

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

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**5th FORUM OF THE AFRICAN UNION
COMMISSION ON INTERNATIONAL LAW
5 - 6 December 2016
Accra, Ghana**

Original: English

CONCEPT NOTE

Theme: "The Role of Africa in Developing International Law"

A. INTRODUCTION

1. The African Union Commission on International Law (AUCIL) was created on the basis of Article 5 (2) of the Constitutive Act of the African Union, and by adoption of the *Statute of the African Union Commission on International Law*, through *Decision Assembly/AU/Dec.209 (XII)* during the 12th Ordinary Session of the Assembly held in Addis Ababa, Ethiopia, in February 2009.
2. The AUCIL was created at a time when the African continent was envisaging increased commitment to the process of accelerating the integration of the continent, and acknowledging the role of law, particularly international law, in that endeavour. To this end, it was established to contribute to the codification and progressive development of international law in the African continent.
3. In implementing its mandate and achieving its mission, “to be an efficient legal advisory organ of the African Union, contributing to the African integration agenda and to the objectives and principles of the Union, and devoted to promote the interests of the African continent in the world, through progressive development and codification of international law in the continent”, AUCIL undertakes a number of programmes and activities such as carrying out research, drafting legal framework agreements, preparing legal opinion, organizing seminars, conferences and training programmes.

B. BACKGROUND ON AUCIL FORUMS

4. AUCIL Forums are held annually following the inaugural forum in December 2012, as a platform for discussing and interacting on matters of interest for Africa through the prism of international law and the African Union Law with the view of 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, identify ways to accelerate regional integration throughout the continent.
5. The 2nd Forum was held under the theme, “the law of integration in Africa” with a focus on taking note of developments being made in order to trace the precise limit, paradigms, and emerging norms and principles, which can actually be considered as emerging norms and principles of customary international law in Africa on integration. The 3rd Forum was held in Addis Ababa, Ethiopia under the theme, “codification of international law at the regional level in Africa” with a view to survey the field of international law in the African continent in order to select areas of codification. The 4th Forum was held under the theme, “the challenges of ratification and implementation of treaties in Africa” in Cairo, Egypt in October 2015. The forum discussed the dilemma of the contradiction between the keenness in ratifying in the context of the African Union and the cumbersome implementation of these texts at the national level and analysed ways in which progressive development of international law on the continent must take place in order to provide urgent responses to these issues.
6. The 5th Forum is organized under the theme, “the role of Africa in developing international law”. The Forum will be held from 5 - 6 December 2016 in Accra, Ghana.

C. RATIONALE OF THE THEME

7. Africa's encounter with international law has shaped it and as argued by some scholars, the continent is largely a creation of international law. Gradually, Africa has ceased to be a mere object to a Eurocentric international law, but is continuously participating as a subject of this international legal order and creating its norms. Therefore, it is pertinent for the Forum to examine critically this new role that Africa is playing with a view of enhancing its active participation.
8. The role of Africa in developing international law will be examined through the sources of international law as stated in the Statute of the International Court of Justice under Article 38 (1) which include international conventions, international customs, general principles of the law and judicial decisions and the teachings of the most highly qualified publicists.
9. The OAU, the predecessor of the AU, although not conceived as a legislative body, in its multilateral law-making adopted twenty-three (23) treaties in the thirty seven (37) years of its existence of which twenty (20) are currently in force. The AU has adopted thirty-seven (37) treaties since its inception in 2002. As of June 2016, there are sixty (60) treaties signed by both the OAU and its successor, the AU. Thirty-two (32) have entered into force. The treaties express common standards and created laws in areas such as governance, democracy, elections, human rights, humanitarian issues, security, gender equality etc. The value of these treaties lies not in the numbers but in the law-creating function, which such international organisations perform. Both the AU and the OAU have also promulgated a wide number of norm-creating decisions, declarations and administrative conventional frameworks.
10. African states have not only been active on the Continent but have also been major contributors through employing their collective negotiating positions as members of international organisations like the United Nations and World Trade Organisation in developing international laws. For example, one of the major contributions by African states to the United Nations Convention on the Law of the Sea (UNCLOS III) during the negotiations at the 6th Session is the development of the economic zone concept.
11. Although treaties and customs are the traditional methods of creating international law, they are certainly not the only form of international law making as outlined above. Evidenced by the vast number of publications by African legal scholars spanning new themes and expanding on the traditional contributions, it will be important for the Forum to analyse how new teaching, research and practice of international law portends in Africa.
12. The African Regional Courts ushered a new generation of international tribunals. These courts have pronounced key judgements that have set precedents in prosecuting mass atrocities. The Special Court of Sierra Leone for instance has had a number of significant achievements in addition to upholding the sentence of the former Liberian President Charles Taylor, the Court made the first ever convictions of attacks against UN peacekeepers, and convicted as a crimes against humanity; forced marriage and recruitment of child soldiers.
13. Against the above, there are wide ranges of topics to be considered under the current theme by the Forum, sub-themes have been proposed to guide and to ensure rich extensive coverage of this topic in the discussions.

D. SUB-THEMES

14. Discussions will focus on the following themes:

- i) The institutional framework of the contribution of Africa in developing international law;
 - Under this theme presentations will offer an overview of the initiatives by the OAU/AU in developing international law.
 - It will highlight the work of African Society on International Law, the African Association on International law, and the AUCIL.
 - It will also highlight on the contribution of Africa within the United Nations system.
- ii) The role of African regional institutions in particular the RECs and regional Courts are playing in developing international law;
 - This theme will focus on the contribution of regional bodies to the creation and development of international law. It will build upon experiences of both national and regional processes in contributing to the international fora of international law.
- iii) Contributions of Africans in international jurisdictions;
 - This theme seeks to discuss the role Africans are playing at international organisations like i.e. International Court of Justice, Tribunal on the Law of the Sea, International Criminal Court, Ad Hoc Tribunal for Rwanda and Yugoslavia, World Trade Organisation Dispute Settlement Body etc.
- iv) Courses on international law given by Africans;
 - Under this theme presenters will identify courses taught by African practitioners and identify the gaps in the areas of study. Participants are encouraged to share their own leaning experiences in taking courses in this field of study whether in the continent or abroad.
- v) The contribution of Africa to the development of international trade and investment
 - This theme will analyse the harmonization of business and investment laws in Africa. Participants will deliberate on the major contributions of the OHADA system, the Uniform Act and how they have standardized and harmonized various aspect of business law in Africa.

E. FORUM OBJECTIVES

15. The main objectives of the fifth edition of the AUCIL Forum are as follows:

- i. Survey the methods in which Africa has engaged and is continuously interacting with international law-making processes.
- ii. Examine the practice of African States in their interactions with each other, and with other states in the international community.

- iii. Investigate the role played by African states in international organisations in the context of development and codification of new rules of international law.
- iv. Analyse ways of progressively contributing to the development of international law in Africa.
- v. Identify the challenges in which Africa has in contributing to the development of international law.

F. PRACTICAL MODALITIES OF THE FORUM

- 16. The forum will adopt a participatory approach to enable a broad exchange of views among participants and obtain their inputs.
- 17. English, Arabic, French and Portuguese are the working languages of the Forum.

G. PARTICIPANTS

- 18. Participants targeted by the Forum are:
 - i. Practitioners: Legal Advisers of Ministries of Foreign Affairs of AU Member States, Lawyers with specialisation in International Law, International Judges;
 - ii. Member States: Ambassadors of AU Member States, Diplomats, Ministries of Justice of AU Member States;
 - iii. Educational and Research Institutions: Academics, Law Faculties from AU Member States, African Researchers of the continent and the Diaspora, Research Centres on International Law in Africa and elsewhere;
 - iv. International, Regional Organizations and Non-governmental Organizations, etc.

H. CONFIRMATION OF PARTICIPATION

- 19. Confirmation of participation must be communicated by e-mail to the AUCIL Secretariat **at the latest 30 November 2016**, via email to: Betelhema@africa-union.org; AleerK@africa-union.org; TamiruD@africa-union.org with copies to Mr. Mourad Ben Dhiab, the Executive Secretary to AUCIL at DhiabB@africa-union.org.

I. COST OF PARTICIPATION

- 20. Participants will themselves bear the cost of their participation.

J. PROGRAMME

- 21. The programme will be circulated and posted on the AU website at the appropriate time.

K. THE FORUM OUTCOME AND OUTPUTS

- 22. AUCIL will at the end of the Forum issue:

- i. A publication of the documents retained as contributions to the Forum, and;
- ii. A report on the deliberations of the Forum and its outcomes which will be presented at the next session of the AUCIL.

L. USEFUL INFORMATION

Entry visa and stay in Ghana: The list of Ghanaian Diplomatic and Consular Missions abroad as well as comprehensive information on the entry visa and stay in Ghana are available at <https://ghana.visahq.com/>

Yellow Fever Vaccination Card: All visitors to Ghana are advised to carry proof of yellow fever vaccination.

Currency rate: 1 EUR = 4.40455 Ghanaian Cedi (GHS)

Voltage: Ghana uses a 220 - 240VAC Volt and 50 Hz system. The power sockets that are used are of type D / G. The participants are encouraged to travel with a three-prong plug adapter and transformer if necessary.

Temperature in Ghana: In the month of December, the weather is arid with scarcely any rain. The temperature varies between a low of 24°C (75°F) and a high of 30°C (86°F).

M. FURTHER INFORMATION

23. For further information on this forum, please contact **Ms. Betelhem Arega** (Betelhema@africa-union.org) or **Ms. Koat Aleer** (AleerK@africa-union.org).