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**
  - 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
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

Pre-outbreak phase

Triggering Article VII

Phase outside control of BTWC States Parties

Internationally coordinated assistance may be terminated before outbreak is over

Building resilience

Assessment of outbreak + consideration of emergency assistance request

Art VII

Internationally coordinated emergency assistance

Final outbreak response

Societal reconstruction

Start outbreak

UNSC decides

Opportunity for States Parties to re-enter process?

Opportunity for States Parties to re-enter process?
### Additional layers of consideration

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

- **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
THE TRENCH

Recalling where science, industry and military art converged
Challenging entrenched positions

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