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## **ARTICLE VI: ASSISTANCE AND PROTECTION AGAINST BIOLOGICAL AND TOXIN WEAPONS**

by Graham S. Pearson\* & Nicholas A Sims†

### **Introduction**

1. The Ad Hoc Group (AHG) is considering measures to strengthen the Biological and Toxin Weapons Convention (BTWC) through a legally binding instrument. The pace of the AHG negotiations has quickened during the past year and there is now a clear political will to see the negotiation of the Protocol completed as soon as possible before the Fifth Review Conference in 2001. It is now evident that several Articles in the draft Protocol are now largely agreed and will not develop significantly from their current form although a certain amount of restructuring may be agreed at a later stage.

2. In Evaluation Paper No 1 in July 1999 it was concluded<sup>1</sup> that *"the majority of the Articles in the draft Protocol have now reached the stage when they have had multiple readings and are unlikely to change significantly during the coming months as the negotiations enter the end-game. It is therefore timely to commence the production of a series of Evaluation Papers which will consider Article by Article the current state of each Article of the Protocol."* By the end of 1999, Evaluation Papers had been prepared for 14 of the 23 Articles, over half of all the Articles of the Protocol. This Evaluation Paper continues this series by considering Article VI *Assistance and Protection Against Biological and Toxin Weapons* on which the AHG has made progress with the current rolling text containing some 20 sets of square brackets.

### **Article VI**

3. In October 1999, the text<sup>2</sup> for Article VI was unchanged from its earlier versions:

#### *ARTICLE VI*

#### *ASSISTANCE AND PROTECTION AGAINST BIOLOGICAL AND TOXIN WEAPONS*

*1. For the purposes of this Article, "Assistance" means the coordination and delivery to States Parties of protection against biological and toxin weapons, including, inter alia, any of the following: detection equipment [including*

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<sup>1</sup>Graham S. Pearson, *The Strengthened BTWC Protocol: An Overall Evaluation*, Evaluation Paper No. 1, University of Bradford, July 1999. Available on <http://www.brad.ac.uk/acad/sbtwc>

<sup>2</sup>United Nations, *Procedural Report of the 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/47 (Part I), 15 October 1999, Geneva.

*biosensors]; alarm equipment; protective equipment; decontamination equipment and decontaminants; prophylactic, diagnostic and/or therapeutic medical measures and materials, and/or advice on any of these protective measures.*

2. *Nothing in this Protocol shall be interpreted as impeding the right of any State Party to conduct research into, develop, produce, acquire, transfer or use means of protection against biological and toxin weapons, for purposes not prohibited under the Convention.*

3. *Each State Party undertakes to facilitate, and shall have the right to participate in [, subject to protection of confidential proprietary information and national security information] [and under non-discriminatory and equitable commercial terms,] the fullest possible exchange of equipment, material and scientific and technological information concerning means of protection against biological and toxin weapons.*

4. *The Technical Secretariat shall establish, not later than 180 days after entry into force of this Protocol and maintain, for the use of any requesting State Party, a data bank containing freely available information concerning various means of protection against biological and toxin weapons as well as such information as may be provided by States Parties.*

5. *The Technical Secretariat shall also, within the resources available to it, and at the request of a State Party, provide expert advice and assist the State Party in identifying how its programmes for the development and improvement of a protective capacity against biological and toxin weapons could be implemented.*

6. *Nothing in this Protocol shall be interpreted as impeding the right of States Parties to request and provide assistance bilaterally and to conclude individual agreements with other States Parties concerning the emergency procurement of assistance.*

7. *Each State Party undertakes to provide assistance to the extent possible through the Organization and to this end may elect to take one or more of the following measures:*

(a) *To contribute to the voluntary fund for assistance to be established by the Conference at its first session;*

(b) *To conclude, if possible not later than 180 days after this Protocol enters into force for it, agreements with the Organization concerning the procurement, upon demand, of assistance;*

(c) *To declare, not later than 180 days after this Protocol enters into force for it, the kind of assistance it might provide in response to an appeal by the Organization. If, however, a State Party subsequently is unable to provide the assistance envisaged in its declaration, it is still under the obligation to provide assistance in accordance with this Article.*

8. *Each State Party has the right to request and, subject to the procedure set forth in paragraphs 9, 10, 11 and 12 to receive assistance and protection against the use or threat of use of biological and toxin weapons if it considers that:*

(a) *Biological and toxin weapons have been used against it;*

(b) *It is threatened by imminent actions that are prohibited for States Parties by Article I of the Convention;*

(c) *It has credible reason to believe it is confronted by imminent actions or serious threat with respect to actions that are prohibited for States Parties by Article I of the Convention.*

9. *The request for assistance, substantiated by relevant information, shall be submitted to the Director-General, who shall transmit it immediately to the Executive Council and to all States Parties, requesting those States Parties which have volunteered assistance, in accordance with subparagraphs 7 (b) and (c) to begin preparations to dispatch emergency assistance in case of use of biological and toxin weapons, or humanitarian assistance in case of serious threat of use of biological and toxin weapons to the State Party concerned, not later than 12 hours after receipt of the request. [Requests for assistance when a State Party considers that biological or toxin weapons have been used against it shall [not be considered or otherwise acted upon by the Director-General or the Executive Council unless a field investigation request from the State Party making the Article VI request is submitted] [also be accompanied, either simultaneously or within 12 hours, by a request for a field investigation pursuant to Article III, section G].]*

10. *The Director-General shall initiate, not later than [12] hours after receipt of a request for assistance, from a State Party, an examination of the request in order to provide foundation for further action by the Organization. The Director-General shall complete the examination within [72] hours and forward a report to the Executive Council and to States Parties. If necessary, the time required for completion of the examination may be extended by periods of [72] hours with reports being submitted at the end of each [72] hour period, to the Executive Council and to all States Parties. The examination shall, as appropriate and in conformity with the request and the information accompanying the request, establish relevant facts related to the request as well as make recommendations on the type and scope of [supplementary] assistance and protection needed. In the case of request for assistance when a State Party considers that biological or toxin weapons have been used against it, the Director-General shall, when possible, incorporate into the examination report relevant factual information from the affected area(s) [and [, if appropriate,] progress reports [of the] [from any] investigation team which [is] [may be] conducting [the] [a] field investigation in the State Party concerned].*

11. *The Executive Council shall meet not later than [24] hours after receiving an examination report to consider the situation and shall take a decision by simple majority within the following [24] hours on whether to instruct the Technical Secretariat to provide [supplementary] assistance. The Technical Secretariat shall immediately transmit to all States Parties and relevant international organizations the*

*examination report and the decision taken by the Executive Council. When so decided by the Executive Council, the Director-General shall provide assistance immediately. For this purpose, the Director-General may cooperate with the requesting State Party, other States Parties and relevant international organizations. The States Parties shall make the fullest possible efforts to provide assistance.*

*12. If the information available from the ongoing examination or other reliable sources would give sufficient proof that there are humans, animals or plants affected by the use of biological and toxin weapons and immediate action is indispensable, the Director-General shall notify all States Parties and shall take emergency measures of assistance, using the resources the Conference has placed at his/her disposal for such contingencies. The Director-General shall keep the Executive Council informed of actions undertaken pursuant to this paragraph.*

Thus far, there has been no text provided in Part II by the Friend of the Chair for Article VI.

4. The provision in the draft Protocol is broader than the limited undertaking placed on States Parties in Article VII of the BTWC<sup>3</sup> which requires that:

#### *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.*

5. Article VI of the Protocol closely mirrors the provisions made in Article X of the Chemical Weapons Convention (CWC)<sup>4</sup> which requires that:

#### *Article X*

### **ASSISTANCE AND PROTECTION AGAINST CHEMICAL WEAPONS**

*1. For the purposes of this Article, "Assistance" means the coordination and delivery to States Parties of protection against chemical weapons, including, inter alia, the following: detection equipment and alarm systems; protective equipment; decontamination equipment and decontaminants; medical antidotes and treatments; and advice on any of these protective measures.*

*2. Nothing in this Convention shall be interpreted as impeding the right of any State Party to conduct research into, develop, produce, acquire, transfer or use means of protection against chemical weapons, for purposes not prohibited under this Convention.*

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<sup>3</sup>United Nations, *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*, Resolutions adopted by the General Assembly, Official Records: Twenty-Sixth Session, 2826 (XXVI), 16 December 1971.

<sup>4</sup>Organization for the Prohibition of Chemical Weapons, *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction*, Available on the web at <http://www.opcw.nl>

3. *Each State Party undertakes to facilitate, and shall have the right to participate in, the fullest possible exchange of equipment, material and scientific and technological information concerning means of protection against chemical weapons.*

4. *For the purposes of increasing the transparency of national programmes related to protective purposes, each State Party shall provide annually to the Technical Secretariat information on its programme, in accordance with procedures to be considered and approved by the Conference pursuant to Article VIII, paragraph 21 (i).*

5. *The Technical Secretariat shall establish, not later than 180 days after entry into force of this Convention and maintain, for the use of any requesting State Party, a data bank containing freely available information concerning various means of protection against chemical weapons as well as such information as may be provided by States Parties.*

*The Technical Secretariat shall also, within the resources available to it, and at the request of a State Party, provide expert advice and assist the State Party in identifying how its programmes for the development and improvement of a protective capacity against chemical weapons could be implemented.*

6. *Nothing in this Convention shall be interpreted as impeding the right of States Parties to request and provide assistance bilaterally and to conclude individual agreements with other States Parties concerning the emergency procurement of assistance.*

7. *Each State Party undertakes to provide assistance through the Organization and to this end to elect to take one or more of the following measures:*

*(a) To contribute to the voluntary fund for assistance to be established by the Conference at its first session;*

*(b) To conclude, if possible not later than 180 days after this Convention enters into force for it, agreements with the Organization concerning the procurement, upon demand, of assistance;*

*(c) To declare, not later than 180 days after this Convention enters into force for it, the kind of assistance it might provide in response to an appeal by the Organization. If, however, a State Party subsequently is unable to provide the assistance envisaged in its declaration, it is still under the obligation to provide assistance in accordance with this paragraph.*

8. *Each State Party has the right to request and, subject to the procedures set forth in paragraphs 9, 10 and 11, to receive assistance and protection against the use or threat of use of chemical weapons if it considers that:*

*(a) Chemical weapons have been used against it;*

*(b) Riot control agents have been used against it as a method of warfare; or*

*(c) It is threatened by actions or activities of any State that are prohibited for States Parties by Article I.*

9. *The request, substantiated by relevant information, shall be submitted to the Director-General, who shall transmit it immediately to the Executive Council and to all States Parties. The Director-General shall immediately forward the request to States Parties which have volunteered, in accordance with paragraphs 7 (b) and (c), to dispatch emergency assistance in case of use of chemical weapons or use of riot control agents as a method of warfare, or humanitarian assistance in case of serious threat of use of chemical weapons or serious threat of use of riot control agents as a method of warfare to the State Party concerned not later than 12 hours after receipt of the request. The Director-General shall initiate, not later than 24 hours after receipt of the request, an investigation in order to provide foundation for further action. He shall complete the investigation within 72 hours and forward a report to the Executive Council. If additional time is required for completion of the investigation, an interim report shall be submitted within the same time-frame. The additional time required for investigation shall not exceed 72 hours. It may, however, be further extended by similar periods. Reports at the end of each additional period shall be submitted to the Executive Council. The investigation shall, as appropriate and in conformity with the request and the information accompanying the request, establish relevant facts related to the request as well as the type and scope of supplementary assistance and protection needed.*

10. *The Executive Council shall meet not later than 24 hours after receiving an investigation report to consider the situation and shall take a decision by simple majority within the following 24 hours on whether to instruct the Technical Secretariat to provide supplementary assistance. The Technical Secretariat shall immediately transmit to all States Parties and relevant international organizations the investigation report and the decision taken by the Executive Council. When so decided by the Executive Council, the Director-General shall provide assistance immediately. For this purpose, the Director-General may cooperate with the requesting State Party, other States Parties and relevant international organizations. The States Parties shall make the fullest possible efforts to provide assistance.*

11. *If the information available from the ongoing investigation or other reliable sources would give sufficient proof that there are victims of use of chemical weapons and immediate action is indispensable, the Director-General shall notify all States Parties and shall take emergency measures of assistance, using the resources the Conference has placed at his disposal for such contingencies. The Director-General shall keep the Executive Council informed of actions undertaken pursuant to this paragraph.*

6. There is no comparable provision, for obvious reasons, for assistance and protection in the Comprehensive Test Ban Treaty (CTBT)<sup>5</sup>.

## **Evaluation**

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<sup>5</sup>Comprehensive Nuclear-Test-Ban Treaty. Available at <http://www.ctbto.org/ctbto/pdf/cbten.pdf>

7. The provisions in the Protocol Article VI can now conveniently be considered on a paragraph by paragraph basis.

8. *Paragraph 1.* This sets out the definition of "Assistance" using identical language to that in the CWC Article X, paragraph 1, except in the following respects:

a. The Protocol states that "*Assistance*" means any of the following:" whereas the CWC language has the simpler "*Assistance*" means the following:"

b. A similar variation is where the Protocol says "*and/or advice on any of these.*" whilst the CWC has the simpler "*and advice on any of these.*"

c. There is also a difference in the list of protection with the Protocol including "*detection equipment [including biosensors]; alarm equipment;*" in contrast to the CWC language "*detection equipment and alarm systems;*". Our view is that the square brackets should be removed so as to provide clarity that detection equipment does include biosensors. It is not evident why the Protocol uses different language regarding *alarm equipment* rather than *and alarm systems* as in the CWC.

d. A further variation is where the Protocol provides for the inclusion of "*prophylactic, diagnostic and/or therapeutic medical measures and equipment*" in contrast to the CWC language "*medical antidotes and treatments;*". The Protocol terminology is correctly tailored to the particular characteristics of medical countermeasures for protection against biological and toxin agents. It also is usefully broader in that it includes "*and equipment*".

9. *Paragraph 2.* This has identical language to that in the CWC, Article X, paragraph 2. It provides the important undertaking that nothing in the Protocol shall impede the right of a State Party to engage in protection against biological and toxin weapons.

10. *Paragraph 3.* If the language within square brackets is ignored, this paragraph has identical language to that in the CWC, Article X, paragraph 3 in stating that each State Party has the right to participate in *the fullest possible exchange* relating to protection against biological and toxin weapons. The language in square brackets has no parallel in the CWC text. It therefore has to be considered what is added if the square brackets were removed. Both sets of language in the square brackets [*subject to protection of confidential proprietary information and national security information*] [*and under non-discriminatory and equitable commercial terms,*] state what is obvious and is implicit in the language *fullest possible exchange*. There is thus no added value from the language in square brackets and we therefore recommend that all the language in square brackets in paragraph 3 be deleted.

11. *CWC Paragraph 4.* This paragraph, which in the CWC, requires States Parties to provide information annually on their national programmes related to protective purposes, has no parallel in Article VI of the Protocol because Article *III Compliance Measures D. Declarations* contains provisions for annual declarations of (C) *Current Defensive [Programmes][Activities]*. There is no necessity therefore to include such language in Article VI.



12. *Paragraph 4.* This has identical language to the first sentence of the CWC, Article X, paragraph 5, requiring the Technical Secretariat to establish a database.

13. *Paragraph 5.* This has identical language to the second sentence of the CWC, Article X, paragraph 5, requiring the Technical Secretariat to provide expert advice and assistance to a State Party if requested.

14. *Paragraph 6.* This has identical language to that in the CWC, Article X, paragraph 6. It provides the assurance that nothing in the Protocol shall impede the right of States Parties to request and provide assistance bilaterally.

15. *Paragraph 7.* The chapeau differs significantly from that in the CWC, Article X, paragraph 7 through two changes. In the first change, the chapeau preserves the undertaking "*to provide assistance through the Organization*" but qualifies this undertaking with the words "*to the extent possible*" which do not appear in the CWC provision.

16. The words "*to the extent possible*" make explicit in the Protocol what was implicit in the CWC. As has been noted<sup>6</sup>:

*"The implicit understanding is not reflected in the text [of the CWC] that only those States Parties which are economically and technologically capable of rendering assistance are expected to make contributions for this purpose."*

By placing these additional words in the chapeau, the Ad Hoc Group is emphasizing the *optional* character of the measures set out in subparagraphs (a) to (c). This may be regarded as a useful clarification. It recognises the reality that not all States Parties will be in a position to contribute in any of the three ways suggested. It removes the uncertainty over the legal position of such States Parties which commentators on the CWC have identified<sup>7</sup>:

*"The agreement on such a provision [as CWC, Article X, paragraph 7] on assistance through the organization was only possible after extensive negotiations and consultations... The main obstacle of an agreement was whether the assistance to be rendered by the Organization should be provided by the States Parties on a mandatory or voluntary basis."*

17. Krutzsch and Trapp concluded<sup>8</sup> that the provision of assistance through the Organization was an "*unequivocal obligation for States Parties*" which could not be replaced by bilateral agreements alone. They also concluded that the undertaking in the chapeau had a "*mandatory character*" which included selecting "*one or more of the ways offered in subparagraphs (a) to (c)*". Although they were critical of the first sentence of subparagraph (c) which they noted "*gives rise to practical and legal problems*", they found that it had to be read consistently with a strong interpretation of the undertaking as a whole:

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<sup>6</sup>Walter Krutzsch & Ralf Trapp, *A Commentary on the Chemical Weapons Convention*, Dordrecht, Martinus Nijhoff, 1994, footnote 4 on p.203.

<sup>7</sup>Walter Krutzsch & Ralf Trapp, *A Commentary on the Chemical Weapons Convention*, Dordrecht, Martinus Nijhoff, 1994, p.203.

<sup>8</sup>Walter Krutzsch & Ralf Trapp, *A Commentary on the Chemical Weapons Convention*, Dordrecht, Martinus Nijhoff, 1994, p.203 - 5.

*"The second sentence of subparagraph (c) emphasizes that the margin of discretion given in this provision does not detract from the mandatory character of the undertaking in the chapeau of paragraph 7."*

18. The qualifying phrase "to the extent possible" introduced in the Protocol applies to the undertaking as a whole because it is placed in the chapeau. It therefore has the effect of changing the obligation "*to elect to take one or more of the following measures*" from "*one or more*" to 'one or more or none' according to the possibilities open to each of the States Parties. At this point it ceases to be an obligation.

19. The second change in the chapeau from that in the CWC, Article X, paragraph 7 follows logically from the introduction of the qualifying phrase "*to the extent possible*". In place of the undertaking in the CWC "*to elect to take one or more of the following measures*", the Protocol cuts off the obligatory language of an **undertaking** after "*Each State Party undertakes to provide assistance to the extent possible through the Organization*", and continues in **optional** mode: "*and to this end **may** elect to take one or more of the following measures.*" [Emphasis added]

20. It also follows that the second sentence of subparagraph (c) has a different effect in the Protocol from its equivalent provision in the CWC. In the CWC it returned States Parties, if unable to honour a declaration previously made under subparagraph (c), to the original position in which they had to make a selection among the measures; and it placed them under a stronger obligation this time to select the financial measure by contributing to the voluntary fund under subparagraph (a). In the Protocol, however, its effect is only to return such States Parties to the overall obligation "*to provide assistance to the extent possible through the Organization.*" Our view is that the Protocol paragraph 7 is thus more realistic than, and is free of the ambiguity in, the corresponding CWC paragraph.

21. *Paragraph 8.* This, in the chapeau, sets out the right of each State Party to request and receive assistance and protection against the use or threat of use of biological and toxin weapons if it considers that certain conditions apply. The language in the chapeau is identical to that in the CWC, Article X, paragraph 8 although there are differences in the conditions:

The first condition is identical in both the Protocol and the CWC:

(a) *Biological and toxin weapons have been used against it;*

The second condition in the CWC relates to the use of riot control agents and therefore has no parallel in the Protocol.

The second condition in the Protocol is somewhat similar to the third condition in the CWC. The Protocol language is:

(b) *It is threatened by imminent actions that are prohibited for States Parties by Article I of the Convention;*

whereas the CWC language is:

*(c) It is threatened by actions or activities of any State that are prohibited for States Parties by Article I.*

The Protocol language thus requires actions to be **imminent** and does not explicitly include *activities*. The exclusion in the Protocol of the words *of any State* is useful reflecting the particular difficulties in respect of biological and toxin weapons of identifying the perpetrator of prohibited actions. Furthermore, following the Aum Shinrikyo attack of the Tokyo subway, it is clear that the actions threatening a State Party, which consequently requests assistance under the Protocol, need **not** be limited to the action of a State but may result from actions by sub-State actors.

The third condition in the Protocol has no parallel in the CWC and states:

*(c) It has credible reason to believe it is confronted by imminent actions or serious threat with respect to actions that are prohibited for States Parties by Article I of the Convention.*

This language requires the State Party requesting assistance to have *credible reason* to believe that it is confronted either by *imminent actions* or *serious threat with respect to actions* that are prohibited to States Parties by Article I of the Convention. The requirement to have *credible reason* is implicit in any request by a State Party for assistance and is therefore strictly not necessary. As to the confrontation by *imminent actions*, this does not differ substantially from the second condition where the State Party *is threatened by imminent actions*. The alternative confrontation by *serious threats with respect to actions* does provide a somewhat broader condition in that these actions are not limited only to those that are *imminent*.

In considering both the second and third conditions in the Protocol, our evaluation is that the CWC language is preferable with its specific inclusion of both *actions or activities* and is not limited to those that are *imminent*. Our recommendation is that there would be improved clarity and thus advantage in merging (b) and (c) to read:

*(b) It is threatened by actions or activities that are prohibited for States Parties by Article I of the Convention.*

22. *Paragraphs 9, 10, 11 and 12.* These elaborate the procedure to be followed following a request for assistance. They broadly follow the parallel procedure in the CWC, Article X, paragraphs 9, 10 and 11.

23. *Paragraph 9.* The first sentence is similar to the two first sentences in the CWC, Article X, paragraph 9 except that the Protocol language makes it explicit that the request is *for assistance*, the two sentences from the CWC are merged into a single sentence in the Protocol and the Protocol is more cautious in that the Director-General shall request States Parties *to begin preparations* to dispatch emergency assistance whereas in the CWC language the Director-General shall forward the request to dispatch emergency assistance.

24. The second sentence of paragraph 9, which is in square brackets, has no parallel in the CWC. This language would limit consideration or action on requests for assistance when a State Party considers that biological or toxin weapons have been used against them **conditional** on the submission of a request for a field investigation. Although in an ideal world, a request for a field investigation might well accompany a request for assistance, in practice the primary requirement in the event of an attack resulting in significant casualties will be for immediate assistance as it will be far from clear whether the outbreak has resulted from natural causes or an attack by biological weapons and the request for an investigation is likely to be some time later when the State Party had considered the information available to it. This is especially true for an incident arising from biological agents because these can occur naturally. It is thus undesirable to make the consideration or action on requests for assistance **conditional** on the submission of a request for a field investigation.

25. *Paragraph 10.* This broadly follows the remainder of paragraph 9 of the CWC although in the Protocol the requirement is for the Director-General to carry out *an examination* of the request whereas in the CWC the Director-General is to carry out *an investigation* of the request. The term *an investigation* was deliberately chosen in the CWC to differ from the term *inspection* and is intended to cover the range of options which might be taken by the Director-General upon receipt of a request for assistance -- this might include going to the State Party that had requested assistance or to neighbouring States or simply be the examination of all available information. A great deal will depend on the individual circumstances of the event which has resulted in the request for assistance.

26. In the Protocol, it is important to use a term that is different from *an investigation* and this is achieved by the term *an examination* which again covers the range of options which might be taken upon receipt of a request for assistance. Insofar as the times are concerned, those in the Protocol, currently in square brackets, are the same as in the CWC with the exception that in the Protocol the Director-General shall initiate the examination not later than [12] hours after receipt of the request for assistance whereas the CWC requirement is for an investigation to be initiated not less than 24 hours after receipt of the request for assistance. The Protocol language requires the examination to *make recommendations on the type and scope of [supplementary] assistance and protection needed.* The CWC has identical language without square brackets around the word *supplementary*.

27. The Protocol language also includes a final sentence which has no parallel in the CWC which requires that:

*In the case of request for assistance when a State Party considers that biological or toxin weapons have been used against it, the Director-General shall, when possible, incorporate into the examination report relevant factual information from the affected area(s) [and [, if appropriate,] progress reports [of the] [from any] investigation team which [is] [may be] conducting [the] [a] field investigation in the State Party concerned].*

This provides a useful addition so long as the consideration of the request for assistance is not made conditional upon a request for a field investigation.

28. *Paragraph 11.* This sets out the requirement for the Executive Council to meet and has language that is essentially identical to the CWC, Article X, paragraph 10 with the Protocol language using *examination* in place of *investigation* and the word [*supplementary*] currently being within square brackets.

29. *Paragraph 12.* This enables the Director-General to take immediate action to take emergency measures of assistance and has language that is essentially identical to the CWC, Article X, paragraph 11 with the Protocol language using *examination* in place of *investigation*.

### **Strikethrough Text for Article VI**

30. It is recommended that Article VI should read as follows:

#### *ARTICLE VI*

##### *ASSISTANCE AND PROTECTION AGAINST BIOLOGICAL AND TOXIN WEAPONS*

1. *For the purposes of this Article, "Assistance" means the coordination and delivery to States Parties of protection against biological and toxin weapons, including, inter alia, any of the following: detection equipment ~~including biosensors~~; alarm equipment; protective equipment; decontamination equipment and decontaminants; prophylactic, diagnostic and/or therapeutic medical measures and materials, and/or advice on any of these protective measures.*

2. *Nothing in this Protocol shall be interpreted as impeding the right of any State Party to conduct research into, develop, produce, acquire, transfer or use means of protection against biological and toxin weapons, for purposes not prohibited under the Convention.*

3. *Each State Party undertakes to facilitate, and shall have the right to participate in ~~[, subject to protection of confidential proprietary information and national security information] [and under non discriminatory and equitable commercial terms,]~~ the fullest possible exchange of equipment, material and scientific and technological information concerning means of protection against biological and toxin weapons.*

4. *The Technical Secretariat shall establish, not later than 180 days after entry into force of this Protocol and maintain, for the use of any requesting State Party, a data bank containing freely available information concerning various means of protection against biological and toxin weapons as well as such information as may be provided by States Parties.*

5. *The Technical Secretariat shall also, within the resources available to it, and at the request of a State Party, provide expert advice and assist the State Party in identifying how its programmes for the development and improvement of a protective capacity against biological and toxin weapons could be implemented.*

6. *Nothing in this Protocol shall be interpreted as impeding the right of States Parties to request and provide assistance bilaterally and to conclude individual agreements with other States Parties concerning the emergency procurement of assistance.*

7. *Each State Party undertakes to provide assistance to the extent possible through the Organization and to this end may elect to take one or more of the following measures:*

(a) *To contribute to the voluntary fund for assistance to be established by the Conference at its first session;*

(b) *To conclude, if possible not later than 180 days after this Protocol enters into force for it, agreements with the Organization concerning the procurement, upon demand, of assistance;*

(c) *To declare, not later than 180 days after this Protocol enters into force for it, the kind of assistance it might provide in response to an appeal by the Organization. If, however, a State Party subsequently is unable to provide the assistance envisaged in its declaration, it is still under the obligation to provide assistance in accordance with this Article.*

8. *Each State Party has the right to request and, subject to the procedure set forth in paragraphs 9, 10, 11 and 12 to receive assistance and protection against the use or threat of use of biological and toxin weapons if it considers that:*

(a) *Biological and toxin weapons have been used against it;*

(b) *It is threatened by ~~imminent~~ actions **or activities** that are prohibited for States Parties by Article I of the Convention;*

~~(c) — It has credible reason to believe it is confronted by imminent actions or serious threat with respect to actions that are prohibited for States Parties by Article I of the Convention.~~

9. *The request for assistance, substantiated by relevant information, shall be submitted to the Director-General, who shall transmit it immediately to the Executive Council and to all States Parties, requesting those States Parties which have volunteered assistance, in accordance with subparagraphs 7 (b) and (c) to begin preparations to dispatch emergency assistance in case of use of biological and toxin weapons, or humanitarian assistance in case of serious threat of use of biological and toxin weapons to the State Party concerned, not later than 12 hours after receipt of the request. ~~[Requests for assistance when a State Party considers that biological or toxin weapons have been used against it shall [not be considered or otherwise acted upon by the Director General or the Executive Council unless a field investigation request from the State Party making the Article VI request is submitted] [also be accompanied, either simultaneously or within 12 hours, by a request for a field investigation pursuant to Article III, section G].]~~*

10. *The Director-General shall initiate, not later than {12} hours after receipt of a request for assistance, from a State Party, an examination of the request in order to provide foundation for further action by the Organization. The Director-General shall complete the examination within {72} hours and forward a report to the Executive Council and to States Parties. If necessary, the time required for completion of the examination may be extended by periods of {72} hours with reports being submitted at the end of each {72} hour period, to the Executive Council and to all States Parties. The examination shall, as appropriate and in conformity with the request and the information accompanying the request, establish relevant facts related to the request as well as make recommendations on the type and scope of {supplementary} assistance and protection needed. In the case of request for assistance when a State Party considers that biological or toxin weapons have been used against it, the Director-General shall, when possible, incorporate into the examination report relevant factual information from the affected area(s) {and {, if as appropriate,} progress reports {of the} {from any} investigation team which {is} {may be} conducting {the} {a} field investigation in the State Party concerned}.*

11. *The Executive Council shall meet not later than {24} hours after receiving an examination report to consider the situation and shall take a decision by simple majority within the following {24} hours on whether to instruct the Technical Secretariat to provide {supplementary} assistance. The Technical Secretariat shall immediately transmit to all States Parties and relevant international organizations the examination report and the decision taken by the Executive Council. When so decided by the Executive Council, the Director-General shall provide assistance immediately. For this purpose, the Director-General may cooperate with the requesting State Party, other States Parties and relevant international organizations. The States Parties shall make the fullest possible efforts to provide assistance.*

12. *If the information available from the ongoing examination or other reliable sources would give sufficient proof that there are humans, animals or plants affected by the use of biological and toxin weapons and immediate action is indispensable, the Director-General shall notify all States Parties and shall take emergency measures of assistance, using the resources the Conference has placed at his/her disposal for such contingencies. The Director-General shall keep the Executive Council informed of actions undertaken pursuant to this paragraph.*