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ASSEMBLY OF THE AFRICAN UNION
Sixteenth Ordinary Session
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Addis Ababa, ETHIOPIA

Assembly/AU/10(XVI)
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**PROGRESS REPORT ON THE IMPLEMENTATION OF ASSEMBLY
DECISION Assembly/AU/Dec.298(XV) ON THE TRANSFORMATION OF
THE AFRICAN UNION COMMISSION INTO THE
AFRICAN UNION AUTHORITY**

**PROGRESS REPORT ON THE IMPLEMENTATION OF ASSEMBLY DECISION
Assembly/AU/Dec.298(XV) ON THE TRANSFORMATION OF THE AFRICAN UNION
COMMISSION INTO THE AFRICAN UNION AUTHORITY**

I. INTRODUCTION:

1. The Assembly of the African Union considered and took note of the Progress Report of the Commission on the Implementation of Decision Assembly/AU/Dec.263 (XIII) on the Transformation of the African Union Commission (AU Commission) into the African Union Authority (AU Authority) adopted by the Thirteenth Ordinary Session of the Assembly in Sirte, Great Jamahiriya on 3 July 2009. Following due consideration of the progress report, the Assembly adopted at its Fifteenth Ordinary Session held in Kampala, Uganda, on 27 July 2010, Decision Assembly/AU/Dec.298 (XV) on the transformation of the AU Commission into the AU Authority, which stipulated, *inter alia*, as follows:

***“REQUESTS** the Commission to convene a follow-up meeting of Government Experts open to members of the Permanent Representatives’ Committee (PRC) for ten (10) working days to pursue consideration of the remaining legal instruments on the transformation of the African Union Commission into the African Union Authority;*

***ALSO REQUESTS** the Commission to convene a meeting of Ministers of Justice/Attorneys General of Member States to consider and approve the legal instruments on the transformation of the African Union Commission into the African Union Authority;*

***DECIDES** that the meetings of experts and Ministers be held as soon as practicable and be financed through the supplementary budget or virement;”*

2. The present report is intended to inform the Assembly of the status of implementation of the above mentioned Decision Assembly/AU/Dec.298 (XV).

3. It is to be recalled that the Commission convened The First Government Experts Meeting on The transformation of the AU Commission into the AU Authority in Tripoli, Great Jamahiriya, from 11 to 15 April 2010. The meeting considered and adopted the draft Protocol on Amendments to the Constitutive Act of the African Union on the Transformation of the African Union Commission into the African Union Authority.

4. The Second Government Experts meeting on the Transformation of the African Union Commission into African Union Authority took place in Addis Ababa, Ethiopia from 17 to 21 May 2010. The meeting considered and adopted the draft Statute of the African Union Authority.

5. The Third Meeting of the Government Experts on the Legal Instruments on the Transformation of the African Union Commission into the African Union Authority was held in Addis Ababa, Ethiopia, from 22 November to 3 December 2010, the meeting

considered the remaining nine (9) draft legal instruments and adopted seven (7), two being subject to a different process of review as requested by the Assembly.

II- PREPARATION OF THE STRUCTURE OF THE NEW AU AUTHORITY, TAKING INTO ACCOUNT THE MANDATE GIVEN TO THE AUTHORITY, IN COLLABORATION WITH THE PRC:

6. The Assembly also requested the Commission to take all necessary measures to prepare the structure of the new AU Authority, taking into account the mandate given to the Authority, in collaboration with the PRC.

7. The structure of the AU Authority will be decided upon in due course in collaboration with the PRC and after adoption of all the legal instruments on the transformation of the AU Commission into the AU Authority.

III- PREPARATION OF THE FINANCIAL IMPLICATIONS OF THE TRANSFORMATION OF THE COMMISSION INTO THE AU AUTHORITY, IN COLLABORATION WITH THE PRC:

8. The Assembly further requested the Commission to take all necessary measures to prepare the financial implications of the transformation of the AU Commission into the AU Authority, in collaboration with the PRC.

9. The financial implications of the transformation of the AU Commission into the AU Authority will be elaborated in due course in collaboration with the PRC after finalization of the structure.

IV- WAY FORWARD:

10. After the consideration of the two remaining draft legal instruments by a meeting of Government Experts, all the draft legal instruments will be submitted to a meeting of Ministers of Justice/ Attorneys General of Member States for consideration and adoption. This would be scheduled for 2011 after consultations of all parties concerned and in particular the PRC.

V- CONCLUSIONS/RECOMMENDATIONS:

11. The transformation of the AU Commission into the AU Authority is a crucial and decisive step in the strengthening of the institutional building process of the AU and in the acceleration of the integration of the continent.

12. The Commission would like to make the following recommendations to the Assembly, through the Executive Council:

- i) Reiterate its commitment to continue the process of the transformation of the African Union Commission into the African Union Authority in order to strengthen the institutional building process of the African Union and acceleration of the economic and political integration of the continent;

- ii) The Commission should convene a fourth Government Experts Meeting during the first half of 2011 to consider the remaining two draft legal instruments on Pan African parliament and the African Court on Justice and Human and Peoples' Rights. This meeting will be followed by a meeting of Ministers of Justice/Attorneys General.

Annex:

- I. Report of Meeting of Government Experts on the Legal Instruments on the transformation of the AU Commission into the AU Authority, Tripoli, Great Socialist People's Libyan Arab Jamahiriya, 11-15 April 2010.
- II. Report of the Second Meeting of Government Experts on the Legal Instruments on the transformation of the African Union Commission into the African Union Authority, Addis Ababa, Ethiopia, 17 – 21 may 2010.
- III. Report of the Third Meeting of Government Experts on the Legal Instruments on the transformation of the African Union Commission into the African Union Authority, Addis Ababa, Ethiopia, 22 November – 3 December 2010.
- IV. The Draft Legal instruments:
 - 1. Draft Statute of the Authority of the African Union,
 - 2. Draft Additional Protocol on Amendments to the Constitutive Act of the African Union on the Transformation of the African Union Commission into the African Union Authority;
 - 3. Draft Amended Rules of Procedure of the Assembly of the African Union;
 - 4. Draft Amended Rules of Procedure of the Executive Council;
 - 5. Draft Amended Rules of Procedure of the Permanent Representatives' Committee;
 - 6. Draft Protocol on Amendments to the Protocol relating to the establishment of the Peace and Security Council of the African Union;
 - 7. Draft Protocol on amendments to the Protocol on the African Investment Bank;
 - 8. Draft Amended Statute of the Economic, Social and Cultural Council of the African Union;
 - 9. Draft Amended Statute of the African Union Commission on international Law.

Assembly/AU/10(XVI)
Annex I

**REPORT OF MEETING OF GOVERNMENT EXPERTS ON THE LEGAL
INSTRUMENTS ON THE TRANSFORMATION OF THE AU
COMMISSION INTO THE AU AUTHORITY**

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**Meeting of Government Experts on the
Legal Instruments on the Transformation
of the AU Commission into the AU Authority
11-15 April 2010
Tripoli, Great Socialist People's
Libyan Arab Jamahiriya**

**Exp/Legal/AUC-Auth./Rpt(I) Rev.1
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**REPORT OF MEETING OF GOVERNMENT EXPERTS
ON THE LEGAL INSTRUMENTS ON THE TRANSFORMATION
OF THE AU COMMISSION INTO THE AU AUTHORITY**

**REPORT OF MEETING OF GOVERNMENT EXPERTS
ON THE LEGAL INSTRUMENTS ON THE TRANSFORMATION OF THE AU
COMMISSION INTO THE AU AUTHORITY**

I. INTRODUCTION

1. Pursuant to Decision Assembly/AU/Dec.263 (XIII) adopted in Sirte, Great Socialist People's Libyan Arab Jamahiriya on 3 July 2009, the Meeting of Government Experts was convened in Tripoli, Great Socialist People's Libyan Arab Jamahiriya from 11 to 15 April 2010 to consider the Legal Instruments on the Transformation of the African Union Commission into the African Union Authority.

II. ATTENDANCE

2. The following Member States were in attendance: Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Union of Comoros, Congo, Democratic Republic of Congo, Egypt, Equatorial Guinea, Ethiopia, Gabon, The Gambia, Ghana, Kenya, Lesotho, Libyan Arab Jamahiriya, Malawi, Mali, Mauritania, Namibia, Nigeria, Rwanda, Sahrawi Arab Democratic Republic, Senegal, Sierra Leone, Somalia, South Africa, The Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

III. OPENING OF THE MEETING

Opening Remarks by AU Commissioner for Peace and Security

3. H.E. Mr. Ramtane Lamamra, Commissioner for Peace and Security, in his opening remarks welcomed all participants at the meeting on behalf of the Chairperson of the African Union (AU) Commission. He further highlighted the key role played by the Leader of the Great Jamahiriya, Brother Muamar Ghaddafi towards the political and socio-economic integration of the Continent and towards the attainment of the United States of Africa.

4. The Commissioner recalled that the meeting was convened pursuant to the Decision of the Assembly of the African Union adopted during its Ordinary Session held in Sirte in July 2009 requesting the AU Commission to take all necessary measures to prepare the legal instruments on the transformation of the AU Commission into the AU Authority and to present them to Member States' Government Experts for consideration. He further stated that on the basis of this mandate, the Commission undertook a number of actions in the preparation of the relevant legal instruments including the recruitment of high-level Consultants to undertake a comprehensive review of the legal instruments on the basis of the Sirte Decision of the Assembly.

5. In concluding, the Commissioner underscored the fact that the development of our Continent primarily depends on the Governments and Peoples of Africa, hence the need to pursue and accelerate the process of integration.

Statement by the Under-Secretary of the People's Committee for External Liaison and International Cooperation of the Great Socialist People's Libyan Arab Jamahiriya

6. H.E. Dr. Khaled El Maktoof Kaeem, Under-Secretary of the People's Committee for External Liaison and International Cooperation in his remarks welcomed all participants to Tripoli, Great Jamahiriya.

7. The Under-Secretary underscored the fact that the transformation of the African Union Commission into the African Union Authority was not merely a change of name but a process that would ultimately lead to the creation of the United States of Africa. He went on to indicate that though there could be differences in the approach, the overall objective of continental integration was the same.

8. The Under-Secretary further stated that this meeting, which was the first in a series would require substantial amendments to the Constitutive Act of the African Union and other AU Legal Instruments.

9. In concluding the Under-Secretary wished the participants successful deliberations, a pleasant stay in Tripoli and declared the meeting officially open.

IV. ELECTION OF THE BUREAU

10. After consultations, the meeting decided to retain the statutory Bureau of the Assembly, as follows:

Chair:	Malawi
1 st Vice Chair:	Gabon
2 nd Vice Chair:	Uganda
3 rd Vice Chair:	Liberia
Rapporteur:	Great Jamahiriya

11. However, the Bureau agreed that the meeting would be chaired by Gabon and on a rotational basis amongst the Bureau members. In this regard, the meeting was chaired by Mrs. Anne Florette Niomba Gros, Representative of Gabon and Amb. Juliet Semambo Kalema, Representative of Uganda.

V. CONSIDERATION AND ADOPTION OF THE DRAFT AGENDA

12. The meeting adopted the following proposed draft Agenda without amendments:

- I. Opening Ceremony
- II. Election of the Bureau
- III. Consideration and Adoption of the Draft Agenda
- IV. Organization of Work
- V. Presentation and Consideration of the Draft Legal Instruments:

- i) Draft Additional Protocol on Amendments to the Constitutive Act of the African Union;
 - ii) Draft Statute and Rules of the Authority of the African Union;
 - iii) Draft Rules of Procedure of the Assembly of the African Union;
 - iv) Draft Rules of Procedure of the Executive Council;
 - v) Draft Rules of Procedure of the Permanent Representatives Committee;
 - vi) Draft Additional Protocol on Amendments to the Protocol relating to the establishment of the Peace and Security Council of the African Union;
 - vii) Draft Protocol on amendments to the Protocol on the African Investment Bank;
 - viii) Draft Statute of the Economic, Social and Cultural Council of the African Union;
 - ix) Draft Statute of the African Union Commission on International Law;
 - x) Draft Protocol on amendments to the Protocol to the Treaty establishing the African Economic Community Relating to the Pan-African Parliament;
 - xi) Draft Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights;
- VI. Adoption of the Report and the draft legal instruments
- VII. Any Other Business
- VIII. Closing Ceremony

VI. ORGANISATION OF WORK

13. The meeting adopted the following working hours:

- Morning: 09h00 – 13h00
- Afternoon: 15h00 – 18h00

VII. PRESENTATION AND CONSIDERATION OF THE DRAFT LEGAL INSTRUMENTS

14. In her introductory remarks, Ms. Djeneba Diarra, Deputy Legal Counsel of the AU Commission recalled the mandate of the meeting. In this regard, she indicated that in Decision Assembly/AU/Dec.263(XIII) adopted in Sirte, Great Jamahiriya on 3 July 2009, the Assembly requested the Commission to take all necessary measures to prepare, among other things, the legal instruments for amendments to the Constitutive Act and other relevant texts, and that the meeting was convened to consider these instruments with a view to making appropriate recommendations to the Policy Organs.

15. She further indicated that on the basis of this mandate, the Commission undertook a number of actions in the preparation of the relevant legal instruments. In this regard, the Commission engaged the services of high caliber consultants to undertake the review of the legal instruments on the basis of :

- i) The Sirte Decision (Assembly/AU/Dec.263 (XIII)); and
- ii) The Conclusions of the Summit on the Modalities of the Transformation of the African Union Commission into the AU Authority.

16. She concluded her remarks with the introduction of the Consultants, namely:

1. Mr. Richard Nzerem, Secretary of the Commonwealth Secretariat Arbitral Tribunal ;
2. Mr. Rafaâ Ben Ashour, Associate Professor of Public Law and Political Science at the Faculty of Legal, Political and Social Sciences of the University of Tunis; and
3. Prof. Tiyanjana Maluwa, Professor of Law, Director of the School of International Affairs at the Dickson School of Law, Pennsylvania State University.

a. Draft Additional Protocol on Amendments to the Constitutive Act of the African Union:

17. In the presentation of the draft Additional Protocol to the Constitutive Act, Mr. Richard Nzerem said that the draft Protocol submitted for consideration by the meeting contains a Preamble and eleven (11) Articles. He informed the meeting that the provisions contained in the Preamble were not legally binding, and thereafter gave a brief presentation of the draft Protocol, highlighting the proposed amendments to the Constitutive Act with respect to the following : the objectives, the principles, the Organs of the Union, the powers and functions of the Assembly, the Specialised Technical Committees, the African Union Authority and the inclusion of new Organs of the Union created after the adoption of the Constitutive Act, and their functions.

18. In conclusion, the Consultant articulated the problems relating to the Protocol on the amendments to the Constitutive Act of the African Union, adopted in July 2003, including its entry into force. In this regard, he suggested that a special provision be inserted into the Protocol under consideration, with a view to addressing the issue, given that the 2003 Protocol amending the Constitutive Act had not received the requisite number of ratifications for its entry into force.

19. At the end of the presentation, the meeting agreed to consider the draft Protocol paragraph by paragraph, starting with the title.

Consideration of the Title

20. Two proposals emerged from the discussions on the title. Some delegations were of the view that the title of the draft Protocol as proposed, made reference to the 2003 Protocol amending the Constitutive Act, which could cause confusion if the titles did not reflect the purposes of these protocols. Since the 2003 draft Protocol had not yet entered into force, they proposed that the title of the present draft Protocol be reworded to avoid confusion with the 2003 Protocol.

21. Other delegations held the view that the term “Additional” should not feature in the title of the draft Protocol, because from a legal standpoint, it does not signify an amendment but rather an addition of a supplementary provision.

22. At the end of the discussions, the meeting agreed to amend the title as reflected in the draft Protocol annexed to this Report.

Consideration of the Preamble

23. In considering the Preamble of the draft Protocol, delegations made comments and observations as follows:

- i. The proposed Preamble is too long and should be reduced to two (2) or three (3) paragraphs at most;
- ii. The Preamble must reflect the inter-governmental nature of the African Union;
- iii. Some paragraphs in the Preamble that are merely repetitions from the Constitutive Act should be deleted;
- iv. The final paragraph of the Preamble as written is contrary to the Constitutive Act because it seems to give powers to a lower-ranking Organ, namely the Authority, to coordinate and harmonize the activities of Policy Organs.

24. In light of the comments and observations made by the different delegations and the consensus reached, the draft Preamble was amended as reflected in the draft Protocol.

Consideration of Article 1: Definitions

25. In considering this draft Article, delegations that intervened made the following comments and observations:

- i. The concept of a United States of Africa should be defined, with a view to interpreting its nature and structure;
- ii. The concept of a United States of Africa is a political vision constituting the ultimate goal of the African Union. In this regard, it is not possible to give legal definitions to it at this stage;
- iii. Acronym like "AUCIL" and expression like "Court" which do not appear in the draft Protocol should be deleted;
- iv. The definition of the Commission as stated in the draft Protocol should be consistent with that of the Constitutive Act which defines the African Union Commission as the Secretariat of the Union;

26. In light of the discussions, explanations given by the Commission and the consensus reached, the concept of a United States of Africa was defined as "the ultimate goal of the African Union's economic and political integration process". The amendments agreed upon in Article 1 are reflected in the draft Protocol herewith attached.

Consideration of Article 2: Objectives

27. During consideration of Article 2 of the draft Protocol, the meeting made comments and observations as follows:

- i) There is need to add the word “gradual” since the attainment of the United States of Africa would be in phases and through the Regional Economic Communities (RECs) in line with the consensus reached during the discussions of the Heads of State and Government in Sirte in July 2009;
- ii) The use of the words “accelerating” in the Preamble and “gradual” in Article 2(l) with regard to the attainment of the United States of Africa was not contradictory;
- iii) The mention of “future and existing” Regional Economic Communities (RECs) was contradictory to the 2006 Banjul Decision Assembly/AU/Dec. 112(VII) on the moratorium on recognition of RECs.

28. At the end of the deliberations, the meeting adopted the amendments as reflected in the draft Protocol herewith attached.

Consideration of Article 3: Principles

29. During consideration of Article 3 of the draft Protocol, it was observed that the proposed sub-paragraph (s) should be deleted since it is a repetition of the objective stated in Article 2 of the draft Protocol (Objectives).

30. At the end of the deliberations, the meeting amended Article 4(d) of the Constitutive Act to include the issue of coordination of defence policies of Member States in addition to the establishment of an African Common Policy, since this matter would be dealt with by the Authority once established.

31. The amendments to Article 3 are included in the attached draft Protocol.

Consideration of Article 4: Organs of the Union

32. During consideration of Article 4, the meeting made comments and observations as follows:

- i) Reference to the Protocol on Amendments to the Constitutive Act in proposed Article 5(c)(j) was not necessary since the Peace and Security Council was established by separate Protocol;
- ii) The word “African” should be added to “Court of Justice and Human Rights”;

- iii) All Organs of the Union should be listed without exception even though Article 5(2) of the Constitutive Act provides for the creation of new Organs by the Assembly.

33. At the end of the deliberations, the meeting adopted the amendments as reflected in Article 14 of the attached draft Protocol.

Consideration of Article 5: Powers and Functions of the Assembly

34. In considering Article 5, the meeting made the following observations:

- i) The need to highlight the supremacy of the Assembly of Heads of State and Government, particularly, with respect to control of activities and programmes of the various organs of the AU with a view to accelerating the integration process of the Continent;
- ii) The future Authority should have functions that are consistent with the spirit of Decision Assembly/AU/Dec.263 (XIII) adopted by the Sirte Summit in July 2009, reflecting the willingness of the Heads of State and Government to provide this Organ with the necessary powers to coordinate the activities and programmes of the Organs of the AU, with a view to accelerating the integration process of the Continent;
- iii) It is important to comply with the mandate contained in Decision Assembly/AU/Dec.263 (XIII) adopted by the Sirte Summit which limits amendments of the Constitutive Act to provisions relating to the transformation of the Commission into an Authority;

35. At the end of the deliberations, the meeting adopted the amendments reflected in Article 5 of the draft Protocol attached.

Consideration of Article 6: Specialized Technical Committees

36. In considering Article 6, the meeting made proposals for amendments on wording, particularly on the use of abbreviations as reflected in the draft Protocol.

Consideration of Article 7: The African Union Authority

37. In considering Article 7, the meeting made the following observations:

- i) The need to delete paragraph (2) of this Article;
- ii) Ensure that all the functions of the Authority, in its capacity as organ, are taken into account, including its role as the Secretariat of the Union;
- iii) The future Authority should have functions enabling it to assume responsibility for coordination of the activities and programmes of the various organs of the Union, with a view to accelerating the integration process of the continent, leading to the establishment of the United States of Africa;

38. At the end of the deliberations, the meeting adopted the amendments reflected in Article 7 of the draft Protocol.

Consideration of Article 8: Functions of the African Union Commission on International Law

39. In considering Article 8, the meeting made the following observations:

- i) The need to delete Article 8 because it pertains solely to the African Union Commission on International Law, while the new organs listed in Article 4 do not have their own specific articles;
- ii) The need to include an Article on the nature, composition and functions of all the new organs listed in Article 4.

40. At the end of the deliberations, the meeting decided to include new Articles on each new organ stated in Article 4.

Consideration of Article 9: Signature, Ratification and Accession

41. In considering Article 9, the meeting decided to delete the heading because it made reference to Article 27 of the Constitutive Act and not the draft Protocol, and was therefore not relevant.

Consideration of Article 10: Entry into force

42. The meeting adopted Article 10 without amendment.

Consideration of Article 11: Transitional Provisions

43. The meeting decided to amend Article 11, as reflected in the draft Protocol.

b. Draft Statute and Rules of the Authority of the African Union:

44. Presenting the Draft Statutes and Rules of the African Union Authority, Mr. Richard Nzerem, Legal Consultant, said that the Draft Statutes and Rules amend some provisions of the Statutes of the African Union Commission adopted in 2002 and amended in 2007 by the Assembly.

45. Also, the amendments made to the Statutes of the African Union Commission take into account the new functions and nomenclature of the African Union Authority, which have already been enshrined in the modalities on the transformation of the African Union Commission into the African Union Authority, adopted by the Executive Council and endorsed in Sirte in July 2009 by the Assembly.

46. The Consultant dwelt on some provisions of the Draft Statutes and Rules of the Authority which amend the substance of the Statutes of the Commission, namely:

- i) Areas of competence of the Authority (Article 3);
- ii) Powers of the Authority;
- iii) Portfolio of the Authority (Article 14).

47. Lastly, he drew the meeting's attention to the provisions of the Draft Statutes and Rules of the Authority, mentioning those already contained in the Statutes of the Commission. These provisions deal with the mandate of the members of the Authority, the procedure for their appointment and their number.

48. In conclusion, the Consultant said that the Draft Statutes and Rules of the African Union Authority will enter into force upon its adoption by the Assembly, just like for the current Statutes of the Commission.

49. The Draft Statute was only presented by the Legal Consultant. Consequently, the meeting recommended that another meeting be convened to consider the remaining legal instruments including the draft Statutes and Rules of the African Union Authority.

VIII. ADOPTION OF REPORT AND THE DRAFT LEGAL INSTRUMENTS

50. The meeting adopted the Report and the draft Protocol on Amendments to the Constitutive Act of the African Union on the Transformation of the African Union Commission into the African Union Authority with amendments.

IX. ANY OTHER BUSINESS

51. There were no discussions under this agenda item.

X. CLOSING CEREMONY

52. In her closing remarks, Mrs. Anne Florette Niomba Gros, Representative of Gabon, thanked the Great Socialist People's Libyan Arab Jamahiriya for hosting the meeting and for all the efforts it deployed for the success of the meeting.

53. She also thanked the experts, the AU Commission including the translators and interpreters as well as the consultants for their contributions during the meeting.

**Annex: Draft Protocol on Amendments to the
Constitutive Act of the African Union on the Transformation of the
African Union Commission into the African Union Authority**

Assembly/AU/10(XVI)
ANNEX II

**REPORT OF THE SECOND MEETING OF GOVERNMENT EXPERTS
ON THE LEGAL INSTRUMENTS ON THE TRANSFORMATION
OF THE AFRICAN UNION COMMISSION INTO
THE AFRICAN UNION AUTHORITY**

AFRICAN UNION
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**Second Meeting of Government Experts
on the Legal Instruments on the Transformation
of the AU Commission into the AU Authority
17 – 21 May 2010
Addis Ababa, Ethiopia**

**Exp/Legal/AUC-Auth./Rpt(II)
Original: English**

**REPORT OF THE
SECOND MEETING OF GOVERNMENT EXPERTS
ON THE LEGAL INSTRUMENTS ON THE TRANSFORMATION
OF THE AFRICAN UNION COMMISSION INTO THE AFRICAN UNION AUTHORITY**

**REPORT OF THE SECOND MEETING OF GOVERNMENT EXPERTS
ON THE LEGAL INSTRUMENTS ON THE TRANSFORMATION
OF THE AFRICAN UNION COMMISSION INTO THE AFRICAN UNION AUTHORITY**

I. INTRODUCTION

1. Pursuant to Decision Assembly/AU/Dec.263 (XIII) adopted in Sirte, Great Socialist People's Libyan Arab Jamahiriya on 3 July 2009, the second Meeting of Government Experts to consider the Legal Instruments on the Transformation of the African Union Commission into the African Union Authority was convened in Addis Ababa, Ethiopia from 17 to 21 May 2010. The meeting was open to the Permanent Representatives of Member States to the African Union. This was a follow up to the First Meeting of Government Experts held in Tripoli, Great Socialist People's Libyan Arab Jamahiriya from 11 to 15 April 2010.

2. It will be recalled that out of the eleven (11) legal instruments that were on the agenda, the First Meeting was able to consider only the Draft Protocol on Amendments to the Constitutive Act of the African Union on the Transformation of the African Union Commission into the African Union Authority. Consequently, the meeting recommended that another meeting be convened to consider the remaining legal instruments.

II. ATTENDANCE

3. The following Member States were in attendance:

Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Chad, Congo, Côte d'Ivoire, Egypt, Ethiopia, Equatorial Guinea, Gabon, The Gambia, Ghana, Kenya, Lesotho, Liberia, Libyan Arab Jamahiriya, Malawi, Mali, Mauritania, Mauritius, Mozambique, Nigeria, Rwanda, SADR, Senegal, Sierra Leone, Somalia, South Africa, The Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

III. ELECTION OF THE BUREAU

4. In view of the fact that this was a follow-up to the Meeting of government Experts that took place in Tripoli, the meeting decided to retain the statutory Bureau of the Assembly as follows:

- Chair: Malawi
- 1st Vice Chair: Gabon
- 2nd Vice Chair: Uganda
- 3rd Vice Chair: Liberia
- Rapporteur: Great Libyan Arab Jamahiriya

IV. OPENING OF THE MEETING

Welcome Remarks by AU Commissioner for Political Affairs

5. H.E. Mrs. Julia Dolly Joiner, Commissioner for Political Affairs, in her opening remarks welcomed all participants to the meeting on behalf of Dr. Jean Ping, Chairperson of the African Union (AU) Commission. She underscored the fact that the presence of delegations at the meeting was a testimony to the fact that the process leading to the African Union Authority has gained momentum since the Sirte Declaration of 9.9.99 was adopted in Sirte, Great Jamahiriya in September 1999.

6. The Commissioner highlighted the fact that the transformation of the AU Commission into the AU Authority has its roots in the historic Sirte Declaration and the established commitments towards the revitalization of the continental organization so that it can play a more active role and continue to be relevant to the needs of the peoples of Africa as well as respond to the demands of prevailing challenges.

7. Mrs. Joiner further reiterated that what has unfolded since the adoption of the Constitutive Act of the African Union was an element of continuity and a commitment to further strengthen the Union – hence the use of the term Authority. This was the fundamental logic of the Conclusions of Heads of State and Government meeting in Sirte in July 2009 which is intended to further strengthen the Union. The amendments to the legal instruments are, therefore, a foundation for enhancing the Union's capacity and making it an effective instrument for peace,; for the promotion of shared values and for the development and integration of the continent.

8. In concluding, the Commissioner thanked all participants for their presence and wished the meeting successful deliberations.

Remarks by the Chairperson, Justice (Dr.) Jane Ansah, Attorney General of the Republic of Malawi

9. In her opening remarks, Justice Dr. Jane Ansah thanked delegations for the confidence reposed in her in electing her as the Chairperson of this meeting. She went on to welcome participants to Addis Ababa and to the meeting which she termed crucial. She underscored the fact that there were a number of legal instruments to be considered and stressed the need for the meeting to proceed expeditiously but cautiously given the importance of the mandate.

10. Finally, she urged the participants to ensure that the mandate given to them by the Policy Organs is discharged in a timely manner so as to make appropriate recommendations towards the achievement of the overall continental agenda.

V. CONSIDERATION AND ADOPTION OF THE DRAFT AGENDA

11. During consideration of the drat Agenda, a delegation suggested that the order of the legal instruments be reversed so that the meeting first considers the Rules of Procedure of the policy organs and thereafter the draft Statute of the Authority.

12. A lengthy debate ensued at the end of which the meeting adopted the proposed draft Agenda as adopted at the Tripoli meeting of April 2010 without amendments. The agenda therefore amended as follows:

1. Opening Ceremony
2. Election of the Bureau
3. Consideration and Adoption of the Draft Agenda
4. Organization of Work
5. Presentation and Consideration of the Draft Legal Instruments:
 - i.) Draft Statute and Rules of the Authority of the African Union;
 - ii.) Draft Rules of Procedure of the Assembly of the African Union;
 - iii.) Draft Rules of Procedure of the Executive Council;
 - iv.) Draft Rules of Procedure of the Permanent Representatives Committee;
 - v.) Draft Additional Protocol on Amendments to the Protocol relating to the establishment of the Peace and Security Council of the African Union;
 - vi.) Draft Protocol on amendments to the Protocol on the African Investment Bank;
 - vii.) Draft Statute of the Economic, Social and Cultural Council of the African Union;
 - viii.) Draft Statute of the African Union Commission on International Law;
 - ix.) Draft Protocol on amendments to the Protocol to the Treaty establishing the African Economic Community Relating to the Pan-African Parliament;
 - x.) Draft Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights;
6. Adoption of the Report and the draft legal instruments
7. Any Other Business
8. Closing Ceremony

VI. ORGANISATION OF WORK

13. The meeting adopted the following working hours:
- Morning: 09h00 – 13h00
 - Afternoon: 15h00 – 18h00

VII. PRESENTATION AND CONSIDERATION OF THE DRAFT LEGAL INSTRUMENTS

14. In his introductory remarks, Mr. Ben Kioko, the AU Legal Counsel recalled the mandate of the meeting. In this regard, he indicated that by virtue of Decision Assembly/AU/Dec.263 (XIII) adopted in Sirte, Great Jamahiriya on 3 July 2009, the Assembly requested the Commission to take all necessary measures to prepare, among other things, the legal instruments for amendments to the Constitutive Act of the African Union and other relevant texts, and that a meeting of government experts be

convened to consider these instruments with a view to making appropriate recommendations to the Policy Organs.

15. He further indicated that on the basis of said mandate, the Commission undertook a number of actions in the preparation of the relevant legal instruments. In this regard, the Commission engaged the services of high caliber consultants to undertake the review of the legal instruments on the basis of:

- i) The Sirte Decision (Assembly/AU/Dec.263 (XIII));
- ii) The Conclusions of the Summit on the Modalities of the Transformation of the African Union Commission into the AU Authority; and
- iii) Other relevant instruments.

16. He concluded his remarks by introducing the Consultants, adding that during internal consultations, it had been agreed that because of the sensitivity of the matter, the consultants would own their documents and would present them to the meeting as was the case in Tripoli. The consultants are :

1. Mr. Richard Nzerem, International legal Draftsman and currently Secretary of the Commonwealth Arbitral Tribunal ;
2. Mr. Rafaâ Ben Ashour, Associate Professor of Public Law and Political Science at the Faculty of Legal, Political and Social Sciences of the University of Tunis; and
3. Prof. Tiyanjana Maluwa, Professor of Law and Director of the School of International Affairs at the Dickson School of Law, Pennsylvania State University.

c. Draft Statute and Rules of the Authority of the African Union:

17. Presenting the draft Statutes and Rules of the African Union Authority, Mr. Richard Nzerem, Legal Consultant, indicated that the draft Statutes and Rules under consideration amend some provisions of the existing Statutes of the African Union Commission adopted in 2002 and amended in 2007 by the Assembly.

18. Also, the amendments made to the Statutes of the African Union Commission take into account the new functions and nomenclature of the African Union Authority, which have already been enshrined in the conclusions on the Modalities on the Transformation of the African Union Commission into the African Union Authority, adopted by the Executive Council and endorsed in Sirte in July 2009 by the Assembly.

19. The Consultant dwelt on some provisions of the draft Statutes and Rules of the Authority which amend the substance of the Statutes of the Commission, namely:

- i) areas of competence of the Authority (Article 3);
- ii) functions of the Authority (Article 5);
- iii) portfolio of the Authority (Article 14).

20. The Consultant emphasized the fact that the Authority will exercise its functions based on the principle of subsidiarity in view of the fact that the Union is a Union of

independent States. In this regard, he indicated that the main function of the Authority would be to coordinate the activities of the Union taking into account the mandate of the other stakeholders, and in particular the Member States and the Regional Economic Communities.

21. In conclusion, the Consultant observed that the draft Statutes and Rules of the African Union Authority will enter into force upon adoption by the Assembly as was the case for the current Statutes of the Commission.

22. At the end of the presentation, the meeting agreed to consider the draft instrument, Article by Article. The meeting also considered the title of the legal instrument and noted that in view of the fact that the rules were internal to the Authority and not submitted to the policy organ for adoption, there was need to amend the title of the legal instrument to Draft Statute by deleting references to Rules of procedure.

Consideration of Article 1: Definitions

23. In considering Article 1, delegations made the following observations and comments:

- i.) the need to list the terms in alphabetical order in linguistic versions ;
- ii.) the need to provide for a more precise definition of the term "Executive Council";
- iii.) the need to define " Authority's members" and "secretaries".

24. At the end of the deliberations, the meeting amended Article 1 as follows:

- i.) replace the term "Deputy-President" by the term "Vice-President" in conformity with the Sirte Conclusions;
- ii.) use the alphabetical order in the Definition section in each linguistic version of the text;
- iii.) retain the definition of "Executive Council" as is since it is the definition adopted in the Constitutive Act of the African Union;
- iv.) retain the definition of the "Authority's Members" as it is in line with the previous Statute of the Commission;
- v.) add the definition of the term "Secretaries" in line with the definition provided for in the Sirte Conclusions and the draft Protocol on the Amendments to the Constitutive Act of the African Union on the Transformation of the African Union Commission into the African Union Authority adopted at the Tripoli Meeting of Government Experts of April 2010.

Consideration of Article 2: Nature of the Authority

25. During consideration of Article 2, delegations made the following comments and observations :

- i.) The Authority is not only a Secretariat;
- ii.) The nature of the Authority has already been defined in the Sirte Conclusions and the draft Protocol on Amendments to the Constitutive Act of the African Union on the Transformation of the African Union Commission into the African Union Authority adopted at the Tripoli Meeting of Government Experts of April 2010;
- iii.) The intergovernmental nature of the Union and all its organs should be reflected in the Protocol on Amendments to the Constitutive Act so that it is not repeated in every single instrument.

26. At the end of the deliberations, the meeting amended Article 2 as reflected in the draft Statute.

Consideration of Article 3: Areas of Competence

27. During consideration of Article 3, delegations made the following comments and observations :

- i.) The principle of subsidiarity ought to be reflected in the text as decided in the Assembly Sirte Conclusions;
- ii.) On sub-paragraph (a), since the ultimate objective is eradication of poverty on the continent and not just poverty reduction, there is need to amend the sub paragraph accordingly;
- iii.) On sub-paragraph (c), the use of the term “etc” is not appropriate and should therefore be deleted or replaced by a rendition more appropriate in drafting;
- iv.) On sub-paragraph (d), the need to refer to climate change rather than global warming since global warming is only one aspect of the climate change issue. Other delegations felt that environment issues were more general and more appropriate;
- v.) On sub-paragraph (e), the need to include in the areas of competence of the Authority, the fight against malaria since the disease kills more people on the continent than even HIV/AIDS;
- vi.) Issues of social development, such as education should be included in the areas of competence of the Authority;

28. The issue of the scope of the mandate of the meeting given by the Assembly, vide its Decision Assembly/AU/Dec.263 (XIII) was raised. In this regard, clarification was sought since some delegations were of the view that the meeting was not mandated to make substantive changes to the legal instruments except for those areas that resulted from the decision on the transformation of the AU Commission into the AU Authority and therefore, previous decisions adopted by the policy organs should not be amended. However, other delegations observed that the Assembly in tasking the Commission to prepare the necessary legal instruments for the transformation implicitly gave the mandate to review the legal instruments with a view to making all the necessary amendments including, if deemed necessary, on issues previously decided upon by the policy organs.

29. The Legal Counsel, in providing clarification with regard to the mandate of the meeting, recalled the process that started with consideration of the issue of the establishment of a Union Government that was placed on the Agenda of the Assembly almost seven years ago and that led to the adoption of Decision Assembly/AU/Dec. 263 (XIII) on the transformation of the AU Commission into the AU Authority in Sirte, Great Libyan Arab Jamahiriya in July 2010. He indicated that the mandate given by the Assembly, vide Decision Assembly/AU/Dec.263 (XIII) was for the Commission to prepare the legal instruments related to the creation of the African Union (AU) Authority and amend accordingly the existing legal instruments. He, therefore, advised that the mandate of the meeting was limited to amending the existing instruments in line with the decisions adopted by the Policy Organs, which did not include a review of the existing texts.

30. At the end of the deliberations, the meeting agreed that its mandate was to amend the legal instruments to incorporate the creation of the AU Authority and not to undertake a general review of the texts. On this basis, was also agreed that the proposals for amendments would be reflected in the Report of the meeting. Accordingly, Article 3 was retained as is.

Consideration of Article 4: Composition

31. During consideration of Article 4, the meeting drew attention to the need, under sub-paragraph (b), to replace the term "Deputy President" with "Vice-President" in conformity with the Sirte Conclusions and everywhere else it appears in the draft Statute.

Consideration of Article 5: Functions

32. During consideration of Article 5, delegations made the following comments and observations :

- i.) Article 5 (2) (c) which relates to implementation of the decisions of the other organs of the Union and 5 (2) (g) which relates to coordination and monitoring of the implementation of decisions should be merged for more coherence as they relate to the same subject;

- ii.) Sub-paragraphs (c) and (g) should be separate since implementation of decisions could also be done by other organs such as the Pan African Parliament or the African Court on Human and Peoples' Rights;
- iii.) In sub-paragraph 5 (2) (fff), the need to refer to "coordination and protection" and not "management of Africa's economic zones and territorial waters" in conformity with the Sirte Conclusions.

33. At the end of the deliberations, the meeting amended Article 5 (2) (fff) as reflected in the draft Statute of the Authority.

Consideration of Article 6: Obligations

34. In considering Article 6, delegations made the following comments and observations :

- i.) Under paragraph 1, the term "actions" should be replaced with the term "act";
- ii.) Under paragraph 3, reference should be made to the Constitutive Act and the Staff Regulations and Rules as the members of the Authority and Staff derive their obligations therefrom;
- iii.) Under paragraphs 4 and 5, there is need to make a distinction between the members of the Commission who are the elected officials and the Staff.

35. At the end of the deliberations and after clarification by the Legal Counsel, the meeting amended Article 6 as reflected in the draft Statute of the Authority.

Consideration of Article 7: Headquarters of the Authority

36. The meeting adopted Article 7 without any amendment.

Consideration of Article 8: Election of Members of the Authority

37. The meeting adopted Article 11 with a minor amendment which is the replacement of the term "Deputy-President" with "Vice-President".

Consideration of Article 9 (new 10): The President

38. During consideration of this Article, some delegations proposed that Sub-paragraph (b) should refer to the Legal representative of the Authority and not the Union in conformity with sub-paragraph (a) and (c) for coherence purposes and in view of the fact that the Legal Representative of the Union is the Chairperson of the Union.

39. After a debate as the Legal Representative of the Union is the Chairperson of the Union or the Chairperson of the Commission, the Legal Counsel clarified that there has

to be a legal representative of the Union as a whole and that the statutes of the Commission had designated that person as the Chairperson of the Commission under the current arrangement.

40. At the end of the deliberations and after clarification provided by the Legal Counsel, the meeting decided to retain Article 9 as is.

Consideration of Article 10 (new 11): Functions of the President

41. During consideration of this Article, delegations made the following observations:

- i.) Paragraph (1) (r), correct the cross-reference to Article 21 instead of Article 18;
- ii.) Paragraph (1) (t) should be amended and the Chairperson of the Authority should prepare two (2) reports a year instead of one (1) report on the activities of the Union and its Organs since the Assembly meets twice a year.

42. At the end of its deliberations, the meeting amended Article 10 (new 11) as reflected in the draft Statute.

Consideration of Article 11: Deputy President

43. The meeting adopted Article 11 (new 12) with a minor amendment which is the replacement of the term “Deputy-President” with “Vice-President”.

Consideration of Article 12 (new 13): Term of Office and Termination of Office

44. The debate on Article 12 focused on the French version which appeared not to be in conformity with the English version with regard to paragraph 1. The meeting also decided that the placement of the articles be change into a more logical arrangement.

45. At the end of the deliberations, the meeting adopted Article 12 (new 13) as reflected in the draft Statute.

Consideration of Article 13 (new 14): The secretaries

46. The meeting adopted Article 13 (new14) without any amendment.

Consideration of Article 14 (new 15): Portfolios of the Authority

47. During consideration of Article 14 (new 15), delegations made the following observations :

- i.) In paragraph (1) (iii), the word management in the phrase “coordination of the management of common defence policies and strategies of the continent” should be deleted and replaced with the phrase “coordination of

common defence policies. Further, non-aggression cannot be combated, the placement of the term non-aggression should be changed;

- ii.) This article should reflect the wording of the Sirte Conclusions;
- iii.) In paragraph (1) (xi), there is need to add “coordination” to the phrase “protection of Africa’s economic zones and territorial waters” in line with the Sirte Conclusions;
- iv.) The transfer of some functions from one portfolio to another.
- v.) The need to add one more portfolio for coordination of defence policies.

48. The Legal Counsel clarified that the allocation of competences to the Secretaries was decided upon by the Assembly of Heads of State and Government as reflected in the Sirte Conclusions, and therefore, the meeting did not have a mandate to review the allocation of the Secretaries competences.

49. At the end of the deliberations, the meeting amended Article 14 (new 15) as reflected in the draft Statute.

Consideration of Article 15 (new 16): General Functions of the Secretaries

50. During consideration of Article 15, the debate focused on the relevance of the term “General” in the title which would suggest that the Secretaries have specific functions.

51. At the end of the deliberations, the meeting adopted Article 15 after deletion of the term “General”.

Consideration of Article 16 (new 17): Nomination of Secretaries

52. During consideration of Article 16, delegations made the following comments and observations:

- i.) the term nomination had been translated in some versions as “appointment”;
- ii.) The need to define the term “Region” in Article 1.

53. At the end of the deliberations, the meeting amended Article 16 as reflected in the draft Statute.

Consideration of Article 17 (new 18): Central Pre-election Process

54. The meeting amended Article 17 as reflected in the draft Statute of the Authority.

Consideration of Article 18 (now 16): Qualifications and Experience of the Secretaries

55. The meeting adopted Article 18 without any amendment.

Consideration of Article 19: Voting Procedure for Election of Secretaries

56. During consideration of Article 19, a delegation proposed that the order of the portfolios according to which elections are conducted should be drawn by lot at the beginning of each election.

57. At the end of the discussions, the meeting adopted Article 19 without any amendment.

Consideration of Article 20: Rules of Procedure

58. The meeting adopted Article 20 without any amendment. However, it was noted that in view of the fact that these rules were internal to the Authority and not submitted to the policy organs for adoption, there was need to change the title of the legal instrument accordingly.

Consideration of Article 21: Appointment of Staff of the Authority

59. During consideration of Article 21, it was observed that the Appointing Authority being the Chairperson of the Authority, there was need for an amendment in that respect. The meeting also agreed to delete the word "other" just before staff. Further, there was need for another amendment in view of the fact that recruitment of Staff is not done in consultation with the PRC.

60. The meeting amended Article 21 as reflected in the draft Statute.

Consideration of Article 22: Privileges and Immunities

61. During consideration of Article 22, delegations made the following comments and observations:

- i.) Need to indicate the dates of the Conventions mentioned in this article;
- ii.) Reference should not be made to the Conventions which have not entered into force and those that do not relate to privileges and immunities;
- iii.) The need to mention the privileges and immunities granted by the Conventions mentioned in this Article;

62. In providing clarification, the Consultant indicated that it was not necessary to add the dates of the said Conventions since their titles were mentioned, and the privileges and immunities are so numerous that it was impossible to list them all.

63. At the end of the deliberations and clarification provided by the Legal Counsel and the Consultant, the meeting adopted Article 22 without amendment.

Consideration of Article 23: Programme and Budget

64. During consideration of Article 23, delegations made the following comments and observations:

- i.) In paragraph (1), delete the phrase “*and shall submit it, through the PRC and the Executive Council, to the Assembly for consideration*” since the Authority should submit directly to the Assembly;
- ii.) The PRC and the Executive Council have to consider the budget before submission to the Assembly given the intergovernmental nature of the Union;
- iii.) The periodicity of the budget should be reviewed in view of the fact that the budget is annual and not every two years;
- iv.) The preparation of the budget should be in conformity with the Financial Rules and Regulations as well as the related relevant decisions of the Assembly;
- v.) The need to replace the terms “Programme and Budget” by the term “Programme Budget” in line with the existing rules;
- vi.) The need to clarify the establishment of the “Working Fund”.

65. At the end of the deliberations and after due clarification had been provided, the meeting amended Article 23 as reflected in the draft Statute.

Consideration of Article 24: Financial Resources

66. During consideration of Article 24, delegations made the following comments and observations:

- i.) The title should be amended to read financial statement or reporting since the content of the Article was not in line with the current title;
- ii.) The provisions of this Article should be in conformity with the Financial rules and Regulations;
- iii.) The Authority should submit the budget approved by the Assembly to Member States within one month of its adoption;

- iv.) Some were of the view that there was a technical problem since the financial year starts on 1 January and the budget is adopted end of January/February and therefore the period of adoption should be July. Others felt that the problem was with regard to implementation and Member States and the Authority should comply;
- v.) It is important that Member States be informed of their assessed contributions the year before the beginning of the financial year;
- vi.) In conformity with Decision EX.CL/Dec.527(XVI) adopted by 16th Ordinary Session of the Executive Council held in Addis Ababa, Ethiopia, from 25 to 29 January 2010, the AU Authority as is the case for the Commission should submit to Member States a quarterly report on the implementation of the budget;
- vii.) Financial experts from Member States should be involved in the consideration of the budget;

67. At the end of the deliberations, Article 24 was amended as reflected in the draft Statute. The meeting also recommended that financial experts from Member States' capitals should be involved in the budgetary process.

Consideration of Article 25: General Fund

68. During consideration of Article 25, clarification was sought as to the Reserve Fund and clarification was provided by the Acting Director of Finance.

69. The meeting adopted Article 25 without amendment.

Consideration of Article 26: Special Funds

70. The meeting adopted Article 26 without amendment.

Consideration of Article 27: Gifts and Other Donations

71. The meeting adopted Article 26 without amendment.

Consideration of Article 28: Deposit of Funds

72. The meeting amended Article 28 as reflected in the draft Statute.

Consideration of Article 29: Accounts and Auditing

73. The meeting adopted Article 29 without amendment.

Consideration of Article 30: Amendment

74. The meeting adopted Article 30 without amendment.

Consideration of Article 31: Entry into Force

75. During consideration of Article 32, delegations made the following observations and comments:

- i.) The Statute of the Authority should enter into force only after the entry into force of the Protocol on Amendment to the Constitutive Act on the transformation of the AU Commission into the AU Authority;
- ii.) The Statute of the Authority shall abrogate the previous legal instrument on the AU Commission;

76. The meeting agreed on the imperative need to amend Article 31 to indicate that the Statute of the Authority will only enter into force after the entry into force of the Protocol on Amendment to the Constitutive Act relating to the Transformation of the AU Commission into the AU Authority.

77. The meeting amended Article 31 as reflected in the draft Statute.

New Article 32: Final Provisions

78. The meeting agreed that there was need to include a new Article entitled final or transitional provisions.

VIII. ADOPTION OF REPORT AND THE DRAFT LEGAL INSTRUMENTS

79. Out of the ten (10) legal instruments that were on the Agenda, the meeting was able to consider only the draft Statute on the Authority and adopted the Report and the draft Statute on the Authority with amendments.

80. The Great Libyan Jamahiriya entered a reservation on the draft Statute of the Authority and the Report of the meeting.

IX. ANY OTHER BUSINESS

81. Some delegations raised the issue of the status of the Addis Ababa meeting which refers to PRC and government experts vis-à-vis the Tripoli meeting which was referred to as a meeting of government experts open to Members of the PRC. Other delegations felt that the Addis Ababa meeting was a continuation of the Tripoli meeting since Decision Assembly/AU/Dec. 263 (XIII) mandated the government experts to undertake this exercise and the latter was not in a position to complete its work in Tripoli.

82. At the end of the deliberations, the meeting agreed that in conformity with Decision Assembly/AU/Dec.263 (XIII), the Addis Ababa meeting was a continuation of the Tripoli meeting and that was therefore a government experts meeting which would finalise the consideration of the draft legal instruments and the PRC would make its observations before consideration by the Executive Council.

83. On the way forward, the meeting agreed that a factual progress report on the implementation of Decision Assembly/AU/Dec.263 (XIII) would be submitted to the meeting of the policy organs scheduled for Kampala, Uganda in July 2010 but the draft legal instruments adopted would be submitted to the Executive Council and the Assembly as a package after finalization of all the remaining instruments.

84. It was proposed that another meeting of government experts, if possible, be convened before the Kampala Summit to finalize consideration of the remaining legal instruments. However, other delegations argued that given the workload related to the preparations of the Kampala Summit, another meeting should be convened after the Kampala Summit. At the end of the deliberations, it was agreed that the follow up meeting be held after the Kampala Summit.

85. The Representative of South Africa reiterated the invitation of its government to the opening and closing sessions of the World Cup scheduled in South Africa on 11 June and 11 July.

86. In another context, the Legal Counsel informed the meeting that the Commission would be sending out a communication to all Member States on the issue of the crime of aggression that will be discussed during the Kampala Review Conference of the International Criminal Court (ICC) scheduled for May/June 2010.

IX. CLOSING CEREMONY

87. The Legal Counsel thanked the delegations and the members of the PRC for the work accomplished in view of the fact that the two most complex instruments were the draft Protocol on Amendments to the Constitutive Act and the draft Statute on the Authority which had now been more or less finalized at the two meetings. He indicated that the next legal instruments would not attract major difficulties and should not take as much time in view of the fact that most of the amendments to be made in accordance with the Sirte Conclusions have been captured in the Statutes of the Authority and all other amendments to the other legal instruments will only be of a consequential nature.

88. In her closing remarks, the Chairperson of the meeting, Hon. Justice (Dr.) Jane Ansah thanked the Government Experts, members of the PRC present, AU Commission officials and staff, Consultants and Interpreters without whom she would not have been able to successfully steer the meeting to a successful conclusion. She wished everyone a pleasant weekend and bade all participants farewell and safe journey back to their respective capitals.

**Assembly/AU/10(XVI)
Annex III**

**REPORT OF THE THIRD MEETING OF GOVERNMENT EXPERTS ON
THE LEGAL INSTRUMENTS ON THE TRANSFORMATION OF THE
AFRICAN UNION COMMISSION INTO THE
AFRICAN UNION AUTHORITY**

AFRICAN UNION
الاتحاد الأفريقي



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**Third Meeting of Government Experts
on the Legal Instruments on the Transformation
of the AU Commission into the AU Authority
22 November – 3 December 2010
Addis Ababa, Ethiopia**

**Exp/Legal/AUC-Auth./Rpt (III)
Original: English**

**REPORT OF THE
THIRD MEETING OF GOVERNMENT EXPERTS
ON THE LEGAL INSTRUMENTS ON THE TRANSFORMATION
OF THE AFRICAN UNION COMMISSION INTO THE AFRICAN UNION AUTHORITY**

**REPORT OF THE THIRD MEETING OF GOVERNMENT EXPERTS
ON THE LEGAL INSTRUMENTS ON THE TRANSFORMATION
OF THE AFRICAN UNION COMMISSION INTO THE AFRICAN UNION AUTHORITY**

I. INTRODUCTION

1. Pursuant to Decision Assembly/AU/Dec.263 (XIII) adopted in Sirte, Great Socialist People's Libyan Arab Jamahiriya on 3 July 2009, the First and Second Meetings of Government Experts to consider the Legal Instruments on the Transformation of the African Union Commission into the African Union Authority were held in Tripoli, Great Socialist People's Libyan Arab Jamahiriya and Addis Ababa, Ethiopia from 11 to 15 April 2010 and 17 to 21 May 2010, respectively. It will be recalled that out of the eleven (11) legal instruments that were on the agenda, the First and Second Meetings considered only (i) the Draft Additional Protocol on Amendments to the Constitutive Act of the African Union on the Transformation of the African Union Commission into the African Union Authority; and (ii) the Draft Statute of the Authority of the African Union.

2. Consequently, pursuant to Decision Assembly/AU/Dec.298 (XV) adopted in Kampala, Uganda in July 2010, the Assembly requested the Commission to convene another meeting of government experts to consider the remaining legal instruments. Pursuant to the said Decision, the Third Meeting was convened in Addis Ababa, Ethiopia from 22 November to 3 December 2010. The meeting was open to the Permanent Representatives of Member States to the African Union.

II. ATTENDANCE

3. The following Member States were in attendance:

Algeria, Angola, Benin, Burkina Faso, Botswana, Burundi, Cameroon, Chad, Congo, Côte d'Ivoire, Egypt, Eritrea, Ethiopia, The Gambia, Ghana, Lesotho, Libyan Arab Jamahiriya, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Nigeria, Sahrawi Arab Democratic Republic, Senegal, Sierra Leone, South Africa, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

III. ELECTION OF THE BUREAU

4. As agreed during the Second Meeting of Government Experts that took place in Addis Ababa, the meeting decided to retain the statutory Bureau of the Assembly as follows:

- Chair: Malawi
- 1st Vice Chair: Gabon
- 2nd Vice Chair: Uganda
- 3rd Vice Chair: Liberia
- Rapporteur: Great Libyan Arab Jamahiriya

IV. OPENING OF THE MEETING

Welcome Remarks by the Legal Counsel – Mr. Ben Kioko

5. In his opening remarks, the Legal Counsel on behalf of H.E. (Dr.) Jean Ping, Chairperson of the African Union (AU) Commission, welcomed all participants to the Third Meeting of Government Experts on the Transformation of the AU Commission into the AU Authority.

6. The Legal Counsel recalled that there were two (2) previous meetings that took place in Tripoli, Great Socialist People's Libyan Arab Jamahiriya and Addis Ababa, Ethiopia from 11 to 15 April 2010 and 17 to 21 May 2010, respectively, during which the Draft Additional Protocol on Amendments to the Constitutive Act of the African Union on the Transformation of the AU Commission into the AU Authority and the Draft Statute of the Authority of the African Union were examined and agreed upon. He drew the attention of the meeting to the agreement reached at the last meeting to revisit the inter-governmental nature of the Union into the draft Additional Protocol on Amendments to the Constitutive Act on the Transformation of the African Union Commission into the African Union Authority during the current meeting to include the principles of subsidiarity and to clarify the intergovernmental nature of the Authority. He then introduced the three consultants, namely:

1. Mr. Richard Nzerem, International legal Draftsman and currently Secretary of the Commonwealth Arbitral Tribunal and Lecturer at the Institute of Advance Legal Studies,
2. Prof. Rafâa Ben Ashour, Associate Professor of Public Law and Political Science at the Faculty of Legal, Political and Social Sciences of the University of Tunis; and
3. Prof. Tiyanjana Maluwa, Professor of Law and Director of the School of International Affairs at the Dickson School of Law, Pennsylvania State University.

7. In concluding, the Legal Counsel thanked all participants for their participation and wished the meeting successful deliberations.

Remarks by the Chairperson of Government Experts, Attorney General of the Republic of Malawi - Justice (Dr.) Jane Ansah

8. In her opening remarks, Justice Dr. Jane Ansah welcomed participants to Addis Ababa, Ethiopia and to the meeting which she stated was a crucial step towards the realization of the objectives of the Union. She underscored the fact that the meeting had an extensive agenda before it, bearing in mind the number of legal instruments to be considered and finalized. She stressed the need for the meeting to proceed expeditiously and to keep to the time allotted.

9. In concluding, she indicated that she was confident that the meeting would be able to complete its work in the same spirit that guided the previous meetings.

V. CONSIDERATION AND ADOPTION OF THE DRAFT AGENDA

10. Presenting the agenda items, the Legal Counsel indicated that agenda items V and VI on the Draft Protocol on Amendments to the Protocol to the Treaty establishing the African Economic Community relating to the Pan-African Parliament (PAP) and the Draft Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human and Peoples' Rights, respectively, were currently undergoing two processes. One was within the context of the Transformation process, while the other was based on various Assembly decisions on the review of the PAP Protocol and on the expansion of the jurisdiction of the Court to try international crimes, respectively.

11. He further stated that the Permanent Representatives Committee (PRC) had requested that before the Draft Protocol on amendments to the Protocol to the Treaty establishing the African Economic Community Relating to the Pan-African Parliament is presented to the Government Experts, it should first be briefed and consulted on the conclusions of the validation workshops that validated the text.

12. He also stated that the Draft Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human and Peoples' Rights was being processed in all working languages and would be considered during this meeting.

13. The Legal Counsel also proposed the inclusion of two pending issues in the Draft Additional Protocol on Amendments to the Constitutive Act of the African Union on the Transformation of the AU Commission into the AU Authority as decided during the last meeting in May 2010:

- ✓ Intergovernmental nature of the Authority; and
- ✓ The principle of subsidiarity.

14. The meeting adopted the agenda as amended as follows:

- X. Opening Ceremony
- XI. Election of the Bureau
- XII. Consideration and Adoption of the Draft Agenda
- XIII. Organization of Work
- XIV. Presentation and Consideration of the Draft Legal Instruments:
 - i) Draft Rules of Procedure of the Assembly of the African Union;
 - ii) Draft Rules of Procedure of the Executive Council;
 - iii) Draft Rules of Procedure of the Permanent Representatives' Committee;
 - iv) Draft Additional Protocol on Amendments to the Protocol relating to the establishment of the Peace and Security Council of the African Union;
 - v) Draft Protocol on Amendments to the Protocol to the Treaty establishing the African Economic Community Relating to the Pan-African Parliament;
 - vi) Draft Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human and Peoples' Rights;
 - vii) Draft Protocol on amendments to the Protocol on the African Investment Bank;
 - viii) Draft Statute of the Economic, Social and Cultural Council of the African Union;
 - ix) Draft Statute of the African Union Commission on international Law.
- XV. Adoption of the Report and the draft legal instruments
- XVI. Any Other Business
- XVII. Closing Ceremony

VI. ORGANISATION OF WORK

- 15. The meeting adopted the following working hours:
 - Morning: 09h00 – 13h00
 - Afternoon: 14h30 – 18h00

VII. PRESENTATION AND CONSIDERATION OF THE DRAFT LEGAL INSTRUMENTS

a) Presentation and Consideration of the Draft Amended Rules of Procedure of the Assembly of the African Union

16. In his presentation, the consultant indicated that the Draft Rules of Procedure of the Assembly amended certain provisions of the existing Rules. He further stated that the amendments introduced took into account the will to accelerate the Continent's economic and political integration and the attainment of the ultimate objective of United States of Africa.

17. At the end of the presentation, one delegation suggested that the draft instrument be examined Article by Article, including those articles for which proposals for amendment had not been made.

18. The Legal Counsel recalled that the mandate given to the Commission by the Assembly in Decision Assembly/AU/Dec.263(XIII) was to enable it to prepare the legal instruments on the establishment of the Authority and thus amending the existing legal instruments. He also recalled the decisions of the two previous meetings to that effect.

19. Following this explanation, the meeting decided to consider only the Articles which had been amended.

Consideration of the title: Draft Amended Rules of Procedure of the Assembly of the Union

20. The meeting adopted the title "Draft Amended Rules of Procedure of the Assembly of the Union" to reflect the fact that the Rules are being amended. The meeting also decided that the Rules of Procedure of the Executive Council and the Permanent Representatives' Committee should also be amended accordingly.

Consideration of Article 1: Definitions

21. During consideration of Article 1, the delegations made the following observations and comments:

- i) The definition of the terms "Chairperson of the Assembly" and "Chairperson of the Authority" posed some difficulties in some of the working languages. Moreover, in the English version and wherever the expression occurs in the document, "Deputy President" should be replaced with "Vice- President";
- ii) In the view of other delegations, the Executive Council must be composed of only Ministers of Foreign Affairs and that, therefore, it should clearly be indicated that the Executive Council shall be composed of Ministers of

Foreign Affairs. However, for other delegations, their opinion was that the definition in the Constitutive Act should be retained;

- iii) Most delegations held the view that, since the Authority was not only a Secretariat but had other functions as defined in the Sirte Conclusions and the Draft Statute of the Authority; the reference to Secretariat should be deleted in the definition. Other delegations expressed the view that this very important function should be maintained in the definition.

22. The Legal Counsel pointed out that the proposal on the composition of the Executive Council was as stipulated in Article 1 (Definitions) and Article 10 (The Executive Council) of the Constitutive Act. He emphasized that it was important not to change this definition because the consensus arrived at during the adoption of the Constitutive Act was that the Executive Council should be composed of Ministers of Foreign Affairs or such other Ministers or Authorities as are designated by Member States. Further, as regards the retention or otherwise of the function of Secretariat, the Legal Counsel indicated that it was already provided for in the Sirte Conclusions and in the Draft Statute of the Authority as just one of the functions of the Authority, and thus it was not necessary to single out this function .

23. After deliberations, the meeting amended and adopted Article 1 as contained in the amended Rules of Procedure.

Consideration of Article 4: Powers and Functions

24. The meeting amended and adopted Article 4 as reflected in the amended Rules of Procedure to indicate that the establishment of a United States of Africa was an “ultimate” objective of the Union.

Consideration of Article 8: Agenda of Ordinary Sessions

25. The meeting amended and adopted Article 8 as reflected in the amended Rules of Procedure to spell out the agenda items that fell under Part A and those that fell under Part B.

Consideration of Article 10: Opening and Closing Ceremonies

26. The meeting adopted Article 10 without amendment.

Consideration of Article 11: Extraordinary Sessions

27. The meeting adopted Article 11 without amendment.

Consideration of Article 12: Agenda of Extraordinary Sessions

28. The meeting adopted Article 12 without amendment.

Consideration of Article 14: Working Languages

29. The meeting amended and adopted Article 14 as reflected in the amended Rules of Procedure to take into account the difference between the official languages and the working languages of the Union.

Consideration of Article 15: Election of the Chairperson

30. During the consideration of Article 15, one delegation proposed that the rapid march by the African Union towards the realization of the United States of Africa dictates that the institution of the Chairperson of the Assembly should have a status and mandate commensurate with the developments within the various organs of the Union. The same delegation proposed that the ideal status would be to have a full time Chairperson of the Assembly whose term of office will not be limited to one year and that the term of office should be renewable several times in accordance with the exigencies of the duties and responsibilities entrusted to the Chairperson during his tenure. The delegation noted that the current terms of reference and mandate of the Chairperson, most of which are ceremonial and formal, should be expanded and developed to become more substantive in nature, thereby enabling the Chairperson to oversee all organs and institutions of the Union and monitor the implementation of the decisions of the Assembly as well as exercise the powers of the Assembly during the interval between Sessions. Furthermore, the delegation noted that expanding the mandate of the Chairperson as suggested herein is dictated by objective circumstances, among which, are the developments taking place within the AU structure itself.

31. Most of the other delegations, however, took note of these proposals and expressed the view that the said proposals were substantive issues which went beyond the mandate of the meeting, and therefore could not be considered.

32. The Legal Counsel pointed out that the proposals exceeded the mandate of the meeting and, hence should be submitted to the deliberative organs for consideration if deemed necessary. However, the Legal Counsel recalled that the said proposals had already been discussed by the Assembly which had decided to maintain the *status quo*.

33. Following the above clarifications, the meeting took note of the proposals and decided that they should be included in the report of the meeting.

Consideration of Article 16: Functions of the Chairperson

34. The meeting adopted Article 16 without amendment.

Consideration of Article 17: Attendance and Participation

35. The meeting adopted Article 17 without amendment.

Consideration of Article 19: Decisions

36. The meeting adopted Article 19 without amendment.

Consideration of Article 32: Authentication of Decisions

37. The meeting adopted Article 32 without amendment.

Consideration of Article 33: Categorization of Decisions

38. The meeting adopted Article 33 without amendment.

Consideration of Article 35: Sanctions for Arrears

39. The meeting adopted Article 35 without amendment.

Consideration of Article 37: Sanctions for Unconstitutional Changes of Government

40. The meeting adopted Article 37 without amendment.

Consideration of Article 38: Election of the Chairperson and Deputy Chairperson

41. The meeting amended the English version of Article 38 as indicated in the amended Rules of Procedure to take into account the change from “Deputy President” to “Vice-President”.

Consideration of Article 39: Secretaries

42. The meeting adopted Article 39 without amendment.

Consideration of Article 40: Term of office

43. The meeting adopted Article 40 without amendment.

Consideration of Article 41: Termination of Appointment

44. The meeting adopted Article 41 without amendment.

Consideration of Article 42 : Voting Procedure for Election of Members of the Authority

45. The meeting adopted Article 42 without amendment.

Consideration of Article 43: Implementation

46. During consideration of this Article, delegations made the following comments and observations:

- i) The need to include in the definitions the term “Summits”;
- ii) The problems encountered during organization of Special Summits can be resolved in other texts;
- iii) The provision did not provide enough clarification.

47. The Legal Counsel indicated that the proposed amendment was to resolve difficulties encountered when certain Special Summits were held outside the Headquarters, including *inter alia* Chairmanship of the Summit and the related expenses, given the fact that there are no provisions on this issue.

48. At the end of the debate, the meeting decided to delete paragraph 2 of Article 43 given the fact that the issues raised had been resolved by the decisions of the policy organs.

Consideration of Article 44: Savings Clause

49. The meeting amended and adopted Article 44 as reflected in the amended Rules of Procedure in view of the fact that the Savings clause should only the decisions of the Organization of African Unity (OAU).

Consideration of Article 46: Entry into Force

50. During the consideration of Article 46, the meeting decided to amend it in order to take into account the fact that the amended Rules of Procedure will enter into force only after the entry into force of the Additional Protocol amending the Constitutive Act and the adoption of the amended Rules of Procedure by the Assembly.

b) Presentation and Consideration of the Draft Amended Rules of Procedure of the Executive Council

51. Presenting the draft amended Rules of Procedure of the Executive Council, the Consultant indicated that there were no substantive changes and that most of the amendments that were made, derived from the decisions already taken in relation to the proposed amendments to the Constitutive Act and the draft Statute of the Authority.

52. In addition, the Legal Counsel informed the meeting that the definitions of the “President of the Authority” and “Secretaries” were omitted and would be included in the document.

Consideration of Rule 1: Definitions

53. During the consideration of Rule 1, one delegation proposed that given the fact that the Executive Council is composed of Ministers of Foreign Affairs of the Member States, it is imperative to rename it “the Executive Council for Foreign Policy” or “Council of Ministers of Foreign Affairs” which shall be responsible for all matters relating to Foreign Policy of the African Union and its relationship with similar regional groupings, unions and blocks as well as international and regional organizations. The same delegation proposed that the Council must have a full time Chairperson who should represent the African Union on Foreign Relations and shall be known as “Coordinator of Foreign Policy” or be given any other appropriate name. The delegation noted that by the appointment of a full time Chairperson of the Council, the current practice whereby the Minister of Foreign Affairs of the Member State chairing the Union becomes the Chairperson of the Council whose functions is part time and he/she has other duties and pre-occupations at the national level, shall cease. The delegation emphasized that this position was not a country position as it was adopted by twenty eight (28) African States, Members of CEN-SAD through a binding decision on the issue during their recent Summit held in N’djamena, Chad last July 2010. The same delegation proposed that after the establishment of the African Union Authority, the Executive Council should devote its time exclusively to Foreign policy and shall therefore be an Executive Council for Foreign Policy. Its other competencies relating to areas such as Economic, Social, energy, Environment, Health, Culture, education, Scientific Research and others will be taken over by Secretaries of sectors in the structure of the Authority.

54. The meeting took note of the observations made by the delegation on the nature of the Authority and decided that the proposals thereon could not be taken into account as they were outside the mandate of the meeting.

55. At the end of the deliberations, the meeting agreed that the definitions should be arranged in an alphabetical order as already agreed upon during consideration of previous draft instruments. It then adopted Rule 1 as reflected in the amended Rules of Procedure of the Executive Council.

Consideration of Rule 5: Powers and Functions

56. During the consideration of Rule 5, it was observed that sub- Article 1 (f) refers to the elections of the members of the African Commission on Human and Peoples’ Rights and the African Committee of Experts on the Rights and Welfare of the Child while omitting other bodies like the Advisory Board on Corruption, the African Court of Justice and Human and Peoples’ Rights, and the African Union Commission on International Law.

57. At the end of the deliberations, the meeting amended Rule 5 as reflected in the draft amended Rules of Procedure.

Consideration of Rules 6: Sessions: Venue

58. The meeting adopted Rule 6 without any amendment.

Consideration of Rule 8: Ordinary Sessions

59. During the consideration of this Rule, the following observations were made:

i.) The budget of the Union is adopted annually and not on a biennium basis;

ii.) There is inconsistency on the number of ordinary sessions per year for the Executive Council and the Assembly in that for the Executive Council there are two (2) sessions while for the Assembly it is at least one (1).

60. The Legal Counsel observed that Rule 8 (1) may be amended to reflect the fact that the budget of the Union is adopted annually as per the current practice. He also provided clarification on the number of ordinary sessions for the Executive Council and the Assembly.

61. At the end of the deliberations, the meeting adopted Rule 8 as reflected in the amended Rules of Procedure.

Consideration of Rule 9: Agenda of Ordinary Sessions

62. The meeting adopted Rule 9 without any amendment.

Consideration of Rule 11: Opening and Closing Ceremonies

63. The meeting adopted Rule 11 without any amendment.

Consideration of Rule 12: Extraordinary Sessions

64. The meeting adopted Rule 12 without any amendment.

Consideration of Rule 13: Agenda of Extraordinary Sessions

65. The meeting adopted Rule 13 without any amendment.

Consideration of Rule 15: Working Languages

66. The meeting adopted Rule 15 as reflected in the amended Rules of Procedure after taking into account the amendments already agreed upon in relation to the draft amended Rules of Procedure of the Assembly.

Consideration of Rule 16: Chairperson

67. During the consideration of Rule 16, delegations made the following comments and observations:

- i.) There was an omission and the Rule should also include “Head of Government” in addition to “Head of State”;
- ii.) The Rapporteur is one of the four (4) Vice Presidents and Rule 16 (1) should be amended to reflect that the Bureau will appoint the Rapporteur from among its members.

68. At the end of the deliberations, the meeting adopted Rule 16 as reflected in the draft amended Rules.

Consideration of Rule 18: Attendance and Participation

69. The meeting adopted Rule 18 without any amendment.

Consideration of Rule 20: Decisions

70. The meeting adopted Rule 20 without any amendment.

Consideration of Rule 33: Authentication of Decisions

71. The meeting adopted Rule 33 without any amendment.

Consideration of Rule 34: Categorisation of Decisions

72. The meeting adopted Rule 34 without any amendment.

Consideration of Rule 37: Secretaries

73. During the consideration of Rule 37, clarification was sought on why gender representation was omitted as a criterion for electing Secretaries.

74. In responding, the Legal Counsel informed the meeting that the Rule provided for the modalities of electing Secretaries and that the detailed provisions were provided for in the Draft Statute of the Authority.

75. At the end of the deliberations, the meeting adopted Rule 37 without any amendments.

Consideration of Rule 38: Voting Procedure

76. The adopted Rule 38 without any amendments.

Consideration of Rule 41: Saving Clause

77. The meeting decided to amend Rule 41 as reflected in the draft Rules in light of the agreement reached on Rule 44 of the Draft Amended Rules of Procedure of the Assembly that provides for decisions taken by the Union to be adopted in conformity with the provisions of the Constitutive Act.

Consideration of Rule 43: Entry Into Force

78. The Article was amended accordingly to reflect the amendments made on the Rule relating to the entry into force of the Draft Amended Rules of Procedure of the Assembly

c) Consideration of the Draft Rules of Procedure of the Permanent Representatives' Committee (PRC)

79. In presenting the Draft Rules of Procedure of the Permanent Representatives Committee (PRC), the consultant indicated that there were no substantial amendments to the document. He added that the amendments were introduced in order to harmonize this legal instrument with the Draft Amended Rules of Procedure of the Assembly and those of the Executive Council as well as with the Draft Statute of the African Union Authority.

80. In conclusion, the consultant observed that the only substantial amendment related to Article 26 to the effect that the relevant provisions of the Draft Amended Rules of Procedure of the Permanent Representative Committee would also apply to meetings of the Senior Officials from Member States organized under the auspices of the Union, emphasizing that this would fill the gaps in the Rules of Procedure governing such meetings.

81. At the end of the presentation, one delegation indicated that with the establishment of the Authority, the PRC would no longer be relevant and that the meeting should take the bold decision of recommending its dissolution it because the duties of the Authority and the rest of the organs are akin to those of the PRC.

82. In his response to the intervention made on the issue of the abolition of the PRC, the Legal Counsel explained that the Sirte Conclusions clearly state that the transformation of the Commission into the Authority should take place within the framework of the existing structure of the African Union. He added that the mandate of the meeting included the preparation of the Draft Amended Rules of Procedure of the Permanent Representative Committee. He concluded on the matter by stressing that in addition to the fact that the meeting did not have the mandate to consider this issue, the

Assembly had in the past already considered the proposal made with regard to the PRC and had decided that it should be retained as one of the organs of the Union.

83. At the end of the debate, the meeting decided to include the proposal in the report.

Consideration of Article 1: Definitions

84. During the consideration of Article 1, it was pointed out that there was need to harmonize the definition of the Authority with the definition contained in the Draft Statute of the Authority and the Draft amended Rules of Procedure of the Assembly and the Executive Council.

85. The meeting adopted Article 1 as reflected in the Draft amended Rules of Procedure of the PRC

Consideration of Article 4: Powers and Functions

86. The meeting adopted Article 4 without any amendment.

Consideration of Article 7: Agenda of Ordinary Sessions

87. The meeting adopted Article 7 without any amendment.

Consideration of Article 10: Working Languages

88. The meeting adopted Article 10 as reflected in the Draft amended Rules of Procedure of the PRC in order to harmonize it with the Draft amended Rules of Procedure of the Assembly and those of the Executive council.

Consideration of Article 11: Chairperson

89. The meeting adopted Article 11 without any amendment.

Consideration of Article 26: Final Provisions

90. In considering Article 26, delegations made the following comments and observations:

- i.) There was no relation between the content of the Article and the legal framework under consideration;
- ii.) There was no need for this provision since the organization of the work of the Permanent Representatives Committee and those of meetings of the Senior Officials from Member States are harmonized;

91. At the end of the deliberations, the meeting agreed to delete the proposed Article 26 which resulted in the renumbering of Articles 27, 28, 29 and 30 as Articles 26, 27, 28 and 29.

Consideration of Rule 29: Entry Into Force

92. The Rule was amended accordingly to reflect the amendments made on the Rule relating to the entry into force of the Draft Amended Rules of Procedure of the Assembly

d) Consideration and Adoption of the Draft Additional Protocol on Amendments to the Protocol Relating to the Establishment of the Peace and Security Council of the African Union

93. Presenting the Draft Additional Protocol on Amendments to the Protocol Relating to the Establishment of the Peace and Security Council of the African Union (PSC), the consultant drew the attention of the meeting particularly to Article 8 on the African Defence Committee.

94. After the presentation, some delegations made the following comments and observations:

- i) The Preamble should be amended given the fact that only States Parties to the Protocol Relating to the Establishment of the Peace and Security Council of the African Union may ratify or adhere to the Protocol amending the existing Protocol;
- ii) Paragraph (b) of Article 2 and Article 8 of the African Defence Committee should be deleted, as the amendment exceeds the mandate of the meeting;
- iii) The geographical distribution of the seats of the PSC was adopted in 2004 as a provisional measure and should be reviewed to ensure equitable distribution of the Peace and Security Council seats among the various regions of the Continent in accordance with Article 5 (2) of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union;
- iv) One delegation underscored the importance of the role of the Peace and Security Council not only for the stability of the continent but also for its socio-economic development; and hence the need to broaden and strengthen its powers. The same delegation also suggested that the PSC should address all conflicts between African States and that the United Nations Security Council should intervene only in conflicts between African States and non African States.

95. The Legal Counsel pointed out that the proposals regarding a new distribution of PSC seats, its enlargement and new powers exceeded the mandate of the meeting and that the said proposals should be considered by the policy organs where necessary. He further stated that the proposals aimed at requesting the PSC, rather than the United Nations to first address all conflicts between African States, would be in contradiction with Africa's commitments vis-a-vis the United Nations which has the primary responsibility for the maintenance of international peace and security in the world in accordance with its Charter. The proposal could also deprive Africa of the United Nations' technical and financial support towards the maintenance of peace and security in Africa.

96. The meeting decided to reflect the proposals and its decision on the matter in the Report.

Consideration of the Title: Draft Additional Protocol on Amendments to the Protocol Relating to the Establishment of the Peace and Security Council of the African Union

97. One delegation introduced an amendment to the title of the Protocol to read as follows: "Draft Protocol on Amendments to the Protocol Relating to the Establishment of the Peace and Security Council of the African Union".

98. The meeting agreed to delete the word "Additional" from the title and adopted the title as amended and reflected in the Draft Protocol.

Consideration of the Preamble:

99. The meeting amended the preamble in the Draft Protocol to take on board the fact that only States Parties to the Protocol establishing the Peace and Security Council may ratify or adhere to the amended Protocol. The meeting deleted three paragraphs as reflected in the Draft protocol.

Consideration of Article 1: Definitions

100. During consideration of Article 1, a proposal was made that since the definitions would be additional to those already reflected in the existing Protocol, the new definitions should feature therein.

101. The meeting adopted Article 1 as amended and reflected in the Draft Protocol.

Consideration of Article 2: Establishment, Nature and Structure

102. The meeting adopted Article 2 as amended and reflected in the Draft Protocol to take into account the fact that the amendment would exceed the mandate of the meeting.

Consideration of Article 3: Objectives

103. The meeting adopted Article 3 as amended and reflected in the Draft Protocol to include the word “ultimate” before objective of establishing the United States of Africa is the socio-economic integration of the Continent.

Consideration of Article 4: Functions

104. The meeting adopted Article 4 as amended and reflected because the organs provided for are “the competent organs” and not “the relevant organs”.

Consideration of Article 5: Powers

105. The meeting adopted Article 5 without amendment.

Consideration of Article 6: Procedures

106. The meeting decided on the Deletion of this Article which resulted in a new numbering of subsequent articles.

Consideration of former Article 8: The African Defence Committee

107. The meeting decided to delete Article 8 because the amendments were substantive and exceeded the mandate of the meeting.

Consideration of former Article 9 (new Article 7): Signature, Ratification and Accession

108. The meeting noted that the Draft Amended Protocol could only enter into force only upon the entry into force of the Additional Protocol amending the Constitutive Act and that this would be reflected in the Article relating to Entry into Force. The meeting adopted Article 9 (new Article 7) as amended and reflected in the Draft Protocol.

Consideration of former Article 10 (new Article 8): Depository

109. The meeting adopted Article 8 as amended and reflected in the Draft Protocol.

Consideration of former Article 11 (new Article 9): Entry into Force

110. During consideration of Article 11 (new Article 9), some delegations pointed out that the provisions of paragraph 6 of Article 22 of the current Protocol which refers to Article 32 of the Constitutive Act of the African Union providing for 2/3 majority of Member States for the entry into force of amendments, should be mentioned. Others were of the view that the present Protocol should enter into force after its ratification by a simple majority of Member States as is the case for the current Protocol. One

delegation indicated that in Article 9 (2) the term “subsequently” should be understood to mean “after the entry into force” of the Protocol in accordance with the provisions of Article 9 (1).

111. In this connection, the Legal Counsel indicated that in accordance with the practice, the entry into force of the protocol on amendments should require the same majority as indicated in the legal instrument being amended, that is the simple majority of Member States.

112. At the end of the discussions, the meeting decided that the draft Protocol on Amendments shall enter into force after its ratification by two-thirds majority of the States Parties to the existing PSC Protocol since non State Parties could not ratify amendments to a protocol there were not party to¹.

b) Consideration and Adoption of the Draft Protocol on Amendments to the Protocol on the African Investment Bank

113. Presenting the draft Protocol on Amendment to the Protocol on the African Investment Bank, the consultant drew the attention of the meeting to the fact that the amendments made to the instrument were not substantive and only consequential.

Consideration of the Preamble

114. The meeting adopted the preamble as reflected in the draft Protocol.

Consideration of Article 1: Definitions

115. During the consideration of Article 1, delegations made the following observations:

- i.) The definitions should be arranged in an alphabetical order as agreed upon with previous draft instruments;
- ii.) It was not necessary to use the word “Additional Protocol” or define it because there is no other protocol amending the Protocol on the African Investment Bank.

Consideration of Article 2: General Provisions

116. The meeting adopted Article 2 without any amendment.

Consideration of Article 3: Amendments to the Statute of the African Investment Bank

117. The meeting adopted Article 3 without any amendment.

¹ Lesotho registered reservation in relation to the use of the words “State Parties” instead of “Member States”

Consideration of Article 4: Signature, Ratification and Accession

118. The meeting adopted Article 4 without any amendment.

Consideration of Article 5: Depository

119. During the consideration of Article 5, it was observed that Article 5 (2) should be redrafted and consideration should be given to the language that was used in the draft Protocol amending the Protocol relating to the establishment of the Peace and Security Council.

120. The meeting adopted Article 5 as reflected in the draft Protocol.

Consideration of Article 6: Entry into Force

121. The meeting adopted Article 6 as reflected in the draft Protocol to take into account the fact that the provisions on entry into force in Article 6 (2) was in respect of the State Party that would adhere to the Protocol subsequently.

122. The meeting requested the Legal Counsel to consider what amendments would be necessary on the Statute of the African Investment Bank which is annexed to the Protocol

c) Consideration of the Draft amended Statute of ECOSOCC

123. Presenting the Draft Amended Statute, the Consultant informed the meeting that the amendments that had been introduced were only consequential arising from the decision to transform the AU Commission to AU Authority.

Consideration of the Title:

124. The question of changing the title to reflect the review of the Statute was discussed. After a brief intervention by the Legal Counsel, the meeting decided that the final title will be determined during adoption of the Statute. It was however decided to retain the term "Statute" in singular.

Consideration of the Preamble

125. During the consideration of the Preamble, it was decided to insert "Economic, Social and Cultural Council of the African Union" before the abbreviation "ECOSOCC". Thereafter the meeting adopted the Preamble with this amendment.

Consideration of Article 1: Definitions

126. During the consideration of Article 1, the following proposals were put forward:

- i) Delete “Secretariat of the African Union” from the definition of the Authority;
- ii) Make reference to the Executive Council Decision defining the concept of “African Diaspora” in the definition of this term;
- iii) Delete the definition of the terms that have not been used in the text of the Draft Amended Statute;

127. The meeting adopted Article 1 as amended and reflected in Article 1 of the Draft Amended Statute.

Consideration of Article 2: Objectives

128. The meeting adopted Article 2 as amended and reflected in the Draft amended Statute taking on board the fact that the establishment of the United States of Africa is the “ultimate” objective of the Union.

Consideration of Article 4: Membership

129. The meeting adopted Article 4 as amended.

Consideration of Article 5: Election of Members

130. The meeting adopted Article 5 as reflected in the Draft amended Statute..

Consideration of Article 7: Functions

131. The meeting adopted Article 7 as amended and reflected in the Draft amended Statute taking to account the fact that the establishment of the United States of Africa is the “ultimate” objective of the Union.

Consideration of Article 9: General Assembly

132. The meeting adopted Article 9 without amendment.

Consideration of Article 10: The Standing Committee

133. The meeting adopted Article 10 as reflected in the Draft amended Statute.

Consideration of Article 11: Sectoral Cluster Committees

134. The meeting adopted Article 11 as reflected in the Draft amended Statute.

Consideration of Article 12: The Credentials Committee

135. The meeting adopted Article 12 after deletion of “Special Interests Groups” which already features in Article 1 on Definitions.

Consideration of Article 13: Budget

136. The meeting adopted the Article with amendments in paragraph 2 as reflected in the Draft Amended Statute.

Consideration of Article 14: Secretariat

137. The meeting adopted Article 14 without amendment.

Consideration of Article 15: Quorum

138. The Meeting adopted Article 15 as amended and as reflected in the Draft Amended Statute to take into account that a simple majority is required for all Organs of ECOSOCC.

Consideration of Article 16: Voting (changed to Decision Making)

139. In considering Article 16, the meeting agreed that Article 16 should be maintained but broken down into paragraphs, with a paragraph for each of the three concepts. With this amendment Article 16 was adopted as indicated in the draft Amended Statute.

Consideration of Article 18: Working Languages

140. The Consultant proposed that Article 18 be amended to read: “The official and working languages of ECOSOCC shall be those of the Union”.

141. He explained that the proposed amendment appears in the Protocol to the Constitutive Act adopted in 2003. Some delegations were of the view that provisions from an instrument that has not yet entered into force should not be used.

142. After the deliberations, there was consensus on the amendment and Article 18 was adopted as amended and reflected in the draft Amended Statute.

Consideration of Articles 19 : Entry into Force

143. During the consideration of Article 19 the following comments and observations were made.

- i.) One delegation proposed the following amendment:
 - a. *'This Statute shall enter into force upon adoption by the Assembly and after the entry into force of the Additional Protocol on Amendments to the Constitutive Act'*;
- ii.) Some delegations proposed rephrasing to avoid repetition of the word entry into force, while others were of the view that there was no need for any amendment;
- iii.) The observation in paragraph 143 (1) above was a precedent that has already been adopted in the Draft Statute of the Authority;
- iv.) The singular should be used with regard to the document';
- v.) Some delegations sought clarification on the chronology of the adoption of the various legal instruments.

144. The Legal Counsel explained that the Additional Protocol on amendments to the Constitutive Act would have to enter into force first before the Statutes on the Authority could come into force. Only thereafter would the other legal instruments as amended enter into force. In order to address the issue, he proposed two (2) options:

- i.) Adopt the proposal on the entry into force of the draft Statute after entry into force of the Additional Protocol on Amendments to the Constitutive Act and accordingly insert a provision stipulating that "this Statute shall enter into force after the entry into force of the Additional Protocol on Amendments to the Constitutive Act and the Statute of the Authority"; or
- ii.) To include a recommendation in the report to the Assembly to the effect that the Additional Protocol on amendments to the Constitutive Act and the Statute on the Authority of the African Union should first be adopted since the other documents cannot come into force before the adoption of these two documents.

145. The Legal Counsel recommended that the provisions in Article 31 of the Draft Statute of the Authority be reflected in all the legal instruments under consideration as well as in the Report.

146. In addition, the Consultant also explained that the amendments to the other legal instruments will only come into force after the AU Commission has been transformed into the AU Authority.

147. At the end of the debate, Article 19 was adopted by adding a provision that entry into force would be after the AU Commission has been transformed into an Authority.

Consideration of Article 20: Amendments

148. The meeting adopted Article 20 with an editorial amendment since it was agreed that the singular should be used.

149. The Legal Counsel informed the meeting that the paragraph on 'Transitional Arrangements' and 'draft decision' had been deleted since there were no longer relevant. It was noted that the said provision had already been deleted in the Arabic, French and Portuguese texts. One delegation recommended that in future the Commission should ensure that the documents are harmonized in all the languages to facilitate the work of the meeting.

d) Consideration and Adoption of the Draft Amended Statute of the African Union Commission on International Law

150. The Consultant presented the Draft Legal Instrument, pointing out in particular that the changes introduced were only in respect of its form. He also pointed out that Article 20 on the Official Languages and Article 27 on Entry into Force should be aligned with the articles of the other texts that have been considered, relating to the same issues.

Consideration of the Title

151. The meeting decided that the Title of this document should be "Draft Amended Statute of the African Union Commission on International Law".

Consideration of the Preamble

152. The meeting adopted the Preamble without amendment.

Consideration of Article 1: Definitions

153. The meeting adopted Article 1 and aligned it with the definitions as retained for the other legal instruments.

Consideration of Article 5: Progressive Development of International Law

154. The meeting adopted Article 5 without amendment.

Consideration of Article 6: Codification of International Law

155. The meeting adopted Article 6 without amendment.

Consideration of Article 10: Candidatures

156. The meeting adopted Article 10 as reflected in the Draft amended Statute.

Consideration of Article 13: Resignation, Suspension and Removal from Office

157. The meeting adopted Article 13 without amendment.

Consideration of Article 14: Vacancies

158. During the consideration of this Article, it was proposed that the Article should take on board the case of vacancy of posts due to permanent incapacitation.

159. The Legal Counsel informed the meeting that the issue was also raised during the adoption of the Statute. He recalled that during the discussions, the delegates took note of the technicalities involved to determine whether a member is incapacitated or not. In view of those discussions, the delegates settled on what is in Article 13 (2) of the Statute on suspension or removal of office of a Member on the recommendation of two-thirds of the other Members if a member no longer meets the requisite conditions specified in the Statute.

160. At the end of the deliberations, the meeting adopted the Article without amendments.

Consideration of Article 20: Official and Working Languages

161. The meeting adopted Article 20 as aligned with the articles on the same issue in the other Draft Legal Instruments.

Consideration of Article 21: Human and Material Resources

162. The meeting adopted Article 21 without amendment.

Consideration of Article 23: Budget

163. The meeting adopted Article 23 as amended and reflected in the Draft amended Statute by deleting the provision on the preparation of the initial budget of the Commission as it was adopted a long time ago when the Commission on International Law was first established

Consideration of Article 25: Cooperation with Other Organizations

164. The meeting adopted Article 25 without amendment.

Consideration of Article 27: Entry into Effect

165. The meeting adopted Article 27 as amended and reflected in the Draft amended Statute to take on board the fact that it is in respect of the amended Statute and that the provisions have been aligned with those of the other Legal Instruments on the same issue .

- e) **Consideration and Adoption of the Draft Protocol on Amendments to the Protocol to the Treaty establishing the African Economic Community Relating to the Pan-African Parliament and Consideration of the Draft Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human and Peoples' Rights.**

166. The meeting considered the Draft Protocol on Amendments to the Protocol to the Treaty establishing the African Economic Community Relating to the Pan-African Parliament and the Draft Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human and Peoples' Rights and decided that in view of the review process of the PAP Protocol and the expansion of the jurisdiction of the Court in line with relevant Assembly Decisions, these processes should take into account the transformation of the AU Commission into the AU Authority. Accordingly, there was no need to consider the consequential amendments at this stage as they will be taken on board during the said global review. However, the meeting decided to include the term "and Peoples'" in the title of the draft legal instrument relating to the Court to read " Draft Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human and Peoples' Rights"

VIII. ADOPTION OF REPORT AND THE DRAFT LEGAL INSTRUMENTS

167. During adoption of the report one delegation insisted that it be mentioned by name in the sections of the report where it had made proposals.

168. After a lengthy discussion, the meeting decided to reject the request in line with the practice and the fact that all the other proposals made by other delegations had not been specifically attributed to any delegation. The concerned delegation then entered a reservation on not being mentioned by name specifically.

169. The meeting considered and adopted the Report and eight (8) legal instruments. The meeting excluded the Draft Protocol on Amendments to the Protocol to the Treaty establishing the African Economic Community Relating to the Pan African Parliament and the Draft Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human and Peoples' Rights. In relation to the two remaining instruments, the meeting agreed that the ongoing review process of these instruments

should take into account the transformation of the AU Commission into the AU Authority.

170. The meeting agreed that the Report and the legal instruments be submitted to the envisaged meeting of Ministers of Justice for consideration after which the instruments will be submitted to the policy organs.

IX. ANY OTHER BUSINESS

171. There was no item raised under any other Business

X. CLOSING CEREMONY

172. The Legal Counsel, on behalf of the Chairperson of the Commission thanked all delegations for their participation and for the spirit of cooperation, tolerance and sense of accommodation that had prevailed during the meeting. He thanked the Chairperson of the meeting for the able manner in which she had chaired the meeting. Finally, he also thanked the interpreters and translators, consultants, officers in the Office of the Legal Counsel and all Departments that worked together with the Office of the Legal Counsel during the meeting.

173. In her closing remarks, the Chairperson thanked the participants for their participation, support and cooperation during the meeting which had resulted in the meeting finishing well ahead of time. She also thanked the Consultants, the Commission including the interpreters and translators for their contributions during the meeting. Finally, she wished all delegations a safe journey home.

Annex:

1. Draft Additional Protocol on Amendments to the Constitutive Act of the African Union on the Transformation of the African Union Commission into the African Union Authority;
2. Draft Amended Rules of Procedure of the Assembly of the African Union;
3. Draft Amended Rules of Procedure of the Executive Council;
4. Draft Amended Rules of Procedure of the Permanent Representatives' Committee;
5. Draft Protocol on Amendments to the Protocol relating to the establishment of the Peace and Security Council of the African Union;

6. Draft Protocol on amendments to the Protocol on the African Investment Bank;
7. Draft Amended Statute of the Economic, Social and Cultural Council of the African Union;
8. Draft Amended Statute of the African Union Commission on international Law.

Assembly/AU/10(XVI)
Annex IV

THE DRAFT LEGAL INSTRUMENTS

2011-01-30

Progress report on the implementation
of assembly decision
assembly/au/dec.298(xv) on the
transformation of the African union
commission into the African union authority

Africa union

Africa union

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