



OPCW

Conference of the States Parties

Third Session
16 - 20 November 1998

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16 September 1998
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**REPORT OF THE SECOND MEETING OF THE
COMMISSION FOR THE SETTLEMENT OF DISPUTES
RELATED TO CONFIDENTIALITY
TO THE**

THIRD SESSION OF THE CONFERENCE OF THE STATES PARTIES

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1. Introduction

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The Commission for the Settlement of Disputes Related to Confidentiality (hereinafter “Confidentiality Commission”) held its second meeting in The Hague from 7 to 10 September 1998.

2. AGENDA ITEM ONE - Opening of the meeting

The meeting was opened by the Chair of the Confidentiality Commission, Dr Laurraine H. Lotter of South Africa, on 7 September 1998.

3. AGENDA ITEM TWO - Address by the Deputy Director-General

The Deputy Director-General, Mr John Gee, delivered a statement on behalf of the Director-General.

4. AGENDA ITEM THREE - Election of the Chair

In accordance with Rule 8 of its Operating Procedures, the Confidentiality Commission elected Mr Kim Sung-Chul of the Republic of Korea as its new Chairman.

5. AGENDA ITEM FOUR - Adoption of the agenda and programme of work

The Confidentiality Commission adopted its agenda and programme of work dated 7 September 1998.

6. AGENDA ITEM FIVE - Election of Vice-Chairs

In accordance with Rule 8 of its Operating Procedures, the Confidentiality Commission elected the following four Vice-Chairs:

Professor Mohammed Mokhtar Dridi (Algeria) - Africa
Dr. György Molnár (Hungary) - Eastern Europe
Professor José Luz González Chávez (Mexico) - Latin America and Caribbean
Professor Herbert de Bisschop (Belgium) - Western Europe and Other

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7. AGENDA ITEM SIX - Registry agreement with the Permanent Court of Arbitration

7.1 The Confidentiality Commission recalled that the Conference of the States Parties had appointed the International Bureau of the Permanent Court of Arbitration (hereinafter "PCA") in The Hague to serve as the Registry of the Confidentiality Commission, subject to the conclusion of an agreement between the OPCW and the PCA (C-II/DEC.14, dated 5 December 1997) and that the Conference had directed the Executive Council to negotiate and conclude an agreement with the PCA, in accordance with paragraphs 30 and 34(a) of Article VIII of the Convention.

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7.2 The Confidentiality Commission noted that a draft text of the Registry Agreement between the OPCW and the PCA (hereinafter "Draft Registry Agreement") had been submitted to the Executive Council (EC-XI/DG.13, dated 17 August 1998), and that comments on the Draft Registry Agreement provided by the Chair of the Confidentiality Commission had also been circulated to the Executive Council (EC-XI/DG.13/Add.1, dated 26 August 1998).

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7.3 The Confidentiality Commission noted that the Draft Registry Agreement is to be considered by the Executive Council at its Twelfth Session. Accordingly, it drew to the attention of the Executive Council the following matters with regard to the Draft Registry Agreement:

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(a) The Confidentiality Commission recommended that, in line 1 of subparagraph 3.2 of the Draft Registry Agreement, the word "supervising" be replaced with the word "responsible".

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(b) With respect to the question of sanctions against a staff member of the PCA who breaches the secrecy agreement that he or she signs with the OPCW in accordance with subparagraph 3.3 of the Draft Registry Agreement, the Confidentiality Commission recommended that the secrecy agreement provide that, in cases where there was any breach of the secrecy agreement, the Secretary-General of the PCA shall take appropriate disciplinary and/or other measures, including waiver of immunity.

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- (c) With respect to the last sentence of subparagraph 3.3 of the Draft Registry Agreement, the Confidentiality Commission recommended that this sentence be replaced with the following: “The names of these persons shall be notified by the OPCW to all its Member States for information. In case a party to a specific dispute before the Confidentiality Commission objects to a particular staff member having access to its confidential information, the Secretary-General of the PCA shall control access accordingly”.
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- (d) The Confidentiality Commission recommended that, in subparagraph 3.5 of the Draft Registry Agreement, the first sentence be replaced with the following: “A member of the Confidentiality Commission, appointed by the Chair in consultation with the other members of the Confidentiality Commission, shall, with the assistance of the Technical Secretariat, perform regular audits of the implementation of the OPCW confidentiality regime by the PCA with respect to matters pertaining to the Confidentiality Commission”.
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- (e) The Confidentiality Commission recommended that the last sentence of subparagraph 4.1 of the Draft Registry Agreement be replaced with the following: “The PCA shall strictly control access to the secure room so that access is available only to those of its staff who are designated to work with matters relating to the Confidentiality Commission, members of the Commission and OPCW staff members who have been cleared for access to confidential information in accordance with Rule 19(d) of the Operating Procedures”.
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- (f) The Confidentiality Commission recommended the addition of a new subparagraph 4.3 bis as follows: “Once the equipment referred to above has been installed to the satisfaction of the PCA, all keys and access codes shall be handed to the PCA”.
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- (g) With respect to subparagraph 4.4 of the Draft Registry Agreement, the Confidentiality Commission recommended that it be replaced with the following: “Maintenance of the equipment referred to in subparagraph 4.3 shall be undertaken under the supervision of the PCA and the cost shall be recovered from the OPCW”.
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- (h) The Confidentiality Commission recommended that subparagraph 5.2 of the Draft Registry Agreement be replaced with the following: “In accordance with Rule 21(a) of the Operating Procedures, the Technical Secretariat of the OPCW shall, upon the request of the Confidentiality Commission, render administrative and technical assistance to the Confidentiality Commission”.
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8. AGENDA ITEM SEVEN - Consideration of the proposals of the Islamic Republic of Iran with respect to the Commission’s Operating Procedures

8.1 The Confidentiality Commission considered the comments and proposed amendments to the Draft Operating Procedures of the Confidentiality Commission provided by the Islamic Republic of Iran (note no. 642-2/1017, dated 15 May 1998) ([hereinafter](#) “Iranian proposal”).

2 The Confidentiality Commission made the following comments on the Iranian proposal:

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(a) With respect to the Iranian proposal regarding Rule 3, the Confidentiality Commission was of the view that the rule did not in any way conflict with the provisions of the OPCW Policy on Confidentiality. It recalled the previous debate on the issue and noted that the selection of number of terms of office permitted by Rule 3 was made in order to accommodate those regional groups that may have limited capacity to provide suitable members and to promote the continuity of the Confidentiality Commission as a whole. The Confidentiality Commission further noted that, in accordance with the Operating Procedures, regional groups should seek consensus on nominations of members of the Confidentiality Commission. In the implementation of the principle of rotation, decisions on the number of terms and the possible immediate reappointment of members is left to the regional groups.

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(b) With respect to the Iranian proposal regarding Rule 19, the Confidentiality Commission believed that it was not necessary to amend this rule. The Confidentiality Commission noted that, under Rule 19 itself, members of the Confidentiality Commission and staff members of the Secretariat would be covered by the relevant confidentiality provisions. In cases where a person representing or assisting a State Party was invited to be present, the State Party concerned would be responsible. With respect to other persons invited to be present, the need to know principle would apply. The responsibility of the Chair in this regard would be that of a subsidiary organ of the Conference, and as such the OPCW would be deemed to be responsible.

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(c) With respect to the Iranian proposal regarding Rule 23(a), the Confidentiality Commission was of the view that this rule did not in any way contradict the OPCW Policy on Confidentiality. In this regard, the Confidentiality Commission noted that the OPCW Policy on Confidentiality does not require the formation of an advisory committee for mediation. It simply allows for the Confidentiality Commission to use this option.

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(d) With respect to the Iranian proposal regarding Rule 23(b), the Confidentiality Commission was of the opinion that it had carefully considered the issue of voting at its first session, including in particular the need to facilitate action in the case of a dispute, and that it was satisfied that its recommendations on the matter were reflected in Rule 23(b).

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(e) With respect to the Iranian proposal regarding Rule 24, the Confidentiality Commission agreed that a specific reference to paragraph 1 of Article 33 of the

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United Nations Charter would add further clarity. ~~The Confidentiality~~ Commission did not, however, believe that it was advisable to change the order in which the United Nations Charter and the Convention were listed in Rule 24. In this regard the Confidentiality Commission noted that the “modes of dispute settlement” to which Rule 24 referred were actually listed in

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Article 33 of the Charter and the reference to the Convention was to make it clear that these modes should not be applied in a manner that was contrary to Article XIV of the Convention.

(f) With respect to the Iranian proposal regarding Rule 33, the Confidentiality Commission noted that the intention behind the rule was to leave the selection of the two party-appointed members of the panel entirely to the discretion of the parties to the dispute. If a party wished to select a member of its nationality, it was not precluded from doing so. In this regard, the Confidentiality Commission noted that the aim of the conciliation process was to facilitate a resolution of the dispute. Placing restrictions, such as nationality or regional distribution, on the selection of the panel would not necessarily facilitate resolution. In the view of the Confidentiality Commission, the overarching goal was to seat a panel of conciliators acceptable to the parties to the dispute and the current Rule 33 met this goal.

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(g) With respect to the Iranian proposal regarding Rule 35, the Confidentiality Commission noted that this was more of a comment on the rule rather than a concrete proposal for amendment. With regard to the substance of the comment, the Confidentiality Commission noted that its aim with all decisions was to reach consensus.

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(h) With respect to the Iranian proposal regarding Rule 38, the Confidentiality Commission referred to its comments with respect to Rule 33 (see subparagraph 7.3(f) of this report).

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(i) With respect to the Iranian proposal regarding Rule 47, the Confidentiality Commission was of the view that a State Party who wished to propose an amendment to the Operating Procedures should act through the Conference of the States Parties.

(j) With respect to the Iranian proposal regarding the secrecy agreement, the Confidentiality Commission noted that this was a comment regarding outstanding issues to be addressed by the Conference. The Confidentiality Commission further noted its preference for an early resolution of the outstanding issues.

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9. AGENDA ITEM EIGHT - Confidentiality training

The members of the Confidentiality Commission participated in confidentiality training provided by the Confidentiality Branch of the Secretariat.

10. AGENDA ITEM NINE - Dispute resolution workshop

The members of the Confidentiality Commission participated in a day-long workshop on dispute resolution.

