

**Eighth Review Conference 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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General exchange of views

**Possibilities for strengthening the international community's
ability to investigate alleged use**

Submitted by the United States of America

Why is the ability to investigate alleged use important?

1. Biological weapons are different in important ways from most other types of weapons. Pathogenic materials, once disseminated into the air, water, or food supply, are not readily recognized. Their effects are delayed, with symptoms typically occurring days or even weeks after exposure, and those symptoms may not clearly indicate that those exposed were victims of an attack. This potential uncertainty over whether or not a biological weapons attack has taken place has important implications for the operation of the Convention, particularly for the provision of assistance.
2. Article VI of the BWC provides that:


“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.”
3. Article VII states that:

“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.**” (Emphasis added)
4. A State Party might suspect that it was the victim of a biological weapons attack, and need assistance, but lack clear evidence. While paragraph 2 of Article VI foresees that the Security Council might call for an investigation in response to such a complaint, there is no requirement for such an investigation, and no common understanding concerning the amount of evidence that would be required to galvanize Security Council action. Thus

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uncertainty about whether biological weapons have been used could prevent the assistance obligation of Article VII from being triggered.

The United Nations Secretary-General's Mechanism for investigations of alleged use

5. In the 1980's, acting pursuant to a series of General Assembly resolutions, the Secretary-General of the United Nations established a mechanism (often referred to as the Secretary-General's Mechanism) to investigate claims of chemical or biological weapons use, which has been used to investigate allegations on numerous occasions. Most notably, the mechanism unambiguously confirmed use of chemical weapons on multiple occasions during the Iran-Iraq war, and again in Syria in 2013. The Secretary-General's Mechanism is the only recognized international tool for investigation of alleged biological weapons use.

6. The Secretary-General's Mechanism has both strengths and weaknesses. An important virtue is that it can be activated relatively easily: typically, the Secretary-General receives a request for an investigation from a member state, evaluates it, and determines how to proceed. There is no requirement to obtain agreement from the United Nations Security Council or any executive body, which could potentially delay an investigation. This virtue is also a key limitation: absent Security Council action, States are not legally obligated to cooperate with an investigation. Some early investigations were stymied when states refused to permit entry onto their territories; in other cases, there have been significant delays in granting access, making the task of confirming or refuting an allegation much more challenging.

7. Allegations of use have been rare: while this is unquestionably positive, it means that maintaining a standing capability for such investigations is challenging. For a biological weapons investigation, the Secretary-General's Mechanism would rely heavily on experts and laboratories nominated by UN member states, and on cooperative arrangements the United Nations has entered into with the World Health Organization.

8. Many BWC States Parties have been actively engaged in efforts to support the Secretary-General's Mechanism through training for nominated experts, workshops, voluntary financial contributions, and other steps. Some States Parties however, have registered concerns about the mechanism, either asserting that Article VI, paragraph 2 of the BWC should be interpreted to mean that any investigation into an allegation concerning a BWC State Party should require action by the United Nations Security Council, or expressing a more general sentiment that BWC States Parties should have a mechanism of their own, rather than relying on other institutions. The former view is inconsistent with past agreements by States Parties, most notably at the Third Review Conference, while the latter seems inconsistent with the text of the BWC itself: both Article VI and Article VII explicitly provide a role for the United Nations and clearly envision a close relationship between the United Nations and the BWC. The infrequency of biological weapons use allegations also suggests that, as a practical matter, it would be unwise to seek to resource and maintain two competing mechanisms – and as long as the BWC continues to lag well behind the United Nations in membership, there can be no serious question of “replacing” the Secretary-General's Mechanism with a BWC-specific mechanism.

Strengthening the international community's ability to investigate biological weapons use

9. If the ability to rapidly and effectively investigate allegations of use is important to effective implementation of the Biological Weapons Convention, yet the principal tool for

such investigations resides with the United Nations, what action could the Eighth Review Conference take to strengthen this key capability? Several steps could be considered:

(a) **Support for implementation of the International Health Regulations (IHR) and Global Health Security Agenda (GHS):** The Joint External Evaluation Tool-International Health Regulations (2005) (JEE) was published by the World Health Organization in 2016 to assess country capacity to prevent, detect and respond to public health emergencies, regardless of origin. Under the indicator of “Linking Public Health and Security Authorities,” which encompasses the priorities set out in GHS Action Package Respond-2, countries are given the following target: “In the event of a biological event of suspected or confirmed deliberate origin, a country will be able to conduct a rapid, multi-sectoral response, including the capacity to link public health and law enforcement, and to provide and /or request effective and timely international assistance, including to investigate alleged use events.” The Review Conference could note that building national capabilities to conduct effective joint criminal and epidemiological investigations of suspicious outbreaks will help ensure that international investigations, if required, will be sought at an early stage, and with better underlying information and evidence. Achieving this goal will also build a larger cadre of experts around the world with the experience and skills needed to conduct such an investigation. It is noteworthy that the JEE specifically indicates that States Parties to the IHR should work in collaboration with relevant regional and international entities, including the FAO, INTERPOL, OIE, WHO, the BWC and the Secretary-General’s Mechanism to develop and implement systems to identify, investigate and respond to suspected deliberate biological use events;

(b) **Clarify the relationship between the BWC and the Secretary-General’s Mechanism:** The Review Conference could articulate a clearer understanding of how the Secretary-General’s Mechanism relates to and reinforces the Convention. In particular, the Review Conference could recognize that the Mechanism could play an important role in implementing provisions of the Convention related to Articles V, VI, and VII. It could be initiated in several ways, all of which are fully consistent with the provisions of the BWC: first, a BWC State Party, or a consultative meeting convened in accordance with the decisions of the Second and Third Review Conferences, could ask the Secretary-General to investigate an allegation pursuant to Article V of the Convention as a means of clarifying a situation involving suspected use: in other words, in such cases, the Secretary-General’s Mechanism constitutes an “appropriate international procedure within the framework of the United Nations¹.” Second, a State Party could request an investigation in an effort to assemble all possible evidence” before submitting a complaint to the United Nations Security Council. Third, the Security Council itself could mandate an investigation, as provided for under Article VI, paragraph 2;

(c) **Support efforts to ensure the operational readiness of the Secretary-General’s Mechanism:** the Review Conference could affirm the importance of maintaining a credible international investigative capability, and urge the United Nations Secretary-General to ensure the operational readiness of the Secretary-General’s Mechanism; States Parties could be encouraged by the Review Conference to support the Secretary-General in

¹ BWC Article V provides that “consultation and cooperation pursuant to this article may also be undertaken through appropriate international procedures within the framework of the United Nations and in accordance with its Charter.” The Third Review Conference agreed in its review of Article V that “the consultative meeting, or any State Party, may request specialized assistance in solving any problems which may arise through, inter alia, appropriate international procedures within the framework of the United Nations and in accordance with its Charter,” and that in such cases, States Parties will “cooperate in appropriate international procedures within the framework of the United Nations and in accordance with its Charter.”

these efforts. They could also be called upon to update their nominations of experts and laboratories and ensure their availability; and

(d) **Commit in advance to cooperate with an investigation:** Historically, delays by a United Nations Member State in accepting an investigation have been a key factor limiting their success. At the Third Review Conference, BWC States Parties agreed “to cooperate fully with the United Nations Secretary-General in carrying out such [alleged use] investigations.” At the Eighth Review Conference, BWC States Parties could collectively reaffirm their commitment to cooperate with international investigations of alleged biological weapons use, and affirm that this includes their willingness to provide access to an investigation team, consistent with safety and domestic legal constraints.
