

Fifth session  
Geneva, 16-27 September 1996

## **INVESTIGATIONS TO ADDRESS A NON-COMPLIANCE CONCERN**

Working paper submitted by the Friend of the Chair

### **[II FIELD INVESTIGATIONS]**

#### **(A) Initiation**

Right of any State Party to request an investigation into a situation or event of exposure of humans, animals or plants to [microbial or other biological agents or toxins] [biological or toxin weapons] associated with a specific concern about non-compliance with Article I of the BWC by any other State Party.

A State Party may make a request either about a situation on its own territory, or on the territory of another State Party or a non-State Party where another State Party is identified as the alleged perpetrator. The State Party may or may not name an alleged perpetrator, except that in the case of the territory of a non-State Party, an alleged perpetrator should be named.

States Parties should have the right to restrict [or deny] access to any particularly sensitive site, area or information unrelated to the BWC.

If a State Party were to provide less than full access to inspectors, it should be obliged to make every attempt to provide alternative means to address the non-compliance concern.

[States Parties could make full use of opportunities for bilateral clarification and consultation to resolve these concerns.]

#### **(B) Information to be submitted in support of a request**

Other States Parties to the Protocol could undertake to assist, to the extent they may be capable or are requested, in clarifying or resolving matters related to a concern about the alleged use of biological or toxin weapons.

A request may be supported by epidemiological data. Other evidence should be necessary to demonstrate a *prima facie* compliance concern.

Evidence may vary with each request, according to the circumstances, victims and pathogens involved, but may include:

- the location and characteristics of the area(s) involved;
- the location name and geographic coordinates;
- the moment of the alleged use (if possible);
- effects on victims;
- number of victims;
- symptoms and signs of the disease;
- types and results of sample identified;
- any other corroborative information.

**(C) Screening (to guard against abusive requests)**

Requests [for a field investigation] should be subject to careful technical and political screening [to ensure that the evidence provided supports a *prima facie* case of non-compliance concern [involving an incident of exposure caused by [BTW]]].

[An inspection should proceed unless the State Parties or their representative body intervene to overrule the request and recall the investigating team]

OR

[Providing the request satisfied agreed requirements the investigation would proceed if formally approved by [a political representative body of States Parties]]

**(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 any 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.

**(E) Measures to deal with abuse after an investigation 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.

**(F) Time frame for an investigation**

[Field investigations] should be conducted as soon as possible after the submission of the inspection request.

**(G) Access**

[The investigative team could have access to all areas which could be affected, including hospitals, refugee camps, and other places it considers necessary for the effective conduct to its investigation.]

[If during an investigation, the team considers it necessary to extend the investigation to a neighbouring State, the [UN Secretary-General, or other appropriate persons/organization,] could notify the State Party of the need to have access to its territory. The extent of any such access would be agreed between the parties involved.]

[A field investigation] may range widely and could include a variety of tools.

**(H) Tools for investigation**

The investigative team should be able to use the range of on-site measures identified by VEREX, including visual inspection of affected areas, interviewing of victims and eye-witnesses, access to medical records of victims as well as medical examination with consent, including the taking of samples from victims in order to make or confirm a diagnosis, investigative epidemiology, taking and evaluating environmental samples, and samples of munitions and devices or remnants of munitions and devices.

**(I) Post investigation review**

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

[The representative body of States Parties] of [UN Security Council] could take a decision on any response or further action.]

[The final report could make recommendations on any technical or humanitarian assistance needed.]

---