

AFRICAN UNION

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**2nd Ordinary Ministerial Session of the Specialized
Technical Committee on Justice and Legal Affairs
8-9 September 2016
Lome, Togo**

**STC/Legal/Min/Rpt.
Original: English**

REPORT

I. INTRODUCTION

1. Pursuant to Decision Assembly/AU/Dec.365(XVII) adopted by the 17th Ordinary Session of the Assembly of the African Union held in Malabo, Equatorial Guinea, in July 2011, and the Decision EX. CL/Dec.701(XXI) adopted by the 21st Ordinary Session of Executive Council of the Africa Union held in Addis Ababa, Ethiopia, in July 2012, the African Union Commission convened the First Extra Ordinary Ministerial Session of the Specialized Technical Committee (STC) on Justice and Legal Affairs to consider various Draft Legal instruments. The STC on Justice and Legal Affairs comprises Ministers of Justice and Attorneys General or Keepers of the Seals, Ministers responsible for Human Rights, Constitutionalism and the Rule of Law or such other Ministers or authorities duly accredited by the Governments of Member States.

II. ATTENDANCE

2. The following Member States were in attendance:

Algeria; Angola; Burkina Faso; Cameroon; Central African Republic; Congo; Cote D'Ivoire; Democratic Republic of Congo; Egypt; Ethiopia; Equatorial Guinea; Ghana; Kenya; Lesotho; Malawi; Namibia; Niger; Nigeria; Rwanda; Sahrawi Republic, South Africa; South Sudan; Sudan; Swaziland; Togo; Uganda; and Zambia.

III. OPENING SESSION

Statement by Minister of Foreign Affairs of the Republic of Togo

3. The Minister of Foreign Affairs of the Republic of Togolese welcomed the delegates on behalf of the President of the Republic of Togo. He took the opportunity to congratulate the Commission and Member States for the place given to the legal instruments in the integration process and the development of the Continent. He noted that the drafting of new legal instruments is an answer to the current challenges faced by the Continent and highlights the necessary combination to be built, first, between the law and the action, and secondly between conceptualization and operationalization.

4. Reaffirming his Government's honour to welcome the Member States to this important meeting, the Minister encouraged the delegates to feel at home in Togo. He then underlined that the draft texts to be considered will contribute to the fulfilment of the objectives enshrined in the Constitutive Act of the African Union.

Statement by the Commissioner of Peace and Security of the African Union Commission

5. H.E. the Commissioner of Peace and Security welcomed the delegates on behalf of H.E. The Chairperson of the African Union Commission, Dr. Nkosazana Dlamini Zuma to the meeting of the STC on Justice and Legal Affairs and thanked them for attending the meeting which is strategically convened to implement the decision of the Assembly, Decision AU/Dec.593 (XXXVI). He informed the

delegates that their attendance to this STC Session to develop legal instruments that state the Common African position on issues of mutual interest to the Member States of the African Union, bears testimony to their own unflinching commitment and that of their Member States to address the challenges faced by the Continent including those relating to justice and the rule of law.

6. The Commissioner recalled that this STC is challenged, based on the obvious skills of its Experts, to develop normative and regulatory instruments, in order to coordinate the African Union Member States' action in the field of maritime security and safety and development in Africa. He stated that this coordinating instrument is a necessity in Africa to regulate, at the Continental level, all implementing mechanisms already in this field.

7. Regarding the other draft legal instruments submitted to the STC on Justice and Legal Affairs for consideration, the Commissioner mentioned that the second item that requires the Session's attention is the Draft Statute of the African Union Mechanism for Police Cooperation (AFRIPOL). He noted that pursuant to the first ever meeting of the African Chiefs of Police held in Algiers from 10 to 11 February 2014, the Algiers Declaration on the Establishment of the African Mechanism for Police Cooperation (AFRIPOL) was adopted. The Commission submitted the draft Statute of AFRIPOL to this meeting of the STC on Justice and Legal Affairs as part of the efforts for speedy operationalization of AFRIPOL.

8. Regarding the Amendment to Article 5 (1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, the Commissioner reminded the delegates that the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) does not currently have the locus standi to submit cases to the Court, it can only request an advisory opinion. He recalled that in order for ACERWC to deal with Human Rights issues that are within its mandate, the Executive Council in its 29th Ordinary session in Kigali in 2016 adopted Decision EX.CL/923 (XXIX) which requests this Committee on Justice and Legal Affairs to consider the Amendment to Article 5 (1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, that sets out the persons entitled to appear before the Court. Pursuant to the adoption of the amendment, ACERWC can appear before the AfCHPR. He urged the Honorable Ministers and Delegates present to consider the request of the Executive Council to amend the provisions of Article 5(1) of the Court Protocol to enable ACERWC to fulfil its mandate of advancing the rights of the African child.

9. Finally, the Commissioner addressed the last instrument on the agenda, the Draft Amendment to the Constitution of the African Civil Aviation Commission (AFCAC), which arises from a decision of its 25th Plenary session of AFCAC to amend the majority required to constitute quorum at Plenary Meetings from two thirds to simply majority. He stressed that as a specialized agency of the Union, the Decision to amend the AFCAC constitution must be approved by the relevant policy organs of the Union, hence the consideration of the Amendment at this STC. He then closed his statement by thanking the Ministers and all the delegations present, the other participants, the AU Commission, the interpreters, translators and the technical staff for the work accomplished in convening the meeting.

Statement by Minister of State, Minister of Justice and Keeper of the Seals of the Republic of Cameroon

10. H.E. the Minister of State, Minister of Justice and Keeper of the Seals of the Republic of Cameroon welcomed the delegates and thanked them for attending the meeting. He also recalled the decision of the Assembly, Decision AU/Dec.593 (XXXVI), which requested the relevant Specialized Technical Committees as well as the Commission to expedite actions to ensure the development, adoption and signing of the Draft Charter on Maritime Security and Safety and Development in Africa during the Extraordinary Summit in October, 2016. He reminded the experts that following the above, the Office of the Legal Counsel convened this meeting to ensure the consideration and recommendation of the Charter to the Assembly in October 2016. The Chairperson of the STC noted that considering the upcoming Extraordinary Session on Maritime Security and Safety and Development in Africa, the Charter to be considered by the delegate has a significant importance. He recalled that securing the seas is a challenge on the way to peace and development, the same ideal of security being also the justification for the establishment of the AFRIPOL. Addressing the question of the amendments to the AFCAC Constitution and the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, the Chairperson reaffirmed that these amendments were consistent with the will of Member States to improve the functioning of our pan-African Institutions.

11. The Chairperson concluded by highlighting the importance of each of the legal instrument to be considered by the meeting and thereafter declared the meeting open.

IV. CONSIDERATION AND ADOPTION OF THE DRAFT AGENDA

12. The meeting adopted the Agenda as follows:

1. Opening Ceremony
2. Consideration and Adoption of the Draft Agenda
3. Organization of Work
4. Consideration of the draft Report of the Meeting of Government Legal Experts
5. Consideration of the draft legal instruments:
 - i. *Draft African Charter on Maritime Security and Safety and Security and Development;*
 - ii. *Draft Statutes of the African Union Mechanism for Police Cooperation (AFRIPOL);*
 - iii. *Draft Amendment to Article 5(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights;*
 - iv. *Draft Amendment to the Constitution of the African Civil Aviation Commission;*

6. Adoption of the draft legal instruments and the Draft Report
7. Any Other Business.
8. Closing Ceremony

V. ORGANISATION OF WORK

13. The meeting adopted its organisation of work as follows:

- Morning: 10.00 to 13.00
- Afternoon: 14.30 to 18.00

VI. CONSIDERATION OF THE DRAFT AFRICAN CHARTER ON MARITIME SECURITY AND SAFETY AND DEVELOPMENT

14. The Commission informed the meeting that the Draft Charter had been validated at a meeting of Government Legal Experts, Regional Economic Communities (RECs) and International Partners in Addis Ababa, Ethiopia in April 2016 and subsequently considered by the Specialized Technical Committee on Defense, Safety and Security in July, 2016, where it was recommended that the Draft Charter be submitted for consideration by the STC on Justice and Legal Affairs.

15. No observations were made by Member States and the draft Charter was approved and recommended for consideration by the Assembly of Heads of States and Government of the African Union.

VII. CONSIDERATION OF THE DRAFT STATUTE OF THE AFRICAN UNION MECHANISM FOR POLICE COOPERATION (AFRIPOL)

16. The Commission introduced the draft Statute. As background, the Commission informed the meeting that the 7th ordinary meeting of the Specialized Technical Committee on Defense, Safety and Security (STCDSS), which was held in Addis Ababa, on 14 January 2014, adopted a Declaration in which the STCDSS welcomed the offer by Algeria to host the Conference of Chiefs of Police in Algiers. The Commission noted that the Declaration was endorsed by the 22nd Ordinary Session of the Assembly of Heads of State and Government of the African Union that was held in Addis Ababa, from 30 to 31st January 2014, Thereafter, the first meeting of African Chiefs of Police was held in Algiers from 10 to 11 February 2014. The meeting adopted the “Algiers Declaration on the Establishment of the African Mechanism for Police Cooperation – AFRIPOL” and agreed to, among others, designate Algeria as the host country for the headquarters of AFRIPOL in Algiers.

17. At its Twenty-Fifth Ordinary Session of the Assembly held in Johannesburg, South Africa, from 14 to 15 June 2015, the Assembly welcomed the further progress made in the operationalization of AFRIPOL as well as efforts undertaken by Algeria in setting up the headquarters of AFRIPOL. Thus, the Commission submitted the Statute of AFRIPOL to the meeting of the STC on Justice and Legal Affairs as part of the efforts for speedy operationalization of AFRIPOL.

18. The Commission further summarised the main issues which were deliberated upon by the Experts Meeting; referring to Article 8 of the instrument where the Experts provided input on alignment of the document as well as Article 20 relating to quorum for decision making where a discrepancy existed in the English and French text regarding quorum.

19. The following observations were made:

- i) The functions and objectives of AFRIPOL confer legal capacity on it. AFRIPOL needn't be conferred with legal capacity as has been done by article 8 of the protocol since the agency is there to assist Member States.
- ii) The Deputy Legal Counsel clarified that it is very important for AFRIPOL to have legal capacity so it can the acquire goods and property it needs in the exercise of its functions and also institute legal proceedings.
- iii) Withholding legal personality from AFRIPOL would put it in a fragile position.
- iv) There needs to be clarity in Article 20 to have one mode of decision-making, i.e., whether by consensus and simple majority, but not two-thirds majority.
- v) There is a need for a qualified majority for decision-making and the quorum for decisions should be two-thirds majority as AFRIPOL is an important institution of the African Union.
- vi) AFRIPOL's role in peace support operations as it relates to the principle of non-interference in the internal affairs of Member States should be clarified.

20. The Commission clarified that AFRIPOL will only act in accordance within mandate of peace support operations taking into account the principle of non-interference and sovereignty of member states. Following the observations, Article 20 of the draft Statute should read "two third majority" instead of "simple majority" and the meeting recommended the draft Statute for consideration and adoption by the Assembly.

VIII. CONSIDERATION OF DRAFT AMENDMENT TO ARTICLE 5(1) OF THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE ESTABLISHMENT OF AN AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

21. The meeting decided that the proposed Amendment to Article 5(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights be referred to the African Union Commission who should study the proposed amendment from a procedural and legal perspective with a view to ensuring compliance with the amendment procedure detailed in the Article 35 of the Protocol establishing the Court prior to re-submission to the STC on Justice and Legal Affairs.

IX. CONSIDERATION OF THE DRAFT AMENDMENT TO THE CONSTITUTION OF THE AFRICAN CIVIL AVIATION COMMISSION (AFCAC)

22. The Representative of the African Civil Aviation Commission (AFCAC) presented the background and context of the amendment proposed by a Member State, after which it was considered by the AFCAC Plenary Session and was now being tabled before the STC on Justice and Legal Affairs for consideration before submission to the Executive Council and then the Assembly for adoption.

23. Following the presentation, the following observations were made:

- i) An amendment of this nature would encourage indiscipline by Member States in non-attendance of meetings.
- ii) In order to be able to move forward in the activities of AFCAC this amendment is necessary and should therefore be adopted. It would therefore be convenient to remove the obstacle of two-thirds majority as a quorum requirement as civil aviation is an important issue in Africa.
- iii) AFCAC makes serious efforts to have attendance and in some instances, out of current membership of 54 only about 33 members attend most of its plenary sessions. The difficulties are sometimes to do with issues of accreditation.
- iv) AFCAC commits to encourage States Parties to attend meetings, as this is an important issue.

24. The proposal for amendment to Article 10(4) of the Revised Constitution of the African Civil Aviation Commission adopted in 2009, was recommended for adoption by the Assembly of Heads of States and Governments of the African Union.

X. ANY OTHER BUSINESS

25. No item was considered in any other business.

XI. ADOPTION OF THE REPORT OF THE SECOND MEETING OF THE SPECIALIZED TECHNICAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS;

26. The Ministers adopted the Report with some amendments.

XII. CLOSING CEREMONY

27. In his closing remarks, the Minister of Justice of the Togolese Republic thanked the delegates for their commitment and tireless work in considering the draft legal instruments. He reminded delegates of the need for Member States to attend and fully participate in the Extraordinary Summit, which will take place in October 2016 in Lome, Togo, and wished all delegates well as they return to their countries.

28. In her remarks, the Deputy Legal Counsel thanked the Government of the Republic of Togo for the collaborations in ensuring the success of the meeting of the STC on Justice and Legal Affairs. She thanked the delegations for their constructive observations and cooperation with the Chairperson and the Commission. She also thanked the experts, staff in the Office of the Legal Counsel, the Representatives of Departments of the Commission and the interpreters and translators for their indulgence and understanding. The Deputy Legal Counsel paid special tribute to the Chairperson for the excellent manner in which he had chaired the meeting.

29. In his closing remarks, the Chairperson of the meeting, H.E, the Honourable Minister of State, Minister of Justice and Keeper of the Seals of the Republic of Cameroon thanked the Ministers and Delegates, the Government Legal Experts, the Legal Counsel and staff of the Office of the Legal Counsel, the Representatives of various Departments, Interpreters, Translators and Technicians for their support and cooperation. He wished the distinguished delegates safe journey to their various destinations.