



OPCW

Executive Council

Thirty-Fifth Session
2 – 5 December 2003

EC-35/DEC.5
3 December 2003
Original: ENGLISH

DECISION

**AGREEMENT BETWEEN THE
ORGANISATION FOR THE PROHIBITION OF CHEMICAL WEAPONS AND THE
SLOVAK REPUBLIC
ON THE PRIVILEGES AND IMMUNITIES OF THE OPCW**

The Executive Council,

Recalling that, according to paragraph 50 of Article VIII of the Chemical Weapons Convention (hereinafter “the Convention”), the legal capacity, privileges, and immunities referred to in that Article shall be defined in agreements between the Organisation for the Prohibition of Chemical Weapons (OPCW) 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 OPCW, subject to prior approval by the Conference of the States Parties (hereinafter “the Conference”);

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

Noting also that the Secretariat has negotiated an agreement between the OPCW and the Slovak Republic on the privileges and immunities of the OPCW;

Noting further that the Conference at its Eighth Session approved that agreement (C-8/DEC.11, dated 23 October 2003);

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

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



Hereby:

Concludes the agreement between the OPCW and the Slovak Republic on the privileges and immunities of the OPCW, as annexed hereto; and

Requests the Director-General to enter into this agreement on behalf of the OPCW.

Annex (English only):

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

Annex**AGREEMENT
BETWEEN
THE ORGANISATION FOR THE PROHIBITION OF CHEMICAL WEAPONS AND
THE SLOVAK REPUBLIC
ON THE PRIVILEGES AND IMMUNITIES OF THE OPCW**

Whereas Article VIII, paragraph 48, of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction provides that the Organisation 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 Organisation;

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

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

Now, therefore, the Organisation for the Prohibition of Chemical Weapons and the Slovak Republic 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 adopted in Paris on 13 January 1993;
- (b) "Organisation" 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 Organisation" means the Director-General and all members of the staff of the Secretariat of the Organisation;
- (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 of the Organisation;
- (g) "Experts" means persons who, in their personal capacity, are performing missions authorised by the Organisation, are serving on its organs, or who are, in any way, at its request, consulting with the Organisation;
- (h) "Meetings convened by the Organisation" means any meeting of any of the organs or subsidiary organs of the Organisation, or any international conferences or other gatherings convened by the Organisation;
- (i) "Property" means all property, assets and funds belonging to the Organisation or held or administered by the Organisation in furtherance of its functions under the Convention and all income of the Organisation;
- (j) "Archives of the Organisation" means all records, correspondence, documents, manuscripts, computer and media data, photographs, films, video and sound recordings belonging to or held by the Organisation or any officials of the Organisation in an official function, and any other material which the Director-General and the Slovak Republic may agree shall form part of the archives of the Organisation;
- (k) "Premises of the Organisation" are the buildings or parts of buildings, and the land ancillary thereto if applicable, used for the purposes of the Organisation, including those referred to in Part II, subparagraph 11(b), of the Verification Annex to the Convention.

ARTICLE 2 LEGAL PERSONALITY

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

- (a) to contract;
- (b) to acquire and dispose of movable property and to acquire and dispose of immovable property necessary for the exercise of its functions under the Convention in the territory of the Slovak Republic;
- (c) to institute and act in legal proceedings.

ARTICLE 3 PRIVILEGES AND IMMUNITIES OF THE OPCW

1. The Organisation and its property, wherever located and by whomsoever held, used for the functions of the Organisation, shall enjoy immunity from every form of legal process, except in so far as in any particular case the Organisation 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 Organisation shall be inviolable. The property of the Organisation, wherever located and by whomsoever held, used for the functions of the Organisation 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 Organisation shall be inviolable, wherever located.
4. Without being restricted by financial controls, regulations or moratoria of any kind:
 - (a) the Organisation may hold funds, gold or currency of any kind and operate accounts in any currency;
 - (b) the Organisation may freely transfer its funds, securities, gold and currencies to or from the Slovak Republic, to or from any other country, or within the Slovak Republic, and may convert any currency held by it into any other currency.
5. The Organisation shall, in exercising its rights under paragraph 4 of this Article, pay due regard to any representations made by the Government of the Slovak Republic in so far as it is considered that effect can be given to such representations without detriment to the interests of the Organisation.

6. The Organisation and its property shall be:
 - (a) exempt from all direct taxes; it is understood, however, that the Organisation 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 Organisation for its official use; it is understood, however, that articles imported under such exemption will not be sold in the Slovak Republic, except in accordance with conditions agreed upon with the Slovak Republic;
 - (c) exempt from duties and prohibitions and restrictions on imports and exports in respect of its publications.

7. While the Organisation 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 Organisation is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, the Slovak Republic will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax in accordance with the internal law of the Slovak Republic.

ARTICLE 4
FACILITIES AND IMMUNITIES IN RESPECT OF
COMMUNICATIONS AND PUBLICATIONS

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

2. No censorship shall be applied to the official correspondence and other official communications of the Organisation.
The Organisation 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 Slovak Republic and the Organisation.

3. The Slovak Republic recognises the right of the Organisation to publish and broadcast freely within the territory of the Slovak Republic for purposes specified in the Convention.
4. All official communications directed to the Organisation and all outward official communications of the Organisation, 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 Organisation, shall, without prejudice to any other privileges and immunities which they may enjoy, while exercising their functions and during their journeys to and from the place of the meeting, enjoy the following privileges and immunities:
 - (a) immunity from personal arrest or detention;
 - (b) immunity from legal process of any kind in respect of words spoken or written and all acts done by them, in their official capacity; such immunity shall continue to be accorded, notwithstanding that the persons concerned may no longer be engaged in the performance of such functions;
 - (c) inviolability for all papers, documents and official material;
 - (d) the right to use codes and to dispatch or receive papers, correspondence or official material by courier or in sealed bags;
 - (e) exemption in respect of themselves and their spouses from immigration restrictions, alien registration or national service obligations while they are visiting or passing through the Slovak Republic in the exercise of their functions;
 - (f) the same facilities with respect to currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
 - (g) the same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.

2. Where the incidence of any form of taxation depends upon residence, periods during which the persons designated in paragraph 1 of this Article may be present in the territory of the Slovak Republic 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 Organisation 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 Slovak Republic.
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 Slovak Republic.

ARTICLE 6 OFFICIALS OF THE OPCW

1. During the conduct of verification activities, the Director-General and the staff of the Secretariat, including qualified experts during investigations of alleged use of chemical weapons referred to in Part XI, paragraphs 7 and 8 of the Verification Annex to the Convention, enjoy, in accordance with Article VIII, paragraph 51, of the Convention, the privileges and immunities set forth in Part II, Section B, of the Verification Annex to the Convention or, when transiting the territory of non-inspected States Parties, the privileges and immunities referred to in Part II, paragraph 12, of the same Annex.
2. For other activities related to the object and purpose of the Convention, officials of the Organisation shall:
 - (a) be immune from personal arrest or detention and from seizure of their personal baggage;
 - (b) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
 - (c) enjoy inviolability for all papers, documents and official material, subject to the provisions of the Convention;
 - (d) enjoy the same exemptions from taxation in respect of salaries and emoluments paid to them by the Organisation and on the same conditions as are enjoyed by officials of the United Nations;
 - (e) be exempt, together with their spouses from immigration restrictions and alien registration;
 - (f) be given, together with their spouses, the same repatriation facilities in time of international crises as officials of comparable rank of diplomatic missions;

- (g) be accorded the same privileges in respect of exchange facilities as are accorded to members of comparable rank of diplomatic missions.
3. The officials of the Organisation shall be exempt from national service obligations, provided that, in relation to nationals of the Slovak Republic, such exemption shall be confined to officials of the Organisation whose names have, by reason of their duties, been placed upon a list compiled by the Director-General of the Organisation and approved by the Slovak Republic. Should other officials of the Organisation be called up for national service by the Slovak Republic, the Slovak Republic shall, at the request of the Organisation, grant such temporary deferments in the call-up of such officials as may be necessary to avoid interruption in the continuation of essential work.
4. In addition to the privileges and immunities specified in paragraphs 1, 2 and 3 of this Article, the Director-General of the Organisation shall be accorded on behalf of himself and his spouse, the privileges and immunities, exemptions and facilities accorded to diplomatic agents on behalf of themselves and their spouses, in accordance with international law. The same privileges and immunities, exemptions and facilities shall also be accorded to a senior official of the Organisation acting on behalf of the Director-General.
5. Privileges and immunities are granted to officials of the Organisation in the interests of the Organisation, 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 Slovak Republic. The Organisation shall have the right and the duty to waive the immunity of any official of the Organisation 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 Organisation.
6. The Organisation shall cooperate at all times with the appropriate authorities of the Slovak Republic to facilitate the proper administration of justice, and shall secure the observance of legal regulations of the Slovak Republic and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

ARTICLE 7

EXPERTS

1. Experts shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time spent on journeys in connection with such functions.
- (a) immunity from personal arrest or detention and from seizure of their personal baggage;

- (b) in respect of words spoken or written or acts done by them in the performance of their official functions, immunity from legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer performing official functions for the Organisation;
 - (c) inviolability for all papers, documents and official material;
 - (d) for the purposes of their communications with the Organisation, the right to use codes and to receive papers or correspondence by courier or in sealed bags;
 - (e) the same facilities in respect of currency and exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;
 - (f) the same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.
2. The privileges and immunities are accorded to experts in the interests of the Organisation 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 Slovak Republic. The Organisation 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 Organisation.

ARTICLE 8 ABUSE OF PRIVILEGE

1. If the Slovak Republic considers that there has been an abuse of a privilege or immunity conferred by this Agreement, consultations shall be held between the Slovak Republic and the Organisation 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 Slovak Republic and the Organisation, the question whether an abuse of a privilege or immunity has occurred shall be settled by a procedure in accordance with Article 10.
2. Persons included in one of the categories under Articles 6 and 7 shall not be required by the territorial authorities to leave the territory of the Slovak Republic on account of any activities by them in their official capacity. In the case, however, of abuse of privileges committed by any such person in activities outside official functions, the person may be required to leave by the Slovak Republic, provided that the order to leave the country has been issued by the territorial authorities with the approval of the Foreign Minister of the Slovak Republic. Such approval shall be given only in consultation with the Director-General of the Organisation. If expulsion proceedings are taken against the person, the Director-General of the Organisation 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 Slovak Republic shall recognise and accept as valid travel document the United Nations laissez-passer issued to the officials of the Organisation, in accordance with special arrangements of the Organisation, for the purpose of carrying out their tasks related to the Convention. The Director-General shall notify the Slovak Republic of the relevant arrangements of the Organisation.
2. The Slovak Republic shall take all necessary measures to facilitate the entry into and sojourn in its territory and shall place no impediment in the way of the departure from its territory of the persons included in one of the categories under Articles 5, 6 and 7 above, whatever their nationality, and shall ensure that no impediment is placed in the way of their transit to or from the place of their official duty or business and shall afford them any necessary protection in transit.
3. Applications for visas and transit visas, where required, from persons included in one of the categories under Articles 5, 6 and 7, when accompanied by a certificate that they are travelling in their official capacity, shall be dealt with as speedily as possible to allow those persons to effectively discharge their functions. Visas will be granted for the period necessary for the discharge of their duties, in case of transit, for the period necessary for the transit. In addition, such persons shall be granted facilities for speedy travel.
4. The certificate under paragraph 3 of this Article shall be issued by the Director-General.
5. The Director-General, the Deputy Director(s)-General and other officials of the Organisation, travelling in their official capacity, shall be granted the same facilities for travel as are accorded to members of comparable rank in diplomatic missions.
6. 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 Organisation 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 Organisation is a party;
 - (b) disputes involving any official of the Organisation or expert who, by reason of his official position, enjoys immunity, if such immunity has not been waived in accordance with Article 6, paragraph 5, or Article 7, paragraph 2, of this Agreement.
2. Any dispute concerning the interpretation or application of this Agreement, which is not settled by mutual consultation, shall be referred for final decision to a tribunal of three arbitrators, at the request of either party to the dispute. Each party shall appoint one arbitrator. The third, who shall be chairman of the tribunal, is to be chosen by the first two arbitrators.
3. If one of the parties fails to appoint an arbitrator and has not taken steps to do so within two months following a request from the other party to make such an appointment, the other party may request the President of the International Court of Justice to make such an appointment.
4. Should the first two arbitrators fail to agree upon the third within two months following their appointment, either party may request the President of the International Court of Justice to make such appointment.
5. The tribunal shall conduct its proceedings in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States, as in force on the date of entry into force of this Agreement.
6. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the parties to the dispute.

ARTICLE 11 INTERPRETATION

1. The provisions of this Agreement shall be interpreted in the light of the functions which the Convention entrusts to the Organisation.
2. The provisions of this Agreement shall in no way limit or prejudice the privileges and immunities accorded to members of the inspection team in Part II, Section B, of the Verification Annex to the Convention or the privileges and immunities accorded to the Director-General and the staff of the Secretariat of the Organisation 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 Organisation may otherwise have, acquire or assume.

ARTICLE 12
FINAL PROVISIONS

1. This Agreement shall enter into force on the 30th day following the date of deposit with the Director-General of an instrument of ratification of the Slovak Republic. It is understood that, when an instrument of ratification is deposited by the Slovak Republic it will be in a position under its own law to give effect to the terms of this Agreement.
2. This Agreement shall continue to be in force for so long as the Slovak Republic remains a State Party to the Convention.
3. The Organisation and the Slovak Republic 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 Organisation or the Slovak Republic. Any such amendment shall be by mutual consent expressed in an agreement concluded by the Organisation and the Slovak Republic.

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

For the Organisation for the Prohibition
of Chemical Weapons,

For the Slovak Republic,

Rogelio Pfirter
Director-General