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Minister of Foreign Affairs

Ref: MO/059/2012

H.E. Dr. Jean Ping  
Chairperson,  
African Union Commission

Excellency,

I am writing you this letter because I have confidence on you that as the Chairperson of the Commission you will give the proper guidance and advise to the PSC and the Department of Peace and Security to respect and properly follow the rules and procedures of our respected Union and the PSC Protocol. I also expect you to rectify the procedural mistake the PSC is committing when dealing with issues that directly affect the interest of Eritrea.

Excellency,

As it is clearly articulated in the Protocol Establishing the PSC, Article 8 Paragraphs 9 and 10 (a and b) unambiguously reads as follows:

Paragraph 9.

“The Peace and Security Council shall hold closed meetings. Any Member of the Peace and Security Council which is party to a conflict or a situation under consideration by the Peace and Security Council shall not participate either in the discussion or in the decision making process relating to that conflict or situation. Such Member shall be invited to present its case to the Peace and Security Council as appropriate, and shall, thereafter, withdraw from the proceedings.”

Paragraph 10.

“a. any Member State which is not a Member of the Peace and Security Council, if it is party to a conflict or a situation under consideration by the Peace and Security Council, shall be invited to present its case as appropriate and shall participate, without the right to vote, in the discussion;

b. any Member State which is not a Member of the Peace and Security Council may be invited to participate, without the right to vote, in the discussion of any

question brought before the Peace and Security Council whenever that Member State considers that its interests are especially affected;”

After two days of intensive and extensive sessions, when most Heads of State and Heads of Delegation had gone back to their respective countries or had left the meeting Hall to their Hotels at the late hour of the Assembly’s closing session, to be precise on 30<sup>th</sup> January at 11:30 pm, when the last agenda item of the Assembly that is agenda item X “Adoption of decisions and declarations of the 18<sup>th</sup> ordinary Session of the Union” started to be discussed in violation of the procedure and normal practice of the Union, an agenda item which was not included in the draft decision and declaration of the Assembly and which was never raised and discussed by the PRC, and the Executive Council was introduced to the Assembly by the Ambassador of Djibouti.

Exploiting the violation of Article 8 Paragraphs 9 and 10 (a and b) of the PSC under the pretext of “since the PSC in its 309<sup>th</sup> Session has decided to welcome the UN Security Council resolution 2023 (2011)” the Ambassador of Djibouti requested “the insertion of UNSC resolution 2023(2011) as paragraph 7 of the decision 18/XVIII of the Assembly.”

As soon as the scripted drama curtain was opened by the Djiboutian Ambassador the Ethiopian Prime Minister, the writer of the script and the producer of the drama who in violation of the UN Charter and AU Constitutive Act has continued to occupy sovereign Eritrean territory took the floor. In an attempt to misguide the Assembly and to cover-up his occupation of sovereign Eritrean territory which he should vacate without any precondition and further delay, the Prime Minister of Ethiopia went on to say that “since resolution 2023(2011) is already adopted by the UNSC and since all UN Member States are obliged to implement UNSC resolutions, there is no need for the AU Assembly to investigate the allegation against Eritrea and to deliberate on the matter. It must simply go ahead and without waste of time accept Djibouti’s proposal.”

Excellency,

The scripted drama that transpired in the Assembly is an issue that could have been avoided had the letter and spirit of the PSC Protocol been respected by the Djiboutian representative and the PSC itself.

It is to be recalled when similar procedural violation took place by the PSC in its 302<sup>nd</sup> Session held on 2<sup>nd</sup> December 2011, our Permanent Representative to the AU, Ambassador Girma Asmerom wrote a letter on the 5<sup>th</sup> of December 2011, to all Members of the PSC, with a copy to you and Ambassador Lamamra, Commissioner for Peace and Security, requesting for the violation of Article 8 Paragraphs 9 and 10 (a and b) of the PSC Protocol to be rectified and corrected.

Excellency,

To the surprise and dismay of my Government unfortunately the previous PSC’s procedural mistake that our Ambassador requested in his letter of 5<sup>th</sup> December 2011 to be rectified was not only given due consideration but contrary to my Government’s

expectation, as was the case in its 302<sup>nd</sup> Session held on 2<sup>nd</sup> December 2011, in its 309<sup>th</sup> Session held on 25 January 2012 the PSC has once again violated Article 8 Paragraphs 9 and 10 (a and b) of the Protocol Establishing the PSC.

It is regrettable and unacceptable for the PSC to violate the letter and spirit of its own Protocol for the second time. No matter by whom in whatever shape or form an agenda item that is pushed outside the procedures of our Union and PSC's Protocol is illegal and unjust and must be rejected automatically by the PRC, PSC, Executive Council and the Assembly.

Excellency,

What was introduced by the Ambassador of Djibouti at the last hour of the Assembly Session was not only a violation of the procedure of the Union and PSC's Protocol but it is also a miscarriage of justice. When the issue was raised by Djibouti all relevant documents concerning the matter in all AU working languages were not distributed to the participants. Relevant documents aside, almost no body in the hall including the Chairman of the Assembly, the Legal Counsel of the Commission, the Secretary-General of the Commission and the Commissioner for Peace and Security had a copy of UNSC resolution 2023(2011).

In order to justify and cover-up this procedural mistake some quarters have tried to insinuate that "the UNSC resolution 2023(2011) was raised by PSC in its 309<sup>th</sup> session". According to the information I got from Member States of the PSC and the Department for Peace and Security UNSC resolution 2023(2011) was mentioned only as an information item by the Chair of the Month, the Kenyan Permanent Representative, when the AU-UN Strategic Partnership agenda was discussed. However, no debate or discussion had taken place on the matter. If there is any claim by any body that a discussion and debate had taken place on the matter at PSC's 309<sup>th</sup> Session, because it is not clear who in the PSC meeting raised the issue of sanctioning Eritrea and whether this Member State has conflict with Eritrea (if so according to Article 8 Paragraph 9 this Member State should have withdrawn from the proceedings) and since Eritrea the affected and interested party was not present at the Session, he/she is unwittingly admitting that Article 8 Paragraphs 9 and 10 (a and b) of the PSC's Protocol are violated. No matter what type of arguments one tries to invoke or tries to cover-up this miscarriage of justice there is no ambiguity that the PSC has violated Article 8 Paragraphs 9 and 10 (a and b) of its own Protocol. The following facts, which can easily be verified by any Member of the Union, are what transpired during the 309<sup>th</sup> PSC Session.

- Eritrea as a party to the situation under consideration and whose interest is gravely affected by resolution 2023(2011) was not given a chance to present its case as provided in Article 8 Paragraphs 9 and 10 (a and b) of the Protocol Establishing the PSC.
- The allegation against Eritrea was not supported by any documented evidence and verified beyond reasonable doubt.
- All important and relevant documents to the issue under discussion including UNSC resolution 2023(2011) were not translated into the working languages of the Union and were not distributed to the PSC Members during the 309<sup>th</sup> Session.

- The issue of Eritrea or UNSC resolution 2023(2011) was not included in the Provisional Program of Work of the PSC for the month of January 2012 as communicated to the Permanent Missions to the AU through AU Commission's note verbale PSD/106/1/6445.11, dated 27 December 2011.
- The UNSC resolution 2023(2011) was mentioned only as an information item by the Chair of the Month, the Kenyan Permanent Representative, when the AU-UN Strategic Partnership agenda was discussed.
- The Member of the PSC who accused Eritrea is not known and since this unknown accuser has not withdrawn from the proceedings it is crystal clear that Article 8 Paragraph 9 of the PSC Protocol is violated.

Excellency,

Eritrea is not asking special treatment. It is simply requesting for the rules and procedures of the Union to be respected and mistakes to be rectified. It is also asking for all Member States of the Union small or big to be treated equally in accordance to the current procedures of the Union and Protocol of the PSC.

Today in violation of AU's rules and procedures and PSC's Protocol a "welcoming" resolution is railroaded and sneaked-in to the Decision of the Assembly by Ethiopia (Djibouti is just the means) against Eritrea. Tomorrow we don't know who is going to play this dirty diplomatic and political game. We have to stop it and to rectify it before it is too late. Maintaining the integrity, unity and solidarity of our continental Organization must be our priority and must not be compromised.

Excellency,

As to the argument and assertion by some quarters, in particular by the Prime Minister of Ethiopia, that "once the UNSC passes a resolution the Member States of the UN are obliged to implement it and there is no need to investigate the allegation and it is not open for discussion" is not only wrong, it is an outright deception. It is true Member States are obliged to implement UNSC resolutions. However it is also right and absolutely true that Member States individually or collectively have the right to question, examine, and deliberate on UNSC resolutions. They have also the right to request for the revision and suspension of resolutions. Especially when resolutions deal with the issue of sanction Member States individually or collectively can and have the right to request and demand the lifting or tightening of the sanction. In short they are not obliged to simply rubber-stump any UNSC decision.

Therefore, the AU Assembly does not only have the right to question UNSC resolutions it does have the right and mandate and obligation to investigate and monitor the matter by creating its own investigation Committee and monitoring group. It does have also the right to formulate its own solutions and road maps. That is what the AU did concerning UNSC resolutions on Libya, ICC and Cote d'Ivoire. That is what Eritrea is requesting and expects the AU and the PSC to do concerning UNSC resolution 2023(2011).

Excellency,

Important issues such as sanction which has severe and negative implication to the MDGs, poverty alleviation, and other economic development agendas of a developing African State as well as peace and security of our continent in general and our regions in particular must be given due consideration and time. Sanction is a serious subject with serious ramification on the livelihood of the general public in particular the poor. It is not a simple matter where decision can be made after one hour or two hour deliberations. Serious investigation and deliberation is needed before any decision is taken. It is also a serious matter that shouldn't be allowed to be implemented blindly because the UNSC said so or for the sake of political or diplomatic expediency. It must be handled with outmost care and sensitivity.

Excellency,

I hope, in the spirit of African solidarity and maintaining the integrity of our continental Organization, you will give proper instruction and guidance to the PSC and the Department of Peace and Security to rectify their mistake concerning "the welcoming" of UNSC resolution 2023(2011) by the PSC and the Assembly. Moreover, for the sake of peace and stability of our region it is about time the AU to urge:

- a. the UNSC to lift the unjust and illegal 1907(2009) and 2023(2011) sanctions it has imposed against Eritrea. (The AU has done it in support of Cuba which is far away from Africa, it is about time to do it for Eritrea which is part and parcel of Africa.)
- b. Ethiopia to withdraw from sovereign Eritrean territory it has militarily occupied.

I kindly request Your Excellency to circulate this letter to all Ministers of Foreign Affairs of the Member States of our Union.

Accept, Your Excellency, the assurances of my highest consideration.

  
Osman Saleh  
Minister



20 Feb. 2012

Asmara

cc: H.E. Ambassador Ramtane Lamamra  
Commissioner for Peace and Security  
African Union Commission