Triggering BTWC Article VII
Outcomes from the 2nd tabletop exercise

Dr Jean Pascal Zanders
Senior Research Associate
Fondation pour la recherche stratégique (FRS), Paris

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Tabletop exercises (TTX)

- **Two TTX completed; one forthcoming**
  - FRS + UNIDIR, Geneva, 8-9 November 2016 (8th RevCon)
  - FRS + BTWC ISU/UNODA, UNREC, Lomé, 29-30 May 2019
  - *FRS + BTWC ISU/UNODA, Geneva, 8-9 August 2019*

- Financed by the Ministry of Foreign Affairs, France

- **Focus of TTX is on the decision to trigger Article VII**
  - Period between detection of outbreak and decision by UN Security Council
  - The TTX do not look into the organisation of assistance
Goals of completed TTX

• **Geneva exercise (November 2016)**
  - Discovery of significant issues
    - Which steps need to be identified and implemented before an outbreak?
    - How should/could Article VII be triggered?
    - Which steps are needed to operationalise Article VII?
  - **Participants**: 26 national representatives and experts from civil society organisations, from 14 countries

• **Lomé exercise (May 2019)**
  - Adaptation of the 2016 scenario
    - Participants presented with outcomes of 2016 TTX (*no discovery*)
    - Discussion of regional/local preparations ahead of an incident
  - Targeted the francophone countries in West Africa
  - **Participants**: 30 outbreak response experts, diplomats and government officials, international and regional organisations, civil society experts
1st TTX (2016): Key considerations

- **Triggering Article VII will be politically highly sensitive**
  - Presumption of major violation of BTWC
  - Geopolitical interests may interfere at each stage of the process
  - Article VII may therefore not be the initially preferred route
    - Lack of clear procedure and requirements currently additional barrier

- **Article VII is but one route available to a BTWC State Party**
  - A UN Member may go directly to the UNSC
  - A state party may call for consultations (Article V)
  - A state party may lodge a formal complaint (Article VI)
    - Immediately
    - After failure to resolve the matter via consultation (Article V)
  - A State Party may seek assistance outside the BTWC framework
  - As part of the process, a State Party may request confirmation of the deliberate intent behind the outbreak (e.g. UNSG mechanism)

- **Time frames for decision-making**
2nd TTX (2019): Key elements – 1

- Participants received detailed briefing on the outcomes of the 2016 exercise
  - Available decision options were discussed
  - Potential risks, uncertainties and consequences of certain decision choices (as experienced in the 2016 TTX) were explained

- Participants could draw on their experiences from the Ebola crisis
  - Representatives from Francophone countries were health crisis responders or coordinators
  - Representatives from (sub-)regional African organisations had relevant expertise
Discussions focused more on the Article VII option and its alternatives

Within the BTWC context:
  - What role for Article V?
  - What role for Article VI?

How to confirm that the outbreak is deliberate?
  - What type of evidence is required?
  - Who should confirm the allegation?

What type of assistance is available (preventive and response)?
  - Bilaterally
  - Regionally
  - Via a BTWC ISU database
What advantages/benefits does Article VII offer over existing response and assistance mechanisms?

- Extreme urgency
- Immediate mobilisation of resources on global level

However,

- Circumstances of outbreak in early stages likely to be uncertain
- Triggering Article VII implies accusation of deliberate use of a disease agent
  - This linkage of assistance request and accusation proved problematic for participants
  - How does one prevent escalating an already existing conflict?
• Is it possible for BTWC states parties to design an Article VII procedure whereby the request for emergency assistance is decoupled from (implicit) accusations?
  • If yes, what is then the difference with other emergency assistance mechanisms?

• Is the relevancy of Article VII in preparedness?
  • Having international and national legal and regulatory measures in place to address the different dimensions of international (emergency) assistance?
    • E.g. cross-border transfers of persons and goods; diagnostic samples, ...
  • Developing national and regional capacities?
    • Health infrastructure
    • Diagnostics
  • Is there an option for focussed assistance & cooperation under Article X?
Timing of invocation of Article VII

Participants noted that suspicions of a biological attack will under most circumstances not exist at the start of the outbreak.

- Indications will gradually build up until they form grounds reasonable suspicions.
- The realisation may only come after weeks, if not months.
- **Implication**: any action under Article VII will necessarily commence after other assistance operations are already under way.

Concerns from the perspective of crisis operations / management

- How will Article VII impact on ongoing assistance operations?
- Will it add a new level of operational decision-making / coordination?
- Can decision-making under Article VII (e.g. among States Parties or by the UNSC) delay operations on the ground?
  - Point: the disease outbreak cannot wait.
2nd TTX (2019): Points of interest – 2

• **On the need to determine whether the outbreak is deliberate**
  • A common position among participants was that assistance should not depend on the outcome of a formal investigation:
    • A presumption of deliberate intent should suffice, or
    • A body of evidence strongly suggesting the intentional nature of the epidemic

• **However, an assistance request should be accompanied by evidence**
  • From a national investigation
  • From the WHO, neighbouring countries or humanitarian NGOs.
  • Discussions generally followed the process laid out in the RSA working paper

• **On the UNSG Investigative Mechanism**
  • Stands outside the BTWC
  • Same applies to other investigative mechanisms (e.g. Interpol)
  • Some participants argued for clarification of roles and better coordination between the UNSGM, the UNSC and the BTWC.
2nd TTX (2019): Points of interest – 3

- **Assessment of the South African working paper**
  - The document had been provided to participants to have some guidance as to how Article VII might be triggered.
  - Participants were requested in the final sessions to offer comments or amendments
  - The TTX report list 10 such suggestions

- **Suggested process led to an important surprise in the TTX**
  - RSA working paper suggests (but does not say so explicitly) that the State Party concerned should address its request directly to the UNSC
    - This is exactly what happened in the TTX
  - The move took the other simulated states by surprise
    - Throughout the crisis there had been an **emphasis on information sharing**
  - The proposed process in the working paper does not call for or recommend prior notification of other States Parties
    - As a consequence, both other simulated states were confused how this request related to assistance that they were already supplying and how they could do more

- **Question:** how does this link up with the multilateral process underlying the BTWC?
3rd TTX (2019 – *Starts tomorrow*)

**Targets primarily states parties and their national experts**
- 50 registered participants received so far
  - 31 state-party representatives
- Also international organisations (e.g. FAO, OIE, WHO) involved
- Participation by some experts and civil society representatives

**Goals**
- Deepening of insights from first two TTX
- Offering concrete elements for procedure for triggering Article VII
- Understanding the concept of ‘crisis’
  - What factors influence the determination of ‘crisis’?
  - Under which circumstances would BTWC states parties consider assistance under Article VII?
  - How does an active conflict affect Article VII considerations?
Publications

