

## **Part III. Non-proliferation, arms control and disarmament, 2002**

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## 14. Arms control in the new security environment

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### I. Introduction

Current tendencies in arms control, disarmament, non-proliferation and export control are examined in this chapter as an introduction to the part of the Yearbook in which separate chapters examine specific processes and developments in greater detail.

While bilateral and multilateral treaties cannot carry the full weight of managing international security problems, arms control continued to play an important role as one instrument of security policy in 2002. The United States confirmed its belief that other approaches cannot substitute for certain features of multilateral arms control.<sup>1</sup>

The essence of arms control remains constant—self-restraint either with regard to national military capacities or decisions, such as the denial of authorization to export, that could support military capacities in other countries. Events in 2002 underlined that this objective is being sought through at least four distinct, complementary but non-hierarchical approaches.

First, many different activities are continuing to take place in the framework of multilateral and bilateral arms control treaties and arrangements—the scope of which includes nuclear, biological, chemical (NBC) and conventional weapons as well as many types of missiles. These treaties and arrangements continue to provide a central element of the framework for overall efforts to control armaments and military capacities.

Second, certain country-specific approaches have been developed that combine different political, legal, economic and military instruments to achieve disarmament. In 2002 the United Nations Security Council continued to be directly engaged in efforts to eliminate weapons of mass destruction and prohibited ballistic missiles in Iraq. In Resolution 1441 the Security Council took a number of decisions unanimously and warned Iraq that it would face ‘serious consequences as a result of its continued violations of its obligations’.<sup>2</sup> At the end of 2002 a number of countries, principally the United

<sup>1</sup> ‘The relevance of regimes’, Speech by John S. Wolf, Assistant Secretary for Nonproliferation, Carnegie International Nonproliferation Conference, Washington, DC, 15 Nov. 2002, URL <<http://www.state.gov/t/np/rls/rm/15486.htm>>.

<sup>2</sup> UN Security Council Resolution 1441, 8 Nov. 2002. National and international attempts to manage the deepening crisis over Iraq during 2002 are discussed in chapter 1 in this volume. Efforts to eliminate Iraq’s nuclear weapon capabilities are addressed in chapter 15 and efforts to eliminate chemical and biological weapon capabilities are discussed in chapter 16 in this volume.

States and the United Kingdom, prepared for military action against Iraq to add credibility to the decisions contained in Resolution 1441.

Third, in June 2002 the leaders of the Group of Eight (G8) formed a Global Partnership Against the Spread of Weapons and Materials of Mass Destruction (Global Partnership), to provide material, technological and financial assistance to states (in the first instance the Russian Federation) that lack the means to implement shared disarmament, non-proliferation and counter-terrorism objectives.<sup>3</sup>

Fourth, the states that participate in multilateral export control cooperation continued to develop common standards implemented through national laws and regulations. Some states that do not participate in such arrangements (such as China) made important changes to their national export control systems.<sup>4</sup>

Taken together, these activities, in each of which the United States has played a prominent role, can be characterized as order-building diplomacy carried out among groups with relevant membership. This approach, called 'effective multilateralism' by one US official, best balances current needs and realities within the international system.<sup>5</sup>

## II. The contribution of arms control to security building in 2002

Recent experience suggests that arms control is playing an important role under at least three sets of conditions.

First, arms control is an element of building a cooperative security community in Europe where multilateral agreements, including the 1990 CFE Treaty<sup>6</sup> as well as confidence- and security-building measures (CSBMs), contributed to a sense of predictability and transparency in the immediate aftermath of the cold war. This web of agreements continues to facilitate integration that is creating transparency, accountability and equality of treatment among a group of states with wide differences in national power and aspirations.<sup>7</sup> Arms control in Europe is an example of the phenomenon noted in the introduction to this volume of 'everybody-wins' security building. Over time, it may help European states revise security policy processes safely and without a significant increase in costs.<sup>8</sup>

Second, arms control establishes norms and expectations against which the actual behaviour of states can be judged. Governments continue to find this framework for evaluation invaluable in developing responses to serious secur-

<sup>3</sup> Alan P. Larson, Under Secretary for Economic, Business and Agricultural Affairs, 'G-8 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction', Testimony Before the House International Relations Committee, Washington, DC, 25 July 2002, URL <<http://www.state.gov/e/rls/rm/2002/12190.htm>>. For a list of the G8 members see the glossary in this volume.

<sup>4</sup> The changes in supply-side approaches to arms control are described in chapter 18 in this volume.

<sup>5</sup> Rademaker, S. G., 'The commitment of the United States to effective multilateralism', Statement to the Conference on Disarmament, Geneva, 13 Feb. 2003, URL <<http://www.state.gov/t/ac/rls/rm/2003/17744.htm>>.

<sup>6</sup> The Treaty on Conventional Armed Forces in Europe.

<sup>7</sup> See chapter 17 in this volume.

<sup>8</sup> See chapter 6 in this volume.

ity problems in, for example, Iraq and on the Korean peninsula. Conversely, the absence of such a framework complicates the development of practical responses in places where the parties have not yet accepted that arms control contributes to security building, such as in South Asia.<sup>9</sup>

Third, President George W. Bush and senior US officials made no secret of their reservations about whether legally binding obligations were needed to manage US strategic relations with Russia. Nevertheless, the US–Russian Treaty on Strategic Offensive Reductions (SORT) was signed in May 2002 as one element of a broader package of measures intended to create a new basis for bilateral Russian–US relations.<sup>10</sup> While the treaty did not contain detailed verification provisions or establish a new implementation mechanism, these issues were not ignored. The parties intend to use existing arrangements that were created for the 1991 Treaty on the Reduction and Limitation of Strategic Offensive Arms (START I Treaty) for verification. Moreover, a new Consultative Group for Strategic Security was created to expand transparency, share information and plans, and discuss strategic issues of mutual concern.<sup>11</sup>

While events in 2002 underlined the need for a mix of complementary arms control instruments in different forms—legal and non-legal—and implemented by different bodies, this fragmentation has introduced its own complexities. First, defining specific objectives and targets is made more complicated by the lack of a single process. Second, developing institutions through which agreements can be reached and implemented is complex.

Arms control is only one type of security-policy response along a spectrum ranging from positive action to restraint. As noted in the introduction to this volume, although a broad range of interrelated factors critically affect security, at present no single global institution can legislate and act across the whole range of relevant issues. Below this higher-order question of how to apply different general responses, arms control continues to face its own selection and coordination problems.

The failure of participating states to reach agreement on an agenda for work within the Conference on Disarmament (CD) for six consecutive years indicates that a single integrated framework for arms control discussions remains elusive. Six years ago, the CD agreed on the need to negotiate a fissile material treaty (FMT). The failure to agree an agenda reflects the insistence of some states that this negotiation is conditional on progress in three other initiatives, namely: prohibiting an arms race in space, providing negative security assurances to non-nuclear weapon states, and the formation of an ad hoc group to discuss how to achieve nuclear disarmament. However, not all CD members agree on the desirability of these three measures. No other multilateral or regional organization is able to take on the task of creating an integrated arms control framework.

<sup>9</sup> See chapter 5 in this volume.

<sup>10</sup> White House, Office of the Press Secretary, 'Text of Strategic Offensive Reductions Treaty', 24 May 2002, URL <<http://www.whitehouse.gov/news/releases/2002/05/20020524-3.html>>.

<sup>11</sup> See chapter 15 in this volume.

The difficulty of ensuring compliance with agreements once reached was highlighted in 2002 by the crises related to the NBC weapon programmes of Iraq and the nuclear weapon programme of North Korea.<sup>12</sup>

Different approaches were devised in the 1990s to bring Iraq and North Korea back into compliance with their arms control obligations. In the case of Iraq, the preferred approach to the discovery of illegal nuclear and biological weapon (BW) programmes was tight management by the UN Security Council. In the case of North Korea, the Security Council in effect delegated to the United States the primary responsibility for developing a response to illegal weapon-related nuclear activities.

Neither Iraq nor North Korea had been brought into compliance with its obligations by the end of 2002. Moreover, in addition to issues surrounding graphite-moderated reactors and related facilities in North Korea, a new and separate set of questions was raised in October 2002 when it was reported that North Korea intended to construct a uranium-enrichment facility (and had begun to purchase materials to this end) and the North Korean Government stated that it was 'entitled to possess' nuclear weapons.<sup>13</sup>

The questions of whether and how to apply arms control restrictions and prohibitions to sub-state and trans-state actors became a focus of some attention in the 1990s as part of multilateral conflict resolution efforts. This has also been an element of the discussion of counter-terrorism.

Events in 2002 underlined that solutions have yet to be found to some genuine and serious problems of multilateral arms control, but there was evidence of a greater willingness to define common and flexible approaches to tackling some of the challenges. Where groups of states have identified a common security problem, they have sought the quickest and most effective means of building political consensus around a course of remedial action. A wide variety of other examples of flexibility and innovation can be enumerated.

In November 2002, 93 states declared their willingness to support an International Code of Conduct Against Ballistic Missile Proliferation (ICOC).<sup>14</sup> The process of formulating the ICOC was novel in that a limited group of 'like-minded' states developed a draft code among themselves but always with the intention of subsequently inviting adherence from the largest possible number of states.

In June 2002, at their summit meeting in Kananaskis, Canada, the G8 countries agreed the Global Partnership, in which they pledged to support cooperation projects to address non-proliferation, disarmament, counter-terrorism and nuclear safety issues. Given the enormous military capacity developed by the Soviet Union, the full participation of Russia in arms control is of great impor-

<sup>12</sup> Arms control related developments in Iraq are discussed in chapter 16 in this volume. The nuclear non-proliferation regime and arms control related developments in North Korea are discussed in chapter 15 in this volume.

<sup>13</sup> Report by the Director General on the Implementation of the NPT Safeguards Agreement between the Agency and the Democratic People's Republic of Korea, Resolution adopted by the Board of Governors of the IAEA on 29 Nov. 2002, IAEA document GOV/2002/60, 29 Nov. 2002. Few details of the scope of North Korean uranium-enrichment activities were available at the end of 2002.

<sup>14</sup> The ICOC is reproduced in appendix 18B and discussed in appendix 18A in this volume.

tance. A key objective of the Global Partnership is to help avoid a situation in which the economic costs of implementing arms control commitments prevent Russia from meeting existing obligations.

At the Kananaskis summit meeting the leaders of the G8 countries called on all countries to adopt a set of non-proliferation principles that were announced when the Global Partnership was formed. Moreover, all countries prepared to adopt these principles and guidelines were invited to participate in and contribute to the overall initiative.

In December 2002 the European Union (EU) published its fourth annual report on the implementation of the EU Code of Conduct on Conventional Arms Exports, agreed between EU member states in 1998.<sup>15</sup> The report underlined that the code, which is based on a political declaration, has led to changes in the national laws of member states as well as changes in policy.

The code contains operative provisions that have led to extensive and growing information exchange among EU member states. Increased confidence and understanding about how the code is implemented has in turn laid a foundation for progressively deeper intergovernmental cooperation among member states. Moreover, with the enlargement of the EU a wider group of states will adopt the agreed measures, participate in the operative provisions of the code and exchange the relevant information.<sup>16</sup>

These initiatives were all, in their different ways, either intended to support arms control treaties or to achieve some of the objectives normally associated with them while mitigating some of the problems recently experienced in arms control treaty processes.

### III. The Global Partnership Against the Spread of Weapons and Materials of Mass Destruction

The G8 is an informal group in which Canada, the European Union, France, Germany, Italy, Japan, Russia, the UK and the USA participate. The EU is represented by the President of the European Commission and by the leader of the country that holds the presidency of the European Council at the time of the G8 summit meeting.

The G8 does not have a secretariat; the country holding the chair is responsible for hosting and organizing the annual G8 summit meeting. The summit meeting is the principal G8 activity that brings together the leaders for talks on issues considered to be of global importance to the group. In advance of the summit the host country organizes meetings between personal representatives of the leaders to set the agenda.

The G8 host country is not responsible for implementing commitments made at the summit meeting (beyond its own national commitments) or for

<sup>15</sup> Fourth annual report according to operative provision 8 of the European Union Code of Conduct on Arms Exports (2002/C 319/01), *Official Journal of the European Communities*, C 319, vol. 45 (19 Dec. 2002), pp. 1–45. The text of the EU Code of Conduct for Arms Exports of 8 June 1998 is available at URL <<http://projects.sipri.se/expcon/eucode.htm>>. See also chapter 13 in this volume.

<sup>16</sup> The impact of EU enlargement on export control is examined in chapter 18 in this volume.

monitoring implementation. However, inter-summit meetings of a network of senior officials, who focus on the major issues on the summit meeting agenda, are usually organized. As a general rule, the chair has taken on the responsibility for engaging non-G8 countries, non-governmental organizations and international organizations.

The Global Partnership combines three separate objectives: facilitating the implementation of agreements negotiated during the cold war, strengthening non-proliferation and counter-terrorism. The Global Partnership statement includes two elements: (a) a set of six principles to prevent terrorists, or those that harbour them, from gaining access to weapons or materials of mass destruction; and (b) a set of guidelines for new or expanded cooperation projects to translate these principles into practical activities.

The G8 countries have agreed to work to embed the six agreed principles into the agreements of other groups and organizations in which they participate. One attempt to achieve this was the introduction of ideas contained in the G8 document into the UN Security Council discussions on combating terrorism.<sup>17</sup> The agreed guidelines are expected to facilitate the signing of legal agreements to set the rules for bilateral government-to-government assistance programmes with Russia. These framework agreements are, in turn, intended to facilitate the work of contractors that implement agreed projects.<sup>18</sup>

The programme of work that will fall under the umbrella of the Global Partnership was not defined by the end of 2002. However, the projects that have been mentioned in public documents are of a kind associated with the US Cooperative Threat Reduction (CTR) programme managed by the US Department of Defense (DOD) within the framework of the 1991 Soviet Nuclear Threat Reduction Act (also known as the Nunn–Lugar Act).<sup>19</sup> The programmes mentioned as having a high priority are the destruction of chemical weapons (CW), the dismantlement of decommissioned nuclear submarines, the disposition of fissile materials and the employment of former weapon scientists.

Most of the programmes implemented in the past have provided financial, material and technical support for purposes related to arms control treaty implementation. The priorities have been to help implement the Russian–US START I Treaty and the multilateral 1993 Chemical Weapons Convention (CWC).<sup>20</sup> Other programmes have sought to facilitate compliance with the multilateral 1972 Biological and Toxin Weapons Convention (BTWC).<sup>21</sup>

<sup>17</sup> On 20 Jan. 2003, at the Ministerial Level meeting of the UN Security Council on combating terrorism, the foreign ministers of the G8 countries stressed the importance of actions to prevent terrorists from gaining access to weapons or materials of mass destruction. Several of the ministers stated that these actions include denial of such weapons and materials to states known to have supported groups that carry out terrorist acts.

<sup>18</sup> The G8 is expected to become a forum for exchanging information and establishing a legal best practice to reduce implementation obstacles.

<sup>19</sup> The CTR programme is discussed in chapter 15 in this volume.

<sup>20</sup> The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction.

<sup>21</sup> The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction.

These programmes also enabled Belarus, Kazakhstan and Ukraine to join the 1968 Non-Proliferation Treaty (NPT).<sup>22</sup>

Arms control has been a critical determinant of the success or failure of CTR projects. At a general level, the existence of arms control agreements has assisted with defining project areas that qualify for external support and explaining to domestic oversight bodies why the resources of donor states should be used in this manner. More specifically, the clear and agreed objectives as well as the agreed body of information already contained in treaties have made it easier to define and implement particular projects. By contrast, when no such agreed objectives exist or when information is not available it has been more difficult to define and implement projects. The difficulty of decommissioning multi-purpose submarines of the Russian Navy (which are not subject to limits established by agreements) can be compared with the successful decommissioning of submarine platforms intended for the delivery of strategic weapons (which are subject to such agreements).

The timing of the G8 initiative, which builds on a German–US agreement reached in talks between President Bush and Chancellor Gerhard Schröder, was heavily influenced by the terrorist attacks against the USA in September 2001. Following these attacks, the G8 partners agreed to develop specific measures to enhance counter-terrorism cooperation. The Global Partnership is partly intended to meet this commitment in that the enhanced physical security or the physical elimination of NBC and radiological weapons, missile delivery systems for these weapons as well as NBC and missile-related materials, equipment and technology would deny such items to terrorists.

While past agreements have been concluded according to a donor–recipient principle, the G8 initiative has been put forward as a partnership arrangement. This is reflected in the procedures of the G8, in which Russia participates fully in all discussions and is party to all decisions. The fact that Russia has pledged to spend the equivalent of \$2 billion on projects agreed to fall within the Global Partnership in 2002–12 played an important role in creating this partnership principle. However, while the principle of partnership applies within the G8 discussions, project implementation will continue to take place on a bilateral basis and will involve the provision of financial, material and technological support from seven of the G8 states, together with the EU, to the eighth participating state—Russia.

The Global Partnership is a political commitment from the G8 participants. By early 2002, G8 senior officials had identified \$18 billion in pledges from their respective countries and the European Union.

Within the G8 Global Partnership defining and funding specific projects that fall under the programme of work and then implementing these projects is the responsibility of the participating states. As of the end of 2002 a catalogue of projects that will fall under the Global Partnership had not been agreed; neither had new projects been identified. The money pledged by leaders had not been included in national budgets.

<sup>22</sup> The Treaty on the Non-Proliferation of Nuclear Weapons.

While the G8 process involves a political commitment at the highest level, in the past it has put a low emphasis on the coordination and coherence of national implementation of this commitment. This is partly because its apparatus, while keeping costs low and flexibility high, does not permit the development of specialist knowledge of summit issues or maintain close ties with national agencies responsible for implementing summit commitments.<sup>23</sup>

The implementation of the G8 Global Partnership is also likely to require close cooperation with the European Union. In December 1999 the EU adopted a Joint Action Establishing a European Union Cooperation Programme for Non-proliferation and Disarmament in the Russian Federation.<sup>24</sup> This Joint Action established support for the project to destroy chemical weapons at a plant in Gorny as well as facilitating studies on plutonium transport, storage and disposition. The Joint Action was supplemented in June 2001 when the EU agreed to support the Northern Dimension Environmental Partnership and expanded financial assistance to include the CW destruction facility at Shchuchye in Russia.<sup>25</sup>

The existing Joint Action contains commitments that cover the period to June 2003. However, it has an option for continuation and the relationship between the G8 Global Partnership and the EU Joint Action is likely to be one factor considered by member states when thinking about how to proceed in this aspect of their relations with Russia.<sup>26</sup>

In summary, as a statement of intent from the highest level of government, the G8 Global Partnership reflects the political impetus behind both non-proliferation and counter-terrorism. However, it has raised a number of substantive questions related to its scope and definition as well as a number of institutional questions related to the management and administration of whatever programme is defined. Whether the G8 process can or will succeed in developing and implementing a work programme is still to be tested.

<sup>23</sup> E.g., commitments made in 1996 at the Moscow Nuclear Safety and Security Summit—related to nuclear safety, nuclear material safety (including preventing illicit trafficking in nuclear materials), nuclear waste management and nuclear material control, accountancy and physical protection—were not subsequently translated into specific activities. Perspectives on the G-8 Global Partnership Against the Spread of Weapons of Mass Destruction, Testimony of Kenneth N. Luongo, Executive Director, Russian–American Nuclear Security Advisory Council to the Committee on Foreign Relations, US Senate, 9 Oct. 2002. The need for new or expanded cooperation projects to address nuclear safety issues is one element of the guidelines agreed by the G8 states in the Global Partnership, which established a Nuclear Safety and Security Group to address implementation of past commitments.

<sup>24</sup> Council Joint Action of 17 December 1999 establishing a European Union Cooperation Programme for Non-proliferation and Disarmament in the Russian Federation (1999/878/CFSP), URL <[http://www.eur.ru/eng/neweur/user\\_eng.php?func=rae\\_disarmament](http://www.eur.ru/eng/neweur/user_eng.php?func=rae_disarmament)>.

<sup>25</sup> Council Report to the European Council on the Implementation of the Common Strategy of the European Union on Russia, Council document 9805/1, 12 June 2001; and Presidency Conclusions, European Council, Gothenburg 15–16 June 2001, URL <[http://www.eu2001.se/static/pdf/eusummit/conclusions\\_eng.pdf](http://www.eu2001.se/static/pdf/eusummit/conclusions_eng.pdf)>.

<sup>26</sup> The Common Strategy on Russia adopted by EU member states in 1999 guides broader aspects of EU–Russian relations and will need to be renewed in the summer of 2003. *Official Journal of the European Communities*, L 157, vol. 42 (24 June 1999), p. 1.

#### IV. Arms control and terrorism

After the terrorist attacks on the USA in September 2001 many states began to examine what contribution arms control could make to counter terrorism. Historically, arms control aimed to regulate state behaviour. The question of how to make arms control restraint and denial provisions ‘bite’ on non-state actors has become more important in the context of more vigorous international anti-terrorist efforts.

In addition to disarmament and restraint of the activities of the states parties, the main multilateral treaties related to BW and CW also aim to prevent the proliferation or illicit acquisition of such items. As a result, these treaty regimes should help restrict non-state access to materials and expertise to authorized persons.

In order to play this role effectively certain conditions need to be met. First, the treaty needs to be adopted by states with national capacities relevant to the purposes of the treaty.<sup>27</sup> Second, those states that adopt an agreement need to implement it fully. In 2002 the need for the enactment of criminal legislation as part of effective national measures to implement treaty commitments played a prominent role in the discussion of the role of arms control in counter-terrorism. For example, in November 2002 the parties to the BTWC decided to hold meetings on the adoption of national measures to implement the prohibitions set forth in the convention, ‘including the enactment of penal legislation’. This was one of five areas in which a need for ‘common understanding and effective action’ was identified.<sup>28</sup>

The European Union has begun to use its own legislation and processes to ensure that member states harmonize their approach to implementing their own obligations in this regard. In April 2002 the General Affairs and External Affairs Council agreed to speed up the completion by EU member states of formalities to bring the International Atomic Energy Agency (IAEA) Additional Protocols establishing strengthened nuclear safeguards into force for the EU. They also agreed to strengthen EU coordinating mechanisms to improve the procedures for exchanging information relevant to implementing national export controls, as well as for examining measures to improve the enforcement of the common export control system established by Council Regulation 1334/2000 on dual-use items and technology.<sup>29</sup>

Among the actions taken by the EU to fight terrorism are commitments to criminalize the possession, use and trafficking of arms of different kinds. Some of these decisions require national implementing legislation by member states, and these states pledged to introduce the necessary national legislation

<sup>27</sup> Moreover, universalization may be the ideal state as it could have both a political impact by strengthening the norm against proscribed activities as well as a preventive effect in cases where national capacities are continuously being developed in a relevant technical field.

<sup>28</sup> The Fifth Review Conference of the States Parties to the BTWC is discussed in chapter 16 in this volume.

<sup>29</sup> General Affairs & External Relations Council (GAERC), ‘Implications of the terrorist threat on the non-proliferation, disarmament and arms control policy of the EU—Council conclusions’, 15 Apr. 2002, URL <[http://europa.eu.int/comm/external\\_relations/cfsp/intro/gac.htm#sd150402a](http://europa.eu.int/comm/external_relations/cfsp/intro/gac.htm#sd150402a)>. Some of these EU measures are discussed further in chapter 18 in this volume.

quickly. Moreover, recognizing that national legal systems need to be improved further to combat terrorism effectively, the member states have also agreed on mechanisms to evaluate how the EU and national legislation is being implemented.

One impact of the close international attention to anti-terrorism has been renewed discussion of instruments for non-proliferation, including export controls. In 2002 the United States defined non-proliferation as a central, focusing issue for its national security policy and particularly stressed the need to break any links between groups planning terrorist acts and hostile states pursuing NBC weapons and missile delivery systems. The importance of this issue was underlined by the publication of the National Strategy to Combat Weapons of Mass Destruction in December 2002.<sup>30</sup>

Not all armed non-state actors would necessarily be unwilling to accept restrictions on their capabilities. Groups that wish to emphasize that they are not terrorists but using force as part of a campaign to achieve legitimate political objectives may perceive compliance with certain arms control measures as strengthening their legitimacy. Such armed non-state groups might be particularly willing to support arms control measures that seek to eliminate weapons considered to have indiscriminate and inhumane effects—such as anti-personnel landmines or biological weapons.<sup>31</sup>

A different proposal for using criminal law to achieve anti-terrorist objectives has been to apply sanctions to any legal person perpetrating an act of terrorism, whether state or non-state.<sup>32</sup>

It has been suggested that national implementing measures related to multilateral treaties banning chemical and biological weapons (CBW), while necessary, should be supplemented with a convention on the criminalization of CBW establishing criminal responsibility for any individual indicted for violating the prohibitions of the BTWC or the CWC.<sup>33</sup> This convention, which has been discussed but is not currently being negotiated, would therefore cover not only acts committed by non-state actors but also the activities of individuals working for or on behalf of governments.

Another dimension of counter-terrorism has been the increased consideration of how to strengthen institutions that can play a role in achieving the objectives defined in treaties. Some of these are dedicated institutions directly linked to the treaties themselves. However, in 2002 other organizations—the

<sup>30</sup> White House, 'National Strategy to Combat Weapons of Mass Destruction', Press Release, Dec. 2002, URL <<http://www.whitehouse.gov/news/releases/2002/12/WMDStrategy.pdf>>.

<sup>31</sup> Evidence that some non-state armed groups are prepared to accept restrictions on landmines is presented in appendix 17A in this volume.

<sup>32</sup> See essay 1 in this volume.

<sup>33</sup> E.g., Secretary of State for Foreign and Commonwealth Affairs, 'Strengthening the Biological and Toxin Weapons Convention: countering the threat from biological weapons', Cm5484, Apr. 2002, URL <<http://files.fco.gov.uk/npd/btwc290402.pdf>>; and 'International criminal law and sanctions to reinforce the BWC', *CBW Conventions Bulletin*, no. 54 (Dec. 2001), pp. 1–2.

World Health Organization, the World Customs Organization and the International Maritime Organization—took steps to support counter-terrorism.<sup>34</sup>

### **Non-proliferation and counter-terrorism in Russian–US relations**

Russia and the United States have a strong commitment to combating terrorism and to the non-proliferation of NBC weapons. However, disagreements remain about the relationship between these two objectives. In particular, the two states disagree about how national export controls should be used as part of the wider effort to deny terrorists access to NBC weapons. In conditions in which Russia and the USA developed cooperation programmes across a range of counter-terrorism and military security-related issues, differences of view on non-proliferation and export control remained as perhaps the single most important area of bilateral disagreement in 2002.

The US Congress was unable to enact a statute in 2002 to replace the 1979 Export Administration Act, which expired in 2001 and whose provisions were prolonged by President Bush using emergency powers.<sup>35</sup> The legislation has not been amended in significant ways since 1979.<sup>36</sup> US officials underlined that ‘the absence of a statutory framework that reflects global political and economic realities seriously undermines our efforts to administer a modern export control system capable of countering modern threats such as terrorism and the proliferation of weapons of mass destruction’.<sup>37</sup>

The US view of the link was summarized in a document which noted that ‘the current and potential future linkages between terrorist groups and state sponsors of terrorism are particularly dangerous and require priority attention’.<sup>38</sup> More specifically, ‘the states most aggressively acquiring WMD [weapons of mass destruction] and their means of delivery are Iran, Iraq and North Korea, followed by Libya and Syria. It is no coincidence that these states, which are uniformly hostile to the United States, are among the ones we identify as state sponsors of terrorism’.<sup>39</sup> Moreover, the USA believed that programmes conducted by Russian entities contributed to the development of nuclear and CW capacities as well as technologies that could help in the acquisition of ballistic missile delivery systems. Under Secretary for Arms Control

<sup>34</sup> A list of the measures is contained in US Delegation to the 5th Review Conference of the BWC, ‘Fact Sheet: U.S. efforts to combat biological weapons threat’, 14 Nov. 2002, URL <<http://www.uspolicy.be/Issues/Defense/USCombatsBioWeapons.111402.htm>>.

<sup>35</sup> ‘Export Administration Act of 1979 reauthorization’, CRS Report for Congress, updated 11 Mar. 2002, URL <<http://www.fas.org/asmp/resources/govern/crs-RL30169.pdf>>.

<sup>36</sup> Juster, K. I., Under Secretary of Commerce Bureau of Industry and Security, ‘Keynote address at the Update 2002 Export Controls and Policy Conference’, Washington, DC, 10 Oct. 2002, URL <<http://www.bxa.doc.gov/press/2002/Ken2U@Update02.html>>.

<sup>37</sup> US Department of Commerce Bureau of Export Administration, ‘Export Administration Annual Report Fiscal Year 2001’, Jan. 2002, URL <<http://www.bxa.doc.gov/press/2001/AnnualReport/tableofcontents.html>>.

<sup>38</sup> ‘National strategy to combat weapons of mass destruction’ (note 30), p. 6.

<sup>39</sup> Bolton, J. R., Under Secretary for Arms Control and International Security, Keynote address to the Fourth International Conference on Export Controls, Warsaw, 30 Sep.–3 Oct. 2002. These issues are discussed further in US Department of State, *Weapons of Mass Destruction: The New Strategic Framework*, special issue of the electronic journal *US Foreign Policy Agenda*, vol. 7, no. 2 (July 2002), URL <<http://usinfo.state.gov/journals/itps/0702/ijpe/ijpe0702.htm>>.

and International Security John Bolton has summarized US concerns that 'the nuclear and missile programmes of Iran and others, including Syria, continue to receive the benefits of Russian technology and expertise'.<sup>40</sup>

The status of countries receiving assistance in respect of multilateral treaties has a direct bearing on both Russian and US export control behaviour. For example, Russia and the USA both have a restrictive approach towards authorizing nuclear and nuclear-related exports to Iraq and North Korea. While the revised system introduced in 2002 permits significant exceptions, Iraq remains under comprehensive UN sanctions. With regard to North Korea, Russian spokesmen have stated their deep concern about its nuclear-related developments and the need to achieve full compliance with the NPT.

In other respects views differ about how export controls should be applied to achieve non-proliferation objectives. For example, Russia has had a less restrictive approach than the United States to nuclear and nuclear-related exports to India (which is not a party to the NPT). Russian officials argue that the export control system developed in the 1990s is sufficient to verify Indian undertakings that items supplied for civilian use will not be diverted to unauthorized locations or assist military programmes. The USA (as well as most other countries) has argued that even if export control systems are technically efficient, authorizing exports of controlled items to India is not sensible or consistent with politically binding non-proliferation guidelines (such as those of the Nuclear Suppliers Group, to which Russia belongs) and the principles and objectives for nuclear non-proliferation and disarmament agreed in the framework of the NPT.<sup>41</sup>

Russia and the USA also assess export applications against national security and foreign policy considerations but reach different conclusions where these issues are concerned, reflecting their different national concerns and priorities.

While the Russian Government endorses the general position that export controls play an important role within national security policy in its declarations, it does not agree that a direct linkage can be identified in some of the specific cases cited by the USA. The disagreement is perhaps most pronounced with regard to Iran, with which Russia continued to develop close cooperation in the nuclear field.<sup>42</sup> In the Russian view, this cooperation was not only legal in that Iran is a full party to the NPT but also potentially beneficial in terms of reducing proliferation risks.<sup>43</sup> In addition to nuclear

<sup>40</sup> Bolton, J. R., Under Secretary for Arms Control and International Security, 'Testimony before the Hearing on the G-8 Global Partnership before the Senate Foreign Relations Committee', Washington, DC, 9 Oct. 2002, URL <<http://www.state.gov/t/us/rm/14243.htm>>. These disputes are discussed further in chapter 15 in this volume.

<sup>41</sup> The 1995 NPT Review Conference agreed a set of principles and objectives for nuclear non-proliferation and disarmament, including measures related to safeguards. UN, 'Principles and objectives for nuclear non-proliferation and disarmament', 2 Dec. 1995, URL <<http://disarmament.un.org/wmd/npt/1995dec2.htm>>.

<sup>42</sup> See chapter 15 in this volume.

<sup>43</sup> The Russian Government has allegedly been trying to persuade Iran to conclude a strengthened safeguards agreement with the IAEA as part of the bilateral discussion of nuclear cooperation. Presentation by Grigori Berdennikov, Monterey Nonproliferation Strategy Group, 'Preventing mass-destruction terrorism and proliferation', SIPRI, Stockholm, 5-6 Sep. 2002, URL <<http://cns.miis.edu/research/mnsg/prevent/parts.htm>>.

cooperation, Iran and Russia have explored the prospects for expanded aerospace cooperation and conventional arms transfers.

The disagreement over how to implement export controls has the potential to complicate some broader bilateral Russian–US cooperation initiatives. However, one of the objectives of using the G8 to manage cooperative threat reduction has been to reduce any conditionality typical of a donor–recipient relationship. In this vein, President Bush sought authority from Congress to waive several annual certification requirements.<sup>44</sup> While eschewing conditionality, the USA has suggested that future cooperation would be facilitated if a common approach to export control policy could be found.<sup>45</sup>

## V. Conclusions: combining different instruments to manage the challenge

In November 2002 US Assistant Secretary for Nonproliferation John Wolf observed that, during discussions in which he had participated in Europe and South Asia about differences in perception regarding the threat posed by NBC weapons, ‘too much of our dialogue has devolved into debate on the architecture’. Wolf noted that this state of affairs reflected differences in perception about the importance of NBC weapon proliferation as a security issue. Whereas for the United States the proliferation of NBC weapons and missile systems to deliver them is ‘a defining national security issue and the nexus with terrorism is a growing concern’, in many other places (including in Europe, according to Wolf) this is seen as ‘just one of many issues to balance and trade off’.<sup>46</sup>

While the lack of political agreement over the priority to be given to different threats, risks and challenges is a barrier to further progress in many areas of arms control, there is a growing awareness of the need to take further action to ensure compliance with existing agreements and address identified cases of non-compliance. Recent developments suggest that the issue area on which the widest circle of states can reach political agreement is the proposition that NBC weapons should not spread to new states or to any non-state actor.

The recognized need to give higher priority to addressing treaty compliance and proliferation concerns has led to a wide range of initiatives of different types. States have sought new forums and new approaches to negotiating such

<sup>44</sup> Under the terms of the 1994 National Defense Authorization Act and the 1992 Freedom Support Act, the president is required to certify that nations receiving financial assistance meet a range of different conditions including compliance with arms control and disarmament treaties and agreements. Under current law the inability to certify Russian compliance with the BTWC and the CWC has impeded the funding of programmes intended to help bring about that compliance. Developments in 2002 are discussed further in chapter 16 in this volume.

<sup>45</sup> E.g., US approval is required for the retransfer of spent nuclear reactor fuel to Russia from a number of countries for storage or reprocessing. If these countries originally acquired the fuel from the USA, US export control laws would require consent prior to re-export. Under US export licensing provisions it may not be possible to grant this authorization unless Russia ends sensitive nuclear cooperation with Iran. Office of the Spokesman, ‘Russia–Iran incentives’, Daily Press Briefing, Washington, DC, 23 Oct. 2002, URL <<http://www.state.gov/r/pa/prs/ps/2002/14590.htm>>.

<sup>46</sup> ‘The relevance of regimes’ (note 1).

agreements. The G8 Global Partnership and the ballistic missile ICOC documents both reflected a new approach in which states with the greatest resources and interest in a given issue took the lead in developing a text that could be used as the basis for seeking wider political support for identified measures. States are encouraged to sign on to and to participate in implementing agreements which they did not participate in developing.

This approach is somewhat similar to that of multilateral export control regimes which have expanded their outreach programmes that are intended to lead a larger group of states to adopt and apply measures developed by regime participants. However, the export control regimes have encouraged states to apply these measures through their national laws and procedures without participating in the regimes.

At the end of 2002 the deepening crisis over how to bring Iraq into compliance with disarmament obligations contained in UN Security Council resolutions focused the attention of the most senior political decision makers of many states on arms control. This political engagement, combined with the greater tendency towards flexibility and innovation in achieving the objectives of arms control, may have opened the way for progress across a spectrum of processes in 2003.