

EXPLANATORY NOTES ON THE LIBYAN PROPOSALS FOR AMENDMENT OF THE CONSTITUTIVE ACT OF THE AFRICAN UNION.

I. INTRODUCTION

1. The Great Socialist Libyan Arab Jamahiriya considers the coming into force of the Constitutive Act and the launching of the African Union as an historic and unique step towards the realization of the common vision of our leaders and peoples for a strong and united Africa.
2. The Jamahiriya also considers that the African Union affords the African peoples the opportunity and the means to collectively face the multifaceted challenges that confront the continent and its peoples in the light of the socio-economic and political changes taking place in the World.
3. It is in that spirit and with a view to strengthening the role and effectiveness of the institutions of the African Union that we are submitting these proposals for the consideration of the member States.
4. It will be recalled that the need for such amendments was articulated by Libya, in statements made to the Lusaka Summit as well as the Durban Summit. The statements had emphasized that the experience of the OAU had shown the need to overhaul its mechanisms and methods of work to ensure the effectiveness of the African Union and its institutions. But in order not to stymie the coming into force of the Constitutive Act, it was agreed by the Heads of State that such amendments be introduced after the coming into force of the Constitutive Act and the launching of the African Union.
5. The purpose of the amendments is to ensure effective take-off of the Union. Towards these objectives, Libya hereby proposes the following amendments, it being understood that Libya attaches importance to the substance, or the ideas and notions and not to the language.

II. PROPOSED AMENDMENTS

Article 3: Objectives

6. Add a new (o) as follows:

“Uniformity in trade, defense and foreign policy with the world, to ensure the defense of the Continent and the strengthening of its political and negotiating position with other parties in the world”

7. **Explanatory Note:** The purpose for this new paragraph is to strengthen the negotiating position of the African States in dealing politically and commercially with others. It is imperative that the African Union has a single commercial policy for import and export of goods with the world. There is no negotiating power at all for a single African State in importing from or exporting to large international market players and economic spaces. There is no comparison between the negotiating power of a single African State on the one hand and a developed State on the other hand. Furthermore, the African Union has no role in the international arena without a single foreign policy.

Article 4: Principles

8. Add a new sentence at the end of (h) after genocide and crimes against humanity as follows: “as well as in cases of unrest or external aggression in order to restore peace and stability to the Member of the Union”.

9. Add a new paragraph (q) as follows:

“ Prohibition of any State from entering into any treaty or alliance as well as offering a base or accepting troops from any state outside the Union”.

10. **Explanatory Note:** The rationale for this proposal is to ensure that the sovereignty and territorial integrity of the African Continent as

Well as the sovereignty and territorial integrity of each member state. Taking into account that one of the objectives and principles of the African Union is to promote peace and security of the continent, when the proposal for the establishment of an African defense and security framework comes into being, there will be no need for agreements with non-African States. In any case, the Constitutive Act in Article 4(d) makes it clear that there has to be a common defense policy for the African Union.

Article 5(f) and 21: Permanent Representatives Committee

The proposal is to delete these articles

11. **Explanatory Note:** The proposed amendment is to delete any reference to the Permanent Representatives Committee in the Constitutive Act so that it is not institutionalized as an organ of the Union as this places it at the same level as the Executive Council, which is a decision-making body. Ambassadors are accredited representatives of their countries to Ethiopia and not all countries are represented in Addis Ababa. Furthermore, the Ambassadors have been hampering the duties of the General Secretariat of the OAU and should not be allowed to hinder the work of the Commission of the Union. Indeed, no such Committee is institutionalized anywhere else, as an organ, whether at the United Nations, Arab League, OIC, ACP or ASEAN etc. Thus, we have to do away with this Committee. It is composed just of Ambassadors and it is not necessary that each African State be represented in Addis Ababa. Also some African states unable to have resident Ambassadors in Addis Ababa. The Ambassadors of African States in Addis Ababa are like Ambassadors in any other African State. We have to distinguish

between a representative to the Union and the Ambassador to the host country. The representative to the Union deals with matters concerning the Union whilst the ambassador deals with bilateral relations between the two countries.

Article 6: The Assembly

12. The proposal is as follows:

- (i) Paragraph 3 is amended to end with the first sentence.
- (ii) The new paragraph 4 should read as follows:
 - “The Assembly of the Union shall meet in extra ordinary session:
 - a) at the request of the Chairman
 - b) at the request of any member and upon approval by a two thirds majority in this case.
- (iii) in paragraph 4 add “at the least” between “one year” and “by a Head of State”
- (iv) add a new paragraph 5 as follows:
 - “The Chairmanship of the Union is a full time tenure. The Chairman should discharge his duties from any of the Union’s offices”

13. **Explanatory Note:** The purpose of these proposals is to ensure that the Chairman of the Union is a real and effective Chairman of the Union, available at all times and not just a chairman for meetings once a year. The Chairman of the Union should be able to convene meetings of the Assembly, without the requirement of a two-thirds majority, which should continue to apply to Member States. In other words there should be a difference between what the Chairman can do and what other Member States can do. Because of this kind of restriction, the previous Chairmen of the OAU have achieved nothing during their term of office. Moreover, the amendment is intended to provide for the possibility of the Chairman of the Union being re-elected for another term, if it is so desired. On the proposal for a full-time tenure for the Chairman of the Assembly, it must be acknowledged that it is very difficult to reconcile the duties of a chairman of the Union with those of a President of a country. The

Chairman cannot manage his State matters and the matters of the Union at the same time. The result would be failure in managing either duties or success in one (State or Union) at the expense of the other. You cannot chase two hares at the same time! If it is difficult for the president of the Union to be resident in Addis Ababa, the headquarters of the Union, this will require alternative seats for the Union. The Chairman of the Union should have a secretariat provided by the Union and, therefore, independent of his state. Such a secretariat would have strong links with the Commission and ensure that the Chairman carries out his duties effectively.

14. (New) Article 7: The Chairmanship of the Union

1. "to politically represent the Union to the World.
2. to exercise the powers aimed at achieving the Union's goals according to article 3 of the Constitutive Act
3. to call any of the Union' organs for a meeting"

15. Explanatory Note: The chairman of the Union must represent it politically in relation to the outside World. Secondly, the Chairman of the Union should have some competence or powers beyond what the Chairman of the OAU had. He/she should be able to make initiatives that will lead to the implementation of the objectives of the Union. Thirdly, the Chairman of the Union should be able to call any of the Union's organs for meetings to consult with them, for example, the financial institutions, the Pan African Parliament, the Executive Council etc. These actions will facilitate the achievement of the objectives of the Union.

(old) Article 7: Decisions of the Assembly

16. The Arabic text of the Constitutive act refers to decisions being taken by "unanimity, or failing which, by two thirds majority," whilst all other texts refer to consensus. There is no problem with decisions being taken by consensus, and therefore, the Arabic text has to be amended. However, in paragraph 3, and everywhere else it appears, it

is proposed that "membership of the Union" be changed to read "membership of the Assembly"

(old) Article 20: The Commission

17. The proposal is to provide that the Commission is composed of a "chairman, his her deputy or deputies and assistants (or commissioners) appointed by the Chairman of the Commission".

18. **Explanatory Note:** The proposal is to ensure that the assistants (or commissioners) are appointed by the Chairman of the commission and are accountable to him. This is important because ultimately the Chairman of the Commission is the one accountable to the Assembly for the performance of his duties. This amendment will ensure that the assistants are men and women of integrity, competence and experience and that they do not place themselves at the same level as the chairman of the Commission. This will also ensure that the principle of collective responsibility prevails at the Commission. This proposal accords with the practice at the UN, Arab League, ASEAN, ACP, EU etc. Finally, if accepted it will ensure that the Chairman of the Commission can replace the assistants (or commissioners) if they do not perform.

(old) Article 31: Cessation of Membership

19. The proposal is for the deletion of this article.

20. **Explanatory Note:** It is quite obvious that a Member State can always withdraw from an intentional organization even where the treaty is silent on withdrawal or denunciation. This is the case with the United Nations Charter where some countries have withdrawn notwithstanding that it is not mentioned textually. Libya's proposal is that this right should not be mentioned in the Act, as if states are being invited to withdraw or denounce the Act.

21. **General amendment:**

(to change "member states" to "members" of the concerned Organ
e.g Members of the Assembly, Members of the Executive Council)

22. **Explanatory Note:** The purpose of this proposal is to ensure that the text conforms to logic. Reference to Member States in respect of decision-making processes is illogical and impractical as it could be interpreted to mean that parliaments must be consulted at every stage of the process. How can parliaments be consulted on procedural issues? It is quite clear that the members represent States and that there is no need to refer to Member States everywhere in the text. Indeed, the UN Charter makes reference throughout the text to "Members of the United Nations". In addition, the Rules of Procedure of the General assembly and the UN Security Council, refer to "members" and "representatives of members" and not to Member States. If accepted, the result will be that in relation to the Assembly, for example, the text will refer to the members of the Assembly.

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