

Triggering Article VII of the BTWC

Conditions and basic scenarios

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Article VII of the BWC and the UN System
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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*
 - 6th & 7th RevCon (2006 & 2011):
 - 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 – 1

- **Governance by community of States Parties**
 - The BTWC is not a UN treaty
 - UN assistance to BTWC follows from annual resolution adopted by UNGA 1st Committee
 - No international organisation to oversee treaty implementation
 - BTWC Implementation Support Unit (ISU) has a limited mandate
 - ISU is embedded in UN Office for Disarmament Affairs (UNODA Geneva) but not an integral part of it
- **No legal person with contracting authority, which affects**
 - Signing of advance protocols / memoranda with UN and other international organs
 - Purchasing of advance goods and services

Realities of the BTWC – 2

- **No capacity for contingency preparations**
 - No deliberative and decision-making bodies of BTWC States Parties
 - No roles for BTWC ISU identified
 - No equivalent provision to Article X of the CWC
 - Was foreseen in Article 13 of the draft legally binding Protocol (2001)
 - No autonomous capacities for surveillance, detection, diagnostics, treatment, etc.
 - No prepositioned equipment and supplies or systematic (regional) training programmes
- **No autonomous investigative capacity**
 - No formal link between BTWC and UN Secretary-General's Investigative Mechanism
 - No international network of certified reference laboratories to analyse samples or with forensic capacities
 - No formal body to assess implications of investigation results

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:
 - <http://www.the-trench.org/wp-content/uploads/2013/06/201707-FRS-BTWC-Article-VII-TTX-report.pdf>

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, ...)

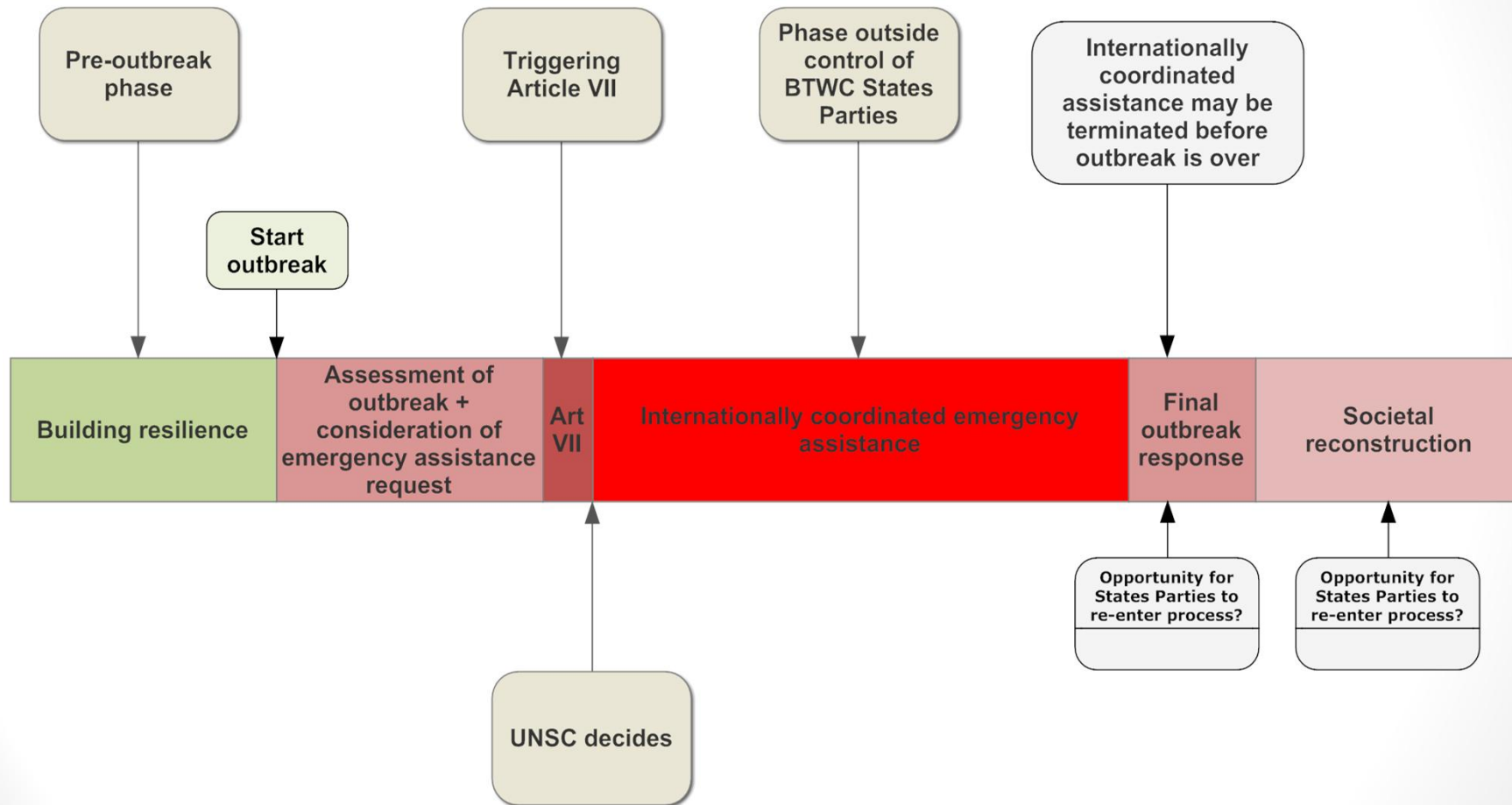
Comments on decision-making chart – 1

- 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



Additional layers of consideration

<i>The outbreak</i>	Human pathogens	Non-human pathogens
Fast spreading epidemic	Ebola crisis Mentioned in Final Document 8 th RevCon, §34	Foot-and-mouth disease Blight
Slowly developing crisis	Anthrax outbreak	Anthrax outbreak (e.g., livestock) <i>Thrips palmi?</i>

- Which type of crisis would be considered under Article VII?
 - In principle, all deliberate outbreaks involving human, animal or plant pathogens
 - However, what is the 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?
- Still, is 'exposed to danger' limited to disease outbreaks?

Where BTWC States Parties can act

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

Conclusions

- **Debate on Article VII is still in early conceptual stage**
 - Formulation of broad principles
 - Emphasis on the humanitarian dimension in case of a suspicious outbreak
 - Need for clarification of terminology in Article VII, as intent was different during negotiation of BTWC
 - 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
 - What roles remain for BTWC States Parties after UNSC decision?
 - 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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