

14. Major trends in arms control and non-proliferation

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I. Introduction

The invasion and occupation of Iraq in 2003 as well as the discussions that preceded it emphasized the urgent need to address the issue of nuclear, biological and chemical (NBC) weapon proliferation. While a greater sense of urgency among states is a precondition for generating the level of political support needed to develop an effective response to proliferation, it became evident in the months after the crisis in Iraq that there is still no agreed diagnosis of the extent or implications of NBC weapon proliferation and no agreed response.

Developments in Iraq and elsewhere have also underlined the dedicated and systematic efforts that have been made by some states to acquire NBC weapons as well as delivery systems for them. In addition to Iraq, events in 2003 highlighted developments of particular concern in the Democratic People's Republic of Korea (DPRK, North Korea), Iran and Libya.¹ The scope of non-proliferation discussions has progressively expanded beyond the weapon programmes of states to include a wider range of issues. There has been a growing concern among governments about security threats from non-state actors that might make use of materials and technologies not traditionally considered weapons to carry out terrorist attacks. Moreover, such attacks might be made using new types of delivery system.

In 2003 a growing number of states participated in discussions about NBC weapon proliferation, its implications and how to combat it. Discussions have also taken place in ad hoc and informal groupings as well as in regional organizations in the Americas, in Asia and in Europe.

Immediately after the March 2003 invasion and occupation of Iraq by a coalition of forces led by the United States, US Deputy Secretary of State Richard Armitage observed that the existing system in place to address NBC weapon proliferation 'works to dampen the demand for such capabilities and to deny the means to develop them, and with some success. But this is not a

¹ Nuclear weapon-related developments in these countries are examined in chapter 15 in this volume.

system that has a clear and consistent way of dealing with nations that pass certain milestones'.²

In the past the non-proliferation agenda focused mainly on measures to prevent states from acquiring NBC weapons or delivery systems for them. However, while efforts to strengthen preventive measures remain essential, in 2003 the USA and the European Union (EU) agreed that these measures needed to be supplemented by additional efforts to 'roll back' existing NBC weapon programmes as well as the delivery systems for these weapons—in particular ballistic missiles.

This chapter examines the main trends in 2003 in the light of the emergence of these shared objectives and the discussion among states of how they can work together to achieve them. Section II examines some of the emerging processes in which states seek to develop measures that can be combined in a flexible manner to pursue non-proliferation objectives. Section III examines the efforts of the EU to make its actions against proliferation more effective. Section IV looks at the interface between the law of arms control and other branches of international law that can help to control arms (including arms other than NBC weapons) or dangerous materials, and section V provides the conclusions.

II. The evolution of arms control and non-proliferation in 2003

Recent SIPRI Yearbooks have identified a tendency to complement continued efforts to develop further arms control and disarmament treaties and to strengthen existing ones with a range of other efforts that are intended to achieve the same or similar objectives. This tendency continued in 2003.

In his address to the United Nations (UN) General Assembly on 23 September 2003, President George W. Bush requested that the Security Council design and adopt what he called an 'anti-proliferation resolution', calling on UN member states to criminalize the proliferation of weapons of mass destruction (WMD), to enact strict export controls consistent with international standards, and to secure any and all sensitive materials within their own borders.³

Within a number of informal groups working to strengthen export controls—the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies—participating states have given particular emphasis to two current needs.⁴ The first is to ensure effective and uniform implementation and enforcement of agreed rules

² 'Iraq showed limits of non-proliferation regime, Armitage says', Remarks of Richard Armitage, Deputy Secretary of State, to the National Defense University, Washington, DC, 30 Apr. 2003, URL <<http://www.useu.be/Categories/Defense/Apr3003ArmitageNonProliferation.html>>.

³ The White House, Office of the Press Secretary, 'President Bush addresses United Nations General Assembly', 23 Sep. 2003, URL <<http://www.whitehouse.gov/news/releases/2003/09/20030923-4.html>>.

⁴ The states participating in these arms export control regimes are listed in the glossary in this volume.

and guidelines by participating states. The second is to encourage, in a more systematic manner, non-participating states to adopt the rules and guidelines that have been developed in the regimes as part of their national export control systems.⁵

At their summit meeting in Evian, France, on 1–3 June 2003, the leaders of the Group of Eight (G8) industrialized states reviewed progress in implementing the Global Partnership Against the Spread of Weapons and Materials of Mass Destruction—the collective effort initiated in 2002 to keep NBC or radiological weapons out of the hands of terrorists or hostile states.⁶ At Evian the G8 leaders supplemented the Global Partnership with additional measures intended to help locate and secure radioactive materials and to increase the security of inventories of man-portable air defence systems (MANPADS) during storage and transportation.⁷

In 2003 a group of states created the Proliferation Security Initiative (PSI), intended to expand efforts to physically intercept cargoes of items for delivery to countries of proliferation concern and intended for use in NBC programmes or in missile delivery systems for such weapons (see below).

Increasingly, measures are being developed to address proliferation concerns in specific countries to supplement global agreements. For example, when the USA and its coalition partners invaded and occupied Iraq in March 2003, they justified their decision by underlining the need to remove an imminent threat posed by WMD in the hands of an aggressive regime.

In January 2003 North Korea announced its withdrawal from the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (Non-Proliferation Treaty, NPT)—the first state to do so—as part of a chain of events triggered by information published in 2002 related to a uranium enrichment programme.⁸ North Korea has taken steps that could significantly expand the volume of nuclear weapon-grade fissile material (including both highly enriched uranium and plutonium) available for a nuclear weapon programme.⁹

The International Atomic Energy Agency (IAEA) has expressed its concern over the long-term plan for nuclear activities made public by Iran in September 2002. Subsequently, the IAEA has found that a number of the actions already taken by Iran are inconsistent with the obligations it accepted under the NPT. In November 2003 the IAEA, while strongly deploring Iran's failure to comply with its obligations under its IAEA safeguards agreement, also laid

⁵ Developments in these export control groupings are discussed in chapter 18 in this volume.

⁶ The members of the G8 are Canada, France, Germany, Italy, Japan, Russia, the United Kingdom and the United States. As of 31 Dec. 2003, the G8 member states plus the EU, Finland, the Netherlands, Norway, Poland, Sweden and Switzerland were participants in the Global Partnership. For more on the Global Partnership see Anthony, I., 'Arms control in the new security environment', *SIPRI Yearbook 2003: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2003), pp. 567–70.

⁷ The G8 initiatives and other efforts to enhance controls over MANPADS are discussed in chapter 18 in this volume.

⁸ The issue of state withdrawal from arms control treaties is discussed in chapter 19 in this volume. For the signatories and parties to the NPT see annex A in this volume.

⁹ See chapter 15 in this volume.

out a process by which Iran could more strictly adhere to its obligations through a policy of active cooperation and full transparency.¹⁰

In 2003 a number of states as well as the UN (through the IAEA) and the EU addressed the question of whether Iran's nuclear programme is consistent with its obligations under the NPT and, if not, how best to respond. The NPT has provided the framework in which states have sought an agreed approach to security concerns about Iranian nuclear activities.

In December 2003 it was revealed that Libya, a party to the NPT, was developing a nuclear fuel cycle intended to support nuclear weapon development. Officials from the USA and the United Kingdom who visited Libya were shown a number of projects, including a previously unknown uranium enrichment project. In addition, Libya—not a party to the 1993 Chemical Weapons Convention (CWC)—had produced significant quantities of chemical agent and designed bombs that could be used to deliver chemical weapons.¹¹

While a set of global rules has been agreed in arms control treaties and agreements, the fact that so much attention has been concentrated on a small number of locations underlines that the main concern of states has increasingly become implementing and enforcing the norms and rules contained in existing treaties and agreements in specific locations, rather than trying to develop additional global obligations.¹²

There has been a flexible approach regarding the framework in which to address these particular issues of concern. In the case of Iraq, states, including the USA and its coalition partners, emphasized the need to implement UN Security Council decisions related to disarmament, given the consistent reports of Iraqi non-compliance by the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), the UN body charged with implementing those decisions. When UNMOVIC did not request the use of force to support its activities and the Security Council did not authorize it, the USA stepped outside the UN system to fashion its policy.

More generally, the USA has emphasized that the national security threat posed by proliferation is so great that legal and political efforts must be supplemented by a more robust and positive set of measures—including a need to maintain deterrence, and develop defences and more effective means for discriminate intervention—that require a continued military modernization.

The states (China, Japan, North Korea, South Korea, Russia and the USA) with the greatest interest in and concern about nuclear developments on the

¹⁰ International Atomic Energy Agency (IAEA), Resolution GOV/2003/81, 26 Nov. 2003, URL <<http://www.iaea.org/Publications/Documents/Board/2003/gov2003-81.pdf>>. For full coverage of the IAEA approach to Iran see URL <<http://www.iaea.org/NewsCenter/Focus/iaeaIran/>>.

¹¹ British Foreign Secretary Jack Straw, 'Our relationship with Libya has enabled a successful outcome', Statement in the House of Commons, London, 5 Jan. 2004. The corrected text of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction is available at URL <<http://projects.sipri.se/cbw/docs/cw-cwc-texts.html>>. For complete lists of parties, signatories and non-signatory states see URL <<http://projects.sipri.se/cbw/docs/cw-cwc-mainpage.html>>. See also annex A and chapter 16 in this volume.

¹² In 2003 the UN Conference on Disarmament, the main forum for amending existing or negotiating new arms control treaties, failed to agree a programme of work for the 7th consecutive year.

Korean peninsula have tried to find a peaceful and diplomatic solution to the nuclear crisis but outside the framework of the NPT.¹³

Additional opportunities to address particular proliferation concerns may be created in future by strengthening regional approaches. At their First Annual Security Review Conference, in June 2003, the member states of the Organization for Security and Co-operation in Europe (OSCE) discussed proposals to improve the security situation in the OSCE area and beyond.¹⁴ A number of interventions and proposals from member states underlined the need for analysis of the relationship between terrorism and the proliferation of WMD. Access to WMD by criminal regimes or terrorist groups was identified by one of the keynote speakers, Polish Deputy Minister for Foreign Affairs Adam Daniel Rotfeld, as ‘the most urgent challenge for the whole community of democratic States’.¹⁵

In October 2003 in Mexico the Organization of American States (OAS) held its first Special Conference on Security as the culmination of work initiated in September 2001.¹⁶ The Declaration on Security agreed by the states that participated in the conference identified seven new threats against which the OAS should act, including ‘the possibility of access, possession and use of WMD and their means of delivery by terrorists’.¹⁷

Twelve Asian countries participated in the Asian Senior-level Talks on Non-Proliferation, held in Japan in November 2003.¹⁸ This was the first official dialogue among Asian countries dedicated to the non-proliferation of NBC weapons. These talks, which emphasized the need for a regional dimension to non-proliferation, focused on preventive efforts and did not mirror the EU–US emphasis on ‘rolling back’ past programmes.

China has emphasized the need to continue to focus on strengthening international legal processes. A White Paper on China’s non-proliferation policy and measures issued by the State Council in December 2003 maintained that:

‘it is highly important to ensure a fair, rational and non-discriminatory non-proliferation regime. Either the improvement of the existing regime or the establishment of a new one should be based on the universal participation of all countries and on their decisions made through a democratic process. Unilateralism and double

¹³ Nuclear issues on the Korean peninsula are discussed in chapter 15 in this volume. The development of Chinese approaches to regional cooperation is discussed in chapter 6 in this volume.

¹⁴ The member states of the OSCE are listed in the glossary in this volume.

¹⁵ Rotfeld, A. D., ‘European security system in transition’, in Organization for Security and Cooperation in Europe, Permanent Council, ‘First Annual Security Review Conference: Vienna, 25 and 26 June 2003: chair’s report’, document PC.DEL/835/03, 16 July 2003, p. 9, URL <http://www.osce.org/documents/sg/2003/07/504_en.pdf>.

¹⁶ The member states of the OAS are listed in the glossary in this volume.

¹⁷ Organization of American States Special Conference on Security, ‘Declaration on Security in the Americas (adopted at the third plenary session of October 28, 2003)’, document CES/DEC.1/03 rev. 1, URL <<http://www.oas.org/csh/ces/documentos/ce00339e04.doc>>.

¹⁸ Asian Senior-Level Talks on Non-Proliferation, ‘Chairman’s summary’, Tokyo, 13 Nov. 2003, URL <<http://www.mofa.go.jp/policy/un/disarmament/arms/astop/summary0311.html>>. The 12 Asian participating states were Brunei Darussalam, Cambodia, Indonesia, Japan, Korea (South), Laos, Malaysia, Myanmar (Burma), the Philippines, Singapore, Thailand and Viet Nam. Australia and the USA also participated.

standards must be abandoned, and great importance should be attached and full play given to the role of the United Nations.¹⁹

When acting outside these regional arrangements, states may take various approaches to proliferation-related developments. The USA often makes confident assertions about the status of weapon development in a number of locations based on information available to it from national technical means. Moreover, the USA conducts its policy against weapon proliferation differently from most other countries and has used sanctions as an element in non-proliferation policy for some time. An example of the difference in approach can be found in US policy towards Syria. The USA alleges that Syria has a stockpile of chemical weapons that could be delivered by either missiles or aircraft.²⁰ In addition, the USA has pointed to 'Syrian efforts to acquire dual-use technologies—some through the IAEA Technical Cooperation programme—that could be applied to a nuclear weapons programme' and expressed concern about how Syria might apply knowledge and items gained through its civilian nuclear programme.²¹ Syria is not a party to the CWC, and possession of these weapons would not be illegal. Syria is a party to the NPT and has a safeguards agreement with the IAEA.²²

On 12 December 2003 President Bush signed the Syria Accountability and Lebanese Sovereignty Restoration Act.²³ One effect of the act is that the USA will not provide any assistance to Syria and will oppose multilateral assistance for Syria until it ends all support for terrorism, withdraws its armed forces from Lebanon, and halts the development and deployment of WMD and medium- and long-range surface-to-surface ballistic missiles. The new law directs the US President to prohibit the export to Syria of any item on the Munitions List or the Commerce Control List of dual-use items in the Export Administration Regulations, and to prohibit the issuance of an export licence for any such item.²⁴

The USA has maintained unilateral sanctions against Syria since 1979, although the international community as a whole has expressed the view that there is no basis for coercive action. Since the Department of Commerce has

¹⁹ *China's Non-Proliferation Policy and Measures*, White Paper (Information Office of the State Council: Beijing, 3 Dec. 2003), URL <<http://www.fas.org/nuke/guide/china/doctrine/wpnp1203.html>>.

²⁰ Bolton, J. R., Under Secretary of State for Arms Control and International Security, 'Syria's weapons of mass destruction and missile development programs', Testimony before the House International Relations Committee, Subcommittee on the Middle East and Central Asia, Washington, DC, 16 Sep. 2003, URL <<http://www.state.gov/t/us/rm/24135.htm>>.

²¹ Bolton, J. R., Under Secretary of State for Arms Control and International Security, 'The new world after Iraq: the continuing threat of weapons of mass destruction', Remarks to the Bruges Group, London, 30 Oct. 2003, URL <<http://www.state.gov/t/us/rm/25752.htm>>.

²² IAEA, 'Agreement of 25 February 1992 between the Government of the Syrian Arab Republic and the International Atomic Energy Agency for the application of safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons', document INFCIRC/407, July 1992.

²³ Syria Accountability and Lebanese Sovereignty Restoration Act of 2003, Public Law no. 108-175, 12 Dec. 2003, URL <http://www.fas.org/asp/resources/govern/108th/pl_108_175.pdf>.

²⁴ Federation of American Scientists, 'International traffic in arms regulations, part 121: the United States Munitions List', URL <<http://www.fas.org/spp/starwars/offdocs/itar/p121.htm>>; and US Department of Commerce, Bureau of Industry and Security, 'Export Administration Regulations Database', part 774: the Commerce Control List, URL <http://w3.access.gpo.gov/bis/ear/ear_data.html>.

generally denied export licences for dual-use equipment to Syria or for any controlled items to military end-users in Syria, the practical impact of the new legislation is likely to be limited.

In contrast to the US approach, the EU member states—although they certainly disapprove of the proliferation of NBC weapons—have not collectively used sanctions in response to WMD proliferation events except where doing so implements a prior decision by the UN.²⁵ The EU has preferred an approach based on engagement. In December 2003 the EU and Syria completed negotiations for a Euro-Mediterranean Association Agreement. The agreement includes cooperation to counter the proliferation of WMD and their means of delivery.²⁶ As of 31 December 2003 it had not yet been ratified by the European Parliament.

The Proliferation Security Initiative

The Proliferation Security Initiative was undertaken following a speech by President Bush in May 2003 in which he stressed the need for new agreements to search planes and ships carrying suspect cargo and to seize illegal weapons or missile technologies.²⁷ While there have been cases of interdiction of shipments in the past, there has not been a clear understanding of the legal basis for such actions nor a framework in which states could exchange information, knowledge and experience or cooperate in carrying out actions. The PSI could complement other measures directed at countries conducting NBC weapon and missile delivery system programmes and help to ensure that all aspects of those programmes are addressed. The initiative envisages sanctions against countries that are suppliers to states with weapon programmes of proliferation concern and aims to disrupt the procurement networks supporting such programmes as well as the interdiction and seizure of items being transported for use in programmes of proliferation concern.

Representatives of 11 states met under the PSI four times before the end of 2003, in Madrid; Brisbane, Australia; Paris; and London.²⁸ By the end of 2003 the PSI could point to three main achievements. First, at a meeting in Paris on

²⁵ Some EU states have used sanctions in this way individually. E.g., Sweden introduced sanctions against India and Pakistan in 1998 following the nuclear weapon tests by those countries and raised the issue of collective sanctions within the EU. However, the idea did not receive the unanimous support it would have required for any measures to be adopted within the framework of the Common Foreign and Security Policy. Like the USA, Canada has shown a tendency to use sanctions as a response to proliferation events as an act of national policy.

²⁶ European Union Directorate General External Relations, 'EU–Syria: conclusion of the negotiations for an Association Agreement', document IP/03/1704, Brussels, 10 Dec. 2003, URL <http://europa.eu.int/comm/external_relations/syria/intro/ip03_1704.htm>.

²⁷ White House, Office of the Press Secretary, 'Remarks by the President to the people of Poland', President George W. Bush, Krakow, Poland, 31 May 2003, URL <<http://www.whitehouse.gov/news/releases/2003/05/20030531-3.html>>.

²⁸ The 11 states were Australia, France, Germany, Italy, Japan, the Netherlands, Poland, Portugal, Spain, the UK and the USA. They were subsequently joined by Canada, Denmark, Norway and Singapore. The issue of participation in the PSI by EU member states has been discussed in the EU Political and Security Committee to consider whether activities conducted in the context of the PSI are compatible with existing and evolving EU legislation related to transportation, customs and border security.

4 September 2003, a Statement of Interdiction Principles was agreed that outlined the scope of the initiative. Second, a calendar of operational activities was agreed, mainly consisting of 10 training exercises, each led by a different PSI participant. Finally, procedures were agreed for transparency and outreach to make sure that all relevant forums were informed about PSI activities and to encourage other states to support the statement.

The Statement of Interdiction Principles contained four central points. First, participants agreed to take effective measures to interdict the transfer or transport of WMD, their delivery systems, and related materials to and from states and non-state actors of proliferation concern. Second, the participants agreed to rapidly exchange relevant information concerning suspect proliferation activity. Third, they agreed to strengthen legal authorities wherever necessary to accomplish the objectives of the PSI. Finally, the statement listed six specific actions that PSI participants would undertake. These were: not to allow persons subject to their jurisdiction to transport or assist in transporting PSI-relevant cargoes; to take action to board and search flagged ships in internal waters, territorial seas or international waters suspected of carrying PSI-relevant cargoes and seize such cargoes if found; to consider consent to permit another state to board and search flagged vessels and seize WMD-related cargoes; to enforce conditions on vessels entering or leaving ports requiring those vessels to submit to boarding, search and seizure of PSI-relevant cargoes; to require aircraft reasonably suspected of carrying PSI-relevant cargoes to land for inspection or to deny such aircraft access through their airspace; and to inspect for cargoes at ports, airports and other facilities used for transshipment and seize any PSI-relevant cargoes found.²⁹

The calendar of activities agreed by PSI participants included maritime interdiction, ground interdiction, air interception and command post exercises. According to the British Foreign Secretary, over 50 countries had expressed support—albeit qualified support in a number of cases—for the aims and scope of the PSI.³⁰ While no list of eventual participating states has been specified, US representatives suggested that the PSI should be broadened to include any state with ‘the capacity and willingness to take steps to help halt shipments of WMD, delivery systems and related materials’.³¹

The PSI participants have been forced to address two sets of questions: legal and definitional. A Chinese government spokesman noted that ‘the legality of some of the PSI measures have some negative aspects that could result in bad consequences and have raised a lot of concerns. The PSI member states should

²⁹ Proliferation Security Initiative, ‘Statement of Interdiction Principles’, 4 Sep. 2003, URL <<http://www.mofa.go.jp/policy/un/disarmament/arms/psi/psi.html>>.

³⁰ British Foreign and Commonwealth Office, ‘Proliferation Security Initiative: London, 9–10 October 2003: Chairman’s conclusions’, URL <<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1065432161812>>.

³¹ Bolton, J. R., Under Secretary of State for Arms Control and International Security Affairs, ‘Proliferation Security Initiative: Statement of Interdiction Principles’, Remarks at the Proliferation Security Initiative Meeting, Paris, 4 Sep. 2003, URL <<http://www.state.gov/t/us/rm/23801pf.htm>>.

earnestly consider this'.³² Other analyses have also found that additional legal authority is required so that the PSI can fill 'the gap between the necessities of international security and the current limits of international law'.³³

Discussions about the PSI have also shown that existing laws and regulations probably do not provide all the legal authority to implement the commitment to act against a flagged ship in 'areas beyond the territorial seas of any other state that is reasonably suspected of transporting such cargoes to or from states or non-state actors of proliferation concern, and to seize such cargoes that are identified'. There may also be difficulties in implementing PSI where cargoes are held in special economic zones, bonded warehouses and free ports that are outside the normal customs boundaries of participating states. In addition, there is legal ambiguity about any compensation claim or legal liability that could arise should an interdiction find no illicit cargo. In addition, participating states must address the related issue of how to determine whether or not a shipment of items that could have legitimate civilian end-uses is illicit.

In cases where authority is lacking, PSI participants will seek to 'broaden the legal authorities as we see the need in order to close whatever gaps there are'.³⁴ The PSI meeting in Washington, DC, in December 2003 brought together legal experts from the PSI participating states to discuss possible gaps in legal coverage.³⁵

In defining the scope of interdiction efforts, PSI participants will focus on those countries or entities that they believe should be subject to interdiction activities 'because they are engaged in proliferation through: (1) efforts to develop or acquire chemical, biological, or nuclear weapons and associated delivery systems; or (2) transfers (either selling, receiving, or facilitating) of WMD, their delivery systems, or related materials'.³⁶ At the PSI meeting in Brisbane two states—Iran and North Korea—were mentioned specifically as countries of concern. Prior to a particular interdiction action, the countries that are directly involved in the particular action to be taken need to be satisfied that they are acting within the agreed principles. However, it is not necessary for those countries to consult the PSI as a group or to consult any other group or organization.

An operational working group and an intelligence working group have also been created in the framework of the PSI. These groups will be charged with

³² 'China warns of illegalities in US-backed non-proliferation plan', Agence France-Presse, 4 Dec. 2003, URL <<http://www.spacewar.com/2003/031204112915.1v17ne05.html>>.

³³ Friedman, B., 'The Proliferation Security Initiative: the legal challenge', Bipartisan Security Group Policy Brief (Global Security Institute: Washington, DC, Sep. 2003), p. 8, URL <http://www.gsinitiative.org/docs/09_03_PSI_brief.pdf>.

³⁴ Porth, J. S., 'Pacific exercise simulates interdiction on the high seas', *Washington File* (US Department of State, International Information Programs, 12 Sep. 2003), URL <<http://usinfo.state.gov/topical/pol/terror/texts/03091211.htm>>.

³⁵ In his remarks to the meeting, which was hosted by the Department of Defense, Deputy Secretary of Defense Paul Wolfowitz recognized the need to remedy 'gaps in legal authority'. 'Deputy Secretary Wolfowitz remarks to Proliferation Security Initiative Conference', Washington, DC, 17 Dec. 2003, URL <<http://www.defenselink.mil/transcripts/2003/tr20031217-depsecdef1024.html>>.

³⁶ 'Statement of Interdiction Principles' (note 29).

implementing the PSI by exchanging information about shipments of potential concern that can lead to a decision to interdict being taken in time to carry out the necessary action.³⁷

Reducing the terrorist threat from maritime trade

As noted above, one concern that has grown in recent years has been the use of an unconventional type of delivery system in a terrorist attack. The potential for ocean-going ships and their cargoes to be used either as weapon delivery systems or to transport weapons or dangerous materials for use in a terrorist attack has been an element in the wider discussion. Initiatives to enhance maritime security have been developed both by governments and within the international maritime industry.

In January 2002 the USA launched the Container Security Initiative (CSI) as a counter-terrorism measure. The CSI seeks to identify and examine maritime cargo containers before their arrival at US borders. Containers are evaluated against the risk that they contain NBC weapons. The CSI also aims to prevent dangerous materials that could be used to carry out a mass-impact terrorist attack from being imported and to reduce the risk that terrorists could enter the USA in specially modified containers to bypass immigration controls.³⁸ The initiative has four basic elements: (a) establishing criteria to identify high-risk containers based on advance information; (b) pre-screening containers at the earliest possible point; (c) introducing technology to accelerate pre-screening (and to further develop such technology); and (d) developing more secure containers.

In the first phase of the CSI, the US objective was to implement measures at the 20 ports that together account for 68 per cent of all cargo containers arriving at US seaports. By the end of 2003, bilateral agreements had been signed with all of the countries where these ports are located. In the CSI's second phase, the US Government is trying to extend the CSI to a wider set of countries and ports.³⁹ Participation involves the stationing of US customs officers at designated ports to assist in providing information that the local customs officers can use when deciding which containers should be screened (only a small proportion can in practice be examined).

The rapid development of the CSI is one of a number of processes intended to enhance the security of maritime trade, including by reducing the threat that legitimate trade will be exploited to carry out acts of mass impact terrorism.

³⁷ The PSI is believed to have facilitated interdiction operations carried out during 2003. In Sep. 2003 British, German, Italian and US authorities cooperated to interdict a shipment of parts for centrifuges intended for use in the Libyan nuclear programme. Robbins, C. A., 'Cargo seizure fueled Libya arms shift: US-initiated interdiction led to discovery of parts used in uranium enrichment', *Wall Street Journal*, 31 Dec. 2003, p. A4.

³⁸ The Container Security Initiative is described on the Internet site of the US Customs and Border Protection Agency, which is part of the Department of Homeland Security, at URL <http://www.cbp.gov/xp/cgov/enforcement/international_activities/csi/csi_in_brief.xml>.

³⁹ The list of countries and ports where CSI is being implemented is available from the US Customs and Border Protection Agency at URL <http://www.cbp.gov/xp/cgov/enforcement/international_activities/csi/>.

There is a need to harmonize CSI with other processes to make a major long-term contribution to enhancing security.

In 2002–2003 eight EU member states (Belgium, France, Germany, Italy, the Netherlands, Spain, Sweden and the UK) entered into bilateral agreements with the USA to participate in the CSI. The European Commission (EC), which is responsible for the implementation of EC law, questioned these bilateral agreements, as trade regulations form part of European Community law and are not under national jurisdiction except when related to arms. On 19 November 2003 the EU and the USA issued a joint statement in which the EU expressed its ‘strong support’ for the CSI.⁴⁰ The Commission has proposed extending the scope of the 1997 EC–US Customs Cooperation Agreement to include security concerns, which would be taken up in the already existing Joint Customs Co-operation Committee.⁴¹

In July 2003 the EC published its own security-management model for the external borders of the EU, which includes a harmonized risk assessment system.⁴² The EC has emphasized the need for member states to apply the same security-related customs controls to container traffic and the need to extend this harmonized system in the context of EU enlargement.

The CSI and the EC both stipulate that exporters should declare the content of cargoes to customs officers at the port of arrival 24 hours before their transport into the tariff area as one safety reinforcement measure. This advance notification is intended to permit coordination with other agencies that are able to carry out risk assessment based on information provided by the exporters. The Canada Customs and Revenue Agency made a similar proposal on 22 July 2003.⁴³ There is now a recognized need for a wider international discussion about how this system of information and document exchange as well as risk assessment can be carried out efficiently.⁴⁴

For a number of years the EU has funded the Safe and Secure Intermodal Transport Thematic Network (SIT). The SIT, which is carried out in partnership with the US Department of Transportation, is a network through which

⁴⁰ US Mission to the European Union, Brussels, ‘U.S., EU initial Container Security Accord’, 19 Nov. 2003, URL <<http://www.useu.be/Terrorism/USResponse/Nov1903CSIAccord.html>>.

⁴¹ ‘Council Decision 97/541/EC of 21 May 1997 concerning the conclusion of the Agreement between the European Community and the United States of America on customs cooperation and mutual assistance in customs matters’, *Official Journal of the European Communities*, L 222 (12 Aug. 1997), pp. 16–25, URL <<http://www.eurunion.org/partner/agreemen.htm>>.

⁴² The EC proposal is contained in 2 communications from the Commission to the Council, the European Parliament and the European Economic and Social Committee: ‘A simple and paperless environment for Customs and Trade’ and ‘On the role of customs in the integrated management of external borders’. In addition, the EC has proposed to the Council and the European Parliament a draft regulation that would modify the Community Customs Code: ‘Proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code (presented by the Commission)’. These documents are contained in Commission of the European Communities document COM(2003) 452 final, 2003/0167 (COD), 24 July 2003, URL <http://europa.eu.int/eur-lex/en/com/pdf/2003/com2003_0452en01.pdf>.

⁴³ Canada Customs and Revenue Agency (CCRA), ‘CCRA announces new timeframes for Advance Cargo Reporting’, News Release, 22 July 2003, URL <<http://www.cbsa-asfc.gc.ca/newsroom/releases/2003/july/ottawacargo-e.html>>. The CCRA has been replaced by the Canada Border Services Agency.

⁴⁴ The Government of Japan, in particular, has raised the question of the economic impact of these new measures on international trade.

representatives from industry, public authorities and government discuss and carry out projects related to the safety and security of air, land and maritime transport.

In June 2002 the World Customs Organization (WCO) adopted a Resolution on Security and Facilitation of the International Trade Supply Chain.⁴⁵ Based on this resolution, a Task Force was established to assist the WCO Secretary General to develop and implement practical measures envisaged by the resolution.⁴⁶

III. The EU approach to arms control, disarmament and non-proliferation

During 2003 there was a significant acceleration in EU efforts in the field of arms control, disarmament and non-proliferation as a result of a number of internal and external pressures on the EU.

When the Treaty on European Union (Maastricht Treaty) entered into force in 1993, arms control, non-proliferation, the control of arms exports, and confidence and security building were all considered appropriate subjects for the Common Foreign and Security Policy (CFSP).⁴⁷ Subsequently, the EU has come a long way in developing a common attitude towards biological and chemical weapon disarmament, nuclear weapon testing, and control over exports of both conventional arms and dual-use items that can be used in NBC weapon programmes. The EU was active in developing the 2002 Hague Code of Conduct Against Ballistic Missile Proliferation.⁴⁸ However, significant gaps still exist in the array of EU positions on a number of issues, including nuclear arms control and disarmament, missile defence and conventional arms control in Europe.

Over time, the EU has developed a habit of taking certain collective actions such as the preparation of agreed statements in advance of international meetings delivered by the EU Presidency and, recently, adopting a common front in some arms control treaty negotiations and in other processes.⁴⁹ Nevertheless, in the external dimension—given the collective diplomatic and economic

⁴⁵ World Customs Organization (WCO), 'Resolution of the Customs Co-operation Council on security and facilitation of the international trade supply chain, June 2002', URL <<http://www.wcoomd.org/ie/En/Press/Declaration%20Final%20Council%20June%202002%20-%20E.html>>. The official name of the WCO is 'Customs Co-operation Council'.

⁴⁶ WCO, 'World Customs Organization Task Force meets in Brussels to secure the international trade supply chain from the threat of terrorism', Press Release, 5 Sep. 2002, URL <<http://www.wcoomd.org/ie/En/Press/SecureSupplyChain.html>>; and WCO, 'Customs Task Force to take a multi-faceted approach to protect international trade from the threat of terrorism', Press Release, 6 Sep. 2002, URL <<http://www.wcoomd.org/ie/En/Press/pressreasetf2.htm>>.

⁴⁷ The text of the 1993 Treaty on European Union (Maastricht Treaty) is available at URL <<http://europa.eu.int/en/record/mt/top.html>>.

⁴⁸ For more on the Code of Conduct see Ahlström, C., 'Non-proliferation of ballistic missiles: the 2002 Code of Conduct', *SIPRI Yearbook 2003* (note 6), pp. 749–59; and for the text, pp. 760–61.

⁴⁹ E.g., there was greater coordination by the EU at the 2001 Review Conference for the 1972 Biological and Toxin Weapons Convention (BTWC), at the reconvened BTWC Review Conference in 2002 and in the lead-up to the adoption of the Hague Code of Conduct Against Ballistic Missile Proliferation in 2002.

weight of the EU member states—the results of the policies have been limited and disappointing.⁵⁰ To give a specific example, the impact of EU efforts to advance disarmament and non-proliferation objectives in the Middle East and in South Asia have been very limited in spite of the EU's long history of political and economic interaction with states there.

The inability to find a common approach to managing the crisis that followed Iraq's failure to comply with disarmament-related decisions of the UN Security Council underlined the need for agreed measures to combat weapon acquisition (partly also to reduce the probability that the USA will more frequently resort to the use of force against weapon programmes of concern).

A number of EU member states indicated that more needed to be done collectively and with greater urgency. In this respect the intervention by Swedish Foreign Minister Anna Lindh along with other ministers at the General Affairs and External Relations Council (GAERC), on 18 March 2003, led to a decision to put the issue of the proliferation of WMD on the agenda of the GAERC on 14 April 2003.⁵¹ This and other aspects of arms control, disarmament and non-proliferation had previously been discussed mainly in working groups consisting of national officials. However, even though these groups met under GAERC auspices, prior to 2003 their findings and recommendations were rarely considered at a higher political level.⁵²

From outside the EU, the terrorist attacks on the USA in September and October 2001 (the latter involving the use of anthrax spores) led to an appraisal of the adequacy of existing EU efforts, in particular against the danger that non-state actors would acquire and use NBC or radiological weapons.

In the light of developments in Iraq, the activities by North Korea and Iran noted above contained the elements of new and perhaps even more serious future crises. Moreover, the high priority given by the USA to preventing NBC weapon proliferation made this a logical issue for enhanced transatlantic cooperation. More concretely, the USA indicated in advance that this issue should be an important part of the agenda for the June 2003 EU–US summit meeting in Washington.

After the attacks on the USA in September 2001, part of the response formulated by the EU included a 'targeted initiative' on non-proliferation, disarmament and arms control launched on 10 December 2001 by EU foreign ministers and leading to a set of conclusions reached at the GAERC meeting

⁵⁰ The actions taken up to 2001 are surveyed in Anthony, I., 'European Union approaches to arms control, non-proliferation and disarmament', *SIPRI Yearbook 2001: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2001), pp. 599–614.

⁵¹ Council of the European Union, '2501st meeting of the Council of the European Union (General Affairs and External Relations)', document 7949/03, 10 Apr. 2003. At the meeting Lindh put forward proposals related to NBC weapons and missile delivery systems. Lindh and Greek Foreign Minister Giorgos Papandreou published the elements of their proposal to give the EU a more active role in disarmament in a joint article, "'Så undviker vi nytt Irak'" ['In this way we can avoid a new Iraq'], *Dagens Nyheter*, 10 Apr. 2003, p. 4; unofficial translation entitled 'No more Iraqs!', 10 Apr. 2003, available at URL <<http://www.papandreou.gr/papandreou/content/articlepage.aspx?articleid=1718&language=0>>.

⁵² The activities of the following Council Working Groups are particularly relevant: the EU Working Group on Non-proliferation (CONOP), the EU Working Group on Conventional Arms (COARM) and the EU Working Group on Disarmament and Security (CODUN).

of 15 April 2002. The conclusions were divided into four sections: multilateral instruments, export controls, international cooperation and political dialogue.⁵³

Nevertheless, while the adopted GAERC conclusions underlined EU support for a large number of relevant processes and identified a number of actions, they lacked critical aspects that reduced their impact and, it must be said, their credibility in the eyes of US observers.⁵⁴ Specifically, the conclusions did not establish a systematic programme for action at the EU level or by member states. The conclusions simply stated that the GAERC would ‘consider the adoption of common positions and joint actions to assure the effective implementation of the listed measures’.

Description and analysis of the key documents adopted in 2003

In 2003 a number of documents were particularly noteworthy in setting the main directions of EU policy on arms control, disarmament and non-proliferation.

On 20 June 2003 the EU High Representative for the CFSP, Javier Solana, presented a paper entitled ‘A secure Europe in a better world’ to the Council of the European Union.⁵⁵ This document was part of an effort to set priorities that would help the EU to establish concrete programmes for common action and, equally important, to direct resources to those programmes. In the paper Solana identified three new threats that the EU would have to address as a matter of highest priority: terrorism, the proliferation of WMD, and the nexus between failed states and organized crime. The Council accepted Solana’s analysis and provisionally endorsed his strategy. In its June 2003 conclusions, the Council underlined that, because WMD and missile proliferation put at risk the security of the member states, peoples and interests, ‘meeting this challenge must be *a central element* in the EU external action’.⁵⁶ In December 2003 in Brussels a revised version of Solana’s paper was adopted by EU leaders as the EU security strategy. In this final document the proliferation of WMD was described as ‘potentially the greatest threat to EU security’.⁵⁷

⁵³ EU General Affairs and External Relations Council, ‘Council conclusions: CFSP: implications of the terrorist threat on the non-proliferation, disarmament and arms control policy of the EU’, 15 Apr. 2002, URL <http://europa.eu.int/comm/external_relations/cfsp/intro/gac.htm#sd150402a>. The multilateral instruments were the 1997 Anti-Personnel Mines Convention, the 1972 Biological and Toxin Weapons Convention, the CWC, the 1996 Comprehensive Nuclear Test-Ban Treaty, the 1981 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (the CCW Convention or ‘Inhumane Weapons’ Convention), the 1925 Geneva Protocol and the NPT. See annex A in this volume.

⁵⁴ By comparison, the EU external action in the fight against terrorism adopted after Sep. 2001 led to the rapid development of a multi-faceted approach that has had a significant impact on the laws, policies, activities and spending patterns of EU member states.

⁵⁵ Solana, J., ‘A secure Europe in a better world’, Thessaloniki European Council, 20 June 2003, URL <http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/EN/reports/76255.pdf>. The document is discussed further in the introduction and chapter 1 in this volume.

⁵⁶ Council of the European Union, ‘Thessaloniki European Council, June 19–20 2003, Presidency conclusions, annex II: declaration on non-proliferation of weapons of mass destruction’, URL <<http://www.eu2003.gr/en/articles/2003/6/20/3121/print.asp>> (emphasis added).

⁵⁷ Council of the European Union, ‘A Secure Europe in a Better World: European Security Strategy’, Brussels, 12 Dec. 2003, p. 3, URL <http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/EN/reports/78367>.

Another key document adopted in 2003 was the Basic Principles for an EU Strategy Against Proliferation of Weapons of Mass Destruction, agreed on 10 June by the Political and Security Committee (PSC) of the EU.⁵⁸ The principles restated the EU commitment to strengthening existing multilateral arms control, non-proliferation and disarmament processes, but were noteworthy for several other ideas that were elaborated. The need for policies based on a common assessment of global proliferation threats was underlined. Consequently, the EU Situation Centre prepared a threat assessment 'using all available sources' that was to be maintained and continuously updated. Moreover, the intelligence services of the member states were instructed to be (and to remain) engaged in this process.

To enhance the credibility of the multilateral treaty regime, the PSC underlined the need to reinforce compliance by enhancing the ability to detect significant violations and strengthening the enforcement of norms established in the treaties. Moreover, the Committee underlined that where preventive measures (including the treaties as well as national export controls) fail to prevent proliferation, 'coercive measures under Chapter VII of the United Nations Charter and international law (sanctions, selective or global, interceptions of shipments and, as appropriate, the use of force) could be envisioned'.⁵⁹

On 10 June 2003 the EU took steps to increase the effectiveness of its collective approach to arms control, disarmament and non-proliferation by adopting an Action Plan for the Implementation of the Basic Principles for an EU Strategy Against Proliferation of Weapons of Mass Destruction. The action plan established a number of measures to be undertaken immediately and others to be elaborated, adopted and under way before the end of the year.⁶⁰ The Action Plan identified the resources needed to implement the measures to be taken immediately and put in place a system to monitor implementation. This approach seemed to indicate an entirely new sense of urgency and expanded the range of measures that might be considered necessary as part of an effective strategy to deter and, where possible, reverse WMD programmes of concern worldwide. The Action Plan grouped measures to be undertaken by the EU into two categories: measures for immediate action and measures to be implemented over a longer period.

Seven measures were identified for immediate action and for each the Action Plan included a time frame, the specific actions to be taken and projected costs. The seven measures were: (a) a detailed plan of diplomatic action; (b) firm engagement to promote universalization and reinforcement of

pdf>. In the draft paper presented in June, the proliferation of WMD was described as 'the single most important threat to peace and security among nations'. Solana (note 55), p. 5.

⁵⁸ Council of the European Union, 'Basic principles for an EU strategy against proliferation of weapons of mass destruction', document 10352/03, Brussels, 10 June 2003, URL <<http://register.consilium.eu.int/pdf/en/03/st10/st10352en03.pdf>>.

⁵⁹ Council of the European Union (note 58).

⁶⁰ Council of the European Union, 'Action plan for the implementation of the basic principles for an EU strategy against proliferation of weapons of mass destruction', document 10354/03, Brussels, 10 June 2003, URL <<http://register.consilium.eu.int/pdf/en/03/st10/st10354en03.pdf>>.

multilateral agreements;⁶¹ (c) prolongation of the EU's programme on disarmament and non-proliferation in the Russian Federation; (d) rapid ratification and implementation of IAEA Additional Protocols by all EU member states and acceding countries;⁶² (e) a budget increase for the IAEA to allow it to implement safeguards tasks; (f) the promotion of challenge inspections in the framework of the CWC; and (g) making the EU a leading cooperative player in the export control regimes. As planned, each of these tasks was accomplished before the end of 2003. Fifteen measures were identified that could not realistically be put in place within six months but could be organized over a longer period of time. The Action Plan made clear that the necessary work should begin immediately to put the measures in place as quickly as possible.

Subsequently, on 12 December 2003, the EU Strategy Against Proliferation of Weapons of Mass Destruction was agreed at the Council in Brussels.⁶³ Largely building on the previous discussions, the strategy included operational elements such as the establishment of a monitoring centre to collect information and intelligence relevant to the strategy's implementation and a biannual review of implementation by the GAERC. These elements should ensure that the EU continues to pay high-level attention to the issue of WMD proliferation.

In the months after these documents were adopted, it was evident that the EU had begun to approach the issue of non-proliferation with a new seriousness. The following examples indicate that the new approach will have an impact within the EU as well as on its external relations.

In June 2003 the EU prolonged the programme to assist Russia with the elimination of surplus weapons.⁶⁴ Subsequently, the EU made clear that this prolonged programme would concentrate its resources on two projects: support for the disposal of plutonium taken from former Soviet nuclear weapons and the provision of equipment required to ensure the operation of the chemical weapon destruction facility being constructed at Kambarka in the Republic of Udmurtia, Russia.⁶⁵

⁶¹ The Council subsequently adopted Council Common Position 2003/805/CFSP. See 'Council Common Position 2003/805/CFSP of 17 November 2003 on the universalisation and reinforcement of multilateral agreements in the field of non-proliferation of weapons of mass destruction and means of delivery', *Official Journal of the European Union*, L 302, vol. 46 (20 Nov. 2003), pp. 34–36.

⁶² By the end of 2003 the IAEA had been informed by all the EU member states that they had fulfilled their internal requirements for the entry into force of an Additional Protocol. However, the IAEA also requires written notification from the Euratom Supply Agency that its requirements for entry into force have been met.

⁶³ Council of the European Union, 'EU strategy against proliferation of weapons of mass destruction', Brussels, 12 Dec. 2003, URL <http://ue.eu.int/cms3_applications/Applications/newsRoom/LoadDocument.asp?directory=en/misc/&filename=78340.pdf>.

⁶⁴ 'Council Joint Action 2003/472/CFSP on the continuation of the European Union cooperation programme for non-proliferation and disarmament in the Russian Federation', *Official Journal of the European Union*, L 157, vol. 46 (26 June 2003), pp. 69–71.

⁶⁵ 'Council Decision 2003/874/CFSP of 8 December 2003 implementing Joint Action 2003/472/CFSP with a view to contributing to the European Union cooperation programme for non-proliferation and disarmament in the Russian Federation', *Official Journal of the European Union*, L 326, vol. 46 (13 Dec. 2003), pp. 49–54.

In November 2003 the EU adopted a policy regarding the management of non-proliferation in the context of its relationships with third countries.⁶⁶ Language for a 'non-proliferation clause' was agreed and was to be included in future agreements with third countries. The agreed language included a commitment to join, ratify, implement and comply with relevant international legal instruments that seek to counter the proliferation of WMD as well as a commitment to establish an effective system of national export controls that apply to both the export and the transit of WMD-related goods.

Since 1995 the legal basis for export controls related to dual-use items in EU member states has been based on EU law in the form of a common regulation. However, the regulation does not prescribe in detail the way in which member states should carry out the task of assessing applications for export licences from individual exporters. Critical licensing and assessment tasks are carried out by the member states according to secondary regulations and procedures that they develop nationally. The EC is responsible for ensuring that actions by the member states are consistent with EU legislation. In 2003 the EU put in place a procedure for 'peer review' by which expert teams will evaluate member states' national regulations and procedures.⁶⁷ The EC will coordinate the activities of these teams, which will consist of officials from member states other than those under review. This innovation should raise the consistency and effectiveness of the national measures to implement the common legislation.

In 2003 the EU introduced the issue of non-proliferation into the Asia–Europe Meeting (ASEM) held in Indonesia. The ASEM is an informal dialogue between the EU and 10 Asian countries that has evolved a structure including regular meetings both at ministerial level and of officials organized in working groups.⁶⁸ On 24 July 2003 the foreign ministers of ASEM member states agreed a Political Declaration on Prevention of Proliferation of Weapons of Mass Destruction and their Means of Delivery. The ASEM Declaration draws heavily on the EU Basic Principles.⁶⁹

During 2003 the EU expressed serious concerns on a number of occasions about Iran's pursuit of a full nuclear fuel cycle.⁷⁰ The EU also supported IAEA efforts to gather more information about Iranian nuclear activities after

⁶⁶ Council of the European Union, 'Fighting against the proliferation of weapons of mass destruction—mainstreaming non-proliferation policies into the EU's wider relations with third countries,' document 14997/03, Brussels, 19 Nov. 2003.

⁶⁷ This regulation was revised and modernized in 2000.

⁶⁸ The 10 Asian countries are Brunei Darussalam, China, Indonesia, Japan, Korea (South), Malaysia, the Philippines, Singapore, Thailand and Viet Nam.

⁶⁹ The 'Political declaration on prevention of proliferation of weapons of mass destruction and their means of delivery' was published as an Annex to the Chair's Statement from the 5th ASEM Foreign Minister's Meeting, Bali, Indonesia, 22–24 July 2003, at URL <<http://www.mofa.go.jp/policy/economy/asem/asem5/>>.

⁷⁰ The Iranian programme was described by the President of the Atomic Energy Organization of Iran (AEOI) at the IAEA General Conference in Dec. 2002. Iran's nuclear activities are described in chapter 15 in this volume.

February 2003, when a number of previously unknown activities and facilities were described to the IAEA Director General during a visit to Iran.⁷¹

The Council has underlined conditionality in Iranian actions in the nuclear field and EU–Iran relations. The EU opened negotiations with Iran on a Trade and Cooperation Agreement in December 2002.⁷² The EU negotiators in the EU–Iran Working Group on Trade and Investment who are discussing the Trade and Cooperation Agreement have raised the issue of nuclear proliferation.⁷³ A more systematic political dialogue with Iran on the issue of combating terrorism has been developed through regular meetings between Iranian officials and counterparts from the EU.⁷⁴ Secretary General/High Representative Solana (on behalf of the Council) and Greek Prime Minister Konstantinos Simitis (on behalf of the EU Presidency) both warned Iran to comply with IAEA requirements during visits to Iran in August 2003.⁷⁵

In addition, the foreign ministers of three EU member states (France, Germany and the UK) initiated a correspondence with their Iranian counterpart in August 2003 on the issue of WMD.⁷⁶ During their visit to Tehran on 21 October 2003 the foreign ministers obtained three commitments from their Iranian counterparts. These were full Iranian cooperation with the IAEA; the signing by Iran of an Additional Protocol to its IAEA safeguards agreement and immediate commencement of ratification procedures; and the suspension of all uranium enrichment and reprocessing activities.⁷⁷ British Foreign Minister Jack Straw underlined that the EU would also monitor the implementation of these commitments by Iran, including the suspension of uranium

⁷¹ The IAEA Director General subsequently found that Iran had ‘failed to meet its obligations under its Safeguards Agreement with respect to the reporting of nuclear material, the subsequent processing and use of that material and the declaration of facilities where the material was stored and processed’. ‘Implementation of the NPT safeguards agreement in the Islamic Republic of Iran’, Report by the Director General to the IAEA Board of Governors, GOV/2003/40, 6 June 2003, URL <<http://www.iaea.org/NewsCenter/PressReleases/2003/06JUNStatementIRAN.pdf>>. Iran’s safeguards agreement is contained in IAEA, ‘The text of the agreement between Iran and the Agency for the application of safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons’, document INFCIRC/214, 13 Dec. 1974, URL <<http://www.iaea.org/Publications/Documents/Infcircs/Others/infcirc214.pdf>>.

⁷² The EU is Iran’s largest and most important trading partner, and an agreement that might increase levels of trade and investment is considered desirable by both sides. The elements of EU–Iran relations are described at URL <http://europa.eu.int/comm/external_relations/iran/intro/index.htm>.

⁷³ Peimani, H., ‘EU and Iran talk trade, not war’, Asia Times Online, 7 June 2003, URL <http://www.atimes.com/Middle_East/EF07Ak02.html>.

⁷⁴ Kemp, G., ‘How to stop the Iranian bomb’, *National Interest*, no. 72 (summer 2003), pp. 48–58.

⁷⁵ ‘EU envoy warns Iran’, BBC News Online, 30 Aug. 2003, URL <http://news.bbc.co.uk/2/hi/middle_east/3190319.stm>.

⁷⁶ ‘Visit to the Islamic Republic of Iran’, Interview with Dominique de Villepin, French Minister of Foreign Affairs, Tehran, 21 Oct. 2003, excerpts available at URL <http://www.info-france-usa.org/news/statmnts/2003/villepin_iran_102103.asp>.

⁷⁷ UK Foreign and Commonwealth Office (FCO), ‘Agreed statement at the end of a visit to the Islamic Republic of Iran by the Foreign Ministers of Britain, France and Germany, Tehran, October 21, 2003’, URL <<http://www.acronym.org.uk/docs/0310/doc13.htm>>. However, in Iran the public statement by Hojatolislam Hassan Rowhani, Secretary of the Supreme National Security Council, qualified the information relating to the timetable for Iran to implement these commitments. ‘Rowhani: Iran to sign up to NPT Additional Protocol before Nov 20’, Islamic Republic News Agency, 21 Oct. 2003, at URL <http://www.ima.ir/?SAB=OK&LANG=EN&PART=_SEARCH&TYPE=_NSEARCH>.

enrichment.⁷⁸ This monitoring—which would necessarily include the use of national intelligence that can probably only be shared among limited groups—suggests that actions by member states either individually or in small ad hoc groups will also play an important role in implementing the Action Plan.⁷⁹ In their agreed statement at the end of their visit to Iran, the foreign ministers of France, Germany and the UK noted that once international concerns are fully resolved, Iran can expect easier access to modern technology and supplies in a range of areas. Moreover, the ministers also agreed to cooperate with Iran to promote security and stability in the region—including the establishment of a WMD-free zone in the Middle East.⁸⁰

Future directions in EU policy

Decisions taken in 2003 suggest that in the short term EU activities will be strengthened in three areas. First, a more effective system will be developed to protect citizens within the enlarged EU against the threat of terrorist attacks. Second, additional activities are anticipated in the area of cooperative threat reduction (CTR) and third, the strengthening of EU export controls will continue.⁸¹

Protecting EU citizens from the risk of terrorist attacks has many different dimensions. In the 1997 Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, the parties had already agreed to create an area of ‘freedom, security and justice’ in the EU.⁸² Subsequently, closer attention was paid to developing more effective cooperation between customs, police and other law enforcement authorities and to stimulating closer judicial cooperation on criminal matters.⁸³ After the terrorist attacks on the USA in September and October 2001, this work was accelerated as part of the EU programme to combat terrorism.⁸⁴ In June 2002 these efforts were supplemented by a com-

⁷⁸ ‘Iran visit represented the “best of European cooperation”—Straw (23/10/03), Edited transcript of an interview given by the Foreign Secretary, Jack Straw, for BBC Radio 4, Thursday 23 October 2003’, URL <<http://www.acronym.org.uk/docs/0310/doc13.htm>>.

⁷⁹ Solana has explained that, logically, member states with particular capacities or comparative advantages would take a lead, but within the framework of a policy discussed and agreed with EU partners. ‘EU’s Solana urges rapid implementation of Iran nuclear deal’, Agence France-Presse, 21 Oct. 2003, URL <<http://www.eubusiness.com/afp/031021193933.0vijwd2z>>.

⁸⁰ UK Foreign and Commonwealth Office (note 77).

⁸¹ EU initiatives in the areas of CTR and export controls are described in chapter 18 in this volume.

⁸² European Union, *Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts* (Office for Official Publications of the European Communities: Luxembourg, 1997), Art. 1, para. 3.

⁸³ ‘Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice—text adopted by the Justice and Home Affairs Council of 3 December 1998 (1999/C 19/01)’, *Official Journal of the European Communities*, C 19, vol. 42 (23 Jan. 1999), pp. 1–15.

⁸⁴ Caparini, M., ‘Security sector reform and NATO and EU enlargement’, *SIPRI Yearbook 2003* (note 6), pp. 237–60. Also relevant in this context was the decision by member states to criminalize several acts agreed to be terrorist offences. Among the acts to be criminalized was ‘the manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons’ if these acts

mon policy on illegal immigration, external borders and cooperation with third countries. The activities to manage external borders are relevant to the EU effort to combat the proliferation of WMD. However, the primary objective has been to strengthen the controls on people and items entering the EU, whether by air, land or sea.⁸⁵ The same month, the EU Heads of State and Government agreed on the creation of the Common Unit for External Border Practitioners. As noted in section II, in 2003 the Commission proposed that this unit should be a network linking the heads of the Border Control Services of the EU member states as well as of Iceland and Norway.

The EU has decided to sponsor the development of new risk-analysis techniques to allow a more targeted use of available resources. The Common Unit will also play a key role in an expanded system of information sharing intended to help identify illicit trafficking routes and identify traffickers—including traffickers in arms and dangerous materials. Customs information is expected to form an important part of the overall data used to identify and confiscate arms and materials being illegally imported and exported and to identify traffickers. In 2001 the EC put forward a strategy for the EU Customs Union.⁸⁶ In February 2003 the European Parliament and the Council adopted a programme intended to evaluate the manner in which the member states were actually carrying out their commitment to cooperate more effectively and to make available resources to help improve implementation where necessary.⁸⁷ In addition, as noted in section II, the EC has examined how to improve sea border controls.

As part of the overall effort to develop closer cooperation on police matters between the EU and Russia, a number of areas have been identified as having a particularly high priority. These areas include combating the illicit trafficking in firearms, ammunition, explosives, poisonous substances, and nuclear and radioactive materials.⁸⁸

were 'committed with the aim of seriously intimidating a population, or unduly compelling a Government or international organisation to perform or abstain from performing any act, or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation'. 'Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA)', *Official Journal of the European Communities*, L 164, vol. 45 (22 June 2002), pp. 3–7, Art. 1.1, discussed in Anthony, I., 'Supply-side measures', *SIPRI Yearbook 2003* (note 6), pp. 727–48.

⁸⁵ Council of the European Union, 'Plan for the management of the external borders of the member states of the European Union', document 10019/02, 14 June 2002, URL <<http://register.consilium.eu.int/pdf/en/02/st10/10019en.pdf>>.

⁸⁶ The strategy was elaborated in 'Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee concerning a strategy for the Customs Union', COM/2001/0051 Final, 8 Feb. 2001, URL <http://europa.eu.int/comm/taxation_customs/publications/customs/customsstrategy_en.htm>.

⁸⁷ 'Decision No. 253/2003/EC of the European Parliament and of the Council of 11 February 2003 adopting an action programme for customs in the Community (Customs 2007)', *Official Journal of the European Union*, L 36, vol. 46 (12 Feb. 2003), pp. 1–6.

⁸⁸ 'Agreement between Europol and the Russian Federation' in Council of the European Union, Conclusions from the 2529th meeting on Justice and Home Affairs, document 12762/03 (Presse 278), Brussels, 2–3 Oct. 2003, p. 13, provisional version available at URL <<http://www.statewatch.org/news/2003/oct/jhaprel.pdf>>.

Finally, the EU has been in the process of creating a common system for an exchange of visa data that may play a role in reducing the risk of transfers of intangible technology relevant to weapon proliferation.⁸⁹

In November 2003 the EC, along with the member states, began to define a number of research projects that could develop the technologies and equipment needed to support this overall effort.⁹⁰ The research efforts—which may not be used to develop lethal equipment—will concentrate on border and coastal surveillance, aviation security, early alert against chemical and biological attacks, protection of critical infrastructure, satellite intelligence capabilities and the development of non-lethal means to counter terrorist actions. The resources to support these projects will be provided in part by the EU Framework Programme for Research, Technological Development and Demonstration.⁹¹

By the end of 2003 the EU had taken a number of steps to implement its commitments to take action against the proliferation of WMD. The establishment of an implementation ‘road map’ alongside a process to monitor implementation increases confidence that other commitments will also be translated into action. Moreover, the adoption of the EU Strategy Against the Proliferation of Weapons of Mass Destruction along with the resources to implement it underline that the EU will continue to play a more important role in this area.

IV. The interface between the law of arms control and other branches of international law

The cold war threat picture, in which the adversary and the likely means of attack were more easily identifiable, has given way to a more complex threat mosaic. The discussion above illustrates some of the ways in which international law has been used to help manage security threats in response to the changing environment. In this section two additional aspects of this changing legal approach are discussed.

First, international legal processes have tried to address threats stemming from the use of items and materials that are not weapons of a traditional kind to carry out attacks on a state or society.

Second, governments have been taking steps to differentiate the manner in which they use force (which must be in accordance with the principles of the laws of war if it is to be legitimate) from terrorist acts carried out by actors who are working neither directly for states nor on behalf of states. International humanitarian law is being used to help define the way in which

⁸⁹ This issue is discussed further in chapter 18 in this volume.

⁹⁰ Tigner, B., ‘EU to unveil its first defense research projects in November’, *Defense News*, vol. 18, no. 39 (20 Oct. 2003), pp. 13.

⁹¹ The Framework Programme has been running since 1984. The 6th Framework Programme runs from 2002 to 2006 and has a total budget of €17.5 billion (c. \$19.8 billion). European Union, ‘6th Framework Programme (2002–2006)’, 5 May 2003, URL <<http://europa.eu.int/scadplus/leg/en/lvb/i23012.htm>>.

weapons can be used legitimately and which kinds of weapon are legitimate. By extension, the development of international humanitarian law may lead to the restriction or prohibition of weapons that are not legitimate.

International legal controls over items and materials other than weapons

One aspect of the changing approach to managing security has been an effort to identify societal vulnerabilities and put in place measures to reduce the likelihood that they will be exploited.⁹² Some analysts have argued that a number of failures in critical infrastructure could be engineered to occur in a coordinated way with malicious intent. According to this logic, if it is not possible to identify adversaries with confidence, it might nevertheless be possible to make a technical assessment of tactics that an adversary might employ as part of a strategy of societal disruption. If a modern advanced society can be massively disrupted by non-military attacks, then this is the type of attack against which countermeasures need to be prepared.

The traditional arms control and disarmament processes are not well suited to address functional security threats. The arms control processes were developed to deal with the security-related aspects of the acquisition of weapons by states. In some cases functional security threats involve the use of items and materials that are not weapons in the traditional sense of the word.

While many of the measures taken to safeguard societies and permit rapid recovery in case of attack are domestic, the fact that potential perpetrators could be located in places other than where their acts occur means that solutions to the problems posed should also be addressed by international law. This in turn requires the adoption of adequate international legal instruments but from outside the traditional realm of arms control.

The threat of mass impact terrorism has led states to consider three types of concern over nuclear-related risks. The first is that nuclear material would be acquired that is not weapon-grade but that could nevertheless be used to construct a nuclear explosive.⁹³ The second is that radiological materials would be acquired and used to cause a radiological hazard in a radiological dispersal device (or 'dirty bomb').⁹⁴ The third risk is that an attack on a nuclear installation would cause a radiological hazard.

⁹² The concept of 'functional security' has been developed by industry to describe the process of identifying all elements that a given entity would require to meet its business needs and ensuring that they are available. The equivalent process for a state would be to identify all the elements needed to meet its responsibilities to provide security to citizens and ensure that these are available.

⁹³ *Weapon-usable* material is uranium enriched to 20% or more in the uranium-235 and uranium-233 isotopes and any plutonium containing less than 80% of the isotope plutonium-238. *Weapon-grade* material is uranium enriched to more than 90% uranium-235 or uranium-233 or plutonium-239 containing less than 6% plutonium-240.

⁹⁴ A radiological dispersal device has been defined as 'any device, including any weapon or equipment, other than a nuclear explosive device, specifically designed to employ radioactive material by disseminating it to cause destruction, damage, or injury by means of the radiation produced by the decay of such material.' Ford, J. L., 'Radiological dispersal devices', *Strategic Forum*, no. 136 (Mar. 1998), URL <<http://www.ndu.edu/inss/strforum/SF136/forum136.html>>.

The IAEA has taken a leading role in trying to develop a comprehensive and coherent approach to nuclear and radiological security.⁹⁵ At present, however, this approach is not in place and existing standards and regulatory systems have largely been established in national legislation. A number of legal processes are under way to create international standards. At present the international agreements that establish standards for nuclear safety and security lack provisions that take into account the possible use of radiological materials as weapons.

The text of the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, the first legal instrument to directly address these issues, was agreed on 5 September 1997 and the convention entered into force on 18 June 2001.⁹⁶ However, key countries that have signed the convention have not yet ratified it, including Russia as well as Brazil, Estonia, Indonesia, Italy, Kazakhstan, Lebanon, Peru and the Philippines.

The Convention on the Physical Protection of Nuclear Material (CPPNM), which was opened for signature on 3 March 1980 and entered into force on 8 February 1987, was established to reduce the risks to public safety and to the environment that might arise from international transport of nuclear materials.⁹⁷ However, the CPPNM does not address the question of the domestic use, storage and transport of nuclear materials or the issue of protecting nuclear facilities from sabotage. The IAEA is currently considering how to amend and supplement the CPPNM to establish agreed standards for measures that would address these concerns.⁹⁸ At present the development of standards, as well as the regulations needed to translate these standards into practical procedures, is undertaken at the national level.

It is clear that CTR projects could support the implementation of agreed standards at the national level, in Russia and elsewhere. While projects to assist in securing military stockpiles have been difficult to develop because of the lack of progress in arms control, developing measures to address risks

⁹⁵ In Mar. 2002 the IAEA Board of Governors agreed a Nuclear Security Plan of Activities. An overview of the implementation of this plan is available in IAEA, 'Measures to strengthen international cooperation in nuclear, radiation and transport safety and waste management', Report to the Board of Governors, document GOV/2003/47-GC(47)/7, 4 Aug. 2003, URL <<http://www.iaea.org/About/Policy/GC/GC47/Documents/gc47-7.pdf>>.

⁹⁶ The text of the convention and information on its status are available at URL <<http://www.iaea.org/Publications/Documents/Conventions/jointconv.html>>.

⁹⁷ For the convention see IAEA, 'The Convention on the Physical Protection of Nuclear Material', document INFCIRC/274/Rev.1, May 1980, URL <<http://www.iaea.org/Publications/Documents/Infcircs/Others/inf274r1.shtml>>.

⁹⁸ In Aug. 2001 the IAEA Board of Governors endorsed 4 physical protection objectives and 12 principles to ensure the security of nuclear materials. IAEA, 'Nuclear verification and security of material: physical protection objectives and fundamental principles', document GOV/2001/41, 15 Aug. 2001, attachment to IAEA, 'Measures to improve the security of nuclear materials and other radioactive materials', document GC(45)/INF/14, 14 Sep. 2001, URL <<http://www.iaea.org/About/Policy/GC/GC45/Documents/gc45inf-14.pdf>>. An IAEA expert group consisting of representatives from 43 countries and the EC has been meeting regularly since 2001 to discuss modifications to the CPPNM. 'Nuclear security regime: work continues on strengthening the International Convention on Physical Protection of Nuclear Material,' IAEA WorldAtom Staff Report, 17 July 2002, URL <<http://www.iaea.org/NewsCenter/News/2002/NucSecurRegime.shtml>>.

associated with radiological material in civilian facilities will probably not pose the same problems. The risk posed by unauthorized access to radiological materials is recognized first and foremost by Russian authorities, but also by the external donor community. Furthermore, addressing issues in civilian facilities would not raise the same problems of information sharing and access to facilities that exist in the military establishment. Projects to help with the safe and secure management of fuel assemblies are one of the main CTR priorities, and an expansion in the scope of these activities to take in additional types of radiological material might be expected.⁹⁹

Another type of threat requiring increased international cooperation is cybercrime (crime related to information technology). The Council of Europe 2001 Convention on Cybercrime would, among other things, require states to make it an offence under their national law for any person to cause loss of property to another intentionally and without right by any input, alteration, deletion or suppression of computer data or by any interference with the functioning of a computer system.¹⁰⁰ This convention could help to reduce the threat from ‘cyber terrorism’—malicious attacks on computer networks. While the convention was opened for signature and ratification by members of the Council of Europe and by other states on 23 November 2001, only 33 countries had signed it and only 4 countries had ratified it by 1 January 2004. The fact that this European multilateral initiative could play a useful role in reducing risks from mass impact terrorism has been highlighted by the USA in support of the convention.¹⁰¹

The impact of humanitarian law on weaponry

In the USA and elsewhere, governments have concluded that it will be necessary to use force as part of the overall effort to address new security threats. This force may well need to be projected over distance.¹⁰² Not only the laws

⁹⁹ For more on CTR see Anthony, I., SIPRI, *Reducing Threats at the Source: A European Perspective on Cooperative Threat Reduction*, SIPRI Research Report no. 19 (Oxford University Press: Oxford, 2004).

¹⁰⁰ Convention on Cybercrime, 23 Nov. 2001, Art. 8, ‘Computer-related fraud’, URL <<http://conventions.coe.int/Treaty/en/Treaties/Html/185.htm>>.

¹⁰¹ E.g., Lincoln Bloomfield has noted that ‘Damaging misuse of information technology must be made a criminal offence everywhere. My recommendation here is that you ensure that your legislation effectively covers cybercrime. In this regard, we commend to all member states the example of the laws and procedures in the Council of Europe Cybercrime Convention as a model for individual states’ legal regimes’. Bloomfield, L. P., Jr, Assistant Secretary for Political–Military Affairs, ‘Cybersecurity: ensuring the safety and security of networked information systems,’ Remarks at the Southeastern European Cybersecurity Conference, Sofia, Bulgaria, 8 Sep. 2003, URL <<http://www.cybersecuritycooperation.org/bloomfield.html>>.

¹⁰² E.g., the British Foreign and Commonwealth Office has noted that ‘the focus of our security and defence policy will be on understanding and countering new threats, often from non-state actors, empowered by new technologies, and originating outside Europe. . . . As doctrine and practice on international intervention develop, the role of the UK armed forces will continue to shift towards deployments in crisis areas around the world. Our ability to project armed force will be a key instrument of our foreign policy’. British Foreign and Commonwealth Office, ‘UK international priorities: a strategy for the FCO’, Dec. 2003, pp. 13–14, URL <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/PreviewPage&AssetType=Page&ResolvePageId=FCO_OBJ_StrategyMain>.

that regulate when to use force, but also those that regulate the conduct of fighting forces during a conflict, will play an essential role in differentiating legitimate use of force from acts of terrorism.¹⁰³ The need to conduct discriminate military operations that protect all civilians, their property and environment to the greatest extent possible (regardless of nationality or citizenship) has led to a renewed interest in humanitarian law approaches to weapon use as a form of control.

Humanitarian law has two aspects that have an impact on weaponry. First, attacks that employ a method whose effect cannot be limited to military targets are considered indiscriminate by the 1977 Additional Protocol I of the Geneva Conventions of 1949.¹⁰⁴ On this basis certain types of weapon have been argued to be indiscriminate and the legality of their use has been questioned.¹⁰⁵

The need to meet standards of discrimination and proportionality could also feed into the development of weapons in the future. In particular, the need for discrimination and proportionality might stimulate the development of weapons with greater accuracy that can achieve operational objectives with less destruction. What are now considered to be ‘fire and forget’ weapons (such as many types of missiles) may in future also be designed to have a ‘fire and regret’ feature that will allow them to be recalled, disabled or destroyed en route to their targets (in this case taking into account the potential impact of resulting debris).

The second impact of humanitarian law on weaponry has been felt in processes where states have been considering how to balance the need to meet military operational objectives against the need to prevent humanitarian problems that might arise out of the irresponsible use of weapons. The second Review Conference of States Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (the 1981 CCW Convention or ‘Inhumane Weapons’ Convention) took place in December 2002.¹⁰⁶ The Group of Governmental Experts (GGE) on Explosive Remnants of War and Mines Other Than Anti-Personnel Mines, established at the 2001 CCW Review Conference, focused on two issues at its negotiations in 2003. The first was to reduce the humanitarian risks caused by explosive

¹⁰³ During the fighting in Iraq in 2003, spokesmen contrasted the efforts made by the USA and its coalition partners to comply with the laws of war when carrying out operations and when dealing with prisoners of war with what has been called ‘a systematic disregard of these laws’ by Iraqi fighters. See, e.g., ‘DoD news briefing: ASD PA Clarke and Maj. Gen. McChrystal’, US Department of Defense (DOD) news transcript, 24 Mar. 2003, URL <http://www.defenselink.mil/news/Mar2003/t03242003_t0324asd.html>; and ‘Briefing on Geneva Convention, EPW’s and war crimes’ by Bryan Whitman, W. Hays Parks (Special Assistant to the Judge Advocate General of the US Army) and Ambassador Pierre-Richard Prosper (US Ambassador-at-Large for War Crimes Issues), US DOD news transcript, 7 Apr. 2003, URL <http://www.defenselink.mil/transcripts/2003/t04072003_t407genv.html>.

¹⁰⁴ For the signatories and parties to Additional Protocol I see annex A in this volume.

¹⁰⁵ Two examples are cluster munitions and thermobaric (fuel-air) weapons. The legality of the use of these weapons in a particular location is discussed in, e.g., Cryer, R., ‘The fine art of friendship: *jus in bello* in Afghanistan’, *Journal of Conflict and Security Law*, vol. 7, no. 1 (Apr. 2002), pp. 37–83.

¹⁰⁶ The CCW Convention is reproduced at URL <http://www.mineaction.org/advocacy_conventions/_ccw_amendedprotocolii.cfm>. For the signatories and parties to the CCW see annex A in this volume.

remnants of war, defined as unexploded ordnance and abandoned explosive ordnance, with the exception of mines, booby-traps and other devices as defined in Protocol II, 'on prohibitions or restrictions on the use of mines, booby-traps and other devices' of the CCW Convention. The second issue was prohibiting or restricting the use and transfer of anti-personnel landmines, as defined in Protocol II of the CCW Convention.

The discussions of the GGE, which opened in March 2003, were facilitated by a draft document prepared by the Coordinator that included a technical annex defining preventive generic measures.¹⁰⁷ The preventive measures under discussion include obligations to: (a) manufacture munitions to a technical standard that maximizes reliability (reducing the risk of unexploded ordnance); (b) test munitions through their service life and use methods of storage that reduce the likelihood of unexploded ordnance; (c) carry out training to a standard that reduces the risk of unexploded ordnance; and (d) ensure, when transferring munitions to another state, that the end-user has procedures and resources to ensure responsible training, storage and use.

On 28 November 2003 the GGE adopted the text of a protocol that will become Protocol V on Explosive Remnants of War of the CCW Convention.¹⁰⁸ The agreed document addresses post-conflict remedial measures. The negotiations will continue in 2004 to discuss how agreed measures can be implemented—including the questions of financing—and to study preventive measures, mainly to address how the design of munitions, including sub-munitions, can be adapted to reduce the risk that weapons will become explosive remnants.¹⁰⁹

V. Conclusions

In 2004 the discussions on arms control, non-proliferation and export control were undoubtedly coloured by the developments in Iraq. While the UN Security Council should play a central role in combating proliferation, in reality this might not always be possible. The full implications of the failure to manage Iraq's non-compliance with UN Security Council resolutions peacefully and within the framework of the UN are not yet clear. However, one common lesson taken from the events of 2003 has been the need to increase the collective effort to detect proliferation activities and either prevent them or, where thresholds have been crossed, 'roll back' programmes of concern.

¹⁰⁷ 'Draft proposal for an instrument on explosive remnants of war by the Coordinator on Explosive Remnants of War (ERW)', Group of Governmental Experts of the States Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects, document CCW/GGE/V/WG.1/WP.1/Rev.1, 20 May 2003, URL <<http://disarmament2.un.org/ccw/ccwggedocsfifth.html>>. Protocol V will enter into force after the 20th deposit of the instruments of ratification; see annex A in this volume.

¹⁰⁸ United Nations Information Service at Geneva, 'States parties to Conventional Weapons Convention adopt new protocol on explosive remnants of war', Press Document, 28 Nov. 2003, URL <<http://www.unog.ch/news2/documents/newsen/dc0347e.htm>>.

¹⁰⁹ This issue is discussed further in chapter 17.

States have increasingly come to recognize that a wide range of instruments is available in this collective effort. The use of multilateral treaties (including their verification measures), national export controls (including efforts by states to cooperate informally to coordinate and strengthen their national controls), CTR programmes, political and economic engagement, screening and physical interdiction of cargoes, and other interdiction efforts have all been closely examined in 2003 with a view to strengthening them.

The application of these measures is increasingly being considered in specific locations as well as being seen as a global activity. It is more often acknowledged that proliferation is not a general phenomenon but rather one that is confined to a relatively small number of specific locations. States and organizations are now recognizing that the mix of different instruments to be applied as part of an effective policy against proliferation is not necessarily the same in each of these specific locations.

The efforts by non-state actors to acquire WMD are not as well understood as the efforts being made by states—to the point where a separate definition may be required both for what constitutes a ‘weapon’ in non-state hands and for what constitutes ‘mass destruction’ by a non-state actor. Moreover, the instruments available to counter these efforts are almost certainly different and less well developed than those available for state-based proliferation.

