

**Meeting of the States Parties to the Convention  
on the Prohibition of the Development,  
Production and Stockpiling of Bacteriological  
(Biological) and Toxin Weapons and on Their  
Destruction**

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**Geneva, 1-5 December 2014**

Item 10 of the provisional agenda

**Biennial item: How to strengthen implementation of Article VII,  
including consideration of detailed procedures and mechanisms  
for the provision of assistance and cooperation by States Parties**

**International organizations that may be involved in the  
provision of and coordination of assistance relevant to  
Article VII**

**Submitted by the Implementation Support Unit**

*Note by the Secretariat*

This document should be considered as a second addendum to the document with the same title issued for the Meeting of Experts under symbol BWC/MSP/2014/MX/INF.1 and therefore be read in conjunction with it.

**The United Nations Office for Disarmament Affairs (UNODA)<sup>1</sup>**

1. The implicit link between Article VII and the Secretary-General's mechanism (SGM) derives from the understanding that assistance shall be provided under Article VII when the Security Council decides that a violation of the Convention has occurred, which may be in the form of alleged use of biological or toxin weapons. In that event, certain practical aspects of the SGM may be made of use, namely the guidelines and procedures.
2. UNODA is the focal point within the United Nations Secretariat to facilitate the administrative and substantive support to and co-ordination for the smooth functioning of the investigative mechanism, including the conduct of on-site investigations.

<sup>1</sup> Information provided by the United Nations Office for Disarmament Affairs.

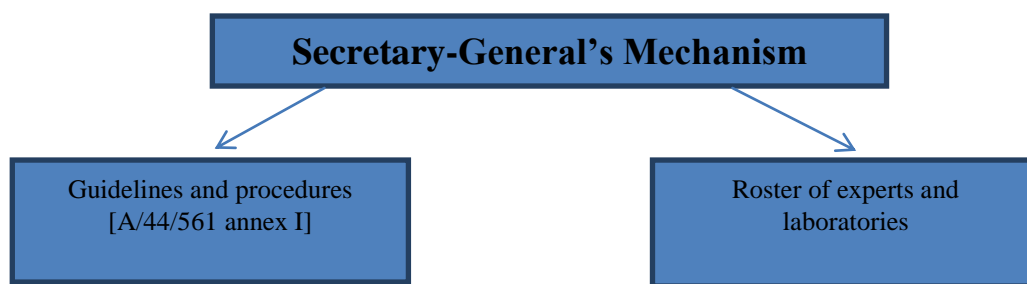


### General overview of the Secretary-General's mechanism

3 Through adoption of General Assembly resolution 42/37 C, the Secretary-General was granted the authority to investigate alleged uses of chemical, biological or toxin weapons. The mandate of the SGM was reaffirmed one year later by the United Nations Security Council through adoption of its resolution 620 (1988) and permits the Secretary-General:

“to carry out investigations in response to reports that may be brought to his attention by any Member State concerning the possible use of chemical and bacteriological (biological) or toxin weapons that may constitute a violation of the Geneva Protocol or other relevant rules of customary international law in order to ascertain the facts of the matter and to report promptly the results of any such investigations to all Member States.”

4. The SGM does not imply the creation of a permanent body. Rather, the mechanism is designed so that required expertise and capabilities are identified by Member States and thus included in a roster that is updated and maintained by UNODA. Expert consultants, qualified experts and designated analytical laboratories are nominated by Member States and are thus available to the Secretary-General in the event an investigation is launched.



5. Investigations carried out under the mandate of the SGM are to be conducted in accordance with the guidelines and procedures (contained in A/44/561, annex I) that were endorsed by the General Assembly in 1990. The technical appendices to the guidelines and procedures were updated in 2007, in particular taking into account developments in the biological area.<sup>2</sup>

6. Unlike the Chemical Weapons Convention (CWC), the BWC has no equivalent investigating body of alleged use. It is therefore particularly important to ensure that the SGM is operational in the biological area. UNODA has cooperative relations and agreements with relevant international organizations such as the World Health Organization (WHO) and the World Organisation for Animal Health (OIE) in support of the SGM.<sup>3</sup>

7. The Organisation for the Prohibition of Chemical Weapons (OPCW), which implements the Chemical Weapons Convention, is authorized by the Convention to conduct investigations in cases of an alleged use of chemical weapons. However, in accordance with the Convention, in the case of an alleged use involving a State not Party to the Convention and/or in territory not controlled by a State Party, the OPCW shall closely cooperate with the United Nations Secretary-General and, if so requested, shall place its resources at the

<sup>2</sup> [http://www.un.org/disarmament/WMD/Secretary-General\\_Mechanism/appendices/](http://www.un.org/disarmament/WMD/Secretary-General_Mechanism/appendices/)

<sup>3</sup> The Memorandum of Understanding between the United Nations and the World Health Organization concerning WHO's support to the SGM includes forms of cooperation, *inter alia*, seconding WHO staff to an investigation, sharing information, facilitating planning and logistic support and providing equipment (MOU, Article I, 1.1a)b)c)i)ii)).

disposal of the Secretary-General. In September 2012, the United Nations and the OPCW concluded an agreement that set out the modalities of cooperation between the two organizations for conducting an investigation in such circumstances.

8. Ongoing training for qualified experts that have been nominated by Member States to the SGM Roster is an important requirement for ensuring proper functioning of the SGM. Member States have been central in facilitating and hosting such specialized training courses. These trainings have been conducted using extrabudgetary funding generously provided by Member States. The first training course was held from May to June 2009 hosted by the Government of Sweden offering a comprehensive training for the practical preparation for and conduct of on-site fact-finding activities. Additional trainings and exercises were subsequently hosted by the Governments of France, Denmark, Sweden, Germany and the United Kingdom of Great Britain and Northern Ireland. Continuous training is vital to enhance the effectiveness of the SGM. A series of training courses, at regular intervals, are expected to take place over the next several years with a view to creating a cadre of experts who are trained to function as a command and control element for a future investigation.

#### **Endorsement of the SGM as an investigative mechanism by the BWC States Parties**

9. At the Sixth and Seventh Review Conferences of the BWC, States Parties recognized the SGM as an institutional investigation mechanism:

“The Conference notes that the Secretary-General’s investigation mechanism, set out in A/44/561 and endorsed by the General Assembly in its resolution 45/57, represents an international institutional mechanism for investigating cases of alleged use of biological or toxin weapons. The Conference notes national initiatives to provide relevant training to experts that could support the Secretary-General’s investigative mechanism.”<sup>4</sup>

#### **Applicability of the Secretary-General’s mechanism in a BWC-activated investigation under Article VII**

10. Under Article VII of the BWC, it is assumed that the provision of assistance and support to an affected State Party would occur when the Security Council decides that such Party has been exposed to danger as a result of violation of the Convention. The Security Council may also request an investigation in this regard. The investigation may be conducted using the guidelines and procedures of the SGM as per the endorsement of said guidelines through the Security Council resolution 620 (1988) if the violation takes the form of an alleged use.

#### **Provision of aid under the Secretary-General’s mechanism**

11. According to the SGM guidelines, the team of qualified experts performing the investigation submits its findings to the Secretary-General, which are then reported to all United Nations Member States. In addition, the guidelines note that, as soon as possible, the team is to provide an estimate on possible victims of the alleged use and types of injuries with a view to the provision of aid to the affected State or States by the international community, “or so that he [the Secretary-General] may take other steps, in consultation with all Member States involved and consistent with his mandate, which might help to prevent further loss of life and suffering caused by the use of such weapons”<sup>5</sup>

<sup>4</sup> BWC/CONF.VII/7, para. 46.

<sup>5</sup> *Ibid*, para. 72.

**Other applications of the Secretary-General's mechanism in the BWC context**

12. If a State Party to the BWC lodges a complaint with the Security Council under Article VI of the BWC to the effect that another State Party acted in breach of obligations deriving from the provisions of the Convention, the Security Council may deem it necessary to launch an investigation. As such, the Security Council may utilize the technical guidelines and procedures contained in annex I of A/44/561 in carrying out such an investigation as the SGM was endorsed through adoption of the Security Council resolution 620 (1988) when the Secretary-General received the task to investigate from the Security Council. Pursuant to General Assembly resolution 42/37 C, the activation of the SGM requires a Member State to request an investigation. Therefore, a BWC State Party may also bring the claim of alleged use directly to the Secretary-General requesting an investigation under the mandate of the SGM.

**Activation and application of the Secretary-General's mechanism in accordance with A/44/561, annex I<sup>6</sup>***Decision to investigate and the investigation team*

13. The guidelines and procedures contained in A/44/561, annex I state that upon receipt of a request for an investigation of an allegation from a Member State, the Secretary-General can request clarification regarding allegations, which should be provided within 24 to 36 hours of the request. Furthermore, paragraph 32 (b) of the guidelines stipulates that, "The decision to conduct an investigation at the site of the incident should be taken as rapidly as possible, no later than 24 hours after the receipt of the report, if possible." A team of qualified experts should be dispatched to the site of the alleged incident "as quickly as possible no later than 48 hours after the decision has been taken to carry out such an investigation, if possible."<sup>7</sup> Member States may propose to the Secretary-General, on his request, an expert consultant or consultants in order to "advise and assist him in a consultative capacity [...] for the successful preparation of and conduct of an investigation."<sup>8</sup>

14. The Secretary-General selects a team of qualified experts for a specific investigation, the constitution of which may be "augmented or modified as required by the availability of the qualified experts and by the circumstances surrounding the investigation."<sup>9</sup> The experts are appointed directly by the Secretary-General for participation in the investigation.

*Cooperation with receiving State and international organizations*

15. A State receiving an investigation is required to cooperate under the SGM including through securing and preserving the site of the allegation and any physical samples.<sup>10</sup> Other modes of cooperation include identifying and arranging access to witnesses, providing information, security and transportation, granting access to necessary equipment, allowing the interviewing of individuals, and providing translation and interpretation, if possible and when not otherwise available.

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<sup>6</sup> For the full description of the Mechanism, see A/44/561, annex I.

<sup>7</sup> *Ibid*, para. 32 (c).

<sup>8</sup> *Ibid*, para. 34.

<sup>9</sup> *Ibid*, para. 92 (a).

<sup>10</sup> *Ibid*, paras. 43 to 46; 49 to 52; 68 and 90 (i), (ii), (v).

16. A State receiving an investigation can also attach an observer to the team so long as such observance does not delay or disrupt the investigation.<sup>11</sup> Likewise, the receiving State may also request duplicates of samples provided this does not interfere with the experts' ability to complete a "thorough and objective investigation."<sup>12</sup>

17. The guidelines contained in A/44/561, annex I also note that cooperation with international organizations should be arranged by the Secretary-General in order to obtain: "information on the status of health and sanitation of populations existing in the area of the investigations" and "appropriate assistance and cooperation of their representatives in the Member States where the team of qualified experts may be sent [...] to investigate the alleged use of CBT [chemical, biological or toxin] weapons."<sup>13</sup>

### **Conclusion**

18. The Secretary-General's capacity to investigate alleged use of biological or toxin weapons is a means to strengthen international norms against the use of such weapons. It is the only existing international instrument for investigation of alleged use of biological weapons in an independent and impartial manner.

## **International Federation of Red Cross and Red Crescent Societies (IFRC)<sup>14</sup>**

### **Introduction**

19. In article VII of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (BWC), States Parties commit to provide each other with assistance in the event that they have been "exposed to danger" as a result of a violation of the Convention. While this assistance might take a number of forms, it could include support with decontamination, clean-up and mass care for affected persons.

20. These types of assistance are not substantially different from those commonly offered in response to many other types of disasters, both natural and man-made. In light of this, the International Federation of Red Cross and Red Crescent Societies (IFRC) has been asked to provide the following background information on the issue of "international disaster response law" (IDRL) (in other words, the regulatory framework for cross-border disaster assistance), although its work in this area has not specifically addressed the impact of weapons.

### **Findings on common regulatory issues in international disaster response**

21. In the 2003, the 28<sup>th</sup> International Conference of the Red Cross and Red Crescent (comprising the component of the International Red Cross and Red Crescent Movement and the States Parties to the Geneva Conventions) called on the IFRC to study the normative framework for international disaster assistance and to develop any "tools, guidelines or models" that might be needed to improve it.

22. In 2007, the IFRC published a desk study<sup>15</sup> on the regulation of international disaster response, compiling the results of six years of research, including over two dozen

<sup>11</sup> *Ibid*, para. 48.

<sup>12</sup> *Ibid*, para. 56.

<sup>13</sup> *Ibid*, para. 88 (b) (ii) and (iii).

<sup>14</sup> Information provided by IFRC.

operational case studies, a global survey and a series of regional and global consultations. The study found a **series of common regulatory problems** in international disaster operations, including bureaucratic bottlenecks in the deployment of international personnel, goods, equipment and transport, as well as also gaps in oversight that allowed for problems in the quality, appropriateness and coordination of international efforts.

23. Common bottlenecks include delays in **customs clearance** (particularly for medications, food, specialized equipment - such as telecommunications- and vehicles) and the granting of duty and tax relief. Relief personnel sometimes face delays obtaining **visas**, and even when visas are initially waived (or tourist visas substituted), problems arise if the relief workers are still occupied when the brief validity period of such alternatives has passed. Issues have also commonly arisen concerning the recognition of **foreign qualifications** of foreign professionals (particularly medical personnel), **registration** of foreign organizations and liability concerns. On the other hand, quality problems have including personnel **lacking core competence**, relief items that were **not really needed**, and organizations (as well as governments) that **failed to adequately coordinate** and communicate with the relevant officials of the affected government. (For example, it is distressingly common for domestic authorities to learn about official relief flights from other countries only after they have already taken to the air).

24. The 2007 study noted that while there are quite a few international instruments relevant to these questions, they **suffered from gaps in coverage, scope and implementation**. It also found that very few States had comprehensive domestic procedures of their own to manage international assistance. Importantly, like the BWC itself, the also study found that many of the existing rules and procedures, both at the international and national level, **address only state-to-state assistance**, even though the overwhelming majority of international humanitarian assistance is channeled through actors such as United Nations agencies, the Red Cross and Red Crescent Movement, and non-governmental organizations. Leaving these actors outside of regulatory and planning frameworks invites a multi-track and confusing process just when coordination and clarity is most important.

### **Progress in addressing gap areas**

25. In 2006-2007, the IFRC facilitated negotiation of the “Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance” (also known as the “**IDRL Guidelines**”),<sup>16</sup> which were adopted by the States Parties to the Geneva Conventions at the 30<sup>th</sup> International Conference of the Red Cross and Red Crescent in 2007. It subsequently cooperated with United Nations Office for the Coordination of Humanitarian Affairs (OCHA) and the Inter-Parliamentary Union to develop a “Model act on IDRL” and is currently working with OCHA on a model emergency decree and regulations. The IFRC has also assisted National Red Cross and Red Crescent Societies in over 50 countries to lend technical support to their authorities in assessing existing regulatory frameworks for managing international disaster assistance and recommend any necessary improvements. To date, **17 countries**<sup>17</sup> have adopted new laws

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<sup>15</sup> Law and legal issues in international disaster response (IFRC 2007), available at [www.ifrc.org/dl](http://www.ifrc.org/dl).

<sup>16</sup> Available at <http://bit.ly/1sQJ3Y7>.

<sup>17</sup> Bhutan, Bosnia and Herzegovina, Burkina Faso, Colombia, Finland, Indonesia, Netherlands, New Zealand, Namibia, Norway, Mexico, Mozambique, Peru, Panama, Philippines, Viet Nam, and Tajikistan.

or rules drawing on the IDRL Guidelines. There are also **15 countries**<sup>18</sup> where draft laws or rules incorporating recommendations from the IDRL Guidelines are currently pending.

26. A number of **regional organizations** have also taken up this issue, developing important instruments of their own, such as the Association of South East Asian Nations (ASEAN) Agreement on Disaster and Emergency Management, the European Union's Host Nation Support Guidelines, and Coordination Centre for the Prevention of Natural Disasters in Central America's regional manuals on coordination and foreign ministry procedures in situations of disaster. It is also worthy of note that **the International Law Commission** has completed first reading on its "Draft articles on the protection of persons in the event of disasters," which is likely to be presented to states in the form of a draft treaty in 2016.

### **Conclusion**

27. Should any BWC member State be interested in further information or potential support on these questions, the International Federation of Red Cross and Red Crescent Societies and its member National Societies are happy to respond.

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<sup>18</sup> Cambodia, Chile, Colombia, Gambia, Guatemala, Haiti, Kenya, Maldives, Mauritius, Mongolia, Myanmar, Peru, Rwanda, Seychelles and Trinidad and Tobago.