

**AD HOC GROUP OF THE STATES PARTIES
TO THE CONVENTION ON THE PROHIBITION
OF THE DEVELOPMENT, PRODUCTION AND
STOCKPILING OF BACTERIOLOGICAL
(BIOLOGICAL) AND TOXIN WEAPONS
AND ON THEIR DESTRUCTION**

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Working paper submitted by the Friend of the Chair on Confidentiality

The following paper reproduces the Rolling Text but incorporates suggestions by the FOC for rationalizing and reordering it. This is put forward without prejudice to the positions of delegations on any issue.

ARTICLE IV

CONFIDENTIALITY PROVISIONS

1. [The Organization] shall conduct its activities provided for under this Protocol in the least intrusive manner consistent with the timely and efficient accomplishment of their objectives. It shall request only the information and data necessary to fulfil its responsibilities under this Protocol and shall use this data and information only for the purpose of this Protocol. It shall take every precaution to protect the confidentiality of information on civil and military activities and facilities [including such information coming to its knowledge] in the implementation of this Protocol and, in particular, shall abide by the {confidentiality} provisions set forth in {this Protocol} ~~{the Confidentiality Annex}~~.

NB: Since both the main text and the annex contain provisions related to the protection of confidentiality, reference should be made to the Protocol as a whole. Unlike in the CWC, there is no separate Confidentiality annex.

2. Each State Party shall treat as confidential and afford special handling to information and data that it receives in confidence from [the Organization] in connection with the implementation of this Protocol. It shall treat such information and data exclusively in connection with its rights and obligations under {this Protocol} and in accordance with the provisions set forth in {this Protocol} ~~{and, in particular, shall abide by the provisions on confidentiality set forth in this Protocol}~~.

3. Each State Party shall have the right to take measures as it deems necessary to protect confidential information, provided that ~~it fulfils its obligations to demonstrate compliance in accordance with the provisions of {the Protocol}~~ [it fulfils its obligations in accordance with

the provisions of the Protocol}.

4. (a) The Director-General shall have the primary responsibility for ensuring the protection of [all] confidential information [which comes into possession of [the Organization] from any source]. Based on guidelines provided for within ~~{the Confidentiality Annex}~~ **this Protocol**, the Director-General shall establish and maintain a stringent regime [governing the handling of confidential information by the [Technical] Secretariat as well as the necessary procedures to be followed in case of breaches or alleged breaches of confidentiality] to ensure effective protection against [unauthorized] disclosure. This regime shall be approved and periodically reviewed by [the ...].

{(b)⁵⁷ The regime referred to in paragraph 4 (a) above shall include, among others, provisions relating to:

- (i) The implementation of general principles for the handling of confidential information, including the establishment of appropriate classification levels on the basis of the sensitive nature of the information;
- (ii) Conditions of staff employment relating to the protection of confidential information;
- (iii) Measures ~~{to protect confidential information in the course of on-site activities}~~ ~~{to ensure the protection of confidential information made available to investigating or visiting teams while they are on the territory of the investigated or visited State Party}~~;
- (iv) Procedures in cases of breaches or alleged breaches of confidentiality;
- (v) Appropriate procedures to protect ~~the confidentiality of data declarations~~ **confidential information.**}
- (vi) **Procedures for archiving of confidential information**

NB: The first alternative in (iii) seems to be the most proper wording, since it protects confidential information regardless of whether the information is made available or just becomes known to the investigating or visiting team. It is proposed to change (v) to cover the handling of confidential information in general, irrespective of its source, since it is not yet clear whether declarations will contain any confidential information. (vi) has been added as proposed by one delegation.

57. — It was proposed that this section be moved to Annex E.

~~[Annex E I.10. — Data required by the States Parties to be assured of the continued compliance with the Convention and this Protocol by other States Parties shall be [routinely] [, upon request,] provided to them. Such data shall encompass:~~

~~(a) — The initial and annual declarations provided by States Parties under Article III and relevant Annexes and Appendices;~~

~~(b) — General reports on the results and effectiveness of verification activities; and~~

~~(c) — Information to be supplied to all States Parties in accordance with the provisions of this Protocol.]~~

[4 bis 5. Data required by States Parties to be assured of the continued compliance with ~~this~~ **the** Convention and this Protocol by other States Parties shall be [routinely] **[, upon request,]** provided to them. Such data shall encompass:

(a) The initial and annual ~~reports and~~ declarations provided by States Parties under Article III, section D, in accordance with the provisions set forth in the Annex;

(b) General reports on the results and effectiveness of compliance monitoring activities;

(c) Information to be supplied to all States Parties in accordance with the provisions of this Protocol.]

NB: It is proposed to merge this paragraph with paragraph I. 10 from Annex E. The reference to "reports" should be deleted since Article III currently does not provide for any reports to be made. With a view to the ongoing discussion whether declarations will contain confidential information, the brackets around paragraph 4 bis (now 5) should remain for the time being.

[5. 6. Without prejudice to the privileges and immunities to be accorded pursuant to this Protocol, the Organization, the Director-General of the [Technical] Secretariat, investigators and investigation assistants or other staff members of the [Technical] Secretariat shall, in accordance with the applicable laws specified in the private international law of the State of forum, be liable to the natural or legal persons for any damage caused by the Director-General of the [Technical] Secretariat, the investigators and investigation assistants or other staff members of the [Technical] Secretariat through unauthorized disclosure of confidential information coming to their knowledge in connection with the implementation of this Protocol.]

{7. The Conference of the States Parties shall establish and appoint, at its first session, a Commission for the settlement of disputes related to confidentiality (hereinafter referred to as

"~~the Confidentiality~~ Commission") as its subsidiary organ in accordance with Article IX, paragraph 24 (j). The Commission shall have the powers and functions as set forth in this Protocol.}]

[~~6. 8.~~ Any State Party to this Protocol which considers that it has been affected by a breach of confidentiality or that its natural or legal persons have suffered from damage through such a breach may seek to settle the dispute in accordance with the provisions set forth in Article XII or by referring it to the Confidentiality Commission ~~to be set up pursuant to paragraph 7 of this Article~~ **in accordance with paragraph 6 of Annex E, Section IV.**]

NB: It is proposed to swap the positions of paragraphs 6 and 7 (now 8 and 7) which would allow to drop the reference to the former paragraph 7 at the end of paragraph 6. Whereas the question of legal responsibility needs further consideration so that the brackets around paragraphs 5 and 6 (now 6 and 8) of the Rolling Text should remain for the time being, it is proposed to delete the brackets around paragraph 7 which introduces the concept of a Confidentiality Commission. It is proposed to include a reference to the Annex in paragraph 7 in order to avoid ambiguity about the way how the Confidentiality Commission will be invoked.

ANNEX E. CONFIDENTIALITY PROVISIONS

I. GENERAL PRINCIPLES FOR THE HANDLING OF CONFIDENTIAL INFORMATION

(A) THE NEED-TO-KNOW PRINCIPLE

1. ~~{The obligation to protect confidential information shall pertain to the verification of both civil and military activities and facilities. Pursuant to the general obligations set forth in Article IV, [the Organization] shall}~~ ~~{The Organization}~~ shall require only the minimum amount of information and data necessary for the timely and efficient carrying out of its responsibilities under ~~{this Protocol}~~ and shall avoid any access to [confidential] information and data not related to the aims of this Protocol. [The Organization] shall develop agreements and regulations to implement the provisions of this Protocol and shall specify as precisely as possible the information to which [the Organization] shall be given access by a State Party. Confidential information shall only be disseminated within [the Organization] in accordance with ~~paragraph 5~~ **the provisions set forth in section V of this annex.**

NB: Sentence 1 repeats what has already been expressed in Art. IV paragraph 1 sentence 3 and could therefore be deleted, especially since sentence 2 makes an explicit reference to the obligations set forth in Art. IV.

(B) THE CONFIDENTIALITY REGIME

2. ~~{The Director General shall have the primary responsibility for ensuring the protection of confidential information and shall establish and maintain a stringent regime governing the handling of confidential information pursuant to paragraph 4 (a), Article IV of this Protocol (hereinafter referred to as "the Confidentiality Regime"). In order to establish the Confidentiality Regime, an appropriate unit of [the Secretariat] (hereinafter referred to as "the Confidentiality Unit") [shall] [may] be charged with overall supervision of the administration of confidentiality provisions.}~~ In order to establish the regime governing the handling of confidential information pursuant to Article IV (hereinafter referred to as "the Confidentiality Regime"), an appropriate unit of [the Secretariat] (hereinafter referred to as "the Confidentiality Unit") ~~{shall}~~ ~~{may}~~ be charged with overall supervision of the administration of confidentiality provisions.

NB: Sentence 1 is already expressed in Art. IV paragraph 4 (a). It is proposed that the establishment of the Confidentiality Unit be made compulsory in order to build an effective Confidentiality Regime.

3. ~~{As the objective of the Confidentiality Regime is the protection of the rights of the States Parties providing the information,}~~ **The Confidentiality Regime** shall be considered and approved by [the Conference]. [The Organization] shall not process, handle or

distribute information or data supplied to it in confidence by States Parties until the regime has been approved by [the Conference].¹²⁷ ~~The approval of the Confidentiality Regime by [the Conference] shall be mandatory prior to initial processing, further handling and authorized distribution of the information and data the States Parties have passed on to [the Organization] in confidence.~~¹²⁸

NB: As the general objectives of the Confidentiality Regime have already been laid out in Art. IV, it is proposed that the restatement at the beginning of sentence 1 be deleted. As to the second sentence, the alternative formulation in footnote 128 appears to be better phrased and has been inserted here.

4. Subsequently, the Director-General shall report [annually] to [the Conference] [the Executive Council] on the implementation of the Confidentiality Regime by [the Secretariat].

(C) THE ESTABLISHMENT OF A CLASSIFICATION SYSTEM

5. ~~— The [Director General] [head of the Confidentiality Unit] or persons to whom such authority was delegated shall have the authority to classify information and data [submitted by States Parties] [information generated by the Organization in the implementation of its duties] according to a classification system [evaluated by States Parties] [which is to be introduced by the [head of the Confidentiality Unit]] [unless such information and data have been already classified by the States Parties]. The classification system shall provide for clear criteria ensuring the inclusion of information into appropriate categories of confidentiality and shall be considered and approved by [the Conference].~~

[7 bis (subparagraph 1)] **5.** A classification system shall be introduced, which shall provide for clear criteria ensuring the inclusion of information into appropriate categories of confidentiality and the justified durability of the confidential nature of information. While providing for the necessary flexibility in its implementation the classification system shall protect the right of States Parties providing confidential information. ~~A~~ **The** classification

127. This provision is made without prejudice to further discussion on the availability to States Parties of initial and annual declarations made under Article III.

128. ~~— "[The Organization] shall not process, handle or distribute information or data supplied to it in confidence by States Parties until the regime has been approved by [the Conference]" is a possible alternative formulation for the sentence.~~

system shall be considered and approved by the Conference pursuant to Article IX, paragraph 24 (h).}

~~{4 bis~~ **6.** Each State Party from which the information was received or to which the information refers shall have the right [, in due consultation with the Confidentiality Unit as the party may consider appropriate,] to classify **such any** information ~~that it provides under this Protocol~~ in accordance with the classification system.}

NB: This reformulation eliminates the logical inconsistency of the current wording.

~~{6.~~ **7.** All data and documents obtained ~~or~~ {produced} by [the Secretariat] [in implementation of its duties] shall be evaluated by the Confidentiality Unit in order to establish whether they contain confidential information. If confidential information is contained, the Confidentiality Unit shall classify this information according to the classification system [in consultation with States Parties concerned] {provided that the State Party of which the information was obtained has not already classified that information}.}

NB: Incoming data and documents should be examined by the Confidentiality Unit even if the delivering State Party has chosen not to classify them, since they might contain information which another State Party considers to be of a confidential nature. It is proposed to extend this obligation to documents produced by the Secretariat and to delete the corresponding brackets.

{(D) CRITERIA FOR CONFIDENTIALITY

~~7. Information shall be considered confidential if:~~

~~(a) It is designated to be confidential by the State Party from which the information was [received] [, and to which the information refers]; or~~

~~(b) In the judgement of [the Director General or] [the head of the Confidentiality Unit], its [unauthorized] disclosure could reasonably be expected to cause damage [either] [to the State Party to which it refers or] to the implementation mechanisms of this Protocol.~~

NB: Paragraph 7 should be deleted since it repeats concepts also expressed in paragraphs 4 bis (now 6) and 7 bis (now 8).

~~{7 bis (continued)~~ **(a) 8.** The essential factors to be considered in determining the level of sensitivity of an item of information are as follows:

- (i) The degree of potential damage which its disclosure could cause to a State Party, any other body of a State Party, including a commercial firm or to any national of a State Party, or to the Protocol or [the Organization]; and

- (ii) The degree of potential, particular or selective advantage, its disclosure could offer to an individual, a State, or any other body, including a commercial firm.

~~(b) — Based on guiding factors in subparagraph (a) and the specific classification criteria set out below, confidential information shall be classified into the following categories, given in increasing order of sensitivity:~~

- ~~(i) — Restricted:~~

~~This category comprises information of which unauthorized disclosure would be prejudicial to the effectiveness or credibility of the Protocol, or prejudicial to the interests of a State Party or of a commercial or governmental body or of a national of a State Party;~~

- ~~(ii) — Protected:~~

~~This category comprises information of which unauthorized disclosure may cause substantial damage to the effectiveness or credibility of the Protocol, or to the interest of a State Party or of a commercial or governmental body or of a national of a State Party;~~

- ~~(iii) — Highly protected:~~

~~This category comprises sensitive information of which unauthorized disclosure would cause serious damage to the effectiveness or credibility of the Protocol, or its aims and purpose, or cause serious damage from the point of view of national security or commercial secrecy to the interest of a State Party or of a commercial or governmental body or national of a State Party.]~~

NB: Several delegations have stated that subparagraph (b) is too detailed and should be left to internal rules (Confidentiality Policy) of the future Organization.

NB: Sections (E), (F) and (G) of Chapter I are to be shifted to Chapter V of Annex E.

II. CONDITIONS OF STAFF EMPLOYMENT RELATING TO THE PROTECTION OF CONFIDENTIAL INFORMATION

(A) GENERAL REQUIREMENTS

1. Conditions of staff employment shall be such as to ensure that access to and handling of confidential information shall be in conformity with the ~~procedures established by the Director General in accordance with section ...~~ **confidentiality provisions set forth in this Protocol.**

2. Each position in the [Technical] Secretariat shall be governed by a formal position description that ~~also~~ specifies, *inter alia*, the scope of access to confidential information, if any, needed in that position.

~~{3. In the discharge of their functions [in on-site activities] [employees of the Organization] [members of the investigating [or visiting] teams] shall only request the information and data which are necessary to carry out their duties. They shall not make any records of information collected incidentally and not related to the requirements of their duties.}~~

(B) INDIVIDUAL SECRECY AGREEMENTS

4. The Director-General and the other members of the staff shall enter into individual secrecy agreements with the [Technical] Secretariat ~~covering their period of employment and a [unlimited] period of [5] [10] years after it is terminated.~~

5. **Subject to this agreement**, they shall not disclose even after termination of their functions to any **State, organization or** unauthorized persons any confidential information coming to their knowledge in the performance of their official duties.

~~6. Subject to this agreement, they shall not communicate to any State, organization or person outside the [Technical] Secretariat any confidential information to which they have access in connection with their activities in relation to any State Party.~~

NB: It is proposed to merge paragraphs 5 and 6 and to delete the second half of paragraph 4, since paragraph 5 specifies that the individual secrecy agreements should impose an unlimited obligation not to disclose any confidential information.

(C) CODE OF CONDUCT

7. **6.** Each staff member shall be obliged to abstain from any kind of public pronouncement, ~~{which might adversely reflect on his or her status or on his or her}~~ ~~{to ensure}~~ integrity, independence or impartiality.

8. **7.** No staff member shall - except with explicit approval of the Director-General:

- (a) Issue statements to the press, radio or other media of public information;

- (b) Accept or keep speaking engagements;
- (c) Take part in film, theatre, radio or television productions or presentations;
- (d) Submit articles, books or other material for publication;

related to the activities of the Organization.

~~[9. 8. In order to avoid improper disclosures, members of the investigation team and staff members shall be appropriately advised and reminded about security considerations and of the possible penalties that they would incur in the event of improper disclosure.]~~

NB: Paragraph 10 of the current Rolling text is to be shifted to Chapter V of Annex E, since it is not directly related to conditions of staff employment

~~[11. 9. In evaluating the performance of members of the investigation team and any other employees of the [Technical] Secretariat, specific attention shall be given to the employee's record regarding protection of confidential information.]~~

~~(D) — PERSONNEL INSTRUCTION/TRAINING~~

~~[12. — Prior to taking up their activities, staff members shall take part in an initial and continuing training programme in order to be advised and reminded of their duties regarding confidentiality issues.]~~

NB: It has been argued that this aspect could be left to the Organization and is also partially covered in paragraph 9 (now 8).

III. MEASURES ~~{TO PROTECT CONFIDENTIAL INFORMATION IN THE COURSE OF ON-SITE ACTIVITIES}~~ ~~{TO ENSURE THE PROTECTION OF CONFIDENTIAL INFORMATION MADE AVAILABLE TO INVESTIGATING OR VISITING TEAMS WHILE THEY ARE ON THE TERRITORY OF THE INVESTIGATED OR VISITED STATE PARTY}~~

(A) PRINCIPLE OF LEAST INTRUSIVE ACTION

1. Investigating or visiting teams shall be guided by the principle of conducting on-site activities and investigations in the least intrusive manner consistent with the timely and effective accomplishment of their mission. ~~[In particular, the number, duration and intensity of on-site activities [visits] [and investigations] actually carried out shall be kept to the minimum necessary.]~~ ~~[Investigating or visiting teams~~ **They** shall [at any time] take into

consideration proposals which may be made by the States Parties to keep the amount of confidential information coming to their knowledge to the minimum necessary.]

NB: The subject of sentence 2 should be dealt with under Article III and the relevant annexes.

{2. Members of the investigating or visiting team shall strictly abide by the **confidentiality** provisions set forth in Article IV and ~~relevant this Annexes governing the conduct of investigations.~~ They shall respect the procedures designed to protect sensitive installations and to prevent the disclosure of confidential data.}

NB: This is to clarify that the obligation pertains to the confidentiality provisions of the Protocol. The current wording could be misunderstood as a reference to the investigations annex, which would not make sense, especially when speaking of visiting teams.

3. In conducting its activities, the [Technical] Secretariat shall avoid undue intrusion into the States Parties' activities not prohibited under the Convention.

{4. ~~Confidential information including, inter alia, photographs, plans and other documents required only for the purpose of on-site activities of a specific facility or for which special investigation according to Annex E, section I, paragraph 13, was requested by a State Party shall, to the extent possible, be stored with [the National Authority] of the State Party or be kept under lock and key at the facility to which it pertains.~~}

NB: This concept, taken from the CWC, does not appear relevant under the types of on-site measures currently under consideration for this Protocol.

(B) {~~ESCORT~~} {~~OBSERVATION OF ON-SITE ACTIVITIES~~}

NB: "Escort" appears to be the best description of what is intended here, since "observation" could be confused with the altogether different concept of an "observer" from the State Party that originated the investigation or visit, as laid out in Annex D I (E).

5. Each investigated ~~visited~~ State Party shall have the right to have ~~investigators and inspection assistants~~ **the investigating team** accompanied during ~~their inspections~~ **the investigation** by representatives of that State Party, provided that ~~investigators~~ **the investigating team** shall ~~is~~ not thereby be delayed or otherwise impeded in the exercise of ~~their~~ **its** functions.

NB: It is proposed to delete the references to visits from paragraphs 5 and 6, since the "Procedures for visits" of Art. III already provide for the visiting team to be accompanied by representatives of the visited State Party.

6. The representative of the investigated ~~visited~~ State Party shall have the right to observe all on-site activities carried out by the investigating ~~or visiting~~ team.

(C) PROTECTION OF SENSITIVE INFORMATION AND EQUIPMENT

7. Pursuant to Article IV, paragraph 3, each State Party may, when receiving an investigation {or visit}, indicate to the investigating {or visiting} team the equipment, documentation or areas that it considers sensitive and not related to the purpose of the investigation {or visit}. [The investigating {or visiting} team shall avoid any access to that equipment, documentation or areas, provided that it agrees that the access is not necessary to fulfil the obligations of the investigating {or visiting} team.] Likewise, the investigating {or visiting} team shall not make any records of information collected incidentally and not related to their mandate.

8. If removal of information or data from a facility is necessary to achieve timely and effective implementation under [this Protocol], the amount of information and data to be removed from a facility shall be kept to the minimum necessary.

{(D) PROTECTION OF SAMPLES

9. The Director-General shall have the primary responsibility for ensuring that the confidentiality of samples during the transfer to designated laboratories for analysis off-site is protected. The Director-General shall do so in accordance with procedures to be considered and approved by [the Conference] pursuant to ... of {this Protocol}.

10. Designated laboratories shall enter into specific secrecy agreements confirming the obligations established within ... of {this Protocol} governing sampling procedures and process of analysis.]

{(E) REPORTS

11. The report to be prepared after each investigation **or visit** shall contain only facts relevant to compliance with [this Protocol].

12. The report shall be handled in accordance with the regulations established by the Confidentiality Unit governing the handling of confidential information. If necessary, the information contained in the report shall be processed into less sensitive forms, before it is transmitted outside the [Technical] Secretariat or the inspected State Party, respectively.}

IV. PROCEDURES IN CASE OF BREACHES OR ALLEGED BREACHES OF CONFIDENTIALITY

{(A) ~~DEFINITIONS~~ BREACH OF CONFIDENTIALITY

1. ~~A breach of confidentiality is established [, if a damage has occurred,] which is caused by a violation of obligations to protect confidential information.~~

~~The following may also represent cases of breaches, among others:~~

~~(a) — Unauthorized disclosure of confidential information;~~

~~(b) — Misuse of confidential information, e.g. to gain a personal advantage or to benefit or damage the interests of a third party;~~

~~(c) — Loss of confidential information.]~~

[1 *bis* A breach of confidentiality shall include any unauthorized disclosure of confidential information complied by [the Organization] to any individual, or government or private entity, regardless of the intention or the consequences of the disclosure.] **A breach of confidentiality shall also be associated with misuse of confidential information to gain a personal advantage or to benefit or damage the interests of a third party.**

NB: Several delegations have expressed reservations with regard to the term "definition" and the wording put forward in paragraph 1. It is proposed to opt for the wording of paragraph 1 bis with an addition to cover the notion of "misuse" included in paragraph 1.

(B) OBLIGATION FOR ~~[INTERNAL INVESTIGATION]~~ ~~[FACT FINDING]~~
~~[INQUIRY]~~

NB: The term "investigation" could be misleading in this context and should therefore be replaced.

2. The Director-General shall establish procedures to be followed in case of breaches or alleged breaches of confidentiality, which shall be considered and approved by [the Conference] pursuant to **Article IX, paragraph 24 (h)**. The Director-General shall also consider recommendations given by the [Conference of] States Parties and amend accordingly the procedures recommended related to the issue of breaches or alleged breaches.

~~3. — The Director General shall promptly initiate an [investigation] [fact finding] [inquiry], if [, in his or her judgement,] there is sufficient indication, that obligations concerning the protection of confidential information have been violated.~~

~~4. — The Director General [shall] [may] also promptly initiate an [investigation] [fact-finding] [inquiry] if there is an allegation made by a State Party that a breach of confidentiality has occurred.~~

~~[8. 3. The Director General shall oversee the implementation of individual secrecy agreements. The Director-General shall promptly initiate an internal [investigation] [fact-finding] [inquiry], following sufficient indication that there has been a violation of an obligation to protect confidential information on the part of: (a) a staff member of the [Technical] Secretariat; or (b) an agent or official of a State Party.~~

NB: Paragraphs 3+4 and paragraph 8 of the current Rolling Text are close alternatives. The more elaborate wording of paragraphs 8, 8 bis and 8 ter appears clearer and includes the concept of the Confidentiality Commission that has been introduced in Art. IV. Paragraphs have been reordered to put them into the logically correct context.

5. 4. In case of an allegation of a breach of confidentiality, States Parties and/or staff members which are named in the allegation or which might be involved in the alleged breach or violation shall be informed of that allegation immediately.

~~8 bis~~ **5.** (a) When the ~~internal [investigation] [fact finding] [inquiry]~~ pursuant to paragraph ~~8 3~~ establishes that there has been a breach of confidentiality, the Director-General shall, in case of (a) of paragraph ~~8 3~~, impose appropriate punitive and disciplinary measures on staff members who have violated their obligations to protect confidential information in accordance with the Staff Rules and Regulations.

(b) In case of a breach of confidentiality by a person referred to in (b) of paragraph ~~8 3~~, consultations shall be held between the Organization and States Parties concerned to address the case.

~~8 ter~~ **6.** In cases where a State Party considers that there has been a breach of confidentiality by a staff member of the [Technical] Secretariat, consultations shall be held between the Director-General and the State Party, and the Director-General shall initiate promptly **an internal [investigation] [fact finding] [inquiry]**. If such consultations are not concluded successfully [within 60 days], the State Party shall have the right to initiate the proceedings of the "~~Commission for the settlement of disputes related to confidentiality~~" (hereinafter referred to as "~~the Commission~~") **Confidentiality Commission**, set up in accordance with paragraph 7, Article IV and paragraph 24 (j), Article IX of this Protocol, to consider the case. The Commission shall seek to settle the case through mediation, inquiry, conciliation, arbitration or other peaceful means. The Commission may request the Director-General to submit the result of the ~~internal [investigation] [fact finding] [inquiry]~~ to the extent possible.}

~~9. 7.~~ States Parties shall, to the extent possible, cooperate with and support the Director-General in investigating any breach or alleged breach of confidentiality and in taking appropriate action in accordance with applicable laws and regulations in case a breach has been established.}

6. 8. An ~~internal [investigation] [fact finding] [inquiry]~~ shall result in a written report, which shall, if necessary, remain confidential and be subject to the strict application of the need-to-know principle. If necessary, the results of the ~~[investigation] [fact finding] [inquiry]~~ shall be reported to the Conference of the States Parties.

(C) INTERIM MEASURES

7. 9. The Director-General may impose interim measures before the conclusion of the ~~internal [investigation] [fact finding] [inquiry]~~ in order to prevent further damage. These measures may include withdrawal of certain personnel from specific functions, denial of access to [certain] information and, in serious cases, a temporary suspension.

~~(D) — LOSS OF CONFIDENTIAL INFORMATION~~

~~[10. — Any loss of a document classified as confidential shall be immediately reported by the staff member who has first come to the knowledge of that loss to his superior. The superior shall assure that the loss is reported to the head of the Confidentiality Unit without delay. Upon receiving information of the loss of a document, the head of the Confidentiality Unit shall initiate an internal [investigation] [fact finding] [inquiry] and report to the Director-General on:~~

~~(a) — The circumstances that have caused the loss of the document;~~

~~(b) — Whether any security regulations or rules were breached;~~

~~(c) — The sensitivity of the information contained in the document;~~

~~(d) — Anticipated consequences of the loss of the document;~~

~~(e) — Corrective action, if any, which would either lessen the damage caused by the loss in the actual case, or, would serve to prevent or lessen the chance of future losses.]~~

~~[11. — Subsequently, the Director General shall take appropriate action, if he or she deems it necessary to do so, in accordance with section C.]~~

NB: Several delegations proposed the deletion of this section which can be left to internal provisions set up by the Organization.

~~(E) (D) OBLIGATIONS OF OBSERVERS AND OTHER AUTHORIZED
INDIVIDUALS OR ENTITY BEYOND THE [TECHNICAL] SECRETARIAT~~

~~[12. 10. The requesting State Party shall ensure that ~~the~~ **an** observer **according to Annex D I (E)** complies with and is individually bound by all relevant provisions of this Protocol. Once any confidential information is disclosed to or acquired by the observer, in addition to and without diminishing the observer's own individual responsibility, the requesting State Party shall also become responsible for the handling and protection of that information in accordance with this Protocol.~~

~~12-bis 11. Paragraphs [...] shall apply, *mutatis mutandis*, to observers and other authorized individuals or entity beyond the [Technical] Secretariat.]]~~

V. APPROPRIATE PROCEDURES TO PROTECT ~~CONFIDENTIALITY [OF
DECLARATIONS]~~ **CONFIDENTIAL INFORMATION**

NB: Throughout this section, reference is made to confidential information in general, since it is not yet clear whether declarations will contain any confidential information.

{(A) MARKING OF CONFIDENTIAL INFORMATION¹²⁹}

1. Written documents provided by the States Parties ~~[in the course of declarations]~~ shall, on receipt by the [Technical] Secretariat, be fitted with an appropriate stamp indicating the confidential nature of the included information. If confidential information is submitted in a form other than in writing, it shall be marked in an equivalent manner using procedures to be established by the head of the Confidentiality Unit.}

129.— ~~The content of this paragraph is to be examined in the light of the discussions on Declarations.~~

{(B) SEALING OF ~~DECLARATIONS~~¹³⁰ **CONFIDENTIAL INFORMATION**

2. Member States shall pass on ~~declarations~~ **information they have classified as confidential** to the [Technical] Secretariat in double envelopes, the inner envelope being sealed and clearly marked to show, that it contains confidential information. Upon receipt by registry, all ~~declarations~~ **confidential information** shall be referred with the inner envelope unopened to the Confidentiality Unit.]

{(C) HANDLING OF ~~DECLARATIONS~~¹³¹ **CONFIDENTIAL INFORMATION**

~~{I. (E) 7 *ter* — To the greatest extent consistent with the effective implementation of the verification provisions of this Protocol, information shall be handled and stored by the [Technical] Secretariat in a form that precludes direct identification of the facility to which it pertains.}~~

3. To the greatest extent consistent with the effective implementation of the provisions under [this Protocol], ~~data declarations [as well as other confidential information]~~ shall be handled and stored in a form that precludes direct identification of the facility to which it pertains, if handled outside the Confidentiality Unit.

{4. ~~Declarations~~ **Confidential information** must not be distributed [outside of the area of the Confidentiality Unit] within the internal mail of the [Technical] Secretariat unless sealed as outlined above.}

~~I. (E) 8. 5.~~ Each access by a staff member of [the Secretariat] to confidential information shall be regulated in accordance with its classification and shall be [strictly] on a need-to-know basis. [Each access to confidential information shall be recorded on file when accessing and exiting. This record shall be retained for ~~[an unlimited period]~~ [(time period *to be specified*)].]

5. 6. If multiple access on confidential documents is needed for internal purposes, the minimum number of copies necessary may be made. These copies shall be destroyed [safely] [by shredding] as soon as the access is no longer needed. The head of the Confidentiality Unit shall oversee the implementation of this paragraph.}

130.— ~~Ibid.~~

131.— ~~Ibid.~~

~~I. (G) 14.~~ [If necessary to fulfil its obligations under this Protocol,] [the Secretariat] may grant access to information and data classified as confidential to entities or individuals not staff of [the Secretariat] only on specific approval by [the Director-General] [the head of the Confidentiality Unit]. [The Secretariat] shall notify a State Party [at least 30 days] before any such access is intended.]

~~I. (E) 8 bis 7.~~ [If necessary to fulfil its obligations under this Protocol,] [the Secretariat] may grant access to information and data classified as confidential to entities or individuals not on the staff of [the Secretariat] only on specific approval by [the Director-General] [the head of the Confidentiality Unit] accompanied by consent of the State Party concerned. [The Secretariat] shall notify the State Party concerned of the proposed access and [unless the State Party concerned explicitly disclaims the proposed access within [30] days after the above notification, the proposal may be deemed to be consented to].]

NB: I. (G) 14 and I. (E) 8 bis of the current Rolling text are close alternatives, with the latter giving the State Party concerned a specific right to contradict a proposed granting of access.

~~I. (E) 9. 8.~~ [Wherever possible,] [the Secretariat] shall avoid the transmission of [(level) to be specified] confidential information in telephone conversations, by electronic means or fax/telex to or from locations outside of [the Secretariat] [unless it is enciphered (coded) (scrambled)].

~~II. (C) 10. 9.~~ Not less than 30 days before an employee is given clearance for access to confidential information that refers to activities on the territory or in any other place under the jurisdiction or control of a State Party, the State Party concerned shall be notified of the proposed clearance. For members of the investigation team the notification of a proposed designation **to individual States Parties** shall fulfil this requirement.]

NB: The addition of "to individual States Parties" intends to clarify that States Parties should be notified individually of a proposed clearance for a member of an investigation team.

~~I. (F) (D)~~ **(D)** HANDLING OF SENSITIVE INFORMATION ON THE PREMISES OF STATES PARTIES

~~I. (F) 11. 10.~~ Each State Party shall protect information which it receives from [the Organization] **at the same according to the** level of confidentiality established for that information. Upon request, a State Party shall provide details on the {manner in which} information provided to it by [the Organization] {is to be handled}.

~~I. (F) 12. 11.~~ [The Secretariat] shall {upon} the request of the States Parties [be prepared to] examine information and data which the States Parties regard as being of particular sensitivity in a special manner. Such information and data would not [in any case] have to be physically transmitted to [the Secretariat], provided that it remained available for ready further examination by [the Secretariat] on premises of the States Parties.

~~I. (G)~~ (E) OBLIGATIONS FOR INTENDED RELEASE OF CONFIDENTIAL INFORMATION

~~I. (G) 13.~~ — No confidential information obtained by [the Secretariat] in connection with the implementation of this Convention shall be published or otherwise released, except [as follows]:

~~(a) — The information is summarized in a way that the resulting information is no longer of a confidential nature [with the consent of the State Party concerned];~~

~~(b) — All States Parties directly concerned explicitly agree to the publication/release;~~

~~[(c) — The information is in accordance with the provisions set forth in [this Protocol] required by the States Parties to be assured of the continued compliance with this Convention by other States Parties [. This information shall include declarations made under Article ... of this Protocol.];]~~

~~[(d) — [After carefully weighing up,] [in the judgement of the Director General] the release is necessary to fulfil [the Organization's] obligations under this Protocol.]~~

~~I. (G) 13 bis~~ **12.** No information obtained by [the Secretariat] in connection with the implementation of this Protocol shall be published or otherwise released, except as follows:

(a) General information on the implementation of this Protocol may be compiled and released publicly in accordance with the decisions of the Conference or the Executive Council;

(b) Any information may be released with the express consent of the State Party to which the information refers;

(c) Information classified as confidential shall be released by [the Organization] only through procedures which ensure that the release of information only occurs in strict conformity with the needs of this Protocol. Such procedures shall be considered and approved by the Conference pursuant to Article IX, paragraph 24 (h).]

NB: Paragraphs 13 and 13 bis of the Rolling Text are close alternatives. It is proposed to retain the wording of paragraph 13 bis which is analogous to the CWC Confidentiality Annex.

VI. PROCEDURES FOR ARCHIVING OF CONFIDENTIAL INFORMATION

~~V. (D) 6.~~ Confidential information shall be stored securely at the premises of [the Organization]. The Director-General shall set out, in an administration directive, physical security measures adapted to the individual areas, where confidential information is stored. These measures shall, *inter alia*, include the restriction of access for certain sensitive areas such as storage areas for confidential information or areas processing declarations or investigation reports.
