

**AD HOC GROUP OF THE STATES PARTIES
TO THE CONVENTION ON THE PROHIBITION
OF THE DEVELOPMENT, PRODUCTION AND
STOCKPILING OF BACTERIOLOGICAL
(BIOLOGICAL) AND TOXIN WEAPONS
AND ON THEIR DESTRUCTION**

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**Outcome of discussions by the Friend of the Chair
on Investigations**

G. INVESTIGATIONS

(B) OUTBREAKS OF DISEASE

[Exclusion of all outbreaks of disease which are due to natural causes]

4. All outbreaks of disease which are due to natural causes do not pose a compliance concern under the Convention and shall not be a reason for an investigation of a non-compliance concern.

5. Nothing in this Protocol shall prejudice the right of a State Party to investigate, as per its national regulations, outbreaks of disease which occur on its territory or in any place under its jurisdiction or control, or if it so wishes, with the assistance of other State(s) and/or relevant international organizations.

Investigation of disease outbreaks [directly related to activities prohibited by the Convention] [related to [non-compliance under Article I of the Convention] [the use of biological weapons]] [relating to a specific concern about possible non-compliance with the Convention]

6. If a State Party has a concern that an outbreak of disease is directly related to activities prohibited by the Convention, it shall have the right to request a field investigation to address the non-compliance concern. In accordance with the requirements of Annex D, section II, paragraphs 1 and 2, such request shall contain detailed evidence, and other information, and analysis substantiating [why, in its view, it considers the outbreak of disease not to be naturally occurring and] [its basis for concern that the outbreak of disease is not naturally occurring and is] directly related to activities prohibited by the Convention.

7. The Executive Council shall not [consider a request for] [authorize] an investigation of an outbreak(s) of disease, unless it determines that there is a [convincing] [sufficient] basis for concern substantiated by detailed evidence, and other information, and analysis that such an outbreak(s) of disease is not naturally occurring and is directly related to activities prohibited by the Convention. When a State Party requests a field investigation of an

outbreak(s) of disease on the territory or in any place under the jurisdiction or control of another State Party, the State Party where the investigation is proposed to occur shall have the right to provide evidence, and other information, and analysis that indicates that the outbreak of disease is naturally occurring or otherwise unrelated to activities prohibited by the Convention. If deemed appropriate by the Executive Council as a matter of procedure under Article IX, paragraph 30, other State(s) Party(ies) may also provide information relevant to whether the outbreak(s) of disease is naturally occurring and/or whether it is related to activities prohibited by the Convention. All of the evidence, and other information, and analysis submitted, shall 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 section of Article III.

[Unusual outbreaks of disease]

8. 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.]¹

[13. In cases where the Security Council has authorized the Secretary-General of the United Nations to investigate a concern(s) that a State which is not party to the Convention is involved in the development, production, stockpiling or use of biological or toxin weapons, the Executive Council may decide, if so requested by the Secretary-General of the United Nations and taking into account the specific circumstances of the concern and the availability of the Technical Secretariat to assist, cooperate, or direct the Director-General to put the resources of the Technical Secretariat at the disposal of the Secretary-General of the United Nations for the conduct of the investigation.]

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

Field investigations

37. The receiving State Party shall provide [, where possible,] access to the investigation area[(s)] within [24] [48] [...] hours after arrival at the point of entry [as well as access within the investigation area[(s)] for activities pursuant to this Article and sections I and II of

1. This paragraph is being retained for the time being. Its subtitle, content and placement need to be reconsidered in view of BWC/AD HOC GROUP/WP.369 submitted by the Group of NAM and Other States.

Annex D [for the duration of the investigation] as specified in Annex D, section II, paragraph 9].

38. The receiving State Party shall [to the extent possible] provide access to places within the investigation area[(s)] external to buildings or other structures for the sole purpose of enabling the investigation team to conduct [a] specific on-site activities[y or activities] identified in, and in accordance with, Annex D, section II, paragraphs 19 to 51. The extent and nature of access within a particular place(s) within the investigation area[(s)] shall be negotiated between the investigation team and the receiving State Party in accordance with paragraphs 27 to 36 of this section. Such negotiated access in accordance with paragraphs 27 to 36 of this section, shall allow access to all humans, animals and/or plants that may have been affected by microbial or other biological agents or toxins [not directly related to activities prohibited by the Convention].

[39. In order to fulfil its mandate, the investigation team may conduct interviewing, disease/intoxication-related investigation, analysis of samples, and collection and examination of background information and data outside the investigation area[(s)] in accordance with the provisions provided for these activities in Annex D, section II.]

40. The receiving State Party shall allow the investigation team to conduct only the following on-site activities identified in Annex D, section II, paragraphs 20 to 52 [inside buildings or other structures] [in hospitals or other places to only have access to affected persons]: interviewing, disease/intoxication-related examination, analysis of samples and collection and examination of background information and data. Such activities shall be conducted in accordance with the provisions provided for them in Annex D, section II.

41. The access provided for in these paragraphs shall not interfere or impede with any national measures taken to deal with the outbreak of disease.

[[42. The investigation team may request access to a facility, building or other structure as objects of investigation within the area(s) designated for investigation if the mandate already specifies that access to such a facility, building or other structure may be required; or if access is required in order to fulfil the investigation mandate.

43. Wherever possible the receiving State Party shall grant immediate access as requested. If the request of the investigation team is accepted, the rules governing the conduct of activities inside any facility, building or structure shall be those specified in this section and Annex D, section III, paragraphs 31 to 59.]

44. If, during the course of the investigation, the investigation team has acquired etiological and/or epidemiological information indicating that a facility on the territory or in any other place under the jurisdiction or control of a State Party is directly relevant to the alleged non-compliance concern that has been identified in the investigation mandate, the

investigation team leader shall submit that information to the Executive Council for its consideration.

45. Upon receipt of the information, the Executive Council shall provide the information to the receiving State Party, the requesting State Party, and, if appropriate, the State Party on whose territory or under whose jurisdiction or control the facility in question is located and host State Party.

46. The Executive Council's consideration of the information received and any decision on the initiation of an investigation shall be conducted in accordance with the provisions set out in paragraphs 21 to 25 of this section

47. If the Executive Council decides that a facility investigation must be conducted, the investigation shall be conducted in accordance with the provisions for facility investigations set out in Article III, section G, and Annex D, sections I and III. The reports of the field and facility investigations shall be considered simultaneously by the Executive Council.

48. If it is found that the information provided by the investigation team is frivolous and/or abusive, the strictest disciplinary steps provided for in the personnel code of the Organization shall be taken against the investigation team leader.]²

Facility investigations

49. The receiving State Party shall provide access within the perimeter as determined in Annex D, section III, paragraph [18] [22] and pursuant to Annex D, section III, paragraphs 15 to 17 [within ...] [not later than 108] hours after [receipt of notification pursuant to Annex D, section III, paragraph 5] [arrival at the point of entry as well as access to buildings, parts of buildings or other structures inside the perimeter for activities pursuant to this Article and sections I and III of Annex D for the duration of the investigation as specified in Annex D, section III, paragraph 8].

[50. The investigation team may include in its investigation plan, specific on-site activities described in Annex D, section III, paragraphs 32 to 59. These specific on-site activities shall be implemented in accordance with the provisions set out above in this section as well as in Annex D, sections I and III .

51. 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

2. Paragraphs 44 to 48 were not discussed during the seventeenth session of the Ad Hoc Group.

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.

52. 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 51, is not used for purposes related to the possible non-compliance concerns raised in the investigation request.

53. 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.]³

3. The text in paragraphs 50 to 53 also appears in paragraphs 27 to 36 on pages 80 to 82 of

[Access and conduct of investigations involving States other than the receiving State Party

54. In cases where facilities or areas of a receiving State Party are located on the territory of a host State Party or where the transport from the point of entry to the facilities or areas subject to investigation requires transit through the territory of another State Party, the receiving State Party shall exercise the rights and fulfil the obligations concerning such investigations in accordance with this 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 facilities or areas to be investigated of a receiving State Party, shall facilitate such transit.

55. In cases where facilities or areas of a receiving State Party are located on the territory of a host State not party to this Protocol, the 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 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 the designated investigation personnel accepted by the receiving State Party in accordance with the provisions set out in Annex D, section I, paragraphs 2 to 16. If a receiving State Party is unable to ensure access, it shall demonstrate that it took all necessary measures to ensure access.

56. In cases where the facilities or areas sought to be investigated are located on the territory of a State Party, but in a place under the jurisdiction or control of a State not party to this Protocol, such a State Party shall take all necessary measures as would be required of a host State Party in accordance with the provisions of paragraphs 54 and 55 above.

57. In cases where the investigation is related to paragraphs 54 and 55, the Director-General shall notify the host State Party/State in the same manner as the receiving State Party.]

(H) FINAL REPORT

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

(I) [[REVIEW OF THE FINAL REPORT] [AND ADOPTION OF DECISIONS]]

[59. The Executive Council shall, in accordance with its powers and functions as determined in Article IX, section C, review and consider the final report of the investigation team as soon as it is presented, and address [and decide on] any concern as to whether:

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

60. With respect to any concerns raised under paragraph 59 (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 prior consultations/clarifications relevant to the request, if applicable;

(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).

61. If the Executive Council reaches the conclusion, in keeping with its powers and functions, that there has been abuse, it shall consider and decide on, *inter alia*, whether:

(a) The requesting State Party should bear some or all of the financial implications of the investigation [which may include indemnities to the receiving State Party];

(b) To suspend the right of the requesting State Party to request an investigation for a period of time, as determined by the Executive Council;

(c) To suspend the right of the requesting State Party to serve on the Executive Council for a period of time.

62. If the Executive Council reaches the conclusion, in keeping with its powers and functions, that further action may be necessary with regard to paragraph 59, it shall take the appropriate measures to redress the situation and to ensure compliance, including, if appropriate, 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.

63. The receiving State Party, the requesting State Party and any other State Party that has been identified in an investigation request as the alleged cause of the non-compliance concern, shall have the right to participate in the review process in the Executive Council but shall have no vote.

64. The Executive Council shall inform the States Parties and the next session of the Conference of States Parties of the outcome of the process.

ANNEX D

II. FIELD INVESTIGATIONS

Paragraph 1

[(e) The area 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 and the geographic characteristics of the area. [The requested area shall not exceed [500] [1,500] [15,000] [...] square kilometres in size.]]

[Interviewing outside the investigation area]

28. [In order to fulfil its mandate, the investigation team may, if it has acquired etiological and/or epidemiological information during its activities which required it to do so,] [On the basis of etiological or epidemiological information relevant to the investigation, the investigation team may request the receiving State Party to be allowed to] conduct interviews outside the area originally designated for investigation with:

- (a) Persons who may have been exposed to biological or toxin weapons;
- (b) Persons responsible for animals or plants which may have been exposed to biological or toxin weapons or persons who may have witnessed the incident; or
- (c) Persons who can provide information on a specific incident or series of incidents that could be relevant to the investigation.

28 *bis* The investigation team shall provide the receiving State Party with the etiological and/or epidemiological information on the basis of which such interviews are [requested] [required].

29. Such interviews shall be conducted in accordance with the provisions contained in paragraphs 22 to 27 above.]

[Disease/intoxication-related examination outside the area of investigation]

38. In order to fulfil its mandate, the investigation team may, if it has acquired etiological and/or epidemiological information during its activities which required the investigation team to conduct medical examinations of persons affected or exposed, take body samples from affected and/or exposed persons or animals, observe, participate in, or conduct post mortem examinations, or conduct disease/intoxication-related examination of animals or plants affected or exposed, outside the area originally designated for investigation. Such activities shall be conducted in accordance with the provisions contained in paragraphs 32 to 37 above.

The investigation team shall provide the receiving State Party with the etiological and/or epidemiological information which require such disease/intoxination-related examination.]

[Extension of investigation area

54. If necessary in order to fulfil its mandate, the investigation team may seek the agreement of the receiving State Party to extend the investigation area to an area adjacent to the investigation area. [If agreement is not reached in [24] [...] hours, the Director-General may submit to the Executive Council a written request to extend the investigation area which shall include the evidence, including information and analysis providing a substantive basis for the request as well as all the information in the original request submitted to the receiving State Party. The Director-General shall transmit a copy of the request to the receiving and requesting States Parties simultaneously with the submission of the request to the Executive Council. The investigation area shall be extended and the investigation in the extended area proceed [unless] [only after] the Executive Council not later than 24 hours after receiving the Director-General's request decides [by a simple majority] of its members present and voting [against] [to approve] the extension of the investigation area. The requesting or receiving State Party or, if applicable, the State Party identified in the request as the alleged cause of the non-compliance concern, may participate in any Executive Council deliberations in this regard. If the requesting or receiving State Party or, if applicable, the State Party identified in the request as the alleged cause of the non-compliance concern, is a member of the Executive Council, such State Party shall not have the right to vote on the Director-General's request.]

55. If during an investigation the investigation team considers it necessary to extend the investigation to a neighbouring State Party/State, the investigation team shall notify the Director-General. The Director-General shall obtain consent from that State Party/State to extend the investigation to its territory.]

[Establishment of [a] new investigation area[(s)]

56. If necessary in order to fulfil its mandate, the investigation team may seek the agreement of the receiving State Party to establish [one] investigation area[(s)] additional to the investigation area[(s)] specified in the investigation mandate. Such a request shall identify the additional area[(s)] as precisely as possible by providing the geographic coordinates, specified to the nearest second, and detail the reasons for establishing the additional investigation area[(s)]. If agreement is not reached within ... hours, the Director-General may submit to the Executive Council a written request to establish additional investigation area[(s)] which shall include all the information in the original request submitted to the receiving State Party. The Director-General shall transmit a copy of the request to the receiving and requesting States Parties simultaneously with the submission of the request to the Executive Council. The additional investigation area[(s)] shall be established and the investigation in such area[(s)] proceed unless the Executive Council not later than 24 hours after receiving the Director-General's request decides by [a simple majority] of its members present and voting against the establishment of the additional

investigation area[(s)]. The requesting or receiving State Party or, if applicable, the State Party identified in the request as the alleged cause of the non-compliance concern, may participate in any Executive Council deliberations in this regard. If the requesting or receiving State Party or, if applicable, the State Party identified in the request as the alleged cause of the non-compliance concern, is a member of the Executive Council, such State Party shall not have the right to vote on the Director-General's request.]
