BACKGROUND

1. The concern that disease outbreaks due to natural causes may in future be the subject of frivolous requests for investigations is real and the future Protocol should prevent this as much as possible. States Parties must on the other hand not be prevented from requesting investigations when they have legitimate non-compliance concerns.

2. This can be achieved by various means such as clear provisions which set out the procedures and requirements for a request to be successful and clear and stringent procedures to deal with requests found to be frivolous. A general statement in Article III which provides the general principles in this regard will also be helpful.

3. The purpose of this paper is to propose language which could serve the purpose of a general statement addressing the concerns of frivolous requests for investigations while still allowing States Parties to request investigations where there are legitimate reasons for such requests.

Approach

4. In the development of the text the following points were used as the basis of work:

   (a) Since virtually all outbreaks of disease are of natural origin, for the purposes of the Protocol all outbreaks of disease should therefore be considered of natural origin. It should, therefore, not be required from any State Party to prove that an outbreak of disease on its territory or anywhere else is of natural origin;

   (b) If any State Party has adequate reason to believe that any outbreak of disease on its own territory, in any other place under its jurisdiction or control, or on the territory of another State Party or in any other place under its jurisdiction or control is not of natural origin, but the result of activities prohibited by Article I of the Convention, it should have the right to request an investigation. In its request, such a State Party should supply adequate information to allow the Executive Council to make a decision whether the request is well
founded and there is a necessity for an investigation. If the request is for an investigation on
the territory of another State Party, that State Party should also be allowed, to provide
information.

PROPOSAL

The text is proposed as a package to replace or add to existing text in various places in the
rolling text.

The following text is proposed to replace paragraph 5, 5 bis and 5 ter in Article III, section G
(A) on page 80, paragraph 3 in Annex D, section II, on page 216 and the whole Annex D
section V on page 242.

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

5 bis 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.

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

5 quatre The Executive Council shall not consider a request for an investigation under
paragraph ... of Article III, unless it is provided by the requesting State Party with the detailed
information, reasons and evidence described in paragraph 5 ter above. The State Party on
whose territory or in any other place under its jurisdiction or control the investigation is
proposed to occur, shall have the right to provide information that indicates that the outbreak
of disease is naturally occurring or otherwise unrelated to activities prohibited by the
Convention. If, deemed appropriate by the Executive Council, another State Party may also
provide information which corroborates that the outbreak of disease is naturally occurring or
otherwise unrelated to activities prohibited by the Convention. All the information reasons
and evidence shall be taken into account by the Executive Council in its consideration of the
investigation request in accordance with the request procedures of paragraph ... of this section
of Article III.

The following text is proposed to replace paragraph 1 (i) in Annex D, section II, page 216.

1. (i) Detailed information, reasons and evidence to demonstrate why, in its view, an
outbreak of disease is not naturally occurring and is directly related to
activities prohibited by the Convention.
(i) *bis* Detailed information on events or activities which makes the requesting State Party to believe that the outbreak(s) of disease is caused by activities prohibited by the Convention.

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