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EXECUTIVE COUNCIL
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**ACTIVITY REPORT OF THE
AFRICAN UNION COMMISSION ON INTERNATIONAL LAW
(AUCIL)**

**ACTIVITY REPORT OF THE AFRICAN UNION COMMISSION
ON INTERNATIONAL LAW (AUCIL)
(January - June 2022)**

SECTION I: INTRODUCTION

A. BACKGROUND

1. The African Union Commission on International Law (AUCIL) was created in 2009 as an independent advisory organ in accordance with Article 5(2) of the AU Constitutive Act.

2. The Statute of the AUCIL was adopted by the 12th Ordinary Session of the Assembly of the African Union, which was held in Addis Ababa, Ethiopia from 1 to 4 February 2009. The AUCIL commenced its work on 3rd May 2010, which is also the effective date for the term of office of the pioneer members of the AUCIL.

3. The mandate of the AUCIL falls under five (5) broad categories, namely (i) the progressive development of international law; (ii) the codification of international law; (iii) contribution to the objectives and principles of the Union; (iv) revision of treaties; and (v) encouraging the teaching, study, dissemination and wider appreciation of international law.

4. In accordance with Article 21 of the AUCIL Statute, the African Union Commission (AUC) is tasked with providing the necessary means, staff and infrastructure to the AUCIL Secretariat to enable it to carry out its duties effectively. Accordingly, the Secretariat of the AUCIL currently forms part of the Office of the Legal Counsel (OLC), which is under the Office of the Bureau of the Chairperson of the AUC.

B. OPERATIONS OF THE AUCIL

i) Election and Swearing-in of new Members of the AUCIL

5. During its 36th Ordinary Session, held from 06 - 07 February 2020, the Executive Council of the African Union elected **Prof. Mohamed S. HELAL** and **Dr. Bélibi Sébastien DAILA**, who were duly appointed by the 33rd Ordinary Session of the Assembly of Heads of State and Government of the African Union, which was held from 09-10 February 2020 in Addis Ababa, Ethiopia.

6. Pursuant to Regulation 3.3 (h) of the AU Staff Regulations and Rules, the new members took an oath of office during the 19th Ordinary Session of the AUCIL held via video conference on **24 May 2021**.

ii) Election of the Bureau (2022-2024)

7. During its 20th Ordinary Session held from 21 March 2022 to 1st April 2022, the AUCIL elected a new Bureau. Pr. Hajer Gueldich, Amb. Juliet S. Kalema and Dr.

Kevin F. Ndjimba were elected for a two-year term, respectively as Chairperson, Vice-Chairperson and Rapporteur General.

iii) Current composition of AUCIL

8. The following is the current composition of AUCIL Members:

	Name	Country	Date Elected or re-elected/Decision	Term
1	Prof. Hajer GUELDICH	Tunisia	July 2018 Assembly/AU/Dec.701(XXXI)	5 year Term
2	Amb. Juliet Semambo KALEMA	Uganda	Feb 2020 Assembly/AU/Dec.782(XXXIII)	5 year Term
3	Kevin Ferdinand NDJIMBA	Gabon	July 2018 Assembly/AU/Dec.701(XXXI)	5 year Term
4	Amb. (Prof.) Sebastião Da Silva ISATA	Angola	Feb 2020 Assembly/AU/Dec.782(XXXIII)	5 year Term
5	Justice Abdi Ismael HERSI	Djibouti	Feb 2020 Assembly/AU/Dec.782(XXXIII)	5 year Term
6	Hon. Kathleen Quartey AYENSU	Ghana	Feb 2020 Assembly/AU/Dec.782(XXXIII)	5 year Term
7	Narindra Arivelo RAMANANARIVO	Madagascar	July 2018 Assembly/AU/Dec.701(XXXI)	5 year Term
8	Tomassa Bisia ELA NCHAMA	Equatorial Guinea	February 2019 Assembly/AU/Dec.741(XXXII)	5 year Term
9	Sindiso KUMALO NGATSHA SICHONE	Zambia	July 2018 Assembly/AU/Dec.701(XXXI)	5 year Term
10	Dr. Bélibi Sébastien DAILA	Burkina Faso	Feb 2020 Assembly/AU/Dec.782(XXXIII)	5 year Term
11	Prof. Mohamed S. HELAL	Egypt	Feb 2020 Assembly/AU/Dec.782(XXXIII)	5 year Term

9. The activity report of the AUCIL outlines the activities of the AUCIL within the period of January - December 2021. The Report is divided into three (3) Sections. **Section one** deals with the activities undertaken during the above-mentioned period; **Section two** contains the challenges faced by the AUCIL while **Section three** enumerates recommendations.

SECTION II: ACTIVITIES UNDERTAKEN BY AUCIL

10. Owing to the COVID-19 pandemic, the AUCIL held only one session, its 19th Ordinary Session via video conference on the 24th, 27th and 31st of May as well as the 2nd and 4th of June 2021.

11. However, in the context of the resumption of face-to-face activities and meetings, the Commission intends to conduct its 2 statutory sessions for the year 2022. To this end, the Commission has already held its 20th Ordinary Session on 21 March 2022 - 01 April 2022

12. During the one-and-a-half-year period, which followed a postponement of its statutory sessions in 2020 due to the COVID-19 pandemic, covered by this report the Commission has continued to make its contribution to development of the African Union Law.

13. In accordance with its mandate and objectives, the AUCIL has undertaken activities related to codification and progressive development of International Law (A), implementation of Executive Council decisions (B), the teaching, study and dissemination of International Law (C), interactive session with the PRC (D) and cooperation with similar international bodies working on International Law (E).

A. PROGRESSIVE DEVELOPMENT AND CODIFICATION OF INTERNATIONAL LAW

14. Central to the work of the AUCIL sessions were the considerations of ongoing studies, the way forward for all completed studies, the reassignment of pending studies of outgoing AUCIL Members, as well as the procedures and working methods of the Commission, particularly in line with the Executive Council Decision EX.CL/Dec.1019 (XXXIII).

15. The AUCIL further considered updates on the ongoing institutional reform of the African Union and the AUCIL's publications.

16. As part of its mandate under Articles 5 and 6 of the AUCIL Statute, the AUCIL undertook various studies through the appointed Special Rapporteurs. In particular, the following activities were conducted:

a) Study on the Preparation of a Draft African Convention against Slavery

17. It is to be recalled that during the 18th Ordinary Session of the AUCIL after considering the concept note prepared by the Special Rapporteur, Prof. Sebastiao da Silva Isata addressed the scope of the topic and the main issues to be addressed in the course of the work for the *study on an African Convention Against Slavery*. In this respect, the Plenary decided to have further discussions and a second reading during its 19th Ordinary Session.

18. Accordingly, after due consideration of the new concept note, the Commissioners suggested that the deliberation on this Convention be deferred to the

next session pending the improvement of the concept note by the Special Rapporteur. In particular, the Special Rapporteur was advised to emphasize the historical references, to reflect on the current context and modern forms of slavery as well as to enrich the content of the relatively short Convention by integrating, for example, several legal instruments.

19. As such, the Plenary took note of the concept note presented by the Special Rapporteur and requested its improvement in the light of the observations and comments made by the Commissioners. The Plenary also invited the Commissioners to transmit their written observations to the Special Rapporteur as soon as possible, and decided to consider the Draft Convention for final reading during the 21st Ordinary session.

b) Study on the Elaboration of a Study and a Draft Continental Convention on the Prevention of Double Taxation

20. During its 19th Ordinary Session, the Special Rapporteur of the study on *Developing a Study and a Draft Continental Convention on Avoiding Double Taxation*, Prof. Hajer Gueldich, reiterated her previous report that was presented on the 18th Ordinary Session and insisted on the need to finalize this work by organizing the joint working meeting with the representatives of ATAF and the Pan-African Parliament, as had been decided at the previous session. She also noted the need to make a final decision on the legal nature of the work that has been done, particularly as to whether it should be a continental convention or a model law.

21. During the 21st Ordinary session, and following the proposal made by the Special Rapporteur, the Plenary took note of her Report and decided the organization of a joint meeting between AUCIL, PAP, ATAF in order to harmonize different points of view, particularly on the question of the legal nature of the document to be submitted to the Policy Organs.

22. The Plenary also recommended consultations between convening the AUCIL and the PAP with a view to prepare a joint organization of this meeting during the intersessional period. The consultation will be made as per Article 24 of the AUCIL Statute, which stipulates that "*the AUCIL may, if it considers necessary, consult with any organ of the Union on any subject which is within the competence of that organ.*"

c) Development of an African Convention on Judicial Cooperation and Mutual Assistance in Criminal Matters

23. It is to be recalled that during its 18th Ordinary Session of AUCIL, after consideration of two draft conventions, the AUCIL provisionally adopted the draft convention on Mutual Legal Assistance and Mutual Assistance in Criminal Matters and a draft convention on Extradition. The AUCIL further decided to refer the two draft instruments back to the Drafting Committee set up at its 16th Ordinary Session with the directive to improve on the text of the draft conventions and incorporate revisions for reconsideration at the next Session.

24. During its 19th Ordinary Session, Prof. Hajer Gueldich, the Special Rapporteur of the study, presented her eighth report to the commissioners. In the report, she

presented in detail the steps taken to produce a draft Convention on Mutual Legal Assistance and Extradition and recalled the general structure of the two draft Conventions presented to the Plenary.

25. Subsequent to the interactions that took place after she presented her report, the Special Rapporteur indicated that at her level the two projects were sufficiently ready to be critically examined from the outside, in particular through the workshop or forum proposed by the Secretariat. Additionally, she informed the Plenary that, following discussions with two eminent professors specialized in the field of mutual legal assistance and mutual aid, she has considered enriching her study and her proposals to take into account the relevant observations made by these two experts.

26. The Plenary recommended the creation of a technical committee composed of two Commissioners and the Special Rapporteur to finalize the study before its final adoption by the Plenary and the determination of the appropriate follow-up steps towards a final endorsement by Policy Organs.

d) Memorandum on the Contribution of AUCIL to the Implementation of the African Union Strategy to Combat COVID-19

27. The document was introduced by the Acting Executive Secretary Dr. Guy-Fleury Ntwari. The document integrates the context and rationale of its preparation by the AUCIL Secretariat by highlighting the need for an international legal framework to address its challenges, as well as other issues that would inevitably arise in the future, particularly from the perspective of international law and African Union law. Furthermore, it identifies the legal basis for possible action by AUCIL, under its mandate, as well as those relevant principles, tools and legal mechanisms.

28. In his presentation to the Plenary, the Acting Executive Secretary also proposed a set of strategic and concrete recommendations on the way forward, which, once approved by the Plenary, could be forwarded to the AU Policy Organs. These include the development of a Framework Convention on Public Health in Africa, the development of a legal corpus on the fight against corruption during pandemics, on civil litigation, on the establishment of an African Drug Agency, on cooperation with the private sector as well as on the preservation of human rights.

29. Taking note of all the information, the Commissioners first welcomed the initiative and the work done by the Secretariat. They then noted the need to improve this work, particularly by revising the legal instruments cited in the memorandum in order to carry out a more exhaustive survey.

30. The Commissioners insisted that this proposal should be more general and cover all types of pandemics, not just COVID-19. For example, it was suggested that the situation of displaced persons and refugees be included in the reflection, as well as the question of the protection of children's rights, which is already the subject of studies currently underway within AUCIL.

31. At the end of the discussions, the Plenary, after commending the Secretariat for the work done, took note of the proposals made and decided to set up a Committee of three Commissioners, namely Commissioners AYENSU, NDJIMBA

and NARINDRA, who will be responsible for reviewing the Concept Note with the Secretariat with a view to presenting a final proposal during the next Ordinary Session, which will be submitted to the relevant Organs of the AU as a contribution by the AUCIL to the AU's strategy for combating COVID-19.

e) Study on the Prohibition on Intervention in International Law

32. The significance and orientation of the study on the Prohibition on Intervention in International Law derive from the role of the AUCIL, as an AU advisory body, which is designed to articulate an African perspective on urgent matters of international law and interject an African voice on ongoing debates in questions of International Law.

33. The Special Rapporteur, Pr. Mohamed S. Helal indicated that recent developments on both the legal and political fronts have refocused attention on the prohibition on intervention, emphasized the need to clarify its scope and content, and underscored the importance of exploring how this rule of international law applies to and governs novel forms of statecraft that have emerged in recent years.

34. These legal and political developments include increased concern, both within the global south and among developed nations, regarding the use of economic sanctions, especially secondary sanctions, as an instrument of statecraft, the emergence of new technology-driven tools of coercion, including in the realm of cyber-operations, and the resort by some powers to what have been dubbed 'gray-zone tactics'¹ to exert pressure against their adversaries in the international system.

35. Accordingly, the AUCIL has a real opportunity to contribute to the codification and progressive development of international law by clarifying the scope, content, and elements of the prohibition on intervention and demonstrating how this principle applies regulates specific forms of behavior, especially novel areas, such as cyber-operations, psychological operations, information warfare, and many other activities that states engage in to intervene in the internal and external affairs of other states. .

36. The special Rapporteur indicated the ultimate goal of the study would be a set of articles accompanied with a commentary that restates the law relating to the prohibition on intervention, and that outlines rules relating to the application of the prohibition on intervention to specific forms of coercive activities. Upon completion, these articles would be presented to the AU Member States of the African Union for consideration.

37. The Plenary endorsed the concept note developed by the Special Rapporteur and the Work Plan contained therein. The Plenary further recommended that the Special Rapporteur shall engage the relevant AU Organs, including the Peace and Security Council.

¹ Gray-zone tactics are aggressive operations that fall short of the threshold of war and which are intended to compel states to make concessions in various policy areas without engaging in armed conflict. See Elizabeth Kiessling, *Gray Zone Tactics and the Principle of Non-Intervention: Can "One of the Vaguest Branches of International Law" Solve the Gray Zone Problem?* Harvard National Security Journal (2021).

f) Study on International Environmental Law

38. During the 21st Ordinary session, the Plenary considered the 1st Report on the study On International Environmental Law conducted by the Special rapporteur Prof. Kevin F. Ndjimba. It is to be recalled that the study was initiated in accordance with Article 4 of the AUCIL Statute, which provides that the AUCIL has, among other missions, to formulate opinions and recommendations on important legal questions, either at the request of the organs of the Union, either on its own initiative".

39. The Special Rapporteur identified the keys issues the study is anticipated to answer to : *Is Africa enabled to accelerate its socio-economic development on the basis of the current approach to international environmental law?*", *"Is the current African policies in line with Africa's international environmental commitments?"*; and finally, considering the objectives displayed within the framework of the 2063 agenda and around the sustainable management of natural resources as well as the conservation of biodiversity, sustainable consumption patterns, the safety of water supply, climate resilience and preparedness to natural disasters and renewable energies, *are they realistic with regard to the law and practice of African States in relation to the environment?*

40. The Special Rapporteur further indicated that the study should be carried out in three stages. The first step consisting to present a theoretical review of the international legal structure based on an analysis of the various legal instruments and relevant studies conducted by the doctrine, would be followed, at the second stage, by a questionnaire addressed to the Member States on their legislation and practices in terms of protection of the environment. Finally, the third step will be the development of Guidelines for the AU and its Member States to ensure an optimal level of ownership and integration of the norms of international environmental law into the domestic legal orders of States.

41. Considering the magnitude of the study, the Plenary recommended limiting its focus to the codification of fundamental principles of environmental law. Principles such "due diligence," "polluter pays," "no harm," and "sovereignty over natural resources," which are expressed in environmental law instruments but are also regarded as customary international law. It was further recommended that the study concentrate on the practices and values of African States when it comes to how States apply environmental law.

B. IMPLEMENTATION OF EXECUTIVE COUNCIL DECISIONS

i. Study relating to Article 5 (1) of the Protocol to the African Charter on Human and Peoples' Rights establishing an African Court of Human and Peoples' Rights

42. Pursuant to the request of the Executive Council in decision EX.CL/Dec.1043(XXXIV), the AUCIL has undertaken the study on the amendment of Article 5 (1) of the Protocol on the Establishment of the African Court on Human and Peoples' Rights in order to grant the African Committee of Experts on the Rights and Welfare of the Child direct access to the Court. This study was adopted by the AUCIL plenary during its eighteenth ordinary session. As a result, the conclusions as

well as the recommendations of the study were reported in the 2019 AUCIL activity report.

43. Subsequently, the study was submitted to the Executive Council. Hence, the Council took note of the study and transmitted it to the STC on Justice and Legal Affairs for consideration, prior to the submission of concrete recommendations on the way forward to the Executive Council in its decision EX.CL/Dec. 1083(XXXVI).

44. The Study was therefore submitted to 7th Ordinary Session of the Specialized Technical Committee on Justice and Legal Affairs (26 Nov-2 Dec, 2021, held by Video-Conference) for consideration and the Experts deliberated upon it extensively.

45. The Meeting, while commending the AUCIL for the effort in undertaking the Study, decided to defer the adoption of the Study and recommendations therein, to allow further consultations with Member States, through the PRC Subcommittee on Human Rights, Democracy and Governance.

ii. AUCIL Study and Recommendations on the amendment of the AUCIL Statute

46. The Executive Council, by decision EX.CL/Dec.1019 (XXXIII), which was adopted in July 2018 in Nouakchott (Mauritania), recommended that “the Statutes of AUCIL be amended to present the findings of its Studies to the STC on Justice and Legal Affairs”.

47. In addition, following the offer made by the government of the Equatorial Guinea to host the AUCIL and its Secretariat, the Executive Council, through decision EX.CL/Dec.1047 (XXXIV), adopted in February 2019 in Addis Ababa (Ethiopia), took note of this proposal and asked the AU Commission (Commission) to formally inform the Government of the Equatorial Guinea of the procedure for hosting AU bodies and the conditions for the transfer of the AUCIL Secretariat.

48. After due consideration of the institutional context and legal requirements, the AUCIL prepared proposals for amending the AUCIL Statute. The draft amendments were adopted by the Plenary of the AUCIL during the eighteenth ordinary session (November 2019).

49. In terms of the proposed amendments content, these cover, on the one hand the submission of the results of the AUCIL studies to the STC on Justice and Legal Affairs, essentially with reformulations, in particular Article: 1 (definitions); Article 5 (progressive development of international law): paragraph 4; Article 6 (codification of international law): paragraphs 2, 7, 10, 11 and 12; Article 18 (Remuneration): French version and Article 19 (Rules of procedure). Furthermore, with respect to the AUCIL Secretariat, it is proposed that the current Article 21 (Human and material resources) needs to be reformulated in order to make a provision on the Secretariat that will in turn enable the Secretariat to be independent and more administratively linked to the AUCIL as well as a possible relocation outside of the AU commission headquarters.

50. In accordance with Article 26 (1) (ii) of the AUCIL Statute, the AUCIL recommended for the consideration and adoption of the draft amendment of its

Statute and adoption of the proposed wording contained in the study. Accordingly, on the thirty-sixth Ordinary Session the Executive Council took note of the study and recommendations regarding the amendments of the Statute and decided their transmission to the STC on Justice and Legal Affairs for consideration in its decision EX.CL/Dec.1083(XXXVI).

51. The proposed amendments were therefore submitted to 6th Ordinary Session of the STC on Justice and Legal Affairs (22-24 September 2021, held by Video-Conference) for consideration and upon substantive deliberations, the meeting adopted the proposed amendments for submission to the Executive Council, which during its 40th Ordinary Session recommended them for adoption to the Assembly. The revised AUCIL Statute was finally adopted by the Assembly during 35th Ordinary Session (5 - 6 February 2022).

C. TEACHING, STUDY AND DISSEMINATION OF INTERNATIONAL LAW

52. Pursuant to Article 4 of the AUCIL Statute, one of the objectives of the AUCIL is:

“to encourage the teaching, study, publication and dissemination of literature on international law, in particular, the laws of the Union with a view to promoting acceptance of and respect for the principles of international law, the peaceful resolution of conflicts, respect for the Union and recourse to its Organs, when necessary.”

53. Accordingly, the AUCIL published the 4th volume of the AUCIL Journal on the theme *“Management of Natural Resources in Africa: Proceedings of the 7th forum”* in 2021. The AUCIL Journal is composed of a selection of the deliberations of the 7th Edition of the Forum, which was convened by the AUCIL in December 2018. The forum is a platform for discussing and interacting on matters of interest for Africa through the prism of international law and African Union Law with the view of raising awareness on the necessity of accelerating regional integration. As such, the journal includes nine scholarly articles on the issue of management of natural resources in Africa and a report that summarizes the discussions of the 7th forum.

D. INTERACTION SESSION ON “ENHANCING COOPERATION BETWEEN THE AFRICAN UNION COMMISSION ON INTERNATIONAL LAW (AUCIL) AND MEMBER STATES” HELD ON THE MARGINS OF THE 20TH ORDINARY SESSION OF THE AUCIL

54. In line with Article 24 (Cooperation with other Organs of the African Union) of the AUCIL Statute and previous relevant decision of the Executive Council, an Interaction Session between the AUCIL and the PRC was held in Addis Ababa, on the sidelines of the 20th ordinary session of the AUCIL (from 21st March to 1st April 2022) on 30th March 2022.

55. The overall objective of the interaction was to assess the current status of the working relationship between the AU Member States, through the PRC, and the AUCIL and make proposals for the achievement of greater effectiveness in the operations of the AUCIL.

56. After a general presentation on the role and mandate of AUCIL, in their various interventions the AUCIL Commissioners highlighted AUCIL's completed, ongoing and projected future studies, while indicating that AUCIL is guided by the need to codify and develop international law in a manner that is relevant to the African Union and its Member States. AUCIL also shared its significant institutional challenges that severely handicap the implementation of its mandate.

57. Several delegations gave their full support to the proposal for the AUCIL being adequately supported by Member States in terms of the necessary human and financial resources to allow the AUCIL to discharge its functions effectively and efficiently.

58. While commending the AUCIL initiative for organizing the interaction, Representatives of Member States observed also that the knowledge of the AUCIL and its achievements among Member States are not necessarily what would have befitted an institution of such importance. Issues of interest to the Member States for the progressive development of International Law should also be given a greater focus, such as a Study on intellectual property rights – to allow Africa to produce vaccines, a study on the regulation of the Online diplomacy.

59. The deliberations converged on the setting up of a formal framework for constant and continued engagement to have a holistic discussion on the AUCIL mandate within the AU framework and Agenda 2063

E. COOPERATION WITH SIMILAR INTERNATIONAL BODIES WORKING ON INTERNATIONAL LAW

60. As part of its mandate under Article 25 to cooperate and promote , the AUCIL undertook various activities in order to enhance its working relationship with various international organizations. Although there were limitations due to the COVID-19 pandemic, the AUCIL delegations undertook the following main activities:

a) Cooperation with the United Nations Commission on International Law (ILC)

61. In view of the limited arrangements available due to the COVID-19 pandemic, the ILC Chairperson could not attend and address the AUCIL at its 19th and 20th Ordinary sessions.

62. The AUCIL continues to value its cooperation with the ILC and expresses the hope that the exchanges of views can be organized at future sessions. It must be noted however, that the secretariats of the two Commissions met in the margin of the United Nations General Assembly 6th Committee, in November 2021 and had an exchange on the development of a collaboration framework between secretariats as well discussions on topics on the programme of work of the two respective bodies.

b) The participation of Mr. Luis García-Corrochano Moyano, Chair of the Inter-American Juridical Committee (IAJC) on the nineteenth Ordinary Session of AUCIL

63. In his communication to the AUCIL Plenary, the chair of the IAJC informed the members of the AUCIL Plenary of the adoption of the draft Inter-American Model Law 2.0 on Access to Public Information. Additionally, he informed the Plenary that the IAJC had adopted the Guidelines on Binding and Non-Binding Agreements, which provide a concrete and detailed set of definitions, common understanding, and best practices that States may consider employing in the negotiation, adoption, or implementation of different types of international agreements and their interaction with the responsible actors (States, governmental entities, and territorial units). Lastly, he shared with the AUCIL Members the reflections of the Inter-American Committee on International Law and the Cyber Operations of States, particularly with regard to the application of international law to cyberspace in order to prevent the risk of a cyber-conflict.

c) Discussion on collaboration with the University of Makeni (Sierra Leone) to develop a legal framework to facilitate the return of its cultural heritage to Africa

64. During the 19th Ordinary Session Prof. Cutis DOEBBLER from the University of Makeni (Sierra Leone) was invited to present a set of reflections relating to specific legal aspects of the AU theme for 2021 "*AU Year of Arts, Culture and Heritage: Levers to Build the Africa We Want*". He indicated that while it is understood that the AUCIL is working to define the contours of a "*legal framework to facilitate the return of elements of cultural heritage to Africa*", this definition must also take into account the right of Africans to be compensated for centuries of exploitation of their heritage and intangible assets, such as intellectual property, based in particular on the principles already identified in the 1970 Convention on Cultural Heritage and the 2003 Convention on Intangible Heritage.

65. In this respect, Prof. Doebbler gave his recommendation to the AUCIL to outline some of the concerns that the Commission may wish to address in considering a framework for facilitating the return of cultural heritages to African States.

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AUCIL and make proposals for the achievement of greater effectiveness in the operations of the AUCIL

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69. Several delegations gave their full support to the proposal for the AUCIL being adequately supported by Member States in terms of the necessary human and financial resources to allow the AUCIL to discharge its functions effectively and efficiently

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71. The deliberations converged on the setting up of a formal framework for constant and continued engagement to have a holistic discussion on the AUCIL mandate within the AU framework and Agenda 2063

SECTION III: CHALLENGES AND OBSERVATIONS

- a) The AUCIL continues to face major challenges at the administrative level. For the seventh year in a row, the AUCIL does not have a permanent Executive Secretary. Additionally, the Secretariat does not have permanent staff assigned to this duty and continues to suffer from insufficient OLC staff allocation. As a result, the AUCIL secretariat lacks adequate human and other administrative resources to undertake in-depth research activities needed to effectively assist in the various studies being conducted by the AUCIL.
- b) The Secretariat currently supporting the AUCIL is part of the structure of the Office of the Legal Counsel, which has extensive responsibilities in serving all other departments of the African Union Commission and other bodies of the African Union generally. Hence, it is practically impossible for the OLC to provide all that is necessary to effectively support the activities of the AUCIL. It is therefore appropriate to highlight the striking inconsistency between the Policy Organ's repeated decisions endorsing the strengthening of the staff of the AUCIL's secretariat and the failure for over almost ten years to implement such decisions.
- c) In this context, taking into consideration the offer made by a Member State to host the AUCIL Secretariat and the amendment proposal by the AUCIL, it has become imperative to have a permanent secretariat that is not only administratively separate from the Office of the Legal Counsel but one that also

has sufficient human resources in the new structure. This shall be considered within the ongoing process of AU Reform.

- d) Despite this challenging backdrop, the AUCIL wishes to express its appreciation to the current a.g Executive Secretary, Dr. Guy-Fleury Ntwari for his invaluable assistance in providing support as well as substantive contributions to the Commission within the limited resources at the Secretariat disposal.
- e) Another related matter is also the lack of visibility of the AUCIL. There is insufficient communication about the potential of the AUCIL in enhancing the quality and coherence of the legal instruments adopted by the African Union. It is hoped that the development of the AUCIL website will allow the Member States, departments and partners to make use of the available information and work towards resolving the shortcomings of our continental legal advisory body. Lack of information and knowledge base, such as a physical or electronic library, further impedes the work of the AUCIL.
- f) The AUCIL expresses its appreciation to the Secretariat, for the organizational arrangements put in place that allowed the Commission to be convened at its nineteenth Ordinary session, in May-June 2021, in a virtual format. The videoconference format enabled members to participate online through a platform (Zoom) with remote simultaneous interpretation. The AUCIL acknowledges the extraordinary efforts made to ensure the smooth conduct of the Commission's deliberations, which enabled the Commission to complete its session.
- g) However, the AUCIL wishes to note that the normal work of the AUCIL was disrupted significantly despite every effort and measures taken to ameliorate the issues. A variety of challenges were encountered, including: (a) reduced hours of operation, especially for decision-making and negotiation, because of members being in different time zones; (b) given that collegiality is central to the functioning of the Commission, its ability to work in the usual manner, including through informal contacts and exchanges, was affected; (c) it was challenging to engage in detailed drafting in a virtual setting sometimes disrupted by internet connectivity problems.
- h) The AUCIL stresses the importance of ensuring that the sufficient budgetary resources are provided for its effective functioning. The AUCIL is concerned that budgetary constraints in recent years have reduced the budgeted amounts to below these levels.
- i) The AUCIL has on numerous occasions reiterated its views concerning the question of honoraria, as well as the extent to which the research of Special Rapporteurs is affected by lack of resources. Given its function in the progressive development of international law, and its codification, the AUCIL stresses the importance of ensuring that the necessary budgetary resources are allocated for the functioning of the AUCIL and its Secretariat, including the need for Special Rapporteurs to obtain the necessary assistance to undertake the research required for the preparation of their reports.

- j) Overall, the capacity of the AUCIL was reduced and, above all, the achievement of the objectives for which it was established, was rendered difficult.

SECTION IV: RECOMMENDATIONS OF AUCIL

72. Following the deliberations and conclusions of the 19th and 20th Ordinary Session, the AUCIL makes the following recommendations to the Executive Council for endorsement:

- (a) **On the Study relating to Article 5 (1) of the Protocol to the African Charter on Human and Peoples' Rights establishing an African Court of Human and Peoples' Rights:** In accordance with the 6th Ordinary Session of the STC on justice and legal Affairs, the AUCIL recommends the consideration of the Study by the PRC Subcommittee on Human rights and Governance, prior to the submission of concrete recommendations on the way forward to the next Ordinary Session of the Executive Council.
- (b) **The implementation of the AUCIL's mandate:** In line with the AUCIL's mandate, the Assembly, the Executive Council or any organ may refer a specific proposal for the AUCIL to study. In this regard, Member States and other bodies of the Union are encouraged to submit a request for studies on pending legal matters, which could benefit from the expertise of the AUCIL. It would be particularly valuable to involve the AUCIL more broadly than hitherto in the African Union legislative process; for it might then deal not only with subjects belonging to the domain of "classical" international law, but also with specialized and technical areas of the African Union Law.
- (c) **A standing Agenda item before the STC on Justice and Legal Affairs:** With the view to have a continuous dialogue on the development of International law and seeking to address the shortcomings stated by Member States, namely the lack of sufficient consultation, the AUCIL wishes to propose that the STC's on Justice and Legal Affairs have a standing agenda on progressive development, codification and dissemination of International law. Additionally, the AUCIL would appreciate being provided with information by States on their national legislation and practice, including judicial and executive practice, and it is with this in mind that the AUCIL wishes to have a continued interaction with the STC on Justice and Legal Affairs.
- (d) **Additional resources for future budget:** In order to create ownership of the activities of this organ amongst Member States, interactions between the AUCIL and relevant policy organs as well as research activities shall be implemented. Resultantly, AUCIL Members will have to meet with the supportive bodies of the Executive council, *id est* the PRC and the STC on Justice and Legal Affairs. Therefore, it is proposed that the initial budget approval of the AUCIL be supplemented with the allocation of additional resources to cover the planned activities.

73. In conclusion, the Executive Council is requested to endorse the following recommendations:

- (i) To emphasize the importance of legal studies that focus on international law and is carried out by the AUCIL at the request of the Policy Organs of the Union as well as those initiated by itself on matters of International Law;
- (ii) To commend the AUCIL for the several studies on international Law that it has finalized so far;
- (iii) To request the PRC and the AU Commission to expeditiously finalise the consideration of the new structure of a permanent AUCIL Secretariat with sufficient human resources; and to submit a report thereof during the next Ordinary Session of the Executive Council in January 2022;
- (iv) To encourage AU commission departments and other Organs of the Union to extend necessary support to and work with the AUCIL in the preparation of its studies by, *inter alia*, providing information that AUCIL may need for this purpose on matters of international law of interest to the African Union;
- (v) To request the PRC to consider and adopt a supplementary budget for AUCIL activities concerning its interactions with relevant organs and the celebration of its tenth anniversary.
- (vi) Called upon the Commission to expedite setting up of a dedicated Secretariat to support the activities AUCIL in view of the importance of its work

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