [weapons of mass destruction] against the United States" and its "friends and allies." The reference to the possible retaliatory use of nuclear arms is plain. The document also does not exclude the preemptive use of nuclear weapons. Thus the weight given to military means to address the problem of WMD proliferation has raised the salience of the most destructive weapon by far, diminishing near-term prospects for the verified reduction and elimination of nuclear arms. By contrast, the first Bush administration had made major contributions to that disarmament process—with the START agreement and the first real-world model for the elimination of a weapon of mass destruction, the Chemical Weapons Convention.

Accompanying this increased reliance on counterproliferation is a thoroughgoing denigration of international law and institutions. This is exemplified by Bolton's position that treaties do not impose true legal obligations. His chief argument is that this is so because a coherent, legitimate, and consistently applied international enforcement framework is lacking. But, as John Jay, one of the authors of the *Federalist Papers*, understood long ago, treaty commitments are binding when states reciprocally intend them to be so and act accordingly. It is also true that there are multiple means of strengthening enforcement, including in this instance the adoption of a biological weapons protocol. ●

## Notes

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4. John R. Bolton, "Is There Really 'Law' in International Affairs?" *Transnational Law and Contemporary Problems*, vol. 10 (spring 2000).
5. Susan Wright, "Geopolitical Origins," in *Biological Warfare and Disarmament: New Problems/New Perspectives*, ed. Susan Wright (Lanham, Md.: Rowman & Littlefield, 2002). Wright draws upon recently declassified British and American documents.
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7. U.S. Department of State, "U.S. Says Biological Weapons Protocol Would 'Not Achieve Its Objectives,'" July 25, 2001.
8. See, for example, Mark Wheelis and Malcolm Dando, "Back to Bioweapons?" *Bulletin of the Atomic Scientists* (January-February 2003), pp. 40-46.
9. Judith Miller, Stephen Engelberg, and William Broad, "U.S. Germ Warfare Research Pushes Treaty Limits," *New York Times*, September 14, 2001.
10. John Steinbruner, Nancy Gallagher, and Stacy Gunther, "A Tough Call," *Arms Control Today* (May 2001), p. 23.
11. Oliver Thränert, "The Compliance Protocol and the Three Depository Powers," in Wright, ed., *Biological Warfare and Disarmament*, p. 347.
12. According to Smithson, the Bush administration "inherited a lemon" (Carla Anne Robbins, "Disarming America's Treaties," *Wall Street Journal*, July 19, 2002).
13. President George W. Bush, "Securing the Homeland, Strengthening the Nation," November 24, 2002, pp. 12-15.
14. National Institute of Allergy and Infectious Diseases, "Homeland Security: Distribution of FY 2003 President's Budget Request," at [www.niaid.nih.gov/biodefense/about/nbe.htm](http://www.niaid.nih.gov/biodefense/about/nbe.htm).
15. Jenni Rissanen, "Left in Limbo: Review Conference Suspended On Edge of Collapse," *Disarmament Diplomacy* (January-February 2002), at [www.acronym.org.uk](http://www.acronym.org.uk).
16. Marie Isabelle Chevrier, "Waiting for Godot or Saving the Show? The BWC Review Conference Reaches Modest Agreement," *Disarmament Diplomacy* (December 2002-January 2003), at [www.acronym.org.uk](http://www.acronym.org.uk).
17. See, for example, the remarks of Barry Kellman, panel discussion, "Preventing the Misuse of Biotechnology," Carnegie International Non-Proliferation Conference, Washington, D.C., November 15, 2002, at [www.ceip.org](http://www.ceip.org).