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Agenda item 21 (a) and (b)

FORMER ITALIAN COLONIES

- (a) REPORT OF THE UNITED NATIONS COMMISSIONER IN LIBYA
- (b) REPORTS OF THE ADMINISTERING POWERS IN LIBYA

Economic and Financial Provisions Relating to Libya

Report of the Ad Hoc Political Committee

Rapporteur: Mr. S. P. LOPEZ (Philippines)

1. During consideration by the Ad Hoc Political Committee of agenda item 21 (a) and (b): reports of the Commissioner and of the Administering Powers in Libya, the representative of the United Kingdom, at the 7th meeting on 9 October 1950 submitted a draft resolution (A/AC.38/L.9 and Corr.1) relating to the Economic and Financial Provisions to be applied to Libya, in accordance with Annex XIV, paragraph 19 of the Peace Treaty with Italy. The representative of the United Kingdom stated that it had been the sense of Sub-Committee 17 of the First Committee at the fourth session that the question should be considered at the fifth regular session.
2. As mentioned in the report of the Ad Hoc Political Committee to the General Assembly on agenda item 21 (a) and (b) (A/1457), the Committee, at its 11th meeting on 12 October 1950, decided without objection to establish a sub-committee (Sub-Committee 1), consisting of the United Kingdom, France, Greece, Egypt, Belgium, Argentina and Poland, to consider the United Kingdom draft resolution (A/AC.38/L.9 and Corr.1) and to report back to the Committee with recommendations. It was also decided that the representative of Italy, the United Nations Commissioner in Libya and the Chairman of the Council for Libya should participate in the Sub-Committee's work in an advisory capacity. It was agreed that the Ad Hoc Political Committee would complete its discussion and vote on the draft resolutions submitted on the reports of the Commissioner and of the Administering Powers in Libya and that the Committee would later make a separate report on the economic and financial aspect of the matter to the General Assembly.

/3. Sub-Committee
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3. Sub-Committee 1 held twenty-eight meetings and submitted its report to the Ad Hoc Political Committee on 11 December 1950 (A/AC.38/L.70). The draft resolution adopted by the Sub-Committee by 6 votes to 1 was divided into two parts. The ten articles of Part A related, inter alia, to the transfer of property owned by the Italian State (Article 1), the pensions owed by Italy (Article 3), the rules to be applied to the property rights and interests of the Italian nationals (Article 6), and the special provisions concerning concessions (Article 9). The draft resolution provided for a United Nations Tribunal of three members to give instructions and to decide all disputes between the authorities concerned concerning the application of the Economic and Financial Provisions (Article 10).

Part B provided for the staff and all expenses necessary to carry out the terms of the draft resolution.

The report set out in paragraph 5 some further explanations on various points of the draft resolution.

4. The Committee considered the report of the sub-committee at its 81st and 82nd meetings on 13 and 14 December 1950.

5. At its 82nd meeting the Committee, by 26 votes to 5 with 9 abstentions, rejected a proposal of the representative of the USSR to defer further consideration of the matter until the sixth session of the General Assembly at which time a representative of Libya could be heard.

6. At the same meeting the Committee adopted, by 34 votes to 5, with 3 abstentions, the draft resolution (A/AC.38/L.70) submitted by Sub-Committee 1.

7. The Committee also agreed to include in its report the explanations contained in paragraph 5 of the Sub-Committee's report on certain points of the draft resolution. The explanations referred to are set out after the text of the draft resolution.

8. The Ad Hoc Political Committee accordingly recommends that the General Assembly adopt the following draft resolution:

ECONOMIC AND FINANCIAL PROVISIONS RELATING TO LIBYA.

A.

Whereas, in accordance with the provisions of Article 23 and paragraph 3 of Annex KE of the Treaty of Peace with Italy, the question of the disposal of the former Italian colonies was submitted on 15 September 1948 to the General Assembly by the Governments of France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America,

Whereas, by virtue of the above-mentioned provisions, the Four Powers have agreed to accept the recommendation of the General Assembly and to take appropriate measures for giving effect to it,

Whereas, the General Assembly, by its resolutions of 21 November 1949 and of 17 November 1950, recommended that the independence of Libya should become effective as soon as possible and in any case not later than 1 January 1952,

Whereas paragraph 19 of Annex XIV of the Treaty of Peace with Italy, which contains the economic and financial provisions relating to ceded territories, states, that "The provisions of this Annex shall not apply to the former Italian colonies. The economic and financial provisions to be applied therein will form part of the arrangements for the final disposal of these territories pursuant to Article 23 of the present Treaty",

Whereas it is desirable that the economic and financial provisions relating to Libya should be determined before the transfer of power in that territory takes place in order that they may be applied as soon as possible,

The General Assembly:

Adopts the following resolution:

Article I

1. Libya shall receive, without payment, the movable and immovable property located in Libya owned by the Italian State, either in its own name or in the name of the Italian administration of Libya.
2. The following property shall be transferred immediately:
 - (a) The public property of the State (demanio pubblico) and the inalienable property of the State (patrimonio indisponibile) in Libya, as well as the

/relevant

relevant archives and documents of an administrative character or technical value concerning Libya or relating to property, the transfer of which is provided for by this resolution;

(b) The property in Libya of the Fascist party and its organizations.

3. In addition the following shall be transferred on conditions to be established by special agreement between Italy and Libya:

(a) The alienable property (patrimonio disponibile) of the State in Libya and the property in Libya belonging to the autonomous agencies (aziende autonome) of the State;

(b) The rights of the State in the capital and the property of institutions, companies and associations of a public character located in Libya.

4. Where the operations of such institutions, companies and associations extend to Italy or to countries other than Libya, Libya shall receive only those rights of the Italian State or the Italian administration of Libya which appertain to the operations in Libya. In cases where the Italian State or the Italian administration of Libya exercised only managerial control over such institutions, companies and associations, Libya shall have no claim to any rights in these institutions, companies and associations.

5. Italy shall retain the ownership of immovable property necessary for the functioning of its diplomatic and consular services and, when the conditions so require, of the schools necessary for the present Italian community whether such property is owned by the Italian State in its own name or in the name of the Italian administration of Libya. Such immovable property shall be determined by special agreements concluded between Italy and Libya.

6. Buildings used in connexion with non-Moslem public worship and their appurtenances shall be transferred by Italy to the respective religious communities.

7. Special agreements may be concluded between Italy and Libya to ensure the functioning of hospitals in Libya.

Article II

Italy and Libya shall determine by special agreements the conditions under which the obligations of Italian public or private social insurance organizations towards the inhabitants of Libya and a proportionate part of the reserves accumulated by the said organizations shall be transferred to similar organizations /in Libya.

in Libya. That part of the reserves shall preferably be taken from the real property and fixed assets in Libya of the said organizations.

Article III

Italy shall continue to be liable for the payment of civil or military pensions earned as of the coming into force of the Treaty of Peace with Italy and owed by it at that date, including pension rights not yet matured. Arrangements shall be concluded between Italy and Libya providing for the method by which this liability shall be discharged.

Article IV

Libya shall be exempt from the payment of any portion of the Italian public debt.

Article V

Italy shall return to their owners, in the shortest possible time, any ships in its possession or that of its nationals, which are proved to have been the property of former Italian nationals belonging to Libya or to have been registered in Libya, except in the case of ships acquired in good faith by Italy or its nationals.

Article VI

1. The property, rights and interests of Italian nationals, including Italian juridical persons, in Libya, shall, provided they have been lawfully acquired, be respected. They shall not be treated less favourably than the property, rights and interests of other foreign nationals, including foreign juridical persons.

2. Italian nationals in Libya who move or who have since 3 September 1943 moved to Italy shall be permitted freely to sell their movable and immovable property, realize and dispose of their assets, and, after settlement of any debts or taxes due from them in Libya, to take with them their movable property and transfer the funds they possess, unless such property and funds were unlawfully acquired. Such transfers of property shall not be subject to any import or export duty.

The conditions of the transfer of this movable property to Italy will be fixed by agreement between the Administering Powers or the Government of Libya upon its establishment on the one hand, and the Government of Italy on the other hand. The conditions and the time-periods of the transfer of the funds, including the proceeds of above-mentioned transactions shall likewise be determined.

3. Companies incorporated under Italian law and having siège social in Italy shall be dealt with under the provisions of paragraph (2) above.

/Companies

Companies incorporated under Italian law and having siege social in Libya and which wish to remove siege social to Italy shall likewise be dealt with under the provisions of paragraph (2) above, provided that more than 50 per cent of the capital of the company is owned by persons usually resident outside Libya and provided also that the greater part of the activity of the company is carried on outside Libya.

4. The property, rights and interests in Italy of former Italian nationals belonging to Libya and of companies previously incorporated under Italian law and having siege social in Libya, shall be respected by Italy to the same extent as the property, rights and interests of foreign nationals and of foreign companies generally.

Such persons and companies are authorized to effect the transfer and liquidation of their property, rights and interests under the same conditions as may be established under paragraph (2) above.

5. Debts owed by persons in Italy to persons in Libya or by persons in Libya to persons in Italy shall not be affected by the transfer of sovereignty. The Government of Italy and the Administering Powers or the Government of Libya after its establishment shall facilitate the settlement of such obligations. As used in this paragraph, the term "persons" includes juridical persons.

Article VII

Property, rights and interests in Libya which, as result of the war, are still subject to measures of seizure, compulsory administration or sequestration, shall be restored to their owners, and, in cases submitted to the Tribunal referred to in Article X of the present resolution, following decisions of that Tribunal.

Article VIII

The former Italian nationals belonging to Libya shall continue to enjoy all the rights in industrial, literary and artistic property in Italy to which they were entitled under the legislation in force at the time of the coming into force of the Peace Treaty.

Until Libya becomes a party to the relevant international convention or conventions, the rights in industrial, literary and artistic property which existed in Libya under Italian law shall remain in force for the period for which they would have remained in force under that law.

/Article IX

Article IX

The following special provisions shall apply to concessions:

- (1) Concessions granted within the territory of Libya by the Italian State or by the Italian administration of Libya, and concession contracts (patti colonici) existing between the "Ente per la Colonizzazione della Libia" or the "Istituto della Previdenza Sociale" and the concessionaires of land to which each contract relates shall be respected, unless it is established that the concessionaire has not complied with the essential conditions of the concession.
- (2) Land placed at the disposal of the "Ente per la Colonizzazione della Libia" and of the colonization department of the "Istituto della Previdenza Sociale" by the Italian State or the Italian administration of Libya and which has not been the object of a concession shall be transferred immediately to Libya.
- (3) Land, buildings and their appurtenances referred to in sub-paragraph (d) of paragraph 4 shall be transferred to Libya in accordance with the arrangements to be made under that sub-paragraph.
- (4) Special agreements between Italy and Libya shall provide for:
 - (a) The liquidation of the "Ente per la Colonizzazione della Libia" and of the colonization department of the "Istituto della Previdenza Sociale", the interim status of those institutions for the purpose of enabling them to fulfil their obligations towards concessionaires whose contracts are still in operation, and, if necessary, the taking over of their functions by new organizations.
 - (b) The repayment by those institutions to financial concerns of the quotas subscribed by the latter in the establishment of the "Ente per la Colonizzazione della Libia", and, in the case of the "Istituto della Previdenza Sociale", the reconstitution of that part of its reserves invested by that institution in its colonization department.
 - (c) The transfer to Libya of the residual assets of the institutions to be liquidated.
 - (d) Arrangements relating to land placed at the disposal of these institutions and to the buildings on and appurtenances to that land, in which, after their abandonment by the concessionaires, no further investment could be made by the institutions

/(e) Payments

(e) Payments in amortization of the debts of concessionaires owed to those institutions.

(5) In consideration of the renunciation by the Italian Government of its claims against those institutions, the latter shall cancel the debts of the concessionaires and the mortgages securing those debts.

Article X

1. A United Nations Tribunal shall be set up, composed of three persons selected by the Secretary-General for their legal qualifications from the nationals of three different States not directly interested. The Tribunal, whose decisions shall be based on law, shall have the following two functions:

(a) It shall give to the Administering Powers, the Libyan Government after its establishment, and the Italian Government, upon request by any of those authorities, such instructions as may be required for the purpose of giving effect to the present resolution;

(b) It shall decide all disputes arising between the said authorities concerning the interpretation and application of the present resolution.

The Tribunal shall be seized of any such dispute upon the unilateral request of one of those authorities.

2. The Administering Powers, the Libyan Government after its establishment and the Italian Government shall supply the Tribunal as soon as possible with all the information and assistance it may need for the performance of its functions.

3. The seat of the Tribunal shall be in Libya. The Tribunal shall determine its own procedure. It shall afford to the interested parties an opportunity to present their views, and shall be entitled to request information and evidence which it may require from any authority or person whom it considers to be in a position to furnish it. In the absence of unanimity, the Tribunal shall take decisions by a majority vote. Its decisions shall be final and binding.

B.

The General Assembly,

Authorizes the Secretary-General, in accordance with established practice,

1. To arrange for the payment of an appropriate remuneration for the members of the Tribunal and to reimburse their travel and subsistence expenses;

2. To assign to the Tribunal such staff and provide such facilities as the Secretary-General may consider necessary to carry out the terms of the present

/resolution

resolution, utilizing the existing United Nations staff of the Libyan Mission insofar as possible.

Explanation of certain points in the draft resolution

Article I - paragraph 2 (a)

It is understood that the Italian Government will facilitate the return to Libya of any archives or documents of an administrative character or technical value, property of the Italian State, which are in Italy and which the Libyan Government would have the right to request of it under this paragraph.

The words documents of "technical value" apply, inter alia, to documents concerning archaeological research projects which are being carried out or are to be carried out in Libya.

Article I - paragraph 3

Italy abandons her right to property transferred under this paragraph, as a contribution to the rehabilitation of Libya.

Article I - paragraph 3 (b)

The rights mentioned in this sub-paragraph include share holdings and similar rights owned by the Italian State either in its own name or in the name of the Italian administration of Libya.

Article I - paragraph 6

The expression "buildings used in connexion with non-Moslem public worship" includes all objects used in connexion with public worship in those buildings.

It is understood that mosques and objects used in connexion with Moslem public worship will be transferred directly to the Libyan State.

It is also understood that the maintenance of cemeteries shall be the subject of special agreements.

Article IV

Italy renounces all her claims to any payment whatsoever from Libya in respect of debts, in view of the economic conditions of that country.

Articles V, VI paragraph 4, VIII

The phrase "former Italian nationals belonging to Libya" means, in particular, the indigenuous population of Libya.

Article VII

It is understood that this article does not affect the requisitions made by the authorities for the needs of the administration.

/Article VIII

Article VIII

It is understood that the second paragraph applies to aliens only, and not to the Libyans themselves.

Article IX - paragraph 4 (c)

It is understood that if the final balance sheet of the institutions shows a debit balance, no part of such liability will be transferred to the Libyan Government.

Article X - paragraph 1

The Tribunal "whose decisions shall be based on law" shall apply the rules of law, and shall not decide ex aequo et bono. It will thus apply the General Assembly resolution in the light of the principles of international law and of the rules for the interpretation of international texts.

Article X

The Sub-Committee discussed the period during which the Tribunal should remain in existence. Although it is difficult to foresee precisely the time it will take that body to accomplish its task, the Sub-Committee believes that it might take at least two or three years. In this connexion, much will depend on the time it will take to conclude the several special Italo-Libyan Agreements provided for in the resolution.

The Sub-Committee further believes that the General Assembly should in any case examine either at its seventh, or at its eighth session at the latest, and in the light of the progress then made by the Tribunal, the question of whether its functions should be continued. By then, Italy and Libya might desire either to maintain the Tribunal jointly, assuming the corresponding financial obligations, or prefer to replace it by a different procedure.

Article X - paragraph 3 - last sentence

In specifying that the decisions of the Tribunal should be binding, the Sub-Committee does not intend to infer that this does not apply to the instructions given by the Tribunal.
