

**Meeting of the States Parties to the Convention
on the Prohibition of the Development,
Production and Stockpiling of Bacteriological
(Biological) and Toxin Weapons and on Their
Destruction**

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**Consideration of the provision of assistance and
coordination with relevant organizations upon
request by any State Party in the case of alleged
use of biological or toxin weapons, including
improving national capabilities for disease surveillance,
detection and diagnosis and public health systems.**

**Previous agreements and understandings under the
Convention relevant to the provision of assistance and
coordination in the case of alleged use of biological or toxin
weapons**

Submitted by the Implementation Support Unit

Summary

This paper collects texts relevant to the topic of the provision of assistance and coordination in the case of alleged use of biological or toxin weapons, drawn from the Convention itself, the final declarations of successive review conferences, and reports of the meetings of States parties.

I. Introduction

1. The previous agreements and understandings detailed in this paper have been split into two types:

- (a) Efforts to investigate the origin of an alleged use, and identify and deal with those responsible (the security response); and
- (b) Measures to mitigate and control the effects of the attack (the health response).

2. For both security and health responses, agreements and understandings are subdivided according to whether they deal with international or national incidents. Those that deal with international incidents generally cover one state using a biological weapon against a second state. They also cover a state, directly or indirectly, assisting or supporting a third party to acquire and use such weapons. Agreements and understandings to deal with national events focus primarily on a state's domestic capacity to respond to internal incidents.
3. The additional agreements were reached at successive review conferences and are quoted from the relevant Final Documents:
 - (a) Final Document of the First Review Conference (BWC/CONF.I/10)
 - (b) Final Document of the Second Review Conference (BWC/CONF.II/13)
 - (c) Final Document of the Third Review Conference (BWC/CONF.III/23)
 - (d) Final Document of the Fourth Review Conference (BWC/CONF.IV/9)
 - (e) Final Document of the Fifth Review Conference (BWC/CONF.V/17)
 - (f) Final Document of the Sixth Review Conference (BWC/CONF.VI/6)
4. The common understandings were reached at the Meetings of States Parties and are quoted from the relevant Reports:
 - (a) Report of the 2004 Meeting of States Parties (BWC/MSP/2004/3)
 - (b) Report of the 2009 Meeting of States Parties (BWC/MSP/2009/5)

II. Efforts to investigate the origin of an alleged use

A. International arrangements

5. Through article V, the Convention includes arrangements for States parties to consult and cooperate with one and other in an attempt to resolve any concerns over its implementation or in compliance with its obligations.

1. Article VI of the Convention

6. If a State Party were to use (or enable a third party to use) a biological weapon, it would breach its obligations under the Convention. An allegation that a State Party was involved in such activities then becomes a compliance issue. The Convention contains a mechanism to help to resolve such an allegation.
7. Article VI states:
 - "(1) Any State Party to this convention which finds that any other State Party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the Security Council of the United Nations. Such a complaint should include all possible evidence confirming its validity, as well as a request for its consideration by the Security Council.
 - (2) Each State Party to this Convention undertakes to cooperate in carrying out any investigation which the Security Council may initiate, in accordance with the provisions of the Charter of the United Nations, on the basis of the complaint received by the Council. The Security Council shall inform the States Parties to the Convention of the results of the investigation."

8. The Final Declarations of the First and Second Review Conferences confirmed that this article "provides for any State Party, which finds that any other State Party is acting in breach of its obligations under the Convention, to lodge a complaint with the United Nations Security Council and under which each State Party undertakes to co-operate in carrying out any investigation which the Security Council may initiate."¹

9. Later review conferences have provided clarification on some of the details of the mechanism:

(a) The Second Review Conference considered "that the Security Council may, if it deems it necessary, request the advice of the World Health Organisation in carrying out any investigation of complaints lodged with the Council"².

(b) The Third, Fourth and Sixth Review Conferences invited "the Security Council to consider immediately any complaint lodged under article VI and to initiate any measures it considers necessary for the investigation of the complaint"³.

(c) The Third Fourth and Sixth Review Conferences also invited "the Security Council to inform each State Party of the results of any investigation initiated under Article VI and to consider promptly any appropriate further action which may be necessary"⁴.

10. Annual meetings of the BWC have focused on the link between national and international capabilities and mechanisms for building capacity to identify or punish the perpetrators of an attack.

11. At the Meeting of States Parties in 2004, States Parties "recognised that ... national preparedness and arrangements substantially contribute to international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease"⁵. States Parties "consequently agreed on the value of ... further development of current procedures for the provision of assistance, by those in a position to do so, to States Parties in cases of alleged use of biological weapons or suspicious outbreaks of disease"⁶.

2. The United Nations Secretary General's investigative mechanism

12. A background paper⁷ prepared for the 2004 Meeting of Experts detailed international procedures within the framework of the United Nations to investigate the alleged use of biological or toxin weapons. These efforts focused on the mandate provided to the Secretary General by the General Assembly⁸ to "investigate, with the assistance of qualified experts, information that may be brought to his attention by any member State concerning activities that may constitute a violation of the [1925 Geneva] Protocol or of the relevant rules of customary international law in order to ascertain thereby the facts of the matter, and promptly to report the results of any such investigation to all member States and to the General Assembly".

¹ BWC/CONF.II/13, Part II, Article VI, paragraph 1.

² BWC/CONF.II/13, Part II, Article VI, paragraph 2.

³ BWC/CONF.VI/6, Part II, paragraph 28.

⁴ *ibid.*

⁵ BWC/MSP/2004/3, paragraph 20 (b).

⁶ BWC/MSP/2004/3, paragraph 21 (b).

⁷ BWC/MSP/2004/MX/INF.3

⁸ A/Res/37/98

13. Although in this paper this mechanism is discussed under the heading of international arrangements, it can also be invoked to respond to national incidents. The use of the Secretary General's investigative mechanism to date has focused primarily on resolving allegations between states.

14. The Third and Fourth Review Conference recalled the existence of the Secretary General's investigative mechanism. The Sixth Review Conference noted that "the Secretary-General's investigation mechanism ... represents an international institutional mechanism for investigating cases of alleged use of biological or toxin weapons. The Conference notes in this regard General Assembly resolution 60/288 (2006)"⁹.

15. The Sixth Review Conference also invited "the Security Council ... to request, if it deems necessary and in accordance with its resolution 620 of 1988, the United Nations Secretary-General to investigate the allegation of use, using the technical guidelines and procedures contained in annex I of United Nations Document A/44/561"¹⁰.

16. The Third Review Conference had welcomed, and the Fourth Review Conference recalled, "the technical guidelines and procedures contained in annex I of United Nations document A/44/561 to guide the United Nations Secretary-General on the timely and efficient investigation of reports of the possible use of such weapons"¹¹.

17. Since 2004, the last time a Meeting of Experts considered these issues, the technical guidelines have been updated. A summary of the current arrangements can be found in the background paper on Technical Guidance for Responding to Alleged Use¹².

18. At the Third and Fourth Review Conferences, States Parties agreed "to consult, at the request of any State Party, regarding allegations of use or threat of use of bacteriological (biological) or toxin weapons and to cooperate fully with the United Nations Secretary-General in carrying out such investigations"¹³.

19. The Third and Fourth Review Conferences stressed "that in the case of alleged use the United Nations is called upon to take appropriate measures expeditiously, which could include a request to the Security Council to consider action in accordance with the Charter"¹⁴.

B. National arrangements

20. At the Meeting of States Parties in 2004, States Parties recognized that "capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease promote the object and purpose of the Convention"¹⁵. At the same meeting, States Parties "consequently agreed on the value of ... continuing to develop their own national capacities for response, investigation and mitigation, in cooperation with the relevant international and regional organisations, and, if in a position to do so, assisting and encouraging, with the necessary agreement, other States Parties to do the same"¹⁶.

⁹ BWC/CONF.VI/6, Part II, paragraph 30.

¹⁰ BWC/CONF.VI/6, Part II, paragraph 28.

¹¹ BWC/CONF.IV/9, Part II, Article VI, paragraph 4.

¹² BWC/MSP/2010/MX/INF.3

¹³ BWC/CONF.IV/9, Part II, Article VI, paragraph 4.

¹⁴ *ibid.*

¹⁵ BWC/MSP/2004/3, paragraph 20 (a).

¹⁶ BWC/MSP/2004/3, paragraph 21 (a).

III. Measures to mitigate and control the effects of the attack

A. International arrangements

1. Article VII of the Convention

21. The Convention includes a mechanism to provide assistance where a State Party has been attacked with a biological weapon by another State Party. Additional agreements cover the provision of emergency assistance prior to the conclusion of a security response and the provision of assistance in cases where a third party has used a biological weapon.

22. Article VII of the Convention states:

"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."

23. Subsequent review conferences provided clarification on some of the details of the mechanism:

(a) The Third, Fourth and Sixth Review Conferences noted the "desires expressed that, should a request for assistance be made, it be promptly considered and an appropriate response provided"¹⁷; and

(b) The Third, Fourth and Sixth Review Conferences considered that "the United Nations, with the help of appropriate intergovernmental organizations such as the World Health Organization (WHO), could play a coordinating role". The Sixth Review Conference expanded the list of relevant intergovernmental organizations to include: "the World Health Organization (WHO), the World Organisation for Animal Health (OIE), the Food and Agriculture Organization of the United Nations (FAO), and the International Plant Protection Convention (IPPC)"¹⁸.

(c) The Third, Fourth and Sixth Review Conferences agreed that "pending consideration of a decision by the Security Council, timely emergency assistance could be provided by States Parties if requested"¹⁹.

(d) The Sixth Conference took note of "the willingness of States Parties, where appropriate, to provide or support assistance to any State Party which so requests, when that State Party has been exposed to danger or damage as a result of the use of bacteriological (biological) agents and toxins as weapons by anyone other than a State Party"²⁰.

24. The Meeting of States Parties in 2004 agreed on the value of "considering, inter alia, the further development of current procedures for the provision of assistance, by those in a position to do so, to States Parties in cases of alleged use of biological weapons or suspicious outbreaks of disease"²¹.

¹⁷ BWC/CONF.VI/6, Part II, paragraph 33.

¹⁸ BWC/CONF.VI/6, Part II, paragraph 34.

¹⁹ BWC/CONF.VI/6, Part II, paragraph 33.

²⁰ BWC/CONF.VI/6, Part II, paragraph 38.

²¹ BWC/MSP/2004/3, paragraph 21 (b).

2. Specialized health agencies

25. Many of the resources and approaches required to deal with a biological attack are similar to those that would be needed to deal with an event of natural or accidental origin. As a result, the efforts of human, animal and plant health organizations may be relevant. Previous agreements and understandings have looked at the relationship between these organizations and the efforts of States Parties.

26. The Meeting of States Parties in 2004 recognised that "the primary responsibility for surveillance, detection, diagnosis and combating of infectious diseases rests with States Parties, while the WHO, FAO and OIE have global responsibilities, within their mandates, in this regard"²². At the same meeting, States Parties "consequently agreed on the value of ... supporting the existing networks of relevant international organisations for the surveillance, detection, diagnosis and combating of infectious diseases and acting to strengthen the WHO, FAO and OIE programmes, within their mandates, for the continued development and strengthening of, and research into, rapid, effective and reliable activities for the surveillance, detection, diagnosis and combating of infectious diseases, including in cases of emergencies of international concern"²³.

27. The Sixth Review Conference encouraged States Parties "to continue strengthening existing international organizations and networks working on infectious diseases, in particular those of the WHO, FAO, OIE and IPPC, within their respective mandates". The Conference also encouraged States Parties "to improve communication on disease surveillance at all levels, including between States Parties and with the WHO, FAO, OIE and IPPC". The Conference noted that "the role of these organizations is limited to the epidemiological and public/animal/plant health aspects of any disease outbreak", but recognized "the added value of information exchange with them"²⁴.

3. Other international arrangements

28. There have also been previous agreements and understandings that deal with arrangements in the broader international community. The Third Review Conference urged the United Nations and States Parties to "take specific measures within their competence for the promotion of the fullest possible international cooperation in this field through their active intervention". The Conference noted that such measures could include "increased technical cooperation and assistance, including training programmes to developing countries in the use of bio-sciences and genetic engineering for peaceful purposes through active association with United Nations institutions, including the International Centre for Genetic Engineering and Biotechnology" and "cooperation in providing information on their national epidemiological surveillance and data reporting systems, and in providing assistance, on a bilateral level and/or in conjunction with WHO, regarding epidemiological surveillance, with a view to improvements in the identification and timely reporting of significant outbreaks of human and animal diseases"²⁵.

29. The Fourth Review Conference urged "States Parties, the United Nations and its specialized agencies to take further specific measures within their competence for the promotion of the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes and of international cooperation in this field. Such measures could include ... increased technical cooperation and assistance, including training programmes

²² BWC/MSP/2004/3, paragraph 18 (c).

²³ BWC/MSP/2004/3, paragraph 19 (a).

²⁴ BWC/CONF.VI/6, Part II, paragraph 55.

²⁵ BWC/CONF.III/23, Part II, Article X, paragraph 3.

to developing countries in the use of biosciences and genetic engineering for peaceful purposes through active association with United Nations institutions, including the International Centre for Genetic Engineering and Biotechnology (ICGEB)"²⁶.

30. The Sixth Review Conference reaffirmed that "existing institutional ways and means of ensuring multilateral cooperation among all States Parties need to be developed further in order to promote international cooperation for peaceful uses in areas relevant to the Convention, including such areas as medicine, public health, agriculture and the environment"²⁷ and urged States Parties "to develop frameworks for disease surveillance in humans, animals and plants, and to support programmes for effective responses at the ... regional and multilateral levels, including through the conclusion of appropriate agreements that would promote the regular exchange of scientific and technical information in these fields"²⁸.

B. Building national capacity

31. The Sixth Review Conference clarified that a national capacity to deal with disease, presumably including disease resulting from an attack with a biological weapon, was one element of national implementation, and as a result, an obligation under the Convention. In the section of the Final Declaration on Article IV, the Conference reaffirmed "the commitment of States Parties to take the necessary national measures to strengthen methods and capacities for surveillance and detection of outbreaks of disease at the national, regional and international levels"²⁹.

32. The Sixth Review Conference also highlighted the need for States Parties to continue to develop such capabilities. It called upon States Parties to "continue establishing and/or improving national and regional capabilities to survey, detect, diagnose and combat infectious diseases as well as other possible biological threats and integrate these efforts into national and/or regional emergency and disaster management plans"³⁰.

33. There are also common understandings that focus on how national capacities in dealing with disease are linked to responding to the alleged use of a biological weapon. The Meeting of States Parties in 2004 recognized that:

- (a) "infectious disease outbreaks can be contained and suppressed through early-detection, immediate response and co-operation and support at the national ... level";
- (b) "strengthening and broadening national and international surveillance, detection, diagnosis and combating of infectious disease may support the object and purpose of the Convention";
- (c) "scientific and technological developments have the potential to significantly improve disease surveillance and response"³¹.

States Parties consequently agreed on the value of:

- (a) "improving, wherever possible, national and regional disease surveillance capabilities, and, if in a position to do so, assisting and encouraging, with the necessary agreement, other States Parties to do the same";

²⁶ BWC/CONF.IV/9, Part II, Article X, paragraph 12.

²⁷ BWC/CONF.VI/6, Part II, paragraph 48.

²⁸ BWC/CONF.VI/6, Part II, paragraph 53.

²⁹ BWC/CONF.VI/6, Part II, paragraph 13.

³⁰ BWC/CONF.VI/6, Part II, paragraph 55 (iv).

³¹ BWC/MSP/2004/3, paragraph 18.

(b) "working to improve communication on disease surveillance, including with the WHO, FAO and OIE, and among States Parties"³².

34. There are additional agreements and common understandings on how national capacity might be built to deal with disease, including that resulting from the alleged use of a biological weapon. The Sixth Review Conference called on:

(a) "States Parties to develop frameworks for disease surveillance in humans, animals and plants, and to support programmes for effective responses at the national, bilateral... levels, including through the conclusion of appropriate agreements that would promote the regular exchange of scientific and technical information in these fields"³³;

(b) "States Parties in a position to do so to continue supporting, directly as well as through international organizations, capacity-building in States Parties in need of assistance in the fields of disease surveillance, detection, diagnosis and combating of infectious diseases and related research"³⁴; and

(c) "States Parties to promote the development and production of vaccines and drugs to treat infectious disease through international cooperation and, as appropriate, public-private partnerships"³⁵.

35. The Meeting of States Parties in 2009 recognized:

(a) "the Convention is a useful and appropriate platform for collaboration and that through the full implementation of the Convention, including article X, States Parties can complement the activities of other forums and promote maximum cooperation and assistance in areas concerning disease surveillance, detection, diagnosis, and containment of infectious diseases"³⁶;

(b) "there remain challenges to be overcome in developing international cooperation, assistance and exchange in biological sciences and technology for peaceful purposes to their full potential, and that addressing such problems, challenges, needs and restrictions will help States Parties to build sufficient capacity for disease surveillance, detection, diagnosis and containment"³⁷;

(c) "that all States Parties have a role to play, States Parties stressed that those States Parties seeking to build their capacity should identify their specific needs and requirements and seek partnerships with others, and that those States Parties in a position to do so should provide assistance and support"³⁸;

(d) "the role of the Implementation Support Unit, consistent with its mandate, in supporting the capacity-building activities of the States Parties by facilitating communication and partnerships, and acting as a clearing-house for information on needs for and sources of assistance and cooperation"³⁹.

³² BWC/MSP/2004/3, paragraph 19.

³³ BWC/CONF.VI/6, Part II, paragraph 53.

³⁴ BWC/CONF.VI/6, Part II, paragraph 55 (v).

³⁵ BWC/CONF.VI/6, Part II, paragraph 55 (vi).

³⁶ BWC/MSP/2009/5, paragraph 21.

³⁷ BWC/MSP/2009/5, paragraph 29.

³⁸ *ibid.*

³⁹ BWC/MSP/2009/5, paragraph 31.

The Meeting consequently agreed on the value of:

- (a) "working together to promote capacity building in the fields of disease surveillance, detection, diagnosis, and containment of infectious diseases. States Parties affirmed that building such capacity would directly support the objectives of the Convention"⁴⁰.
 - (b) "mobilizing resources, including financial resources, to facilitate the widest possible exchange of equipment, material and scientific and technological information to help overcome challenges to disease surveillance, detection, diagnosis and containment"⁴¹.
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⁴⁰ BWC/MSP/2009/5, paragraph 20.

⁴¹ BWC/MSP/2009/5, paragraph 29.