

PART X

CHALLENGE INSPECTIONS PURSUANT TO ARTICLE IX

A. DESIGNATION AND SELECTION OF INSPECTORS AND INSPECTION ASSISTANTS

1. Challenge inspections pursuant to Article IX shall only be performed by inspectors and inspection assistants especially designated for this function. In order to designate inspectors and inspection assistants for challenge inspections pursuant to Article IX, the Director-General shall, by selecting inspectors and inspection assistants from among the inspectors and inspection assistants for routine inspection activities, establish a list of proposed inspectors and inspection assistants. It shall comprise a sufficiently large number of inspectors and inspection assistants having the necessary qualification, experience, skill and training, to allow for flexibility in the selection of the inspectors, taking into account their availability, and the need for rotation. Due regard shall be paid also to the importance of selecting inspectors and inspection assistants on as wide a geographical basis as possible. The designation of inspectors and inspection assistants shall follow the procedures provided for under Part II, Section A, of this Annex.

2. The Director-General shall determine the size of the inspection team and select its members taking into account the circumstances of a particular request. The size of the inspection team shall be kept to a minimum necessary for the proper fulfilment of the inspection mandate. No national of the requesting State Party or the inspected State Party shall be a member of the inspection team.

B. PRE-INSPECTION ACTIVITIES

3. Before submitting the inspection request for a challenge inspection, the State Party may seek confirmation from the Director-General that the Technical Secretariat is in a position to take immediate action on the request. If the Director-General cannot provide such confirmation immediately, he shall do so at the earliest opportunity, in keeping with the order of requests for confirmation. He shall also keep the State Party informed of when it is likely that immediate action can be taken. Should the Director-General reach the conclusion that timely action on requests can no longer be taken, he may ask the Executive Council to take appropriate action to improve the situation in the future.

Notification

4. The inspection request for a challenge inspection to be submitted to the Executive Council and the Director-General shall contain at least the following information:

(a) The State Party to be inspected and, if applicable, the Host State;

(b) The point of entry to be used;

(c) The size and type of the inspection site;

(d) The concern regarding possible non-compliance with this Convention including a specification of the relevant provisions of this Convention about which the concern has arisen, and of the nature and circumstances of the possible non-compliance as well as all appropriate information on the basis of which the concern has arisen; and

(e) The name of the observer of the requesting State Party.

The requesting State Party may submit any additional information it deems necessary.

5. The Director-General shall within one hour acknowledge to the requesting State Party receipt of its request.

6. The requesting State Party shall notify the Director-General of the location of the inspection site in due time for the Director-General to be able to provide this information to the inspected State Party not less than 12 hours before the planned arrival of the inspection team at the point of entry.

7. The inspection site shall be designated by the requesting State Party as specifically as possible by providing a site diagram related to a reference point with geographic coordinates, specified to the nearest second if possible. If possible, the requesting State Party shall also provide a map with a general indication of the inspection site and a diagram specifying as precisely as possible the requested perimeter of the site to be inspected.

8. The requested perimeter shall:

(a) Run at least a 10 metre distance outside any buildings or other structures;

(b) Not cut through existing security enclosures; and

(c) Run at least a 10 metre distance outside any existing security enclosures that the requesting State Party intends to include within the requested perimeter.

9. If the requested perimeter does not conform with the specifications of paragraph 8, it shall be redrawn by the inspection team so as to conform with that provision.

10. The Director-General shall, not less than 12 hours before the planned arrival of the inspection team at the point of entry, inform the Executive Council about the location of the inspection site as specified in paragraph 7.

11. Contemporaneously with informing the Executive Council according to paragraph 10, the Director-General shall transmit the inspection request to the inspected State Party including the location of the inspection site as specified in paragraph 7. This notification shall also include the information specified in Part II, paragraph 32, of this Annex.

12. Upon arrival of the inspection team at the point of entry, the inspected State Party shall be informed by the inspection team of the inspection mandate.

Entry into the territory of the inspected State Party or the Host State

13. The Director-General shall, in accordance with Article IX, paragraphs 13 to 18, dispatch an inspection team as soon as possible after an inspection request has been received. The inspection team shall arrive at the point of entry specified in the request in the minimum time possible, consistent with the provisions of paragraphs 10 and 11.

14. If the requested perimeter is acceptable to the inspected State Party, it shall be designated as the final perimeter as early as possible, but in no case later than 24 hours after the arrival of the inspection team at the point of entry. The inspected State Party shall transport the inspection team to the final perimeter of the inspection site. If the inspected State Party deems it necessary, such transportation may begin up to 12 hours before the expiry of the time period specified in this paragraph for the designation of the final perimeter. Transportation shall, in any case, be completed not later than 36 hours after the arrival of the inspection team at the point of entry.

15. For all declared facilities, the procedures in subparagraphs (a) and (b) shall apply. (For the purposes of this Part, "declared facility" means all facilities declared pursuant to Articles III, IV, and V. With regard to Article VI, "declared facility" means only facilities declared pursuant to Part VI of this Annex, as well as declared plants specified by declarations pursuant to Part VII, paragraphs 7 and 10 (c), and Part VIII, paragraphs 7 and 10 (c), of this Annex.)

(a) If the requested perimeter is contained within or conforms with the declared perimeter, the declared perimeter shall be considered the final perimeter. The final perimeter may, however, if agreed by the inspected State Party, be made smaller in order to conform with the perimeter requested by the requesting State Party.

(b) The inspected State Party shall transport the inspection team to the final perimeter as soon as practicable, but in any case shall ensure their arrival at the perimeter not later than 24 hours after the arrival of the inspection team at the point of entry.

Alternative determination of final perimeter

16. At the point of entry, if the inspected State Party cannot accept the requested perimeter, it shall propose an alternative perimeter as soon as possible, but in any case not later than 24 hours after the arrival of the inspection team at the point of entry. In case of differences of opinion, the inspected State Party and the inspection team shall engage in negotiations with the aim of reaching agreement on a final perimeter.

17. The alternative perimeter should be designated as specifically as possible in accordance with paragraph 8. It shall include the whole of the requested perimeter and should, as a rule, bear a close relationship to the latter, taking into account natural terrain features and man-made boundaries. It should normally run close to the surrounding security barrier if such a barrier exists. The inspected State Party should seek to establish such a relationship between the perimeters by a combination of at least two of the following means:

(a) An alternative perimeter that does not extend to an area significantly greater than that of the requested perimeter;

(b) An alternative perimeter that is a short, uniform distance from the requested perimeter;

(c) At least part of the requested perimeter is visible from the alternative perimeter.

18. If the alternative perimeter is acceptable to the inspection team, it shall become the final perimeter and the inspection team shall be transported from the point of entry to that perimeter. If the inspected State Party deems it necessary, such transportation may begin up to 12 hours before the expiry of the time period specified in paragraph 16 for proposing an alternative perimeter. Transportation shall, in any case, be completed not later than 36 hours after the arrival of the inspection team at the point of entry.

19. If a final perimeter is not agreed, the perimeter negotiations shall be concluded as early as possible, but in no case shall they continue more than 24 hours after the arrival of the inspection team at the point of entry. If no agreement is reached, the inspected State Party shall transport the inspection team to a location at the alternative perimeter. If the inspected State Party deems it necessary, such transportation may begin up to 12 hours before the expiry of the time period specified in paragraph 16 for proposing an alternative perimeter. Transportation shall, in any case, be completed not later than 36 hours after the arrival of the inspection team at the point of entry.

20. Once at the location, the inspected State Party shall provide the inspection team with prompt access to the alternative perimeter to facilitate negotiations and agreement on the final perimeter and access within the final perimeter.

21. If no agreement is reached within 72 hours after the arrival of the inspection team at the location, the alternative perimeter shall be designated the final perimeter.

Verification of location

22. To help establish that the inspection site to which the inspection team has been transported corresponds to the inspection site specified by the requesting State Party, the inspection team shall have the right to use approved location-finding equipment and have such equipment installed according to its directions. The inspection team may verify its location by reference to local landmarks identified from maps. The inspected State Party shall assist the inspection team in this task.

Securing the site, exit monitoring

23. Not later than 12 hours after the arrival of the inspection team at the point of entry, the inspected State Party shall begin collecting factual information of all vehicular exit activity

from all exit points for all land, air, and water vehicles of the requested perimeter. It shall provide this information to the inspection team upon its arrival at the alternative or final perimeter, whichever occurs first.

24. This obligation may be met by collecting factual information in the form of traffic logs, photographs, video recordings, or data from chemical evidence equipment provided by the inspection team to monitor such exit activity. Alternatively, the inspected State Party may also meet this obligation by allowing one or more members of the inspection team independently to maintain traffic logs, take photographs, make video recordings of exit traffic, or use chemical evidence equipment, and conduct other activities as may be agreed between the inspected State Party and the inspection team.

25. Upon the inspection team's arrival at the alternative perimeter or final perimeter, whichever occurs first, securing the site, which means exit monitoring procedures by the inspection team, shall begin.

26. Such procedures shall include: the identification of vehicular exits, the making of traffic logs, the taking of photographs, and the making of video recordings by the inspection team of exits and exit traffic. The inspection team has the right to go, under escort, to any other part of the perimeter to check that there is no other exit activity.

27. Additional procedures for exit monitoring activities as agreed upon by the inspection team and the inspected State Party may include, *inter alia*:

(a) Use of sensors;

(b) Random selective access;

(c) Sample analysis.

28. All activities for securing the site and exit monitoring shall take place within a band around the outside of the perimeter, not exceeding 50 metres in width, measured outward.

29. The inspection team has the right to inspect on a managed access basis vehicular traffic exiting the site. The inspected State Party shall make every reasonable effort to demonstrate to the inspection team that any vehicle, subject to inspection, to which the inspection team is not granted full access, is not being used for purposes related to the

possible non-compliance concerns raised in the inspection request.

30. Personnel and vehicles entering and personnel and personal passenger vehicles exiting the site are not subject to inspection.

31. The application of the above procedures may continue for the duration of the inspection, but may not unreasonably hamper or delay the normal operation of the facility.

Pre-inspection briefing and inspection plan

32. To facilitate development of an inspection plan, the inspected State Party shall provide a safety and logistical briefing to the inspection team prior to access.

33. The pre-inspection briefing shall be held in accordance with Part II, paragraph 37, of this Annex. In the course of the pre-inspection briefing, the inspected State Party may indicate to the inspection team the equipment, documentation, or areas it considers sensitive and not related to the purpose of the challenge inspection. In addition, personnel responsible for the site shall brief the inspection team on the physical layout and other relevant characteristics of the site. The inspection team shall be provided with a map or sketch drawn to scale showing all structures and significant geographic features at the site. The inspection team shall also be briefed on the availability of facility personnel and records.

34. After the pre-inspection briefing, the inspection team shall prepare, on the basis of the information available and appropriate to it, an initial inspection plan which specifies the activities to be carried out by the inspection team, including the specific areas of the site to which access is desired. The inspection plan shall also specify whether the inspection team will be divided into subgroups. The inspection plan shall be made available to the representatives of the inspected State Party and the inspection site. Its implementation shall be consistent with the provisions of Section C, including those related to access and activities.

Perimeter activities

35. Upon the inspection team's arrival at the final or alternative perimeter, whichever occurs first, the team shall have the right to commence immediately perimeter activities in accordance with the procedures set forth under this Section, and to continue these activities until the completion of the challenge inspection.

36. In conducting the perimeter activities, the inspection team shall have the right to:

- (a) Use monitoring instruments in accordance with Part II, paragraphs 27 to 30, of this Annex;
- (b) Take wipes, air, soil or effluent samples; and
- (c) Conduct any additional activities which may be agreed between the inspection team and the inspected State Party.

37. The perimeter activities of the inspection team may be conducted within a band around the outside of the perimeter up to 50 metres in width measured outward from the perimeter. If the inspected State Party agrees, the inspection team may also have access to any building or structure within the perimeter band. All directional monitoring shall be oriented inward. For declared facilities, at the discretion of the inspected State Party, the band could run inside, outside, or on both sides of the declared perimeter.

C. CONDUCT OF INSPECTIONS

General rules

38. The inspected State Party shall provide access within the requested perimeter as well as, if different, the final perimeter. The extent and nature of access to a particular place or places within these perimeters shall be negotiated between the inspection team and the inspected State Party on a managed access basis.

39. The inspected State Party shall provide access within the requested perimeter as soon as possible, but in any case not later than 108 hours after the arrival of the inspection team at the point of entry in order to clarify the concern regarding possible non-compliance with this Convention raised in the inspection request.

40. Upon the request of the inspection team, the inspected State Party may provide aerial access to the inspection site.

41. In meeting the requirement to provide access as specified in paragraph 38, the inspected State Party shall be under the obligation to allow the greatest degree of access taking into account any constitutional obligations it may have with regard to proprietary

rights or searches and seizures. The inspected State Party has the right under managed access to take such measures as are necessary to protect national security. The provisions in this paragraph may not be invoked by the inspected State Party to conceal evasion of its obligations not to engage in activities prohibited under this Convention.

42. If the inspected State Party provides less than full access to places, activities, or information, it shall be under the obligation to make every reasonable effort to provide alternative means to clarify the possible non-compliance concern that generated the challenge inspection.

43. Upon arrival at the final perimeter of facilities declared pursuant to Articles IV, V and VI, access shall be granted following the pre-inspection briefing and discussion of the inspection plan which shall be limited to the minimum necessary and in any event shall not exceed three hours. For facilities declared pursuant to Article III, paragraph 1 (d), negotiations shall be conducted and managed access commenced not later than 12 hours after arrival at the final perimeter.

44. In carrying out the challenge inspection in accordance with the inspection request, the inspection team shall use only those methods necessary to provide sufficient relevant facts to clarify the concern about possible non-compliance with the provisions of this Convention, and shall refrain from activities not relevant thereto. It shall collect and document such facts as are related to the possible non-compliance with this Convention by the inspected State Party, but shall neither seek nor document information which is clearly not related thereto, unless the inspected State Party expressly requests it to do so. Any material collected and subsequently found not to be relevant shall not be retained.

45. The inspection team shall be guided by the principle of conducting the challenge inspection in the least intrusive manner possible, consistent with the effective and timely accomplishment of its mission. Wherever possible, it shall begin with the least intrusive procedures it deems acceptable and proceed to more intrusive procedures only as it deems necessary.

Managed access

46. The inspection team shall take into consideration suggested modifications of the inspection plan and proposals which may be made by the inspected State Party, at whatever stage of the inspection including the pre-inspection briefing, to ensure that sensitive

equipment, information or areas, not related to chemical weapons, are protected.

47. The inspected State Party shall designate the perimeter entry/exit points to be used for access. The inspection team and the inspected State Party shall negotiate: the extent of access to any particular place or places within the final and requested perimeters as provided in paragraph 48; the particular inspection activities, including sampling, to be conducted by the inspection team; the performance of particular activities by the inspected State Party; and the provision of particular information by the inspected State Party.

48. In conformity with the relevant provisions in the Confidentiality Annex the inspected State Party shall have the right to take measures to protect sensitive installations and prevent disclosure of confidential information and data not related to chemical weapons. Such measures may include, *inter alia*:

- (a) Removal of sensitive papers from office spaces;
- (b) Shrouding of sensitive displays, stores, and equipment;
- (c) Shrouding of sensitive pieces of equipment, such as computer or electronic systems;
- (d) Logging off of computer systems and turning off of data indicating devices;
- (e) Restriction of sample analysis to presence or absence of chemicals listed in Schedules 1, 2 and 3 or appropriate degradation products;
- (f) Using random selective access techniques whereby the inspectors are requested to select a given percentage or number of buildings of their choice to inspect; the same principle can apply to the interior and content of sensitive buildings;
- (g) In exceptional cases, giving only individual inspectors access to certain parts of the inspection site.

49. The inspected State Party shall make every reasonable effort to demonstrate to the inspection team that any object, building, structure, container or vehicle to which the

inspection team has not had full access, or which has been protected in accordance with paragraph 48, is not used for purposes related to the possible non-compliance concerns raised in the inspection request.

50. This may be accomplished by means of, *inter alia*, the partial removal of a shroud or environmental protection cover, at the discretion of the inspected State Party, by means of a visual inspection of the interior of an enclosed space from its entrance, or by other methods.

51. In the case of facilities declared pursuant to Articles IV, V and VI, the following shall apply:

(a) For facilities with facility agreements, access and activities within the final perimeter shall be unimpeded within the boundaries established by the agreements;

(b) For facilities without facility agreements, negotiation of access and activities shall be governed by the applicable general inspection guidelines established under this Convention;

(c) Access beyond that granted for inspections under Articles IV, V and VI shall be managed in accordance with procedures of this section.

52. In the case of facilities declared pursuant to Article III, paragraph 1 (d), the following shall apply: if the inspected State Party, using procedures of paragraphs 47 and 48, has not granted full access to areas or structures not related to chemical weapons, it shall make every reasonable effort to demonstrate to the inspection team that such areas or structures are not used for purposes related to the possible non-compliance concerns raised in the inspection request.

Observer

53. In accordance with the provisions of Article IX, paragraph 12, on the participation of an observer in the challenge inspection, the requesting State Party shall liaise with the Technical Secretariat to coordinate the arrival of the observer at the same point of entry as the inspection team within a reasonable period of the inspection team's arrival.

54. The observer shall have the right throughout the period of inspection to be in communication with the embassy of the requesting State Party located in the inspected

State Party or in the Host State or, in the case of absence of an embassy, with the requesting State Party itself. The inspected State Party shall provide means of communication to the observer.

55. The observer shall have the right to arrive at the alternative or final perimeter of the inspection site, wherever the inspection team arrives first, and to have access to the inspection site as granted by the inspected State Party. The observer shall have the right to make recommendations to the inspection team, which the team shall take into account to the extent it deems appropriate. Throughout the inspection, the inspection team shall keep the observer informed about the conduct of the inspection and the findings.

56. Throughout the in-country period, the inspected State Party shall provide or arrange for the amenities necessary for the observer such as communication means, interpretation services, transportation, working space, lodging, meals and medical care. All the costs in connection with the stay of the observer on the territory of the inspected State Party or the Host State shall be borne by the requesting State Party.

Duration of inspection

57. The period of inspection shall not exceed 84 hours, unless extended by agreement with the inspected State Party.

D. POST-INSPECTION ACTIVITIES

Departure

58. Upon completion of the post-inspection procedures at the inspection site, the inspection team and the observer of the requesting State Party shall proceed promptly to a point of entry and shall then leave the territory of the inspected State Party in the minimum time possible.

Reports

59. The inspection report shall summarize in a general way the activities conducted by the inspection team and the factual findings of the inspection team, particularly with regard to the concerns regarding possible non-compliance with this Convention cited in the request for the challenge inspection, and shall be limited to information directly related to this Convention. It shall also include an assessment by the inspection team of the degree and nature of access and cooperation granted to the inspectors and the extent to which this

enabled them to fulfil the inspection mandate. Detailed information relating to the concerns regarding possible non-compliance with this Convention cited in the request for the challenge inspection shall be submitted as an Appendix to the final report and be retained within the Technical Secretariat under appropriate safeguards to protect sensitive information.

60. The inspection team shall, not later than 72 hours after its return to its primary work location, submit a preliminary inspection report, having taken into account, *inter alia*, paragraph 17 of the Confidentiality Annex, to the Director-General. The Director-General shall promptly transmit the preliminary inspection report to the requesting State Party, the inspected State Party and to the Executive Council.

61. A draft final inspection report shall be made available to the inspected State Party not later than 20 days after the completion of the challenge inspection. The inspected State Party has the right to identify any information and data not related to chemical weapons which should, in its view, due to its confidential character, not be circulated outside the Technical Secretariat. The Technical Secretariat shall consider proposals for changes to the draft final inspection report made by the inspected State Party and, using its own discretion, wherever possible, adopt them. The final report shall then be submitted not later than 30 days after the completion of the challenge inspection to the Director-General for further distribution and consideration in accordance with Article IX, paragraphs 21 to 25.