Article VII of the BTWC
Assistance in case of a treaty violation

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Article VII

Each State Party to this Convention undertakes to provide or support assistance, in accordance with the United Nations Charter, to any Party to the Convention which so requests, if the Security Council decides that such Party has been exposed to danger as a result of violation of the Convention.
Interpreting Article VII

- **Assistance**
  - Generally understood to mean humanitarian aid
  - However, explicit reservations by Austria and Switzerland to Article VII in view of their status of permanent neutrality ⇒ how explicit was the reference to humanitarian aid in 1971?

- **UN Charter**
  - Includes Chapter VII (which contains Article 51)

- **If the Security Council decides**
  - What happens if there is no decision?
  - Situation of armed conflict ⇒ may be highly politicised

- **Violation of the Convention**
  - Any provision of the BTWC, or is reference to BW use implicit?
  - Does Article VII only cover acts by States Parties?
  - Quid non-Parties; Terrorists?
RevCons: Additional agreements

- **Assistance**
  - Can be promptly provided by States Parties, pending UNSC decision (3rd RevCon, 1991)
  - Interpretation 4th RevCon (1996): prohibition in Article I covers **BW use**
    - Again explicit reference to **BW use**
    - Reference to 'anyone other than a State Party' (thus includes terrorists)
  - UN and specialised organisations can play role in assistance (3rd RevCon, 1991)

- **Specification of nature of assistance (humanitarian)**
  - 7th RevCon (2011): expertise, information, protection, detection, decontamination, prophylactic and medical and other equipment

- **National preparedness contributes to international response capacity**
  - 6th RevCon (2006): response, investigation and mitigation of disease outbreaks, including alleged BW use

- **Emphasis on the responsibility and role of individual State Party**
  - For providing assistance
  - For coordination with international organisations
  - Own preparedness to meet health threats
Realities of the BTWC

- Treaty is governed by the community of States Parties
  - No formal international organisation to oversee treaty implementation
  - No legal person with contracting authority
- No capacity to prepare for contingencies in case of major treaty violations
  - No equivalent provision to Article X of the CWC
    - Was foreseen in Article 13 of the draft legally binding Protocol (2001)
  - No systematic (national) capacity building in surveillance, detection, diagnostics, treatment, etc. (as could be conceived under Article X of the BWC)
  - No prepositioned equipment and supplies or systematic (regional) training programmes
  - No independent investigative capacity
  - No international network of certified reference laboratories to analyse samples or with forensic capacities
FRS – UNIDIR tabletop exercise (Nov 2016)

- **Victim state**: triggered Article VII
  - After confirmation that disease was non-endemic, **AND**
  - Disease had been genetically modified to enhance resistance to antibiotics
  - In earlier stages it was wary of the political implications of triggering Article VII

- **Alleged perpetrator**: called for investigation by UN Secretary-General
  - Sought confirmation of the nature of the outbreak
  - Government convinced that it was not responsible: exoneration & transparency
  - Factor in decision as to whether it would provide assistance under Article VII rather than via other mechanisms

- **Outside country**: emergency assistance via other mechanisms
  - Willing to provide emergency assistance, but not under Article VII (e.g., WHO)
  - Demanded *proof* of deliberate attack before willing to offer Article VII assistance

- **Report of the TTX**:
Implications of three directions

- **Coordination of the response**
  - Each route gives lead to different bodies with different mandates
  - Raises questions about overall coordination of the response, potentially involving
    - UN Security Council and UN Secretary-General
    - International organisations (e.g. WHO)
    - Bilateral assistance
    - International non-governmental organisations
    - Donor entities (states, inter-governmental organisations, charities and foundations, ...)
    - International military units (both for logistics assistance or peace keeping), policing and law enforcement assistance, etc.
    - Local health care and logistics

- **Uncertainty about the Article VII process informed preferences in function of national assessment of situation based on then available information**
  - Nowhere has the process for triggering Article VII been spelled out
  - To whom should the request be addressed? (BTWC ISU, BTWC Depositories, UNSC, ...)

- **What is ‘sufficient’ proof?**
  - Three different demands
  - Who decides what proof is sufficient?
  - Not a question of criminal culpability, but grounds for triggering Article VII
  - Concern about the political implications of triggering Article VII (UNSC, allegation, ...)
Comments on decision-making chart – 1

- Chart built on assumption of major disease outbreak potentially causing a humanitarian crisis
  - The outbreak is unusual with deliberate intent suspected
  - There is no established procedure for dealing with an Article VII request
    - The UNSG Investigative Mechanism is not a formal part of the BTWC regime
      - However, RevCon final documents have referred to it
      - Some States Parties have listed their material support for the Investigative Mechanism as contributing to Article VII (Repurposing of contributions)
      - Based on the Syria experience and concerns of false allegations (e.g., by the accused state) a request for an investigation may accompany or follow the Article VII invocation
      - The ‘accused’ State Party may request the UNSG Investigative Mechanism to exonerate itself (FRS – UNIDIR TTX)
    - The BTWC ISU has not yet been formally designated as the recipient of any form of complaint, nor do the 3 Depository States have any formal function in the management of the BTWC
      - Would a State Party consider invoking Article V before deciding on Article VII (bearing the potential urgency of the crisis in mind)?
      - A State Party can always appeal directly to the UNSC or WHO, etc.
  - Multiple scenarios possible
    - Elements to the left of the chart will be less evident in case of a threat (‘danger’) rather than of an actual incident
Consideration has to be given to the *internal* decision-making process of a State Party thinking of invoking Article VII

- Which factors may contribute to invoking Article VII?
- Which factors may mitigate against an Article VII request?
  - Domestic
  - International
  - Situation-specific

**Are there other cost-benefit factors to be considered?**

- Relative to other procedures foreseen under the BTWC
- Relative submitting the concern directly to the UNSC
- Relative to seeking assistance directly from international organisations such as WHO, OIE, FAO, ...
Possible phases in an Ebola-like crisis

- **Pre-outbreak phase**
- **Triggering Article VII**
- **Phase outside control of BTWC States Parties**
- **Internationally coordinated assistance may be terminated before outbreak is over**

1. **Start outbreak**
2. **Assessment of outbreak + consideration of emergency assistance request**
3. **Internationally coordinated emergency assistance**
4. **Final outbreak response**
5. **Societal reconstruction**

- **UNSC decides**
- **Opportunity for States Parties to re-enter process?**
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Domestic implementing Article VII

- **Two dimensions of implementation**
  - Contingency planning for international assistance
  - Domestic preparations for receiving assistance

- **The domestic dimension**
  - Different areas for enhancing resilience and contingency planning
    - Detection and surveillance capacities
    - Analytical capacities
    - Health infrastructure
    - Biorisk management (biosecurity & - safety)
      - Important for transfer of samples to or across neighbouring states in case of an epidemic
    - Infrastructure development to be able to receive large-scale assistance
      - E.g. ports or airports and procedures for logistics management
  - Possibilities of assistance under BTWC Article X to be explored
An additional layer of considerations

Which type of crisis would be considered under Article VII?

- In principle, all deliberate outbreaks involving human, animal or plant pathogens
- However, impact of media and subjective sense of urgency
- Are we dealing with an outbreak, health crisis or humanitarian crisis?
  - Would the distinctions make a difference for Article VII assistance?

<table>
<thead>
<tr>
<th>The outbreak</th>
<th>Human pathogens</th>
<th>Non-human pathogens</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slowly developing crisis</td>
<td>Anthrax outbreak</td>
<td>Anthrax outbreak (e.g., livestock) <em>Thrips palmi?</em></td>
</tr>
</tbody>
</table>
Conclusions

- **Debate on Article VII is still in early conceptual stage**
  - Formulation of broad principles
  - Emphasis on the humanitarian dimension
  - Need for clarification of terminology in Article VII, as intent was different during negotiation of BWC
  - Review of status implementation of Article VII (BWC/CONF.VIII/INF.3) contains primarily national activities whose goals were reinterpreted in function of Article VII

- **Major gaps**
  - No common idea of how a state might decide to invoke Article VII or how such a state should proceed
  - Major gap analysis is required to understand the demands of implementing Article VII in all its stages
    - Relationship States Parties – UNSC requires clarification, including its political and organisational dimensions
    - Is prior determination of deliberate disease a prerequisite for invoking Article VII and UNSC action?
  - In particular, it is necessary to clarify the additional benefits to States Parties for invoking Article VII over existing mechanisms
    - There are clear disadvantages
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