

## E. CONSULTATION, CLARIFICATION AND COOPERATION<sup>70</sup>

1. States Parties shall, without prejudice to their rights and obligations under Article V of the Convention, consult and cooperate, directly among themselves, or through the Organization or other appropriate international procedures, including within the framework of the United Nations and in accordance with its Charter, on any matter which may be raised relating to the object and purpose of the Convention, or the implementation of the provisions of this Protocol and to clarify and resolve any matter which may cause concern about possible non-compliance with the [basic] obligations of this Protocol or the Convention. For these purposes, States Parties [may, without prejudice to their [and the Technical [Secretariat's] [Body's]] rights and obligations under this Protocol with respect to investigations and visits] [shall [, prior to the submission of any request for an investigation [or visit],] first make every effort to] follow, *inter alia*, one or more of the following procedures:

(a) Seek clarification from another State Party. In the case of a written request for clarification [directly] to another State Party, the requested State Party shall provide the clarification to the requesting State Party as soon as possible, but in any case not later than [10 days] after receipt of the request. The requesting and requested States Parties [may] [shall] keep the Executive Council and Director-General informed of the request and the response;

(b) Submit a written request for clarification concerning another State Party, together with information upon which the request is made, to the Director-General. The Director-General shall immediately forward the request to the State Party concerned. The requested State Party shall provide the clarification to the Director-General as soon as possible, but in any case not later than [10 days] after receipt of the request. The Director-General shall immediately forward the clarification to the requesting State Party. [If agreed by both the requesting and requested States Parties] [If requested by either the requesting or requested State Party] the Director-General shall keep the Executive Council and/or all other States Parties informed of the request and the basis for the request as well as the response;

(c) Submit a written request for clarification concerning another State Party, together with information upon which the request is made, to the Executive Council which shall forward the request to the requested State Party through the Director-General no later than 24 hours after its receipt. The requested State Party shall provide the response to the Executive Council as soon as possible, but in any case no later than [96 hours] [10 days] after receipt of the request. The Executive Council shall take note of the response and forward it to the requesting State Party no later than 24 hours after its receipt. The Executive Council shall

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70. A view was expressed that this section could be considered for inclusion in section G, subsection B.

inform without delay all other States Parties about any such request for clarification and the basis for this request as well as the response provided by the requested State Party.

2.<sup>71</sup> For the purposes of obtaining further clarification requested under paragraph 1 (c), the Executive Council may call on the Director-General to [consult the Scientific Advisory Board and/or] establish [on the basis of equitable geographical distribution [if possible]] [a group of experts from the list of investigation personnel designated and approved in accordance with the procedures set out in Annex D, section I,] to examine all available information and data relevant to the situation causing concern. The [group of experts] [Scientific Advisory Board] shall submit a factual report to the Executive Council on its findings as soon as possible.

3. If, following receipt of the clarification obtained pursuant to paragraph 1, the requesting State Party considers that the response does not resolve the concern, including a possible non-compliance concern, and that it needs to seek further clarification, or if it has not received the clarification within the times specified in paragraph 1, or if the requested State Party makes it clear to the requesting State Party, that it will not provide the requested clarification, the requesting State Party may request in writing:

(a) The Executive Council to obtain further clarification from the requested State Party, providing reasons why the clarification does not resolve the concern, including a possible non-compliance concern, or to obtain from the requested State Party the reasons as to why it has not provided the clarification as required under the provisions of this Article within the times specified in paragraph 1, or why the requested State Party will not provide the requested clarification; and/or

(b) A special session of the Executive Council in which States Parties involved that are not members of the Executive Council shall be entitled to take part. In such a special session the Executive Council shall consider the matter and may recommend to the States Parties involved any measure it deems appropriate to resolve the situation [in accordance with Articles V, IX or XII].

4. If the concern of a State Party about possible non-compliance has not been resolved within [21] [60] days after the submission of the request for clarification to the Executive Council, and it believes its concern warrants urgent consideration, [notwithstanding its right to request an investigation,] it may request in writing a special session of the Conference of States Parties in accordance with Article IX, paragraph 12 (c). At such a special session, the Conference shall consider the matter and may recommend any measure it deems appropriate to resolve the situation [in accordance with Articles V or XII].

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71. Further consideration needs to be given to whether the order of paragraphs 2 and 3 might be reversed.

5. A requested State Party may pursue, *inter alia*, one or more of the following procedures:

[(a) Request the Executive Council to consider the matter on the basis of the information which was made available in the request as well as on information which has been made available by the requested State Party, and, if appropriate, also on the basis of information received from the Technical [Secretariat] [Body] based on the declarations submitted by the States Parties [and any other relevant information which it has acquired in the performance of its functions];]

[(b) Request the [Executive Council] [Director-General] to mandate the Technical [Secretariat] [Body] to conduct a [voluntary] [consultation] visit in order to resolve the matter [in accordance with the procedures set out in Annex ...].]

[6. The Executive Council [may] [shall] upon the request of the State Party concerned so mandate the Technical [Secretariat] [Body] [only if it is satisfied, *inter alia*, that:

[(a) No other measure foreseen by this Protocol would be more appropriate to resolve the concern;]

(b) The arrangements for the visit would enable a visiting team to fulfil its mandate, which shall be agreed between the Director-General and the State Party concerned;

[(c) The State Party concerned shall meet all the Technical [Secretariat's] [Body's] costs in respect of the visit.]

In the case of a clarification visit or an investigation being initiated with regard to the same matter as the voluntary consultation visit, the Organization shall immediately terminate any plans for or any on-going activity with regard to the latter].]

7. If requested by [all] [one or more of] the States Parties concerned, other States Parties or relevant international organizations may undertake to assist in clarifying or resolving matters related to a concern about non-compliance which has been raised as a matter for consultation, clarification and cooperation.

8. Nothing in the above arrangements shall prejudice States Parties' rights to arrange by mutual consent for any procedures among themselves [including possible on-site activities].

[9. The Technical [Secretariat] [Body] [shall] [may] [have the right to seek clarification from] [and] [consult with] any State Party of [matters of a purely technical nature] [any [ambiguity, uncertainty, anomaly or omission] [technical matter]] relating to its declaration

obligations under this Protocol [, or on any other related matter which may be considered ambiguous].]<sup>72</sup>

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72. A view was expressed that issues dealt with in this paragraph should be dealt with in Article IX relating to organization issues, in the section on the functions of the Technical [Secretariat] [Body].

[F. [MEASURES TO STRENGTHEN THE IMPLEMENTATION OF ARTICLE III]

[1. States Parties, in order to ensure compliance with Article III of the BTWC, shall only transfer dual-use microbial and other biological agents, toxins and equipment for purposes not prohibited by the Convention, in accordance with the following guidelines.

2. In pursuance of paragraph 1, and recognizing that most of the agents, toxins, equipment and technologies are of a dual-use nature and with the objective of preventing dual-use items from being utilized for purposes prohibited by BTWC, the guidelines shall be as follows:

(a) Any request made by a State Party for the procurement of a specific agent/toxin reagent shall be accompanied by information on purpose, quantity required, site or facility for proposed use, quantity to be produced at the site or facility, place where intended to be stored and end-use certificate;<sup>73</sup>

(b) Any request for transfer or procurement of equipment envisaged to be declared under CBMs, for use by a State participating in the compliance regime in a BL4 facility, including details of its proposed application and the site/facility for intended use, shall be intimated to the Organization;

(c) Any transfer of technology related to means of delivery, aerosol dispersion of toxins and pathogens, stabilization of agents/toxins to environmental stress shall be intimated to the Organization;

(d) Transfer of agents, equipment and material shall not be allowed to non-States Parties of the compliance regime under the Convention without prior approval of the Organization.]

[3. (a) To ensure compliance with Article III of the BTWC, [no] [each] State Party shall [only] authorize transfers to any recipient whatsoever, of microbial or other biological agents, or toxins whatever their origin or method of production, or equipment which [is capable of using such agents or toxins for hostile purposes] [can be used in contravention of Article I of the Convention], [unless that State Party has] [if it is] determined that these will be used solely for prophylactic, protective or other peaceful purposes.

(b) (i) Each State Party shall report to the Organization on the national laws and regulations it has adopted to implement Article III of the BTWC not

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73. The format on transfers developed by the Friend of the Chair on CBMs on “Data on transfers and transfer requests and on production” in pages 208-209 of BWC/AD HOC GROUP/39 would need to be modified in this context. Paragraph 2 above may be considered for Annex.

later than ... days after the entry into force of this Protocol for that State Party and whenever an amendment thereto is made.

(ii) Each State Party shall report to the Organization on its administrative and other national measures to implement Article III of the BTWC not later than ... days after the entry into force of this Protocol for that State Party and whenever an amendment thereto is made.

[(iii) Such reports shall contain detailed information. If available, the information contained in these reports may be subject to examination during a visit under the Article I investigation procedures of this Protocol.]

[(c) No transfer of microbial or other biological agents or toxins, whatever their origin or method of production, or equipment which is capable of using such agents or toxins for [hostile purposes] [for purposes which would contravene Article I of the Convention], shall be allowed to non-States Parties of the Convention and the Protocol.]<sup>74</sup>

[(d) Each State Party, in implementing these measures, shall ensure that they do not impede the peaceful economic and technological development of States.]]

[4. [Proposed] Transfer guidelines

(a) The provisions of the Convention shall not be used to impose restrictions and/or limitations on the transfer of scientific knowledge, technology, equipment and materials for purposes not prohibited under the Convention.

(b) In order to promote transparency in the biological trade, the States Parties may agree on arrangements for exchanging the end-user certificate related to biological exports in a manner that will entail no restrictions or impediments on access to biological materials, equipment or technological information by all States Parties. This would replace all existing ad hoc regulations in the biological trade at the time of entry into force of the Protocol for States Parties.

(c) An end-user certificate may be required from the recipients stating, in relation to the transferred biological agents or toxins and equipment (to be identified as relevant by the Ad Hoc Group), the following:

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74. Further consideration should be given to possible humanitarian implications of such a prohibition.

- (i) That they will only be used for purposes not prohibited under this Convention for the States not party to the Convention;
  - (ii) That they will not be retransferred without receiving the authorization from the supplier(s);
  - (iii) Their types and quantities;
  - (iv) Their end-use(s); and
  - (v) The name and address(es) of the end-user(s).
- (d) States Parties shall resolve suspicions arising from such transfers through the process of consultation and clarification in accordance with Article V of the Convention.]]

## G. INVESTIGATIONS<sup>75</sup>

### (A) INITIATION AND TYPES OF INVESTIGATIONS

[1. The provisions of this section shall only be available to address non-compliance concerns that occur after the entry into force of this Protocol.]

2. Each State Party shall have the right to request an investigation for the sole purpose of determining the facts relating to a specific concern about possible non-compliance with the Convention by any other State Party [(hereinafter referred to as “the alleged non-compliant State Party”)]<sup>76</sup>.

3. Each State Party shall be under the obligation to keep all requests within the scope of the Convention and refrain from unfounded requests.

4. The requesting State Party [the State Party requesting an investigation (hereinafter referred to as “the requesting State Party”)] shall specify in each request which one of the following types of investigation it is seeking:

- (1) [Field] investigations [of the alleged use of biological weapons] [, to be conducted in geographic areas where the release of, or exposure of humans, animals or plants to microbial or other biological agents and/or toxins has given rise to a concern about non-compliance with Article I of the Convention by a State Party].
- (2) [Facility] investigations [of any other alleged breach of obligations under the provisions of the Convention] [, to be conducted inside the perimeter of a particular facility(ies) for which there is a concern that it is involved in activities prohibited by Article I of the Convention].
- [(3) Investigations where there is a concern that a transfer has taken place in violation of Article III of the Convention.]

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75. There is no agreement on terminology of investigations. One possible term is “Investigation to address a non-compliance concern”. Another possible term is “Challenge inspection (under Article VI)”.

76. Terms to be used to describe the States Parties involved in investigations have been proposed by a delegation for insertion in paragraphs 2, 4, 6 and 16 (b). Pending agreement on these (or other) terms, they have not been inserted elsewhere in the text.

5. All natural outbreaks of disease do not pose a compliance concern to the Convention [and therefore shall not be cause for an investigation of a non-compliance concern] [as set out in Annex ...].<sup>77 78</sup>

[5 *bis* All natural outbreaks of disease do not pose a compliance concern to the Convention and therefore shall not be a cause for an investigation of a non-compliance concern. The diseases which are endemic in the region and present the expected epidemiological features shall not be considered as an unusual outbreak of disease. An outbreak of disease which appears to be unusual, shall be investigated by the affected State Party, as per guidelines set out in Annex D, section V, and concluded as soon as possible.]

[5 *ter* Accidents which are a result of activities not prohibited under the Convention do not pose a compliance concern to the Convention and therefore shall not be cause for an investigation of a non-compliance concern as set out in Annex ... .]

[6. An investigation may be requested to be conducted on the territory of a State Party, or in any other place under its jurisdiction or control, regardless of the form of ownership of the facility or the geographic area subject to the investigation, in accordance with the provisions of this Protocol and its Annexes [(hereinafter referred to as “the receiving State Party”).]

[6 *bis* An investigation may be requested to be conducted on the territory of a State Party, or in any other place under its jurisdiction or control, regardless of the form of ownership of the facility or the area subject to the investigation, in accordance with the provisions of this Protocol and its Annexes. The State Party on whose territory lie facilities or areas which are the subject of an investigation, or the State Party outside whose territory lie facilities or areas under its jurisdiction or control which are the subject of an investigation is hereinafter referred to as “the receiving State Party”. However, it does not include “the host State Party of an

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77. Specific language on this issue for inclusion in the Annex will be formulated drawing on, without prejudice to other possible proposals, BWC/AD HOC GROUP/WP.262, submitted by the Group of NAM and Other Countries, which was not addressed during the ninth, tenth, eleventh, twelfth, thirteenth or fourteenth session of the Ad Hoc Group.

78. A view was expressed that the appropriate placement of this text required further consideration.

investigation” which is the State Party on whose territory lie facilities or areas under the jurisdiction or control of another State Party/State which are the subject of an investigation.]<sup>79</sup>

[7. A [field] investigation [of alleged use of biological weapons] may also be requested to be conducted on the territory of a non-State Party, or in any other place under its jurisdiction or control, if there are concerns that a State Party [which shall be identified in the request] is the cause of the non-compliance concern. Consultations shall be undertaken with the non-State Party concerned in order to secure its agreement that the provisions and rights with regard to access and conduct of investigations foreseen for States Parties under the Protocol, or any other investigation arrangements which are deemed mutually acceptable by the non-State Party and the [Director-General] Executive Council, may be applied, as appropriate, to an investigation on its territory or at any other place under its jurisdiction or control.]

[7 *bis* Any State Party may request an investigation to be conducted in any place which is under the jurisdiction or control of a non-State Party. The investigation request shall be in accordance with the provisions of this Article and shall identify a State Party as the alleged cause of the non-compliance concern. Upon receipt of such a request, the Director-General shall immediately contact the non-State Party concerned to seek:

(a) Its consent to the conduct of the investigation; and, subject to such consent

(b) Its agreement that the provisions of this Protocol governing the conduct of investigations shall apply to the investigation as if it were to be conducted in a place under the jurisdiction or control of a State Party or, alternatively, its agreement to different procedures for the conduct of the investigation which the Director-General is satisfied would enable the facts relating to the specific concern about non-compliance raised in the request to be determined.

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<sup>79</sup>. This paragraph was not discussed during the thirteenth or fourteenth session of the Ad Hoc Group.

The Director-General shall inform the Executive Council and the requesting State Party of the outcome of such consultations as soon as possible.]<sup>80</sup>

[8. In the case of a non-compliance concern involving a State which is a party to the Convention but not to the Protocol, States Parties, where appropriate, shall use the relevant provisions of the Convention to seek to resolve the concern. In cases where an investigation is initiated under the Convention, the provisions and rights with regard to access and conduct of investigations foreseen under the Protocol may be applied, as agreed and appropriate.]

[9. In cases of concerns with respect to biological or toxin weapons involving a State not party to the Convention, the Organization shall closely cooperate with the [Security Council and the] Secretary-General of the United Nations. If so requested, the Organization shall put its resources at the disposal of the [Security Council and the] Secretary-General.]

10. Requests for investigations shall be submitted in writing by the requesting State Party to [the United Nations Security Council, in accordance with Article VI of the Biological Weapons Convention] [[the Executive Council and at the same time to] the Director-General for immediate processing] [and circulation to the Executive Council] in accordance with procedures as set out in this Protocol and its Annexes.

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80. This paragraph was not discussed during the thirteenth or fourteenth session of the Ad Hoc Group.

(B) CONSULTATION, CLARIFICATION, AND COOPERATION<sup>81</sup>

11. States Parties [shall] [may] [first] make [every effort] [full] [use [where possible and as appropriate] of opportunities] for bilateral and multilateral clarification and consultation [through the Organization] [in accordance with Article V of the BTWC] [[and established procedures under the Protocol] to resolve a concern about non-compliance with the Convention [[prior to] [or] [in parallel to] a request]].

12. Other States Parties may undertake to assist, on a voluntary basis and to the extent they may be capable and/or are requested, by the States Parties concerned [or by the Organization] in clarifying or resolving matters related to a concern about non-compliance, which has been raised as a matter for consultation, clarification and cooperation. [[International organizations such as WHO, FAO and IOE] [and an international epidemiological network] may play a role in such consultation and clarification procedures.]

(C) INFORMATION TO BE SUBMITTED WITH A REQUEST FOR AN INVESTIGATION TO ADDRESS A CONCERN OF NON-COMPLIANCE WITH THE CONVENTION

13. A State Party requesting an investigation shall provide [, to the extent possible,] [all] relevant [available] [necessary] information [and evidence] indicating a non-compliance concern [as specified in paragraphs ... of this section] [including 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 place of any such event or activities]. All such information shall be as precise as possible.

[14. Other States Parties may provide information relevant to the request. Any such submission shall not delay the consideration of the request by the Executive Council described in paragraph ... .]

[15. States Parties which provide information pursuant to paragraphs 13 and 14 shall also provide relevant information about the source of such information, [confirming [proving] [and demonstrating] its [reliability] [and impartiality,] [its non-discriminatory nature] [that it is well-founded] [and open to multilateral scrutiny]].]

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81. The inclusion of this section is without prejudice to any final decision on whether such procedures shall be mandatory and/or whether they shall take place prior to the initiation of an investigation.

16. A request for a [field] investigation [of alleged use of BW] under paragraph 4 of this Article for an event(s) which has given rise to a concern about non-compliance shall [to the extent possible] [at least] include the following information:<sup>82</sup>

- (a) Name of the State Party[/State] on whose territory or in any other place under whose jurisdiction or control the alleged event(s) has taken place;
- (b) If the alleged event(s) has taken place, in any place on the territory of a State Party[/State] which is not under its jurisdiction or control, the name of that State Party[/State] (hereinafter referred to as “the host State Party/State”);
- (c) A description of the alleged event(s), including all [available] information on:
  - (i) The [use] [release] of microbial or other biological agent(s) or toxin(s) for other than peaceful purposes; and/or
  - (ii) Weapons, equipment or means of delivery used in the alleged event(s);
- (d) The circumstances under which the alleged event(s) took place;
- (e) The suspected cause and/or perpetrator of the alleged event(s);
- (f) The date and time when the alleged event(s) took place and[/or] became apparent to the requesting State Party and, if possible, the duration of that alleged event(s);
- (g) The area[(s)] requested to be investigated identified as precisely as possible by providing the geographic coordinates, specified to the nearest second if possible, or other alternative measures, as well as a map specifying the identified area[(s)] and the geographic characteristics of the area[(s)]. [No more than three areas may be requested as investigation areas, with each such area not to exceed [500] [...] square kilometers in size];
- (h) Whether any victims are humans, animals or plants as well as an indication of numbers affected and a description of the consequences of exposure, and if so:
  - (i) Symptoms and/or signs of the disease;
  - (ii) All available epidemiological data relevant to the disease outbreak;

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82. Paragraphs 16 to 20 have been reproduced in Annex D, pending a decision on whether they should be placed in the Protocol or in the Annex.

[i) Substantiating evidence to differentiate the alleged event(s) to be investigated from a natural outbreak of disease and demonstrate that it is not a natural outbreak of disease [or accidents which are a result of activities not prohibited under the Convention];]

[j) Information from and/or the outcome or results of [any] prior consultations/clarifications relevant to the request.]

17. In addition to the information to be supplied with a request pursuant to paragraph 16, other types of information may also be submitted as appropriate and to the extent possible including, *inter alia*:

(a) Reports of any internal investigation including results of any laboratory investigations;

(b) Information on the initial treatment and the preliminary results of the treatment of the disease;

(c) A description of the measures taken to prevent the spread of the disease outbreak and to eliminate the consequences of the alleged event(s), and their results in the affected area(s), if available;

(d) [Request for specific assistance] [Information on any requests for assistance relevant to the alleged event(s)], if applicable;

[e) In the case of alleged accidental release of microbial or other biological agents or toxins, information on a facility(ies) from which the accidental release could have taken place;]

(f) Any other corroborative information, including affidavits of eye witness accounts, photographs, samples or other physical evidence [which in the course of internal investigations have been recognized as being related to the alleged event(s)].

[18. To avoid abusive or frivolous requests, in addition to the requirements set forth in paragraph 16, requests for a field investigation based upon an outbreak of disease or intoxication of concern shall contain information indicating that such outbreak is potentially connected to activities prohibited by the Convention. The State Party on whose territory the field investigation is proposed to occur or any other State Party may provide any information that indicates such outbreak of disease or intoxication is naturally occurring or otherwise unrelated to activities prohibited by the Convention. This information shall also be taken into account by the Executive Council in its consideration of the investigation request in accordance with the request procedures of paragraph ... of this Article.]<sup>83</sup>

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83. Paragraph 18 was proposed by a delegation to replace both paragraph 5 and subparagraph 16 (i). It was not discussed during the eleventh, twelfth, thirteenth or fourteenth session of the Ad Hoc Group.

19. Requests for [facility] investigations [of any other alleged breach of obligations under the provisions of the Convention] under paragraph 4 of this Article for an event(s) which has given rise to a concern about non-compliance shall at least include the following information:

(a) Name of the State Party on whose territory or in any other place under whose jurisdiction or control the non-compliant activity has allegedly taken place;

(b) A [detailed] description of the specific event(s) or activity(ies) which gave rise to a non-compliance concern, including [specific] information regarding the development, production, stockpiling, acquisition or retention of:

- (i) Microbial or other biological agents or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;
- (ii) Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict;

(c) The [name, if known, or other form of identification and] location(s) of the [facility[ies]] [site[s]] where the alleged non-compliant activity(ies) took place. This shall include as much detail as possible including a site diagram, indicating boundaries as well as the requested perimeter, related to a reference point with geographic coordinates, specified to the nearest second, if possible, or other alternative measures;

(d) The approximate period during which the non-compliant event(s) or activity(ies) is alleged to have taken place;

(e) Information from and/or the outcome or results of [any] prior consultations/clarifications or other prior investigations relevant to the request;

[(f) Information to demonstrate that the non-compliance concern is not a natural outbreak of disease.]

20. In addition to the information to be supplied with a request pursuant to paragraph 19, other relevant information should also be submitted as appropriate and to the extent possible including, *inter alia*:

(a) Whether the facility[ies] concerned has been declared under the Protocol; and any information included in or absent from the declaration relevant to the allegations; if not, any information to suggest that the facility[ies] concerned should have been declared under the Protocol;

(b) Details of the ownership and/or operator of the facility concerned.

[(D) FOLLOW-UP AFTER SUBMISSION OF AN INVESTIGATION REQUEST AND EXECUTIVE COUNCIL DECISION-MAKING

21. The Director-General, after receiving an investigation request, shall acknowledge receipt of it to the requesting State Party within [2] hours and shall communicate the request to the State Party sought to be investigated within [6] hours and to all other States Parties within [24] hours.<sup>84</sup>

22. The Director-General shall task the Technical [Secretariat] [Body] immediately to ascertain that the investigation request meets the requirements set out in paragraphs ... of this Article and, if necessary, [to] [shall] assist the requesting State Party in revising the investigation request accordingly. The Director-General shall immediately inform the Executive Council that the requesting State Party is revising the request. Any revised request shall be submitted and processed in the same way as an original request.

23. [When the investigation request fulfils the requirements] [Immediately upon receipt of an investigation request], the Director-General shall begin preparations for the investigation without delay.

[24. The Director-General, upon receipt of an investigation request referring to an investigation area under the jurisdiction or control of a State Party, shall immediately seek clarification from the State Party sought to be investigated in order to clarify and resolve the concern raised in the request. A State Party which receives a request for clarification pursuant to this paragraph shall provide the Director-General with explanations and with other relevant information as soon as possible but no later than ... hours after receipt of the request for clarification. Unless the requesting State Party considers the concern raised in the investigation request to be resolved and withdraws the request, the Executive Council shall take a decision on the request in accordance with paragraph 26.]

25. The Executive Council shall begin its consideration of an investigation request immediately upon its receipt and shall [take a decision on it] [conclude its consideration of it] no later than [12] hours after [its receipt] [receipt of the original request] [approving of the request by the Technical [Secretariat] [Body]].

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84. A view was expressed that the issue of the communication of the request to all other States Parties needed further consideration in the light of discussion on the issue of consultation and clarification.

26. [Providing [the Director-General determines that] the request [satisfied agreed requirements] [met the requirements set out in paragraphs ... of this Article],] the investigation [shall] [would] proceed [if formally approved by [at least a two-thirds majority] [a three-quarters majority] [present and voting] of] [unless] the Executive Council [decides by a three-quarters majority of all its members against carrying out the investigation] [where it considers the investigation request to be frivolous, abusive or clearly beyond the scope of the Convention].<sup>85</sup>

27. If the Executive Council decides against an investigation request, preparations shall be stopped, no further action shall be taken on it and the State Party concerned shall be informed accordingly.

[28. [The Executive Council, in examining the information submitted with the investigation request, may call for more information from the requesting State Party.] [The Executive Council [may] [could] also recommend bilateral or multilateral consultations to resolve the issue.] [The Executive Council may also consider whether to request more information from [other relevant international organizations] [such as] [WHO/IOE/FAO] [that would be necessary for taking a decision on a request] [which it considers necessary for further consideration of the investigation request] [or whether to request the WHO/IOE/FAO to conduct an investigation].]]]

[(E) ISSUE OF INVESTIGATION MANDATE

29. Pursuant to paragraph 26 the Director-General shall issue an investigation mandate to the investigation team leader [according to the decision [and recommendations] by the Executive Council] for the conduct of the investigation. The investigation mandate shall be based upon the investigation request and shall contain the information specified in paragraph ... of Annex D. The investigation mandate shall be clear and specific and shall be [strictly] observed by the investigation team.

30. The investigation mandate shall be made available to the State Party to be investigated [through notification of investigation made by the Director-General and] [by the investigation team upon the latter's arrival at the point of entry.]

[(F) [ACCESS AND MEASURES TO GUARD AGAINST ABUSE DURING THE]  
[CONDUCT OF INVESTIGATIONS]

31. The investigation shall be conducted in accordance with the provisions of this Protocol and the Annex.

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85. A view was expressed that this concept would be better placed in section I.

[32. The investigated State Party shall provide access [to the investigation team] [within the time frame specified in paragraph ... of Annex D] [within the [approved] investigation area for the sole purpose of collecting facts relevant to the mandate and] [in accordance with] [to which it is entitled under] [the Protocol and its Annexes].

[The investigated State Party shall be under the obligation to allow the greatest degree of access to facilities or areas to be investigated for the sole purpose of establishing facts relevant to the concern regarding possible non-compliance [taking into account] [without prejudice to] its constitutional obligations with regard to proprietary rights or searches and seizures.]

33. The investigated State Party shall make every reasonable effort to demonstrate its compliance with [the Convention] [and this Protocol] and to this end to enable the investigation team to fulfil its mandate.

34. [The extent and nature of access to a particular place or places within the [approved] investigation area shall be negotiated between the investigation team and the investigated State Party [on a managed access basis].]

The investigated State Party shall have the right [under managed access] to take such measures [as are] [it deems] necessary to protect sensitive national security or commercial proprietary information not related to activities prohibited by the Convention [, or to comply with its constitutional obligations with regard to proprietary rights or searches and seizures].

This may include restricting access to any particularly sensitive [facility], area or information [unrelated to the prohibitions of the BTWC] [not related to activities prohibited by the Convention] [unrelated to the contents of the request].

[The extent and nature of access to a particular place or places will in such cases be negotiated between the investigation team and the investigated State Party [on a managed access basis] [, so as to enable the investigation team to fulfil its mandate].]

An illustrative list of specific measures which an investigated State Party might, if necessary, take to this end is set out in Annex D.

If the investigated State Party provides less than full access to places, activities, or information, it shall [as a rule] make all reasonable [and feasible] efforts to provide [reliable] alternative means to demonstrate compliance.

[35. The investigated State Party shall have the right to restrict [or deny] access to any particularly sensitive [facility], area or information not related to activities prohibited by the Convention.]

[The investigated State Party shall have the right to make the final decision regarding any access of the investigation team, taking into account its obligations under this Protocol and the provisions on managed access [without prejudice to the provisions in paragraph 32].]<sup>86</sup>

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86. Paragraphs 32 to 35 and paragraph 36 were regarded by some delegations as alternatives.

OR

[36. Pursuant to a request for an investigation of a facility or location, and in accordance with the procedures provided for in Annex D, the investigated State Party shall have:

(a) The right and the obligation to make every reasonable effort to demonstrate its compliance with [the Convention] [and this Protocol] and, to this end, to enable the investigation team to fulfil its mandate;

(b) The obligation to provide access within the [requested site] [[facility or] [site] designated for investigation] for the sole purpose of establishing facts relevant to the concern regarding possible non-compliance [[taking into account] [without prejudice to] constitutional obligations it may have with regard to proprietary rights or searches and seizures]; and

(c) The right to take measures to protect sensitive installations, and to prevent disclosure of confidential information and data, not related to activities prohibited by the Convention.]<sup>87</sup>

[37. Pursuant to a request for an investigation of a facility or location, and in accordance with the procedures provided for in Annex D, the investigated State Party shall have:

(a) The right and obligation to make every reasonable effort to demonstrate its compliance with the Convention and, to this end, to enable the investigation team to fulfil its mandate;

(b) The obligation to provide access within the requested site designated for investigation for the sole purpose of establishing facts relevant to the concern regarding possible non-compliance; and

(c) The right to take measures to protect sensitive installations, and to prevent disclosure of confidential information and data, not related to the Convention.

38. The investigated State Party shall provide access to the investigation team within the requested site within ... hours of receiving the notification of the intent to conduct an investigation. The extent and nature of access to a particular place or places within the requested site shall be negotiated between the investigation team and investigated State Party.

39. Upon request of the investigation team, the investigated State Party may provide aerial access to the investigation site.

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87. Ibid.

40. In meeting the requirement to provide access as specified in paragraph 46, the investigated State Party shall be under the obligation to allow the greatest degree of access taking into account any constitutional obligations it may have with regard to proprietary rights or searches and seizures. The investigated State Party has the right under managed access to take such measures as are necessary to protect national security or commercial proprietary information. The provisions of this paragraph may not be invoked by the investigated State Party to conceal evasion of its obligations not to engage in activities prohibited by the Convention.

41. If the investigated State Party provides less than full access to places, activities or information, it shall be under the obligation to make every reasonable effort to provide alternative means to clarify the possible non-compliance concern that generated the investigation.

42. In carrying out the investigation in accordance with the investigation mandate, the investigation team shall use only those methods necessary to provide sufficient relevant facts to clarify the concern about possible non-compliance with the provisions of the Convention, and shall refrain from activities not relevant thereto. It shall collect and document such facts as are related to the possible non-compliance with the Convention by the investigated State Party, but shall neither seek nor document information which is clearly not related thereto, unless the investigated State Party expressly requests it to do so. Any material collected and subsequently found not to be relevant shall not be retained.

43. The investigation team shall be guided by the principle of conducting the investigation in the least intrusive manner possible, consistent with the effective and timely accomplishment of its mission. Wherever possible, it shall begin with the least intrusive procedures it deems acceptable and proceed to more intrusive procedures only as it deems necessary.

44. The investigation team shall take into consideration suggested modifications of the investigation plan and proposals which may be made by the investigated State Party, at whatever stage of the investigation including the pre-investigation briefing, to ensure that sensitive equipment, information or areas, not related to biological or toxin weapons, are protected.

45. The investigation team and the investigated State Party shall negotiate: the extent of access to any particular place or places within the requested site as provided in paragraph ...; the particular investigation activities, including sampling, to be conducted by the investigation team; the performance of particular activities by the investigated State Party; and the provision of particular information by the investigated State Party.]

46. The investigation team shall conduct its investigation in the least intrusive manner possible consistent with its effective and timely implementation of its mandate, and shall collect only relevant information necessary to clarify the specific non-compliance concern.

47. The investigation team shall have the right to request clarifications in connection with ambiguities that may arise during an investigation. Such requests shall be made promptly to or

through the representative of the investigated State Party. The representative shall make every reasonable effort to provide the investigation team with such clarification as may be necessary to remove the ambiguity.

[48. These provisions may not be invoked by any investigated State Party to conceal any evasion of its obligations not to engage in activities prohibited under the Convention.]

[[Field] investigations [of the alleged use of biological weapons]

[49. During [field] investigations [of the alleged use of biological weapons] the investigation team may [request to] conduct any or [all] [combination] of the following activities: interviewing, visual observation, [auditing,] [medical/disease-related examination,] [sampling and identification and collection of background information and data].]

[50. The receiving State Party shall provide access to areas external to buildings or other structures. The extent and nature of access to a particular area shall be negotiated between the investigation team and the receiving State Party on a managed access basis.]

51. [The receiving State Party shall provide access within buildings or other structures for the sole purpose of enabling the investigation team to conduct the specific on-site activities identified in Annex D, section II, paragraphs ... when it is impossible to conduct such activities outside of such buildings or structures.] In cases of [field] investigations [of the alleged use of biological or toxin weapons], [the investigated State Party shall provide access to] the investigation team [[shall] [may] with the consent of the receiving State Party, have access] to all such areas that might have been affected, including hospitals, refugee camps and other places, as it considers necessary for the effective conduct of its investigation without interfering with national measures to contain [and remedy the consequences of the alleged use of biological or toxin weapons] [the outbreak] [or the possible outbreak].

52. The investigated State Party shall have the right, in accordance with the obligation to demonstrate compliance, to protect sensitive installations and to prevent disclosure of sensitive information and data not related to the investigation mandate or to activities prohibited by the Convention to take specific measures which may include but are not limited to the following:

(a) Managing access to [areas identified according to paragraph ... above] [as well as buildings and other structures] that contain particular sensitive equipment or information not related to the investigation mandate or activities prohibited by the Convention;

(b) Limiting the time investigation team members may spend in any area [or building], while allowing the team to fulfil its mandate;

(c) Limiting the number of investigation team members entering the areas, buildings or structures;

(d) Notifying the investigation team of the products and processes in which it has a proprietary or national security interest and its right to safeguard such information. It may

request that if a specific piece of information is released to the team, it should be accorded the most stringent protection measures with the Organization.

[53. When a restricted-access site is declared, each such site shall be no larger than four square kilometres and shall have clearly defined and accessible boundaries.]

[54. The investigation team shall have the right to take steps necessary to conduct its investigation up to the boundary of a restricted-access site.]

[55. The investigation team shall have the right to observe visually all open places within the restricted-access site from the boundary of the site.]

56. The investigation team shall make every reasonable effort to fulfil the investigation mandate [outside the declared restricted-access site. If at any time the investigation team demonstrates credibly to the investigated State Party that the necessary activities authorized in the investigation mandate could not be carried out from the outside and access to the restricted-access site is necessary to fulfil the mandate, some members of the investigation team shall be granted access to accomplish specific tasks within the site. The investigated State Party shall have the right to shroud or otherwise protect sensitive equipment, objects and materials not related to the purpose of the investigation. The number of investigators shall be kept to the minimum necessary to complete the tasks related to the investigation. The modalities for such access shall be subject to negotiation between the investigation team and the investigated State Party].

[57. During the conduct of the investigation, the investigation team shall have the right to request access to buildings or other structures beyond that provided pursuant to paragraph 51. If the receiving State Party agrees to this request, the extent and nature of such access to the specific building or other structure shall be negotiated between the investigation team and the receiving State Party on a managed access basis. In the event the receiving State Party refuses the request, the investigation team may request a facility investigation pursuant to paragraph 58.

58. If the receiving State Party denies the investigation team's request to access buildings or other structures made pursuant to paragraph 57, the Director-General of the Organization shall have the right to submit to the Executive Council a written request to conduct a facility investigation. Such request shall include the name and location of the facility to be investigated, the requested perimeter for the proposed facility investigation, and the information indicating that this facility may be connected to the alleged non-compliance concern that prompted the field investigation.

59. Contemporaneously with submitting the Director-General's request to the Executive Council, pursuant to paragraph 58, the Director-General shall transmit a copy of the request to the receiving State Party. The receiving State Party shall acknowledge to the Director-General its receipt of the request within one hour.

60. Upon receipt of the receiving State Party's acknowledgement, pursuant to paragraph 59, the investigation team shall have the right to collect factual information, in accordance with ..., on vehicular exit activity from exit points for land, air, and water vehicles of the requested facility perimeter. The investigation team shall have the right to continue to collect such information until the Executive Council decides against carrying out the facility investigation in accordance with paragraph 61, or the facility investigation is completed.

61. The facility investigation shall proceed unless the Executive Council, not later than [48] hours after having received the facility investigation request pursuant to paragraph 58, decides by a ... majority of all its members against carrying out the facility investigation, if it considers the facility investigation request not to be supported by the information submitted by the investigation team. If the Executive Council decides against the facility investigation, perimeter monitoring shall be stopped, no further action on the facility investigation request shall be taken, and the States Parties concerned shall be informed accordingly.

62. A State Party that is a member of the Executive Council shall not have the right to vote on a request regarding a facility located in its territory or in any other place under its jurisdiction or control. If the State Party that submitted the request for a field investigation, pursuant to paragraph ..., is a member of the Executive Council, that State Party shall not have the right to vote on the Director-General's request to conduct a facility investigation. The receiving State Party and the State Party that submitted the request for a field investigation shall have the right to participate in any Executive Council deliberations on the request.

63. The investigation team shall begin the facility investigation ... hours after the expiration of the [48] hour period established in paragraph 61.]<sup>88</sup>

[Access to facilities during an investigation and to locations outside the originally requested area

64. The investigation team may only request access to a facility or facilities, building, or other structures as objects of investigation within the area(s) designated for investigation if either of the following conditions apply:

(a) The investigation team has acquired etiological and/or epidemiological information in the course of its activities indicating that such places are directly relevant to the investigation mandate;

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88. Paragraphs 50, the first sentence of paragraph 51 and paragraphs 57 to 63 are taken from BWC/AD HOC GROUP/WP.314. They were not discussed during the twelfth, thirteenth or fourteenth session of the Ad Hoc Group.

(b) The investigation team needs to test an hypothesis(es) on the cause(s) or source(s) of the event(s) which the investigation team has developed based on etiological and/or epidemiological information obtained during the investigation and which will enable the investigation team to fulfil its mandate.

65. The investigation team shall submit its request to conduct activities pursuant to paragraph 64 above in writing to the representatives of the receiving State Party. The written request shall specify the reason(s), along with the supporting data, why access and/or such measures are being sought. The investigation team shall inform the Director-General in its next situation report pursuant to paragraph ... of Annex D, section II. The Director-General shall immediately inform the Executive Council and keep it up-to-date on all subsequent developments.

66. The receiving State Party shall, whenever possible, grant immediate access to the facility, facilities, building or other structures as requested. If the receiving State Party is unable to provide such access in order to make any necessary preparations to protect national security information or commercial proprietary information that may be present in any facility, building, structure or other area, it may ask the investigation team for a delay of up to 24 hours. The investigation team may observe the facility, facilities, building or other structure during any requested delay.

67. The extent and nature of access to such locations shall be negotiated between the investigation team and the receiving State Party or the State Party on whose territory the investigation is being conducted. The provisions on managed access in this section shall apply.

68. In those cases where the mandate already specifies that access to a facility or facilities, building or other structure may be required, the extent and nature of access shall be negotiated between the investigation team and the receiving State Party.

69. When access to locations outside the originally designated area(s) for investigation is sought pursuant to paragraph ..., the receiving State Party shall take immediate steps to give effect to the requests of the investigation team.<sup>89</sup>  
[Facility] investigations [of any other alleged breach of obligations under the provisions of the Convention]

70. The investigation team may [request to] conduct any or [all] [a combination] of the following on-site activities: interviewing, visual observation, [identification of key equipment,] [auditing,] [medical examination] [and sampling and identification]. These

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89. Paragraphs 64 to 69 reproduce parts of BWC/AD HOC GROUP/WP.357. They were not discussed during the fourteenth session of the Ad Hoc Group.

specific on-site activities shall be implemented in accordance with the provisions set out above in this section as well as in Annex ... .

71. In conformity with the relevant provisions of Annex E of this Protocol, the investigated State Party shall have the right to take measures to protect sensitive installations and prevent disclosure of confidential information and data not related to biological and toxin weapons, in accordance with the obligation to demonstrate compliance and the right if necessary to protect sensitive information to take specific measures which may include but are not limited to the following:

- (a) Removal of sensitive papers from office spaces and direct view;
- (b) Shrouding of sensitive displays, stores, and equipment;
- (c) Shrouding sensitive pieces of equipment, such as computer or electronic systems;
- (d) Logging off of computer systems and turning off data indicating devices;
- (e) Using random selective access techniques whereby the team is requested to select a given percentage or number of buildings of their choice to investigate; the same principle can apply to the interior and content of sensitive buildings or documents;
- (f) In exceptional cases, limiting the number of team members who have access to certain parts of the site; and limiting the viewing angle;
- (g) Limiting the time investigation team members may spend in any area or building, while allowing the team to fulfil its mandate;
- (h) The investigated State Party may at any time during the investigation notify products and processes in which it has a proprietary interest in order to help the team respect the investigated State Party's right to safeguard proprietary information. It may request that if a specific piece of information is released to the team, it should be accorded the most stringent protection measures with the Organization.

72. The investigated State Party shall make every reasonable effort to demonstrate to the investigation team that any object, building, structure, container or vehicle to which the investigation team has not had full access, or which has been protected in accordance with paragraph 71, is not used for purposes related to the possible non-compliance concerns raised in the investigation request.

73. This may be accomplished by means of, *inter alia*, the partial removal of a shroud or environmental protection cover, at the discretion of the investigated State Party, by means of a visual observation of the interior of an enclosed space from its entrance, or by other methods.]

[Access and conduct of investigations involving States other than the State Party to be investigated]

74. In cases where facilities or areas of [an investigated] [a receiving] State Party are located on the territory of a host State Party or where the access from the point of entry to the facilities or areas subject to investigation requires transit through the territory of another State Party, the [investigated] [receiving] State Party shall exercise the rights and fulfil the obligations concerning such investigations in accordance with this [Annex] [Protocol]. The host State Party shall facilitate the investigation of those facilities or areas and shall provide for the necessary support to enable the investigation team to carry out its tasks in a timely and effective manner. States Parties through whose territory transit is required to investigate facilities or areas of [an investigated] [a receiving] State Party shall facilitate such transit.

75. In cases where facilities or areas of [an investigated] [a receiving] State Party are located on the territory of a [host] State not party to this Protocol, the [investigated] [receiving] State Party shall take all necessary measures to ensure that investigations of those facilities or areas can be carried out in accordance with the provisions of this [Annex] [Protocol]. A State Party that has one or more facilities or areas on the territory of a [host] State not party to this Protocol shall take all necessary measures to ensure acceptance by the host State of investigators and investigation assistants designated to that State Party. If [an investigated] [a receiving] State Party is unable to ensure access, it shall demonstrate that it took all necessary measures to ensure access.

76. In cases where the facilities or areas sought to be investigated are located on the territory of a [host] State Party, but in a place under the jurisdiction or control of a State not party to this Protocol, the [host] State Party shall take all necessary measures as would be required of [an investigated] [a receiving] State Party [and a host State Party] [[without prejudice to] [consistent with] the rules and practices of international law] to ensure that investigations of such facilities or areas can be carried out in accordance with the provisions of this [Annex] [Protocol]. If the [host] State Party is unable to ensure access to those facilities or areas, it shall demonstrate that it took all necessary measures to ensure access [[without prejudice to] [consistent with] the rules and practices of international law]. This paragraph shall not apply where the facilities or areas sought to be investigated are those of the [host] State Party.

77. In cases where the investigation is related to paragraphs 74, 75 and 76, the Director-General shall notify the States directly involved in accordance with Annex D, paragraph ... .]

(G) FINAL REPORT

78. The preparation and handling of the final report shall be conducted in accordance with Annex D, paragraphs ... .

(H) FURTHER CLARIFICATION

79. The [Organization] [Technical [Secretariat] [Body]] [may] [shall] undertake consultations with the investigated State Party to allow for further clarification including on matters raised by the investigated State Party, if there are remaining uncertainties identified by the investigation team [, or in case the cooperation offered by the investigated State Party is not considered to meet required standards]. [If the uncertainties cannot be removed or if the established facts are of a nature to imply non-compliance with obligations under the Convention, the Technical [Secretariat] [Body] shall convene the Executive Council to examine the final report.]

(I) [ADOPTION OF A DECISION ON THE BASIS] [CONSIDERATION]  
OF THE FINDINGS OF THE INVESTIGATION

[80. The Executive Council shall consider whether there has been any non-compliant activity and take a decision on any response or further action.]

[81. The Executive Council shall, in accordance with its powers and functions, review the final report of the investigation team as soon as it is presented, and [address] [decide on] any concern as to:

- (a) Whether any non-compliance has occurred;
- (b) Whether the request had been in accordance with the provisions of this Protocol;
- (c) Whether the right to request an investigation has been abused.]

82. With respect to any concerns raised under paragraph 81 (c), one or more of the following factors could be taken into account, where relevant:

- (a) Information relating to the investigated site available prior to the investigation request (the authenticity and reliability of any information would need to be carefully assessed);
- (b) Whether any of the information submitted as part of the investigation request was shown to be false;
- (c) Information from and/or outcome or results of [any] prior consultations/clarifications relevant to the request;
- (d) Whether any investigation(s) (including any instituted under Article VI of the Convention) had previously been requested by the same State Party *vis-à-vis* the same investigated site, and if so, their number, frequency and outcome (including any follow-up action);

(e) Whether the same requesting State Party had launched any prior requests for investigation which had been deemed by the Executive Council to be frivolous, abusive or beyond the scope of the Convention.

[83. If the Executive Council reaches the conclusion, in keeping with its powers and functions, that further action may be necessary with regard to paragraph 81, it shall make specific recommendations to the Conference which shall consider the recommendations in accordance with Article IX and take the appropriate measures in accordance with Article V.]

84. In the case of abuse, the Executive Council shall examine whether the requesting State Party should bear any of the financial implications of the investigation. The [Executive Council,] States Parties [United Nations Security Council] [may] [shall] consider appropriate actions, including [possible] sanctions, in accordance with applicable international law, [by the Organization] if they decide that a request has been frivolous, abusive or beyond the scope of the [Protocol] [Convention].

[85. The investigated State Party and the requesting State Party shall have the right to participate in the review process but shall have no vote. If the Executive Council reaches the conclusion, in keeping with its powers and functions, that further action may be necessary with regard to paragraph 81, it shall take the appropriate measures to redress the situation and to ensure compliance, including specific recommendations to the Conference of States Parties.]

## ARTICLE IV

### CONFIDENTIALITY PROVISIONS

1. The Organization shall conduct its activities provided for under this Protocol in the least intrusive manner consistent with the timely and efficient accomplishment of their objectives. It shall request only the information and data necessary to fulfil its responsibilities under this Protocol and shall use this data and information only for the purpose of this Protocol. It shall avoid, to the extent possible, any access to information and data not related to the aims of this Protocol. It shall take every precaution to protect the confidentiality of information on civil and military activities and facilities in the implementation of this Protocol and, in particular, shall abide by the confidentiality provisions set forth in this Protocol.
2. Each State Party shall treat as confidential and afford special handling to information and data that it receives in confidence from the Organization in connection with the implementation of this Protocol. It shall treat such information and data exclusively in connection with its rights and obligations under this Protocol and in accordance with the provisions set forth in this Protocol.
3. Each State Party shall have the right to take measures as it deems necessary to protect confidential information, [provided that it fulfils] [without prejudice to] its obligations [to demonstrate compliance] in accordance with the provisions of the Protocol.
4. (a) The Director-General shall have the primary responsibility for ensuring the protection of all confidential information which comes into possession of the Technical [Secretariat] [Body]. Based on guidelines provided for within this Protocol, the Director-General shall establish and maintain a stringent regime governing the handling of confidential information by the Technical [Secretariat] [Body] as well as the necessary procedures to be followed in case of breaches or alleged breaches of confidentiality to ensure effective protection against unauthorized disclosure. This regime shall be approved and periodically reviewed by [the Conference of the States Parties];  
  
(b) The regime referred to in paragraph 4 (a) above shall include, among others, provisions relating to:
  - (i) General principles for the handling of confidential information;
  - (ii) Conditions of staff employment relating to the protection of confidential information;
  - [(iii) Measures to protect confidential information obtained in the course or as a result of on-site activities;]
  - (iv) Procedures in cases of breaches or alleged breaches of confidentiality.

[5. Data required by States Parties to be assured of the continued compliance with the Convention and this Protocol by other States Parties shall [on a reciprocal basis as appropriate] be [routinely] [, upon request,] provided to them [at the premises of the Technical [Secretariat] [Body]]. Such data shall encompass:

(a) The initial and annual declarations provided by States Parties under Article III, section D, in accordance with the provisions set forth in the Annex;

(b) General reports on the results and effectiveness of compliance monitoring activities [; reports on investigations and summary reports on visits in accordance with Annex B ... and Annex D ..., and which are to be processed in accordance with paragraph 10 of Annex E, section III, as well as periodical reports required under Article VII];

(c) Information to be supplied to all States Parties in accordance with the provisions of this Protocol.]<sup>90</sup>

[6. Without prejudice to the privileges and immunities to be accorded pursuant to this Protocol, the Organization, the Director-General and staff members of the Technical [Secretariat] [Body] shall, in accordance with the applicable laws specified in the private international law of the State of forum, be liable to the natural or legal persons for any damage caused by the Director-General and staff members of the Technical [Secretariat] [Body] through unauthorized disclosure of confidential information coming to their knowledge in connection with the implementation of this Protocol.]

*6 bis* The Director-General shall impose appropriate disciplinary measures on employees of [the Technical [Secretariat] [Body]] [or of the Organization] who violated their obligations to protect confidential information. In case of [serious] breaches, the immunity of employees of [the Technical [Secretariat] [Body]] [or of the Organization] from jurisdiction [may] be waived [by the Director-General] in accordance with [the provisions on privileges and immunities contained in Article IX of this Protocol and the agreement referred to in paragraph 51 of that Article] and the provisions in Annex E. [The Executive Council or the Conference of States Parties as appropriate shall pay due regard.]

[7. The Conference of the States Parties shall establish and appoint, at its first session, a Commission for the settlement of disputes related to confidentiality (hereinafter referred to as “the Confidentiality Commission”) as its subsidiary organ in accordance with Article IX, paragraph 23 (j). The Confidentiality Commission shall have the powers and functions as set forth in this Protocol.]

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90. There is a need to consider whether the declarations shall be available to all States Parties or only to those States Parties which have submitted their declarations.

8. Any State Party to this Protocol which considers that it has been affected by a breach of confidentiality or that its natural or legal persons have suffered from damage through such a breach [shall] [may] seek to settle the dispute in accordance with the provisions set forth in Article XII which may include referring it to the Confidentiality Commission in accordance with paragraph 8 of Annex E, section IV.

[8 *bis* For disputes regarding alleged breaches involving both States Parties and the Technical [Secretariat] [Body] or two or more States Parties, a commission for the settlement of the dispute related to confidentiality, set up as a subsidiary organ of the Conference, shall consider the case in accordance with the provisions set forth in Annex E. The commission shall be approved by the Conference.]

## ARTICLE V

### MEASURES TO REDRESS A SITUATION AND TO ENSURE COMPLIANCE

1. The Conference shall take the necessary measures, in accordance with paragraphs 2, 3 and 4, to ensure compliance with the Convention and this Protocol and to redress and remedy any situation which contravenes their provisions. In considering action pursuant to this paragraph, the Conference shall take into account all information and recommendations on the issues submitted by the Executive Council.
2. In cases where a State Party has been requested by the [Executive Council] [Conference] to take measures to redress a situation raising problems with regard to its compliance, and where the State Party fails to fulfil the request within the specified time, the Conference may, upon the recommendation of the Executive Council, *inter alia*, restrict or suspend the State Party's rights and privileges under this Protocol until the Conference decides it has undertaken the necessary action to conform with its obligations under the Convention and this Protocol.
3. In cases where serious damage to the object and purpose of the Convention may result from non-compliance with the provisions of the Convention or this Protocol, in particular Article I of the Convention, the Conference may recommend to States Parties [collective] [joint] measures which are in conformity with international law and designed to ensure the fulfilment of the object and purpose of the Convention.
4. The Conference or, alternatively, if the case is particularly grave and urgent, the Executive Council, may bring the issue, including relevant information and conclusions, to the attention of the [General Assembly [and] [or] the Security Council of the] [relevant organs of the] United Nations.

## ARTICLE VI

### ASSISTANCE AND PROTECTION AGAINST BIOLOGICAL AND TOXIN WEAPONS

1. For the purposes of this Article, “Assistance” means the coordination and delivery to States Parties of protection against biological and toxin weapons, including, *inter alia*, any of the following: detection equipment [including biosensors]; alarm equipment; protective equipment; decontamination equipment and decontaminants; prophylactic, diagnostic and/or therapeutic medical measures and materials [including immunization]; and/or advice on any of these protective measures.
2. Nothing in this Protocol shall be interpreted as impeding the right of any State Party to conduct research into, develop, produce, acquire, transfer or use means of protection against biological and toxin weapons, for purposes not prohibited under the Convention.
3. Each State Party undertakes to facilitate, and shall have the right to participate in [, subject to protection of confidential proprietary information and national security information] [and under non-discriminatory and equitable commercial terms,] the fullest possible exchange of equipment, material and scientific and technological information concerning means of protection against biological and toxin weapons.
4. The Technical [Secretariat] [Body] shall establish, not later than 180 days after entry into force of this Protocol and maintain, for the use of any requesting State Party, a data bank containing freely available information concerning various means of protection against biological and toxin weapons as well as such information as may be provided by States Parties.
5. The Technical [Secretariat] [Body] shall also, within the resources available to it, and at the request of a State Party, provide expert advice and assist the State Party in identifying how its programmes for the development and improvement of a protective capacity against biological and toxin weapons could be implemented.
6. Nothing in this Protocol shall be interpreted as impeding the right of States Parties to request and provide assistance bilaterally and to conclude individual agreements with other States Parties concerning the emergency procurement of assistance.
7. Each State Party undertakes to provide assistance to the extent possible through the Organization and to this end may elect to take one or more of the following measures:
  - (a) To contribute to the voluntary fund for assistance to be established by the Conference at its first session;
  - (b) To conclude, if possible not later than 180 days after this Protocol enters into force for it, agreements with the Organization concerning the procurement, upon demand, of assistance;

(c) To declare, not later than 180 days after this Protocol enters into force for it, the kind of assistance it might provide in response to an appeal by the Organization. If, however, a State Party subsequently is unable to provide the assistance envisaged in its declaration, it is still under the obligation to provide assistance in accordance with this Article.

8. Each State Party has the right to request and, subject to the procedure set forth in paragraphs 9, 10, 11 and 12 to receive assistance and protection against the use or threat of use of biological and toxin weapons if it considers that:

(a) Biological and toxin weapons have been used against it;

(b) It is threatened by imminent actions that are prohibited [for States Parties] by Article I of the Convention;

(c) [It has credible reason to believe] it is confronted by imminent actions or [elevated] threat with respect to actions that are prohibited [for States Parties] by Article I of the Convention.

9. [Without prejudice to the right of the requesting State Party to request specific assistance under Article III, section G on investigations, subsection C, paragraph 17,] the request for assistance, substantiated by relevant information, shall be submitted to the Director-General, who shall transmit it immediately to the Executive Council and to all States Parties, requesting those States Parties which have volunteered assistance, in accordance with paragraph 7 (b) and (c) to prepare to dispatch emergency assistance in case of use of biological and toxin weapons, or humanitarian assistance in case of [serious] threat of use of biological and toxin weapons to the State Party concerned [, not later than [12] hours after receipt of the request]. [Requests for assistance when a State Party considers that biological or toxin weapons have been used against it shall not be considered or otherwise acted upon by the Director-General or the Executive Council unless a field investigation request from the State Party making the Article VI request is submitted under Article III, section G, or the Executive Council upon the request of that State Party, under the procedure contained in Article IX, paragraph 32, authorizes the Director-General to prepare an examination report.]

10. The Director-General shall initiate, not later than [24] [12] [hours] after receipt of a request for assistance, from a State Party, a [systematic] examination of the request in order to provide foundation for further action by the Organization. The Director-General shall complete the examination within [72] hours and forward a report to the Executive Council and to States Parties. If necessary, the time required for completion of the examination may be extended by periods of [72] hours with reports being submitted at the end of each [72] hour period, to the Executive Council and to all States Parties. The examination shall, as appropriate and in conformity with the request and the information accompanying the request, establish relevant facts related to the request as well as make recommendations on the type and scope of [supplementary] assistance and protection needed. In the case of request for assistance when a State Party considers that biological or toxin weapons have been used against it, the Director-General shall, when possible, incorporate into the examination report relevant factual

information from the affected area(s) [and progress reports of the investigation team which is conducting the field investigation in the State Party concerned].

11. The Executive Council shall meet not later than [24] hours after receiving an examination report to consider the situation and shall take a decision by simple majority within the following [24] hours on whether to instruct the Technical [Secretariat] [Body] to provide [supplementary] assistance. The Technical [Secretariat] [Body] shall immediately transmit to all States Parties and relevant international organizations the examination report and the decision taken by the Executive Council. When so decided by the Executive Council, the Director-General shall provide assistance immediately. For this purpose, the Director-General may cooperate with the requesting State Party, other States Parties and relevant international organizations. The States Parties shall make the fullest possible efforts to provide assistance.

12. If the information available from the ongoing examination or other reliable sources would give sufficient proof that there are humans, animals or plants affected by the use of biological and toxin weapons and immediate action is indispensable, the Director-General shall notify all States Parties and shall take emergency measures of assistance, using the resources the Conference has placed at his/her disposal for such contingencies. The Director-General shall keep the Executive Council informed of actions undertaken pursuant to this paragraph.

## ARTICLE VII

### SCIENTIFIC AND TECHNOLOGICAL EXCHANGE FOR PEACEFUL PURPOSES AND TECHNICAL COOPERATION<sup>91</sup>

#### (A) GENERAL PROVISIONS

[1. Each State Party<sup>92</sup> undertakes to fulfil its obligations in a manner that [ensures compliance] [enhances compliance] with the provisions of [the Convention] [including] [in particular] [Article X] [Article X of the Convention].

To that end, the States Parties shall:

(a) Cooperate, as appropriate, on a global, regional or bilateral basis, directly or through the institutional mechanisms provided for under this Protocol, in order to [comply] [enhance compliance] with the provisions of Article X of the Convention;

(b) Foster international cooperation in the field of peaceful bacteriological (biological) activities, including the exchange of bacteriological (biological) agents and toxins for peaceful purposes in accordance with the provisions of the Convention;

(c) Avoid hampering the economic and technological development of States Parties, in particular of developing countries which are States Parties.]

[1 *bis* The objectives of this Article shall be to provide for specific measures and obligations which will:

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91. The title of this Article may be reconsidered, if necessary, in the light of discussions on the content of this Article.

92. The use of the term "States Parties" in this Article, as distinguished from the same term in other articles, requires further discussion. There is difference of view among delegations whether the term appropriately refers, at specific points throughout this Article, to States Parties to the Protocol or to States Parties to the Convention. The appropriate expression throughout this Article would need to be adjusted to reflect the outcome of such discussion and be consistent with the use of that expression elsewhere in the Protocol.

(a) Address [opportunities] [undertakings] for cooperation, as envisioned under Article X of the Convention, which the Protocol will create among its States Parties;

(b) Promote assistance directly related to the effective implementation of this Protocol;

And will, in this regard, avoid any restrictions incompatible with the obligations undertaken under the Convention, noting that the provisions of the Convention should not be used to impose restrictions and/or limitations on the transfer for purposes consistent with the objectives and the provisions of the Convention of scientific knowledge, technology, equipment and materials.]<sup>93</sup>

[1 *ter* Each State Party undertakes to implement specific measures designed to ensure effective and full implementation of Article X, which also avoid any restrictions incompatible with the obligations undertaken under the Convention, noting that the provisions of the Convention should not be used to impose restrictions and/or limitations on the transfer for purposes consistent with the objectives and the provisions of the Convention of scientific knowledge, technology, equipment and materials.]<sup>94</sup>

[2. The economic and social development of all States Parties shall include the requirement for multilaterally negotiated, universal, comprehensive and non-discriminatory sensitive technology transfer agreements.]

[3. Each State Party [in a position to do so] [shall] [may] cooperate as appropriate, on a global, regional, or bilateral basis, directly or through the Organization, in order to foster international cooperation in the field of peaceful bacteriological (biological) and toxin activities, in accordance with the provisions of the Convention.]

[4. In implementing the provisions of this Article, the States Parties and the Organization shall take into account [the necessity of strengthening] existing agreements and competences of other relevant international organizations [or among States Parties] [not contrary to the provisions of the Convention] [and take steps to avoid duplicating existing activities and mechanisms] [and shall cooperate to strengthen the existing cooperative relations and [if necessary] [where possible] avoid duplicating existing activities].]<sup>95</sup>

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93. This newly introduced paragraph requires further study and discussion. It was put forward by some delegations as an alternative to paragraph 1. A view was expressed that this paragraph should be replaced by paragraph 1.

94. This paragraph is based on the consensus language of the mandate and is suggested as a possible replacement for paragraphs 1 and 1 *bis*.

95. There is divergence of views regarding the need for and the placement of this paragraph in this Article, which is also included in section F (safeguards and limitations). Views were expressed that the question of avoiding duplication is relevant to all provisions of the Protocol and not just to Article VII; therefore consideration should be given to dealing with this issue in Article I.

(B) MEASURES TO PROMOTE SCIENTIFIC AND TECHNOLOGICAL EXCHANGES

[5. Each State Party undertakes in its implementation of these measures to ensure that:

(a) The provisions of Article X of the Convention on the [transfer and] exchange of materials, equipment and technology for peaceful purposes are [fully and] effectively implemented;

(b) Transfers or exchanges of materials, equipment and technology of concern take place [only] in [full] compliance with [all] the provisions of [Article III and] [Article X] of the Convention [and its Protocol].<sup>96</sup>

6. [Subject to the availability of national resources and the need to protect confidential proprietary information and national security information,] States Parties shall [to the extent possible]<sup>97</sup> individually, jointly, through relevant international arrangements or through the institutional mechanisms provided for under this Protocol:

(a) Promote [and participate in] the publication, exchange and dissemination of information concerning current research programmes and centres, conferences and recent developments in the biosciences and biotechnology [and genetic engineering], and other scientific and technological developments and activities of relevance to the Convention;

(b) [Promote] [Support] the establishment and assist peaceful activities of research institutes through the dissemination of knowledge about examination and identification techniques, laboratory safety, vaccine production and other research projects in the biosciences;

(c) [Promote] [Support] the [establishment] [accessibility], operation and updating of biological data bases in the collection and dissemination of information relevant to the purposes of the Convention;

(d) Promote public health, as well as the monitoring, diagnosis, prevention and control of outbreaks of diseases, including international cooperation on the development and production of vaccines;

[(e) Assist in improving and participating in the functioning of international systems for the global monitoring of emerging diseases in humans, animals and plants;]<sup>98</sup>

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96. This issue is elaborated by some delegations in BWC/AD HOC GROUP/WP.232.

97. The extent of States Parties' obligations under this paragraph may need to be reassessed in the light of discussions on issues currently addressed in section F, paragraph 24, without prejudice to the positions of delegations on section F.

98. This paragraph establishes a link between the Protocol and on-going international efforts for monitoring emerging diseases, the nature and extent of which needs further discussion.

[(f) Promote transfer of technology for peaceful use of genetic engineering and other scientific and technical developments [and high technology] relevant to the Convention;]

[(g) [Promote participation] [Participate] [on a non-discriminatory basis] [and conclude agreements] at the bilateral, regional or multilateral levels in the [development] and application of biotechnology, and in scientific research, for the prevention, diagnosis and treatment of infectious diseases;

[(h) Promote [and set up] programmes for the development of human resources in the biological sciences, including advancing the education of personnel.]

[(h) *bis* Promote the establishment and conduct of training programmes on the diagnosis, prevention and treatment of infectious diseases.]

[7. In the field of biodefence activities, each State Party undertakes:

[(a) Immediately after entry into force of the Protocol, [to consider ways and means] to strengthen the States Parties' biological defence capabilities, including by the elaboration of guiding principles and possible scope of measures for States Parties to cooperate in useful exchanges intended to provide a sufficient degree of transparency and contribute to the effective functioning of the compliance regime established by this Protocol;]

[(b) Make available on request, [under fair and equitable commercial terms,] instruments, equipment and technologies in the field of biodefence activities;]

[(c) Promote collaborative research and development projects and joint ventures in biodefence activities [, particularly related to vaccine development] and diagnostics systems.]]<sup>99</sup>

(C) MEASURES TO AVOID HAMPERING THE ECONOMIC AND TECHNOLOGICAL DEVELOPMENT OF STATES PARTIES

8. Each State Party shall:

[(a) Have the right, individually or collectively, to conduct research with, to develop, produce, acquire, retain, transfer and use biological agents and toxins for peaceful purposes;

(b) Undertake to facilitate, and have the right to participate in the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes;<sup>100</sup>

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99. Some aspects of the issue addressed in this paragraph are also being examined under Article VI (assistance and protection against biological and toxin weapons). Careful consideration was recommended to avoid possible overlaps.

100. The view was expressed that the location of subparagraphs (a) and (b) needs further consideration.

(c) [Undertake] Not [to] maintain among themselves any restrictions, including those in any international agreements, which would restrict or impede trade and development and promotion of scientific and technological knowledge in the field of biology, genetic engineering, microbiology and other related areas for peaceful purposes;

[(c) *bis* Undertake not to establish or maintain regimes which conflict with Article X of the Convention or impose or maintain any discriminatory measure which would restrict or impede trade and the development and promotion of scientific and technological knowledge, in particular in the fields of biological research, including microbiology, biotechnology, genetic engineering, and their industrial, agricultural, medical, pharmaceutical applications, and other related areas for peaceful purposes;]

[(c) *ter* Not impose or maintain any discriminatory measure, incompatible with the obligations undertaken in the Convention, which would restrict or impede the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes;]

[(d) Not use this Convention [this Protocol] as grounds for applying any measures other than those provided or permitted, under this Convention [this Protocol] nor use any other international agreement for pursuing an objective inconsistent with this Convention [this Protocol];]

[(d) *bis* Not use the provisions [of the Convention or] of this Protocol to impose restrictions and/or limitations on transfers consistent with the objectives and provisions of the Convention on scientific knowledge, technology, equipment and materials;]

(e) [Undertake to] [Keep under] review any existing national regulations governing exchanges and transfers of bacteriological (biological) agents and toxins, and equipment, materials and scientific and technological information for the use of such agents and toxins in order to [render them] [ensure that they are] consistent with the objectives of Articles III and X of the Convention and the provisions of this Article [, within ... days of the entry into force of this Protocol for it. The Director-General shall collate on an annual basis and, for the information of States Parties, report on the implementation of this subparagraph.]]

(D) INSTITUTIONAL MECHANISMS FOR INTERNATIONAL COOPERATION AND PROTOCOL IMPLEMENTATION ASSISTANCE [AND ITS REVIEW]<sup>101</sup>

[The Cooperation Committee]

9. The Conference of States Parties shall establish at its first session a Cooperation Committee (hereinafter referred to as “the Committee”) to coordinate and promote effective and full implementation of Article X of the Convention and Article VII of the Protocol, as its

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101. A question was raised whether this addition to the title, as well as paragraph 15, to which it refers, should be considered in this section. An answer was given that this was indeed the case.

subsidiary organ, in accordance with Article IX, paragraph 23 (j) of the Protocol. The members of the Committee shall be elected for a term of two years, in accordance with Article IX, paragraph ... of this Protocol. The Committee shall have the following powers and functions:<sup>102</sup>

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102. The drafting of paragraph 9 and its contents will require further review to ensure that the applicability of provisions in this, and other paragraphs of this Article, do not imply potential benefits to states that are not States Parties to this Protocol.

- (a) To review the functioning of the regular budget where it relates to activities of the Organization relevant to this Article as well as the voluntary fund;<sup>103</sup>
- (b) To promote cooperation among States Parties in the exchange of biological agents and toxins, equipment, materials and technology for peaceful purposes;
- (c) To promote the publication, exchange and dissemination of information among States Parties concerning current research programmes in bioscience and biotechnology, conferences, research centres, and other scientific and technological developments for peaceful purposes;
- (d) To promote the distribution of information on collaborative research and development projects for peaceful purposes among States Parties;
- (e) The identification of specific measures to recommend that States Parties adopt to promote international exchange in the field of biotechnology for peaceful purposes;
- (f) The Committee shall submit an annual report on its activities, containing its proposals and recommendations on the further strengthening of the implementation of Article X of the Convention to the Conference of States Parties.]

Role of the Technical [Secretariat] [Body]

[10. The Technical [Secretariat] [Body] shall promote and facilitate scientific and technical cooperation and exchange among States Parties and shall develop a framework of programmes and activities, subject to the provisions of paragraphs ... , in support of this goal and for providing technical assistance, [based on the proposals and recommendations of the Cooperation Committee on the implementation of Article VII of this Protocol,] upon request, directly to individual States Parties. Such assistance shall be for improving knowledge, practices and cooperation in the peaceful uses of bacteriological (biological) agents and toxins [materials and equipment], the effective implementation of this Article and the effective implementation of Article III, section D, subsection I and Article X of this Protocol.

11. States Parties may request assistance under the provisions of paragraph 10. All requests shall be submitted to the Director-General and shall include an explanation for the assistance sought. Where requests for assistance exceed the available resources of the Technical [Secretariat] [Body], [the Director-General] may take into the account one or more of the following factors:

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103. A voluntary fund would be established so as to finance the activities aimed at promotion of cooperation among States Parties.

- (a) The effective implementation of this Protocol;
- (b) The relative capacities and needs of individual States Parties, particularly of developing countries being States Parties;
- (c) The specific details of each request;
- (d) Whether the State Party seeking assistance has benefited from technical and assistance programmes established by the Technical [Secretariat] [Body] within the last two years, and, if so, the financial extent of them;
- (e) The extent to which the assistance requested would improve the operation and utility of existing national, regional and international efforts in the area of the assistance sought.]

[12. The Organization shall provide a forum for consultation and cooperation in matters to promote [implementation assistance] [scientific and technological exchange] and technical cooperation for peaceful purposes and develop a framework for activities aimed at providing assistance, upon request, to the States Parties, and [in particular to the developing countries being States Parties] [to States Parties, with highest priority being given to States Parties most in need of such assistance]. Taking full account of existing agreements and competences of the relevant international organizations, [provision of the following may, *inter alia*, be considered by the States Parties directly or through an institutional mechanism] [the Organization shall ensure, through its own institutional framework, coordinating its efforts as appropriate with States Parties, provision of the following]:

- (a) Assistance to States Parties [to obtain advice], if requested, [for] [on] the establishment and functioning of national authorities;
- (b) Assistance to States Parties [to obtain advice], if requested, [for] [on] the preparation of declarations [required under the provisions of this Protocol] [in accordance with Article ... and section ... of Annex ...];
- [(c) Assistance to States Parties, if requested, in drawing up internal legislation necessary under the provisions of this Protocol;]<sup>104</sup>
- [(d) Promotion and financing of the establishment of vaccine production facilities, particularly in developing countries [which are States Parties];]

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104. This subparagraph should be examined in the light of discussions on Article X (national implementation measures) of the rolling text.

[(e) If requested and in the context of visits to States Parties:

- (i) Exchange of information and provision of expert advice, assistance and appropriate recommendations on biological practices;
- (ii) Information-sharing concerning cooperative programmes in biosafety, identification of agents, diagnostics and the development of innovative vaccines, aimed at being low-cost products, safe and usable under difficult conditions;]<sup>105</sup>

[(f) Establish an international information exchange network using modern communication media which facilitates the possibility of continuous participation by national experts of the States Parties in the Organization's activities;]

[(f) *bis* Establish procedures for the use of modern technology, including international networks, to facilitate communication between States Parties and the Organization;]

(g) Convening national or regional seminars with a view to optimizing cooperation and developing a long-term programme of exchanges on scientific developments [, including the biodefence activities for peaceful purposes,] and internships;

(h) Creating [a framework for donor countries] [including a [voluntary fund]] [to support an international system for the global monitoring of emerging diseases in humans, animals and plants, and] additional assistance for training of expert personnel and for the financing of scientific and technical cooperation and assistance projects;

[(i) Assisting States Parties in training personnel for employment in the Organization, in order to promote the objective of representation on a wide and equitable geographical basis.]]

#### [Protocol implementation assistance

13. The Technical [Secretariat] [Body] shall either itself or in cooperation with States Parties provide advice and assistance to States Parties, if requested, on:

- (a) The establishment and functioning of national authorities;
- (b) The preparation of facility and national declarations required under Article III of this Protocol;

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105. Given that the question of a possible cooperative role for visits is also being considered under compliance measures, the issue needs further consideration.

(c) The drawing up of internal legislation necessary under the provisions of this Protocol;

(d) The content and conduct of training courses and seminars for National Authority and declared facility personnel on the compilation of declarations and the planning and hosting of visits.

#### Other assistance

14. Taking full account of existing agreements and competences of the relevant international organizations and also existing programmes of bilateral assistance, the Technical [Secretariat] [Body] shall, where appropriate:

(a) Provide information and advice, during voluntary visits for assistance purposes as provided for in Article III, paragraph 65 (a) and (b) on the following:<sup>106</sup>

- (i) Biosafety, including environmental protection and occupational health issues;
- (ii) The principles of good laboratory practice and current good manufacturing practices;
- (iii) The principles and requirements of national and international regulatory mechanisms governing the production, validation, marketing and sale of pharmaceutical products and vaccines;
- (iv) Training requirements for facility and national regulatory personnel, and sources of such training;
- (v) Identifying national and international sources of information for more detailed follow-up enquiries and specialized assistance on these topics;

(b) Convene regional seminars with a view to optimizing cooperation on the peaceful uses of bacteriological (biological) agents and toxins;

(c) Consider with other relevant international organizations the requirements for effective operation of an international system for the global monitoring of emerging and re-emerging diseases in humans, animals and plants, and ensure that they resulting epidemiological data is disseminated on request to all States Parties;

(d) Provide information on the availability of publications and other publicly available forms of information containing the results of recent and current research

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106. See: BWC/AD HOC GROUP/WP.358 on voluntary visits.

programmes on the uses of bacteriological (biological) agents and toxins for industrial, pharmaceutical, medical and agricultural purposes.]<sup>107</sup>

[15. The Executive Council shall, in accordance with paragraph ... of Article IX of the Protocol, consider concerns raised by a State Party on the implementation of Article X of the Convention.]

(E) [PROMOTING] COOPERATIVE RELATIONSHIPS [, INCLUDING] WITH OTHER INTERNATIONAL ORGANIZATIONS [AND AMONG STATES PARTIES]

[[16. The Organization shall establish a cooperative relationship [, maintain working ties and when necessary conclude agreements and arrangements pursuant to paragraphs 23 (i) and 33 (k) of Article IX [and develop joint programmes] with other relevant international organizations, agencies and programmes [, including [OPCW] WHO, FAO, IOE, UNIDO, ICGEB, UNEP and other agencies engaged in the implementation of Agenda 21 and the Convention on Biological Diversity (CDB)] in order to, *inter alia*]:

(a) Derive the greatest [possible synergy] [benefits] in such fields as:

- (i) The collection and dissemination of information on listed biological agents and toxins;
- (ii) Sharing information on environmental release of genetically modified organisms;
- (iii) Good manufacturing practices (GMP), good laboratory practice (GLP), biological containment and other biosafety regulations and practices;
- (iv) Facilitation of remote access to databanks and various tools of electronic communication;

(b) Maintain a record of cooperative activities promoted by international organizations in areas relevant to the Convention, to raise awareness of and facilitate access to those activities by States Parties to the Protocol, and coordinate with those organizations its own promotional activities;

(c) Support a framework for multilateral cooperation among the States Parties, including exchange of information among scientists and technologists, with the aim of, *inter alia*:

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107. Paragraphs 13 and 14 are taken from BWC/AD HOC GROUP/WP.363 and were not discussed during the fourteenth session of the Ad Hoc Group.

- (i) Utilizing the scientific and technological capabilities, experience and know-how of States Parties;
- (ii) Facilitating harmonization of relevant existing national regulatory and administrative procedures;
- [(iii) Assisting developing countries which are States Parties in strengthening their scientific and technological capabilities in the biosciences, genetic engineering and biotechnology.]]

17. The [Organization] [Technical [Secretariat] [Body]], [if necessary] after consultation with other relevant international organizations, agencies and programmes, [shall] [may] make recommendations, as appropriate, [to [the Conference of] States Parties and] to international organizations [as to how the objectives of] [to suggest further practical steps for the effective and full implementation of] [Article X of the Convention] [this Article] might be furthered through the activities of those organizations for the benefit of States Parties.

[18. The Organization shall contain a department devoted to the implementation of [Article X of the Convention] [and] [this Article].]

[19. The Technical [Secretariat] [Body] shall cooperate with, and conclude only where appropriate, collaborative agreements with other relevant international organizations and agencies in order to:

- (a) Derive the greatest possible synergy in:
  - (i) The collection and dissemination of information on the diagnosis, surveillance, treatment and prevention of infectious diseases;
  - (ii) Regulations governing the handling, use and release of bacteriological (biological) agents and toxins;
  - (iii) The facilitation of remote access to data banks containing information on the peaceful uses of bacteriological (biological) agents and toxins, biosafety, and results of scientific research in the life sciences in areas directly relevant to the Convention;
- (b) Maintain a record of cooperative activities funded or promoted by international organizations on the peaceful uses of bacteriological (biological) agents and toxins, and on the diagnosis, treatment and prevention of infectious diseases, raise awareness of those activities and coordinate its own promotional activities with those organizations;
- (c) Facilitate the provision of information and advice about relevant existing regulatory procedures on the use of bacteriological (biological) agents and toxins;

(d) Establish and maintain an electronic communications network to facilitate contact between States Parties, other relevant international organizations and the Technical [Secretariat] [Body] for the purposes of facilitating and promoting scientific cooperation and exchange among States Parties, including dissemination of up to date information and advice on all of the technical assistance and cooperation programmes available through the mechanisms provided for under this Article.]<sup>108</sup>

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108. This paragraph is taken from BWC/AD HOC GROUP/WP.363 and was not discussed during the fourteenth session of the Ad Hoc Group.

[(F) SAFEGUARDS AND LIMITATIONS<sup>109</sup>

20. The States Parties [are encouraged] [shall], to the extent possible and in line with the provisions of the Convention [and the Protocol], [to] promote transparency and openness in their research activities.

[21. The States Parties [should] [shall] take all practicable measures to prevent [that] the [misuse] [application] of scientific and technological research in areas associated with the Convention [designed to produce] [may benefit or induce] [the production of] [any kind of qualitative improvement in the field of] biological and toxin weapons.]

22. The States Parties, aware of the vast knowledge arising from new discoveries, *inter alia*, in microbiology, genetic engineering and biotechnology, [should] [shall] take all practicable safety precautions, including the bioethical dimension in those precautions, to protect populations and the environment in relation to activities not prohibited by the Convention.<sup>110</sup>

23. [The States Parties] [shall comply with safety and immunization measures, and with legislative and administrative measures [established by other States]] [undertake to comply as fully as possible with the safety regulations of relevant international organizations for the security and physical protection of research centres, laboratories and facilities intended to be used for scientific and technical exchanges].

24. In [fulfilling the obligations of] [implementing] this Article, each State Party shall [take into consideration international law relating to the protection of commercial and proprietary information] [protect commercial and proprietary information and national security information].

[25. In implementing the provisions of this article, the States Parties and the Organization shall take into account [the necessity of strengthening] existing agreements and competences of other relevant international organizations [or among States Parties] [not contrary to the provisions of the Convention] [and take steps to avoid duplicating existing activities and

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109. There were proposals to the effect of deleting this section or moving it to another part of the Protocol that might deal with BTWC Article III matters. However, it was also pointed out that this section had no relevance with regard to Article III provisions of the Convention.

110. This paragraph should be examined in the light of discussions on Article X (national implementation measures) of the rolling text.

mechanisms] [and shall cooperate to strengthen the existing cooperative relations and [if necessary] [where possible] avoid duplicating existing activities].<sup>111]</sup>

[(G) REPORTING]

[26. Each State Party shall declare annually the measures taken individually or together with other States and international organizations in implementing Article X of the Convention [and Article VII of the Protocol].]

27. The States Parties shall [report periodically through the institutional mechanisms, provided for in this Protocol, on specific measures they have taken in order to comply with the provisions of Article X of the Convention [with the aim of increasing and widening such exchanges and transfers [of bacteriological (biological) related materials, equipment and technologies for peaceful purposes], for the benefit of all States Parties, and in particular the developing countries which are States Parties]. These reports shall be examined by those institutional mechanisms with the aim of making recommendations to States Parties for the effective implementation of Article X of the Convention.]

[28. Each State Party shall have the right to declare any restrictions, in non-compliance with the obligations under Article X, on the transfer of biological materials, equipment and technology for peaceful purposes.]

[29. Each State Party shall report annually to the Director-General on the specific measures that they have taken in order to fulfil the provisions of Article X of the Convention and to implement the provisions specified in this Article. These reports shall be considered by the Technical [Secretariat] [Body] with the aim of suggesting specific practical steps for the effective implementation of this Article and Article X of the Convention.]<sup>112]</sup>

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111. There is divergence of views regarding the need for and the placement of this paragraph in this Article, which is also included in section A (general provisions). Views were expressed that the question of avoiding duplication is relevant to all provisions of the Protocol and not just to Article VII; therefore consideration should be given to dealing with this issue in Article I.

112. This paragraph is taken from BWC/AD HOC GROUP/WP.363 and was not discussed during the fourteenth session of the Ad Hoc Group.