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THE DEFENSE THREAT REDUCTION AGENCY: A NOTE ON THE UNITED STATES’ APPROACH TO THE THREAT OF CHEMICAL AND BIOLOGICAL WARFARE

Matthew Linkie

INTRODUCTION

On October 1, 1998, the Pentagon merged three cold war agencies into a new $1.9 billion-per-year Defense Threat Reduction Agency (DTRA) to address growing weapons proliferation problems and to meet the threat from weapons of mass destruction in the hands of terrorist and rogue nations. Speaking to DTRA employees in connection with the creation of the new agency, Secretary of Defense, William S. Cohen stated:

Today’s harsh reality is too powerful to ignore: at least 25 countries have, or are in the process of developing, nuclear, biological or chemical weapons and the means to deliver them. . . . We must confront these threats in places like Baghdad before they come to our shores. Because America should not rush into the future without being rooted in the proven strengths of the past, we turn to you – the proven professionals.

The DTRA merges, the Defense Technology Security Administration (DTSA), the Defense Special Weapons Agency (DSWA), and...
the On-Site Inspection Agency (OSIA)\(^5\) into one central agency. Its creation sparks a new integrated approach to uncovering chemical and biological stockpiles of weapons and preventing their use.\(^6\)

The establishment of the DTRA is evidence of the nation's dedication to reducing the threat of a chemical or biological attack on the United States.\(^7\) Its establishment, however, also acknowledges America's vulnerability to such a threat\(^8\) and the concern that our nation may be ill-prepared to protect its citizens.\(^9\) In the past, the U.S. relied on geography, international treaties, and international conventions for protection from a possible biological or chemical attack.\(^10\) Most geographic defenses, however, are outdated and the relevant treaties inef-
fective. For example, because all countries are not parties to these treaties, some countries may disregard them. Compliance by countries that are parties to such treaties is difficult to monitor and "cheating" is not easily detected, as the procedures required to check compliance under current treaties are generally cumbersome. The treaties essentially have failed in their attempt to discover chemical and biological weapons facilities and to stop proliferation. Further, the treaties do not extend to non-statist terrorist organizations. A new approach is necessary.

The unique characteristics of chemical and biological weapons make the establishment of the DTRA a necessity. First, these weapons are easy to produce and do not require large, expensive facilities."


12. See Fitzgerald, supra note 11, at 446 (identifying Libya and other countries not party to U.N. treaties).


15. See Fitzgerald, supra note 11, at 429. For example, although the U.S. contends Iraq is building chemical and biological weapons, it has thus far been unable to prevent their proliferation under the U.N. procedures. See Stone, supra note 11, at A12.

16. See David G. Gray, Note, "Then the Dogs Died": The Fourth Amendment and Verification of the Chemical Weapons Convention, 94 COLUM. L. REV. 567, 574 (1994) (discussing the characteristics of chemical weapons). "[Y]ou can make the basic compounds [of chemical weapons] in a kitchen sink or a high school lab." Id. (citing Robin Wright, Chemical Arms Race Heating Up, L.A. TIMES, Oct. 9, 1988, pt. 1, at 1, 6); see also W. Edward Montz Jr. and Frank A. Lewis, The Emerging Threat of Chemical/Biological Terrorism, 14 ENVTL. COMPLIANCE & LITIG. STRATEGY 6 (1998) (discussing the ease and commercial availability of chemical agents). "A number of chemical agents are commercially available or easy to make with just a basic knowledge of chemistry." Id.
They can be developed and produced almost anywhere – in laboratories, basements or small-scale industrial facilities. Mustard gas, for example, can be synthesized by simply mixing two chemicals. In addition, these weapons involve chemicals and biological substances with commercial uses and are readily available throughout the world. Second, chemical weapon facilities are extremely difficult to detect. Because the technologies needed to produce these weapons often have commercial applications, their use as weapons can be easily denied. Third, small quantities of such weapons can be extremely effective and lethal. Fourth, chemical and biological weapons can be delivered by a variety of means and come in a variety of forms. Furthermore, their effects may go undetected for minutes (in the case of chemical agents) or for days (in the case of biological agents), making these weapons particularly attractive to terrorists. Lastly, response tactics vary greatly depending upon the type of chemical or biological

18. See Gray, supra note 16, at 574 (citation omitted).
19. See id. at 575 (citation omitted).
20. See id. (citation omitted).
21. See id. (citation omitted) (stating that any production facility could be dual-purpose, readily switching from the manufacture of chemical weapons to the production of aspirin).
23. See Vaccine Improves Odds Against Anthrax, REGULATORY INTELLIGENCE DATABASE, Apr. 6, 1998, available in 1998 WL 194056 (F.D.C.H.) (discussing the chance of survival after inhaling anthrax used as a biological weapon). “When inhaled, an unvaccinated, unprotected person has about a one percent chance of surviving a concentrated anthrax exposure.” Id.
24. See Montz and Lewis, supra note 16, at 6 (discussing the forms of chemical and biological agents). Chemical agents can be solid, liquid or vapor. See id. Solids and liquids are put into suspension as aerosols; some liquid aerosols may change to a vapor state. See id.
25. See Vaccine Improves Odds Against Anthrax, supra note 23. “You wouldn’t see it, smell it or feel it in the air. But just the same, one deep breath is enough to kill you.” Id. “One of the hardest things about a chemical and biological event is that unlike a bomb going off, you’re not sure what happened and when it happened.” DOD News Briefing, supra note 3.
weapon, making training and defense preparation extremely difficult.\textsuperscript{26}

Prior to the establishment of the DTRA, the United States' primary protection from biological and chemical warfare rested with multiple agencies in the intelligence community and the Department of Defense (DOD).\textsuperscript{27} These agencies relied on legislation such as the 1996 Defense Against Weapons of Mass Destruction Act\textsuperscript{28} and the Chemical and Biological Weapons Threat Reduction Act of 1997;\textsuperscript{29} presidential executive orders such as Executive Order No. 12,868;\textsuperscript{30} and international treaties including the Geneva Protocol of 1925,\textsuperscript{31} the 1972 Biological and Toxin Weapons Convention,\textsuperscript{32} and the 1993 Chemical Weapons Convention.\textsuperscript{33}

The creation of the DTRA is the result of extensive Congressional

\textsuperscript{26} See DOD News Briefing, supra note 3. "It takes fundamentally different tactics if it's a chemical terrorist weapon or a biological terrorist weapon... If it's a chemical weapon, you want to get people out of the area as soon as possible. If it's a biological weapon, you want to contain people in the area." Id.

\textsuperscript{27} See id. (discussing the organizations responsible for reducing key threats to national security).


\textsuperscript{33} Chemical Weapons Convention, supra note 10.
testimony by defense officials,\textsuperscript{34} scientists and public health officials,\textsuperscript{35} and recent legislation,\textsuperscript{36} all demanding a new approach for defending against biological and chemical weapons. In addition, the attacks on the Alfred P. Murrah Federal Building in Oklahoma City, the sarin gas attack in Tokyo,\textsuperscript{37} and the events of the Gulf War\textsuperscript{38} encouraged officials to reevaluate the nation’s chemical and biological weapons defense capabilities.\textsuperscript{39}

The push for establishment of the DTRA began with the Defense Reform Initiative of 1997 (DRI).\textsuperscript{40} In addition to the cost-saving measures outlined by the DRI, the Secretary of Defense also recognized the current defense infrastructure’s inability to prepare and de-


\textsuperscript{36} See generally 50 U.S.C. § 2301; see also Chemical and Biological Weapons Threat Reduction Act of 1997, supra note 29.

\textsuperscript{37} The AUM Shinrikyo nerve gas attack on the Tokyo subway system aimed to kill thousands of people and scare the population away from public transportation. See Paul Rogers, The Next Terror Weapon Will be Biological. And it Could be Used Soon, THE GUARDIAN (Aug. 18, 1998).


\textsuperscript{39} See DOD News Briefing, supra note 22.

\textsuperscript{40} See William Cohen, Secretary of Defense, Defense Reform Initiative of 1997. Primarily, the DRI was meant as a cost-cutting measure. See Bradley Graham, Retired Admiral Pushes Pentagon to Run a Tighter Ship; Cohen Aide Launches Several Reforms, WASH. POST, Nov. 6, 1998, at A19. The initiative included plans to: (1) eliminate one-third of the 3,000 jobs in the Office of the Secretary of Defense, (2) make substantial reductions in military headquarters staffs and thirteen Defense agencies, (3) switch from reams of paper to electronic networks for issuing regulations, (4) order items and pay bills, (5) privatize utility systems at military bases, and (6) establish a chancellor for education and professional development to oversee the department’s thirty civilian schools. See id.
fend from an attack such as the one in Tokyo.\textsuperscript{41} In particular, the Secretary noted that the agencies currently in charge of countering this new threat were formed to protect the nation from a nuclear attack rather than chemical or biological warfare.\textsuperscript{42} Thus, the bureaucracies responsible for monitoring the nation's defense capabilities required restructuring. Testimony noted the proven frailty of existing treaties in protecting the United States against a chemical or biological attack.\textsuperscript{43} The DRI and the Secretary's testimony made it clear that, although the threats are by no means new, our methods for combating them must be.

The development of the DTRA to meet these threats, however, presents numerous questions and considerations. The first concern is whether large scale spending to fund the DTRA is necessary or whether spending to educate health officials on how to respond to an attack would be more appropriate. Questions relating to jurisdiction and feasibility, as well as potential infringements upon international treaties and conventions also arise. Another problem is how the DTRA will work with other U.S. government intelligence agencies, federal law enforcement, and state public health officials to enforce its findings. This Note proposes potential answers to these questions.

Part I of this Note presents a history of biological and chemical warfare and describes potential public health effects. This Part examines current law and U.S. capabilities to protect the nation from the threat of weapons of mass destruction. Part II explains the development of the DTRA, its mission, goals, organization, and intended impact on current law. Part III analyzes the need for the DTRA, specifically, how current capabilities to defend against terrorist chemical and biological weapons attacks are insufficient, and considers areas in which the DTRA can succeed where international treaties have failed. In addition, Part III questions whether funds are being spent appropriately on the DTRA, or whether this money could be spent more effectively on public health and readiness programs. This Part discusses the prob-
lems the DTRA will face in meeting its goals, particularly with regard to jurisdiction, enforcement, and feasibility issues. Part IV concludes that the establishment of the DTRA is necessary for effective reduction of the threat from chemical and biological weapons. Furthermore, Part IV finds that similar efforts must be made to increase the capabilities of the United States' health facilities to respond to a chemical or biological attack in the United States.

I. PREPARING FOR THE THREAT

A. The History and Health Risks of Biological and Chemical Warfare

Biological and chemical weapons historically have played a significant role in military operations. Medieval armies poisoned their enemies' drinking water with the dead bodies of humans and animals. In ancient times, armies burned sulfur and tar, choking their enemies with smoke. In the eighteenth century, the British army spread disease among the Native American tribes by distributing blankets contaminated with smallpox.

Nations recognized the need to regulate the use of such tactics in the late nineteenth and early twentieth centuries however, the Hague Conferences of 1899 and 1907 and the Geneva Protocol of 1925 did not effectively deter their use. The use of chemical and biological weapons by the Germans during World War I, and the

44. See ROBIN CLARKE, THE SILENT WEAPONS 12-16 (1968) (discussing the origins of toxic warfare).
45. See id. at 14. During the medieval period, poisoning water supplies was a standard military tactic. See id.; see also DOD News Briefing, supra note 22 (discussing how during the middle ages, cadavers were catapulted over besieged city walls to spread death and disease).
46. See id. (examining the Spartans' use of noxious fumes from smoldering pitch and sulfur to attack the Athenians).
47. See CLARKE, supra note 44, at 14-16.
51. See Fitzgerald, supra note 11, at 429-30 (discussing the German use of chemical weapons in 1915). Germany sidestepped the Hague Conference's
Italians in 1935 against Ethiopia, evidenced this failure and helped usher in the modern era of chemical warfare and abuses of international law.

Since these events, chemical weapons technology has progressed greatly, allowing nations to build up massive stockpiles and conduct intensive research on possible chemical and biological agents. This trend, however, has not been limited to large nations. Developing countries such as Libya began to manufacture chemical weapons as well. In addition, the first large scale use of chemical weapons by a terrorist group was exhibited when the Aum Shinrikyo Cult deployed sarin gas in a Tokyo subway station in 1995. Later, in July ban on chemical warfare by using chlorine filled canisters positioned along a four mile front rather than projectiles during the chemical attack. See id. The German Army waited for the wind to blow towards the French positions, then opened the canisters releasing a cloud of chlorine gas over the French troops. See id.

52. See id. (discussing Italy’s use of chemical weapons in 1935). Italy used chemical weapons in its conquest of Ethiopia, despite the Geneva Protocol’s ban on their use. See id.

53. See id. at 430-32. In addition, Japan used poison gas against China (1937-45) as did Iraq against Iran (1982-83). See Falk, supra note 13, at 23.

54. See DOD News Briefing, supra note 22 (discussing the use of new technologies as strategic weapons rather than tactical maneuvers).

55. See Fitzgerald, supra note 11, at 443 (citation omitted).

56. Not until the Aum Shinrikyo cult confessed to the subway attack did analysts discover the same cult was responsible for an attack with VX gas against a twenty-eight year old man in December 1994. See David L. Chandler, Japan Cult May Have Used Agent Found in Sudan, BOSTON GLOBE, Aug. 26, 1998, at A14. “In that attack, the chemical agent VX was sprayed directly on the victim’s skin.” Id. “The man lost consciousness immediately and died ten days later.” Id.

57. Founded by Shoko Asahara (whose real name is Chizuo Matsumoto), the Aum Shinrikyo cult is believed to have up to $1 billion in assets and as many as 16,000 members in Russia. See Jeff Nesmith, Target America: Biochemical Warfare, ATLANTA J. & CONST., Aug. 2, 1998, at E2; see also Chris Betros, Death Sentence Urged for Cult Killer. Former Member First to Face Capital Punishment in Aum Shinri Kyo Trials, S. CHINA MORNING POST, July 7, 1998, at 12.

58. During the March 20, 1995 Tokyo subway attack, canisters with electric fans placed in three subway lines converging in central Tokyo began dispersing Sarin nerve gas. See Fitzgerald, supra note 11, at 445. The attack injured 5,000 and killed twelve. See id. See Subcomm. on Labor, Health and Human Services, Education, and Related Agencies of the Senate Comm. on
1998, more than sixty people were poisoned by cyanide at an outdoor summer festival in Japan. These abuses have not been limited to foreign countries and terrorist organizations. The use of riot control agents and herbicides by the U.S. in Vietnam violated the 1925 Geneva Protocol. In addition, chemical weapons have been used by domestic terrorists in the U.S.

B. U.S. Legislation

In 1996, the U.S. Congress passed the Defense Against Weapons of Appropriations, 105th Cong. (1998) (Statement of Richard Jackson). The cult also attempted to obtain biological agents, such as Ebola, anthrax, and botulin from a United States military base in Japan. See Nesmith, supra note 57, at E2; see also S. Subcomm. on Labor, Health and Human Services, Education, and Related Agencies of the Senate Comm. on Appropriations, 105th Cong. (1998) (Statement of James M. Hughes).

59. See Rogers, supra note 37, at 14. Although it did not achieve its intended result, “the Tokyo subway attack was the first substantial example of the use of a weapon of mass destruction.” Id.


61. See Fitzgerald, supra note 11, at 434-35. The actions of the United States, however, “did not technically breach the Geneva Protocol because the United States did not ratify the treaty until after the war, in January 1975.” Id. (citing Philip Louis Reizenstein, Note, Chemical and Biological Weapons—Recent Legal Developments May Prove to be a Turning Point in Arms Control, 12 BROOK. J. INT’L L. 95, 98, n.18 (1986). In addition, the United States interpreted the Geneva protocol not to preclude irritants or herbicides because their effects are not similar to more lethal chemical agents like nerve gas. See id.

62. See U.S. Readies Defense Against Germ Warfare; Terrorism Experts Say Small Scale Attack More Likely, SALT LAKE TRIB., June 22, 1998, at A6 (stating that “the only real bioterrorism incident in U.S. history occurred in 1984, when members of the Rajneeshee cult in Oregon sprayed salmonella bacteria on 10 local salad bars in an effort to dampen voter turnout and throw an election their way.”); see also Marie Isabelle Chevrier, The Threat That Won’t Disperse: Why Biological Weapons Have Taken Center Stage, WASH. POST, Dec. 21, 1997, at C1 (discussing contamination of salad bars in Oregon by a cult and poisoning of lab workers in Texas by food laced with a germ that causes a rare form of dysentery); see also Reporter’s Notebook: Chem-bio, Not As Easy As Pie, DEFENSE WEEK, Vol. 19 No. 14, April 16, 1998 (discussing how the World Trade Center bombers had attempted to cause an explosion followed by dispersal of a chemical agent, but that the blast from the explosion destroyed the chemical agent).
Mass Destruction Act of 1996 to help defend against the threat of nuclear, chemical, and biological (NCB) weapons. The Nunn-Lugar Amendment to the Act included significant Congressional findings supporting the establishment of the DTRA. In particular, Congress found that weapons of mass destruction in the hands of hostile nations and terrorist groups pose an increasing threat to the U.S. Congress also found that the U.S. lacked adequate planning and countermeasures to address the threat of chemical and biological weapons.

The Nunn-Lugar Amendment proposed an "emergency response assistance program" to aid domestic preparedness by providing civilian personnel and state and local agencies with training and expert advice regarding emergency responses to the use of weapons of mass destruction. In addition, the amendment authorized extensive funding and military assistance to aid in increasing the nation's preparedness.

64. See id. at § 2311.
66. 50 U.S.C. § 2302(1) defines weapons of mass destruction as "any weapon or device that is intended, or has the capability, to cause death or serious bodily injury to a significant number of people by the release, dissemination, or impact of – (A) toxic or poisonous chemicals or their precursors; (B) a disease organism; or (C) radiation or radioactivity."
68. See 50 U.S.C. § 2301(19). Although Congress noted that the Department of Energy has established a Nuclear Emergency Response Team, no comparable unit exists for emergencies involving biological or chemical weapons. See § 2301(20). In addition Congress noted that state and local emergency response personnel are not adequately prepared or trained to handle incidents involving such materials. See § 2301(21); see also U.S. Lags in Biological Warfare Protection Threat Said to Be on the Rise, NEW ORLEANS TIMES-PICAYUNE, Dec. 27, 1997, at A6 (stating, "the United States is poorly prepared to defend its armed forces from the rising threat of germ warfare attack and lags even more in protecting Americans at home.").
70. For example, the Act authorizes $35 million for the emergency response assistance program. See 50 U.S.C. § 2312(h). The Act also authorizes $15 million for a nuclear, chemical, and biological emergency response program. See 50 U.S.C. § 2313(c).
71. Section 2313 authorizes military assistance to civilian law enforcement in emergency situations involving biological or chemical weapons. See id. at § 2313(a).
It urged the United States Sentencing Commission to provide increased criminal penalties for offenses relating to importing and exporting biological and chemical weapons as well as the technology used to create them.\(^72\) Clearly, these provisions placed a new and greater emphasis on identifying the threat of chemical and biological weapons and remediying the lack of U.S. capabilities to respond to such a threat.

A second piece of legislation, the Chemical and Biological Weapons Threat Reduction Act of 1997,\(^73\) gives even greater priority to defending against chemical and biological weapons. For example, the Act provides criminal and civil penalties for “the unlawful acquisition, transfer, or use of any chemical weapon or biological weapon.”\(^74\)

Congress recognized that the use of chemical and biological weapons contravenes international law and that their use “is abhorrent and should trigger immediate and effective sanctions.”\(^75\) The Act was a response to President Clinton’s Executive Order 12,868, declaring a national emergency in response to “the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States” posed by the proliferation of NCB weapons and of the means for delivering such weapons.\(^76\) Congress reviewed the intelligence community’s findings that numerous countries possess these weapons and the means to deliver them.\(^77\) Congress also noted that the 1996 Defense Against Weapons of Mass Destruction Act underscored the “urgent need to improve domestic preparedness” to protect against chemical and biological threats.\(^78\) The new Act expanded on the 1996 legislation and aimed to reduce the threat of biological and chemical

\(^{72}\) See id. at § 2332.
\(^{73}\) The Chemical and Biological Weapons Threat Reduction Act of 1997, supra note 29.
\(^{74}\) Id.
\(^{75}\) Id. at (2).
\(^{77}\) See The Chemical and Biological Weapons Threat Reduction Act of 1997, supra note 29, Section 2 at (7) (finding that China, Egypt, Iran, Iraq, Libya, North Korea, Syria, and Russia possess chemical and biological weapons and the means to deliver them. Four countries in the Middle East – Iran, Iraq, Libya, and Syria – have also supported international terrorism as a national policy.) See id. at § (8).
\(^{78}\) See id. at § (11).
warfare by authorizing criminal penalties of imprisonment or death in
the case of an action that results in the death of another person. The
Act authorizes civil penalties of up to $100,000 for each violation and
the forfeiture and destruction of property involved in the offense. Further, other economic sanctions may be imposed.

Congress made significant findings regarding the future threat of
chemical and biological weapons. For example, regarding prepared-

79. Section 229A (a)(1) states “[a]ny person who violates section 229 of this title shall be fined . . . or imprisoned for any term of years or both.” Id. Section 229A(a)(2) states “[a]ny person who violates section 229 of this title and by whose action the death of another person is the result shall be punished by death or imprisoned for life.” Id.
80. Section 229A (b)(1) states
The Attorney General may bring a civil action in the appropriate United States District Court against any person who violates section 229 of this title and, upon proof of such violation by a preponderance of the evidence, such person shall be subject to pay a civil penalty in an amount not to exceed $100,000 for each such violation.
81. Section 229B(a) states “[a]ny person convicted under section 229A(a) shall forfeit to the United States irrespective of any provision of State law – (1) any property, real or personal, involved in the offense, including any chemical weapon or biological weapon.” Section 229B(c) states, “[t]he attorney General shall provide for the destruction or other appropriate disposition of any chemical or biological weapon seized and forfeited pursuant to this section.”
82. Title II, § 201 provides “the imposition of sanctions against any foreign government – (A) that has used chemical or biological weapons in violation of international law; or (B) that has used chemical or biological weapons against its own nationals . . .” (amending Title III of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991).
83. See id. at Title II, § 207. In particular, Section 207(a) of the Act states that
ness, Congress found that

The armed forces of key regional allies and likely coalition partners, as well as civilians necessary to support United States military operations, are inadequately prepared and equipped to carry out essential missions in chemically and biologically contaminated environments; congressional direction contained in the 1997 Defense Against Weapons of Mass Destruction Act is intended to lead to enhanced domestic preparedness to protect against the use of chemical and biological weapons; and the United States Armed Forces should place increased emphasis on potential threats to deployed United States Armed Forces and, in particular should make countering the use of chemical and biological weapons an organizing principle for United States defense strategy and for the development of force structure, doctrine, planning, training, and exercising policies of the United States Armed Forces.84

C. The Defense Reform Initiative of 1997

In 1997, Secretary of Defense William Cohen sponsored the Defense Reform Initiative of 1997.85 The DRI was intended to apply principles from business and industry to make the Department of Defense more effective and productive.86 During the first year of the DRI, the DOD recognized substantial savings from public-private competition by moving into Internet-based electronic commerce, utilizing ideas from the private sector, consolidating, streamlining, and downsizing.87 Despite overall reductions in defense costs, the 1996 and 1997 acts assured that defense resources focused on the threat of biological and chemical weapons would continue to increase.88 One of

84. Id. at Title II, §§ 207(a)(6)-(8).
86. See DOD News Briefing, supra note 42 (containing an interim status report of Deputy Secretary of Defense, John J. Hamre, on the Defense Reform Initiative).
87. See DOD News Briefing, supra note 42. (Fact Sheet on first year accomplishments of the DRI); see also, DOD News Briefing, supra note 3 (discussing streamlining and downsizing as purposes of the DRI).
88. See DOD News Briefing, supra note 3 (stating that there is no intention
the stated aims of the DRI is "to strengthen the Department’s ability to deal with the proliferation of weapons of mass destruction." Secretary Cohen recognized this stating, "of the challenges facing the Department of Defense in the future, none is greater than the threat posed by the weapons of mass destruction."

The DTRA constituted the DOD’s focal point in addressing this complex and comprehensive problem. As a result, the DTRA had a budget of $1.9 billion and employed over 2,000 people in Fiscal Year 1999. The increased spending indicated that reducing the threat of biological and chemical warfare has become a national defense growth industry.

II. THE DEVELOPMENT OF THE DTRA

Under Title X of the National Defense Authorization Bill, the Secretary of Defense possesses the authority to create an agency to consolidate DOD functions. Under this authority, Secretary Cohen established the DTRA. Its development began a substantial step toward to cut capabilities in the area of national security threats from chemical and biological weapons).


90. DOD News Briefing, supra note 3 (quoting Secretary of Defense, William Cohen).


92. See DOD News Briefing, Improvements from Consolidation, supra note 42.

93. See DOD News Briefing, supra note 3 (stating that facing the threat of weapons of mass destruction “is likely to be . . . a growth industry in the Department of Defense.”).


95. See DOD News Briefing, supra note 3. In response to a question regarding the idea of forming the DTRA, Deputy Secretary of Defense, Dr. John J. Hamre, stated, “[The DTRA] grew very much out of Secretary Cohen’s re-
increased protection from the threat of chemical and biological weapons.\textsuperscript{96} By combining the expertise of three defense intelligence agencies (DTSA, DSWA, and OSIA) and employing the knowledge of expert scientists in the field of biological and chemical warfare agents, the DTRA appears to have the capability to effectively implement the 1996 and 1997 legislation. In addition, the DTRA’s centralized expertise should maximize efforts to discover chemical and biological weapons production and stockpiling programs.

\textit{A. The Mission and Goals of the DTRA}

The overall goal of the DTRA is to “reduce the present threat [of a chemical or biological attack] and [to] prepare against the future threat . . .”\textsuperscript{97} The DTRA, however, was established with three broad missions in mind:\textsuperscript{98} (1) to maintain current U.S. nuclear deterrent capabilities,\textsuperscript{99} (2) to reduce the threat from weapons of mass destruction,\textsuperscript{100} and (3) to counter threats of weapons of mass destruction.\textsuperscript{101} To accomplish its missions, the DTRA needs to learn how to anticipate attacks, speed up response time, work with research and intelligence communities, and protect technology.\textsuperscript{102} To satisfy these missions, the DTRA will have to first understand the threat and second, determine who or what constitutes a threat.

view last fall, about a year ago at this time . . . [but] it represents a culmination of a year’s worth of change.” \textit{Id.}

\textsuperscript{96} See \textit{id.} (discussing the significance of DTRA’s establishment).

\textsuperscript{97} \textit{Id.}

\textsuperscript{98} See \textit{DOD News Briefing, M2 PRESSWIRE, July 9, 1998, available in 1998 WL 14095333.}

\textsuperscript{99} See \textit{id.}

\textsuperscript{100} See \textit{id.} The second mission includes elements such as treaty monitoring and on-going support of confidence building measures. \textit{See id.}

\textsuperscript{101} See \textit{id.} The third mission involves a combination of responsibilities. The DTRA will develop modeling and simulation skills for biological and chemical weapons, building an intellectual infrastructure for biological and chemical threats, as well as consequence management in its effort to counter weapons of mass destruction threats. \textit{See id.}; see also \textit{DOD News Briefing, supra} note 3 (discussing a variety of approaches such as treaty compliance, cooperative threat reduction, counterproliferation and active deterrence).

\textsuperscript{102} See \textit{DOD News Briefing, M2 PRESSWIRE, July 9, 1998, available in 1998 WL 14095333.}
1. The First Step: Understanding the Threat

The first critical step the DTRA must take to accomplish its goals is to collaborate with intelligence agencies to better understand the threat. To achieve such an understanding, the DTRA proposes to work with U.S. research and intelligence communities to identify evolving threats and the intentions of those who would represent them. Although the formula for determining threats is not new to the DOD, the DTRA's focus on evolution and intent is an untested methodology and therefore is of uncertain value. For example, as stated by the Director of the DTRA:

[In the old days with the Soviet Union, you could do the simple exercise that said capability, which was easy to see and photograph; . . . skip over intention because they wouldn't have built [weapons] if they didn't have an intention to use it; and. . . [determine the amount of] threat with some confidence. . . . In the case of the domestic application of a biological weapon, for example, capability sits everywhere [and] you know almost nothing about intent unless you in fact have penetrated a fraternal or nearly religious organization. . . . [T]he multiplication of those two together to get threat is a much more uncertain activity. It makes it much harder to do.]

Thus, the first goal of the DTRA is to develop relationships with the intelligence community in an effort to better understand emerging threats of chemical and biological weapons. In response to questions at a DOD news briefing, the Director of the DTRA emphasized the importance of working with the intelligence community, stating:

[The intent is to be much more active. . . . We will be working with the intelligence community to come up with an integrated set of threat assessments [by creating] scenarios. . . coupling the intelligence to how you would really act. You produce the best five or six scenarios you can, for example, for domestic events, and then play them out and ask yourself how good was our response, what in anticipation would have made the response better, how do you go back to the intelligence community and tell them to look for [a better]

104. Id.
response].

2. The Second Step: Determining Who or What Is a Threat

Determining the source of the threat and building relationships with countries and groups that might pose a threat constitutes the goals of the DTRA’s second step. The first part is admittedly difficult and requires the DTRA’s partnership with intelligence agencies. Because the threat is just as likely to stem from transnational, millenarian, or religious groups, as opposed to national states, finding the actor is much more difficult.

The second part, building relationships with countries and groups that might pose a threat, is another daunting task for the DTRA. To accomplish this, the DTRA will rely on the On-Site Inspection Agency and its role in overseeing foreign treaty provisions compliance with disarmament. The DTRA proposes to apply OSIA responsibilities combined with multiple United Nations parties to build relationships with countries that do not currently possess amicable relations with the U.S. As admitted by the DTRA Director, this will involve “a fair amount of politics and policy.”

B. Organization of the DTRA

The Director of the DTRA reports directly to the Undersecretary of Defense for Acquisition and Technology. The Director’s con-

105. Id.
106. See id.
108. DOD News Briefing, supra note 3 (response of Dr. Jay C. Davis, DTRA Director).
109. Director Dr. Jay C. Davis is a nuclear physicist and former associate director of the Lawrence Livermore National Laboratory. See Pincus, supra note 1; Air Force Major General William F. Moore is the Deputy Director. See DOD Agency Makes Debut, GOV’T EXECUTIVE, Nov. 1, 1998, available in 1998 WL 10315082.
110. See Defense Threat Reduction Agency Director Selected,
sulting advisors include senior officials from the Department of State, the Department of Energy, and the Federal Bureau of Investigation, as well as a Threat Reduction Advisory Committee composed of distinguished policy, scientific and defense experts. The DTRA also runs the Advanced Systems and Concepts Office (ASCO), an office responsible for analyzing emerging weapons of mass destruction threats and the technologies and concepts to counter them.

Eight directorates within the DTRA carry out these critical mission elements.

The merger of the DTSA, DSWA, and OSIA into the DTRA has not been without criticism. Specifically, employees of the DTSA have criticized the chain of command for the DTRA Director, who reports to the Undersecretary for Acquisition and Technology. Previously, the head of the DTSA – one element merged into DTRA – reported to the Defense Undersecretary for Policy. Critics noted that this creates a conflict of interest because the Undersecretary for Acquisition and Technology seeks to keep the U.S. defense industry profitable through


112. One responsibility of ASCO is planning. See DOD News Briefing, supra note 3.

113. The directorates include: (1) Nuclear Support; (2) On-Site Inspection, which is responsible for conducting on-site inspections and aerial monitoring abroad, gathering information on the accuracy of treaty-related declarations and weapons system reductions and building confidence among treaty members; (3) Cooperative Threat Reduction, responsible for implementing the cooperative threat reduction program and helping the countries of the former Soviet Union destroy nuclear, chemical and biological weapons; (4) Technology Security, which develops and implements policies on international transfers of defense related goods, services and technologies to ensure that such transfers are consistent with U.S. national security interests; (5) Special Weapons Technology; (6) Chem-Bio Defense is the focal point for technical expertise on chemical and biological weapons; (7) Counterproliferation, which aims at responding to proliferation by developing new technologies, training responders, and coordinating response planning for Department of Defense and other agencies; and (8) The Force Protection which is responsible for protecting armed forces and their families from acts of terrorism. See The Defense Threat Reduction Agency, Organization, supra note 111.
the very sales that it would regulate. Critics contended that national security becomes subordinate to free trade.\(^{114}\) One DTSA employee, for example, stated that this reorganization “will fatally compromise controls on the export of dangerous technologies.”\(^{115}\)

In response, the DTRA’s Deputy Secretary stressed the Defense Undersecretary for Policy would retain overall supervision of export controls and the intent was never to remove Policy’s oversight responsibility. The Secretary maintained that the developing fears in Congress regarding the DTRA’s role are a result of a misunderstanding of his intent. The agency would do well, however, to better explain its intent with regard to export controls and to formulate a chain of command with distinct reporting responsibilities.

The private sector is concerned about tighter export controls.\(^{116}\) Since the end of the Cold War, fewer types of exports have been licensed by the U.S. government, making it easier for companies to ship goods to countries once considered off-limits because of national security concerns.\(^{117}\) Yet, with the emerging threats of biological and chemical warfare, restrictions on shipments of biological and chemical warfare agents and missile technology have increased.

Under the 1949 Export Control Act, the Commerce Department’s Bureau of Export Administration (BEA) is authorized to restrict “dual use” goods that have both civilian and military uses.\(^{118}\) This includes chemicals and biological agents that could be used to produce weapons for attacking the U.S.\(^{119}\) The increased licensing requirements present a resource problem for the BEA and mandate the involvement

\(^{114}\) See Sydney J. Freedberg, Jr., *The Pentagon’s Alphabet Warfare*, NAT’L J., Sept. 12, 1998. Congressional Republicans such as Sen. Jon Kyl (R-AZ) support these contentions, stating that the Clinton administration leans toward granting export licenses. See id.

\(^{115}\) Id. A DTSA export license reviewer testified in Congress that the DOD continually weakened in its ability to keep American technology from leaving the borders. See id.


\(^{117}\) See *Antiterrorism Efforts Threaten Shippers*, AM. SHIPPER, Feb. 1, 1999.


\(^{119}\) See *Antiterrorism Efforts Threaten Shippers*, supra note 118.
of other agencies such as the DTRA. The DTRA’s role is not to grant licenses, but to monitor the distribution of chemical and biological agents that could be used in weapons.

As we move from the nuclear age to the information age, new threats emerge. It therefore makes perfect sense to strengthen export controls on chemicals and biological agents. Where the U.S. once protected the export of weapons technology, it now must also protect the export of information and scientific technology. The DTRA is organized to assist the BEA in this task.

III. THE DTRA: SOLUTION OR CONFLICT

A. The Need for the DTRA?

Before the development of the DTRA, the United States’ main defense against national security threats rested with agencies born during the Cold War designed to combat nuclear threats. The DTRA was deemed necessary because the threat from weapons of mass destruction posed significantly different challenges from those posed by nuclear threats, such as the likelihood of a “low-tech” attack by a small group. In discussing this need, Deputy Secretary of Defense John J. Hamre stated

the new era is a startlingly complicated era, one where national security challenges are far more diverse and far more complex. It no longer has the ease of thinking about it in terms of a communist world and a free world. . . . We needed to have a central organization that was integrated in bringing all of these different

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120. See supra notes 3-5 and accompanying text.
121. See statement of Deputy Secretary of Defense, Dr. John J. Hamre, DOD News Briefing, supra note 3.

It has been ten years since the Berlin Wall came down. As with every change in the security history of the United States, there’s a period of some transition when you sort out what the last world was like and what is the new world going to be like. In many ways I think this represents one of the very important milestones in this transition.

Id.

122. See id. Hamre stated, “The dispersal of weapons of mass destruction capabilities into the hands of small groups that are driven by much more varied motivations than those of the past presents a threat that unfortunately may be obvious to us only after the fact.” Id.
strands together in one place.123

1. The Ineffectiveness of International Treaties and Conventions – The Chemical Weapons Convention

In addition to the organizational issues and ongoing problems of insufficient chemical and biological defense capabilities,124 the U.S. has voiced concerns that existing international treaties and conventions are insufficient to diminish the threat of the use of weapons of mass destruction.125 There are numerous reasons for their ineffectiveness.126 First, since the Chemical Weapons Convention does not extend to terrorist groups, they are left unrestricted in their capacity to produce chemical or biological weapons.127 Second, the treaties have no direct power over countries that do not ratify them.128 These countries include Iraq, North Korea, and Libya,129 all of which are suspected of

123. Id.

124. See id. (discussing tests in Philadelphia and Washington, D.C. showing local law enforcement unpreparedness to handle a chem/bio attack); see also DOD News Briefing, M2 PRESSWIRE, July 9, 1998, available in 1998 WL 14095333 (stating that the U.S. does not have the intellectual infrastructure for biological and chemical threats the way the U.S. has for nuclear threats).

125. See Fitzgerald, supra note 11, at 429.

126. For example, when the 1972 Biological and Toxin Weapons Convention (BTWC) was drafted, it did not address the use of biological weapons because they were deemed to be useless by the military. See Detlev Vagts and Raymond A. Zilinskas, The Diplomacy of Biological Disarmament: Vicissitudes of a Treaty in Force, 1975-85, 84 AM. J. INT’L L. 984 (1990); see also Falk, supra note 13, at 21 (discussing the shortcomings of the Geneva Protocol). The Geneva Protocol lacks consensus concerning the identity of toxic agents included in the prohibition. See id. Parties have interpreted it as merely prohibiting the first use of prohibited weaponry. See id. at 22. It prohibits only the use of proscribed substances and does not prohibit research, development, and possession. See id. at 23.


128. See Fitzgerald, supra note 11, at 446; see also Rotunda, supra note 127, at 135 (stating one inherent limitation of the CWC is that outlaw countries can simply refuse to ratify it).

129. See Fitzgerald, supra note 11, at 446; see also Rotunda, supra note 127, at 135.
producing weapons of mass destruction. While the threat of a direct attack on the U.S. from one of these nations may appear minimal, these nations may sell or convey their weapons to terrorist groups. Such groups pose an even greater threat to the U.S. because they are not easily detected or monitored. Third, the international treaties lack provisions authorizing the use of military force to ensure compliance. Instead, they authorize sanctions for countries in non-compliance. Concerns have been raised that sanctions are an inappropriate response to such circumstances. The Chemical Weapons Convention is illustrative of this.

Iraq’s refusal to cooperate with U.N. arms inspectors sent to gather evidence as to whether Baghdad was developing weapons of mass destruction demonstrates the ineffectiveness of the Chemical Weapons Convention. Although Iraq admitted to making VX gas for weapons, it refused to allow U.N. inspectors to investigate its chemical weapons program. Iraqi officials maintained that until the U.N. Security Council lifts the sanctions it imposed after the Gulf War, they would not allow inspections. In return, U.N. officials stated that the sanctions would not be lifted until the U.N. certified

131. See Chemical Weapons Convention, supra note 10, at art. XII at 819.
132. See id. at art. XI.
133. See Stone, supra note 11, at A12 (discussing the use of sanctions against Iraq, the author states “[m]any believe U.N. sanctions aimed at hurting Saddam’s government have instead devastated the Iraqi people...”).
134. See Bill Nichols, Clinton, Security Team Discuss Iraqi Problem, USA TODAY, Nov. 9, 1998, at 12A.

During the 1980’s, Iraq developed an extensive chemical weapons program and the most advanced biological warfare program in the Middle East. Saddam Hussein used a combination of blister agents, such as mustard, and nerve agents, such as Tabun, against the Iranians and the Kurds. Iraq produced enough precursors for 400 tons of the nerve agent VX per year.

Id.

137. See Nichols, supra note 134, at 12A.
that Iraq destroyed its NCB weapons. This stalemate between Iraq and the U.N. led to threatened military action by the United States. Although other Middle East states were less than enthusiastic, the United States began Operation Desert Fox on December 16, 1998. The military operation deployed cruise missiles, which battered Iraqi military targets and intelligence facilities. United States officials believed the intelligence facilities held Iraq's Special Republican Guard that protected Iraq's chemical and biological weapons programs.

In addition, international law has not provided strong guidance in controlling the threat of chemical and biological weapons. The International Court of Justice issued an Advisory Opinion in 1996 which held that the use or threat of weapons of mass destruction "is generally contrary to the rules of international law applicable in armed conflicts except in an extreme circumstance in which a state's very survival would be at stake." Such decision-making contributes little, creating an ineffective international climate for reducing the threat of chemical and biological weapons.

2. How The DTRA Will Make a Difference

By placing increased emphasis on identifying transnational groups that might be developing chemical or biological weapons to carry out terrorist attacks in the United States, the DTRA will help better protect the nation against the threat of biological and chemical warfare. In addition, because the United States' power to respond is limited under the relevant international treaties and conventions, the DTRA will provide a more appropriate response mechanism to the threat of chemical and biological weapon attacks and discourage par-

139. See Stone, supra note 11, at A12. In an effort to get support for a possible military strike, Defense Secretary Cohen visited Jordan, Saudi Arabia, Oman, the United Arab Emirates, Bahrain, Qatar, Kuwait, and Egypt. See id.
140. See id. Analysts at Washington think tanks, such as the Brookings Institution, state that it is difficult to get the Saudis to agree to the use of military force against Iraq. See id.
142. Id.; see also Legality of the Threat or Use of Nuclear Weapons, 35 INT'L. LEGAL MATERIALS 809 (1996) (Advisory Opinion of July 8, 1996).
143. See DOD News Briefing, supra note 3.
ties who do not comply with international treaties and conventions.\textsuperscript{144}

The DTRA also intends to be more effective than its predecessors at substantiating allegations of treaty violations. Prior to the establishment of the DTRA, the U.N. relied on medical and technical experts to investigate allegations,\textsuperscript{145} often yielding inconclusive results.\textsuperscript{146} By dedicating an agency such as the DTRA to investigate treaty compliance and employing the expertise of OSIA officials within the DTRA, conclusive evidence of violations should be more apparent.\textsuperscript{147}

For example, in October 1998, the DTRA sent a team of twelve individuals to Kosovo to monitor the Kosovo Liberation Army (KLA) and Serbian army compliance with a U.N. resolution calling for a cease-fire.\textsuperscript{148} Although the DTRA members were unarmed observers, they ran at least twenty-five patrols a day, moving in bright orange vehicles.\textsuperscript{149} At the end of each day, the patrols reported the day’s events to U.S. embassies, the Secretary of State, and the National Security Council. During this period of observation, the DTRA members stated that they worked extremely hard at maintaining their neutrality toward the Serbian authorities, the KLA, and the local populace. One member stated

People would talk to us. Both sides would talk to us.

\textsuperscript{144} The DTRA’s counterproliferation directorate prepares U.S. leaders to respond when weapons of mass destruction are discovered by studying proliferation threats, developing new technologies, training responders and planning across DOD and other agencies. The DTRA also leads the DOD in supporting operational forces. See Defense Threat Reduction Agency, Counterproliferation (visited Jan. 19, 1999) <http://www.dtra.mil/counter/counter.html>.

\textsuperscript{145} See Falk, supra note 13, at 18-19; see also G.A. Res. 144C, 35th Sess., U.N. GAOR Supp. No. 48, at 61, U.N. Doc. A/35/687 (1980) (discussing the General Assembly’s request for medical and technical experts to investigate allegations that chemical/biological agents were being used in Southeast Asia).


\textsuperscript{147} The DTRA’s On-Site Inspection directorate is primarily responsible for monitoring activities and developing treaty verification monitoring technologies, conducting on-site inspections and aerial monitoring abroad.


\textsuperscript{149} See id.
... I think the local Albanians were glad we were there. Within our region, there were three shootings—three Albanians were killed. Tensions were always high and we were unarmed. We were always a target. There was a cease-fire in place and violence was limited, but the feeling of being threatened was constant.\textsuperscript{150}

The team realized the importance of its presence. As was described by another member, “I had one individual tell me, ‘If you leave, we leave.’”\textsuperscript{151} The DTRA team members also realized the effect of their presence.\textsuperscript{152} More than fifty families returned to one area described as a “ghost town” before the DTRA trucks arrived.\textsuperscript{153} Others in the DTRA saw the impact of the mission on a personal level. One member stated, “I was in a shop and an elderly Albanian woman hugged me and kissed me. We ended up talking to her about 30 minutes about how she felt safer since we were there.”\textsuperscript{154}

Although the DTRA’s presence in Kosovo was not to uncover treaty violations with respect to chemical or biological weapons, its accomplishments in Kosovo are representative of the success of the DTRA in international situations. The DTRA Team Leader, U.S. Army Lt. Col. Leonard Blevins stated, “Some people on the mission from outside the DTRA and the DOD had never been faced with this type of situation before. I really believe our folks were the glue that held it together.”\textsuperscript{155}

The DTRA also indirectly supports Russia’s compliance with the Strategic Arms Reduction Treaty.\textsuperscript{156} Specifically, the DTRA provides funding to Thiokol Propulsion, a division of Cordant Technologies Inc., to design and construct electrical supply lines, gas lines, product storage tanks, and control systems for the disposal of Russian missile fuel.\textsuperscript{157} Funding is supplied as part of the DTRA’s Cooperative Threat Reduction program.\textsuperscript{158} These efforts are yet another example of the

\textsuperscript{150} Id.
\textsuperscript{151} Id.
\textsuperscript{152} See id.
\textsuperscript{153} See Threat Reduction Agency Dozen Lead Observer Force, supra note 148.
\textsuperscript{154} Id.
\textsuperscript{155} Id.
\textsuperscript{157} See id.
\textsuperscript{158} See id.; see also Greg Seigle, Ukraine Aims to Mirror US Threat Re-
DTRA's ability to work globally in facilitating treaty compliance.

B. Proper Spending? Should Money be Spent to Improve Public Health Facilities and Educate Doctors Instead of on the DTRA?

Three programs have the unique potential to mitigate the effect of a chemical or biological attack and assist in domestic preparedness. The Centers for Disease Control and Prevention (CDC), the National Network of Electronic Communications, and the National Domestic Preparedness Office can reduce the threats by helping to identify and control outbreaks, providing clear paths of communication, and preparing local and state first responders.

The CDC promotes health and quality of life by preventing and controlling disease. It is the lead domestic agency for disease surveillance and prevention and often collaborates with the United States Agency for International Development (USAID) and the World Health Organization to control infectious disease problems in foreign countries. The CDC has also worked with the Defense Department to develop surveillance mechanisms to monitor outbreaks of infectious diseases. In 1995, representatives from twenty different United States government agencies reviewed the United States' role in detecting and responding to outbreaks of diseases. They made nineteen recommendations to the U.S. government emphasizing that "a global disease surveillance and response network could enable the United States to respond quickly and effectively in the event of an attack involving

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biological or chemical warfare." Additionally, they noted that "the experience gained in controlling naturally occurring microbes will enhance [the United States'] ability to cope with a biological warfare agent should the need arise." 

Collaborative reports such as these strengthen the United States' capacity to detect and respond to the threat of biological terrorism. In addition, initiatives such as the two-year outbreak investigation program, enable the CDC to address the threat of biological warfare. With its expertise in controlling the spread of infectious diseases, the CDC is a logical partner for the DTRA.

Increased spending on the CDC and other U.S. health organizations will aid the fight against the threat of chemical and biological warfare. These organizations have identified a long list of unforeseen infectious disease problems. The experiences of these organizations in identifying diseases, along with their already developed programs could be adapted to detect chemical weapons and biological agents. For example, in 1997, an avian strain of influenza that had never before attacked humans began to kill previously healthy people in Hong Kong. Later that year, CDC learned that vancomycin, a last resort antibiotic, began to lose its power to cure infections caused by staphylococcus aureus, a common bacterium that can cause critical illness. This same expertise that the CDC has demonstrated regarding infectious disease identification and protection could be used to identify the location of biological weapons and reduce the threat of chemical and biological warfare.

The CDC and other public health groups, however, have not received the DTRA's level of funding. For example, in Fiscal Year 1998, USAID received $50 million to strengthen global surveillance and control of infectious diseases, a small amount compared to the DTRA's 1999 budget of approximately $2 billion.

161. Senate Comm. on the Judiciary, 105th Cong. (1998) (statement of James M. Hughes, Director, National Center for Infectious Diseases, Centers for Disease Control and Prevention.).
162. Id.
163. See Air Force, CDC Agree to Conduct Joint Programs, supra note 160.
164. See Foreign Operations, supra note 159.
165. See id.
166. See id.
167. See id.
The CDC has a positive relationship with several foreign countries making it an essential partner in confronting the threat of chemical and biological warfare. The CDC historically has played a key role in assisting foreign governments in protecting against infectious disease outbreaks. As a result, collaborative efforts between the DTRA and the CDC on foreign soil could enhance the DTRA's threat reduction efforts.

Furthermore, the CDC has experience dealing with prolonged infectious disease outbreaks. CDC staff have responded to several extraordinarily serious situations requiring numerous personnel over extended periods of time. CDC personnel went to the Democratic Republic of the Congo in 1995 during an Ebola hemorrhagic fever outbreak and to Kenya during an outbreak of Rift Valley Fever in 1998. Thus, the CDC staff could provide extensive knowledge to the DTRA of disease conditions and survivability rates in the event of a biological attack.

A second potentially productive DTRA alliance would be with the recently established National Association of County and City Health Officials (NACCHO). NACCHO represents 3,000 public health departments in the U.S. and is dedicated to increasing nationwide disease surveillance. Because a hospital is often the first entity to recognize public health threats, it is necessary that the hospital be able to communicate quickly and disseminate possible infectious disease outbreaks to other hospitals. In recognition of this, NACCHO proposes increased funding to develop a national network of electronic communications among public health agencies to protect communities from the public health consequences of acts of terrorism. In stark contrast to the funding the DTRA receives, local public health departments

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168. See id. For example, in 1997, CDC sent personnel to 145 countries for scientific exchange and technical assistance and provided diagnostic support for hundreds of local investigations. See id.


170. See id. (stating that few of us in public health are familiar with the prevention, diagnosis or treatment of the health effects from agents of biological warfare).

171. See DOD News Briefing, supra note 3; see also DOD News Briefing, supra note 22. The NATO Workshop on political-military decision-making
are significantly underfunded. Increased funding and better electronic communications for local health departments will clearly aid the DTRA mission. By linking disease surveillance functions of local public health departments with the DTRA’s knowledge of chemical and biological threats, the U.S. will be better prepared to answer chemical or biological attacks.

A third area where spending could be increased is the proposed National Domestic Preparedness Office. Increased spending for this entity is important because public health agencies will be the first to respond to, and contend with, the aftermath of a chemical or biological attack. Greater funding will help provide local and state agencies with better training, equipment and resources to deal with this emerging threat.

The National Domestic Preparedness Office is intended to serve as a single point of contact to assist state and local authorities in the event of a chemical or biological attack. The Office’s mission is to focus on planning, training, exercises, equipment and research development, information and intelligence sharing, and health and medical issues. An advisory group will compliment the Office and serve as a bridge between federal domestic preparedness programs and the needs and

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About one-half of all local health departments don’t have the use of electronic mail. At least one thousand local health departments have no access to any on-line or Internet service. Among those that do, one-third are not even linked to their state health department, and fewer than one-quarter can reach other health departments electronically. In some health departments, up to five employees must share one computer.

Id.


174. See id.

175. See id.
priorities of states and local communities.\textsuperscript{176} The Office plans to employ a "coordinator" in each FBI field office who will serve as the primary point of contact for state and local emergency first responders.\textsuperscript{177}

C. Conflicting Duties: Interagency Competition, the Fourth Amendment, and International Agreements

1. Interagency Competition

Senate Hearings in 1975\textsuperscript{178} and 1989\textsuperscript{179} evidenced the strong role of the CIA in countering the threat of chemical and biological weapons attacks. "It's inherently a law enforcement, an emergency response responsibility of the United States, but . . . [DoD is the only agency] in the entire federal government that . . . [has] mobilization capabilities."\textsuperscript{180} Yet, agencies other than the Department of Defense have the lead responsibility in the U.S. when there is an incident involving terrorist activity.\textsuperscript{181} Such conflicts of authority between the DOD, law enforcement, and the Federal Emergency Management Agency could generate interagency competition despite the DTRA's statements that it will work with other agencies to combat the threat of biological and chemical warfare.\textsuperscript{182}

\textsuperscript{176} See id.

\textsuperscript{177} See id.

\textsuperscript{178} See Unauthorized Storage of Toxic Agents: Hearings Before the S. Select Comm. to Study Gov't Operations with Respect to Intelligence Activities, 94th Cong. 1st Sess., at 11 (1975). Then Director of the CIA, William Colby referred to four "functional categories" of CIA activity, including "assessment and maintenance of biological and chemical disseminating systems for operational" use and "providing technical support and consultation on request from offensive and defensive [biological/chemical warfare]." Id.; see also Falk, supra note 13, at 29.


\textsuperscript{180} DOD News Briefing, supra note 3.

\textsuperscript{181} See id.

\textsuperscript{182} See Laura Myers, THE MILWAUKEE J. SENTINEL, Oct. 2, 1998, at 5. John Pike, a security analyst for the Federation of American Scientists stated "[t]he CIA, Defense Intelligence Agency and others don't work closely
2. The Fourth Amendment

A large portion of the DTRA’s responsibilities falls within the category of domestic weapons’ inspection. This has the potential to raise constitutional questions under the Fourth Amendment. Inevitably, situations will arise in which a DTRA authorized search for chemical or biological agents will intrude upon a citizen’s right to be free from “unreasonable searches and seizures” as required by the Fourth Amendment.183 For example, DTRA agents might locate the headquarters of a known anti-government group and want to search for evidence of biological agents. The DTRA might suspect that the group has small amounts of VX gas that it could unleash within the hour at the offices of a nearby multinational corporation. Under the Chemical Weapons Convention, the DTRA could possibly inspect the group’s headquarters without a search warrant.184 Moreover, the DTRA could seize samples, inspect documents and take photographs before a judge made a determination of probable cause.185 Although authorized by the CDC,186 DTRA inspections of domestic facilities would surely raise Fourth Amendment challenges. In addition, the DTRA would be held to the same Fourth Amendment standards when inspecting foreign weapons facilities.187

3. International Agreements

The establishment of the DTRA may also cause potential conflicts with the endorsement of international agreements. For example, Article 24 of the U.N. Charter gives the Security Council “primary responsibility for the maintenance of international peace and security”188 and

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183. U.S. CONST. amend. IV.
184. See Rotunda, supra note 127, at 149.
185. See id.
186. See Chemical Weapons Convention, supra note 10, at art. IV. The Chemical Weapons Convention applies to both governments and private individuals and allows inspection of publicly or privately owned places where targeted chemical weapons may be produced. See id.
187. See Rotunda, supra note 127, at 143 (citing Reid v. Covert, 354 U.S. 1 (1957) (plurality opinion). “Searches that violate the Fourth Amendment are not cured by the simple expediency of a treaty ratification or an executive agreement.” Id.
188. Rubenstein, supra note 179, at 342.
its resolutions are "absolutely binding on all member states." It is conceivable that the DTRA's primary role in this area will be to ensure that countries are complying with these resolutions. The DTRA however, must play a limited role in the enforcement of treaty violations to comply with the U.N. charter.

IV. CONCLUSION

Establishing the DTRA provides the United States with the capability of dealing with the new era of chemical and biological weapons. History shows that international treaties and conventions have failed to deter terrorist groups and countries from producing and using such weapons. The DTRA provides a means to protect the nation from the unique threat of weapons of mass destruction. However, the DTRA is not sufficient by itself to supply this protection. Additional spending is necessary to fund the civilian health departments and to educate doctors on how to respond to outbreaks caused by these weapons. At the same time, the United States should not rely solely on the DTRA to reduce the overall threat, as every threat cannot be discovered. The health industry must also be adequately prepared in the event that terror strikes.

189. See id.
190. Typically, remedies for violation of international law are reparation, in the form of either compensation, restitution or satisfaction. See id. at 366.