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**Chairman:** Mr. Thanat KHOMAN (Thailand).

## AGENDA ITEM 39

**Question of the frontier between the Trust Territory  
of Somaliland under Italian administration and Ethi-  
opia: reports of the Governments of Ethiopia and of  
Italy (A/3753 and Corr.1, A/3754 and Add.1, A/C.4/  
L.528/Rev.1 to 530) (continued)**

1. Mr. DE CLEMENTI (Italy) recalled that at the previous meeting he had suggested that the Committee should decide immediately whether it was appropriate to repeal the decision taken in General Assembly resolution 392 (V). His impression was that the members of the Committee would prefer to study the problem in all its aspects before taking that step. He would accordingly reserve the right to raise the matter again at the end of the debate.

2. Ato Yilma DERESSA (Ethiopia) said that his Government deeply appreciated the laudable motives of the sponsors of the two draft resolutions. For the time being, he would confine himself to commenting on that submitted by the United States of America and the United Kingdom (A/C.4/L.529).

3. He noted that in the third paragraph of the preamble there was a reference to the representative of the Government of Somalia; actually the representative in question had been introduced by the representative of Italy as a member of the Italian delegation. Moreover, the Ethiopian delegation could not accept the statement made at the 738th meeting by that representative, who had repudiated the basis on which the frontier had been determined.

4. The fourth paragraph of the preamble referred to "questions relating to the entire frontier"; he observed that negotiations had brought out the fact that the only outstanding issues were now specific points on the frontier drawn in 1908; agreements on the frontier as a whole had been reached during those negotiations.

5. The fifth paragraph of the preamble was not very happily worded, as it stressed failure rather than positive results, just at a time when both parties were affirming their desire to make progress towards settlement.

6. Ethiopia could not give favourable consideration to the sixth paragraph of the preamble, as it could not

admit that its interests, as a Member State, should come second to those of a Trust Territory.

7. The word "delimit" in paragraph 2 of the operative part was likely to lead to confusion. As the Secretariat had pointed out, the act of delimiting consisted of specifying in detail an already existing frontier. The Italo-Ethiopian Convention of 1908, while it clearly defined the territorial rights of Ethiopia and Italy in articles I, II, III and IV, provided that the delimitation of the frontier would be the subject of a subsequent agreement as provided in article V. The word "delimit" therefore had no meaning except in the context of that Convention. The text of paragraph 2 as it stood did not lay down the obligation to "delimit" the frontier in accordance with the Convention, or in accordance with any legal method or procedure. As the text stood, the proposed tribunal might delimit the frontier on a political basis without any reference to the Convention of 1908. The words "consistent with the Italo-Ethiopian Convention of 16 May 1908" confirmed the impression that an effort was being made to distort that Convention, as the text did not say "within the framework of the Convention" or "in conformity with the Convention". The Ethiopian Government thought that the mediation stage was long past, and found the draft resolution in its present form unacceptable.

8. The United Kingdom, supported by the United States, had argued that to take the Convention of 1908 as the basis for arbitration proceedings would be to prejudice the question. The Ethiopian Government thought that it in no way prejudged the question by referring to the Convention, which had long governed the question of the frontier and was the only valid instrument which could assist a tribunal in making its decision. He could not accept the draft resolution, which would challenge the validity of that instrument.

9. Mr. KANAKARATNE (Ceylon) pointed out that the amendments submitted by the representatives of the Philippines (A/C.4/L.530) altered the draft resolution (A/C.4/L.528/Rev.1) to such an extent that they were tantamount to a new draft resolution. Their sponsor should have submitted them as such. The question to be settled was whether arbitration or mediation should be tried. It was clear from the statements of the Italian delegation that the Somali Government would not accept arbitration until all possibilities of mediation had been exhausted. Moreover, under General Assembly resolution 392 (V), confirmed by resolution 1068 (XI), mediation was to be undertaken on the request of either party. As hitherto neither party had requested mediation and negotiation had failed, the only course still open under resolution 392 (V) was arbitration.

10. The sponsors of the draft resolution in document A/C.4/L.528/Rev.1 accordingly considered the time ripe for inviting the parties to submit to arbitration. In addition to the legal arguments under resolution 392 (V), they thought that the time factor should

be taken into account. From the statements made in the Committee, it was clear that the Government of Somalia and the Somali people were anxious that the question should be settled before 1960, and they were perfectly right. Barely two years remained until 1960, which was too little time to try mediation and then, if that failed, arbitration. Time would certainly be gained if the arbitration procedure were tried at once.

11. The Minister of Economic Affairs of the Somali Government, Mr. Omar, in his statement at the previous meeting, had criticized the draft resolution because the text was based on the Convention of 1908, and had expressed the opinion that, in view of Somaliland's new international position, the problem was now exclusively the concern of Somaliland and Ethiopia. However convinced anybody might be of the need to place Somaliland's interests first, it was nevertheless impossible to consider that the legal problem lay between Ethiopia and Somaliland, since Somaliland did not yet exist as a legally recognizable entity, and would not so exist until 1960.

12. The sponsors of the draft resolution thought that the Convention of 1908 provided a basis for settlement, and they had noted that both Ethiopia and Italy were agreed regarding its complete validity. It must not be forgotten that the problem concerned the frontier alone, and no ethnological or other considerations should be brought in, as Mr. Omar had tried to do. Under those circumstances, given the Convention of 1908 and the agreements reached on various points, the only way to settle the question would be to establish a tribunal to decide on the various points of difference. He quoted a statement made to the Council of the League of Nations in 1935 by the representative of Italy, to the effect that, with regard to the delimitation of the frontier, the Italian Government could not accept any procedure other than that prescribed by the Convention of 1908.<sup>1/</sup> The rights of the Somali people could hardly be less under the Trusteeship System than they had been in 1935.

13. The sponsors of the draft resolution had not excluded the possibility of taking into account other relevant international agreements to which Italy and Ethiopia might be parties. In paragraph 2 of the operative part of the draft resolution submitted by the United Kingdom and the United States of America (A/C.4/L.529), after the words "of 16 May 1908", they would like to add the phrase, "and with other bilateral agreements concluded between the two parties".

14. Mr. CARPIO (Philippines) said that his delegation endeavoured at all times to preserve an objective outlook. One point that the two draft resolutions (A/C.4/L.528/Rev.1 and A/C.4/L.529) had in common was that they did not refer to the measures provided for in General Assembly resolution 392 (V). He thought that that omission should be remedied, and had therefore submitted amendments (A/C.4/L.530) which were based on principles proclaimed by the General Assembly.

15. Before going into the details of his proposals, he stressed that they were in fact amendments, and cited rule 131 of the rules of procedure of the General Assembly in that connexion. He asked the Chairman to put his amendments to the vote before the draft resolutions.

<sup>1/</sup> League of Nations, *Official Journal*, June 1935, p. 641.

16. The first Philippine amendment was designed to replace the first preambular paragraph of the revised text of the five-Power draft (A/C.4/528/Rev.1) by a more explicit text. It was not enough to mention earlier resolutions; their content should also be stated, in order to spare the reader research. The purpose of the second amendment was similar. Instead of taking note of various reports, it would be better to state clearly that the negotiations had not been successful. After all, that was the important point.

17. The purpose of the third amendment was to substitute a new text for the third and fourth preambular paragraphs of the draft resolution, which hardly seemed to be justified. Ethiopia and Italy had not doubt agreed to negotiate on the basis of the 1908 Convention, but that agreement was none the less null and void, in view of the failure of the negotiations. Since the General Assembly had resolved that in such cases the parties should resort to mediation, there seemed to be no reason for not trying that method. There was no occasion to set up forthwith an arbitration tribunal based only on the 1908 Convention; nor was there any proof that the Convention was the only valid document, and in any case it was doubtful whether the Committee could settle that aspect of the question.

18. The fourth amendment should not give rise to objections. The fifth provided for a mediation procedure to solve the problem. He pointed out in that connexion that the present administrative frontier cut a large number of Somalis off from the wells to which they had formerly had access and forced them to go as far as twenty-five kilometres for water. It was essential to give everyone concerned access to wells. That was an important question, which could be solved by mediation. He stressed that, in submitting that amendment, he had taken into account the rights of both parties, since the Secretary-General would be obliged to consult them both before appointing a mediator.

19. The proposed procedure was therefore equitable and did not favour anyone. On the other hand, it had the advantage of saving time, since it provided for arbitration if mediation failed, and for reporting to the General Assembly, to enable it to appraise the results at its thirteenth session.

20. He proposed to speak later on the draft resolution in document A/C.4/L.529.

21. Mr. KHAN (Pakistan) pointed out that, before a mediation procedure could be initiated, one of the parties should make a request to that effect. Taking up an idea suggested by the representative of Ceylon, he proposed that operative paragraph 2 of the draft resolution submitted by the United Kingdom and the United States (A/C.4/L.529) should be amended to read as follows:

"Recommends the parties to establish an arbitration tribunal, if possible within three months, to delimit the frontier in accordance with terms of reference to be agreed between them, consistent with the Italo-Ethiopian Convention of 16 May 1908 and all other international agreements regarding the border question of the Territory under discussion, with the assistance of an independent person to be nominated by the President of the General Assembly with the consent of the parties."

22. Sir Andrew COHEN (United Kingdom) said he would not object to that amendment if the parties concerned agreed to it; all that the United Kingdom and United States delegations wanted was to reach a generally acceptable solution.

23. Mr. DORSINVILLE (Haiti) said that he had recently had an opportunity of observing on the spot the Somali people's anxiety lest the frontier should not be established by 1960. The Haitian delegation had always stressed the urgency of the problem, and everybody now seemed to agree. The Committee obviously could not pretend to solve so complex a question, but it should seek all possible ways of emerging from the deadlock. In the present circumstances, the mediation procedure proposed earlier had little chance of success and would only mean postponing until the following year the apparently inevitable arbitration. The Haitian delegation was therefore strongly in favour of arbitration and would vote against the Philippine amendments (A/C.4/L.530) to the five-Power draft resolution (A/C.4/L.528/Rev.1).

24. Since arbitration was the only real solution, it remained to decide upon the advisability of giving the arbitrators specific terms of reference. That was done in the five-Power draft resolution, but he preferred the draft resolution submitted by the United Kingdom and the United States (A/C.4/L.529). He thought that the arbitration tribunal should have a wider sphere of action than the interpretation of a single document, since one of the parties considered that other texts could also be invoked. The difference of opinion was such that, if a single text were to serve as a basis, the chances of success would be small. A detailed study of the situation by the arbitrators should make it possible to find a solution which would not only take account of the formulas of the past, but would be more in keeping with the realities of today. He did not think that the Committee was in a position to decide which documents could be validly referred to; that decision should be left to the arbitrators.

25. The amendments proposed to operative paragraph 2 of the draft resolution in document A/C.4/L.529 seemed to meet the views of his delegation, and he hoped they would be studied by all the parties so that the Committee would be able to adopt a text likely to bring a solution of the problem nearer and to bring peace to the Somalis, who were most directly concerned.

26. Miss BROOKS (Liberia) said that, like the Philippine representative, she tried to be objective. It was her conviction of the necessity of reaching a solution soon that had led her to join with other delegations in submitting a text which did indeed propose a method likely to lead to progress.

27. She asked whether the Ethiopian and Italian representatives would accept the amendments proposed by the representatives of Ceylon and Pakistan to the draft resolution in document A/C.4/L.529.

28. Ato Yilma DERESSA (Ethiopia) said that he had already had occasion to explain why such vague terms as "other international agreements" did not satisfy him, and to show which were the instruments that might be invoked. It was usual in arbitration for the basic documents to be agreed upon between the parties. Ethiopia could not agree to appear before an arbitra-

tion tribunal blindfolded, and all it wanted to know was what agreements besides the Convention of 1908 Italy intended to bring forward so that it could say at once whether it found them acceptable.

29. Mr. DE CLEMENTI (Italy) pointed out that Italy did not in any way contest the full validity of the Convention of 1908. It even recognized that that might be the basic document on which a solution could be reached; but it would like to have the assurance that in the arbitration tribunal the two parties could produce any documents they considered necessary to uphold their point of view. The Committee could not refuse them that right. It was not for the parties to restrict the competence of the tribunal beforehand; it was for the latter to judge whether the arguments presented were in order or not.

30. With regard to the appointment of the third member of the tribunal, in his view it would be preferable to leave the two original members to decide what procedure should be followed; the wording of subparagraph (a) of the operative paragraph of the five-Power draft resolution (A/C.4/L.528/Rev.1) therefore seemed better. On the other hand, if the Convention of 1908 had to be mentioned, all the other international agreements relating to the frontier, such as the United Nations Charter, for instance, should also be taken into consideration. On the basis of the few remarks he had made, it should be possible to find a reasonable formula which would be acceptable to all.

31. Mr. BOZOVIC (Yugoslavia) noted with regret that the negotiations had failed, but welcomed the fact that the two Governments sincerely wished to reach a solution and were ready to accept arbitration. It was true that in 1950 the General Assembly had first envisaged mediation, but the Committee was not obliged to take an absolutely literal view; it was perfectly justified in recommending arbitration if that method seemed more likely to succeed. It had been left to the parties to ask for mediation, but no formal request had been made; indeed, one of the parties seemed opposed to the idea. Moreover, mediation did not seem to be the most suitable procedure, in view of the urgency of the problem. Referring to the Philippine proposals on that point (A/C.4/L.530), he said that it was difficult to consider them as mere amendments, as they involved changes in every paragraph of the proposed draft resolution.

32. Although the two parties accepted arbitration, they did not agree upon the terms of reference of the arbitrators. Ethiopia argued that the tribunal should take the Convention of 1908 as a basis, but stated its willingness to recognize other Italo-Ethiopian treaties, if any. It would presumably also accept any multilateral treaties to which Ethiopia and Italy were both parties. Italy, on the other hand, maintained that the tribunal should be entirely free to decide whether any particular agreement cited was applicable. There were some weak points in that argument. First, when two countries differed as to the interpretation of an agreement, it was usual for the parties resorting to arbitration to agree to provide the tribunal with a basis for its decision. When there was no agreement, the tribunal was instructed to take certain principles of international law into account. Secondly, Yugoslavia could not vote in favour of a resolution which would empower a tribunal to apply certain agreements without knowing what those agreements were. If Italy could

not indicate them, it would be preferable to leave the parties free to decide, after detailed consideration, what documents the tribunal should take as a basis for its decision.

33. Mr. KHAN (Pakistan) noted that there had been no formal request for mediation. He proposed that the meeting should be adjourned so as to enable representatives to agree on a compromise text.

34. Miss BROOKS (Liberia) supported the proposal.

35. The CHAIRMAN announced that he had received a letter from the President of the General Assembly indicating that Committees should complete their work by 12 December so as to enable the Assembly to close its session on 14 December.

36. Sir Andrew COHEN (United Kingdom) felt that the Committee should continue its efforts to find a compromise; the problem was a serious one which affected the very lives of the peoples concerned.

37. Mr. KANAKARATNE (Ceylon) concurred with the view expressed by the United Kingdom representative.

38. Mr. JAIPAL (India) proposed that the Committee should adjourn, in an endeavour to seek a compromise solution, and reassemble at 8.30 p.m.

It was so agreed.

The meeting rose at 5.55 p.m.