ADDITIONAL PROTOCOL

TO

THE TREATY ESTABLISHING THE GULF OF GUINEA COMMISSION (GGC)

RELATING TO

THE AD HOC ARBITRATION MECHANISM

JULY 2013

MALABO
Resolution No.3/CM/GGC/2008/02, on adoption of the draft supplementary Protocol to the Treaty Establishing the Gulf of Guinea Commission on the Ad Hoc Arbitration Mechanism.

The Council of Ministers,

Mindful of the Article of the Treaty Establishing an Ad Hoc Arbitration Mechanism within the Gulf of Guinea Commission;

Mindful of the need to provide the ad hoc Arbitration Mechanism of the Gulf of Guinea Commission with Rules of Procedure for the prevention, management and resolution of conflicts arising from delineation of borders and the economic and commercial exploitation of common natural resources of Member States of the GGC;

Recommends

Article 1

To the Assembly of Heads of State and Government to adopt the Supplementary Protocol to the Treaty on the ad hoc Arbitration Mechanism in annex to this Resolution.

Article 2

This Resolution shall enter into force with effect from the date of signature.

Done at Luanda, this 9 day of April, 2008

Chairperson Council of Ministers

Noel Nelson Messone
PREAMBLE

Mindful of the Charter of the United Nations organisation and the Statutes of the Council of Ministers of the Gulf of Guinea Commission, the Assembly of Heads of States and Government hereby adopts this Supplementary Protocol to the Treaty establishing the Gulf of Guinea Commission, relating to the ad hoc Arbitration Mechanism as follows:

Article 1  General Conditions

1. There is hereby created an ad hoc Arbitration Mechanism within the Gulf of Guinea Commission, in accordance with the provisions of the Treaty, and aimed at ensuring the prevention, management and resolution of conflicts arising from border disputes and the economic exploitation and commercialization of the natural resources of the Member States of the Gulf of Guinea Commission.
2. To this end, the parties shall undertake to settle all disputes amicably. Where this fails, they shall refer the matter to the ad hoc Arbitration Mechanism or any other mechanism for the peaceful resolution of conflicts provided for in the United Nations Charter and the Treaty of the African Union.
3. The Rules of Procedure and any other matters concerning the ad hoc Arbitration Mechanism shall be drawn up by council and approved by the Assembly.
4. The structure created by the Mechanism shall adopt their own Rules of Procedure.

Article 2  Composition

a. The Members of the ad hoc Arbitration Mechanism shall be elected by the Heads of State and Government.
b. Each Member State of the Commission shall have one Representative within the Mechanism.
c. Members of the Mechanism shall be eminent persons of recognized competence.
d. Each Member State of the Commission shall be entitled to propose a candidate for membership of the Mechanism.
e. The Executive Secretary shall draw up a list of candidate proposed by the Member States for the consideration of the Heads of States and Government.
Article 3  **Duration of Mandate**

1. Members of the Mechanism shall be elected for a renewable period of…… years
2. Members of the Mechanism shall retain their positions until the election of new members
3. Outgoing Members shall continue to serve until the conclusion of the process in which they are engaged.

Article 4  **Organisation and Functioning**

The Mechanism shall comprise a Chairperson and Vice Chairperson, who shall be chosen by the Assembly from among its Member;

The Chairperson and Vice chairperson may not be re-elected to the same positions;

A secretary and other staff shall be recruited by the Mechanism;

Conditions of service of the Secretary and other Staff of the Mechanism shall be laid down by its Rules and Procedure.

Article 5  **Expenditure**

Administrative overheads, remunerations, emoluments and other costs of the Mechanism shall be paid by the Gulf of Guinea Commission. All other expenditure incurred during the launching stages of a process led by the Mechanism shall be financed in accordance with the Rules of Procedure of the Bureau of the Mechanism

Article 6  **Removal from Office**

A Member of the Mechanism may only be relieved of his/her functions by a decision of the Assembly of Heads of State and Government, adopted by a 2/3 (two thirds) majority of its Members, on the grounds of incapacitation or for a serious offence.

Article 7  **Absence**

Absence of a Member of the Mechanism is covered by Article 2 of this Protocol. The tenure of the stand-in for an absent Member shall expiry upon expiry of the tenure of the Absentee.
Article 8  **Privileges and Immunities**

Members of the Mechanism shall, in the discharge of their functions, enjoy the diplomatic privileges and immunities provided for in the Treaty of the Gulf of Guinea Commission.

Article 9  **Procedure for Recourse to the Mechanism**

Recourse to the Mechanism may be by interested parties, by one of the parties to a conflict, by the Council of Ministers or by the Assembly of Heads of State and Government.

Article 10  **Procedure for Acceptance of the Jurisdiction of the Mechanism**

Willingness of one of the Parties to a conflict to accept the jurisdiction of the Mechanism may be indicated in the following manner:

a. Through a written understanding signed by the other Part, expressing its readiness to accept recourse to mediation, reconciliation or arbitration
b. Through a submission made to the Mechanism by the other Party
c. Acceptance of the intervention of the Mechanism by the Party which will have brought the issue under contention before the bodies enumerated in Article 9, paragraph 1 above.

Article 11  **Enquiries and Investigations**

If, in the process of resolving a conflict, there should be a need to conduct an investigation or enquiry into the facts of the matter, or to clarify certain issues relating to the conflict, the interested Parties and the Member States shall assist in the conduct of the enquiry or investigation.

Member States shall refrain from any act of commission or omission which may aggravate a situation brought before the Mechanism.

Article 12  **Modalities for Conflict Resolution**

In the event of conflict between Member States, the parties may agree to resolve issues through mediation, conciliation or arbitration.
Article 13  **Mediation**

When a situation of conflict between member States is brought before the Mechanism for mediation, the Chairperson shall, in collaboration with the interested Parties, set up a special mediation committee comprising three neutral members of the mechanism, who shall serve as mediators in the conflict. The committee may request necessary technical assistance from the Executive Secretariat.

Article 14  **Role of Mediators**

1. The role of the mediators shall be restricted to the conciliation of differing points of view and of conflicting claims, with a view to reducing the points of divergence.

   The mediators shall prepare an end of mission report which shall include the following:
   a. A summary of the claims of the Parties;
   b. Important issues on which the parties are in agreement;
   c. Important points of disagreement;
   d. Points on which the parties are in agreement or have made concessions;
   e. Recommendations for the resolution of the conflict;
   f. The signatures of all the mediators and Representatives of the Parties.

2. The mediators shall present their recommendations to the Parties and the Assembly of Heads of State and Government within the shortest possible time.

3. If the terms for reconciliation proposed by the mediators are accepted, they shall be embodied in a Protocol of Agreement between the Parties.

Article 15  **Conciliation**

1. Where one or more Parties to a conflict opt(s) for a settlement by conciliation under the auspices of the mechanism, it/they may present a request to this effect to the Chairperson.

2. If such a request is presented by one of the Parties, it must indicate that prior notification of the fact has been made in writing to the other Party.

3. The request shall indicate the underlying reasons for the conflict.
Article 16  **Council of Conciliation**

On receipt of the request, the Chairperson shall, in agreement with the Parties, set up a Conciliation council whose membership, functions and other attributes shall be determined by Regulation.

Article 17  **Report of the Council of Conciliation**

1. At the end of the conciliation process, the Council shall prepare a report which shall include the following:
   a. The facts which indicate that the Parties have reached agreement, detailing the terms of the agreement, and formulating the Council’s recommendations for a settlement
   b. The points of divergence preventing agreement;
2. The report of the Council of Conciliation shall immediately be transmitted to the Chairperson of the Mechanism and may only be made public with the consent of the Parties.

Article 18  **Arbitration**

1. When all parties have agreed to seek arbitration, a panel of Arbitration shall be set up as follows:
   a. Each party shall designate an arbiter with legal qualifications from among the Members of the Mechanism
   b. The two arbiters shall agree on the choice of a third person from the Members of the Mechanism to preside over the Panel
   c. If, by the end of one month the two arbiters have failed to agree on the designation of a Chairperson for the Panel, the choice shall be made by the Bureau of the Gulf of Guinea Commission.

2. The Chairperson of the panel may, in agreement with the Parties, appoint two or more arbiters who may not necessarily be Members of the Mechanism, but who shall have the same powers as the other Members of the Panel.
3. The arbiters not be nationals of a Party State, residents of a Party State, in the employment of a Party State, or already have served as Mediator or Conciliator in the same conflict. The arbiters must all be different nationalities.
Article 19  **Recommendations of the Panel of Arbitration**

The Recommendations of the Panel of Arbitration shall be sent to the parties and submitted to the Assembly of Heads of States and Government.

Article 20  **Records**

The Secretariat of the Gulf of Guinea Commission shall record and coordinate the mediation, conciliation and arbitration process. The Secretariat shall provide all necessary assistance to ensure that the Parties carry out the recommendations of the person responsible for each of the modalities adopted by the Mechanism. The secretariat shall also monitor and evaluate the process.