
Second Session
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**REPORT OF THE FIRST MEETING OF THE
COMMISSION FOR THE SETTLEMENT OF DISPUTES
RELATED TO CONFIDENTIALITY
TO THE
SECOND SESSION OF THE CONFERENCE OF THE STATES PARTIES**

1. Introduction

The twenty members of the Commission on the Settlement of Disputes related to Confidentiality (hereinafter “Confidentiality Commission”), elected for a term of two years by the Conference of the States Parties at its First Session (subparagraph 14.40 of C-I/9*), held their first meeting in The Hague from 22 to 26 September 1997, in accordance with the decision of the Conference (subparagraph 14.41 of C-I/9*). The meeting of the Confidentiality Commission continued on 17 November 1997.

2. AGENDA ITEM ONE - Opening of the meeting

The meeting was opened on 22 September 1997 by Mr Jan Zaadhof of the Netherlands on behalf of the Chairman of the Conference, and the Deputy Director-General delivered an opening statement on behalf of the Director-General.

3. AGENDA ITEM TWO - Election of the Chair

The Confidentiality Commission elected Dr Laurraine H. Lotter of South Africa as its Chair.

4. AGENDA ITEM THREE - Adoption of the agenda and programme of work

The Confidentiality Commission adopted its agenda and programme of work dated 22 September 1997.

5. AGENDA ITEM FOUR - Consideration and adoption of the Draft Operating Procedures

- 5.1 On the basis of a non-paper prepared by the Secretariat, the Confidentiality Commission elaborated its Draft Operating Procedures in accordance with the Rules Governing the Commission for the Settlement of Disputes related to Confidentiality (Part IX.2 of the OPCW Policy on Confidentiality (C-I/DEC.13, dated 16 May 1997) (hereinafter “Confidentiality Policy Rules”).

5.2 On 17 November 1997, the Confidentiality Commission completed its consideration of and adopted the Draft Operating Procedures as contained in the attachment to this report, and submitted them to the Conference at its Second Session for consideration and approval.

6. AGENDA ITEM FIVE - Any other business

6.1 The Confidentiality Commission elected the following four Vice-Chairs, in accordance with Rule 8 of its Draft Operating Procedures:

Mr Wang Xiaoyu (China) - Asia

Mrs Anca Roxana Visan (Romania) - Eastern Europe

Mr Camilo Sanhueza Bezanilla (Chile) - Latin America and Caribbean

Prof. Dr Eric P.J. Myjer (Netherlands) - WEOG

6.2 In addition to the recommendation contained in subparagraph 5.2 above, the Confidentiality Commission adopted the following further recommendations for referral to the Conference of the States Parties at its Second Session for consideration and approval:

- (a) in order to ensure the expeditious filling of a vacancy occurring as a result of the departure of a member prior to the expiration of his or her term of office, the Confidentiality Commission recommended that the Conference delegate to the Executive Council, in accordance with Article VIII, paragraph 30, of the Convention, the authority to appoint a replacement from the regional group concerned. In so doing, the Conference would not be required to meet in a special session to appoint a new member of the Confidentiality Commission in the manner provided by Confidentiality Policy Rule 1.2 *in fine*;
- (b) with reference to Rule 13 of the Draft Operating Procedures, the Confidentiality Commission recommended that the Conference delegate its functions under Article XIV, paragraph 4, of the Convention to the Executive Council in accordance with Article VIII, paragraph 30, of the Convention. The Confidentiality Commission was of the view that this would enable disputes relating to confidentiality, other than those contemplated by paragraph 23 of the Confidentiality Annex, to be submitted to the Confidentiality Commission in a timely fashion, and would obviate the necessity for a special session of the Conference in relation to such disputes;
- (c) the Confidentiality Commission recommended that its annual meetings be held at a convenient time at least two months prior to the regular sessions of the Conference, in order to ensure that recommendations requiring a Conference decision are not delayed for extended periods, as could be the case with the current arrangement for holding its meetings in conjunction with the Conference; the Confidentiality Commission further recommended and that Confidentiality Policy Rule 1.4 be amended accordingly;

- (d) the Confidentiality Commission recommended that an independent Registry be established to serve the Confidentiality Commission to ensure that the impartiality and independence of its procedures is preserved, and further recommended that the International Bureau of the Permanent Court of Arbitration in The Hague act in this capacity as Registry to the Confidentiality Commission. The Confidentiality Commission was of the view that to entrust the Office of the Legal Adviser or another branch of the Technical Secretariat with the functions of the Registry could give rise to an appearance of conflict of interest in disputes involving the OPCW. The Confidentiality Commission made this recommendation on the understanding that measures shall be taken to ensure that its Registry acts in accordance with the OPCW confidentiality regime;
- (e) the Confidentiality Commission recommended that the Conference approve in its annual budget a provision for training in dispute resolution techniques (maximum three days per year) for the members of the Confidentiality Commission;
- (f) the Confidentiality Commission recommended that the Conference consider whether the costs of proceedings before the Confidentiality Commission should be borne by the parties to the dispute or by the Organisation. If the Conference agrees to the former, i.e. to the costs being borne by the parties, the following rule should be added to the Operating Procedures:

Rule 50 Costs

For each case submitted to the Confidentiality Commission, the costs shall be borne by the parties to the dispute pursuant to Articles 38 to 40 of the Permanent Court of Arbitration Optional Rules for Arbitration involving International Organisations and States and Articles 38 to 40 of the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States, applied mutatis mutandis.

7. AGENDA ITEM SIX - Date of the next meeting

Subject to the adoption by the Conference at its Second Session of the recommendation set out in subparagraph 6.2(c) above, the Confidentiality Commission resolved to hold its next regular annual meeting at least two months prior to the Conference's regular session in 1998. In this regard, the Confidentiality Commission requested the Technical Secretariat to fix an appropriate date for its next meeting at least two months before the Conference's regular session in 1998 and to inform the members of the Confidentiality Commission accordingly.

8. AGENDA ITEM SEVEN - Adoption of the report

The Confidentiality Commission considered and adopted the report of its First Meeting.

9. AGENDA ITEM EIGHT - Closure

The Chair closed the meeting on 17 November 1997.

Attachment

**DRAFT OPERATING PROCEDURES
OF THE
CONFIDENTIALITY COMMISSION**

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DRAFT OPERATING PROCEDURES OF THE CONFIDENTIALITY COMMISSION

I. INTRODUCTION

Rule 1 Application of Operating Procedures

- (a) These Operating Procedures of the Confidentiality Commission are a set of rules governing the proceedings of the Commission for the Settlement of Disputes Relating to Confidentiality (hereinafter referred to as the “Confidentiality Commission”), established by the Conference of the States Parties (hereinafter referred to as the “Conference”) of the Organisation for the Prohibition of Chemical Weapons (hereinafter referred to as the “OPCW”) pursuant to paragraph 23 of the Annex on the Protection of Confidential Information (hereinafter referred to as the “Confidentiality Annex”) to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (hereinafter referred to as the “Convention”).
- (b) The parties to disputes relating to confidentiality shall cooperate in good faith with the Confidentiality Commission in accordance with these Operating Procedures.
- (c) In assisting the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute pursuant to these Operating Procedures, the Confidentiality Commission shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties and the circumstances surrounding the dispute.

II. COMPOSITION

Rule 2 Appointment of members

- (a) After expiration of the terms of appointment of the members of the first Confidentiality Commission in accordance with the Rules governing the Commission for the Settlement of Disputes related to Confidentiality (hereinafter referred to as the “Confidentiality Policy Rules”) as set out in Part IX.2 of the OPCW Policy on Confidentiality (document C-I/DEC.13, dated 16 May 1997, hereinafter referred to as the “Confidentiality Policy”), the members of the Confidentiality Commission shall be appointed by the Conference in accordance with the procedure set out below.
- (b) In accordance with Confidentiality Policy Rules 1.1 and 1.2, the States Parties belonging to each of the five regions specified in paragraph 23 of Article VIII of the Convention (hereinafter referred to as the “regional groups”) shall select four candidates from among the persons nominated by the States Parties in their region, to

serve in a personal capacity. The States Parties in each of the regional groups shall do their utmost, through the process of consultation, to reach consensus on their selection. A list of 20 candidates reflecting the selection of the regional groups shall be submitted to the Conference for appointment. The decision on appointment shall be taken by the Conference as a matter of substance, in accordance with paragraph 18 of Article VIII of the Convention.

- (c) If the States Parties of a region cannot achieve consensus on the candidates to be submitted to the Conference, the list submitted to the Conference shall include the names of all persons nominated by the States Parties from that region. The Conference shall elect the Confidentiality Commission members from that region by a ballot on all nominees from the region. The four nominees who obtain the most votes shall be the candidates from the region. In the event of a tie, the Conference shall elect the member by a further ballot on the tied nominees.

Rule 3 Term of office

After expiration of the terms of appointment of the members of the first Confidentiality Commission in accordance with the Confidentiality Policy Rules, the members of the Confidentiality Commission shall be appointed by the Conference every two years at its regular annual session. They shall serve on the Confidentiality Commission until the appointment of their successors by the Conference. A person who has completed three consecutive terms as a member of the Confidentiality Commission shall not be eligible for immediate re-appointment.

Rule 4 Vacancy

In the event of a vacancy on the Confidentiality Commission prior to the expiration of the term of office of a member, the Chair of the Conference, after consultation with the regional group concerned, shall appoint a person from that regional group who meets the qualifications set forth in Confidentiality Policy Rule 1.3, to fill the vacancy for the remainder of the term of office concerned.

Rule 5 Extension of appointments for continuing proceedings

In cases where the term of office of a member of the Confidentiality Commission expires while proceedings in a case under consideration in which he or she is involved are continuing, the member's participation in the Confidentiality Commission's hearing of that case shall be extended until the termination of the proceedings. The outgoing member shall participate only in the Confidentiality Commission's consideration of the case in question.

III. DECISION-MAKING

Rule 6 Quorum

Fourteen of the members of the Confidentiality Commission shall constitute a quorum.

Rule 7 Decision-making

- (a) In respect of any decision or recommendation before the Confidentiality Commission, the Chair of the Confidentiality Commission shall seek consensus.
- (b) If consensus cannot be reached on a recommendation or a decision on a matter of substance, the Confidentiality Commission shall resolve the matter by a two-thirds majority of its members present and voting.
- (c) The Confidentiality Commission shall take decisions on questions of procedure by a simple majority of its members present and voting.
- (d) When the issue arises as to whether the question is one of substance or not, that question shall be treated as a matter of substance unless otherwise decided by the Confidentiality Commission by a two-thirds majority of its members present and voting.

IV. OFFICERS OF THE CONFIDENTIALITY COMMISSION

Rule 8 Election of Chair and Vice-Chairs

The Chair and four Vice-Chairs shall be elected by consensus from among the members of the Confidentiality Commission at each of its regular annual meetings, in accordance with Rule 9. If the Chair is absent or unable to exercise his or her functions as Chair, these shall be exercised by one of the four Vice-Chairs. The order of precedence of the Vice-Chairs shall be by English alphabetical order of regional group, starting with the regional group following that which provided the Chair.

Rule 9 Regional distribution of officers

The Chair shall rotate annually among members from the regional groups. The Vice-Chairs shall be elected upon the recommendation of the Confidentiality Commission's regional groups, with the exception of the regional group which provides the Chair. On completion of their terms of office, the Chair and the Vice-Chairs shall not be eligible for re-election to the same posts for the following term of office.

V. CONFLICT OF INTEREST

Rule 10 Disclosure

Each member of the Confidentiality Commission shall, as soon as he or she is informed of a dispute, disclose to the Chair any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence in regard to the case. The Chair shall inform all members of the Confidentiality Commission of any such disclosure and, if the Confidentiality Commission considers it appropriate, such a member shall either refrain from specific

activities relating to the case or from any participation in the consideration of the case. If the Chair has an apparent conflict of interest, he or she shall entrust to one of the Vice-Chairs the functions which are affected by such conflict.

Rule 11 Provision of information to the Chair

A party to a dispute under consideration by the Confidentiality Commission which is aware of circumstances believed to give rise to justifiable doubts as to the impartiality or independence of a member of the Confidentiality Commission may give notice of such circumstances to the attention of the Chair. If the conflict of interest involves the Chair, a Vice-Chair shall be entrusted with the Chair's functions as provided for under Rule 10.

VI. TYPES OF DISPUTE

Rule 12 Disputes considered pursuant to paragraph 23 of the Confidentiality Annex

Consideration of a dispute by the Confidentiality Commission pursuant to paragraph 23 of the Confidentiality Annex shall be initiated either by the Director-General on behalf of the Organisation or by one or more States Parties. A request for the initiation of proceedings shall be addressed to the Chair of the Confidentiality Commission through the Registry as appointed in Rule 21.

Rule 13 Disputes considered pursuant to paragraph 4 of Article XIV of the Convention

Where, pursuant to paragraph 4 of Article XIV of the Convention, the Conference entrusts the Confidentiality Commission with a dispute relating to confidentiality other than a dispute of the type identified in Rules 12 and 14, the Confidentiality Commission's proceedings shall be initiated by the Conference by means of a request addressed to the Chair of the Confidentiality Commission.

Rule 14 Disputes considered pursuant to paragraph 2 of Article XIV of the Convention

Where, pursuant to paragraph 2 of Article XIV of the Convention, the Confidentiality Commission is chosen to consider a dispute over a matter of confidentiality as a means of resolving their dispute, the parties shall initiate such proceedings by a request addressed to the Chair of the Confidentiality Commission through the Registry.

VII. GENERAL RULES FOR PROCEEDINGS OF THE CONFIDENTIALITY COMMISSION

Rule 15 Form of request for initiation of proceedings

All requests for the initiation of proceedings shall be accompanied by a statement of claim in accordance with Rule 22 below.

Rule 16 Meetings of the Confidentiality Commission

The Confidentiality Commission shall meet at the headquarters of the Organisation, unless the Confidentiality Commission decides otherwise for a specific case. The Confidentiality Commission's meetings and hearings shall be private.

Rule 17 Language of proceedings

The proceedings of the Confidentiality Commission shall be conducted in one of the Convention's official languages, which shall be chosen by the Confidentiality Commission on a case by case basis. At the request of any of the parties or a member of the Confidentiality Commission, interpretation of the proceedings into any of the official languages of the Convention shall be provided, and official translations into any of the official languages of the Convention shall be made of the written submissions of the parties, the Confidentiality Commission's report and any other documents issued by the Confidentiality Commission.

Rule 18 Deliberations

When all parties to the dispute have completed their presentations, including any rebuttals requested by the Confidentiality Commission, the Chair of the Confidentiality Commission shall declare the hearings closed and the Confidentiality Commission shall deliberate in private.

Rule 19 Confidentiality

- (a) The deliberations of the Confidentiality Commission shall be confidential, and the documents considered at such meetings shall, when deemed necessary, be assigned the appropriate classification level in accordance with the Confidentiality Policy.
- (b) No information submitted by a member of the Confidentiality Commission, a party to the dispute, an interested third party or any other person shall be disclosed by any person present at the deliberations of the Confidentiality Commission. This shall not preclude a party to the dispute from disclosing statements of its own position in a manner which fully takes into account the provisions of the Confidentiality Annex, the Confidentiality Policy, and the OPCW Media and Public Affairs Policy. Parties providing written submissions to the Confidentiality Commission may be asked by it to provide non-confidential summaries of these submissions that may be disclosed to the States Parties.

- (c) Members of the Confidentiality Commission shall be bound by the provisions of the Confidentiality Annex and of the Confidentiality Policy and shall, when using confidential documents, apply the OPCW Manual of Confidentiality Procedure, *mutatis mutandis*.
- (d) The Director-General shall ensure that meetings of the Confidentiality Commission at which confidential information is considered receive support only from those staff members of the Technical Secretariat who have been specifically cleared by the Director-General and proposed to the parties to the dispute, as far as possible at least ten days before the staff members are cleared, for access to confidential information pertaining to the dispute under consideration in accordance with paragraph 11 of the Confidentiality Annex.
- (e) The Chair of the Confidentiality Commission shall ensure that its meetings are attended only by persons whose functions require them to deal with the issues under consideration and that those persons will have access to relevant confidential information only on the basis of a “need-to-know” principle governing access to confidential information.
- (f) The members of the Confidentiality Commission shall enter into individual secrecy agreements with the Conference, using the format set out in the annex hereto.

Rule 20 Time limits

The parties shall comply with the time limits fixed in these Operating Procedures. After initiating proceedings, a party may make a written request for changes to the time limits applicable to those proceedings.

Rule 21 Assistance to the Confidentiality Commission and appointment of a Registry

- (a) The Technical Secretariat shall, upon request, render administrative and technical assistance to the Confidentiality Commission.
- (b) The Conference shall appoint a Registry.

VIII. RULES FOR PROCEEDINGS

Rule 22 Statement of claim

- (a) In requesting the initiation of proceedings pursuant to Rules 12, 13 and 14, the initiator shall submit a statement of claim which shall be a concise statement of the facts supporting the request and which shall include, *inter alia*, the following particulars:
 - (i) the name and address of the representative of the initiator and the name and address of the respondent;

- (ii) a description of the alleged infringement of obligations concerning the protection of confidential information;
 - (iii) the circumstances under which the alleged infringement occurred, by which activities under the Convention or by which violation of its provisions the confidential information was obtained;
 - (iv) an assessment of the nature and amount of actual or potential damage, if any, to the interests of any party(ies) concerned; and
 - (v) the relief or remedy sought.
- (b) Relevant documents or other evidence may be annexed to the statement of claim.
- (c) The Registry shall serve the statement of claim on the respondent forthwith.

Rule 23 Initial consideration of the dispute

- (a) Upon receiving a statement of claim, the Chair shall immediately forward it to all members of the Confidentiality Commission and shall, in consultation with the Vice-Chairs, make written recommendations to the members on the following matters:
- (i) the convening of a meeting of the Confidentiality Commission;
 - (ii) the appointment of a mediator, if relevant, as one of the means of dispute resolution appropriate to the case. The mediator shall be one or more of the members of the Confidentiality Commission;
 - (iii) a tentative timetable for the dispute settlement process;
 - (iv) other modes of dispute settlement.
- (b) The recommendation of the Chair shall be accepted and implemented by the Confidentiality Commission unless at least 14 members inform the Chair otherwise within the time limit specified in the recommendation.
- (c) A meeting of the Confidentiality Commission shall be convened upon the request of 14 of its members if the Chair does not recommend that it be convened.
- (d) If a meeting of the Confidentiality Commission is to be convened, it shall be held no later than 21 days from the date of receipt of the statement of defence.

Rule 24 Modes of dispute settlement

The modes of dispute settlement applied shall be in accordance with Article 33 of the Charter of the United Nations and Article XIV of the Convention.

Rule 25 Statement of defence

The respondent shall submit a statement of defence within 30 days from the date of service of the statement of claim, which shall reply to the allegations of the statement of claim and may contain such other facts or arguments as the respondent deems pertinent. Relevant documents or other evidence referred to in the reply to the statement of claim may be annexed to the statement of defence.

A. MEDIATION

Rule 26 Mediation

- (a) As soon as practicable after the proceedings have been initiated, but no later than 21 days after the date of service of the statement of defence, mediation shall immediately be offered to the parties by the Chair. On acceptance of mediation by the parties to the dispute, the mediator appointed pursuant to Rule 23 shall formulate proposals on a mediation process in accordance with the principles set out in Confidentiality Policy Rules 3.2 and 3.3. Such proposals shall be communicated to the parties to the dispute, each of which shall inform the mediator of whether or not it agrees with the proposals.
- (b) The mediator shall convene a meeting with the parties no later than fifteen days after their acceptance of the proposals in Rule 26(a).
- (c) The mediator shall attempt to gather information concerning the dispute and to identify the issues involved, shall explore the respective interests of the parties underlying the positions that they maintain in respect of the dispute, shall develop options that might satisfy the respective interests of the parties, and shall evaluate options that exist for settling the dispute in the light of the parties' respective interests and each party's alternatives to settlement in accordance with one of the options.

Rule 27 Reporting to members of the Confidentiality Commission

- (a) The mediator shall periodically inform all members of the Confidentiality Commission on the progress and results of the mediation process.
- (b) If mediation proceedings are terminated or if only a partial settlement is achieved, the mediator shall report in detail to the Confidentiality Commission on the discussions that have been held, on the positions taken by the parties, and on any conclusions and recommendations. Any additional documentation pertaining to the matter shall be annexed to the report of the mediator.

Rule 28 Settlement

- (a) If the parties agree to a settlement or partial settlement of a dispute, they shall draw up and sign a written settlement or partial settlement agreement. The mediator may, if requested, assist in drawing up such an agreement.
- (b) The settlement or partial settlement agreement shall be submitted to the Confidentiality Commission as soon as practicable, but no later than 20 days after signature by the parties. The Confidentiality Commission shall ascertain whether the parties have agreed to the settlement or partial settlement agreement and, if so satisfied, shall certify it.
- (c) All certified settlement agreements shall be listed in the record book maintained by the Registry. The Registry shall also maintain the originals of certified settlement agreements and shall provide copies to the parties to the dispute.

Rule 29 Termination of mediation proceedings

- (a) Mediation proceedings shall be terminated:
 - (i) when the dispute has been successfully settled in accordance with Rule 28;
 - (ii) when the mediator declares, in writing, and in consultation with, or on written notification by, any of the parties, that further efforts at mediation are no longer justified;
 - (iii) when the time period for mediation efforts under the time-table set by the Confidentiality Commission has elapsed and no party or the mediator has requested an extension of the time period.
- (b) If mediation proceedings are terminated without a settlement of the dispute or with only a partial settlement achieved, the Confidentiality Commission, if it considers this necessary, shall set the terms for fact-finding pursuant to Rule 30, or shall appoint the conciliation panel with the consent of the parties pursuant to Rule 33. This provision shall not apply if the parties have agreed to arbitration pursuant to Rules 38 to 40.
- (c) Mediation proceedings and, in particular, positions taken by the parties to the dispute during these proceedings, shall be confidential, and the documents considered during these proceedings shall, when deemed necessary, be assigned the appropriate classification level, without prejudice to the rights of any party in any further proceedings before the Confidentiality Commission.

B. FACT-FINDING

Rule 30 Fact-finding

- (a) When mediation proceedings are terminated without settlement of the dispute or with only a partial settlement achieved, the Confidentiality Commission, if it considers this necessary, shall forthwith hold a hearing in accordance with Rule 31 in order to clarify any points or to obtain any additional facts which may lead to a resolution of the dispute.
- (b) If the Confidentiality Commission considers it necessary to hold a hearing, it may appoint a panel of five members to undertake this task. In appointing the panel, the Confidentiality Commission shall consider regional distribution and the expertise available.
- (c) Alternatively, the Confidentiality Commission may use the services of an expert as contemplated in Rule 45 to clarify any points or to obtain additional facts which may lead to a resolution of the dispute.

Rule 31 Procedure for the hearing

- (a) The claimant shall present its case and the respondent shall present its defence. The Confidentiality Commission or the panel may, at any time during the hearing, put questions to the parties. They may ask the parties to provide explanations either in the course of the hearing or subsequently in writing.
- (b) The parties to the dispute shall make available to the Confidentiality Commission or to the panel a written version of their oral statements.
- (c) Each party shall have the burden of proving the facts relied on to support its claim or defence.

Rule 32 Reporting

The panel shall report to the Confidentiality Commission on its proceedings. Its report shall include conclusions.

C. CONCILIATION

Rule 33 Panels

- (a) Where the parties have agreed to conciliation, the Confidentiality Commission shall appoint a panel from amongst its members. Each party may nominate one member and the Confidentiality Commission shall appoint the remainder to a total of five, taking into account such factors as regional distribution and the expertise available. The Confidentiality Commission shall appoint the Chair of the panel.

- (b) Vacancies
 - (i) In case of vacancy on the panel because of death, incapacitation or resignation of a member, the Confidentiality Commission shall immediately appoint a replacement from among the members of the Confidentiality Commission in consultation with the parties, taking into account such factors as regional distribution and the expertise available.
 - (ii) Upon notification to the Confidentiality Commission of a vacancy on the panel, the proceedings shall be or shall remain suspended until the vacancy has been filled.
 - (iii) If any panel member is replaced, prior hearings may be repeated at the discretion of the panel.
- (c) The panel shall take the documents submitted to the Confidentiality Commission under these Rules, and as directed by the Confidentiality Commission, as its point of departure.
- (d) Sittings of the panel
 - (i) The Chair of the panel shall conduct its hearings and preside over its deliberations.
 - (ii) The presence of a majority of the members of the panel shall be required at its sittings.
 - (iii) The Chair of the panel shall fix the date and hour of its sittings.
- (e) Decisions of the panel
 - (i) Decisions of the panel shall be taken by a majority of the votes of all its members. Abstention shall count as a negative vote.
 - (ii) Except as otherwise provided by these rules or decided by the Confidentiality Commission, the panel may take any decision by correspondence among its members, provided that all of them are consulted. Decisions so taken shall be certified by the Chair of the panel.
 - (iii) The panel shall report on its proceedings to the Confidentiality Commission. The report shall include final recommendations.

Rule 34 Panel mode of operation

- (a) In order to bring about agreement between the parties, the panel may, from time to time at any stage of the proceedings, make, orally or in writing, recommendations to the parties. It may recommend that the parties accept specific terms of settlement or that they refrain, while it seeks to bring about agreement between them, from specific acts that might aggravate the dispute; it shall point out to the parties the arguments in favour of its recommendations. It may fix time limits within which each party shall inform the panel of its decision concerning the recommendations made.
- (b) The panel shall decide cases in accordance with the Permanent Court of Arbitration Optional Conciliation Rules. Articles 6, 9(1), 10, 12, 13(2), 13(3) and 15 of those Rules shall be applied mutatis mutandis.

Rule 35 Confirmation of panel reports

All panel reports shall be submitted to the Confidentiality Commission as a whole for confirmation. A panel report shall be considered confirmed unless two thirds of the members of the Confidentiality Commission present and voting vote against confirmation. If the Confidentiality Commission refuses to confirm a panel report, the former shall, in consultation with the parties, consider the case itself.

**D. REPORTING PROCEDURE FOR
FACT-FINDING AND CONCILIATION**

Rule 36 Final report of the Confidentiality Commission

- (a) Within 30 days of the end of the fact-finding or the conciliation hearing, the Confidentiality Commission shall issue the final report on its findings and recommendations, which shall include, in accordance with Confidentiality Policy Rule 3.5:
 - (i) a description of facts relating to the dispute;
 - (ii) the findings and conclusions with respect to the dispute, as reflected in the panel report if confirmed, including: whether a breach of confidentiality has occurred; the responsibility for that breach; the nature and amount of the damage caused by the breach; observations on reasons and circumstances which led to the occurrence of the breach; and
 - (iii) recommendations concerning the remedy for the situation and the prevention of the occurrence of similar events, as well as time limits within which each party shall inform the Confidentiality Commission of its decision concerning the recommendations made.

- (b) The final report shall not contain confidential information. The Confidentiality Commission may, however, include in a special annex to its final report such confidential details as it deems necessary for the implementation of conclusions contained in the report. The annex shall be classified and shall be made available only in accordance with the Confidentiality Policy.

Rule 37 Release of reports

All Confidentiality Commission reports shall be listed in the record book maintained by the Registry. The Registry shall maintain the originals of the Confidentiality Commission's report and shall provide copies of the report to the parties to the dispute. The Confidentiality Commission may also instruct the Registry to provide copies of the report to the Executive Council if the Confidentiality Commission considers that the gravity or urgency of the case requires such action.

E. ARBITRATION

Rule 38 Panels

- (a) If the parties have agreed to arbitration, the Confidentiality Commission shall appoint a panel from amongst its members. Each party may nominate one member and the Confidentiality Commission shall appoint the remainder to a total of five, taking into account such factors as regional distribution and the expertise available. The Confidentiality Commission shall appoint the Chair of the panel.
- (b) Vacancies
 - (i) In case of vacancy on the panel because of death, incapacitation or resignation of a member, the Confidentiality Commission shall immediately appoint a replacement from among the members of the Confidentiality Commission in consultation with the parties, taking into account such factors as regional distribution and the expertise available.
 - (ii) Upon notification to the Confidentiality Commission of a vacancy on the panel, the proceedings shall be or shall remain suspended until the vacancy has been filled.
 - (iii) If any panel member is replaced, prior hearings may be repeated at the discretion of the panel.
- (c) The panel shall take as its point of departure the documents submitted to the Confidentiality Commission pursuant to these rules and as directed by the Confidentiality Commission.

- (d) **Sittings of the panel**
 - (i) The Chair of the panel shall conduct its hearings and shall preside at its deliberations.
 - (ii) The presence of a majority of the members of the panel shall be required at its sittings.
 - (iii) The Chair of the panel shall fix the date and hour of its sittings.
- (e) **Decisions of the panel**
 - (i) Decisions of the panel shall be taken by a majority of the votes of all its members. Abstention shall count as a negative vote.
 - (ii) Except as otherwise provided by these rules or as decided by the Confidentiality Commission, the Confidentiality Commission may take any decision by correspondence among its members, provided that all of them are consulted. Decisions so taken shall be certified by the Chair of the panel.
 - (iii) The panel shall report on its proceedings to the Confidentiality Commission. The report shall include the panel's decision.

Rule 39 Panel procedure

The panel shall decide cases in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration involving International Organisations and States or the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between two States, as appropriate. Articles 15, 24, 25, 28, 29, 30, 32 and 34 of the Permanent Court of Arbitration Optional Rules for Arbitration involving International Organisations and Articles 15, 24, 25, 28, 29, 30, 32 and 34 of the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between two States shall be applied mutatis mutandis.

Rule 40 Certification of panel decisions

All decisions of the panel shall be submitted to the Confidentiality Commission for certification, after which they shall be listed in the record book by the Registry.

F. GENERAL PROVISIONS APPLICABLE TO CONCILIATION, FACT-FINDING AND ARBITRATION

Rule 41 Documents and other evidence

- (a) The parties may submit to the Confidentiality Commission documents or other evidence to support their positions.

- (b) At any time during its proceedings the Confidentiality Commission may require the parties to produce documents or other evidence within such a time as the Confidentiality Commission shall determine.

Rule 42 Additional submissions

- (a) Statements of rebuttal may be submitted by any of the parties in accordance with the timetable set for the matter.
- (b) During its proceedings the Confidentiality Commission may require the parties to submit further written statements, as necessary.

Rule 43 Third parties

If the Confidentiality Commission is of the opinion that a third party has a substantial interest in a matter under consideration by the Confidentiality Commission, the Confidentiality Commission may decide to provide the third party with an opportunity to make written and/or oral submissions. These submissions shall be provided to the parties to the dispute and may, if the Confidentiality Commission considers it appropriate, be reflected in the Confidentiality Commission's report.

Rule 44 Investigation by the Director-General

- (a) The Director-General shall submit to the Confidentiality Commission the report of investigations carried out pursuant to paragraph 19 of the Confidentiality Annex, if such investigations are related to a case under consideration by the Confidentiality Commission.
- (b) The Confidentiality Commission may require the Director-General to initiate an investigation pursuant to paragraph 19 of the Confidentiality Annex or to supplement a previous investigation by investigating additional issues.

Rule 45 Experts

- (a) The Confidentiality Commission may appoint one or more independent experts to report to it in writing on specific issues relating to a case pending before the Confidentiality Commission. The experts shall be bound by the relevant provisions of the Confidentiality Annex and the Confidentiality Policy and shall be required to enter into an individual secrecy agreement with the Conference, using the format set out in the annex hereto. The experts shall, when using confidential information, apply the OPCW Manual of Confidentiality Procedure, *mutatis mutandis*.
- (b) If the issues to be considered by an expert appointed by the Confidentiality Commission relate to confidential information of one of the parties, the expert shall be appointed with the consent of the party concerned. In such cases, the Confidentiality Commission shall inform all parties through the Registry, of the name, qualifications and nationality of a person proposed for appointment as an expert. The party whose

confidential information is to be considered by the expert shall inform the Registry, within seven days of receiving the notice, of whether it consents to the appointment of the expert. If the party does not indicate its rejection of the proposed expert within this time, it shall be deemed to have consented to the appointment of the proposed expert.

Rule 46 Interim measures to protect evidence at an inspection site

A party to a dispute before the Confidentiality Commission may request it to order interim measures to protect evidence at an inspection site or elsewhere. The Confidentiality Commission shall, in consultation with the parties, order such interim measures as it considers necessary to protect evidence relevant to a dispute pending before it. The Confidentiality Commission shall request the Director-General to take such interim measures as it considers necessary.

IX. MISCELLANEOUS

Rule 47 Amendments

Proposals for amendment of these procedures may be made by any member of the Confidentiality Commission for consideration at its regular annual meeting. Such proposals shall be notified to the Secretariat at least 45 days prior to the meeting and, to the members of the Confidentiality Commission, not less than 21 days prior to the meeting. Decisions on proposals for amendments shall be treated as decisions on matters of substance. Proposals agreed to shall be recommended to the Conference for adoption.

Rule 48 Record book

The Registry shall keep a record book which shall list, subject to the provisions of the Convention related to confidentiality, all the filings and hearings in each matter brought before the Confidentiality Commission.

Rule 49 Annual reporting to the Conference

At its regular annual meeting, the Confidentiality Commission shall report to the Conference on its activities in the preceding year. In accordance with Confidentiality Policy Rules 3.8 and 3.11(b), its annual report shall include the categories of disputes considered, the outcomes reached, and details of the outcomes consistent with the continuing protection of confidentiality. In accordance with Confidentiality Policy Rules 3.8, 3.11(c) and 3.12(j), the report shall also include a review of the efficiency of the Confidentiality Commission's operations, taking into account factors such as the number of disputes brought to it, the number of disputes resolved by mediation, conciliation or arbitration, and the length of time taken to issue its reports. On the basis of this review, the Confidentiality Commission may, if it deems this necessary, recommend measures for the improvement of efficiency.

Annex

ORGANISATION FOR THE PROHIBITION OF CHEMICAL WEAPONS

SECURITY AGREEMENT

between

The undersigned ('the Signatory')

and

**The Conference of the States Parties of the Organisation for the Prohibition of
Chemical Weapons**

1. I, the Signatory, confirm that I have read and understood the Confidentiality Annex of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction ("the Convention"), and the OPCW Policy on Confidentiality.

2. As a condition for my appointment to the OPCW Commission for the Settlement of Disputes Related to Confidentiality ("Confidentiality Commission"), I hereby undertake to comply with the letter and spirit of the OPCW Policy on Confidentiality.

3. In view of my obligation to carry out faithfully and conscientiously the tasks entrusted to me during my term (or terms) as a member of the Confidentiality Commission, I further undertake that for the duration of that term (or terms), I shall:

- restrict any use I make of OPCW confidential information, both within the Organisation and outside the Organisation, to the proper execution of my tasks;
- respect and apply the procedures established under the OPCW Policy on Confidentiality and under the administrative directives which support that Policy, for the protection, handling, dissemination and release of confidential information;
- refrain from disclosing information to which I have had access by virtue of my membership in the Confidentiality Commission; and
- refrain from any unauthorised use of information to which I have had access as a member of the Confidentiality Commission, including any unauthorised use which seeks to serve the interests of myself or any third party, or which may damage the interests of any party.

4. Without limiting the foregoing, I undertake that at all times following the expiry of my term (or terms) as member of the Confidentiality Commission, I shall refrain from any use, disclosure or dissemination of confidential information to which I have had access in the course of my term (or terms) as member of the Confidentiality Commission, and I shall take no action that may lead to such information being disclosed or exploited to the detriment of the OPCW, a State Party to the Convention, or a person or commercial entity of a State Party.

5. I confirm that I am aware that a breach, as determined by the Conference of the States Parties, of these provisions and undertakings during or after my term (or terms) as member of the Confidentiality Commission may result in penal prosecution or civil action under the jurisdiction of a State Party to the Convention which could result in severe penalties or liability for damages.

SIGNATORY

| Signature | Full name | Date |
|------------------|------------------|-------------|
|------------------|------------------|-------------|

Done in triplicate at The Hague, Kingdom of the Netherlands in (a Convention language)

.....

Undertaking and Acceptance on behalf of the Conference of the States Parties of the OPCW.

I confirm that, as elected Chair of the Conference of the States Parties of the OPCW, I have accepted this agreement with the Signatory; that I made available to the Signatory the OPCW Policy on Confidentiality and the OPCW Manual of Confidentiality Procedure; that I have briefed the Signatory on the obligations relating to confidentiality incurred in accepting appointment to the Confidentiality Commission; that throughout his/her term (or terms) of membership on the Confidentiality Commission, the OPCW Secretariat will continue actively to promote the Signatory's understanding of all applicable obligations, policy and procedures relating to confidentiality, including any updates and amendments to the Policy on Confidentiality, or to the administrative directives which support that Policy; and that the OPCW Secretariat will provide briefing on such obligations upon request at any time following the expiration of the Signatory's term (or terms) as member of the Confidentiality Commission.

| Signature | Full name | Date |
|------------------|------------------|-------------|
|------------------|------------------|-------------|

WITNESS: The execution of this agreement was witnessed by the undersigned

Signature **Full name** **Date**

CONFIRMATION: On the expiration of my term or consecutive terms as member of the OPCW Confidentiality Commission, I confirm my understanding that the obligations relating to confidentiality continue to apply without time limitation in the future.

Signature **Full name** **Date**

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