禁止化学武器组织

缔约国大会

第八届会议
2003 年 10 月 20 日至 24 日

C-8/DEC.10
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CHINESE
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决定

塞浦路斯共和国与禁止化学武器组织关于禁化武组织特权和豁免的协定草案

缔约国大会，

忆及按照《化学武器公约》（以下称“《公约》”）第八条第 50 款，该条中提到的法律行为能力、特权和豁免应在禁止化学武器组织（禁化武组织）与各缔约国之间的协定中订明；

进一步忆及《公约》第八条第 34 款(a)项规定经缔约国大会事先核准，执行理事会（以下称“执理会”）应代表禁止化学武器组织与各国和各国际组织缔结协定或安排；

注意到总干事和技术秘书处（以下称“秘书处”）工作人员在进行核查活动期间享受的特权和豁免为《公约》《核查附件》第二部分 B 节中载明的特权和豁免；

进一步注意到秘书处已经谈判了本决定所附的塞浦路斯共和国与禁化武组织关于禁化武组织特权和豁免的协定草案；

考虑到这一协定不妨碍《公约》的有关条款；这一协定中的任何内容都不得以违反《公约》条款的方式加以应用或解释；以及即使这一协定的规定与《公约》发生冲突，也应以《公约》为准；

认识到禁止化学武器组织成员国仍可择其自便，借鉴本协定缔结其他关于禁止化学武器组织特权和豁免的协定，或在其认为适当时抛开本协定，条件是新的协定必须符合《公约》的条款；

特此：

核准执理会在其第三十五届会议上缔结本决定所附的塞浦路斯共和国与禁化武组织关于禁化武组织特权和豁免的协定；

附件（只有英文）：

Draft Agreement between the Republic of Cyprus and the Organisation for the Prohibition of Chemical Weapons on the Privileges and Immunities of the OPCW（塞浦路斯共和国与禁止化学武器组织关于禁化武组织特权和豁免的协定草案）

Annex

DRAFT AGREEMENT BETWEEN THE REPUBLIC OF CYPRUS AND THE ORGANISATION FOR THE PROHIBITION OF CHEMICAL WEAPONS ON THE PRIVILEGES AND IMMUNITIES OF THE OPCW

Whereas Article VIII, paragraph 48, of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction provides that the OPCW shall enjoy on the territory and in any other place under the jurisdiction or control of a State Party such legal capacity and such privileges and immunities as are necessary for the exercise of its functions;

Whereas Article VIII, paragraph 49, of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction provides that delegates of States Parties, together with their alternates and advisers, representatives appointed to the Executive Council together with their alternates and advisers, the Director-General and the staff of the Organisation shall enjoy such privileges and immunities as are necessary in the independent exercise of their functions in connection with the OPCW;

Whereas notwithstanding Article VIII, paragraphs 48 and 49 of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, the privileges and immunities enjoyed by the Director-General and the staff of the Secretariat during the conduct of verification activities shall be those set forth in Part II, Section B, of the Verification Annex;

Whereas Article VIII, paragraph 50, of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction specifies that such legal capacity, privileges and immunities are to be defined in agreements between the Organisation and the States Parties,

Now, therefore, the Organisation for the Prohibition of Chemical Weapons and the Republic of Cyprus have agreed as follows:

ARTICLE 1
DEFINITIONS

In this Agreement:

(a) "Convention" means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction of 13 January 1993;

(b) "OPCW" means the Organisation for the Prohibition of Chemical Weapons established under Article VIII, paragraph 1, of the Convention;

(c) "Director-General" means the Director-General referred to in Article VIII, paragraph 41, of the Convention, or in his absence, the acting Director-General;

(d) "Officials of the OPCW" means the Director-General and all members of the staff of the Secretariat of the OPCW;

(e) "State Party" means the State Party to this Agreement;

(f) "States Parties" means the States Parties to the Convention;

(g) "Representatives of States Parties" means the accredited heads of delegation of States Parties to the Conference of the States Parties and/or to the Executive Council or the Delegates to other meetings of the OPCW;

(h) "Experts" means persons who, in their personal capacity, are performing missions authorised by the OPCW, are serving on its organs, or who are, in any way, at its request, consulting with the OPCW;

(i) "Meetings convened by the OPCW" means any meeting of any of the organs or subsidiary organs of the OPCW, or any international conferences or other gatherings convened by the OPCW;

(j) "Property" means all property, assets and funds belonging to the OPCW or held or administered by the OPCW in furtherance of its functions under the Convention and all income of the OPCW;

(k) "Archives of the OPCW" means all records, correspondence, documents, manuscripts, computer and media data, photographs, films, video and sound recordings belonging to or held by the OPCW or any officials of the OPCW in an official function, and any other material which the Director-General and the State Party may agree shall form part of the archives of the OPCW;

(l) "Premises of the OPCW" are the buildings or parts of buildings, and the land ancillary thereto if applicable, used for the purposes of the OPCW, including those referred to in Part II, subparagraph 11(b), of the Verification Annex to the Convention.

ARTICLE 2
LEGAL PERSONALITY

The OPCW shall possess full legal personality. In particular, it shall have the capacity:

(a) to contract;
(b) to acquire and dispose of movable and immovable property;
(c) to institute and act in legal proceedings.

ARTICLE 3
PRIVILEGES AND IMMUNITIES OF THE OPCW

1. The OPCW and its property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except in so far as in any particular case the OPCW has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

2. The premises of the OPCW shall be inviolable. The property of the OPCW, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

3. The archives of the OPCW shall be inviolable, wherever located.

4. Without being restricted by financial controls, regulations or moratoria of any kind:

   (a) the OPCW may hold funds, gold or currency of any kind and operate accounts in any currency;

   (b) the OPCW may freely transfer its funds, securities, gold and currencies to or from the State Party, to or from any other country, or within the State Party, and may convert any currency held by it into any other currency.

5. The OPCW shall, in exercising its rights under paragraph 4 of this Article, pay due regard to any representations made by the Government of the State Party in so far as it is considered that effect can be given to such representations without detriment to the interests of the OPCW.

6. The OPCW and its property shall be:

   (a) exempt from all direct taxes; it is understood, however, that the OPCW will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

   (b) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the OPCW for its official use; it is understood, however, that articles imported under such

exemption will not be sold in the State Party, except in accordance with conditions agreed upon with the State Party;

(c) exempt from duties and prohibitions and restrictions on imports and exports in respect of its publications.

7. While the OPCW will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the OPCW is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, the State Party will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

ARTICLE 4
FACILITIES AND IMMUNITIES IN RESPECT OF COMMUNICATIONS AND PUBLICATIONS

1. For its official communications the OPCW shall enjoy, in the territory of the State Party and as far as may be compatible with any international conventions, regulations and arrangements to which the State Party adheres, treatment not less favourable than that accorded by the Government of the State Party to any other Government, including the latter's diplomatic mission, in the matter of priorities, rates and taxes for post and telecommunications, and press rates for information to the media.

2. No censorship shall be applied to the official correspondence and other official communications of the OPCW.
The OPCW shall have the right to use codes and to dispatch and receive correspondence and other official communications by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.
Nothing in this paragraph shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between the State Party and the OPCW.

3. The State Party recognises the right of the OPCW to publish and broadcast freely within the territory of the State Party for purposes specified in the Convention.

4. All official communications directed to the OPCW and all outward official communications of the OPCW, by whatever means or whatever form transmitted, shall be inviolable. Such inviolability shall extend, without limitation by reason of this enumeration, to publications, still and moving pictures, videos, films, sound recordings and software.

ARTICLE 5
REPRESENTATIVES OF STATES PARTIES

1. Representatives of States Parties, together with alternates, advisers, technical experts and secretaries of their delegations, at meetings convened by the OPCW, shall, without prejudice to any other privileges and immunities which they may enjoy, while exercising their functions and during their journeys to and from the place of the meeting, enjoy the following privileges and immunities:

   (a) immunity from personal arrest or detention;

   (b) immunity from legal process of any kind in respect of words spoken or written and all acts done by them, in their official capacity; such immunity shall continue to be accorded, notwithstanding that the persons concerned may no longer be engaged in the performance of such functions;

   (c) inviolability for all papers, documents and official material;

   (d) the right to use codes and to dispatch or receive papers, correspondence or official material by courier or in sealed bags;

   (e) exemption in respect of themselves and their spouses from immigration restrictions, alien registration or national service obligations while they are visiting or passing through the State Party in the exercise of their functions;

   (f) the same facilities with respect to currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

   (g) the same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.

2. Where the incidence of any form of taxation depends upon residence, periods during which the persons designated in paragraph 1 of this Article may be present in the territory of the State Party for the discharge of their duties shall not be considered as periods of residence.

3. The privileges and immunities are accorded to the persons designated in paragraph 1 of this Article in order to safeguard the independent exercise of their functions in connection with the OPCW and not for the personal benefit of the individuals themselves. It is the duty of all persons enjoying such privileges and immunities to observe in all other respects the laws and regulations of the State Party.

4. The provisions of paragraphs 1 and 2 of this Article are not applicable in relation to a person who is a national of the State Party.

ARTICLE 6
OFFICIALS OF THE OPCW

1. During the conduct of verification activities, the Director-General and the staff of the Secretariat, including qualified experts during investigations of alleged use of chemical weapons referred to in Part XI, paragraphs 7 and 8 of the Verification Annex to the Convention, enjoy, in accordance with Article VIII, paragraph 51, of the Convention, the privileges and immunities set forth in Part II, Section B, of the Verification Annex to the Convention or, when transiting the territory of non-inspected States Parties, the privileges and immunities referred to in Part II, paragraph 12, of the same Annex.

2. For other activities related to the object and purpose of the Convention, officials of the OPCW shall:

   (a) be immune from personal arrest or detention and from seizure of their personal baggage;

   (b) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

   (c) enjoy inviolability for all papers, documents and official material, subject to the provisions of the Convention;

   (d) enjoy the same exemptions from taxation in respect of salaries and emoluments paid to them by the OPCW and on the same conditions as are enjoyed by officials of the United Nations;

   (e) be exempt, together with their spouses from immigration restrictions and alien registration;

   (f) be given, together with their spouses, the same repatriation facilities in time of international crises as officials of comparable rank of diplomatic missions;

   (g) be accorded the same privileges in respect of exchange facilities as are accorded to members of comparable rank of diplomatic missions.

3. The officials of the OPCW shall be exempt from national service obligations, provided that, in relation to nationals of the State Party, such exemption shall be confined to officials of the OPCW whose names have, by reason of their duties, been placed upon a list compiled by the Director-General of the OPCW and approved by the State Party. Should other officials of the OPCW be called up for national service by the State Party, the State Party shall, at the request of the OPCW, grant such temporary deferments in the call-up of such officials as may be necessary to avoid interruption in the continuation of essential work.

4. In addition to the privileges and immunities specified in paragraphs 1, 2 and 3 of this Article, the Director-General of the OPCW shall be accorded on behalf of himself and his spouse, the privileges and immunities, exemptions and facilities accorded to diplomatic agents on behalf of themselves and their spouses, in accordance with

international law. The same privileges and immunities, exemptions and facilities shall also be accorded to a senior official of the OPCW acting on behalf of the Director-General.

5. Privileges and immunities are granted to officials of the OPCW in the interests of the OPCW, and not for the personal benefit of the individuals themselves. It is the duty of all persons enjoying such privileges and immunities to observe in all other respects the laws and regulations of the State Party. The OPCW shall have the right and the duty to waive the immunity of any official of the OPCW in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the OPCW.

6. The OPCW shall cooperate at all times with the appropriate authorities of the State Party to facilitate the proper administration of justice, and shall secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

ARTICLE 7
EXPERTS

1. Experts shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time spent on journeys in connection with such functions.

   (a) immunity from personal arrest or detention and from seizure of their personal baggage;

   (b) in respect of words spoken or written or acts done by them in the performance of their official functions, immunity from legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer performing official functions for the OPCW;

   (c) inviolability for all papers, documents and official material;

   (d) for the purposes of their communications with the OPCW, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

   (e) the same facilities in respect of currency and exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

   (f) the same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.

2. The privileges and immunities are accorded to experts in the interests of the OPCW and not for the personal benefit of the individuals themselves. It is the duty of all persons enjoying such privileges and immunities to observe in all other respects the laws and regulations of the State Party. The OPCW shall have the right and the duty to waive the immunity of any expert in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the OPCW.

ARTICLE 8
ABUSE OF PRIVILEGE

1. If the State Party considers that there has been an abuse of a privilege or immunity conferred by this Agreement, consultations shall be held between the State Party and the OPCW to determine whether any such abuse has occurred and, if so, to attempt to ensure that no repetition occurs. If such consultations fail to achieve a result satisfactory to the State Party and the OPCW, the question whether an abuse of a privilege or immunity has occurred shall be settled by a procedure in accordance with Article 10.

2. Persons included in one of the categories under Articles 6 and 7 shall not be required by the territorial authorities to leave the territory of the State Party on account of any activities by them in their official capacity. In the case, however, of abuse of privileges committed by any such person in activities outside official functions, the person may be required to leave by the Government of the State Party, provided that the order to leave the country has been issued by the territorial authorities with the approval of the Foreign Minister of the State Party. Such approval shall be given only in consultation with the Director-General of the OPCW. If expulsion proceedings are taken against the person, the Director-General of the OPCW shall have the right to appear in such proceedings on behalf of the person against whom they are instituted.

ARTICLE 9
TRAVEL DOCUMENTS AND VISAS

1. The State Party shall recognise and accept as valid the United Nations laissez-passer issued to the officials of the OPCW, in accordance with special OPCW arrangements, for the purpose of carrying out their tasks related to the Convention. The Director-General shall notify the State Party of the relevant OPCW arrangements.

2. The State Party shall take all necessary measures to facilitate the entry into and sojourn in its territory and shall place no impediment in the way of the departure from its territory of the persons included in one of the categories under Articles 5, 6 and 7 above, whatever their nationality, and shall ensure that no impediment is placed in the way of their transit to or from the place of their official duty or business and shall afford them any necessary protection in transit.

3. Applications for visas and transit visas, where required, from persons included in one of the categories under Articles 5, 6 and 7, when accompanied by a certificate that they are travelling in their official capacity, shall be dealt with as speedily as possible to allow those persons to effectively discharge their functions. In addition, such persons shall be granted facilities for speedy travel.

4. The Director-General, the Deputy Director(s)-General and other officials of the OPCW, travelling in their official capacity, shall be granted the same facilities for travel as are accorded to members of comparable rank in diplomatic missions.

5. For the conduct of verification activities visas are issued in accordance with paragraph 10 of Part II, Section B, of the Verification Annex to the Convention.

ARTICLE 10
SETTLEMENT OF DISPUTES

1. The OPCW shall make provision for appropriate modes of settlement of:

   (a) disputes arising out of contracts or other disputes of a private law character to which the OPCW is a party;

   (b) disputes involving any official of the OPCW or expert who, by reason of his official position, enjoys immunity, if such immunity has not been waived in accordance with Article 6, paragraph 5, or Article 7, paragraph 2, of this Agreement.

2. Any dispute concerning the interpretation or application of this Agreement, which is not settled amicably, shall be referred for final decision to a tribunal of three arbitrators, at the request of either party to the dispute. Each party shall appoint one arbitrator. The third, who shall be chairman of the tribunal, is to be chosen by the first two arbitrators.

3. If one of the parties fails to appoint an arbitrator and has not taken steps to do so within two months following a request from the other party to make such an appointment, the other party may request the President of the International Court of Justice to make such an appointment.

4. Should the first two arbitrators fail to agree upon the third within two months following their appointment, either party may request the President of the International Court of Justice to make such appointment.

5. The tribunal shall conduct its proceedings in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States, as in force on the date of entry into force of this Agreement.

6. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the parties to the dispute.

ARTICLE 11
INTERPRETATION

1. The provisions of this Agreement shall be interpreted in the light of the functions which the Convention entrusts to the OPCW.

2. The provisions of this Agreement shall in no way limit or prejudice the privileges and immunities accorded to members of the inspection team in Part II, Section B, of the Verification Annex to the Convention or the privileges and immunities accorded to the Director-General and the staff of the Secretariat of the OPCW in Article VIII, paragraph 51, of the Convention. The provisions of this Agreement shall not themselves operate so as to abrogate, or derogate from, any provisions of the Convention or any rights or obligations which the OPCW may otherwise have, acquire or assume.

ARTICLE 12
FINAL PROVISIONS

1. This Agreement shall enter into force on the date of deposit with the Director-General of an instrument of ratification of the State Party. It is understood that, when an instrument of ratification is deposited by the State Party it will be in a position under its own law to give effect to the terms of this Agreement.

2. This Agreement shall continue to be in force for so long as the State Party remains a State Party to the Convention.

3. The OPCW and the State Party may enter into such supplemental agreements as may be necessary.

4. Consultations with respect to amendment of this Agreement shall be entered into at the request of the OPCW or the State Party. Any such amendment shall be by mutual consent expressed in an agreement concluded by the OPCW and the State Party.

Done in The Hague in duplicate on _____**,** in the English language.

For the Organisation for the Prohibition of Chemical Weapons,

_____
Rogelio Pfirter
Director-General

For the Republic of Cyprus,

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