

AFRICAN UNION

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UNION AFRICAINE

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

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**ACTIVITY REPORT OF THE AFRICAN UNION COMMISSION
ON INTERNATIONAL LAW (AUCIL)
FOR THE PERIOD JULY 2017 TO JUNE 2018**

**ACTIVITY REPORT OF THE AFRICAN UNION COMMISSION
ON INTERNATIONAL LAW (AUCIL)
(July 2017- June 2018)**

I. INTRODUCTION

1. The activity report of the African Union Commission on International Law (AUCIL) outlines the activities of the AUCIL within the period of July 2017- June 2018. 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 AUCIL while **Section three** enumerates recommendations.

2. The AUCIL was created in 2009 as an independent advisory organ in accordance with article 5(2) of the AU Constitutive Act. The Statute of the AUCIL was adopted by the 12th Ordinary Session of the Assembly of the African Union held in Addis Ababa, Ethiopia from 1 to 4 February 2009. The AUCIL started work on 3rd May 2010 the effective date for the term of office of the pioneer members of AUCIL.

3. The mandate of the AUCIL falls under three (3) broad categories, namely (i) the progressive development of international law, (ii) the codification of international law; and (iii) the teaching, study, dissemination and wider appreciation of international law. These can be realised through: revision of treaties, carrying out studies on matters of interest to the Union and its Member States and 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 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 African Union Commission.

II. CURRENT COMPOSITION

5. The AUCIL Members current composition is as follows:

	Name	Country	Date Elected or reelected/Decision	Term
1	Amb. (Prof.) Sebastião Da Silva ISATA	Angola	Jan 2015 Assembly/AU/Dec.550(XXIV)	5 year Term
2	Justice Abdi Ismael HERSI	Djibouti	Jan 2015 Assembly/AU/Dec.550(XXIV)	5 year Term
3	Prof. Hajer GUELDICH	Tunisia	Jan 2015 Assembly/AU/Dec.550(XXIV)	3 year Term
4	Hon. Kathleen Quartey AYENSU	Ghana	Jan 2017 Assembly/AU/Dec.634(XXVIII)	3 year Term
5	Dr Mohamed BARAKAT	Egypt	Jan 2015	5 year Term

	Name	Country	Date Elected or reelected/Decision	Term
			Assembly/AU/Dec.550(XXIV)	
	Amb. Juliet Semambo KALEMA	Uganda	Jan 2015 Assembly/AU/Dec.550(XXIV)	5 year Term
7	Prof. Daniel Makiesse MWANAWANZAMBI	Democratic Republic of Congo	Jan 2013 Assembly/AU/Dec.471(XX)	5 year Term
8	Prof. Boniface Obinna OKERE	Nigeria	Jan 2013 Assembly/AU/Dec.471(XX)	5 year Term
9	Justice Naceesay SALLA-WADDA	The Gambia	Jan 2013 Assembly/AU/Dec.471(XX)	5 year Term
10	Amb. (Prof.) Cheikh Tidiane THIAM	Senegal	Jan 2015 Assembly/AU/Dec.550(XXIV)	5 year Term
11	Justice Kholisani SOLO	Botswana	Jan 2013 Assembly/AU/Dec.471(XX)	5 year Term

III. STATUTORY MEETINGS

6. Two statutory meetings were held during the reporting period, namely: (i) the 14th Ordinary Session held from 27 November to 8 December 2017 in Malabo, Equatorial Guinea; and (ii) the 15th Ordinary Session held from 9 to 20 April 2017 in Addis Ababa, Ethiopia.

7. The AUCIL also conducted its 6th Forum on International Law from from 4 to 5 December 2017 in Malabo, Equatorial Guinea under the theme "The Legal, Political and Socio-Economic Consequences of Migration, the Situation of Refugees and Internally Displaced Persons in Africa".

SECTION I ACTIVITIES OF AUCIL

8. As stated above and in line with the Statute of the AUCIL, this report will address the activities of the AUCIL in three Sections; i.e. (the contribution of this organ towards (i) progressive development and codification of international Law; and (ii) Teaching, study and dissemination of International Law; and (iii) other activities of the AUCIL

I. PROGRESSIVE DEVELOPMENT AND CODIFICATION OF INTERNATIONAL LAW

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

a) *Adoption of the Study and AU Model Law for the Implementation of the African Union Convention for the Protection of and Assistance to Internally Displaced Persons in Africa*

10. In this line, the study on the AU Model Law for the Implementation of the African Union Convention for the Protection of and Assistance to Internally Displaced Persons in Africa and the AU Model Law/hasdaeeefl-adopted vide Assembly/AU/Dec. 676 (XXX), making it the first ever AUCiL document to be endorsed by the Member States.

11. The Model Law will serve as a resource in the drafting process of national legislation to implement the Kampala Convention at the national level. The Model Law is designed in a manner that allows flexible adaptation to specific situation in terms of causes and challenges of displacement of each country, making it easily adaptable for different legal systems.

12. As foreseen under Article 3(2) (c) of the Kampala Convention, national policies and strategies on internal displacement, including at local level would provide a better domestic framework for protection and assistance to IDPs. The drafting and implementation of domestic law on internal displacement would be highly facilitated by the process of developing strategies and policies, which could help the country assess the extent, causes and severity of internal displacements, their causes, the severities and degree of vulnerabilities faced by IDPs as well as in identification of laws and practices that affect rights and welfare of IDPs in the country. It would also provide the opportunity to consult with IDPs and all stakeholders on the specific situation of the country and possible needs of protection, assistance and durable solutions.

13. In line with the preamble of the AUCIL Statute, which emphasizes “value of the dissemination of, and research in international law, which lies in the ability to foster the creation of an environment that is conducive to the respect for and acceptance of the principles of international law, and the peaceful settlement of conflicts”, the AUCIL in collaboration with the United Nations High Commissioner for Refugees (UNHCR) published a copy of this study and Model Law. The timely publication of the Model Law is intended to mark the 20th anniversary of the Guiding Principles, the accepted international standards used to develop national legislations, policies and programs to address the challenges of internal displacement in Africa. The Guiding Principles, drafted in 1988 by the prominent South Sudanese scholar Professor Francis Deng, are the strong legal basis for the development of both the Kampala IDP Convention and the Great Lakes Protocol on Internally Displaced Persons.

14. This study and Model Law also comes at a time where the AU’s 10-year Plan of Action focuses, amongst others on the popularizing and promoting the implementation of AU normative instruments to strengthen governance of humanitarian issues in Africa. It also serves as a useful document in strengthening the capacity of Member States prior to the 2019 celebration of the 50th and 10th anniversary of the 1969 OAU Convention and the Kampala Convention respectively.

b) *Preliminary Report on the Study on Judicial Cooperation and Mutual Legal Assistance, by Prof. Hajer Gueldich*

15. The Special Rapporteur, Prof. Hajer Gueldich presented the fourth report on the study on judicial cooperation and mutual assistance. Since her last report, she suggested to improve the two Draft Conventions she prepared on the Judicial Cooperation and on the Extradition, due to technical and practical considerations.

16. The study was enriched further by the various interviews she conducted and the two institutions she visited in Algiers, namely, the African Center for the Study and Research on Terrorism and African Union Mechanism for Police Cooperation. She also made amendments to the Draft convention on Judicial Cooperation and Mutual Assistance and the Convention on Extradition.

17. In order to finalize the work, the Plenary constitutes a working group to finalize the work in line with national practices on judicial cooperation's. The Plenary further called upon Member States to respond to questionnaires as it is essential for the completion of the study.

c) *Preliminary Report on the Study on non-double taxation, by Prof. Hajer Gueldich*

18. The Special Rapporteur, Prof. Hajer Gueldich presented the third report on the study on avoidance of double taxation in Africa. It was stressed that the Draft Convention will draw much from the OECD and UN Model documents on the same subject matter, including their general structure. The special rapporteur regretted to note that much of her work has been hindered due to lack of response to questionnaires from Member States. In this regard, the Plenary further called upon Member States to respond to questionnaires as it is essential for the completion of the study and draft Convention.

d) *Study and Draft Model Law for the Domestication of the African Union Convention on Preventing and Combatting Corruption, by Justice Abdi Ismael Hersi*

19. The Special Rapporteur, Justice Ismeal Abdi Hersi, noted that the theme of the year for the 2018, under the theme "Winning the Fight against Corruption: A Sustainable Path to Africa's Transformation". In an effort to counter the menace of corruption, the AU, in 2003, adopted a comprehensive anti-corruption regulatory framework – the African Union Convention on Preventing and Combating Corruption (AUCPCC) – constituting of prevention, criminalization, law enforcement and international cooperation. In addition, at a regional level, two of the eight RECs, the SADC and ECOWAS, already had introduced their own binding anti-corruption instruments in 2001: the SADC Protocol against Corruption and the ECOWAS Protocol on the Fight against Corruption.

20. In the context of anti-corruption law, uniformity is required, because without it States may attempt to tackle corruption in differing ways, leading to uncertainty regarding the applicability of such imperative anti-corruption tools as extradition and

provision of other forms of international cooperation. In this regard, the AUCIL, recognizing the need to harmonizing policies between itself and the Regional Economic Communities (RECs) for the gradual attainment of the Union's objectives, through its Special Rapporteur undertook a study on the Anti-Corruption Law within the REC's and their synergy with the Laws of the Union.

e) *Study and a Draft Model Law for the domestication of the Protocol to the African Charter on Human and People's Rights on the Right of Women in Africa, by Justice Naceesay Salla- Wadda*

21. The Special Rapporteur, Justice Naceesay Salla-Wada presented her report on the model law she drafted for the domestication of the African charter on human and people's rights on the rights of women in Africa. She took references from international human rights treaties covering the rights of women, especially the Maputo Protocol and CEDAW. The Special Rapporteur regretted that no additional state, other than the five she reported in her last report, responded to her questionnaire.

22. The Draft Model Law contained provisions covering the rights of women, inter alia, in the areas of education, health, employment, non-discrimination, marriage and the family, armed conflict, sustainable development, housing, food security and disability.

f) *Study of the Developed Jurisprudence of East African Community (EAC), by Amb. Juliet Semambo Kalema*

23. The Special Rapporteur noted that the aim of this study is to develop a comprehensive report on the developed jurisprudence of the East African Community (EAC). This will offer an opportunity to assess the progress made by the regional economic communities towards the achievement of the AU objectives, as outlined in the Constitutive Act, notably that of "political and social-economic integration of the continent".

24. In conducting this study, she noted that it will examine the legal basis for EAC cooperation and integration. This will involve an analysis/examination of the legislative and judicial systems applied in the partner states as well as the body of Community Law (the Treaty, protocols, EALA Acts, International Conventions and Protocols) in order to gain an understanding of how supportive these systems are to the development of Community jurisprudence and enhance the integration process in the continent.

25. The Special Rapporteur also prepared a questionnaire to be submitted to the Member States and the Regional Economic Communities with the view to conducting a continental analysis.

g) *Concept Note on the study on the implementation of the African Mining Vision – African Mining and Petroleum Law, by Prof. Daniel Makiesse Mwanawanzambi*

26. The Special Rapporteur, Prof. Daniel Makiesse Mwanawanzambi, presented his concept note on the study on the implementation of the African Mining Vision. The Special Rapporteur noted that, in keeping with the AUCIL's mission, he intends to identify the current realities and regulatory requirements for mining and petroleum in Africa and subsequently, identify potential avenues of a consecutive law for the African regulation of mines and oil so that the African States can have and integrate a normative framework into a common policy to appropriate these abundant resources in a continent where the population remains very poor.

h) Concept Note on the Study and recommendations on International Environmental Law by Prof. Daniel Makiesse Mwanawanzambi

27. The Special Rapporteur, Prof. Daniel Makiesse Mwanawanzambi, presented his concept note on the study and recommendation on Environmental Law. The Special Rapporteur noted that, in keeping with the AUCIL's mission, he intends to identify the current realities and regulatory requirements in protection of the Environment.

i) Study and Draft Model Law for the domestication of the African Charter on the Rights and Welfare of the Child by Prof. Boniface Obinna Okere

28. The Special Rapporteur, Prof. Boniface Obinna Okere presented his Concept Note related to the development of a Model Law for the domestication of the African Charter on the Rights and Welfare of the Child. The Special Rapporteur noted that the study aims to assist States Parties in harmonising their laws and related administrative regulations in Africa so as to develop a common approach to child protection through the development of a Model Law.

29. The Model Law will guide law makers in translating the obligations under the Charter into detailed national legislations. It will also assist policy makers, judicial officers, administrators and researchers in the application of the African Charter on the Rights and Welfare of the Child.

30. The Special Rapporteur also prepared a questionnaire to be submitted to the Member States and the Regional Economic Communities with the view to conducting a continental analysis.

j) Study by Amb. (Prof.) Cheikh Tidiane THIAM of the developed jurisprudence of regional integration among the 8 Regional Economic Communities (RECs) in Africa - the Case of ECOWAS

31. The Special Rapporteur, **Amb. (Prof.) Cheikh Tidiane THIAM** presented his report on the study of Regional Integration: The Economic Community of West African States (ECOWAS). The preliminary report highlighted the three main characteristics of the ECOWAS, namely, (i) the aspect of an integration organization whose federal aspiration is unfinished at this stage; (ii) partial and progressive pooling of the sovereignty of the Member States; and (iii) the gradual integration process.

32. The preliminary report highlighted the relationship between the Community legal order and the domestic legal orders, with a focus on the work of the Community Court in guaranteeing the rule of law.

II. TEACHING, STUDY AND DISSEMINATION OF INTERNATIONAL LAW

33. 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.”

34. Accordingly, the AUCIL undertook the following activities:

a) ***The 6th Forum of the African Union Commission on International Law: “The Legal, Political and Socio-Economic Consequences of Migration, the Situation of Refugees and Internally Displaced Persons in Africa”.***

35. The 6th Forum of AUCIL, chaired by Prof. Daniel Makiesse Mwanawanzambi, with Amb. Juliet Semambo Kalema as Rapporteur, was held in Malabo, Equatorial Guinea from 4 to 5 December 2017 immediately following the end of 14th Ordinary Session. The theme of the 6th Forum was “The Legal, Political and Socio-Economic Consequences of Migration, the Situation of Refugees and Internally Displaced Persons in Africa.

36. The rationale behind the theme was to create the platform to discuss the issue of immigrants, refugees and internally displaced persons through the prism of international law and the African Union Law with the view to raising awareness on the necessity of accelerating regional integration, enlightening African decision makers on legal implications of regional integration, present the steps already achieved towards the African integration; and to identify ways to accelerate regional integration throughout the continent.

37. The Forum also evaluated recent ongoing initiatives such as of the Draft African Union Common African Position (CAP) on the Global Compact on Safe, Orderly and Regular Migration, and draft Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment and was guided by Agenda 2063 of the African Union and 2030 Agenda for Sustainable Development Goals (SDGs). It also focused on the potentials and benefits of migration in facilitating the transfer of knowledge and skills that boost the labor market, establishing networks that spur innovation and economic growth and enhancing the flow of trade, investment and remittances.

38. The speakers presenting on the various topics were eminent scholars and legal experts from esteemed institutions and international organisations. The forum

was attended by over 150 participants constituting of African Union Member States, International Organizations and Universities. The Keynote of this Forum was addressed by Prof. Chaloka Beyani, Former UN Special Rapporteur on the Human Rights of Internally Displaced Persons. H.E. Judge Abdulqawi Yusuf, President of the International Court of Justice also delivered an address to the forum through a representative.

39. Through the survey of international and regional perspectives of migration and analysis of the adequacy of existing legal frameworks, and as an outcome of The Forum, the AUCIL published a compilation of the contributions to the Forum which made various proposals for the application of migration policies to emerging challenges for the attention of the deliberative organs of the AU.

b) The AU Humanitarian Law and Policy Training, Malabo, Equatorial Guinea from 6 to 8 December 2017

40. Bearing in mind the importance of higher learning and research and in enhancing the knowledge on contemporary issues of International regarding Migration, the AUCIL also took part in organized the AU Humanitarian Law and Policy Training in Malabo, Equatorial Guinea from 6 to 8 December 2017. The lead in this training was the Department of Political Affairs, which serves as the focal department on all matters related to Humanitarian Law within the African Union. The UNHCR also partnered with the African Union. The AUCIL at this juncture wishes to appreciate the interdepartmental collaborations with Political Affairs on areas of common interest, which allowed for economizing both in human and financial resources. Such collaborations also allow international law to reach a larger number of African Community and the AUCIL wishes to make its call to work with other organs and departments of the AUC in achieving our shared goals through the prism of International Law. It is also recommended that training of this type take advantage of the expertise of the AUCIL Members in giving course in their specific specialities under International law.

c) Publication of the AUCIL 3rd and 4th journal

41. International law and African law are the essential foundations for achieving the objectives of African unity and the aspirations of the African peoples. The accessibility of instruments of international law and recent development, in this line, plays a paramount role in the growth and development of international law in Africa. It is with this in mind that the AUCIL has published the 3rd and 4th editions of the AUCIL Journal composed of Africa's contribution in the field of International Law.

III. OTHER ACTIVITIES OF THE AUCIL

42. The AUCIL has also endeavored to cooperate within various bodies within the AU. The following are some of the activities that have been undertaken:

a) Reform Unit

43. The General rapporteur, Prof. Hajer Gueldich provided the background to the report of the President Paul Kagame on the AU institutional reform, which is

premised on the need for financial independence of the organization. She presented the main thrust of the reform, on the basis of these 4 pillars: institutional, policy, operational management and financial sustainability. The General rapporteur highlighted the progress that has been achieved in the implementation of the Reform, since her last briefing to the Plenary during the 14th ordinary session. She called upon the Plenary to reflect how AUCIL could be involved in the legal aspects of this reform.

44. The Plenary agreed that more effort needs to be exerted to make sure the team working on the Kagame Reform begins to interact with the AUCIL. In this regard, Prof. Pierre Moukoko, Head of the AU Institutional Reforms Unit | within the AU Commission, was invited. He interacted with the AUCIL members on the different issues of this Reform.

b) The African Governance Structure (AGA)

45. The African Governance Architecture (AGA), which was established pursuant to a Decision of the 15th Ordinary Session of the Assembly of African Union (AU) Heads of State and Government held in July 2010 vide AU/Dec.304 (XV) to put in place a “Pan-African Architecture on Governance” to serve as a “platform for dialogue between the various stakeholders” who are mandated to promote good governance and strengthen democracy in Africa, in addition to translating the objectives of the legal and policy pronouncements on AU Shared Values. Accordingly, Rule 2 (f) of the African Governance Platform enumerates the AUCIL as one of the members of the Platform. In this line, the AUCIL has been working closely with AGA to ensure that the AUCIL is kept abreast of similar projects and to further collaborate with the AGA in furthering its shared goals.

c) Retreat between the Office of the Legal Counsel (OLC) and the AUCIL

46. The Office of the Legal Counsel (OLC) pursuant with its mandate under the Maputo Structure serves the African Union Commission (AUC), amongst others in the following main roles: assisting and advising AU Organs on legal matters; providing legal opinions relating to Rules and Regulations of the AU as well as other legal instruments; assessing legal implications of the activities and decisions of all AU departments and Organs; drafting contracts; host agreements, cooperation agreements and Rules of Procedure of the various organs, treaties, and other legal instruments and to undertake investigations and prepare reports on special legal problems. The OLC also serves as the Secretariat of the AUCIL PURSUANT to Article 21 of the AUCIL Statute.

47. In addition to providing Secretariat service to the AUCIL as provided for under Article 21, the AUCIL has structural and functions relations with OLC. Both of them intervene in the field of legal affairs of the African Union and the AUCIL Secretariat is part of OLC’s Structure. In this line, the AUCIL Members held a one-day retreat on the 2 December 2017 with Amb. Namira Negm to discuss the possible areas of cooperation and boosting the capacity of the Secretariat.

IV. COOPERATION WITH SIMILAR INTERNATIONAL BODIES WORKING ON INTERNATIONAL LAW

48. As part of its mandate to cooperate and promote under Article 25, the AUCIL undertook various activities in order to enhance its working relationship with various international organizations. The AUCIL delegation undertook three main activities:

A) **72nd session of the United Nations General Assembly Sixth Committee Legal Week in New York, USA from 24 to 27 October 2017.** The AUCIL was represented by Amb. (Prof.) Sebastião Da Silva ISATA and Dr Mohamed BARAKAT and two (2) members of the Secretariat. The AUCIL undertook the following activities:

- **Consideration of the work of the Commission at its sixty-eighth session of the UNILC:** The AUCIL attended the session of the UNILC and was able to learn from the working and research methodologies of the UNILC members as presented at the UNILC Session in New York.
- **Joint High-Level Dialogue organized by the AUCIL and the Asia-Africa Consultative Forum (AALCO):** The AUCIL also, used its presence at the UNILC to organise the first-ever High-level Briefing on the “Legal, Political and Socio-Economic consequence of Migration” to follow up to the New York Declaration for Refugees and Migrants, adopted in September 2016. The Panel consisting of Amb. (Prof.) Sebastiao Da Silva Isata, Chairperson of AUCIL; Prof. Marcelo Kohen, Secretary-General, International Institute of International Law and Prof. Roy S. Lee, representative of the Asian African Legal Consultative Organization (AALCO) at the United Nations thereafter. The Panel addressed the ongoing efforts to develop a global compact for safe, orderly and regular and in discussions on the post 2015 development agenda. The event was held at ECOSOC Chamber at the UN Headquarters. As a follow up to this collaboration, the AUCIL has been approached by AALCO to organize a seminar on International Reforms to the Investment Regime and the Investor-State Dispute Settlement Mechanism. This will be followed up by a capacity building initiatives (2018-2020) to broadly strengthen the capacity of African and Asian countries to design and implement investment policies and law reforms that improve their business climate; and to raise the profile of Afro-Asian as an investment destination while facilitating regional cooperation and highlighting the Afro-Asian perspective in international dialogue on investment policies.
- **Informal Dialogue on Universal Jurisdiction: The AUCIL in collaboration with the OLC held an Informal dialogue on Universal Jurisdiction.** This event was organized on the sidelines of the meeting of the Sixth Committee of UN General Assembly in New York. The substantive agenda items discussed focused on Africa’s concerns about Universal Jurisdiction and ILC as a

potential venue for clarification of Universal Jurisdiction (invited ILC members); and addressed possible way forward regarding Universal Jurisdiction. It is also pertinent to note that the AU Heads of States and Government at its 30th session vide Assembly/AU/Dec.672(XXX) requested "the African Group in New York to immediately place on the agenda of the United Nations General Assembly a request to seek an advisory opinion from the International Court of Justice on the question of immunities of a Head of State and Government and other Senior Officials as it relates to the relationship between Articles 27 and 98 and the obligations of States Parties under International Law". Given that the AUCIL has a study related to this matter, it is expected that the AUCIL Special Rapporteur will be able to furnish the necessary legal advice.

B) Attendance of the 91st Session of the Inter-American Juridical Committee (IAJC), Rio de Janeiro, Brazil, 7 to 11 August 2017. AUCIL was represented by Hon. Kathleen Quartey AYENSU and one (1) member of the Secretariat. Following the attendance of the Session, the following outcome was achieved:

- AUCIL was invited to the upcoming IAJC Legal Advisors meeting in 2018;
- The IAJC has allocated a teaching course on African Union and the application of International Law at the 2018 training for Latin America;
- Furthermore, the president of the IAJC attended the AUCIL 6th Forum in Malabo, Equatorial Guinea and provided the Forum an overview on Migration policies from the perspective of Latin America.

C) Attendance of the 69th Session of the UN International Law Commission, Geneva, Switzerland, 18 July 2017: AUCIL was represented by Prof. Hajer Gueldich and Amb. Juliet Sembo Kalema and one (1) representative of the AUCIL Secretariat. On the sideline of the 69th Session of ILC, the representatives of the AUCIL also discussed on the prospect of strengthening the AUCIL Secretariat. The following events have also taken place after the visit:

- Prof. Gueldich has been invited to serve as a panelist at the 70th anniversary of the UNILC in 2018 in Geneva;
- The AUCIL and UNILC are undertaking discussion on holding of a joint session in 2019.

SECTION II CHALLENGES

49. While the AUCIL was established in 2009 and started operations in 2010, it started receiving limited budgetary provisions for the funding of its various studies and programme activities only in 2012. Although slightly alleviated in 2013, 2014, 2015 and 2016 the funds allocated to AUCIL for the implementation of its programme activities remain under the minimum required level. Additionally, the late release of the Program budget for the year 2017.

50. There is also a challenge relating to the insufficient staff allocated to the Secretariat. The AUCIL secretariat lacks adequate human and other administrative resources to undertake research activities needed to effectively assist in the various studies being conducted by the AUCIL. The Secretariat which is assisting the AUCIL mainly in administrative and research functions, is part of the Structure of the Office of the Legal Counsel which has huge responsibilities in serving all other departments of the African Union Commission and other bodies of the African Union generally. Hence, it is well-nigh impossible for the Secretary of AUCIL to devote all the necessary quality time to more effectively service the activities and support the AUCIL. It is 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 its failure for over almost ten years to implement such decisions.

51. In turn, this also affects the synergy between the AUCIL with other organs, structures and departments of the African Union. The Commission's lack of involvement in such interactions to date has relegated it to a secondary role in the African Union system. This may ultimately undermine the importance and the place of the AUCIL in the African integration agenda and in the progressive development and codification of international law.

52. Another related matter is also the absence of visibility of the AUCIL. There is insufficient communication about the potential of the AUCIL to contribute to 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 an information and knowledge base, such as the physical or electronic library, which is necessary for carrying out its work, also impedes the work of the AUCIL.

53. In presentation of its Model Law before the Specialized Technical Committee on Justice and Legal Affairs, and thereafter the Executive Council, the AUCIL was faced with challenges as Member States were of the view that the Organ lack sufficient consultation in its work. Prior consultations and regular interactions between Policy Organs and the AUCIL, could contribute substantially to the acceptability and utility of the Commission's work.

54. An aspect of the AUCIL's methods of work that is of the highest importance consists in its exchanges with Member States. Such exchanges may take various forms and may be carried out at various stages of the consideration of a topic. In this respect, It must be recognized that failure of Member States to respond to the requests for information or for observations, starves the AUCIL of data that are vital

to the success of its work, while laying the validity and utility of the codification process as such gravely open to question.

SECTION III RECOMMENDATIONS

55. Following the deliberations and conclusions of the 14th and 15th Ordinary Session of the AUCIL, the following recommendations are made:

- a) **AUCIL Secretariat:** Article 21 of the AUCIL Statute provides that the Commission shall provide the necessary means, staff, infrastructure to the AUCIL in order to enable it carry out its duties effectively. AUCIL is currently served by an interim Secretary and two (2) temporary Staff Members within the Office of the Legal Counsel, who are given parallel responsibilities. It is envisaged that the expansion of the Office of the Legal Counsel vide Assembly/AU/Dec.687(XXX) will take due consideration of urgent the need to set up a proper AUCIL's Secretariat.
- b) **Additional resources for 2019:** It is to be noted that the AUCIL since its establishment has been receiving funding for its Programm budget from the European Union and only the operational budget (cost for sessions and travel) from Member States. Resultantly, the AUCIL's programmes, such as studies on International Law have suffered from the late release of European Union budgets and an oversee on its work only by a Partner. In order to create ownership of this organ amongst Member States and in line with the with the Union's objective to fully fund its programmes, it is proposed that the initial budget approval of the AUCIL be supplemented with allocation of a supplementary budget to cover the planned activities in the second half of 2019.
- c) **The implementation of the AUCIL's mandate:** In line with the AUCIL's mandate, the Assembly or the Executive Council or any organ may refer to the AUCIL a specific proposal for studies. 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 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.
- d) **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 in order 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. The AUCIL would appreciate being provided by States with information 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.

- e) **The Preparation of the 10th AUCIL Anniversary:** The Plenary decided to celebrate the 10th Anniversary of the AUCIL in Addis Abeba in 2020. The AUCIL members planned to organize some events (an International Symposium on the theme "AUCIL, International Law and AU Law", a training on the AU law for three days, etc.).

AUCIL also suggests the AU Assembly to declare the **AU theme of the Year of 2020 to be "The African Union Law towards Peace and Security"**

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

- i) To emphasize the importance of the legal studies on international law carried out by AUCIL at the request of the Policy Organs of the Union and its member States, as well as those initiated by itself on matters of International Law of interest to the African Union and its member States;
- ii) To commend the AUCIL for the several studies on international law so far finalized;
- iii) To urge and request the AU Commission to address the necessary means, staff and infrastructure to the AUCIL Secretariat to enable it carry out its duties effectively,
- iv) To further request the Commission to provide the AUCIL Secretariat with a Division with sufficient and permanent human resources in the proposed new structure of the Office of the Legal Counsel vide Decision Assembly/AU/Dec.687(XXX);
- v) To encourage the AUCIL, within the limits of available resources, to bolster its activities in the development and codification of International Law with a specific focus on African Union Law. In this regard, draft conventions should be initiated in areas of specific interest to the African Union;
- vi) To request the STC on Justice and Legal Affairs to include a permanent agenda item on the heading "Progressive Development and Codification of International and African Union Law";
- vii) 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;

- viii) To declare the year 2020 to be “the African Union Law year ”under the theme “*The African Union Law towards Peace and Security*” so as to marshal all the necessary efforts towards campaigning “Silencing the guns by 2020” as well as the celebration of the 10th Anniversary of AUCIL;
- ix) To request the AUCIL to prepare a concept note for the “*African Union Law Year*” (2020) and to present it to the AU Summit in January 2019, for consideration and appropriate directions.

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