



**STATUTE OF THE
JUDICIAL COMMISSION FOR
THE SETTLEMENT OF DISPUTES
(April 1981)**

REGIONAL ORGANIZATION FOR THE PROTECTION OF THE MARINE ENVIRONMENT

KUWAIT - 1988



STATUTE OF THE JUDICIAL COMMISSION
ADOPTED BY THE COUNCIL
AT ITS FIRST MEETING IN APRIL 1981

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STATUTE OF THE JUDICIAL COMMISSION

Bearing in mind the provision of Article XXV of the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution, and in realisation of Article XVI (b) (iii) of the Convention;

The Council decides the Composition, Terms of Reference and Rules of Procedure of the Commission as follows:

Article 1

DEFINITIONS

For the purpose of these Rules:

1. "Action Plan" means the Action Plan for the Development and Protection of the Marine Environment and the Coastal Areas of Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates adopted at the Kuwait Regional Conference of Plenipotentiaries on the Protection and Development of the Marine Environment and the Coastal Areas, convened from 15 to 23 April 1978.
2. "Chairman" refers to Chairman of the Council comprised of the Contracting States, formed in accordance with Article XVI of the Convention.

3. "Contracting States" refer to the Countries which are party to the Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution.
4. "Convention" means Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution.
5. "Council" means Council comprised of the Contracting States, formed in accordance with Article XVI of the Convention.
6. "Executive Secretary" means Executive Secretary of the Organization established by the Contracting States in accordance with Article XVIII of the Convention.
7. "Commission" means Judicial Organ for the settlement of disputes formed in accordance with sub-clause (iii) clause (b) of Article XVI of the Convention.
8. "Organization" means the Regional Organization for the Protection of the Marine Environment established by the Contracting States in accordance with Article XVI of the Convention.
9. "Statute" means the Statute of the Commission.

CHAPTER ONE

FORMATION OF THE COMMISSION

SCOPE

Article 2

The Commission established by Article XVI (b) (iii) of the Convention shall be constituted and shall function in accordance with the provisions of the Convention and of this Statute.

SEAT OF THE COMMISSION

Article 3

The seat of the Commission will be in Kuwait, the Headquarters of the Organization. This, however, shall not prevent the Commission from sitting and exercising its functions in any of the Contracting States whenever the Commission considers it desirable.

COMPOSITION

Article 4

The Commission shall consist of eight members nominated by the Contracting States and approved by the Council. No two of the members shall be of the same nationality.

NOMINEES AND QUALIFICATIONS

Article 5

1. The nominees for membership of the Commission shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be a jurisconsult of recognised competence.

2. A Contracting State may nominate not more than two nominees. The nomination shall be supported by a detailed curriculum vitae and must be received by the Executive Secretary at least four months before the Council's meeting.

CIRCULATION OF NOMINATIONS

Article 6

The Executive Secretary shall circulate the list of nominees, accompanied by their C.V.s., to the Contracting States two months before the Council's meeting.

DURATION OF MEMBERSHIP

Article 7

1. The members of the Commission shall be appointed for a period of five years and they may be re-appointed for one more term.

2. A Contracting State may withdraw its appointed member, or replace him, on the approval of the Council.

THE OATH

Article 8

Before taking up his duties each member shall, before the Chairman of the Council, take an oath to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Commission.

PRESIDENCY

Article 9

1. The Presidency of the Commission shall be filled by rotation according to the reverse alphabetical order (of English language) of the names of the Contracting States.

2. In the absence of the President, the seat shall be filled by the eldest member of the Commission.

3. The term of the Presidency will be one year.

LIMITATIONS

Article 10

1. No member of the Commission will be eligible to appear as agent, counsel or advocate in any case before the Commission.
2. No member may participate in the decision of any case in which he has previously taken part as agent, counsel or advocate for one of the parties, or as a member of a national or international court, or of a commission of inquiry, or in any other capacity.
3. Doubts on any of these points shall be settled by the decision of the Commission.

PRIVILEGES AND IMMUNITIES

Article 11

The commission and its members while exercising their functions in the territories of the Contracting States, shall enjoy the privileges and immunities to be determined by agreement (s) between the Organization, the host Country and other Contracting States.

MEETING OF THE COMMISSION

Article 12

The Commission shall convene within ten to sixty days, upon receiving the request of the Executive Secretary, depending on the urgency of the case, as determined by the Executive Secretary.

TERMINATION OF MEMBERSHIP

Article 13

1. Apart from normal replacement, or death, the duties of a member shall end when he submits his resignation to the Chairman through respective governmental channels.

2. The resignation will be effective from the date of submission to the Chairman.

REPLACEMENT OF MEMBER

Article 14

A member who is to replace a member of the Commission whose term of office has not expired, shall be appointed for the remainder of his predecessor's term.

NON-PARTICIPATION

Article 15

1. If, for some reason, a member of the Commission considers that he should not take part in the decision of a particular case, he shall inform the President.

2. If the President considers that for some special reason one of the members of the Commission should not sit in a particular case, the matter shall be settled by the decision of the Commission.

ADMINISTRATIVE SUPPORT

Article 16

The Executive Secretary shall assign a legal officer to handle the work related to the Commission. The Secretariat of the Organization shall handle the secretarial work of the Commission.

REMUNERATIONS

Article 17

The President and each member of the Commission shall receive special allowance to be determined by the Council.

CHAPTER TWO

COMPETENCE AND JURISDICTION
OF THE JUDICIAL COMMISSION

SUBSTANTIVE JURISDICTION

Article 18

The Commission shall have jurisdiction to settle disputes between the Contracting States inter alia concerning:

- i) the interpretation or application of the Convention or any of its Protocol;
- ii) the General Obligations provided for under Article III of the Convention;
- iii) the fulfilment of the obligations provided for under the Action Plan;
- iv) the measures provided for protection of marine environment and combating pollution in the Convention and its Protocols.

JURISDICTION OF THE COMMISSION

Article 19

The Commission shall have jurisdiction in disputes relating to the determination of civil liability and compensation for damage resulting from pollution of the marine environment.

DECISION OF THE COMMISSION

Article 20

1. The decision of the Commission will be binding and final between the parties and in respect of that particular case.

2. In the event of dispute as to the meaning of scope of the decision, the Commission shall construe it upon the request of any party.

ENFORCEMENT OF DECISION

Article 21

The decision of the Commission will be enforceable in the Contracting States through their respective executing agencies. In case of non-compliance of one party, the matter shall be referred to the Council.

REVISION OF DECISION

Article 22

1. An application for revision of a decision may be made within a period of six months only when it is based upon the discovery of some fact of such a nature as to be a decisive factor,

which fact was, when the decision was given, unknown to the Commission and also to the party claiming revision, always provided that such ignorance was not due to negligence.

2. The proceedings for revision shall be opened by a decision of the Commission expressly recording the existence of the new fact, recognising that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

ADVISORY JURISDICTION

Article 23

1. The Commission shall have jurisdiction to give an advisory opinion in all legal questions at the request of the Council concerning:

- i) the interpretation of a treaty on the protection of the marine environment from pollution;
- ii) application of rules of International Law relating to prevention, abatement and combating of marine pollution;
- iii) the existence and extent of liability of any fact which, if established, would constitute a breach of an

international obligation concerning the protection of marine environment;

- iv) the interpretation of rules and procedures of the Organization;
- v) any other matter referred to it by the Council.

2. Advisory opinion has no binding force and does not constitute res judicata, but it is expected to be treated with respect and as authoritative statement of the Law.

LAW APPLIED

Article 24

1. The Commission, whose function is to decide in accordance with the principles of Islamic Law and International Law such disputes as are submitted to it, shall apply in particular:

- i) Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution and its Protocols;
- ii) the International Conventional Law and International rules relating to preservation and protection of the marine environment;

- iii) the general principles which are common in the laws of the Contracting States.

2. This provision shall not prejudice the power of the Commission to decide a case ex aequa et bono, if the parties agree thereto.

VOTE

Article 25

1. Judicial decisions of the Commission will be based on majority opinion of the members present, provided that there shall not be less than five members to decide a case.

2. In the event of an equality of votes, the President shall have a casting vote.

DISPUTE ON JURISDICTION

Article 26

In the event of a dispute as to whether the Commission has jurisdiction, the matter shall be settled by the decision of the Commission.

CHAPTER THREE

PROCEDURE

LANGUAGE

Article 27

1. The official languages of the Commission shall be Arabic, English and Farsi.
2. If the parties agree that the case shall be conducted in Arabic or Farsi, the pleadings and the decision shall be accompanied with English translation.

INITIATION OF PROCEEDINGS

Article 28

1. Cases are brought before the Commission by a written application addressed to the Executive Secretary.
2. The application shall indicate full particulars of the parties, subject of the dispute and the relief asked for.
3. The Executive Secretary shall forthwith communicate the application to Members of the Commission and all parties concerned.
4. The Executive Secretary shall also notify the other Contracting State.

PROVISIONAL MEASURES

Article 29

1. The Commission shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

2. Pending the final decision of the dispute, notice of the measures suggested shall forthwith be given to the parties and the Council.

REPRESENTATION OF PARTIES

Article 30

1. The parties shall be represented by agents.

2. They may have the assistance of counsel or advocates before the Commission.

3. The agents, counsel and advocates of parties before the Commission shall enjoy the privileges and immunities necessary to the independent exercise of their duties.

FORMS OF PROCEDURES

Article 31

1. The procedure shall consist of two parts:

i) written, and

ii) oral

2. The written proceedings shall consist of the communication to the Commission and to the parties of memorials, counter-memorials and, if necessary, replies; also all papers and documents in support.

3. These communications shall be made through the Executive Secretary, in the order and within the time fixed by the Commission.

4. A certified copy of every document produced by one party shall be communicated to the other party.

5. The oral proceedings shall consist of the hearing by the Commission of witnesses, experts, agents, counsel and advocates.

HEARING

Article 32

The hearing before the Commission shall be public unless the Commission decides otherwise.

MINUTES

Article 33

1. Minutes shall be made at each hearing and signed by the Legal Officer and the President.
2. These minutes alone shall be authentic.

CONDUCT OF CASES

Article 34

1. The Commission shall make orders for the conduct of cases, shall decide the form and time in which each party may conclude its arguments, and make all arrangements concerned with the taking of evidence.
2. The Commission may, even before the hearing begins, call upon the agents to produce

any document or to supply any explanation - formal note shall be taken of any refusal.

3. The Commission may, at any time, entrust any individual body, bureau, or other organization that it may select, with the task of carrying out an inquiry or giving an expert opinion.

INTERVENTION

Article 35

1. Should a Contracting State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Commission to be permitted to intervene.

2. It shall be for the Commission to decide upon this request.

DEFAULT

Article 36

If one of the parties who is properly notified does not appear before the Commission, or fails to defend his case, the other party may call upon the Commission to decide the case.

CHAPTER FOUR

MISCELLANEOUS

INTERNAL RULES

Article 37

The Commission shall formulate rules for carrying out its functions subject to the approval of the Council.

BUDGET

Article 38

The Commission will have its own annual budget attached to the budget of the Organization.

AMENDMENT OF RULES

Article 39

Amendment to these statutes shall be made by the Council.

