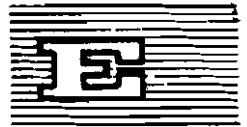


UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
RESTRICTED

E/CN.14/ADB/SC/WP.4
10 November 1962

Original: ENGLISH

ECONOMIC COMMISSION FOR AFRICA
Committee of Nine on the Establishment
of an African Development Bank
Sub-Committee on the
Drafting of the Charter
Second session
Geneva, 5-10 November 1962

REPORT OF THE SUB-COMMITTEE
ON THE DRAFTING OF THE CHARTER
ON ITS SECOND SESSION

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I. INTRODUCTION

1. The second session of the Sub-Committee on the Drafting of the Charter was held, as provided by the Committee of Nine in the Report on its second session^{1/}, at Geneva from 5 to 10 November 1962. During this period the Sub-Committee held six meetings.
2. The Committee of Nine, having decided at its first session^{2/} that the head of the delegation of Tunisia should be the Chairman of the Sub-Committee, Mr. M. Moalla, delegate of Tunisia, presided over the session.
3. At its opening meeting the Sub-Committee decided that any member of the Committee of Nine, not a member of the Sub-Committee, was welcome to participate in its work. The delegation of Cameroun participated in all the meetings of the session. The remaining members of the Committee joined in the work of the Sub-Committee at various times, as they returned from their consultation tours in non-African countries.^{3/}

II. AGENDA

4. The Sub-Committee adopted the following agenda at its first meeting:
 1. Procedure for the discussion of the contents of the Charter
 2. Discussion of the contents of the Charter:
 - A. Purpose and functions of the Bank
 - B. Membership
 - C. Organization and management
 - D. Capital structure
 - E. Operations of the Bank
 - F. General and final provisions
 3. Arrangements for the preparation of the third session of the Sub-Committee.
 4. Adoption of the report on the second session.

^{1/} Document E/CN.14/ADB/10, para. 13(1).

^{2/} Document E/CN.14/ADB/4, para. 32.

^{3/} A list of all participants is attached as Annex I.

III. DISCUSSION OF THE ITEMS OF THE AGENDA

1. PROCEDURE FOR THE DISCUSSION OF THE CONTENTS OF THE CHARTER

5. The Committee had before it a note of the Executive Secretary entitled "Explanatory Outline of a Charter for the African Development Bank"^{1/}, which reviews the constitutional, policy and technical issues to be decided in drafting the text of the Charter, and discusses possible solutions, specially in the light of those adopted in the Charters of the principal existing inter-governmental development finance institutions.

6. On the proposal of the Chairman, the Sub-Committee decided that at its present session it would not attempt to draft actual provisions for the Charter, but would discuss the principal issues involved in order to arrive at policy decisions which could guide the experts (in the secretariat as well as in the governments) in the preparation of draft texts. These would be submitted to the Sub-Committee at its final session for consideration and for submission to the Committee of Nine.^{2/}

7. On this basis, the Sub-Committee agreed to discuss the principal subject areas to be covered by the Charter, in the order proposed by its Chairman and indicated in the agenda.

2. DISCUSSION OF THE CONTENTS OF THE CHARTER^{3/}

A. PURPOSE AND FUNCTIONS OF THE BANK

8. The purpose and functions of the Bank should be highlighted in a Preamble and set out specifically in the first Chapter of the Charter.

^{1/} Document E/CN.14/ADB/12.

^{2/} The final session of the Sub-Committee will be held in Morocco from 7 to 14 January 1963, to be followed by the final session of the Committee of Nine, from 14 to 24 January, also in Morocco (Report of the Committee of Nine on its second session, document E/CN.14/ADB/10, para. 13(2) and 14.)

^{3/} This part of the Report sets out the conclusions of the Sub-Committee.

9. The Preamble should refer especially to the Bank's purpose of furthering African solidarity, the economic and social advancement of the African countries and the harmonious development of their economies. The Preamble should also indicate that the Bank's activities would be designed to add to existing development finance facilities, and that the Bank would be ready to cooperate with other African or non-African national, regional and international institutions concerned in the development of Africa.

10. The specific statement of the Bank's purpose and functions in the first Chapter of the Charter itself should be along the following lines:

- (a) to use resources at its disposal for financing development projects;
- (b) to mobilize financial resources from all sources for investment in such projects;
- (c) generally to promote investment in such projects, whether in the public or in the private sector;
- (d) to identify, study and formulate such projects; and
- (e) to provide technical assistance through expert advice and training and to undertake such other activities and provide such services as will directly advance the Bank's purposes.

B. MEMBERSHIP

(1) Qualifications

11. All independent African countries are qualified to become members of the Bank.

12. All of these countries which at the outset sign and ratify the Bank's Charter shall be members of the Bank.

13. All of these countries which wish subsequently to adhere to the Charter Agreement are entitled to do so, provided they fulfil the requirements set out in the Charter.

14. All African countries which subsequently become independent will thereupon be qualified for membership.

15. Provision should be made in the Charter to exclude from membership countries whose institutions are contrary to the fundamental principles on which African solidarity must be based.

16. While there should be no Associate Membership category, the Bank should be empowered to establish suitable relationships with African countries which have not yet achieved their independence, and with independent qualified countries which have not yet adhered to the Bank's Charter Agreement.

(ii) Organs of Co-operation

17. Each member government shall designate the appropriate office or agency through which the Bank will deal with it, and it with the Bank.

(iii) Withdrawal

18. Members shall have the right to withdraw at any time, but this right should be subject to a substantial period of notice. The financial settlement between the Bank and the withdrawing member (including the repurchase of its shares) should be subject to terms which would suitably protect the legitimate interests of the Bank.

(iv) Suspension

19. Members who fail to fulfil their obligations to the Bank shall be suspended from membership, unless the Board of Governors decides otherwise by a qualified majority. Such suspension would become permanent automatically if it was not terminated within a year's time.

C. ORGANIZATION AND MANAGEMENT

20. The Bank shall have three main organs - a Board of Governors, a Board of Directors, and a President. Governors, Directors, their Alternates, and the President shall be African.

(i) Board of Governors

21. All Powers of the Bank shall be vested in the Board of Governors. Such powers may be delegated except as otherwise expressly provided in the Charter.

22. Each member country will appoint one Governor and one Alternate Governor for a period of five years, subject to recall and renomination at the discretion of the government concerned. Governors and Alternate Governors shall be persons having high qualifications in the field of finance. The Bank shall meet the expenses of the Governors, and Alternates, but they shall receive no remuneration.

23. The Board of Governors will have at least one annual meeting and such special sessions as may be necessary. Special sessions may be called at the suggestion of the President of the Board or a specified majority of governments or at the request of the Board of Directors or the President of the Bank. The Board of Governors may take decisions by correspondence, but only with a qualified majority and upon a recommendation of the Board of Directors.

24. The Board shall elect a President at its annual meeting who shall continue in this office until his successor is elected.

25. It should be left to the discretion of the Board of Governors to invite experts and persons representing other institutions to their meetings.

(ii) Board of Directors

26. The Board of Directors shall exercise such powers as may be delegated to it by the Board of Governors.

27. The Board of Directors shall be composed of nine Directors elected by the Board of Governors. The Directors shall be selected at large from among all the candidates put forward by the member governments, rather than as representatives of specific countries or groups of countries, though the Board of Governors should have regard to considerations of equitable geographic distribution, the professional competence of the candidates and the contributions of the different countries to the Bank.

28. The Board of Governors should be empowered, once the membership and capital distribution of the Bank have become stabilized, to modify

this system and to establish a system of the election of all or part of the Board of Directors by Governors representing specific countries or groups of countries.

29. There shall be Alternate Directors. Directors and Alternates shall serve for three years, one third of their number to be elected each year. The same person may not serve simultaneously as Governor and Director.

(iii) President of the Bank

30. The Board of Governors shall elect the President of the Bank who shall be a person of highest competence. He will serve ex officio as Chairman of the Board of Directors without vote except in case of a tie. The term of office of the President shall be five years. No decision was taken for the time being as to whether the candidate for the office of President should be nominated by the Board of Directors.

31. The President shall be the Chief Executive Officer of the Bank and shall appoint its staff in accordance with rules to be adopted by the Board of Directors.

32. The question of the election and role of a Vice-President was not settled.

(iv) Voting Power

33. The Sub-Committee favoured allocating voting power to all member countries, at least on the basis of the Bank's initial capital subscription.

(v) Advisory Committee

34. This subject was left for subsequent discussion.

D. CAPITAL STRUCTURE

(i) Authorized Capital

35. The authorized capital of the Bank shall be the equivalent of US\$200 million. Of this the equivalent of US\$100 million shall be payable over a period of five years.

(ii) Subscription of the Authorized Capital

36. Since an equal distribution of the proposed capital would place too heavy a burden on many African countries, it was decided that the share capital of the Bank should be divided into unequal portions, varying with the economic capacity of member countries. This, however, should not affect the question of the distribution of the voting rights (see para. 31 above). As to the criteria to be used for the determination of the allocations of shares, the secretariat was instructed to study the matter on the basis of the different criteria which were used, e.g. for allocating the contributions to the IMF and the IBRD and for the assessments to the budget of the United Nations.

(iii) Means of Payment

37. The paid-up portion of the subscribed capital shall be paid in convertible currency. The question whether all or part of the callable portion of the subscriptions may be payable in local currency of each member was left for further discussion. In the event that provision is made for such payments in local currency it was contemplated that a maintenance-of-value clause would be inserted in the Charter.

38. The Bank's unit of account should be a weight of gold equivalent to that of the US dollar.

(iv) Changes in the Authorized Capital

39. Increases or decreases in the authorized capital shall require an affirmative vote of the Governors representing a qualified majority of the member countries and of the subscribed capital.

(v) Special Resources

40. The Bank may accept funds placed at its disposal which are subject to special terms regarding their use and/or administration.

E. OPERATIONS OF THE BANK

41. The Bank should be empowered to grant and guarantee loans for the financing of projects in the African territories of its member countries

which will contribute to their economic and social development. It should not engage in purely commercial banking operations. The decisive criterion in the selection of a project should be its potential contribution to the implementation of the purposes of the Bank, rather than the type of project involved, though the Bank should give special attention to suitable multi-national projects.

42. In setting the terms of its loans, the Bank should take due account of the terms on which the funds involved have been secured. The Bank should not, however, give grants, even out of non-reimbursable aid funds placed at its disposal.

43. The Bank may make equity investments, but the total of these outstanding at any time may not exceed a limited proportion of the Bank's paid-in capital and resources; nor may any one equity investment exceed a limited proportion of total investments in the venture.

44. The Bank may provide financial assistance to projects sponsored by governments, governmental bodies and public and private undertakings. In the case of loans to non-governmental borrowers, the Bank may require the guarantee of the government concerned. The Bank shall not undertake an operation in a country to which that country's government objects.

45. The Bank may in particular grant global credits to national development banks, under suitable conditions regarding the general allocation of the funds provided.

46. The Bank shall have power to undertake all such related financial and non-financial activities (including the formation of consortia or the underwriting of issues for projects in which it is interested, the granting and organization of technical assistance in this field, the promotion of development projects) as may serve the achievement of its purposes. Non-financial assistance may also be given to dependent African territories.

47. The Bank may not finance local currency costs of development projects where this would require it to sell convertible currencies.

48. In addition to the capital subscriptions of member countries, the latter may however be required by the Bank, under appropriate circumstances, to provide limited loans to the Bank in their local currency.

49. It was decided not to include in the Charter a provision on loan committees, since their use should be governed by the Bank's regulations.

F. GENERAL AND FINAL PROVISIONS

(i) Languages

50. There will be three languages: Arabic, English and French.

(ii) Privileges, Immunities, etc.

51. The Bank, its Governors, Directors, President and staff should have the necessary and customary privileges and immunities.

(iii) Other Matters

52. The other matters under this heading being technical matters well settled in the practice of existing international institutions, no specific guidance for their formulation in the Charter was considered needed.

3. ARRANGEMENTS FOR THE PREPARATION OF THE THIRD SESSION OF THE SUB-COMMITTEE

53. The Sub-Committee requested the secretariat to prepare complete draft texts for the Bank Charter along the lines of the Executive Secretary's Note.^{1/} These texts should accord with the conclusions set out by the Sub-Committee in Part II 2 of this report. Where various views had been expressed on a given issue, alternative texts should be prepared, in order to facilitate the work of the Sub-Committee. Where necessary, appropriate explanatory notes could accompany the texts.

^{1/} "Explanatory Outline of a Charter for the African Development Bank" (document E/CN.14/ADB/12).

54. While only a relatively short time remained for the preparation of these drafts, the secretariat was asked to distribute them as early as possible to the members of the Sub-Committee. The latter might, if they wished, prepare draft proposals of their own for submission to the Sub-Committee.

4. ADOPTION OF THE REPORT ON THE SECOND SESSION

55. The Sub-Committee adopted the present report at its sixth and final meeting on 9-10 November 1962. This meeting was also attended by the remaining members of the Committee of Nine who were invited by the Chairman of the Sub-Committee to express their views on the issues dealt with in the report.

56. At the end of the meeting, the Chairman of the Committee of Nine, the Head of the Delegation of Liberia, expressed his appreciation for the work of the Sub-Committee and congratulated its Chairman, its members and its secretariat.

57. The session closed at 0.45 a.m. on 10 November 1962.

ANNEX

LIST OF PARTICIPANTS

I - Sub-Committee

Members:

Tunisia	: Mr. Mansour MOALLA (Chairman)	Director, Office of the President of the Republic
Cameroun	: Mr. F.A. N'LIBA-N'GUIMBOUS	Director-General Banque Camerounaise de Développement
Liberia	: Mr. Oliver BRIGHT, Jr.	Deputy Councillor, Department of State
Mali	: Mr. Sekou TRAORE	Deputy Director-General Popular Development Bank
Tanganyika	: Hon. L. Nangwanda SIJAONA, M.P.	Parliamentary Secretary to the Treasury
	Mr. Marc BOMANI	Deputy Solicitor-General

Observers:

Mr. Cleantho de PAIVA LEITE	Executive Director, Inter-American Development Bank
Mr. Julio Gonzales del SOLAR	Special Representative in Europe, Inter-American Development Bank

Secretariat:

Mr. S. ROSSEN	Representative, Executive Secretary, ECA
Mr. K.E. LACHMANN	Secretary of the Committee
Mr. A. ELKIN	Consultant
Mr. G. Ofosu-AMAAH	Assistant Secretary
Mr. Th. de CANDIA	Conference and Finance Officer

II - Consultation Teams

Team B1

Members:

Ethiopia	: Mr. Yawand Wossen MANGASHA (Leader)	Vice-Governor, State Bank
Guinea	: Mr. Gnan Felix MATHOS	Director, National Bank
Liberia	: Mr. A. Romeo HORTON	President, Bank of Liberia

Secretariat:

Mr. Harold E. CAUSTIN Consultant

Team B2

Members:

Sudan	: Mr. Mamoun BEHEIRY (Leader)	Governor, Bank of the Sudan
Cameroun	: Mr. Albert NJENG BIKIM	Representative, Banque Camerounaise de Développement
Nigeria	: Mr. Olufemi AKINRELE	Under-Secretary, Federal Ministry of Finance

Secretariat:

Mr. Abdel Galeel El-EMARY Consultant
