Tabletop Exercise (TTX)
on the Implementation of Article VII
of the Biological and Toxin Weapons Convention (BTWC)

8-9 November 2016, Palais des Nations, Geneva

Report

Prepared by

Jean Pascal Zanders, Elisande Nexon and Ralf Trapp

Exercise organised by the *Fondation pour la Recherche Stratégique* (FRS)
in cooperation with the *United Nations Institute for Disarmament Research* (UNIDIR),
with funding from France and a grant from the UK Foreign and Commonwealth Office.

About FRS

The Foundation for Strategic Research (FRS) was founded in 1998. Based in Paris, it is an independent research centre and the leading French think tank on defence and security issues. Its team of experts in a variety of fields contributes to the strategic debate in France and abroad, and provides unique expertise across the board of defence and security studies. In the aera of international security, its specific focuses are security doctrines, arms control, proliferation/dissemination issues and challenges, non-proliferation regimes and policies (small arms, conventional weapons, biological and chemical weapons, nuclear weapons, and their delivery systems). The FRS maintains an active presence in the strategic debate through its publications, its website, and the events it regularly organises. It takes part in the EU Non-Proliferation Consortium.

www.frstrategie.org

About UNIDIR

The United Nations Institute for Disarmament Research (UNIDIR)—an autonomous institute within the United Nations—conducts research on disarmament and security. UNIDIR is based in Geneva, Switzerland, the centre for bilateral and multilateral disarmament and non-proliferation negotiations, and home of the Conference on Disarmament. The Institute explores current issues pertaining to the variety of existing and future armaments, as well as global diplomacy and local tensions and conflicts. Working with researchers, diplomats, government officials, NGOs and other institutions since 1980, UNIDIR acts as a bridge between the research community and governments. UNIDIR's activities are funded by contributions from governments and donor foundations.

www.unidir.org

Note

FRS and UNIDIR would like to thank all the workshop participants for their inputs and contribution to the constructive discussions, as well as the Ministry for Europe and Foreign Affairs of France and the Foreign and Commonwealth Office of the United Kingdom for their financial support for this project.

The views expressed in this publication are those of the workshop participants and the authors. The contents or findings and recommendations expressed herein do not necessarily represent the views of the United Nations, FRS, UNIDIR, the Ministry for Europe and Foreign Affairs of France or the Foreign and Commonwealth Office of the United Kingdom.

© FRS 2017

Table of contents

Introduction 5
Goals and framework 7
Summary of findings and recommendations 9
Scenario of the tabletop exercise 12
General setting 12
Geopolitics 12
Conflict 13
General plot outline 13
Conduct of the tabletop exercise 14
First breakout session: *Assessing the outbreak* 15
Decision-making 15
Discussion and observations 18
Second breakout session: *Developing policy actions – contingencies* 20
General setting 20
Decision-making 20
Discussion and observations 24
Third breakout session: *Critical decision-making* 25
General setting 25
Decision-making 25
Discussion and observations 26
Rationale behind positions and decisions taken by participants 28
Questions outside the scenario used in the tabletop exercise 30
Next steps 31
Appendix 1 – Agenda 32
Appendix 2: Background to Article VII of the BTWC 33
Genesis of Article VII 33
Evolution of understandings 35

[This page intentionally left blank]

Introduction

In accordance with the decision of the 7th Review Conference (2011), the Parties to the Biological and Toxin Weapons Convention (BTWC) for the first time took up the biennial topic of 'Article VII' during the Meeting of Experts (MX) held in August 2014. Article VII reads as follows:

> *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*.

Since completion of negotiations in 1971, this article has received scant attention.[1] As a consequence, the vagueness of its purpose and meaning of some key phrases has only increased over the years. Meanwhile, the security landscape in which the BTWC must function too has changed significantly. The bipolar global order of the Cold War gave way to today's polycentric world system with its many regional power centres and levels of decision-making, of which the state is but one actor. Direct security challenges to societies worldwide have also changed, terrorism being one of the most vexing issues. It threatens societies both from within and faraway. Bearing pathogens and toxins in mind, the so-called 'loners' — individuals with the knowledge and expertise—can put significant numbers of people at risk. Furthermore, societies worldwide are confronted with emerging and re-emerging diseases (avian influenza, Zika and Ebola just being some recent examples) and the international community struggles to organise international assistance.

The civil war in Syria, which broke out in the spring of 2011, has seen the first use of chemical weapons (CW) since the entry into force of the Chemical Weapons Convention (CWC) in 1997. The Organisation for the Prohibition of Chemical Weapons (OPCW), in collaboration with the United Nations (UN) and the World Health Organization (WHO), has been able to conduct investigations of alleged use (both in support of the UN Secretary-General's Investigative Mechanism and autonomously after Syria's accession to the CWC in October 2013) and take a lead role in the disarmament of Syria's chemical warfare capacities. The demands on the international organisation, the complexities of inter-organisational collaboration, and the fact that all operations had to be undertaken under conditions of war have led to serious questions about how the international community would have responded if biological rather than chemical weapons had been used.

The BTWC has no autonomous implementation organisation, an Organisation for the Prohibition of Biological Weapons (OPBW) as it were. From the perspective of Article VII this has a twofold implication. On the one hand, no institution has developed and tested procedures to carry out this obligation in case of a request. In addition, no agreements with other international organisations on whose expertise the BTWC States Parties may

[1] Appendix 2 summarises the genesis and evolution of common understandings of Article VII.

have to rely are in place. On the other hand, organisations such as the OPCW tend to be fountains of innovative ideas. Options that previously had not been considered or were too politically sensitive can gradually become inserted into the deliberations. Concrete treaty implementation requirements or State Party requests may set such processes in motion. In the absence of an OPBW with relevant decision-making organs or programming responsibilities many debates must necessarily remain conceptual. Presently, the BTWC's governance structure based on consensual decision-making by States Parties has no mechanisms in place to discuss and set up or negotiate special arrangements with international organisations.

Through the process of quinquennial review conferences States Parties reach common agreements—both in terms of updating common understandings and agreeing on the types of actions that need to be undertaken—on the BTWC articles. The intersessional process—a series of annual Meetings of Experts followed by Meetings of States Parties (MSP) in between review conferences—generated common understandings. (The 8th Review Conference failed to renew the process in November 2016 and States Parties only agreed on a single MSP in December 2017, which is to consider possible activities until the 2021 Review Conference.) These common understandings may, among other things, advance the interpretation of a particular provision or phrase in the light of evolving security conditions, science and technology, and other developments. Formal endorsement at the next review conference reflects state practice and therefore evolution of the treaty regime. Broadly speaking, Article VII seems to have fallen outside these processes and not all review conferences contributed to clarifying or expanding the understanding of the article.

Article VII received ample attention at the 8th Review Conference (7–25 November 2016). Provided that the MSP foreseen for 2017 can agree on an annual work programme before the 2021 Review Conference, implementation of Article VII will likely feature on the agenda of activities.

To assist State Party consideration of issues under this provision, the *Fondation pour la Recherche Stratégique* (FRS) and the *United Nations Institute for Disarmament Research* (UNIDIR) held a tabletop exercise (TTX) on 8–9 November 2016 to understand better the elements that would have to be in place to trigger Article VII and the consequences such action may have on the organisation of international assistance. Moreover, the TTX also aimed to achieve a deeper appreciation of the unique contribution of the BTWC in addition to the expected assistance efforts by international organisations, relief associations and individual countries. The TTX put into sharper relief certain questions BTWC States Parties will have to address even before the first item of assistance is shipped to the disaster area. Failing to do so, the TTX suggested that States, depending on their individual assessment of the risks following the outbreak and the cause of the epidemic, may decide on totally different courses of action, an outcome that might severely hamper the international coordination of efforts to stem the outbreak and assist victims.

Goals and framework

The tabletop exercise primarily sought to stimulate reflection on the decision-making processes that could lead a BTWC State Party to invoke Article VII and would steer the international community's response. In contrast to several other exercises it did not cover the response phase to the outbreak and the deployment of emergency assistance. In fact the TTX ended at the moment when the international community would have come together to organise its response. Reflection on the domestic and international decision-making processes covered (but was not limited to):

- Determination of the conditions that could trigger Article VII;
- Determination of the steps one or more State Parties are likely to undertake to trigger Article VII; and
- Assessment of the circumstances under which the international community might be willing to consider responding to requests under Article VII.

Specific questions included (but were not limited to):

- *What steps or measures need to be identified and implemented ahead of an outbreak?*
  - On the national level?
  - On the international level?
- *What areas should such preparatory steps or measures cover?*
  - To receive or facilitate receipt of international assistance?
  - To foresee and prepare for the impact of an outbreak on a country's social fabric (e.g., economy and trade, travel, schools, public events, fear, education and outreach concerning the crisis, etc.)?
- *What steps or measures would the community of States Parties need to undertake to operationalise Article VII?*
  - Are there any preconditions to launching such a request?
  - Is there a need for independent confirmation that an outbreak is deliberate before Article VII can be triggered? If so, who will make that determination?
  - What type of information should the request contain?
  - With whom should the request be filed?
    - Should mechanism provided in other parts of the BTWC be utilised?
    - Can a State Party file a direct request with the UNSG or UNSC, and if so, what is its specific contribution to or impact of Article VII on the subsequent chain of developments?

The proposed scenario covered only the time frame between the detection of an outbreak and the moment when the international community would be called upon to offer assistance to the country suffering a major outbreak. It did not deal with how the resources for such assistance would be mobilised or the ways in which the assistance might be provided.

Furthermore, the scenario was not intended to be gamed. Its purpose was to focus on critical decision moments prior to the deployment of assistance under BTWC Article VII. In particular it sought to stimulate thought on the conditions under which a State Party might consider triggering Article VII in view of the many other available mechanisms to call for and manage international assistance after disasters, including public health crises resulting from disease outbreaks:

- The WHO would be a key actor in any scenario of a major disease outbreak. At the time of the exercise it had already undertaken a major reform of its emergency capacities based on reviews of its response to the Ebola epidemic in West Africa.
- Other United Nations actors that might become involved depending on the nature of the outbreak are the Food and Agricultural Organisation (FAO), the Office for the Coordination of Humanitarian Affairs (OCHA), the UN Children's Fund (UNICEF), the World Food Programme (WFP), and the World Organisation for Animal Health (OIE), among others.
- States Parties to the BTWC, as well as other international organisations, may decide to provide different types of assistance on a bilateral basis or in support of international relief efforts (e.g., funding of operations) on purely humanitarian imperatives and without awaiting decisions under BTWC Article VII.
- Several non-governmental humanitarian organisations may become involved in addressing the consequences of a major disease outbreak because of their rapid response capacity (e.g. International Committee of the Red Cross – ICRC or Médecins sans frontières – MSF) or ongoing local development assistance activities. Each one of them may have capacities to receive, distribute or deploy international assistance to the stricken areas.

Equally important in considering possible action under BTWC Article VII were the likely organisational and procedural implications of the sequence in which international organisations may become involved in the response.

Summary of findings and recommendations

1. Invocation of BTWC Article VII may generate many political and legal uncertainties in the absence of clear procedures. Presently it is unclear under which circumstances the article could be triggered and to whom the request for assistance should be addressed (Chair/President of BTWC meetings, Depository States, UN Secretary-General, UN Security Council). In the case of an unusual disease outbreak the international community will likely respond immediately with medical, humanitarian and other relief assistance via established intergovernmental and international non-governmental organisations. The question therefore arises which types of assistance above and beyond that of a humanitarian response States Parties to the BTWC should consider. In addition, it is unclear how such assistance might be delivered to the requesting state: via the already mobilised intergovernmental and international non-governmental organisations or via alternative routes? More to the point, there are issues related to institutional mandates and competences, as well as operational coordination and decision making, which would need further study.

2. The TTX indicated that initial measures by States Parties in response to a disease outbreak—even if concerns exist that the outbreak might have been the result of a malicious act—are likely to be driven by public health concerns. Using existing public health systems and mechanisms under the International Health Regulations (IHR) were primary considerations in the opening stage of the exercise. It reflected the uncertainties regarding situational assessments at this early stage, on the one hand, and the need to respond quickly to save lives, on the other hand. However, this initial response created both institutional and psychological barriers to requesting additional assistance that is explicitly linked to a potential violation of the BTWC. It will therefore be important to establish a procedural framework for how Article VII can be invoked.

3. It is equally unclear at what stage of the evolving health emergency Article VII could conceivably be invoked. Requesting assistance under Article VII signals deliberate intent behind the outbreak, which other States Parties may not be willing to accept immediately. This raises questions of evidence. Must the requesting State Party supply evidence of deliberate release in support of its request, and if affirmative, what should be the nature and quality of such evidence? What additional steps to confirm the allegation may the international community, and the UN Security Council in particular, require before determining that the requesting State Party 'has been exposed to a danger as a result of violation of the Convention'?

4. The exercise also showed that States Parties may require independent confirmation of a violation of the BTWC before they are willing to trigger Article VII (for example in form of findings in relation to procedures under Articles V or

VI of the BTWC, or of an investigation under the UN Secretary-General's Mechanism). It will be important therefore to consider whether these mechanisms are well-equipped to provide such independent confirmation at a level of confidence acceptable to States Parties. Equally important, can such mechanisms yield results within time frames that allow timely decision-making under Article VII?

5. While current debates on Article VII tend to emphasise humanitarian assistance, the TTX suggested that BTWC States Parties ought to consider the added value of Article VII assistance. Humanitarian assistance is the first response to an unusual disease outbreak, for which mandates and procedures have been developed and adopted by various organisations and institutions. Given that invocation of Article VII is suggestive of a deliberate release of a pathogen, clarifying the uncertainty (with or without attributing responsibility) may be an equally important response component. Article VII could conceivably address the following areas of possible assistance: forensic or investigative capacities, data sharing and information, law enforcement capacity, transport assistance (e.g. humanitarian corridors; road, air space or port access), military assistance (e.g., logistics at points of entry or distribution centres).

6. The implications of invoking Article VII clearly complicated the assistance process. From the perspective of the requesting State Party the consequences of the step are unclear. For instance, would it still be in charge of the response? Would it still be involved in the decision-making processes, and if so, to what extent? What control would it retain over developments once the determination of the cause of the outbreak has been internationalised? Might it exacerbate international tensions that contributed to the health crisis in the first place? What options for de-escalation of the conflict remain after internationalisation?

7. Participants stressed that in the case of a suspected deliberate outbreak on a technical or procedural level a continuum may exist between humanitarian assistance and assistance delivered under Article VII. However, such a continuum may not be present on a political level. Concern about the point when political factors might become disruptive to the assistance enterprise raised the threshold for invoking Article VII considerably. Participants sensed that resorting to Article VII is an inherently political decision that would set all subsequent decision-making and organisation of the response apart from that for an unusual, yet natural outbreak. The risk that invocation of Article VII might hinder the public health response they viewed as not negligible.

8. Article VII and its implications of a deliberate release of pathogens would raise speculation about the identity of the perpetrator. This might affect the willingness of other States Parties to provide assistance on a bilateral or inter-regional basis. Invoking Article VII should not shift the focus away from the public health

emergency and reduce the efficiency of crisis management by hindering collaborative approaches and slowing the emergency response.

9. BTWC States Parties should also explicitly consider how Article VII might function in case an outbreak is slow-moving or affects animals or plants rather than humans.

10. The exercise underlined the desirability of developing a format for an assistance request under Article VII. The process of developing such a format, as well as the agreed format itself, would help to clarify some of the above-mentioned uncertainties in terms of procedures, actors and decision steps.

11. The relationship between an assistance action in response to Article VII, and other humanitarian assistance actions under frameworks / legal instruments other than the BTWC, should be further clarified: there are uncertainties at the level of policy, decision making, and operational coordination that could lead to tension, unwanted duplications or operational conflict. A process similar to the interagency coordination exercises under the UN Counter-Terrorism Implementation Task Force (CTITF)[2] working group in the chemical field may point a way forward to clarifying the different roles and mandates and developing coordination mechanisms and interfaces.

12. From a methodological point of view, organising tabletop exercises of this kind at regional level could yield valuable inputs to better understand the specific challenges that may hinder the public health crisis response in some parts of the world and clarify how Article VII could be relevant.

[2] https://www.un.org/counterterrorism/ctitf/en

Scenario of the tabletop exercise

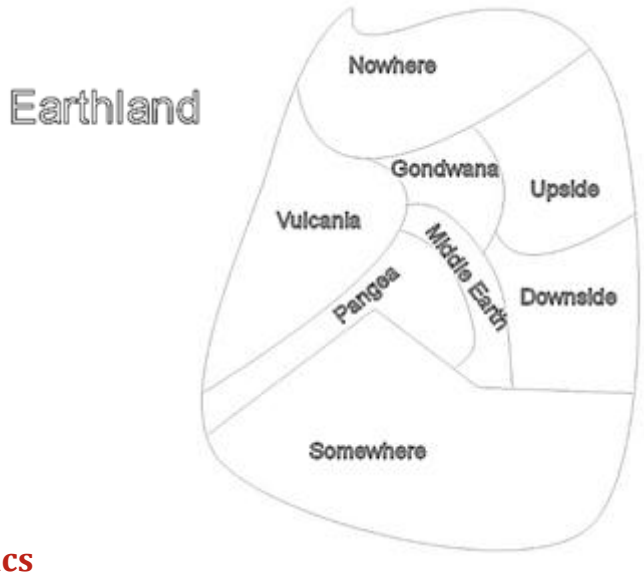
General setting

Earthland is a continent comprising eight large and mid-sized countries. They are: Downside, Gondwana, Middle Earth, Nowhere, Pangea, Upside, and Vulcania.

The scenario focuses mostly on Upside and Downside.

Upside shares borders with Nowhere in the north, Gondwana in the west and Downside in the south. As a consequence of regional instability in the east of Earthland, Upside is suffering from declining foreign investment. Poverty is rising, and exacerbates internal ethnic and religious tensions and frictions with its neighbours.

To the south of Upside lies Downside, a multi-cultural society. This is a relatively wealthy country, with an economy based on agriculture in the east and heavy industry in the south. Its economic fortunes are highly dependent on agricultural and industrial exports, but the service sector is slowly becoming the most important contributor to GDP. Downside shares a short border with Gondwana in the northwest and long ones with Upside to the north and Middle Earth to the west.



Geopolitics

Earthland is an essentially peaceful continent, with the exception of its eastern part. Several decades ago, Downside became independent from Upside, and ethnic, religious and cultural frictions contribute to border tensions and ongoing skirmishes. In particular, Upside lost most of the heavy industry, which is now located in the south of Downside.

Middle Earth has ethnic and cultural ties to Upside, but is now geographically separated from it by Downside. It traditionally supports Upside in its conflict with Downside.

All states are party to the BTWC. Upside, however, by and large ignores participation in meetings in Geneva or regional seminars. While it does not comply with many of its

political obligations—it also still has to submit its initial declaration on national legislation to the 1540 Committee under the terms of UN Security Council Resolution 1540 (2004)—there is little to suggest that it does not comply with the general prohibitions in the BTWC.

Downside, in contrast, maintains an interest in the BTWC proceedings and tends to regularly attend meetings. However, preoccupied with domestic priorities, including the ongoing instability in the north, the recommendations trickling down from Geneva are hardly followed up.

Conflict

Last year a major war broke out between the two antagonists with the Upsiders wanting to regain control over Downside's industrial region. However, the war stalemated with mounting casualties among the military of both sides and Downside civilians.

The other Earthland powers were able to broker a cease-fire between the belligerents after several months of conflict, and sent in a multilateral force to maintain an uneasy peace. There are still occasional skirmishes and incidents of cross-border shelling.

One other consequence of the latent conflict between both states is a weakened health infrastructure in the border region. It has always been prone to seasonal disease outbreaks. Regional travel usually ensures that infection crosses porous borders, particularly with Gondwana and Middle Earth. However, both Upside and Downside used to have a network of small health facilities from the coast in the east to Gondwana and Middle Earth in the west that seconded as an early outbreak detection system. Through careful relocation of resources via monitoring centres in the respective Ministries of Health both countries have been mostly successful in containing past epidemics in their early stages. Both states also tended to allow health workers from both regional and international organisations, as well as international non-governmental humanitarian associations, unfettered access to the region. The area's relative remoteness from the main population centres also helped in containing outbreaks.

Nowadays the network of health facilities exists in all but name. More importantly, communication between health workers on both sides of the border is now virtually non-existent and many international organisations have pulled out or greatly reduced their staff in the border region.

General plot outline

At the start of the TTX participants were briefed on the general geopolitical situation on the imaginary continent of Earthland. Participants formed three breakout groups, representing the countries of Upside, Downside and Nowhere. Upside was the country where the outbreak was first recorded; Downside the one on which suspicion of deliberate release of the pathogen came to rest; and Nowhere a neutral BTWC State Party prepared to offer emergency assistance. Participants were asked to take on the

role of an advisory committee to their respective governments and prepare options for decision-making. They had to identify and justify their preferred option and explain why they forwent alternatives considered by the group.

The exercise foresaw three distinct decision-making stages that followed briefings updating participants on the status of the epidemic and national and international responses. After each briefing, each breakout group received a specific set of questions to address.

Conduct of the tabletop exercise

The TTX scenario started with one local hospital and two healthcare centres in the south of Upside each receiving several patients with clinical features such as cough, sputum production, increasing chest pain, dyspnoea, hypoxia, and haemoptysis. The inquiry showed a sudden onset of chills, fever, headache, generalised body pains, weakness, and chest discomfort.

Doubts about the nature of the disease existed among the health carers. At first, they were not aware of the cases received in the other hospital and healthcare centres. They first suspected community-acquired bacterial pneumonia or viral pneumonia. Yet, the fulminant form of the disease and elements of context (lack of travel, previously healthy patients, etc.) did not seem to support this diagnosis. Soon some therefore began to suspect inhalational anthrax or pneumonic plague. However, the lack of advanced diagnostic equipment meant that these hypotheses too could neither be confirmed nor excluded. Moreover, nobody had any first-hand clinical experience with either type of disease.

Within 72 hours the number of patients exploded to 83. Many rapidly succumbed to the infection. In the same time frame, 37 cases were registered in neighbouring countries. Local resources were quickly overcome.

The hospital and healthcare centres alerted the Ministry of Health that they had received an unusually number of patients with pneumonic symptoms. They now suggested a strong possibility of pneumonic plague. Indeed, the first autopsies had revealed pulmonary complications such as localised areas of necrosis and cavitation, pleurisy with prominent effusion, and adult respiratory distress syndrome. Samples were sent to the nearest reference laboratory in Nowhere for analysis.

Meanwhile, the mortality rate was rising and victims were dying fast. Patients who received antibiotics in the hours following the onset of symptoms did not seem to respond well to the treatment. Similarly, medication administered preventively did not appear to protect people in contact with patients. This led some people to doubt the bacterial nature of the infection.

First breakout session: *Assessing the outbreak*

Decision-making

Instructions for Upside, Downside and Nowhere

Your task is to prepare an initial situation assessment based on the information so far available on the outbreak, identifying possible future decision making needs and policy/action options. Some of the issues you may decide to address could be:

- While assessing the information available at this stage of the outbreak, what kind of measures would your country take as a matter of routine?
- Which actors would be involved in this phase of the outbreak and what would be their roles? Who leads the response?
- What steps would be taken as a matter of routine in regard to external actors (neighbouring countries, regional organisations, WHO, others)? Within which legal/procedural frameworks would these steps be taken?
- Would you require additional information to assess the outbreak and if so, how would you go about gathering it? Which actors would be involved and what would be their role?
- Are there any measures you would be considering based on the information available so far, that go beyond a routine outbreak response? If so, which ones would that be? For example, would you consider an investigation? If affirmative, which investigative mechanisms would you consider activating? Would you consider requests for information exchanges?

In preparing the above assessment, would you already consider to use the BTWC as a possible framework for action? If so, please clarify which specific steps you would consider taking and why (e.g. consultations with other States Parties under Article V; preparations for subsequent steps under Articles VI or VII). If not, please state your reasons for rejecting the option.

Please prepare an assessment of whether and how to use the BTWC framework in response to the outbreak, in the form of an inter-ministerial situation assessment to the country's leadership.

Response by Upside

Applying established protocols and requiring international assistance

- The measures to be taken as a matter of routine are standard public health measures including increasing surveillance, informing hospitals and health professionals, collecting epidemiological data, sending samples to a reference laboratory, working with the media to raise awareness among the public without causing unnecessary panic or concern.

- Nationally, a whole-government approach is to be adopted involving all relevant stakeholders including entities responsible for health, transport, trade, tourism, social welfare, interior affairs, and foreign affairs. The Ministry of Health leads the response.
- All public health measures are to be implemented in accordance with the International Health Regulations (IHR) whereby the IHR national focal point at the Ministry of Health is to be tasked with notifying WHO of the outbreak. The focal point should request assistance for strengthening national response capacities and ensuring effective containment of the disease.
- Besides the WHO, other international bodies such as the ICRC and OCHA, as well as non-governmental organisations can also be requested to provide assistance.
- The IHR are to be used as the chief legal framework for response, since at this stage the assumption is that this is a natural disease outbreak. This is also due to the fact that the causative agent of the outbreak has not yet been confirmed.

Coordination and cooperation at the international level

- In terms of coordination, depending on the severity of the situation on the ground, the WHO may be requested to dispatch a crisis management team to serve in support and advisory capacities.
- A diplomatic mission is to be dispatched to neighbouring countries for fact-gathering and information-sharing, in order to compare available data and speed up response operations.

Controlling movement of people

- Ongoing screening and risk assessment are to be conducted. Movement of people is to be controlled, including at main points of entry such as ports and borders to ensure that the situation is not further exacerbated as a consequence of travel, trade, and goods transfer.

Considering the benefit of involving the BTWC

- As far as the BTWC is concerned, the framework of Article X is to be explored for requesting cooperation and assistance from other States Parties. Since at this stage the epidemiological data suggest a naturally occurring disease outbreak, one way of requesting assistance is submitting a request under Article X. Such a request can then be matched with the offers for assistance submitted by other States Parties.
- Confirmation by reference laboratories that the outbreak is deliberate is required before going further and considering implementing Article VII.

Response by Downside

When considering alternative policy options, Downside took into consideration the scarcity of available information, the possible disruption of economic life and the absence of indications that the outbreak was deliberate. Downside chose to rely on routine procedures in which the IHR national focus point would play its central role. At this point Downside decided to mobilise all necessary resources to contain the outbreak. It also engaged in contingency planning to anticipate any further steps should current measures prove insufficient.

Implementing public health measures and mobilising capacities

- Disease surveillance is strengthened, with an enhancement of the alert system and an alert sent to authorities and clinicians in border regions.
- Stockpiles of countermeasures and equipment are assessed (e.g. personal protection equipment, pharmaceutical products).
- Rapid response teams are alerted.
- Risk assessment is initiated.

Collecting information pertaining to the outbreak

- The IHR national focal point is to reach out to the WHO in order to obtain additional information.
- The Ministry of Health informally contacts non-governmental organisations (NGO) in its efforts to collect information.

Assessing and controlling flows

- Ground crossings with Upside are assessed and temporary closure of borders is considered.

Excluding the involvement of the BTWC

- The BTWC was not considered as the deliberate nature of the outbreak is not assumed at this stage.

Response by Nowhere

Preparing to respond to a public health crisis even if the country is not yet affected

- Public health authorities intensify information updates to local public authorities and health professionals in hospitals, especially with regards to clinical symptoms. They also reach out to the WHO.
- The Ministry of Defence is informed of the crisis as peacekeeping officers are deployed in the border region between Upside and Downside.
- Public communication about the outbreak is kept low-level to avoid creating undue alarm. At entry points, travellers arriving from the affected countries receive information. The question of limiting transports is raised.

Starting to exchange information with other countries

- Nowhere asks Upside and Downside to provide more information (from Ministry of Health to Ministry of Health). Information from the ground is required but security issues have to be taken into account.
- Finding a neutral place for public health officers to discuss the outbreak is a key issue.

Testing the samples sent by Upside

- The national reference laboratory starts testing the samples to confirm the nature of the pathogen. It investigates the matter of apparent antimicrobial resistance and also undertakes DNA sequencing of pathogen samples. It is important to ensure safe manipulation of pathogens and maintenance of the integrity of the chain of custody.

Excluding the involvement of the BTWC

- There is no reason to invoke provisions of the convention at this point, as this is still a public health situation.

Discussion and observations

Initially all three countries irrespective of their respective roles tended to view the outbreak through a public health lens. They emphasised national responsibility in areas like assistance, risk assessment, preparedness and coordination with international organisations. Striving for efficiency in their response, participants considered options in view of available information and excluded steps with no clear benefits or that could potentially hinder collaborative approaches.

Primacy of public health considerations invested the respective Health Ministries with the lead role. All three countries thus reached out to the WHO, whether for directly addressing the direct consequences of the outbreak or making assistance available. Besides references to the WHO participants were also guided by the IHR (2005) or discerned possible roles for the OCHA.

One important consequence of their early choices all three countries subsequently faced was the difficulty to shift from a public health response to considering possible action under or with reference to the BTWC. An international investigation confirming deliberate release of a pathogen appears to be a requisite to change track.

Some participants also pointed to the lack of clear procedures for triggering Article VII as a major drawback in a context when speed is of the essence.

The general reluctance to invoke BTWC mechanisms in both the opening phase and later stages of the exercise raises the question whether early suspicion of a BW attack might provoke a different, perhaps politically highly charged initial reaction. BW use indeed amounts to an act of war with a proscribed weapon. In such a scenario the question becomes how the other measures would relate to the public health response. One party would be viewed as the culprit and a sizeable degree of hostility would inevitably undercut international response efforts. Even without immediate military retaliation, several measures proposed by the three breakout groups would almost

certainly play out differently. For instance, how would the suspicions affect the information flows among the countries concerned and to international organisations such as the WHO? One can imagine other investigative bodies or instruments becoming involved, but how would their results be shared with another organisation, for instance the WHO, and vice versa? Fact-finding and efforts at determining criminal responsibility may affect interactions with entities whose effectiveness depends on neutrality. Similarly, how would suspicions of deliberate intent affect the various recommendations by the breakout groups on technical cooperation and assistance to address the outbreak?

The tabletop exercise was a small pilot event and as a consequence the background of invited participants – mostly public health, the life sciences, or arms control and the BTWC – may have inserted certain predispositions into the deliberations that explain the reluctance to invoke BTWC mechanisms. In a real-life situation the presence of representatives from a country's security and intelligence institutions, for example, would have also helped to shape the consensus recommendation for government action. Depending on the acuteness of the threat posed by the outbreak to countries involved in consequence management or assistance, and depending on information that was not part of this scenario but that in a real situation might be brought into the internal assessments (such as intelligence assessments), a more varied spectrum of responses comprising weighted aspects of public health, justice, military intervention, and so on can be expected. Even so, the questions raised in the previous paragraph remain pertinent.

In the first of the plenary discussion sessions designed to elucidate factors and motives that helped to shape policy recommendations, several breakout group participants raised the question of how compelling available information about a possible BW attack was at the opening stage. Participants argued that it may often be difficult to have certainty about whether an outbreak was the consequence of a hostile release of an agent, an accident, or a natural occurrence (including diffusion by so-called 'super-spreaders'). It may thus be difficult to consider measures under the BTWC framework until the UNSC has made a determination on the case, so they argued.

Participants further identified the possibility of a considerable delay between the first reports of an outbreak and confirmation of a hostile release as a further complication. What, in such a scenario, would be the point of invoking Article VII when the focus is on saving lives and containing the further spread of the disease? That may explain the participants' preference at this stage for humanitarian measures and support for public health systems. Article VII may still be invoked after confirmation of deliberate release. However, rather than offering emergency assistance, initiatives by BTWC States Parties may seek to address such issues as the re-building of the public health system, decontamination and site remediation, and other measures aimed at full recovery.

Some participants also raised the issue of early discussions involving the WHO and the UN Office for Disarmament Affairs (UNODA) about the timing for triggering the UN Secretary-General's Mechanism (UNSGM) should strong suspicions of deliberate release emerge. The WHO has clear procedures that rely on national focal points but no such directives exist under BTWC Article VII.

Second breakout session: *Developing policy actions – contingencies*

General setting

The reference laboratory in Nowhere has confirmed the diagnosis of pneumonic plague, but its origin remains unknown. For one thing, plague is not endemic to the region and the hospital and two health care centres are at considerable distance from each other. No one seems aware of any recent patient transfers or in-person exchanges between staff members of the different hospitals.

Policy makers in the respective capitals scramble to assess the rapidly spreading epidemic and decide on emergency measures to contain it.

Secondary infection is identified among contact cases and some professional health workers are contaminated due to insufficient training (no previous experience with the disease) and the lack of adequate protective equipment. Limited stockpiles and counterfeited drugs hamper further the response (tentative prophylaxis of contact cases; symptomatic treatments).

20 days later, the same pattern is observed as 227 cases of pulmonary plague are registered all over the country, with a few tens of infections being recorded in other countries. Initial epidemiological investigation suggests several Patients Zero. This suggests that the infective agent may have been released at different locations.

Economic and political consequences are now obvious. Trade collapses and food shortages are emerging in more remote locations because the government has ordered limits on travel. Schools have been closed and public events cancelled.

Decision-making

Instructions for Upside

With new information becoming available an inter-ministerial task force has been set up to review all available data and to develop an option paper outlining policy and action items for top-level governmental decision makers.

The options under consideration should address the entire spectrum of actions to manage the situation, including the required policy decisions for each one of the actions. These may include:

- National public health response to save life and contain the outbreak;
- Measures to maintain law and order, law enforcement, border controls;
- Public information and communication;
- Measures to be taken with regard to other States (for example, information sharing, coordination of surveillance and response measures with neighbouring countries, activation of other cooperative measures);

- Measures to be taken with regard to regional and international organisations (notifications, information sharing, activation of response mechanisms, activation of investigation mechanisms, …)
- National and/or international investigations to confirm that the outbreak was the result of a deliberate attack, and to the extent possible to identify the individuals or organisations responsible;
- Measures to detect and prevent any further attacks, should the deliberate nature of the outbreak be confirmed;

Within this inter-ministerial task force, you have been given responsibility to review the options emanating from the BTWC. Prepare an internal memo that outlines whether, why and how the provisions of assistance under Article VII should be activated to request assistance from other BTWC States Parties. Also identify key implications if such a decision were to be taken.

Response by Upside

The inter-ministerial *ad hoc* task force reviewed the new information as to how the situation was evolving and adopted the following stance:

Continuing to implement public health measures

- Public health measures encompass surveillance, risk assessment and epidemiological data collection. In order to allow for early diagnostics of cases, authorities alert hospitals and share information about the causative disease agent (pneumonic plague).

Tracking the origins of the outbreak

- Authorities launch a domestic investigation. Sampling is carried out with the aim of establishing the possible origin of the disease, as it is not endemic to the region.

Invoking Article V and Article VII of the BTWC

- By invoking the mechanism of Article V authorities seek to try holding consultations with neighbouring countries, in particular Downside and Nowhere. The goal of those consultations will be to share information and clarify the situation to enable quick containment of the disease.
- The mechanism of Article VII is to be invoked only once diplomatic discussions and the mechanism of Article V has been exhausted in order to bring the matter to the attention of the UN Security Council as a matter of urgency. With regard to the need of international investigation, authorities also intend to request the UN Secretary-General to activate the Mechanism for Investigation of Alleged Use if the source of the attack remains unknown at this stage. This will confirm the results of the domestic investigations.

Instructions for Downside

With new information becoming available it appears to be increasingly likely that the outbreak in the border area with Upside was caused by a deliberate release of airborne plague in several locations in areas under Upside's control. There is speculation in the press and on social media that your country instigated these incidents. There are also indications through diplomatic channels that Upside is considering a range of options including activating international investigation or assistance mechanisms.

An inter-ministerial task force has been set up to review all information available and to develop a discussion paper outlining possible policy directions and actions for top-level government decision makers. This task force is looking at a range of options, which may include:

- A bilateral approach to Upside to clarify the situation and attempt to resolve it;
- Making use of the good offices of a regional power or involving regional mechanisms to defuse the situation;
- Requesting the UN Secretary-General to conduct an investigation into alleged BW use;
- Requesting other potential partners (e.g. other States, INTERPOL) to help with an investigation into the allegations;
- Using regional or international mechanisms to call for assistance to help the victims of the outbreak in both Upside and Downside;
- Using one or more of the mechanisms provided for under the BTWC to clarify the situation or organise assistance.

Within this inter-ministerial task force, you have been given responsibility to review the options emanating from the BTWC, including with regard to the conduct of an investigation of the alleged BW releases as well as the possibility of submitting a request for assistance in support of the victims of the outbreak. Prepare an internal memo that outlines these options and identifies key implications if your country were to use any of these mechanisms.

Response by Downside

Downside reaffirmed its legal commitments to prevent any BW production, stockpiling, and use. It reminded that while there was still no confirmation of deliberate use at this stage, it needed to display openness to international cooperation and request an independent investigation to disprove the allegations against it. It stated that it was also affected by the outbreak and would thus potentially benefit from assistance. Authorities were currently conducting their own investigation with support from INTERPOL, which would likely be speedier and more effective than an UNSGM investigation.

In this context, Downside's government decided that it will:

- Deny any allegation of use by Downside forces;

- Not initiate any bilateral approach to Upside, but remain prepared to engage in discussions if requested;
- Request the other Earthland powers that brokered a cease-fire for cooperation and facilitate information exchanges;
- Request from the UN Secretary-General an independent investigation (thereby initiating the UNSGM) while continuing its national investigation with the assistance from INTERPOL;
- Request offers of assistance and support; and
- Request OCHA, WHO and BWTC State Parties to provide assistance under Article VII (in terms of food, medical and technical supplies, etc.).

Asked for clarification of their decisions by other workshop participants, Downside considered itself as a victim of the attack too. It did not exclude the possibility of non-state actors operating within its borders.

Instructions for Nowhere

With new information becoming available it appears increasingly likely that the outbreak in the border area between Upside and Downside was caused by a deliberate release of plague in several locations in areas under Upside's control. There is speculation in the press and on social media that Downside may have instigated these incidents, but no independent investigations have yet been conducted. There also are indications through diplomatic channels that Upside is considering a range of options including activating international investigation or assistance mechanisms.

An inter-ministerial task force has been set up to review all information available and to develop an option paper outlining policy and action options for decision makers at the top of government. The task force is looking inter alia at such issues as:

- ➡ What assistance could be made available should there be a formal request from Upside (or Downside), or a call from the UN Security Council?
- ➡ What would be the modalities for the dispatch of such assistance?
- ➡ Which partners (other states, regional organisations, international organisations, etc.) the assistance would have to be coordinated with (and which frameworks / procedures / arrangements could be used to that end)?
- ➡ Which administrative and logistical issues would have to be clarified in the planning and implementation of such assistance?
- ➡ Which priority measures should be taken in expectation of an imminent request for assistance?

Within this inter-ministerial task force, you have been given responsibility to investigate practical options and requirements emanating from a possible request by Upside for assistance under BTWC Article VII. Please prepare a set of recommendations and justifications to this end.

Response by Nowhere

Nowhere primarily reviewed assistance options. The general assessment of the situation remained largely unchanged. Nowhere's authorities assessed the forms of assistance that they could make available. Upon request, they would agree to provide assistance, however not under Article VII but through other channels, for example bilaterally or through international organisations. Invoking Article VII might indeed escalate the situation. Assistance would be humanitarian and could encompass both medical (e.g. mobile laboratories, medical teams, PCR instruments, etc.) and non-medical (e.g. food and water) assistance. The security of health and aid professionals is a key issue. In addition, Nowhere is prepared to provide forensic assistance under the BTWC upon request.

Discussion and observations

National preparedness and response measures considered at this stage included increased disease surveillance, additional sampling and analyses, review of stockpile levels (vaccines, treatments, etc.), risk assessments, issuance of travel advice and public health related controls at border crossing points (and in some cases temporary closure). There also was reference to information sharing through the IHR mechanisms (through the WHO).

All groups recognised the need to take measures beyond a 'normal' public health response, and there was reference to the need to include and coordinate with, for example, border control forces (including controls at border crossing points and where necessary closure of some crossing points), military units and peacekeepers. Their roles were not further detailed but could include both security functions and logistical support. (For specifics of the types of assistance considered see below.)

There were references to other provisions of the BTWC that could be used to further clarify the situation, gather additional information and prepare future coordinated assistance actions. References were made to clarifications under Article V or cooperative approaches under Article X. But none of these were viewed as preferred options as they might delay the response or politicise the assistance request/response ('taking sides' in an ongoing conflict; presuming BW involvement before independent confirmation by a recognised authority such as a UNSGM investigation).

All groups referred to the desirability of investigating the reported incident(s) (internationally, and usually with reference to the UNSGM; in one case also in form of a national police investigation supported by INTERPOL) to clarify whether they were deliberate and, if possible, to also establish the origin/source of the agent released. Such an investigation almost became a precondition for shifting the initial humanitarian response without any reference to the BTWC to possible measures under or leading towards the application of Article VII.

All breakout groups assumed that calling for an investigation under the UNSGM equalled making reference to the BTWC and application of Article VII: in either case the UN Security Council would become involved in the subsequent process.

Third breakout session: *Critical decision-making*

General setting

During this session, the inter-ministerial task force focused on issues related to requesting assistance under Article VII, considering both procedural and substantive aspects.

Decision-making

Response by Upside

- In terms of procedure, a consensus was reached that the request will be submitted to the Presidency/Chair of the BTWC with a copy to the Implementation Support Unit (ISU). The President/Chair is to inform States Parties to the Convention that the Article VII procedure will have been triggered.

- Taking into consideration the mandate of other international agencies, a request under Article VII could address issues such as the need for forensic/investigative assistance, data sharing/information assistance, cooperation with intelligence, law enforcement capacity, transport assistance (e.g. humanitarian corridors, road/air space access), possible military assistance.

Response by Downside

Regarding the request for assistance, Downside's government answered as follows:

- Downside takes this request for assistance seriously in accordance with its obligations under the BWTC.
- It reminds that in addition to the national investigation it requested a UNSGM investigation and is committed to facilitate it.
- It also requested voluntary assistance from OCHA, WHO and other BTWC States Parties because Downside is also affected by this outbreak.
- Despite its limited resources and the costs involved in the response to the outbreak, Downside is willing to work constructively with its neighbouring state, Upside, in responding to this outbreak on a bilateral basis, through:
    - Information/Intelligence exchanges;
    - Transparency, including visits of laboratories and medical facilities;
    - Technical expertise;
    - Joint border control; and
    - Judicial cooperation in investigation/prosecution.

Response by Nowhere

The inter-ministerial task force provided the following statement:

- Nowhere acknowledges Upside's request for assistance under Article VII of the BTWC making reference to a deliberate release of a BW agent in its territory.
- Nowhere recognises the unusual character of the agent and outbreak.
- Nowhere notes that so far no investigation has proven the deliberate use of BW.
- Nowhere strongly recommends to conduct multilateral investigations to prove the deliberate character of the outbreak, for instance through the UNSGM or Article VI of BTWC.
- Nowhere remains strongly preoccupied by the humanitarian situation and health security implications and is therefore willing to continue providing assistance through the established channels (OCHA).

In addition, on the national level the task force recommended to adopt border control measures, provide travel advice and activate crisis response structures.

On the international level, it suggested to deliver of general condemnation of biological weapons use (even though the perpetrator still remains unknown), to support the peaceful resolution of the ongoing conflict and to endeavour issuing a joint statement with the other Earthland Nations.

Discussion and observations

Only one breakout group was requested to formulate a request under Article VII; the other two were to formulate an official response. The absence of formalised and agreed procedures led to a degree of improvisation on the part of the participants with regard to whom the request/response was to be addressed to. The group formulating the request decided to address it to the President of the BTWC Review Conference with copy to the ISU. In doing so, it implicitly assumed that the request would be circulated to all BTWC States Parties. This group also recalled that they had already requested a UNSG investigation, and were conducting their own national investigation into the incident(s) for which they had requested INTERPOL support.

However, the Presidency is limited to the actual Review Conferences and there is not always an intersessional process to rely on. This raised the issue of how a formal request might be submitted in between Review Conferences. Furthermore, neither the President nor the ISU are involved in the operational response, raising questions about State Party expectations from them.

The only alternative, besides transmitting the Article VII request directly to the UN Secretary-General or Security Council, was to submit it to one or all three Co-Depositary States, namely the Russian Federation, United Kingdom and United States. Here too, however, no clear procedure for follow-on action has been established. The final documents of Review Conferences do not contain agreements or common understandings of how to proceed. Discussions highlighted the need to formulate a mechanism for requesting assistance. To whom should it be addressed and how should

all States Parties be notified? What type of information or evidence should the request contain? What process within the BTWC framework should be followed by the Co-Depositaries or States Parties? At what point, if any, should the UN Security Council be notified? How would the assistance be provided?

The consequences for the State Party formulating the request were also unclear. Would it still be in charge of the response or still be part of the decision process? What control would it retain once the determination of the cause of the outbreak has been internationalised?

With respect to the objective and the content of the request, workshop participants reflected on the types of information another State Party might require to consider providing assistance. Among the items considered were the need to characterise the situation (e.g. when did the outbreak happen, when was the diagnosis made, what are the laboratory results?) and an explanation of why an attack is suspected. However, many participants felt that such an explanation should avoid apportioning responsibility for the outbreak. Finally, as assistance should not duplicate assistance by the WHO or via other mechanisms, the request under Article VII could focus on means and resources supporting the inquiry into the allegation and possible attribution.

In the exercise the responses depended highly on the way the request for assistance was phrased and submitted. Participants clearly distinguished between a response under general principles of humanitarian assistance or involving mechanisms such as those foreseen by the IHR or OCHA, on the one hand, and responding under BTWC Article VII, on the other hand. The latter they viewed as problematic as long as no internationally recognised investigation results were available. Some participants felt that a prior UN Security Council decision might be required.

Certain participants also felt that assistance under Article VII ought to be limited to items that go beyond the humanitarian response already under way to avoid duplication. During the discussion reference was made to items such as mobile laboratories for disease diagnosis, decontamination equipment, or specific emergency response teams (e.g., military units trained in large-scale logistics in remote areas).

Rationale behind positions and decisions taken by participants

It was stressed that in case of a suspected deliberate outbreak a continuum between humanitarian assistance and that provided under BTWC Article VII may exist on a technical level (especially in the early stages), but that such a continuum may not exist on a political level. The threshold for triggering Article VII and the point where political factors may become disruptive were extensively discussed.

Bilateral versus multilateral approaches

There was a broadly shared view that both the investigation and assistance measures should proceed on a multilateral basis. This does not preclude national investigations of the incidents (which were seen as necessary to identify those responsible and eventually punish them – notwithstanding the absence of any such information in the scenario, no breakout group intimated that the attack had been instigated by a state). Participants did not *preclude* bilateral approaches but multilateral steps were clearly preferred.

Invoking Article VII or not

Although all groups looked into the option of invoking Article VII, they all hesitated to head down that route unless a much higher degree of certainty concerning the deliberate nature of the outbreak was available. Participants stressed the importance of evidence, which raised the question of what would constitute proof of a violation of the BTWC. An additional aspect likely to influence the decision on Article VII concerns the nature of the attack: a single release of pathogens or a sequence of strikes. In the former case, response measures may focus on addressing the consequences of the attack as a matter of priority. In the latter case, bringing the matter to the UN Security Council might be the most pressing concern to take urgent measures to stop the attacks and tackle their consequences.

In the absence of confirmation (by a UNSGM investigation, by a determination by the UNSC) participants felt that invoking Article VII was legally uncertain. The step may therefore prove counterproductive: without further clarification of the circumstances under which it can be triggered and subsequent steps, activation of the provision strongly suggests hostile intent long before the actual nature of the outbreak has been formally determined. The resulting politicisation of international deliberations could complicate the delivery of 'normal' humanitarian assistance. Workshop participants sensed that resorting to Article VII was inherently a political decision that would set all subsequent decision-making and organisation of the response apart from those for unusual, yet natural disease outbreaks. Workshop participants therefore voiced strong concerns that invoking Article VII might hinder the public health response. Many among them wondered whether the step might prevent or at least complicate collaboration with neighbouring countries or other BTWC State Parties. At the same time, some felt that invoking Article

VII could also send a positive message in support of upholding the norm against biological weapons by demonstrating international solidarity in the face of a grave violation.

Why invoke Article VII instead of Article VI?

Article VI also envisages the involvement of the UN Security Council but is limited to investigating alleged use. Article VII, in contrast, focusses on the provision of assistance and therefore prioritises humanitarian considerations.

Can another BTWC article be invoked?

There was some consideration as to whether States Parties could request and provide assistance under Article X. Although this provision foresees assistance and cooperation, the context is not one of a presumed or confirmed violation of the convention. Nevertheless, it might be possible to set up collaborative programmes to strengthen national response capacities in case of unusual outbreaks.

How may Article VII affect assistance through other mechanisms?

In the two breakout groups considering the provision of assistance, participants assumed a clear separation between humanitarian assistance measures and responses to an assistance request under Article VII. They felt it would considerably affect the application of certain technical measures. For instance, would laboratories sequence DNA merely to identify the pathogen strain with a view of better understanding the disease and countering of preventing outbreaks, or would they also analyse samples to serve forensic purposes such as determining the causative agent's provenance? Given the emergencies, which task would be prioritised if no separate laboratory facilities were immediately available?

Questions outside the scenario used in the tabletop exercise

Would the decision-making processes be similar in case of an outbreak involving a plant or animal pathogen?

The groups seem to agree that although some key actors would be different (different ministries at the national level, different international organisations at the international level – OIE and FAO rather than or in addition to WHO) and each case would have to be treated individually, the fundamental approaches would be similar.

How would the response to a slow-moving outbreak differ from a sudden, fast-spreading epidemic?

The factual basis for decision-making might be more complex as it will require more time to establish that a slowly evolving outbreak is in progress. More factors need to be taken into consideration and the scale of the crisis might not be immediately apparent. This may make it more difficult for a State Party to invoke Article VII.

Should there be a single framework for Article VII or is there a need to differentiate, for example, between human, animal and plant pathogen scenarios? And what level of discretion does a State Party have to use whichever framework it wishes to use, to request assistance?

The participants tended to agree that invoking Article VII implies a political decision at government level. Such a decision was only possible in response to intentional use and evidence in support of such determination would always be a key factor. At the national level, the actors and frameworks for such a decision will differ from country to country and be highly situation and context-dependent. Internationally, however, participants believed that there should be a single framework. At the same time, it was understood that in an emergency situation, all channels of assistance ought to be available irrespective of whether the UN Security Council has decided on the matter. Emergency assistance should address humanitarian needs, including basic security (restrictions on movement, closing of certain services, cancellation of public events, etc.), organisation of food supplies, quarantine measures, and the like.

What types of assistance could be envisaged under Article VII (that would reach beyond the "normal" types of assistance typical for a humanitarian assistance operation)?

The following examples were advanced:

- Military assistance;
- Funding of disarmament efforts;
- Sampling and analysis to investigate suspicious facilities/activities;
- Bio-forensics and the application of chain of custody procedures;

- Mobile laboratories, reference laboratories; and
- Capacity building for local emergency response staff (decontamination, use of protective and other equipment, specialised medical treatment).

Which of the BTWC provisions may States Parties consider using in crisis situations (suspected violation of the Convention, suspected use of a biological weapon)?

There was general agreement that the consultations foreseen under Article V of the BTWC could be useful.

Applying Article VI may lead to the UN Security Council determining that a violation of the BTWC had occurred and that the violation endangered the State Party concerned. As such, a key precondition in the minds of many states for triggering Article VII would have been met. Other participants felt that there was no point in involving the Security Council twice. Furthermore, under the BTWC a State Party can always raise its concerns directly with the UNSC.

What would constitute sufficient proof for a violation and the use of a biological weapon?

Determination of a treaty violation at the national level, participants felt, would be a political decision based on a range of factors, including but not limited to factual evidence and scientific findings, intelligence, general information, political context, and political goals. At the international level, deciding what constitutes sufficient proof is the prerogative of the UN Security Council, which will set its own standards for evaluating evidence either received in a request for intervention or through a formal investigative report.

However, it was also argued that a State Party can only call on specific assistance under Article VII if it presents evidence of having been exposed to danger following a violation of the BTWC. That should not stop the international community from acting as such proof is not required for humanitarian assistance unrelated to Article VII. The argument was not intended to undermine the value of objective scientific evidence and assessment but was formulated to underscore the profound impact of political realities and dynamics. The process of attribution, if called upon, would be subject to similar pressures.

Next steps

This exercise showed the interest of such an approach to foster discussions among experts. The results underline the value of follow-on exercises to explore in greater depth specific issues uncovered during this tabletop exercise. These would require the involvement of a broader range of stakeholders extending beyond public health and disarmament experts. Future exercises should also take existing national capacities into consideration to gain deeper understanding of specific requirements by BTWC State Parties.

Appendix 1 – Agenda

Tabletop Exercise (TTX)
on the Implementation of Article VII
of the Biological and Toxin Weapons Convention (BTWC)
8-9 November 2016, Room IV, Palais des Nations, Geneva

Organised by the *Fondation pour la Recherche Stratégique* (FRS)
in cooperation with the *United Nations Institute for Disarmament Research* (UNIDIR),
with funding from France and a grant from the UK Foreign and Commonwealth Office.

Tuesday, 8 November 2016

09:00 – 09:15 Welcome

S.E. Mrs Alice Guitton, Ambassador, Permanent Representative of France to the Conference on Disarmament
Dr Jean-François Daguzan, Deputy Director, FRS
Dr Jarmo Sareva, Director, UNIDIR

09:15 – 10:15 Introduction to the Tabletop Exercise (TTX)

Dr Jean Pascal Zanders: History and issues with Article VII
Dr Ralf Trapp: Objectives of the TTX and general instructions

10:15 – 11:15 Setting the scene

Participants introduce themselves
Composition of breakout groups
First instructions for participants

11:15 – 11:30 Coffee break

11:30 – 12:30 First breakout session: *Assessing the outbreak*
12:30 – 13:00 Preliminary reports from breakout groups and discussions

13:00 – 13:45 Lunch

13:45 – 14:00 Second instruction for participants
14:00 – 15:00 Second breakout session: *Developing policy actions – contingencies*
15:00 – 15:30 Preliminary reports from breakout groups and discussions

15:30 – 16:00 Coffee break

16:00 – 16:15 Third instruction for participants
16:15 – 17:15 Third breakout session: *Critical decision-making*
17:15 – 17:45 Preliminary reports from breakout groups and discussions

17:45 – 18:00 Day's wrap-up

Wednesday, 9 November 2016

09:00 – 10:00 Detailed reports from the breakout groups

10:00 – 11:00 Discussion of the decision-making process in breakout groups (part 1)

11:00 – 11:15 Coffee break

11:15 – 12:00 Discussion of the decision-making process in breakout groups (part 2)

12:00 – 12:45 Plenary discussion: Operationalising Article VII of the BTWC

12:45 – 13:00 Closing comments

Dr Jarmo Sareva, Director, UNIDIR

Appendix 2: Background to Article VII of the BTWC

Article VII has its origins in a 1968 working paper by the United Kingdom proposing a separate treaty banning biological weapons (BW). The language underwent several reiterations over the next three years and at one point disappeared entirely from the draft convention, only to resurface in its current formulation just before the conclusion of the negotiations. The different versions of the article left traces from earlier intentions and understandings, meaning that the intent behind certain clauses may be uncertain or confusing today. This is particularly the case for the following:

- *Provide or support assistance*: what is the nature of the assistance, humanitarian, military, or any other type
- *In accordance with the United Nations Charter*: why does the article include a reference to the UN Charter, particularly since the Charter allows for punitive actions and even resort to military force under Chapter VII?
- *If the Security Council decides that such Party has been exposed to danger*: why is there a requirement for Security Council action if assistance can be provided under basic humanitarian principles?
- *As a result of violation of the Convention*: does this clause imply violation of any part of the BTWC, which if affirmative, may include illicit weapon programmes?

This section present a brief historical analysis, while recognising that further archival research is necessary to fully understand the transition of Article VII's purpose from the intention by the negotiators to today's purpose.

Genesis of Article VII

Paragraph 10 of the working paper the UK submitted to the Eighteen Nation Committee on Disarmament (ENCD) on 6 August 1968 contained language that would eventually evolve into Article VII, even though it did not yet feature the word 'assistance':

> *Consideration should be given to the possibility of including in the Convention an article under which the parties would undertake to support appropriate action in accordance with the United Nations Charter to counter the use, or threatened use, of microbiological methods of warfare.* [...][3]

In August 1970 the UK submitted a revised draft convention (the original having been submitted in July 1969, see below), whose Article IV introduced the term 'assistance':

> *Each of the Parties to the Convention affirms its intention to provide or support appropriate assistance, in accordance with the United Nations*

3.Disarmament Conference document ENCD/231, as cited in SIPRI, *The Problem of Chemical and Biological Warfare, Volume IV: CB Disarmament Negotiations, 1920–1970* (Almqvist & Wiksell: Stockholm, 1971), p. 257.

> *Charter, to any Party to the Convention, if the Security Council concludes that biological methods of warfare have been used against that Party*.[4]

Two things stand out, however. The 1968 working paper and Article I of the draft convention placed an explicit prohibition on BW use at the heart of the proposed prohibitory regime, an element that was dropped by the time the negotiation of the BTWC was concluded. Furthermore, the proposed convention was to be accompanied by a UN Security Council resolution that delineated the responsibilities of the UN Secretary-General and declared the readiness of the Security Council to give urgent consideration to any complaint about BW use under the terms of the treaty lodged with it. The draft resolution pointed in its fourth preambular paragraph explicitly to the assistance provision in the draft treaty and cited the prior requisite action by the Security Council for it to take effect:

> *Noting further the declared intention of Parties to the Convention to provide or support appropriate assistance, in accordance with the Charter, to any other Party to the Convention, if the Security Council concludes that biological methods of warfare have been used against that Party*.[5]

The draft convention submitted by the Socialist states on 23 October 1970 dropped the prohibition on use and any reference to assistance. They would not reinsert it in any of the revised proposals of April and August 1971. The latter document was identical to a draft convention submitted in parallel by the USA.

In the final months of negotiation, the language on assistance resurfaced as Article VII. However, any direct reference to use or threatened use had disappeared together with the explicit prohibition on use. The UN Security Council never adopted the suggested accompanying resolution.[6] On 16 December 1971 the UN General Assembly adopted Resolution 2826 (XXVI) commending the new disarmament treaty, but made no specific reference to assistance.[7]

From this brief overview it follows that in 1968 the idea of assistance was introduced in close correlation with the prohibition of BW use. However, over the next three years explicit references to use were dropped from the draft treaty articles, including the assistance obligation. When the latter resurfaced in the final negotiation stage, the context for its triggering had been changed (exposed to danger as the result of violation of the treaty, rather than of BW use) and the UN Security Council was no longer expected to assume explicit responsibilities.

4.Disarmament Conference document, CCD/225/Rev. 2, as cited in SIPRI, *The Problem of Chemical and Biological Warfare, Volume V: The Prevention of CBW* (Almqvist & Wiksell: Stockholm, 1971), p. 265.

5.As cited in SIPRI, *The Problem of Chemical and Biological Warfare, Volume V: The Prevention of CBW* (Almqvist & Wiksell: Stockholm, 1971), p. 266.

6.UN Security Council resolutions, URL <http://www.un.org/en/sc/documents/resolutions/>.

7.Text available from UN Office at Geneva, 'BTWC UN General Assembly Resolutions', URL <http://www.unog.ch/unog/website/disarmament.nsf/%28httpPages%29/37A6DB1B7A0359ACC12571D8004925AE?OpenDocument&unid=2796BFD7ADDD08C9C125772800331B63>.

Evolution of understandings

In the more than 40-year life span of the BTWC, States Parties paid scant attention to Article VII. A summary review of the final documents of the review conferences by the ISU suggests that States Parties interpreted the provision for the first time at the 3rd Review Conference (1991).[8] The 4th Review Conference (1996) determined that Article I covered the prohibition of BW use, upon which the 6th Review Conference (2006) reintroduced the original idea in the UK's 1970 draft that Article VII applies in response to BW use rather than another type of material breach of the convention. In addition, the 6th Review Conference expanded the understanding to the threat of use or use by anyone other than a State Party, thus including acts by non-States Parties or terrorists.

Until the 7th Review Conference no document appears to have clarified what the nature of the assistance to be delivered was supposed to be.[9] The general assumption seems that assistance has to be of a humanitarian nature, even though no study points to a specific document to support the view. In 1988, just after the 2nd Review Conference (1986), Nicholas Sims wrote:

> *Statements made in the UN, with an eye on future references to the negotiating history of the Convention, indicate that this Article is generally understood to refer to humanitarian, not military assistance*.[10]

The quote does not suggest a consensus view, but instead hints at efforts to construct future interpretation.[11]

There are two reasons why this question merits clarification. First, what does the clause 'in accordance with the UN Charter' in Article VII signify? Second, why did two countries—Austria and Switzerland—make explicit reservations with regard to this article?

Today, referring to the UN Charter seems innocuous enough. Any international action that refers to the UN achieves a higher degree of legitimacy in the eyes of the world. Again, the clause originated with the original UK working paper of 1968 (... the parties

8.Previous agreements and understandings under the Convention relevant to strengthening the implementation of Article VII, including consideration of detailed procedures and mechanisms for the provision of assistance and cooperation by States Parties, BWC/MSP/2015/MX/INF.2, 29 June 2015.

9.There was some elaboration of the (humanitarian) assistance concept and procedures during the meetings of the Ad Hoc Group negotiating a legally binding protocol to the BTWC (1996–2001). However, the document was never adopted.

10.Sims, N. A., *The Diplomacy of Biological Disarmament* (Macmillan Press: Basingstoke, 1988), p. 24.

11.However, a working paper submitted by the United Kingdom to the Seventh Review Conference claims that the negotiating record makes indicates that 'assistance' refers essentially to medical or relief assistance. BWC, Seventh Review Conference, document BWC/CONF.VII/WP.1, Article VII: options for implementation and proposal for intersessional work, 11 October 2011, paragraph 1.

would undertake to support appropriate action in accordance with the United Nations Charter *to counter the use, or threatened use*, of microbiological methods of warfare) and draft treaty of 1970 (... *to provide or support appropriate assistance*, in accordance with the United Nations Charter, ...). [Emphasis added] Even if the phrasing in both documents is markedly different, it remains relevant to read the draft convention in conjunction with the related draft UN Security Council resolution. The preambular paragraph following the one referring to 'appropriate assistance' read:

> *Reaffirming in particular the inherent right, recognized 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*.[12]

The cited SIPRI volume did not reproduce the text of the original UK draft convention of 10 July 1969, but paraphrased its Article IV without reference to the UN Charter:

> *Each party would affirm its intention to provide or support appropriate assistance to any other party, if the Security Council concludes that biological methods of warfare have been used against that party (Article IV)*.[13]

It also noted that in response to critical remarks, the UK amended its proposal. The book did not record any modification of Article IV, but noted that: 'The related draft Security Council resolution was also changed by adding a preambular paragraph which reaffirmed the right of individual and collective self-defence recognised in Article 51 of the U N Charter.'[14] The authors of the SIPRI volume did not offer additional context for this insertion, but it is quite possible that the phrase 'appropriate assistance' in the 1969 and 1970 draft texts had a broader intended scope than the later one of humanitarian help. As they wrote concerning the motivation for the supplementary draft resolution [emphasis added]:

> [...] *the Security Council would declare its readiness to give urgent consideration to complaints lodged with it, and to any report that the Secretary-General may submit on the result of his investigation of a complaint, and to consider urgently what action should be taken or recommended in accordance with the UN Charter, if it concluded that the complaint was well-founded*.[15]

Analysis of the original documents will have to determine the original intent behind the references to 'action', 'assistance' and 'in accordance with the UN Charter'. Nevertheless, the point remains that two States Parties, Austria and Switzerland, formally recorded their reservation with specifically Article VII of the BTWC on grounds of their permanent neutral status:

---

12. SIPRI, *The Problem of Chemical and Biological Warfare, Volume V: The Prevention of CBW*, p. 325.
13. *Ibidem*, p. 295.
14. *Ibidem*, p. 297.
15. *Ibidem*, p. 296.

Austria: '*Considering the obligations resulting from its status as a permanently neutral state, the Republic of Austria declares a reservation to the effect that its co-operation within the framework of this Convention cannot exceed the limits determined by the status of permanent neutrality and membership with the United Nations. This reservation refers in particular to Article VII of this Convention as well as to any similar provision replacing or supplementing this Article.*'[16]

Switzerland: '3. *By reason of the obligations of its status as a perpetually neutral State, Switzerland is bound to make the general reservation that its collaboration within the framework of this Convention cannot go beyond the terms prescribed by that status. This reservation refers especially to Article VII of the Convention as well as to any similar clause that could replace or supplement that provision of the Convention (or any other arrangement).*'[17]

It seems unlikely that humanitarian assistance would have led to the respective reservations. Furthermore, it also seems that the article would require significant rephrasing before either country may be willing to withdraw them.[18]

As noted earlier, the 7th Review Conference clearly interpreted the sense of Article VII. Whereas the Final Document of the 6th Review Conference noted that 'should a request for assistance be made, it be promptly considered and an appropriate response provided. In this context, pending consideration of a decision by the Security Council, timely emergency assistance could be provided by States Parties if requested',[19] the equivalent paragraph in the Final Document of the 7th Review Conference stated [emphasis added]: '[...] should a request for assistance be made, it be promptly considered and an appropriate response provided. In this context, *in view of the humanitarian imperative*, pending consideration of a decision by the Security Council, timely emergency assistance could be provided by States Parties, if requested.'[20] The document also gives for the first time a listing of what it considers 'appropriat2e assistance': expertise, information, protection, detection, decontamination, prophylactic and medical and other equipment, among other things.[21]

The timing of this elaboration of Article VII was no coincidence. The rise of a global health security agenda and increased consideration of how the UN and its specialised agencies, as well as other governmental or non-governmental international organisations might contribute to the goals of the BTWC cannot but emphasise the humanitarian dimension of 'assistance'. Thus far, however, not a single document appears to revoke any past alternative interpretation of the provision, if such a paper indeed existed.

16.UNODA, Treaties Database, at <http://disarmament.un.org/treaties/a/bwc/austria/rat/london>.
17.UNODA, Treaties Database, at <http://disarmament.un.org/treaties/a/bwc/switzerland/sig/london>.
18.Neither Austria nor Switzerland participated in the BTWC negotiations. Discussions during the August 2015 MX revealed that delegates from both countries were unaware of the origins of their respective countries' reservations.
19.BTWC, Sixth Review Conference, document BWC/CONF.VI/6, Final Document, Part II. Final Declaration, paragraph 33.
20. BTWC, Seventh Review Conference, document BWC/CONF.VII/7, Final Document, Part II. Final Declaration, paragraph 33.
21.*Ibidem*, paragraph 37.