Preventive measures against terrorism with BW

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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?
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
**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?
Issues that require resolution – 1

- What are the concrete procedures for requesting assistance?

- What are the concrete procedures for mobilising and coordinating action of international organisations?

- Who is in charge?
  - For coordination?
  - For operations in the field?
Issues that require resolution – 2

- Given today’s global health security context, what is the specific area BTWC States Parties should be concerned with? And what is their specific role?
  - How much and what type of evidence must support a request?
  - How does the UNSC determine BW use? How to organise an onsite investigation (fast)?
  - Under which circumstances can teams go into a warzone to offer assistance to victims of BW use?
  - Who takes responsibility if the UNSC fails to take appropriate decisions?

- Invoking Article VII suggests BW use, which is an act of war

  \[\textit{Risks escalating an ongoing conflict}\]
BTWC Article VII and possible implications

Case Zero (Start outbreak)
- Discovery new cases
- Outbreak looks unusual
- Disease identification

Assistance operations get underway
- Humanitarian NGOs
- International organisations

First indications that the outbreak may not be natural
- Number of cases increase rapidly
- Epidemiological patterns emerge
- Health crisis becomes an (international) epidemic
- International humanitarian crisis declared
- International humanitarian assistance operations

Indications deliberate outbreak multiply
- Crisis expands further
- Internal assistance intensifies
- Conviction emerges that outbreak is deliberate

Triggering BTWC Article VII
- International assistance response by BTWC states parties

UNSC decides BTWC violated

- Confirmation of multiple Cases Zero
- Determine geographic origin agent
- DNA analysis (→ modification?)
- Identify perpetrator
- Etc.

How does this assistance relate to assistance already provided?
- Does it create new levels of decision-making / coordination?
- Implies BW use
- Implies an act of war
- How does it impact international assistance underway?
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, ...
RevCons: Additional agreements

- **Assistance**
  - Can be promptly provided by States Parties, pending UNSC decision (3\textsuperscript{rd} RevCon, 1991)
  - Interpretation 4\textsuperscript{th} RevCon (1996): prohibition in Article I covers \textit{BW use}
  - 6\textsuperscript{th} & 7\textsuperscript{th} RevCon (2006 & 2011):
    - Again explicit reference to \textit{BW use}
    - Reference to \textit{‘anyone other than a State Party’} (thus includes terrorists)
  - UN and specialised organisations can play role in assistance (3\textsuperscript{rd} RevCon, 1991)

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

- **National preparedness contributes to international response capacity**
  - 6\textsuperscript{th} 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
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**
  - Assistance & cooperation for less developed countries in areas mentioned above
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
Publications


