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United Nations involvement in investigating the possible use of biological weapons

Submitted by Germany

1. Following the failure of the States Parties to the Biological and Toxin Weapons Convention to agree on a draft protocol in 2001, it is now crucial to consider how existing mechanisms could be used or improved in order to solve problems which were identified during the VEREX process as well as in the Ad Hoc Group as issues of key importance for strengthening the Convention.

2. One of these key issues is the problem of how to handle investigations relating to the suspected use of biological weapons. Articles V and VI of the Convention may provide some guidance on how States Parties could address this problem and who might be responsible for taking action in this connection. While the Convention does not explicitly prohibit the use of biological weapons, the provisions of Articles V and VI can be invoked to deal with any alleged use, since no State Party can use these weapons without already being in breach of the prohibitions contained in Article I. However, Articles V and VI of the Convention address only the question of who is responsible for taking action if a complaint should be lodged; they do not lay down any technical guidelines or procedures for the conduct of such investigations.

3. In 1987 the United Nations General Assembly agreed in Resolution 42/37 C MEASURES TO UPHOLD THE AUTHORITY OF THE 1925 GENEVA PROTOCOL AND TO SUPPORT THE CONCLUSION OF A CHEMICAL WEAPONS CONVENTION to request the Secretary-General

- (a) "to carry out investigations ... concerning the possible use of ... bacteriological (biological) or toxin weapons that may constitute a violation of the 1925 Geneva Protocol or other relevant rules of customary international law ...;
- (b) with the assistance of qualified experts provided by interested Member States, to develop further technical guidelines and procedures available to him for the timely and efficient investigation of such reports of the possible use of ... bacteriological

- (biological) and toxin weapons;
- (c) ... to compile and maintain lists of qualified experts provided by the Member States whose services could be made available at short notice to undertake such investigations, and of laboratories with the capability to undertake testing of the presence of agents the use of which is prohibited;
- (d) ...
- (e) To appoint experts to undertake investigations...;
- (f) Where appropriate, to make the necessary arrangements for experts to collect and examine evidence and to undertake such testing as may be required;
- (g) To seek, in any such investigation, assistance as appropriate from Member States and the relevant international organizations;
- (h) ...
- (i) to submit a report to the General Assembly at its forty-third session on the implementation of the present resolution."

4. In October 1988 the Secretary-General reported to the General Assembly (Document A 43/690) that he had appointed a group of qualified experts to develop technical guidelines and procedures for the timely and efficient investigation of the possible use of biological weapons, which had requested more time, however, to accomplish its work.

5. In October 1989 Document A 44/561 containing the "Report of the group of qualified experts established in pursuance of General Assembly resolution 42/37 C" and "GUIDELINES AND PROCEDURES FOR THE TIMELY AND EFFICIENT INVESTIGATION OF REPORTS OF THE POSSIBLE USE OF CHEMICAL AND BACTERIOLOGICAL (BIOLOGICAL AND TOXIN WEAPONS" were presented to the Assembly.

6. For want of a more recent document, the guidelines and procedures described in Document A 44/561 are currently the best available to have been multilaterally agreed. However, it is legitimate to ask whether, in the light of new technological developments, these guidelines and procedures might now be out-dated. Another issue that deserves consideration is whether sufficient attention has always been or is now paid to the document's recommendations regarding the timely and efficient conduct of investigations.

7. Special attention should be paid to the recommendation:

- (a) that Member States may designate qualified experts to be placed on lists, which should be periodically updated (para 35);
- (b) that Member States should make available to the designated experts the equipment necessary for the investigation (para 36);
- (c) that Member States may designate laboratories to be placed on lists, which should be periodically updated (para 37);
- (d) that Member States may designate relevant specialized training courses available to qualified experts (para 40);
- (e) that expert consultants chosen by the Secretary-General on the basis of their personal abilities should assist him in a consultative capacity where competence is required (para 57);

- (f) that the abilities and expertise of the qualified experts may be evaluated by the Secretary-General with the assistance of the expert consultants (para 64);
- (g) that designated laboratories may be called upon by the Secretary-General to participate in interlaboratory calibration studies as to establish the validity and accuracy (para 77);
- (h) that the Secretary-General should report periodically to Member States on the status and degree of completion of standing preparatory measures (para 83);
- (i) that expert consultants should assist the Secretary-General in organizing the composition of teams of qualified experts, preparing programmes for calibration of equipment, evaluating the qualification of laboratories as well as periodically updating the procedures and methods for determining whether CBT weapons use has occurred (para 84).

8. This is only an abbreviated list of the recommendations and obligations contained in Document A 44/561. During the very prolonged protocol negotiations participants might to some extent have lost sight of this document and its various recommendations and obligations. In the present situation, however, it seems high time to update the lists of experts and laboratories as well as to assess the procedures and guidelines in the light of recent technological developments. Another question to be considered is whether updating the lists of experts and laboratories and their evaluation can be done satisfactorily with the assistance of consultative experts, or whether this task requires a permanent element of expertise on the staff of the Secretary-General.

9. *United Nations General Assembly Resolution 42/37 C* as well as *United Nations General Assembly Documents A 43/690* and *A 44/561* are available on the CD-ROM prepared by the Federal Foreign Office for participants at the BTWC Meeting of Experts in July 2004.
