

COUNCIL OF MINISTERS
Fifteenth Ordinary Session
Addis Ababa - August 1970

CM/334

AMENDMENTS TO THE CHARTER AND THE PROTOCOL OF THE
COMMISSION OF MEDIATION, CONCILIATION
AND
ARBITRATION



AMENDMENTS TO THE CHARTER AND THE PROTOCOL OF THE COMMISSION
OF MEDIATION, CONCILIATION AND ARBITRATION

1. The establishment of the Commission of Mediation, Conciliation and Arbitration is the most outstanding manifestation of one of the basic concerns of the founders of the Organization of African Unity; the settlement of disputes by peaceful means. Doubtless, it is by far the most important of all the specialized Commissions.
2. The Protocol of the Commission of Mediation, Conciliation and Arbitration was adopted and signed in Cairo (United Arab Republic) on 21 July 1964. However, the election of the first Members of the Commission was held in Accra on 25 October 1965 by the Second Session of the Assembly of Heads of State and Government.
3. After the signing of the Protocol of the Commission and the election of its twenty-one Members by the Assembly, and in order to enable it to function and carry out the work of Mediation, Conciliation and Arbitration entrusted to it by the African Heads of State, it became necessary to provide the necessary funds for the setting up and running of the Bureau of the Commission. The first funds were not voted until in September 1967 in Kinshasa and the President of the Commission did not assume his office in Addis Ababa until in April 1968, while the two Vice-Presidents took up their posts only in January 1969. Meanwhile, because it did not have the means, the Commission was doomed to inactivity. The attention of the political bodies of OAU was drawn to this state of affairs. This is why, in its Decision AHG/Dec.3, the Third Session of the Assembly of Heads of State and Government, after taking note of the Report of the President of the Commission, "requested the Secretariat to examine the organizational structure of the Commission in the light of the work requested of the Commission and of the experience of settling

disputes between other Member States since the Commission was set up in 1964".

4. The General Secretariat's report showed that several reasons accounted for the inactivity of the Commission.

5. First of all, the setting up of the Bureau of the Commission had been impeded owing to lack of funds. Secondly, there seemed to be preference for referring inter-African disputes to the political bodies of OAU or to ad hoc Commissions, rather than to the Commission of Mediation, Conciliation and Arbitration. In fact, all the disputes between Member States referred to OAU, had followed a particular procedure of political nature: Algero-Moroccan border dispute Ad hoc Commission, Council of Ministers on the Somali-Ethiopian dispute, Ad hoc Commission chaired by President Kenyatta on the dispute between the Democratic Republic of Congo and its neighbouring States; mission assigned to President Mobutu in respect of the dispute between Burundi and Rwanda, mission assigned to President Tubman in respect of the dispute between the Ivory Coast and Guinea, and the mission assigned to President Kaunda in respect of the dispute between Somalia and Kenya. Of late, several disputes between Member States were solved on regional or sub-regional basis with the intervention of friendly heads of State or through direct negotiations as was the case in the Magreheb, Central and West Africa.

6. The idea of re-considering the permanent status of the Bureau of the Commission was brought about by this unusual situation and the ever increasing tendency toward financial austerity measures. In the course of discussions, at the various Sessions of the Council of Ministers and the Assembly of Heads of State and Government, on the consideration of the report of the President of the Commission, various points of view were expressed on the expediency of transforming the Bureau of the Commission of Mediation into an Ad hoc Body. Finally, during the Sixth Session of the Assembly of Heads of

State and Government, it was formally proposed to reconsider the permanent status of the Bureau of the Commission with a view to making it an Ad hoc Body. The Assembly decided (Decision AHG/Dec.40(VI)) "that the Council of Ministers should study the future of the Commission of Mediation, Conciliation and Arbitration and report the results to the next ordinary session of the Assembly". To this end the Assembly further mandated the President of Dahomey to table at the Seventh Session of the Assembly, draft amendments to the Protocol of the Commission or the Charter. In accordance with this Decision, the delegation from Dahomey at the Sixth Session of the Assembly, proposed an amendment to Article 19 of the Charter in a letter dated 8 September addressed to the Administrative Secretary-General. The amendment is as follows: "The second part of the phrase instead of ".... decide to establish a Commission of Mediation, Conciliation and Arbitration....." should read: "provide for ad hoc Commissions of Mediation, Conciliation and Arbitration.....".

7. With this amendment, Article XIX would read as follows: "Member States pledge to settle all disputes among themselves by peaceful means and, to this end, provide for ad hoc Commissions of Mediation, Conciliation and Arbitration, the composition and conditions of service of which shall be defined by a separate Protocol to be approved by the Assembly of Heads of State and Government. The said Protocol shall be regarded as forming an integral part of the present Charter".

8. Note LEG/20/GEN dated 9 September 1969, conveyed the text of this amendment to all the Member States through their delegations at the Sixth Ordinary Session of the Assembly of Heads of State and Government.

9. As a follow-up, Dahomey completed its proposal of 8 September 1969 as follows: "HONOUR INFORM YOU GOVERNMENT OF DAHOMEY COMPLETE ITS AMENDMENT SUBJECT OF LETTER OF 8 SEPTEMBER (1969) AS FOLLOWS ARTICLE VI PARAGRAPH 2 OF PROTOCOL (OF)

MEDIATION COMMISSION THE PRESIDENT VICE-PRESIDENTS AND EIGHTEEN OTHER MEMBERS CARRY OUT THEIR DUTIES OCCASIONALLY STOP IN COMPLIANCE WITH ARTICLE XXIII OF PROTOCOL COMMUNICATE PROPOSAL TO MEMBER STATES COMPLETE AMENDMENT".

10. This addition to the amendment of Dahomey was also forwarded to all Member States through Note LEG/10/2/3/1133-69 dated 18 September, 1969. In that Note, the General Secretariat specified that the second part of the amendment formed one and indivisible whole with the first and took effect from the same day.

11. The study of the draft amendment of Dahomey was placed on the agenda of the Fourteenth Ordinary Session of the Council of Ministers and after a lengthy debate on it, the Council decided:

- on the withdrawal of the report of the General Secretariat;
- that the report which the President of the Commission was supposed to present should be submitted to the General Secretariat for onward transmission to all Member States;
- that the General Secretariat should prepare, in consultation with the Bureau of the Commission, the report to be submitted to it at its fifteenth session.

12. In compliance with these directives of the Council, the General Secretariat sent a letter dated 19 March 1970 to the President of the Commission of Mediation, requesting him to forward to the Secretariat for onward transmission to Member States, his report intended for submission to the Fourteenth Ordinary Session of the Council as well as any other documents which the Commission may wish to forward to African Governments. In that same letter, the General Secretariat further requested from the President of the Commission a number of other details

on the activities of the Bureau and proposed a meeting for the discussion of such activities.

13. By 30 June 1970, the General Secretariat had not received any reply from the Bureau. However, on 17 June, a meeting was held between the General Secretariat and the Bureau of Commission of Mediation. It appeared from the discussions that the Bureau no longer had the intention of forwarding to Member States, the report prepared by its President for the Fourteenth Session of the Council of Ministers; the essential parts of that report having probably been included in a new comprehensive report covering the various aspects of the functions and activities of the Commission and its Bureau, the draft amendment of Dahomey and the election of Members of the Commission of Mediation, Conciliation and Arbitration by the seventh session of the Assembly of Heads of State and Government. To avoid any possible duplication, the General Secretariat particularly insisted that the main report promised by the Bureau be forwarded to it in good time, for onward transmission to Member States without delay.

14. The draft amendment of Dahomey, considered in its entirety, calls for two remarks: First, the first part of that proposal reads as follows: "provide for ad hoc Commissions of Mediation, Conciliation and Arbitration..."

15. It does not seem that the proposal of Dahomey aims at transforming the present Commission which deals with Mediation, Conciliation, and Arbitration, into three ad hoc Commissions, one to be responsible for Mediation, the second Conciliation, and the third Arbitration. However, this is what the first part of the amendment of Dahomey, implies as it stands at present. This will consequently lead to the drawing up of an entirely new Protocol, since it would be necessary to redefine the conditions of service of each of the three ad hoc Commissions thus established and provide for the election of Members for each one of them.

16. It is easy to imagine at this stage, the confusion and complications that this would lead to. A simple interpretation of this part of the draft amendment and which probably conforms more with the concern of both the Sixth Session of the Assembly and the Government of Dahomey, will be as follows:

"provides for an ad hoc Commission of Mediation, Conciliation and Arbitration".

Furthermore, as things stand at present, only the Bureau of the Commission is, in fact, permanent, since in accordance with Article VI, paragraph 2 of the Protocol, "The President and the two Vice-Presidents shall be full-time Members of the Commission, while the remaining eighteen shall be part-time Members".

17. It is therefore the Bureau which the proposal of Dahomey intends to transform into an ad hoc Body. Finally, it is worth pointing out that, in any case, the transformation of the Commission of Mediation, Conciliation and Arbitration into an ad hoc Body will in no way affect the position of the three current members of the Bureau. The term of office of these three persons who were elected for a period of five years by the Second Assembly of Heads of State and Government meeting in Accra in October 1965, will expire in October 1970 and besides, in accordance with the terms of Article 6, paragraph 1, "The President and the two Vice-Presidents shall not be eligible for re-election as such officers".

18. Consequently, the three current Members of the Bureau will not in the least be affected by whatever decision is taken by the seventh session of the Assembly on the amendment of Dahomey, for the simple fact that, whatever the case, they will cease to exercise their functions after the election of new Members of the Commission by the same Assembly.

In view of the foregoing and in accordance with Decision AHG/Dec.40 (VI) of the Sixth Session of the Assembly of Heads of State and Government, it would be necessary for the present Session of the Council of Ministers to give the fullest possible attention to the amendment of Dahomey in order to make recommendations likely to enable the seventh session of the Assembly to take a decision on the amendment in question with full knowledge of the facts.

ASSEMBLY OF HEADS OF STATE
AND GOVERNMENT

Sixth Ordinary Session

Addis Ababa September, 1969.

COMMISSION OF MEDIATION, CONCILIATION AND
ARBITRATION:

The Assembly of Heads of State and Government meeting in its Sixth Ordinary Session in Addis Ababa from 6 to 10 September, 1969 having discussed the "Report of the President of the Commission of Mediation, Conciliation and Arbitration" contained in document AHG/42 decided:

- (a) by a vote of 82 for, none against and 2 abstentions that the report should be withdrawn;
- (b) that the Council of Ministers should study the future of the Commission of Mediation, Conciliation and Arbitration, and report the results to the next ordinary session of the Assembly,
- and (c) that the President of Dahomey be permitted to table at that time a formal notice to the Assembly, proposing amendments of the Protocol of the Commission or the Charter of the OAU, which will allow for any decisions taken by the Assembly after receiving the report of the Council of Ministers, to come into force legally and immediately in accordance with the procedures laid down in the OAU Charter.

Addis Ababa, 9 September 1969

The General Secretariat of the Organization of African Unity presents its compliments to the Delegations of all Member States at the Sixth Ordinary Session of the Assembly of Heads of State and Government, and has the honour to attach hereto a proposed amendment to Article XIX of the Charter of the OAU, submitted by the Government of the Republic of Dahomey.

This draft amendment is conveyed to the Delegations of all Member States at the express request of the Government of Dahomey.

The General Secretariat of the Organization of African Unity avails itself of this opportunity to renew to the Delegations of all Member States at the Sixth Ordinary Session of the Assembly of Heads of State and Government the assurances of its highest consideration.

To the Delegations of all Member States
at the Sixth Ordinary Session of the
Assembly of Heads of State and Government

Addis Ababa, 8 September 1969

From the Minister for Foreign Affairs
of the Republic of Dahomey

to

The Administrative Secretary-General
of the Organization of African Unity

Mr. Secretary-General,

Pursuant to the deliberations of the Sixth Session of the Assembly of Heads of State and Government on item 8 of its agenda, "Report of the President of the Commission of Mediation, Conciliation and Arbitration", I have the honour to inform you that my Government would like to see Article XIX of the Charter amended thus:

The second part of the phrase, instead of "... decide to establish a Commission of Mediation, Conciliation and Arbitration...", should read: "provide for ad hoc Commissions of Mediation, Conciliation and Arbitration...".

With this amendment, Article XIX would read as follows:

"Member States pledge to settle all disputes among themselves by peaceful means and, to this end, provide for ad hoc Commissions of Mediation, Conciliation and Arbitration, the composition and conditions of service of which shall be defined by a separate Protocol to be approved by the Assembly of Heads of State and Government. The said Protocol shall be regarded as forming an integral part of the present Charter".

As the Assembly of Heads of State and Government have instructed the Council of Ministers to undertake a study on the future of the Commission of Mediation, Conciliation and Arbitration, my Government considers that its proposal regarding the amendment to Article XIX will facilitate the task of the Council of Ministers in the event that the proposed study should lead to a radical transformation of the Commission.

In accordance with Article XXXVIII of the Charter, I would ask you to be so good as to notify the Member States regarding the proposal made by Dahomey before the end of the present Assembly of Heads of State and Government of the Organization of African Unity.

Please accept, Mr. Secretary-General, the assurances of my highest consideration.

Dr. D. BADAROU

The General Secretariat of the Organization of African Unity presents its compliments to the Ministries of Foreign/External Affairs of Member States and, further to its note of 9 September 1969, has the honour to communicate herein below the specifications which the Government of Dahomey, in conformity with the conclusions of the discussions of the Sixth Assembly of Heads of State and Government on the Report of the President of the Commission of Mediation, Conciliation and Arbitration, has made as a follow-up of its proposal of 8 September 1969 which is the subject of the aforementioned note: that the said Commission be made an ad hoc Body.

Quote:

"HONOUR INFORM YOU GOVERNMENT OF DAHOMEY COMPLETE ITS AMENDMENT SUBJECT OF LETTER OF 8 SEPTEMBER (1969) AS FOLLOWS ARTICLE VI PARAGRAPH 2 OF PROTOCOL (OF) MEDIATION COMMISSION THE PRESIDENT VICE-PRESIDENTS AND EIGHTEEN OTHER MEMBERS CARRY OUT THEIR DUTIES OCCASIONALLY STOP IN COMPLIANCE WITH ARTICLE XXIII OF PROTOCOL COMMUNICATE PROPOSAL TO MEMBER STATES COMPLETE AMENDMENT"

Unquote.

The second part of the draft amendment of the Government of Dahomey with the first part makes one and indivisible whole and takes effect from the same date.

The General Secretariat of the Organization of African Unity avails itself of this opportunity to renew to the Ministries of Foreign/External Affairs of Member States the assurances of its highest consideration.

Date: 19 March, 1970

Mr. President,

I have the honour to draw your attention to the discussions held during the 14th Ordinary Session of the Council of Ministers on the amendment proposed by Dahomey to the Charter and Protocol of the Commission of Mediation, Conciliation and Arbitration.

In this connexion, it is my duty to remind you that the Council's deliberations led to two important decisions.

First, the Council decided that the report which you were supposed to submit to it should be transmitted, through your good offices, to the General Secretariat in order that the latter may communicate the report in time to all Member States for them to be acquainted with it when the amendment proposed by the Government of Dahomey is considered. That is why I should like to request that you forward the said report to me at your earliest convenience so that the appropriate sections of the General Secretariat can make the necessary arrangements for onward transmission to the Governments of Member States as soon as possible.

Furthermore, the Council of Ministers requested the Secretary-General to prepare his report on the amendment proposed by Dahomey, in consultation with the Bureau of the Commission of Mediation, Conciliation and Arbitration with a view to making available to the Council of Ministers all useful information on the activities of the Bureau of the Commission of which you are President.

..2/.

Mr. Justice Odesanya,
President of the OAU Commission
of Mediation, Conciliation and
Arbitration,
Addis Ababa, Ethiopia.

In order to enable the Secretary-General to implement this decision of the Council, I am submitting below, for your attention, a questionnaire which is intended to guide efforts in the quest for information which the General Secretariat hopes to obtain with your kind co-operation.

1) According to you, from what date did the Bureau of the Commission have the necessary funds for its material installation?

2) In your judgement, from what date was the Bureau actually set up and in a position to perform the duties incumbent on it under the terms of the Protocol governing the activities of the Commission of Mediation, Conciliation and Arbitration?

3) To your knowledge, since the Bureau of the Commission was set up, what disputes have been brought before it according to the procedure established by the Protocol of the Commission?

- Which countries referred those disputes to the Bureau?
- What were the initiatives taken by the Bureau to ensure the functioning of the procedure provided for by the Protocol?

4) According to you, what have been the results of efforts made by the Bureau of the Commission to settle, through mediation, conciliation or arbitration, the disputes put before it?

5) Has your Bureau taken initiatives to try to settle through mediation, conciliation or arbitration, disputes that have arisen between certain Member States by procedures other than that of submission to the jurisdiction of the Commission provided for in the Protocol of the Commission?

- What were those initiatives and what were the results obtained?

6) Since the Bureau was set up, has it convened a meeting of all the Members of the Commission of Mediation, Conciliation and Arbitration?

- How many times?
- What were the purposes of those meetings?
- and what were their results?

7) What are the difficulties experienced by the Bureau of the Commission in the execution of its tasks?

- What, in your opinion, are the reasons for such difficulties?
- What solutions do you recommend to overcome them?

It is obvious that the above questions are, in no way, to be considered as restrictive. Any information on all aspects of the activities of the Commission of Mediation, Conciliation and Arbitration in general and, of its Bureau in particular, would be welcome.

I wish to draw your attention to the fact that during its last session, the Council of Ministers stressed the need to receive the working documents for the forthcoming session in good time so as to enable Governments of Member States to study these documents with a view to taking a stand and giving directives to their delegations to the meetings of the Council of Ministers who will have to discuss the problems contained in these documents.

Thus, it is essential that the General Secretariat receive, as soon as possible, the information which you would be so kind as to supply on the various aspects of the functioning of the Bureau of the Commission of Mediation, Conciliation and Arbitration. Likewise, could you kindly submit, in good time, the documents that you wish to have communicated to Member States, taking into consideration the fact that documents have to be translated into at least two working languages of OAU.

To conclude, I would like to inform you that I am entirely at your disposal at any time to discuss with you and the two Vice-Presidents all the matters mentioned above or any other matter which you deem useful to raise with the General Secretariat.

Please accept, Mr. President, the assurance of my highest consideration.

(BARRY BASSIROU)
LEGAL ADVISER

COUNCIL OF MINISTERS
Ninth Ordinary Session
Kinshasa
September 1967

REPORT OF THE PRESIDENT OF THE
COMMISSION OF MEDIATION, CONCILIATION AND ARBITRATION

REPORT OF THE PRESIDENT OF THE
COMMISSION OF MEDIATION, CONCILIATION AND ARBITRATION

Mr. Chairman,
Your Excellencies,
Distinguished Delegates,

In his report CM/172 on my Commission the Administrative Secretary-General inter alia refers to the prevailing preference for inter-State dispute to be referred to Extraordinary Sessions of the Council of Ministers or to ad hoc commissions instead of my Commission which is the specific machinery provided by the Charter of the Organization for the peaceful settlement of inter-State disputes. This preference is easy to explain and does not diminish in any way either the importance or the effectiveness of my Commission. There are categories of international dispute which can be settled by more than one method or by a combination of methods some of which are concurrent with or supplementary to one another. Different categories of dispute may require different treatments. There are disputes of a strictly technical or legal nature which only my Commission can handle. Take for instance disputes : arising from inter-State intercourse, such as conventions, treaties, economic, technical and cultural agreements, or disputes : arising from the treatment of the nationals of one State by another State. In fact the categories of inter-State dispute are so various that I do not propose to burden you with their details.

I must however high-light some of the disputes belonging to this category, that is dispute arising from conventions, treaties, economic, technical and cultural agreements. Distinguished delegates are familiar with such agreements as the Morocco-Mali Trade Agreement of 1961 which provided for the export to Mali of fats, vegetables, fruits, textiles, vehicles from Morocco in exchange for Mali's cotton, groundnuts and leather. The Agreement was renewed in 1962. There is the Upper Volta-Mali Convention of 1962 dealing with goods in transit to and from Mali. There are many others like the Ghana-Upper Volta Custom Agreement of 1962; the Nigeria-Togo-Dahomey Agreement of 1962; the Nigeria-Cameroon Bilateral Trade Agreement of 1962. The terms of all these agreements are interesting and very important but I need not go into them in this report or to anticipate the types of purely technical disputes that may arise from them. There are many similar agreements between other members of OAU. Some

such agreements are bilateral, others are multilateral. In the future the number of such conventions, treaties and agreements necessitated by inter-State intercourse in Africa will be prodigious. The Secretary-General refers only to one technique of settling disputes between Member States. Some boundary disputes like the Algeria-Morocco Border Dispute or purely political disputes like the one between Ghana and Guinea, Guinea and Ivory Coast can be settled by an ad hoc commission or through the good offices or the friendly intervention of a third party or by negotiation or diplomacy. It is to this type of dispute that reference is made in the Secretary-General's report. My Commission is intended to deal with all types of dispute however complicated, technical or legal. That is why all its members are Jurists; they are either Judges or Attorneys-General or Professors of law or men otherwise distinguished by their knowledge of law. In fact this Commission is quasi-judicial and some of its members are interested in the mechanics of settling international disputes.

The most important decisions which the Council of Ministers should take at its current meeting are mentioned at page 3 of the Administrative Secretary-General's report and I endorse them. Funds ought to be provided now for the inaugural meeting of the Commission and for the interim remuneration of the members of the Bureau comprising the President and his two Vice-Presidents. I have so far had the opportunity of meeting only three members of my Commission, two in Addis-Ababa and one in Cairo. I have never met either of my two Vice-Presidents who according to the Protocol of my Commission are to take important administrative and other decisions with me at the Commission's Secretariat which is yet to be set up. The inaugural meeting would approve the Rules of Procedure some of which I have already drafted. It might also be called upon to take some budgetary and financial decisions for the consideration of the Council of Ministers. It will certainly be asked to approve some administrative proposals which I consider necessary for the implementation of the provisions of the Protocol of the Commission.

I have so far not put up any budgetary proposals because such proposals might at this stage be considered unrealistic. The need for economy is the theme which runs through every annual report of the Administrative Secretary-General and a similar theme runs through the discussions of the Council of Ministers. One must therefore be very careful in addressing any proposals to this distinguished Council. The Council however is yet to fix the salaries and allowances of the members of the Bureau in compliance with Article 8 of the

Protocol. I have already said I endorse the three recommendations at page 3 of the Secretary-General's report on my Commission although with respect to the charge of inactivity I would say that it is not always easy to make bricks without straw. An interim budget is now necessary for the activation of my Commission. Some of the items of such budget will have to be largely speculative but there is no danger of waste because any funds provided will be disbursed by the Administrative Secretary-General until the Secretariat of the Commission which is independent of the General Secretariat is created.

I have no doubt when the Commission is set on its feet confidence in the services which it will always provide will be quickly generated.

May I seize this opportunity to inform distinguished delegates that since I last appeared before you in Addis-Ababa I have been appointed a Judge of the High Court of the Western State of the Federal Republic of Nigeria. This appointment will not however affect my work as the President of this Commission.

Justice M.A. Odesanya
President

COUNCIL OF MINISTERS
Ninth Ordinary Session
Kinshasa - September 1967

CM/172/Add.1

Item 18(c) of the draft agenda
Proposals by Member States concerning the
Commission of Mediation, Conciliation and Arbitration

1. Proposal by Liberia - See Annex 1 enclosed.
2. Proposal by Tanzania - See Annex 2 enclosed.

EMBASSY OF THE REPUBLIC OF LIBERIA
Addis--Ababa

The Liberian Delegation to the Eighth Ordinary Session of the Council of Ministers of the Organization of African Unity presents its compliments to the Secretariat of the Organization of African Unity and has the honour to forward the attached Statement giving the views of the Government of the Republic of Liberia on the matter of the activation of the Commission of Mediation, Conciliation and Arbitration of the Organization of African Unity.

The Liberian Delegation will be pleased were the Secretariat to prepare and circulate this document to all Members of the Council of Ministers with the least possible delay as it is the wish of the Liberian Delegation that the Members of the Council shall be aware of the Liberian Government's view prior to the discussion of this item at this Eighth Ordinary Session.

The Liberian Delegation to the Eighth Ordinary Session of the Council of Ministers of the Organization of African Unity avails itself of the opportunity to renew to the Secretariat of the Organization of African Unity the assurances of its highest esteem and consideration.

Addis--Ababa, February 27, 1967.

EMBASSY OF THE REPUBLIC OF LIBERIA

Addis-Ababa

COMMENTS SUBMITTED BY THE GOVERNMENT
OF LIBERIA ON THE ACTIVATION OF THE
COMMISSION OF MEDIATION CONCILIATION
AND ARBITRATION

The Government of Liberia wishes to recall that, at the 7th Ordinary Session of the Council of Ministers, its delegation raised, for consideration of the Council, the matter of the activation of the Commission of Mediation, Conciliation and Arbitration. In introducing this item, the Delegation of Liberia expressed concern that, although the Protocol of the Commission had been signed two years before, and the members of the Commission had been elected for over a year, the Commission had not begun to function. Concern was also expressed by the Liberian Delegation over the fact that disputes continue to proliferate in Africa and these disputes continue to require the attention of the Council of Ministers.

This position won wide support in the Council and the President of the Council was mandated to review, with the President of the Commission, the causes or failure of activating the Commission and the possibility of speedy activation. The President was required to report back to the Council without delay.

During the meeting of the 3rd Ordinary Session of the Assembly of Heads of State and Government, a report was submitted by the President of the Commission in which he advanced certain views regarding the present inert state of the Commission.

The Government of Liberia has given serious consideration to the views expressed by the President of the Commission of Mediation, Conciliation and Arbitration, both in his oral and in his written report

to the Assembly of Heads of State and Government. In spite of the respect which we have for the view of this distinguished Lawyer, the Government of Liberia has encountered great difficulty in reconciling these views with the salient provisions of the Protocol of Mediation, Conciliation and Arbitration and the Charter of the Organization of African Unity as they relate to the pacific settlement of international disputes.

It is observed that, although the Charter provides that disputes are to be settled by mediation, conciliation and arbitration and removes from the competence of the Commission only judicial determination, the report of the President suggests that the nature of the disputes arising indicate that they can best be settled by the Assembly, Council of Ministers or an individual Head of State or Minister.

This suggestion seems to convey the impression that disputes arising in Africa are suited only for mediation. While the Government of Liberia does agree that some disputes arising in Africa are suited to mediation, it finds it somewhat difficult to accept the view contained in the report, considering the fact that the results of efforts to settle disputes which have arisen indicate quite clearly that mediation in some cases have been inadequate.

Furthermore, in framing the Charter, the African States took the position, and in the view of the Liberian Government, quite rightly so, that the Assembly of Heads of State and Government and the Council of Ministers are political bodies without any particular competence in the settlement of disputes. They therefore decided that it would be preferably were disputes involving the honour and dignity of States to be handled by bodies specialized in this discipline.

The report also suggests that one of the basic difficulties facing the Commission is the lack of work to justify the establishment of the Bureau (the President, two Vice Presidents and the Register) on a full time basis. Consequently, the suggestion that the Bureau should operate on an ad hoc basis and receive compensation only for the time they are actually serving.

The Government of Liberia cannot concur in this view for the following reasons :

- a. The reason for the lack of work for the Commission, in the view of the Government, is due principally to the fact that the Commission has not been organized and is not in a position to function. In short, the Commission does not in fact exist .

There would be great difficulties encountered in asking a body which does not exist to carry out a particular job.

An example of this type of situation was the recent dispute submitted to the Commission by Guinea and the Ivory Coast. It is clear that the Commission failed to handle the dispute because it was ill-equipped to do so.

- b. Even were we to accept the view that insufficient disputes exist to keep the Commission busy on a full time basis, the Government of Liberia considers that it will be preferable to have the Commission in existence, available to settle disputes as they arise than to be in the position of having disputes arise without any adequate machinery to handle them.

The Government of the Republic of Liberia has also given serious consideration to the views expressed by Member States in consequence of the report of the President that a study be undertaken by the Secretariat with a view to recommending possible courses of action including amending the Protocol and Charter of the Organization.

While the Government of Liberia concedes that economic considerations may warrant such actions, yet it is our view that it may be better to at least try the Protocol and see how it works before attempting to change it. In this case the Protocol and the Commission have never been given a chance to work nor has it even been tried.

Furthermore, the Government of Liberia feels that, in spite of the economic reasons advanced for wanting to change the Protocol even before putting it to a test, the success of the OAU and its continued existence, will depend, in a large measure, on the manner in which we will be able to handle the dispute which arises between and among us.

It is therefore of primary importance that the Commission of Mediation, Conciliation and Arbitration, the body charged by our Charter with the settlement of disputes should function as a well-organized and efficient body even if this is done at the expense of some other less important function.

United Republic of Tanzania
Ministry of Foreign Affairs
Dar Es Salaam

Ref. N° FAC/O.10/7

The Ministry of Foreign Affairs of the United Republic of Tanzania presents its compliments to the Administrative-Secretariat of the O.A.U. and has the honour to request that the accompanying memorandum on the Commission on Mediation, Conciliation and Arbitration may be circulated to all Member States of the O.A.U. in advance of the next meeting of the Council of Ministers.

The Ministry of Foreign Affairs of the United Republic of Tanzania avails itself of this opportunity to renew to the Administrative Secretariat of the O.A.U. the assurances of its highest consideration.

Dar es Salaam, 8th August, 1967

The Administrative Secretariat of the O.A.U.
Addis Ababa
Ethiopia.

It will be borne in mind that the Charter establishes the Commission of Mediation, Conciliation and Arbitration as one of its four principal organs. After the adoption of the Protocol of the Commission by the Heads of State at their first Ordinary Session in Cairo in 1964, the structure of the Commission was complete, its terms of reference were defined and the way was opened for the commencement of its work.

It is appreciated that the mode and organisation of work is largely left to the Commission. So much is clear from the terms of Article XVI of the Protocol, which provides that :

"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".

However, the Protocol establishes a certain framework and lays down certain guidelines for the conduct of the work of the Commission. Articles VI to IX of the Protocol provide for a Bureau, consisting of a President, two Vice-Presidents and a Registrar, and such Staff as may be appointed by the Commission. Article II provides for eighteen other members of the Commission. The terms of service and conduct of business of members of the Commission are governed by Article III and other administrative officers of the Commission shall be governed by Staff Regulations which, under Article IX (2), are to be drawn up by the Commission.

In order to clarify the manner in which it was envisaged that the Commission would function, it may be useful to recall part of the Report of the Committee of Experts which drafted the Protocol of the Commission. That Committee, which submitted its report to the Council of Ministers at its Third Ordinary Session in Cairo in July, 1964, explained (at page 5) the reasons behind the modification in the final Draft of the Protocol as compared with the earlier (Lagos) Draft as follows :

"A major question, left unresolved in the Lagos Draft, concerned the structure and organization of the Commission. Difficulty lay in the necessity of providing for the triple functions to be performed, namely mediation, conciliation, and arbitration, within the framework of a single body. Various possibilities of creating a single, highly complex organism were considered. The idea of a "standing" group of full-time members (i.e. similar to the composition of a Court of judges), divided into three chambers or sections, found a certain degree of support, but ultimately was rejected in favour of a small full-time nucleus (to be called a "Bureau") with a panel of part-time members who could be made more available whenever their services were required. The latter seemed to be more appropriate for reasons of economy and flexibility, as well as the practice of contemporary international organisation. Other matters provided for were necessary and incidental matters of administration".

It is therefore required, in order for the Commission to play the full role envisaged for it as a "principal organ" under the Charter, the Council of Ministers to provide for the salaries of the Bureau (who will be expected to take up full-time residence at the Seat of the Commission) and other administrative expenses of the Commission. It is anticipated that the Commission will, at the earliest convenient time, hold an organizational meeting for the purpose of appointing a Registrar and other administrative officers and drawing up and adopting Staff Regulations.

It is hoped that these practical steps towards the organization of the Commission on a firm footing will be ensured by the Council of Ministers' consideration of this matter at its next regular session.

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COUNCIL OF MINISTERS.
Fifteenth Ordinary Session
Addis Ababa - August 1970

CM/334
Addendum

A D D E N D U M

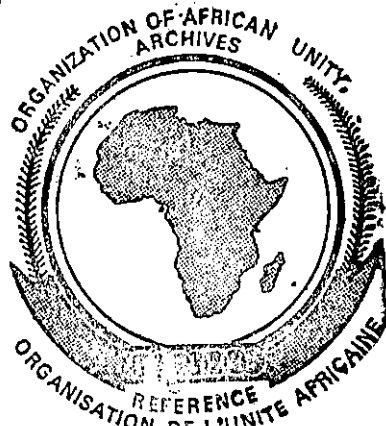
to Document CM/334, relating to "Amendments to the
Charter and the Protocol of the Commission of
Mediation, Conciliation and Arbitration."

A D D E N D U M

to Document CM/334, relating to "Amendments to the Charter and the Protocol of the Commission of Mediation, Conciliation and Arbitration."

Pursuant to the deliberations of the Council of Ministers, meeting in its Fifteenth Ordinary Session, Dahomey has decided that its amendment, proposed in September 1969, should be worded as follows:-

"ARTICLE VI, PARAGRAPH 2, OF THE PROTOCOL OF THE COMMISSION OF MEDIATION, CONCILIATION AND ARBITRATION SHOULD READ: THE PRESIDENT, THE TWO VICE-PRESIDENTS AND THE EIGHTEEN MEMBERS OF THE COMMISSION SHALL BE PART-TIME MEMBERS OF THE COMMISSION. PLEASE COMMUNICATE PROPOSED AMENDMENT TO ALL MEMBER STATES IN ACCORDANCE WITH ARTICLE XXXIII OF CHARTER."



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