

## Attachment

### 1) What types of disputes/issues (cf. paras. 6 and 7 above) have you encountered?

The Organisation for the Prohibition of Chemical Weapons (“OPCW”) has encountered the following types of issues:

- (i) Issues with States:
  - Interpretation and application of the Headquarters Agreement between the Kingdom of the Netherlands and the OPCW (the “Headquarters Agreement”)
- (ii) Issues with other International Organisations
  - Differences concerning the implementation of operational activities on the basis of certain service agreements
- (iii) Disputes with private parties:
  - Disputes arising from commercial contracts

### 2) What methods of dispute settlement (cf. para. 9 above) have been resorted to in cases of disputes with other international organizations, states or private parties? Please provide any relevant case law, or a representative sample thereof. If you cannot provide such information for confidentiality reasons, could you provide any such decisions or awards in redacted form, or a generic description/digest of such decisions?

#### **Interpretation and application of the Headquarters Agreement**

Disputes concerning the interpretation and application of the Headquarters Agreement with its Host Country have been resolved amicably in accordance with Article 26(2) of the Headquarters Agreement.

In addition to the Headquarters Agreement, the Conference of the State Parties has established the Host Country Committee (the “HCC”).<sup>1</sup> The HCC meets periodically<sup>2</sup> to address any issues pertaining to the privileges and immunities conferred in the context of the Headquarters Agreement.

#### **Operational concerns with regard to the implementation of service level agreements**

---

<sup>1</sup> See decision C-11/DEC.9.

<sup>2</sup> The HCC may also meet whenever it is convoked by the Chairperson of the Executive Council at the request of any Member State or the Director-General. See C-11/DEC.9, at paragraph 3.

In carrying out its operational activities, the OPCW has concluded agreements with other UN common system organisations. Issues concerning the implementation of these agreements have been resolved by negotiations.

### **Disputes arising from commercial contracts**

Disputes arising from commercial contracts have been resolved through negotiations.

- 3) **In your dispute settlement practice, for each of the types of disputes/issues arising, please describe the relative importance of negotiation, conciliation or other informal consensual dispute settlement and/or third-party dispute resolution, such as arbitration or judicial settlement.**

The OPCW attaches great importance to informal consensual dispute settlement mechanisms. To the extent possible, settlement by negotiations is usually attempted before recourse to any formal dispute settlement procedure.

For disputes arising from contracts pertaining to the purchase of goods and/or services, the relevant General Terms and Conditions for Goods and for Services (the “GTCs”) contain dispute settlement clauses which refer to conciliation in accordance with the Conciliation Rules of the United Nations Commission on International Trade Law (the “UNCITRAL”), and arbitration pursuant to the UNCITRAL Arbitration Rules. Similar mechanisms are in place to address potential disputes which may arise from OPCW’s procurement activities.<sup>3</sup>

- 4) **Which methods of dispute settlement do you consider to be most useful? Please indicate the preferred methods of dispute settlement (cf. para. 9 above) for different types of disputes/issues (cf. paras. 6 and 7 above).**

The OPCW considers informal consensual dispute settlement methods *e.g.*, consultation and negotiations to be most useful. In the event that such methods do not result in amicable settlement, conciliation and arbitration are preferred to formal litigation.

- 5) **From a historical perspective, have there been any changes or trends in the types of disputes arising, the numbers of such disputes and the modes of settlement used?**

There is no discernible trend that can be mentioned.

- 6) **Do you have suggestions for improving the methods of dispute settlement (that you have used in practice)?**

No.

- 7) **Are there types of disputes that remain outside the scope of available dispute settlement methods?**

---

<sup>3</sup> To-date, no such dispute has yet arisen.

No.

8) **Does your organization have a duty to make provision for appropriate modes of settlement of disputes arising out of contracts or other disputes of a private law character under the 1946 Convention on the Privileges and Immunities of the United Nations, the 1947 Convention on the Privileges and Immunities of the Specialized Agencies, or an equivalent treaty? How in practice has your organization interpreted and applied the relevant provisions?**

The OPCW is an independent, autonomous UN related organisation.<sup>4</sup> As a result of its status, the 1946 Convention on the Privileges and Immunities of the United Nations and the 1947 Convention on the Privileges and Immunities of the Specialized Agencies do not apply to the OPCW. However, the OPCW is required to make provision for appropriate modes of settlement pursuant to Article 26(1) of its Headquarters Agreement with its Host Country.

As per standard practice, contracts and agreements to be entered into by the OPCW or the OPCW Technical Secretariat are submitted to the Office of the Legal Adviser (the “LAO”) for review. LAO ensures that such contracts and agreements contain appropriate dispute settlement clauses. LAO routinely reviews and updates the OPCW’s GTCs and the dispute settlement clauses contained therein if necessary.

9) **Are there standard/model clauses concerning dispute settlement in your treaty and/or contractual practice? Please provide representative examples.**

The OPCW’s GTCs include model dispute settlement clauses which refer any dispute to conciliation and arbitration in accordance with the applicable UNCITRAL rules. The said model clauses are as follows:

“The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of the Contract or the breach, termination, or invalidity thereof. Without prejudice to the privileges and immunities of the Organisation, where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the Conciliation Rules of the United Nations Commission on International Trade Law (“UNCITRAL”), then in effect, or according to such other procedure as may be agreed between the Parties in writing.

Any dispute, controversy or claim between the Parties arising out of the Contract or the breach, termination, or invalidity thereof that remains unresolved within sixty (60) days

---

<sup>4</sup> The OPCW is recognized by the United Nations as an “independent, autonomous international organization”. See the Relationship Agreement between the OPCW and the United Nations in the Annex to EC-MXI/DEC.1, dated 1 September 2000.

after receipt by one Party of the other Party's request for amicable settlement shall, at the request of either Party, be referred to arbitration in accordance with the UNCITRAL Arbitration Rules then in effect. The number of arbitrators shall be one. The place of arbitration shall be the Permanent Court of Arbitration, The Hague, the Netherlands. In light of the privileges and immunities of the OPCW, references in the UNCITRAL Arbitration Rules to the place of arbitration shall connote only the actual location for the arbitral proceedings but shall not mean the "seat" or "juridical seat" or "juridical place" for such proceedings. The language of the arbitration shall be English. The decisions of the arbitrator shall be based on general principles of international commercial law. The arbitrator shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Contract, order the termination of the Contract, or order that any protective measures be taken with respect to the goods, the Services or any other property or any confidential information provided under the Contract, as appropriate, in accordance with the relevant UNCITRAL Arbitration Rules. The arbitrator shall have no authority to award punitive damages. Unless otherwise expressly provided in the Contract, the arbitrator shall have no authority to award interest in excess of the United States Federal Reserve Bank of New York's Secured Overnight Financing Rate ("SOFR") then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy or claim."

**10) Does "other disputes of a private law character" (see 8) above) encompass all disputes other than those arising from contracts? If not, which categories are not included? What has been the practice of your organization in determining this? What methods of settlement have been used for "other disputes of a private law character" and what has been regarded as the applicable law?**

The OPCW has not been involved in disputes other than those arising from contracts and such disputes are not envisaged. Thus, the Organisation has not yet developed any practice in determining the scope of the expression "other disputes of a private law character" and the application thereof.

**11) Have you developed a practice of agreeing ex post to third-party methods of dispute settlement (arbitration or adjudication) or waiving immunity in cases where disputes have already arisen and cannot be settled otherwise, e.g., because no treaty/contractual dispute settlement has been provided for?**

No.

\*\*\*