

D. INVESTIGATIONS

I. GENERAL PROVISIONS

(A) DESIGNATION OF INVESTIGATION PERSONNEL

1. The personnel of an investigation team shall consist of investigators and, as necessary, investigation assistants. The Director-General shall only designate properly qualified investigation personnel from the appointed full time staff of the Technical Secretariat or ad hoc experts, nominated by States Parties in accordance with paragraphs 11 to 16 of this section, to carry out [field] investigations. In the employment of the staff and in the determination of the conditions of service due regard shall be paid to the necessity of securing the highest standards of efficiency, competency and integrity and the importance of selecting personnel on as wide an equitable geographic basis as possible. No national of the requesting State Party or the receiving State Party shall be a member of an investigation team.

Designation of full time investigation personnel

2. Candidates shall [be proposed by States Parties] [apply] for appointment as investigation personnel to the full time staff of the Technical Secretariat on the basis of their expertise and experience relevant to the purpose of investigations of non-compliance concerns.

[3. Each State Party, not later than 30 days after the entry into force of this Protocol, or accession to the Protocol, shall notify the Director-General of the names, dates of birth, gender, ranks, qualifications and professional experience of the persons proposed by the State Party for designation as investigation personnel.]

4. Not later than [30] [60] days after the entry into force of this Protocol, the Technical Secretariat shall communicate in writing to all States Parties an initial list of the names, nationalities, dates and places of birth, gender, passport numbers and ranks of the persons proposed for designation as investigation personnel by the Technical Secretariat, as well as a description of their qualifications and professional experience.

5. Each State Party shall acknowledge receipt of this initial list of investigation personnel proposed for designation, within [24 hours] of receipt thereof. Any investigator or investigation assistant included in this list shall be regarded as accepted unless a State Party, not later than 30 days after acknowledgment of receipt of the list, declares its non-acceptance in writing. The State Party may include the reason for the objection. In the case of non-acceptance, the proposed investigator or investigation assistant shall not participate in investigation activities either (i) on the territory of a State Party that has declared its non-acceptance, or (ii) in any other place under the jurisdiction or control of a State Party that has declared its non-acceptance. The Technical Secretariat shall immediately confirm receipt of the notification of non-acceptance. The Technical Secretariat shall, as necessary, submit further proposals in addition to the initial list.

6. Additions or changes to the list of investigation personnel shall be effected according to the procedures set out in paragraphs [3,] 4 and 5 above. [Each State Party shall promptly notify the Technical Secretariat if an investigator or investigation assistant nominated by it can no longer fulfil the duties of investigation personnel as its nominee.]

7. The Technical Secretariat shall keep the list of investigation personnel up to date and notify all States Parties of any additions, deletions or changes to the list.

8. A State Party that has been notified of an investigation shall not seek the removal from the investigation team of any of the investigation personnel named in the investigation mandate. A State Party shall have the right at any other time, to object to any member of the investigation personnel who has already been accepted. It shall notify the Director-General of its objection in writing and may include the reason for the objection. The Director-General shall within 12 hours of receipt of the objection, acknowledge receipt thereof. Such objection shall come into effect upon receipt by the State Party of the Director-General's acknowledgement.

9. The number of investigation personnel accepted by a State Party for designation shall be sufficient to allow for availability of appropriate numbers of investigation personnel.

10. If, in the opinion of the Director-General, the non-acceptance by a State Party of proposed investigation personnel impedes the designation of a sufficient number of investigation personnel or otherwise hampers the effective fulfilment of the tasks of the Technical Secretariat for the purposes of investigations, he/she shall take the matter up with the State Party concerned. If the matter remains unresolved he/she shall then refer the issue to the Executive Council.

Designation of ad hoc experts as investigation personnel

11. Not later than [30] days after the entry into force of this Protocol, the Technical Secretariat shall communicate the necessary qualifications, professional experience and an indication of the minimum number of experts in each category to be included on the list of investigation personnel for utilization on an ad hoc basis as investigators [during field investigations].

12. Ad hoc experts shall be nominated by States Parties. States Parties wishing to propose such experts [shall] [may] nominate candidates meeting the requirements within 30 days after receipt of the communication and notify the Director-General of the names, nationalities, dates and places of birth, gender, passport numbers, qualifications and professional experience of the ad hoc experts they nominate for designation as investigation personnel. The Director-General may seek further nominations, and additional nominations may also be submitted by States Parties, at any time. Such nominations shall be circulated to States Parties in accordance with the provisions of paragraphs 4 to 10 above.

13. Not later than [90] days after the entry into force of this Protocol, the Director-General shall communicate to each State Party the list of ad hoc personnel [for utilization during field

investigations] in accordance with the provisions for the list of investigation personnel as set out in paragraphs 4 to 10 of this section.

14. In the event that necessary expertise is not available within the Technical Secretariat and ad hoc experts are required for the conduct of a [field] investigation, such experts shall be selected from the designated list of ad hoc personnel by the Director-General in accordance with the provisions of paragraph 44 below. [A nominated ad hoc expert shall not be appointed as an investigation team leader.]

15. When designated for a [field] investigation team the personnel on the list of ad hoc personnel shall be considered members of the staff of the Technical Secretariat and as such subject to all provisions, applicable to such personnel, contained in this Protocol. A State Party that has been notified of an investigation shall not seek the removal from the investigation team of any of the investigation personnel named in the investigation mandate.

16. Each State Party shall promptly notify the Technical Secretariat if an ad hoc expert nominated by it can no longer fulfil the duties of investigation personnel. Any ad hoc expert appearing on the list of designated investigation personnel, may also withdraw from the list by informing the Director-General in writing.

Training

17. The Technical Secretariat shall ensure that all members of the designated investigation personnel are properly trained to conduct investigations. The Technical Secretariat shall conduct such training and it may coordinate, in agreement with States Parties offering training, a schedule for such training.

(B) DESIGNATION AND CERTIFICATION OF LABORATORIES

18. The Director-General shall utilize only properly designated and certified laboratories for off-site analyses of samples. [Analysis [of a part of a sample] shall, whenever possible, be carried out on the territory of the receiving State Party.]

19. The criteria, including the proficiency standards, and procedures required for designation and certification of laboratories shall be approved by the First Conference of States Parties.

20. Not later than 30 days after the conclusion of the first Conference of States Parties, or after the accession of a State Party to the Protocol, the Technical Secretariat shall communicate to the States Parties the criteria, including the proficiency standards, and procedures required for the designation and certification of laboratories as approved by the First Conference of States Parties.

21. States Parties, wishing to do so, shall, within 60 days after receiving the communication of the criteria, including the proficiency standards, and procedures required

for the designation and certification of laboratories, provide an initial list of laboratories nominated for designation and certification.

22. Nominated laboratories shall be designated and certified by the Director-General in accordance with the provisions contained in paragraphs 19 and 20 above. The Director-General shall not later than 30 days after the completion of the designation and certification process, communicate a list of all the designated and certified laboratories to all States Parties.

23. The Director-General may terminate the designation and certification of a laboratory on the request of the nominating State Party or if such a laboratory falls below the required proficiency standards.

24. Further laboratories may, when necessary, be designated and certified in accordance with the procedures referred to in paragraphs 19 to 21 above. The designation and certification of each laboratory shall be subject to renewal every three years.

25. In the designation and certification of laboratories, the Director-General shall pay due regard to the necessity of equitable geographic distribution of designated laboratories. At the request of a State Party, the Technical Secretariat shall assist in the upgrading of a laboratory(ies) nominated for designation and certification. The cost of upgrading the nominated laboratories shall be borne by the State Party concerned, and/or by the Technical Secretariat within available resources when possible.

26. In order to ensure the security and confidentiality of samples being analysed, the Director-General shall enter into specific agreements with designated and certified laboratories as soon as possible after the designation and certification of each laboratory. A designated and certified laboratory shall not be used for the analysis of samples until such an agreement has been concluded with the laboratory.

(C) STANDING ARRANGEMENTS

Point(s) of entry

27. Each State Party shall designate its point(s) of entry and shall supply the required information to the Technical Secretariat not later than 30 days after this Protocol enters into force for it. These point(s) of entry shall be such that the investigation team can reach any investigation area from at least one point of entry within [24] hours. Locations of point(s) of entry shall be provided to all States Parties by the Director-General.

28. Each State Party may change its point(s) of entry by giving notice of such change to the Director-General. Changes shall become effective 30 days after the Director-General receives such notification, to allow appropriate notification to all States Parties.

29. If the Director-General considers that there are insufficient point(s) of entry for the timely conduct of investigations or that changes to the point(s) of entry proposed by a State

Party would hamper such timely conduct of investigations, it shall enter into consultations with the State Party concerned to resolve the problem.

Arrangements for use of non-scheduled aircraft

30. Where timely travel to the point of entry is not feasible using scheduled commercial flights, an investigation team may utilize non-scheduled aircraft. Not later than 30 days after this Protocol enters into force for it, each State Party shall inform the Technical Secretariat of the diplomatic clearance number for non-scheduled aircraft or appropriate procedures and measures to facilitate the arrival and handling of non-scheduled aircraft transporting an investigation team and equipment necessary for investigation. Aircraft routings shall be along established international airways that are agreed upon between the State Party and the Director-General as the basis for such procedures.

31. When a non-scheduled aircraft is used, the Technical Secretariat shall provide the receiving State Party with the proposed flight plan [, through the National Authority,] for the aircraft's flight from the last airfield prior to entering the airspace of the State in which the investigation site is located to the point of entry, not less than [6] hours before the scheduled departure time from that airfield. Such a plan shall be filed in accordance with the procedures of the International Civil Aviation Organization applicable to civilian aircraft. The Technical Secretariat shall include in the remarks section of each flight plan the diplomatic clearance number or details concerning the appropriate procedures and measures to facilitate the arrival of the non-scheduled aircraft and the appropriate notation identifying the aircraft transporting the investigation team and equipment necessary for the investigation.

32. Not less than [3] hours before the scheduled departure of the investigation team from the last airfield prior to entering the airspace of the State in which the investigation is to take place, the receiving State Party or host State Party shall ensure that the flight plan filed in accordance with paragraph 31 is approved, so that the investigation team may arrive at the point of entry by the estimated arrival time.

33. The receiving State Party shall provide parking, security protection, servicing and fuel as required by the Technical Secretariat for the aircraft of the investigation team at the point of entry when such aircraft is owned or chartered by the Technical Secretariat. Such aircraft shall not be liable for landing fees, departure tax, and similar charges. The Technical Secretariat shall bear the cost of such fuel, parking, security protection and servicing.

Administrative arrangements

34. The receiving State Party shall provide or arrange for the amenities necessary for the investigation team such as transport, communications means, interpretation, working space, lodging, meals and emergency medical care. In this regard, the receiving State Party shall be reimbursed by the Organization for all such costs incurred by the investigation team within 30 days after receipt of a detailed notification claim for such costs from the receiving State Party.

Approved investigation equipment

35. The approved investigation equipment for use during on-site investigations [, which shall be commercially available to all States Parties of the Protocol] as well as the specifications for this equipment [is set out in Appendix ...] [shall be approved by the Conference of States Parties at its first session]. These specifications shall take account of safety and confidentiality factors bearing in mind the type of location where such equipment could be used.
36. The Technical Secretariat shall, as appropriate, update the list of equipment. The updated list shall be considered and approved by the Conference.
37. The Technical Secretariat shall ensure that all types of approved equipment are available for on-site investigations when required. When required for an on-site investigation, the Technical Secretariat shall duly certify that the equipment has been calibrated, maintained and protected. To facilitate the checking of the equipment at the point of entry by the receiving State Party, the Technical Secretariat shall provide documentation and attach seals to authenticate the certification.
38. Any permanently held equipment shall be in the custody of the Technical Secretariat. The Technical Secretariat shall be responsible for the maintenance and calibration of such equipment.
39. Subject to paragraph 40, there shall be no restriction by the receiving State Party on the investigation team bringing into the investigation site such equipment on the list which the Technical Secretariat has determined to be necessary to fulfil the investigation requirements. The investigation team shall take into account local regulations having an effect on the use of specific pieces of equipment when such equipment is being used during an investigation. The receiving State Party shall include the details of such regulations in the pre-investigation briefing.
40. The receiving State Party shall have the right, without prejudice to the prescribed time frames, to inspect the equipment in the presence of investigation team members at the point of entry, i.e. to check the identity of the equipment brought in or removed from the territory of the receiving State Party or the host State. To facilitate such identification, the Technical Secretariat shall attach documents and devices to authenticate its designation and approval of the equipment. The investigation of the equipment shall also ascertain to the satisfaction of the receiving State Party that the equipment meets the description of the approved equipment specified in the mandate for the particular type of investigation. The receiving State Party has the right to exclude equipment not meeting that description or equipment without the above-mentioned authentication documents and devices. The inspection of investigation equipment shall not exceed [4] hours.
- [41. As appropriate, the Technical Secretariat shall make arrangements with States Parties to provide equipment mentioned in the list. Such States Parties shall be responsible for the maintenance and calibration of such equipment. [The Technical Secretariat shall make

appropriate arrangements to allow States Parties to familiarize themselves with investigation equipment included on the list of approved equipment.]]

42. In cases where the receiving State Party agrees to provide, at the request of the Technical Secretariat, investigation equipment, or the investigation team finds it necessary to use equipment available on site not belonging to the Technical Secretariat and requests the receiving State Party to enable the team to use such equipment, the receiving State Party shall attempt to meet the request to the extent it can. The investigation team shall have the right to observe and confirm the calibration of such equipment. The receiving State Party shall be reimbursed for the cost of making the equipment available and for any calibration thereof required by the investigation team.

43. In cases where the receiving State Party offers to provide equipment, available on site, the investigation team may accept the offer. The investigation team shall have the right to observe and confirm the calibration of such equipment. Any calibration required by the investigation team and the use of the equipment shall be at the cost of the receiving State Party.

(D) PRE-INVESTIGATION ACTIVITIES

Assignment of investigation team

44. The Director-General shall determine the size of the investigation team and select the proper qualified members to conduct the specific type of investigation requested in the investigation request on [as wide a] [an equitable] geographic basis as possible taking into account the circumstances of the particular request. Members of the investigation team shall be selected from the investigation personnel designated in accordance with paragraphs 2 to 16 above. The size of the investigation team shall be kept to the minimum necessary for the proper fulfilment of the investigation mandate [, but shall not in any event exceed ... persons in cases of field investigations and ... persons in cases of facility investigations]. The Director-General may at his/her discretion alert potential members of the investigation team, as soon as possible after receipt of the investigation request, of the possibility that they may be required for an investigation.

45. The Director-General may extend the size of the investigation team and in agreement with the receiving State Party.

[Observer

46. The requesting State Party may, subject to the agreement of the receiving State Party, send a representative who may be a national either of the requesting State Party or of a third State Party, to observe the conduct of an investigation.

47. The receiving State Party shall notify its acceptance or non-acceptance of the proposed observer to the Director-General.

[48. The receiving State Party [may] [shall] as a rule, accept the proposed observer, but if the receiving State Party exercises a refusal, that fact shall be recorded in the final report.]

49. The requesting State Party shall liaise with the Technical Secretariat to coordinate the arrival of the observer at the same point of entry as the investigation team within a reasonable period of the investigation team's arrival.

[50. The observer shall have the right throughout the period of investigation to be in communication with the embassy or other official representation of the requesting State Party located in the receiving State Party, or in the case of absence of an embassy or other official representation, with the requesting State Party itself. The receiving State Party shall [, to the extent possible,] provide means of communication to the observer.]

51. The observer shall have the right to arrive at the investigation area/site with the investigation team and to have access to and within the investigation area/site as granted by the receiving State Party.

[52. The observer shall have the right to make recommendations concerning the conduct of the investigation and the factual findings to the investigation team, which the team shall take into account to the extent it deems appropriate.]

53. Throughout the investigation, the investigation team shall keep the observer informed about the conduct of the investigation and the factual findings.

54. Throughout the investigation, the receiving State Party shall provide or arrange for the amenities necessary for the observer similar to those enjoyed by the investigation team as described in paragraph 34. All costs in connection with the stay of the observer on the territory of the receiving State Party, shall be borne by the requesting State Party.]

Dispatch/arrival of investigation team

55. The Director-General shall dispatch an investigation team as soon as possible after an investigation request has been received and [approved] [processed in accordance with the decision making process set out] in accordance with the provisions of Article III, section G, paragraphs ... to The investigation team shall arrive at the point of entry specified in the request in the minimum time possible in accordance with the provisions contained in Article III, section G, and this Annex.

56. [In the case of field investigations,] the Director-General may, in exceptional cases and after prior consultation with the receiving State Party, dispatch an element of the investigation team assigned in accordance with paragraph 44 above [consisting of ad hoc experts] later than the rest, if the time period for the deployment of the full team cannot be achieved simultaneously.

(E) CONDUCT OF INVESTIGATION

Communications

57. The members of the investigation team shall have the right at all times during the investigation to communicate with each other. For this purpose they may use their own duly approved and certified equipment with the consent of the receiving State Party and in full compliance with the relevant [telecommunications] regulations of the receiving State Party, if the receiving State Party cannot provide them with the necessary telecommunication equipment. Members of the investigation team shall have the right to communicate at all times with the Technical Secretariat, using their own duly approved and certified equipment to the extent that the receiving State Party cannot provide them with the required telecommunication equipment [meeting the same specifications as for the similar approved and certified equipment] [and with the consent of the receiving State Party]. In doing so, the members of the investigation team shall be under the obligation not to communicate any information or data not related to the investigation mandate.

58. The members of the investigation team shall, unless authorized by the Director-General, be prohibited at all times from communicating directly or indirectly on any matter related to the investigation with any person or institution other than the members of the investigation team or the Technical Secretariat.

[Orientation overflight

59. Upon the request of the investigation team, the receiving State Party may provide an overflight over the investigation area or the facility to be investigated during the investigation for the purposes of providing the investigation team with a general orientation of the investigation area or the facility to be investigated.]

(F) POST-INVESTIGATION ACTIVITIES

Preliminary findings

60. Upon completion of the investigation, the investigation team shall meet with the receiving State Party to review the team's preliminary findings and to clarify any remaining ambiguities. The team shall provide to the receiving State Party its preliminary findings in written form [having taken into account the provisions of Annex E], together with a list and copies of written information and data gathered and other material intended to be taken off site; and any samples proposed to be removed from the site. This document shall be signed by the team leader. In order to indicate that the receiving State Party has taken notice of the contents of the initial findings, the representative of the receiving State Party shall countersign the document. This meeting and these procedures shall be completed not later than [24] hours after completion of the investigation.

61. In accordance with the access provisions contained in Article III, section G, subsection G, the receiving State Party may request that restrictions be placed on [or deny

altogether] the removal of specific [samples,] documents or other materials, if it deems this necessary to protect commercial proprietary or national security information.

62. The receiving State Party may also draw to the attention of the investigation team any information in the preliminary findings which, in its view, is unrelated to the investigation mandate. In these cases the receiving State Party may request that the information be considered confidential. In such cases the receiving State Party shall have the right to request that such information is deleted [, the investigation team shall delete that information accordingly]. [If the investigation team does not agree to the deletion of such information, it shall be handled as confidential.]

63. Further to the provisions of paragraph 61 above the investigation team shall, upon request, supply copies of all information and data recorded during the investigation to the receiving State Party.

Departure

64. Upon completion of the post-investigation activities, the investigation team and the [observer] shall leave the territory of the receiving State Party as soon as possible. The receiving State Party shall do everything in its power to provide assistance and to ensure the safe conduct of the investigation team, equipment and baggage to the point of exit. Unless agreed otherwise by the receiving State Party and the investigation team, the point of exit shall be the same as the point of entry used.

(G) MEASURES TO GUARD AGAINST ABUSE DURING AN INVESTIGATION

65. In carrying out the investigation in accordance with the investigation mandate, the investigation team shall use only those methods provided for in this Protocol which are necessary to provide sufficient relevant facts to clarify the concern about possible non-compliance described in the investigation mandate and shall refrain from activities not relevant thereto.

66. It shall collect and document such facts as are related to the possible non-compliance concern described in the investigation mandate but shall neither seek nor document information which is clearly not related thereto, unless the receiving State Party expressly requests it to do so. Any material collected and subsequently found not to be relevant shall not be retained.

[67. Investigators shall, in accordance with the relevant rules laid down in international law, be liable to physical or juridical persons for any intentional or accidental damage resulting from unlawful actions on their part, including the leaking of confidential information that becomes known to them in the course of investigation work.]

II. FIELD INVESTIGATIONS

(A) INVESTIGATION REQUEST

[Detailed] Information [, reasons and evidence] to be submitted with a request for an investigation

1. A request for an investigation under paragraph 3 of Article III, section G, for an event(s) which has given rise to a concern about non-compliance shall include the following information:

(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);

(iii) The circumstances under which the alleged event(s) took place;

(iv) The suspected cause and/or perpetrator of the alleged event(s);

(d) To the extent possible, 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);

(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.]

(f) 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;

(g) For requests involving outbreaks of disease, detailed evidence, and other information, and analysis, including detailed information on events [and] [and/or] [or] activities which substantiate its view that an outbreak[(s)] of disease: (a) is not naturally occurring, and (b) is directly related to activities prohibited by the Convention;

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

2. In addition to the information to be supplied with a request pursuant to paragraph 1, 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) The request for specific assistance submitted separately in accordance with the provisions contained in Article VI, paragraph 9;

[(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)].

Investigation area[(s)]

3. The investigation area[(s)], requested in terms of paragraph 1 (e) above, shall be the area[(s)] to be investigated, subject to adjustments made by the Technical Secretariat in terms of Article III

(B) PRE-INVESTIGATION ACTIVITIES

Notification of investigation

4. The Director-General shall, not less than [12] [...] hours prior to the arrival of the investigation team at the point of entry, notify the receiving State Party of the impending investigation. The Director-General shall also notify other States Parties if access to their territories might be required during the investigation.

5. The notification made by the Director-General under the provisions of paragraph 4 shall include, *inter alia*:

- (a) Name of the receiving State Party[/State];
- (b) Name of the host State Party[/State], if applicable;
- (c) Name of the requesting State(s) Party(ies) if not the same as the name of the receiving State Party;
- (d) The nature of the alleged event(s) to be investigated as determined from the investigation request;
- (e) The point of entry where the investigation team will arrive as well as the means of arrival;
- (f) The date and estimated time of arrival of the investigation team at the point of entry;
- (g) If using a non-scheduled aircraft, the standing diplomatic clearance number or the appropriate information required by the receiving State Party to facilitate the arrival and handling of the non-scheduled aircraft;
- (h) Location and characteristics of the area[(s)] where the incident(s) of non-compliance is alleged to have taken place;
- (i) A description of any effects on humans, animals or plants;
- (j) A list of the approved equipment to be used during the investigation;
- (k) A list of approved equipment which the Director-General requests the receiving State Party's consideration to be made available to the investigation team for use during the investigation in accordance with section I, paragraph 42 of this Annex;
- (l) A list of laboratory facilities and other support which the Director-General requests, if applicable, the receiving State Party to provide to the investigation team for use during the investigation if available and possible;
- [(m) The investigation mandate;]
- [(n) The names of the leader and the other members of the investigation team.]

6. The receiving State Party shall acknowledge receipt of the notification of the impending investigation not later than ... after receipt of such a notification.

7. The receiving State Party shall indicate not later than ... hours after receipt of the notification, which of the requested equipment, laboratory facilities and other support will be supplied.

Investigation mandate

8. The investigation mandate, issued in accordance with Article III, section G, paragraph ..., shall contain at least the following:

- (a) The decision of the Executive Council, on making of an investigation;
- (b) The name of the receiving State(s) Party(ies);
- (c) The nature of the alleged event(s) to be investigated as determined from the investigation request [and approved by the Executive Council], including any effects on humans, animals or plants;
- (d) The area[(s)] where the investigation will be conducted, designated on a map by geographic coordinates specified to the nearest second;
- (e) Specified investigation objectives to be accomplished by the investigation team;
- (f) The planned types of activities, operational instructions and any other identifiable tasks of the investigation team;
- (g) Any transit or basing points to be used by the investigation team, as appropriate;
- (h) The names of the leader and of the other members of the investigation team;
- (i) The name of the proposed observer, if any;
- (j) The list of approved equipment to be used during the investigation;
- (k) The estimated time necessary to conduct the investigation.

Duration of an investigation

9. The investigation shall not exceed [30] [...] days unless an extension is authorized by the Executive Council and agreed to by the receiving State Party. The estimated period of the investigation shall be indicated in the investigation mandate and updated, within the time frame specified above, by the investigation team in full consultation with the receiving State Party after the pre-investigation briefing. The investigation team shall make every effort to conduct the investigation in the shortest time possible. The period of investigation means the period from the end of the point of entry procedures until the departure of the investigation team from the point of exit.

(C) ACTIVITIES UPON ARRIVAL OF THE INVESTIGATION TEAM

Transportation from the point of entry

10. The receiving State Party shall transport the investigation team together with its equipment to the location within the investigation area[(s)] indicated by the investigation team as the starting point of the investigation as soon as possible, but in any case shall ensure their arrival at that location not later than [24] [48] hours after the arrival of the investigation team at the point of entry.

11. The host State Party shall as necessary assist in the transportation of the investigation team and its equipment.

Pre-investigation briefing

12. The investigation team shall be briefed by representatives of the receiving State Party with the aid of maps and other documentation as appropriate. The briefing shall include, *inter alia*, relevant natural terrain features, safety aspects, prevailing disease profiles in the area[(s)] to be investigated [if the receiving State Party considers it relevant to the briefing], possible routes and means of transport to the area[(s)], logistical arrangements for the investigation, details of equipment and/or laboratory facilities provided on request of the Director-General and any other relevant information.

13. If the case so warrants, the receiving State Party shall have the right to inform the investigation team during the pre-investigation briefing or at any time during the investigation about the areas [, facilities or buildings] which it considers sensitive or not related to the Convention and therefore subject to the access provisions in Article III, section G, subsection G.

14. The receiving State Party may provide additional information that became available after the request was made or that does not appear on the investigation mandate.

15. The pre-investigation briefing shall not exceed three hours.

Investigation plan

16. After the pre-investigation briefing the investigation team shall prepare an initial investigation plan to serve, *inter alia*, as a basis for logistic and safety arrangements. This plan shall at least contain the activities to be carried out by the team, logistic requirements of the team and provisional timings of the activities and requirements. The investigation team shall, as appropriate, modify the investigation plan taking into account any comments by the receiving State Party. This plan shall be made available to the receiving State Party prior to the commencement of the investigation. The preparation of the investigation plan shall not exceed two hours.

(D) CONDUCT OF INVESTIGATION

Situation report

17. The investigation team shall, not later than 24 hours after its arrival on the territory of the receiving State Party, [in consultation with the receiving State Party] send a situation report to the Director-General. It shall [in consultation with the receiving State Party] send further investigation progress reports as necessary.

18. The situation report may indicate any urgent need related to the matter under investigation for technical, medical, veterinary or agronomic assistance and any other relevant information. The progress reports may indicate any further need for assistance that might be identified during the course of the investigation.

Implementation by the investigation team of specific on-site activities

19. All on-site activities shall be conducted in accordance with the access provisions contained in Article III, section G, subsection G.

Interviewing

Interviewing of eye witnesses

20. The investigation team may interview persons, with their explicit consent, who witnessed or could provide information on a specific incident or series of incidents, that could be relevant to the investigation. The interview shall take place in the presence, and if possible and appropriate with the assistance, of representatives of the receiving State Party [, unless the individual concerned indicates otherwise].

21. The investigation team may seek information relevant to the investigation which is necessary to fulfil their investigation mandate. If required, interpretation shall be provided by the investigation team or, where requested, by the receiving State Party.

Interviewing of humans who may have been exposed to BTW or owners of animals or plants which may have been exposed to BTW

22. The investigation team may interview humans, with their explicit consent, who may have been exposed in order to establish how the exposure affected them. In the case of animals or plants which may have been exposed, the investigation team may interview the persons responsible for the animals or plants, with their consent, in order to establish how the exposure affected such animals or plants. Interviews shall be conducted in the presence, and if possible and appropriate with the assistance, of representatives of the receiving State Party [, unless the individual concerned indicates otherwise].

23. The investigation team shall seek only information which is relevant to the investigation and necessary to fulfil their investigation mandate. If required, interpretation shall be provided by the investigation team or, where requested, by the receiving State Party.

Interviewing of other individuals

24. The investigation team may interview other individuals, such as national/local government officials, personnel of any relevant medical, veterinary, pharmaceutical, agricultural institutions or facilities, with their explicit consent, in the presence, and if possible and appropriate with the assistance, of a representative of the receiving State Party [, unless the individual concerned indicates otherwise,] in order to obtain information relevant to the investigation.

25. The investigation team shall only seek information which is relevant to the investigation and necessary to fulfil the investigation mandate. If required, interpretation shall be provided by the investigation team or, where requested, by the receiving State Party.

26. The receiving State Party, or the person being interviewed, shall have the right to object to questions they deem not relevant to the investigation or impinge on sensitive national security or commercial proprietary data. If the investigation team leader nonetheless continues to believe that these questions are relevant and should be answered, he/she may submit them in writing to the receiving State Party for reply, together with an explanation of their relevance to the investigation. The investigation team may note in its report any refusal by the receiving State Party to permit interviews or to allow questions to be answered and any explanations provided by the receiving State Party in this regard.

27. Interviews shall be conducted in such a way as to avoid unduly hindering the work of the personnel interviewed. The investigation team shall, where relevant, give advance notice of the proposed timings of any requested interviews with specific individuals. The receiving State Party may make proposals for the timings of such interviews.

[Interviewing of individuals not available in the investigation area

28. If the investigation team, during the course of the investigation, establishes that any person(s) who meets the criteria for interviewing set out in paragraphs 20, 22 and 24 above, but not present in the area of investigation during the investigation, the interviewing of whom is required to fulfil its mandate, it may indicate such individuals [who are normally resident in the investigation area] to the receiving State Party. The investigation team shall provide the

receiving State Party with the etiological and/or epidemiological information indicating why such interviews are necessary to fulfil its mandate. [As a rule,] the receiving State Party shall [make every reasonable effort to] enable the investigation team to conduct such interview(s) as soon as possible. Such interview(s) shall be conducted in accordance with the provisions contained in paragraphs 20 to 27 above.]

Visual observation

29. The investigation team may observe visually area[(s)] identified in the investigation mandate in order to obtain information relevant to the investigation. All necessary precautions shall be taken to ensure the health and safety of the investigation team. The investigation team shall be accompanied by representatives of the receiving State Party. [Video or photographic equipment shall be used in accordance with the access provisions contained in Article III, section G, subsection G.] [The investigation team may only use video or photographic equipment with the agreement of the receiving State Party.]

30. If direct visual observation is not possible because of national security, commercial proprietary or health and safety considerations, the receiving State Party shall through alternative means provide equivalent information to clarify that the area[(s)] and objects concerned are not relevant and essential to the fulfilment of the investigation mandate by the investigation team.

Disease/intoxination-related examination

31. Appropriately qualified medical members of the investigation team may conduct medical examinations of persons affected or exposed, with their informed written consent or with the informed written consent of their family or legal representatives. The purpose of such examinations shall be to enable the investigation team to make a diagnosis and/or determine whether exposure has occurred.

32. Appropriately qualified members of the investigation team may conduct disease/intoxination-related examinations of animals and/or plants affected or exposed, with relevant explicit consent where possible and appropriate, of the legal owners of the animals and/or plants. The purpose of these examinations shall be to enable the investigation team to make a diagnosis and/or determine whether exposure has occurred.

33. The investigation team may, where necessary and applicable, take body samples from affected persons or animals as well as samples of affected or exposed plants in order to diagnose, confirm a clinical diagnosis of the disease or determine whether exposure has occurred. In the case of persons affected this shall be with the informed written consent or with the informed written consent of the family or legal representative of the person affected. The receiving State Party shall receive duplicate samples for its own analysis.

34. The investigation team may observe, participate in or conduct post mortem examinations where relevant, with the informed written consent by the family or the legal representative of the deceased.

35. The investigation team may when necessary examine laboratory animals, existing samples taken from laboratory animals or take samples from such animals with the consent of the legal owners.

36. All medical information, including samples and other material taken from humans, shall be accorded the most stringent protection measures by the investigation team and all laboratories involved in the investigation.

[37. If the investigation team, during the course of the investigation, establishes that any affected or exposed persons or animals not present in the investigation area, the medical or veterinary examination or taking of body samples of whom is required for the fulfilment of its mandate, it may indicate such persons or animals to the receiving State Party. The receiving State Party shall enable the investigation team to conduct such medical or veterinary examination and/or taking of body samples. Such activities shall be conducted in accordance with the provisions contained in paragraphs 31 to 36 above. The investigation team shall provide the receiving State Party with the etiological and/or epidemiological information which necessitates such activities.]

Sampling and identification

[38. All of the activities provided for in paragraph 39 to 48 shall be conducted in accordance with the access provisions contained in Article III, section G, subsection G.]

39. The investigation team may [with the consent of the receiving State Party], where appropriate and it considers necessary, take environmental samples, samples of munitions and devices or remnants of munitions and devices relevant to the investigation mandate. Any such samples shall be analysed for the presence of specific biological agents or toxins.

40. Samples shall be taken in the presence of a representative of the receiving State Party. The investigation team may request the receiving State Party to assist in the collection of samples under the supervision of members of the investigation team. The investigation team may also request the receiving State Party, where necessary and appropriate, to take relevant control samples from areas immediately adjacent to the locations under investigation. The receiving State Party shall receive duplicate samples for its own analysis.

41. The investigation team may analyse samples using any methods specifically designed or approved for use in such investigations, and available to the investigation team. At the request of the investigation team, the receiving State Party shall, to the extent possible, provide assistance for the analysis of samples, using locally available resources. If the receiving State Party itself performs analyses, the investigation team or some member especially assigned by the team leader shall be present during all analytical processes. All sampling shall be conducted according to procedures and methods so as to ensure that the desired samples taken are not contaminated and taken with due regard to health and safety considerations.

42. Analysis [of one of the sealed duplicate samples referred to in paragraph 40] shall, whenever possible, be carried out on the territory of the receiving State Party and in the presence of representatives of the investigation team and the receiving State Party.
43. When it is not possible to carry out the analysis on the territory of the receiving State Party, the investigation team may remove samples for analysis in designated and certified laboratories. Representatives of the receiving State Party shall have the right to accompany all samples and observe any analysis and the subsequent destruction. Any samples remaining after analyses that have not been destroyed shall be returned to the State Party of origin.
44. The Director-General shall have the primary responsibility for the security, integrity and preservation of samples and for ensuring that the confidentiality of samples transferred for off-site analysis is protected. The Director-General shall, in any case:
- (a) Establish a stringent regime governing the collection, handling, storage, transport and analysis of samples;
 - (b) Select from among the designated and certified laboratories those which shall perform analytical or other functions in relation to the investigation;
 - (c) Ensure that there are procedures for the safekeeping and maintaining of the integrity of sealed duplicate samples for further clarification if necessary;
 - (d) Ensure the expeditious processing of the analysis of samples;
 - (e) Be accountable for the safety of all samples.
45. When off-site analysis is to be performed, samples shall be analysed in two designated and certified laboratories [in different States Parties]. The Technical Secretariat shall ensure the expeditious processing of the analysis.
46. The receiving State Party shall receive duplicate samples for its own analysis. The receiving State Party and the investigation team shall also receive sealed duplicate samples for safekeeping and use if necessary for further clarification.
47. If further clarification of analytical results becomes necessary, then the sealed duplicate samples shall be used for this purpose. The seals of these samples shall be broken in the presence of both the investigation team and representatives of the receiving State Party. The analysis of these samples shall also take place in the presence of the investigation team and representatives of the receiving State Party.
48. Any unused samples or portions thereof, remaining after the investigation has been completed and that have not been destroyed, shall be returned to the receiving State Party.

Collection and examination of background information and data

49. The investigation team may [take the following measures with the prior consent of the receiving State Party and] [, subject to the access provisions contained in Article III, section G, subsection G, and, where necessary and appropriate,] with the assistance of the receiving State Party:

(a) Obtain and examine epidemiological data which it deems relevant to the investigation mandate. Such data may include data on the prevalence of a disease, an epidemic or other disease outbreaks [but excluding natural outbreaks of disease], and any preliminary identification and diagnosis of the event(s) that has given rise to the investigation as well as data on immunization programmes;

(b) Examine all medical, public and occupational health records and data which it deems relevant to the investigation mandate. Access to individual medical records shall be by the informed written consent of the individual concerned, or the family or legal representative where appropriate;

(c) Examine other documentation and records, such as those on veterinary or agricultural matters, which it deems relevant to the investigation mandate.

50. The investigation team may request copies of any documentation or data relevant to the investigation request for inclusion in the final report or to assist in its preparation. The reason for any objection given by the receiving State Party shall be put in writing for inclusion in the investigation report. Documentation and data requested by the investigation team and identified as confidential by the receiving State Party shall be treated in accordance with the confidentiality provisions of this Protocol.

51. Any documents or data collected and subsequently identified [by the receiving State Party] not to be relevant to the investigation mandate, shall be returned to the receiving State Party by the investigation team. Any documentation or data identified by the receiving State Party as in its view not being relevant to the investigation mandate shall be identified as such in the final report.

[Extension of investigation area [of alleged use cases]]⁶⁶

52. Any extension of the investigation area to an area adjacent to the existing investigation area is subject to the agreement of the receiving State Party. [If agreement is not reached in [24] hours, the investigation team leader shall submit the issue to the Executive Council through the Director-General. The Executive Council shall decide [against] [to approve] the extension of the investigation area by [a simple majority] [two-thirds majority] of its members present and voting.]

66. Final agreement on this issue is directly related to agreement on the size of the initial investigation area.

53. The Director-General shall submit to the Executive Council a written request to extend the investigation area which shall include the evidence, including information and scientific and technical analysis, providing a substantive basis for the request. 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 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.

54. 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 inform the Executive Council. [On the basis of that information and/or any other information, any State Party may request, in accordance with Article III, section G, paragraphs 6 to 28, that a separate investigation be conducted on the territory of a State Party identified by the Director-General in the submission to the Executive Council. In the case of a non-State Party, the Director-General shall immediately contact that non-State Party in accordance with the procedure set out in Article III, section G, paragraph 11.]]

[Establishment of new investigation area(s)]

55. If necessary in order to fulfil its mandate, the investigation team may seek the agreement of the receiving State Party to establish investigation area(s) additional to the investigation area 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.]

Extension of investigation duration

56. If the investigation team, at any time during the investigation, finds that the estimated time for the investigation is not adequate, the investigation team may apply to the Director-General for an extension of the investigation duration. The Director-General may extend the duration of the investigation in accordance with paragraph 9 of this section.

(E) POST-INVESTIGATION ACTIVITIES

Preliminary findings and departure

57. The post-investigation activities relating to preliminary findings and departure of the investigation team shall be conducted in accordance with paragraphs 60 to 64 of section I of this annex.

(F) REPORTS

Interim investigation report

58. An interim investigation report shall be made available to the receiving State Party not later than 30 days after completion of the on-site part of the investigation.

59. The interim investigation report shall summarize the factual findings of the investigation. In addition, the report shall include a description of the investigation process, tracing its various stages, with special reference to:

- (a) The activities conducted by the investigation team and its factual findings, particularly with regard to the concern regarding possible non-compliance as expressed in paragraph 1 (c);
- (b) The locations and times of any sampling and on-site analysis;
- (c) Supporting evidence such as the records of interviews, the results of disease/intoxication-related examinations and epidemiological and scientific analyses, and the documents examined by the investigation team;
- (d) Any information that the investigation team in the course of its investigation collected, that might serve to help in the identification of the origin of any biological agent or toxin found during the course of the investigation such as, *inter alia*, chemical composition and the presence of inert materials in the case of possible toxin weapons and serological or molecular sequence evidence in the case of infectious agents;
- (e) The report shall also present such environmental and historical information as is available on the previous presence of the alleged agent in the region;
- (f) An account of the assistance and its timeliness, provided by the host State Party;

(g) The result of any completed laboratory investigations and sampling and identification;

(h) A factual description by the investigation team of the degree and nature of access and cooperation granted by the receiving State Party and the extent to which this enabled the investigation team to fulfil its mandate.

60. The receiving State Party shall have the right to the following, which shall be communicated to the investigation team within [4] [10] [30] [...] days after receipt of the interim report from the investigation team:

(a) Identify any information and data not related to the non-compliance concern(s) contained in the investigation mandate which in its view, due to its confidential nature, should not be contained in the final version of the report. The investigation team shall consider these observations and, as a rule, should remove that information and data as requested;

(b) Comment on the contents of the interim investigation report. The investigation team shall refer to the comments of the receiving State Party in the final version of the report and, wherever possible, incorporate them before submitting the final report to the Director-General.

Laboratory reports

61. Laboratory analysis and identification of biological agents and/or toxins shall be reported by the laboratory by means of the following type[s] of report[s]:

[(a) Initial laboratory report. An initial laboratory report shall be made available to the leader of the investigation team by the laboratory as soon as possible after receipt of the sample(s) and shall indicate initial findings, contain initial diagnoses, if available, or at least a differential diagnosis, give an estimate of the duration of further work as well as a plan for the conduct of further analysis and tests.

(b) Intermediate laboratory report. The laboratory shall make an interim laboratory report to the leader of the investigation team if it has not finalized its work after 30 days since the initial report. It shall contain details of progress of work and a preliminary diagnosis or identification and the final plan for future work.]

(c) Final laboratory report. The laboratory shall make a final report of its findings to the leader of the investigation team as soon as it has finalized its work, but not later than six months after receipt of the sample(s). The final laboratory report shall contain a description of the work done and a complete diagnosis or identification of an agent or agents. If it was not possible to make a positive diagnosis or identification, the report shall state that fact and give an explanation as to why it was not possible to make a final diagnosis or identification.

62. If there is any discrepancy in the laboratory reports, the investigation team shall submit a duplicate sample to another designated and certified laboratory for analysis.

63. The laboratory reports shall be completed as soon as possible but not later than six months after the conclusion of the on-site investigation for inclusion in the draft final report.

Final report

64. A draft final report which shall contain the interim investigation report, the comments of the receiving State Party and the laboratory reports shall be made available to the receiving State Party by the leader of the investigation team not later than 10 days after receipt of the final laboratory report(s). The receiving State Party may provide written comments on the draft final report which shall be communicated to the investigation team leader within [4] [30] days after receipt of the draft final report. Any written comments that the receiving State Party may wish to make concerning the contents and findings of the draft final report, shall be attached as an annex to the final version of the draft report. The draft final report together with its annexes shall become the final report.

65. The final report shall be transmitted to the Director-General not later than [14] days after the completion of the investigation for further handling in accordance with Article III, section G.

III. FACILITY INVESTIGATIONS

(A) INVESTIGATION REQUEST

Information to be submitted with a request for an investigation⁶⁷

1. Requests for facility investigations under paragraph 3 of Article III, section G, 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 alleged non-compliant activity has taken place;
- (b) If the alleged non-compliant activity(ies) 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 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;
- (d) The name, if known, or other form of identification and location(s) of the facility[(ies)] 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;
- (e) The approximate period during which the non-compliant event(s) or activity(ies) is alleged to have taken place;
- (f) Information from and/or the outcome or results of [any] prior consultations/clarifications or other prior investigations relevant to the request.

67. Paragraphs 1 and 2 may in future be placed in Article III, section G.

2. In addition to the information to be supplied with a request pursuant to paragraph 1, 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[(ies)] concerned.

Requested perimeter

3. The requested perimeter identified in paragraph 1 (d) above, shall:

(a) Where possible, run at least [10] metres outside any buildings or other structures;

(b) Not cut through existing security enclosures; and

(c) Where possible, run at least [10] metres outside any existing security enclosures that the requesting State Party wishes to include within the requested perimeter.

4. If the requested perimeter does not conform with the specifications of paragraph 3, it shall be re-drawn by the investigation team in consultation with the receiving State Party to ensure that it conforms with that provision.

(B) PRE-INVESTIGATION ACTIVITIES

Notification of investigation

5. The Director-General shall, not less than ... hours before the planned arrival of the investigation team at the point of entry, notify the receiving State Party, and if applicable the host State Party, of the impending investigation. This notification shall include, *inter alia*:

(a) Name of the receiving State Party;

(b) Name of the host State Party, when applicable;

(c) Name of the requesting State Party;

(d) The name, if known, and location of the facility[(ies)] to be investigated;

(e) The point of entry where the investigation team will arrive as well as the means of arrival;

(f) The date and estimated time of arrival of the investigation team at the point of entry;

(g) If using a non-scheduled aircraft, the standing diplomatic clearance number or the appropriate information required by the receiving State Party to facilitate the arrival and handling of the non-scheduled aircraft;

(h) The names of the leader and of the other members of the investigation team;

[(i) The investigation mandate.]

6. The receiving State Party shall acknowledge receipt of the notification of the impending investigation not later than ... hours after receipt of such a notification.

Investigation mandate

7. The investigation mandate, issued in accordance with ..., shall contain at least the following:

[(a) The decision of the Executive Council on the investigation request;]

(b) The name of the receiving State Party;

(c) The name of the host State Party, when applicable;

(d) The non-compliance concern(s) that gave rise to the investigation request;

(e) The location and requested perimeter of the investigation site specified on a map, taking into account all information on which the request was based;

(f) The names of the leader of and of the other members of the investigation team;

(g) The list of approved equipment to be used during the investigation;

(h) Operational instructions and any other identifiable tasks;

(i) The planned types of activity of the investigation team;

(j) [Specified] objectives to be accomplished by the investigation team;

(k) Point of entry to be used by the investigation team;

(l) The estimated time necessary to conduct the investigation.

Duration of an investigation

8. The period of the investigation shall not exceed 84 consecutive hours, unless extended by agreement with the receiving State Party. The period of investigation shall [commence with the pre-investigation briefing] [be the period from provision of access to the investigation team within the [requested or if different] final perimeter, exclusive of time spent on presentation of the preliminary findings].

Monitoring of perimeter

9. Not later than [12] hours after receiving the notification in accordance with paragraph 5 of this section, the receiving State Party shall begin collecting factual information of all vehicular exit activity from all exit points for all land, air and water vehicles of the perimeter as determined in accordance with paragraphs 3 and 4 of this section. This obligation may be met by collecting factual information in the form of traffic logs, photographs or video recordings.

10. Upon the investigation team's arrival at the alternative [or final] perimeter [whichever occurs first], it shall have the right to begin implementing exit monitoring procedures in order to secure the [alternative or final] perimeter [whichever occurs first]. Such procedures shall include the identification of vehicular exits and the making of traffic logs.

11. The investigation team may inspect, in accordance with the access provisions contained in Article III, section G, subsection G, vehicular traffic exiting the perimeter. The receiving State Party shall make every reasonable effort to demonstrate to the investigation team that any vehicle, subject to inspection, to which the investigation team is not granted full access, is not being used for purposes related to the possible non-compliance concern(s) as stated in the investigation mandate. Personnel and vehicles entering and personnel and personal vehicles exiting shall not be subject to inspection.

12. [With the consent of the receiving State Party,] the investigation team may, under the supervision of a representative(s) from the receiving State Party and/or the facility, take photographs and make video recordings of exit traffic which are deemed relevant to the investigation mandate [by the investigation team]. The photographs and video recordings shall be safeguarded by the investigation team and the receiving State Party, which at the end of the investigation shall take a joint decision about their relevance to the investigation mandate. All photographs and video recordings not relevant to the investigation mandate shall remain with the receiving State Party. Other procedures for exit monitoring shall be agreed upon by the investigation team and the receiving State Party. The investigation team has the right to go, under escort, to any other part of the perimeter to check that there is no other exit activity.

13. All activities for securing the perimeter and exit monitoring shall take place within a band around the outside of the perimeter, not exceeding [45] metres in width, measured outward.

14. The application of the above procedures may continue for the duration of the investigation, but shall be conducted in such a manner as to ensure the least possible hampering or delaying of the normal operation of the facility.

(C) ACTIVITIES UPON ARRIVAL OF INVESTIGATION TEAM

Alternative determination of final perimeter

15. At the point of entry, if the receiving State Party is unable to accept the requested perimeter [because it cannot be translated onto a scale map and/or linked to identifiable physical or topographical features present at the location of the requested perimeter or if it does not conform with the specifications set out in paragraph 3 of this section], it shall propose an alternative perimeter as soon as possible, but in any case not later than [2] [24] hours after the arrival of the investigation team at the point of entry. In case of differences of opinion, the receiving State Party and the investigation team shall engage in negotiations with the aim of reaching agreement on a final perimeter.

16. The alternative perimeter shall be designated as specifically as possible in accordance with paragraph 3. It shall include the whole of the requested perimeter and, as a rule, bear a close relationship to the requested perimeter, taking into account natural terrain features and man-made boundaries. It shall normally run close to the surrounding security barrier if such a barrier exists. The receiving State Party shall seek to establish such a relationship between the perimeters by a combination of at least two of the following means:

- (a) An alternative perimeter that shall not extend to cover an area significantly greater than that of the requested perimeter;
- (b) An alternative perimeter that is, where possible, a short, uniform distance from the requested perimeter;
- (c) At least part of the requested perimeter is visible from the alternative perimeter.

17. If the alternative perimeter is acceptable to the investigation team, it shall become the final perimeter and the investigation team shall be transported from the point of entry to that perimeter in accordance with paragraphs 23 and 24 of this section.

[18. If no agreement is reached within [3] hours after the arrival of the investigation team at the point of entry, the alternative perimeter shall be designated the final perimeter and the investigation team shall be transported from the point of entry to that perimeter in accordance with paragraphs 23 and 24 of this section.]

OR

[19. If a final perimeter is not agreed, the perimeter negotiations shall be concluded as early as possible, but in no case shall they continue for more than [3] [24] hours after the

receiving State Party has proposed the alternative perimeter. If no agreement is reached, the receiving State Party shall transport the investigation team to a location at the alternative perimeter.

20. If the receiving State Party deems it necessary, such transportation may begin before the expiry of the time period specified for the perimeter negotiations in paragraph 19. Transportation shall, in any case, be completed not later than ... hours after the arrival of the investigation team at the point of entry.

21. Once at the facility, the receiving State Party shall provide the investigation team with prompt access to the alternative perimeter to facilitate negotiations and agreement on the final perimeter and access within the final perimeter.

22. If no agreement is reached within ... hours after the arrival of the investigation team at the alternative perimeter, the alternative perimeter shall be designated the final perimeter.]

Transportation from the point of entry

23. The receiving State Party shall transport the investigation team together with its equipment, to the [alternative or final] perimeter [, whichever occurs first,] as soon as possible, but in any case shall ensure their arrival at that location not later than ... hours after the arrival of the investigation team at the point of entry.

24. The host State Party shall as necessary assist in the transportation of the investigation team and its equipment.

Pre-investigation briefing

25. The receiving State Party shall provide a pre-investigation briefing to the investigation team prior to granting it access. The briefing shall include the scope and a general description of the activities of the facility, details of the physical layout and other relevant characteristics of the area within the perimeter, including either a map or sketch, whichever is available, showing all structures and significant geographic features. The investigation team shall also be briefed on the availability of facility personnel and records which may be relevant to the investigation mandate. The briefing shall also include information concerning the safety or other relevant regulations including, where applicable, rules of observation and quarantine, in force at the facility. The briefing may, at the discretion of the receiving State Party, include an orientation tour of the area within the perimeter. The investigation team shall provide information on the vaccination status of the team members at the pre-investigation briefing. The duration of the briefing shall not exceed [3] [...] hours unless agreed to by the investigation team and the receiving State Party.

26. If the case so warrants, the receiving State Party shall have the right to inform the investigation team during the pre-investigation briefing or at any time during the investigation about the areas, facilities or buildings which it considers sensitive or not related to the Convention and therefore subject to the access provisions in Article III, section G, subsection G.

Initial investigation plan

27. After the pre-investigation briefing the investigation team shall prepare [on the basis of information available and appropriate to it] an initial plan for the conduct of the investigation. This plan shall outline the specific activities the investigation team plan to carry out and specific areas within the perimeter, documentation and personnel to which access is desired. Other information such as approximate timings and the sequence of activities may also be included in the plan.

28. The investigation team shall take into account the areas, facilities, buildings or documentation which the receiving State Party considers sensitive or not related to the Convention, in accordance with paragraph 26 above, in the preparation of the investigation plan. The investigation team shall also take into account any measures, in accordance with the provisions contained in Article III, section G, subsection G, indicated by the receiving State Party and may make proposals concerning the implementation of these measures.

29. The investigation team shall indicate in the initial plan the number of personnel responsible for perimeter activities. The investigation team shall also include in its initial plan an indication whether it plans to divide into subgroups. It shall not divide into more than two subgroups unless otherwise agreed by the receiving State Party.

30. The initial plan shall be made available to the receiving State Party prior to the commencement of the investigation. The investigation team shall, as appropriate, modify the plan and consider any comments by the receiving State Party. During the investigation, the investigation team may revise the initial plan as it deems necessary, taking into account any comments by the receiving State Party and information required during the investigation. Any revision of the initial investigation plan shall be made available to the receiving State Party.

[31. The receiving State Party shall have ... hours to review the initial plan and propose changes.]

32. The preparation of the initial investigation plan shall not exceed [2] [...] hours.

(D) CONDUCT OF INVESTIGATION

Implementation by the investigation team of specific on-site activities

33. The investigation team may [, with the appropriate consent by the receiving State Party,] conduct the following activities during the investigation in accordance with the access provisions contained in Article III, section G, subsection G.

Interviewing

34. The investigation team may interview any relevant personnel of the facility [with their explicit consent] in the presence of representatives, which may include a legal advisor and/or a senior member of the facility staff, of the receiving State Party with the purpose of establishing relevant facts. They shall only request information and data which are necessary for the fulfilment of the investigation mandate.

35. The receiving State Party shall have the right to object to questions posed to the facility personnel if it deems that those questions are not relevant to the investigation or impinge on sensitive national security or commercial proprietary data. If the investigation team leader nonetheless continues to believe that these questions are relevant and should be answered, he/she may submit them in writing to the receiving State Party for reply, together with an explanation of their relevance to the investigation. The investigation team may note in its report any refusal by the receiving State Party to permit interviews or to allow questions to be answered and any explanations given.

36. Interviews shall be conducted in such a way as to avoid unduly hindering the work of the facility. The investigation team shall give advance notice of interview requests.

Visual observation

37. The investigation team may visually observe the interior and exterior of those buildings and structures which are relevant to the investigation mandate within the investigated facility.

38. [If direct visual observation is not possible because of national security, commercial proprietary or health and safety considerations, the receiving State Party may use as an alternative a video camera, photographs or drawings] pursuant to the provisions contained in Article III, section G, subsection G.

[Identification and examination of [key] equipment

39. The investigation team may identify and examine only equipment relevant to the investigation mandate at the investigated facility. [In the identification and examination of [key] equipment, the investigation team [shall] [may] make use of [, but not be limited to,] the list of equipment contained in Annex]

[40. The investigation team may also note the size and quantity of equipment in the facility, or the absence of any equipment, and compare this with information provided in facility declarations where appropriate.]]

[Determination of the quantity of biological materials]

41. The investigation team may [consider] [determine] the quantity of [microbial or other] biological [materials] [agents and toxins] located at the facility [which contain listed biological agents and toxins]. [The following shall not be subject to quantitative determination:

- (a) Culture collections;
- (b) Biological materials used in day-to-day work at the facilities.]]

Examination of documentation and records

[42. The investigation team may [, as a last resort,] [request] examine documentation and records available at the facility, relevant to the investigation mandate and [concerning only] [which may include but are not limited to] the supply and consumption of media and the design or operation [and use] of equipment as well as receipt and transfer of biological agents and toxins, when it is required to fulfil their mandate. The receiving State Party may assist the investigation team by providing the relevant documentation and records to the investigation team to discharge its functions in accordance with the investigation mandate.]

43. The receiving State Party may, in accordance with Article III, section G, subsection G, protect documentation and records.

44. The investigation team may request copies of documentation or print-outs of records. The investigation team and the Technical Secretariat shall, if so required by the receiving State Party, treat as confidential such documents and print-outs or records and any other information obtained as a result of access to documentation and records, and shall handle them accordingly. Documents and print-outs may be removed from the facility only with the permission of the receiving State Party.

45. The examination of documentation and records shall be conducted in such a way as to minimize disruption to the normal work of the facility.

46. The receiving State Party [shall] [may] upon request of the investigation team provide information on relevant health, safety or other regulatory procedures or financial regulations, to serve as background information which may assist the investigation team to understand documents and records examined.

[47. If specific issues arise during the investigation, which in the opinion of the investigation team could be resolved by the examination of specific documentation and records not available at the investigated facility, the investigation team may request the receiving State Party to provide access to these specific documents and records for review at the investigated facility in accordance with the provisions of Article III, section G, subsection G.]

[Examination of medical records]

48. The investigation team may, in discharging its mandate, request access to medical and occupational health records and data of the facility or such regulations being applied at the facility. [Any such documentation not available at the facility shall be provided in accordance with paragraph 47 above.] Such access [to this data] shall be at the discretion of the receiving State Party. The receiving State Party shall, however, endeavour to provide the greatest degree of access possible to such data. The receiving State Party may maintain the anonymity of data. Access which may require scrutiny of individual medical records in which the identity of an individual may be revealed, shall be by the informed written consent of the individual. If a request for access to medical and occupational health data is refused, the receiving State Party shall provide a written explanation to the investigation team leader.]

[Examination of clinical and pathological samples]

49. The investigation team may with the permission of the receiving State Party [analyse] [examine] pursuant to paragraph 53 below available clinical and pathological samples relevant to the investigation mandate taken previously by the facility and review analytical data related to these samples in the presence of representatives of the receiving State Party.]

Sampling and identification

50. The investigation team may [, as a last resort,] [, if required to fulfil its mandate,] request samples and test these for the presence of specific biological agents or toxins in order to address a specific non-compliance concern contained in the investigation mandate.

51. Sampling shall only be used when the investigation team comes to a conclusion [based only on information obtained from the briefing and/or the application of the other measures in this section] during the investigation which suggest that sampling might provide significant information necessary for the fulfilment of the investigation mandate. [Where possible,] specific tests shall be used to identify specific agents, strains or genes.

52. The receiving State Party shall have the right to take measures, in accordance with the access provisions contained in Article III, section G, subsection G, to protect national security and confidential proprietary information such as requiring the use of specific tests or on-site analysis or, if necessary, to refuse a sample. In the latter case the receiving State Party shall be under the obligation to make every reasonable effort to demonstrate that the requested sample is unrelated to the non-compliance concern(s) contained in the investigation mandate.

53. Representatives of the receiving State Party shall take samples at the request of the investigation team and in their presence. If so agreed, the investigation team may take samples itself. Where possible, samples shall be analysed on site. The investigation team may test samples using any methods approved by the Technical Secretariat for use in such investigations. At the request of the investigation team, the receiving State Party shall to the extent possible provide assistance for the analysis of samples on site, using locally available resources. In the event that it is agreed between the investigation team and the receiving State

Party, that the receiving State Party itself performs analyses, this shall be done in the presence of members of the investigation team.

54. If on-site analysis is impossible, the investigation team may request the removal of samples for analysis in laboratories selected in accordance with paragraph 55 (b) below. Where possible a sample [shall] [may also] be analysed in an accredited and certified laboratory on the territory of the receiving State Party. The receiving State Party shall have the right to take measures necessary to ensure that commercial proprietary or national security information would not be jeopardised by the off-site analysis of samples. If the removal of samples is agreed, the receiving State Party shall have the right to accompany the sample and observe any analysis and its subsequent destruction.

55. The Director-General shall have the primary responsibility for the security, integrity and preservation of samples and for ensuring that the confidentiality of samples transferred for off-site analysis is protected. The Director-General shall, in any case:

(a) Establish a stringent regime governing the collection, handling, storage, transport and analysis of samples;

(b) Select from among the designated and certified laboratories those which shall perform the analytical functions in relation to the investigation;

(c) Ensure that there are procedures for the safekeeping and maintaining of the integrity of sealed duplicate samples for further clarification if necessary.

56. When off-site analysis is to be performed, samples shall be analysed in [a] [at least two] designated and certified laborator[y][ies]. The Technical Secretariat shall ensure the expeditious processing of the analysis. The samples shall be accounted for by the Technical Secretariat.

57. The receiving State Party shall receive duplicate samples, for its own analysis. The receiving State Party and the investigation team shall also receive sealed duplicate samples for safekeeping and use if necessary for further clarification.

58. If further clarification of analytical results becomes necessary then the sealed duplicate samples shall be used for this purpose. The seals of these samples shall be broken in the presence of both the investigation team and representatives of the receiving State Party. The analysis of these samples shall also take place in the presence of the investigation team and representatives of the receiving State Party.

59. Any unused samples or portions thereof, remaining after the investigation has been completed and that have not been destroyed shall be returned to the receiving State Party.

60. The receiving State Party shall have the right to offer a sample for analysis in accordance with the provisions in paragraphs 51 to 59 above, at any time in order to help resolve the non-compliance concern(s) contained in the investigation mandate.

61. Any on-site sampling and analysis shall be conducted in such a way as to avoid any adverse impact on the normal work of the facility and any consequent loss of production.

(E) POST-INVESTIGATION ACTIVITIES

Preliminary findings and departure

62. The post-investigation activities relating to preliminary findings and departure of the investigation team shall be conducted in accordance with paragraphs 60 to 64 of section I of this annex.

(F) REPORTS

Interim investigation report

63. An interim investigation report shall be made available to the receiving State Party not later than 14 days after completion of the on-site part of the investigation. The interim investigation report shall summarize the factual findings of the investigation. In addition, the report shall include a description of the investigation process, tracing its various stages, with special reference to:

(a) The activities conducted by the investigation team and its factual findings, particularly with regard to the concern regarding possible non-compliance as expressed in paragraph 1 (c);

(b) The positions and times of any sampling and on-site analysis;

(c) Supporting evidence such as records of perimeter monitoring activities, and the records of on-site activities conducted by the investigation team;

(d) Any information that the investigation team in the course of its investigation collected, that might serve to help in the identification of any biological agent or toxin found during the course of the investigation such as, *inter alia*, chemical composition and the presence of inert materials in the case of possible toxin weapons and serological or molecular sequence evidence in the case of infectious agents;

(e) The results of any completed laboratory investigations and sampling and identification;

(f) A factual description by the investigation team of the degree and nature of access and cooperation granted by the receiving State Party and the extent to which this enabled the investigation team to fulfil its mandate;

(g) An account of the assistance and its timeliness, provided by the host State Party, if applicable.

64. The receiving State Party shall have the right to the following, which shall be communicated to the investigation team within [4] [10] [30] days after receipt of the interim report from the investigation team:

(a) Identify any information and data not related to the non-compliance concern(s) contained in the investigation mandate which in its view, due to its confidential nature, should not be contained in the final version of the report. The investigation team shall consider these observations and, as a rule, should remove that information and data as requested;

(b) Comment on the contents of the interim report. The investigation team shall refer to the comments of the receiving State Party in the final version of the report and, wherever possible, incorporate them before submitting the final report to the Director-General.

Laboratory reports

65. Laboratory analysis and identification of biological agents and/or toxins shall be reported by the laboratory by means of the following types of reports:

(a) Initial laboratory report. An initial laboratory report shall be made available to the leader of the investigation team by the laboratory as soon as possible after receipt of the sample(s) and shall indicate initial findings, containing initial identification, if available, give an estimate of the duration of further work as well as a plan for the conduct of further analysis and tests.

(b) Intermediate laboratory report. The laboratory shall make an interim laboratory report to the leader of the investigation team if it has not finalized its work after 30 days since the initial report. It shall contain details of progress of work and a preliminary diagnosis or identification and the final plan for future work.

(c) Final laboratory report. The laboratory shall make a final report of its findings to the leader of the investigation team as soon as it has finalized its work, but not later than six months after receipt of the sample(s). The final laboratory report shall contain a description of the work done and an identification of an agent or agents. If it was not possible to make a positive identification, the report shall state that fact and give an explanation as to why it was not possible to make a positive identification.

66. If there is any discrepancy in the laboratory reports, the investigation team shall submit a duplicate sample to another designated and certified laboratory for analysis.

67. The laboratory reports shall be completed as soon as possible but not later than six months after the conclusion of the on-site investigation for inclusion in the draft final report.

Final report

68. A draft final report which shall contain the interim investigation report, the comments of the receiving State Party and the laboratory reports shall be made available to the receiving State Party by the leader of the investigation team not later than 10 days after receipt of the final laboratory report(s). The receiving State Party may provide written comments on the draft final report which shall be communicated to the investigation team leader within [4] [30] days after receipt of the draft final report. Any written comments that the receiving State Party may wish to make concerning the contents and findings of the draft final report, shall be attached as an annex to the final version of the draft report. The draft final report together with its annexes shall become the final report.

69. The final report shall be transmitted to the Director-General not later than 14 days after receipt of written comments from the receiving State Party for further handling in accordance with Article III, section G.

[IV. [INVESTIGATIONS WHERE THERE IS A CONCERN THAT A TRANSFER
HAS TAKEN PLACE IN VIOLATION OF ARTICLE III OF THE CONVENTION]

- (A) INVESTIGATION REQUEST
- (B) PRE-INVESTIGATION [ACTIVITIES] [PROCEDURES]
- (C) CONDUCT OF INVESTIGATION
- (D) POST-INVESTIGATION [ACTIVITIES] [PROCEDURES]

[V. INVESTIGATIONS OF NATURAL AND UNUSUAL OUTBREAKS OF DISEASE

1. In pursuance of paragraph 8, Article III, section G, an unusual outbreak of disease may be defined as an outbreak which is unexpected within the prevailing and known context for the host agent and environment parameters. For the purposes of this Protocol, an unusual outbreak of disease may have one or more of the following reasons:

(a) That the disease is being reported for the first time in the region and was never known to be endemic;

(b) That the epidemic has occurred outside its normal anticipated season;

(c) That the reservoir host and/or insect vector of the disease do not occur in or were previously eradicated from the affected region;

(d) That the disease appears to be transmitted by an uncommon or unusual route;

(e) That the epidemiological features of the disease suggest increased virulence of the organism manifested in the form of increased case fatality rate;

(f) That the causative agent has higher survival time even in the adverse environmental conditions and shows unusual resistance;

(g) That the causative agent is capable of establishing new natural reservoirs to facilitate continuous transmission;

(h) That the disease occurred in a population with a high level of immunity due to vaccination suggesting that the causative agent has modified;

(i) That the disease is caused by an agent with an unusual population subset or in an unexpected age group;

(j) That the epidemiology of the disease suggests an abnormal reduction in the incubation period of the disease;

(k) That the epidemiology of the outbreak strongly points to environment of a biological agent, but isolation and identification of the suspected agent is not possible by established means;

(l) That the characteristics of the causative agent differ from the known characteristics of that agent prevalent in the territory of the State Party.

2. An outbreak of disease which appears to be unusual may be investigated by the affected State Party to accomplish the following:

- (a) Collection of relevant data regarding all aspects of the disease;
- (b) Identification of the causative agent;
- (c) Characterization of the causative agent by using molecular techniques such as PCR and DNA sequencing;
- (d) Identification of the unusual features of the disease including documentation of the outbreak emphasizing on the atypical features;
- (e) Assessment of the extent and severity of the outbreak, including the epidemic curve and monitoring of the trends.]