

**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.440
26 January 2001

Original: ENGLISH

Twenty-second session
Geneva, 12 - 23 February 2001

Working paper submitted by South Africa

ARTICLE IV

INVESTIGATIONS

I. GENERAL PROVISIONS

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 or alleged 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 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.]

OUTBREAKS OF DISEASE

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

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

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

Investigation of a concern that an outbreak of disease is directly related to activities prohibited by the Convention

6. If a State Party has a concern that an outbreak of disease is directly related to activities prohibited by the Convention, it shall have the right to request a field investigation to address the non-compliance concern. In accordance with the requirements of paragraph 18, such request shall contain detailed evidence, and other information, and analysis substantiating why, in its view, it considers the outbreak of disease not to be naturally occurring and directly related to activities prohibited by the Convention. [Reports coming from the mass media cannot be considered as evidence.] [Information from private persons cannot be the sole evidence on the basis of which the request shall be made.]

7. The Executive Council shall not [consider a request for] [authorize] a field investigation of an outbreak of disease, unless it determines that there is a basis for concern substantiated by detailed evidence, and other information, and analysis that the outbreak(s) of disease, is not naturally occurring and is directly related to activities prohibited by the Convention. The Executive Council, if it deems it appropriate for its [consideration] [authorization] of the above request, shall also request from the most relevant international organization(s) such as, but not limited to, the WHO, OIE, FAO, all available information in its/their possession, that may be relevant to the outbreak. When a State Party requests a field investigation of an outbreak(s) of disease on the territory or in any place under the jurisdiction or control of another State Party, the State Party where the investigation is proposed to occur shall have the right to provide evidence, and other information, and analysis that indicates that the outbreak of disease is naturally occurring or otherwise unrelated to activities prohibited by the Convention. If deemed appropriate by the Executive Council as a matter of procedure under Article IX, paragraph 30, other State(s) Party(ies) may also provide information relevant to whether the outbreak(s) of disease is naturally occurring and/or whether it is related to activities prohibited by the Convention. All of the evidence, and other information, and analysis submitted, shall be taken into account by the Executive Council in its consideration of the investigation request in accordance with the request procedures of paragraphs 14 to 17 and 27 to 35.

[ALLEGED USE OF A BIOLOGICAL WEAPON

8. A State Party has a right to request a field investigation of an alleged use of a biological weapon if it believes that a biological weapon was used against it on the territory under its jurisdiction and control.]

[Unusual outbreaks of disease]

9. 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 C, section V, and concluded as soon as possible.]¹

CONSULTATION, CLARIFICATION AND COOPERATION

10. [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 satisfactorily any matter which may cause concern about possible non-compliance with the obligations of the Convention.

INITIATION OF INVESTIGATIONS

11. An investigation may be requested to be conducted on the territory of a State Party, or in any other 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. The receiving State Party means the State Party on whose territory or in any other place under whose jurisdiction or control an investigation is proposed, taking place or has been completed. In the specific case where an investigation is proposed, taking place or has been completed on the territory of a State Party/State, but in a place under the jurisdiction or control of another State Party/State, the former State Party/State shall not be the “receiving State Party”, but shall be defined as the “host State Party/State of an investigation”.

12. 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 or control, if any State Party has a concern(s) that 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.

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

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 27 to 36.

[14. If, during the course of a field investigation, the investigation team has acquired information (as a result of the conduct of the activities specified in paragraphs 129 to 160) indicating that a facility on the territory or in any other place under the jurisdiction or control of a State Party, is directly relevant to the alleged non-compliance concern that has been identified in the field investigation mandate, the investigation team leader shall provide a factual statement of the information and a factual description of how the information was obtained to the receiving State Party. The receiving State Party may within ... comment on the factual statement. The investigation team leader shall then submit the factual statement, description of how the information was obtained and the comments of the receiving State Party to the Executive Council through the Director-General.

15. Upon receipt of the information, the Executive Council shall provide the information to the receiving State Party, the requesting State Party, and, if appropriate, the State Party on whose territory or under whose jurisdiction or control the facility in question is located. Only these States Parties may submit a request for a facility investigation which involves this information. Such request shall be considered in accordance with the provisions contained in paragraphs 10 to 14 and 23 to 28.

16. The Executive Council's consideration of the information or any request for a facility investigation received from a State Party which received its information in accordance with paragraph 15 and any decision made thereon shall be conducted in accordance with the provisions set out in paragraphs 27 to 35.

17. If the Executive Council decides that a facility investigation must be conducted, the investigation shall be conducted in accordance with the provisions for facility investigations set out in this section, and Annex C, sections I and III. The reports of the field and facility investigations shall be considered independently or simultaneously as determined by the Executive Council depending on the specific circumstances involved.]

REQUIREMENTS FOR A REQUEST FOR AN INVESTIGATION TO ADDRESS A CONCERN OF NON-COMPLIANCE WITH THE CONVENTION

Requirements for a request for a field investigation

18. A request for an investigation under paragraph 3 (a), for an event(s) which has given rise to a concern about non-compliance shall include the following:

(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 in accordance with paragraph 20;

(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.]

19. In addition to the information to be supplied with a request pursuant to the information stated above, 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, if available;

(d) The request for specific assistance submitted separately in accordance with the provisions contained in Article VI, paragraph 9;

(e) 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)].

20. The investigation area identified in paragraph 18 (e), shall:

(a) Be kept to the minimum size necessary consistent with the requirements for an effective and timely investigation of the specific non-compliance concern contained in subparagraph 18 (c);

(b) Be finite and 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;

(c) Not exceed [300] [500] [1,500] square kilometres [in case of human disease and 15,000 square kilometres in case of animal and plant disease in size];

(d) Be no larger than the evidence provided can reasonably justify;

(e) Not cross any international borders.

[21. During its consideration of the investigation request, the Executive Council shall also consider the area to be investigated. The size of a modified investigation area shall not exceed the size of the area requested by the requesting State Party.]

22. For the purposes of the investigation mandate the Director-General shall designate the investigation area on a map by geographic coordinates specified to the nearest second. The designation shall be based on the investigation area identified by the requesting State Party in the investigation request, subject to any directions or guidelines received from the Executive Council in this regard.

Requirements for a request for a facility investigation

23. Requests for facility investigations under paragraph 3 (b), for an event(s) which has given rise to a concern about non-compliance shall at least include the following:

(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 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.

24. In addition to the information to be supplied with a request pursuant to paragraph 23, other relevant information should also be submitted as appropriate and to the extent possible including, *inter alia*:

(a) Whether the facility 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 concerned should have been declared under the Protocol;

(b) Details of the ownership and/or operator of the facility concerned.

25. The requested perimeter identified in paragraph 23 (d), 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.

26. If the requested perimeter does not conform with the specifications of paragraph 25, it shall be re-drawn by the investigation team in consultation with the receiving State Party to ensure that it conforms with that provision.

[27. States Parties which provide information pursuant to paragraphs 18 to 26 shall also provide relevant information about the source of such information in order to confirm that the information is well-founded.]

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

28. The Director-General, after receiving an investigation request, shall acknowledge receipt of it to the requesting State Party within two hours and shall provide a copy of the investigation request to the State Party sought to be investigated within six hours.

29. The Director-General shall ascertain within six hours after receipt of the investigation request, whether the investigation request meets the requirements set out in paragraphs 18 to 20, for field investigations, and paragraphs 23 and 26, for facility investigations. If the Director-General is satisfied that the investigation request meets these requirements, he/she shall so inform the Executive Council, the State Party sought to be investigated and the requesting State Party immediately, and, if applicable, the potential host State Party/State, within six 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.

30. When the investigation request fulfils the requirements, the Director-General may begin with appropriate preparations for the investigation.

31. [The Director-General shall also ascertain that the procedures set out in paragraph 10, have been fully utilized. In case the procedures have not been fully utilized] the Director-General may, upon receipt of an investigation request referring to an investigation area under the jurisdiction or control of a State Party, propose to the requesting State Party to 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 requesting State Party and the Director-General with explanations and with other relevant information as soon as possible but not 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 33.

32. The Executive Council shall begin its consideration of an investigation request immediately after it is informed by the Director-General, in accordance with paragraph 29, that the request meets the requirements and shall [complete its consideration] [take a decision on it] not later than [12] [36] [96] hours after it is so informed. Upon the conclusion of the Executive Council's consideration of an investigation request, the Director-General shall provide a copy of the request and the decision to all States Parties within 24 hours.

33. 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].

34. The State Party sought to be investigated shall have the right to inform the Executive Council about the nature of the facility or area indicated in the investigation request, and provide information to indicate why, in its view, this facility is 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 a facility or area is prohibited for reasons of national security unrelated to the Convention.]

35. In its examination of the investigation request, the Executive Council shall consider all the evidence and other information as well as analysis provided by the requesting State Party and the State Party sought to be investigated, as well as [any] [the] information resulting from [any] [the] prior consultation or clarification process 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 timeline set out in paragraph 32, 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 cannot be provided by other relevant international organizations within the timeline set out in paragraph 32, the Director-General shall inform the Executive Council as appropriate. In the case of the Executive Council not approving the request for investigation, it may recommend other actions to resolve the matter such as bilateral or multilateral consultations to resolve the issue.

36. 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.

37. The investigation mandate shall be made available to the receiving State Party immediately after the mandate is issued to the investigation team by the Director-General which shall be not later than 12 hours before the team's arrival at the point of entry.

DESIGNATION OF INVESTIGATION PERSONNEL

38. 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 48 to 53, 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

39. 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.

[40. 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.]

41. Not later than 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.

42. Each State Party shall acknowledge receipt of this initial list of investigation personnel proposed for designation, within 48 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.

43. Additions or changes to the list of investigation personnel shall be effected according to the procedures set out in paragraphs [40,] 41 and 42. [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.]

44. 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.

45. 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.

46. 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.

47. 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

48. 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.

49. Ad hoc experts meeting the requirements as communicated pursuant to paragraph 48, shall only be nominated by States Parties. Any such nominations shall be submitted by States Parties to the Director-General within 30 days after receipt of the communication and shall include 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 41 to 47.

50. 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 41 to 47.

51. 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 109. An ad hoc expert shall not be appointed as an investigation team leader.

52. 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.

53. 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

54. 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.

DESIGNATION AND CERTIFICATION OF LABORATORIES

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

56. 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.

57. 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.

58. 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.

59. Nominated laboratories shall be designated and certified by the Director-General in accordance with the provisions contained in paragraphs 56 and 57. 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.

60. 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.

61. Further laboratories may, when necessary, be designated and certified in accordance with the procedures referred to in paragraphs 56 to 58. The designation and certification of each laboratory shall be subject to renewal every three years.

62. 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.

63. 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.

ACCESS AND MEASURES TO GUARD AGAINST ABUSE DURING THE CONDUCT OF INVESTIGATIONS

General principles

64. The receiving State Party shall provide access to the investigation team within the areas specified in paragraphs 73 and 78 below and at the same time have the right to take such measures it deems necessary in accordance with the provisions of this section [to protect its national security interests and/or to protect confidential information and data [(including commercial proprietary information)]] during an investigation within the relevant time frames specified in paragraphs 119 and 170 in accordance with the following:

(a) All such access shall be for the sole purpose of establishing facts relevant to the investigation mandate;

(b) 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;

(c) The nature and extent of access to a particular facility, place(s) or information within the areas specified in paragraphs 73 and 78, as set out in the mandate, shall be negotiated between the investigation team and the receiving State Party;

(d) 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 sections II and III;

(e) The receiving State Party shall have the right to make the final decision [on the nature and extent of such] [regarding any] access, taking into account its rights and obligations under this Protocol;

[(f) In meeting the requirements to provide access, the receiving State Party shall be under the obligation to provide the greatest degree of access possible, taking into account any constitutional obligations it may have with regard to proprietary rights or searches and seizures;]

(g) 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.

65. The receiving State Party shall have the right to take measures, as it deems necessary to protect national security and/or to protect confidential information and data [(including commercial proprietary information)] in accordance with the provisions of this section and taking into account its obligations under this Protocol. Such measures may include but shall not be limited to the following:

[(a) Making the final decision on the nature and extent of such access as provided for in paragraph 64, including to deny access to particularly sensitive places, or rooms not related to the investigation mandate, within the facility or area specified in paragraph 73 or 78;]

(b) Removal of sensitive papers from office spaces and direct view;

(c) Shrouding of sensitive displays, stores, and equipment;

(d) Shrouding sensitive pieces of equipment, such as computer or electronic systems;

(e) Logging off of computer systems and turning off data indicating devices;

(f) 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;

(g) Limiting the number of team members who have access to certain buildings, structures or places within the area specified in paragraphs 73 and 78;

(h) Limiting the viewing angle;

(i) Limiting the time investigation team members may spend in any area or building;

(j) At any time during the investigation, notifying the investigation team of the products and processes which involve national security and/or the protection of confidential information and data [(including commercial proprietary information)] and its rights to safeguard it. 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.

66. The receiving State Party shall have the right to take measures it deems necessary to protect national security and/or confidential information [(including commercial proprietary information)] and data. It shall have the right to take the final decision [on the nature and extent of] [regarding any] access as provided for in paragraph 64 [, including to deny access to particularly sensitive [sites, facilities,] places or rooms not related to [activities prohibited by the Convention] [the investigation mandate] [, taking into account its obligations under this section]].

67. If the receiving State Party provides less than full access to places, activities or information, it shall make every reasonable and feasible effort 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.

68. 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.

69. 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 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.

70. 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, it shall begin with the procedures it deems least intrusive and proceed to more intrusive procedures only as required to fulfil its mandate.

71. The investigation team shall take into consideration 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 are protected. The investigation plan shall be

handled in accordance with paragraph 126 for field investigations and paragraphs 189 to 192 for facility investigations.

72. 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.

Field investigations

73. The receiving State Party shall provide access [where possible] [within] [to] the investigation area within [48] [108] hours after arrival at the point of entry in order to conduct activities pursuant to this Article for the duration of the investigation as specified in paragraph 119.

74. The receiving State Party shall provide access in accordance with paragraph 64 within the investigation area for the sole purpose of enabling the investigation team to conduct specific on-site activities identified in, and in accordance with, paragraphs 130 to 161 [excluding paragraphs 139 and 140]. The extent and nature of access within the investigation area shall be negotiated between the investigation team and the receiving State Party in accordance with paragraphs 64 to 72.

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

[76. The investigation team may, during the course of the investigation, request the receiving State Party to provide access to a building or other structure as objects of investigation within the area(s) designated for investigation if access is required in order to fulfil the field investigation mandate. The investigation team shall together with its request for access provide the receiving State Party with information substantiating its request.

77. If the request of the investigation team is accepted, the rules governing the conduct of activities inside any building or structure shall be those specified in this section and paragraphs 130 to 161. If the receiving State Party denies the request of the investigation team, the investigation team may submit the report to the Director-General for submission to the Executive Council for consideration.]

Facility investigations

78. The receiving State Party shall provide access within the requested and, if different, final perimeter not later than 108 hours after [receipt of the decision of the Executive Council] [arrival at the point of entry] pursuant to paragraph 32 for the conduct of activities pursuant to paragraph 196 to 223 for the duration of the investigation as specified in paragraph 170.

[MEASURES TO GUARD AGAINST ABUSE DURING AN INVESTIGATION

79. 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.

80. 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.

[81. 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.]

STANDING ARRANGEMENTS

Point(s) of entry

82. 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.

83. 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.

84. 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

85. 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.

86. 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 six 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.

87. Not less than three 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 86 is approved, so that the investigation team may arrive at the point of entry by the estimated arrival time.

88. 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

89. 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

90. 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.

91. The Technical Secretariat shall, as appropriate, update the list of equipment. The updated list shall be considered and approved by the Conference.

92. 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.

93. 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.

94. Subject to paragraph 95, 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.

95. 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.

[96. 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.]]

97. 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.

98. 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.

[Observer

99. 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. [The receiving State Party shall as a rule, accept the proposed observer, but if the receiving State Party exercises a refusal, that fact shall be recorded without comment in the final report.]

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

101. The requesting State Party shall liaise with the Director-General 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.

102. 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.

103. The observer shall have the right to arrive at the investigation area/alternative or final perimeter, whichever occurs first, with the investigation team and to have access to and within the investigation area/alternative or final perimeter, whichever occurs first, as granted by the receiving State Party.

[104. The observer shall have the right to make recommendations concerning the conduct of the investigation. The investigation team leader shall be under no obligation to act upon the recommendations of the observer.]

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

106. 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 89. 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.]

Communications

107. 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.

108. 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.

Assignment of investigation team

109. 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 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 39 to 53. 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.

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

Dispatch/arrival of investigation team

111. 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 paragraphs 28 to 37. 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 this Article.

112. 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 109 above later than the rest, if the time period for the deployment of the full team cannot be achieved simultaneously.

[Orientation overflight

113. 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. If the receiving State Party is unable or does not agree to provide an orientation overflight, this fact shall not be recorded nor be commented upon in the final report.]

II. FIELD INVESTIGATIONS

PRE-INVESTIGATION ACTIVITIES

Notification of investigation

114. 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.

115. The notification made by the Director-General under the provisions of paragraph 114 shall include, *inter alia*:

- (a) Name of the receiving State Party;
- (b) Name of the host State Party or 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 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 paragraph 97;
- (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.

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

117. 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

118. The investigation mandate, issued in accordance with paragraph 37, 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 investigation area designated in accordance with paragraph 22;
- (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

119. 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.

ACTIVITIES UPON ARRIVAL OF THE INVESTIGATION TEAM

Transportation from the point of entry

120. The receiving State Party shall transport the investigation team together with its equipment to the location within the investigation area 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.

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

Pre-investigation briefing

122. 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 to be investigated [if the receiving State Party considers it relevant to the briefing], possible routes and means of transport to the area, logistical arrangements for the investigation, details of equipment and/or laboratory facilities provided on request of the Director-General and any other relevant information.

123. 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 paragraphs 64 to 77.

124. 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.

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

Investigation plan

126. 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.

Situation report

127. 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.

128. 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

129. All on-site activities shall be conducted in accordance with the access provisions contained in paragraphs 64 to 77.

Interviewing of eye witnesses

130. 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].

131. 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

132. 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].

133. 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

134. 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.

135. 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.

136. 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.

137. 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]

138. 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 130, 132 and 134 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 130 to 137.]

Visual observation

139. 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 paragraphs 64 to 77.] [The investigation team may only use video or photographic equipment with the agreement of the receiving State Party.]

140. 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/intoxication-related examination

141. 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.

142. Appropriately qualified members of the investigation team may conduct disease/intoxication-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.

143. 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.

144. 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.

145. 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.

146. 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.

[147. 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 141 to 146. The investigation team shall provide the receiving State Party with the etiological and/or epidemiological information which necessitates such activities.]

Sampling and identification

[148. All of the activities provided for in paragraphs 149 to 158 shall be conducted in accordance with the access provisions contained in paragraphs 64 to 77.]

149. 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.

150. 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.

151. 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.

152. Analysis [of one of the sealed duplicate samples referred to in paragraph 150] 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.

153. 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.

154. 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.

155. 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.

156. 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.

157. 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.

158. 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

159. 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 paragraphs 64 to 77, 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.

160. 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.

161. 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.

EXTENSIONS

[Extension of investigation area

162. If during the course of the investigation the investigation team considers it necessary to extend the area of investigation, it may request the receiving State Party for such extension. In its request, the investigation team shall indicate the requested extended area on a map by geographic coordinates specified to the nearest second. It shall also provide the receiving State Party with the reasons for the request and if the receiving State Party agrees with the request, the investigation area shall be extended as requested.

[163. If agreement is not reached in 12 hours, the investigation team leader shall submit the issue to the Executive Council through the Director-General. 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 as well as all the information in the original request submitted to the receiving State Party. The Director-General shall also 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 Executive Council shall decide to approve the extension of the investigation area by a simple majority of its members present and voting. 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 request of the Director-General.]

164. 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 paragraphs 6 to 22 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 paragraph 12.]

[Establishment of new investigation area(s)]

165. 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 12 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 request of the Director-General decides by ... 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 request of the Director-General.]

Extension of investigation duration

166. 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 119.

III. FACILITY INVESTIGATIONS

PRE-INVESTIGATION ACTIVITIES

Notification of investigation

167. 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 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.

168. 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

169. The investigation mandate, issued in accordance with paragraph 37, 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

170. 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

171. Not later than [12] hours after receiving the notification in accordance with paragraph 167, 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 25 and 26. This obligation may be met by collecting factual information in the form of traffic logs, photographs or video recordings.

172. 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.

173. The investigation team may inspect, in accordance with the access provisions contained in paragraphs 64 to 78, 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.

174. [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.

175. 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.

176. 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.

ACTIVITIES UPON ARRIVAL OF INVESTIGATION TEAM

Alternative determination of final perimeter

177. 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 25], 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.

178. The alternative perimeter shall be designated as specifically as possible in accordance with paragraph 25. 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.

179. 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 185 and 186.

180. 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.

181. 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 180.

182. Transportation shall, in any case, be completed not later than ... hours after the arrival of the investigation team at the point of entry.

183. 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.

184. 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

185. 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.

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

Pre-investigation briefing

187. 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.

188. 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 paragraphs 64 to 78.

Initial investigation plan

189. 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.

190. 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 188, in the preparation of the investigation plan. The investigation team shall also take into account any measures, in accordance with the provisions contained in paragraphs 64 to 78, indicated by the receiving State Party and may make proposals concerning the implementation of these measures.

191. 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.

192. 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.

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

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

IMPLEMENTATION BY THE INVESTIGATION TEAM OF SPECIFIC ON-SITE ACTIVITIES

195. 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 paragraphs 64 to 78.

Interviewing

196. 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.

197. 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.

198. 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

199. 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.

200. [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 paragraphs 64 to 78.

Identification and examination of key equipment

201. The investigation team may identify and examine only equipment relevant to the investigation mandate at the investigated facility. In the identification and examination of

equipment, considered key equipment by the investigation team, it may make use of, but not be limited to, the list of equipment contained in Annex A.

202. 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 material]

[203. 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.]]

OR

[203. The investigation team may determine the quantity of media and material containing biological agent or toxin in terms of weight, volume, name of agent or toxin and the concentration of such agent or toxin, when required to fulfil its mandate.

203 *bis* The investigation team may also note the quantity of biological material in comparison with information provided in facility declarations or notifications.]]

Examination of documentation and records

204. The investigation team may only when required [(as a last resort)] to fulfil its mandate, examine documentation, electronically held data, manuals and records available at the facility, relevant to the investigation mandate [concerning only] [and which may include but are not limited to] the supply and consumption of media and the design or operation of equipment, receipt and transfer of biological agents and toxins [as well as information on types and quantities of biological agents or toxins]. 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.

205. The receiving State Party may, in accordance with paragraphs 64 to 78, protect documentation, electronically held data, manuals and records.

206. The investigation team may request copies of documentation or printouts 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.

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

208. The investigation team may, with the consent of the receiving State Party, obtain 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.

[209. 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 at the investigated facility, to these specific documents and records for review at the investigated facility in accordance with the provisions of paragraphs 64 to 78.]

[Examination of medical records]

210. The investigation team may, in discharging its mandate and with the consent of the receiving State Party, obtain access to medical and occupational health records and data of the facility or such regulations being applied at the facility. Access to such 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]

211. The investigation team may with the permission of the receiving State Party examine analytical data related to clinical and pathological samples relevant to the investigation mandate taken previously by the facility.]

Sampling and identification

212. 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.

213. 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.

214. The receiving State Party shall have the right to take measures, in accordance with the access provisions contained in paragraphs 64 to 78, 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.

215. 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.

216. If on-site analysis is impossible, the investigation team may request the removal of samples for analysis in laboratories selected in accordance with paragraph 217 (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.

217. 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.

218. 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.

219. 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.

220. 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.

221. 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.

222. The receiving State Party shall have the right to offer a sample for analysis in accordance with the provisions in paragraphs 213 to 221, at any time in order to help resolve the non-compliance concern(s) contained in the investigation mandate.

223. 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.

IV. POST-INVESTIGATION ACTIVITIES

Preliminary findings

224. 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 D], 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.

225. In accordance with the access provisions contained in paragraphs 64 to 78, 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.

226. 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.]

227. Further to the provisions of paragraph 226 the investigation team shall, upon request, supply copies of all information and data recorded during the investigation to the receiving State Party.

Departure

228. 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.

REPORTS

Interim investigation report for field investigations

229. 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. 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 18 (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.

230. 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.

Interim investigation report for facility investigations

231. 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 23 (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.

232. 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

233. 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.

234. 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.

235. 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

Final report

236. 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.

237. 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 paragraphs 238 to 243.

[[REVIEW OF THE FINAL REPORT] [AND ADOPTION OF DECISIONS]]

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

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

239. With respect to any concerns raised under paragraph 238 (c), one or more of the following factors could be taken into account, where relevant:

- (a) Information relating to the investigated site available prior to the investigation request (the authenticity and reliability of any information would need to be carefully assessed);
- (b) Whether any of the information submitted as part of the investigation request was shown to be false;
- (c) Information from and/or outcome or results of prior consultations/clarifications relevant to the request, if applicable;

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

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

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

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

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

241. If the Executive Council reaches the conclusion, in keeping with its powers and functions, that further action may be necessary with regard to paragraph 238, 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.

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

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