



OPCW

Executive Council

Fifteenth Session
26 - 29 April 1999
Agenda Item 20

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28 April 1999
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DECISION

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

The Executive Council

Recalling that, in accordance with paragraph 50 of Article VIII of the Convention, the legal capacity, privileges and immunities referred to in that Article shall be defined in agreements between the Organisation and the States Parties;

Recalling further that subparagraph 34(a) of Article VIII of the Convention states that the Executive Council shall conclude agreements or arrangements with States and international organisations on behalf of the Organisation, subject to prior approval by the Conference;

Noting that the privileges and immunities enjoyed by the Director-General and the staff of the Technical Secretariat during the conduct of verification activities are those set out in Part II, Section B, of the Verification Annex;

Bearing in mind that the Technical Secretariat has negotiated the draft Agreement between the Republic of Korea and the Organisation for the Prohibition of Chemical Weapons on the Privileges and Immunities of the OPCW annexed hereto;

Noting further that this agreement is without prejudice to the relevant provisions of the Convention; that nothing in this agreement shall be applied or interpreted in a way that is contradictory to the provisions of the Convention; and that, even in the event of a conflict between the provisions of this agreement and the Convention, the Convention shall take precedence;

Recognising that Member States of the OPCW remain free either to draw upon the present agreement for the conclusion of other agreements on the privileges and immunities of the OPCW or to depart from it, where they deem appropriate, provided that the new agreements conform with the provisions of the Convention;

Hereby:

Recommends that the Conference of the States Parties at its Fourth Session approve the negotiated text of the draft Agreement between the Republic of Korea and the Organisation for the Prohibition of Chemical Weapons on the Privileges and Immunities of the OPCW as annexed hereto.

Annex (English only):

Draft Agreement between the Republic of Korea and the Organisation for the Prohibition of Chemical Weapons on the Privileges and Immunities of the OPCW

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

The Republic of Korea
and
The Organisation for the Prohibition of Chemical Weapons

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 Technical 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 provides that such legal capacity, privileges and immunities shall be defined in agreements between the Organisation and the States Parties,

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 Technical Secretariat of the OPCW, except those who are locally recruited and assigned to hourly rates;
- (e) "States Parties" means the States Parties to the Convention;
- (f) "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 convened by the OPCW;
- (g) "Experts" means persons, other than officials of the OPCW, who, in their personal capacity, are performing missions for and authorised by the OPCW, are serving on its organs, or who are, in any way, at its request, consulting with the OPCW;
- (h) "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;
- (i) "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 Republic of Korea and the Director-General may agree shall form part of the archives of the OPCW.

ARTICLE 2 JURIDICAL PERSONALITY

The OPCW shall possess juridical personality. It shall have the capacity:

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

ARTICLE 3
PROPERTY, FUNDS AND ASSETS

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, gold or currency to or from the Republic of Korea, to or from any other country, or within the Republic of Korea, 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 Republic of Korea 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 Republic of Korea, except in accordance with conditions agreed upon with the Republic of Korea;
 - (c) exempt from customs 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 Republic of Korea will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

ARTICLE 4
FACILITIES IN RESPECT OF COMMUNICATIONS

1. For its official communications the OPCW shall enjoy, in the territory of the Republic of Korea and as far as may be compatible with any international conventions, regulations and arrangements to which the Republic of Korea adheres, treatment not less favourable than that accorded by the Government of the Republic of Korea 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 press and radio.
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 Republic of Korea and the OPCW.
3. The Republic of Korea recognises the right of the OPCW to publish freely, in accordance with the Convention, the OPCW Media and Public Relations Policy and the OPCW Policy on Confidentiality, within the territory of the Republic of Korea.
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 are no longer engaged in the performance of such functions;
 - (c) inviolability for all papers and documents;

- (d) the right to use codes and to send or receive papers or correspondence 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 Republic of Korea in the exercise of their functions;
 - (f) the same facilities in respect of 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 are present in the territory of the Republic of Korea 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 Republic of Korea.
 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 Republic of Korea.

ARTICLE 6

OFFICIALS OF THE OPCW

1. During the conduct of verification activities, the Director-General and the staff of the Technical Secretariat, including qualified experts during investigations of alleged use of chemical weapons selected in accordance with Part XI, paragraph 8 of the Verification Annex to the Convention, shall enjoy, in accordance with Article VIII, paragraph 51, of the Convention, solely the privileges and immunities set forth in Part II, Section B, of the Verification Annex to the Convention.
2. Subject to paragraph 3 of this Article, 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 and documents, 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 immune, 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. Officials of the OPCW, who are nationals of the Republic of Korea, shall, when exercising their official functions, enjoy only the immunities set forth in paragraphs 2 (a), (b), (c) and (d) of this Article.
 4. The officials of the OPCW shall be exempt from national service obligations, provided that, in relation to nationals of the Republic of Korea, 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 Republic of Korea. Should other officials of the OPCW be called up for national service by the Republic of Korea, the Republic of Korea 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.
 5. In addition to the privileges and immunities specified in 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 envoys on behalf of themselves and their spouses, in accordance with international law.
 6. Privileges and immunities are granted to officials of the OPCW in the interests of the OPCW only, 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 Republic of Korea. 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.
 7. The OPCW shall cooperate at all times with the appropriate authorities of the Republic of Korea 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. Subject to paragraph 2 of this Article, 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 and documents;
 - (d) for the purposes of their communications with the OPCW, the right to use codes and to send or 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 experts of the OPCW, who are nationals of the Republic of Korea, shall, when exercising their official functions, enjoy only the immunities set forth in paragraphs 1 (a), (b), (c) and (d).
3. The privileges and immunities are granted 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 Republic of Korea. 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 Republic of Korea considers that there has been an abuse of a privilege or immunity conferred by this Agreement, consultations shall be held between the Republic of Korea 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 Republic of Korea 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. If it is found that such an abuse has occurred, the Republic of Korea affected by such abuse has the right, after notification to the OPCW, to withhold from the OPCW the benefits of the privilege or immunity so abused. However, the withholding of privileges or immunities must not interfere with the OPCW's principal activities or prevent the OPCW from performing its principal functions.
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 Republic of Korea 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 in the Republic of Korea outside the official functions of the person, the person may be required to leave by the Government of the Republic of Korea, provided that the order to leave the country has been issued by the territorial authorities with the approval of the Minister of Foreign Affairs and Trade of the Republic of Korea. 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 Republic of Korea shall recognise and accept as valid travel documents the United Nations laissez-passer issued to the officials of the OPCW, in accordance with special arrangements to be concluded between the OPCW and the United Nations, for the purpose of carrying out their tasks related to the Convention. The Director-General shall notify the Republic of Korea of the relevant arrangements.
2. Applications for 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 on the business of the OPCW, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.
3. The Director-General, the Deputy Director(s)-General and other officials of the OPCW, not lower than head of division of the OPCW, travelling on the business of the OPCW, shall be granted the same facilities for travel as are accorded to members of comparable rank in diplomatic missions.
4. 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 6, or Article 7, paragraph 3, of this Agreement.
2. The provisions relating to the settlement of disputes set out in Article XIV of the Convention will apply mutatis mutandis to any dispute between the Republic of Korea and the OPCW concerning the interpretation or application of this Agreement.

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, prejudice or expand the privileges and immunities set forth 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 Technical 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 first day of the second month following the date on which the Government of the Republic of Korea and the OPCW have informed each other in writing that their respective internal procedures have been complied with.
2. This Agreement shall continue in force for so long as the Republic of Korea remains a State Party to the Convention.
3. The Republic of Korea and the OPCW 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 Republic of Korea or the OPCW. Any such amendment shall be by

mutual consent expressed in an agreement concluded by the Republic of Korea and the OPCW.

In witness whereof the undersigned, being duly authorised by their respective competent organs, have signed the Agreement.

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

For the Republic of Korea,

For Organisation for the Prohibition of
Chemical Weapons

José M. Bustani
Director-General

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