

DECISION**MATTERS RELATED TO THE TRANSFER OF PROPERTY, FUNCTIONS AND
RECOMMENDATIONS OF THE COMMISSION TO
THE OPCW****The Conference**

Recalling that, in accordance with the Paris Resolution, paragraph 16, the property and functions of the Commission shall be transferred to the OPCW and that the legal instrument drawn up to accomplish this is the Draft Protocol Regarding the Transfer of Assets, Liabilities, Records and Functions from the Preparatory Commission for the Organisation for the Prohibition of Chemical Weapons to the Organisation for the Prohibition of Chemical Weapons ("Transfer Protocol"),

Recalling further that, in accordance with the authority delegated to it by the Commission in PC-XV/25, paragraph 7.2, Working Group A, in PC-XVI/A/4, paragraph 3.1, finally approved the Transfer Protocol, annexed to PC-XV/A/WP.11, as amended, on the understanding that all letters referred to in its Annexes 2 and 4 be made available to delegations and that no objections be received in The Hague by the Secretariat within seven days after circulation of the said letters,

Recalling further that the said letters were circulated on 17 March 1997, that no objection was received by the Secretariat in The Hague within seven days thereafter (26 March 1997) and that the approval of the above-mentioned Draft Transfer Protocol therefore became final,

Aware that, in accordance with the Paris Resolution, paragraph 10(g) the Commission undertook, in PC-VIII/A/WP.7, Annex, to purchase equipment required for training of inspectors and evaluation purposes and that at present approximately 15,000 items of equipment have been purchased. Equipment standardisation, as required, was accomplished by ensuring that all equipment items procured were checked prior to the placement of orders against the operational requirements and technical specifications for such equipment developed and approved by the relevant bodies of the Commission (PC-VI/B/WP.4, PC-VII/B/WP.5, PC-VIII/B/WP.2 and Corr. 1, PC-VIII/B/WP.12, PC-IX/B/WP.3, PC-XI/B/WP.1, PC-XI/B/WP.6, PC-XII/B/WP.6, PC-XIII/B/WP.5, PC-XIV/B/WP.5 and Corr. 1 PC-XV/B/WP.9 and Corr.1, PC-XVI/B/WP.6). Major items of equipment were also evaluated for compliance with the approved specifications by a number of Member States which had offered to provide these services to the Secretariat (PC-XV/B/WP.9 and PC-XVI/B/WP.6). Seventy-five percent of this equipment is currently being used by inspector trainees in the course of the General Training Scheme. All equipment which is not

being used is stored at the OPCW Equipment Store in Rijswijk, a city close to The Hague. The facility in Rijswijk also houses the OPCW Laboratory equipped with the most modern analytical and other laboratory equipment.

Bearing in mind that the Commission recommended in paragraph 33.6 of its Final Report that the Conference note the above-mentioned activities regarding the purchase and standardisation of equipment undertaken by the Commission; that the Conference approve the above-mentioned Draft Transfer Protocol; and that the Conference authorise the Director-General to sign the Transfer Protocol on behalf of the OPCW and act as Depositary for the Transfer Protocol upon its signature by the Executive Secretary of the Commission,

Hereby:

1. **Notes** the activities regarding the purchase and standardisation of equipment undertaken by the Commission,
2. **Adopts** the Transfer Protocol annexed hereto, and
3. **Authorises** the Director-General to sign the Transfer Protocol on behalf of the OPCW and, upon signature by the Executive Secretary of the Commission, to act as Depositary for the Transfer Protocol.

Annex

Annex

**PROTOCOL REGARDING THE
TRANSFER OF ASSETS, LIABILITIES, RECORDS AND FUNCTIONS
FROM THE
PREPARATORY COMMISSION
FOR THE ORGANISATION FOR THE PROHIBITION OF CHEMICAL WEAPONS
TO THE
ORGANISATION FOR THE PROHIBITION OF CHEMICAL WEAPONS**

The Preparatory Commission for the Organisation for the Prohibition of Chemical Weapons ("Commission") and the Organisation for the Prohibition of Chemical Weapons ("OPCW"),

Noting that:

Paragraph 17 of the Text attached to the Resolution Establishing the Preparatory Commission for the Organisation for the Prohibition of Chemical Weapons ("Paris Resolution"), adopted by signatory States to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction ("Convention") at the Signing Ceremony on 13-15 January 1993, provides that the Commission shall remain in existence until the conclusion of the First Session of the Conference of the States Parties of the OPCW;

Paragraph 16 of the same Text provides, *inter alia*, that the property and functions of the Commission shall be transferred to the OPCW at the First Session of the Conference of the States Parties;

Desiring that:

The details of the transfer be determined;

Agree as follows:

**Article 1
Transfer of assets and liabilities**

- 1.1 All assets and liabilities of the Commission shall be transferred to the OPCW by the conclusion of the First Session of the Conference of the States Parties. The assets and liabilities of the Commission shall include the assets held, including all transferable rights, and the liabilities incurred, in the name of the Commission.

- 1.2 The transfer shall include the rights in respect of movable, immovable and intellectual property.
- 1.3 The movable property shall be listed in an inventory drawn up by the Commission, as on the date of the entry into force of the Convention, and accepted by the OPCW at the time of the transfer. The Inventory shall be annexed to this Protocol as Annex 1.
- 1.4 The transfer of rights and obligations with respect to the office furniture and office equipment supplied free of charge to the Commission by the supplier designated by The Hague under paragraph 8 of Annex 3 of the Text attached to the Paris Resolution, shall be in accordance with the Exchange of Letters between the Executive Secretary of the Commission and the Director of the OPCW Foundation. This Exchange of Letters is contained in Annex 2 to this Protocol. The inventory, as on the date of entry into force of the Convention, of such office furniture and office equipment is contained in Annex 3 to this Protocol.
- 1.5 The transfer of rights and obligations with respect to the office furniture and office equipment supplied free of charge to the Commission on behalf of the OPCW by the supplier designated by The Hague under paragraph 9 of Annex 3 to the Text attached to the Paris Resolution, shall be in accordance with the Exchange of Letters between the Executive Secretary of the Commission and the Representative of the Host Country. The Exchange of Letters is contained in Annex 4 to this Protocol. The current inventory of such office furniture and office equipment is contained in Annex 5 to this Protocol.
- 1.6 The transfer of assets shall include an eventual audited cash surplus, if any, which will be reflected in the final audited financial statements of the Commission. The transfer of assets shall not include Capital Advance payments made by Member States to the Commission, since these funds shall be reimbursed to Member States in accordance with Commission Financial Regulation 6.2, taking into account Financial Regulation 6.3. After the final audit of the Commission's account is completed, any cash surplus shall be reimbursed to the Member States of the Commission in accordance with Commission Financial Regulation 6.1(b), unless a Member State decides to temporarily credit this amount to the OPCW until it becomes a State Party. Cash surpluses of those Member States which are also States Parties of the OPCW shall be treated in accordance with OPCW Financial Regulation 6.3(c).
- 1.7 It is understood that gifts presented to the Commission by Governments, public bodies or private individuals, whether they have become part of the buildings or whether they have retained the character of movable property, shall be transferred to the OPCW on the same terms as those on which the said gifts were presented.

Article 2
Succession to contracts

- 2.1 The terms and conditions under which the OPCW may succeed to contracts entered into by the Commission are specified in said contracts.
- 2.2 All contracts concluded by the Commission have foreseen the dissolution of the Commission and, where appropriate and feasible, have provided for succession by the OPCW, without prejudice to the OPCW's right not to succeed to these contracts.
- 2.3 While not in written contract form, appropriate bank accounts and signature cards will be prepared by the Commission to facilitate the transfer of cash to the OPCW, and the deposit of OPCW contributions as received.
- 2.4 A list of the contracts specified in 2.2 above is attached to this Protocol as Annex 6.

Article 3
Transfer of functions

As of the date of the conclusion of the First Session of the Conference of the States Parties, the remaining relevant functions of the Commission shall be transferred to the OPCW.

Article 4
Accrued benefits of staff members

- 4.1 The OPCW shall recognise the accrued benefits of those staff members of the Provisional Technical Secretariat of the Commission who are appointed by the Director-General to the Technical Secretariat of the OPCW. The accrued benefits shall be specified in the Letter of Appointment.
- 4.2 If the Conference of the States Parties decides to establish a Provident Fund for the staff members of the Technical Secretariat of the OPCW, the staff members of the Provisional Technical Secretariat who are subsequently appointed by the Director-General to the Technical Secretariat shall be offered the option of having their Commission Provident Fund credits transferred directly to the OPCW Provident Fund and will be fully credited accordingly for the deposit.

Article 5
Office of the Liquidator

- 5.1 Immediately after the conclusion of the First Session of the Conference of the States Parties, the Office of the Liquidator for the Commission shall be established. The Liquidator shall be appointed by the Director-General at the same time. The Executive Secretary of the Commission shall initially undertake the liquidation of the Commission until his contract expires.
- 5.2 The Liquidator shall act under the supervision of the Director-General. The Liquidator is hereby fully empowered to complete the final closure of the Commission's accounts in accordance with the Financial Regulations and Rules of the Commission and to

carry out the liquidation of the Commission as specified in Article 5.3 below. As necessary to complete the liquidation, the Liquidator is empowered to assume the duties of "the Executive Secretary" and "the Director of Administration" specified in the Financial Regulations and Rules of the Commission.

5.3 The mandate of the Liquidator shall be:

- (a) to take full account of the financial assets and liabilities of the Commission; to collect all receivables and obligations owing to the Commission and to otherwise enforce any claims of the Commission; to pay, discharge and satisfy or otherwise provide for all known liabilities and obligations of the Commission; to set aside a portion of the Commission's financial assets as a reserve for the payment of contingent liabilities and obligations, such reserve to be established over such time and from such assets as the Conference of the States Parties may deem advisable;
- (b) to take authority for the preparation of the final financial statements of the Commission and to submit them to the External Auditor not later than 31 March following the end of the current calendar year;
- (c) to cooperate with the External Auditor as he may require in the performance of the audit;
- (d) to be present when the final audited financial statements are presented to the Executive Council and the Conference of the States Parties and to respond to requests by those organs in this connection;
- (e) to disburse to each Member State its share of the Capital Advance credited to its account by the Commission in accordance with Financial Regulation 6.2, once the Conference of the States Parties has noted the final audited financial statements of the Commission;
- (f) to transfer to the OPCW an eventual audited cash surplus, if any, identified in the final audited financial statements of the Commission in accordance with paragraph 1.6 of this Protocol;
- (g) to perform any other actions necessary or advisable in order to carry out the liquidation of the Commission.

5.4 For the duration of the liquidation process, the books and accounts of the Commission shall be kept separately from those of the OPCW.

5.5 The services of the Liquidator shall be provided by the OPCW. The OPCW will also provide, clerical and administrative support and supplies to the Liquidator as are deemed necessary to complete the liquidation. The services of the Liquidator, the clerical and administrative support and the supplies mentioned in this paragraph shall be borne by the OPCW budget. All other costs related to the liquidation shall be charged to the Commission's account.

- 5.6 The Conference of the States Parties shall expeditiously terminate the Office of the Liquidator and shall, at its next regular session after the submission of the financial statements as provided for in subparagraph 5.3(b), dissolve the residual legal entity after the conclusion of the liquidation process.

Article 6
Entry into force; termination

This Protocol shall enter into force on the date on which it is signed by the Executive Secretary of the Commission and the Director-General of the OPCW. The Protocol shall apply in perpetuity.

Article 7
Annexes

The Annexes to this Protocol constitute an integral part of this Protocol. The Annexes are:

- Annex 1: Inventory of movable property being transferred by the Commission to the OPCW
- Annex 2: Exchange of Letters between the Executive Secretary of the Commission and the Director of the OPCW Foundation related to paragraph 8 of Annex 3 to the Text attached to the Paris Resolution
- Annex 3: Inventory of office equipment and office furniture supplied to the Commission and which are the property of the supplier designated by The Hague under the Paris Resolution
- Annex 4: Exchange of Letters between the Executive Secretary of the Commission and the Director of the OPCW Foundation related to paragraph 9 of Annex 3 to the Text attached to the Paris Resolution
- Annex 5: Inventory of office equipment and office furniture supplied to the Commission on behalf of the OPCW and which are the property of the supplier designated by The Hague under the Paris Resolution
- Annex 6: List of contracts entered into by the Commission

The text of this Protocol, done in a single copy, in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being authentic, shall be deposited with the Director-General of the OPCW.

DONE at The Hague this day of one thousand nine hundred and ninety-seven.

On behalf of the Preparatory
Commission for the Organisation for
the Prohibition of Chemical Weapons

On behalf of the Organisation for
the Prohibition of Chemical
Weapons

Executive Secretary

Director-General

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