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Chairman: Mr. Manfred LACHS (Poland).

AGENDA ITEM 53

Question of the continuation of the United Nations Tribunal in Libya: report of the Secretary-General (A/2983 and Corr.1, A/C.6/L.348, A/C.6/L.352, A/C.6/L.354, A/C.6/L.362) (continued):

GENERAL DEBATE (continued)

1. Mr. BIHIN (Belgium) said that the functions specifically referred to in article X, paragraph 1 (a) and (b) of General Assembly resolution 388 A (V) had been deliberately vested in the United Nations Tribunal in Libya for the express purpose of carrying the terms of that resolution into effect. Consequently, the Tribunal was an essential feature of the arrangements contemplated by the resolution. Inasmuch as certain questions which fell within the scope of the resolution still remained unsettled between Libya and Italy, he considered that the Tribunal was still necessary, even though it had at present no cases on its list. The President of the Tribunal, in his communication to the Secretary-General dated 5 July 1955 (A/C.6/L.348) had indicated that, if the negotiations in progress between the parties did not result in an agreement, certain new cases would be submitted to the Tribunal.
2. The argument of economy was not decisive. The Tribunal was necessary and the expense to maintain it was therefore justified. Moreover, it was possible to maintain the Tribunal in existence while reducing its cost.
3. Finally, he did not agree with the argument that the continuation of the Tribunal would delay the solution of the outstanding questions. On the contrary, the existence of the Tribunal made it more likely that questions could be solved which the parties otherwise would not succeed in settling between themselves.
4. In conclusion, the Belgian delegation thought that in view of the present state of affairs it was necessary to continue the Tribunal and that it was not advisable to prescribe any fixed time for it to remain in operation. Of course, it was well understood that it was not a question of continuing it indefinitely but merely of giving full application to General Assembly resolution 388 (V). In adopting this resolution, it had certainly not

been the Assembly's intention to make the Tribunal a permanent organ. However, it would neither be wise nor consistent with the interests of Libya or Italy to simply terminate that Tribunal at that time.

5. Mr. MAÚRTUA (Peru) said that, in spite of the satisfactory results of the direct negotiations between them, Libya and Italy appeared to differ in their interpretation of the terms of article X, paragraph 1 (b), of General Assembly resolution 388 A (V).

6. In his letter of 14 October 1955 (A/C.6/L.352, para. 2) the Permanent Observer for Italy indicated a number of issues which might possibly lead to disputes between Italy and Libya. In his letter of 25 October 1955 (A/C.6/L.354) the Libyan Ambassador cited the passage in the joint *communiqué* of 5 October 1955 which stated that the negotiations had "produced satisfactory results with regard to the general principles for solving the majority of the problems considered". Clearly, therefore, while general principles might have been agreed upon, their application in detail had still to be decided. Furthermore, since in the same document (A/C.6/L.354) the Libyan Ambassador spoke of the possibility of arbitration, it was reasonable to assume that there still were some questions outstanding between Italy and Libya with which the Tribunal would be competent to deal.

7. In his second letter, dated 31 October 1955 (A/C.6/L.362), the Libyan Ambassador admitted that there were still a number of controversial issues outstanding between Italy and Libya. So far as several of the points mentioned were concerned, it was clear that the opinion expressed in that communication to the effect that those matters had been disposed of, was not shared by the Italian Government.

8. The fact that few cases had been submitted to the Tribunal was not an argument for its abolition: the role of a judicial body was mainly a preventive one. It created an atmosphere of confidence and gave the assurance to the parties concerned that the law would be enforced. No one would suggest that law courts should be abolished because very few cases of law-breaking were being reported. The general observance of the law was in fact a tribute to the value of the courts.

9. The United Nations could not abolish an impartial judicial body like the United Nations Tribunal in Libya without abdicating one of its essential functions, that of safeguarding peace under law. It was not necessary that the settlement of disputes should be a monopoly of the Tribunal. Direct negotiation certainly constituted the best mode of settlement, but where negotiations failed, it was desirable to provide for an impartial judicial body. Accordingly, because General Assembly resolution 388 A (V) had not yet been fully implemented, because a number of outstanding problems had still not been disposed of, and because the Tribunal was competent under article X, paragraph 1, to interpret the terms of the resolution, which it might be asked to do at any time,

his delegation considered that the Tribunal should be continued. The decision of the United Nations concerning the Tribunal should not be governed exclusively by financial considerations.

10. Mr. MOROZOV (Union of Soviet Socialist Republics) said that the views of the delegations which had never regarded the establishment of the Tribunal as necessary had been proved right by events; the practical results achieved by the Tribunal had been negligible. It consequently seemed somewhat rash to suggest, as the Peruvian representative had done, that the mere existence of the Tribunal had contributed, or would contribute, towards a settlement of the outstanding problems. Experience had shown nothing to justify such a supposition.

11. The General Assembly was dealing with the question of the continuation of the Tribunal for a second time, because resolution 388 (V) had specified no period during which the Tribunal was to complete its task. That omission was in itself attributable to the uncertainty of some delegations regarding the need for such a body. In any event, it had originally been assumed that the Tribunal's life would not exceed a reasonable period, such as two or three years. In the five years which had in fact elapsed since its establishment, the parties had had every opportunity to avail themselves of its services. It was significant, therefore, that the Tribunal had been inactive over prolonged periods.

12. That being so, it was difficult to accept any argument in favour of maintaining the Tribunal. Most of the questions mentioned in resolution 388 (V) had been dealt with, and the remaining points could best be settled by direct negotiations between the parties. The arguments in favour of continuation seemed somewhat artificial; it would be unprecedented to maintain a Tribunal when it was absolutely certain, in advance, that it would not be called upon to adjudicate. The Libyan representative had clearly stated that his Government would not refer any case to the Tribunal. The Tribunal's term had already lasted for five years and should not be extended. Besides, it was inconsistent with the spirit of the Charter to force a sovereign State to continue to accept a judicial body which it no longer regarded as necessary. Moreover, the Libyan Government's offer to refer any eventual dispute to arbitration (A/C.6/L.354) provided a perfectly satisfactory answer. Voluntary submission to arbitration, in accordance with the established principles of international law, was a step which a State could take without sacrificing any of its sovereignty.

13. He had not been convinced by any of the arguments advanced in favour of continuing the Tribunal. The USSR delegation, mindful also of the very substantial cost of that body, felt bound to support the Libyan Government's contention. From the purely procedural point of view, it might be advisable for the General Assembly to take no action whatsoever, for in the absence of an express decision that it should be continued, the Tribunal would lapse automatically.

14. He reserved his right to speak on any proposal which might be submitted.

15. Mr. ABOU-AFIA (Egypt) said that the statements of the Italian and Libyan representatives had shown that there was no conflict of principle between the parties. The Committee's only duty, therefore, was to weigh the need for maintaining a United Nations body at the cost involved.

16. After recommending the independence of Libya, the General Assembly had adopted resolution 388 (V), indicating the economic and financial measures to be taken in order to make that independence a reality. The spirit of the resolution's sponsors was clearly reflected in the last paragraph of the preamble. The Tribunal, established by article X, had been intended as an instrument to which the parties could resort in order to give prompt effect to resolution 388 (V). In the five years of its existence, however, it had proved of little value. It was true that the Tribunal could only be as useful as the parties allowed it to be; in those five years, however, Libya had not found it necessary to refer to that body on a single occasion, while Italy had submitted only two applications.

17. He would be grateful if the Secretary-General could state what it had cost to maintain that body over the whole period. If, as he believed, the figure was close to \$500,000, it could rightly be said that the cost had not been justified.

18. The Libyan Government was now requesting the termination of the Tribunal, on the understanding that it would willingly submit to arbitration any dispute which might arise. The Italian Government, on the other hand, contended that the Tribunal constituted a safeguard, as the possibility of disagreement could not be excluded. Before ruling which of those views was the more reasonable, the Committee was entitled to additional information. For example, as the Philippine representative had said at the preceding meeting, it had not yet been specified what issues had been settled and what points remained unresolved. The duty to answer that question clearly rested on the Italian Government, which wished the Tribunal to be maintained. The questions which the Permanent Observer of Italy had mentioned in his communication of 14 October 1955 (A/C.6/L.352) were not sufficiently specific. It was not clear from paragraph 2 of that communication which of the subjects covered by resolution 388 A (V) might still give rise to controversy.

19. The Philippine representative had made the somewhat general statement that if there was the least possibility of disagreement there might be a need for the Tribunal. That seemed to be an excessively theoretical approach to a practical point. If such a view were accepted, the Tribunal would have to be maintained indefinitely. The Libyan Government's contention that the Tribunal's continued existence might in fact delay final agreement (A/C.6/L.354) could not be rejected outright on the strength of a remote possibility. Indeed, the experience of the past five years seemed to confirm the Libyan argument.

20. He reserved his delegation's right to speak again, after hearing the Italian representative's reply to the points raised.

21. Mr. COLLINS (Liberia) said that the Committee's paramount duty was to avoid disturbing the friendly spirit manifested by the two parties. The only question was whether the Tribunal had done what it was set up to do. It had been established by General Assembly resolution 388 (V) for the purpose of implementing the provisions of that resolution. The reason why the General Assembly had not fixed any time limit was perhaps that it wished to have the work done as well as possible. It had recently been confirmed, however, by the President of the Tribunal (A/C.6/L.348), that the Tribunal had dealt with only two cases and that no further cases were pending.

22. The Italian Government was asking that the Tribunal should continue to function until the end of 1956 and that its seat should be removed outside Libya. The Italian observer had not, however, given any cogent reason why that request should be granted, nor were there any reasons for assuming that the Tribunal might accomplish in one additional year something which it had not done in the last five.

23. It was reasonable to assume that Libya, which largely owed its existence to the United Nations, was desirous of proving worthy of its sovereign status. Any new State was naturally anxious to speed its own development, free from unnecessary preoccupations. It would be a mistake, therefore, to prolong the life of the Tribunal, which had achieved very little in the past. It would be more prudent to allow the Italian and Libyan Governments to arrange the final details of a settlement by themselves. The course suggested in the last paragraph of the letter from the Libyan Prime Minister to the Secretary-General (A/2983, Annex II) seemed to indicate the best solution.

24. The Liberian delegation, confident that Libya would act in the utmost good faith and with the deepest respect for the principles of the United Nations, believed that the Tribunal should be discontinued without further delay.

25. Mr. STABELL (Norway) said that, although some of the questions raised during the discussion could not properly be considered by the Committee, because they concerned issues still outstanding between the Italian and Libyan Governments, the important fact had, at least, been established that some issues which came within the terms of Assembly resolution 388 (V) were still outstanding. The Belgian representative had also made the important point that the provisions establishing the Tribunal formed an integral part of resolution 388 A (V), the efficacy of which might be impaired if the body in question were discontinued.

26. On what authority had the United Nations intervened in the question of succession? In his opinion, the power had been delegated by the contracting parties to the Treaty of Peace with Italy. That being so, it was doubtful that the delegation of authority also entitled the United Nations to make substantial changes in the resolution it had originally adopted. By abolishing the Tribunal when there were still issues outstanding with which it might be called upon to deal, the United Nations would be making a very substantial change in its original resolution and one which, in his opinion, it had no authority to make. Admittedly the argument might be carried even further, to the extreme conclusion that the United Nations could not terminate the Tribunal without the consent of Italy and Libya. It was no doubt a weakness of the resolution that it failed to make provision for the Tribunal's termination. Clearly, however, the Tribunal could not remain in existence indefinitely and, since the United Nations bore the expense of its upkeep, the Organization ought to have some say in deciding how long it was to function. The fact that the Tribunal cost the United Nations, on an average, \$90,000 a year and had had very little work to perform during the five years of its existence was no negligible consideration.

27. It was to be noted that the General Assembly, in resolution 530 (VI), containing the economic and financial provisions relating to Eritrea, had wisely provided two time limits for the corresponding Tribunal in Eritrea, specifying that all requests referred to in

article XI, paragraph 1 of that resolution, were to be presented to the Tribunal not later than 31 December 1953 and that the Tribunal should pronounce its decision on each such request within two years from the date of its presentation. On the analogy of that solution, he would like to suggest, and only suggest, that two similar time limits should be fixed in the case of the Tribunal in Libya.

28. Mr. AL-KHATIB (Saudi Arabia) said that, in the absence of a provision specifying a period, the Tribunal's term must be presumed to expire when the Tribunal had no cases before it and there was no urgent need for it. The point had been reached where the cost of maintaining the Tribunal far outweighed whatever advantage its continued existence might offer. Italy and Libya were moving towards an amicable settlement by direct negotiation in an atmosphere free from the hostility that court proceedings tended to engender.

29. His delegation would accordingly support any draft resolution designed to terminate the United Nations Tribunal in Libya.

30. Mr. HSU (China), referring to the Libyan Government's statement (A/C.6/L.354) that, in the unlikely event of a legal dispute, it "would be prepared to submit the matter to arbitration by a body qualified to examine the conflict in question", said that the offer, as it stood, was not entirely satisfactory. He felt that the Italian and Libyan Governments, in the event of their resorting to arbitration, should be guided by the draft convention on arbitral procedure prepared by the International Law Commission, regardless of whether that draft was ultimately adopted.

31. Whatever solution the Committee recommended should be fair to both parties and give due consideration to the interests of the United Nations. Although the Libyan contention that the Tribunal no longer served any useful purpose was not in itself a conclusive argument, it was a strong argument when considered in conjunction with the high cost of the Tribunal during its fairly long existence.

32. Interesting though the Norwegian representative's suggestion was, he did not think that the appointment of a time limit for the submission and adjudication of issues really disposed of the financial objections to the Tribunal's continuation.

33. His delegation would support any draft resolution which recommended the termination of the Tribunal, provided that adequate provision was made for proper arbitration or some other juridical procedure of settlement in the event of a dispute.

34. Mr. STAVROPOULOS (the Legal Counsel), in reply to the Egyptian representative, said that the total cost of maintaining the Tribunal since 1951 had been approximately \$484,000 dollars, the highest expenditure in any single year having been \$127,000. Since its establishment, the Tribunal had dealt with two cases, the first judgement in case No. 2 having been rendered on 3 July 1954 and the second, dealing with the remaining thirteen of the twenty-five establishments originally the subject of the dispute, on 27 June 1955.

35. Mr. TARAZI (Syria) said that the question appeared to have been thoroughly discussed and the speakers had taken considerable care to explain the exact circumstances in which the Tribunal had been set up. The salient fact that emerged from that explanation was that there had been a radical change in the situation. When the General Assembly had adopted resolution 388 (V) in December 1950, the status of Libya had not been

finally decided, and perhaps many delegations had doubted whether the Government set up in Libya would be capable of fulfilling its obligations and in a position to settle disputes. Since then, however, the sovereign State of Libya, by demonstrating its ability to reach amicable agreements by direct negotiation, had shown that there was no further need for the Tribunal.

36. He could not subscribe to the theory of delegation of powers advanced by the Norwegian representative, despite its undoubted ingenuity. While it was possible to maintain that there had been a delegation of authority as far as the Allied Powers and Italy were concerned, Libya obviously could not have delegated any such authority, for the State of Libya had not been in existence at the time of the signature of the Treaty of Peace. Nor could he share the Norwegian representative's perplexity regarding the way in which the Tribunal might be terminated. An agreement between the two Powers concerned, Italy and Libya, would suffice. One of them, Libya, had already stated that it saw no purpose in the continued existence of the Tribunal; and, since the conditions prevailing at its establishment had ceased to exist, the implied proviso *rebus sic stantibus* could be a legitimate ground for discontinuing it. There was the further consideration, already mentioned by Libya, that the existence of the Tribunal was not conducive to friendly negotiation.

37. The Peruvian representative's remark that the role of the Tribunal was preventive as well as active would

be perfectly true of a criminal court but did not apply to a Tribunal established to deal with civil disputes—a task which, incidentally, it had been rarely called upon to perform.

38. In any case, there was already a body in existence which was competent to adjudicate in disputes between States—the International Court of Justice—and it might be regarded as a slight against the dignity of that body to establish courts to deal with such disputes on a local level.

39. The high cost of the Tribunal was an important consideration, although he would not base the case for its abolition on such grounds. The vital point was that, if the Assembly decided to continue the Tribunal, it would be imposing an unwelcome decision on one of the two parties concerned.

40. Mr. STABELL (Norway) explained that he had not meant to imply that the United Nations had no authority to terminate the Tribunal. On the contrary, the compromise solution he had suggested provided for such termination.

41. Mr. SPIROPOULOS (Greece) remarked that there appeared to be three possible courses of action: to continue the Tribunal, to terminate it, or to adopt the Norwegian representative's suggestion. He felt that the time had come for delegations to make concrete proposals.

The meeting rose at 1 p.m.