

Arms Control and Disarmament (Inspections) Act, 1991

Principal Act

Act. No. 1991-31

Commencement (LN.1992/100)

17.7.1992

Assent

21.11.1991

International Agreements involved:

Protocol on Inspection incorporated in the Treaty on Conventional Armed Forces in Europe signed in Paris on the 19th of November 1990.

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AN ACT TO FACILITATE THE CARRYING OUT IN GIBRALTAR OF INSPECTIONS UNDER THE PROTOCOL ON INSPECTION INCORPORATED IN THE TREATY ON CONVENTIONAL ARMED FORCES IN EUROPE SIGNED IN PARIS ON 19TH NOVEMBER 1990.

Title and commencement.

1. This Act may be cited as the Arms Control and Disarmament (Inspections) Act, 1991, and shall come into effect on such day as the Governor may, by notice in the Gazette, appoint and different days may be so appointed for different purposes.

Interpretation.

2. (1) In this Act—

“challenge inspection” means an inspection conducted pursuant to Section VIII of the Protocol (challenge inspections within specified areas);

“escort team” shall be construed, in relation to any challenge inspection, in accordance with Section VIII of the Protocol and any reference to an escort team shall be taken to include a reference to an escort team in which any liaison officer is included pursuant to paragraph 2 of Section V of the Protocol (procedures upon arrival at point of entry and exit);

“inspection team” shall be construed, in relation to any challenge inspection, in accordance with Section VIII of the Protocol and any reference to an inspection team shall include a reference to an inspection team in which any inspector is included pursuant to paragraph 1 of Section VI of the Protocol (general rules for conducting inspections);

“inspector” has the meaning given by Section I of the Protocol (definitions);

“the Protocol” means the Protocol on Inspection incorporated in the Treaty on Conventional Armed Forces in Europe signed in Paris on the 19th of November 1990; certain definitions contained in Section I and the provisions of Section VI whereof are contained in the Schedule hereto;

“specified area” shall be construed, in relation to any challenge inspection, in accordance with Section VIII of the Protocol.

Right of entry etc. for purposes of challenge inspections under the Protocol.

3. (1) Where a request to conduct a challenge inspection within any specified area in Gibraltar—
(a) has been made under the Protocol, and

(b) has been granted,

the Governor may issue an authorisation under this section in respect of that inspection.

(2) An authorisation under this section shall contain a description of the specified area and state the names of the members of the inspection team by whom the inspection is to be carried out.

(3) Such an authorisation shall have the effect of authorising the inspection team—

(a) to exercise within the specified area such rights of access, entry and unobstructed inspection as are conferred on them by Section VI of the Protocol, and

(b) to do such other things within that area in connection with the conduct of the inspection as they are entitled to do by virtue of that Section.

(4) Such an authorisation shall in addition have the effect of—

(a) authorising an escort team to accompany the inspection team at all times, and

(b) authorising any police officer or any civilian police officer in the employment of the Ministry of Defence, if so authorised by the Commissioner of Police, to give such assistance as the person in command of the escort team may request for the purpose of facilitating the conduct of the inspection in accordance with Section VI of the Protocol.

(5) The name of the person in command of the escort team shall be stated in the authorisation.

(6) Where the inspection team is divided into sub-teams in accordance with paragraph 2 of Section VI of the Protocol.

(a) sub-section (3) shall apply to each of the sub-teams as it applies to the inspection team as a whole, and

(b) sub-section (4)(a) shall be construed as authorising members of the escort team to accompany each of the sub-teams.

(7) Any police officer or civilian police officer in the employment of the Ministry of Defence giving assistance in accordance with subsection (4)(b) may use such reasonable force as he considers necessary for the purpose mentioned in that provision.

(8) The occupier of any premises—

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- (a) in relation to which it is proposed to exercise a right of entry in reliance on an authorisation under this section, or
- (b) on which an inspection is being carried out in reliance on such an authorisation,

or a person acting on behalf of the occupier of any such premises, shall be entitled to require a copy of the authorisation to be shown to him by a member of the escort team.

(9) The validity of any authorisation purporting to be issued under this section in respect of any challenge inspection shall not be called in question in any court of law at any time before the conclusion of that inspection and no proceedings, of whatever nature, shall be brought at any time before the conclusion of any challenge inspection if they would, if successful, have the effect of preventing, delaying or otherwise effecting the carrying out of any such inspection.

(10) If in any proceedings any question arises as to whether a person at any time was or was not, in relation to any challenge inspection, a member of the inspection team or (as the case may be) a member of the escort team, a certificate issued by the Governor stating any fact relating to that question shall be conclusive evidence of that fact.

Offences.

4.(1) Where an authorisation has been issued under section 3 in respect of any challenge inspection, any person who—

- (a) refuses to comply with any request made by any police officer or civilian police officer in the employment of the Ministry of Defence, and authorised by the Commissioner of Police, for the purpose of facilitating the conduct of that inspection in accordance with Section VI of the Protocol, or
- (b) wilfully obstructs any member of the inspection team or of the escort team in the conduct of that inspection in accordance with that Section,

shall be guilty of an offence and liable on summary conviction to a fine at level 3 on the standard scale.

(2) Where an offence under this section is committed by a body corporate and is proved to have been committed with the consent or connivance of any director or manager or other similar officer of that body corporate, or any person who is purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Privileges and immunities of inspectors and transport crew members in connection with inspections under the Protocol.

5.(1) Inspectors and transport crew members shall enjoy the same privileges and immunities as are enjoyed by diplomatic agents in accordance with the following provisions of the 1961 Articles–

- (a) Article 29;
- (b) paragraph 2 of Article 30;
- (c) paragraphs 1, 2 and 3 of Article 31, and
- (d) Articles 34 and 35.

(2) Such persons shall, in addition, enjoy the same privileges as are enjoyed by diplomatic agents in accordance with paragraph 1(b) of Article 36 of the 1961 Articles, except in relation to articles the importing or exporting of which is prohibited by law or controlled by enactments relating to quarantine.

(3) Subject to sub-section (4), the privileges and immunities accorded to inspectors and transport crew members by virtue of this section–

- (a) shall be enjoyed by them at any time when they are in Gibraltar–
 - (i) in connection with the carrying out of an inspection there pursuant to any provision of the Protocol, or
 - (ii) while in transit to or from the territory of a State Party in connection with the carrying out of such an inspection there; and
- (b) shall also be enjoyed by them at any time with respect to acts previously performed in the exercise of official functions as an inspector or a transport crew member.

(4) The immunity from jurisdiction enjoyed by an inspector or a transport crew member by virtue of sub-section (1)(c) shall cease to be so enjoyed if expressly waived by the State Party of which he is a national.

(5) Any means of transport–

- (a) used by inspectors to travel to or from Gibraltar in connection with the carrying out of an inspection pursuant to any provision of the Protocol (whether in Gibraltar or elsewhere), and

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(b) specifically provided for use by, or by arrangement with, any State Party,
shall be inviolable.

(6) If in any proceedings any question arises whether a person is or is not entitled to any privilege or immunity by virtue of this section, a certificate issued by the Governor stating any fact relating to that question shall be conclusive evidence of that fact.

(7) In this section—

“the 1961 Articles” means the Articles which are set out in the Schedule to the Diplomatic Privileges Act;

“State Party” has the same meaning as in the Treaty referred to in section 2;

“transport crew member” has the meaning given to it by Section I of the Protocol.

SCHEDULE

Section 2.

PROVISIONS OF THE PROTOCOL ON INSPECTION

SECTION I. DEFINITIONS

1. For the purposes of the Treaty:

.....

- (E) The term “inspector” means an individual designated by one of the States Parties to carry out an inspection and who is included on that State Party's accepted list of inspectors in accordance with the provisions of Section III of this Protocol.
- (F) The term “transport crew member” means an individual who performs duties related to the operation of a transportation means and who is included on a State Party's accepted list of transport crew members in accordance with the provisions of Section III of this Protocol.
- (G) The term “inspection team” means a group of inspectors designated by an inspecting State Party to conduct a particular inspection.
- (H) The term “escort team” means a group of individuals assigned by an inspected State Party to accompany and to assist inspectors conducting a particular inspection, as well as to assume other responsibilities as set forth in this Protocol. In the case of inspection of a stationing State Party's conventional armaments and equipment limited by the Treaty, an escort team shall include individuals assigned by both the host and stationing States Parties, unless otherwise agreed between them.
- (O) The term “specified area” means an area anywhere on the territory of a State Party within the area of application other than a site inspected pursuant to Section VII, IX or X of this Protocol within which a challenge inspection is conducted pursuant to Section VIII of this Protocol. A specified area shall not exceed 65 square kilometres. No straight line between any two points in that area shall exceed 16 kilometres.

SECTION VI.

GENERAL RULES FOR CONDUCTING INSPECTIONS.

1. An inspection team may include inspectors from States Parties other than the inspecting State Party.

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2. For inspections conducted in accordance with Sections VII, VIII, IX and X of this Protocol, an inspection team shall consist of up to nine inspectors and may divide itself into up to three sub-teams. In the case of simultaneous inspections on the territory of States Parties that do not have military districts specified in Articles IV and V of the Treaty or within a single military district of a State Party with such military districts, only one inspection team may divide itself at the inspection site into three sub-teams, the others into two sub-teams.
3. Inspectors and escort team members shall wear some clear identification of their respective roles.
4. An inspector shall be deemed to have assumed his or her duties upon arrival at the point of entry/exit on the territory of the State Party where an inspection is to be carried out and shall be deemed to have ceased performing those duties after leaving the territory of that State Party through the point of entry/exit.
5. The number of transport crew members shall not exceed 10.
6. Without prejudice to their privileges and immunities, inspectors and transport crew members shall respect the laws and regulations of the State Party on whose territory an inspection is carried out and shall not interfere in the internal affairs of that State Party. Inspectors and transport crew members shall also respect regulations at an inspection site, including safety and administrative procedures. In the event that the inspected State Party determines that an inspector or transport crew member has violated such laws and regulations or other conditions governing the inspection activities set forth in this Protocol, it shall so notify the inspecting State Party, which upon the request of the inspected State Party shall immediately delete the name of the individual from the list of inspectors or transport crew members. If the individual is on the territory of the State Party where an inspection is carried out, the inspecting State Party shall promptly remove that individual from that territory.
7. The inspected State Party shall be responsible for ensuring the safety of the inspection team and transport crew members from the time they arrive at the point of entry/exit until the time they leave the point of entry/exit to depart the territory of that State Party.
8. The escort team shall assist the inspection team in carrying out its functions. At its discretion, the escort team may exercise its right to accompany the inspection team from the time it enters the territory of the State Party where an inspection is to be carried out until the time it departs that territory.
9. The inspecting State Party shall ensure that the inspection team and each sub-team have the necessary linguistic ability to communicate freely with the escort team in the language notified in accordance with Section IV, paragraph 2, sub-paragraph (F) and paragraph 3, sub-paragraph (E) of this Protocol. The inspected State Party shall ensure that the escort team has the necessary linguistic ability to communicate freely in this language with the inspection team

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and each sub-team. Inspectors and members of the escort team may also communicate in other languages.

10. No information obtained during inspections shall be publicly disclosed without the express consent of the inspecting State Party.

11. Throughout their presence on the territory of the State Party where an inspection is to be carried out, inspectors shall have the right to communicate with the embassy or consulate of the inspecting State Party located on that territory, using appropriate telecommunications means provided by the inspected State Party. The inspected State Party shall also provide means of communication between the sub-teams of an inspection team.

12. The inspected State Party shall transport the inspection team to, from and between inspection sites by a means and route selected by the inspected State Party. The inspecting State Party may request a variation in the selected route. The inspected State Party shall if possible grant such a request. Whenever mutually agreed, the inspecting State Party will be permitted to use its own land vehicles.

13. If an emergency arises that necessitates travel of inspectors from an inspection site to a point of entry/exit or to the embassy or consulate of the inspecting State Party on the territory of the State Party where an inspection is carried out, the inspection team shall so notify the escort team, which shall promptly arrange such travel, and if necessary, shall provide appropriate means of transportation.

14. The inspected State Party shall provide for use by the inspection team at the inspection site an administrative area for storage of equipment and supplies, report writing, rest breaks and meals.

15. The inspection team shall be permitted to bring such documents as needed to conduct the inspection, in particular its own maps and charts. Inspectors shall be permitted to bring and use portable passive night vision devices, binoculars, video and still cameras, dictaphones, tape measures, flashlights, magnetic compasses and lap-top computers. The inspectors shall be permitted to use other equipment, subject to the approval of the inspected State Party. Throughout the in-country period, the escort team shall have the right to observe the equipment brought by inspectors, but shall not interfere with the use of equipment that has been approved by the escort team in accordance with Section V, paragraphs 5 to 7 of this Protocol.

16. In the case of an inspection conducted pursuant to Section VII or VIII of this Protocol, the inspection team shall specify on each occasion it designates the inspection site to be inspected whether the inspection will be conducted on foot, by cross-country vehicle, by helicopter or by any combination of these. Unless otherwise agreed, the inspected State Party shall provide and operate the appropriate cross-country vehicles at the inspection site.

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17. Whenever possible, subject to the safety requirements and flight regulations of the inspected State Party and subject to the provisions of paragraphs 18 to 21 of this Section, the inspection team shall have the right to conduct helicopter overflights of the inspection site, using a helicopter provided and operated by the inspected State Party, during inspections conducted pursuant to Sections VII and VIII of this Protocol.

18. The inspected State Party shall not be obliged to provide a helicopter at any inspection site that is less than 20 square kilometres in area.

19. The inspected State Party shall have the right to delay, limit or refuse helicopter overflights above sensitive points, but the presence of sensitive points shall not prevent helicopter overflight of the remaining areas of the inspection site. Photography of or above sensitive points during helicopter overflights shall be permitted only with the approval of the escort team.

20. The duration of such helicopter overflights at an inspection site shall not exceed a cumulative total of one hour, unless otherwise agreed between the inspection team and the escort team.

21. Any helicopter provided by the inspected State Party shall be large enough to carry at least two members of the inspection team and at least one member of the escort team. Inspectors shall be allowed to take and use on overflights of the inspection site any of the equipment specified in paragraph 15 of this Section. The inspection team shall advise the escort team during inspection flights whenever it intends to take photographs. A helicopter shall afford the inspectors a constant and unobstructed view of the ground.

22. In discharging their functions, inspectors shall not interfere directly with ongoing activities at the inspection site and shall avoid unnecessarily hampering or delaying operations at the inspection site or taking actions affecting safe operation.

23. Except as provided for in paragraphs 24 to 29 of this Section, during an inspection of an object of verification or within a specified area, inspectors shall be permitted access, entry and unobstructed inspection:

(A) in the case of a specified area, within the entire specified area; or

(B) in the case of an object of verification, within the entire territory of the declared site except within those areas delineated on the site diagram as belonging exclusively to another object of verification which the inspection team has not designated for inspection.

24. During an inspection of an object of verification or within a specified area pursuant to Section VII or VIII of this Protocol and subject to the provisions of paragraph 25 of this Section, inspectors shall have the right, within the areas cited in paragraph 23 of this Section,

to enter any location, structure or area within a structure in which battle tanks, armoured combat vehicles, artillery, combat helicopters, combat aircraft, reclassified combat-capable trainer aircraft, armoured personnel carrier look-alikes, armoured infantry fighting vehicles look-alikes or armoured vehicle launched bridges are permanently or routinely present. Inspectors shall not have the right to enter other structures or areas within structures the entry points to which are physically accessible only by personnel doors not exceeding two metres in width and to which access is denied by the escort team.

25. During an inspection of an object of verification or within a specified area pursuant to Section VII or VIII of this Protocol, inspectors shall have the right to look into a hardened aircraft shelter to confirm visually whether any battle tanks, armoured combat vehicles, artillery, combat helicopters, combat aircraft, reclassified combat-capable trainer aircraft, armoured personnel carrier look-alikes, armoured infantry fighting vehicle look-alikes or armoured vehicle launched bridges are present and, if so, their number and type, model or version. Notwithstanding the provisions of paragraph 24 of this Section, inspectors shall enter the interior of such hardened aircraft shelters only with the approval of the escort team. If such approval is denied and if the inspectors so request, any battle tanks, armoured combat vehicles, artillery, combat helicopters, combat aircraft, reclassified combat-capable trainer aircraft, armoured personnel carrier look-alikes, armoured infantry fighting vehicle look-alikes or armoured vehicle launched bridges in such hardened aircraft shelters shall be displayed outside.

26. During an inspection of an object of verification or within a specified area pursuant to Section VII or VIII of this Protocol, except as provided in paragraphs 27 to 33 of this Section, inspectors shall have the right to have access to conventional armaments and equipment only in so far as is necessary to confirm visually their number and type, model or version.

27. The inspected State Party shall have the right to shroud individual sensitive items of equipment.

28. The escort team shall have the right to deny access to sensitive points, the number and extent of which should be as limited as possible, to shrouded objects and to containers any dimension (width, height, length or diameter) of which is less than two metres. Whenever a sensitive point is designated, or shrouded objects or containers are present, the escort team shall declare whether the sensitive point, shrouded object or container holds any battle tanks, armoured combat vehicles, artillery, combat helicopters, combat aircraft, reclassified combat-capable trainer aircraft, armoured personnel carrier look-alikes, armoured infantry fighting vehicle look-alikes or armoured vehicle launched bridges and, if so, their number and type, model or version.

29. If the escort team declares that a sensitive point, shrouded object or container does contain any of the conventional armaments and equipment specified in paragraph 28 of this Section, then the escort team shall display or declare such conventional armaments and

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equipment to the inspection team and shall take steps to satisfy the inspection team that no more than the declared number of such conventional armaments and equipment are present.

30. If, during an inspection of an object of verification or within a specified area pursuant to Section VII or VIII of this Protocol, a helicopter of a type that is or has been on the multi-purpose attack helicopter list in the Protocol on Existing Types is present at an inspection site and is declared by the escort team to be a combat support helicopter, or if an Mi-24R or Mi-24K helicopter is present at an inspection site and is declared by the escort team to be limited pursuant to Section I, paragraph 3 of the Protocol on Helicopter Recategorisation, such a helicopter shall be subject to internal inspection in accordance with Section IX, paragraphs 4 to 6 of this Protocol.

31. If, during an inspection of an object of verification or within a specified area pursuant to Section VII or VIII of this Protocol, an aircraft of a specific model or version of combat-capable trainer aircraft listed in Section II of the Protocol on Aircraft Reclassification is present at an inspection site and is declared by the escort team to have been certified as unarmed in accordance with the Protocol on Aircraft Reclassification, such an aircraft shall be subject to internal inspection in accordance with Section IX, paragraphs 4 and 5 of this Protocol.

32. If, during an inspection of an object of verification or within a specified area pursuant to Section VII or VIII of this Protocol, an armoured vehicle declared by the escort team to be an armoured personnel carrier look-alike or an armoured infantry fighting vehicle look-alike is present at an inspection site, the inspection team shall have the right to determine that such vehicle cannot permit the transport of a combat infantry squad. Inspectors shall have the right to require the doors and/or hatches of the vehicle to be opened so that the interior can be visually inspected from outside the vehicle. Sensitive equipment in or on the vehicle may be shrouded.

33. If, during an inspection of an object of verification or within a specified area pursuant to Section VII or VIII of this Protocol, items of equipment declared by the escort team to have been reduced in accordance with the provisions in the Protocol on Reduction are present at an inspection site, the inspection team shall have the right to inspect such items of equipment to confirm that they have been reduced in accordance with the procedures specified in Sections III to XII of the Protocol on Reduction.

34. An Inspector shall have the right to take photographs, including video, for the purpose of recording the presence of conventional armaments and equipment subject to the Treaty, including within designated permanent storage sites, or other storage sites containing more than 50 such conventional armaments and equipment. Still cameras shall be limited to 35 mm cameras and to cameras capable of producing instantly developed photographic prints. The inspection team shall advise the escort team in advance whether it plans to take photographs. The escort team shall co-operate with the inspection team's taking of photographs.

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35. Photography of sensitive points shall be permitted only with the approval of the escort team.

36. Except as provided for in paragraph 38 of this Section, photography of interiors of structures other than storage sites specified in paragraph 34 of this Section shall be permitted only with the approval of the escort team.

37. Inspectors shall have the right to take measurements to resolve ambiguities that might arise during inspections. Such measurements recorded during inspections shall be confirmed by a member of the inspection team and a member of the escort team immediately after they are taken. Such confirmed data shall be included in the inspection report.

38. States Parties shall, whenever possible, resolve during an inspection any ambiguities that arise regarding factual information. Whenever inspectors request the escort team to clarify such an ambiguity, the escort team shall promptly provide the inspection team with clarifications. If inspectors decide to document an unresolved ambiguity with photographs, the escort team shall, subject to the provision in paragraph 35 of this Section, co-operate with the inspection team's taking of appropriate photographs using a camera capable of producing instantly developed photographic prints. If an ambiguity cannot be resolved during the inspection, then the question, relevant clarifications and any pertinent photographs shall be included in the inspection report in accordance with Section XII of this Protocol.

39. For inspections conducted pursuant to Sections VII and VIII of this Protocol, the inspection shall be deemed to have been completed once the inspection report has been signed and countersigned.

40. No later than completion of an inspection at a declared site or within a specified area, the inspection team shall inform the escort team whether the inspection team intends to conduct a sequential inspection. If the inspection team intends to conduct a sequential inspection, the inspection team shall designate at that time the next inspection site. In such cases, subject to the provisions in Section VII, paragraphs 6 and 17 and Section VIII, paragraph 6, subparagraph (A) of this Protocol, the inspected State Party shall ensure that the inspection team arrives at the sequential inspection site as soon as possible after completion of the previous inspection. If the inspection team does not intend to conduct a sequential inspection, then the provisions in paragraphs 42 and 43 of this Section shall apply.

41. An inspection team shall have the right to conduct a sequential inspection, subject to the provisions of Sections VII and VIII of this Protocol, on the territory of the State Party on which that inspection team has conducted the preceding inspection:–

- (A) at any declared site associated with the same point of entry/exit as the preceding inspection site or the same point of entry/exit at which the inspection team arrived,
or

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- (B) within any specified area for which the point of entry/exit at which the inspection team arrived is the nearest point of entry/exit notified pursuant to Section V of the Protocol on Information Exchange; or
 - (C) at any location within 200 kilometres of the preceding inspection site within the same military district; or
 - (D) at the location which the inspected State Party claims, pursuant to Section VII, paragraph 11, sub-paragraph (A) of this Protocol, is the temporary location of battle tanks, armoured combat vehicles, artillery, combat helicopters, combat aircraft or armoured vehicle launched bridges which were absent during inspection of an object of verification at the preceding inspection site, if such conventional armaments and equipment constitute more than 15 per cent, of the number of such conventional armaments and equipment notified in the most recent notification pursuant to the Protocol on Information Exchange; or
 - (E) at the declared site which the inspected State Party claims, pursuant to Section VII, paragraph 11, sub-paragraph (B) of this Protocol, is the site of origin for battle tanks, armoured combat vehicles, artillery, combat helicopters, combat aircraft or armoured vehicle launched bridges at the preceding inspection site which are in excess of the number provided in the most recent notification pursuant to the Protocol on Information Exchange as being present at that preceding inspection site, if such conventional armaments and equipment exceed by 15 per cent, the number of such conventional armaments and equipment so notified.
42. After completion of an inspection at a declared site or within a specified area, if no sequential inspection has been declared, then the inspection team shall be transported to the appropriate point of entry/exit as soon as possible and shall depart the territory of the State Party where the inspection was carried out within 24 hours.
43. The inspection team shall leave the territory of the State Party where it has been conducting inspections from the same point of entry/exit at which it entered, unless otherwise agreed. If an inspection team chooses to proceed to a point of entry/exit on the territory of another State Party for the purpose of conducting inspections, it shall have the right to do so provided that the inspecting State Party has provided the necessary notification in accordance with Section IV, paragraph I of this Protocol.