

AFRICAN UNION

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**EXECUTIVE COUNCIL
Fifteenth Ordinary Session
24 – 30 June 2009
Sirte, Libya**

EX.CL/521 (XV)

**ADOPTION OF THE REPORT OF THE 12TH EXTRAORDINARY
SESSION OF THE EXECUTIVE COUNCIL ON THE MODALITIES FOR
THE IMPLEMENTATION OF DECISION ASSEMBLY/AU/DEC. 233 (XII)
ON THE TRANSFORMATION OF THE AFRICAN UNION COMMISSION
INTO THE AFRICAN UNION AUTHORITY,**

TRIPOLI, LIBYA, 15-16 APRIL 2009

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EXECUTIVE COUNCIL
12th Extraordinary Session
15 - 16 April 2009
Tripoli, Libya

Ext/EX.CL/Draft/Rpt (XII)

Draft
REPORT OF THE TWELFTH EXTRAORDINARY SESSION OF
THE EXECUTIVE COUNCIL

**DRAFT REPORT OF THE TWELFTH EXTRAORDINARY SESSION
OF THE EXECUTIVE COUNCIL**

I. INTRODUCTION

1. The Twelfth Extraordinary Session of the Executive Council of the African Union was held in Tripoli, Libya, from 15 to 16 April 2009, under the chairmanship of H.E. Dr. Ali Triki, Secretary for African Union Affairs of the Great Socialist People's Libyan Arab Jamahiriya and Chairperson of the Executive Council of the African Union. It was aimed at considering the modalities for the implementation of Decision Assembly/AU/Dec.233 (XII) on the Transformation of the African Union Commission into the African Union Authority. Brother Leader Muammar Gaddafi graced the opening ceremony with his presence.

ATTENDANCE:

2. The meeting was attended by the following Member States:

Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Republic of Congo, Democratic Republic of Congo, Côte d'Ivoire, Djibouti, Egypt, Eritrea, Ethiopia, Equatorial Guinea, Gabon, The Gambia, Ghana, Kenya, Lesotho, Libya, Liberia, Malawi, Mali, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sahrawi Arab Democratic Republic, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

Also present were the following Organs: PAP, ECOSOCC, ACHPR and AfCHPR. The following Regional Economic Communities (RECs) were represented: CEN-SAD, COMESA, EAC, ECCAS and IGAD.

II. OPENING CEREMONY

Statement by H.E. Mr. Jean Ping, Chairperson of the AU Commission

3. In his address, H.E. Mr. Jean Ping, Chairperson of the African Union Commission, recalled the various stages and decisions leading up to the holding of this Extraordinary Session. He further recalled the mandate of this Session, namely, the consideration of the size and functions of the Authority, the functions of the Secretaries and the financial implications of establishing the Authority. He apologized on behalf of the Commission for any inconvenience caused to Member States by the production and distribution of a document for which they had not requested. He concluded by saying

that he counts on the spirit of solidarity and cohesion of Member States for the success of the meeting.

Opening Statement by H.E. Brother Muammar Gaddafi, Leader of the Great Socialist People's Libyan Arab Jamahiriya and Chairperson of the Assembly of the AU

4. In his opening statement, the Chairperson of the Assembly of the AU stressed the importance of the transformation of the Commission into an Authority in pursuit of the objectives of the Union. He said that, despite the abundance of natural resources, the African continent continues to face difficulties which are forcing young citizens of the continent to risk their lives by trying to cross the Mediterranean Sea into Europe in search of greener pastures.

5. He emphasised the need for the continent to integrate by eliminating borders, promoting free movement and removing visa requirements for movement of Africans within the continent. He reminded Council that Africans are aspiring for integration, which is the solution to the continent's problems.

6. In his assessment of the existing structure of the Union, he indicated that neither the Permanent Representatives Committee nor the Executive Council has the competence to address sectoral issues such as education, health and defence. Furthermore, the latter meets only twice a year to prepare Assembly sessions and, hence, does not have the time to fully address a whole range of pressing continental matters. Also, given that the Chairperson of the Union has urgent national issues to grapple with, it is difficult for him to deal with Union matters. In addition, the inadequacy of regular direct contact between the Chairperson of the Commission and that of the Union was highlighted as a key weakness. In light of the foregoing, Brother Leader emphasized the need to overhaul the existing structure of the Union.

7. Outlining his vision of the proposed AU Authority, he stated that less importance should be attached to terminology and greater significance given to substance. In this regard, he proposed that the key elements of the Authority should be as follows:

- i) Each portfolio of the Authority should be headed by a Union Secretary who will be answerable to the President of the Authority,
- ii) The President of the Authority should be accountable to the Chairperson of the Assembly,
- iii) Like the Executive Council, which brings together Ministers of Foreign Affairs, similar bodies should be set up for all sectors such as defence, agriculture, trade etc.,
- iv) There should be a Union Secretary, based at the Authority, for each of the following:

- a. **Foreign Affairs:** To coordinate the continent's foreign policy
- b. **International Cooperation, Foreign Trade and Economic Relations** (to be led by the Head of NEPAD)
- c. **Defence and Security** (to be led by the Chair of the Peace and Security Council)
- d. Any other portfolio deemed necessary for the attainment of the objectives of the Union.

8. The full text of the Statement of Brother Leader is attached hereto as Annex I.

Remarks by H.E. Dr. Ali Triki, Secretary for African Union Affairs of the Great Socialist People's Libyan Arab Jamahiriya and Chairperson of the Executive Council of the African Union

9. In his introductory remarks, the Chairperson of the Executive Council reiterated the sentiments expressed by the Chairperson of the Union by reminding Council that Africa would continue to face difficult times until the continent is fully integrated. He made reference to the resurgence of coups d'Etat in Africa which is cause for concern. In this regard, he informed Council that the Chairpersons of the Union, the Commission and the Peace and Security Council have been working closely together on peace and security matters. In conclusion, he urged Council to use the opening statement of the Chairperson of the Union, in which he outlined his vision of the proposed Authority, as a guide for its deliberations.

III. ADOPTION OF THE AGENDA

10. During the adoption of the Agenda, Council discussed the documents that would serve as the basis of the deliberations of its Extraordinary Session. At the end of the discussions, Council decided to consider the following:

- i) Report on the outcome of the Special Session on Follow-up to the Sharm El Sheikh Assembly Decision AU/Dec. 206 (XI) on the Union Government (Doc. Sp/Assembly/AU/Draft/Rpt (I));
- ii) Proposals on Modalities for the implementation of the Assembly Decision on the Transformation of the AU Commission into the AU Authority - Decision AU/Dec.233 (XII) – (Doc. Ext/EX.CL/Draft/Rpt (XII)); and
- iii) The Opening Statement by the Leader of the Great Socialist People's Libyan Arab Jamahiriya.

IV. ORGANIZATION OF WORK

11. Council adopted the following working hours:

Morning:	09h00	-	13h00
Afternoon:	15h00	-	20h00

12. After an extensive discussion on the mandate given by the Assembly to the Executive Council, it was decided to set up a Committee chaired by Tanzania (Rapporteur) and comprising: Chad, Libya, Rwanda, Senegal, Zambia and the Commission. The Committee was entrusted to consider the three working documents along with the inputs and contribution derived from the deliberations of the Council and to come up with concrete proposals for latter's consideration.

13. The Committee subsequently presented the outcome of its work to the Executive Council.

V. CONSIDERATION OF THE MODALITIES FOR THE IMPLEMENTATION OF THE ASSEMBLY DECISION ON THE TRANSFORMATION OF THE AU COMMISSION INTO THE AU AUTHORITY (DECISION Assembly/AU/Dec. 233 (XII))

14. After a thorough review, the Executive Council adopted its conclusions for consideration by the Assembly, as reflected in Document Ext/EX.CL/Concl. (XII).

15. During the consideration of the recommendations of the Ministerial Committee, Council was briefed by the Foreign Minister of Senegal, on behalf of the Ministerial Drafting Committee of 7, on the proposals made by Brother Leader on the areas of competence, functions, powers and structure of the Authority. In this regard, the Minister of Foreign Affairs of Senegal indicated that Brother Leader had recommended the following:

- (i) Harmonization of areas of competence of the Authority (paragraph 4 of the conclusions of the Ministerial Committee) with the portfolios of the Secretaries of the African Union Authority. Consequently, the functions established for each portfolio should be replicated in the areas of competence of the African Union Authority.
- (ii) Defence, security and coordination of external relations should be added to the areas of competence of the African Union Authority.
- (iii) The Secretary of the Union Authority for Peace, Security and Joint Defence should chair the Peace and Security Council (PSC).

- (iv) The Secretary of the Union Authority for Political Affairs and the Coordination of External Relations should chair the Executive Council of the Union.
- (v) NEPAD should cover the portfolio of the Secretary of the Authority for Trade, Industry and International Cooperation.
- (vi) The Authority of the Union should be answerable directly to the Assembly without passing through the Executive Council.
- (vii) The Authority of the Union should be responsible for representing and negotiating on behalf of the Union.
- (viii) Appropriate amendments should be made to the Constitutive Act and the various protocols, where necessary.

16. The Executive Council took note, with high appreciation, of the proposals of Brother Leader and his intention to submit them directly to the Assembly for consideration by his Peers during the next Ordinary Session of the Assembly.

17. In his conclusion, the Chairperson of the Executive Council also indicated that he would bring Brother Leader's proposals to the attention of the Assembly when reporting on the outcome of the 12th Extraordinary Session.

18. At the end of its deliberations, the Executive Council adopted the following two documents:

- i. Declaration on the developments in Togo (Annex II);
- ii. Vote of Thanks to H.E. Col. Muammar Gaddafi, Leader of the Libyan Revolution, Chairperson of the Executive Council and the Libyan people (Annex III).

VI. CLOSING

19. In his closing remarks, the Chairperson of the Executive Council thanked all delegations for their cooperation and important contribution they had made for the successful conclusion of the Extraordinary Session. The Session was closed at 05:30 a.m. on 17 April 2009.

EX.CL/521(XV)
Annex

**CONCLUSIONS OF THE 12TH EXTRAORDINARY SESSION
OF THE EXECUTIVE COUNCIL**

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EXECUTIVE COUNCIL
12th Extra Ordinary Session
15 - 16 April 2009
Tripoli, Libya

EXT/EX.CL/Concl. (XII)

CONCLUSIONS OF THE 12TH EXTRAORDINARY SESSION
OF THE EXECUTIVE COUNCIL

CONCLUSIONS OF THE 12TH EXTRAORDINARY SESSION OF THE EXECUTIVE COUNCIL

1. Pursuant to the mandate given to the Executive Council by Assembly Decision (Assembly/AU/Dec/233 (XII)), the Executive Council considered the modalities for transforming the AU Commission into the AU Authority and adopted the following conclusions.

a) Nature of the Authority

2. In accordance with the Decision of the Assembly, [Assembly/AU/Dec.206 (XII)] adopted in Sharm El Sheikh, Egypt in July 2008, the African Union is a Union of independent and sovereign States; as such, it is an inter-governmental organization and all its Organs are of an inter-governmental nature. In all cases, the Assembly shall retain its right to delegate any function and/or power to any organ of the Union including the Authority.

3. The transformation of the Commission into an Authority is intended to strengthen the institutional framework of the Union in order to enable it play its role in accelerating the political and socio-economic integration of the Continent towards the achievement of the United States of Africa.

4. Based on the above, the Executive Council makes the following recommendations:

b) Areas of Competence

5. In this regard, the Authority will exercise its functions on the basis of the principle of subsidiarity with the RECs and Member States as agreed upon by the Assembly in Sharm El Sheikh on the recommendation of the Committee of Twelve in Arusha:

- Continent-wide poverty reduction (in coordination with RECs);
- Free movement of persons, goods and services (in coordination with RECs);
- Inter-regional and continental infrastructure (road networks, bridges, railways, ports, energy and communications, etc);
- Global warming, desertification and coastal erosion;
- Epidemics and pandemics, such as HIV/AIDS;
- Research/Universities/Centres of excellence;
- International trade negotiations;
- Peace and Security;

- Transnational crime (terrorism, drugs, arms trafficking, legal positions and frameworks).

c) Functions of the Authority

<u>African Union Commission</u>	<u>African Union Authority</u>
<p>The functions set out in Article 3(2) of the Statutes of the Commission:</p>	<p>The functions set out in Article 3(2) of the Statutes of the Commission, plus the following:</p>
<ul style="list-style-type: none"> a) represent the Union and defend its interests under the guidance of and as mandated by the Assembly and the Executive Council; b) initiate proposals for consideration by other organs; c) implement the decisions taken by other organs; d) organise and manage the meetings of the Union; e) act as the custodian of the Constitutive Act, its protocols, the treaties, legal instruments, decisions adopted by the Union and those inherited from the OAU; f) establish, on the basis of approved programmes, such operational units as it may deem necessary; g) coordinate and monitor the implementation of the decisions of the other organs of the Union in close collaboration with the PRC and report regularly to the Executive Council; h) assist Member States in implementing the Union programmes and policies, including, CSSDCA and NEPAD; 	<ul style="list-style-type: none"> i) Make proposals for reforming and refining the existing governance structure of the African Union as a tool for accelerating political and economic integration of the continent. ii) Promote Pan-Africanism and to project and defend general African interests within and outside the continent. iii) Ensure that Union policies, positions and decisions are translated into action and implemented faithfully. iv) Effectively mobilize African people on the continent and in the Diaspora to identify with and support the process of renewal and reform of the continent as a framework for African renaissance. v) Coordinate the political positions of Member States of the African Union on issues of common interest for the Continent and its peoples. vi) Coordinate the positions of Member States of the African Union during international negotiations.

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| i) work out draft common positions of the Union and coordinate the actions of Member States in international negotiations; | vii) Represent Member States of the African Union and speak on their behalf in international bodies focusing on common African foreign policies as and when mandated by Member States. |
| j) prepare the Union's Programme and Budget for approval by the policy organs; | viii) Coordinate and promote measures for preventing, managing and resolving conflicts. |
| k) manage the budgetary and financial resources including collecting the approved revenue from various sources, establishing fiduciary, reserve and special Funds with the appropriate approvals, and accepting donations and grants that are compatible with the objectives and principles of the Union; | ix) Coordinate, monitor and promote measures for enhancing the process of post-conflict reconstruction and development. |
| l) manage the assets and liabilities of the Union according to laid down regulations and procedures; | x) Coordinate the implementation of the Common African Defence and Security Policy relating to defence, as well as the strategies and mobilization of the resources required for the defence of the Continent. |
| m) prepare strategic plans and studies for the consideration of the Executive Council; | xi) Assess, evaluate and monitor potential threats that could undermine the political, economic, and social security and stability of the Continent. |
| n) take action in the domains of responsibility as may be delegated by the Assembly and the Executive Council. The domains shall include the following: | xii) Provide strategic command for the African Standby Force |
| i) control of pandemics; | xiii) Operationalize and supervise the African Peace Academy as provided for in the Non-Aggression and Common Defence Pact. |
| ii) disaster management; | xiv) Enhance the effectiveness of a comprehensive Early Warning regime. |
| iii) international crime and terrorism; | xv) Coordinate and promote the implementation of the provisions of the Non-Aggression and Common Defence Pact. |
| iv) environmental management; | |
| v) negotiations relating to external trade; | |
| vi) negotiations relating to external debt; | |
| vii) population, migration, refugees and displaced persons; | |
| viii) food security; | |
| ix) socio-economic integration; and | |

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| x) all other areas in which a common position has been established. | xvi) Coordinate, monitor and promote the Implementation of the African Nuclear Weapons Free Zone Treaty (Treaty of Pelindaba). |
| o) mobilize resources and devise appropriate strategies for self-financing, income generating activities and investment for the Union; | xvii) Follow up on the issue of non-proliferation of weapons of mass destruction, small arms and light weapons. |
| p) promote integration and socio-economic development; | xviii) Elaborate a common African programme of action in the area of foreign trade with a view to harmonizing policies and systems in this area. |
| q) strengthen cooperation and co-ordination of activities between Member States in fields of common interest; | xix) Represent the common interests of Member States of the Union and speak on their behalf at international events relating to international trade as and when mandated. |
| r) ensure the promotion of peace, democracy, security and stability; | xx) Coordinate and facilitate the strengthening of the RECs with a view to enhancing their role in the integration process and achieving the objectives of the Union. |
| s) provide operational support to the PSC; | xxi) Enhance intra-African trade so as to promote integration and development. |
| t) elaborate, promote, coordinate and harmonise the programmes and policies of the Union with those of the RECs; | xxii) Elaborate plans aimed at facilitating free movement of persons, capital, goods and services in collaboration with RECs. |
| u) prepare and submit an annual report on the activities of the Union to the Assembly, the Executive Council and the Parliament; | xxiii) Develop and harmonize the collection and use of statistics on the continent |
| v) prepare the Staff Rules and Regulations for approval by the Assembly; | xxiv) Promote private sector development |
| w) implement the decisions of the Assembly regarding the opening and closing down of sections, administrative or technical offices; | |
| x) follow up and ensure the application of the Rules of Procedure and Statutes of the organs of the Union; | |

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| y) negotiate, in consultation with the PRC, with the host countries, the Host Agreements of the Union and those of its administrative or technical offices; | xxv) Ensure and monitor the implementation of programmes of the New Partnership for Africa's Development (NEPAD). |
| z) build capacity for scientific research and development for enhancing socio-economic development in the Member States; | xxvi) Ensure the centrality of the African Union Authority in Africa's relations with international economic groupings and partners. |
| aa) strive for the promotion and popularization of the objectives of the Union; | |
| bb) collect and disseminate information on the Union and set up and maintain a reliable database; | |
| cc) ensure the mainstreaming of gender in all programmes and activities of the Union; | |
| dd) undertake research on building the Union and on the integration process; | |
| ee) develop capacity, infrastructure and maintenance of intra-continental information and communication technology; and | |
| ff) prepare and submit to the Executive Council for approval, administrative regulations, standing orders and Rules and Regulations for the management of the affairs of the Union and keeping proper books of accounts. | |

d) Structure / Size of the Authority

6. Two options were considered, namely, ten (10) and twelve (12) members of the Authority respectively composed of a President, a Vice-President and Secretaries.

7. At the end of the deliberations, Option I was recommended. This would entail retaining the existing portfolios with the additional approved areas of competence

agreed upon in Arusha and Sharm El-Sheikh to constitute an Authority of 10 members composed of a President, a Vice President and 8 Secretaries as follows:

- (i) President: Chief Executive. He/she shall serve as the Legal Representative of the Union, the Accounting Officer of the Authority and shall have overall responsibility for the functioning of the Authority. The current areas of responsibility under the Office of the Chairperson shall be transferred to the Office of the President of the Authority.
- (ii) Vice-President: Deputy-Chief Executive. He/she shall, in the discharge of his/her responsibilities, be accountable to the President. The current areas of responsibility under the Office of the Deputy Chairperson shall be transferred to the Office of the Vice President of the Authority.
- (iii) Secretary: Peace, Security and Common Defence (Conflict Prevention, Management, Resolution and post-conflict reconstruction, Combating Terrorism and Non-Aggression and Transnational crime (terrorism, arms trafficking);
- (iv) Secretary: Political Affairs and Coordination of Common Positions on External Relations (Political cooperation, Human Rights, Democracy, Good Governance, Electoral Institutions, Humanitarian Affairs - Refugees, Returnees and Internally Displaced Persons, Free movement of persons, financial crimes and money laundering);
- (v) Secretary: Infrastructure and Energy (Energy, Transport (inter-regional and continental infrastructure- road networks, bridges, railways, maritime, air transport- Communication and information networks Infrastructure, and);
- (vi) Secretary: Health and Social Affairs (Children, Crime prevention and Drug Control, Human Trafficking, Population, Migration, Labour and Employment, Sports and Culture, vulnerable groups, social welfare, epidemics and pandemics such as HIV/AIDS);
- (vii) Secretary: Education, Human Resources and Science and Technology (Information Communication Technology, Youth, Research, Universities and Poles of Excellence and Intellectual Property matters)
- (viii) Secretary: Trade, Industry and International Cooperation (Trade, Industry, Customs and Immigration Matters, International Trade Negotiations, Free movement of goods and services and Tourism)
- (ix) Secretary: Rural Economy, Agriculture and Environment (Rural Economy, Agriculture and Food Security, Livestock, Water, Lakes, Rivers and Natural Resources, Desertification, global warming, coastal erosion; climate change)

- (x) Secretary: Economic Affairs (Economic Integration, International Economic Cooperation, Monetary Affairs, Private Sector Development, Investment and Resource Mobilization, Continent-wide poverty reduction, Statistics)

e) Functions of the Secretaries

8. In the performance of their functions, the Secretaries shall be answerable to the President of the Authority under whose supervision they carry out their duties. Their functions shall include the following:

- a. initiate common policies and programmes in respect of the portfolios assigned to them, submit them to Union Organs for consideration and adoption and monitor the implementation of decisions;
- b. oversee departments under their charge and in accordance with the functions of the Authority;
- c. engage in advocacy activities so as to promote the attainment of the goals of the Union, as well as the implementation of its programmes;
- d. perform representational and negotiation functions as and when the Authority is mandated by the Assembly.

f) Financial Implications

9. The financial implications of the transformation of the Commission into the Authority will be worked out by the Commission, taking into account the internal restructuring proposals and shall be submitted to the next Ordinary Session of the Executive Council in June 2009.

10. The imperative need for identification of alternative sources of financing the Union was underlined in order to ensure sustainable funding for the programmes and activities of the Union. In this regard, a report should be submitted to the 16th Ordinary Session of Council in January 2010.

g) Other Issues

11. Council took note of the fact that the transformation of the Commission into the Authority will operate within the overall framework of the African Union whose structure will include the Assembly; the Executive Council; the Peace and Security Council; the Pan-African Parliament; the African Court of Justice and Human Rights; the Authority; the Permanent Representatives Committee; the Specialized Technical Committees; the Economic, Social and Cultural Council; the Financial Institutions; the Peace and Security Council; the African Commission on Human and Peoples' Rights; and the

African Committee of Experts on the Rights and Welfare of the Child. In this regard, there will be need for review of the institutional framework of the Union to enable them play an enhanced role in accelerating the continental integration process.

12. In order to transform the Commission into an Authority, the Constitutive Act should be amended in accordance with the provisions of Article 32 of the said Act, and thereafter, call upon Member States to expedite the ratification of the amendments. In addition, there may be consequential amendments to the other protocols and rules of procedure.

Done in Tripoli, 17 April 2009

2009

Adoption of the report of the 12th
extraordinary session of the executive
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