

# Triggering Article VII of the BTWC

## *Conditions and basic scenarios*

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*Article VII of the BTWC: Initiating a request for assistance in case of exposure to a biological danger as a result of a violation of the Convention*

*BTWC Meeting of States Parties – Side Event Hosted by France*

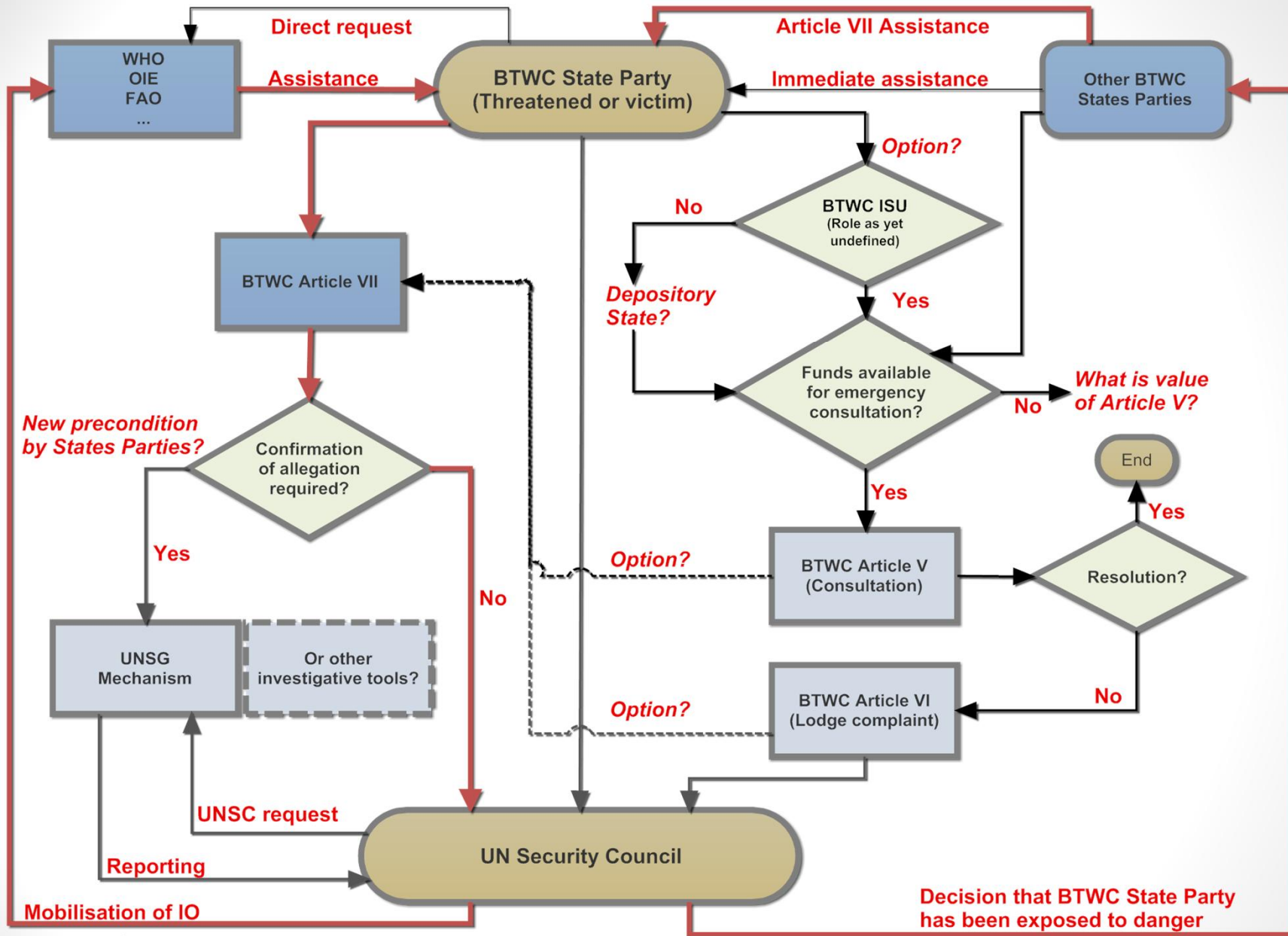
*Geneva, 6 December 2017*

# FRS – UNIDIR tabletop exercise (Nov 2016)

- *Victim state*: triggered Article VII
  - After confirmation that disease was non-endemic, *AND*
  - Disease had been genetically modified to enhance resistance to antibiotics
  - In earlier stages it was wary of the *political implications* of triggering Article VII
- *Alleged perpetrator*: called for investigation by UN Secretary-General
  - Sought confirmation of the nature of the outbreak
  - Government convinced that it was not responsible: *exoneration* & *transparency*
  - Factor in decision as to whether it *would provide* assistance under Article VII rather than via other mechanisms
- *Outside country*: emergency assistance via other mechanisms
  - Willing to provide emergency assistance, but not under Article VII (e.g., WHO)
  - Demanded *proof* of deliberate attack before willing to offer Article VII assistance
- Report of the TTX:
  - <http://www.the-trench.org/wp-content/uploads/2013/06/201707-FRS-BTWC-Article-VII-TTX-report.pdf>

# Implications of three directions

- **Coordination of the response**
  - Each route gives lead to different bodies with different mandates
  - Raises questions about overall coordination of the response, potentially involving
    - UN Security Council and UN Secretary-General
    - International organisations (e.g. WHO)
    - Bilateral assistance
    - International non-governmental organisations
    - Donor entities (states, inter-governmental organisations, charities and foundations, ...)
    - International military units (both for logistics assistance or peace keeping), policing and law enforcement assistance, etc.
    - Local health care and logistics
- **Uncertainty about the Article VII process informed preferences in function of national assessment of situation based on then available information**
  - Nowhere has the process for triggering Article VII been spelled out
  - To whom should the request be addressed? (BTWC ISU, BTWC Depositories, UNSC, ...)
- **What is 'sufficient' proof?**
  - Three different demands
  - Who decides what proof is sufficient?
  - Not a question of criminal culpability, but grounds for triggering Article VII
  - Concern about the political implications of triggering Article VII (UNSC, allegation, ...)



- ➔ Article VII actions
- ➔ Alternatives

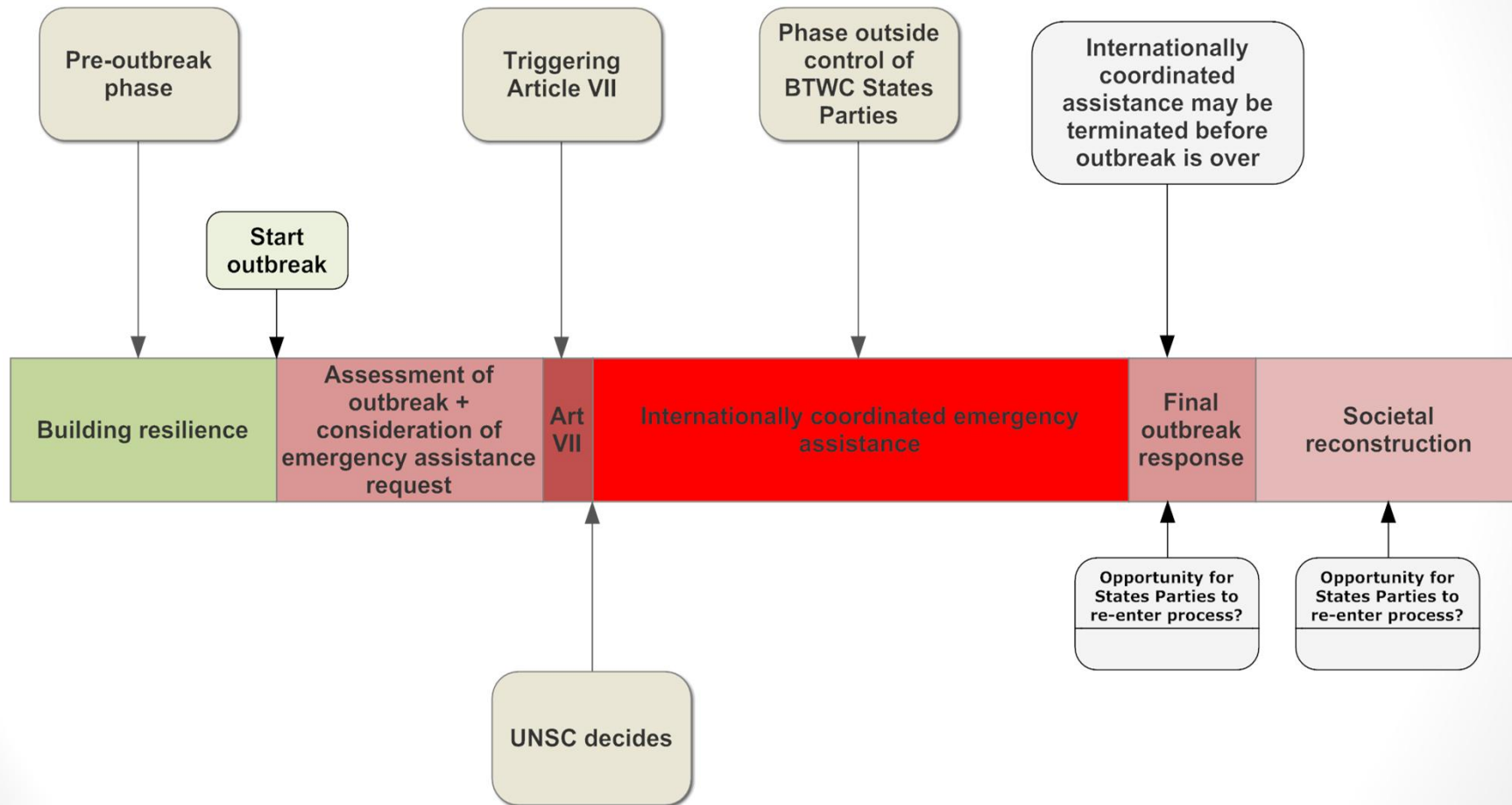
# Comments on decision-making chart – 1

- Chart built on assumption of major disease outbreak potentially causing a *humanitarian* crisis
  - The outbreak is *unusual* with *deliberate intent* suspected
  - There is no established procedure for dealing with an Article VII request
    - The UNSG Investigative Mechanism is not a formal part of the BTWC regime
      - However, RevCon final documents have referred to it
      - Some States Parties have listed their material support for the Investigative Mechanism as contributing to Article VII (Repurposing of contributions)
      - Based on the Syria experience and concerns of false allegations (e.g., by the accused state) a request for an investigation may accompany or follow the Article VII invocation
      - The 'accused' State Party may request the UNSG Investigative Mechanism to exonerate itself
    - *BTWC ISU* not formally designated as recipient of any form of complaint, nor do *3 Depository States* have any formal function in BTWC management
    - Would a State Party consider invoking *Article V* before deciding on Article VII (bearing the potential urgency of the crisis in mind)?
      - In that case, are there (reserve) funds available to convene such a meeting (in view of current contribution crisis)?
    - A State Party can always appeal directly to the UNSC or WHO, etc. (+ BTWC Article VI)
- **Multiple scenarios possible**
  - Elements to the left of the chart will be less evident in case of a threat ('*danger*') rather than of an actual incident

# Comments on decision-making chart – 2

- Consideration has to be given to the *internal* decision-making process of a State Party thinking of invoking Article VII
  - Which factors may contribute to invoking Article VII?
  - Which factors may mitigate against an Article VII request?
    - Domestic
    - International
    - Situation-specific
- Are there other cost-benefit factors to be considered?
  - Relative to other procedures foreseen under the BTWC
  - Relative submitting the concern directly to the UNSC
  - Relative to seeking assistance directly from international organisations such as WHO, OIE, FAO, ...

# Possible phases in an Ebola-like crisis



# Realities of the BTWC

- Treaty is governed by the community of States Parties
  - No formal international organisation to oversee treaty implementation
  - No legal person with contracting authority
- No capacity to prepare for contingencies in case of major treaty violations
  - No equivalent provision to Article X of the CWC
    - Was foreseen in Article 13 of the draft legally binding Protocol (2001)
  - No systematic (national) capacity building in surveillance, detection, diagnostics, treatment, etc. (as could be conceived under Article X of the BWC)
  - No prepositioned equipment and supplies or systematic (regional) training programmes
  - No independent investigative capacity
  - No international network of certified reference laboratories to analyse samples or with forensic capacities



# Conclusions

- **Debate on Article VII is still in early conceptual stage**
  - Formulation of broad principles
  - Emphasis on the humanitarian dimension
  - Need for clarification of terminology in Article VII, as intent was different during negotiation of BWC
  - Review of status implementation of Article VII (BWC/CONF.VIII/INF.3) contains primarily national activities whose goals were repurposed in function of Article VII
- **Major gaps**
  - No common idea of how a state might decide to invoke Article VII or how such a state should proceed
  - Major gap analysis is required to understand the demands of implementing Article VII in all its stages
    - Relationship States Parties – UNSC requires clarification, including its political and organisational dimensions
    - Is prior determination of deliberate disease a prerequisite for invoking Article VII and UNSC action?

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