
Fifth session
Geneva, 16-27 September 1996

Working paper submitted by the Friend of the Chair

INVESTIGATIONS TO ADDRESS A NON-COMPLIANCE CONCERN:
CORE ELEMENTS

(A) INITIATION

Right of any State Party to request an investigation into a specific concern about non-compliance with Article I of the BWC by any other State Party.

Investigations to be conducted on the territory of any State Party or in any other place under the jurisdiction or control of the State Party. [States Parties could have the right to restrict or deny access to any [site or] information unrelated to the BWC, but there could remain an obligation to take steps to clarify the non-compliance concern.]

Investigations should have a clear and specific mandate.

Other States Parties [to the protocol] could assist in clarifying and resolving any matters related to non-compliance.

(B) INFORMATION TO BE SUBMITTED IN SUPPORT OF A REQUEST

Obligation on State Party to provide in its investigation request specific information about the particular non-compliance concern.

Obligation to keep requests within the scope of the Convention and to refrain from unfounded requests.

Information in support of a request could include [location, how the concern arose, the type of non-compliant activity, the specific event or activities which gave rise to the concern, the date and the place of any such event, any other information indicating a non-compliance concern, affirmation that the source of the information is non-discriminatory and that the information is well founded.]

[The review of information submitted with a request could take account of the following specific [criteria/outline principles/factors/considerations]:

(C) SCREENING (TO GUARD AGAINST ABUSIVE REQUESTS).

[Bilateral consultations could be required to take place prior to a request for an investigation of a non-compliance concern.]

[Requests for an investigation into a non-compliance concern could be submitted to the United Nations Security Council for decision on whether to initiate an investigation.]

or

[Requests for an investigation into a non-compliance concern could be submitted to a political representative body of States Parties. Providing the request satisfied agreed requirements, the investigation would proceed [if formally approved by this representative body] or [unless this body intervened to overrule the request and recall the inspection team.]]

[The consideration of investigation requests could be assisted by technical advice [from an ad-hoc group of experts/a small technical secretariat] of a new independent organization.]

(D) MEASURES TO GUARD AGAINST ABUSE DURING INSPECTIONS

Obligation to conduct an investigation in the least intrusive manner possible consistent with its effective and timely implementation, and to collect only relevant information necessary to clarify the specific non-compliance concerns.

Right of the investigated State Party to take measures to protect sensitive installations and to prevent disclosure of commercial proprietary, scientific and national security information not related to its obligations under the Convention.

Right to implement managed access techniques including, *inter alia*: shrouding displays and equipment; switching off computer screens; granting selective access to buildings, laboratories and documentation; limiting the numbers of inspectors permitted in any area at one time; controlling the time spent in particular areas; restricting the visual access to particular areas.

(E) MEASURES TO DEAL WITH ABUSE AFTER
AN INSPECTION HAS TAKEN PLACE

Right of States Parties to consider (at post investigation review) appropriate sanctions [or penalties], if they decide that a request has been frivolous, abusive, or beyond the scope of the Convention.

[Individual inspectors and/or the Organization could be liable for damages arising from their actions, including leakage of CPI.]

[Disciplinary procedures to deal with misconduct by inspectors.]

(F) TIME-FRAME FOR AN INVESTIGATION

A State Party could be required to respond rapidly. Investigations into a non-compliance concern to be conducted as soon as possible after the submission of the inspection request.

(G) ACCESS

[Extent and nature of access to a particular place or places negotiated between the investigators and the receiving State.] [Access governed by multilaterally agreed procedures or principles.]

(H) TOOLS FOR INVESTIGATION

(I) POST-INVESTIGATION REVIEW

Investigators' final report to include [factual findings with regard to the concerns regarding possible non-compliance with article I of the BWC] [an indication of whether non-compliant activity had taken place and the extent to which the investigated State Party had cooperated in the investigations.]

[The [representative body of States Parties] or [UN Security Council] could take a decision on any response or further action, particularly in the event that there were unresolved non-compliance concerns.]
