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The threat of biological terrorism[1] is pushing international law toward a new paradigm of State Responsibility based on the Principle of Precaution. Like the effect that gunpowder weapons had on the configuration of the State-centric paradigm of international law in the sixteenth century or the effect that nuclear weapons had on mid-twentieth century concepts of international peace and security, the advent of disease as a terror weapon exposes the limitations of received doctrines of international law.

The current paradigm shift is not a wholesale replacement of extant precepts by something entirely new and different; it is, initially, an adjustment or supplementation of ideas in order to cope with an extreme contingency that, over time, permeates and drives the law's evolution. Nor is bioterrorism the only phenomenon demanding a paradigm shift – attention should also focus on global environmental threats as well as nuclear terrorism. Indeed, it could be argued that the paradigm of State Responsibility has been shifting for at least the period since the Soviet Union's collapse. But bioterrorism accelerates the need to appreciate its implications, especially for the United States in view of its superpower status and unique leadership in the global campaign against terrorism.

This article addresses three questions. First, is bioterrorism qualitatively different from other security threats, and, if so, what should be the strategy for confronting bioterrorism? Second and most important, what are the legal implications for a State that shuns its responsibilities to support that strategy? Third, has recent behavior of the United States fallen short of its responsibilities? This article's conclusion is that the United States is off to a bad start. Its diplomacy manifests a stubborn refusal to understand that the path to security from bioterrorism goes through other States. That refusal is not only bad policy, but it is also a dereliction of this nation's legal responsibility.

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1. Readers should note that the term "bioterrorism" includes a wide array of crimes that are not catastrophic. Lacing salad bars with salmonella or using ricin as a murder weapon is criminal but no more so than use of an automatic rifle. This discussion focuses only upon those extreme types of bioterrorism that are likely to threaten mass casualties. For a fuller discussion, see Barry Kellman, *Biological Terrorism: Legal Measures for Preventing Catastrophe*, 24 HARV. J.L. & PUB. POL'Y 417 (2001).

I. Bioterrorism's Challenge

A. Why Biological Weapons Are Unique

Biological agents are qualitatively distinguishable from other weapons for at least three reasons. First, unlike every other non-nuclear weapon, a sophisticated discharge of smallpox or flu virus that has been engineered to resist treatment could sweep through populations and likely cross borders, inflicting levels of casualties that would jeopardize the continued social order. It should be remembered that smallpox was the twentieth century's greatest killer, responsible for at least five times the death toll as Hitler and Stalin combined. The greatest single killing event of the past century was the 1918 flu (obviously not bio-engineered), which may have infected as much as 20 percent of humanity, of whom roughly one in twenty died. With modern population concentrations in cities and air transportation capable of taking disease across the world in a day, the potential for devastation is remarkable.

This characteristic of bioterrorism has a crucial implication: post-event response is very inadequate. Humanity would be poorly served by a system that could only apprehend and prosecute a bioterrorist after he or she has committed a catastrophic attack. That dimension of penalization would not begin to repair the rent in the social fabric. Thus, the discussion of what to do legally to cope with the bioterrorism threat must move from post-event remediation to prevention and interdiction.[2]

Second, unlike nuclear weapons, biological weapons are relatively easy to make. This is not to suggest that making biological weapons is trivial; considerable sophistication and equipment is necessary to make a weapon that is capable of mass death. But whereas the complexity of making nuclear weapons offers some protection against nuclear terrorism,[3] to rely on the technological hurdles of bioterrorism as protection is foolhardy.

Third, unlike every other weapon, including nuclear weapons, biological agents can be made and transported virtually anywhere. The production site would, as stated, require sophisticated equipment, but it need not necessarily be a fully equipped biopharmaceutical facility. A laboratory in most other parts of the world could easily escape detection, and its operations could proceed with minimal risk. Once produced and weaponized, those agents can be taken across borders without significant risk of detection. Indeed, the production process can be segmented, with sequential steps undertaken in different nations; transporting the final product to the target destination is simple. If the agent is sufficiently contagious, a suicidal "martyr" can infect himself and thereby become a human weapon of mass destruction. Once detonated, the catastrophic consequences are virtually unstoppable.

For this reason, to speak of bioterrorism is, necessarily, to demand multilateral, virtually universal action. Producing pathogens in a covert laboratory and carrying them through customs at any international airport can too easily defeat unilateral action. Moreover, bioterrorism is not seriously deterrable; its effects are unlikely to be felt until well after the attacker has left the scene unnoticed. And even after the attack, the effects can spread anywhere. If terrorists have access to biological weapons, they can inflict a catastrophe and can sow panic with the threat to do it again somewhere else. This is an existential threat,

2. *See generally* A. L. DeWitt, *The Ultimate Exigent Circumstance*, 5 Kan. J.L. & Pub. Pol'y 169 (1996).

3. *See* Barry Kellman & David S. Gualtieri, *Barricading the Nuclear Window – A Legal Regime to Curtail Nuclear Smuggling*, 1996 U. Ill. L. Rev. 667 (1996).

not only to the target State but also to humanity as a whole. This is the threat to all in common, and it must be dealt with collectively.

B. A Prevention Strategy for Bioterrorism[4]

A prevention strategy must be international. The focus of that strategy should include measures to deny necessary materials and equipment to bioterrorists and to identify covert biological weapons activities as well as to interdict those activities and the transnational movements of deadly pathogens. The remarkably bad news is that those capabilities are worse than inadequate; they are virtually nonexistent.

More precisely, that strategy should be built upon: (1) criminalization both of use of biological agents as well as unauthorized possession of pathogens or critical equipment; (2) regulation of possession and transfer of pathogens including oversight of basic bioresearch and tracking of sophisticated weaponization equipment; and (3) multilateral law enforcement cooperation and assistance, including authority to investigate suspicions of bioweapons activities.

1. *Criminalization of Biological Weapon Use*

With regard to actual use of biological agents to inflict disease and death, there is little need for new measures; all States have homicide laws that are sufficient in scope to cover a biological weapons attack. But even if national laws explicitly prohibit use of biological weapons, the effects of such use are too cataclysmic to delay employing law enforcement until after the fact. A more preventative criminal law enforcement system to address the bioterrorist threat should, therefore, focus on earlier production or acquisition of dangerous capabilities. However, most States have not enacted criminal penalties for persons who produce or transfer deadly biological agents. In most States, there is no legal authority to investigate private biological weapons activities, nor is there any legal way to deprive private groups access to the items they might need to carry out their plans.

Remedying that gap-filled condition is complicated by the fact that most biological agents have legitimate research uses (e.g., for developing sensors or vaccines); all equipment relevant to producing and weaponizing those agents is similarly dual-use. After an attack, everyone will know what those capabilities were used for. But ascribing the status of criminality to advance preparations before actual use of deadly agents raises the risk of snaring legitimate, even compelling, activities within the prohibition. What is needed here is a combination of national penal legislation and development of international regulatory standards as discussed below. National penal legislation should criminalize preparations, assistance, and construction of relevant facilities to produce biological weapons, and strict penalties for such activities should be enacted.

2. *Regulation of Access to Pathogens, Critical Equipment*

a. Registration

There must be some capability to distinguish legitimate from illegitimate behavior prior to actual use. That is, there should be a mechanism to assert that mere possession or ac-

4. This section's discussion need only be very brief in order to set the foundation for the final discussion. For more elaboration on this international strategy for bioterrorism, see Barry Kellman, *An International Criminal Law Approach to Biological Weapons*, Harv. J.L. Pub. Pol'y (forthcoming March 2002).

quisition of designated items by certain persons is illegal, while at the same time allowing commercial and research facilities to possess or acquire the same things without violating the law. Accordingly, legitimate facilities or companies should be required to be registered, accredited, or licensed with an agency that has oversight responsibility for domestic biological and pharmaceutical activities. Licensees should be obligated to maintain records of their activities involving designated items or activities that could have weapons utility. Transfer of weapons-capable pathogens would be limited to registered entities. Moreover, all legitimate transfers should be reported, including the name and location of both the transferor and the transferee.

A necessary link here is to national criminal legislation: receiving, supplying, or smuggling weapons precursors, critical materials, or critical equipment would be illegal unless that activity is declared. An unregistered entity that has designated items or is engaged in designated activities is engaged in illegal conduct. Legitimate parties can avoid criminality by registering or declaring relevant activities. If those activities are kept secret and unregulated, the presumption must be that the objective is criminal. If nations criminalize unregistered activities, investigations could proceed without needing direct evidence that those activities are necessarily leading to a bioterrorist event. That is, instead of requiring probable cause that someone is engaging in weapons-related activities (an exceptionally high burden for law enforcement personnel to satisfy), an investigation could be conducted whenever there is probable cause that someone has designated items without a license.

b. Physical Protection

Even if deadly agents can no longer be ordered from legitimate sources, the possibility of theft remains. Pathogens could be stolen from a facility or during transit. The thief could be an outsider or could be someone inside the facility who diverts agents to impermissible uses. Therefore, additional security for biological agents is important to prevent and deter potential terrorists from surreptitious acquisition of pathogens. It is during transfer that pathogens are most vulnerable to wrongful diversion; measures should be implemented to require that specialized transit capabilities, staffed by trained professionals, are available when designated pathogens are to be moved. Moreover, transfers should be preceded by notification to relevant government officials, and successful arrival of those transfers should also be noticed.

Because facilities housing biological agents may be inviting targets of theft for bioterrorists, measures analogous to those promulgated for nuclear materials should be implemented for biological materials. And because anyone with access to deadly agents could create a weapon from just a single vial, persons working with select agents or who have access to the agents through their affiliation with the facility (e.g., janitors and security) should be monitored. Personnel requirements including background checks and psychological testing, again similar to those used in the nuclear industry, should be implemented.

c. Regulation of Critical Weaponization Equipment

Sophisticated equipment is desirable (virtually necessary) to manipulate pathogens to fashion particles small enough to: (1) disperse broadly over the relevant target population, (2) be retained by the target when contact is made, and (3) stay viable for a prolonged period so that a large portion of the target population will be infected. Complex fermentation and large-scale weaponization equipment capable of decreasing particle size without killing off the agent can be regulated, even as simpler devices remain uncontrolled. However, the need to avoid putting unnecessary burdens on the legitimate biopharmaceutical sector mandates

consideration of whether regulatory gains are worth the cost. Measures of varying degree of burdensomeness should be considered including Know-Your-Customer Guidelines, tagging equipment to enable law enforcement to determine its location and track its movement, declaration of equipment transfers, and licensing of equipment purchasers.

d. Guidelines for Biological Research

There should be guidelines concerning biological research that could have direct implications for weapons production, especially constructing and handling recombinant DNA. These guidelines should serve two distinct purposes: (1) to provide a framework for assessing risk, and (2) to propound appropriate containment and handling practices. A corollary to these guidelines would be a code of ethical conduct for scientists and laboratory personnel concerning the scope and purpose of their activities, the safety and containment practices that they employ, and the transfer of the products of their work including their new knowledge. This code should be extended to a code of corporate conduct for participants in the biopharmaceutical sector. Perhaps most important, a code of ethnical conduct would encourage the vast majority of ethical scientists to inquire into and report on illegal weapons activities.

3. *Investigations and Anti-smuggling Initiatives*

Bioterrorism is likely to involve transnational movement, initially of the materials and pathogens necessary to produce deadly agents, and later of the biological weapons to the target destination. As international regulatory efforts limit access to legitimate supplies and transportation systems, terrorists will increasingly make use of smuggling networks that are currently used for drugs, guns, or other contraband. Improved border and customs controls can help protect against smuggling. Each State could pursue terrorists within its jurisdiction but there would not necessarily be a way to pursue terrorists operating in States that lack law enforcement capabilities or in States that are unwilling to cooperate in an investigation. There is a correlation between the lack of law enforcement capabilities or willingness to cooperate and the risk that terrorists will operate within a nation. Therefore, international cooperation is necessary to effective law enforcement. These measures should also facilitate obligatory cooperative responses to foreign-initiated investigations or requests for legal assistance. And each State would accept the obligation to extradite or prosecute suspected perpetrators.[5]

Police organizations that operate near borders and customs services need capabilities to cooperate with their counterparts in neighboring States. While *ad hoc* communication is always possible, such cooperation is cumbersome, time-consuming, and unpredictable. Yet, because most States lack capabilities (technical, financial, and know-how) to implement mutual legal assistance obligations, even if obligatory under an international convention, mechanisms should be advanced whereby States with highly developed law enforcement resources can help other States to develop necessary capabilities. Elaborate systems of information sharing can enable law enforcement personnel to compile information on covert activity. Information on transfers of lethal pathogens that is generated by the regulatory system discussed above can be combined with information on suspected terrorist groups.

5. This idea is the premise of the draft treaty put forth by the Harvard-Sussex Program on CBW Armament and Arms Limitation. Draft Convention on the Prevention and Punishment of the Crime of Developing, Producing, Acquiring, Stockpiling, Retaining, Transferring, or Using Biological or Chemical Weapons.

II. The International Legal Paradigm of State Freedom and Obligation[6]

A. State Responsibility for Acts of Violence – The Traditional View

In international law, States are permitted to do that which is not expressly prohibited.[7] Thus, the starting point for assessing State responsibility is not obligation; it is the freedom of States as well as individuals to act within the broad boundaries of positive law. "Responsibility" refers to a State's accountability for its conduct in terms of whether that action complies with its obligations. The term does not typically refer to any type of omnipresent obligation of States to take unspecified action to prevent potential harm to someone or some other State. Simply expressed: a State is obligated to comply with expressed obligations and prohibitions, but broader normative notions of morality and virtue to prevent harm is exactly that, normative but not obligatory.

With regard to trans-national violence, the subject of responsibility is complicated by the distinction between State and private violence. Armed conflict, i.e., violence that is State caused, incited, instigated, or supported, is conceptually separate from criminality, i.e., private violence that is disconnected from State direction or involvement. It is axiomatic in international law that private behavior is not the State's responsibility unless authorized or induced or supported by the State. Accordingly, a State's responsibility for behavior that it has not performed is limited to behavior that it has actively encouraged. A State is not inherently responsible for the criminal activities of its citizens, even if those activities are directed against foreign States or persons.[8] There is obvious logic in this proposition. Even though the international legal system is built upon the primacy of States, not everything that happens is logically, morally, or legally attributable to a State. On the international stage, persons – whether natural or legal – can be bound to their contracts, held liable for their torts and, of course, commit crimes without precipitating issues of a State's responsibility.

This is an essentially liberal formulation defining culpable conduct as that which entails some knowing or willful choice of a course of conduct that violates a pre-existing prohibition, i.e., entails some fault. Moreover, in the absence of evidence establishing conspiracy or aiding and abetting, only the actor is responsible for the activity. The International Law Commission recently posited:

> In theory, the conduct of all human beings, corporations or collectivities linked to the State by nationality, habitual residence or incorporation might be attributed to the State, whether or not they have any connection to the government. In international law, such an approach is avoided, both with a view to limiting responsibility to conduct which engages the State as an organization, and also so as to recognize the autonomy of persons acting on their own account and not at the instigation of a public authority. Thus the general rule is that the only conduct attributed to the State at the international level is that of its organs of government, or of others

6. The concepts and principles of State Responsibility are among the most complicated of international law. This section's brevity necessarily shortchanges that complexity. There are rhetorical reasons in favor of opting for brevity, but that choice should not be interpreted as ignorance of or dismissiveness of the subtle nuances of propositions that are only lightly touched upon here.

7. S.S. Lotus (France v. Turkey), 1927 P.C.I.J. (ser. A) No. 10.

8. Daniel Pickard, *When Does Crime Become a Threat to International Peace and Security?* 12 Fla. J. Int'l L. 1 (1998).

who have acted under the direction, instigation or control of those organs, i.e., as agents of the State.[9]

Notably for this discussion, however, the Commission went on to say: "[A] State may be responsible for the effects of the conduct of private parties, if it failed to take necessary measures to prevent those effects."[10]

B. Condition Precedent or Condition Subsequent?

There is an implicit assumption in this concept of State responsibility that, at least as to private violence, any potential for harm does not outweigh the law's reluctance to impose responsibility for not *preventing* that harm. This is consistent with a free society's conception of law enforcement in relation to violent crime. Because crime is abhorrent, and we strive to apprehend and prosecute the perpetrator, we may even authorize more money for police, for lighted streets, alarm systems, etc. But we do not hold the government responsible for not doing as much as possible to prevent that crime,[11] nor do we strictly oversee private behavior in order to prevent someone from committing a crime.

It is crucial to understand the chronological aspect of this concept. From the perspective of international law as well as domestic law enforcement, judgments of behavior's legality and the responsibility for that behavior are after-the-fact. That is, law typically accepts the risk that illegal conduct will take place, with the expectation that subsequent evaluation will punish the offender, deter future criminality, and afford a remedy, if possible, to the victim.[12]

Yet, as indicated above, bioterrorism presents a threat to the survival of modern civilization; it challenges the received concept of State responsibility because its consequences are too severe to be satisfied with post-event judgment and remediation. The priority of permitting freedom of action except where there is fault must give way to the priority of prevention. Accordingly, the volume of legal obligations with regard to bioterrorism must multiply from avoidance of prohibited conduct to acceptance and implementation of measures to prevent intolerable consequences.

Consider the following proposition: As the global threat from terrorist groups rises and as the multilateral obligations on States to confront that threat in advance are clarified, the threshold for attributing State responsibility for terrorist activities becomes more readily satisfied. Phrased differently, sovereignty in law presumes sovereignty in fact. For a State to be innocent of responsibility for terrorist activities, it must take action against terrorists operating from its jurisdiction so as to prevent them from harming others. If it cannot do so, it should seek and receive external assistance. If it can take action but declines to do so,

9. G.A. Res. A/56/10, U.N. GAOR, Int'l Law Comm., 56th Sess., Supp. No. 10, ch. IV E.2, U.N. Doc. A/56/10 (2001).

10. *Id.*

11. Officials are not under a general obligation to prevent harm to citizens or rescue persons in danger. The Due Process Clause of the Fourteenth Amendment does not guarantee certain minimal levels of safety and security for citizens: it is designed to control abuses of governmental power, and on that account does not reach negligence, nor is it a source of mandatory rescue services, but it does proscribe intentional deprivations. DeShaney v. Winnebago County Dep't of Soc. Servs., 489 U.S. 189, 103 L. Ed. 2d 249, 19 S. Ct. 998 (1989).

12. An important analogue here is the right of a State to use violence in self-defense, arguably the only doctrinal justification in international law for State violence. That right may be exercised only after an overt threat has materialized; there is no positive law doctrine of anticipatory self-defense. Just as a State is not responsible for preventing criminal conduct that has not yet happened, so a State is without the right to use force to prevent a threat that has not yet materialized.

then the rest of the world whose security is threatened may legally attribute responsibility to that State.

C. The *Principle of Precaution*

This proposition suggests that terrorism should be added to those situations that challenge the received concept of *State responsibility*, where the international community has determined that the consequences of private behavior are too severe to be satisfied with post-event judgment and remediation. Instead of being satisfied with imposing liability on oil transporters for their spills, the international community imposes an obligation of double-hulled tankers. Recognizing the insufficiency of imposing liability for eradication of species or biodiversity or for ozone depleting or climate changing emissions, the international community propounds proactive obligations to interdict such activities. Accordingly, the volume of legal obligations on States multiplies from avoidance of prohibited conduct to acceptance and implementation of measures to prevent intolerable consequences.

The *Principle of Precaution* emerged from concerns for the global environment. Its most notable expression is in the Tenth Principle of the Rio Declaration;[13] numerous other international environmental agreements contain a similar provision. Recognizing that the *Principle of Precaution* is potentially unlimited,[14] its application has been limited to situations that involve (1) collective damage, (2) of extraordinary magnitude, (3) that is incompensable and irreversible, and (4) that can be prevented only through some degree of collective action.[15]

Moreover, precaution is limited to situations of scientific uncertainty, where the harmful consequences are probable but the exact causes of those consequences can be identified only to a reasonable probability because proof is beyond current scientific capabilities. In these situations, obligations are established according to what is reasonably the *worst case*. Notably, the *Principle of Precaution* inverts the legal implications of uncertainty. In the traditional conception of State responsibility where that which is not prohibited is allowed, uncertainty as to the effects of behavior undermines an assertion of fault and is, therefore, an argument for the behavior's legality. But where precaution is mandated, uncertainty suggests an obligation to refrain from questionable behavior.

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13. "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." *Report of the United Nations Conference on Environment and Development*, U.N. GAOR, 47th Sess., Agenda Item 21, U.N. Doc. A/CONF.151/26 (Vol. I), Annex I, Rio Declaration on Environment and Development, Principle 15.

14. "For the business community, an unpredictable precautionary principle inhibits efficiency and realistic corporate planning, and increases the costs and risks of doing business. For the larger international community, the present precautionary principle impedes the development of rational, coordinated, and predictable environmental law and policy." James E. Hickey & Vern R. Walker, *Refining the Precautionary Principle in International Environmental Law*, 14 VA. ENVTL. L.J. 423, 425 (1995); *see also* Frank B. Cross, *Paradoxical Perils of the Precautionary Principle*, 53 WASH. & LEE L. REV. 851 (1996).

15. *See generally* HARALD HOHMANN, PRECAUTIONARY LEGAL DUTIES AND PRINCIPLES OF MODERN INTERNATIONAL ENVIRONMENTAL LAW (1994); *see also The Precautionary Principle and International Law, The Challenge of Implementation*, 31 INTERNATIONAL ENVIRONMENTAL LAW AND POLICY SERIES (DAVID FREESTONE & ELLEN HEY eds., 1997).

Underlying the imposition of legal obligations of precaution is a fundamental philosophical transformation of the individual's and the State's freedom of action (sovereignty) into duties owed to the human species as a whole. This transformation is unprecedented, for it could only happen in an era when there is widespread recognition of human interconnectedness that transcends nationality and of human capabilities to dominate nature. The *Principle of Precaution* embodies a maturing awareness that humankind has the power to commit suicide as a species and, increasingly, that the power to do so can be exercised by a remarkably small group of people:

> Instead of the categorical Kantian imperative, there should be substituted an imperative adapted to the new type of human action: "Act so that the effects of your action are compatible with the permanence of an authentically humane life on earth." For while we have the right to risk our own lives, we do not have the right to risk that of humanity. This imperative is the basis of the precautionary principle.[16]

III. United States Responsibility for Precaution

At the Fifth Review Conference (RevCon) for the Biological Weapons Convention (BWC),[17] held in early December 2001, the issue of bioterrorism was, for the first time, front and center in the discussions. The BWC of 1972 prohibits all States Parties from developing or using biological weapons, but it contains no verification or enforcement mechanisms. The BWC calls for Review Conferences every five years. The 2001 RevCon had, of course, been planned long before September 11, but that catastrophe added unprecedented significance to the discussions.

Notably, the 2001 RevCon was the first and only multilateral forum related to security issues since September 11 and the anthrax attacks that followed it. It was the first and only multilateral forum to confront the issue of terrorism in connection with the development or use of weapons of mass destruction. Amidst President Bush's calls for a new global coalition to root out terrorists wherever they may be, diplomats arrived in Geneva with a heightened appreciation for the consequences of inaction and, despite a history of fractiousness over issues of verification, were willing to consider new ideas to improve international capabilities to combat bioterrorism.

Earlier in the year, a group working to strengthen the Convention issued a draft *Protocol* that would require States to declare facilities capable of making biological weapons and to open these facilities to randomly selected transparency visits. The *Protocol* would also promote an international system to monitor emerging disease. The United States rejected the draft *Protocol* in July, claiming that it would be ineffective to detect non-compliance and that it would be burdensome for the American biopharmaceutical sector. Instead, the U.S. delegation to the RevCon proposed a series of alternative measures to strengthen national capabilities for early detection of bioterrorism.

Problems arose at the RevCon when delegates' repeated inquiries to the U.S. delegation as to how the proposed measures might be implemented went unanswered, and calls for a follow-on process to elaborate these measures met constant U.S. opposition. A dilemma

16. Francois Ewald, *The Return of the Crafty Genius: An Outline of a Philosophy of Precaution*, *quoting* HANS JONAS, THE IMPERATIVE OF RESPONSIBILITY 5 (Hans Jonas trans., in collaboration with David Herr, Univ. of Chicago Press 1984).

17. Conference for the Biological Weapons Convention, Dec. 2001 *available at* http://www.un.org/depts/dda/wmd/bwc/.

arose: most participants recognized a need to design measures to strengthen the BWC and were generally warm to the U.S. proposals, but the United States, having objected to the *Protocol*, opposed a continuing process to advance strengthening measures, including its own proposals. Even so, the United States succeeded in one of its prime objectives of including references to the threat of terrorism in the RevCon's draft Final Declaration, thereby formally establishing the link between the BWC and efforts to prevent bioterrorism.

That is why it was so stunning when, on the final day at 5:00 P.M., an hour before the RevCon was supposed to end, the United States submitted a poison pill resolution to abolish prospective efforts to strengthen the BWC. That proposal had not been part of the U.S. negotiating positions up to that point, nor had the delegation informed allied delegations that such a proposal would be made. Taking everyone completely by surprise, an immediate recess was called amidst loud denunciations of the United States as liars. An immediate meeting of the Western Group was boycotted by the entire European Union who refused to talk further with the United States delegation.

Although the U.S. proposal seems innocuous, both its timing and its substance struck deeply at mutual understandings that had sustained the RevCon's discussions for the preceding three weeks. Throughout the RevCon, a most critical issue was whether the United States would agree to a process that could generate arrangements to strengthen the BWC. At the end of lengthy discussions to consider a future process, with the United States resisting alternative formulations, the proposal to overtly terminate the one ongoing mechanism meant that instead of discussing how to move forward, the delegates were asked to move backward without any prospect of having a replacement forum or mechanism. Moreover, the offer of such a reversal at such a late hour was received by every other delegation as insulting. Thus, the proposal was not only substantively contrary to the objectives of every other delegation it was also diplomatically offensive.

In an altogether unprecedented move, the RevCon was suspended for a year, having accomplished nothing and leaving potential progress in the world's ability to confront the threat of biological weapons unfinished. Whatever hopes the international community might have had for progress to address the serious threat of bioterrorism were dashed by an absolutely unprecedented assault on multilateralism. No international negotiations in recent memory have ended in such a debacle.

Undoubtedly, the rancor and distrust generated by the U.S. action will permeate matters associated with biological weapons and preclude, at least for the short term, a broad range of international cooperation proposals. In short, when it mattered most, the United States failed to meet its responsibility of precaution. As expressed by one delegate when leaving the RevCon that final evening: "Saddam Hussein must be very pleased."