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The Central Deception of National Missile Defense

By Robert Sherman

When casual acquaintances learn my line of work, they frequently ask “Do you think we should build a shield against nuclear weapons?”

As readers of this journal are no doubt aware, no such shield has been proposed. But by encouraging the American people to equate defense against missiles with defense against weapons of mass destruction, National Missile Defense (NMD) supporters play their strongest card.

So long as the American people think “nuclear defense” when they hear “missile defense,” popular support for NMD is likely to remain substantial. One of the most effective lines of attack against NMD is to educate the American people to the fact that even a successful defense against ballistic missiles will not protect us against weapons of mass destruction.

It is useful to illustrate the distinction by examining the historical analogues to a defensive shield against ballistic missiles.

One precedent that springs immediately to mind is that of nationwide anti-aircraft defense. With remarkable consistency, the British defense against German bombers in the Battle of Britain, the German defense against Allied

bombers, and the North Vietnamese defense against American bombers all averaged about 2% effectiveness. In slow grinding wars of attrition, such defenses were profitable. But against a nuclear attack this level of effectiveness, or even an order-of-magnitude improvement over it, would be useless.

While defense against ballistic missiles is probably even more difficult than defense against aircraft, for the sake of discussion let us grant NMD the benefit of the doubt. Let us assume it would be 100% effective, and that North Korea, Iraq, Iran *et al* are fully convinced that any ballistic missile attack they make against the United States will fail. In that case, the best historical analogue is found by going back seven decades.

As France’s Minister of War in 1929, Andre Maginot was determined that never again would Germany invade his country. So he began construction of the most massive, powerful and technologically advanced homeland defense in history.

Stretching the entire length of the Franco-German border, the Maginot Line was to consist of a series of interconnected forts using

FAS Status Report

By Henry Kelly

Election Results

The FAS membership elected Richard Garwin, Jane Owen, and Gregory Simon to the FAS Council, replacing Arthur Rosenfeld, Marvin Miller, and Priscilla McMillan, whose terms ended this year. The membership also overwhelmingly approved the merger of the FAS Fund and the FAS into a single organization. This change will streamline management of the organization and means that all contributions to FAS will be tax deductible. The merger will take effect upon receipt and approval of merger documents by the DC government.

Board Meeting

The FAS Council with its newly elected members and the FAS Fund Board met for the last time as separate entities on July 13 and 14. The FAS Council re-affirmed its previous vote to appoint Hazel O’Leary, Shankar Sastry, and Jonathan Silver to the FAS Fund Board. Once the merger takes effect, members of both the Fund Board and the FAS

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If Not NMD, Then What?

By Robert Sherman

The threat of weapons of mass destruction (WMD) attack by rogue states or subnational entities cannot be dismissed. While the present Administration undoubtedly errs in treating compounded worst-case analyses as if they describe the probable case, this danger is real.

Prudently, we have to presume that an aggressor would render missile defense irrelevant by driving around it, using clandestine delivery methods. If we accept that unpleasant fact and focus on the problem of clandestine delivery, we are not helpless against it. On the contrary, we have at least three countermeasures available:

Arms control and nonproliferation agreements and policies can help keep weapons and fissile materials out of the wrong hands. The smaller the number of weapons of mass destruction and the scarcer the materials to make them, the lower the probability that the wrong people will acquire them.

It is sometimes argued that nonproliferation and arms control have failed because they have not been completely successful. Despite the Nuclear Nonproliferation Treaty, India and Pakistan have conducted nuclear tests, and Israel and South Africa have deployed nuclear weapons. Shortly after

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FAS

The Federation of American Scientists (FAS), founded October 31, 1945 as the Federation of Atomic Scientists by Manhattan Project scientists, engages in research and advocacy on science-and-society public policy issues with an emphasis on global security policy. Current weapons nonproliferation issues range from nuclear disarmament to biological and chemical weapons control to monitoring small arms sales; related issues include drug policy, space policy, and disease surveillance. FAS also works on learning technology and on reductions in government secrecy.

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Sharing Missile Defense

By Les AuCoin and Robert Sherman

Some commentators have recently suggested that President Bush offer to negotiate a missile-defense sharing arrangement with Russia and China.

Sharing missile defense is not a new idea. During the Star Wars debate of the 1980s, Reagan Administration spokesmen talked of sharing missile defense with the Soviet Union – at a time when any computer with more than 32K memory was subject to national

ineffective, NMD will certainly incorporate our most advanced military technology, much of which will be applicable to other military systems.

Will we – *should* we – be willing to give the Russian and Chinese militaries such a major boost? It is incumbent upon advocates of NMD-sharing to spell out specifically which leading-edge technologies they are willing to share and why. Don't hold your

sharing as strategically merited. They merely offer it as an overtly political gimmick for political purposes. As such, it is fully consistent with the fundamental nature of NMD itself.

The problem with political gimmicks is that at some point they turn into real hardware that costs real money and has a real national security impact.

President Bush came to office carrying ideological baggage that threatens to undermine the military security of the United States. In the case of NMD, the strategic penalty will probably be seen as Russia and China respond by

NMD will certainly incorporate our most advanced military technology . . .

security export controls. In House Defense Appropriations Subcommittee hearings, we repeatedly invited Administration witnesses to state which missile-defense technologies they were prepared to share. The response was, invariably, a prompt shift into mumble mode.

Eventually the Reagan Administration allowed that it wouldn't actually share the technology, but might permit the Soviet Union to "share the protection" of missile defense. Presumably that meant that if American missiles were launched against the Soviet Union, we would use the American missile defense to shoot them down. Even in the surreal world of the missile defense debate, the giggle factor on that one was prohibitive, and talk of sharing went away.

There are several reasons why sharing fails to pass the straight-face test.

Begin with the technology any National Missile Defense (NMD) must contain. Even if it is totally

*Will we – **should** we – be willing to give the Russian and Chinese militaries such a major boost?*

breath waiting for them to do it.

The absurdity of NMD-sharing hasn't declined with time or with the end of the Cold War. On the contrary, it may be acquiring a grim new overtone.

According to some respected defense analysts, China will become a major military threat to the United States in about 20 years. This may be nothing but hype, but for the moment let's assume these analysts are right.

Today, Chinese military technology trails ours by decades. Are there any circumstances in which we should intentionally assist the Chinese military to close the technology gap? None are apparent.

To their credit, NMD advocates usually don't propose NMD-

augmenting their nuclear offensive forces above the levels they would otherwise have, and as our relations with our allies become increasingly strained. All of that notwithstanding, it is unlikely that external reality will cause this Administration to question its NMD stance. Domestic political ramifications of national security decisions are on the White House radar screen with an intensity that national security itself cannot match.

But internal contradictions will be more difficult to avoid. Secretary of Defense Donald Rumsfeld is committed to revolutionizing conventional capabilities of the US military, but now he finds that the funds to do it are not going to be

continued on next page

NMD Deception *continued from p. 1*

the strongest concrete armor and most powerful artillery in existence. It was even to provide air conditioning for the crews – astonishingly advanced technology for that time.

regardless of route.

Similarly, the Bush Administration's mistake is to define the threat as nuclear or biological weapons delivered by ballistic missiles. It isn't. The threat is nuclear or biological weapons, regardless of delivery

The ICBM would be more expensive, less accurate, and much less reliable than clandestine delivery. Even more important, the ICBM would leave an unmistakable return address, while clandestine delivery offers at least a possibility of anonymity.

Ballistic missiles make sense for the five declared nuclear weapon states, which can test and perfect their missiles and need to deliver multiple weapons to rapidly-chosen targets. But for a Third World despot with one or two weapons, ICBMs are the weakest delivery method imaginable.

Imagine, then, that the Secretary of Defense were to make a public statement that the purpose of NMD is to force hostile states to abandon ineffective ICBMs and deliver their nuclear or biological attack by more effective clandestine means.

He'll never say that, of course, because if he did the NMD debate would be over. □

A hostile missile without a weapon threatens no American. But a hostile nuclear weapon without a missile threatens all Americans.

Maginot died in 1932 but his dream project continued. By the time Germany again turned hostile eyes toward France in 1940, the Maginot Line was complete, fully operational, ready for combat – and useless. It might well have been 100% effective, and it would have made no difference.

The Germans simply drove around it. They easily crossed the German-Belgian border, and then hooked across the Franco-Belgian border; their successful invasion of France was delayed by only a few days.

France's mistake was to define the threat as a German invasion through a particular border. The real threat was a German invasion,

method.

A hostile missile without a weapon threatens no American. But a hostile nuclear weapon without a missile threatens all Americans.

Imagine that you are a foreign aggressor, you have a workable nuclear weapon, and you wish to kill a large number of innocent American civilians. In broad-brush terms, you have two options:

You can use an ICBM. Or you can use clandestine delivery: Put the bomb in the hold of a merchant ship and explode it in an American harbor. Put it in an airliner and fly it to the city of your choice. Or just put it in a Ryder truck and drive it there.

Sharing *continued from p. 3*

available, and the shortfall is largely created by NMD. Missile defense is already the largest item in the defense budget. If past patterns hold, missile defense costs will escalate rapidly and dramatically. It must be dawning on Mr. Rumsfeld that he can have real-world defense capability upgrades

to his conventional forces, or he can have National Missile Defense; he cannot have both. □

Les AuCoin (D-Or.) served on the House Defense Appropriations Subcommittee (1983-1992) where he chaired an investigation of National Missile Defense.

Robert Sherman is Director of the Nuclear Security Program at the Federation of American Scientists, and was AuCoin's national security staffer.

Status continued from p. 1

Council will become the initial slate of directors for the new FAS. Our next elections and Board appointments will be made using the new FAS bylaws.

The Board meeting was lively and, at least from my perspective, highly productive. It's clear that

the new FAS Board will play an active role in shaping the organization's future. We are likely to form several advisory groups for FAS projects that will report regularly to the Board. These groups would include FAS Board members and other individuals interested in the specific topics covered. We already have an

active Biological Weapons Working Group, but we may start to develop Groups advising us on Global Security and Information Technology (with emphasis on information technology in education). We're likely to be contacting FAS members to ask them for help.

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Summary of recommendations in *A Nuclear Posture for the Next Decade***

By the Center for Defense Information, the Federation of American Scientists, the National Resources Defense Council, and the Union of Concerned Scientists.

Our analysis shows that US security would be substantially improved by adopting a nuclear posture for the next five to ten years in which the United States would:

- Declare that the sole purpose of US nuclear weapons is to deter and, if necessary, respond to the use of nuclear weapons by another country.
- Reject rapid-launch options, and change its deployment practices to provide for the launch of US nuclear forces in hours or days rather than minutes.
- Replace its reliance on pre-set targeting plans with the capability to promptly develop a response tailored to the situation if nuclear weapons are used against the United States, its armed forces, or its allies.
- Unilaterally reduce its nuclear arsenal to a total of 1,000 warheads, including deployed, spare, and reserve warheads. The United States would declare all warheads above this level to be in excess of its military needs, move them into storage, and begin dismantling them in a manner transparent to the international community. To encourage Russia to reciprocate, the United States could make the endpoint of its dismantlement process dependent on Russia's response. The deployed US warheads should consist largely of a survivable force of submarine-based warheads.
- Promptly and unilaterally retire all US tactical nuclear weapons, dismantling them in a transparent manner. In addition, the United States would take steps to induce Russia to do the same.
- Announce its commitment to further reductions in the number of nuclear weapons, on a negotiated and verified multilateral basis.
- Commit to not resume nuclear testing and to ratify the Comprehensive Test Ban Treaty.
- Reaffirm its commitment to pursue nuclear disarmament and present a specific plan for moving toward this goal, in recognition that the universal and verifiable prohibition of nuclear weapons would be in the US national security interest.
- Recognize that deployment of a US missile defense system that Russia or China believed could intercept a significant portion of its survivable long-range missile forces would trigger reactions by these countries that could result in a net decrease in US security. The United States should therefore commit to not deploy any missile defense system that would decrease its overall security in this way.

** The full text of this report can be found at www.fas.org/ssp/docs/010600-posture.htm.

By Tamar Gabelnick

At the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, held from 9-20 July in New York, the US government blew a great opportunity to mend its international image on arms control. The UN Conference was organized to develop an action plan to combat the black market trade in small arms and light weapons. Governments have become increasingly interested in this subset of the conventional arms branch – which ranges from pistols to grenade launchers – because they are the preferred tools of insurgents, organized criminals and other threats to state security and peace-keepers in the field.

The US government has been quite active in addressing the problems surrounding the spread of small arms since the issue reached the international radar screen in the mid-1990s. In addition to preparations for the UN Small Arms Conference, it signed the OAS Convention on Small Arms in 1997; pushed hard for a strong Firearms Protocol to the UN Convention against Transnational Organized Crime, finally signed in February 2001; promoted passage of one of the world's only laws regulating the operations of troublesome arms brokers; began a \$2 million a year program of small arms destruction in post-conflict countries; and partnered with several African nations to improve regional capacity to prevent arms smuggling.

Then Secretary of State Madeleine Albright made no fewer than four major speeches signaling her commitment to reducing small arms proliferation. Secretary of State Powell has not yet made this a priority issue, but his interest in

The inability of the US to play a productive role on an issue it normally takes a strong stand on shows either a lack of political savvy or the indomitable influence of the gun lobby on US foreign policy-makers.

gun-ravaged Africa should make him a natural candidate. He also responded to a House of Representatives letter requesting his attendance at the UN Conference by saying he was committed to a “successful outcome,” and that the US Delegation “has forcefully advocated, and will continue to advocate, that the Conference Program of Action include strong language” on export controls.

But US government actions in New York turned it from leader to renegade on the small arms issue. Egged on by gun rights lobbyists inside and out of the official delegation (three “public” members of the official delegation had ties to the NRA), the US delegation began and ended the Conference with a hard-nosed, anti-UN, pro-gun stance. During his opening statement, Under Secretary of State John Bolton quoted John Ashcroft's interpretation of the Second Amendment, throwing in a jab at international and non-governmental organizations for good measure. He introduced several “red line” issues that the US could not accept in the Program of Action, including problems never mentioned during the three Preparatory Committee meetings. On two of these issues – restrictions on civilian ownership of guns and a prohibition on transfers of arms to non-state actors – the US was prepared to walk out of the Conference rather than accept anodyne compromise language suggested by the Conference Chair. Eventually,

the vast majority of nations were forced to cede to US demands in order to save the Conference.

In his opening speech, Bolton did make note of strong US export controls and called on other states to “adopt similar practices.” But while the US delegation apparently proposed stronger language on some export control provisions, it did not insist on these changes. Rather, it used most of its political capital to insert qualifying language on many measures and to remove calls for international financing of new initiatives.

Given that the end result of the Conference was only a politically – not legally – binding document, the negative quality of US leadership was surprising. With the black eye the United States has received from blocking progress on other issues of importance at the global level – from the biological weapons protocol to the Kyoto greenhouse treaty – the inability of the US to play a productive role on an issue it normally takes a strong stand on shows either a lack of political savvy or the indomitable influence of the gun lobby on US foreign policy-makers.

Despite an unhelpful US position, the final Conference Program of Action did move the debate on small arms proliferation forward in several other significant areas. It contains repeated references to the humanitarian impact of small arms violence, a relatively new way to frame the issue that will help enlarge the group of

government agencies and NGOs involved. It calls on states to assess small arms exports based on their "responsibilities under international law," a critical phrase for NGOs trying to get states to integrate human rights and humanitarian law into their export decisions. It also recognizes the importance of demobilization, disarmament, and

reintegration of ex-combatants; the need for international rules on the activities of arms brokers; and the responsibility of governments to keep close watch over their weapons stockpiles and international borders.

Finally, conferees agreed to hold a review conference in 2006, plus biennial meetings along the

way. These meetings will allow NGOs and governments to keep the momentum moving on the small arms issue and to revisit the Program of Action formally in a short time frame.

For more information, visit www.fas.org/asmp/campaigns/smallarms/illicit.html. □

Address to the UN Conference on Illicit Trade in Small Arms

By Tamar Gabelnick

I am speaking today for my organization, the Federation of American Scientists, and on behalf of the US Small Arms Working Group, an alliance of non-governmental organizations and individuals working to reduce the proliferation and misuse of small arms. We stand firmly behind the idea that the Program of Action should include a call for norms and standards on the export of small arms and light weapons. And we believe that such norms should be developed at the *international* level.

Some delegates have challenged the pertinence of export criteria to a document focused on the illicit trade in small arms. But the connection is often short between government-authorized sales and the illicit trade. Small arms exported to states with weak border controls, poor stockpile security, or even corrupt government agents can quickly end up in the black market. Breaking the legal to illicit link therefore depends on prudent exporting decisions that take into consideration the recipient states' records on diversion, among other factors.

But I will go one step further and argue that some government-authorized sales must be considered illicit *in the first instance*. Just because a

government grants permission for an export does not mean that it is legal under international law. The most obvious example is when a state approves weapon transfers to a state or armed group in violation of a UN arms embargo. While government-authorized, it is still illegal. Likewise, small arms exports that violate states' obligations under other international treaties - such as the Convention on Certain Conventional Weapons or the Landmines Treaty - are also obviously illegal.

Beyond these express limitations on states' freedom to transfer small arms and light weapons, there are also *indirect* limits on exports based on the *use* of the weapons. According to the International Law Commission's Draft Articles on State Responsibility, a state that aids another state to commit an international crime is internationally responsible for that action. If I were to hand a gun to someone about to commit murder, I could be considered an accomplice to that crime. And so it is with international weapons transfers.

Under current principles of international law, states have a responsibility not to authorize arms exports when there is a clear risk that the weapons would be used to commit serious violations of international humanitarian or human rights law, to engage in acts of genocide or other crimes against humanity, or to violate norms of the UN Charter. Article 1 of

the Geneva Conventions on the laws of war - which requires states to "respect and ensure respect" for its provisions - reinforces the notion that states must not sell arms that would be used to violate the Conventions.

The norm of state responsibility for the use of its exported weapons has also been enshrined in many states' national laws and has been included in regional agreements such as the EU Code of Conduct and the OSCE Document on Small Arms. The international community must now build on the norms accepted by many of the major arms experts and agree to them at the international level.

Mr. President and distinguished delegates, my recommendation to you today is therefore to include in the Program of Action, in the section entitled "at the global level," a call to "create common norms and standards for the export of small arms and light weapons based on international humanitarian and human rights law and respect for the UN Charter." This is essential and fully relevant language that only serves to reinforce principles that states have already committed to, and should already be implementing. □

In what has become a depressingly consistent pattern of resistance to international agreements, the U.S. has effectively scuttled a six-year effort to draft a verification protocol to the Biological Weapons Convention. The US chief negotiator Donald A. Mahley, said that the US had concluded that "... the draft protocol would put national security and confidential business information at risk." This administration apparently sees no risk in failing to use internationally agreed mechanisms for verifying the treaty or the encouragement that potential violators will take from this failure. The irony, of course, is that the weakness of the protocol is there largely at US insistence. Instead of using its position as the world's single superpower with humility, the US is once again parting ways with its closest allies and taking a position that can only be read as an insistence that other nations should lay themselves open to intrusive inspection, while the US accepts no obligations.

The following material is excerpted from testimony by Barbara Hatch Rosenberg, Director of the FAS Chemical and Biological Weapons Arms Control Project, made before the House Committee on Government Reform Subcommittee on National Security, Veterans Affairs and International Relations on June 5 urging the US not to abandon the verification protocol. Its logic remains compelling.

Ever since President Nixon unilaterally renounced biological weapons, there has been bipartisan support for the BWC and, under Ronald Reagan, George Bush (Sr.) and Bill Clinton, vocal US support for strengthening it. Throughout the six years of Protocol negotiations, however, virtual deadlock in the inter-agency process prevented US leadership and greatly limited US contributions. With each agency most interested in protecting its own turf, there has been no participant who has had both the vision and the power to insist on the public interest. Only high-level determination will override these narrow interests.

Consequently, at the Protocol negotiations the ball has been carried by our allies, particularly the United Kingdom, which served as Friend of the Chair for Compli-

ance Measures. The UK has devoted great effort to research and develop an effective compliance regime. If the Western Group had stood solidly behind the original British contributions to the rolling text we would have a much stronger Protocol text now. But US objections forced continual weakening of the text, and the obvious split in the Western Group prevented the West from negotiating from a position of strength with other Blocks. Countries like China have been able to use the US as a shield for their views. Rejection of the Chairman's Text for the Protocol puts the US in a position more extreme than that of the radical fringe — China, Libya, Cuba, Iran and Pakistan — which have expressed significant objections but not outright rejection of the text.

US objections to the strong Protocol measures originally

advocated by our allies centered around the declaration of Biological Defense facilities. This year, new objections were added, including opposition to declaration of non-governmental production facilities. Once US objections were voiced, it became essentially impossible to reach consensus on anything stronger. Incorporation of US demands in his compromise text left the Chairman in a weakened position to deal with the demands of other countries. Our allies consider the Chairman's text to be the best that can now be achieved. At the same time, they consider it the bottom line and want no further compromises. Moreover, the negotiators are close to the end of their patience and our allies see no point in continuing to spar unproductively with the US. We are within reach of the goal. If consensus cannot be reached soon with minor adjustment of the Chairman's text, it means that there is no political will to strengthen the BWC.

Unless it can be seen by the end of the negotiation that agreement is near, there is sure to be a contentious row at the fifth BWC Review Conference in November, with quite likely a lack of agreement on what to do next. The US is certain to receive most of the blame. By turning down an international step toward prevention that is almost within our grasp, the US is telling potential proliferators that the international community is not prepared to enforce the ban on biological weapons. As citizens of the lone superpower, Americans would be a prime target if these weapons were used either strategically or as an instrument of terror. Even without use, the proliferation

of biological weapons entails a serious risk of escape and the possible establishment of new and uncontrollable diseases in the biosphere. There are no military weapons that can “take out” an emerging disease.

US military experts, and studies by many non-governmental ex-

objective is transparency with regard to relevant capabilities. This was an intrinsic premise in the VEREX feasibility study and its positive outcome.

Sufficient transparency can be achieved by requiring declaration of relevant installations and providing means for clarifying any ques-

- mandatory randomly-selected visits to declared facilities;
- visits to clarify remaining questions when consultations fail (these may be voluntary or can be pursued through the Executive Council to become mandatory);
- mandatory challenge investigations anywhere, including both facility and field investigations.

By turning down an international step toward prevention that is almost within our grasp, the US is telling potential proliferators that the international community is not prepared to enforce the ban on biological weapons.

perts, agree that, at present and for some time to come, terrorist groups are highly unlikely to have sufficient expertise and resources to succeed in a mass attack with biological weapons. Aum Shinrikyo, the Japanese terrorist group, had plenty of both but failed in nine attempts to mount a biological attack. Although the US has so far concentrated on preparations for mopping up after a bioterrorist disaster, it would be foolhardy to ignore the more important goal of cutting off the source by preventing the proliferation of biological weapons. That is not something the US can do unilaterally. The first step must be international, and strengthening the BWC is the available tool. That is why our European and other allies are so angered and dismayed by the US stance.

A verification regime that can be relied upon to detect violations of the BWC is impossible. That is not what the Protocol is about, and not what the negotiators have ever tried to do. Too much of what is needed to develop biological weapons also has peaceful uses. In such “dual-use” situations, the

tions that may arise regarding the declarations, including whether or not relevant sites have NOT been declared. The Chairman’s text does this. It requires declaration of the sites of greatest potential threat, and it provides several different means for getting on site (which, if blocked by the party in question, would also yield information).

The intrinsic tension between transparency and confidentiality means that, in *any* biological weapons regime, no smoking guns are likely to be found. Although inspectors’ on-site activities have to be subject to limits in order to protect confidential information, that doesn’t mean that nothing will be learned. Raising suspicions, or resolving them, is what the Protocol is about. National means can then be focused on the sites or questions of concern. The Protocol’s compliance regime would effectively complement national intelligence, military power and diplomacy. In serious situations the Protocol would provide a basis, broader than we now have, for international action.

The Chairman’s text provides a variety of on-site measures:

Douglas MacEachin, former Deputy Director of the CIA, has made a persuasive case for the *deterrent effect* of non-challenge visits. In a recent article he points out that, ideally, a proliferator would use a commercial plant as a cover for a biological weapons program, thereby facilitating operations and the procurement of dual-use equipment and materials. But if the plant had to be declared, he would not take the chance that inspectors might obtain enough information during a visit to raise new suspicions. Instead, the illicit activity would be forced into undeclared, clandestine operation, with all the attendant risks. Any evidence of suspicious activity at an undeclared site could lead to intense surveillance, a clarification process under the Protocol or a challenge investigation. The Chairman’s Protocol text calls for a 50% vote of Executive Council members present and voting to authorize a challenge investigation at a suspected facility. An FAS study recommended this formula as the best means for preventing ill-founded investigations without unduly inhibiting the use of this important measure or impeding its deterrent effect.

continued on next page

It is ironic that, while suspecting Iraq of continuing its biological weapons program and decrying its refusal to allow UN inspections, the US is turning down a treaty that would provide a variety of means for probing suspicious installations by going on site.

The US policy review has rejected the Chairman's text on the grounds that

- a) it is too weak,
- b) it would threaten national security and commercial proprietary information, and
- c) it threatens the Australia Group and its "dual use" export control regime.

a) Weakness:

With regard to weakness of the text, the old argument of not being able to detect violations (meaning *always*, and with *certainty*) is frequently invoked. As discussed already, this is not and could not possibly be the purpose of the Protocol. If this were the only criterion of interest to the US, we should never have participated in the negotiations in the first place.

Furthermore, the US delegation has made it known in Geneva that they will not support *any* Protocol based on the present negotiation mandate, but would prefer a much more limited mandate — which would inevitably lead to a more limited Protocol. A more limited Protocol — say, containing only challenge investigations—would be weaker, not stronger.

Finally, the weaknesses in the text are largely there in compliance with past US demands, including the following:

- The text does not require declaration of all biodefense facilities; only those conducting certain activities, and only

those above a certain size.

There are ample loopholes to satisfy DoD specifications.

—The text requires no significant information about production facilities for pharmaceuticals (other than licensed vaccines), and exempts them from visits! No problem there for American pharmaceutical companies.

which is particularly concerned about protecting its proprietary microbial strains. There are, in addition, all the protections for confidentiality that were developed for the CWC with the help of the chemical industry. The exemption of certain defense facilities and of most pharmaceutical facilities from declaration under the Protocol, discussed above, provides addi-

A verification regime that can be relied upon to detect violations of the BWC is impossible. That is not what the Protocol is about.

—All on-site activities of inspectors during visits are at the discretion of the host government, and all procedures during challenge investigations are subject to managed access.

—All visits require at least two weeks notice.

b) Confidentiality:

The Chairman's text possesses more safeguards for confidential information than the Chemical Weapons Convention of 1993 (CWC), to which we are already a party and which covers most of the same facilities: those handling toxins (including the US biodefense program), for example, fall under both treaties; most pharmaceuticals are manufactured chemically, and therefore are "discrete organic chemicals" covered by the CWC. Challenge inspections under the CWC can take place "anytime, anywhere," as President George Bush (Sr.) insisted.

Unlike the CWC, for example, the Protocol text allows no sampling and analysis in non-challenge visits, and gives control of access to the host country. These aspects of the Protocol text comply with the wishes of US bioindustry,

tional protections for confidential information. The Chairman's text more than meets all the essential confidentiality concerns of the pharmaceutical and biotech industries. Further safeguards for industry could be incorporated into US Protocol implementing legislation.

c) Export Controls

One only need read Article 7 of the Chairman's text to realize that its rhetoric is meant to please the critics of the Australia Group but its substance tilts heavily toward the West. The text contains only guidelines, with *no* hard obligations regarding exports; each State Party has full discretion over implementation of the suggestions in the text.

One thing is certain: any weaknesses in the Protocol do not stem from inadequate technical information. Although the US has submitted no reports on trial visits or investigations to the Protocol negotiations, twelve trial visits have been reported by other countries, most of them US allies. Half of these trials involved more than one country, or included foreign

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If Not NMD *continued from p. 2*

signing the Biological Weapons Convention, the Soviet Union embarked on a massive BW program. And today a handful of rogue states are actively working on biological and chemical weapons, as at least two extremist substate actors have done in the recent past.

But the question is not of how the performance of arms control and nonproliferation compares with perfection. If perfection were the standard, we would never build a weapon, certainly not an NMD that has failed as many tests as it has passed.

The question is of how arms control and nonproliferation compare with the only real-world alternative, which is their absence.

Forty years ago it was generally predicted that the turn of the millennium would see at least thirty nuclear weapon states. Today there are six to eight. South Africa has destroyed all its nuclear weapons. Brazil and Argentina turned back from the nuclear-weapons brink at the eleventh hour. Russia is, albeit erratically, destroying its chemical and biological weapons complexes. If it were not for arms control and nonproliferation initiatives, none of these things would be happening. Weapons of mass destruction would be accepted as normal methods of warfare, as chemical weapons were accepted in the first World War. There is no getting around the fact that arms control and nonproliferation have made the world safer.

Deterrence. Against ballistic missiles or other traceable threats, the primary answer isn't complicated. Deterrence by threat of intolerable retaliation is to international relations what the queen plus two rooks are to chess. Deterrence is old hat and it's not pretty, but it

works against foes great and small. The end of the Cold War has not changed that fact.

Deterrence need not and should not mean a threat of massive nuclear destruction of civilians. On the contrary, it is most credible when it does not require nuclear weapons at all, and does not threaten great loss of innocent life. Consider that Saddam Hussein had the ability to use chemical weapons not only against our forces, but against any American city he chose. He was stopped not by Patriot defensive missiles, but by then-Secretary of State James Baker's pointed non-nuclear warning to his Iraqi counterpart:

If the conflict starts, God forbid, and chemical or biological weapons are used against our forces, the American people would demand revenge, and we have the means to implement this. This is not a threat, but a pledge that if there is any use of such weapons, our objective would not be only the liberation of Kuwait, but also the toppling of the present regime. Any person who is responsible for the use of these weapons would be held accountable in the future.

Rogue governments are, in almost all cases, dictatorships in a state of physical conflict with the people of the country they rule. These governments exist of themselves, by themselves, and for themselves. Baker correctly recognized that to threaten nuclear retaliation against large numbers of Iraqi citizens would not only be morally and politically unacceptable; it would also be of no great concern to Saddam Hussein who himself kills substantial numbers of Iraqis to maintain his hold on power. Baker exercised effective deterrence by focusing it on the only things Saddam and his colleagues cared about: their own existences and

their access to wealth and power.

The same is true of the North Korean and Chinese leadership. For all their aggressive posturing, they lead lives of comfort and power and will place neither their positions nor their persons at risk.

It is sometimes asserted that there are "undeterrables" – those so consumed by religiosity and fanatic hatred that they fear nothing. If a person is willing to strap a bomb to his body, what threat could possibly be meaningful to him?

Perhaps none. But it is not the suicide bombers who need deterring. It is his leaders, those who organize, finance, train, and motivate the suicide bombers — but who never volunteer to carry the bombs themselves and who are fully deterrable.

The most difficult threat will not be leaders who are identified but cannot be deterred – it is doubtful that such exist or will exist. It will be leaders who order anonymous attacks and cannot be identified or traced.

Intelligence and interception are the best tools – possibly the only tools – for dealing with anonymous attacks.

The history of interception is a mixed bag. Timothy McVeigh and the World Trade Center bombers were not intercepted until their damage had been done. But more recently, the terrorists who planned to bomb Los Angeles Airport on New Years Day 1999 were caught as they crossed from Canada into Washington State with their bomb material.

Identifying and intercepting terrorists will never be easy, nor will it ever be a sure thing. But it can certainly be done better if it has greater resources available – resources the present Administration now plans to dissipate on NMD. □

Strategic Security Project Co-Authors Report, Expands Staff

Bob Sherman is building a strong team in Strategic Security. We have been working actively to build a rational basis for a new US nuclear and space posture, working with the Center for Defense Information, the Union of Concerned Scientists, and the Natural Resources Defense Council. FAS Council Chair Frank von Hippel and Fund Board Chair Steve Fetter were active participants in the process. The recommendations in this report (see summary on page 5) represent an effective way to take advantage of the end of the Cold War. We have been encouraging a broad national debate on these issues and helping the Congress to prepare to review the Bush Administration's nuclear posture review due December 1.

Robert Nelson continues his analysis of small nuclear weapons and is working actively with FAS Board members Lynn Sykes and Gregory van der Vink to review the state-of-the-art in detection of nuclear testing. Our new staff member Michael Levi will be focusing initially on reviewing new proposals for Ballistic Missile Defense technology. This work will soon be available in a major re-design of the FAS global security website.

Charles Vick continues to analyze missile development in North Korea, Iran, and Iraq. His work can be seen in the relevant sections of the FAS website.

ASMP Attends UN Conference

Tamar Gabelnick, together with Pamina Firchow and Matt Schroeder, have been working

actively to use the opportunity of the *UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects* to strengthen international controls on the conventional arms trade. Gabelnick's presentation to the Conference can be found on page 9. Her work was made much harder by an administration that at times seemed more interested in highlighting its *bona fides* with the NRA than developing multi-national approaches to the control of the small arms trade.

BWC Project Widens Focus While Continuing Protocol Fight

Barbara Rosenberg and her Biological Weapons Working Group fought hard to preserve the verification protocol to the Biological Weapons Convention, making an eloquent case for a strong verification protocol in testimony before the House Committee on Government Reform Subcommittee on National Security, Veterans Affairs and International Relations (see page 11).

Now that near term hopes for a verification protocol have been dashed, it is even more critical that we identify other approaches. Rosenberg and her FAS group is actively promoting several. They are examining options for a global infectious disease surveillance system, and development of a database on pathogen strain identification. Van Blackwood will be leading an effort designed to ensure that the largest possible number of people in a position to identify inappropriate use of biological technology is trained to identify misuse, and know how to respond appropriately. A key element of this work is a collaborative effort to develop high-quality educational

materials on this topic, available over the internet, that could be used around the world in courses for students in the biological sciences.

Ed Tech Pinpoints Resources

Marianne Bakia has been working actively to encourage increased federal investment in education technology research. An NSF-sponsored workshop that FAS helped lead last fall concluded that a key barrier to increased investment was the absence of a clearly articulated program of research. We have been working hard to remedy this situation by assisting in the creation of a *Learning Federation*, a public-private partnership that will conduct research on use of education technology for post-secondary instruction in science, mathematics, and engineering. An initial step will be developing a detailed roadmap of required research.

Marianne has also been an active part of the *Digital Legacy* project — a proposal for a major national investment in the development and dissemination of educational and cultural materials using new digital communication technologies. Like the Morrill Act of the 19th century, this would spark widespread use of technologies that can enrich the lives of people throughout the US.

FAS Sponsors Survey of Science/Tech Institutes

Peter Balint, on loan to FAS from the University of Maryland, has been exploring options for strengthening the ability of university centers to support accurate, timely analysis of science and technology policy issues most relevant to the Congress and the

public. His work involves (i) identifying existing capacity in US universities and developing a plan for strengthening their capacity and tying them more directly to priority work, and (ii) surveying potential Congressional clients to propose mechanisms for identifying the highest priority projects, the timing required, and the best format for delivering the information.

FAS Sponsors Digital Human Conference

Gerry Higgins of FAS, joined by Tim Poston on leave from Johns Hopkins University, are working to

create an open-source community working with a shared set of standards that can build a *Digital Human* – a simulation of the human body that would range in scale from molecules to organs. These simulations would be used to teach and learn biology at all levels, to integrate information and conduct research, to predict stress on the human body in a variety of circumstances. We started building this community at a major conference on this topic held at NIH on July 23 and 24. The proceedings are posted on the FAS homepage, www.fas.org/dh.

A Final Note

We've been working actively to both strengthen FAS' work in areas where it has been active for many years and explore new areas. Our new facilities on K Street in downtown Washington, DC are helping us work together much more effectively, and we look forward to working with our new Board.

I apologize for the erratic mailing schedule of the PIR. We've successfully navigated some major transitions and hope to be back on a regular schedule this fall. We've plainly got our work cut out for us. Thank you for your continued support. □

Hail and Farewell to FAS Staff

By Karen Kelley

FAS is undergoing several staff changes this summer.

We are pleased to welcome **Michael Levi** and **Van Blackwood** to the staff. Michael Levi will be assisting Robert Sherman on the Strategic Security Project as the Associate Director. He comes to FAS from Princeton University where he has been pursuing a Ph.D. in string theory and theoretical cosmology while working with Frank von Hippel on science and policy issues.

Van Blackwood joined the staff in August. He will be assisting Barbara Rosenberg of the BW/CW Nonproliferation Project primarily on a new initiative in bioethics. With a Ph.D. in chemistry, Van has spent the last three years as the AAAS Defense Science Policy Fellow at the USAF Office of the Deputy Assistant Secretary.

We are saddened by the departure of **Pamina Firchow** and **Amy**

Rossi, both of whom will be pursuing their Master's degrees at the London School of Economics this fall.

Amy Rossi has been an invaluable asset to FAS, serving initially as the Assistant to the President, and subsequently providing vital research and logistics support as the Project Coordinator of both the BW/CW Nonproliferation Project and the Learning Technology

Project.

Pamina Firchow has contributed a great deal in her capacity as the Research Assistant to the Arms Sales Monitoring Project. She has authored a paper on the implementation of the OAS Convention on Small Arms, in addition to providing fundamental research support.

We wish them great success in their new endeavors. □



Van Blackwood, BW/CW Arms Control Project



Michael Levi, Strategic Security Project

By Steven Aftergood

A change in the rules of the House of Representatives poses a new obstacle to congressional oversight of intelligence. That is what the House Government Reform Committee discovered when the CIA blocked one of its investigations.

Committee members were astonished — and infuriated — when the CIA refused to participate in a hearing they called to examine computer security at the Agency.

“Neither I nor any CIA representative will testify,” wrote Director of Central Intelligence George J. Tenet bluntly on July 17. He noted that House Intelligence Committee chairman Porter Goss “urged me not to testify.” (A copy of Tenet’s letter, obtained by FAS, is posted at www.fas.org/irp/news/2001/07/tenet.html.)

The focus of the Committee’s interest immediately shifted from computer security to a new topic: “Is the CIA’s refusal to cooperate with Congressional inquiries a threat to effective oversight of the operations of the Federal Government?” That rather leading question was the title of an unusual hearing held before two subcommittees of the House Government Reform Committee.

The hearing was unusual because the established structures of intelligence oversight are rarely criticized within Congress itself, and Republican leaders rarely speak of the CIA with anger and indignation. But this time they did.

“The CIA is assaulting Congress’s constitutional responsibility to oversee executive branch activities,” said subcommittee chairman Rep. Stephen Horn (R-Calif.) “The CIA believes it is above that basic principle in our Constitution. We do not agree.”

“Tell me why I shouldn’t be outraged,” said Rep. Christopher Shays (R-Conn.), his voice trembling. “When faced with persistent institutionalized [CIA] resistance to legitimate inquiries, we’re compelled to reassert our authority.”

FAS helped to publicize the conflict and reported on the under-

oversight policies in his former capacity as director of the Center for National Security Studies.

That original compromise permitted the establishment of the Intelligence Committee on condition that the existing jurisdiction of other committees would be fully preserved.

“The CIA is assaulting Congress’s constitutional responsibility to oversee executive branch activities ... [It] believes it is above that basic principle in our Constitution.”

-Rep. Stephen Horn (R-California)

lying issues in our email newsletter *Secrecy News*.

To justify his refusal to testify, Mr. Tenet of the CIA cited a little-noticed amendment to the House Rules that was adopted last January 3. As a result of that amendment, “The Permanent Select Committee on Intelligence is to have exclusive oversight responsibility over the sources and methods of the core intelligence agencies.”

The upshot of this change is that congressional oversight of intelligence, which is already subject to far-reaching limitations, is being further diminished by restricting the oversight jurisdiction of most committees other than the Intelligence Committee.

The new House rule is “wholly inconsistent with the compromise which led to the creation of the Intelligence Committees,” noted Morton H. Halperin, now senior fellow at the Council on Foreign Relations. Mr. Halperin, who served in numerous national security functions in and out of government, played an influential role in the formulation of intelligence

Specifically, the 1977 House Rule that established the House Intelligence Committee stated: “Nothing in this rule shall be construed as prohibiting or otherwise restricting the authority of any other committee to study and review any intelligence or intelligence-related activity to the extent that such activity directly affects a matter otherwise within the jurisdiction of such committee.”

This rule remains in effect, even though it appears to be contradicted by the new amendment granting “exclusive” oversight of intelligence sources and methods to the Intelligence Committee.

As a practical matter, the new rule has already curtailed intelligence oversight in the House Government Reform Committee.

Members of the Government Reform Committee met with the Speaker of the House in late July to discuss the new challenge to their jurisdiction, a Committee spokesman said. He added that though there was no immediate resolution of the issue, the Committee intends to defend its interests vigorously.

Controversy over Wen Ho Lee Persists

By Steven Aftergood

It has been nearly a year since former Los Alamos scientist Wen Ho Lee, once suspected of espionage, was freed from jail with an apology from the judge after he pled guilty to illegally downloading classified information. But the handling of his case continues to be a source of controversy and confusion.

Most recently, the GAO reported that testimony presented to Congress by FBI Assistant Director Neil Gallagher about the Lee case was “inaccurate and mislead-

ing.”

Mr. Gallagher assured Congress in 1999 that the FBI had full confidence in the initial Inquiry which asserted that design secrets of the W-88 nuclear warhead had been compromised at Los Alamos and which identified Wen Ho Lee as an espionage suspect.

But such confidence was unwarranted. The GAO found that Mr. Gallagher “should have known that the FBI’s Albuquerque Field Office had concerns about the ... Inquiry.”

Specifically, a January 1999 communication from the FBI

Albuquerque Field Office spelled out the defects in the Inquiry that launched the Lee prosecution and was provided to Mr. Gallagher. That document remains classified.

The text of the new GAO review may be found at www.fas.org/irp/ops/ci/whl_gao.html.

In response to the assessment, Mr. Gallagher lashed out at the GAO for suggesting that he may have “intentionally” misled Congress, writing “At no

continued on next page

The intrinsic limits on Congressional oversight of intelligence — involving shortages of staff personnel, time, resources, and Members’ attention as well as a lack of independent sources of information — were described with unusual frankness by Mary K. Sturtevant in the Summer 1992 issue of the *American Intelligence Journal*, published by the National Military Intelligence Association.

Though dated in some respects, Ms. Sturtevant’s article identifies the basic structural barriers to oversight that will only be exacerbated by the new House rule. See “Congressional Oversight of Intelligence: One Perspective” at www.fas.org/irp/eprint/sturtevant.html. □

BWC Protocol *continued from p. 10*

observers. All of them concluded that non-challenge visits would be effective in strengthening the BWC and increasing confidence in compliance. They also concluded that confidential information could be protected at the same time. Americans should be aware that protection of their defense establishments and bio-industry is of great importance to our allies, as it is to us. In formulating their policies our allies have worked productively with *the same* multinational corporations that are the major players in the US.

In addition, copious amounts of information were available from trial inspections conducted by the US and many other countries not so long ago during negotiation of the CWC, from the UNSCOM experience in Iraq, and from the experience of

multiple types of national and international inspections carried out routinely at sites relevant to the Protocol by many countries. It would be desirable for the US to carry out on-site trials of its own in order to allay the fears of those potentially affected, but to be credible, such trials would have to be multilateral and would have to make a special effort to demonstrate the absence of bias. □

For more information about the BWC, testimony from other parties (including the Chairman, Ambassador Tibor Toth), and the current draft of the Protocol, visit

www.fas.org/bwc/index.html

Wen Ho Lee continued from p. 15

time during my 28-year career in the FBI have I ever misled or intentionally misinformed a member of Congress.”

In a June 27 letter released by the FBI, Mr. Gallagher acknowledged that when he testified before Congress in June 1999 he was not aware of the defects in the Administrative Inquiry that initially named Lee as a possible espionage suspect. But in his defense, he notes that he wrote to Congress in November 1999 to correct the record after he learned that the basis for the Lee investigation was disputed. See Mr. Gallagher’s rebuttal to the GAO review at www.fas.org/irp/ops/ci/whl_gall.html.

But that’s not the end of it. Former DOE counterintelligence official Notra Trulock, who played a key role in shaping congressional and media perceptions of the case, criticized Mr. Gallagher’s letter. He spoke of a “web of deceit the FBI has spun to cover up its own mistakes and blunders in the Wen Ho Lee debacle.... Gallagher is distorting the record and attempting to mislead both the GAO and the Congress.” See Mr. Trulock’s

letter to the GAO at www.fas.org/irp/ops/ci/whl_gao_trulock.html.

Several other official assessments of the Wen Ho Lee case remain outstanding. The massive Justice Department report conducted by federal prosecutor Randy Bellows on the investigation up through March 1999 has been declassified and is awaiting final processing for public release. It is said to provide a withering account of the FBI’s conduct of the case.

An FBI Office of Professional Responsibility report is being withheld in its entirety as “law enforcement information,” even though it was initiated, in part, to respond to public concerns about the conduct of the case.

A separate Justice Department’s Office of Professional Responsibility review, which commenced nearly a year ago, is still “in its preliminary stages,” and “it would be premature to estimate when it will be completed,” according to Justice official Robert B. Lyon, Jr.

And not least, Wen Ho Lee himself has completed a memoir of his experience.

His 256 page manuscript, entitled “My Country Versus Me,” is to be published by Hyperion

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Books later this year. It is now under review by Department of Energy officials to ensure that it contains no classified information.

In a recent floor statement, Senator Arlen Specter criticized the executive branch for failing to cooperate with congressional oversight of the Lee case. He said that the treatment of Dr. Lee as “public enemy No. 1, when he was put in manacles and solitary confinement...had all the earmarks of an effort at the top of the Justice Department and FBI to coerce a guilty plea.” □

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