Origins of Article VII of the BTWC
The meaning of ‘Emergency Assistance’

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Assistance, Response and Preparedness
BTWC Meeting of Experts IV – Side Event Hosted by France
Geneva, 14 August 2018
Why study negotiation history of Article VII?

- **Tabletop exercise (November 2016)**
  - Triggering Article VII has major political implications
    - Prior assumption that outbreak is deliberate (major BTWC breach)
    - May exacerbate ongoing conflict
    - Decision-making in UN Security Council (UNSC) may become highly politicised + veto risk
  - Procedural uncertainty too made participants hesitate to invoke Article VII
    - Demand of proof of allegation was important
    - However, what constituted ‘proof’ was uncertain
      - To be presented by victim?
      - To be confirmed by external body (e.g., UN Secretary-General investigative mechanism)?
  - Different actor types saw different value in Article VII
    - E.g. alleged perpetrator saw it as transparency tool and means of exoneration

- **Lack of procedures**
  - UN has not looked into possible roles in case Article VII is triggered
  - No procedures are currently available
  - If UNSC were to receive request, first task would be to understand Article VII and what negotiators intended
Key negotiation moments

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

- **Prohibition**
  - BW use (draft Article I)
  - BW development, acquisition, possession (draft Article II)

- **Investigation (draft Article III)**
  - Victim of BW use: complaint + evidence to UNSG, who investigates and reports to UNSC (Article III, 1)
  - 3rd party complaint: complaint + evidence to UNSC (Article III, 2)
  - Allegation of violation of draft Article II: complaint + evidence to UNSC (Article III, 2)

- **Assistance (draft Article IV)**
  - Victim of BW use: confirmation of alleged use by UNSC, other States Parties provide or support ‘appropriate assistance’
  - UK view: ‘appropriate assistance’ = humanitarian

- **Draft UNSC Resolution**
  - UNSC takes upon itself to act following a complaint
  - Specific and independent role for UNSG in case a victim lodges a complaint
  - UNSC to develop investigative procedures in advance
Core characteristics of original UK proposal

- **Assistance is strictly humanitarian**
  - Consistent with UN Charter
  - Assistance is humanitarian and moral responsibility of *individual* states under UN Charter

- **Strict separation of victim assistance from confronting aggressor**
  - Hence draft UNSC Resolution to set up specific modalities
  - Separate UNSC decision processes envisaged to 'authorise' humanitarian assistance → assistance should not be contingent on political considerations
  - Different procedure for 3rd-party complaints → directly to UNSC
    - Motive: low likelihood of access to site of incident; different UNSC action required

- **Prevention of UNSC veto**
  - UNSC only confirms validity of complaint (no other action)
  - BTWC States Parties then provide or support humanitarian assistance

- **Draft Articles III (investigation) and IV (assistance) seen as ‘deterrent’**
  - Functional substitutes for lack of verification (viewed as impossible)
Mechanism envisaged in UK draft BTWC
Critical negotiation stages

• **UK proposals**
  - Primary focus on BW use (Laws of war)
  - Disarmament elements (ban on development, acquisition and possession)
  - Investigation of alleged use and other treaty violations
  - Assistance provision
  - Accompanying text for UNSC resolution on UNSG investigation and UNSC action in case of allegation of use

• **Socialist (and US) proposals**
  - Primary focus on disarmament
  - No direct reference to BW use (except in preambular paragraphs and reference to 1925 Geneva Protocol)
    - Disarmament precludes BW use
  - No assistance provision
  - Consultative process (future BTWC Article V)
  - Complaints procedure for treaty violations involving UNSC (future BTWC Article VI)
    - UNSC only to 'consider' a complaint: any action requires separate decision (→ veto risk)

• **Integration of UK and Socialist proposals**
  - Primary focus on disarmament
  - No direct reference to BW use
  - Reintroduction of UK assistance provision as BTWC Article VII (but now in a disarmament framework) → loss of purpose?
  - No accompanying draft UNSC resolution to outline role of UN bodies → loss of process?
Revised draft UNSC resolution

• 26 August 1969: revised UK draft convention, incl. new preambular paragraph indraft UNSC resolution:

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

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

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

- **Original purpose (UK)**
  - BW use
  - Draft convention had focus on banning use

- **Socialist draft treaty**
  - Focus on disarmament (weapon elimination; prevention of BW development, production, stockpiling & transfer)
  - Reference to treaty violations other than use?
    - E.g. Accidental release of an agent from an illicit research or production facility

- **Interpretation during negotiations after insertion Article VII**
  - UK reinterpreted deterrence function: deterrence against use = deterrence against acquisition and possession
  - USA: any type of violation (reinforcement of the UK’s deterrence argument)
  - USSR: any type of violation; systematically argued against inclusion of ‘use’ in draft BTWC
  - Other countries too
'If the Security Council decides'

- **Original purpose (UK)**
  - UNSC *confirms*, based on UNSG investigative report
  - No decision
  - Purpose: moral pressure in support of individual humanitarian action; removal of political/ideological grounds to refuse humanitarian assistance

- **Socialist draft treaty**
  - Ban on use removed from draft treaty
  - Inclusion of consultation (future Article V) and complaints procedure (future Article VI)
  - UNSC will *consider* a complaint
  - No longer a process involving independent investigation by UNSG foreseen
  - No longer any separation between victim assistance from confronting aggressor

- **Interpretation during negotiations after insertion Article VII**
  - Not really considered in any detail
  - Acceptance of clause without much consideration of implications
  - Today function in Article VII unclear; no clear reference to which Chapter in UN Charter
  - Linkages between BTWC Article VII and Articles V and VI unclear and unspecified
‘The United Nations Charter’

- **Original purpose (UK)**
  - Emphasis of individual moral and humanitarian obligations

- **Socialist draft treaty**
  - No equivalent provision included

- **Interpretation during negotiations after insertion Article VII**
  - Not really considered in any detail
  - Not linked to UNSC decision
  - Specific meaning today unclear in view of lack of explicit prohibition on use
‘Assistance’

- **Original purpose (UK)**
  - Humanitarian
  - Victim had autonomous right to lodge a complaint in case of being a victim of BW use
  - Other States Parties provide or support assistance individually

- **Socialist draft treaty**
  - No equivalent provision included

- **Interpretation during negotiations after insertion Article VII**
  - Humanitarian consideration drove reintroduction of original UK idea
  - Today, no specific role & procedure for victim of use foreseen
    - Trend towards collective determination of outbreak seems to exist in today’s deliberations
    - Will international community ‘judge’ on severity of crisis before responding to invocation of Article VII?
  - Investigative mechanisms foreseen outside of the BTWC
Some concluding thoughts

- Normal that today States Parties have different ideas and opinions
- Many questions about how to trigger (or indeed the purpose of) Article VII remain
  - Is it still an individual action by a victim state party?
  - Is it based on a collective judgement by all states Parties, and therefore collective action?
    - If so, what are the mechanisms/procedures for arriving at such collective judgement?
- **Key considerations:**
  - How severe must a crisis be to trigger Article VII?
  - Are other violations of the BTWC provisions putting a State Party in danger still part of the present considerations?
  - If BTWC States Parties do not agree on mechanisms/procedures, other institutions will take over in case of a crisis
    - All mechanisms under consideration exist outside the BTWC and have their own decision mechanisms
  - Once Article VII has been triggered, the whole process of assistance provision is out of the hands of the BTWC States Parties
  - Who will determine that the violation of the BTWC (which triggered the response) has been resolved?
- **For the present, how and when will States Parties register current common treaty interpretations?**