Triggering Article VII of the BTWC

Conditions and basic scenarios

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Article VII of the BTWC: Initiating a request for assistance in case of exposure to a biological danger as a result of a violation of the Convention

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- **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
    - **BTWC ISU** not formally designated as recipient of any form of complaint, nor do **3 Depository States** have any formal function in BTWC management
    - Would a State Party consider invoking **Article V** before deciding on Article VII (bearing the potential urgency of the crisis in mind)?
      - In that case, are there (reserve) funds available to convene such a meeting (in view of current contribution crisis)?
      - A State Party can always appeal directly to the UNSC or WHO, etc. (+ BTWC Article VI)
  - **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
Comments on decision-making chart – 2

• 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
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
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 repurposed 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?
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