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C O N T E N T S

Page

Draft trusteeship agreement for the Territory of Somaliland under Italian administration: special report of the Trusteeship Council (A/1294) (continued) 189

Report of the Trusteeship Council (A/1306 and A/1306/Corr.1) (continued) 189

Chairman: Prince WAN WAITHAYAKON (Thailand).

Draft trusteeship agreement for the Territory of Somaliland under Italian administration: special report of the Trusteeship Council (A/1294) (continued)

[Item 21(c)]*

1. The CHAIRMAN opened the discussion on the draft trusteeship agreement for Somaliland (A/1294) and on the progress report of the United Nations Advisory Council for the Trust Territory of Somaliland under Italian Administration (A/C.4/178).

2. Blatta Ephrem Tewelde MEDHEN (Ethiopia) recalled that the *Ad Hoc* Political Committee was at that time considering the problem of Eritrea, which was a subject of vital importance to Ethiopia. His country was equally concerned in the question of Somaliland, but its delegation was small; he therefore requested the Committee to postpone the consideration of the question of Somaliland for about a week.

3. After a short discussion in which Mr. RYCKMANS (Belgium), Mr. FLETCHER-COOKE (United Kingdom), Mr. QUESADA ZAPIOLA (Argentina), Mr. MACAPAGAL (Philippines) and Mr. JOBIM (Brazil) took part, the CHAIRMAN put the Ethiopian representative's proposal to the vote.

That proposal was adopted by 9 votes to 5, with 29 abstentions.

4. At the suggestion of Mr. LANNUUNG (Denmark), the CHAIRMAN said that he would keep in touch with the Chairman of the *Ad Hoc* Political Committee on the subject.

5. In reply to a question by Mr. S. RAO (India), the CHAIRMAN said that if the Committee started discussing the report of the Special Committee on In-

formation transmitted under Article 73 e of the Charter and did not complete that discussion within a week, it would do so before taking up the question of Somaliland.

6. Mr. JOBIM (Brazil) proposed that the Committee should take up the Special Committee's report on information from Non-Self-Governing Territories at its afternoon meeting.

7. Mr. QUESADA ZAPIOLA (Argentina) recalled that his delegation had objected (144th and 145th meetings) to starting the discussion on information from Non-Self-Governing Territories before the full documentation was available in Spanish.

Report of the Trusteeship Council (A/1306 and A/1306/Corr.1) (continued)

[Item 12]

8. Mr. TURGEON (Canada) referred to the joint draft resolution submitted by Cuba and the Philippines on the abolition of corporal punishment in Trust Territories (A/C.4/L.87/Rev.1), which had been approved in its amended form at the Committee's 172nd meeting. If he had been able to be present at that meeting, he would have abstained from voting on the draft resolution.

9. At the suggestion of Mr. LAURENTIE (France), supported by Mr. JOBIM (Brazil), the CHAIRMAN opened the discussion on the joint draft resolution submitted by India, Indonesia, Pakistan and the Philippines (A/C.4/L.76, A/C.4/L.76/Add.1, A/C.4/L.76/Corr.1).

10. Mr. JOBIM (Brazil) pointed out first of all that, in spite of its title, the draft resolution was not connected with the report of the Trusteeship Council but with the general procedure of the Fourth Committee.

* Indicates the item number on the General Assembly agenda.

11. In practice, by extending the scope of the Committee's studies instead of asking it to study certain concrete questions in greater detail, the joint draft resolution went against the general feeling in the Committee and would lead it along the wrong path.

12. If it discussed Trust Territories and Non-Self-Governing Territories together, the Committee would weaken the effect of its discussion on the former without any advantage to the latter. The Committee could not carry out a detailed examination of the progress achieved in the political field by a Non-Self-Governing Territory even if the question was closely related to conditions in a neighbouring Trust Territory. His delegation would therefore prefer to maintain the current practice of treating the two types of questions separately. Although that division might fairly often be artificial, it did follow from the Charter and from the colonial history of the territories in question.

13. It was true, as the second paragraph of the joint draft resolution stated, that the general questions of political, economic, social and educational advancement were often of a common character in Trust Territories and Non-Self-Governing Territories. The fact remained, however, that the United Nations had fairly extensive powers of control and supervision over the Trust Territories, while its functions with regard to Non-Self-Governing Territories were very limited. The second and third paragraphs of the preamble to the joint draft resolution were therefore inappropriate.

14. Secondly, the adoption of that draft resolution would relegate the questions of petitions and the work of visiting missions to the background when they were actually the General Assembly's two most important means of supervising affairs in the Trust Territories.

15. It should also be remembered that the Trusteeship Council was totally different in nature from the Special Committee on Information transmitted under Article 73 e of the Charter. The Council had been established under the Charter, whereas the Committee had been set up by the General Assembly. Thus the two organs could not be treated as though they were on an equal footing. If a common denominator were established for the discussion of their reports, the two organs would be obliged to adopt the same procedure, which would be contrary to the Charter and impossible in practice.

16. He next pointed out that the permanent nature of the Special Committee seemed to be placed in question by the words used in the first paragraph of the operative part of the joint draft resolution. That was a very controversial issue and it could not be settled by such indirect means.

17. He turned then to the question of the responsibilities assumed, on the one hand, by the Administering Authorities, and, on the other, by the Members of the United Nations administering territories which were not yet entirely self-governing. The latter assumed the obligations set forth in Chapter XI of the Charter regarding Non-Self-Governing Territories; whereas the former assumed the obligations set forth in Chapters XII and XIII of the Charter regarding the Trusteeship System and the Trust Territories and at the same time certain special obligations were undertaken specifically by each Administering Authority under a trust-

eeship agreement. He mentioned, for example, the provision that equal treatment should be given to the nationals of all Member States in economic matters—a provision which did not appear in Chapter XI of the Charter.

18. He admitted that improvements could be made in the Fourth Committee's method of examining questions relating to the Trust Territories, but felt that any change should be along opposite lines to those recommended in the joint draft resolution. For example, the Committee might choose two or three Territories each year and concentrate on the particular problems of those Territories.

19. In conclusion, he emphasized that the joint draft resolution raised several highly important questions concerning the Fourth Committee's procedure and the scope of the United Nations' supervisory powers in respect of Trust Territories and Non-Self-Governing Territories. It would therefore be advisable for the Committee to study the question thoroughly at the following session of the Assembly. He asked the representative of India and the other sponsors of the joint draft resolution to consider withdrawing their proposal, while reserving the right to submit it again at a later date.

20. Mr. S. RAO (India) explained first of all that, because of the decisions taken at the 172nd meeting, he had made certain appointments which would prevent him from being present at the afternoon meeting and at part of the meeting to be held on the following day. He therefore requested that the Committee, while continuing to discuss the joint draft resolution, should postpone the vote until it had finished considering the report of the Special Committee on Information transmitted under Article 73 e of the Charter.

21. The CHAIRMAN ruled that the Committee would continue its discussion and would decide later when to vote on the draft resolution, taking into account the request made by the representative of India.

22. Mr. S. RAO (India) wished to comment on the substance of the draft resolution under discussion. He had been somewhat surprised by the remarks of the representative of Brazil who had said that he had observed a certain confusion in the wording of the draft resolution and had complained that the solution proposed in the operative part was not satisfactory.

23. As he had already had occasion to point out, the mere fact that the Fourth Committee had already spent several weeks on the examination of the various problems raised in the report of the Trusteeship Council tended to show the value of the proposals made in the joint draft resolution. He recalled that when the Fourth Committee had studied the draft resolution on technical assistance for the Trust Territories, the delegation of India had supported the draft resolution (159th meeting), but at the same time had pointed out that the Committee would have to consider a similar proposal with regard to the Non-Self-Governing Territories when it discussed the report of the Special Committee on Information transmitted under Article 73 e of the Charter.

24. From a general point of view, the Indian delegation believed that there would be real advantage in

the adoption of the method proposed in the joint draft resolution. In the first place, the Fourth Committee would be able to complete its work more rapidly than at present and would thus save time. Under the present system, the Committee studied problems connected with economic, social and educational advancement first with regard to the Trust Territories and then in connexion with the Non-Self-Governing Territories. It frequently happened that the problems, in both cases, had features in common and sometimes were completely identical. That was due to the fact that most of the territories concerned were situated in under-developed areas. It was necessary for the Committee to examine the same problem twice; therein lay the practical value of the joint draft resolution.

25. Further, the reorganization of the agenda of the General Assembly proposed in the joint draft resolution would have the advantage of stressing the responsibility of the Assembly with regard to both types of territories, and in particular with regard to Trust Territories. The Indian delegation was afraid that if the General Assembly did not change its existing procedure, its discussions would not produce concrete results. In the past, the discussions of the Fourth Committee and of the General Assembly and the recommendations or decisions subsequently adopted had not placed sufficient emphasis on the responsibilities of the General Assembly in that field.

26. The delegation of India recognized that problems of political advancement in the Trust Territories were different from those in the Non-Self-Governing Territories. There was a marked difference between the responsibilities of the General Assembly under Chapters XII and XIII of the Charter and those placed upon it by Chapter XI. That fundamental difference was, however, taken fully into account by the draft resolution. The resolution recommended that items on the agenda of the General Assembly which were referred to the Fourth Committee should be so arranged as to permit the common discussion, not of problems bound up with political advancement, but of functional problems in Trust and Non-Self-Governing Territories, for it was the belief of the sponsors of the proposal that the common discussion of such problems would produce more valuable results and better serve the interests of the territories concerned. In that connexion, it should be recalled that the joint draft resolution was similar to the draft resolution already approved by the Fourth Committee on the form of the report of the Trusteeship Council (166th meeting).

27. In reply to the representative of Brazil who appeared to fear that the application of the joint draft resolution might actually be prejudicial to the Trust Territories, he directed the former's attention to the fourth paragraph of the joint draft resolution. That paragraph stated that the General Assembly "*Recommends* that, in future, items on the agenda of the General Assembly which are referred to the Fourth Committee should be so organized as to permit the common discussion of functional problems in Trust and Non-Self-Governing Territories, without prejudice to the full consideration of the reports of the Trusteeship Council and of any Special Committee on Information from Non-Self-Governing Territories which may be appointed, or to the full consideration of such special

matters relating exclusively to the Trust Territories as may arise out of petitions, visiting missions, the annual reports of the Administering Authorities and the discussions in the Trusteeship Council."

28. The paragraph quoted clearly revealed that the draft resolution, while permitting the common study of problems common to the two groups of territories, took fully into account the differences between the two types of territories and in no way ruled out the possibility of the separate examination of matters affecting the Trust Territories only.

29. There was, on the other hand, a definite danger in the solution suggested by the representative of Brazil; if, as the representative of Brazil proposed, the General Assembly each year examined problems relating to a limited number of Trust Territories only, its responsibility with regard to the Trust Territories as a whole might well be diminished as a result. Mr. Rao could not, therefore, accept that solution, which would be infinitely more dangerous than that envisaged in the joint draft resolution.

30. Moreover, the fifth paragraph of the joint draft resolution should remove the doubts and apprehensions of the representative of Brazil since it recommended that "the agenda of the General Assembly should comprise the consideration of political conditions in the Trust Territories, of economic problems in Trust and Non-Self-Governing Territories, of social problems in Trust and Non-Self-Governing Territories and of educational problems in Trust and Non-Self-Governing Territories on the basis of the reports of the Trusteeship Council and of any Special Committee on Information transmitted under Article 73 e of the Charter, and that provision should also be made for the separate examination of questions of procedure, substance and general principle arising out of the report of the Trusteeship Council and of procedural recommendations emanating from the Special Committee on Information transmitted under Article 73 e of the Charter."

31. In conclusion, he said that in his opinion it would be preferable to use the word "*Decides*", rather than the word "*Recommends*" in the fourth and fifth paragraphs of the joint draft resolution, since the General Assembly was fully entitled to take a decision regarding its agenda.

32. Mr. RYCKMANS (Belgium) agreed with the representative of Brazil regarding the inadvisability of the joint draft resolution. Its adoption would complicate the work of the Fourth Committee and reduce its efficacy. It would be practically impossible to apply the terms of the operative part of the resolution.

33. It was true that general questions regarding economic and social progress and the advancement of education had features in common in the Trust Territories and in the Non-Self-Governing Territories but the same was also true of the territories of independent nations inhabited by backward groups. He cited in that connexion the example of the Eskimos of Canada, the Amazon Indians, the aboriginal population of Australia and the tribal areas of Liberia. If, however, the Fourth Committee were to propose to examine the position of such groups, the nations concerned would refuse to participate in the discussion, and rightly. Similarly, if

the Fourth Committee were to propose to make a common examination of the position in the Belgian Congo and in Ruanda-Urundi, the representative of Belgium would be unable to participate in the discussion and would be forced to vote against any draft resolution submitted as a result of such discussion.

34. It was in fact because such problems concerned territories of various types that it was wise to study them within the framework of the Trust Territories, with regard to which the scope of the supervisory powers exercised by the United Nations was unchallenged, so that the Non-Self-Governing Territories and backward population groups of sovereign States could benefit from the results of that examination. A State which refused to apply in a Non-Self-Governing Territory under its administration measures which the General Assembly had recommended should be adopted in a Trust Territory in a similar position would run the risk of being condemned by world public opinion.

35. The adoption of the joint draft resolution would also raise a serious procedural difficulty; under Article 15 of the Charter, the General Assembly received and considered reports from "the other organs of the United Nations", which included the report of the Trusteeship Council and the report of the Special Committee on Information transmitted under Article 73 e of the Charter. The General Assembly could not evade that responsibility and it was impossible for it to examine the two reports simultaneously.

36. Mr. LAURENTIE (France) endorsed the Brazilian representative's remarks, but did not consider the Indian representative's arguments very convincing.

37. It would be a mistake to over-emphasize the similarity between the problems of Trust Territories and those of Non-Self-Governing Territories. True, all under-developed peoples were to some extent faced with the same problems, although the similarities were largely regional. The problem of educational development, for example, was not the same in West Africa as in East Africa, and it was certainly not the same in the Pacific territories. In each of those regions the same problem had special aspects which called for different solutions.

38. In the case of Non-Self-Governing Territories, the General Assembly had decided not to study the regional characteristics of the problems by adopting resolution 332 (IV) which invited the Special Committee to submit to it reports containing such procedural recommendations as it might deem fit and such substantive recommendations as it might deem desirable relating to functional fields generally but not with respect to individual territories. It was therefore impossible to study the problems in their regional aspects, which were the basis for the common character mentioned in the draft resolution under discussion.

39. He emphasized, moreover, that a study of such problems was essentially technical. He had followed the discussions of the Trusteeship Council and of the Special Committee on Information transmitted under Article 73 e of the Charter, and had been struck by their highly technical nature. The members of those bodies were endeavouring to examine those problems in ever increasing detail and to probe into their essence in order to arrive at the appropriate answer in each case.

40. He did not think that the Fourth Committee could possibly resume, from a more general standpoint common to the two categories of territories, the study carried out by the Trusteeship Council in connexion with Trust Territories and by the Special Committee in connexion with the Non-Self-Governing Territories. It lacked the necessary technical qualifications. The Committee's task was primarily a policy-making one; it must give advice, make recommendations, indicate the general policy to be followed with respect to Trust and Non-Self-Governing Territories, and not take up again studies already made by the Trusteeship Council and the Special Committee with a view to synthesizing their results. Such work was necessary, but it should be carried out by the specialized agencies, rather than the Fourth Committee. The reports of the Trusteeship Council and the Special Committee, as well as the documents used by both bodies, might for that purpose be transmitted respectively to FAO, UNESCO, ILO or other specialized agencies, which were organizations composed of experts.

41. Moreover, as a number of representatives had emphasized, the joint draft resolution raised an important question of principle. In preparing the text, the authors of the draft resolution had been very careful to avoid any confusion between the different responsibilities of the General Assembly under Chapter XI of the Charter, on the one hand, and under Chapters XII and XIII, on the other. Yet he feared that such confusion, which would be contrary to the very principles of the Charter, might arise in the Fourth Committee's discussion if the proposed solution were adopted. Indeed, if the Committee were to study the problems in Trust and Non-Self-Governing Territories at the same time, members would obviously be inclined to overlook the basic difference in the legal status of the two categories of territories and fail to draw the necessary distinction between them. The draft resolution was perfectly clear and precise but its practical application might have dangerous consequences.

42. For all those reasons the French delegation would be obliged to vote against the joint draft resolution.

43. Mr. LANNUNG (Denmark) shared to a certain extent the views of the Brazilian, Belgian and French representatives. In his opinion, the draft resolution was at best premature; before settling the question raised therein, the Committee would have to acquire greater practical experience in order to be able to judge the proposal fairly on its own merits and it was reasonable to wait until the new system of work in the Special Committee had had a fair trial. He agreed that the procedure proposed by the authors of the draft resolution might make it possible to save time at the outset, but he wondered whether the confusion and duplication which would probably ensue would not cause a greater loss of time in the end. According to the proposed procedure, a question might be examined three times: first, when problems common to both categories of territories were discussed; then in connexion with the Trusteeship Council's report; and finally in connexion with the Special Committee's report. Nor could he agree to treating jointly questions which were clearly kept distinct in Chapter XI and Chapters XII and XIII of the Charter, which was what would happen if the joint draft resolution were adopted.

44. Moreover, questions relating to the functioning of the Trusteeship System must be settled by a two-thirds vote of the General Assembly, while those concerning Non-Self-Governing Territories required a simple majority vote only. That in itself was a practical reason why questions relating to both categories of territories should not be considered together.

45. Mr. ASTAPENKO (Byelorussian Soviet Socialist Republic) said that his delegation had always supported proposals that tended to improve the procedure for considering questions concerning the Trust and the Non-Self-Governing Territories, but he could not approve the joint draft resolution because the procedure it advocated was contrary to the Committee's practice and combined the problems of the Trust Territories and those of the Non-Self-Governing Territories, which the Charter had clearly separated.

46. The Indian representative had stated that the length of the discussion which the Committee had devoted to the consideration of the Trusteeship Council's report was an argument in favour of his draft resolution. In Mr. Astapenko's view, however, exactly the contrary was the case; the proposed procedure would hinder the Committee and prolong the debates. He would therefore vote against the joint draft resolution.

47. Mr. HIMIOB (Venezuela) said that his delegation had considered the draft resolution unacceptable from the start. The Charter drew a clear distinction between Trust Territories and Non-Self-Governing Territories. If the Committee sincerely wished to help the Administering Authorities to govern the Territories placed under their care in accordance with the provisions of the Charter, it should endeavour to maintain as clear a distinction as possible between Trust and Non-Self-Governing Territories. That distinction should apply both to questions of substance and to questions of procedure. Consequently, Mr. Himiob would vote against the draft resolution.

48. Mrs. FIGUEROA (Chile) thought that the procedure which the draft resolution would establish was not clear. There was nothing in the rules of procedure of the General Assembly that authorized one Assembly to take decisions relating to the distribution of the items on the agenda of the following Assembly. That, however, was what the draft resolution would mean. Hence the Chilean delegation could not vote in favour of it.

49. Mr. COQUET (Mexico) said that his delegation was opposed to the draft resolution, which it considered contrary to Article 15 of the Charter as well as to the provisions of Chapters XI, XII and XIII of the Charter, which dealt separately with matters relating to Non-Self-Governing Territories and Trust Territories. In addition, the adoption of such a draft resolution would give rise to much confusion in the examination of problems concerning Trust and Non-Self-Governing Territories.

50. Although the provisions of the Charter dealing with Trust Territories and Non-Self-Governing Territories respectively were parallel in respect of aims and purposes, there were also fundamental differences. Admittedly, for example, Articles 73 and 76 of the Charter provided that the interests of the inhabitants of the Non-Self-Governing or Trust Territories should be

paramount, and both Articles sought to promote the economic, social and educational progress of the populations of those territories. It was also true, as Kelsen stated,¹ that the title of Chapter XI, "Declaration regarding Non-Self-Governing Territories", was rather misleading, for the provisions of Articles 73 and 74 were not unilateral declarations but obligations imposed on Member States administering Non-Self-Governing Territories. Similarly, the General Assembly could utilize the information transmitted under Article 73 e of the Charter, and, under Article 10, could make recommendations in respect of any problem it raised.

51. Nevertheless, those common provisions were not in themselves sufficient to justify the draft resolution under discussion, which might jeopardize the fundamental distinction established by the Charter between those two categories of territories and everything dependent upon that distinction.

52. With regard to the recommendations adopted by the General Assembly on matters relating to Trust Territories, such recommendations were based on the provisions of Articles 16, 75, 83, 85, 87 and other relevant Articles, in which it was clearly provided that an International Trusteeship System should be established under the authority of the United Nations for the administration and supervision of such Territories, and that the supervisory work carried out under the authority of the General Assembly should be directed towards the adoption of resolutions designed to achieve the purposes of the Trusteeship System.

53. For all those reasons of a legal nature, the delegation of Mexico would vote against the draft resolution submitted by India, Indonesia, Pakistan and the Philippines.

54. Mr. MEHTA (India), invoking rule 118 of the rules of procedure of the Assembly, proposed the adjournment of the debate on the item under discussion. He explained that the authors of the draft resolution wished to consider in detail the comments and observations which had just been made; they therefore hoped that the debate might be postponed until the information from Non-Self-Governing Territories had been considered.

55. Mr. TAJIBNAPIS (Indonesia) seconded the Indian representative's motion for adjournment of the debate.

The motion for adjournment of the debate was adopted by 28 votes to 8, with 12 abstentions.

56. Mr. QUESADA ZAPIOLA (Argentina) wondered whether the question of Non-Self-Governing Territories would be discussed at the afternoon meeting, as the Spanish-speaking delegations had not yet received the Spanish text of all the documents on the question. He warned the Committee against a renewal of the procedure followed at the beginning of the meeting at the request of the Ethiopian representative.

57. Mr. UDOVICHENKO (Ukrainian Soviet Socialist Republic) remarked in that connexion that the Committee had decided to discuss the question of Somali-

¹ See Hans Kelsen, *The Law of the United Nations*, Frederick A. Praeger, Inc., New York, 1950, p. 552.

land. A majority of two-thirds would, he considered, be necessary to modify that decision, but there had been only 9 votes for and 5 against the adjournment of the question. The Chairman had nevertheless decided to postpone consideration of the item until the following week. That was an unfortunate precedent.

58. The CHAIRMAN said that the proposal for adjournment of the question had been put to the vote according to rule 118 of the rules of procedure of the Assembly, which the Ethiopian representative had been perfectly entitled to invoke. The motion had been put

to the vote immediately. Being a procedural matter, it required only a simple majority.

59. After a short exchange of views concerning the agenda for the afternoon meeting, in which the representatives of BELGIUM, CUBA, EGYPT and ARGENTINA participated, the CHAIRMAN confirmed that he would consult the Chairman of the *Ad Hoc* Political Committee, as suggested by the Danish representative, and report to the Fourth Committee at the beginning of the afternoon meeting.

The meeting rose at 12.45 p.m.