



ORGANIZATION OF  
AFRICAN UNITY

Secretariat  
P. O. Box 3243

منظمة الوحدة الأفريقية  
السكرتاريات  
ص. ب. ٣٢٤٣

ORGANIZATION DE L'UNITE  
AFRICAINNE

Secretariat  
B. P. 3243

Addis Ababa :. . .

ORIGINAL: English  
DISTRIBUTION: General

CM/977 (XXXIII)

COUNCIL OF MINISTERS

Thirty-third Ordinary Session

Monrovia, Liberia, July 1979

REPORT OF THE ADMINISTRATIVE SECRETARY-GENERAL ON  
OAU COMMITTEE OF LEGAL EXPERTS ON AMENDMENTS TO THE  
PROTOCOL OF THE COMMISSION OF MEDIATION, CONCILIATION  
AND ARBITRATION



I N T R O D U C T I O N

As a result of decision AHG/Dec.109(XIV) by the Assembly of Heads of State and Government at its 14th Ordinary Session, to the effect that

"OAU Administrative Secretary-General reconsider as a matter of urgency, the procedures contained in the Protocol of the OAU Commission of Mediation, Conciliation and Arbitration, and submit recommendations for their modification to enable the Commission to react more promptly to crises whenever they explode anywhere in Africa, and then submit a report to the Thirtieth Ordinary Session of the Council of Ministers on all desirable improvements to be made on the protocol" CM/924 (XXXI) was presented to the Council.

At its 31st Session, the Council considered the Administrative Secretary-General's Report CM/924 (XXXI) on the subject and

"Requested the OAU Administrative Secretary-General to convene a meeting of OAU Committee of Legal Experts to consider from the Political and Legal Standpoints, amendments proposed by member States and to submit to the Third Ordinary Session of the Council of Ministers an Amended Protocol for consideration."

The Secretariat in its circular note CAB/LBG/22/126 of 18th December 1978 requested member States to send in proposals for amending the Protocol. None was received, and the OAU Committee of Legal Experts met at the General Secretariat from the 15th to 21st March, and considered amendments to the Protocol. It took into account both political and legal aspects of the work of the Commission as well as ways disputes between member

States could easily be referable to the Commission. It considered that the work of the Commission could be put in two parts - the first consisting in the examination of disputes before it, and the second part consisting in the implementing of its decisions and recommendations.

The first part, examination of disputes, will be conducted in a juridical manner. Disputes should be heard in details so that the problems can be discerned and appreciated in their proper perspectives, in order to reach just decisions and recommendations. The second part, that of implementation, relate to the search for the political will for the acceptance of the decisions and recommendations of the Commission. The Committee therefore amended the Protocol to provide it with these two aspects. First professionally qualified men will be appointed to mediate, conciliate or arbitrate in disputes. They will carry out their duties in a juridical manner, and reach at decisions and recommendations. In the search for the political will for implementation, the Mediators, Conciliators or Arbitrators will work at the level of Heads of State and Government with the Heads of State and Government of the parties to the dispute. Thus by the combination of the two a healthy blend of politics and law would have been achieved. This blend, it is considered, will facilitate speedy and effective means of settling disputes among member States of the CAU.

If the Council accepts the Protocol as amended, it will be necessary in order that it be effective, cause that notice of it be given to the Administrative Secretary-General in accordance with Article XXXIII of the OAU Charter; for this is the manner in which the Protocol can be amended. Nothing however prevents the Council from recommending that the Protocol as amended come into force provisionally until it comes into force definitely in about a years' time after it has received the approval of the Assembly of the Heads of State and Government. It may be pertinent also to call attention to the fact that the Committee of Legal

Experts suggested amendment to the OAU Charter in Article 7 to reflect the creation of the institution of the "Current Chairman" of the Assembly of Heads of State and Government. If the Council is also agreeable to this, notice of it should be given to the Administrative Secretary-General.

The Committee considered Article by Article of the Protocol as unamended (Please see annex II).

ANNEXES

- ANNEX I. - List of Delegates to the OAU Committee of Legal Experts meeting 15 - 21st March 1979.
- ANNEX II - Unamended Protocol of the Commission of Mediation, Conciliation and Arbitration.
- ANNEX III - Rapporteur's Report of the Commission of Mediation, Conciliation and Arbitration.
- ANNEX IV - Amended Protocol of the Commission of Mediation, Conciliation and Arbitration.

LIST OF DELEGATESONU COMMITTEE OF LEGAL EXPERTS MEETING

(FROM 15TH TO 21ST MARCH, 1979)

EGYPT

1. Mr. Said Rifaat Counsellor (Chairman)
2. Mr. Sayed Abouzeid Counsellor, Egypt Embassy in Addis Ababa.

ETHIOPIA

1. Mr. Girma Amare Counsellor (Rapporteur)
2. Mr. Kemal Bedri Counsellor

GUINEA

1. Mr. Lamine Diallo Juge d'Instruction pour la Cour d'Appel et la Tribunal Criminal - Conakry

NIGERIA

1. Mr. P.S.O. Eromoboer 3rd Secretary, Nigerian Embassy in Addis Ababa.

SENEGAL

1. Mr. Saliou Cisse First Counsellor Senegal Embassy - Addis Ababa

SUDAN

1. Mr. Kamil El-tayeb Idris Legal Expert - Ministry of Foreign Affairs, Khartoum.
2. Mr. Abbas Osman Elkhalfi First Secretary, Sudan Embassy in Addis Ababa.

TANZANIA

1. Mrs. N. Vitta

First Secretary,  
Tanzania Embassy,  
Addis Ababa

ZAMBIA

1. Mr. C.D.C. Mubanga - Chipoya Senior Research Fellow

O B S E R V E R

IVORY COAST

1. Mr. Kouassi Ble

First Counsellor,  
Ivory Coast Embassy in  
Addis Ababa.

PART I

ESTABLISHMENT AND ORGANIZATION

ARTICLE I

The Commission of Mediation, Conciliation and Arbitration established by Article XIX of the Charter of the Organization of African Unity shall be governed by the provisions of present Protocol.

ARTICLE II

1. The Commission shall consist of twenty-one members elected by the Assembly of Heads of State and Government.
2. No two Members shall be nationals of the same State.
3. The Members of the Commission shall be persons with recognized professional qualifications.
4. Each Member State of the Organization of African Unity shall be entitled to nominate two candidates.
5. The Administrative Secretary-General shall prepare a list of the candidates nominated by Member States and shall submit it to the Assembly of Heads of State and Government.

ARTICLE III

1. Members of the Commission shall be elected for a term of five years and shall be eligible for re-election.
2. Members of the Commission whose terms of office have expired shall remain in office until the election of a new Commission.

3. Notwithstanding the expiry of their terms of office, Members shall complete any proceedings in which they are already engaged.

#### ARTICLE IV

Members of the Commission shall not be removed from office except by decision of the Assembly of Heads of State and Government, by a two-thirds majority of the total membership, on the grounds of inability to perform the functions of their office or of proved misconduct.

#### ARTICLE V

1. Whenever a vacancy occurs in the Commission, it shall be filled in conformity with the provisions of Article II.

2. A Member of the Commission elected to fill a vacancy shall hold office for the unexpired term of the Member he has replaced.

#### ARTICLE VI

1. A President and two Vice-Presidents shall be elected by the Assembly of Heads of State and Government from among the Members of the Commission who shall each hold office for five years. The President and the two Vice-Presidents shall not be eligible for reelection as such officers.

2. The President, the two Vice-Presidents and the Eighteen Members of the Commission shall be part-time Members of the Commission.



ARTICLE VII

The President and the two Vice-Presidents shall constitute the Bureau of the Commission and shall have the responsibility of consulting with the parties as regards the appropriate mode of settling the dispute in accordance with this Protocol.

ARTICLE VIII

The salaries and allowances of the Members of the Bureau and the remuneration of the other Members of the Commission shall be determined in accordance with the provisions of the Charter of the Organization of African Unity.

ARTICLE IX

1. The Commission shall appoint a Registrar and may provide for such other officers as may be deemed necessary.
2. The terms and conditions of service of the Registrar and other administrative officers of the Commission shall be governed by the Commission's Staff Regulations.

ARTICLE X

The administrative expenses of the Commission shall be borne by the Organization of African Unity. All other expenses incurred in connection with the proceedings before the Commission shall be met in accordance with the Rules of Procedure of the Commission.

ARTICLE XI

The Seat of the Commission shall be at Addis Ababa, Ethiopia.

PART II  
GENERAL PROVISIONS

ARTICLE XII

The Commission shall have jurisdiction over disputes between States only.

ARTICLE XIII

1. A dispute may be referred to the Commission jointly by the parties concerned, by a party to the dispute, by the Council of Ministers or by the Assembly of Heads of State and Government.

2. Where a dispute has been referred to the Commission as provided in paragraph 1, and one or more of the parties have refused to submit to the jurisdiction of the Commission, the Bureau shall refer the matter to the Council of Ministers for consideration.

ARTICLE XIV

The Consent of any party to a dispute to submit to the jurisdiction of the Commission may be evidenced by:

- a) a prior written undertaking by such party that there shall be recourse to Mediation, Conciliation or Arbitration.
- b) reference of a dispute by such party to the Commission; or
- c) submission by such party to the jurisdiction in respect of a dispute referred to the Commission by another State, by the Council of Ministers, or by the Assembly of Heads of State and Government.

ARTICLE XV

Member States shall refrain from any act or omission that is likely to aggravate a situation which has been referred to the Commission.

ARTICLE XVI

Subject to the provisions of this Protocol and any special agreement between the parties, the Commission shall be entitled to adopt such working methods as it deems to be necessary and expedient and shall establish appropriate rules of procedure.

ARTICLE XVII

The Members of the Commission, when engaged in the business of the Commission, shall enjoy diplomatic privileges and immunities as provided for in the Convention on Privileges and Immunities of the Organization of African Unity.

ARTICLE XVIII

Where, in the course of Mediation, Conciliation or Arbitration, it is deemed necessary to conduct an investigation or inquiry for the purpose of elucidating facts or circumstances relating to a matter in dispute, the parties concerned and all other Member States shall extend to those engaged in any such proceedings the fullest co-operation in the conduct of such investigation or inquiry.

ARTICLE XIX

In case of a dispute between Member States, the parties may agree to resort to any one of these modes of settlement: Mediation, Conciliation and Arbitration.

PART III

MEDIATION

ARTICLE XX

When a dispute between Member States is referred to the Commission for Mediation, the President shall, with the consent of the parties, appoint one or more members of the Commission to mediate the dispute.

ARTICLE XXI

1. The rôle of the mediator shall be confined to reconciling the views and claims of the parties.
2. The mediator shall make written proposals to the parties as expeditiously as possible.
3. If the means of reconciliation proposed by the mediator are accepted, they shall become the basis of a protocol of arrangement between the parties.

PART IV  
CONCILIATION

ARTICLE XXII

1. A request for the settlement of a dispute by conciliation may be submitted to the Commission by means of a petition addressed to the President by one or more of the parties to the dispute.
2. If the request is made by only one of the parties, that party shall indicate that prior written notice has been given to the other party.
3. The petition shall include a summary explanation of the grounds of the dispute.

ARTICLE XXIII

1. Upon receipt of the petition, the President shall, in agreement with the parties, establish a Board of Conciliators, of whom three shall be appointed by the President from among the Members of the Commission, and one each by the parties.

2. The Chairman of the Board shall be a person designated by the President from among the three Members of the Commission.

3. In nominating persons to serve as Members of the Board, the parties to the dispute shall designate persons in such a way that no two Members of it shall be nationals of the same State.

#### ARTICLE XXIV

1. It shall be the duty of the Board of Conciliators to clarify the issues in dispute and to endeavour to bring about an agreement between the parties upon mutually acceptable terms.

2. The Board shall consider all questions submitted to it and may undertake any inquiry or hear any person capable of giving relevant information concerning the dispute.

3. In the absence of agreement between the parties, the Board shall determine its own procedure.

#### ARTICLE XXV

The parties shall be represented by agents, whose duty shall be to act as intermediaries between them and the Board. They may moreover be assisted by counsel and experts and may request that all persons whose evidence appears to the Board to be relevant shall be heard.

#### ARTICLE XXVI

1. At the close of the proceedings, the Board shall draw up a report stating either:

- a) that the parties have come to an agreement and, if the need arises, the terms of the agreement and any recommendations for settlement made by the Board; or
- b) that it has been impossible to effect a settlement.

2. The Report of the Board of Conciliators shall be communicated to the parties and to the President of the Commission without delay and may be published only with the consent of the parties.

#### PART V

#### ARBITRATION

1. Where is it agreed that arbitration should be resorted to, the Arbitral Tribunal shall be established in the following manner:

- a) each party shall designate one arbitrator from among the Members of the Commission having legal qualifications;
- b) the two arbitrators thus designated shall, by common agreement, designate from among the Members of the Commission a third person who shall act as Chairman of the Tribunal;
- c) where the two arbitrators fail to agree, within one month of their appointment, in the choice of the person to be Chairman of the Tribunal the Bureau shall designate the Chairman.

2. The President may, with the agreement of the parties, appoint to the Arbitral Tribunal two additional Members who need not be Members of the Commission but who shall have the same powers as the other Members of the Tribunal.

3. The arbitrators shall not be nationals of the parties, or have their domicile in the territories of the parties, or be employed in their service, or have served as mediators or conciliators in the same dispute. They shall all be of different nationalities.

#### ARTICLE XXVIII

Recourse to arbitration shall be regarded as submission in good faith to the award of the Arbitral Tribunal.

1. The parties shall, in each case, conclude a compromise which shall specify:

- a) the undertaking of the parties to go to arbitration, and to accept as legally binding, the decision of the Tribunal;
- b) the subject matter of the controversy; and
- c) the seat of the Tribunal.

2. The compromise may specify the law to be applied by the Tribunal and the power, if the parties so agree, to adjudicate ex aequo et bono, the time-limit within which the award of the arbitrators shall be given, and the appointment of agents and counsel to take part in the proceedings before the Tribunal.

#### ARTICLE XXX

In the absence of any provision in the compromise regarding the applicable law, the Arbitral Tribunal shall decide the dispute according to treaties concluded between the parties, International Law, the Charter of the Organization of African Unity, the Charter of the United Nations and, if the parties agree, ex aequo et bono.

ALGERIA	MALI
BURUNDI	MAURITANIA
CAMEROON	MOROCCO
CENTRAL AFRICAN REPUBLIC	NIGER
CHAD	NIGERIA
CONGO (BRAZZAVILLE)	RWANDA
DAHOMEY	SENEGAL
ETHIOPIA	SIERRA LEONE
GABON	SOMALIA
GHANA	SUDAN
GUINEA	TOGO
IVORY COAST	TUNISIA
KENYA	UGANDA
LIBERIA	UNITED ARAB REPUBLIC
LIBYA	UNITED REPUBLIC OF TANGANYIKAN AND ZANZIBAR
MADAGASCAR	UPPER VOLTA
MALAWI	



ARTICLE XXXI

1. Hearings shall be held in camera unless the arbitrators decide otherwise.
2. The record of the proceedings signed by the arbitrators and the Registrar shall alone be authoritative.
3. The arbitral award shall be in writing and shall, in respect of every point decided, state the reasons on which it is based

PART VI  
FINAL PROVISIONS

ARTICLE XXXII

The present Protocol shall, after approval by the Assembly of Heads of State and Government, be an integral part of the Charter of the Organization of African Unity.

ARTICLE XXXIII

This Protocol may be amended or revised in accordance with the provisions of Article XXXIII of the Charter of the Organization of African Unity.

IN FAITH WHEREOF, WE, The Heads of African States and Government have signed this Protocol.

Done at Cairo, (United Arab Republic), on the  
21st day of July, 1964.

CM/977<sup>2</sup>(XXXIII)  
Annex III

RAPPORTEUR'S REPORT ON OAU  
COMMITTEE OF LEGAL EXPERTS ON AMENDMENT TO THE PROTOCOL  
OF COMMISSION OF MEDIATION, CONCILIATION  
AND ARBITRATION

The meeting was declared open by Mr. Nzanzimana, Acting Secretary-General of the OAU at 4:00 p.m. on 15 March 1979. In attendance were Legal Experts from Egypt, Ethiopia, Nigeria, Senegal, Sudan, Tanzania and Zambia. Experts from Tunisia and Guinea were still being awaited. The Assistant Secretary-General welcomed the Experts to Addis Ababa and referred to Resolution 645 (XXXI) in which the Administrative Secretary-General was requested by the Council of Ministers to convene the meeting of OAU Legal Experts to consider from Political and Legal Standpoints, amendments to the Protocol of the Commission of Mediation, Conciliation and Arbitration in order to make the Commission react more quickly and more effectively to the settlement of disputes between Member States of the Organization. He called attention to the various disputes between Member States and said the task before the Experts was an important and urgent one. They should therefore work assiduously and prove equal to the task.

The Committee unanimously agreed that Egypt be the Chairman, Ethiopia Rapporteur and that the Sudan, Senegal, Guinea and Nigeria constitute the Drafting Committee, and decided that it worked from 10:00 a.m. to 1:00 p.m. and from 4:00 p.m. to 7:00 p.m. daily. Documents before it were the Protocol of the Commission of Mediation, Conciliation and Arbitration, CM/924 (XXXI) - Report of the Administrative Secretary-General of the Commission of Mediation, Conciliation and Arbitration and an Introduction on the subject matter, produced by the General Secretariat.

The Committee decided that the Commission's sphere of activity should continue to include Mediation, Conciliation and Arbitration, that the Protocol of the Commission should be the main working paper, to be considered article by article in conjunction with the Secretariat's proposed amendments, and any other amendments that the experts might bring forward.

#### ARTICLE I

The Committee considered that this Article should remain as it is.

#### ARTICLE II

The Committee agreed with the Secretariat's proposed amendments. It decided that 21 Member States should be elected to the Commission. The membership of 21 would provide an adequate panel from which the Bureau of the Commission could appoint Mediators, Arbitrators and Conciliators. The election of Member States instead of individuals and the subsequent appointment of "recognised professionally qualified persons" to serve on the Commission was considered a healthy blend of politics and judiciary that would clothe the Commission with respect and efficiency in handling disputes. Sub-paragraph 3 would be amended as suggested by the Secretariat; but sub-paragraphs 2, 4 and 5 would be deleted as irrelevant. Amended Article 2 would read:-

- "1. The Commission shall consist of twenty-one Member States elected by the Assembly of Heads of State and Government.
2. Member States elected to the Commission shall appoint only persons with recognised professional qualifications to the Commission".

ARTICLE III

The Committee decided that this Article should stand unamended.

ARTICLE IV

As members of the Commission would now be Member States rather than individuals, inability to perform the functions of their office or proved misconduct cannot be said of them - The Article therefore becomes irrelevant, and shall be deleted.

ARTICLE V

This Article should remain unamended.

ARTICLE VI

This Article should remain unamended.

ARTICLE VII

The Committee discussed this Article to great lengths and decided that the Bureau of the Commission should have the responsibility consulting with the parties to the dispute as regards appropriate mode of settling the dispute in accordance, with the Protocol as well as the responsibility of consulting with Member States of the Commission as regards the qualifications of the persons to be appointed to the Commission. The Bureau could thereby adapt such appointments to the appropriate mode required for settling disputes. The Article as amended would read:-

"The President and the two Vice-Presidents shall form the Bureau of the Commission, and shall have the responsibility of consulting with the parties to the dispute as regards the appropriate mode of settling the dispute, as well as the responsibility of consulting with the Member States of the Commission as regards the qualifications of persons to be appointed to serve on the Commission, in accordance with the provisions of this Protocol".

#### ARTICLE VIII

The Committee discussed this Article exhaustively, and was of the opinion that since Member States instead of individuals were elected to the Commission, and since the services of the Commission would be part-time salaries would not be paid. But members of the Commission would be paid subsistence allowance, and provided with passage fares whenever they were engaged in the service of the Commission. To avoid the mistake of the past, it decided to provide specifically that the above expenses be estimated annually and included in the Budget of the OAU. It therefore decided to amend the Article to read:-

1. The OAU shall bear the subsistence allowance and all other travelling expenses of the members of the Commission whenever they are engaged in the service of the Commission on the strength of the provisions of this protocol.
2. The administrative expenses of the Commission shall be borne by the Organization of African Unity".

ARTICLE IX

The Committee considered that the Legal Service of the OAU at the General Secretariat should adequately undertake the Secretariat service of the Commission. The OAU Legal Service should be strengthened to cope with this. It therefore decided that the Chief Legal Officer of the OAU should be the Registrar of the Commission. The amended Article would read:-

"The Chief Legal Officer of the OAU shall be the registrar of the Commission, and the Legal Service of the OAU shall provide the Secretariat as well as administrative services of the Commission".

ARTICLE X

This article was rendered irrelevant in view of the amendments made in Article 8 and 9. The Committee therefore decided to delete it.

ARTICLE XI

The Committee was of the opinion that since the Secretariat and Administrative Services of the Commission are at the OAU General Secretariat, Addis Ababa, the seat of the Commission shall be at the OAU General Secretariat, Addis Ababa, and decided to amend the article to read:-

"The seat of the Commission shall be at the OAU General Secretariat, Addis Ababa, Ethiopia."

ARTICLE XII

The Committee was of the opinion that since the Commission is specifically established to settle disputes among the members of the OAU, the article should be amended to read:-

"The Commission shall only have jurisdiction over disputes between Member States of the OAU."

ARTICLE XIII

This Article aroused lengthy discussion. Some members took issue with the Secretariats proposed amendment to paragraph 1, which provides that the "Current Chairman" of the Assembly of Heads of State and Government should be empowered to refer disputes to the Commission. These members argued that the institution of the "Current Chairman" was not provided in the OAU Charter, and therefore should not be given a Charter responsibility. They were aware of AHG/Dec. 109 (XIV) paragraph 2 which provides as follows:-

"The Administrative Secretary-General to take as an interim measure and as a regular procedure every necessary step to carry out investigation into all cases of conflict which could, in his opinion, endanger peace and security in Africa and submit without delay a report on his findings to the Current Chairman of the Assembly of Heads of State and Government, who will as far as his means will allow take every necessary step to arrest the deterioration of relation in the region concerned."

and were satisfied that this was not a Charter provision, and could not be regarded as an amendment to the Charter. Nevertheless the Committee was apprehensive of the necessity of making disputes easily referable to the Commission, and decided that while the Secretariat's proposed amendment was acceptable the Charter should be amended to reflect the establishment of the institution of "Current Chairman". It therefore decided that the amended paragraph 1 of Article XIII should read:-



"A dispute may be referred to the Commission jointly by the parties concerned, by a party to the dispute, by the Council of Ministers or the Assembly of Heads of State and Government or by the Current Chairman of the Assembly of Heads of State and Government, after consultation with the parties to the dispute."

Paragraph 2 of Article XIII should be amended to read:-

"Where a dispute has been referred to the Commission as provided in paragraph 1, and one or more of the parties have refused to submit to the jurisdiction of the Commission; the Bureau shall refer the matter to the Council of Ministers; or to the Assembly of Heads of State and Government for consideration".

The expert of Ethiopia made a reservation in respect of the amendment introduced to paragraph 1 of Article XIII of the Protocol on Mediation, Conciliation and Arbitration to the effect that no specific role has been assigned to the current chairman of the OAU within the Charter. The expert of Ethiopia is of the opinion that the Protocol as a subsidiary legal instrument to the charter cannot create an institutional organ out of the current chairman when such has not been envisaged by the Charter.



ARTICLE XIV

The Committee is of the opinion that paragraphs (a) of this Article should stand unamended, but that paragraph (c) should be amended to reflect disputes referred to the Commission by the Current Chairman. This paragraph as amended would read:-

"(c) submission by such party to the jurisdiction in respect of a dispute referred to the Commission by another State, by the Council of Ministers or by the Assembly of Heads of State and Government; or by the Current Chairman of the Assembly of Heads of State and Government.

ARTICLES XV, XVI, XVII

The Committee decided to retain these Article as they stand.

ARTICLE XVIII

At the end of the proceedings, the Chairman of the mediators, Council of Conciliators or of the Arbitration Tribunal and the other members engaged in the settlement of the dispute shall hold as soon as possible discussions at the level of Heads of State and Government with the parties in dispute so as to ensure the approval and implementation of the decisions or recommendations.

ARTICLE XIX

The Committee decided not to amend this Article

ARTICLES XX and XXI

The Committee decided to maintain these articles unamended.

ARTICLE XXII

Sub-article 1 of this article aroused a lengthy discussion. Some members were of the opinion that this paragraph as it stands restricts the submission of settlement of dispute for conciliation only to the parties to the dispute. It was therefore, moved to amend it so as to accommodate other bodies which might initiate conciliation proceedings. This contention was, however, opposed on the ground that this provision is concerned only with the choice of the mode of settlement and that it is up to the parties to choose among themselves in what manner they want to settle their disputes. After a thorough discussion on the legal issues involved it was resolved to amend the sub-article as follows:-

"When a dispute between Member States is referred to the Commission for Conciliation it shall be submitted to the Commission by means of a request with the consent of the parties."

The Committee decided to keep sub-article 2 as it stands and amended sub-article 3 to read:-

"The request shall include a summary explanation of the grounds of the dispute".

ARTICLE XXIII

The Committee amended sub-article 1 so as to read:-

"Upon receipt of the request, the President shall, in agreement with the parties, establish a Board of Conciliators, of whom three all be appointed by the President from among the Members of the Commission, and one each by the parties."

Sub-article 2 was amended to read:-

"The Chairman of the Board shall be designated by the President from among the three Members of the Commission."

As membership is qualified to refer to states sub-article 3 was rendered irrelevant and was decided to delete it.

#### ARTICLE XXIV AND XXV

The Committee decided to keep these articles as they stand.

#### ARTICLE XXVI

It was decided by the Committee to retain sub-article 1 in its entirety. However, a hot discussion ensued over sub-article 2. Some members of the Committee proposed that the report of the Board of Conciliators should be transmitted not only to the parties and the President but were of the opinion that it should also be communicated to the Assembly of Heads of State and Government for information. To this effect the Committee agreed that, as the highest policy making organ of the Organization of African Unity the report of Board of Conciliators should be transmitted to the Assembly of Heads of States and amended the paragraph so as to read:-

" The Report of the Board of Conciliators shall be communicated to the parties and to the President of the Commission. It shall also be communicated to those who submitted the dispute to the Commission and to the Assembly of Heads of State and Government and may be published only with the consent of the parties".

ARTICLE XXVII

1. (a) accepted as it stands  
(b) a reformulation of the paragraph was decided by the Committee so as to read:-  
"the two arbitrators thus designated shall, by common agreement, designate from among the Members of the Commission a third member who shall act as Chairman of the Tribunal."  
(c) This wording of "one month" in this paragraph was amended to read "thirty days" in order to avoid any confusion of counting.
2. The Committee accepted the paragraph as it stands.
3. This article is rendered irrelevant by virtue of Membership of States and was decided to delete it.

ARTICLE XXVIII, XXIX AND XXX

The Committee decided to retain these articles unamended.

"Amend Article XIV so that it has two parts one of which is the present article and another to be moved from Article XXXI sub-article 1."

FINAL PROVISIONS - ARTICLES XXXII AND XXXIII

The Committee decided to accept them in their entirety.

AMENDED PROTOCOL OF THE COMMISSION OF  
MEDIATION, CONCILIATION AND ARBITRATION

ESTABLISHMENT AND ORGANIZATION

ARTICLE I

The Commission of Mediation, Conciliation and Arbitration established by Article XIX of the Charter of the Organization of African Unity shall be governed by the provisions of the present Protocol.

ARTICLE II

1. The Commission shall consist of twenty-one Member States elected by the Assembly of Heads of State and Government.

2. Member States elected to the Commission shall appoint only persons with recognized professional qualifications to serve in the Commission.

ARTICLE III

1. Members of the Commission shall be elected for a term of five years and shall be eligible for re-election.

2. Members of the Commission whose term of office have expired shall remain in office until the election of a new Commission.

3. Notwithstanding the expiry of their terms of office, Members shall complete any proceedings in which they are already engaged.

ARTICLE IV

1. Whenever a vacancy occurs in the Commission, it shall be filled in conformity with the provisions of article II.

2. A member of the Commission elected to fill a vacancy shall hold office for the unexpired term of the member it has replaced.

ARTICLE V

1. A President and two Vice-Presidents shall be elected by the Assembly of Heads of State and Government from among the members of the Commission, who shall each hold office for five years. The President and the two Vice-Presidents shall not be eligible for re-election as such officers.

2. The President, the two Vice-Presidents and the Eighteen Members of the Commission shall be part-time members of the Commission.

ARTICLE VI

The President and the two Vice-Presidents shall constitute the Bureau of the Commission and shall have the responsibility of consulting with the parties to the dispute as regards the appropriate mode of settling the dispute, as well as the responsibility of consulting with the members of the Commission as regards the qualifications of persons to be appointed to serve in the Commission, in accordance with the provisions of this Protocol.

ARTICLE VII

1. The CAU shall bear the subsistence allowance and all other travelling expenses of the members of the Commission whenever they are engaged in the service of the Commission in accordance with the provisions of this protocol.



2. The administrative expenses of the Commission shall be borne by the Organization of African Unity.

#### ARTICLE VIII

The Chief Legal Officer of the OAU shall be the Registrar of the Commission, and the Legal Service of the OAU shall provide the secretarial as well as administrative services of the Commission.

#### ARTICLE IX

The seat of the Commission shall be at the OAU General Secretariat, Addis Ababa, Ethiopia.

#### ARTICLE X

The Commission shall have jurisdiction over disputes between member States of the OAU.

#### PART II - GENERAL PROVISIONS

#### ARTICLE XI

1. A dispute may be referred to the Commission jointly by the parties concerned, by a party to the dispute, by the Council of Ministers, by the Assembly of Heads of State and Government or by the Current Chairman of the Assembly of Heads of State and Government, after due consultation with the parties to the dispute.

2. Where a dispute has been referred to the Commission as provided in paragraph 1, and one or more of the parties have refused to submit to the jurisdiction of the Commission; the Bureau shall refer the matter to the Council of Ministers; or to the Assembly of Heads of State and Government for consideration.

# ARTICLE XII

The consent of any party to a dispute to the jurisdiction of the Commission may be evidenced by:-

- (a) a prior written undertaking by such party that there shall be recourse to mediation, conciliation or arbitration;
- (b) reference of a dispute by such party to the Commission; or
- (c) submission by such party to the jurisdiction in respect of a dispute referred to the Commission by another state, by the Council of Ministers, by the Assembly of Heads of State and Government or by the Current Chairman of the Assembly of Heads of State and Government.

# ARTICLE XIII

Member States shall refrain from any act or omission that is likely to aggravate a situation which has been referred to the Commission.

ARTICLE XIV

subject to the provisions of this Protocol and any special agreement between the parties, the Commission shall be entitled to adopt such working methods as it seems to be necessary and expedient and shall establish appropriate rules of procedure.

ARTICLE XV

The members of the Commission, when engaged in the business of the Commission, shall enjoy diplomatic privileges and immunities as provided for in the General Convention on Privileges and Immunities of the Organization of African Unity.

ARTICLE XVI

Where, in the course of Mediation, Conciliation or Arbitration, it is deemed necessary to conduct an investigation or inquiry for the purpose of elucidating facts or circumstances relating to a matter in dispute, the parties concerned and all other Member States shall extend to those engaged in any such proceedings the fullest co-operation in the conduct of such investigation or inquiry.

ARTICLE XVII

In case of a dispute between Member States, the parties may agree to resort to any one of these modes of settlement: Mediation, Conciliation and Arbitration.

ARTICLE XVIII

On completion of work, the Chairman of, Mediators or of the Board of Conciliators or of the Arbitral Tribunal in consultation with the other members who are engaged in the settlement of the dispute shall as soon as possible, hold discussions at the level of Heads of State and Government with the parties to the dispute with the view to securing acceptance and implementation of the decisions or recommendations.

PART III - MEDIATIONARTICLE XIX

When a dispute between Member States is referred to the Commission for Mediation, the President shall, with the consent of the parties, appoint one or more Members of the Commission to mediate in the dispute.

ARTICLE XX

1. The role of the mediator shall be confined to reconciling the views and claims of the parties.

2. The mediator shall make written proposals to the parties as expeditiously as possible.

3. If the means of reconciliation proposed by the mediator are accepted, they shall become the basis of a protocol of arrangement between the parties.

PART IV - CONCILIATION

ARTICLE XXI

1. When a dispute between member states is referred to the Commission for Conciliation it shall, with the consent of the parties be submitted to the Commission by means of a request.

2. If the request is made by only one of the parties, that party shall indicate that prior written notice has been given to the other party.

3. The request shall include a summary explanation of the grounds of the dispute.

ARTICLE XXII

1. Upon receipt of the request, the President shall, in agreement with the parties, establish a Board of Conciliators, of whom three shall be appointed by the President from among the Members of the Commission, and one each by the parties.

2. The Chairman of the Board shall be designated by the President from among the three Members of the Commission appointed by him.

ARTICLE XXIII

1. It shall be the duty of the Board of Conciliators to clarify the issues in dispute and to endeavour to bring about an agreement between the parties upon mutually acceptable terms.

2. The Board shall consider all questions submitted to it and may undertake any inquiry or hear any person capable of giving relevant information concerning the dispute.

3. In the absence of agreement between the parties, the Board shall determine its own procedure.

#### ARTICLE XXIV

The parties shall be represented by agents, whose duty shall be to act as intermediaries between them and the Board. They may moreover be assisted by counsel and experts and may request that all persons whose evidence appears to the Board to be relevant shall be heard.

#### ARTICLE XXV

1. At the close of the proceedings, the Board shall draw up a report stating either:-

(a) that the parties have come to an agreement and, if the need arises, the terms of the agreement and any recommendations for settlement made by the Board; or

(b) that it has been impossible to effect a settlement.

2. The Report of the Board of Conciliators shall be communicated to the parties concerned and to the President of the Commission without delay. It shall also be communicated to the body which initially referred the dispute to the Commission and to the Assembly of Heads of State and Government. The Report may be published only with the consent of the parties.

PART V - ARBITRATIONARTICLE XXVI

1. Where it is agreed that arbitration should be resorted to, the Arbitral Tribunal shall be established in the following manner:-

(a) each party shall designate one arbitrator having legal qualifications from among the Members of the Commission.

(b) the two arbitrators thus designated shall, by common agreement, designate from among the Members of the Commission a third Member who shall act as the Chairman of the Tribunal;

(c) where the two arbitrators fail to agree, within thirty days of their appointment, in the choice of the Member to be the Chairman of Tribunal, the Bureau shall designate the Chairman.

2. The President may, with the agreement of the parties, appoint to the Arbitral Tribunal two additional Members who need not be Members of the Commission but who shall have the same powers as the other Members of the Tribunal.

ARTICLE XXVII

Recourse to arbitration shall be regarded as submission in good faith to the award of the Arbitral Tribunal.

ARTICLE XXVIII

1. The parties shall, in each case, conclude a compromise which shall specify:

(a) the undertaking of the parties to go to arbitration, and to accept as legally binding, the decision of the Tribunal;

(b) the subject matter of the controversy; and

(c) the seat of the Tribunal.

2. The compromise may specify the law to be applied by the Tribunal and the power, if the parties so agree, to adjudicate ex aequo et bono, the time-limit within which the award of the arbitrators shall be given, and the appointment of agents and counsel to take part in the proceedings before the Tribunal.

ARTICLE XXIX

In the absence of any provision in the compromise regarding the applicable law, the Arbitral Tribunal shall decide the dispute according to treaties concluded between the parties, International Law, the Charter of the Organization of African Unity, the Charter of the United Nations and, if the parties agree, ex aequo et bono.

ARTICLE XXX

1. Hearings shall be held in camera unless the arbitrators decide otherwise.



2. The record of the proceedings signed by the arbitrators and the Registrar shall alone be authoritative.

3. The arbitral award shall be in writing and shall, in respect of every point decided, state the reasons on which it is based.

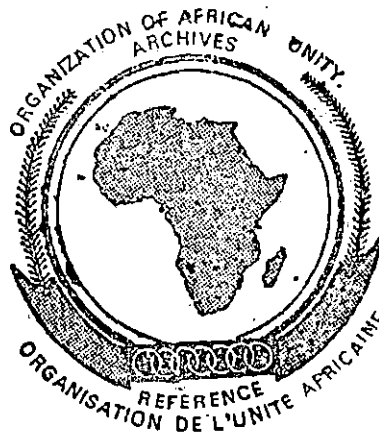
## PART VI - FINAL PROVISIONS

### ARTICLE XXXI

The present Protocol shall, after approval by the Assembly of Heads of State and Government, be an integral part of the Charter of the Organization of African Unity.

### ARTICLE XXXII

This Protocol may be amended or revised in accordance with the provisions of Article XXXIII of the Charter of the Organization of African Unity.



1979-07

# Report of the Administrative Secretary-General on OAU committee of legal experts on amendments to the protocol of the commission of Mediation, Conciliation and Arbitration

Organization of African Unity

African Union

---

<https://archives.au.int/handle/123456789/10017>

*Downloaded from African Union Common Repository*