The provisions in BTWC Article VII

History and evolution

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The Operationalisation of Article VII of the Biological Weapons Convention

BTWC Working Group side event

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Article VII

Each State Party to this Convention undertakes to provide or support assistance, in accordance with the United Nations Charter, to any Party to the Convention which so requests, if the Security Council decides that such Party has been exposed to danger as a result of violation of the Convention.

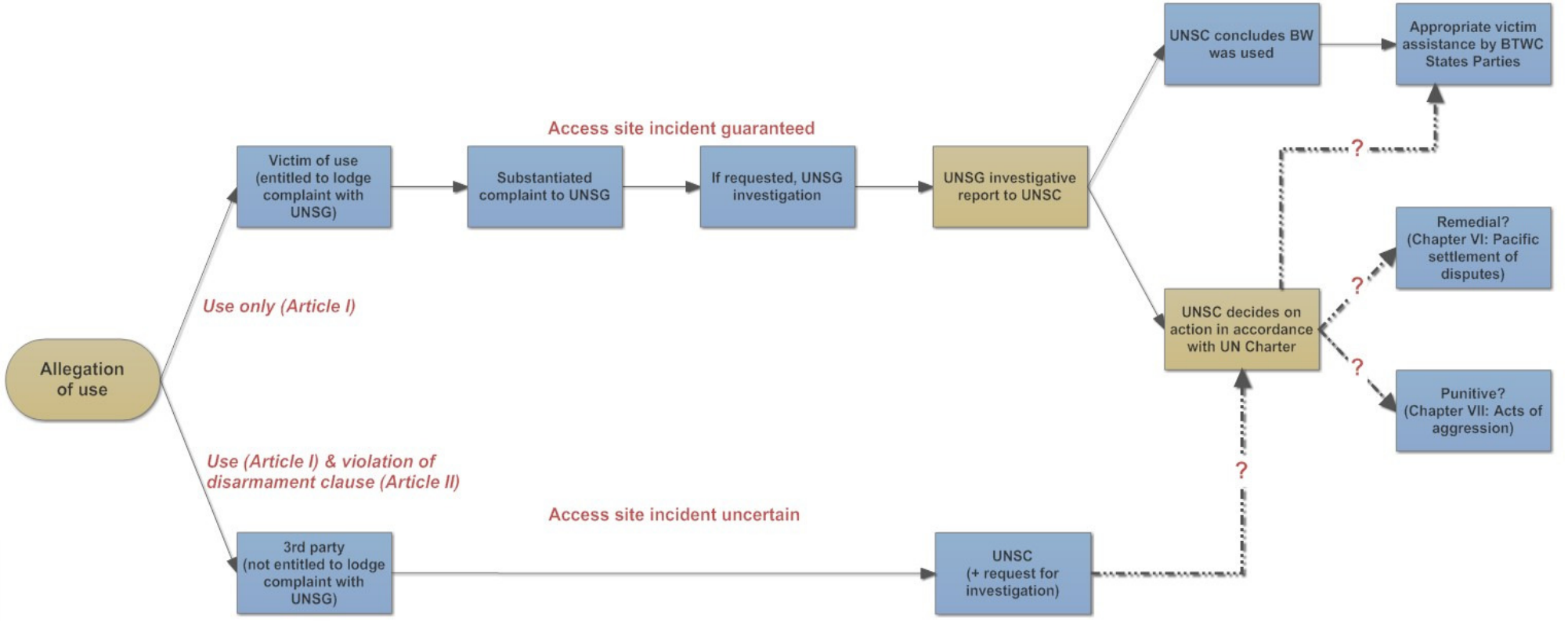
Key negotiation moments regarding Article VII

- **6 August 1968:** UK submits working paper outlining a BW-only convention
- **10 July 1969:** UK submits draft convention + UNSC resolution
- **26 August 1969:** UK introduces revised draft convention + UNSC resolution
- **18 August 1970:** UK introduces 2nd revision
- **30 March 1971:** Socialist countries circulate draft BTWC
- **5 August 1971:** Socialist countries submit revised draft BTWC; USA submits identical, but separate draft convention
- **August – September 1971:** Negotiation of final document; insertion of elements from UK draft treaty into Socialist proposal

Core ambitions in original UK proposal

- **Prohibition**
  - BW **use** (draft Article I)
  - BW development, acquisition, possession (draft Article II)
- **Investigation (draft Article III)**
  - Victim of BW use: complaint + evidence to **UNSG**, who investigates and reports to UNSC (Article III, 1)
  - 3rd party complaint: complaint + evidence to **UNSC** (Article III, 2)
  - Allegation of violation of draft Article II: complaint + evidence to UNSC (Article III, 2)
- **Assistance (draft Article IV)**
  - Victim of BW use: confirmation of alleged use by UNSC, other States Parties provide or support 'appropriate assistance'
  - UK view: 'appropriate assistance' = humanitarian
- **Draft UNSC Resolution**
  - UNSC takes upon itself to act following a complaint
  - Specific and independent role for UNSG in case a victim lodges a complaint
  - UNSC **to develop investigative procedures in advance**

Mechanism envisaged in original UK draft BTWC



Core characteristics of original UK proposal

- **Assistance is strictly humanitarian**
  - Consistent with UN Charter
  - Assistance is humanitarian and moral responsibility of ***individual*** states under UN Charter
- **Strict separation of victim assistance from confronting aggressor**
  - Hence draft UNSC Resolution to set up specific modalities
  - Separate UNSC decision processes envisaged to 'authorise' humanitarian assistance → assistance should not be contingent on political considerations
  - Different procedure for 3rd-party complaints → directly to UNSC
    - Motive: low likelihood of access to site of incident; different UNSC action required
- **Prevention of UNSC veto**
  - UNSC only confirms validity of complaint (no other action)
  - BTWC States Parties then provide or support humanitarian assistance
- **Draft Articles III (investigation) and IV (assistance) seen as '*deterrent*'**
  - Functional substitutes for lack of verification (viewed as impossible)

Revised draft UNSC resolution

- **26 August 1969: revised UK draft convention, incl. new preambular paragraph in draft UNSC resolution:**

  REAFFIRMING in particular the inherent right, recognised under **Article 51** of the Charter, of individual and collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

- **Impact:**
  - Loss of strict separation between victim assistance & confronting aggressor
  - 'Assistance' could now mean many **different things** besides 'humanitarian'
    - Made clear in several statements after introduction of Socialist (& US) draft treaties

Critical negotiation stages

- **UK proposals**
  - Primary focus on **BW use** (Laws of war)
  - Disarmament elements (ban on development, acquisition and possession)
  - Investigation of alleged use and other treaty violations
  - Assistance provision
  - Accompanying text for **UNSC resolution** on UNSG investigation and UNSC action in case of allegation of use
- **Socialist (and US) proposals**
  - Primary focus on disarmament
  - **No direct reference to BW use** (except in preambular paragraphs and reference to 1925 Geneva Protocol)
    - Disarmament precludes BW use
  - No assistance provision
  - Consultative process (future BTWC Article V)
  - Complaints procedure for treaty violations involving UNSC (future BTWC Article VI)
  - UNSC only to '***consider***' a complaint: any action requires **separate decision** (→ veto risk)
- **Integration of UK and Socialist proposals**
  - Primary focus on disarmament
  - **No direct reference to BW use**
  - Reintroduction of UK assistance provision as BTWC Article VII (but now in a disarmament framework) → ***loss of purpose***?
  - No accompanying draft UNSC resolution to outline role of UN bodies → ***loss of process***?

The starting point: Interpreting Article VII – 1

- **Assistance**
  - Generally understood to mean humanitarian aid
  - However, explicit reservations by Austria and Switzerland to Article VII in view of their status of permanent neutrality
    - How explicit was the reference to humanitarian aid in 1971?
      - UK viewed in its original treaty proposal (1969) that international, non-military assistance would deter BW use
      - Morocco, when proposing to reintroduce the provision in the draft treaty in August 1971, explicitly referred to the humanitarian dimension
    - Have Austria and Switzerland revisited their reservations in view of recent Article VII deliberations?
- **UN Charter**
  - Includes Chapter VI (remedial: Pacific settlement) and Chapter VII (punitive, and contains Article 51)
  - First UK treaty outlines (1968 and 1969) foresaw
    - Original draft Article I explicitly forbade BW use (disappeared in later versions of the draft treaty and final document adopted in September 1971)
    - Specific role for the UNSG in investigation of alleged BW use
    - A resolution to be adopted by UNSC committing the body to decide on assistance without veto use
  - US feared weakening of Article 51 in context of NATO commitments, eventually leading to UK retracting parts of its proposal

The starting point: Interpreting Article VII – 2

- **If the Security Council decides**
  - Original UK proposal included adoption of UNSC resolution with commitment to act and without veto option after BTWC EIF
  - Today:
    - What happens if there is no decision?
    - Situation of armed conflict ⇒ the assistance request may become highly politicised

- **Violation of the Convention**
  - Any provision of the BTWC, or is reference to ***BW use*** implicit?
    - Does 'BW use' include exposure to non-human pathogens?
  - Does Article VII only cover acts by States Parties?
    - Quid non-Parties; Terrorists?

Additional agreements before 9th RevCon

- **Assistance**
  - Can be promptly provided by States Parties, pending UNSC decision (3rd RevCon, 1991)
  - Interpretation 4th RevCon (1996): prohibition in Article I covers ***BW use***
  - 6th & 7th RevCon (2006 & 2011):
    - Again, explicit reference to ***BW use***
    - Reference to ***'anyone other than a State Party'*** (thus includes terrorists)
  - UN and specialised organisations can play role in assistance (3rd RevCon, 1991)
- **Specification of nature of assistance (humanitarian)**
  - 7th RevCon (2011): expertise, information, protection, detection, decontamination, prophylactic and medical and other equipment
- **National preparedness contributes to international response capacity**
  - 6th RevCon (2006): response, investigation and mitigation of disease outbreaks, including alleged BW use
- **Emphasis on the responsibility and role of *individual* State Party**
  - For providing assistance
  - For coordination with international organisations
  - Own preparedness to meet health threats

Possible deliberate origin: *Triggering Article VII*

Options under consideration

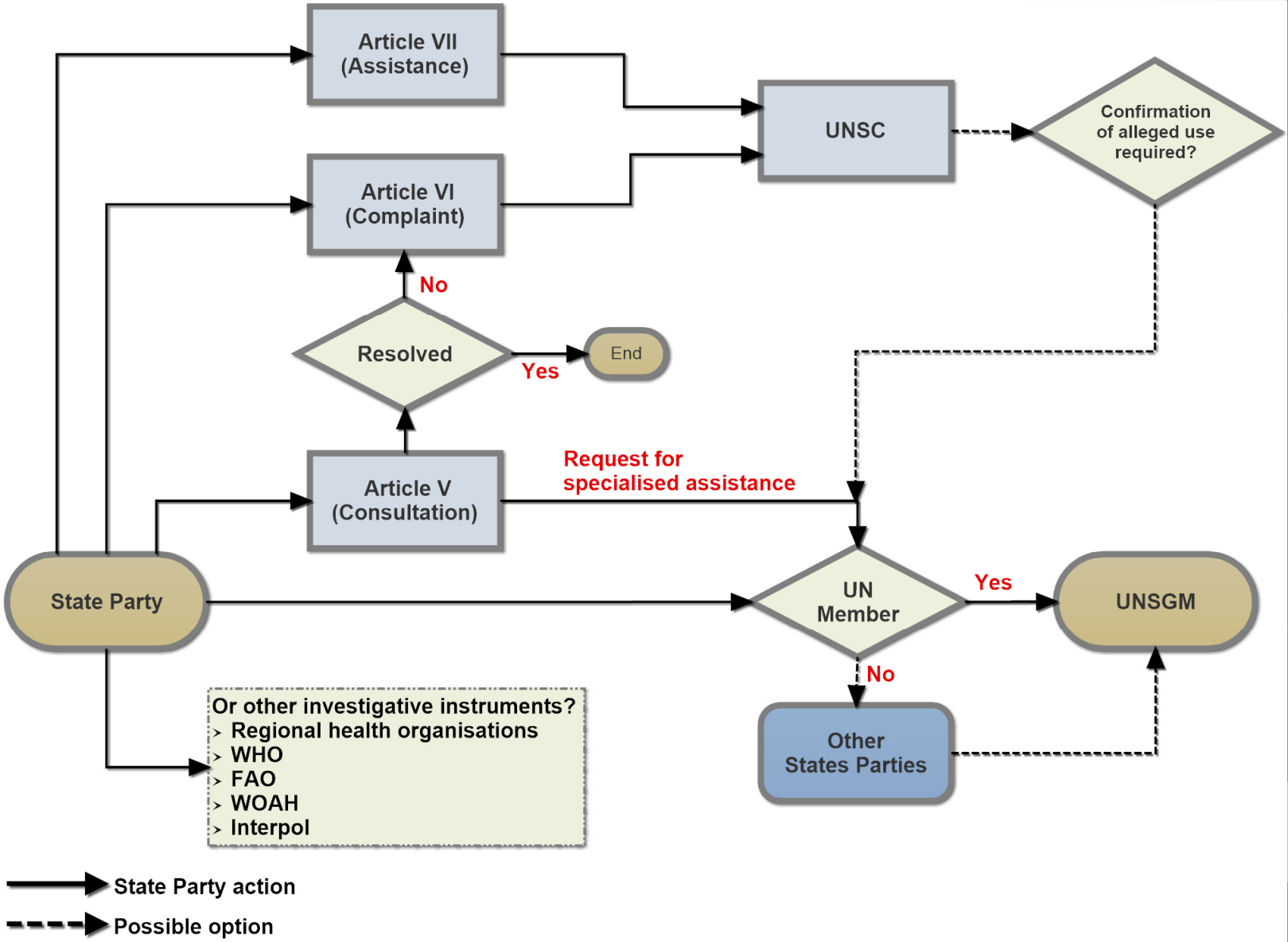
- Request to UNSC (RSA)
  - Possibly via UNSG (RF)
  - Concurrent notification of other States Parties (CA, RF)
- Prompt consideration of request once made (3, 4, 6, 7RC)
- Timely emergency assistance by SPs pending decision UNSC (*idem* + 8RC)
- Responsibility for response + coordination lies with SPs (7, 8RC)
- Type of evidence to accompany assistance request (RSA)
- Investigation of alleged BW use
  - Need for SPs to have own disease surveillance and detection capacities for identifying and confirming the cause of outbreaks independently or jointly with other SPs (7, 8RC)
  - Possible application of UNSG investigative mechanism (DE, USA)

Gaps

- None of the proposals or ideas so far reflected in RC documents
- Speculation as to what the UNSC might decide following a request
- How does this SP responsibility (and obligation to act under Article VII) correlate with proposals for coordinated response under UN? Is this an early-phase obligation?
- How / who to obtain? What evidentiary value? Sufficient or beyond any doubt?
- No SP consensus on linkage BTWC–UNSG investigative mechanism.
  - Could be triggered outside of Article VII
  - UNSC member could request UNSG investigation after receipt of Article VII request

Alleged use:

Options available to state parties



Coordinated emergency assistance

Options under consideration

- Identification of roles of IOs (WHO, FAO, WOAH, IPPC) (3, 4, 6, 7, 8RC)
- UN *could* coordinate assistance provision and delivery (8RC)
  - Establishment international coordinating body (similar to UNMEER during Ebola crisis) (UK)

Gaps

- Once the UNSC has decided, *no further role for the BTWC community* is identified or discussed in BTWC documents
  - UN and/or relevant IOs will lead operations
  - Individual states will provide emergency assistance to and/or in coordination with those IOs
- In most major scenarios, IOs will already be in the field before determination of possible deliberate release
  - Relationship IOs and BTWC SP contributions unclear
  - Risk of adding additional layer of decision-making

Conclusion: Some key considerations

- **Triggering Article VII will be politically highly sensitive**
  - Presumption of a major violation of the BTWC
    - May escalate the conflict and thus interfere with ongoing international response
  - Geopolitical interests may interfere at each stage of the process
  - Article VII may therefore not be the initially preferred route
    - Lack of clear procedures and requirements is currently an additional barrier
- **Article VII is but one route available to a BTWC State Party**
  - A UN Member may go directly to the UNSC
  - A BWC State Party may call for consultations (Article V)
  - A BWC State Party may lodge a formal complaint (Article VI)
    - Immediately
    - After failure to resolve the matter via consultation (Article V)
  - A BWC State Party may seek assistance outside the BWC framework
- **Evidence to be supplied in support of Article VII action?**
- **Time frames for decision-making?**

Negotiation history of Article VII



The Meaning of
'Emergency Assistance'

Origins and negotiation of Article VII of the Biological and Toxin Weapons Convention

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Working paper

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