"Investigation" under the framework of BWC

Submitted by the Islamic Republic of Iran

Summary

During the past two decades or even more, various proposals have been put on the table about how to strengthen effectiveness of the UNSG Investigation Mechanism in the context of BWC; a mechanism, inception of which was the General Assembly Resolution A/RES/42/37C of 30 November 1987 on measures to uphold the authority of the 1925 Protocol. As indicated in its working paper in 2004, the Islamic Republic of Iran believes that there are several procedural and semantic deficiencies when it comes to this mechanism, and its relevance to the BWC. Furthermore, it is pretty reassuring that these deficiencies are not insurmountable, and addressing them only needs the collective will of the States Parties. In this paper, this issue is analyzed more articulately and a constructive proposal will be offered when the subject is somehow unfolded.

1. Article VI of the BWC refers to the breach of obligations by a State Party of the provisions of the Convention. Under this Article, any State Party to this Convention which finds that any other State Party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the Security Council of the United Nations, which should include all possible evidence confirming its validity. The Security Council then:
   (a) May initiate an investigation, in accordance with the provisions of the Charter of the United Nations, on the basis of the complaint received by the Council.
   (b) Shall later inform the States Parties to the Convention of the results of the investigation.

2. It is quite obvious that the Convention is silent about the acts of non-State Parties, thereby is creating a kind of safe-haven for those outside the Convention. Needless to say
that for the sake of promoting universalization of the Convention, being outside the Convention should be seen as a disadvantage, not to the contrary.

3. Meanwhile it is referring to "breach of obligations", and not exclusively limiting itself to "alleged uses". It is also important to note that this Article is referring to the necessity of providing the complaint with "all possible evidence confirming its validity", without recommending any possible mechanism or clearly defining what might constitute the basis of such a complaint.

4. Also, it is noteworthy that in this Article although it may give the possibility to the Security Council to "initiate an investigation" and then "inform the States Parties" of the results of the investigation, the Security Council is not rendered any kind of judgment or decision making power on such cases.

5. Additionally, conferring part of an empirical realm of a Convention with close to universal membership to decide, to an exclusive body apart from that Convention, which certain countries are practically being put out of touch due to their veto power, will not be consistent with the object and purpose of the Convention.

6. All in all, resorting to this Article as a supporting element for/of having the UNSG mechanism, or to justify its foundation, does not seem to be supported factually and literally by the Convention, unless the States Parties come together, negotiate and work out on the subjective difficulties and conclude on an objective mechanism under the BWC.

7. Furthermore, Article VII obligates each State Party to this Convention 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". This is also a complex issue, which needs to be further elaborated in order for assuring that we are all on the same page on this.

8. First, the power bestowed herewith to the Security Council is limited only to deciding that "such Party has been exposed to danger as a result of violation of the Convention", and not anything more, which should be under the realm of the would-be BWC organization. While, also, the Convention is silent on the definition of "danger", "exposure", as well as, identifying the material breach of the provisions of the Convention.

9. Second, It precludes, in no way, the implementation of the provisions of Article X, which articulate that each State Party "undertakes to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes...". It is also crucial to acknowledge that humanitarian assistance cannot be held hostage to any political bickering or big-powers' discreet diplomacy in the Security Council.

10. Deeply concerned by the use of chemical weapons by Sadam's regime in the Iraq war against Iran, the General Assembly in its Resolution A/RES/42/37C of 30 November 1987 under the theme of "Measures to uphold the authority of the 1925 Protocol and to support the conclusion of a Chemical Weapons Convention" requested the Secretary-General "to carry out investigations in response to reports that may be brought to his attention by any Member State" concerning the possible use of chemical and biological or toxin weapons. Therefore, the underlying principle of establishing such a mechanism is merely to "uphold the authority of 1925 protocol", with 140 States Parties (less universalized than BWC with 174 States Parties), and even 46 of them having reservations.

11. Unfortunately the BWC, itself, also does not clearly address the prohibition of the "use" of these horrifying weapons. And, even though it has seized the matter in the Article VIII, through reaffirmation of the Geneva Protocol of 1925, and according to this Protocol
the “Use” is prohibited, but, as was mentioned above, regrettably some States Parties have still kept their reservations to that effect. This concern was, for the first time, brought to the attention of the States Parties by the Islamic Republic of Iran during the Fourth Review Conference and a proposal for the amendment of the Convention was made.

12. If, and unless, all States Parties to the Convention have the same understanding, and the relevant commitment, that the use, in any way and under any circumstances, of biological agents or toxins, that is not consistent with prophylactic, preventive, protective or other peaceful purposes, is effectively a violation of Article I of the Convention, then, alleged use of biological and toxin weapons can be an embodiment of this non-compliance.

13. In 2001, as the result of years of intensive negotiation on all provisions of the Convention, including the issue of investigation, a comprehensive composite text, which needed only final tuning and improvement, was ready for the adoption by Conference of States Parties. Had such painstaking negotiations come to successful conclusion, the anticipated OPBW, addressing comprehensively the balanced implementation of all provisions of the Convention, could have been considered and a comprehensive verification mechanism based on the Protocol would have been well in place by now.

14. While there is an investigation mechanism in terms of Chemical Weapons Convention, since this Convention has its own mandates and modalities, many other deficiencies might also be enumerated vis-à-vis the application of the SG Investigation Mechanism in the context of the Biological and Toxin Weapons Convention, including, inter-alia:

(a) There is no agreed glossary for the BWC; therefore, there is no internationally recognized definition on the terms "terms of compliance", "suspicious and/or unusual outbreaks of diseases and events" or "alleged use", "investigation", "risks", "dangers" etc.;

(b) Additionally, since, BWC does not have any established implementation structure, therefore it lacks a framework for the follow up and implementation of its provisions;

(c) The UNSG Mechanism is an anachronism of the time when there was a tangible and urgent example of Sadam's extensive use of chemical weapons against Iran and even its own civilians on the one hand, and the absence of any OPCW and the ineffective BWC Protocol of 2001, on the other; and,

(d) The text of the guidelines and technical procedures for SG investigation has not been negotiated by States Parties to the BTWC and therefore do not fully reflect their legitimate and immediate concerns.

15. However, unconditional commitment to an unreserved implementation of the Geneva Protocol of 1925 and outright ban in terms of USE in the context of the Convention, as well as, clarifying the definitions and scopes of the Articles in the Convention should be dealt with comprehensively in a balanced States Parties-led approach, while taking into account the lessons and experiences of, and trying to avoid duplication of efforts by, CWC, WHO, OIE, and FAO; hence, such ambiguities in the relations between these Articles cannot be easily overlooked by working on another ambiguous and even non-State-led discriminatory mechanism.

16. Considering the above mentioned deficiencies in the Mechanism and the problems with regard to the implementation of the Convention itself, and also, faced with rapid development of bioscience and biotechnology, there is no doubt that it is an imperative and important for the States Parties to the Convention to discuss the implementation of the Convention in its totality and to strengthen the effectiveness of the Convention, in a
balanced manner, within an inter-governmentally negotiated legally binding non-discriminatory frameworks.