

OPERATIONALISING ARTICLE VII OF THE BIOLOGICAL WEAPONS CONVENTION

EDITED BY JEAN PASCAL ZANDERS



United Nations

Copyright © 2022 United Nations
All rights reserved

Disclaimer:

This publication was produced with the financial support of the Government of Japan. The views expressed herein are not necessarily those of the Government of Japan or of the BWC ISU

Designed and produced by:

Implementation Support Unit for the Biological Weapons Convention, Geneva

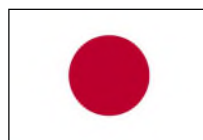
Credits:

All photographs used in this publication have been sourced from the United Nations Secretariat and other United Nations entities. Unless otherwise indicated, all data in this publication were sourced from the United Nations.

Photo cover by Fayette Reynolds M.S.

OPERATIONALISING ARTICLE VII

OF THE BIOLOGICAL WEAPONS
CONVENTION



CONTENTS

Preface	V
Author biographies	VIII
Table of Abbreviations	XI
On the origin of Article VII	1
The Evolution of BWC Article VII	7
Triggering Article VII: Procedural options and issues to resolve	12
The importance of international cooperation activities (Article X) in the effective operationalisation of assistance and protection measures (Article VII)	16
Evidence to provide when requesting Article VII assistance	21
Emergency assistance: Insights from the Chemical Weapons Convention	27
Preparedness against major disease outbreaks in Africa since the Ebola epidemic	32
The COVID-19 pandemic and early detection of unusual events: Lessons from and for the BWC	38
Increasing assistance and response capacities: What role for international organisations?	44

PREFACE

Article VII is arguably one of the least detailed provisions in the Biological Weapons Convention (BWC). It comprises a single sentence:

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.

Its clauses do not fit well together. The reference to the UN Security Council (UNSC) has its roots in the original draft Convention proposed by the United Kingdom in 1969 that outlined specific responsibilities and obligations for the body. Today, it makes little sense to wait for a decision in New York to authorise emergency assistance. Fortunately, States Parties have already clarified that 'assistance' as meant in the article is not military, but humanitarian. They have also agreed that humanitarian assistance may be provided before any such UNSC decision. Article VII also circumscribes the context for an assistance request, namely exposure to a danger that is the consequence of a breach of the Convention.

Over the past decade, States Parties have adopted an issue-oriented approach to Article VII: ways of organising assistance and assistance requests (e.g. the assistance database proposed by France and India), specific assistance proposals (e.g. mobile biomedical units suggested by Russia), or a procedure for requesting assistance (e.g. the evolving proposal for triggering Article VII put forward by South Africa).

However, when taking a more process-oriented approach, different issues arise. First, if a deliberate disease outbreak is sufficiently severe, then national, regional or international responses will likely already have been mobilised before the first indications of deliberate origin emerge. This interval between first indications of the outbreak and realisation that something may be amiss may range from several weeks to months. The questions to consider are therefore:

- What could BWC States Parties contribute to emergency relief not yet being supplied under other response mechanisms?
- What will the consequences be of adding another layer of decision-making and bureaucratic organisation to the emergency response already underway?
- What will the consequences be of a security overlay? Will or can all responding entities (especially non-governmental relief organisations) remain in place? What might the consequences be of, say, peacekeeping forces in the region moving to a higher state of alert, simply because certain types of protective or emergency equipment can only be released according to alert levels?

Thinking in terms of a process, BWC States Parties might wish to consider preparedness. How does one put capacities in place to prevent or deal with potential deliberate outbreaks? Many concrete projects or programmes can be set up but may involve other BWC articles. Material assistance, infrastructure and training can and are already being supplied under Article X on international cooperation. The same goes for detection and analytical capacities, and so on. Specific biorisk management capacities could be provided under both Articles IV and X. In addition, States Parties could consider parallel legislation to authorise the transport and handling of samples across borders and protocols to maintain the integrity of the chain of custody. They could also already reflect on how collected data can be shared among partner organisations or with BWC States Parties. Many restrictions or conditions may apply, including ones in the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity.¹

The demand for solid evidential quality under an Article VII request will likely be high. There exists no laboratory network to support the BWC (like the one under development for the UN Secretary-General's investigative mechanism or available to the Organisation for the Prohibition of Chemical Weapons). Findings of a highly qualified national reference laboratory in one BWC State Party may have to be validated by another, preferably international and neutral institution.

The BWC has no international body to oversee and promote such initiatives, so States Parties would have to decide on ways to organise and finance them. Given that under a global disarmament treaty all States Parties have equal obligations and enjoy equal rights, how can the community of States Parties ensure that everybody benefits from these preparations?

Second, the procedure for requesting emergency assistance requires urgent consideration. Submitting a request to the UNSC is the only course of action available under the BWC. Neither Article VII proper, nor subsequent common agreements offer any guidance. Three tabletop exercises organised by the BWC Implementation Support Unit between 2016 and 2019 revealed some hesitation to invoke the provision due to lack of clarity about the steps to take and the consequences these may entail. Participants were particularly concerned about the potential for conflict escalation if the article were to be invoked. The deliberate release of a pathogen indeed amounts to an act of war and represents a most egregious breach of the BWC. In addition, is it possible for the international community to prevent UNSC Permanent Members from wielding their veto power when considering an Article VII request? And what role is left for the BWC States Parties once the UNSC has received the request? How does the crisis end? Do States Parties take over the helm from the UNSC once that body has declared an end to the crisis, even when the health emergency might not necessarily be completely over?

The BWC is a disarmament treaty, therefore an instrument of international security relating to weapons, their acquisition and retention, and their use. An outbreak or epidemic is most often a natural phenomenon, occasionally the consequence of an accident, and rarely the effect of a deliberate release to harm humans, animals or plants. Issues considered under Article VII overlap greatly with global health questions, as seen when States Parties considered the implications of the Ebola crisis in West Africa. Likely, they will also invoke the COVID-19 pandemic in their statements during the forthcoming Ninth Review Conference. Yet, the scope of the BWC is different; it is more limited.

¹ Nagoya Protocol on Access and Benefit-sharing (2014). Convention on Biological Diversity. <https://www.cbd.int/abs/>

When envisaging operationalisation of Article VII, the question arises how unique the considerations and proposals to the BWC are? Are States Parties considering or deciding on matters to be implemented by other organisations or institutions, or processes that fall outside of the BWC scope? Conversely, what decision-making structures exist under the BWC and what types of actions can BWC States Parties manage, control or oversee? Finally, what are the lateral consequences of concrete proposals States Parties will consider? Do they have implications for other parts of the BWC or would they benefit from additional agreements under other BWC articles?

The chapters in the present publication, prepared in preparation of the Ninth Review Conference of the BWC to be held in 2022, summarise the current state of reflection on the operationalisation of Article VII. They also highlight and discuss several issues States Parties will come across as they will try to further develop shared understandings and agreements on how to operationalise Article VII. The ideas and commentaries meant to stimulate understanding of issues and future reflection do not prejudge deliberations by States Parties and bind only the respective authors in their individual capacity.

The financial support by the Government of Japan in the preparation of the present publication is greatly appreciated.

Jean Pascal Zanders

30 March 2022

AUTHOR BIOGRAPHIES

Ms Kadiatou DAO has been working in the biological field since 2008. She graduated to master's degree in Science and Technology, and certified in Nonproliferation and Arms control field with focus on Biosecurity. Nowadays she is assists with the implementation of the International Health Regulations in Mali and is a member of the Biological Weapons Convention Experts and Youth for Biosecurity and Emerging Leaders in Biosecurity across the world.

Dr Maria J. Espona, Biologist (1994), Master en Terrorism Studies (2013) and Doctor in Criminology (2019). She works mostly in the fields of chemical and biological weapons and export controls. She has written extensively on those topics. She teaches in Postgraduate Courses Science and Technology and Disarmament, Research Methodologies, Information Quality and Intelligence in Argentina and Peru. She is the Director ArgIQ, Argentina Information Quality. She also leads the Targeted Initiatives on CBRN Export Control on Dual-Use Materials and Intangible Technologies in Central Asia (ISTC) and the GUAM Countries (STCU).

Ms María Garzón Maceda is the Research Assistant of the WMD and Space Programmes at UNIDIR. She has over 10 years of experience in the field, previously serving as a public servant at the Argentine Ministry of Foreign Affairs.

Dr Richard Guthrie is a consultant researcher primarily focused on international security issues with some four decades of experience in and with the non-governmental, governmental and inter-governmental sectors; mostly looking at technology control and innovation issues that relate to materials and technologies that can have hostile as well as peaceful uses. He currently runs a project called CBW Events which has the aim of creating a record of events to enable and encourage understanding of how policies on the issues relating to chemical and biological warfare and its prevention are developed. He has side interests in event management for mass gatherings, in emergency planning/response, and in international legal frameworks.

Dr Talkmore Maruta is a Public Health Medical Laboratory Scientist with a BSc (Hons) Degree in Medical Laboratory Sciences, Masters in Public Health (MPH), Masters Business Administration (MBA) and PhD in Public Health and currently studying for a Masters in International Affairs and Diplomacy. He has regional and international experience in laboratory system strengthening, disease surveillance, epidemic preparedness and response and biosafety and biosecurity. He contributed significantly in the development and implementation of two flagship programmes of Strengthening Laboratory Management Towards Accreditation (SLMTA) and WHO/AFRO Strengthening Laboratory Quality Management Towards Accreditation (SLIPTA) programmes that have been implemented in over 1300 laboratories in 55 countries in Africa, Asia, Latin America, the Caribbean, and the Oceania and helped over 200 laboratories attain accreditation to international standards. His experience

spans the Africa, Caribbean and South East Asia Regions where he has closely worked with over 30 Ministries of Health while working with renowned organizations like Clinton Health Access Initiative (CHAI), Foundation for Innovative New Diagnostics (FIND), African Society for Laboratory Medicine (ASLM) and the East Central and Southern Africa Health Community (ECSA-HC). His work in the region was recognized at the ASLM 2012 Conference with a Distinguished Leadership award and the "Best Employee" award in the World Bank supported Southern Africa TB Health Systems Strengthening (SATBHSS) project in 2019. At Africa Centres for Disease Control and Prevention (Africa CDC), Dr Maruta coordinates the Africa CDC Regional Biosafety and Biosecurity Initiative whose goal is to strengthen the biosecurity and biosafety systems of African Union Member States to comply with international regulations including the International Health Regulations (IHR 2005), Biological Weapons Convention (BWC), and United Nations Security Council Resolution (UNSCR) 1540 and the GHSA action packages (APP3). He currently Co-Chairs the APP3 with Uganda.

Dr Robert (Bob) Mathews is an honorary Associate Professor at the University of Melbourne Law School. He was previously Head of the NBC Arms Control Unit at the Australian Defence Science and Technology Group, and from 1984 until 2017 served as Scientific Adviser to Australian delegations during the negotiation and implementation of the Chemical Weapons Convention and efforts to strengthen the Biological Weapons Convention.

Dr James Revill is the Head of the WMD and Space Programmes at UNIDIR. His expertise are on the evolution of the chemical and biological weapons. He has published widely in these areas.

Valeria Santori, PhD is an international consultant. As a UNODA Consultant for the BWC-ISU, she led the development of the International Bio-Emergency Management Framework for Deliberate Events (BEMF) in coordination with relevant UN offices and other international organisations. Ms Santori also consulted inter alia with the United Nations Counter-Terrorism Implementation Task Force, now United Nations Office of Counter-Terrorism, on response to terrorist use of biological and chemical weapons and was formerly Senior Policy Officer with the Office of Strategy and Policy and the Verification Division at Organisation for the Prohibition of Chemical Weapons.

Ms Lizeka Tandwa obtained her MSc (Med) Bioethics and Health Law and Bachelor of Health Sciences (Hons) from the University of the Witwatersrand. She is a lecturer and the programme head of the MSc (Med) in Bioethics and Health Law programme at the Steve Biko Centre for Bioethics, University of the Witwatersrand. She is the principal researcher and writer for the State of Laboratory Biosafety and Biosecurity in the SADC region study at the Academy of Science of South Africa. Her current research interests include biosecurity and dual-use research, public health and research ethics.

Dr Ralf Trapp is a consultant on chemical and biological weapons arms control. A chemist and toxicologist by training, he participated in the negotiations of the Chemical Weapons Convention and in 1992 joined the OPCW where he worked on issues of verification, international cooperation, and science advice. Since 2006, he has provided services to, amongst others, the OPCW, the United Nations, and the European Union.

Dr John R Walker is a Senior Associate Fellow at the Royal United Services Institute and the European Leadership Network, and a Senior Research Fellow at the Department of Science and Technology Studies, University College London. Dr Walker served in the Arms Control and Disarmament Research Unit in the UK Foreign and Commonwealth Office 1985-2020. He was Head of ACDRU from 2014 until he retired in 2020.

Dr Jean Pascal Zanders is an independent researcher/consultant on disarmament and security questions at The Trench. He is also a Senior Research Associate at the Fondation pour la Recherche Stratégique (Paris) and Research Associate at the Centre on Conflict, Development & Peacebuilding, Graduate Institute of International and Development Studies (Geneva). He holds master's degrees in Germanic Philology-Linguistics (1980) and Political Sciences (1992) and a PhD Degree in Political Sciences (1996). He was Project Leader of the Chemical and Biological Warfare Project at the Stockholm International Peace Research Institute (1996–2003); Director of the Geneva-based BioWeapons Prevention Project (2003–08) and Senior Research Fellow at the European Union Institute for Security Studies (2008–13). He has participated as an expert to the Belgian and EU Delegations in the BTWC and CWC meetings since 2009. He was a member of the Advisory Board on Education and Outreach (ABEO) of the Organisation for the Prohibition of Chemical Weapons (OPCW) from January 2016 until December 2021 and served as ABEO chair from 2016 until 2019.

TABLE OF ABBREVIATIONS

ACAT	Assistance Coordination and Assessment Team
AHG	Ad Hoc Group
BBI	Biosafety and Biosecurity Initiative
BEMF	Bio-Emergency Management Framework
BW	Biological weapon
BWC	Biological Weapons Convention
CBM	Confidence-Building Measures
CCD	Conference of the Committee on Disarmament
CD	Conference on Disarmament
CDC	Centres for Disease Control and Prevention
COVID-19	New corona virus disease
CW	Chemical weapons
CWC	Chemical Weapons Convention
DBE	Deliberate biological event
ENDC	Eighteen-Nation Disarmament Committee
EOSG	Executive Office of the Secretary-General
FAO	UN Food and Agriculture Organisation
GHSA	Global Health Security Agenda
HCAT	High Consequence Agents and Toxins
IHR	International Health Regulations
INTERPOL	International Criminal Police Organisation
IPPC	International Plant Protection Convention
ISP	Inter-Sessional Programmes of Work
ISU	Implementation Support Unit
JEE	Joint External Evaluation
JEU	UN Environment/OCHA Joint Unit
MSP	Meeting of State Parties
MX	Meeting of Experts
NGO	Non-governmental organisations
NPHI	National Public Health Institutes
OCHA	UN Office for the Coordination of Humanitarian Affairs
OIE	World Organisation for Animal Health
OPCW	Organisation for the Prohibition of Chemical Weapons

PACT	Partnership to Accelerate COVID-19 Testing
PHEOC	Public Health Emergency Operation Centres
ProMED	Program for Monitoring Emerging Diseases
RISLNET	Regional Integrated Surveillance and Laboratory Networks
RRAM	Rapid Response and Assistance Mission
S&T	Science and technology
SARS	Severe acute respiratory syndrome
SARS-CoV-2	SARS corona virus-2 (See also COVID-19)
TS	Technical Secretariat (of the OPCW)
UN	United Nations
UN-BRWG	UN Biorisk Working Group
UNCCT	UN Counter-Terrorism Centre
UNDSS	UN Department for Safety and Security
UNGA	UN General Assembly
UNICRI	UN Interregional Crime and Justice Research Institute
UNMEER	UN Mission for Ebola Emergency Response
UNOCC	UN Operations and Crisis Centre
UNOCT	UN Office of Counter-Terrorism
UNODA	UN Office for Disarmament Affairs
UNOLA	UN Office of Legal Affairs
UNSC	UN Security Council
UNSG	UN Secretary-General
WHO	World Health Organisation

1

On the origin of Article VII

Jean Pascal Zanders

Introduction

A single sentence makes up Article VII of the Biological Weapons Convention (BWC). However, it comprises multiple clauses. It basically commits Parties to the BWC to provide or support assistance to any Party that requests such assistance if it feels exposed to danger due to a BWC violation. However, two of the clauses impose conditions. First, the provision of assistance or support must be in accordance with the United Nations (UN) Charter. Second, the undertaking to provide or support assistance is only effectual after UN Security Council (UNSC) determination that the requesting State has been exposed to such a danger. Beyond that, the provision remains silent on the procedures a party should follow for an assistance request, how the UNSC should validate the danger to which the requesting State feels exposed, and how the international community should organise such assistance. Or indeed, what types and levels of ‘assistance’ are meant in the BWC context.

After the treaty’s entry into force in 1975, States Parties hardly looked at the one-paragraph article. Up to the Seventh Review Conference (2011) the only additional understandings and agreements concerned general implementation procedures and possible roles of appropriate international organisations, including the World Health Organisation (WHO), the World Organisation for Animal Health (OIE) and the Food and Agricultural Organisation (FAO), and coordination functions for the UN.¹ Attention to the article increased markedly at the 7th Review Conference, a consequence of a heightened perceived worldwide risk from emerging and re-emerging diseases, fears of outbreaks resulting from biosecurity and -safety lapses in high-containment laboratories, concerns about scientific and technological advances in the life sciences that could be misused for hostile purposes, potential terrorist or criminal interest in highly contagious pathogens, and so on. BWC States Parties took up Article VII as part of the intersessional process – the annual meetings of experts (MXs) and of States Parties (MSPs) – in 2014. When the MX convened in August, the Ebola epidemic in West Africa had turned into an international crisis. On the last day of the MX, 8 August, the WHO declared the outbreak a Public Health Emergency of International Concern. The Ebola experiences, just like the current pandemic caused by the new coronavirus disease (COVID-19), have added urgency to turn Article VII into an operational provision

¹ BWC Implementation Support Unit (2016). Additional understandings and agreements reached by previous Review Conferences relating to each article of the Convention. Preparatory Committee of the Eighth Review Conference. WC/CONF.VIII/PC/4, 13-15. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/109/11/PDF/G1610911.pdf?OpenElement> (Accessed: 30 March 2022).

Genesis of a treaty provision

Negotiation of the BWC developed between August 1968, when the United Kingdom submitted to the Eighteen-Nation Disarmament Committee (ENDC) its working paper with discussion elements for a convention to ban or proscribe the use for hostile purposes of microbiological agents causing death or disease by infection in man, other animals or crops, and 28 September 1971, day when the Conference of the Committee on Disarmament (CCD) – successor body to the ENDC – finalised the treaty text. About Article VII, there were three significant moments. On 10 July 1969, the UK introduced a draft convention accompanied by a proposal for a UNSC resolution. A month and a half later, on 26 August, it submitted a revised draft convention and an accompanying text for a UNSC resolution. The final modification happened on 19 August 1971 when Morocco announced in the CCD its interest in having the original UK proposal for furnishing appropriate humanitarian assistance in case of exposure to danger reinstated.² Five days later it submitted a working paper requesting the insertion of a new article into the draft treaty then under consideration.³ The proposed amendment referred to neither the UNSC nor the UN Charter. Argentina intervened to have the original UK language reinserted and linked the assistance provision to the system proposed in draft (and current) Article VI containing the complaints procedure referring to the UNSC (paragraph 1) and the undertaking to cooperate in the investigation if initiated by the UNSC under provisions in the UN Charter.⁴

The original proposal by the United Kingdom (July 1969)

The four-page draft treaty included text for a draft UNSC resolution.⁵ In the draft treaty, Article I sought to outlaw biological warfare. Draft Article II proscribed the acquisition and possession of biological weapons (BW), research aimed at BW production, and to destroy or divert to peaceful purposes BW holdings within three months after entry into force of the convention. In contrast to the final text of the BWC, the UK thus foresaw a ban on BW use, which negotiators later dropped to avoid undermining the 1925 Geneva Protocol outlawing both chemical and biological warfare while a future disarmament treaty on chemical weapons still had to be negotiated.

Draft Articles III and IV formed the core of what would eventually become BWC Article VII. The first paragraph in draft Article III would have allowed a State that believes BW have been used *against it* (draft Article I) to lodge a complaint with the *UN Secretary-General* (UNSG). It should submit all evidence at its disposal supporting the complaint, and request that the UNSG investigate the complaint and submit a report on the result of the investigation to the UNSC. The second paragraph addressed both BW use (draft Article I) and violations against the disarmament provision (draft Article II). As regards use, the difference with the first paragraph is that a party other than the presumed victim may lodge the complaint. However, that third party would have had to address its complaint to the UNSC rather than to the UNSG.

² Conference of the Committee on Disarmament (1971). Final Verbatim Record of the Five Hundred and Thirty-First Meeting. CCD/PV.531, 16.

³ Morocco (1971). Working paper on drafts CCD/337* and CCD/338* on the prohibition of the development, production and stockpiling of bacteriological (biological) and toxin weapons and on their destruction. Conference of the Committee on Disarmament. CCD/347, para 3.

⁴ Conference of the Committee on Disarmament (1971). Final Verbatim Record of the Five Hundred and Thirty-Third Meeting. CCD/PV.533, 18.

⁵ United Kingdom (1969). Biological Warfare: Draft Convention and accompanying draft Security Council Resolution. Conference of the Eighteen-Nation Committee on Disarmament. ENDC/255.

Minister of State Fred Mulley clarified the reasoning behind the different procedures in an address to the ENDC when presenting the draft text. For the victim State it was important to have a quick and automatic investigation. Access to the site of the incident was guaranteed because the complainant would provide all the facilities for carrying out an investigation. The proposed mechanism the UK intended as a deterrent to treaty violations (and therefore as a functional substitution for verification, which it believed to be impossible). Regarding a third-party complaint, access to the site of the BW attack would be uncertain and in consequence, an automatic investigation could not be foreseen.⁶

Draft Article IV addressed the need for other States Parties to provide or support appropriate assistance under the UN Charter if the UNSC concludes that BW were used against the complainant. Mulley also framed this article in terms of deterrence and compared it to the security guarantees extended by nuclear-weapon states under the Nuclear Non-Proliferation Treaty. He also clarified that:

the obligation on parties would not be simply to seek action by the Security Council. It would be an obligation — or rather an affirmation of intention — to take some kind of action themselves in accordance with the Charter to assist the victim, rather than an obligation to take action against the aggressor — though of course the Security Council might decide that the latter was called for too.⁷

The passage signalled clarity of purpose behind draft Article IV. The UK intended it as a tool for individual rather than collective action. Such action consisted solely of victim assistance. Humanitarian action is consistent with the UN Charter. Any retaliation against an aggressor, as the statement clarified, would require a separate or additional UNSC decision. Equally important was that execution of draft Article IV on emergency assistance did not depend on a UNSC conclusion of a treaty violation but represented a UK view that (individual) assistance was a moral and humanitarian responsibility under the UN Charter.

The accompanying draft UNSC resolution foresaw that the UNSC would take it upon itself to act following a complaint, recognise the specific and independent role for the UNSG if the victim State lodges a complaint, and develop investigative procedures in advance.

The revised proposal by the United Kingdom (August 1969)

In the revision of the draft convention tabled on 26 August,⁸ draft Articles III and IV essentially remained unchanged except for a modification to paragraph III, 2, which required the complaining State Party to supply all supporting evidence at its disposal (thus making it in line with paragraph III, 1).

However, the most important change to the concept of emergency assistance in case of BW use was the insertion of a new preambular paragraph in the draft UNSC resolution:

REAFFIRMING in particular the inherent right, recognised under Article 51 of the Charter, of individual and collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

⁶ Conference of the Eighteen-Nation Committee on Disarmament (1969). Final Verbatim Record of the Four Hundred and Eighteenth Meeting. ENDC/PV.418, 10.

⁷ ENDC/PV.418 (1969), 11.

⁸ United Kingdom (1969). Biological Warfare: Draft Convention and accompanying draft Security Council Resolution. Conference of the Eighteen-Nation Committee on Disarmament. Document ENDC/255/Rev.1.

Ambassador I. Porter linked the modification to concerns by some ENDC members about the interpretation of draft Article IV (on assistance):

We have also made one change in our draft Security Council resolution by adding a preambular paragraph which reaffirms the right of individual and collective self-defence recognized in Article 51 of the United Nations Charter. This paragraph is designed to meet concerns expressed to us that Article IV of the draft convention might be taken to derogate from that right.⁹

The public record of deliberations, as far as the author has ascertained, does not reveal an ENDC member that may have raised the concern. The working assumption is therefore that the matter was raised bilaterally, possibly in consultations with the United States.

This new preambular paragraph carried the potential of confusing the purpose of draft Article IV. Whereas just over a month earlier Minister of State Mulley could unambiguously argue that the draft provision called for individual action supporting victims of a BW attack on humanitarian grounds, the insertion of an explicit reference to Article 51 undermined that claim. Given that a BW attack amounts to an act of war, 'appropriate assistance' could thus mean vastly different things to different countries.¹⁰

One year later, after a period of limited ENDC activity on the future BWC, the UK issued on 18 August a second revised draft convention with some minor modification to the language in draft Article III, 2.¹¹

The endgame deliberations

Discussions on the draft BWC intensified after 30 March 1971 when the group of nine Socialist countries submitted their own draft treaty.¹² CCD members now had two proposals to consider, which overlapped with each other in several respects and offered alternative approaches for addressing certain more contentious issues. Crucially for the assistance provisions, this draft focussed solely on weapon elimination and non-acquisition. It did not mention a ban on BW use. Prevention of use was to be achieved through preclusion of BW possession. Both in preambular paragraphs and draft Article VIII, the document emphasised the centrality of the Geneva Protocol. As Soviet Head of Delegation A. A. Roshchin emphasised on the day of submission, 'By concluding the proposed convention the parties to it would thereby confirm their adherence to the purposes and principles of the Geneva Protocol of 1925 and stress the importance of that document and its prohibition of the use of chemical and bacteriological means of warfare'.¹³

One consequence of the difference with the UK approach to eliminating the possibility of biological and toxin warfare was the absence of provisions addressing the consequences and response to

⁹ ENDC/PV.431 (1969), 15.

¹⁰ For instance, Article 5 of the 1949 North Atlantic Treaty establishing the North Atlantic Treaty Organisation (NATO) describes assistance in the framework of Article 51 of the UN Charter. https://www.nato.int/cps/en/natohq/official_texts_17120.htm (Accessed: 30 March 2022)

¹¹ United Kingdom (1970). Revised draft Convention for the Prohibition of Biological Methods of Warfare and accompanying draft Security Council Resolution. Conference of the Eighteen-Nation Committee on Disarmament. CCD/255/Rev.2.

¹² Byelorussian Soviet Socialist Republic, Bulgaria, Czechoslovakia, Hungary, Mongolia, Poland, Romania, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics (1971). Draft Convention on the prohibition of the development, production and stockpiling of bacteriological (biological) weapons and toxins and on their destruction. Conference of the Committee on Disarmament. CCD/325.

¹³ Conference of the Committee on Disarmament (1971). Final Verbatim Record of the Five Hundred and Fifth Meeting. CCD/PV.505, 17.

alleged BW use. The Socialist treaty proposal focussed on the backward and forward-looking dimensions of disarmament (i.e. capacity elimination and prevention of future armament). Its complaint procedures foresaw consultations among States Parties and the possibility for a State Party to refer the matter to the UNSC (comparable to current Article VI). However, the referral procedure lacked automaticity and urgency of UNSC actions, which heightened the possibility of vetoes halting the process. Both drafts were not inherently incompatible, but between them they allowed for divergent opinions and solutions.

Besides The Netherlands and Nigeria, Argentina, Brazil, Italy and Sweden were by then already on record as favouring the separation between preliminary fact-finding and political judgement.¹⁴ However, as the Dutch delegate's intervention indicated, the thinking was shifting away from a specific role for the UNSG and towards an international organ or body of experts. From the UN negotiation records consulted it is not clear whether the reference to an international body implied the WHO and under what arrangement the body of experts would be set up and how it would relate to the community of States Parties or the UNSC. Given long-standing reluctance to involve the WHO (which is why the UK dismissed the idea in its original proposal), the legitimacy of a body of experts could become highly contested in the context of the UNSC's consideration of the fact-finding report or if an expert were to be a national from a country with which one of the parties involved in the BW allegation has an antagonistic relationship.

During these exchanges, 'appropriate assistance' came under scrutiny, leading to a UK clarification on 10 August that

In our view this term should be understood primarily as meaning action of a medical or relief nature to assist the victim. Furthermore, in order to make the purpose quite clear, we should be ready, if this is the general wish, to consider amending the wording of the article on this matter to make it clear that such assistance would be at the request of the offended party.¹⁵

While 'assistance' might have been in humanitarian in nature in the minds of many delegates, this clarification represented an unequivocal statement to this effect. It also clarified that such assistance would not be automatic.

Even though the debates on interpreting emergency assistance would continue during the next two weeks, they ended with the acceptance of the Moroccan proposal as modified by Argentina later in August, which is BWC Article VII.¹⁶

Conclusion

It is interesting to note that the original British concept – Article IV in the draft treaty – had clarity in the purpose of the assistance provision. Draft Article III combined with suggested language for a resolution to be adopted by the UNSC laid out a process for action and identified the roles of key protagonists, including the victim State, the UNSG and the UNSC. When the Moroccan amendment reinserted some of the language taken from the original proposal, the context had changed completely. The ban on BW use had disappeared and the draft treaty focussed on weapon elimination.

¹⁴ Conference of the Committee on Disarmament (1971). Final Verbatim Record of the Five Hundred and Twenty-Fifth Meeting. CCD/PV.525, 7.

¹⁵ Conference of the Committee on Disarmament, Final Verbatim Record of the Five Hundred and Twenty-Eighth Meeting, CCD/PV.528, 10 August 1971, p. 27, para. 90.

¹⁶ For a detailed discussion of the negotiation of Article VII, see Zanders, J. P. (2018). *The Meaning of 'Emergency Assistance': Origins and negotiation of Article VII of the Biological and Toxin Weapons Convention*. Ferney-Voltaire, The Trench. <https://www.the-trench.org/wp-content/uploads/2018/08/Meaning-of-Emergency-Assistance-Final.pdf>

Today, despite affirmations by individual States Parties of Article VII's humanitarian imperative and common agreements and understandings achieved by the review conferences, from the perspective of triggering the assistance provision there remain many uncertainties about process, actor roles and instruments. Integration of organisational units (such as the BWC Implementation Support Unit) or tools created since the 1970s (e.g. the UNSG's investigative mechanism, other international organisations, or the consultative meeting under Article V) has not yet happened. Statements as to their potential roles have essentially remained unilateral declarations by the BWC community with no formal negotiation of accords with the respective partners laying out roles and responsibilities.

While over the past decade major advances have been made in the organisation and coordination of emergency assistance if major outbreaks occur, the lines of communication and authority are virtually non-existent should ever there be an epidemic resulting from a breach of the BWC. Triggering Article VII may for a State Party equal jumping into a black hole and exacerbate the tensions that provoked the BW attack.

Relying on responses developed for crises resulting from natural outbreaks like Ebola or COVID-19 raises questions of how the BWC community might react if an outbreak resulting from deliberate release of a pathogen does not turn into a regional or global emergency. The focus on BW use in most deliberations since the treaty negotiations over 50 years ago means that the phrase 'violation of the Convention' still requires clarification of what other circumstances might lead a State Party to trigger Article VII. Many questions yet need answers by the time the Ninth BWC Review Conference meets.

2

The Evolution of BWC Article VII

James Revill and María Garzón Maceda

Article VII of the Biological Weapons Convention (BWC) has become more salient in the discourse around biological disarmament over time. This is mainly because of exogenous developments, including disease outbreaks, growing concern over biological weapons (BW) use by state and non-state actors and evolving international public health provisions.

This chapter charts the evolution of Article VII since the entry into force of the BWC in 1975; outlines common agreements and understandings State Parties have reached at Review Conferences; and summarises some key contemporary initiatives to operationalise the article.

Article VII in the Twentieth Century

During the Cold War, discussion around Article VII remained limited. At both the First and Second Review Conferences, the summary records suggest State Parties paid little attention to Article VII. The Final Reports from both review conferences simply indicated that Article VII had not been invoked.¹

In the post-Cold War environment, the 1990-1991 Gulf War generated alarm over Iraqi BW, resulting in greater attention to Article VII at the Third Review Conference in 1991.² The Final Document of the Third Review Conference (1991) recorded three new additional understandings under Article VII. One paragraph reaffirmed the undertaking of States Parties to provide support or assistance to any party 'if the Security Council decides that such a party has been exposed to danger'. The second, recognising concerns over the possibility of a UN Security Council veto on whether a State Party was 'exposed to danger', added that 'pending consideration of a decision by the Security Council, timely emergency assistance could be provided by States Parties if requested'. The third paragraph acknowledged a coordinating role for the UN and other appropriate intergovernmental organisations, such as the World Health Organisation (WHO).³

At the Fourth Review Conference (1996) States Parties focussed most attention on the ongoing work of the Ad Hoc Group on a legally binding protocol to the BWC. The additional understanding associated with Article VII remained unchanged, except for a new paragraph developed from an Iranian proposal:⁴ 'the Conference takes note of the proposal that the Ad Hoc Group might need to discuss the detailed procedures for assistance in order to ensure that timely emergency assistance would be provided'.⁵

During the protocol negotiations, work under BWC Article VII was heavily influenced by Article X of the Chemical Weapons Convention (CWC), which deals with assistance and protection. The Composite text, the Chair's best-guess compromise language for the draft protocol, used CWC

1 BWC (1980). 'Final Document of the First Review Conference.' BWC/CONF.I/10, 8.

2 Sims, N. (2001). *The Evolution of Biological Disarmament*. SIPRI Chemical & Biological Warfare Series, 19. Oxford: Oxford University Press.

3 BWC (1991). 'Final Document of the Third Review Conference.' BWC/CONF.III/23, II, 19.

4 BWC (1996). 'Report of the Committee of the Whole.' BWC/CONF.IV/6, 20.

5 BWC (1996). 'Final Document of the Fourth Review Conference.' BWC/CONF.IV/9, II, 22.

Article X as a base for Protocol Article 13 (which elaborated on BWC Article VII). Thus Article 13 followed the same definition of ‘assistance’ as the CWC, provided for the establishment of a databank containing information on means of protection, and foresaw expert advice to assist States with the development and improvement of their national protection programmes. This article also followed the CWC regarding States Parties’ rights and obligations and the detailed procedure for request and delivery of assistance. The Protocol would only have applied to those BWC States Parties that became party to the Protocol as well.⁶

Article VII in the Twenty-First Century

The Protocol negotiations collapsed in 2001, leaving the work of the Ad Hoc Group in stasis. However, States Parties agreed to intersessional work on issues related to the BWC. This work effectively constituted a ‘rescue package’ for the convention after the failure of the protocol negotiations and the Fifth Review Conference. Nonetheless the new format consisting of annual Meetings of Experts (MX) followed by Meetings of States Parties (MSP) in between review conferences provided several procedural and substantive benefits, including in relation to Article VII. For example, in 2004 the MX and MSP considered mechanisms for the surveillance, detection of infectious diseases and capabilities for responding to, investigating and mitigating the effects of cases of alleged BW use or suspicious outbreaks of disease.⁷

Exogenous developments

The insights from the meetings in 2004 to some extent informed the discussion around Article VII at the Sixth Review Conference (2006). However, three exogenous developments prompted additional attention to this article. First, the outbreaks of severe acute respiratory syndrome (SARS) in 2003/2004 created several challenges for disease reporting and surveillance. They resulted in an overhaul of national and regional early warning and response systems.⁸

Second, linked to the SARS outbreak was the revision of the International Health Regulations (IHR) in 2005.⁹ As the WHO statement to the Sixth Review Conference indicated, the IHR represented ‘a major step forward in international cooperation and collective action in the fight against the spread of epidemics and pandemics’.¹⁰ Notably, Article 59 of the IHR highlights the value of national preparedness in addressing public health challenges and obliges States to ‘develop, strengthen and maintain, as soon as possible [...] the capacity to detect, assess, notify and report [events]’.¹¹ The revision of the IHR in part appears to have informed a new additional understanding for Article VII.¹²

6 BWC (2001). ‘Protocol to the BWC’. Ad Hoc Group Chair Composite Text. BWC/AD HOC GROUP/CRP.8, 71.

7 See: BWC (2004). ‘Report of the Meeting of Experts’. BWC/MSP/2004/MX/3, 1; and BWC (2004). ‘Report of the Meeting of States Parties’. BWC/MSP/2004/3, 1.

8 For example: European Commission (2007). ‘Report from the Commission to the Council and The European Parliament on the operation of the Early Warning and Response Systems (EWRS) of the Community Network for the epidemiological surveillance and control of communicable diseases during years 2004 and 2005 (Decision 2000/57/EC).’ COM/2007/121. United States General Accounting Office (2003). ‘SARS Outbreak: Improvements to Public Health Capacity Are Needed for Responding to Bioterrorism and Emerging Infectious Diseases.’ GAO-03-769T.

Canada (2004). ‘SARS: A Canadian Perspective on Lessons Learned.’ Meeting of Experts. Working Paper BWC/MSP/2004/MX/ WP.80.

9 This was noted in the background documentation. See: BWC (2006). ‘World Health Organization (WHO), Revised International Health Regulations.’ In *Background Information Document on Developments since the Last Review Conference in Other International Organizations Which May be Relevant to the Convention*. BWC/CONF.VI/INF.2,13.

10 WHO (2006). ‘Update on WHO Activities in Global Health Security.’ Statement at the 6th BWC Review Conference, 1. [https://docs-library.unoda.org/Biological_Weapons_Convention_-_Sixth_Review_Conference_\(2006\)/BWC-6RC-Statement-061121-WHO.PDF](https://docs-library.unoda.org/Biological_Weapons_Convention_-_Sixth_Review_Conference_(2006)/BWC-6RC-Statement-061121-WHO.PDF) (Accessed: 07 March 2022)

11 WHO (2005). ‘International Health Regulations’. Second Edition. Geneva: World Health Organisation,11

12 Pearson, G. S. (2006). ‘BTWC Sixth Review Conference’. HSP Reports from Geneva, no. 74,1–36.

The Final Document of the Sixth Review Conference noted that ‘State Parties’ national preparedness contributes to international capabilities for response, investigation and mitigation of outbreaks of disease’.¹³

A third trend in 2006 was the growing salience of terrorism with BW in the international security discourse.¹⁴ This manifested in an extension of the additional understandings of Article VII to incorporate the use of BW by non-state actors. The Conference noted the willingness of States Parties to provide assistance in the event of ‘use of bacteriological (biological) agents and toxins as weapons by *anyone other than States Parties*’ (emphasis added).¹⁵

The Sixth Review Conference also paved the way for further intersessional work on Article VII and the ensuing MX and MSP in 2010 noted challenges to the provision of assistance.¹⁶ Among these, the MSP recognised ‘the need for clear procedures for submitting requests for assistance or for responding to a case of alleged use’.¹⁷ Reflecting a blurring of spheres, the MSP report also referred to ‘the potentially complex and sensitive interface between an international public health response and international security issues’.¹⁸ It further underlined the ‘importance of assistance being provided promptly, upon request’.¹⁹

Seventh Review Conference

The Seventh Review Conference in 2011 provided an opportunity to ‘look afresh’ at Article VII and build on earlier intersessional work.²⁰ In this vein, in the additional understanding for Article VII, States Parties recognised that ‘health and security issues are interrelated at both the national and international levels’ and recognised there was value to ‘further dialogue regarding appropriate means of coordination between States Parties and relevant international organizations.’

The additional understanding also recognised the challenges to developing measures for the effective provision of assistance and ‘the importance of ensuring that efforts undertaken are effective irrespective of whether a disease outbreak is naturally occurring or deliberately caused’. This step reflected an ongoing evolution in the BWC that may ‘broaden the regime’s focus from traditional biological *weapons* threats to biological threats more generally’.²¹

At the Seventh Review Conference, States Parties agreed to future intersessional work on strengthening Article VII in 2014 and 2015, including consideration of detailed procedures and mechanisms for the provision of assistance and cooperation. These meetings took place amidst the 2014-2016 Ebola outbreak in West Africa, which invigorated discussion on assistance and resulted in lessons learned for responding to disease outbreaks.²² These intersessional meetings were also notable for the emergence of new proposals for operationalising Article VII.

13 BWC (2006). ‘Final Document of the Sixth Review Conference.’ BWC/CONF.VI/6, 14.

14 BWC (2006). ‘Report of the Committee of the Whole.’ BWC/CONF.VI/3, 39.

15 BWC (2006). ‘Final Document of the Sixth Review Conference.’ BWC/CONF.VI/6,14. See also: Pearson (2006).

16 Becker-Jakob, U. (2013). ‘Balanced minimalism: The Biological Weapons Convention after its 7th Review Conference’. PRIF-Report (120). Frankfurt: Hessische Stiftung Friedens- und Konfliktforschung.

17 BWC (2010). ‘Report of the Meeting of States Parties.’ BWC/MSP/2010/6, 4.

18 BWC (2010), 4.

19 BWC (2010), 5.

20 United Kingdom of Great Britain and Northern Ireland (2011). ‘Article VII: options for implementation and proposal for intersessional work.’ Working Paper. BWC/CONF.VII/WP.1,1.

21 Becker-Jakob (2013), 13.

22 Guthrie, R. (2020). ‘BWC Article VII & Article X discussions relevant to disease outbreak response’ In *COVID-19 Impact Report 3*. BioWeapons Prevention Project (BWPP), 5-6. https://www.cbw-events.org.uk/COVID-19_impact-01-07.pdf (Accessed: 7 March 2022)

Eighth Review Conference

At the Eighth BWC Review Conference (2016), States Parties noted ‘the tragic Ebola outbreak (2014/2015) in West Africa’ and indicated this ‘underlined the importance of rapid detection and prompt, effective, and coordinated response in addressing outbreaks of infectious diseases’.²³ The Final Document stressed the importance of preparedness and ‘recognizes capacity building (...) as the most immediate imperative for enhancing and strengthening the capacity of the States Parties’.²⁴ In addition, States Parties expanded on earlier language related to rapid consideration of assistance:

...in view of the humanitarian imperative, the Conference encourages States Parties in a position to do so to provide timely emergency assistance, if requested pending consideration of a decision by the Security Council.²⁵

The Eighth Review Conference was also notable for the emergence and crystallisation of new and renewed thinking around the provision of assistance. There was, for example, additional understanding on the need for a procedure to ‘better identify accessible information on the types of assistance that might be available’, including ‘capacities and experiences of UN and relevant international organizations’, and a database that would ‘allow matching specific offers and requests for assistance’.²⁶ Some of these ideas were further developed during the 2016-2020 intersessional period. They are outlined below.

Issue areas for further common action and specific initiatives

Guidelines to request assistance

The lack of clarity regarding the practicalities of how a State would request assistance under Article VII has been championed by South Africa among other states. This important issue is discussed in Chapter 3 in this volume.²⁷

Assistance database

At the 2018 MSP, India and France submitted a blueprint for a database mechanism to implement Article VII.²⁸ The proposal was presented in working paper at the 2020 MSP and subsequently refined through a series of workshops.²⁹ The platform would address the challenge of identifying possible assistance resources and ‘provide for a confidential clearing-house tool for assistance requests and offers’.³⁰

23 BWC (2016). ‘Final Document of the Eighth Review Conference.’ BWC/CONF.VIII/4, 14.

24 BWC (2016), 15.

25 BWC (2016), 14.

26 BWC (2016).

27 South Africa presented working papers at the Meeting of Experts of 2014 (BWC/MSP/2014/MX/WP.9) and 2015 (BWC/MSP/2015/MX/WP.10), and at the 2016 Eighth Review Conference (BWC/CONF.VIII/WP.34).

28 France and India (2018) ‘Proposal for establishment of a database for assistance in the framework of Article VII of the Biological Weapons Convention.’ Working Paper BWC/MSP/2018/WP.7.

29 France and India (2021) ‘Proposal for the establishment of a database for assistance under Article VII of the Biological and Toxin Weapons Convention.’ Working Paper BWC/MSP/2020/WP.3.

30 France and India (2021), 1-2.

Mobile biomedical units

In 2016, Russia presented a proposal for the establishment of mobile biomedical units to implement Articles VI, VII and X in synergy. The paper drew from Russia's experience in responding to the Ebola outbreak and identified a role for such units in the provision of assistance and the delivery of protection against BW.³¹

Gender considerations

At the 2020 MX, Panama submitted a working paper on gender considerations within the BWC.³² It includes references to the importance of applying a gender lens to the provision of assistance considering the potential sex-specific and gendered impacts of BW.³³

Prospects for Article VII

Article VII has evolved incrementally since the entry into force of the BWC with change prompted by exogenous trends and events, such as the 1990-91 Gulf War, the negotiation of the CWC, the revision of the IHR and the growing salience of terrorism with BW, but particularly in response to international public health events, such as SARS and Ebola. The present pandemic with SARS Corona virus-2 adds further urgency to the operationalisation of the provision.

The result is a considerable amount of substantive material and ideas on the scope and challenges of providing assistance under Article VII. However, to date there has been less in the way of operational developments linked to this article. It remains unclear exactly how the request and provision of assistance under Article VII would function in certain conditions. An agreement on more detailed procedures for effectively operationalising this article could provide one fruitful outcome of the upcoming Ninth Review Conference.

31 Russian Federation (2016) 'Strengthening the Biological Weapons Convention operationalising mobile biomedical units to deliver protection against biological weapons, investigate their alleged use, and to suppress epidemics of various etiology.' Working Paper BWC/CONF.VIII/PC/WP.1/Rev.2, 2.

32 Panama (2021). 'Enhancing Gender Equality and Women's Empowerment as an Integral Part of the Institutional Strengthening of the Biological Weapons Convention (BWC).' Working Paper. BWC/MSP/2020/MX.5/WP.6.

33 Dalaqua, R., Revill, J., Hay, A., and Connell, N. (2019). 'Missing Links: Understanding Sex- and Gender-Related Impacts of Chemical and Biological Weapons.' Geneva: UNIDIR.

3

Triggering Article VII: Procedural options and issues to resolve

Lizeka Tandwa

Article VII promotes collaboration and humanitarian assistance (medical or other) between State Parties if a deliberate biological event (DBE) occurs. Article VII fosters the principle of solidarity within the Biological Weapons Convention (BWC), which encourages a joint effort by State Parties in the prevention and response to the use of biological weapons (BW). Each State Party needs to enhance domestic prevention, preparedness and response capacities for outbreaks and BW attacks. However, if assistance is needed, Article VII enables it.¹ Nobody has invoked Article VII in the past, yet States Parties' readiness to implement it, should the need arise, is imperative. This chapter summarises the procedural options proposed by State Parties and non-governmental organisations (NGOs). It analyses common opportunities and pertinent issues to resolve when considering implementation of Article VII.

Options for assistance under Article VII

If a State Party is exposed to a DBE, four humanitarian assistance options are available. First, it can receive assistance through bilateral or multilateral support from other States without invoking Article VII. This option would appeal to pre-existing agreements between States. It was instituted in the response to the outbreaks such as the Ebola epidemic, although this example is unrelated to BW.² Second, intergovernmental agencies such as the World Health Organisation, World Organisation for Animal Health (OIE), Food and Agriculture Organisation of the United Nations (FAO) and International Plant Protection Convention have mandates to respond to outbreaks and DBEs depending on their nature. These first two options are available to States and can readily co-exist with the next two options.³

Third, BWC State Parties can initiate humanitarian assistance without United Nations Security Council (UNSC) approval, as they clarified at the Seventh Review Conference (2011). The threat of the rapid spread and catastrophic effects of a biological event can lead to the third option, wherein State Parties need to assist the affected State Party before a decision by the UNSC.⁴ This option, however, is understood to present practical challenges and would require further consideration and consensus.⁵

1 Zanders, J. P. (2018). *The Meaning of 'Emergency Assistance': Origins and negotiation of Article VII of the Biological and Toxin Weapons Convention*. Ferney-Voltaire: The Trench, 31. Lampalzer, A. and Santori, V. (2019). 'The operationalization of Article VII of the Biological Weapons Convention: Efforts to enhance assistance capacities in response to deliberate bio-events.' In: Davis, I. (2019). *Verification and Implementation: A collection of analysis on international agreements for security and development*. (London: VERTIC), 22. Implementation Support Unit (2011). 'Additional understandings and agreements reached by previous Review Conferences relating to each article of the Convention.' Preparatory Document for Seventh Review Conference, para 69.

2 Japan (2018). 'Approach to Strengthening Measures for Emerging Infectious Diseases based on Lessons Learned from the Ebola Outbreak.' Working Paper BWC/MSP/2018/WP.4.

3 Katz, R., Graeden, E., Abe, K., *et al.* (2018). 'Mapping stakeholders and policies in response to deliberate biological events.' *Heliyon* (4:12), 5-12.

4 BWC (2012). 'Final Document of the Seventh Review Conference.' BWC/CONF.VII/7, para. 33.

5 Lampalzer and Santori (2019), 34.

The final option, and focus of this chapter, is the invocation of Article VII and provision of assistance and support to the affected State through UNSC approval. The objective of Article VII is for State Parties to assist and support, in the accordance of the United Nations Charter, when the UNSC decides that a State was exposed danger as a result of a violation of the Convention, such as a DBE.⁶ If the UNSC confirms a request, State Parties have a formal responsibility to support and assist an affected State. If the request is not confirmed, there is no formal requirement to support and assist the affected State through Article VII, however States may assist through other options. The procedural options proposed by States and NGOs are described in the next section.

Proposed procedural options

State Parties and NGOs submitted several proposals with procedural options for implementing Article VII should the need arise. The working papers presented at the Meeting of Experts on the *assistance, response and preparedness* (MX4) and at the Meeting of State Parties (MSP) in 2018 elucidate the challenges and how they might be addressed.

The Russian Federation and the United Kingdom described the core elements that can effectuate Article VII. Both States provided a detailed account of procedural, operational and scientific areas that need to be considered to trigger Article VII. The working paper explicates imperative considerations for the State Parties that pertain to working relationships; communication strategies and contextual matters such as cultural considerations. Other aspects include the harmonised engagement with other national or international agencies during the response and periodic exercises to test and enhance capabilities to prepare for responses.⁷ The Russian Federation also offered ready-to-use national bio-medical units that would aid in implementing Articles VI, VII and X of the BWC.⁸

France and India proposed that the BWC Implementation Support Unit (ISU) administer a database to collect and securely store important and confidential details about State Parties. Upon need, State Parties and the UNSC can access essential information on the affected State's capacities and domestic procedures. This database would also be the interface where requests for assistance and responses from other State Parties are facilitated.⁹ The Russian Federation and United Kingdom also referred to the need for an *Assistance and Cooperation* database.¹⁰ France and India recommended that the database would run similarly to but separately from the Article X database.¹¹ The establishment of an Article VII database would not require additional resources. While the proposed database garnered wide support, States Parties have not yet drawn up a specific mandate to create it. France and India also suggested establishing a voluntary fund specifically for Article VII-related needs.¹²

South Africa affirmed that necessary investigations or UNSC decision-making after the invocation of Article VII should not hinder State Parties from assisting an affected State. It provided a guideline for the information that should accompany an assistance request. The guideline details the required information about area of incident, outbreak and epidemiological facts, and response mechanisms

6 South Africa (2018). Implementation of Article VII. Working Paper BWC/MSP/2018/WP.6, para 6.

7 Russian Federation and the United Kingdom of Great Britain and Northern Ireland (2019). 'Core elements for an effective Article VII response.' Working Paper BWC/MSP/2019/MX.4/WP.6, paras 4-6.

8 Russian Federation (2016). 'Strengthening the Biological Weapons Convention Operationalising mobile biomedical units to deliver protection against biological weapons, investigate their alleged use, and to suppress epidemics of various etiology.' Working Paper BWC/CONF.VIII/PC/WP.1/Rev.2.

9 France and India (2018). 'Proposal for establishment of a database for assistance in the framework of Article VII of the Biological Weapons Convention.' Working Paper BWC/MSP/2018/MX.4/WP.3, para 4.

10 Russian Federation and the United Kingdom (2019), para 5.

11 France India (2018), para 10.

12 France and India (2018), para 9.

to assist the UNSC in making an informed and prompt decision to recognise the emergency. South Africa also put forward a guideline for considering levels of responses to a DBE. In addition, it referred to the responsibility of an affected State to enable other State Parties to assist it, such as providing temporary licenses to technical personnel participating in the response.¹³

NGOs submitted a joint position paper for MX4 that highlighted the importance of an action plans and the establishment of capacity within the United Nations to conduct independent investigations on allegations of DBEs. The joint paper also encouraged nations to share experiences and challenges associated with assistance, response and preparedness and encouraged a coordinated international response to DBE through a framework.¹⁴

State Parties and NGOs have identified opportunities and framed proposals to operationalise Article VII through working papers and statements to meetings. So far, however, BWC States Parties have not yet reached any common understandings on the issues raised during the MX 4 and MSP meetings.¹⁵

Challenges for implementing Article VII

The challenges associated with implementing Article VII are mainly two-fold. First, the BWC does not have a technical secretariat with the mandate to initiate procedures should there be a DBE against a State Party. The BWC ISU has no mandate beyond providing administrative support to States Parties, nor does it have the requisite resources to assist or coordinate Article VII actions following its invocation. Second, no adopted processes for implementing Article VII exist as yet. Despite proposals put forward by State Parties, agreement on processes to follow is yet to be reached. It remains unclear how the international community can confirm the deliberate nature of a biological event or determine the response and support that a requesting State should receive.¹⁶ This section focuses solely on the latter issue.

Conditions for a State to report a DBE and request assistance

It is important for State Parties to have clear guidance on the conditions required for reporting a possible breach of the BWC by another State or an incident involving a non-state actor that warrants the invocation of Article VII. Allegations of this nature would be consequential and entail major associated risks. Therefore, they would need to be grounded on reasonable and clear information for review by the UNSC.

How does the affected State report a DBE and request assistance?

It can be deduced from Article VII that a State can report a DBE and request assistance directly from the UNSC.¹⁷ If a database is to be established as a reporting mechanism,¹⁸ it is important to ensure guidance on the step-wise process of reporting and the nature of the information needed by the UNSC is available.

13 South Africa (2018).

14 'Joint NGO Position Paper to Biological Weapons Convention.' BWC Meetings of Experts, 7-16 August 2018, 3 [https://docs-library.unoda.org/Biological_Weapons_Convention_-_Meeting_of_Experts_\(2018\)/Joint%2BNGO%2BPosition%2BPaper%2Bto%2BBWC%2BMXs%2B2018.13%2BAug%2B2018%2B-%2Bupdated%2Bversion.pdf](https://docs-library.unoda.org/Biological_Weapons_Convention_-_Meeting_of_Experts_(2018)/Joint%2BNGO%2BPosition%2BPaper%2Bto%2BBWC%2BMXs%2B2018.13%2BAug%2B2018%2B-%2Bupdated%2Bversion.pdf) (Accessed: 3 March 2022)

15 Lampalzer and Santori (2019), 35.

16 Lampalzer and Santori (2019). Katz, Graeden, Abe, *et al.* (2018) 26, 30-31.

17 South Africa (2018), para 5.

18 Russian Federation and the United Kingdom (2019), para 5. France and India (2018), para 4.

The criteria to decide whether an Article VII request is justified

The criteria the UNSC would apply when determining the validity of an Article VII request are important. They inform the kind of information that a State Party must provide to the UNSC for its decision-making on the validity of the request. Possibly they could help to establish whether the UNSC would play additional roles, such as determining the levels of response and assistance required to support the affected State. States already put forward elements that might inform the formulation of such criteria.¹⁹ If the UNSC were to reject an Article VII request or fail to act, then the procedure should foresee how the criteria could be applied for a coordinated response by BWC States Parties in cooperation with relevant international organisations.

The categories of response for Article VII

It is essential to articulate in what ways support and assistance can be provided when a State Party invokes Article VII, while considering the domestic processes when determining the response options. The classification or levels of response need to be determined.²⁰

The proposals by State Parties discussed above have to an extent dealt with some of the challenges raised, specifically how to report a DBE and the information required from the requesting State. However, some of the salient implementation issues persist, such as the conditions for reporting and requesting assistance, criteria for invoking Article VII, and the categories of response. Finally, it is important that stakeholders with a mandate to respond to outbreaks of plant, animal and human diseases are identified, consulted and collaborated with. It is likely that through bilateral agreements between states or involving international agencies multiple response strategies may be designed. However, it is important to ensure harmonisation among these strategies to enable prompt and effective response to an affected State.

Conclusion

This chapter discussed and analysed the procedural options presented at MX4 and MSP. It indicated areas of broad agreement and commonly identified opportunities needing further development when devising implementation strategies for Article VII. The proposals have focused on the kind of information needed for informed decision-making by the UNSC after a BWC State Party has triggered Article VII and possible modes for receiving and storing information. They also contained suggestions for command-and-control mechanisms, which still need further elaboration for clear guidance. The combined proposals provide a good foundation for moving discussions on Article VII forward.

This chapter also identified salient issues for further consideration at the Ninth Review Conference. They include conditions for reporting a danger because of a violation of the Convention, the criteria for determining whether and how to invoke Article VII, requirements to assist the UNSC with its decision-making, and the categories of response depending on the nature and scope of the incident that led to the invocation of Article VII.

¹⁹ South Africa (2018), para 10.

²⁰ South Africa (2018), paras 12-13. Russian Federation (2016), para 5.

4

The importance of international cooperation activities (Article X) in the effective operationalisation of assistance and protection measures (Article VII)

Robert J Mathews

Introduction

The 1972 Biological Weapons Convention (BWC) was the first multilateral treaty to prohibit an entire class of weapons, including the development, production and stockpiling of biological and toxin weapons. BWC Article VII contains provisions on the assistance to a State Party exposed to danger because of a violation of the Convention (intended primarily as an incentive for States to join the treaty, and arguably, as a deterrent against the use of biological weapons (BW) against a BWC State Party). Article X contains international cooperation provisions (intended to promote the peaceful uses of biology, as an incentive for States to join the treaty).¹ At entry into force of the BWC in 1975, these two articles were generally seen as discrete provisions with separate functions.

In the early years of the BWC, only limited attention was paid to Articles VII and X.² However, there has been increasing interest in Articles VII and X since the early 1990s, including during the five-yearly BWC Review Conferences and the Ad Hoc Group (AHG) meetings (1995-2001) aiming for a Protocol to strengthen the BWC,³ and since 2003, during the intersessional programmes of work (ISP) that meet annually between Review Conferences.⁴

This chapter commences with a brief discussion of the negotiation of Articles VII and X, and their gradual evolution over the past 50 years in a changing world. Particular focus is on how international cooperation (Article X) has become increasingly recognised as being important in the effective operationalisation of the assistance and protection provisions (Article VII). The outcomes of recent ISP meetings and Review Conferences relating to Article VII, including the synergy with Article X, are then discussed. Finally, the chapter considers possible achievements both during and beyond the Ninth Review Conference, scheduled for 2022.

Negotiation and early consideration of Articles VII and X

Assistance and protection provisions were included in original draft treaty text proposed by the UK in 1969. In the negotiations, the USSR and US dropped the provisions in their subsequent draft treaty texts. However, other States argued the necessity of having assistance and protection measures and pushed for their inclusion (and subsequently retention). Assistance and protection eventually became Article VII.

1 Under Article X, States Parties 'undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes'. In addition to this 'promotional' aspect, Article X also contains a 'regulatory' aspect whereby it states that the BWC 'shall be implemented in a manner designed to avoid hampering the economic or technological development of States Parties'.

2 Sims, N.A. (2001), *The Evolution of Biological Disarmament*. SIPRI Chemical and Biological Studies 19. Oxford, Oxford University Press, 58-60 and 119-128.

3 Littlewood, J. (2005). *The Biological Weapons Convention: A Failed Revolution*. Aldershot, Ashgate.

4 The ISP meetings usually consist of Meetings of Experts in the middle of the year and a Meeting of States Parties at the end of the year.

In the early years of the BWC, many States Parties paid limited attention to Article VII. However, in the early 1990s interest in it grew because of the recognition that scientific and technological advances relevant to the BWC could lead to greater interest in BW and concerns about BW programmes in the former Soviet Union and Iraq.⁵

The international cooperation provisions agreed in Article X of the BWC were strongly influenced by the 1968 Nuclear Non-Proliferation Treaty.⁶ Article X provides an incentive for States to join the BWC by offering benefits in return for forgoing the option of developing BW.

As was the situation with Article VII, many developed countries paid only limited attention to Article X in the early years of BWC. At the First Review Conference (1980), several States Parties referred to international cooperation for disease prevention. However, the Final Declarations from the First, Second and Third Review Conferences contained relatively few references to Article X and only limited mention of any association between both articles.⁷

Negotiation of provisions related to BWC Articles VII and X in the draft Protocol

From the mid-1990s when the AHG began considering and later started negotiating a Protocol, interest in Article X grew, especially among many developing countries. Because several developed Western countries meeting in the Australia Group were coordinating and implementing national export licensing measures on listed dual-use biological materials, equipment and technology, some developing States Parties felt those export controls might hinder their access to such dual-use items for their legitimate peaceful purposes.⁸

For the development of international cooperation provisions in the draft Protocol the AHG relied to a considerable extent on Article XI of the 1993 Chemical Weapons Convention (CWC).⁹ Article 14 of the Chair's Composite Text of the Protocol contained measures based on the principles that: scientific and technological exchange shall be promoted (directly between States Parties or through the organisation); free trade and the fullest possible exchange of bio-materials shall be facilitated; and the hampering of economic and technological development by restrictions incompatible with the BWC shall be avoided.¹⁰ Many measures listed in subsequent paragraphs of Article 14 related directly or indirectly to prevention, surveillance, detection, diagnosis and treatment of diseases in humans, animals and plants.¹¹

⁵ Sims (2001), 58-60.

⁶ *Treaty on the Non-Proliferation of Nuclear Weapons*, opened for signature on 1 July 1968 and entered into force on 5 March 1970. In particular, BWC Article X.1 corresponds to NPT Article IV.2, and BWC Article X.2 corresponds to NPT Article III.3.

⁷ Sims (2001), 122-124.

⁸ Mathews, R. J. (2004). 'The development of the Australia Group export control lists of biological pathogens, toxins and dual-use equipment.' *CBW Conventions Bulletin* (66), 1-4.

⁹ *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction*, opened for signature on 13 January 1993 and entered into force on 29 April 1997.

¹⁰ While some of the issues associated with the effective implementation of Article X remained unresolved in the latter stages of the Protocol negotiations, the measures to promote scientific and technological exchanges related to the assistance and protection against biological weapons had been essentially agreed. See BWC (2000), Procedural Report of the Ad Hoc Group, Part I. BWC/AD HOC GROUP/52 (Part 1), 100-101.

¹¹ BWC (2001). Protocol to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction. BWC/AD HOC GROUP/CRP.8 (Technically corrected version), 74-84.

Similarly, consideration of assistance and protection under the draft Protocol was to a considerable extent drawn from the detailed measures in CWC Article X. Thus, Article 13 of the Composite Text¹² defined assistance as the coordination and delivery to States Parties of protection against biological and toxin weapons, including detection and alarms equipment, protective equipment, decontamination equipment and decontaminants, prophylactic, diagnostic and therapeutic measures and materials, and advice on protective measures. To prepare for assistance in case of a BW attack, Article 13 proposed preparatory measures including: the establishment of a database with information on various means of protection; advice by the Technical Secretariat (of a BWC implementation organisation to be created under the Protocol) on development of a protective capacity; and undertakings by States Parties to contribute to the provision of assistance.

The synergy between international cooperation and assistance and protection had thus become well recognised during the AHG negotiations.

Consideration of Articles VII and X since 2003

Following the collapse of the Protocol negotiations in 2001 and the commencement of the ISP in 2003, consideration of Article X began to focus more on health-related issues than national export controls. Growing concerns about terrorism with BW, which led to UN Security Council (UNSC) resolution 1540 in 2004 and follow-on resolutions, contributed significantly to this evolution.¹³

In subsequent intersessional meetings, recognition of Article X's importance in supporting Article VII grew. For instance, after extensive discussions within the 2007-2010 ISP, the Seventh Review Conference (2011) agreed to establish the Cooperation and Assistance Database to facilitate the exchange of requests for and offers of assistance and cooperation among States Parties. These relate to a wide range of activities, including building capacity, disease surveillance and biological risk management. The database matches assistance offers with assistance requests, thus enabling collaboration among States Parties.¹⁴

Interest in assistance and protection also increased in the ISP. The Seventh Review Conference decided that States Parties should consider how to 'concretely operationalise' Article VII during the 2012-2015 ISP. States Parties considered Article VII in considerable detail. They acquired much better appreciation of the practical challenges surrounding the article's operationalisation following lessons identified during the responses to the outbreaks of severe acute respiratory syndrome (SARS), Middle East respiratory syndrome (MERS) and Ebola.¹⁵ The discussions also highlighted the clear relationship between the underlying objectives of Articles VII and X. More specifically, States Parties began realising that increasing national capacities to respond to alleged BW use contributes to the strengthening of international capacities, and that international cooperation is critical to achieving strengthened national capacities.¹⁶

12 BWC (2001), 71-73.

13 Mathews, R. J. (2007). 'CBW Export Controls and the 'Web of Prevention': A Practitioners Perspective'. In Rappert, B. and McLeish, C. (eds) (2007). *A Web of Prevention: The Life Sciences, Biological Weapons and the Governance of Research*. New York, Earthscan. Indeed, many BWC States Parties not associated with the Australia Group have used the Australia Group dual-use biological lists as a basis for fulfilling their obligations under BWC Article III and UNSC resolution 1540.

14 During the MX1 in September 2021, it was reported that 59 requests for assistance have been made by seventeen States Parties, while 77 offers of assistance have been submitted by ten States Parties and one group of States Parties.

15 BWC (2018). Background information documents on assistance, response and preparedness. Submitted by the Implementation Support Unit. BWC/MSP/2018/MX.4/2.

16 See for example, Cuba (2015). Consideration of Cuba on how to strengthen the implementation of Article VII, including consideration of detailed procedures and mechanisms for the provision of assistance and cooperation of

One important lesson drawn from the Ebola outbreak in West Africa (2014-2016) was the need to address the lack of rapid operational response capability to provide timely, accessible and affordable medical support for affected populations.¹⁷ The benefits and necessity of high levels of international cooperation among States Parties to effectively implement Article VII were referred to under both the Article X and Article VII sections of the 2015 Report of the MSP.¹⁸

In their consideration of Article VII at the Eighth Review Conference (2016), States Parties recognised the synergy between Articles VII and X, in particular through cooperative activities to prevent, detect and combat infectious disease outbreaks.¹⁹ They underlined the importance of rapid detection and prompt, effective and coordinated response in addressing outbreaks of infectious diseases. They also recognised that such considerations would be relevant regardless of the origin of the disease outbreak – whether natural, accidental or deliberate. This realisation reflects the reality that a disease outbreak might be identified only as deliberate some considerable time after the index case (if ever). Thus, States Parties recognised that BWC Article VII assistance measures should be available regardless of the origin of the disease outbreak. In consequence, they adopted a common understanding encouraging assistance to a requesting State Party even before the UNSC has determined whether the outbreak was deliberate.

States Parties also recognised that several international organisations and arrangements, including the World Health Organisation (WHO), the World Organisation for Animal Health (OIE), the Food and Agriculture Organisation of the United Nations (FAO), and the Global Health Security Agenda (GHSA), already implement cooperation and assistance programmes directly relevant to Article VII.²⁰ These organisations could also play an important role in coordinating, mobilising and delivering the timely emergency assistance. States Parties also sought to avoid duplication between BWC-related Article VII assistance measures and disease response activities by these other organisations.

After the Eighth Review Conference, international cooperation became the annual topic for the Meeting of Experts MX1, and assistance, response and preparedness for MX4. These meetings considered further the synergy between Articles X and VII, and built on and refined earlier proposals. For example, France and India updated their proposal for an Article VII assistance database, which had received widespread support alongside concerns it should avoid duplication with the already existing Article X database. During the 2020 MX1 – held in 2021 due to the new coronavirus disease (COVID-19) pandemic – several States Parties commented that the impacts of the pandemic underscored the weakness of Article X implementation. In the 2020 MX4, many participants highlighted that COVID-19 illustrated, among other issues, how existing arrangements remained insufficient to respond effectively to a novel infectious disease.

States Parties. Working Paper BWC/MSP/2015/MX/WP.22.

17 The Ebola outbreak demonstrated the need for development and sustainment of required capabilities and capacities. It revealed numerous weak points in the international response framework for dealing with epidemic or pandemic outbreaks. One particular weak point was early detection, which is necessary to enable prompt containment and mitigation efforts to prevent the uncontrolled spread of the disease.

18 BWC (2015), Report of Meeting of States Parties. BWC/MSP/2015/6, paras 24 and 50-51.

19 See for example, United Kingdom of Great Britain and Northern Ireland (2016). Articles VII and X: the importance of synergy. Working Paper BWC/CONF.VIII/PC/WP.14.

20 The WHO provides support for national implementation of the International Health Regulations, the OIE assists in strengthening the Performance of Veterinary Services based on international standards, and the FAO activities include the promotion of the effective containment and control of animal disease outbreaks through the Emergency Prevention System for Animal Health. The GHSA aims to strengthen both global and national capacities to prevent, detect, and respond to human and animal infectious diseases threats whether naturally occurring or accidentally or deliberately spread.

MX4 also addressed the question how a State Party exposed to danger should request assistance: should it send the request directly to UNSC, to the BWC Implementation Support Unit or the three co-depositaries, or bilaterally to other States Parties? It recognised that mobile laboratories are useful when dealing with disease outbreaks and other incidents. Some interventions suggested such tools could be included as assistance offers in the proposed Article VII database.²¹

There was also widespread recognition that building additional capabilities could help developing States in combatting biological threats. Various regional approaches were discussed, including activities under the Signature Initiative to Mitigate Biological Threats in Africa supported by the Global Partnership.²²

Looking towards and beyond Ninth Review Conference

Following the lessons learnt from the Ebola epidemic in West Africa (2014-2016) and the lessons still being learnt from the Covid-19 pandemic, effective operationalisation of Article VII will likely attract considerable attention at the forthcoming Review Conference.

The BWC States Parties increasingly recognise the importance of Article X in assisting with the development and improvement of their national capacities and capabilities to prevent, detect and combat infectious disease outbreaks effectively through the surveillance, detection, diagnosis and mitigation of human, animal, zoonotic and plant disease outbreaks. States Parties recognise a clear benefit in helping those States Parties where existing capacities may be less developed to strengthen their disease surveillance and associated systems. Article X addresses this need through cooperation to prevent disease as one of the peaceful purposes recognised under the BWC.

The recent ISP discussed several specific Article VII issues that may likely feature prominently in the work of the Ninth Review Conference, including the proposal by France and India to establish a database for assistance under Article VII;²³ the proposal by Russia and the UK to develop core elements for an effective Article VII response;²⁴ and Russia's proposal to operationalise mobile biomedical units to deliver protection against BW.²⁵

These and other proposals to implement Article VII would all benefit from international cooperation among States Parties. Given the importance of synergies between Article X and VII, it may be useful to revisit the UK working paper for the Eighth Review Conference proposing to establish an MX that would focus on developing international cooperation activities in direct support of more effective operationalisation of Article VII.²⁶ It would be a significant step forward if States Parties were to agree at the Ninth Review Conference on a similar proposal for an MX topic in the next ISP.

21 Guthrie, R. G. (2021) 'Consideration of the remaining Meetings of Experts'. *MSP Report 4*, Bioweapons Prevention Project.

22 BWC (2001). 'Global Partnership Signature Initiative to Mitigate Biological Threats in Africa'. Statement to the BWC MX1 by the UK Global Partnership Chair.

23 India and France (2021). Proposal for the establishment of a database for assistance under Article VII of the Biological and Toxin Weapons Convention: specific pending issues and way forward for the operationalization of the proposal. Working Paper BWC/MSP/2020/MX.4/WP.3.

24 Russian Federation and the United Kingdom of Great Britain and Northern Ireland (2018). Core Elements for an Effective Article VII Response. Working Paper BWC/MSP/2018/WP.6.

25 Russian Federation (2021). Strengthening the Biological Weapons Convention: Operationalising mobile biomedical units to deliver protection against biological weapons, investigate their alleged use, and to suppress epidemics of various etiology. Working Paper BWC/MSP/2020/MX.4/WP.2.

26 United Kingdom of Great Britain and Northern Ireland (2016), para 7. This proposal did not obtain consensus during the Eighth Review Conference for unrelated political reasons.

5

Evidence to provide when requesting Article VII assistance

Ralf Trapp

Introduction

Article VII of the Biological Weapons Convention (BWC) lays down:

- a right to request assistance under the BWC by a State Party that believes it has been exposed to danger because of a violation of the Convention;
- a reference to the UN Security Council (UNSC) considering the matter to decide whether a violation of the BWC has occurred, and whether it has resulted in a danger to a Party of the Convention;
- the undertaking of all other States Parties, in response to the UNSC action, to provide or support assistance to the State Party endangered by the treaty violation.

The Eighth BWC Review Conference (2016) reiterated and in part expanded earlier common understandings that, given the urgency and because of the humanitarian imperative, States Parties may provide emergency assistance, if requested, pending consideration of a decision by the Security Council.¹

Article VII does not set forth, however, a procedure to be followed in its execution, the standards that an assistance request should meet, the types of assistance that States Parties would be expected to provide or support, or the manner in which the assistance would be delivered.

State practice of how Article VII would play out does not exist: the provision has never been invoked. But in past deliberations States Parties have shed some light on the matter. Several common understandings are relevant:

- the coordination role of the United Nations, together with appropriate intergovernmental organisations such as the World Health Organisation (WHO),² which would imply that the UN and its partner organisations should be aware of the assistance request;
- the importance of coordinated assistance provision, which may include ‘expertise, information, protection, detection, decontamination, prophylactic and medical and other equipment that could be required’.³ This highlights the need for a requesting State Party to communicate the types of assistance it is seeking in its request;
- the possibility that the danger posed by the violation might cause a situation where ‘national means and resources could be overwhelmed’,⁴ an issue relevant for the Security Council’s consideration and hence a matter the requesting State Party may wish to address in its request;

1 BWC (2017). Final Document of the Eighth Review Conference, BWC/CONF.VIII/4, para 35; Implementation Support Unit (2018), Background information document on assistance response and preparedness, BWC/MSP/2018/MX.4/2, 7.

2 Implementation Support Unit (2018), 7-8.

3 Implementation Support Unit (2018), 8.

4 Implementation Support Unit (2018), 10.

- the need for ‘rapid response, effective coordination and communication, understanding of national and regional specificities to ensure rapid engagement with local communities, timely access to affordable drugs and vaccines and related diagnostic tools, preventive and therapeutic equipment’,⁵ highlighting types of information that the requesting State Party might wish to communicate in its request.

The lack of practical guidance and procedure for how to request assistance under Article VII was reflected in the intersessional programme 2018-2020. This chapter first looks at the role of an Article VII request and how this may shape both its format and content. It then discusses possible format and content of such a request, and comments on proposals submitted in recent years regarding the evidence to be included in such a request.

The role of the request

Article VII requests for assistance may relate to any of a large number of possible scenarios regarding activities and agents involved, targets, nature of an outbreak including its size and speed of propagation, amongst others. Whether an outbreak originated from a deliberate release may arise only after response systems to disease outbreaks have already come under strain and international assistance is already being mobilised under public/animal/plant health systems.

Tabletop exercises have shown that the decision-making process leading to submitting an assistance request under the BWC can be complicated. Submitting such a request signals a shift from a public (animal, plant) health response to a situation where national (and perhaps regional or international) peace and security issues are at stake. The ‘danger’ to the requesting Member State is no longer perceived and presented merely as a risk to life resulting from a biological event. It is now attributed to a ‘violation’ of the BWC.

An assistance request under Article VII has several distinct audiences, each with their own roles and objectives. Content and format of the assistance request should facilitate the engagement with these different audiences to be effective.

Regarding the UNSC, the request needs to demonstrate that the State Party is in danger, and that this danger results from a presumed BWC violation. The request needs to urgently engage the UNSC and to facilitate its consideration and decision making regarding the international response to the biological attack.⁶

Regarding other BWC Parties, the request needs to convey the gravity of the situation so as to mobilise supportive action (political, diplomatic) *and* to encourage the dispatch of humanitarian assistance pending a decision by the Security Council.⁷

The request should also convey practical information to States Parties planning to provide assistance and to UN entities and other international organisations concerned. Such information should, for example, describe the situation on the ground, the resulting assistance needs, and how assistance can be dispatched and will be received. It should also include practical details to help coordinate the response and manage the logistics of assistance delivery.

⁵ Implementation Support Unit (2018), 12-13.

⁶ Note that the Security Council has no procedures or guidelines to inform its decision-making upon receipt of such a request (Implementation Support Unit (2018), 3). The way in which the request conveys the nature of the situation, and its urgency and gravity will be important for the determination that a violation of the BWC has been committed, but equally it will affect the speed and effectiveness of the international assistance provided.

⁷ There is a view that a request for assistance should not only be submitted to the Security Council, but also be brought to the attention of other States Parties (via depositories or the ISU). BWC (2020). Report of the 2020 Meeting of Experts on assistance, response and preparedness. BWC/MSP/2020/MX.4/2, Annex I, para 9.

Possible format of a request

Article VII provides no specific guidance on content and format of a request for assistance. Absent a decision on the matter, States Parties have discretion over how they would submit a request and the information they would include. Even with agreement on content and format of an Article VII request, States Parties will be free to include whatever information they feel appropriate. Nevertheless, such agreement will facilitate the requesting State Party's action, UNSC decision-making processes and responses by other States Parties and entities concerned.

An assistance request is not merely a technical report of scientific and other findings about a situation perceived as danger resulting from a violation of the BWC. It is directed at specific audiences with specific roles, expectations and needs, and intended to facilitate communications and decision-making:

- at the political level, whether the requesting State party was in danger from a BWC violation, and whether assistance ought to be provided;
- at the scientific and technical level, whether the evidence provided in support of the claims (danger, treaty violation, assistance needed) is trustworthy and the conclusions are based on authentic data and valid processes; and
- at the operational level, what specific assistance needs there are and how they can be met.

To develop a model for such a request, it may help to look at investigation reports under the UN Secretary-General (UNSG) Mechanism. These too attempt to convey contextual information and scientific data to political and technical audiences. They facilitate political and legal decision-making and technical scrutiny of the methods and standards used.⁸ This can be achieved through two distinct, audience-tailored discursive narratives: the political audience is told a 'what story' (what investigative steps were taken, what was found, and whether this corroborates the allegation of use). This narrative is part of the main body of the report. The technical audience receives a 'how story' through technical and methodological details demonstrating that the investigation was conducted in an authoritative, robust and comprehensive manner. This part of the report – usually contained in annexes – provides a basis for discussions about the veracity and trustworthiness of the findings.⁹

Possible content of a request

In its working paper, South Africa proposed the following (non-exhaustive) content of an assistance request under Article VII:¹⁰

- a. Name of the State Party.
- b. National Point of Contact of the State Party.
- c. Date and place of first reported case. If there was a related event, a description of the event. To the extent possible, the date and time, when the alleged event(s) took place and/or became apparent to the requesting State Party and, if possible, the duration of the alleged event(s).
- d. Severity of the event. Number of cases and the number of fatalities, if any.

8 See McLeish, C. and Moon, J. M. (2021). 'Sitting on the boundary: the role of reports in investigations into the alleged biological-weapons use', *Nonproliferation Review*. (27:4-6), 525-540.

9 McLeish and Moon (2021), 534.

10 South Africa (2018). Implementation of Article VII. Working Paper BWC/MSP/2018/MX.4/WP.3, para. 10.

- e. Symptoms and signs — diagnosis if possible. Information on the initial treatment and the preliminary results of the treatment of the disease.
- f. A description of the area involved.
- g. All available epidemiological information.
- h. Actions taken to manage the outbreak.
- i. International organisations already involved in the provision of assistance.
- j. States already involved in the provision of assistance.
- k. Indications of why the outbreak is considered the result of a biological attack.
- l. Characteristics of the agent involved, if available.
- m. Types and scope of assistance required.
- n. Indication of any investigations conducted or being conducted.
- o. Contact details for coordination of assistance if different from National Point of Contact.
- p. Licensing requirements for health care personnel and measures to address such requirements.
- q. Immigration processes for personnel and equipment for the provision of assistance.

Most items in this list relate to the delivery, management and logistics of the provision of assistance — what is the nature of the outbreak (size, timing, severity, symptoms and treatments), what is needed, where should it be delivered, what are the conditions in the area that assistance providers need to be aware of, what are the established lines of command, communications and control, and who else will be involved (or is already providing assistance). These are essential issues that the requesting State needs to communicate to States Parties and other assistance providers so they can respond effectively to the request (even before the Security Council has made a determination about the request).

However, what information should the request communicate regarding why the outbreak is considered the result of a biological attack? And what evidence should the State Party provide to substantiate its claim of a violation of the BWC?¹¹ The South African working paper did not elaborate on this matter, although it included reference to a previous or ongoing investigation, which might suggest that the assistance request could include evidence gathered by such an investigation including from laboratory analyses and other relevant findings.

Similar questions arose during a series of tabletop exercises simulating decision-making processes in the run-up to launching an assistance request. An exercise conducted in Lomé, Togo, in 2019¹² highlighted the need to confirm the deliberate nature of the outbreak. Different views remained, however, about the nature of the evidence that would suffice. Some participants insisted on including investigation findings, such as, for example, the results of a UNSG investigation. Others held that a presumption of a deliberate intent based upon strongly suggestive evidence would suffice. The exercise participants suggested several elements that could be included in a request (additional to as well as overlapping with the proposals by South Africa):

¹¹ Note that scientific findings of an investigation of the outbreak may suggest that a biological agent had been deliberately released, but that alone may not suffice to conclude that a State Party to the BWC had committed the act (although this may appear obvious from the overall context).

¹² Zanders, J. P., Trapp, R. and Nexon, E. (2019). *Tabletop Exercise (TTX) on the Implementation of Article VII of the Biological and Toxin Weapons Convention (BTWC)*, 28–29 May 2019, UNREC, Lomé Togo. Paris: Foundation for Strategic Research.

- Description of the security situation in the zone affected;
- Besides providing humanitarian support, an assistance request may also include a call for support of an investigation of the incident;
- Inclusion of detail regarding the different options for logistical support;
- Recognition of the need for effective coordination (implying the inclusion in the request of more detail on the management of the assistance effort);
- Information about whether the disease is endemic and whether there were separate index cases; and
- A specification of assistance already being provided.

Feedback from tabletop exercises suggested that supporting evidence of high quality should be included in the request for assistance to substantiate the claim of a BWC violation.¹³ Such evidence may result from a UNSG investigation which may be invoked by the State Party requesting assistance. This may include laboratory evidence indicative of a non-natural cause of an outbreak, such as the detection of unexpected virulence genes/epitomes or peculiarities regarding functional activity (infectivity, toxicity, antibiotic resistance).¹⁴

Other possible evidence to demonstrate that a biological attack had occurred could include documentation of dissemination systems or weapons recovered, witness testimony (victims, observers, medical staff that have provided treatment), and relevant epidemiological and clinical data.¹⁵

However, tabletop exercises have also underlined the need to balance demands for supporting evidence against the need for speedy emergency assistance. It is well known from other emergency response operations that demands for high evidential standards in the initial assistance request can slow down relief operations. Indicators for a deliberate attack also might only emerge during an emergency assistance operation. Launching an investigation of an alleged biological attack at that stage may create conflict with the ongoing assistance operation. The UNSG investigation of chemical weapons use in Syria has shown that in such circumstances, coordination at the level of principals of the organisations involved will be essential.

Conclusions

A request for assistance under Article VII of the BWC has several functions and addresses different audiences with specific expectations and needs. This affects the design and format of such a request, what evidence should be included, and how evidence should be presented.

South Africa's proposal provides a good basis for developing guidance on the kind of information a request should contain, in particular regarding enabling effective emergency assistance delivery and support. It may need some further fine-tuning, also based on practical experience from relief operations in other areas of humanitarian assistance – e.g., the UN Disaster Assessment and Coordination mechanism – and exercises conducted in the BWC context.

13 Zanders, J. P., Trapp, R. and Nexon, E. (2019). *Tabletop Exercise (TTX) on the Implementation of Article VII of the Biological and Toxin Weapons Convention (BTWC)*, 8-9 August 2019, UNOG, Geneva, Switzerland. Paris: Foundation for Strategic Research.

14 For details, see Spiez Laboratory (2021). *6th UNSGM Designated Laboratories Workshop – Report*.

15 For the latter see Heymann, D. L. (ed.) (2015). *Control of Communicable Diseases - Manual*, 20th Edition, (Washington, DC: Alpha Press), A24-A25.

Regarding evidence to support the decision-making processes related to establishing that the requesting State Party was exposed to danger resulting from a BWC violation, further discussions are needed to clarify what types of evidence the relevant actors (primarily the UNSC and BWC States Parties) would need in their decision-making processes.

Finally, structure and format of a request for assistance under Article VII should be carefully considered to ensure that the different audiences receive information in ways that help them review the request and respond to it appropriately, within the context of their respective role(s) and mandates. Format and content should be devised in ways that facilitate communications among decision makers and their technical support structures, and between assistance providers and the State Party requesting assistance.



Emergency assistance: Insights from the Chemical Weapons Convention

John R. Walker

Introduction

The Chemical Weapons Convention (CWC) was negotiated in Geneva between 1984 and 1992, but drew upon previous considerations, discussions and bilateral negotiations that had taken place since the signature of the Biological Weapons Convention (BWC) in April 1972. One of the critical contextual considerations to remember is that the Conference on Disarmament (CD) negotiated the CWC against the background of continuing and extensive chemical weapons (CW) use – both mustard and nerve agents – in the 1980-88 Iran-Iraq War. Many states saw successful conclusion of the CWC as the best way of addressing the threat to international security posed by CW use. However, several negotiating parties, particularly those in the Group of 21 non-aligned states, had also observed the considerable medical and humanitarian challenges of responding effectively and mitigating the consequences of CW use. Iran in particular was struggling to cope with large numbers of CW casualties, and some of its soldiers were treated in Western European hospitals. There were thus pressures in the negotiations for including specific measures in the draft text of the CWC that could deter CW use and provide for a range of assistance measures to any State Party either threatened with or attacked by CW.

There was a precedent for such provisions in BWC Article VII, but these did not go far enough as they were rather general and contingent on UN Security Council agreement that a State Party had been exposed to danger because of a violation of the Convention. The eventual text that the CD agreed in the CWC's Article X on Assistance and Protection Against Chemical Weapons represented a major advance on the BWC's Article VII. Things have come full circle now in the sense that especially since the Seventh Review Conference in 2011, BWC States Parties have shown a desire to strengthen Article VII with several proposals, most notably by India, France, Russia, South Africa and the United Kingdom.¹

One key question is, of course, the extent to which the provisions in the CWC's Article X and the steps taken by the Organisation for the Prohibition of Chemical Weapons (OPCW) to operationalise these effectively provide a model for further work on Article VII. This Chapter therefore reviews both the CWC's Article X provisions and the OPCW's work on implementing Article X, especially its efforts in more recent years.

¹ France and India (2016). Proposal for Establishment of a Database for Assistance in the Framework of Article VII of the BWC. BWC/CONF.VIII/PC/WP.38. South Africa (2016). Implementation of Article VII. BWC/CONF.VIII/WP.34. United Kingdom of Great Britain and Northern Ireland (2015). Making Article VII Effective: Some core assumptions and key questions. BWC/MSP/2015/MX/WP.1.

The CWC's Article X

The CWC text that the negotiators finally agreed in September 1992 included provisions on assistance containing three essential elements: first, creation of a data bank containing freely available information on protection measures against CW; second, a set of specific assistance measures that States Parties would undertake to provide — a voluntary fund, agreements with the OPCW about procurement on demand of assistance, and to declare the type of assistance it might provide if requested; and, third, a process for investigating an alleged use to assess the nature of the problem and advise on what assistance would be most useful and urgent. In terms of assistance, means of protection against CW would include provision of respirators and canisters, NBC protective suits, gloves and boots, collective protection, agent detectors, decontaminants, medical counter measures, and training in the use of CW protection measures.

Many such items have relatively limited shelf lives and cannot be stockpiled indefinitely, so stocks have to be periodically replenished. Maintaining such stockpiles presented challenges to the negotiators too as did working out how such protective means could be transported to a State Party in need in a timely fashion. The OPCW Technical Secretariat (TS) was to rely on contributions from States Parties and was not to be funded to acquire and maintain its own stockpiles. In any case, many negotiating parties preferred the option of voluntary contributions to enable the purchase of such protective means and indicate the sorts of assistance their countries could provide if requested.

Article X's investigation provisions created a system in which the OPCW Director General would initiate a rapid investigation not later than 24 hours after receiving an assistance request. Such an investigation's prime purpose is to provide foundation for further action by the OPCW's Executive Council, and to determine the nature and scope of any assistance needed. An initial investigation must be completed within 72 hours, but subsequent additional time periods are also possible. This is in reality quite a tall order. Deploying to an area of CW use, which could be in a remote location, and securing access to victims, casualty stations and hospitals could present significant logistical challenges in such a relatively short time frame. The CWC is silent on exactly how such assistance could be deployed to a State Party and does not explicitly recognise that for protective measures to be of any use or value, personnel have to be trained in their use (e.g. such as how to undress safely from contaminated suits). Negotiators left such details to the Preparatory Commission to work out and by the future TS in tandem with States Parties best placed to assist.

To the negotiators, one of Article X's implicit objectives was to deter CW use in the first place; it was not just about providing protective measures promptly. The theory held that if an aggressor knows in advance there is an effective process for providing assistance, then this may well reduce, or even remove any military or strategic advantage that might be obtained by CW use. Troops and civilians would be better protected, and therefore suffer fewer casualties. A defender would encounter less significant degradation of its military capabilities, thus obliging an attacker to use even more chemical agent to achieve its strategic or tactical objectives. If preparations for CW use require production of larger quantities of agent, then this may also increase the chances that the Convention's verification regime would detect such levels of clandestine activity before stocks could be used. Conversely, all this supposed that protective measures could be deployed and large numbers of personnel trained in their proper and effective use expeditiously, and in such a way that would make a decisive difference on the battlefield.

There is one other Article X provision worth noting in the context of operationalising BWC Article VII. CWC States Parties are required, in the interests of transparency, to report on their CW protective programmes. However, it took some time after the Convention's Entry into Force for the States Parties to agree on a format for such declarations. The format is essentially a set of yes/no questions with a few descriptive elements also required.

Article X since Entry into Force (1997-2022)

Since 1997 the OPCW and States Parties have focussed their efforts on essentially three main lines of work: training courses and information materials such as the OPCW Assistance Data Bank; large- and small-scale exercises to test response capabilities and develop procedures and help define requirements; and building up and maintaining the TS' own rapid response capabilities. There is not the space here to review these extensive activities. Nevertheless, a broad overview will illustrate the nature and scope of the very many activities conducted since the CWC's entry into force.

Train-the-trainer exercises

On 8 December 2021 the Director-General invited States Parties from the Latin American and Caribbean Group to nominate representatives to participate in the eighth regional training cycle related to assistance and protection under Article X. This course was scheduled for 21 - 25 March 2022 in Panama. As for its scope, it offered an introduction to basic toxicology, the types and uses of individual protective equipment, reconnaissance, detection, and decontamination.² In 2014 South Africa and the TS provided training for up to 20 instructors from Africa involved in emergency response to a chemical incident. This course covered planning and building a support team for civilian protection and defence; rescue and decontamination operations in contaminated areas; and appropriate responses and countermeasures in the event of incidents involving chemical-warfare agents or toxic chemicals.³ A key feature here is the importance of 'train the trainer' as one of the best ways of disseminating knowledge.

Large-scale assistance exercises

The OPCW has conducted three large-scale assistance exercises known as ASSISTEX. The last of these held to date took place in Tunisia in October 2010. It involved over 400 specialists from eleven States Parties, the TS and the UN Office for the Coordination of Humanitarian Assistance. The scenario entailed a terrorist attack with CW against civilians during a sports event, combined with an investigation of alleged use. Participants included specialists in all aspects of response and alleged use: reconnaissance, detection, decontamination, evacuation, medical support, sampling and analysis, search and rescue, and bomb disposal units.⁴ One of the key lessons to emerge from these exercises concerned the critical importance of effective command and control of any response given the diverse range of national and international bodies highly likely to be engaged on the ground. Unless properly coordinated, the response would probably become confused and unnecessarily complicated.

In recent years the focus has moved to capacity-building tabletop exercises aimed at strengthening and improving States Parties' capabilities related to Article X. These exercises place particular emphasis on coordinating assistance among States Parties and between States Parties and relevant international organisations.⁵ The core components of the capacity-building activities run by the TS under Article X are now based on a three-part training cycle comprising basic, advanced, and exercise courses.⁶

2 OPCW (2021). Note by The Director General Call for Nominations for a Basic Course on Response to Incidents Involving Chemical Warfare Agents and Toxic Industrial Chemicals for States Parties in Latin America and the Caribbean Region, Panama City, Panama 21 – 25 March 2022. S/2012/2021.

3 OPCW (2014). Note by the Director General, Call for Nominations for the Third Assistance-And-Protection Course for Instructors from African States Parties Tshwane, South Africa 1 - 12 September 2014. S/1187/2014.

4 OPCW (2010). 'ASSISTEX 3 Gets Underway in Tunis'. <https://www.opcw.org/media-centre/news/2010/10/assistex-3-gets-underway-tunis> (Accessed: 5 March 2022)

5 OPCW (2022). 'Capacity Building Table Top Exercises OPCW'. <https://www.opcw.org/resources/capacity-building/assistance-and-protection-programmes/table-top-exercises> (Accessed: 5 March 2022)

6 OPCW (2021). Report of the OPCW on the Implementation of The Convention on the Prohibition of the Development,

In-house training exercises

In-house training sessions have also been conducted for the members of the TS's own Assistance Coordination and Assessment Team (ACAT) to maintain readiness in the event of an Article X assistance request from a State Party. The training courses cover the role of ACAT members, the planning of resources, procedures involved during operations, on-site coordination with other international organisations and national agencies, and other practical information related to field missions.⁷

The CWC Third Review Conference in 2013 encouraged the TS to further strengthen its capacity to respond promptly to requests for assistance. In consequence, the TS established the Rapid Response and Assistance Mission (RRAM). It allows the rapid deployment of a team of TS experts to support and advise on the appropriate response to a range of different scenarios that may occur during a chemical attack. A State Party affected by an incident of alleged use of toxic chemicals by non-state actors may request activation of this mechanism. The RRAM can also support a State Party in coordinating its response efforts with other international organisations.⁸ The RRAM periodically performs field exercises to ensure that it is ready if called upon.

Lessons and pointers for the BWC's Article VII

There are perhaps several things we can take from the OPCW experience for continuing work on the operationalisation of BWC Article VII.

One obvious option would be to adopt the same sorts of procedures in CWC Article X, paragraph 7. This approach appeared in the BWC draft Protocol in 2001 and the UK also recommended it in a Working Paper presented at the Meeting of Experts in 2014.⁹ However, States Parties showed little enthusiasm for this approach.

One of the central features of the OPCW approach is the training of first responders and instructors as a route to building up and sustaining capabilities and capacities. Maintaining assistance and protection data banks and the critical on-line resource the 'Practical Guide for Medical Management of Chemical Warfare Casualties' are all important parts of the OPCW's overall assistance and protection posture.¹⁰ This has much to commend it, but requires extensive resources, such as development and up-dating of training materials, availability of expert instructors, exercise venues as well the money to fund it all. In the OPCW this comes from both the regular budget and voluntary contributions, but the amounts are still comparatively modest.

The role of staff in the TS in planning and conducting such courses is crucial and undertaken by the TS' own International Cooperation and Assistance Division. Any comparable effort in a BWC context is way beyond the capacities of the current Implementation Support Unit.

The broad range of national organisations is also an essential part of any response to an alleged CW attack. Working effectively and efficiently in conjunction with other international organisations would

Production, Stockpiling and use of Chemical Weapons and on Their Destruction in 2020. C-26/3.

7 OPCW (2018). Note by the Technical Secretariat Review of the Operation of the Chemical Weapons Convention since The Third Review Conference. RC-4/S/1.

8 OPCW (2022). Preventing the Re-Emergence of Chemical Weapons. <https://www.opcw.org/work/preventing-re-emergence-chemical-weapons> (Accessed: 5 March 2022)

9 BWC (2001). Protocol to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction. BWC/AD HOC GROUP/CRP.8 (Technically corrected version). United Kingdom of Great Britain and Northern Ireland (2014). Making Article VII effective. BWC/MSP/2014/MX/WP.1.

10 OPCW (2022). Practical Guide for Medical Management of Chemical Warfare Casualties. https://www.opcw.org/sites/default/files/documents/2019/05/Full%20version%202019_Medical%20Guide_WEB.pdf (Accessed: 5 March 2022)

be no different in the BWC context. The World Health Organisation for one would play a central role in any response to an outbreak of infectious disease of international concern. This is why effective command and control is so fundamental to an effective assistance response, a point recognised already by some States Parties in the BTWC context.¹¹

¹¹ United Kingdom of Great Britain and Northern Ireland (2014), Responding to a case of suspect biological weapons use: The command and control element at the scene BWC/MSP/2014/MX/WP.5.

7

Preparedness against major disease outbreaks in Africa since the Ebola epidemic

Talkmore Maruta and Kadiatou Dao

Introduction

Unintentional or the deliberate disease outbreaks may challenge public health systems. Yet, we are witnessing the testing of the global health system by emerging and re-emerging diseases, such as Ebola and new corona virus disease (COVID-19). Often these epidemics are coupled with other public health events making response difficult. Terrorist threats remind us of the need to be also prepared to prevent and act on deliberate attacks involving biological weapons (BW). Thus, the management of biological risks, in an international environment marked by the exponential rise of diverse types of threats, becomes an imperative for any State concerned with safeguarding its security and sovereignty.

In Sub-Saharan Africa, terrorist organisations and other transnational threats such as the Ebola outbreak in 2014 have brought the region to the forefront of international peace and security policy considerations. While the Ebola virus itself would be difficult to weaponise for a deliberate mass-casualty attack, a nexus of weak public health infrastructures and national response frameworks, the presence of terrorism, and outbreaks of any high-impact disease represents cause for great international concern.¹

Fortunately, besides domestic approaches to counter diseases, there are international regulations and programmes that enable States Parties to the Biological Weapons Convention (BWC) to prevent, detect, and respond to outbreaks. The BWC, United Nations Security Council (UNSC) resolution 1540, the International Health Regulations (IHR) 2005 and the Global Health Security Agenda (GHSa) all address issues related to accidental or deliberate release of biological agents. These international tools overlap with each other in terms of non-proliferation and prevention of misuse biological materials and permit countries to collaborate with each other or provide assistance to mitigate such risks through multisectoral approaches.

This chapter will review African approaches to the epidemic preparedness since the Ebola outbreak. The first section introduces the Africa Centres for Disease Control and Prevention (Africa CDC). The next part describes the measures taken in response to the new corona virus pandemic. Section 3 introduces the challenge of BW and the specific responses to the prevention and mitigation of deliberate disease. The next section discusses the relevancy of BWC Article VII and how discussion of its implementation has helped with the development of preparedness measures. The conclusions sum up the current status of preparedness in Africa and lists remaining challenges.

1 Dao, K. and Perkins, D. (2016). 'Opportunities for Strengthening Biosafety and Biosecurity Oversight through International Cooperation and Compliance with International Obligations: A Perspective from Mali.' *1540 COMPASS* (11), 28-34.

Africa Centres for Disease Control and Prevention

Launched in 2017, the Africa CDC is an autonomous public health institute of the African Union (AU) with a mandate to support public health initiatives of AU Member States by strengthening their capacities to detect early and respond quickly and effectively to disease threats.² Africa CDC coordinates and integrates solutions to ensure Member State institutions, including National Public Health Institutes (NPHI), have the necessary health infrastructure, human resources, disease surveillance systems, laboratory diagnostics and network systems. The decentralised model of five Regional Collaborating Centres for the Central, Eastern, Northern, Southern, and West Africa allows Africa CDC to work more closely with Member States to implement context based and relevant interventions to local public health threats.

To be effective, Africa CDC has five divisions of Disease Control and Prevention, Emergency Preparedness and Response, Laboratory Systems and Networks, Public Health Institutes and Research, Public Health Information Systems, and Surveillance and Disease Intelligence.³ Through the Disease Control and Prevention, Africa CDC operationalised the Regional Integrated Surveillance and Laboratory Networks (RISLNET) in Central Africa to rapidly identify and respond to public health threats through integration of all pillars of response within defined geographic regions of Africa. Plans are underway to operationalise RISLNET in Southern Africa.

Under its division of Emergency Preparedness and Response, Africa CDC supported establishment and operationalisation of national Public Health Emergency Operation Centres as part of the NPHIs. Standard operating procedures were developed and shared among Member States followed by training and support with equipment. Through the National Public Health Institutes and Research division, Africa CDC developed a framework for building up NPHIs in Africa, a legal framework for NPHIs, and an NPHI monitoring scorecard.

In 2018, Africa CDC developed and shared with Member States the framework for development of NPHI in Africa and partnered with selected Member States to train and customise the framework to meet local needs. Systems set up through the Laboratory Systems and Networks, quality management systems, structures for rapid diagnostic uptake and integration and human resource training and capacity building have been implemented to strengthen Member States preparedness and effective and rapid response to events of public health concern.

Response to the COVID-19 pandemic

The architecture set up by Africa CDC and implemented during outbreaks on the continent, including Ebola in West Africa, were instrumental in mounting an effective response to the COVID-19 pandemic. Surge capacity through the COVID-19 Rapid Responders was deployed in several Member States to strengthen local response. Community Health Worker networks were deployed to assist with community, event-based surveillance and contact tracing in the early phases of the pandemic. Diagnostic capacity for Severe Acute Respiratory Syndrome Corona Virus-2 (SARS-CoV-2) was rapidly scaled from two laboratories at the time of the first case on 14 February 2020 to 24 countries by 24 February and reaching 1 million tests by August 2020.⁴ Africa CDC mobilised resources through its network to deploy testing kits and case management equipment and therapeutics. At

2 Africa CDC. 'About us'. <https://africacdc.org/about-us/> (Accessed: 14 February 2022)

3 Africa CDC. 'Staff Directory'. <https://africacdc.org/staff-directory/> (Accessed: 15 March 2022). Africa CDC. 'Our Work'. <https://africacdc.org/our-work/> (Accessed: 15 March 2022)

4 Maruta, T. and Kebede, Y. (2021). 'The evolution of SARS-CoV-2 testing in Africa: Observations from the first 1 million cases'. *Southern African Journal of Public Health*. (4:4), 106-110.

continental level, Africa CDC used its convening power to mobilise a regional response through continental strategies. This included the Africa Joint Continental Strategy for COVID-19 Outbreak Strategy launched in March 2020 to ensure coordinated efforts and minimise duplication of efforts.⁵ This enabled the Africa Task Force for Coronavirus to operationalise the Africa Joint Continental Strategy and coordinate supplies of reagents to SARS-CoV-2 testing laboratories by linking diagnostic kits manufacturers directly with countries. In this way, it guaranteed supply by circumventing global supply chains constraints. The Partnership to Accelerate COVID-19 Testing (PACT) enhanced testing, tracing and treating all COVID-19 cases promptly.⁶ The Africa Medical Supplies Platform functioned as a single online platform through which countries accessed medical supplies and diagnostic test kits by means of facilitated volume aggregation and easy payment facilities.⁷

Responding to challenges posed by biological weapons

In response to documented capacity gaps in biosafety and biosecurity by World Health Organisation Joint External Evaluation (JEE) (2016-2019)⁸ and the Global Health Security Index Report (2019)⁹, Africa CDC in collaboration with Member States and its regional and international partners launched the Biosafety and Biosecurity Initiative (BBI)¹⁰. The BBI aims to strengthen the biosecurity and biosafety systems of AU Member States so that they comply with international regulations including the International Health Regulations (IHR 2005), Biological Weapons Convention (BWC), and UNSC resolution 1540, as well as the multi-country GHSA action packages, more specifically the Action Package on Prevention (APP3). The initiative is being implemented in five broad categories, namely development and implementation of the Regional Biosafety and Biosecurity Legislative Framework, establishment and operationalisation of multi-expert Regional Biosafety and Biosecurity Technical Working Groups (RBB-TWG), development of a Regional Training and Certification Program for Biosafety and Biosecurity Professionals, development and implementation of a Regulatory and Certification Framework for institutions handling High Consequence Agents and Toxins, and finally, strengthening of NPHIs and National Reference Laboratory Networks biosafety and biosecurity systems.

Domain 7 of the proposed Regional Biosafety and Biosecurity Legal Framework addresses BWC requirements.¹¹ It specifically refers to the 'Prohibition of all Activities in the Development, Possession, and Transfer of Biological Agents for the Purpose of Producing Weapons'. The domain requires Member States to put measures in place prohibiting the misuse of biological agents and toxins by creating offences and penalties for violations. Through the process of supporting national implementation, the Regional Legal Framework, which is under review by the African Union, provides opportunities for collaboration among States Parties. Africa CDC will support Member States to review existing biosafety and biosecurity legislation, set up country-specific implementation plans, training focussing on the legal framework, and technical assistance with the drafting and or updating of national legislation in alignment with the regional Framework. Using its convening powers, Africa

5 Africa Union. (2020). *Africa Joint Continental Strategy for COVID-19 outbreak*. Addis Ababa: African Union Commission. <https://africacdc.org/download/africa-joint-continental-strategy-for-covid-19-outbreak>

6 Africa CDC. The Partnership to Accelerate COVID-19 Testing (PACT). <https://africacdc.org/download/partnership-to-accelerate-covid-19-testing-pact-in-africa/> (Accessed: 14 February 2022)

7 Africa Medical Supplies Platform. <https://amsp.africa/> (Accessed: 14 February 2022)

8 World Health Organization. (2019). *Joint External evaluation mission reports*. <https://www.who.int/ihr/procedures/mission-reports-africa/en/> (Accessed: 15 March 2022)

9 Global Health Security Index. (2021). <https://www.ghsindex.org/> (Accessed: 15 March 2022)

10 Africa Centres for Disease Control. Biosafety and Biosecurity Initiative. <https://africacdc.org/programme/laboratory-systems-and-networks/biosafety-and-biosecurity/> (Accessed 15 March 2022)

11 Africa Centres for Disease Control. (Forthcoming). *Regional Biosafety and Biosecurity Legal Framework*.

CDC can support Member States with the BWC ratification process, the nomination procedure for BWC National Focal Persons, and conduct advocacy, awareness, training and capacity building of National Focal Persons, civil society, academia, political figures on BWC domestic implementation aspects.

Preparedness in support of Article VII implementation

The IHR States Parties are required to develop minimum essential public health capacities such as 'the capacity to detect, assess, notify and declare events'.¹² The IHR core capacities monitoring framework, developed by the WHO's Secretariat, provides a checklist and indicators to be used to monitor progress in acquiring core capacities around 49 indicators covering the 19 technical fields concerned, including biosafety and biosecurity.

For national public health capacity building, the IHR Review Committee recommended developing options to move from exclusive self-assessment to combinations of self-assessment, peer review and voluntary external evaluation involving a mixed group of national and independent experts. These additional formulas should notably consider the strategic and operational aspects of the IHR such as the need for high-level political commitment and government-wide or multi-sector collaboration. The IHR, JEE highlighted gaps and oriented African's countries on specific needs if exposure occurs.¹³

However, BWC Article VII gives States Parties the right to call for assistance when there is a deliberate use of biological agents. Representatives from West-African countries participated in a tabletop exercise in Lomé in 2019 simulating BW use under conditions where the origin of the disease outbreak remain uncertain for a considerable period of time after the detection of the first victim. In this environment of uncertainty, participants had to consider whether and when they would appeal for international assistance under BWC Article VII, how they would formulate the formal request to the UNSC and decide on the type of evidence they would supply in support of that request.¹⁴

This exercise aimed to explore the operationalisation of Article VII in the event of a high-spread infectious public health event. It demonstrated the need for African countries to assess the risks and prepare for a subregional deliberate disease outbreak despite lessons learned from the Ebola crisis in West Africa. The tabletop exercise showed the need for African countries to assess the level of their preparations in terms of institutional arrangements, diagnostic capacity, availability of emergency equipment, individual and collective protective equipment, and prophylactic means.

Requesting assistance under Article VII may also require evidence supporting the claim of deliberate use of pathogens. This becomes a task for the State Party requesting emergency assistance because the BWC does not have a supporting international organisation that could mount a field investigation into alleged BW use and conduct the necessary analyses to confirm intentional release of biological agents. Notwithstanding the challenges and deficiencies noted, South Africa is working on a proposal under consideration by BWC States Parties on how to submit an assistance request under Article VII issues to ensure that the humanitarian nature of the provision is strengthened.¹⁵

12 World Health Organization (2019).

13 World Health Organization (2018). *Joint external evaluation tool*. Second edition. Geneva. <https://apps.who.int/iris/bitstream/handle/10665/259961/9789241550222-eng.pdf>

14 Zanders, J. P., Trapp, R. and Nexon, E. (2019), *Report of the (Second) Tabletop Exercise (TTX) on the Implementation of Article VII of the Biological and Toxin Weapons Convention (BTWC)*. Paris: Fondation pour la Recherche Stratégique. <https://www.the-trench.org/wp-content/uploads/2018/07/English-20190804-BTWC-Article-VII-TTX-Lome%CC%81-report-Final-EN.pdf>

15 Reddiar, M. (2020). 'A set of guidelines and formats to assist a State Party, if required, when submitting an application for assistance in the framework of Article VII'. Presentation, International Webinar, MX4: Assistance, Response and Preparedness. <https://documents.unoda.org/wp-content/uploads/2020/11/BWC-Webinar-Article-VII-Presentation-11-November-2020.pdf> (Accessed: 21 April 2022)

With hindsight, the scenarios enacted at Lomé offered a good example of the types of preparations needed in case of an Ebola or COVID-19 epidemic and any large outbreak whose origin might have been a deliberate release of a pathogen. During the COVID-19 pandemic, initiatives have been taken to strengthen national implementation of the BWC. In this context, on 23 August 2021, the BWC Implementation Support Unit and the Malian National Institute of Public Health co-hosted an online workshop on Confidence-Building Measures (CBMs) under the BWC.¹⁶ The transparency offered by the national annual CBM reports are a cornerstone to build a cooperation between States Parties under the BWC Article X. This is important, for example, in the area of establishing surveillance and detection capacities. Moreover, based on the experiences from the tabletop exercise and the preparations undertaken by the African Union since the Ebola outbreak and further measures taken during the COVID-19 crisis, the question arises whether there is a need for the Africa CDC to set up a formal capacity to investigate, analyse and confirm potential deliberate use of pathogens?

Conclusions

Based on the Global Health Security Index 2021 report, none of the Africa countries had an overall Index score above 50% indicating persistent status of unpreparedness for major epidemics¹⁷. Key challenges include poor infrastructure, no dedicated finance from the treasury to support preparedness, lack of conducive environment in terms of political systems and government effectiveness in dealing with epidemics. Some countries in the Africa region still have political and security risks that could undermine national capability to counter threats. These include civil wars, political and economic instabilities, and other cross-boundary disputes.

Key challenges facing the Africa region

REGIONAL	<ul style="list-style-type: none"> • Geopolitical instability in the Sahel affecting the entire African region and the whole world • Instability reduces response capacity in affected areas • Potential risk for release of biological agents in affected areas
PREPAREDNESS	<ul style="list-style-type: none"> • Insufficiency of the One Health approach during crises • Weak involvement in development or adoption of multisectoral regulatory and legislative frameworks • Lack of pooling of achievements and efforts in the implementation of international obligations relating to the fight against natural and intentional epidemics
RESOURCES	<ul style="list-style-type: none"> • Insufficient financial resources and political commitment for a good preparation for appropriate responses to epidemics • Poor coordination between technical and financial partners during responses

¹⁶ UN Office for Disarmament Affairs. (2021). 'UNODA and Mali hold workshop on Confidence-Building Measures under the Biological Weapons Convention'. <https://www.unoda.org/node/23529> (Accessed: 20 March 2022)

¹⁷ Global Health Security Index (2021).

In collaboration with the BWC Implementation Support Unit (ISU), Africa CDC can support adoption or adaptation of the Regional Biosafety and Biosecurity Legal Framework to create conducive environment for compliance to the BWC, support Member States in drafting national legislation to support ratification of the BWC, mobilise governments to official nominations of National Focal Persons for the BWC and jointly conduct advocacy, awareness, training and capacity building of National Focal Persons, civil society, academia, political figures on BWC domestic implementation aspects.

8

The COVID-19 pandemic and early detection of unusual events: Lessons from and for the BWC

Maria Espona and Richard Guthrie

Introduction

The new corona virus disease (COVID-19) pandemic has focused attention on how infectious disease can have widespread impacts across societies. This has repercussions for future understandings of how deliberate use of disease as a weapon should be responded to. Key to this is the ability to distinguish deliberate use of disease from other causes.

While issues of international law and developed norms often become focal points for discussion on a subject like biological weapons (BW), the role of effective public health measures in countering disease outbreaks also requires attention. Conceptually, BW are nothing more than tools to provoke deliberate disease. The lower the potential impact of weaponised disease, the smaller the incentives to develop and maintain BW becomes. If governments' responses to the current pandemic produce outcomes that not only reduce the impacts of emerging and re-emerging infectious diseases but also enhance abilities to identify and contain them, then those outcomes will become powerful tools to counter BW, alongside benefitting global health. The Ninth Review Conference for the Biological Weapons Convention (BWC), now scheduled for 2022, should look into such options and stimulate their further development and adoption by States Parties.

The BWC is often described as the first international treaty to prohibit possession of an entire class of weapons of mass destruction. However, this description misses the link between the issues of BW and those of public health. A key input into the treaty negotiations was a study published in 1970 by the World Health Organisation (WHO) entitled *Health Aspects of Chemical and Biological Weapons*.¹ Embodied in this work, and made more explicit in the 2004 follow-up,² is the concept that the best counter to deliberate outbreaks are solid understandings and effective responses to naturally occurring disease. Much of the focus in BWC meetings has been on use of disease as a weapon against humans, but the Convention also covers the deliberate use of disease against animals and plants. While this chapter focuses on human diseases, many principles also apply to disease outbreaks in animals and plants.

The link between public health activities and responses to deliberate disease provides the opportunity to strengthen capacities in both areas although some delegations to BWC meetings have expressed desires to avoid duplication of activities. Concerns have occasionally been raised about any roles that might be perceived as bringing the WHO into the security realm with potential negative consequences for other health work.

1 World Health Organization (1970). *Health Aspects of Chemical and Biological Weapons*. Geneva. <http://apps.who.int/iris/bitstream/handle/10665/39444/24039.pdf>

2 World Health Organization (2004). *Public health response to biological and chemical weapons – WHO guidance*. [https://www.who.int/publications/i/item/public-health-response-to-biological-and-chemical-weapons-who-guidance-\(2004\)](https://www.who.int/publications/i/item/public-health-response-to-biological-and-chemical-weapons-who-guidance-(2004))

BWC Article VII discussions relevant to disease outbreak response

The most detailed discussions within BWC meetings about investigations of alleged use took place in the Ad Hoc Group established after the 1994 Special Conference, the work of which came to a halt in 2001. The inter-sessional work programmes, which started in 2003 and have continued ever since, have also taken up the issue.

Papers from the Friend of the Chair on Compliance Measures during the Ad Hoc Group included the text: 'All outbreaks of disease which are due to natural causes do not pose a compliance concern under the Convention and shall not be a reason for an investigation of a non-compliance concern' – reflecting a consensus reached on this point.³ In several working papers on investigation issues the Ad Hoc Group tackled the relationship between investigations of alleged use of BW and investigations of unusual outbreaks of disease, including the differences needed between the investigations.

BWC Article VII deals with the provision of 'assistance' by States Parties if a state party is 'exposed to danger' because of a breach of the Convention. As no government is likely to have ready the resources required to respond fully to the humanitarian consequences of a severe biological attack, the concept of receiving assistance applies to all. It is only in inter-sessional meetings since the Seventh Review Conference (2011) that States Parties undertook detailed discussions on Article VII distinct from questions of investigation of alleged use of BW. Just as lessons learned from the Ebola Virus Disease outbreak in West Africa invigorated Article VII discussions in 2014 and 2015, it is reasonable to expect there will be a similar, potentially greater, influence resulting from the COVID-19 pandemic.

Prompt (or early) detection and reporting of disease outbreaks

Many diseases, whether infectious or non-infectious, appear in a relatively consistent pattern. Some are sporadic, and in consequence, their case numbers can vary considerably from incident to incident. Still, if the total case numbers in a given geographical area rises above an expected level, then the incident becomes an 'outbreak'. Routine disease surveillance is key to understanding outbreak patterns. Evaluating outbreaks requires familiarity with the usual to be able to identify the unusual. Analysis of historical records enables identification of anomalous events.

To understand the spread of disease, surveillance mechanisms must be able to answer the basic 'what', 'when' and 'where' questions. What causes the outbreak, and which are its signs and symptoms? When did the cases start manifesting themselves? Where were the cases located? Notwithstanding an effective disease surveillance system, identification of the causative agent of a new or emerging disease may remain challenging.

Besides direct evidence about an unusual number of sick people, several types of indirect indicators may also point to an outbreak. Any change in usual patterns could suggest an unusual event and might prompt an investigation into whether the outbreak has a natural, accidental, or deliberate origin. This form of analysis applies to human and animal or plant diseases. It also forms the foundation for routine monitoring of food or water poisoning.

Arrangements for collecting data vary between countries. Under some national arrangements, the data collected about an outbreak only involve the cases recorded at the hospital-level of the health care system, such as admissions or emergency room entries. Patients who visit their family doctor

³ See, e.g. BWC (1999). Working paper submitted by the Friend of the Chair on Investigations, Investigation of Disease Outbreaks. BWC/AD HOC GROUP/WP.405, 1.

may not get included in the national statistics even if there is a laboratory test to confirm a disease. Some people may go to the pharmacy; or look for information on the web, and these cases rarely are counted. Some variation may exist because of capacity limits and therefore this may be a useful focus for capacity-building efforts.

In the early stages of an outbreak, it may not be possible to identify the pathogen and thus develop a reliable test. It will thus be important to collect data on the numbers and locations of people expressing signs and symptoms related to the suspected outbreak. As understanding of the disease moves forward, it may also be possible to identify a collection of signs and symptoms (i.e. a syndrome) that could be used for diagnostic purposes.

Records relating to the weather are also relevant as certain circumstances may increase transmission of infectious diseases, such as, for example, low temperatures leading people to spend more time indoors in poorly ventilated spaces to keep the heat in. Other weather conditions like extreme heat can lead to different sorts of health issues. Detection of an anomaly requires data from all available sources, not only traditional ones. For instance, monitoring the number of web searches using specific keywords relating to symptoms could also provide an early warning about an unusual event.

With the COVID-19 pandemic, many people equated it initially with a new type of influenza and therefore did not consider it something special. As the virus spread, its particular symptoms and sequelae made the world realise that it was experiencing a new lethal type of contagion. As most infected people experienced mild flu-like symptoms, many never asked for assistance or got tested. As many among them took over-the-counter medicines they went unreported. Some, however, developed more severe life-threatening symptoms, illustrating the difficulties in identifying in a timely way infection with the new coronavirus.

When trying to understand any outbreak, epidemiological information must be set into context, since external influences such as weather and climate changes, or human activities such as war, forced migrations, dam building, extreme deforestation, etc. could also affect the expected patterns for some diseases. The observed anomalies do not necessarily imply an accident or intentional use. Notwithstanding, it may still be worthwhile to investigate anomalous but natural events to better understand how the new development correlates with environmental factors.

Country borders are historical constructs, and pathogens do not respect them. Because of this, the data analysis should consider geographical delimitations rather than political ones. The latter are mostly relevant to counting formal cases and organising responses to the outbreak. However, people cross borders, and when doing so, they may use different types of transport and travel to distant locations. Given the incubation period and delays in the manifestation of first symptoms after infection, people may be unaware of their condition until after their arrival and thus contribute to unpredictable patterns of disease spread.

One lesson from the COVID-19 pandemic has been the failure by some countries to record and report the scale of transmission at the national level. This not only affected neighbouring countries, but also hindered international cooperation to control and respond to the spread. It testifies to the limitations of current ad hoc country-by-country approaches to containing epidemics.

While health care systems vary between countries, citizens will exhibit similar symptoms wherever they fall ill. This fairly straightforward observation should enable the integration and joint analysis of data despite differences between national healthcare systems. The prompt detection and reporting to the WHO are critical to handling an epidemic at the national and international levels. Currently, reports are prepared, but not always in an accurate and timely way. This is why alternative sources of information, such the Program for Monitoring Emerging Diseases (ProMED), become relevant to understanding diseases progression. Administrative infrastructure affects how a country reports

outbreaks. Collecting information from the whole health care system may be challenging, even for some developed countries, depending on which information is collected and from where assistance and cooperation in this area could contribute significantly to a society's overall preparation.

Distinguishing deliberate disease from natural events or accidental releases

Following determination of an outbreak, steps must be taken to identify its origin and determine whether its causes are natural, accidental, or deliberate. Any investigation of alleged use of BW needs to consider and evaluate the possibility of plausible alternative explanations for the outbreak.

There is some information for which there are obvious reasons to collect, such as geographical distribution of a disease and variations over time. Other examples of indicators, built using openly available information that could help determine the origin of an anomalous event include:

- Non-governmental alerts, like ProMED, together with increases in volume or requests for information;
- Strain identification: determination of whether one or more strains are present and their genetic fingerprint;
- Unexpected demand for certain vaccines or treatments;
- Increases in calls to emergency lines reporting similar disease symptoms, and equivalent reporting on plants and animal health issues;
- Reports from slaughterhouses and silos and grain collectors about the unusual presence of diseases or toxins;
- School and workplace absentee records;
- Other relevant changes in habitual social patterns;
- Etc.

Analysis of combined sets of indicators will help to confirm an extraordinary situation and may contribute to identifying the causes of its emergence. Processing of other contextual information may also be useful for building a full picture of the unfolding crisis, such as, for example:

- Existence of an internal or international conflict;
- Consideration of allegations of a BW programme by at least one of the actors involved;
- Presence of terrorist or criminal groups, including suspicions of BW-related activities;
- Movement of people (war, migrants and refugees, mass events, etc);
- Presence of high-containment laboratories in the affected area;
- Environmental changes (natural and manmade);
- Human penetration or exploitation of certain natural habitats that may harbour unknown sources of infection;
- Presence of transport hubs (train stations, ports, airports, etc.) through which large numbers of people pass arriving from or travelling to different near or distant locations;
- Etc.

A systematic and systemic analysis of anonymised data relating to such, and other indicators would help to map the progression of an outbreak and possibly contribute to identifying clues about its origins. The insights would also help to focus on response priorities, including geographical containment, resource mobilisation, allocation, and optimisation, and determination of next step priorities.

Implications for the Ninth BWC Review Conference

The Ninth Review Conference will be a key moment in developing international responses to deliberate disease. Future analysts looking back may well evaluate the success or failure of the Convention by a simple yardstick – was the BWC community able to reinvigorate international efforts to control BW drawing on the lessons learned from the COVID-19 pandemic?

The discussion above illustrates that States Parties need to carefully consider the issues of disease surveillance at the Review Conference. While there is an overlap with public health, the ability to identify the unusual from the usual is one of the most potent defences against the use of disease as a weapon. Such measures are key to the sustainability of a BW-free world. That disease surveillance and related activities support the BWC was highlighted in a 2009 MSP working paper summarising an EU-sponsored workshop which noted: ‘Participants emphasized that improving cooperation for disease surveillance, detection, diagnosis and containment would directly support the security and non-proliferation objectives of the BWC, as well as supporting the development of the peaceful applications of biological science and technology in accordance with Article X’.⁴

There are related areas in which there are lessons to be learned from the current pandemic to enhance preparedness for any future deliberate disease outbreak. It is already possible to identify situations where pre-COVID-19 pandemic preparedness had a mismatch with events, such as a planning assumption in some countries that requirements for sudden additional supplies of personal protective equipment could be met through imports. Shortages of supplies meant this was impossible at the onset of the pandemic. A further identified initial shortage was availability of staff with relevant skills to rapidly increase the throughput of laboratories processing medical samples in many countries. Key questions remain about how such capacity-building can be resourced and coordinated to facilitate the filling of capacity gaps identified during the pandemic relevant to response to any future biological attack. Tests to identify asymptomatic carriers of COVID-19 became important tools in the reduction of the rate of spread of the pandemic across the world. Inclusion of issues around rapid development and distribution of tests would be important in any future Article VII scenario discussions.

While medical research developed several vaccines and medical treatments for COVID-19, there remain questions regarding the optimum way to distribute the products that result from such research. Gaining active global endorsement for a Review Conference decision to support future humanitarian activities in response to deliberate disease, however structured and whatever it encompassed, would require perceptions of fairness in relation to access to vaccines, pharmaceutical treatments, or protective equipment.

Issues of how science and technology (S&T) developments relevant to the BWC should be reviewed under the Convention have been the subject of discussion for several years. The emerging understandings of COVID-19 have been a clear example of the complex interactions at the interface where science and policy meet. These circumstances illustrate the challenges of developing policy

⁴ Sweden on behalf of the European Union (2009). Moderators’ summary of the international workshop on improving cooperation under article X for disease surveillance, detection diagnosis and containment. Working Paper BWC/MSP/2009/WP.1, 4.

while the science is not clear. Lessons learned from handling scientific advice in relation to the pandemic may assist States Parties in developing arrangements for review of S&T developments under the BWC.

The pandemic has shown the need for a fundamental shift in the perceived value of routine disease surveillance. Many organisations at subnational, national, regional, and international levels hold data. However, this information is not always collected in a structured way, shared, and integrated. Assimilation of the sources of information discussed in this chapter into the disease surveillance system could help to provide early warnings, and as a consequence, would enable prompt responses to future outbreaks. Shifting the attention to the data produced during an outbreak and its systematic and systemic analysis, will allow a different and more secure approach to the subject, in the best interest of the world's people.

9

Increasing assistance and response capacities: What role for international organisations?

Valeria Santori¹

Introduction

In his remarks to the UN Security Council (UNSC) on the new corona virus disease (COVID-19) pandemic, a natural disease outbreak, the UN Secretary-General noted, in April 2020, that ‘the weaknesses and lack of preparedness exposed by this pandemic provide a window onto how a bioterrorist attack might unfold – and may increase its risks’. He also pointed to the possibility that ‘[n]on-state groups could gain access to virulent strains that could pose similar devastation to societies around the globe...’². Faced with such potential threats, many States have undertaken measures to prepare for and respond to deliberate biological weapon (BW) use scenarios. International organisations with existing mandates to assist States in case of an outbreak of a human or animal disease or of a plant pest³ (hereinafter generically referred to as ‘disease outbreak’) have also begun considering the question of how to respond to a deliberate biological event and measures to gear up for such an occurrence. The issue is also high on the agenda of the United Nations (UN) and of the international community, and it acquired added urgency in light of the COVID-19 pandemic. However, capacities for assistance in the framework of the Biological Weapons Convention (BWC), which is the primary international instrument prohibiting biological weapons, are lacking.

Article VII is a key provision in the BWC that expresses solidarity among its States Parties and aims to deter breaches of the convention. According to the common understandings reached by States Parties at Review Conferences, those breaches include not only the use of bacteriological (biological) agents and toxins as weapons by States Parties, but also ‘by anyone other than a State Party’,⁴ which has been understood as to include also non-State actors.⁵ While Article VII provides a tool for a States Party to request and receive assistance in case a BWC violation exposes it to danger, operationalisation of this provision still requires considerable work. Indeed, as discussed by other authors in this volume, the BWC does not spell out any procedures or modalities for States Parties to request assistance, or for the international community to deliver it.

BWC States Parties have however conveyed a clear expectation that the UN ‘could play a coordinating role in providing and delivering assistance under the Convention’ with the help of *inter alia* the appropriate international organisations, ‘in accordance with their respective mandates’.⁶ Regrettably,

1 The views expressed in this chapter are those of the author and do not necessarily reflect the views of the ISU, the United Nations, any of its agencies or other international organisations that contributed to the BEMF. Any inaccuracy, mistake or misinterpretation of relevant mandates, legal documents, policies, other provisions, or relevant practice is to be attributed to the author.

2 See UN Secretary-General (2020). Remarks to the Security Council on the COVID-19 Pandemic. <https://www.un.org/sg/en/content/sg/speeches/2020-04-09/remarks-security-council-covid-19-pandemic> (Accessed: 21 March 2022)

3 Article II of the International Plant Protection Convention (IPPC) defines pests as “any species, strain or biotype of plant, animal or pathogenic agent injurious to plants or plant products”. The term pest is therefore inclusive also of plant diseases and weeds.

4 See BWC (2006). Final Document of the Sixth Review Conference. BWC/CONF.VI.6. Final Declaration, Article VII, para 38. This language has been reiterated thereafter until 2016, when the Eighth Review Conference seemingly inadvertently omitted it.

5 Sims, N. A. (2001). *The Evolution of Biological Disarmament*. SIPRI Chemical and Biological Warfare Studies 19. Oxford: Oxford University Press, 152-153.

6 BWC (2017). Final document of the Eight Review Conference. BWC/CONF.VIII/4. Final Declaration, Article VII, para 37.

the means by which this would happen have not been further elaborated. In particular, little attention has been given to a more detailed consideration of what this ‘important coordinating role’ by the UN could entail, and which parts of the UN system ought to be involved.

States Parties have supported various initiatives to operationalise Article VII. Canada sponsored a UN Office for Disarmament Affairs (UNODA) project, coordinated by the BWC Implementation Support Unit (ISU) and implemented in cooperation with various UN offices, departments, funds, programmes, specialised agencies and other parts of the UN system, as well as other relevant international organisations. The project aimed at enhancing international mechanisms for assistance to States in the context of a deliberate use of disease, particularly in support of an Article VII assistance request in the BWC context.⁷ Its main output, part of which is reflected in this chapter, is an International Bio-Emergency Management Framework for deliberate events (BEMF).⁸ The UN Secretary-General also pointed to the need for such a framework in his 2018 disarmament agenda, under which he mandated UNODA to work with ‘all relevant UN entities to contribute to developing a framework that ensures a coordinated international response to the use of BW’.⁹

The BEMF aims to contribute to a harmonised response among participating organisations to a deliberate disease outbreak and provides a framework for dialogue and cooperation among them. It describes existing mandates, response and coordination mechanisms of international organisations operating in the human, animal and plant health sectors that would be relevant to a response to a deliberate use of disease. The BEMF also covers possible humanitarian implications of a deliberate disease outbreak and related humanitarian response mechanisms.¹⁰ The Framework is an informal, non-prescriptive and non-binding policy document. It does not replace, affect or duplicate any emergency preparedness and response arrangements, cooperation mechanisms of participating organisations or States. It just refers to them.

Main Challenges to Operationalising Article VII from the perspective of international organisations

A cornerstone of the multilateral disarmament architecture, the BWC does not establish an international institution to support its implementation. No legal entity therefore exists that could engage in activities relating to receiving requests for assistance and coordinating its delivery. In 2006, the BWC Sixth Review Conference established the ISU endowing it with limited staffing and tasks, mainly relating to administrative support and assistance to States Parties. As things currently stand, therefore, the ISU has no mandate, legal personality or capacity to coordinate response and assistance operations if a State Party were to invoke Article VII.

7 Organisations and entities that accepted to contribute to and are referred to in the BEMF are the: United Nations – in particular, the Executive Office of the Secretary-General (EOSG), UN Department for Safety and Security (UNDSS), UN Interregional Crime and Justice Research Institute (UNICRI), UN Operations and Crisis Centre (UNOCC), UN Office for the Coordination of Humanitarian Affairs (OCHA) and UN Environment Programme/OCHA Joint Unit (JEU), UN Office of Counter-Terrorism (UNOCT), UNODA, UN Office of Legal Affairs (UNOLA) – Food and Agriculture Organization of the UN (FAO), International Criminal Police Organization (INTERPOL), IPPC Secretariat, World Organisation for Animal Health (OIE), Organisation for the Prohibition of Chemical Weapons (OPCW, in circumstances relevant to the Chemical Weapons Convention), and World Health Organization (WHO).

8 Currently, this document is for the internal purposes of the BWC-ISU, UNODA, the donor and the international organisations participating in the Article VII UNODA project.

9 See ‘Securing our Common Future. An Agenda for Disarmament’, p. 26, and its Implementation Plan (Action 11), available at <https://www.un.org/disarmament/sg-agenda/> (Accessed: 21 March 2021)

10 The development of the BEMF built upon the UN Counter-Terrorism Centre’s (UNCCT) work on inter-agency interoperability in case of chemical and/or biological terrorist attacks. Following a recommendation that emerged in the context of that work, the BEMF has been developed based on the model of the International Atomic Energy Agency’s Joint Radiation Emergency Plan of the International Organizations, while factoring in the fundamental differences between the nuclear and the biological areas.

Moreover, as mentioned above, the text of the BWC does not specify the modalities for the international community to deliver Article VII assistance, while States Parties have repeatedly expressed the need to establish procedures to deliver such assistance in coordination with international organisations. The important role of international organisations that are specifically mandated, upon request, to provide support to States in mitigating the consequences of outbreaks of human or animal diseases, or plant pests was noted by successive BWC Review Conferences. They mentioned in particular the World Health Organisation (WHO), the World Organisation for Animal Health (OIE), the UN Food and Agriculture Organisation (FAO), and the International Plant Protection Convention (IPPC). BWC States Parties also stressed that ‘the capacities and experiences of United Nations and relevant international organizations should be identified and used, within their mandates, when required and upon request of the concerned State Party.’¹¹

Besides the current lack of mechanisms or procedures to activate and deliver assistance under Article VII, there is neither a lead organisation nor a comprehensive international mechanism that would ensure the overall coordination of international organisations’ actions in case of a major deliberate disease outbreak. The UN has not been mandated to assume the overall coordination of a response to a deliberate event either.

Ensuring effective inter-agency cooperation – even beyond the usual partners (to include security actors for example) – becomes therefore essential towards providing effective support to States with their efforts in responding to a deliberate disease outbreak. The UN General Assembly (UNGA) also highlighted the need for effective inter-agency coordination in response to a deliberate use of biological agents in its Counter-Terrorism Strategy.¹² More recently, in its resolution 74/270 relating to COVID-19, a natural outbreak, the UNGA also acknowledged ‘the need for all relevant stakeholders to work together at the national, regional and global levels’ and reaffirmed ‘its strong support for the central role of the United Nations system in the global response’ to the pandemic.¹³

Challenges for international organisations AND FOR Inter-Agency Cooperation

As much as coordination is crucial within the UN system and with other international organisations, specific challenges arise for inter-agency cooperation in the biological sector in case of a suspected or confirmed deliberate use of disease.

Mandates, operating principles, and modalities of international organisations with possible roles in the response differ. At the same time, each organisation operates strictly within the confines of its own mandate and acts exclusively upon one or more of their respective member States’ request for assistance or their acceptance of an offer of assistance.

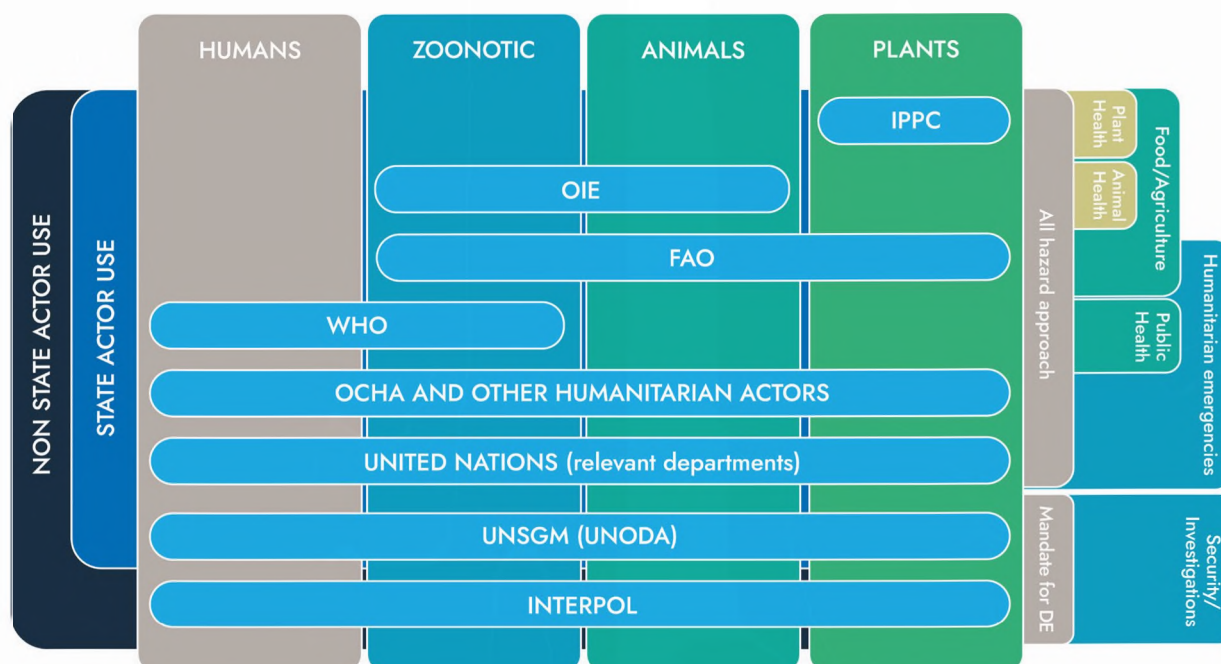
Some organisations have a mandate that covers response to disease outbreaks of a deliberate nature. Other organisations follow a so-called ‘all-hazards approach’. They address the consequences of a disease outbreak to mitigate them, irrespective of the underlying causes. Other organisations’ mandates do not refer to disease outbreaks at all. However, due to the characteristics, impact or response requirements of such outbreaks, they could nevertheless assist States in need.

11 BWC (2017), paras 37 and 39.

12 See, e.g., UNGA resolution A/RES/60/288 (2006). Global Counter-Terrorism Strategy, Pillar II, para 17.

13 UNGA resolution A/RES/74/270 (2020). Preamble paras 7 and 8; Operative para 1.

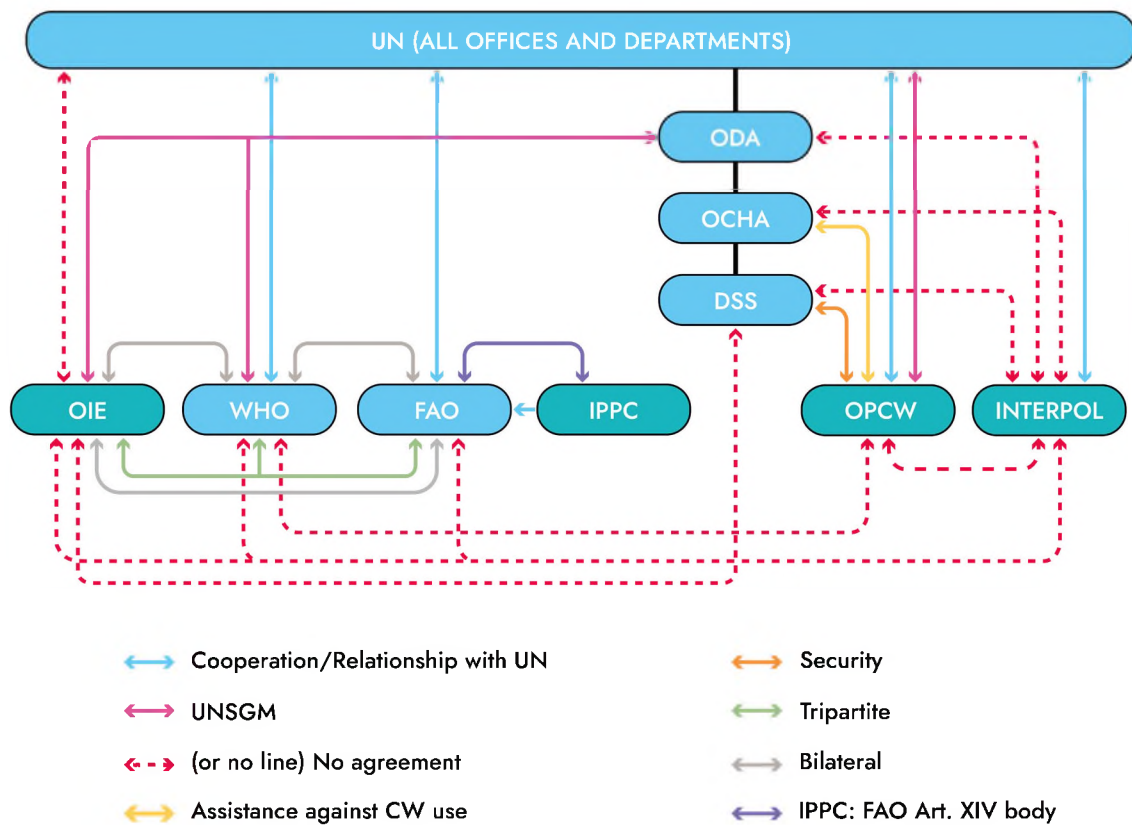
Figure 1. Main Actors and Core Mandates



Source: BEMF

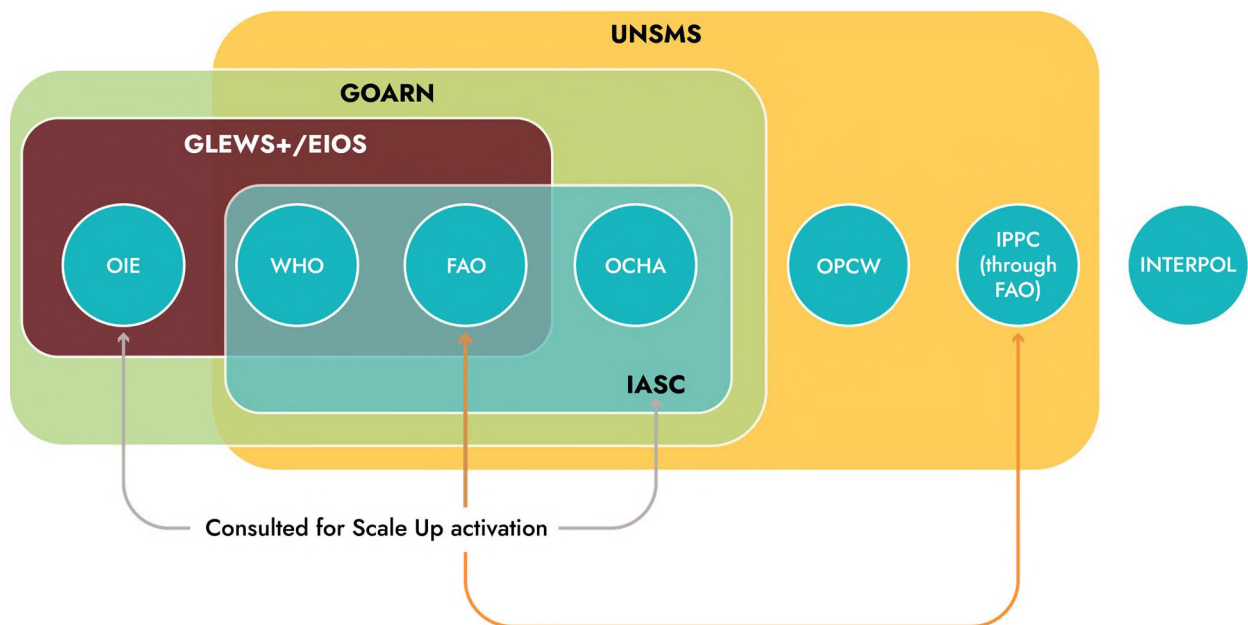
Organisations whose core mandate is related to food and agriculture, public, animal or plant health and/or is humanitarian in nature, even when that mandate covers deliberate events, are not ‘security’ organisations. Their procedures do not specifically address situations of deliberate use and only recently have they begun considering the possible consequences of such use on routine operations. Even when they may have to operate in a security context, those organisations always remain true to their technical, medical or humanitarian mandate and related operating principles. There may also be concerns that possible association with security aspects of a response might negatively impact on those organisations’ health or humanitarian mandates. Moreover, while those organisations may have entered in bilateral cooperation agreements with each other and set up sectoral cooperation mechanisms, in some instances such arrangements are lacking, while, as mentioned above, no overarching mechanism to coordinate all international actors relevant to a response presently exists.

Figure 2. Relevant agreements and arrangements between participating agencies



Source: BEMF

Figure 3. Cooperation mechanisms



Source: BEMF

In terms of response operations proper, in general terms, the technical activities, tools and mechanisms of the participating organisations for detecting, assessing and responding to disease outbreaks would essentially remain the same, irrespective of the outbreak's origin.

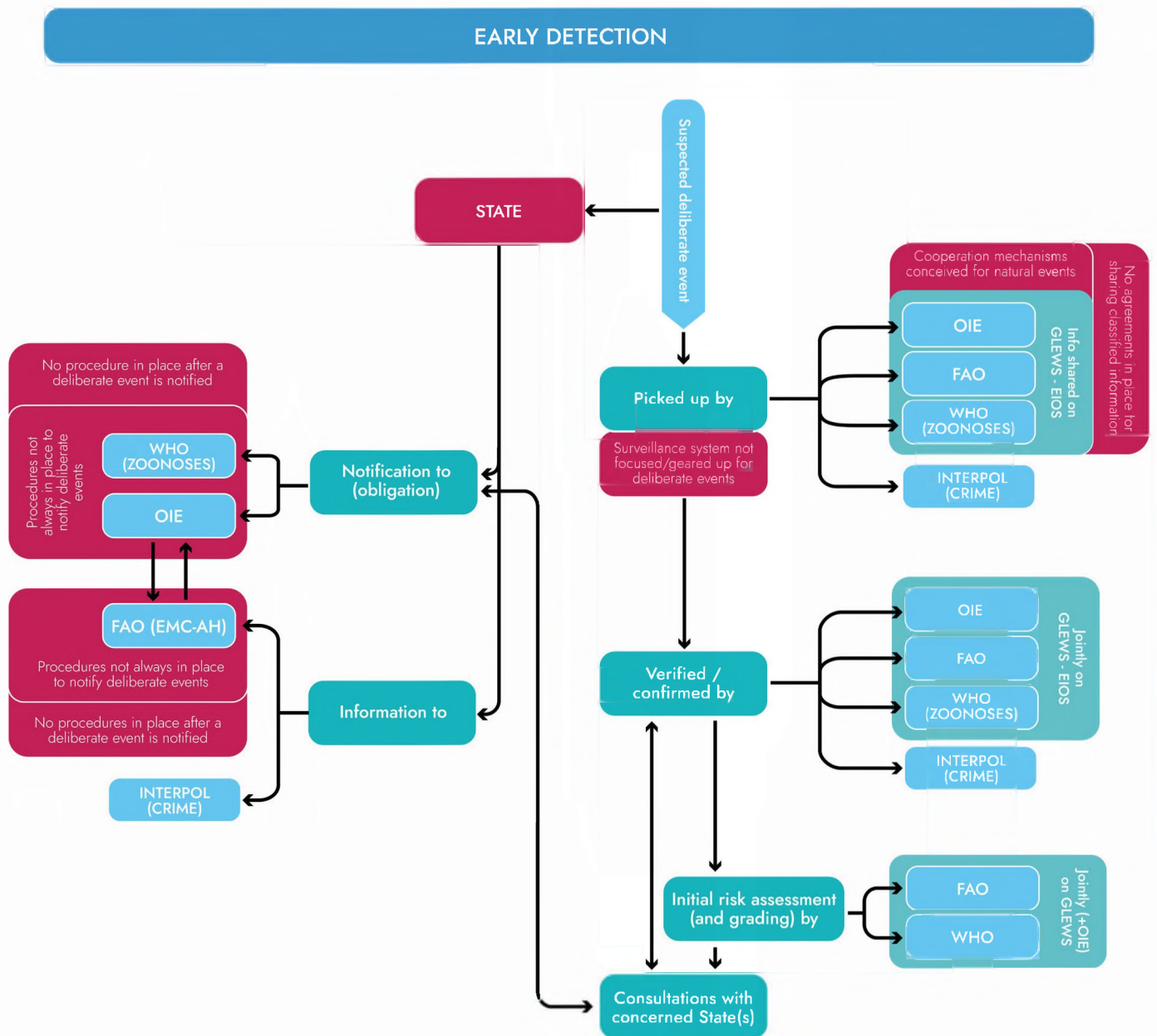
In case of a deliberate event, however, response efforts could include, in addition to containment measures, other components, such as an international investigation, an engagement of the UNSC and the launching of an international assistance operation. A deliberate event, moreover, would likely raise some political, security and logistical challenges that would impact on the engagement and operational modalities of participating organisations. Political challenges particularly, could impact on the ability of participating organisations to engage with the situation, and on their routine procedures. Logistical challenges would affect *inter alia* the safety and security of personnel to be deployed or already deployed, as well as the ability to conduct of operations in the field. Moreover, security considerations might impact on those organisations' ability to share information among themselves, even within agreed cooperation frameworks.

What possible role for the UN and other international organisations?

Despite the many challenges described above and the shortcomings in existing legal tools – e.g. those embedded in the BWC or limitations in the mandates of relevant international organisations – these organisations' respective response actions to events involving a deliberate disease outbreak may also be analysed with a systemic approach, as a single response process. Such a systemic approach looks at every phase of a response (early detection, assessment, delivery of assistance, etc.) and analyses how, in each phase, each international institution contributes critical resources and expertise to the joint response effort. Even if not (perfectly) coordinated, such overall response process presents a certain degree of complementarity if one focuses on the connections between the response actions of international organisations rather than on any inconsistencies or lacunae.

The BEMF aims to describe that process, for three different scenarios of deliberate use: human disease, animal disease and plant pest. For each scenario and for each response phase, the BEMF describes 'who does what'. It highlights where sectoral or broader coordination arrangements already exists, and where such arrangements are lacking. It also highlights how the deliberate nature of the incident may create political, legal, operational and other difficulties that may affect how the various organisations operate, thus possibly impacting on the effectiveness of the response. The table below describes how the process would unfold in the phase of early detection of an animal or zoonotic disease (of a possibly deliberate nature). Potential bottlenecks are highlighted in red.

Figure 4– Animal and zoonotic disease: Early detection



Source: BEMF

Most importantly, while no single office in the UN is mandated to take on the overall coordination of the response to a deliberate use of a biological agent, several UN offices, departments and funds would have a role to play in connection with a (deliberate) disease outbreak, including in cases where the UNSC or the UNGA may be involved. Policies and procedures are in place for UN coordination and effective leadership of the response in case of crises that require a UN system-wide coordinated and multidisciplinary response. In addition, the UN would liaise and coordinate with other relevant international organisations as needed. For example, to address the COVID19 pandemic, the UN, pursuant to internal policies, established a Crisis Management Team under WHO lead with participation from all relevant parts of the UN system to coordinate assistance to States. In case of alleged use of a biological weapon, moreover, if so requested by a Member State, the Secretary-General under the authority granted to him by UNGA Resolution 42/37C of 1987

(endorsed by UNSC resolution 620 (1988)), could decide to open an international investigation into the alleged use of biological weapons possibly in cooperation with WHO and, where relevant, other organisations. UN practice has also shown that *ad hoc* or reinforced structures have been established to coordinate assistance in connection with (natural) human health emergencies of high complexity that required a UN system-wide response.¹⁴ Similar or other *ad hoc* mechanisms could be conceivably established to coordinate assistance in case of a disease outbreak of a deliberate nature, or also to carry out an investigation.

Conclusions

In the current circumstances, there are important gaps and complex challenges to ensuring effective coordination of assistance, especially if requested under BWC Article VII. However, the UN, in cooperation, as possible, with other international organisations, is endowed with tools and expertise that could be used when responding to a deliberate use of disease. Those tools would need to be adapted to the specific characteristics of a deliberate event, additional agreements may be required and more policies and operational procedures would need to be developed for the system of international organisations to be fully prepared. Efforts are being undertaken by those institutions towards this end. With regard particularly to the BEMF, additional work is being carried out under the UN Biorisk Working Group (UN-BRWG), established on 20 August 2020 by decision of the Secretary-General's Executive Committee. The UN-BRWG aims to bring together policy, normative and technical expertise to harmonise and further develop a clear understanding of capacities, mechanisms, and roles and responsibilities within the UN system to strengthen the international community's response to biorisks and improve the prevention of and preparedness for the deliberate use of biological pathogens. The Working Group was mandated to undertake five activity workstreams. Under 'Activity 2', the BEMF is being developed into an overarching guidance framework for the UN system. This work includes relevant lessons and practices identified within response to the COVID-19 outbreak. Under 'Activity 4', this guidance will be tested in a high-level table-top biorisk assessment and mitigation exercise involving the UN leadership.

The BEMF, as an action item in the UN Secretary-General's disarmament agenda, has endeavoured to highlight challenges, but also to point to opportunities to enhance cooperation among the participating organisations. It has done so particularly by promoting dialogue among them and a common understanding of each other's mandates, capabilities and statutory constraints. This work is now continuing within the UN-BRWG. It is hoped that this could contribute to developing a framework that ensures coordinated international assistance in the event of BW use.

¹⁴ In September 2014, the UN Mission for Ebola Emergency Response (UNMEER) was established to enhance coordination of assistance to tackle the Ebola Virus Disease Outbreak in West Africa. In May 2019, to address the Ebola outbreak in the Democratic Republic of the Congo (DRC), the Secretary-General established a strengthened humanitarian coordination and support mechanism in the epicentre of the Ebola outbreak in the eastern provinces of the country. UNGA (2019). Revised estimates relating to the programme budget for 2020 under section 27, Humanitarian assistance, and section 36, Staff assessment. A/74/544, para 1.2.

FOR MORE INFORMATION:

BWC IMPLEMENTATION SUPPORT UNIT

WEBSITE: WWW.UN.ORG/DISARMAMENT/BIOLOGICAL-WEAPONS/

E-MAIL: BWC@UN.ORG

TWITTER: [@BWCISU](https://twitter.com/BWCISU)

THIS PUBLICATION WAS PRODUCED WITH THE FINANCIAL SUPPORT
OF THE GOVERNMENT OF JAPAN

