



ORGANIZATION OF AFRICAN UNITY

TRANSITION OF THE OAU TO THE AFRICAN UNION

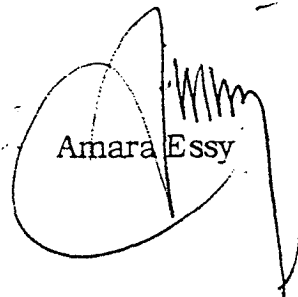
**REPORT OF THE SECRETARY GENERAL ON THE
IMPLEMENTATION OF THE LUSAKA SUMMIT ON THE
TEXTS RELATING TO THE KEY ORGANS OF THE AFRICAN UNION**

December 2001
Addis Ababa, Ethiopia

FOREWORD

The present document contains the texts related to the Assembly of Heads of State and Government, the Executive Council, the Commission and the Permanent Representatives Committee as requested by the Lusaka Summit. These texts are the synthesis of the outcome of the brainstorming session held on 13 and 14 October and chaired by myself, the informal briefing session of the European and Ethiopian Experts, the internal discussion within the two Sub-Committees were I set up and which were co-chaired by the Assistant-Secretaries General, the deliberations of the meeting of the Coordination Committee which I chaired on 23 and 24 November and in which the Assistant-Secretaries General, the Directors of different Department, the Heads of Division, the Legal Counsel and all the consultants working in the General Secretariat participated.

This document is, therefore, the sum total of the successive value added of the above-mentioned meetings. By submitting it for consideration to the representatives of Member States, I am confident that it will be given the greatest attention.



Amara Essy

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INTRODUCTION

1. In its Decision AHG/160 [XXXVII] on the implementation of the Sirte Summit Decision on the African Union, the 37th Ordinary Session of the Assembly of Heads of State and Government, held in Lusaka from 9 to 11 July 2001, “mandated the Secretary-General to work with Member States through the Permanent Representatives and experts, the results of whose work should be examined by a representative committee of Ministers to be established for this purpose before final submission to the Council and the Assembly”. The Assembly also “mandated the Secretary-General to undertake the necessary consultations with Member States with a view to working out the modalities and guidelines for the launching of the Organs of the African Union, including the preparation of the Draft Rules of Procedure of these Organs and ensuring the effective exercising of their authority and discharging their responsibilities. In undertaking this task, priority should be given to the launching of the key organs, namely: the Assembly, the Executive Council, the Commission and the Permanent Representatives’ Committee”. As for the commission, the Assembly “mandated the Secretary-General, in consultation with Member States, to submit proposals regarding the structure, functions and powers of the commission”.

2. The present document is a contribution of the General Secretariat to the implementation of the Lusaka Summit decision which gives priority to the launching of the key Organs of the Union, i.e: the Assembly, the Executive Council, the Commission and the Permanent Representatives’ Committee. It constitutes the outcome of a reflection engaged within the General Secretariat and which involved a number of officers. In this regard, a brainstorming session presided over by the Secretary General and including the Assistant-Secretaries General, the Directors, the Legal Counsel and other officers was organized on 13 and 14 October 2001 and gave rise to a fruitful debate on the implementation of the Lusaka Summit Decision on the African Union. The discussions were pursued two sub-committees established to that end, led by the Assistant Secretaries General. The two sub-committees prepared draft documents on the four key organs, which have been examined during a second Plenary meeting held on 23 and 24 November 2001 and chaired by the Secretary General. The draft documents have been adopted on 28 November 2001 by the Policy Cabinet composed of the Secretary General and the Assistant-Secretaries General.

3. In elaborating these documents on the Rules of Procedure of the Organs (the Assembly, the Executive council, and the Permanent Representatives Committees) and the Structures, functions and powers of the Commission, the General Secretariat was guided by the provisions of the Constitutive Act and the various decisions of the Assembly of Heads of State and Government, particularly the Lusaka Decision which suggested a gradual approach in the establishment of the Organs of the Union. It was inspired by the same gradual approach when suggesting that the Union should be provided with initial powers, which will be

exercised by its Organs and the initial structures of its organs being understood that these powers and structures will expanded gradually as the Union gathers momentum and establishing itself. Likewise, it is suggested that, in addition to the functions of General Secretariat of the Union that the Commission is expected to carry out, the latter should be provided with powers to be delegated by the Assembly in a number of areas to be determined. Finally, in making proposals on the size of the Commission and the initial structures that should support it, the Secretariat has taken into account the financial capacity of Member States and the necessity, at the same time, to provide the Commission with adequate human, financial and material resources.

4. In submitting these proposals, the General Secretariat hopes to facilitate the task of the bodies that will consider them in conformity with the Lusaka Summit Decision.

DRAFT RULES OF PROCEDURE

- (i) Assembly of Heads of State and Government
- (ii) Executive Council
- (iii) Permanent Representatives Committee

The Rules of Procedure of any organisation should derive from the basic provisions of the text of the legal instrument that set up that organisation. This principle, however, has not been strictly adhered to either in the OAU Charter or in the Constitutive Act of the African Union. In the case of the Constitutive Act of the Union, the powers and functions of the Assembly and the Executive Council are provided for in Articles 9 and 13 respectively. However, the Act is silent on the powers and functions of the Permanent Representatives' Committee. By its very nature, the Constitutive Act cannot and in fact does not spell out in detail the functions, powers and operational modalities of the various organs of the African Union. In view of this situation, and taking into account the special nature of the Act as well as of its fundamental objectives, the proposed Draft Rules of Procedure for the three priority organs listed above are designed to facilitate the efficient functioning of these organs, enhance their effectiveness and cover certain inadequacies in the Constitutive Act of the Union.

ASSEMBLY

Composition

The Assembly shall be composed of Heads of State and Government or their duly accredited representatives.

Powers

1. The Assembly shall

- (a) be the Supreme Organ of the Union ;
- (b) adopt its own Rules of Procedure ;
- (c) decide at its ordinary session on the venue of its next meeting ;
- (d) elect its Chairman and the other Members of the Bureau for a period of one year, through consultations between Member States;
- (e) determine the common policies of the Union ;
- (f) facilitate the progressive polling sovereignty of Member States to be exercised by the Commission in the interest of the Union;
- (g) determine the areas in which Member States can entrust the Union with the responsibility of promoting their collective interests;
- (h) receive, consider, take decisions on and endorse reports and recommendations from the other Organs of the Union ;
- (i) consider requests for membership of the Union ;
- (j) establish any organ of the Union ;
- (k) approve the budget of the Union ;
- (l) give directives to the Executive Council or the Commission on such situations as conflict prevention, management and resolution, war, acts of terrorism, restoration of peace, economic and social development and integration and other emergency situations ;
- (m) appoint the judges of the Court of Justice ;
- (n) impose sanctions against any defaulting Member State in such areas, as non-payment of assessed contributions, massive violation of human rights and violation of the principles enshrined in the Constitutive Act ;
- (o) authorise its Chairman to convene a Meeting of the Bureau on behalf of the Assembly, to deal with emergency situations on the continent;

- (p) authorise the Union to intervene in a Member State in the event of grave situations such as war crimes, genocide, crimes against humanity ;
- (q) appoint the Chairman of the Commission and his or her Deputy or Deputies and the commissioners; they shall be appointed for a four (4) year term, renewable only once;
- (r) have the power to suspend or remove from office, before the end of their term, the Chairman, his/her Deputy /Deputies and Commissioners as well as the judges of the Court of Justice on such grounds as gross incompetence or serious misconduct incompatible with their status or likely to tarnish the image and credibility of the Union ;
- (s) endorse all appointments made by the Executive Council.
- (t) have the power to amend the Constitutive Act of the Union, following the laid down procedures;
- (u) have the power to interpret the Constitutive Act, pending the establishment of the African Court of Justice.

2. The Assembly may delegate any of its powers and functions to any Organ of the Union.

3. The Chairman of the Commission, his or her Deputy/Deputies and the Commissioners will be a critical element in the efficient and effective functioning of the African Union. To this end, therefore, it is imperative that the Rules of Procedures should provide for an appointment process that ensures that the best people are appointed to these key posts. Consequently, it is recommended that:

- (a) In the election of the Chairman of the Commission his or her Deputy/Deputies and Commissions consideration shall first and foremost be given to the competence and merit of the candidate, who shall be eligible for re-election once.
- (b) Nominations for the Office of the Chairman of the Commission his or her Deputy/Deputies and commissioners shall be circulated to Member States at least three months before the election.
- (c) The Assembly shall appoint the Chairman /Vice Chairman and Commissioners of the Union by secret vote and two-thirds majority of Member States. Where there are more than two candidates, and no candidate secures the required two-thirds majority after three consecutive ballots, the candidate who scores the least vote will withdraw while the candidate who secures the highest votes at the fourth ballot will be declared the winner. this rule is subject to the following conditions:

- (i) where there are only two candidates, and none of them secures the required two-thirds of the vote of members, the candidate with the least votes will withdraw after the third ballot. Balloting will continue for the remaining candidate until he/she secures the required two-thirds of the votes of members. However, should he/she fail to secure the required votes after three rounds of balloting, elections will be postponed for one year to allow for new candidates;
- (ii) where there is only one candidate, and he/she fails to secure two-thirds of the votes of members after the third ballot, balloting will cease after the third ballot and the election postponed for one year to allow for new candidates.

Functions

The Assembly shall:

1. harmonise and co-ordinate all activities and initiatives of the Union;
2. monitor the implementation of policies and decisions of the Union and ensure compliance by all Member States, individually and collectively;
3. cooperate with Africa's development partners so that all activities and initiatives, regarding Africa are in line with the objectives of the Union.

Election of the Bureau

The Assembly shall elect the Chairman and the members of the Bureau after consultations between the Member States. Their term of Office shall be for one year.

Sessions

The Assembly shall:

1. meet at least once a year in ordinary session. At the request of any Member State and on approval by **a two-thirds majority** of Member States, the Assembly shall meet in Extraordinary Session;
2. decide at its ordinary session the venue of its next session by simple majority;
3. convene for 2 full working days;
4. authorise the Current Chairman in consultation with the Chairman of the Commission to convene emergency Sessions of the Bureau on behalf of the Assembly to deal with emergency situations with a view to taking decisions and

actions. Such meetings shall be attended by Heads of State and Government. These Meetings shall be open to other Members of the Union.

5. With the exception of the opening and closing sessions, hold all its meetings in private; the Assembly, however, may decide by simple majority whether any of its meetings shall be public.

6. The Bureau shall be composed of 12 members, on the basis of proportional representation of regions.

7. Two-thirds of the total membership of the Union shall form a quorum.

Agenda

1. The Assembly shall, based on the recommendations made by the Executive Council, adopt a limited and focused agenda, requiring its highest attention and decision, .

2. The Agenda shall be distributed to all the Member States at least one month before the meeting of the Assembly.

3. The opening ceremony shall be short and limited to statements by the President of the Host Country, the Chairman of the Commission, the outgoing Chairman and the Secretary General of the United Nations or his representative.

4. There shall be no general statements during the deliberations of the Assembly at its closed session.

5. The agenda of an extra-ordinary session shall be communicated by the Chairman of the Commission at least ten days before the opening of the extra-ordinary session. It shall comprise only items submitted for consideration in the request for convening the extra-ordinary session.

6. "Any Other Business" shall be for information purposes only and shall not be the subject of debate or decision.

Participation

The Chief Executives of the Regional Economic Communities and the Heads of the principal Organs of the Union shall be invited to participate in the closed sessions of the Assembly. The Representatives may take the floor, when necessary, on issues of concern during the deliberations on the Agenda items.

Decisions

1. The Assembly shall adopt its decisions by consensus or, failing which, by a two-thirds majority of the Member States. However, procedural matters,

including the question of whether a matter is one of procedure or not, shall be decided by a simple majority.

2. The voting shall be by secret ballot.
3. Each Member State shall have one vote.
4. All resolutions and decisions shall be determined by a two-thirds majority of the members of the Union.
5. After the debate has been closed, the Chairman shall immediately put to the vote the resolution with all amendments. The vote shall not be interrupted except on a point of order related to the manner in which the vote is taking place.
6. When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Assembly shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on, until all amendments have been put to the vote. If one or several amendments are adopted, the amended proposal is then put to the vote. If no amendments are adopted, the proposal shall be put to the vote in its original form. A proposal is considered as an amendment to a text if it adds or removes parts therefrom or modifies it.
7. Parts of a proposal, resolution or a motion shall be voted on separately when so requested. If this is done, the text resulting from the series of votes shall be put to the vote as a whole. If all operative parts of a proposed resolution or motion have been rejected, the proposal shall be considered to have been rejected as a whole.
8. Votes will be taken by raising the hand, but any members may request a roll-call vote which shall be taken in the alphabetical order of the names of the Member States beginning with the state whose name is drawn by lot by the Chairman. After the vote any member may request the use of the floor to explain his vote.
9. There shall be a secret vote for elections, and also in such special circumstances as the Assembly may determine by simple majority.
10. Failure to comply with the decisions of the Assembly will attract sanctions in accordance with Article 23 of the Constitutive Act.

Declarations and Resolutions

The Assembly may also adopt resolutions and/or declarations on issues of common interest to Member States.

Debate

1. The use of the floor shall be granted by the Chairman in the order in which it has been requested.
2. Proposed decisions, declarations, motions, or amendments shall be presented in writing to the Secretary General who shall give copies to members of the Assembly. However, the Assembly may authorise the discussion of a proposal not previously distributed.
3. A motion or a proposed resolution may be withdrawn by the original mover prior to its being submitted to the vote. Any member may reintroduce a motion or proposed resolution that has been withdrawn.
4. During the debate, a member may raise a point of order and the point of order shall immediately be decided by the Chairman, in accordance with the Rules of Procedure. If a member appeals against the decision, the appeal shall immediately be submitted to the vote.
5. During the course of a debate the Chairman may announce the list of speakers and, with the consent of the Assembly, declare the list closed. The Chairman may, however, accord the right of reply to any member, if, in his opinion, a speech delivered after he has declared the list closed makes this desirable.
6. When a matter has been sufficiently discussed a member may move the closure of the debate. Two members may briefly speak in favour and two against such motion after which the motion shall be immediately put to the vote.
7. During the discussion of any matter, a member may move the adjournment of the debate on the item under discussion. In addition to the proposer of the motion, one member may speak in favour and one against the motion after which the motion shall be immediately put to the vote.

Working Languages

The working languages of the Organisation and all its institutions shall be, if possible, African languages, French, English, Arabic and Portuguese;

Amendments

These Rules of Procedure may be amended by the Assembly by a two-thirds majority.

THE EXECUTIVE COUNCIL

Composition

The Executive Council shall be composed of the Ministers of Foreign Affairs or such other Ministers or Authorities as are designated by the Governments of Member States.

Powers

1. The Executive Council shall:

- (a) coordinate and harmonise policies in areas of common interest to Member States;
- (b) consider issues referred to it by the Assembly and/or the Permanent Representatives Committee and/or the Commission;
- (c) have the power to refer issues to the Permanent Representatives Committee or the Commission or the Specialised Technical Committees;
- (d) consider and submit the Programme Budget of the Union;
- (e) adopt its own Rules of Procedure;
- (f) decide on the dates and venue of its sessions;
- (g) elect its Chairperson and the other Members of its Bureau;
- (h) receive, consider, take decisions on reports and recommendations from the other Organs of the Union;
- (i) set up Commissions, Committees and Organs of the Union and appoint officials of such bodies;
- (j) endorse the Reports, Decisions, Projects and Programmes of the Specialised Technical Committees;
- (k) consider and adopt the Reports of the Chairman of the Commission;
- (l) approve the Rules of Procedure of the Specialised Technical Committees;
- (m) approve the Staff Rules and Regulations and the Financial Rules and Regulations of the Commission;
- (n) approve the Headquarters Agreements as well as the Host Agreements of the Representations of the Union and the Organs of the Union ;
- (o) approve the structures of the Commission and transmit them to the Assembly.

2. The Executive Council may delegate any of its powers and functions to the Specialised Technical Committees and/or to the Permanent Representatives Committee or the Commission.

Functions

The Executive Council shall:

- (a) be accountable to the Assembly;
- (b) prepare the Agenda of the Assembly;
- (c) determine the issues to be referred to the Assembly for decision;
- (d) coordinate the activities and initiatives of the Union;
- (e) approve the Protocol on Relations between the Union and the Regional Economic Communities and coordinate the activities of the RECs with a view to attaining the objectives of the Union;
- (f) promote cooperation and coordination with the UNECA and the ADB and other African institutions to facilitate convergence and complementarity of programmes and projects of the Union;
- (g) monitor the implementation of the policies and decisions adopted by the Assembly;
- (h) cooperate with Africa's partners so that all activities and initiatives regarding Africa are in line with the objectives of the Union.

Bureau

The Executive Council shall elect its own Chairman and members of the Bureau (1 Chairman + 3 Vice-chairmen + 1 Rapporteur) on a Regional rotational basis, after consultations between the Member States, for a period of one(1) year.

Sessions

The Executive Council shall:

1. meet at least for two ordinary sessions per year, one of which shall precede the session of the Assembly;
2. meet for three (3) full days;
3. meet in Extraordinary Session at the request of a Member State and after agreement by two-thirds of Members;

4. two-thirds of the membership of the Union shall form a quorum at any meeting of the Executive Council.

Agenda

1. The Executive Council shall adopt its agenda, prepared and submitted to it by the Commission in conjunction with the Permanent Representatives Committee.

2. The Agenda shall be communicated to the Member States at least one month before the opening of the Ordinary Session.

3. The Agenda of an Extraordinary Session shall comprise only specific items submitted for consideration in the request for convening the Extraordinary Session.

4. "Any Other Business" shall be for information purposes only and shall not be the subject of debate or decision.

Participation

The Chief Executives of the Regional Economic Communities, and the Heads of the different Organs of the Union shall be invited to participate in the closed sessions of the Executive Council. They shall take the floor on issues of concern during the deliberations of the Agenda items.

Decisions, Declarations, Resolutions and Motions

The Executive Council shall adopt Decisions. The Decisions shall be signed by the Chairman and published in the Official Journal of the Union. The Executive Council may also adopt Declarations, Resolutions and / or Motions on issues of common interest to Member States. Proposed Decisions, Motions or amendments shall be presented in writing to the Chairman of the Commission who shall circulate copies to Member States. However, the Council may, in exceptional circumstances, authorise the discussions of a proposal not previously distributed. Proposed Decisions and Motions shall be examined in the order of their submission.

A Motion or proposed Decision may be withdrawn by the original mover prior to its being submitted to the vote. Any Member State may reintroduce a Motion or proposed Decision that has been withdrawn.

Public and Private Meetings

All meetings of the Council shall be held in private. However, the Council may decide by simple majority whether any of its meetings shall be public.

Working Languages

The working languages of the Council and all its organs and institutions shall be, if possible, African languages, French, English, Arabic and Portuguese. It may decide that some of the meetings of the organs and institutions shall use only two working languages - English and French.

Vacancy or Absence

In case of vacancy or absence of the Chairman, one of the Deputy-Chairmen shall act in his place.

Debate

The Chairman opens and closes the meetings, submits for approval the records of the meetings, directs the debates, grants the use of the floor, submits to a vote matters under discussion, announces the results of votes, rules on points of order in accordance with the Rules of Procedure.

No Member State shall have the floor without the consent of the Chairman. The Chairman shall grant the use of the floor in the order in which it has been requested. He can call to order any Member State when his statement is not relevant to the matter under discussion.

Points of Order

During the debate, a representative may raise a point of order and the point of order shall be immediately decided by the Chairman in accordance with the Rules of Procedure. A representative may appeal against the ruling of the Chairman. The appeal shall be immediately put to the vote and decided by simple majority.

A representative may not, in raising a point of order, speak on the substance of the matter under discussion.

Time Limit

The Council may limit the time allowed to each speaker on any question. On procedural questions, the Chairman shall limit each intervention to a maximum of five minutes. When debate is limited and a representative exceeds his allotted time, the Chairman shall call him to order without delay.

Closure of Debate

When a matter has been sufficiently discussed any representative may move the closure of the debate. Two representatives may speak in favour of the motion

and two against the motion, after which the motion shall be considered approved if it has a simple majority in its favour. When the debate on an item is concluded because there are no other speakers, the Chairman shall declare the debate closed.

Adjournment of Debate

During the discussion of any matter, a representative may move the adjournment of the debate on the item under discussion. In addition to the proposer of the motion, one representative may speak in favour and one against the motion after which the motion shall be immediately put to the vote.

Suspension or Adjournment of the Meeting

During the discussion of any matter, a representative may move the suspension or adjournment of the meeting. No discussion on such motions shall be permitted, and they shall be immediately put to the vote.

Order of Procedural Motions

Subject to Rule .. Points of Order, the following motions shall have Precedence in the following order over all other proposals or motions before the meeting:

- (i) to suspend the meeting;
- (ii) to adjourn the meeting;
- (iii) to adjourn the debate on the item under discussion;
- (iv) for the closure of the debate on the item under discussion.

Voting Rights

Each Member State shall have one vote.

Majority Required

All decisions shall be determined by simple majority of the members of the Executive Council .

Vote on Decisions

After the debate has been closed the Chairman shall immediately put to the vote decisions with all amendments. The vote shall not be interrupted except on a Point of Order related to the manner in which the vote is taking place.

Vote on Amendments

When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Council shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on, until all the amendments have been put to the vote. If one or several amendments are adopted, the amended proposal is then put to the vote. If no amendments are adopted, the proposal shall be put to the vote in its original form. A proposal is considered as an amendment to a text if it adds or removes parts therefrom or modifies it.

Vote on Separate Parts of a Proposal

Part of a proposal, resolution or a motion shall be voted on separately, when so requested. If this is done, the text resulting from a series of votes shall be put to the vote as a whole. If all operative parts of a proposed resolution or motion have been rejected, the proposal shall be considered to have been rejected as a whole.

Method of Voting and Explanation of Vote

Votes will be taken by raising the hand, but any representative may request a roll-call vote which shall be taken in the alphabetical order of the names of the members beginning with the State whose name is drawn by lot by the Chairman. After a vote any representative may request the use of the floor to explain his vote.

There shall be a secret vote for elections and also in such special circumstances as the Council may determine by simple majority.

In the event of equality of votes in issues other than elections, the proposal is deemed to be rejected.

These Rules of Procedure may be amended by the Council by a two-thirds majority.

PERMANENT REPRESENTATIVES COMMITTEE (PRC)

1. Composition

The Permanent Representatives Committee shall be composed of Permanent Representatives accredited to the Union, and other Plenipotentiaries of Member States.

Member States, in selecting their representatives on the Permanent Representatives Committee, are urged to take into account the challenges facing our Continent and the new orientation of the African Union.

2. Powers

The Permanent Representatives Committee :

- (i) shall act in an advisory capacity to the Executive Council and the Commission ;
- (ii) may set up sub-committees, as it may deem necessary.

3. Functions

The Permanent Representatives Committee shall:

- (i) prepare the meetings of the Executive Council including the agenda and draft decisions/recommendation;
- (ii) propose its own Rules of Procedure and submit them to the Executive Council for approval;
- (iii) elect its Chairman and members of the Bureau;
- (iv) consider the Programme-Budget of the Union as well as Administrative, Budgetary and Financial matters of the Commission and forward its views on them to the Executive Council;
- (v) consider any other matter delegated to it by the Executive Council or submitted to it by the Commission ;
- (vi) propose the composition of the various Bureaux of the various organs and sub-committees;
- (vii) be available for consultation by the Commission on matters related to the Commission and the programmes and projects of the Union;
- (viii) monitor the implementation of the decisions and instructions of the Executive Council;
- (ix) direct that its Bureau be regularly briefed by the Commission on the activities of the Commission.

4. Bureau

The Permanent Representatives Committee shall elect its own Chairman and members of the Bureau (1 Chairman + 3 Vice-Chairmen + 1 Rapporteur) on a regional rotational basis, after consultations between Member States for a period of one(1) year.

5. Sessions

- (i) (The Permanent Representatives Committee shall meet regularly as and when necessary;
- (ii) A Member State which is not represented at the Headquarters of the Union and which is unable to attend any of the regular meetings of the Permanent Representatives Committee, may designate a country from its Region to represent it on specific issues.

6. Quorum

The quorum of the meetings of the Permanent Representatives Committee shall be by simple majority.

TOWARDS ESTABLISHING THE COMMISSION OF THE AFRICAN UNION

The Political Basis of Defining Functions, Structures and Authority of the Commission

1. Any attempt to propose a determination of the structures, functions and regulations of the Commission have to be derived from a rigorous understanding of the essence of the African Union as articulated in the Sirte Declaration; from the deliberations and Decisions of the Assembly of Heads of State and Government; as well as from the provisions of the Constitutive Act of the African Union. Indeed, the Commission as a principal Organ of the Union acquires its essential features from the nature of the Union to be established and the corresponding tasks that its operationalization will entail; from its relationship with the other Organs of the Union, and from the imperatives of realizing the vision and ideals of closer unity and solidarity within the African Continent.

2. The Sirte Declaration of 9.9.99 provides a profound articulation of the basis for a determination of the institutional bearings of the African Union. It is asserted in paragraph 6, that: "In order to cope with these challenges and to effectively address the new social, political and economic realities in Africa and in the world, we are determined to fulfill our peoples' aspirations for greater unity in conformity with the objectives of the OAU Charter and the Treaty Establishing the African Economic Community (the Abuja Treaty). *It is also our conviction that our continental Organization needs to be revitalized in order to be able to play a more active role and continue to be relevant to the needs of our peoples and responsive to the demands of the prevailing circumstances....*"

3. It is from this inspiration that the preamble of the Constitutive Act underlines a determination:

"... to take all necessary measures to strengthen our common institutions and provide them with the necessary powers and resources to enable them discharge their respective mandates effectively."

4. Indeed, this is a commitment made by African leaders, which has far reaching implications regarding the structures, functions and authority of the various Organs of the African Union, including the Commission.

5. This spirit is further reinforced by the objectives that the African Union aspires to achieve which not only reiterate and reinvigorate some of the fundamental objectives of the OAU, but broaden the scope of collective endeavour. The Constitutive Act assigns the Union with new responsibilities that the OAU Charter did not originally enunciate. The tasks that the Organs of the

African Union have to undertake not only incorporate a wider range of sectors but also involve a more complex set of activities. These include:

- the acceleration of the political and socio-economic integration of the continent;
- the promotion and defence of African common positions on issues of common interest;
- the promotion of peace, security and stability of the continent;
- the promotion of democratic principles and institutions, popular participation and good governance;
- the promotion and protection of human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant instruments;
- the promotion of sustainable development at the economic, social and cultural levels;
- the advancement of research in all fields, in particular science and technology, and the eradication of preventable diseases and the promotion of good health on the continent;
- the establishment of the necessary conditions for the continent to play its rightful role in the global economy and in international negotiations;
- the coordination and harmonization of policies between the various African Regional Economic Communities.

6. To some extent, these are not essentially novel tasks even for the OAU. With its limited capacities, during the past decades it had been compelled to undertake some of these functions. However, by enshrining them in the Constitutive Act, it can be assumed that the leaders of the Continent were determined to provide a basis for creating the appropriate structures and capacities for their realization.

7. The necessity of revitalizing the Organs of the African Union is also underscored by the fact that the Constitutive Act has taken the process of integration a step beyond the Abuja Treaty. It reflects the conviction and dire need to accelerate the process of the implementation of the Treaty to achieve greater unity and solidarity among African countries. It also identifies, as a main objective, the issue of coordination and harmonization of policies of the Regional Economic Communities (RECs) for the gradual attainment of the objectives of the Union. Furthermore, the Act provides details (in its Articles 13,14,15,19,22) which specifically address the question of economic integration. Also, the involvement of the African people and the introduction of the areas of social and culture as part of the domain of action of the Union make the Act even more

comprehensive than the AEC Treaty in addressing, in a more explicit manner, social and cultural issues.

8. There is an additional dynamic that also compels the establishment of organs that are more robust and proactive than what presently exist. The fundamental essence of the Principles enunciated by the Constitutive Act, reaffirms, in very explicit terms, that this is a Union being formed among independent nation-states, which at this initial stage, shall retain their distinct nationhood. These sovereign States, which also share a common vision about their destiny and some fundamental values pertaining to a number of spheres, are committed to enhancing the areas of cooperation and integration among them. The process of attaining the ideal of stronger unity and solidarity as spelt out in Article 3 of the Constitutive Act, while at the same time respecting the Principles enunciated in Article 4 (which emphasize the aspects of sovereignty and nationhood), presents a complex challenge that requires the establishment of engaging and dynamic operational Organs for the African Union than the current set up of the Organization of African Unity provides for.

9. Indeed, the Constitutive Act is very explicit in calling for more engaging and dynamic Organs of the Union. For instance, in defining the various functions of the higher Organs of the African Union {Articles 9,13,15,21(2)}, the Act stipulates the specific tasks that have to be undertaken. These include: determining common policies, monitoring the implementation of policies, coordinating and harmonizing projects and programmes of the Union, preparing projects and programmes; and preparing the work of the various Organs. Obviously, these cannot be performed by Secretariat type of structures as current experience with the OAU clearly informs.

10. The vitality and dynamism for the new institutions of the African Union can only be acquired through an enhancement of authority and legitimacy at their disposal and also increased capacities for their functioning. Clearly, the essence of the African Union, as articulated in the Sirte Declaration and the deliberations of the Leaders, points towards the direction of a framework for unity that is stronger than the OAU. At the same time, the establishment of bodies such as the financial institutions that have been provided in the Constitutive Act underline a commitment and determination to increase and deepen the space for collective action among the Member States. In the same regard, in seeking to achieve the objectives of the Union, there develops a basis for increasing the legitimacy for collective action. The promotion of democratic principles and institutions, popular participation and good governance; or the right of the Union to intervene in a Member State in respect of grave circumstances such as war crimes, genocide and crimes against humanity would definitely provide Union Organs with the legitimacy to pursue collective action and to acquire the requisite vitality.

11. Both in political and operational terms, the realization of this ideal entails a demarcation of certain areas of authority currently exercised by Member States, to be pooled together for collective initiative and cooperation under the auspices of the African Union. The spirit of the Abuja Treaty, which is embedded in the Sirte Declaration and inherited by the Constitutive Act points towards the direction of the elaboration of a common vision, policies and action, which in turn, necessitates the need to put in place the necessary structures that can advance the implementation of such a common agenda. Indeed, there are a number of such areas in which African countries have already developed common positions and coherent plans of action. Similarly, some of the cross-boundary challenges, such as the pandemics, environmental degradation, disaster management, terrorism, external trade, migration and food security provide a strong legitimacy for a Continental approach to surmounting them.

12. As a supreme Organ of the Union, it is the Assembly which is the ultimate custodian and repository of collective authority shared by Member States. Article 9 of the Constitutive Act outlines how this authority should be exercised on behalf of the Union Members, namely, through decision-making; monitoring and implementation; adopting the budget; giving directives; and appointing and dismissing the high officers of some institutions. The Assembly may delegate some of its powers and functions to other Organs. Articles 13 and 15 of the Constitutive Act also outline how the Executive Council and the Specialized Technical Committees can facilitate the work of the Assembly in exercising its authority.

13. As specified in Article 20 of the Constitutive Act, the Commission will also be the Secretariat of the Union. It is, therefore, the only body that is expected to deal on day-to-day basis with the operational matters of the African Union and it will be the principal body that services all the other Organs. Of course, this should not preclude the fact that certain specialized Organs such as the envisaged Financial Institutions or even the Pan-African Parliament need to have their own support structures to service or in particular facilitate the attainment of their functions and mandates. However, it is the Commission that will ultimately oversee the functioning of the main Organs of the Union, including the Assembly, the Executive Council and the Committee of Permanent Representatives.

14. As an integrated structure, all the Organs of the Union will have functional linkages based on ensuring the attainment of the objectives of the Union along the principles enunciated by the Constitutive Act. The actual working relationship will depend on the Rules of Procedures of the other Organs. However, in performing its role, the Commission will have to nurture and develop strong linkages with the other Organs. This relationship may vary from being mainly consultative and facilitative in consensus building, transmission of proposals and initiatives, to technical backstopping and advisory. Furthermore, within the Secretariat of the Commission, there will be particular units that act as focal points for servicing the other Organs. In this respect, the linkage, in both

directions, between the Commission and the Specialized Technical Committees will be very important.

15. The relationship between the Commission and other Organs will be evolving over time, as the Union and its structures gain momentum and become more consolidated. For example, in the long run, members of the Commission should receive the confirmation of the Pan-African Parliament so as to enhance their legitimacy.

16. On the basis of this understanding of the spirit of the Constitutive Act, at an operational level, it can be said that the Commission has to be the driving force in initiating, executing and following up on the decisions of the other Organs, including the higher ones and to exercise their authority on behalf of the Union. In practical terms, for the Commission to be able to assume these functions and perform them efficiently and effectively, it has to be endowed with the requisite capacities, particularly in terms of resources; and it has also to be **conferred with a commensurate authority**.

17. It is from the above premise that the authority of the Union, which is devolved to its Organs, the most supreme being the Assembly, can be exercised and applied through the operational activities of the Commission. Consequently, the Commission needs to be conferred with sufficient authority to enable it perform the responsibilities it is assigned with. The legitimacy of delegating this authority to the Commission derives from the fact that it is an Organ that should function and operate through the principle of consistent coalescence of the interests of the Union, which should always transcend the separate and individual interests of the constituent Member States. In this respect, the Commission assumes the status of an embodiment of the personality of the Union and it upholds its general interests.

18. This legitimacy is further enhanced by the appointment of members of the Commission by the Assembly on the basis of proven eligibility criteria that underscore both competence as well as a Pan-Africanist orientation. An arrangement of regular consultations with the Pan-African Parliament, the Permanent Committee of Representatives, the ECOSOCC, Member States in general, as well as a closer collaboration with the Specialized Technical Committees should further enhance the legitimacy of its functioning. At the same time, the monitoring authority of the Executive Council as provided for in Article 13, paragraph 2, will also enhance the accountability of the Commission.

19. The delineation of authority and functions to the Commission derives from the scope of operation of the African Union. The Constitutive Act provides for a broad general area of competence for the Union. As indicated earlier, the objectives and principles cover a number of activities in the political, economic and social domains. These range from defense to political and socio-economic integration; from peace, security, and stability to governance and human rights;

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from the interaction with Regional Economic Communities to global economic relations. Furthermore, the functions of the Executive Council and the nomenclature of the Specialized Technical Committees as provided for in Articles 13 and 14 of the Constitutive Act cover all sectors of economic development. And when these are combined with the tasks involved in implementing the Abuja Treaty, the operational area of the African Union covers almost every aspect of life in the Continent.

Authority and Functions of the Commission

20. In the light of the foregoing, and deriving from the provisions of the Constitutive Act, as the operational Organ of the Union, the Commission shall:

- represents the Union and defends its interests under the guidance of the Assembly and the Executive Council; and its Chairman shall be the legal representative of the Union;
- be the embodiment of the personality of the African Union and the custodian of the collective interests of the Union;
- be the driving force of the Union in terms of initiating proposals for the consideration of higher Organs and operationalizing decisions made;
- act as the custodian of the Constitutive Act of the Union, the African Economic Community Treaty and all the decisions of the Organs of the Union;
- establish such structural units and compose them as it may deem necessary for the effective discharge of its functions;

21. In terms of achieving its mission, the major concrete tasks of the African Union will involve ensuring the complete operationalization of the Union structures provided for in the Constitutive Act; implementing the objectives and principles of the Union; and accelerating the attainment of the objectives of the Abuja Treaty as adumbrated by the Sirte Declaration of 9.9.99. In the execution of these tasks, the Commission has to deploy its conferred authority and perform at a higher level than simply a Secretariat. In this respect, it has to assume its initiative role more vigorously. It has to serve as the driving force of the Union by sustaining its momentum through submitting proposals and initiatives. Once these are considered and agreed upon and the broad policy and procedural parameters are defined, the Commission should proceed in working towards outcome. Similarly, the Commission needs to undertake more earnestly the task of representing the Union, particularly with respect to third parties and in international negotiations. And as a Commission, it has to engage itself consistently in assisting Member States in overcoming bottlenecks, obstacles and inefficiencies through collective endeavours.

22. The functions of the Commission should accordingly include, *inter-alia*:
- (a) initiating, implementing and monitoring the implementation of the decisions of the Union's policy Organs;
 - (b) servicing the other institutions of the Union;
 - (c) assisting Member States in implementing the Union's programmes and policies;
 - (d) initiating draft common positions of the Union and coordinating the actions of the Union's Member States in international negotiations;
 - (e) managing the fiscal and financial resources as well as assets of the Union according to laid down procedures and regulations. This includes preparing the Union's programme and budget, collecting the approved revenue sources; establishing fiduciary, reserve and special funds with the appropriate approvals, procuring donations that are compatible with the objectives and principles of the Union;
 - (f) taking action in its domain of responsibility, as may be delegated by the Assembly. Such domains could include the following issues among others: control of pandemics, disaster management, combating crime and terrorism, environmental management, negotiating external trade, migration, food security, socio-economic integration and all those areas in which a Common Position has been established;
 - (g) mobilizing resources for implementation of the Union's programmes and policies;
 - (h) act as mandated by the Assembly and the Executive Council;
 - (i) representing the Union with third parties;
 - (j) promoting cooperation and coordination of activities between Member States in all fields;
 - (k) providing operational support to the Mechanism for Conflict Prevention, Management and Resolution;
 - (l) promoting, coordinating and harmonising programmes and policies of the RECs;
 - (m) providing annual reports on the activities of the Union to the Assembly, the Council and the Pan-African Parliament;
 - (n) promoting peace, security and stability; and
 - (o) promoting integration and economic development.

23. A number of Regulations and Rules would need to be elaborated for the smooth functioning and operationalisation of the Commission as indicated above, such as financial regulations, staff regulations, etc. In the same regard, the decisions adopted by the different Organs of the Union should be published in the Official Journal along the lines provided for in Articles 10(3)* and 13(3)** of the Treaty Establishing the African Economic Community. Apart from providing an orderly presentation of decisions adopted by the different Organs of the Union, the Journal will also contribute towards publicizing Union affairs.

Size of the Commission

24. A determination of the size of the Commission is dictated by the scope of its functions and affordability by the Member States. Definitely the African Union will involve more operational tasks than the OAU, and in this respect the structures of the Commission will have to be larger than the present Secretariat. The tasks that derive from the Constitutive Act are beyond Secretariat functions as presently constituted. The accomplishment of these tasks will entail expanding the institutional structures and deploying additional staff and expertise.

25. The increase in the size of the present Secretariat, in terms of personnel, directorates and units, will have to be gradual and incremental. It should be determined by the responsibilities assigned to the Commission as the Union consolidates itself and as the area of common interest among Union Members expands. Nevertheless, the ultimate size of the Commission, among other things, will have to balance the necessity for effective and efficient operation and its resource affordability. In this regard, it is important to ensure that the size of the Commission is such that the cost for its maintenance is not so high as to jeopardize the other components of the budget. The challenge in this respect is to have high-caliber personnel, who are well motivated, and who can constitute the core of Commission staff. Other experts can be hired on a contract basis, as and when the need arises. Such an approach should lower staff costs.

Number of Commissioners

26. Related to the size of the Commission as an institution, is the issue of number of Commissioners that can allow the functioning of this Organ in an effective manner. Article 20(2) defines the composition of the Commission to consist of: the Chairman, his or her deputy or deputies and the Commissioners.

* Article 10(3) States: "Decisions shall be automatically enforceable thirty (30) days after the date of their signature by the Chairman of the Assembly, and shall be published in the official journal of the Community."

** Article 13(3) States: "Regulations shall be automatically enforceable thirty (30) days after the date of their signature by the Chairman of the Assembly, and shall be published in the official journal of the Community."

While the Act provides for one or more deputies, it does not specify the exact number of Commissioners. Nevertheless, experience of other Organizations has demonstrated that above a certain number, the Commission's efficacy suffers and the cost burden increases. Likewise, below a certain number, the legitimacy and efficiency of the institution suffer. In the case of the African Union, the right balance may be acquired gradually, with acquisition of responsibilities by the Union and the increase of resource capacity.

27. It is proposed that the Commission could initially start with seven members, including the Chairperson. However, it can be reviewed and increased gradually as the process of integration gathers momentum.

Profile and Appointment of Members of the Commission

28. Members of the Commission, including its Chairperson, should be competent women and men with proven experience, commensurate leadership qualities and an impressive track record in government, parliament, international organization or other relevant sectors of society. In the appointment of Members of the Commission, appropriate consideration has to be given to the issue of gender representation.

29. It may be necessary to devise a system of selecting candidates who are submitted for membership to the Commission so as to ensure that the Assembly is presented with the most appropriate candidates to be considered for appointment.

30. In order to promote a Continental image of the Commission, the appointment of Members of the Commission should ensure that the successful individuals possess and maintain a Continental perspective rather than identifying with regional interests while serving in the Commission. This will contribute to enhancing the Pan-African nature of the Commission.

31. A distinctive attribute of the Commission as presented in the Constitutive Act is that it is a single, indivisible body. Indeed, the notion of a Commission, both in its basic etymology and in its organizational usage, refers to a body that functions through deliberative procedures to accomplish a given mission. The function can be regulatory, facilitative or even the pursuit of larger developmental goals within a given mandate. It differs from a Secretariat, which largely provides backup services to other Organs. Invariably, to be effective, a Commission needs to be provided with a mandate—whose scope may vary, and whose authority may either be statutory or delegated.

32. By providing for a Commission among the Organs of the African Union, and indicating that it shall be the Secretariat of the Union, the Constitutive Act, among other things, empowers this body to be provided with a mandate that transcends that of an ordinary Secretariat. The basic rationale for such a consideration, is that the task to be accomplished is so profound and complex

that it has to be assigned to an Organ rather than to individuals. In this regard, in order to perform its given mandate effectively, the Commission has to project a deliberative institutional character and it has to conduct its business as a single, indivisible body undertaking a collective responsibility in its designated area of competence.

33. In order to maintain the indivisibility and collegiality of the Commission as an Organ, it is important that all its members are appointed by the same body. A differentiation in the mode of appointment may impinge upon the holistic character of this body. In this regard, so as to ensure that members of the Commission are endowed with the status and authority of continental representatives and that they command the requisite respect in interactions and negotiations with other international actors on behalf of the Union, more than ever before, all members of the Commission need to be elected by the Assembly as provided for in Article 9(l)(i) of the Constitutive Act.

34. While the Constitutive Act is silent on the issue of the duration of the term of office of the Members of the Commission, including its Chairperson, it is strongly recommended that the duration should be limited to two terms of 4 years each, so as to ensure constant dynamism in the leadership of the Organization.

The Chairperson of the Commission

35. The Chairperson of the Commission shall be:

- (a) the legal representative of the Union;
- (b) the accounting officer of the Commission;
- (c) the Chairperson of all meetings and deliberations of the Commission

The Deputy Chairperson of the Commission

36. The Deputy Chairperson of the Commission shall:

- (a) assist the Chairperson of the Commission in the exercise of his or her functions and shall exercise any powers to be delegated to him/her by the Chairperson of the Commission;
- (b) act as the Chairperson of the Commission in the event of the absence or temporary incapacity of the Chairperson of the Commission.

In addition to his or her responsibilities in (a) and (b) above, the Deputy Chairperson shall also have portfolios like any other Commissioner.

Portfolios and Structures of the Commission

37. In order to enable the Commission perform effectively, it should organize itself along some coherent portfolios which correspond with the priority tasks of the Union at any given period. The portfolios will be headed by the respective members of the Commission. At the same time, the structures of the Commission should be built around a number of Directorates that shall be the technical pillars of the Commission and provide expertise in their specific areas of focus. Consideration should be given also to the desirability of appointing a Secretary of the Commission who will be located in the Office of the Chairperson^{***}. The exercise of organizing Directorates and Units should be undertaken with an element of flexibility in order to allow for adapting to the requirements of any given period and to provide for the incorporation of changes and innovations with the gaining of operational experience.

Commission Portfolios

38. Flexibility is also essential in constituting the portfolios that will be allocated to Members of the Commission for providing leadership and supervision. The exact composition and assignment of the portfolios should be determined by the Chairperson and members of the Commission, taking into account the exigencies of the day, particularly, the priority programmes of the Union as well as the interest and orientation of individual members of the Commission. The following categories are presented only as indications for the type of portfolios that can be considered:

- Economic Development, Cooperation and Integration;
- Social Affairs and Gender,
- Science and Technology;
- Administration and Finance;
- Information, Communication, and Resource Mobilization; Political Affairs.

39. There is an imperative need of streamlining the responsibilities of the college of Commissioners and the technical and administrative functions of the Commission Directorates. The Commissioners should provide guidance and leadership for the overall policy orientation, while the Directorates generate the technical and administrative outputs in the operationalization of Union functions.

Meetings of the Commission and Decision-Making

40. The Commission, being a collegial body, should meet on a regular basis (weekly) to deliberate on issues of its competence and take collective decisions accordingly. It should be mandatory for all Commissioners to attend meetings of

^{***} See Functions under the Section on *Secretary to the Commission* paragraph 42-43.

the Commission, unless there are compelling reasons for them not to do so. The Secretary of the Commission is responsible for finalizing the agenda and circulating the same with documentation to all Commissioners. Bearing in mind that Commissioners will be required to undertake missions abroad in the exercise of their functions, the Commission should be empowered to take decisions by written procedure. In this regard, the text of the proposal on which a decision is required shall be circulated within a time limit and Commissioners must make known any reservations or amendments they wish to make. Otherwise, the proposal may stand adopted. However, the Commission shall take decisions collectively, and at least initially, by consensus. At a later stage a voting procedure may be considered.

41. The written procedure for decision-making should be reflected in the Rules of Procedure of the Commission.

Secretary to the Commission

42. Among the useful experiences of other structures of integration that can be emulated is the establishment of the post of Secretary to the Commission. This position is deemed necessary so as to enhance operational coordination and harmonization among the structures of the Commission. It is the Office that facilitates the deliberative functions of the Commission, follows up on the decisions, and ensures that the activities of the Directorates are in congruence with the intended goals and objectives.

43. In order to ensure effective performance, the Office of the Secretary to the Commission should be under the authority of the Chairperson, though separate from his/her Bureau or Cabinet. The functions of the Secretary to the Commission may include, but not limited to:

- preparing the meetings and monitoring the implementation of the decisions of the Commission;
- harmonizing, rationalizing, and prioritizing programmes and activities;
- elaborating and coordinating programmes and work-plans of the Commission.

Directorates and Units

44. The new Directorates should be made more efficient in their work and more effective in their performance, notably by bringing them closer to the issues of concern to the African Union. In considering the number of Directorates to be established, due consideration has to be given to the financial implications. In this regard, where a function can not be incorporated into an established Directorate, and if its operational requirements do not necessitate the creation of a separate Directorate, then the option of establishing a unit (which is much smaller than a Directorate) for such a function may be considered.

45. An ideal and more streamlined categorization of Directorates would be to follow the format of the 7 Specialized Technical Committees as provided for in Article 14 of the Constitutive Act. However, such an approach will lead to the creation of more Directorates, particularly when the programme areas of the Union such as Political Affairs, Administration, Finance, and Conferences are added. Consequently, with the aim of reducing the number of Directorates to the basic minimum, the composition at the initial stage will not necessarily match with the sectors included in the Specialized Technical Committees. After all, at any given period, there will be a need for prioritizing Union activities, and in this respect, the programme work of the Commission will not necessarily cover all the sectors. Pending further consideration, the following initial and provisional allocation of Directorates is proposed:

Economic Development, Cooperation and Integration

- (i) Agriculture and Natural Resources;
- (ii) Trade and Customs,
- (iii) Monetary and fiscal issues;
- (iv) Transport, Communications and Tourism;

Social Affairs and Gender

- (i) Education and Culture
- (ii) Health;
- (iii) Labour, Population and Gender;

Science and Technology

- (i) Research and Planning;
- (ii) Industry and Energy;
- (iii) Environment.

Administration and Finance

- (i) Administration and Conferences;
- (ii) Finance;

Information, Communication and Ressource Mobilisation

- (i) Information and Communication;

This portfolio will also cover the Office of Resource Mobilisation (see below);

Political Affairs

- (i) Conflict Prevention, Management and Resolution;
- (ii) Humanitarian Affairs;
- (iii) Political Cooperation and Coordination.
This Directorate will include migration.

This portfolio will also include the CSSDCA Unit (see below)

It is further proposed to have the following offices:

1. Office of Resource Mobilization
2. Office of the Legal Counsel;
3. Office of the Financial Controller; and
4. CSSDCA Unit.

46. Office of Resource Mobilization will be within the Office of the Commissioner for Information, Communication and Resource Mobilization, while the remaining two offices, that is, the Office of the Legal Counsel and the Office of the Financial Controller will be within the Office of the Chairperson.

47. As regards the Office of the Financial Controller, the incumbent will be appointed by the Assembly for a term of four (4) years renewable once only as stipulated in Article 23.2 of the Abuja Treaty. This will enable the Office to be fully independent and conduct the audit function free from interference.

48. The Directors, who will take charge of the day-to-day technical and administrative functioning of the Directorates, have to be men and women of proven competence and experience in the respective fields of Commission operations, and also possessing the requisite leadership qualities. The Chairperson of the Commission will appoint the Directors after consultation with the Members of the Commission and in accordance with appropriate recruitment procedures.

Coordination

49. In order to surmount the present bottlenecks which hamper effective Coordination under the present arrangement within the OAU, this task – and its attendant activities – should now be assigned to **the Secretary to the Commission** who will be in a position to deploy the authority of the Chairperson in harmonizing the activities of the various Directorates. In addition, the Office of the Legal Counsel should also be within the Office of the Chairperson.

Staff of the Commission

50. On the issue of the staff, the Commission, should be supported by experts recruited among nationals of the Union's Member States and on the basis of proven expertise and competition. The conditions of service should be so designed as to be comparable with other International Organizations in order to attract the best brains and expertise available on the Continent. The current staff of the OAU General Secretariat who will be found to possess the requisite requirements for functioning in the Commission would need to be reoriented and to undergo a programme of capacity enhancement.

51. It is in this regard that the on-going Change Management Programme within the OAU General Secretariat needs to be reinforced with an orientation towards complementing the transformation to the African Union, developing systems and methods of work that will enhance efficiency and effectiveness within the Organs of the African Union and particularly in the Commission, and devise a human resource management that will engender continuous improvement in staff performance.

52. Article 33 of the Constitutive Act of the African Union, *inter-alia*, provides for a one year transitional period for the purpose of enabling the OAU/AEC to take the necessary measures regarding the devolution of its assets and liabilities to the Union.

53. The staff of the OAU, currently at post, constitute one of the major assets to be inherited by the African Union as they constitute the institutional memory- the foundation upon which the African Union will rest.

54. In the recent restructuring the General Secretariat has gone through experiences of retrenchment that have disrupted the smooth and continuous functioning of the new structure. On the basis of this recent experience, maximum priority should be given to the redeployment and placement of the existing staff in the new structure of the Commission of the African Union, subject to such staff meeting the level desirable in the context of the higher expectations and level of responsibility devolving on the African Union.

55. In order to harness and retain this essential and core ingredient in constructing the African Union and to be able to attract the best brains to join them, the following considerations should be borne in mind.

- (i) The present conditions of service obtaining in the OAU are not attractive and competitive in comparison with those of similar African institutions (ADB, ECA, COMESA, SADC, ECOWAS, African Economic Research Consortium etc.) some of these institutions such as the Regional Economic Communities are supposed to be the building blocs and the pillars of the African Union.

- (ii) Because of the low and unattractive conditions of service of the OAU, the nationals of some member states are unable to accept job offers from the OAU, resulting in the inequitable representation of all member states in the Organisation.
- (iii) Since the African Union is expected to be a centre of excellence, it is strongly recommended that the terms and conditions of service be thoroughly reviewed to attract the best brains in the continent and those in the African diaspora
- (iv) In concrete terms and pending an appropriate further review, it is proposed that the basic salary scale currently used by the OAU be increased by 50%. Similarly, all other relevant conditions of service such as education, housing and dependency allowances should be reviewed upwards to compare with those of ADB and UN.

The Budget of the Union

56. The expanded activities of the Union shall entail a relatively higher expenditure of budgetary resources. The increased number of Organs and structures, the enlarged scope of activities, and the closer degree of engagement by the Organs of the Union will require more human and financial resources to sustain them. To some extent, the burden associated with this increase may be eased by the incremental manner in which the Organs and structures will be launched and programmes initiated. The decision taken by the Assembly, at its Lusaka Session, to begin by launching the key institutions will definitely lower the initial resource demand of the Union. Similarly, a rigorous prioritization of programmes and activities after the Union has been launched will also reduce operational expenses.

57. It has to be realized, that an increase in costs and expenditure for the African Union cannot be avoided. The higher benefits that are expected out of forging closer unity will definitely call for increased levels of expenditure. As already pointed out, a revitalization of the framework for integration has necessitated the establishment of more organs and structures and also an expansion in the activities of the Continental Organization. In terms of bodies, for example, the Constitutive Act provides for 17 Organs of the African Union, compared to the 4 Organs that are provided for in the OAU Charter****. Similarly, whatever the number of Directorates that shall finally be agreed upon, the Commission of the African Union will be supported by more structures than the 5 Departments provided for in the Regulations and Functions of the OAU General Secretariat. At the same time, an accelerated realization of the objectives of the

****The Central Organ of the Mechanism for Conflict Prevention, Management and Resolution as well as the Committee of Ambassadors can be included as two other bodies that were operational in the 1990s.

Abuja Treaty, and an increased level of cooperation in social and political activities will also demand more resources.

58. It is therefore important that additional means of financing the African Union be considered. The experience of the OAU strongly suggests that it is important to complement the contributions from Member States with other substantial sources of income. Indeed, the current high level of defaults and accumulation of arrears, if not contained, may be compounded in the African Union where the resource demand may double or even treble. There is a need, therefore, for seeking additional means of financing the Union.

59. The income of the Union, will therefore be derived from Contributions from Member States, based on an agreed scale of assessment, and from other sources****.

60. The Commission shall prepare the programme and budget of the Organization and shall submit it to the Pan-African Parliament, when it is operational, to obtain its input, to the Executive Council for scrutiny and approval, before forwarding it to the Assembly for final adoption, as provided for in Article 9(1)(f) of the Constitutive Act. At a later stage, consideration can be given to having the budget scrutinized and approved by the Pan-African Parliament when it has assumed its full legislative powers.

61. The proposed Programme and Budget shall comprise the programme of joint activities related to the implementation of the Union objectives, the activities of the Commission, as well as the expenses of all the other Organs of the Union.

62. In formulating the Programme and Budget, the Commission shall consult the different Organs of the Union.

Institutional Linkages

63. Apart from executing decisions of the Assembly and Council, the Commission should maintain close working relationship with all the other institutions of the African Union and also with the Regional Economic Communities which are the building blocks of the Union. The nature of the relationship will be dictated by the different roles the Organs will perform within the Union at different stages of the consolidating the Union. At a preliminary level, relations such as the following can be envisaged:

- With the Pan-African Parliament and ECOSOCC - Consultative and Feedback Relations;

****As pointed out in the introduction, owing to the technical nature of this issue, the General Secretariat is taking steps to commission a preliminary study on Financing the Union, and the results will be submitted later.

- With the Committee of Permanent Representatives - Facilitation of Consensus Building and Consultations with Member States;
- With the Court of Justice - Facilitation and Interpretation of All Legal Matters of the Union, Adjudication, and Legal Advice;
- With the Financial Organs - Policy and Technical Support, Oversight, and Institutional Linkage to Higher Organs;
- With the Regional Economic Communities - Collaboration, Regular Consultations (at least 2 meetings per annum with the Chief Executives), and working towards a possibility of the Chief Executives acquiring an ex-officio status in the Commission.