

**CUBA****PAPER BY THE REPUBLIC OF CUBA SUBMITTED UNDER AGENDA ITEM 13
OF THE NINETY-THIRD SESSION OF THE EXECUTIVE COUNCIL****Views on the implementation of Rule 85 of the Rules of Procedure of the
Conference of the States Parties of the Organisation for the Prohibition of
Chemical Weapons**

1. The States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (hereinafter called “the Convention”) established the Organisation for the Prohibition of Chemical Weapons (OPCW) to achieve the object and purpose of the Convention, to ensure the implementation of all its provisions, as well as to provide a forum for consultation and cooperation among States Parties, desiring also to promote the peaceful use of chemistry.
2. Rules of Procedure of the Conference of the States Parties (hereinafter called “the Conference”) of the OPCW were adopted at its First Session (C-I/3, dated 12 May 1997) and amended by the Conference at its Third Special Session (C-SS-3/DEC.1, dated 7 April 2008), its Sixteenth Session (C-16/DEC.14, dated 2 December 2011), and at the Third Review Conference (RC-3/DEC.2, dated 8 April 2013). The Rules of Procedure constitute an essential instrument for the effective work of the OPCW, which remain relevant.
3. Provisions of the Rules of Procedure of the Conference of the States Parties of the OPCW are clear in its letter. It is an obligation to all members of the Organisation for the Prohibition of Chemical Weapons and its Secretariat, to ensure the proper implementation of all its rules, as well as to exhaust all efforts to achieve the adoption by consensus of the decisions of the Conference of States Parties, in accordance with the provisions of the Rules of Procedure.
4. The Republic of Cuba as State Party to the Convention and member of the Organisation for the Prohibition of Chemical Weapons (OPCW), taking into account the interpretation that was given to Rule 85 of the Rules of Procedure of the Conference of the States Parties of the OPCW in its Twenty-Fourth Session, and after receiving the legal opinion of the Secretariat that was requested on this matter, expresses its concern over the interpretation given to Rule 85 of the Rules of Procedure.



5. The text of Rule 85 of the Conference's Rules of Procedure that regulates invalid votes in the context of an election of Members to the Executive Council, reads:

Rule 85 Invalid votes

In elections to the Executive Council invalid votes shall include those cast for a Member of the Organisation:

- (a) Which is not in that group referred to in Article VIII, paragraph 23, of the Convention;
- (b) Whose term of office as an elected Member will not expire at the end of the session in which the election is being held.

A ballot paper containing more names from the relevant group than the number of seats assigned to it will be declared invalid.

6. There is a general principle of law, recognized by many legal systems and applicable to any legal provisions that states: "Ubi lex non distinguit, nec nos distinguere debemus", "Where the law does not distinguish, there is no distinction", "Donde la ley no distingue, no cabe distinguir".
7. Based on the text of Rule 85, we can affirm regarding the scenario in which a ballot paper contains fewer names from the relevant group than the number of seats assigned to it, that there is an omission of the rule. Therefore, there are no legal elements to justify the invalidity of the ballot paper for this scenario.
8. The diplomatic work related to exchanges on candidatures, developed through agreements between sovereign States, must also be respected.
9. Rules of Procedure must be implemented on the basis of strict adherence of its letter, and its interpretation must be based in its genuine meaning.
10. The interpretation and implementation of a rule cannot be subject to a procedural option applied to a preceding issue; this cannot be interpreted as an established practice in the work of the Organisation. From the legal points of view, there are many considerations to define what constitutes a Practice of an international organization, among them: it must be general and consistent to a customary international law, and it must be generally supported. It is an obligation of the States Parties to ensure the good practices of the work of the Organisation.
11. The amendment of a Rule, its suspension, reinterpretation or modification, is a matter of substance, that should be agreed by Members of the Organisation by a decision of the Conference, subject to the provisions of the Convention, in accordance with the procedures for decisions on matters of substance as set forth in Rule 69 and Rule 93 of the Rules of Procedure.
12. Legal certainty is a principle universally recognized, and should lead the work of the OPCW.
13. The functions and powers enshrined in the Rules of Procedure must be respected. Rule 50 establishes that the presiding officer shall rule on points of order, but

recognises that he or she shall ensure observance of the Rules, and that in the exercise of his or her functions, shall remain under the authority of the Conference. Rules 68, 69, and 70 stipulate that the Conference of States Parties is the organ with the competence to take decisions on questions of procedure and on matters of substance.

14. The interpretation of Rule 85 of the Rules of Procedure that was implemented in the Twenty-Second and Twenty-Fourth Session of the Conference of States Parties of the OPCW in the context of the election of Members to the Executive Council, was without prejudice to the positions of States Parties to the Convention, and it cannot constitute a precedent for the future work of the Organisation.
15. The Republic of Cuba as State Party to the Convention and member of the Organisation for the Prohibition of Chemical Weapons (OPCW) emphasises the importance of maintaining the integrity of the Rules of Procedure in force, to ensure the effective work of the Organisation.

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