

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

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**THIRD MEETING OF THE AFRICAN UNION
MINISTERS OF DEFENCE AND SECURITY
TO CONSIDER THE DRAFT AFRICAN
UNION NON-AGGRESSION PACT**

29 JUNE 2004

ADDIS ABABA, ETHIOPIA

EXP/GVT/PACT/2 Rev. 2

DRAFT

AFRICAN UNION NON-AGGRESSION PACT

ID: 3780

PREAMBLE

We, the Heads of State and Government of Member States of the African Union;

CONSCIOUS of the gravity of the impact of conflicts both within and among African States, on peace, security and stability in the Continent, and their devastating impact on socio-economic development;

COMMITTED to our common vision of a united and strong Africa, based on respect for the principles of peaceful co-existence, non-aggression, non-interference in the internal affairs of Member States, mutual respect for individual sovereignty and territorial integrity of each State;

DETERMINED to put an end to conflicts of any kind within and among States in Africa, in order to create propitious conditions for socio-economic development and integration of the continent, as well as the fulfilment of the aspirations of our peoples;

CONSIDERING the Constitutive Act of the African Union, the Treaty Establishing the African Economic Community and the Charter of the United Nations;

CONSIDERING ALSO the Protocol Relating to the Establishment of the Peace and Security Council of the African Union adopted in Durban, South Africa, on 10 July 2002, particularly its Article 7(h) on the implementation of the Common Defence Policy of the Union;

REAFFIRMING our commitment to the Solemn Declaration..on the Common African Defence and Security Policy adopted in Sirte, Great Libyan Arab Jamahiriya, by the Second Extraordinary Session of the Assembly of the African Union held from 27 to 28 February 2004, particularly its Chapter III, paragraph (t) which encourages “the conclusion and ratification of non-aggression pacts between and among African States and the harmonization of such agreements”;

CONVINCED that the African Union is a community of Member States which decided, among other things, to adopt an African Union Non-Aggression Pact in order to deal with threats to peace, security and stability in the continent and to ensure the well being of the African peoples;

HAVE AGREED AS FOLLOWS:

CHAPTER I: DEFINITIONS

Article 1

In this Pact:

- a) **“Aggression”** means the use, intentionally and knowingly, of armed force or any other hostile act by a State, a group of States, an organization of States or non-State actor(s) or by any foreign or external entity, against the sovereignty, political independence, territorial integrity and human security of the population of a State

Party to this Pact, which are incompatible with the Charter of the United Nations or the Constitutive Act of the African Union.

The following shall constitute acts of aggression, regardless of a declaration of war by a State, group of States, organization of States, or non-State actor(s) or by any foreign entity:

- i. the use of armed forces against the sovereignty, territorial integrity and political independence of a State Party, or any other act inconsistent with the provisions of the Constitutive Act of the African Union and the Charter of the United Nations;
- ii. the invasion or attack by armed forces against the territory of a State Party, or military occupation, however temporary, resulting from such an invasion or attack, or any annexation by the use of force of the territory of a State Party or part thereof;
- iii. the bombardment of the territory of a State Party or the use of any weapon against the territory of a State Party;
- iv. the blockade of the ports, coasts or airspace of a State Party;

- v. the attack on the land, sea or air forces, or marine and fleets of a State Party;
- vi. the use of the armed forces of a State Party which are within the territory of another State Party with the agreement of the latter, in contravention of the conditions provided for in this Pact;
- vii. the action of a State Party in allowing its territory, to be used by another State Party for perpetrating an act of aggression against a third State Party;
- viii. the sending by, or on behalf of a State Party or the provision of any support to armed groups, mercenaries, and other organized transnational criminal groups which may carry out hostile acts against a State Party, of such gravity as to amount to the acts listed above, or its substantial involvement therein;
- ix. the acts of espionage which could be used for military aggression against a State Party;

- x. technological assistance of any kind, intelligence and training to another State for use in committing acts of aggression against another State Party; and

- xi. the encouragement, support, harboring or provision of any assistance for the commission of terrorist acts and other violent trans-national organized crimes against a State Party;

- b) “**Assembly**” means the Assembly of Heads of State and Government of the African Union;

- c) “**Commission**” means the Commission of the African Union;

- d) “**Common African Defence and Security Policy**” means the Common Defence and Security Policy of the African Union;

- e) “**Constitutive Act**” means the Constitutive Act of the African Union;

- f) “**Court of Justice**” means the Court of Justice of the African Union;

- g) "**Destabilization**" means any act that disrupts the peace and tranquillity of any State Party or which may lead to mass social and political disorder;
- h) "**Dispute**" means any conflict between two or among several State Parties or within a State Party, which constitutes a threat to peace and security, or a breach of the peace and security within the African Union, as determined by the Assembly of Heads of State and Government or the Peace and Security Council;
- i) "**Human Security**" means the security of the individual in terms of satisfaction of his/her basic needs. It also includes the creation of social, economic, political, environmental and cultural conditions necessary for the survival and dignity of the individual, the protection of and respect for human rights, good governance and the guarantee for each individual of opportunities and choices for his/her full development;
- j) "**Lomé Declaration**" means the Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government;

- k) **“Member States”** means Member States of the African Union;
- l) **“Mercenaries”** means mercenaries as defined in the OAU Convention on the Elimination of Mercenarism in Africa;
- m) **“Non-Aggression”** means peaceful conduct by a State Party, group of State Parties, organization of State Parties, or non-State actor(s), which does not constitute acts of aggression as defined above;
- n) **“Pact”** means the present Pact;
- o) **“Protocol”** means the Protocol Relating to the Establishment of the Peace and Security Council of the African Union;
- p) **“Regional Mechanism”** means African Regional Mechanisms for Conflict Prevention, Management and Resolution;
- q) **“State Party”** means a Member State that has ratified or acceded to this Pact;

- r) "**Terrorist Acts**" means those acts or offences defined in the OAU Convention on the Prevention and Combating of Terrorism;
- s) "**Threat of Aggression**" means any harmful conduct or statement by a State, group of States, organization of States, or non-State actor(s) which though falling short of a declaration of war, might lead to an act of aggression as defined above;
- t) "**Trans-national Organized Criminal Group**" means a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes which are trans-national in scope, or offences established in accordance with international law, including the United Nations Convention Against Trans-national Organized Crime and its Protocols thereto, the purpose being which to obtain, directly or indirectly financial and other material benefits;
- u) "**Union**" means the African Union;

CHAPTER II: OBJECTIVES

Article 2

The objectives of this Pact are:

- a) to promote peaceful co-existence and non-aggression in Africa, and to prevent conflicts of inter-State or intra-State nature, as well as to ensure that disputes are resolved by peaceful means;
- b) to define a framework under which the Union may intervene or authorise intervention, in situations of aggression, in conformity with the Constitutive Act, the Protocol and the Common African Defence and Security Policy.

CHAPTER III: OBLIGATIONS

Article 3

- a) State Parties undertake to consider any aggression or threat of aggression against any of the State Parties as a threat or aggression on the others, that needs to be brought to the immediate attention of the Assembly of the Union or the Peace and Security Council for decision and action as appropriate, in conformity with AU's principles and objectives;

- b) .. State Parties undertake to mutually provide assistance towards their common defence and security vis-à-vis any aggression or threats of aggression;
- c) State Parties undertake, individually and collectively, to respond by all available means, including the use of the military, to aggression or threats of aggression against any State Party;
- d) State Parties undertake not to recognize any territorial acquisition or special advantage, resulting from aggression.
- e) The present Pact shall not derogate from, and shall not be interpreted as derogating in any way from the Rights and obligations contained in the United Nations Charter and the Constitutive Act, including the Protocol, and from the primary responsibility of the United Nations Security Council for the maintenance of international peace and security.
- f) This Pact shall not derogate from, and shall not be interpreted as derogating in any way whatsoever, upon the Rights of refugees guaranteed by the relevant international texts.

Article 4

- a) State Parties undertake, pursuant to the provisions of the Constitutive Act, to resolve any dispute in which they may be involved, by peaceful means and to avoid endangering peace and security; to refrain from the use of force or threat to use force in

their relations with each other and in any manner whatsoever, incompatible with the United Nations Charter. Consequently, no consideration whatsoever, be it political, legal, economic, military, religious or racial shall justify aggression;

- b) State Parties undertake to develop and strengthen the friendly and peaceful relations existing among them in accordance with the fundamental principles of the Union;
- c) State Parties undertake to promote such sustainable development policies as are appropriate to enhance the well being of the African people, including the dignity and fundamental rights of every human being in the context of a democratic society as stipulated in the Lomé Declaration.
- d) State Parties undertake to establish in the future, taking into account the degree of integration of the Continent, an African Army based on the standby contingents and within a timeframe to be determined by the Assembly.

Article 5

- a) State Parties undertake to intensify collaboration and cooperation in all aspects related to combating international terrorism or any other form of organized trans-national crime or destabilization of any Member State.

- b) Each State Party shall prevent its territory and its people from being used for encouraging or committing acts of subversion, hostility, aggression and other harmful practices that might threaten the territorial integrity and sovereignty of another State Party or regional peace and security.
- c) Each State Party shall prohibit the use of its territory for the stationing, transit, withdrawal or incursions of irregular armed groups, mercenaries and terrorist organizations operating in the territory of another State Party.

Article 6

- a) State Parties undertake to extend mutual legal assistance in the event of threats of terrorist attack or other organized international crimes.
- b) State Parties undertake to arrest and prosecute any irregular armed group(s), mercenaries or terrorist(s) that pose a threat to any State Party.

Article 7

State Parties undertake to provide all possible assistance towards the military operations decided by the Peace and Security Council.

Article 8

- a) Each State Party undertakes not to enter into any international or regional commitment which is in contradiction of the present Pact.
- b) Each State Party undertakes that no situation shall constitute a reason for exemption from the obligations devolving on it under this Pact.

CHAPTER IV: IMPLEMENTATION AND EVALUATION MECHANISM

Article 9

The Peace and Security Council shall be responsible for the implementation of this Pact, under the authority of the Assembly of Heads of State and Government.

Article 10

The evaluation of the Pact shall be done within the context of paragraph 36 of the Solemn Declaration on the Common African Defence and Security Policy which provide for the convening by the Chairperson of the Peace and Security Council “of a yearly review conference involving all the conflict research mechanisms of the various regional organizations as well as mechanisms established by the continental instruments.”

CHAPTER V: PEACEFUL SETTLEMENT OF DISPUTES

Article 11

State Parties to any dispute shall first seek a solution by bilateral negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, or resort to regional and continental mechanisms or arrangements, or other peaceful means as may be determined by the State Parties concerned.

Article 12

State Parties undertake to refer all disputes over the interpretation, implementation and validity of this Pact to the Court of Justice, without prejudice to the competence of the Peace and Security Council.

CHAPTER VI: FINAL PROVISIONS

Article 13

This Pact shall be open for signature, ratification and accession by the Member States in accordance with their respective constitutional procedures.

Article 14

This Pact shall enter into force thirty (30) days following the deposit of instruments of ratification by a simple majority of Member States of the Union.

Article 15

Any amendment to, or revision of this Pact shall be in accordance with the provisions of Article 32 of the Constitutive Act.

Article 16

This Pact shall be drawn up in four (4) original texts in Arabic, English, French and Portuguese, all four (4) being equally authentic.

Article 17

- a) This Pact and all instruments of ratification shall be deposited with the Chairperson of the Commission, who shall transmit certified true copies to all Member States.
- b) The Chairperson of the Commission shall notify all Member States of the dates of deposit of the instruments of ratification or accession and the entry into force of this Pact.
- c) The Chairperson shall register this Pact with the United Nations and any other Organization as may be decided by the Union.

African Union Commission (AUC)

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Africa Standby Capacity Roaster

Meetings

2004-06-29

3rd Meeting of the African Ministers of Defence and Security to Consider the Draft African Union Non-Aggression Pact, 29 June 2004, Addis Ababa, Ethiopia

African Ministers of Defence

<http://10.110.20.58/handle/123456789/81>

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