

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

BWC/AD HOC GROUP/WP.401
26 August 1999

Original: ENGLISH

Sixteenth session
Geneva, 13 September - 8 October 1999

Working paper submitted by the Friend of the Chair on Investigations

**INVESTIGATIONS - PROPOSALS FOR FURTHER CONSIDERATION
BY THE FRIEND OF THE CHAIR ON INVESTIGATIONS**

G. INVESTIGATIONS⁺

(A) TYPES OF INVESTIGATIONS

1. Each State Party shall have the right to request an investigation which shall be carried out for the sole purpose of determining the facts relating to a specific concern about possible non-compliance with the Convention by any other State Party.

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

3. The requesting State Party shall specify in each request which one of the following types of investigations it is seeking:

{(a) Investigations to be conducted in geographic areas where the [release of, or] exposure of humans, animals or plants to microbial or other biological agents and/or toxins has given rise to a concern about possible [non-compliance under Article I of the Convention] [use of biological weapons], hereinafter referred to as “field investigations”.}

(b) Investigations of alleged breaches of obligations under Article I of the Convention, to be conducted inside the perimeter of a particular facility(ies) at which there is a substantiated concern that it is involved in activities prohibited by Article I of the Convention, hereinafter referred to as “facility investigations”.

[(c) Investigations where there is a concern that a transfer has taken place in violation of Article III of the Convention.]

1. ~~There is no agreement on the title of this section.~~

~~{(B) OUTBREAKS OF DISEASE DUE TO NATURAL CAUSES}~~

~~{Exclusion of all outbreaks of disease which are due to natural causes}~~

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

5. Nothing in this Protocol shall prejudice the right of a State Party to investigate, as per its national regulations, outbreaks of disease which occur on its territory or in any place under its jurisdiction or control, or if it so wishes, with the assistance of other State(s) and/or relevant international organizations. **A State Party may report the results of any internal investigation(s) of an outbreak of disease to the Director-General in accordance with the provisions contained in Article VIII.**

~~{Investigation of disease outbreaks}~~

6. If a State Party has a concern that an outbreak of disease is directly related to activities prohibited by the Convention, it shall provide in its request for an investigation detailed information, reasons and evidence to demonstrate why, in its view, it considers the disease not to be naturally occurring and directly related to activities prohibited by the Convention.

7. The Executive Council shall not consider a request for an investigation under paragraph ... of Article III, unless it is provided by the requesting State Party with the detailed information, reasons and evidence described in paragraph 6 above. The State Party on whose territory or in any other place under its jurisdiction or control the investigation is proposed to occur, shall have the right to provide information that indicates that the outbreak of disease is naturally occurring or otherwise unrelated to activities prohibited by the Convention. If deemed appropriate by the Executive Council, another State Party may also provide information which corroborates that the outbreak of disease is naturally occurring or otherwise unrelated to activities prohibited by the Convention. All the information reasons and evidence shall be taken into account by the Executive Council in its consideration of the investigation request in accordance with the request procedures of paragraph ... of this section of Article III.}

~~{Unusual outbreaks of disease}~~

~~8. The diseases which are endemic in the region and present the expected epidemiological features shall not be considered as an unusual outbreak of disease. An outbreak of disease which appears to be unusual, shall be investigated by the affected State Party, as per guidelines set out in Annex D, section V, and concluded as soon as possible.}~~²

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

(C) CONSULTATION, CLARIFICATION AND COOPERATION

8. ~~{As a rule,}~~ States Parties [shall] [may], without prejudice to their right to request an investigation, **and first make every effort to** prior to the submission of any request for an investigation [first] make full use of and} follow the relevant procedures set out in section E of this Article on consultation, clarification and cooperation in order to clarify and resolve ~~{fully}~~ **satisfactorily** any matter which may cause concern about possible non-compliance with the obligations of the Convention.

(D) INITIATION OF INVESTIGATIONS

10. An investigation may be requested to be conducted on the territory of a State Party, or in ~~{any other}~~ ~~{a}~~ **another** place under its jurisdiction or control, regardless of the form of ownership of the facility or the area subject to the investigation, in accordance with the provisions of this Protocol ~~and its Annexes~~. [The “receiving State Party” means the State Party in any place under whose jurisdiction or control lie(s) a facility(ies) or area(s) which is(are) the subject of an investigation. In the specific case of an investigation in which such facility(ies) or area(s) is(are) located on the territory of a State Party/State, but in a place under the control of another State Party/State, the former State Party/State shall not be the receiving State Party, but the host State Party/State.]³

{11. An investigation may also be requested to be conducted in any place on the territory of a non-State Party which is under its jurisdiction ~~{and}~~ ~~{or}~~ control, if **any State Party has a** ~~there are~~ concern(s) that a **another** State Party, which shall be identified in the request, is the alleged cause of the non-compliance concern. Upon receipt of such a request, the Director-General shall immediately contact the non-State Party concerned to seek:

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

(b) Its agreement that the provisions of this Protocol governing the conduct of investigations shall apply to the investigation or, alternatively, its agreement to different procedures for the conduct of the investigation which the Director-General is satisfied would enable the facts relating to the specific concern about non-compliance raised in the request to be determined.

The Director-General shall inform the Executive Council and the requesting State Party of the outcome of such consultations as soon as possible.}

{12. In the case of a non-compliance concern involving a State which is a party to the Convention but not to the Protocol, States Parties, ~~where appropriate,~~ shall ~~first~~ use the

3. Views were expressed that this definition and its placement should be discussed further.

relevant provisions of the Convention to seek to resolve the concern. In cases where an investigation is initiated under the Convention, involving a State which is a party to the Convention but not to the Protocol, **the Executive Council may, on request of the Secretary-General of the United Nations, authorize the Director-General to provide assistance to the Secretary-General during the investigation.** ~~the provisions of the Protocol with regard to access and conduct of investigations may be applied, if agreed by that State.~~

13. Requests for investigations to be conducted in accordance with this Protocol shall be submitted in writing by the requesting State Party ~~to the Executive Council and at the same time~~ to the Director-General for processing in accordance with procedures as set out in paragraphs ... to ... of this section.

(E) INFORMATION TO BE SUBMITTED WITH A REQUEST FOR AN INVESTIGATION TO ADDRESS A CONCERN OF NON-COMPLIANCE WITH THE CONVENTION⁴

14. A State Party requesting an investigation shall provide ~~[, to the extent possible,] [all] relevant [available] [necessary] the information [and evidence] required in accordance with the provisions set out in Annex D~~ ~~indicating a non-compliance concern [as specified in paragraphs ... of this section] [including location, how the concern arose, the type of non-compliant activity, the specific event or activities which gave rise to the concern, the date and place of any such event or activities].~~ All such information shall be as precise as possible.

~~[15.— Other States Parties may provide information relevant to the request. Any such submission shall not delay the consideration of the request by the Executive Council described in paragraph]~~

~~[16.— States Parties which provide information pursuant to paragraphs 14 and 15 shall also provide relevant information about the source of such information, [confirming [proving] [and demonstrating] its [reliability] [and impartiality,] [its non-discriminatory nature] [that it is well founded] [and open to multilateral scrutiny]].]~~

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

4. This section was not discussed during the fifteenth session of the Ad Hoc Group. It was agreed to move other paragraphs, hitherto in this section, to Annex D without prejudice to a final decision on whether these paragraphs will be placed in the Protocol or in Annex D.

17. The Director-General, after receiving an investigation request, shall acknowledge receipt of it to the requesting State Party within {2} hours ~~and shall provide a copy of the investigation request to the State Party sought to be investigated within {6} hours~~.

18. The Director-General⁵ shall ascertain **within** ~~no later than {1} [...]~~ hour[s] ~~immediately~~ after receipt of the investigation request whether the investigation request meets the requirements set out in paragraph **1 of section II of Annex D, for field investigations, and paragraph 1 of section III of Annex D, for facility investigations** ~~... of {this Article} {Annex D}~~. If the Director-General is satisfied that the investigation request meets these requirements, he/she shall so inform the Executive Council immediately ~~and shall provide a copy of the investigation request to {the Executive Council and}~~ **and provide a copy of the request to the State Party sought to be investigated and, if applicable, the potential host State Party, within {6} hours**. If the Director-General determines that the investigation request does not meet these requirements, the Director-General shall so inform ~~{the Executive Council and}~~ the requesting State Party, and shall inform the requesting State Party of the reasons for this determination. The requesting State Party may submit a revised request, which shall be submitted and processed in the same way as an original request.

19. ~~{When the investigation request fulfils the requirements}~~ ~~{Upon receipt of an investigation request}~~, the Director-General ~~{shall}~~ ~~{may, as appropriate,}~~ begin **with appropriate** preparations for the investigation ~~without delay~~.

~~{20. In case the procedures set out in paragraph 9 above have not been fully utilized, the Director-General, upon receipt of an investigation request referring to an investigation area under the jurisdiction or control of a State Party, shall~~ **may, with the consent of the requesting State Party**, immediately seek clarification from the State Party sought to be investigated in order to clarify and resolve the concern raised in the request. A State Party which receives a request for clarification pursuant to this paragraph shall provide the Director-General with explanations and with other relevant information as soon as possible but no later than **24** hours after receipt of the request for clarification without prejudice to its rights to provide additional relevant information during the entire process of the consideration of the investigation request by the Executive Council. Unless the requesting State Party considers the concern raised in the investigation request to be resolved and withdraws the request, the Executive Council shall take a decision on the request in accordance with paragraph}

21. The Executive Council shall begin its consideration of an investigation request immediately after it is informed by the Director-General, in accordance with paragraph 18, that the request meets the requirements set out in paragraph ... of ~~{this Article} {Annex D}~~ and shall ~~{take a decision on it} {conclude its consideration of it}~~ **reach a conclusion of its consideration** no later than ~~{12} {96} {36}~~ hours after it is so informed. Upon **the conclusion of the Executive Council's consideration** ~~{taking a decision} {concluding its consideration}~~

5. It was understood that all subsequent references in this section to the Director-General implied that he/she would be assisted by relevant staff in the Technical ~~{Secretariat} {Body}~~.

of an investigation request, the Director-General shall provide a copy of the request and the ~~{decision}~~~~{outcome}~~ to all States Parties within [24] hours.

22. The investigation shall proceed [in the case of a request for a facility investigation] [if formally approved by at least a [two-thirds] [three-quarters] majority [present and voting] of the Executive Council] [unless the Executive Council decides by a three-quarters majority of [all] its members [present and voting] against carrying out the investigation] [and, in the case of a request for a field investigation, if formally approved by a simple majority of the Executive Council members present and voting].

23. The State Party sought to be investigated ~~{may}~~~~{shall have the right to}~~ inform the Executive Council about the nature of the facility(ies) or area(s) indicated in the investigation request ~~{, and **provide information to indicate why, in its view, this facility(ies) is if these were** unrelated to the Convention}~~. It may also state, if it believes it necessary to do so, why in its view the investigation request is unfounded or abusive. ~~{It may also inform the Executive Council that access to such facility(ies) or area(s) is prohibited for reasons of national security unrelated to the Convention.}~~

24. In its examination of the investigation request, the Executive Council shall consider all the information ~~{, reasons and evidence}~~ provided by the requesting State Party and the State Party sought to be investigated, ~~{as well as, **and if applicable**, any information resulting from the procedures outlined in paragraph 20 above}~~, and may also take into account other relevant information available to it. In doing so, the Executive Council may also decide, without prejudice to the time-line set out in paragraph 21, to seek more information from the requesting State Party, the State Party sought to be investigated and from other relevant international organizations. If such information can not be provided by other relevant international organizations within the time-line set out in paragraph 21, the Director-General shall inform the Executive Council as appropriate. ~~{The Executive Council may also recommend bilateral or multilateral consultations to resolve the issue.}~~

25. The requesting State Party as well as the State Party sought to be investigated, and ~~{, **if applicable**, in the case of a request for a field investigation,}~~ the State Party identified in the request as the alleged cause of the non-compliance concern, may participate in the Executive Council's consideration of an investigation request, but shall not have the right to vote on the request, whether or not such States Parties are members of the Executive Council.

26. The investigation mandate shall be made available to the receiving State Party ~~{through notification of investigation made by the Director-General and}~~ [by the investigation team upon the latter's arrival at the point of entry] ~~{immediately after the mandate is issued to the investigation team by the Director-General {which shall be no later than 12 hours before the team's arrival at the point of entry}}~~.

(G) ~~{MANAGED}~~ ACCESS AND MEASURES TO GUARD AGAINST ABUSE DURING THE CONDUCT OF INVESTIGATIONS⁶

6. ~~The structure and content of this section need further consideration.~~

General principles

27. Investigations shall be conducted in accordance with the provisions of this Protocol.

28. The receiving State Party shall provide access to the investigation team during an investigation within the relevant time frames specified in Annex D in accordance with the following:

(a) — ~~In the case of a field investigation, the receiving State Party shall provide access to the investigation area[(s)] within [24] [48] hours after arrival at the point of entry as well as access within the investigation area[(s)] for activities pursuant to this Article and sections I and II of Annex D for the duration of the investigation as specified in Annex D section II paragraph 9; when the requesting State Party is the same as the receiving State Party, the [access and] area[(s)] to be investigated shall be identified by that State Party to the investigation team; Moved to become paragraph 37 under field investigations.~~

(b) — ~~In the case of a facility investigation, the receiving State Party shall provide access within [the requested perimeter] [[as well as] [or] the [final] perimeter] within ... hours after arrival at the point of entry as well as access for activities pursuant to this Article and sections I and III of Annex D for the duration of the investigation as specified in Annex D, section III, paragraph 8; Moved to become paragraph 48 under facility investigations.~~

(c) All such access shall be in accordance with the provisions of this Protocol for the sole purpose of establishing facts relevant to the investigation mandate;

(d) The receiving State Party shall have the right to inform the investigation team about the areas, facilities or buildings which it considers sensitive and/or not related to the Convention;

(e) The nature and extent of access to a particular facility, place(s) or information within the areas specified in subparagraphs (a) or (b) above, as set out in the mandate, shall be negotiated between the investigation team and the receiving State Party;

(f) The investigation team and the receiving State Party shall also negotiate the activities to be performed during the investigation. **All activities shall be performed in accordance with the relevant provisions for these activities contained in Annex D [including sampling];**

(g) The receiving State Party shall have the right to make the final decision ~~on the extent and nature of such [regarding any] access, taking into account its obligations under this Protocol and the provisions of this section [, its national security interests,] [and its constitutional obligations with regard to proprietary rights or searches and seizures];~~

(h) The receiving State Party shall make every reasonable effort to demonstrate its compliance with the Convention and, to this end, to enable the investigation team to fulfil its mandate.

29. The receiving State Party shall have the right to take such measures as it deems necessary to protect confidential or sensitive national security ~~{interests}~~~~{information}~~ and/or commercial proprietary information ~~{or sites}~~ not related to the investigation mandate ~~{and}~~ ~~{or}~~ to ~~{the Convention}~~ ~~{activities prohibited by the Convention}~~. Such measures may include but shall not be limited to the following:

- (a) Removal of sensitive papers from office spaces and direct view;
- (b) Shrouding of sensitive displays, stores, and equipment;
- (c) Shrouding sensitive pieces of equipment, such as computer or electronic systems;
- (d) Logging off of computer systems and turning off data indicating devices;
- (e) Using random selective access techniques whereby the team is requested to select a given percentage or number of buildings of their choice to investigate; the same principle can apply to the interior and content of sensitive buildings or documents;
- (f) ~~{In exceptional cases,}~~ **deny access or** limiting the number of team members who have access to certain **sensitive** parts of the area~~(s)~~, buildings or structures within the area~~(s)~~ specified in subparagraphs 28 (a) and (b) above;
- (g) ~~and~~ Limiting the viewing angle;
- (h) Limiting the time investigation team members may spend in any area or building;

(i) At any time during the investigation, notifying the investigation team of the products and processes which involve **confidential** ~~{commercial proprietary information or national security}~~~~{confidential}~~ information and its right to safeguard such information. It may request that if a specific piece of information is released to the team, it should be accorded the most stringent protection measures in conformity with the confidentiality provisions.

~~{30. If the case so warrants, the receiving State Party shall have the right to deny access to particularly sensitive areas, [or rooms within] sites, facilities or buildings [within the areas specified in paragraph 28 above] not related to [activities prohibited by the Convention] [the investigation mandate].}~~

31. If the receiving State Party provides less than full access to places, activities or information, it shall make every reasonable ~~{and feasible}~~ effort **possible** to provide alternative means to demonstrate compliance and to clarify the possible non-compliance concern that generated the investigation. The nature and extent of access, including any

alternative means to demonstrate compliance, provided by the receiving State Party, and the extent to which this enabled the investigation team to fulfil its mandate, shall be recorded factually in the investigation report.

32. In carrying out the investigation in accordance with the investigation mandate, the investigation team shall use only those methods necessary to provide sufficient relevant facts to clarify the concern about possible non-compliance with the provisions of the Convention, and shall refrain from activities not relevant thereto. It shall request, collect **and/or** ~~and~~ ~~or~~ document only such facts as are related to 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.

33. The investigation team shall conduct the investigation in the least intrusive manner possible consistent with the effective and timely implementation of its mandate. ~~As a rule,~~ ~~Wherever possible,~~ it shall begin with the ~~least intrusive~~ procedures ~~it deems acceptable~~ **it deems least intrusive** and proceed to more intrusive procedures only as ~~it deems~~ **necessary required to fulfil its mandate.**

34. The investigation team shall **treat** ~~take into consideration and incorporate~~ ~~[, whenever possible,]~~ ~~[as appropriate],~~ in accordance with ~~section II, paragraph 16, and section III, paragraph 28, of Annex D,~~ suggested modifications of the investigation plan and proposals which may be made by the receiving State Party, at any stage of the investigation including the pre-investigation briefing, to ensure, *inter alia*, that sensitive equipment, information or places not relevant to the ~~investigation mandate~~ ~~Convention~~, are protected, **in accordance with section II, paragraph 16, and section III, paragraph 28, of Annex D.**

35. ~~If the investigation team considers it necessary in order to fulfil its mandate,~~ ~~the~~ investigation team shall have the right to request clarification in connection with ambiguities that may arise during an investigation. Such requests shall be made promptly to or through the representative of the receiving State Party. The representative shall make every reasonable effort to provide the investigation team with such clarification as may be necessary to remove the ambiguity.

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

⁷[Field investigations]

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

7. Paragraphs 37 to 65 were not discussed during the fifteenth session of the Ad Hoc Group. It was agreed that, without prejudice to their ultimate placement, they would be addressed in the group of the Friend of the Chair on Investigations Annex.

Annex D for the duration of the investigation as specified in Annex D, section II, paragraph 9.; ~~when the requesting State Party is the same as the receiving State Party, the [access and] area[(s)] to be investigated shall be identified by that State Party to the investigation team;~~ Moved from subparagraph 28 (a).

38. The receiving State Party shall provide access to areas external to buildings or other structures for the purpose of enabling the investigation team to conduct specific on-site activities identified in Annex D, section II, paragraphs 19 to 51. The extent and nature of access within a particular area shall be negotiated between the investigation team and the receiving State Party in accordance with paragraphs 28 and 29 of this section. Such access shall include access to all areas that might contain personnel, animals and/or plants that may have been affected by microbial or other biological agents or toxins. Access shall not interfere with any national measures taken to contain the effect of the outbreak of disease.

39. Both inside and outside the investigation area[(s)], the receiving State Party shall provide access within buildings or other structures for the purpose of enabling the investigation team to conduct interviewing, disease/intoxination-related examination, analysis of samples, collection and examination of background information and data.

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

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

42. The Director-General may dispatch additional team members from the list of designated full-time investigation personnel if access is granted to a facility, building or other structure. The Director-General shall notify the receiving State Party of the names of the additional team members, date and estimated time of arrival and point of entry in accordance with the relevant provisions of Annex D, section III, subparagraphs 5 (e), (f) and (h). The investigation team may also bring additional approved equipment, which shall be subject to the provisions of Annex D, section I, paragraphs 38 and 39.

43. If the receiving State Party denies the investigation team's request pursuant to paragraph 40 for access to buildings or other structures, the investigation team may note such a denial in its report along with any explanation provided by the receiving State Party. The investigation team may then continue the field investigation.

44. The investigation team may at any time submit a request to the Director-General for submission to the Executive Council seeking authorization to conduct a facility investigation at a facility on the territory or in a place under the jurisdiction or control

of the receiving State Party, if the investigation team has acquired etiological and/or epidemiological information during the investigation indicating that such places are directly relevant to the alleged non-compliance specified in the field investigation request. Such a request shall be handled in accordance with the provisions set out for facility investigations in subsection D of this section. The request shall include the name, if known, the location and requested perimeter of the facility to be investigated.

45. Simultaneously with submitting the request of the Director-General to the Executive Council, the Director-General shall transmit a copy of the request to the receiving State Party, the requesting State Party, and, if appropriate, the host State Party. The receiving State Party shall acknowledge to the Director-General its receipt of the request within one hour.

46. Upon receipt of the receiving State Party's acknowledgment, the investigation team shall have the right to collect factual information, in accordance with Annex D, section III, paragraphs 10 and 11, on vehicular exit activity from exit points for land, air and water of the requested perimeter of the facility. The investigation team shall have the right to continue to collect such information until the Executive Council decides against carrying out the facility investigation in accordance with paragraph ..., or the facility investigation is completed.

47. [The facility investigation shall proceed unless the Executive Council, not later than [36] hours after having received the facility investigation request pursuant to paragraph 44 above, decides by a three-quarters majority of all its members against carrying out the investigation, if it considers that the request is not supported by the information and analysis submitted by the investigation team.] The investigation shall be conducted in accordance with the provisions for facility investigations set out in Article III, section G, and Annex D, sections I and III. If the Executive Council decides against the facility investigation, perimeter monitoring shall be stopped. The States Parties concerned shall be informed accordingly. No further action on the facility investigation request shall be taken unless the investigation team is able to submit further specific new information.

~~[37. — During field investigations the investigation team may [request to] conduct any or [all] [combination] of the following activities: interviewing, visual observation, [auditing,] [medical/disease-related examination,] [sampling and identification and collection of background information and data].]~~

~~[38. — The receiving State Party shall provide access to areas external to buildings or other structures. The extent and nature of access to a particular area shall be negotiated between the investigation team and the receiving State Party on a managed access basis.]~~

~~39. — [The receiving State Party shall provide access within buildings or other structures for the sole purpose of enabling the investigation team to conduct the specific on-site activities identified in Annex D, section II, paragraphs ... when it is impossible to conduct such activities outside of such buildings or structures.] In cases of field investigations, [the investigated State Party shall provide access to] the investigation team [[shall] [may] with the~~

~~consent of the receiving State Party, have access] to all such areas that might have been affected, including hospitals, refugee camps and other places, as it considers necessary for the effective conduct of its investigation without interfering with national measures to contain [and remedy the consequences of the alleged use of biological or toxin weapons] [the outbreak] [or the possible outbreak].~~ *These paragraphs are covered in the new proposed text.*

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

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

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

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

(d)—~~Notifying the investigation team of the products and processes in which it has a proprietary or national security interest and its right to safeguard such information. It may request that if a specific piece of information is released to the team, it should be accorded the most stringent protection measures with the Organization.~~

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

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

[43.—~~The investigation team shall have the right to observe visually all open places within the restricted access site from the boundary of the site.]~~ *The contents of these paragraphs are covered in paragraph 29.*

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

~~modalities for such access shall be subject to negotiation between the investigation team and the investigated State Party].~~

~~[45. — During the conduct of the investigation, the investigation team shall have the right to request access to buildings or other structures beyond that provided pursuant to paragraph 39. If the receiving State Party agrees to this request, the extent and nature of such access to the specific building or other structure shall be negotiated between the investigation team and the receiving State Party on a managed access basis. In the event the receiving State Party refuses the request, the investigation team may request a facility investigation pursuant to paragraph 46.~~

~~46. — If the receiving State Party denies the investigation team's request to access buildings or other structures made pursuant to paragraph 45, the Director General of the Organization shall have the right to submit to the Executive Council a written request to conduct a facility investigation. Such request shall include the name and location of the facility to be investigated, the requested perimeter for the proposed facility investigation, and the information indicating that this facility may be connected to the alleged non-compliance concern that prompted the field investigation.~~

~~47. — Contemporaneously with submitting the Director General's request to the Executive Council, pursuant to paragraph 46, the Director General shall transmit a copy of the request to the receiving State Party. The receiving State Party shall acknowledge to the Director General its receipt of the request within one hour.~~

~~48. — Upon receipt of the receiving State Party's acknowledgement, pursuant to paragraph 47, the investigation team shall have the right to collect factual information, in accordance with ..., on vehicular exit activity from exit points for land, air, and water vehicles of the requested facility perimeter. The investigation team shall have the right to continue to collect such information until the Executive Council decides against carrying out the facility investigation in accordance with paragraph 49, or the facility investigation is completed.~~

~~49. — The facility investigation shall proceed unless the Executive Council, not later than [48] hours after having received the facility investigation request pursuant to paragraph 46, decides by a ... majority of all its members against carrying out the facility investigation, if it considers the facility investigation request not to be supported by the information submitted by the investigation team. If the Executive Council decides against the facility investigation, perimeter monitoring shall be stopped, no further action on the facility investigation request shall be taken, and the States Parties concerned shall be informed accordingly.~~

~~50. — A State Party that is a member of the Executive Council shall not have the right to vote on a request regarding a facility located in its territory or in any other place under its jurisdiction or control. If the State Party that submitted the request for a field investigation, pursuant to paragraph ..., is a member of the Executive Council, that State Party shall not have the right to vote on the Director General's request to conduct a facility investigation. The receiving State Party and the State Party that submitted the request for a field investigation shall have the right to participate in any Executive Council deliberations on the request.~~

~~51. — The investigation team shall begin the facility investigation ... hours after the expiration of the [48] hour period established in paragraph 49.]⁸~~

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

~~52. — The investigation team may only request access to a facility or facilities, building, or other structures as objects of investigation within the area(s) designated for investigation if either of the following conditions apply:~~

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

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

~~53. — The investigation team shall submit its request to conduct activities pursuant to paragraph 52 above in writing to the representatives of the receiving State Party. The written request shall specify the reason(s), along with the supporting data, why access and/or such measures are being sought. The investigation team shall inform the Director General in its next situation report pursuant to paragraph ... of Annex D, section II. The Director General shall immediately inform the Executive Council and keep it up to date on all subsequent developments.~~

~~54. — The receiving State Party shall, whenever possible, grant immediate access to the facility, facilities, building or other structures as requested. If the receiving State Party is unable to provide such access in order to make any necessary preparations to protect national security information or commercial proprietary information that may be present in any facility, building, structure or other area, it may ask the investigation team for a delay of up to 24 hours. The investigation team may observe the facility, facilities, building or other structure during any requested delay.~~

~~55. — The extent and nature of access to such locations shall be negotiated between the investigation team and the receiving State Party or the State Party on whose territory the~~

8. Paragraph 38, the first sentence of paragraph 39 and paragraphs 45 to 51 are taken from BWC/AD HOC GROUP/WP.314. They were not discussed during the twelfth, thirteenth, fourteenth or fifteenth session of the Ad Hoc Group.

~~investigation is being conducted. The provisions on managed access in this section shall apply.~~

~~56.— In those cases where the mandate already specifies that access to a facility or facilities, building or other structure may be required, the extent and nature of access shall be negotiated between the investigation team and the receiving State Party.~~

~~57.— When access to locations outside the originally designated area(s) for investigation is sought pursuant to paragraph ..., the receiving State Party shall take immediate steps to give effect to the requests of the investigation team.]⁹ The contents of these paragraphs are included in the new proposed text.~~

Facility investigations

48. The receiving State Party shall provide access within ~~[the requested perimeter]~~ ~~[[as well as] [or]~~ the [final] perimeter] within ... hours after arrival at the point of entry as well as access buildings, parts of buildings or other structures inside the perimeter for activities pursuant to this Article and sections I and III of Annex D for the duration of the investigation as specified in Annex D, section III, paragraph 8. Moved from subparagraph 28 (b).

58. The investigation team may **include in its investigation plan specific on-site activities described in Annex D, section III, paragraphs 32 to 59** ~~[request to] conduct any or [all] [a combination] of the following on-site activities: interviewing, visual observation, [identification of key equipment,] [auditing,] [medical examination] [and sampling and identification].~~ These specific on-site activities shall be implemented in accordance with the provisions set out above in this section as well as in Annex **D, section I and III.**

~~59.— In conformity with the relevant provisions of Annex E of this Protocol, the investigated State Party shall have the right to take measures to protect sensitive installations and prevent disclosure of confidential information and data not related to biological and toxin weapons, in accordance with the obligation to demonstrate compliance and the right if necessary to protect sensitive information to take specific measures which may include but are not limited to the following:~~

- ~~(a) — Removal of sensitive papers from office spaces and direct view;~~
- ~~(b) — Shrouding of sensitive displays, stores, and equipment;~~

9. ~~Paragraphs 52 to 57 reproduce parts of BWC/AD HOC GROUP/WP.357. They were not discussed during the fourteenth or fifteenth session of the Ad Hoc Group.~~

~~(c) — Shrouding sensitive pieces of equipment, such as computer or electronic systems;~~

~~(d) — Logging off of computer systems and turning off data indicating devices;~~

~~(e) — Using random selective access techniques whereby the team is requested to select a given percentage or number of buildings of their choice to investigate; the same principle can apply to the interior and content of sensitive buildings or documents;~~

~~(f) — In exceptional cases, limiting the number of team members who have access to certain parts of the site; and limiting the viewing angle;~~

~~(g) — Limiting the time investigation team members may spend in any area or building, while allowing the team to fulfil its mandate;~~

~~(h) — The investigated State Party may at any time during the investigation notify products and processes in which it has a proprietary interest in order to help the team respect the investigated State Party's right to safeguard proprietary information. It may request that if a specific piece of information is released to the team, it should be accorded the most stringent protection measures with the Organization.~~

~~60. — The investigated State Party shall make every reasonable effort to demonstrate to the investigation team that any object, building, structure, container or vehicle to which the investigation team has not had full access, or which has been protected in accordance with paragraph 59, is not used for purposes related to the possible non-compliance concerns raised in the investigation request.~~

~~61. — This may be accomplished by means of, *inter alia*, the partial removal of a shroud or environmental protection cover, at the discretion of the investigated State Party, by means of a visual observation of the interior of an enclosed space from its entrance, or by other methods.] *The contents of these paragraphs are all covered in paragraphs 28 and 29.*~~

~~{Access and conduct of investigations involving States other than the **receiving** State Party to be investigated}~~

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

63. In cases where facilities or areas of ~~[an investigated]~~ [a receiving] State Party are located on the territory of a [host] State not party to this Protocol, the ~~[investigated]~~ [receiving] State Party shall take all necessary measures to ensure that investigations of those facilities or areas can be carried out in accordance with the provisions of this ~~[Annex]~~ [Protocol]. A State Party that has one or more facilities or areas on the territory of a [host] State not party to this Protocol shall take all necessary measures to ensure acceptance by the host State of ~~investigators and investigation assistants~~ **the designated investigation personnel accepted by to that the receiving State Party in accordance with the provisions set out in Annex D, section I, paragraphs 2 to 16.** If ~~[an investigated]~~ [a receiving] State Party is unable to ensure access, it shall demonstrate that it took all necessary measures to ensure access.

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

65. In cases where the investigation is related to paragraphs 62, 63 ~~and 64~~, the Director-General shall notify the **host State Party**/State ~~directly involved in accordance with Annex D, paragraph~~ **in the same manner as the receiving State Party.**

(H) FINAL REPORT

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

(I) ~~[ADOPTION OF A DECISION ON THE BASIS] [CONSIDERATION] OF THE FINDINGS OF THE INVESTIGATION REVIEW OF THE FINAL REPORT~~

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

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

68. With respect to any concerns raised under paragraph 67 (c), one or more of the following factors could be taken into account, where relevant:

(a) Information relating to the investigated site available prior to the investigation request (the authenticity and reliability of any information would need to be carefully assessed);

(b) Whether any of the information submitted as part of the investigation request was shown to be false;

(c) Information from and/or outcome or results of ~~any~~ prior consultations/clarifications relevant to the request, **if applicable**;

(d) Whether any investigation(s) (including any instituted under Article VI of the Convention) had previously been requested by the same State Party *vis-à-vis* the same investigated site, and if so, their number, frequency and outcome (including any follow-up action);

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

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

(a) The requesting State Party should bear some or all of the financial implications of the investigation ~~[, as well as~~ **which may include** indemnities to the receiving State Party};

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

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

70. If the Executive Council reaches the conclusion, in keeping with its powers and functions, that further action may be necessary with regard to paragraph 67, it shall take the appropriate measures to redress the situation and to ensure compliance, including, if appropriate, specific recommendations to the Conference which shall consider the recommendations in accordance with Article IX and take the appropriate measures in accordance with Article V.

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

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