

**UNITED**



**NATIONS**

**FINAL REPORT OF THE  
UNITED NATIONS  
COMMISSIONER IN ERITREA**

**GENERAL ASSEMBLY  
OFFICIAL RECORDS : SEVENTH SESSION  
SUPPLEMENT No. 15 (A/2188)**

**NEW YORK, 1952**

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#### NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

## LETTER OF TRANSMITTAL

New York, 17 October 1952

Sir,

I have the honour to transmit herewith the final report on my mission for consideration by the General Assembly at its seventh regular session.

The report is submitted in accordance with paragraph 15 of resolution 390 A (V) of 2 December 1950,<sup>1</sup> which lays down that the United Nations Commissioner shall make appropriate reports to the General Assembly of the United Nations concerning the discharge of his functions and that when the transfer of authority has been completed, he shall so report to the General Assembly and submit to it the text of the Eritrean Constitution.

This report, which contains a general account of the mission's work, supplements the report submitted to the General Assembly at its sixth regular session in documents A/1959 and A/1959/Add.1. Since the latter report was submitted, the following general developments have taken place.

The main item of the Commissioner's terms of reference under the resolution was the preparation of a draft Constitution to be submitted to a representative assembly of Eritreans chosen by the people.

After discussing the interpretation of the terms of resolution 390 A (V) with a panel of legal consultants, a first draft Constitution was drawn up at Geneva. In a revised form, it was then transmitted to the Administering Authority and to the Government of Ethiopia, as provided in the resolution.

The consultations took the form of veritable negotiations and resulted in the drafting of a text which was acceptable to the parties concerned. That text was submitted to the Eritrean Assembly elected by the people and convened and arranged through the good offices of the Administering Authority in accordance with the provisions of paragraph 11 of the resolution.

The Secretary-General of the United Nations  
New York

Some amendments were made to the draft constitution and the final text as a whole was adopted unanimously by the Eritrean Assembly on 10 July 1952. The Constitution was approved by the Commissioner on 6 August 1952 and ratified by the Emperor on 11 August 1952. It could not enter into force, however, until ratification of the Federal Act, which took place on 11 September 1952 at Addis Ababa.

Thus all the action provided for in the General Assembly resolution with respect to the Constitution has been carried out and the attached report gives a detailed account of all the relevant events; it also contains, in annex, the final text of the Constitution.

The other terms of reference under which the Commissioner was acting, not in these instances personally and in consultation with other authorities, but as an authority consulted by the Administering Authority, are also dealt with in the report.

I should like to say how much I appreciated the consistently co-operative spirit of the Administering Power and Administering Authority and to emphasize the cordial relations which prevailed throughout the consultations with the Ethiopian Government and the parties concerned. I should also like to mention the high quality of the work accomplished by the Assembly and the conciliatory spirit shown by the representatives and by the people. I also wish to thank you most warmly for your co-operation and unstinted assistance and for the competence and hard work of the members of the United Nations Secretariat whom you assigned to help me in the performance of my mission, and to pay a tribute to the learning of the legal experts who assisted me in drafting the Constitution.

I have the honour to be, Sir...

E. ANZE MATIENZO  
*United Nations Commissioner in Eritrea*

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<sup>1</sup> The text of United Nations General Assembly resolution 390 A (V) is annexed to the report.

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## INTRODUCTION

### SECTION 1: HISTORICAL AND POLITICAL

1. The General Assembly of the United Nations, at its fifth regular session, recommended that Eritrea should constitute an autonomous unit federated with Ethiopia under the sovereignty of the Ethiopian Crown. The relevant resolution, 390 A (V), of 2 December 1950, the text of which is annexed to the present report, was the culmination of four years' endeavour by the Council of Foreign Ministers, the Paris Conference and, finally, the United Nations, to decide on the disposal of this former Italian colony, administered by the United Kingdom since 1941.

2. Eritrea lies between the Red Sea to the east, the Sudan to the north and west and Ethiopia to the south, and has an area of 117,248 sq. km. (45,800 sq. miles). From Massawa on the Red Sea to the frontier town of Sabderat in the west, the distance is almost the same as from the Sudanese frontier in the north to the Setit and Mareb rivers in the south (about 500 km.). But the Red Sea Division is wedged between Ethiopia and the coast from north-west to south-east, having a length of some 600 km. and a breadth of a little more than 100 km. at certain points.

3. Although there are no accurate census figures, the British Administration estimated the population at about one million. It is made up of Christians and Moslems in roughly equal numbers, the plateau being inhabited mainly by Christians and the lowlands by Moslems.

4. The populations of the plateau (the Hamasien, Serae and Akele Guzi divisions), as well as of the "Abyssinian Districts" of the Keren region, all have practically the same social structure. The basic unit is the village community made up of kinship groups of families, among which only the settlers and their families have rights in the surrounding lands. The villages were administered in the past by a chief, assisted by elders.

5. The nomad tribes of the north and west (Sahel, Beni Amer, Mensa, etc.) comprise nobles and serfs who owed them services and tribute now for the most part abolished; class distinctions have not completely disappeared, however.

6. Thirdly, the Red Sea coast area is inhabited by the Danakils, the semi-nomadic Saho-speaking tribes and the Samhar people. Under Italian rule, tribal chieftains were added to the democratically-organized kinship groups, which had their own chiefs.

7. Finally, the peoples of the south-west (Baria and Kunama) living in semi-permanent villages, are organized in family and tribal groups, each family group having its council of elders.

8. Among the foreign communities, whose economic activity is important to the country, the Italian, Arab, Indian, Greek, Jewish and Sudanese have official organizations. The largest communities are the Italian,

numbering approximately 17,000, and those coming originally from Asia, mainly Arab and Indian.

9. The Italian Administration, facilitated by the acquisition of the Bay of Assab by the Rubattino Company, began with the foundation of the colony of Eritrea (January 1890). The Italian population in Eritrea, besides being large in number, has played a big part in the development of the country (communications network, ports, town planning) and in its progress in agriculture (concessions) and industry. The Italian Administration ended in 1941 with the entry of the Allied armed forces.

10. It is at this time, in 1941, that the Unionist Party claims to have begun its activities, though pointing out that a "movement" for union with Ethiopia had long existed in Eritrea. The Four Power Commission of Investigation, however, referring to the actual founding of the party, set the date at 1946.<sup>1</sup> The party's aim was unconditional union with Ethiopia.

11. Towards the end of 1946, a Moslem League of Eritrea was founded at Keren, in the Western Province; it demanded the independence of Eritrea or, if that were not considered possible, "an international trusteeship for ten years with internal independence under the control of the British Government".<sup>2</sup> In 1949, this Moslem League joined with a number of less important parties to form an Independence Bloc, and changed its programme, demanding immediate independence for Eritrea.

12. Finally, the Moslem League of the Western Province, consisting of former members of the Moslem League of Eritrea and founded at the beginning of 1950, advocated a separate solution for the Western Province, namely, a period of British Administration followed by independence, the rest of the territory to be left free to decide its own future.

13. Since the Council of Foreign Ministers had not been able to reach agreement in spite of the dispatch of a Commission of Enquiry (November 1947 to January 1948), the question was submitted to the United Nations General Assembly, in accordance with annex XI, paragraph 3 of the Treaty of Peace with Italy which states:

"If with respect to any of these territories the Four Powers are unable to agree upon their disposal within one year from the coming into force of the Treaty of Peace with Italy, the matter shall be referred to the General Assembly of the United Nations for a recommendation, and the Four Powers agree to accept the recommendation and to take appropriate measures for giving effect to it."

14. At its third regular session, the General Assembly, after discussion, postponed the question of the disposal of the former Italian colonies until the fourth regular session.

<sup>1</sup> Four Power Commission of Investigation for the former Italian colonies, vol. I, *Report on Eritrea*, p. 13.

<sup>2</sup> *Ibid*, vol. I, app. 20, p. 3.

15. The United Nations Commission for Eritrea, established at the fourth regular session by resolution 289 A (IV), Section C, of 21 November 1949, to "ascertain all the relevant facts" and submit proposals "appropriate for the solution of the problem of Eritrea", concentrated its attention on the two following factors:

(1) The rights and claims of Ethiopia based on geographical, historical, ethnic or economic reasons;

(2) The need to find an acceptable compromise between the solutions recommended by the population, which ranged from independence to union with Ethiopia.<sup>3</sup>

16. The solution of Federation, adopted by the General Assembly by 46 votes to 10, with 4 abstentions, (resolution 390 A (V)), on the basis of proposals by the representatives of Burma and the Union of South Africa on the United Nations Commission for Eritrea, and of a draft resolution submitted by a number of delegations,<sup>4</sup> took into account the wishes and welfare of the inhabitants of Eritrea, the interests of peace and security in East Africa and the rights and claims of Ethiopia. It was essentially a middle-of-the-road formula, and the Commissioner, having acquainted himself with the facts in Eritrea, stated on many occasions that in his view it appeared to be the best possible "compromise".<sup>5</sup>

SECTION 2: RESOLUTIONS 390 A (V) AND 390 B (V) OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS. TERMS OF REFERENCE AND ELECTION OF THE UNITED NATIONS COMMISSIONER IN ERITREA

17. The text of resolution 390 A (V) of 2 December 1950, the first seven paragraphs of which form the Federal Act, is reproduced as annex I to the present report.

18. Paragraph 10 of the resolution provided for the appointment by the General Assembly of a United Nations Commissioner in Eritrea. By resolution 390 B (V), adopted at the same meeting on 2 December 1950, it was decided to establish a Committee to assist in making the appointment. When the report of the Committee was received, the General Assembly, at its 325th plenary meeting on 14 December 1950, by secret ballot elected Mr. Eduardo Anze Matienzo to the office of United Nations Commissioner in Eritrea.<sup>6</sup>

19. The duties of the Commissioner and the powers conferred upon him were set out in paragraphs 12, 13 and 15 of section A of the resolution. Thanks to the co-operation and goodwill which he received from the other interested parties and from the Eritreans themselves, the Commissioner did not find it necessary to exercise the power of consultation with the Interim Committee conferred by paragraph 15 of the resolution.

20. The main duties and powers of the Commissioner are summarized below in chronological order (subject

to overlapping) and in the order in which they are dealt with in this report.

(1) The duty, in consultation with:

(a) The Administering Authority;

(b) The Government of Ethiopia; and

(c) The inhabitants of Eritrea,

of preparing a draft of the Eritrean Constitution which shall:

(a) Be based on the principles of democratic government;

(b) Include the guarantees contained in paragraph 7 of the Federal Act; and

(c) Contain provisions adopting and ratifying the Federal Act on behalf of the people of Eritrea.

(2) The duty of submitting the draft Constitution to the Eritrean Assembly.

(3) The duty of advising and assisting the Eritrean Assembly in its consideration of the draft Constitution.

(4) The power and, if in the Commissioner's opinion it conformed to the principles of the resolution, the duty of approving the Constitution as adopted by the Eritrean Assembly.

(5) The duty of making appropriate reports to the General Assembly of the United Nations concerning the discharge of his functions and, having maintained his headquarters in Eritrea until the transfer of power had been completed; the duty of so reporting to the General Assembly and submitting to it the text of the Eritrean Constitution.

21. Moreover, under the provisions of paragraph 11, the Administering Authority was required to consult the United Nations Commissioner on certain matters assigned to it, namely the organization of an Eritrean administration, the induction of Eritreans into all levels of the administration and the convocation of a representative assembly of Eritreans chosen by the people. The Administering Authority was also authorized, in agreement with the Commissioner, to negotiate on behalf of the Eritreans a temporary customs union with Ethiopia.

22. The Government of the United Kingdom of Great Britain and Northern Ireland was responsible for the transfer of power to the appropriate authorities as soon as the Eritrean Constitution and the Federal Act had entered into effect. Although not required to do so, the Administration consulted or notified the Commissioner informally at each stage of its preparations for the transfer of power.<sup>7</sup>

23. The difficulty of the Commissioner's task is evident from a glance at the legal framework of the resolution and the circumstances in which he was called upon to act.

24. So far as the legal framework is concerned, it may be said that the United Nations General Assembly, in its resolution 390 A (V), not only drafted the Federal Act, but laid down the principles on which the Constitution of Eritrea was to be based.

25. Within this framework, the Commissioner was himself a "subsidiary organ" of the United Nations, for

<sup>3</sup> Report of the United Nations Commission for Eritrea, *Official Records of the General Assembly, Fifth Session, Supplement No. 8 (A/1285)*.

<sup>4</sup> Bolivia, Brazil, Burma, Canada, Denmark, Ecuador, Greece, Liberia, Mexico, Panama, Paraguay, Peru, Turkey, United States of America (A/AC.38/L.37 and Corr. 1.)

<sup>5</sup> See document A/AC.44/R.55, p. 4.

<sup>6</sup> *Official Records of the General Assembly, Fifth Session, Supplement No. 8 (A/1285)*.

<sup>7</sup> The steps taken by the Administering Authority to implement the provisions of the resolution concerning it are the subject of a separate report to the General Assembly on the administration of Eritrea from December 1950 to September 1952 submitted by the Administering Authority and reproduced as a United Nations document (A/2233).

the resolution made no provision for him to have a council. His mandate was of a dual nature. In the first place, he was required to act as counsel by preparing a draft Constitution, in the consideration of which he was to advise and assist the Eritrean Assembly. Secondly, the resolution gave him real powers of decision, since he was called upon to agree to any negotiation of a temporary customs union between Eritrea and Ethiopia, and to approve the Constitution of Eritrea.

26. To confer power on a United Nations Commissioner to take decisions concerning the preparation of a constitution for a political unit is a new departure.

27. The legal questions to be settled were complex:

(1) First, the Commissioner had the duty of preparing legal texts compatible with the principles and rules formally laid down by the General Assembly of the United Nations, in conformity with the wishes of the inhabitants and—since it was for the Emperor to approve the Constitution by ratification—acceptable to the Ethiopian Government. Moreover, provision for consultation with the Administering Authority was expressly made in the resolution of 2 December 1950.

(2) Secondly—a new departure in constitutional history—the Commissioner had to prepare a Constitution for an autonomous unit—Eritrea—which was a member of a Federation whose organs had not yet been fully created. The Federal Act, incorporated in the resolution of 2 December 1950, determined only the principles of the future Federation; the resolution did not stipulate how they should be put into effect by creating the necessary organs, as it did in the case of the Eritrean Constitution.

28. Beside these legal features of the resolution there was also an extremely complicated *de facto* situation, hardly susceptible of rapid change owing to the traditions and rights established or perpetuated during the successive phases of the country's history.

29. The main task of the United Nations Commissioner in Eritrea was the preparation of a constitution which in conformity with resolution 390 A (V) would firmly establish for the future the foundations of autonomy for Eritrea federated with Ethiopia under the sovereignty of the Ethiopian Crown.

30. In accordance with paragraph 15 of the resolution, which provided that the Commissioner should make appropriate reports to the General Assembly concerning the discharge of his functions, the Commissioner sub-

mitted a Progress Report<sup>8</sup> to the General Assembly at its fifth regular session.

31. The present report covers the whole of his mission and describes first the work leading up to the entry into effect of the Constitution and the enactment of the organic laws:

*Chapter I.* Preparatory work and consultations for the preparation of a draft Constitution.

*Chapter II.* Drafting of the Constitution.

*Chapter III.* Convening by the Administering Authority of a representative Assembly of Eritreans chosen by the people.

*Chapter IV.* Submission of the draft Constitution to the Eritrean Assembly. Discussions. Adoption of the amended text.

*Chapter V.* Approval of the Constitution by the Commissioner. Ratification of the Constitution and of the Federal Act by the Emperor of Ethiopia.

*Chapter VI.* Characteristic features and the legal basis of the Eritrean Constitution of 10 July 1952.

*Chapter VII.* Organic laws complementary to the Constitution.

32. Furthermore, in accordance with paragraph 11 of the resolution, the Administering Authority consulted the Commissioner on matters coming within its competence. These consultations form the subject of:

*Chapter VIII.* Consultations with regard to a temporary customs union and the organization of an Eritrean Administration.

33. In accordance with paragraph 15 of the resolution, the Commissioner maintained his headquarters at Asmara until 15 September 1952, the date on which the transfer of power took place.

34. Paragraph 15 also required the Commissioner to submit the text of the Eritrean Constitution to the General Assembly. The final chapters therefore deal with the following matters:

*Chapter IX.* Transfer of power.

*Chapter X.* Submission of the Eritrean Constitution to the General Assembly of the United Nations.

There is also a concluding chapter containing general observations.

<sup>8</sup> A/1959 and Add.1.

## Chapter I

### PREPARATORY WORK AND CONSULTATIONS FOR THE PREPARATION OF A DRAFT CONSTITUTION

#### Section I. Preparatory work by the Commissioner (January-June 1951)

##### A. PRELIMINARY CONTACTS WITH THE GOVERNMENTS OF THE UNITED KINGDOM, ITALY AND ETHIOPIA

35. At the outset of his mission, the Commissioner accepted invitations from the Governments of the United Kingdom and Italy to pay short visits to London and Rome on his way to Eritrea, for informal talks on matters of common concern connected with the implementation of the resolution.

36. In London, the informal talks covered all aspects of the terms of reference of the Commissioner and the Administering Authority; the Commissioner and officials of the United Kingdom Government found themselves in general agreement on the matters discussed. Hopes for close co-operation between the Administering Authority in Eritrea and the Commissioner were expressed on both sides.

37. During informal talks in Rome, the Italian Government assured the Commissioner of its desire to collaborate with him in the fulfilment of his mission.

38. Shortly after arriving in Eritrea, the Commissioner paid an official courtesy visit to the Emperor of Ethiopia and the Ethiopian Government, and had talks concerning the resolution. On his return to Eritrea, the Commissioner stated at a Press conference that he was counting on the understanding and co-operation of the Ethiopian Government for the success of his mission.

##### B. STATEMENT BY THE COMMISSIONER ON ARRIVAL IN ERITREA

39. The Commissioner arrived in Asmara on 9 February 1951, and on the same day made a public statement<sup>9</sup> in which he explained his terms of reference, describing the United Nations resolution as a middle-of-the-road plan which should give satisfaction both to those who had wished Eritrea to be united with Ethiopia, and to those who had desired her independence. He also welcomed the fact that the plan gave satisfaction to Ethiopia by recognizing both her claims to an outlet to the sea and the historic and traditional ties uniting Ethiopia and Eritrea.

40. Describing the meaning of the provisions of the resolution in simple terms, the Commissioner said that his principal task was to draft a constitution for Eritrea and to assist and advise in its adoption. He could not, however, succeed in his task unless all Eritreans, irrespective of party or creed, were prepared to accept the United Nations decision, which was in keeping with the principles of the Charter. The United Nations had set an example of conciliation and compromise in finding a fair and equitable solution of the problem of the future

of Eritrea; it was for the Eritreans, in that same spirit, to set aside personal differences, joining together peacefully with the single purpose of serving their country during the momentous period when the foundations would be laid for the autonomy of Eritrea in federation with Ethiopia. He added that he had received pledges of support in his task from the Governments of Ethiopia, the United Kingdom and Italy.

41. In conclusion, the Commissioner said that he would spare no effort to bring his task to a successful conclusion. He had come as a friend to help the Eritreans, and his door would always be open to all. He appealed to all the population to assist him and the British Administration by showing restraint, equanimity, loyalty and brotherly love, so that the interests of Eritrea and of Ethiopia might be served and the recommendations of the United Nations put into effect.

##### C. INITIAL VISITS OF THE COMMISSIONER TO VARIOUS PARTS OF ERITREA

42. Shortly after his arrival in Eritrea, the Commissioner undertook a series of personal visits throughout the territory, extending over a period of eleven weeks from the end of February to the middle of May 1951.<sup>10</sup> His purpose in doing so was to acquaint himself with the country, its people and their aspirations, and to explain to as many Eritreans as possible the meaning of the United Nations resolution and his own terms of reference.

43. Having expressed a desire not to confine himself to seeing the large centres and the various aspects of the country's agricultural and industrial life, but also to visit the most remote districts in order to meet those people who could not come to the towns, the Commissioner accepted the suggestions of the British Administration for tours which would cover most of the territory and enable him to meet a large majority of the population at public meetings. Thus he visited each of the five divisions of Eritrea, holding meetings in the principal towns, villages and traditional meeting places, where he was able to talk to district and tribal chiefs, elders, religious and political personages, peasants, artisans, and the representatives of minority groups.

44. Wherever he went the Commissioner's main concern was to persuade all groups of the population to declare their willingness to cease political strife, to accept the United Nations recommendation unreservedly and to co-operate with him in putting it into effect. All sections of the population voiced their approval and acceptance of the General Assembly's resolution and gave the Commissioner assurances of their support in the performance of his task. In spite of all of these assurances, however, the Commissioner gained the impression that

<sup>9</sup> A/1959, chapter II, section 2.

<sup>10</sup> A/AC.44/R.2, R.3, R.4, R.5, R.8, R.9 and R.14.

the population was mainly pessimistic, particularly on account of the insecurity caused by brigandage. He also had the feeling that part of the population had no real confidence in the idea of federation or in the possibility of applying it. On all occasions, therefore, he endeavoured to instil a spirit of optimism and self-confidence into all those he met.

45. After his initial visits, the Commissioner felt that he had made the inhabitants of Eritrea more alive to the meaning of the United Nations recommendations, awakened them to a sense of their future responsibilities and convinced them of the need for constructive consideration of their wishes concerning the future Constitution. He also felt that the local experience he had acquired would help him in his consultations regarding the draft Constitution.

## Section 2. Formal consultations (May-December 1951)

### A. INTRODUCTION

46. The resolution made it the Commissioner's main duty to prepare a draft Constitution, and instructed him to do so in consultation with the Administering Authority, the Government of Ethiopia and the inhabitants of Eritrea.

47. The Commissioner's original intention was to hold simultaneous consultations with all the parties concerned, in the hope that he would thus benefit from the results of parallel exchanges of views. This plan could only be partly carried out, however, owing to a number of developments. In particular, the unfavourable security situation during the early part of the year led the Commissioner to postpone his consultations with the inhabitants until later.

48. The Commissioner began his consultations with the Administering Authority on 27 June 1951, with the Government of Ethiopia on 28 May 1951 and with the inhabitants of Eritrea on 11 July 1951.

### B. CONSULTATIONS WITH THE ADMINISTERING AUTHORITY

49. On taking up his duties in Eritrea, the Commissioner established a relationship of cordiality and mutual confidence with the Administering Authority, and kept it constantly informed of his activities and the progress of his work.

50. In order to discharge his duties in accordance with paragraph 12 of the resolution and in order that there might be a documentary record of his consultations, the Commissioner held two formal meetings with the Administering Authority.

51. The first took place on 27 June 1951,<sup>11</sup> before the Commissioner had begun his consultations with the inhabitants; the basis of discussion was a document<sup>12</sup> he had drawn up containing a detailed examination and interpretation of the provisions of the resolution, together with a provisional outline of the Constitution and a tentative list of subjects on which he proposed to ask for the views of the population.

52. After the Commissioner had accepted certain amendments it proposed, the Administering Authority stated that it considered the document to be a reasonable interpretation of the resolution. The Administering

Authority pointed out to the Commissioner that it would be difficult to organize an Eritrean administration without knowledge of the relevant provisions of the Constitution; he therefore undertook to submit in advance an outline of the rules and principles relating to the administration which he intended to incorporate in the draft Constitution. Accordingly, in a letter dated 5 August 1951, the Commissioner transmitted a provisional draft of the section of the Constitution relating to the administration of the territory, pointing out that it had not yet been decided whether that section would be included in the Constitution or in an organic law.

53. The Administering Authority, acknowledging the draft in a letter dated 13 August 1951, stated that it would prefer not to comment on the draft Constitution which was in preparation, until the consultations with the population had been completed. It added that one of its immediate objects was to take the first steps towards organizing an Eritrean administration and that it was not thought that a limited interim objective of that nature could conflict with the principles embodied in the Commissioner's draft.

54. In the meantime, in a letter dated 30 July 1951, the Commissioner transmitted to the Administering Authority an outline of the constitutional problems on which agreement had been reached during his consultations with the Government of Ethiopia.

55. When he had completed his consultations with the inhabitants, and shortly before he left for Geneva to draft the Constitution, the Commissioner held a second formal meeting<sup>13</sup> with the Administering Authority, at which he gave his impressions of the consultations and discussed means of settling the controversies which had arisen over the questions of the flag, the official languages, and the representative of the Emperor.

56. With regard to the question of the flag, he said that personally he felt it would be wiser to leave it to be decided by the Eritrean Assembly, if agreement could not be reached beforehand—a suggestion to which the Administering Authority agreed.

57. It also agreed with a proposal by the Commissioner not to include any provision in the draft Constitution establishing one or more official languages, but to await the views of the Eritrean Assembly on the subject.

58. With regard to the question of the Emperor's representative, the Commissioner mentioned the different opinions he had heard during the consultations and pointed out that while he considered it his duty to support the establishment of a representative without powers, it was impossible, both on legal grounds and for political and psychological reasons, to consider granting him powers. The Administration replied that any cleavage such as existed between the Moslem and the Christian population in Eritrea weakened the State; it might therefore be useful to have at the head of the Government someone of prestige appointed by the Emperor from outside Eritrea, as a neutral figure and stabilizing force.

59. After some discussion, it was agreed in principle that the draft Constitution should make provision for a representative of the Emperor, in order to give the latter formal status in Eritrea.

60. The Commissioner also briefly outlined his provisional ideas for the establishment, in the draft Consti-

<sup>11</sup> A/AC.44/SR.3.  
<sup>12</sup> A/AC.44/L.6.

<sup>13</sup> A/AC.44/SR.71.

tution, of various organs or councils with specific functions—ideas which he would explore further with a panel of legal consultants at Geneva; he also sketched the general form which the Constitution would take. The Administration made various comments on the Commissioner's proposals, but stated that it would need to give them further consideration.

### C. CONSULTATIONS WITH THE GOVERNMENT OF ETHIOPIA

61. In accordance with paragraph 12 of the resolution, the Commissioner opened formal consultations with the Government of Ethiopia at Addis Ababa on 28 May 1951, on the subject of the draft Eritrean Constitution. The first two meetings were held on 28 and 30 May 1951, and were followed by two further meetings at Asmara on 3 July 1951.<sup>14</sup> In addition, a series of informal discussions took place at Addis Ababa and Asmara between the Commissioner and the Ethiopian Minister for Foreign Affairs or, in his absence, the Vice-Minister for Foreign Affairs, and their advisers, for the purpose of exchanging views and reaching agreement on constitutional questions, principally of a technical or non-controversial nature.

62. At the first meeting the Commissioner outlined, as a basis for preliminary discussion, his general views on the draft Constitution, giving a detailed exposition of the matter which he considered it should contain, divided into four sections. The first section would be devoted to nationality, human rights, respect and safeguards for institutions, traditions, religions and languages; official and recognized languages, determination of the respective jurisdictions of the Eritrean and the Federal Governments, and the question of the flag. The second section would cover the general structure of the constitutional organs of Eritrea, the Executive and the Administration. The third and fourth sections would contain, respectively, provisions concerning the judiciary and revision of the Constitution.

63. At the second meeting, held on 30 May 1951, the Minister for Foreign Affairs submitted a number of observations on the Commissioner's statement, together with the views of the Ethiopian Government on certain fundamental principles which should be taken into account in drafting the Constitution. The two preliminary meetings showed where there was agreement in principle and where there was a divergence of views, and contributed to the gradual reduction of the latter at the subsequent meetings at Asmara and Geneva.

64. The third and fourth formal meetings took place at Asmara in July 1951. The observations submitted by the Minister for Foreign Affairs may be summarized as follows:

65. The compromise solution of federation was one involving the sovereignty of Ethiopia. That solution had been written into the Federal Act, every point of which had been closely studied and discussed and every word adopted by the General Assembly. Hence it could not be called in question, directly or indirectly, by the inhabitants whom the Commissioner was required to consult, under the terms of the resolution, in preparing a draft of the Eritrean Constitution.

66. Similarly, the question of the respective jurisdictions of the Federal and the Eritrean Governments, and

matters in the field of foreign affairs, such as the recruitment of foreign experts, should not be dealt with in the Constitution.

67. Although the Federal Act established a very close federation in certain respects, since it did not provide for a separate Federal Government, it did not, on the other hand, give the Federal Government any safeguards for respect for federal laws, decrees and privileges in Eritrea. This absence of safeguards resulted from the very broad measure of autonomy granted to Eritrea with the consent of Ethiopia, especially in such matters as policing, the budget and tax collection.

68. The Ethiopian Government could make no further concessions beyond those it had already accepted, without endangering the viability of the Federation. To ensure future stability, it was important to maintain the links established by the resolution between the Federal and the Eritrean Governments. In that connexion, the Minister for Foreign Affairs recalled that the word "powers" had been deliberately substituted for the word "autonomy" in paragraph 2 of the Federal Act. The resolution thus indicated the link which was to exist between the three branches of the Federal and of the Eritrean Governments, a link which was not implied by the term "autonomy" and such a view was confirmed by the fact that the Federal Act referred to an autonomous unit and not to a State in the case of Eritrea. The *de facto* substitution of the word "autonomy" for the word "powers", contrary to the terms of paragraph 2,<sup>15</sup> would result in severing the sole link retained by the Federal Act, i.e., that between the Federal and Eritrean Executives. Moreover, if that link were to be effective, provision must be made for a régime which would make the Eritrean Executive sufficiently independent of the Eritrean Legislature.

69. Such independence could not be secured by a parliamentary system, in which the executive did not exist as an independent power. Besides, the Commissioner had agreed with the Vice-Minister for Foreign Affairs, at Addis Ababa, that such a system should not be adopted. But in order to ensure the independence of the Executive, it would still be necessary to define his principal powers. Among the powers normally conferred on the Executive was the right of veto; the Constitutions of sixty-five out of seventy independent States, or States which were members of Federations, conferred this right. Precedent was not the only argument for granting the right of veto to the Executive of Eritrea. To deny him that right would be to make it the servant of an Assembly which could flout Federal jurisdiction, while the Federal Government could oppose no effective sanction. While the right of veto would give the Executive the necessary independence in his relations with the Assembly, it in no way implied that the Executive would become the slave of the Federal Government. The Government of Ethiopia reaffirmed that it had neither the intention nor the means to impair Eritrean autonomy in any way. The Government of Ethiopia was not thinking of the right of veto as absolute and final, but only as a suspensive power by which the Assembly

<sup>15</sup> The first two paragraphs of the Federal Act are as follows:

"1. Eritrea shall constitute an autonomous unit federated with Ethiopia under the sovereignty of the Ethiopian Crown.

"2. The Eritrean Government shall possess legislative, executive and judicial powers in the field of domestic affairs."

<sup>14</sup> A/AC.44/SR.1, SR.2, SR.4 and SR.5.

could be induced to reconsider decisions it had taken, a prescribed majority then being required for their confirmation. Recognition of the right of veto in this sense was essential for the protection of minorities, on which so much stress had been laid in the United Nations General Assembly when the principle of federation was adopted. It would provide an unquestionable safeguard for minorities, since measures discriminating against them could not then be adopted hastily, by a chance majority in the Assembly.

70. With regard to the appointment of officials, the Minister for Foreign Affairs stated that their appointment by the Executive was the only procedure by which discrimination could be avoided in a country where there was a diversity of races and religions. Provision should not be made for appointments by election. Appointment by a simple majority might, for instance, mean imposing on the Western Province a Christian official whom it would not accept. In many cases, it would be impossible to obtain a two-thirds majority. Hence it was necessary either to adopt the Ethiopian Government's recommendation that the Governor-General should make appointments, or to face the fact that there might be no Eritrean officials.

71. The Minister of Foreign Affairs concluded his statement by expressing the conviction that once the question of the Executive had been settled, it would be relatively easy to reach agreement on the two other powers—the Legislature and the Judiciary.

72. In reply to the Minister for Foreign Affairs, the Commissioner said that as representative of the United Nations he was fully aware that the resolution was unalterable and there was no question of his accepting any change in well-defined formulas resulting from close negotiation. Thus, he had never been in any doubt about the fact that the inhabitants could not call in question any of the provisions of the resolution, or in particular, the federation plan. Indeed, the vast majority of the population had accepted that solution. But he had a distinct impression that their acceptance had been based on the existence of real autonomy, as contemplated in the resolution, and he was far from sure that they would take the same view if that autonomy were limited in any way.

73. The provisions of paragraphs 1 and 2 of the Federal Act were clear. They established an autonomous unit and then enumerated the powers which the Eritrean Government would possess. But those provisions must be considered together with paragraph 12 of the resolution, which provided that the Constitution of Eritrea should be based on democratic principles. Hence the powers of Eritrea must necessarily originate directly or indirectly from the Eritrean people and could not be established by another authority; for otherwise it would be possible to impair Eritrean autonomy, which in his view was an essential element in the federal structure. Autonomy would, in fact, disappear if the central power were exercised through its agents, whether they were called provincial governors, prefects or district chiefs. In that case autonomy would merely be set aside in favour of one of the systems of decentralization found in unitary States.

74. So far as the future régime of Eritrea was concerned, the Commissioner pointed out that the question was not settled by the resolution; paragraphs 1 and 2 of

the Federal Act only provided for the separation of powers. That separation could be safeguarded just as well by a parliamentary régime as by a presidential or directorial one, and it could not be asserted that the resolution made a choice between the three régimes and rejected the parliamentary system.

75. He therefore considered that the choice between the three systems remained open. He was, however, required by the resolution to base the draft Constitution on the principles of the separation of powers and democratic government.

76. With regard to the argument of the Ethiopian Government's international responsibility, the Commissioner considered that the necessary safeguards could be provided without preventive measures amounting to interference in the domestic affairs of Eritrea. When the government of a member of a federation committed abuses in the exercise of its powers, involving the international responsibility of the federation, the Federal State was only justified in taking measures *a posteriori* in order to fulfil its international obligations.

77. The fact that foreign affairs came within the jurisdiction of the Federal Government only meant that it was competent in matters of public law concerning relations between States. With regard to the access of foreign nationals to the civil service, it must be concluded that the Federal Government would have jurisdiction only if the engagement of foreign experts were to be preceded by the negotiation of an international convention. As a general rule, the employment of foreign nationals in administrative posts constituted a private law relationship coming within the domestic jurisdiction of the federal member State concerned.

78. With regard to the fundamental question of relations between the Federal and the Eritrean Executives, the Minister for Foreign Affairs had stressed the necessity of establishing a link between the two. But although it was clear that in a federation there must be continuous relations, and hence effective liaison between the federal executive and the executives of its various members, that did not mean that the federal power could intervene in the appointment of the executives of member States, still less exercise any form of supervision over them. The only exception would be possible intervention by the Federal Government if a member government took any action involving the international responsibility of the Federation.

79. Although the possibility of a violation of the Federal Act by the Eritrean Executive could not be dismissed out of hand, the assumption should be, on the contrary, that both parties would respect the Federal Act. In constitutional law, the maintenance of the law depended, in certain cases, not on the existence and operation of supervision machinery, but on the goodwill of the various organs and agents. The fear of possible abuses did not entitle anyone to diminish an established autonomy by preventive action.

80. The Commissioner concluded his statement by expressing the belief that if the Emperor were represented in Eritrea by a personage with formal powers invested with the authority of the Crown, such representation, by virtue of the high degree of impartiality it guaranteed and the confidence it would inspire by reason of the Emperor's prestige among all the Eritrean people, would be a decisive stabilizing influence in the Federation.

81. During subsequent informal discussions before the Minister for Foreign Affairs left for Addis Ababa, it became clear that there was general agreement on the following points:

(1) Recapitulation in the Constitution of the human rights and fundamental liberties listed in the resolution at paragraph 7 of the Federal Act;

(2) Recapitulation in the Constitution of the nationality and citizenship provisions included in the resolution, and which constitute paragraph 6 of the Federal Act;

(3) Principle of universal suffrage;

(4) Legislature to consist of a unicameral assembly with small membership, elected by majority vote, without power to overthrow the government;

(5) Chief Executive to be elected for a fixed term of office, with normal powers and the right to appoint and dismiss heads of executive departments;

(6) The Emperor to have a representative in Eritrea;

(7) Powers of the administration to extend, *inter alia*, to the following:

(a) Appointment of officials by Executive without distinction as to race or religion, and their subjection to regulations in conformity with the law;

(b) Number and composition of executive departments or services to be established by law;

(8) Principles concerning the organization of the judicature.

82. The Commissioner pointed out that while the Ethiopian Government and himself held very similar views on the above points, important groups of the population were still opposed to the establishment of a unicameral-legislature and to the insertion of a provision in the Constitution recognizing a representative of the Emperor in Eritrea.

83. Further discussion might therefore be necessary, since agreement had not been reached on such questions as the rights and duties of the Emperor's representative in Eritrea, the extent to which the Ethiopian Government would be identified with the Federal Government and the official languages.

84. One further meeting<sup>16</sup> was held between the Ethiopian Vice-Minister for Foreign Affairs and the Commissioner, before the latter left for Geneva to prepare the draft Constitution. Moreover, between the July and October meetings with representatives of the Government of Ethiopia, the Commissioner had carried out his consultations with the inhabitants of Eritrea and he included a section thereon in his Progress Report<sup>17</sup> to the General Assembly for the year 1951.

85. At the meeting on 25 October 1951,<sup>18</sup> the Commissioner stated that he thought it advisable to give the representative of the Ethiopian Government a formal, written statement<sup>19</sup> based on the legal aspects of the resolution, which would serve as a reply to the points raised during his formal and informal consultations with the Ethiopian Government.

86. With regard to the question of the Emperor's representative in Eritrea, the Commissioner recalled that

when the matter had first been raised at the meetings at Addis Ababa in May 1951, he had been surprised at a statement by the Minister for Foreign Affairs to the effect that during the discussion of the resolution in the General Assembly, it was a generally accepted principle that the Emperor would be represented in the Eritrean Government. Nevertheless, he had agreed to consider the matter with an open mind, in the belief that respect for the Emperor as head of the Federation was a vital factor for the implementation of the resolution. For reasons which he gave in great detail he could not, however, agree to the Ethiopian Government's proposal that the representative of the Emperor should be granted powers in the Eritrean Government, e.g., power to nominate the head of the Government or to approve his appointment, power to stay the enactment of laws or to veto laws passed by the Eritrean Assembly, or power to confirm the appointment of judges. Summing up his views on the subject, the Commissioner said that the Imperial Representative in Eritrea, as the agent of the Emperor, would occupy a position of the highest prominence, and be able to perform functions and hold a position which would enhance the respect due to the Emperor as head of the Federation. On the other hand, any intervention in the domestic affairs of Eritrea that impaired the autonomy of the country's democratic government in the slightest degree would be in conflict with the resolution.

87. With regard to the question whether the Government of Ethiopia should be recognized as the Federal Government, the Commissioner said that since the resolution provided that the Constitution and institutions of Ethiopia must be respected, and since it contained many references to the Federal Government, he considered that the organs of the Ethiopian Government dealing with Federal affairs would constitute the Federal Government, in which Eritreans would participate in accordance with paragraph 5 of the resolution.

88. With regard to official languages, the Commissioner observed that in the course of his work he had found that Tigrinya and Arabic were firmly established in the country. While Arabic might not be in everyday use among the Moslems, it had strong religious associations for the Moslem population. Moreover, the consultations of the United Nations Commission and his own Mission had all been carried out in Arabic and Tigrinya. He could not overlook those facts, though he was ready to agree not to include any specific provision on languages in the draft Constitution and to leave the decision to the Eritrean Assembly.

89. In reply to the Commissioner's formal statement of views, the Vice-Minister for Foreign Affairs reserved the right to make any comments he considered necessary.

90. It is true to say that when the Commissioner left for Geneva to prepare the draft Constitution, the only question of substance on which agreement had not been reached with the Government of Ethiopia was that of the status of the Emperor's representative. While the Commissioner had agreed in principle to provide, in the draft Constitution, for a representative of the Emperor in Eritrea with certain official functions, the actual scope of those functions had not been finally determined.

91. Early in December 1951, the acting head of the Ethiopian delegation to the sixth regular session of the General Assembly made it known to the Commissioner

<sup>16</sup> A/AC.44/SR.70.

<sup>17</sup> A/1959.

<sup>18</sup> A/AC.44/SR.70.

<sup>19</sup> A/AC.44/SR.70/Annex.



that his Government would welcome an opportunity for further formal consultations at Geneva with a view to mutual clarification of certain issues. Hence two meetings were held at Geneva on 6 and 7 December 1951.<sup>20</sup>

92. In the first place, the representative of the Ethiopian Government recalled that the Commissioner had stated that the Federal Government had wide functions and powers under the United Nations resolution, that it would not be difficult for that Government to maintain the unity of the Federation and to fulfil its international obligations and that, in consequence, he saw no need to give it powers *lato sensu* in the autonomous unit of Eritrea. The only concern of the Ethiopian Government was for the respect and maintenance of federal jurisdiction and responsibility and the unity of the Federation, and for the fulfilment of its international obligations. It did not wish to be burdened with any additional domestic powers.

93. With regard to the question of what he preferred to term the "Crown" rather than the "Emperor", the representative of the Ethiopian Government suggested that the representative of the Crown in Eritrea should, for instance, make the speech from the throne, propose legislation to the Eritrean Assembly, promulgate laws, carry out investitures including the oath of office, have the power to summon special sessions of the Eritrean Assembly and that his consent be required before any of the human rights proclaimed in the Constitution could be suspended. He also commented on some of the Commissioner's views regarding organs and councils to be established, and raised a number of points concerning the respective jurisdictions of the Federal and Eritrean Governments.

94. At the second meeting at Geneva, during a frank discussion, the divergence of views on functions which could normally be assigned to the representative of the Emperor was considerably narrowed. The Commissioner undertook to examine the points raised with a panel of legal consultants, though he still maintained his view that the Emperor's representative could be granted no powers giving him any share in the functions of the Eritrean Executive and thus impairing the autonomy of Eritrea. He said that he would still agree to the Emperor having a representative in Eritrea without powers, but with certain official functions, though he foresaw grave difficulties when the draft Constitution was submitted to the Eritrean Assembly, since the idea of a representative, even without powers, was strongly opposed.

95. No useful purpose would be served by giving a more detailed account in this report of the many arguments and counter-arguments used on both sides during the consultations with the Ethiopian Government prior to the preparation of the draft Constitution. A full account is available to delegations, in the summary records of the formal meetings and statements annexed to them. The Commissioner, while aware that, in principle, consultations only entail asking for the views of the party consulted, without any obligation to accept them, nevertheless wished to give his consultations with the Ethiopian Government the character of real negotiations. Both the Ethiopian Government and the Commissioner, while maintaining their principles throughout the negotiations, eventually reached an agreement satis-

factory to both parties, thanks to a spirit of compromise, goodwill and mutual understanding, as will be seen from the text of the final agreement<sup>21</sup> reached on the draft Constitution prior to its submission to the representative Assembly.

#### D. CONSULTATION WITH THE INHABITANTS OF ERITREA

##### 1. *Postponement of formal consultations outside Asmara*

96. With a view to preparing the draft Constitution in accordance with the terms of paragraph 12 of resolution 390 A (V), a comprehensive programme of formal consultations with every section of public opinion was drawn up by the Commissioner early in April 1951.

97. He found it necessary to postpone the consultations, however, on account of the banditry and terrorism of the *shifita*.

98. The *shifita* problem was certainly one of those which the Administration had found it most difficult to solve.

99. During recent years, *shifita* activity had progressively increased, in scope and intensity, to such an extent that lives and property in unguarded areas were endangered and the economic life of the country had suffered in consequence. *Shifita* activity had been aimed against Eritreans as well as against foreign nationals.

100. It was hoped that final agreement on the Federation plan would lead to the restoration of more normal conditions. Unfortunately, that expectation was not realized during the first half of 1951.

101. From the time of his arrival in Eritrea, the Commissioner was deeply concerned over this state of affairs. While realizing that under the terms of the United Nations resolution he had no direct responsibility for security in the territory, he nevertheless felt entitled to take cognizance of the situation and to condemn such activities. On his initial visits to various parts of Eritrea, he urged all sections of the population to work together towards a solution of the problem, in a spirit of understanding and co-operation. In that connexion he said that *shifita* terrorism was deplorable for the whole country, and expressed the earnest desire to see security re-established in order that the Federation plan could be carried out, unimpeded by internal strife and bloodshed.

102. On 31 March 1951, the Commissioner addressed a communication to the British Administration. While making it clear that he realized that action to combat organized banditry was the exclusive responsibility of that Administration, he pointed out that renewed *shifita* activity had coincided with the moment when the recommendations of the General Assembly should be implemented in an atmosphere of confidence. Although such activity might for the time being be due to common banditry, the Commissioner feared that during the consultations, or when the Eritrean Assembly was convoked, it could again be politically exploited as it had been in the past. The elections must be preceded by a period of electoral campaigning, during which it was particularly important that the atmosphere of insecurity caused by banditry should be dissipated.

<sup>20</sup> A/AC.44/SR.73 and SR.74.

<sup>21</sup> See chapter II, section 4 B.

103. In order to ensure security, certain sections of the population favoured repressive measures, particularly the execution of sentences already pronounced. Moreover, the Commissioner was aware that the British Administration considered the co-operation of the population to be essential in combating the *shifita*. He himself considered it possible to combine both factors by broadening the terms of the existing amnesty, as he felt that public support would grow more effective as the success of police measures increased. The people were equally convinced that a very liberal amnesty, coinciding with a vigorous policy of repression, could re-establish security in the country.

104. Now the Commissioner's main task was to draft a constitution for Eritrea and to ensure that the country became part of a federation. That mission had a political aspect, and its success might be endangered by the existence and renewal of banditry at that time. While fully aware that his competence did not extend to matters of internal security, he believed it to be his duty to take moral action, and he offered the British Administration, which had to face this serious situation, the support of the United Nations.

105. At a press conference on 4 April 1951, the Commissioner made a statement on the problem of organized banditry, noting its recent intensification after the period of calm following the adoption of the resolution.

106. He recalled that the United Nations Charter constituted a great endeavour to improve the lot of mankind through peace and security. At the moment when the Eritrean people were about to assume responsibility for their own affairs, however, they were a prey to the deadly scourge of banditry. In the name of civilization and the ideals of the Charter, therefore, and with all the moral authority of the United Nations, he condemned the cowardly attacks of the *shifita* against life and property.

107. He also pointed out that insecurity might be an obstacle to the convocation of an Eritrean Assembly by the Administering Authority and that any renewal of terrorism would make it difficult for him to carry out the consultations which he intended to initiate with the inhabitants in the near future. If the United Nations resolution was to be implemented within the prescribed time, the Eritreans, who were to assume self-government, must be initiated into their new tasks during a preparatory period; but how could such training be given in an atmosphere of fear and insecurity?

108. Finally, the problem would complicate the task of the Eritrean Government, if order were not restored before its constitution.

109. After going into the methods by which the evil could be attacked, the Commissioner stressed that the British Administration was aware of the gravity of the problem. He had, however, felt it his duty to make such a statement in order to place the moral authority of the United Nations at the disposal of the Administration which, in its struggle against banditry, already had the support of the Ethiopian Government.

110. In a letter of 16 April 1951, the British Administration asked the Commissioner whether, when he spoke of broadening the terms of the existing amnesty, he had meant that it should include pardons for all crimes committed by bandits, including murder.

111. Replying on the same date, the Commissioner confirmed that by broadening the amnesty he meant pardons for all acts of banditry, including murder, as had been proposed to him by a number of the population.

112. On 1 May 1951, at a further Press conference,<sup>22</sup> the Commissioner made a statement in which he announced the postponement of the consultations outside Asmara.

113. In this statement he recalled his first visits throughout the territory, the sacrifices made by people from remote villages in coming to meet him, their deep desire to be enlightened, their faith in the future of Eritrea and, even more encouraging, their almost unanimous acceptance of the solution chosen by the United Nations. Nevertheless, he could not overlook the fact that these favourable conditions were compromised by the shadow of banditry which lay over Eritrea in defiance of the principles of the Charter and the spirit of the resolution.

114. The Commissioner observed that such illegal activities imperilled the population, gave rise to certain doubts and divided public opinion. Consequently, to his great regret he did not feel in a position to proceed with the plan he had announced and immediately to hold formal consultations with the inhabitants of Eritrea, in accordance with the General Assembly's resolution. He did not believe it advisable, from the psychological point of view, to begin such consultations at a time when a population which desired nothing so much as peace and security was in danger. Moreover, it would not be proper for a United Nations Commissioner to travel over roads along which the victims of the terrorists were falling. It was true that the United Nations flag had sometimes to be flown in the midst of battle, but that was in order to resist aggression and protect human rights. Finally, the Commissioner did not think it right that he should travel the country under the protection of an armed escort while the inhabitants ran the risk of *shifita* attacks when they came to meet him.

115. The Commissioner emphasized that it was not a question of cancelling, but only of postponing the consultations; for the secretariat was carrying on with the preparatory work and it would be possible to consult those of the people who would not run any risk. In conclusion, he expressed the hope that the delay in his work would be only a short one and that the situation would improve sufficiently to allow him to meet the inhabitants in an atmosphere of optimism and security, foreshadowing a happy future for Eritrea.

116. In a letter dated 21 May 1951,<sup>23</sup> the British Administration stated that on his return to Eritrea the Chief Administrator's attention had been drawn to the statement which the Commissioner had made on 1 May 1951. While appreciating that the Commissioner's motive was to make a moral protest against lawlessness, the British Administration feared that it would give a reader, particularly one who was unfamiliar with Eritrea, the impression that the lives and property of the population at large were endangered and that the inhabitants were threatened with violence for political reasons. It was true that banditry had continued, but

<sup>22</sup> A/AC.44/R.13.

<sup>23</sup> A/AC.44/R.19.

it was generally considered to have lost the political complexion formerly attributed to it: political parties which were formerly in bitter opposition had presented an agreed, joint address at the Commissioner's recent meetings at Asmara. The evidence available to the Administration did not lead it to believe that the persons consulted by the Commissioner had been subject to intimidation, or that those whom he might wish to meet would be endangered for political reasons. During the previous three months, two persons had been killed on the main roads; the remaining fatal civilian casualties had occurred in tribal and communal affrays and in acts of armed brigandage which had no political complexion.

117. In a letter to the British Administration, dated 24 May 1951, the Commissioner replied that while he was still concerned at the gravity of the problems of banditry and public security, he had taken note of the optimistic picture drawn by the Administration in its letter of 21 May 1951. He was particularly happy to receive the letter at a time when the United Kingdom Government had just approved a measure which would undoubtedly help to pacify the country, and in the execution of which he was prepared to give all the assistance in his power.

118. On 19 July 1951, the Chief Administrator proclaimed a general amnesty. Under the terms of the proclamation, amnesty was granted to all *shifita* in respect of their past activities as such. No action would be taken by the police or by the courts against those who presented themselves within one month of the date of the proclamation and had not committed any offence after the publication of the general amnesty. They would be required to hand over their arms. The most rigorous action would be taken, however, against *shifita* who did not avail themselves of the amnesty, or who committed offences after the proclamation had received general publicity. If the offer of amnesty were successful in bringing about a cessation of *shifita* activities, a commission would be set up to review the sentences on *shifita* in prison at that time, with a view to extending the benefits of the amnesty to them. Those who took advantage of the amnesty must, in principle, return to their homes and resume their normal peaceful occupations. Nevertheless, temporary assistance was contemplated in certain cases. Provision was made for the customary methods of conciliation and compensation in respect of disputes of feuds arising from *shifita* activity.

119. The proclamation was accompanied by a "Notice to the Public", in which the Chief Administrator referred to the traditional methods of clemency, and the wishes expressed both by the public and by the Emperor of Ethiopia that peace should be restored to Eritrea by those means. He appealed to the people of Eritrea to extend forgiveness to those who took advantage of the amnesty and to co-operate in making the amnesty successful. He asked the population to assist the Administration in preventing further crimes, by refusing to help *shifita* who did not give themselves up, and in capturing those who committed new criminal acts.

120. Simultaneously with the proclamation of a general amnesty on 19 June, the Commissioner published an announcement in which he recalled that in his capacity of United Nations Commissioner in Eritrea he

had always been, and continued to be, deeply concerned over *shifita* activity at a time when, under the auspices of the United Nations, the history of Eritrea was entering on an entirely new phase. The General Assembly's resolution concerning the future of Eritrea was intended to reconcile the wishes of the Eritrean people and to ensure peace and progress in that region of Africa; but before the resolution could be put into effect, it must have the support of all Eritreans.

121. The Commissioner stated that he was in complete agreement with the United Kingdom Government in affirming that all sections of public opinion wished to see peace in Eritrea re-established by traditional methods of clemency and pardon, though these must on no account lead to anarchy or disorder.

122. The whole population should therefore support the Commissioner in his task, by uniting to preserve human life and property. Similarly, the Commissioner believed it his duty to support measures of clemency and pardon intended to restore the peace and tranquillity necessary for implementing the General Assembly's resolution and for laying the foundations of the Eritrean Constitution. To that end, with the moral support of the United Nations and invoking the principles of the Charter, the Commissioner appealed to the *shifita* to take advantage of the general amnesty and become loyal and peaceful citizens, and to the inhabitants of Eritrea to co-operate with the British Administration.

123. In order to implement the section of the General Amnesty Proclamation providing for rigorous action against *shifita* who failed to surrender or who committed offences following the Proclamation announcement, the Chief Administrator, in another proclamation published on 14 June 1951, established special courts to deal with armed bands or persons who sheltered or assisted armed bands. This proclamation prescribed communal responsibility; collective fines could be imposed on a community if there were reason to believe that offences had been committed within the community area. Community bonds could also be demanded in order to secure public order. A number of *shifita*, who subsequently committed offences employing threats of armed force, were tried and convicted under the provisions of the Proclamation.

124. In a letter dated 26 July 1951,<sup>24</sup> the British Administration wrote that before replying to the Commissioner's letter of 24 May 1951,<sup>25</sup> it had wished to be in a position to gauge the effect of the measures taken, and stated that they had met with considerable success. It suggested that the letter of 21 May 1951<sup>25</sup> had drawn no optimistic picture of banditry or of public security. The letter had simply explained that, in the view of the Chief Administrator, the persons consulted in Eritrea by the Commissioner had not been subjected to political intimidation from bandits and that those whom he wished to meet were not in danger of being attacked because they were going to take part in the consultations. The British Administration had felt it necessary to make that explanation because the Commissioner's public statement of 1 May 1951<sup>26</sup> might have given the impression that such political intimidation was rife.

<sup>24</sup> A/AC.44/R.54.

<sup>25</sup> A/AC.44/R.19.

<sup>26</sup> A/AC.44/R.13.

125. The Commissioner, in a letter to the British Administration, dated 1 September 1951, pointed out that in his statement of 1 May 1951<sup>27</sup> he had had no intention of giving the impression that persons travelling to his consultations were in danger for political reasons. He had been mainly concerned over the fact that insecurity in the territory had led to pessimism and fear; consequently, in view of the prevailing atmosphere in Eritrea at that time, he had not thought it an opportune moment to begin consultations.

## 2. *The consultations*

126. As a result of the measures taken by the Administration, the situation improved so much that, at a conference held at Asmara on 29 June 1951, at which prominent personalities and members of the Press were present, the Commissioner announced his intention of beginning his consultations with the inhabitants of Eritrea, with a view to preparing a draft of the Eritrean Constitution. The consultations actually began on 11 July 1951.

### (a) *Documents used in the consultations*

127. It had been necessary to prepare public opinion for the consultations and, to this end, the Commissioner had drafted a document<sup>28</sup> entitled: "Detailed examination of the General Assembly resolution of 2 December 1950, on the future of Eritrea" (resolution 390 A (V)). The document set out briefly the background and nature of the Eritrean question as it had been dealt with by the four Powers and later by the United Nations. An explanation of the meaning of the provisions of the United Nations resolution followed, in which the Commissioner emphasized that the primary objective of the draft Constitution was to be the lawful formation of an Eritrean Government and that it would also define a status for Eritrea, assuring the maximum autonomy attainable.

128. With regard to a representative assembly of Eritreans to be convened for the purpose of considering the adopting of the draft Constitution, the Commissioner considered that it must be truly representative of the people and that, once it had adopted the Constitution, it should act as a continuing legislative body after the transfer of power.

129. Concerning the relationship between the autonomous unit of Eritrea and the Federation, the Commissioner considered that in order to ensure the stability of the Constitution, the prescribed plan must be closely adhered to. For purposes of foreign affairs, Eritrea, under Federation, would become an integral part of a State which had long been internationally recognized. The Eritrean Constitution must in no way impair the international status and identity of the Ethiopian Empire. He outlined the provisions of the resolution that would ensure close political and economic association between Eritrea and Ethiopia, such as the representation of Eritrea in the Imperial Federal Council, the participation of Eritreans in the Federal Government, the single nationality prevailing throughout the Federation, the human rights set out in the Federal Act which would also be included in the Constitution, and the complete economic unity of the Federation.

130. The Commissioner also gave details of the respective jurisdictions of the Federal and the Eritrean

Governments as defined in paragraph 3, section A of the resolution. He concluded that the Constitution must contain all the provisions necessary for the establishment of a viable autonomous unit under the sovereignty of the Ethiopian Crown. It must also be given the necessary stability to enable it to serve the interests of peace and security in East Africa and the wishes and welfare of the inhabitants of Eritrea, as provided in the preamble to the resolution.

131. There followed a tentative outline of the Constitution. The Commissioner explained that certain principles of the Eritrean Constitution were clearly set out in the United Nations resolution and could therefore be considered as unalterable; hence the consultations would relate to other constitutional problems which had not been settled by the resolution.

132. The Commissioner desired to obtain opinions on the following questions:

#### (1) *The Assembly*

Should there be one or two Assemblies?

For what period should the Assembly or Assemblies be elected?

#### (2) *The Executive*

Of what should the Executive consist?

How should it be nominated?

Should it be nominated for a set term of office or should the Assembly be able to dismiss it at any time?

What should be the relations between the Executive and the Assembly?

Should the Emperor of Ethiopia be represented in the Executive and should he take part in constituting the Government?

#### (3) *Electorate*

Should universal suffrage be established?

If so, what form should it take, if the traditions of the territory are to be respected?

Since it seems advisable, in principle, to adopt the system of indirect voting, what would be the best method of putting it into effect, taking into account the movements of the nomadic tribes who form part of the electorate?

#### (4) *General Points*

What should be the official languages of Eritrea?  
Should Eritrea have a special flag?

### (b) *Announcement and commencement of consultations*

133. A summary of the document<sup>29</sup> was presented by the Commissioner on 29 June 1951. He subsequently made certain amendments to the original text and, after being translated into Tigrinya and Arabic and printed as a bilingual pamphlet, it was widely distributed among representatives of the population, not only at Asmara but in the various divisions of the territory, through the good offices of the British Administration.

### (c) *Methods used in consulting the inhabitants*

134. The system adopted was to hold meetings with each group of public opinion at Headquarters in Asmara, alternating with meetings in the divisions to hear the people. First of all, invitations to meetings on specific dates were sent to all the political parties, the religious leaders and the heads of foreign communities. A note was published, inviting all economic, cultural

<sup>27</sup> *Ibid.*

<sup>28</sup> A/AC.44/L.6.

<sup>29</sup> A/AC.44/L.4.

and professional organizations wishing to state their views to apply for a hearing. Secondly, the inhabitants were notified of the dates and places of the hearings in each division, through Press announcements and notifications to the senior divisional officers, who then instructed the district and tribal chiefs to notify the people and to see that representatives were freely elected.

135. With a view to ensuring some degree of order at the meetings and to making the consultations effective and profitable, the Commissioner evolved a uniform scheme which he followed throughout the consultations. He opened each meeting with an explanation of the United Nations resolution, emphasizing its essential points. He then asked those representatives who had already submitted, or wished to submit, a written statement, to present it formally, thus giving him an opportunity to comment on the contents. He thought it necessary on each occasion to stress that the purpose of the consultation was to obtain opinions on those aspects of the Constitution which had been the subject of questions in his basic document. He reserved the right to comment and to make any necessary explanations. All opinions would be recorded and given careful consideration when assessing majority opinion on each aspect of the Constitution.

136. As the consultations reached their peak, the Commissioner was, on several occasions, requested by local leaders to hold separate meetings for the opposing factions of the population; but although he once consented under pressure, he subsequently made successful efforts to bring all sections of the population together, feeling that this was necessary in order to prevent the division of people who were to share autonomy, and to encourage them, on the contrary, to work together and hear different views with tolerance.

137. The Commissioner pointed out to the British Administration that in order to prevent the inhabitants from claiming later that they had been influenced in their views or unable to express themselves freely on account of the presence of officials of the British Administration, it would be well to hold large open assemblies in the different divisions without local officials or Eritrean police, except when he considered it necessary for them to be present. The British Administration, at all times willing to assist the Commissioner, gave instructions that no officials other than Eritrean administrative assistants should be present. It can therefore be claimed that the meetings provided a means of truly democratic expression of the people's will.

138. The representatives were nominated according to the traditional system of the country and while it was sometimes alleged that their appointment was not valid, the mass of the people were satisfied that they had been heard through their duly appointed representatives. Moreover, the Commissioner was always willing to hear private persons or notables who had particular views to add to the general statements.

#### (i) *Political parties*

139. All the officially registered political parties, numbering fifteen, were invited to consultations. The Eritrean Democratic Front (the former Independence Bloc), composed of the Moslem League of Eritrea, the Liberal Progressive Party, the New Eritrea Party, the Independent Party, the Italo-Eritrean Association

and the War Veterans Association, expressed the wish to be heard as a single political group, however. Thus consultations with the Democratic Front were carried out at two meetings, the Moslem League being heard at one and the remaining five parties at the other. All the other political parties accepted the invitation except the Unionist Party, which suggested to the Commissioner, through its secretary-general, both orally and in writing, that its members be heard in the various districts. Always willing to listen to representatives of the people, the Commissioner held consultations with the other political parties at Asmara, but agreed to hear the members of the Unionist Party during his consultations in the divisions. He also announced that if the Unionist Party wished to make any additional comments, either orally or in writing, on the conclusion of the consultations he would give the Party itself every opportunity to state its views.

140. Meetings with the political parties<sup>30</sup> took place between 11 and 20 July 1951. In each case, a written memorandum<sup>31</sup> was submitted by the parties which, together with the summary<sup>32</sup> of the Commissioner's basic document, served as a basis for the consultations.

#### (ii) *Religious leaders*

141. Meetings with the leaders of the religious communities took place between 30 July and 3 August 1951; the only leader who did not accept the invitation for an oral consultation was the acting head of the Coptic Church.

142. Most of the religious leaders submitted written statements<sup>33</sup> which served as a basis for the consultations.<sup>34</sup>

#### (iii) *Foreign communities*

143. As previously stated, the officially registered foreign communities were invited to consultations with the Commissioner. The Italian (*Casa degli Italiani*), Jewish, Arab and Indian communities accepted the invitation, in some cases submitting written statements<sup>35</sup> which served as the basis of the oral consultations.<sup>36</sup> The Greek and Sudanese communities submitted written statements only. Most of these communities answered the specific questions asked by the Commissioner in his basic document.<sup>37</sup> Their views are given in the analysis which follows, except for those of the Sudanese community which stated in its written reply that it did not wish to express any views on the Constitution, since its own statutes forbade any expression of political opinion. It confined itself to stating that it would conform to any rules and regulations enacted by the Government and trusted that the rights and interests of the various communities would be protected by special provisions.

#### (iv) *Economic, cultural and professional organizations*

144. In view of the multiplicity of economic, cultural and professional organizations and their limited interest in the Constitution, the Commissioner decided not to send them individual invitations. Instead, he issued

<sup>30</sup> A/AC.44/SR.6-12, SR.13 (also SR.56), SR.14, SR.15.

<sup>31</sup> A/AC.44/R.20-29, R.26/Rev.1 and R.51.

<sup>32</sup> A/AC.44/L.4.

<sup>33</sup> A/AC.44/R.30, R.32, R.33, R.35, R.42.

<sup>34</sup> A/AC.44/SR.19-26.

<sup>35</sup> A/AC.44/R.38, R.40, R.41 and R.44.

<sup>36</sup> A/AC.44/SR.34-38.

<sup>37</sup> A/AC.44/L.4.

a Press release, on 1 July 1951, inviting organizations which wished to submit their views to apply for a hearing.

145. A number of organizations applied to be heard, the most important being the Eritrean Chamber of Commerce. The majority submitted written statements<sup>38</sup> which served as a basis for the consultations.<sup>39</sup> All the organizations, the Eritrean Employees Association (British Administration, Eritrea) and the Asmara University Circle, gave written replies to the questions raised by the Commissioner in his basic document and, during the oral consultations, departed very little from constitutional questions.

146. The majority of the organizations heard had a small membership, generally made up of young people whose main aim was to improve the standard of education and culture in Eritrea. The Eritrean Chamber of Commerce was the only organization of a different character which applied for a hearing, and in view of the importance of its activities, the Commissioner gave most careful consideration to its opinions.

(d) *Questions asked at the consultations*

(1) *The Assembly*

(a) Should there be one or two Assemblies?

(i) Views of the political parties

147. The political parties were divided into two groups on the question of the number of Assemblies. The Eritrean Democratic Front asked for two Assemblies: a senate and a house of representatives. The Moslem League of the Western Province also asked for two Assemblies—because there were two large racial groups—but it had subscribed to a joint memorandum presented by the Independent Moslem League and the National Party, proposing that there should be two separate administrations—one for Moslem and one for Christian regions, with safeguards for the rights of the religious minority in each case. The Commissioner informed these parties that he could not consider the memorandum, as it appeared to be contrary to the spirit of the resolution. Apart from this memorandum the Independent Moslem League and the National Party asked for one Assembly, basing their request on financial grounds. The Intellectual Party asked for two chambers—a senate and a house of representatives—since it felt that an upper chamber would exercise some control over draft legislation passed by the lower chamber. The Voce Federale Eritrea Party also asked for an upper and lower chamber. Apart from the Independent Moslem League and the National Party, those in favour of one Assembly were the Liberal Unionist Party, which thought that one would suffice for the time being, and the Independent Party—Eritrea united with Ethiopia. Finally, the Unionist Party, in accordance with its reply to the Commissioner's invitation, presented a memorandum dated 11 October 1951, in which it set out its views on the questions raised by the Commissioner. It also favoured a single Assembly.

(ii) - Views of the religious leaders

148. The acting head of the Coptic Church, in his memorandum, stated his preference for a single Assembly, whereas the Grand Mufti of Eritrea considered that there should be two. The other religious leaders consulted expressed no opinion on the question.

<sup>38</sup> A/AC.44/R.43-50 and R.52.

<sup>39</sup> A/AC.44/SR.40, SR.50-55, SR.63 and 67.

(iii) Views of the foreign communities

149. The Jewish and Indian communities thought that one Assembly would be sufficient, while the Arab and Greek communities asked for two Assemblies: a senate and a house of representatives. The Greek community observed that two chambers would ensure easier and more faithful application of the Constitution. The other foreign communities submitted no comments on the subject.

(iv) Views of the economic, cultural and professional Organizations

150. Few of the organizations which applied for hearings expressed any opinion on the number of Assemblies, but the majority of those that did so, thought it better to set up only one Assembly.

(b) For what period should the Assembly or Assemblies be elected?

(i) Views of the political parties

151. Different views were expressed with regard to term of office. The Eritrean Democratic Front proposed a term of two years, as did also the Moslem League of the Western Province, the Independent Moslem League, the National Party and the Independent Party. The Unionist Party proposed a term of two or three years, while the Liberal Unionist Party suggested five years and the Voce Federale Eritrea Party three years.

(ii) Views of the religious leaders

152. The acting head of the Coptic Church considered that a two-year term was preferable, while the Grand Mufti of Eritrea replied that the house of representatives should be appointed for a fixed term of four years and the senate for a fixed term of six years.

(iii) Views of the foreign communities

153. Only the Jewish and the Greek communities gave any reply on the question of the term of office, the former suggesting two years and the latter four years.

(iv) Views of the economic, cultural and professional organizations

154. Few of these organizations expressed any opinion on the term of office: one of them suggested two years and another five years.

(2) *The Executive*

Of what should the Executive consist?

How should it be nominated?

Should it be nominated for a set term of office or should the Assembly be able to dismiss it at any time?

What should be the relations between the Executive and the Assembly?

(i) Views of the political parties

155. The Eritrean Democratic Front considered that the chief of the Executive should be nominated jointly by the Assemblies. He should choose his ministers, taking into consideration the existence of Moslem and the Christian groups in the population, and should be required to submit his programme and the names of the ministers to the Assembly for approval. The Executive should remain in office, in principle, for the same period as the Assemblies, and in no case longer; it would, however, resign if defeated on a vote of no confidence by the Assemblies.

156. The Unionist Party proposed that the head of the autonomous unit of Eritrea should be chosen by

the Assembly, that his appointment should be subject to the Emperor's approval, and that he, in turn, should appoint the heads of the various administrative departments. This party also suggested that the Executive should not be subject to dismissal by the Assembly during its period of office and that a special term of two or three years should accordingly be prescribed for the Executive. Relations between the Executive and the Assembly should be close and effective, the Executive having the right to initiate legislation.

(ii) Views of the religious leaders

157. The acting head of the Coptic Church considered that the Assembly should appoint the Executive and that legislation drafted by the Executive should be subject to approval by the Assembly. The Grand Mufti proposed that the Executive should consist of twelve ministers, including the Chief Executive, and that it should be elected by both chambers for a period of about five years. It should be subordinate to the Assembly. None of the other religious leaders replied to the question.

(iii) Views of the foreign communities

158. The Jewish community considered that the Executive should be elected for five years and that the Assembly should have the power to demand its resignation. The Arab community suggested that the Executive should be composed of five members, not including the head of the Government. They should be appointed by the head of the Government, who would himself be appointed by Parliament. His term of office would depend on Parliament. The Indian community thought that the Chief Executive should be elected by the Assembly and that his appointment should be confirmed by the Emperor. Members of the Executive should be appointed by the Chief Executive from among members of the Assembly. The Greek community stated that the Prime Minister should be elected unanimously by both chambers. He should nominate his own ministers, and the Executive should remain in office for the same term as the Assemblies; the latter should, however, have the power to dissolve before that term had expired. The Executive would submit draft legislation and give effect to laws after their adoption by the Assemblies.

(iii) Views of the economic, cultural and professional organizations

159. Only three organizations expressed views concerning the Executive. The Cultural Association of Asmara, considered that the Emperor should approve the nomination of the Chief Executive. The Eritrean Lawyers of Asmara, stated that the Executive should be under the direction of the Assembly and that the appointment of the Chief Executive should be subject to approval by the Emperor. The Chief Executive should choose the members of the Executive. The Executive should have no fixed term of office, but merely require the confidence of the Assembly. The Eritrean Teachers' Cultural Association of Asmara, suggested that the same as that of the Assembly, i.e., two years. The Chief Executive should nominate his ministers.

(3) *The Representative of the Emperor*

Should the Emperor of Ethiopia be represented in the Executive and should he take part in constituting the government?

(i) Views of the political parties

160. Several political parties, including the Democratic Front, the Moslem League of the Western Province, the Independent Moslem League and the National Party, were opposed to the Emperor being represented in the Executive or even having a representative in Eritrea; some of them argued that the United Nations resolution contained no such provision or that it would not be in conformity with the spirit of the resolution. The Liberal Unionist Party took a mid-way position, having no objection to a representative of the Emperor provided that he was merely an observer without powers, while the Independent Party considered that the Emperor should have a representative in the Executive, who would act in an advisory capacity. The Unionist Party stated, in its written memorandum, that it considered that the question had been asked in the spirit of the resolution and that, in the same spirit, the answer could be only in the affirmative; it added that the stronger the federal link between Eritrea and the Ethiopian Government and people, and the closer the political and economic association of the two countries, the better. The Unionist Party did not say what the status or functions of the Emperor's representative should be, but in consultations with the people in the divisions and at Asmara, members of the Party or its supporters generally asked that he be given certain powers, their proposals ranging from extensive to more formal functions.

(ii) Views of the religious leaders

161. There was a distinct divergence of opinion between the acting head of the Coptic Church and the Grand Mufti, the former considering that the representative of the Emperor should be given powers commensurate with his capacity, in order to administer the country, whereas the Grand Mufti saw no reason for intervention in the internal affairs of Eritrea by the representative of the Emperor. During the consultation, the Mufti opposed the insertion in the Constitution of a provision establishing a representative of the Emperor. The other religious leaders expressed no views on the subject.

(iii) Views of the foreign communities

162. Three of the foreign communities gave an affirmative reply to the question. The Jewish community considered that there should be a representative of the Emperor, who would take part in constituting the government. The Arab community felt that the Eritrean Government should deal directly with the Emperor, but that if he wished to have a representative in Eritrea, the latter must possess full powers to act on his behalf. The Greek community thought that the Emperor should have a representative in the Executive.

(iv) Views of the economic, cultural and professional organizations

163. The answers from these bodies, which were mostly Asmara organizations, generally favoured a representative of the Emperor, but did not define his powers.

(4) *The Electorate*

Should universal suffrage be established?

If so, what form should it take, if the traditions of the territory are to be respected?

Since it seems advisable, in principle, to adopt the system of indirect voting, what would be the best

method of putting it into effect, taking into account the movements of the nomadic tribes which form part of the electorate?

164. It is fair to say that the great majority of the inhabitants were agreed on the question of elections, believing that the best electoral system for the country, at least for the time being, was the indirect one, based on the customs and traditions of the country. In elaborating its views, the Eritrean Democratic Front submitted a plan comprising different systems for the highland plateau and the lowlands, and asked for proportional representation of the Moslem minorities on the plateau and the Christian minorities in the lowlands. It also considered that autonomous areas and urban centres such as Asmara, Massawa and Keren, should have direct elections. In two isolated cases, there were requests that the voting age should be fixed at 19 years and the age of eligibility for election at 35 years. The Eritrean Chamber of Commerce urged that the economic activities of Eritrea should be represented in the Assemblies.

(5) *General points*

(a) What should be the official languages of Eritrea?

165. At the outset, the main Moslem political parties asked for Arabic and Tigrinya as the official languages, while the Christian parties with Unionist sympathies favoured Tigrinya only, claiming that Arabic was a language used only for religious purposes and foreign to the territory. Individual views were also expressed, including a suggestion that Tigrinya and Tigre should be adopted. One foreign community favoured English as a second language, after Tigrinya; another considered that, in addition to the local official languages, a European language should also be officially adopted in the interests of the minorities.

166. The Italian community and the Eritrean Chamber of Commerce both urged that a European language should be officially adopted in addition to the local languages, and that it should be Italian, which was widely used in the territory. The Asmara University Circle was very anxious, for technical reasons, that Italian should be used for teaching in the public schools.

167. Owing to the position taken by the majority of Christians regarding the Arabic language, there was a marked hardening in the attitude of the Moslems. Though they had at first proposed Arabic and Tigrinya as the official languages, they subsequently rejected Tigrinya.

168. The Unionist Party, however, left the way open for conciliation, stating in its written memorandum that "Facts and common sense suggest that one language should be the official language for Eritrea. The question of language should not contribute to divide rather than unite the Eritrean people, and the Unionist Party most sincerely hopes that common ground agreeable to all parties concerned will be arrived at". It also declared that it would leave the question of language to be settled by the Assembly.

(b) Should Eritrea have a special flag?

169. There was a similar cleavage of opinion on the subject of the flag. The Eritrean Democratic Front asked not only for a distinctive flag for Eritrea, but also for a separate flag for the Federation. The Moslem League of the Western Province, the Independent

Moslem League and other parties recognized that the Federal flag should be that of Ethiopia, but claimed that Eritrea should have a flag of her own. On the other hand, the Unionist Party, the acting head of the Coptic Church and a number of their supporters opposed the creation of a separate Eritrean flag, which they considered contrary to the spirit of Federation. In their view, Eritrea should be placed under the Ethiopian flag. Opinion was similarly divided in the consultations throughout the territory.

(e) *Consultations with the people in the various regions of the territory*

170. The Commissioner does not think it necessary to give a detailed account of the consultations which he held with the representatives of the people in different parts of the five divisions of Eritrea and at Asmara, since, in general, they reflected the views of the political parties. The Commissioner had hoped to separate the views of the political parties from those of the population by hearing the former at Asmara and the latter during his journeys through the territory; but it became increasingly clear, during the hearings in the different divisions, that the views of the two main political groups — the Unionist Party and the Eritrean Democratic Front — more or less dominated the discussions. It should be observed, however, that the meetings in the Western Province and the Red Sea Division were exceptions. The Moslem League of the Western Province in the former, and the Independent Moslem League in the latter, expressed rather different views. It should be noted that the majority of the people's representatives presented the Commissioner, at the meetings, with written statements of the views of the different political parties.

171. *On the plateau*, which is a predominantly Christian area, the majority favoured one Assembly, freely elected by the population for a term of two years; they wished the Eritrean flag to be that of Ethiopia, and the official language to be Tigrinya. Various views were expressed with regard to the Executive; the majority considered that the chief of that branch should be elected by the Assembly, but a few, on the contrary, wished him to be either appointed, or approved by the Emperor. Generally speaking, the representatives were in favour of representation of the Emperor in Eritrea; some wished the representative to have extensive powers, while others wished him to be merely an observer or adviser. A few Moslems supported these views.

172. Most of the Moslem minority on the plateau, together with a few Christians, asked for two Assemblies — a house of representatives and a senate — to serve for terms of two years and five years respectively, and both to be freely elected by the people. They considered that the head of the Government should be elected by the Assembly for a term of two years, and that he should in turn appoint the heads of the various ministries. The Moslem majority asked for Arabic and Tigrinya as the official languages, wished Eritrea to have a flag distinct from that of Ethiopia and opposed any intervention by the Emperor in the internal affairs of Eritrea, stating that his representation in Eritrea would be a violation of Eritrean autonomy.

173. *In the lowlands*—Western Province and Red Sea Division—which are predominantly Moslem areas, the majority were of the opposite opinion, being in favour



of two Assemblies, though a few Christians supported the single Assembly.

174. In the Western Province, the Moslem League of the Western Province and the Moslem League in Eritrea held similar views; they asked for two Assemblies, no intervention by the Emperor, a separate flag for Eritrea, and Arabic as the official language. At Keren, however, where there are large Christian settlements, a number of people shared the Unionist Party's views.

175. In the Red Sea Division, including Assab, the followers of the Independent Moslem League took a middle course between the extreme views of the Unionist Party and the Democratic Front. Though they asked, through their representatives, for a separate flag for Eritrea, and Arabic as the official language (in a few instances, Arabic and Tigrinya), and opposed representation of the Emperor in Eritrea since it was not prescribed in the resolution, they declared themselves in favour of a single Assembly. The Moslem League in Eritrea was also heard at all the meetings in the Red Sea Division, with the exception of those at Assab. The Unionist Party presented views on behalf of the minority, composed mainly of Christians who have come from the plateau to work in Massawa, and a few Moslems.

176. It should perhaps be added that at several of the meetings in various parts of the territory there were individual expressions of anti-foreign sentiment. Some people expressed the wish that the United Nations should guarantee the Constitution, or that there should be United Nations observers in Eritrea to see that the country's autonomy was respected.

177. The Commissioner agreed to hear the representatives of the *two Wards of Asmara* at two meetings<sup>40</sup> held at the Palace on 8 October 1951. These meetings were on almost exactly the same lines as those held in the divisions, though it became apparent that the Moslem and Christian views had hardened, perhaps because the Asmara hearings were to end the consultations. A member of the Moslem League sharply criticized certain parts of the Commissioner's interpretation of the United Nations resolution.<sup>41</sup> The Christian elements were most firmly opposed to recognition of Arabic as an official language. They also claimed very wide powers for the Emperor, even suggesting that he should appoint the members of the Executive. Generally speaking, these two meetings, which ended the consultations, were also their climax and brought out the deep cleavage between the two main political parties, each of which sought to interpret the United Nations resolution to its own advantage, as implying either independence or union with Ethiopia.

178. If the value of the consultations with the inhabitants is to be fairly assessed, it is important to note that there were certain major obstacles. It was not easy to translate or interpret into the local languages such concepts as "federation", "autonomy" and "sovereignty", so the Commissioner tried to overcome these difficulties whenever he could by defining the expressions in practical terms.

179. Furthermore, although the Commissioner merely outlined, as examples, certain questions on aspects of

the Constitution on which he would call for opinions, very few of the organs or representatives of the people consulted departed from the questions asked. Almost without exception, the views submitted to the Commissioner concerned the Assembly, the Executive, the electorate, the representative of the Emperor, the official languages and the flag, the last three questions being the most controversial. In other words, those consulted showed a very definite tendency to concentrate on the points raised by the Commissioner.

### **Section 3. Main points dealt with by the Commissioner in public statements made in Eritrea (January—October 1951)<sup>42</sup>**

180. Being accustomed to receiving commissions of inquiry instructed to ascertain the wishes of the population and note all suggestions objectively, the Eritreans at first sometimes misunderstood the nature of the new United Nations mission, believing that the Commissioner had also come to question them on their wishes for the future of their country.

181. This was a dangerous attitude of mind, for experience had shown that owing to the diversity of races and religions in Eritrea there was a danger that political differences might divide the people into rival groups.

182. The Commissioner therefore took care to explain clearly that since the United Nations had adopted resolution 390 A(V), all that really remained to be done was to put it into effect as quickly as possible.

183. Thus, and only thus, on the basis of a compromise resulting from long and difficult negotiations, could all the parties reach agreement.

184. The Commissioner therefore invited the population to give him its confidence and co-operation, so that the final decision of the United Nations might be equitably interpreted.

185. It was true that the resolution adopted by the General Assembly, being relatively short, was only a general plan, and the reason for holding consultations was, precisely, to help the Commissioner in deciding certain points. The proposals submitted would, however, be taken into account only in so far as they appeared to be in keeping with the general spirit of the plan.

186. Among the guiding principles of the resolution of 2 December 1950, the Commissioner did not hesitate to place in the forefront the unity of the Eritrean people, which, gradually prevailing over the diversity of traditions, religions and customs, would enable all Eritreans to dwell, so to speak, in one and the same house.

187. The Commissioner accordingly condemned and firmly rejected a plan<sup>43</sup> submitted by certain political parties, which, in spite of its technical qualities, would have made for division and "cantonization" of the country.

188. It is only fair to add that, in spite of isolated incidents, the peaceful coexistence of different religions is a time-honoured tradition in Eritrea and that the great majority of Eritreans were themselves convinced that Christians and Moslems could collaborate, as already suggested by the peaceful atmosphere of the impressive meetings held at Asmara.

<sup>40</sup> A/AC.44/SR.68 and SR.69.

<sup>41</sup> A/AC.44/L.6.

<sup>42</sup> A/AC.44/R.55.

<sup>43</sup> See paragraph 147 above.

189. On the other hand, whenever the Commissioner met with isolated instances of ill will against any section of the population, if there was anti-foreign feeling, he did not fail to reply that all discrimination, hostile feeling or reaction against the foreign communities, whether European or Asian, might be a bar to progress in a country of relatively small economic, technical and educational development. Might not the advice and co-operation of certain foreigners, particularly those already living in Eritrea, such as the English and the Italians, possibly be useful later on? As he spoke, the Commissioner often had before him the remarkable achievements of the concessionaires or had himself been making use of the communications network built by the Italians. In drawing the attention of his hearers to these characteristic features of Eritrean life, the Commissioner was not only thinking of promoting good relations among the inhabitants; he also had in mind the General Assembly's concern to ensure "the continuing collaboration of the foreign communities in the economic development of Eritrea".

190. On the other hand, since the foreign communities needed only a peaceful atmosphere in which to go about their business, it was in their interests and, as the Commissioner stressed on many occasions, it was also

their duty, to spare no effort to make the unity of the Eritrean people as complete and firm as possible.

191. Finally, going beyond the narrow limits of Eritrean autonomy, the Commissioner encouraged the whole population to regard the Ethiopians as their brothers, as suggested by the Ethiopian representative at the fifth regular session of the General Assembly.

192. In reply to certain isolated expressions of anxiety concerning the possible domination of one partner in the Federation by the other, the Commissioner protested against such misgivings, pointing out that they were incompatible with goodwill, mutual confidence and good faith, which formed the very soul of the Federation without which it might be endangered.

193. It was therefore in a spirit of deep respect for the Emperor of Ethiopia, Sovereign of the Federation, and for the principle of Eritrean autonomy, that the Commissioner invited the numerous audiences which gathered to hear the representative of the United Nations, to look to the future with that optimism which now seemed justified by the return of security and the acceptance of autonomy within the Federation by all the population.

## Chapter II

### DRAFTING OF THE CONSTITUTION

#### **Section 1. Preliminary discussions at Geneva with the First Panel of Legal Consultants. Statement of general principles by the Panel (23 November - 20 December 1951)**

194. Although the Commissioner and the Government of Ethiopia had reached agreement on most of the questions<sup>44</sup> before them, there was one important substantive problem upon which their views still differed. Referring to paragraphs 1 and 2 of the resolution, and relying on the fact that the resolution described Eritrea as an autonomous unit and not as a State, the Government of Ethiopia maintained that the Emperor was to exercise certain powers in Eritrea. The Federation was indeed established under the sovereignty of the Ethiopian crown. The Government of Ethiopia later assumed certain international obligations in respect of Eritrea and was further under an obligation to preserve the integrity of the Federation. That would only be possible if the Federal Government were in a position to exercise some measure of control over the Eritrean Government.

The Commissioner disputed that interpretation. He pointed out that paragraphs 1 and 2 of the resolution provided for the establishment of an Eritrean Government possessing legislative, executive and judicial powers, which accordingly was to be entirely separate from the Federal Government. Furthermore, paragraph 12 of the resolution stated that the Constitution of Eritrea was to be based on the principles of democratic government, which meant that its authority should emanate from the Eritrean people.

195. The Commissioner thought, however, that before taking a decision he ought to obtain the opinion of qualified and impartial experts. He therefore asked the Secretary-General of the United Nations to appoint a Panel of Legal Consultants whose opinion he could take on the points still at issue between the Government of Ethiopia and himself. On 7 November 1951 the Commissioner left Asmara for Geneva where, assisted by his Legal Adviser, he held preliminary discussions with a Panel of three Legal Consultants chosen for their experience in constitutional and international law.

196. When the Panel first met, on 23 November 1951, to draw up its programme of work, it was agreed that it should first give the Commissioner an opinion on the different and controversial interpretations of the United Nations resolution which he had encountered in carrying out his mandate. But the Panel decided that before taking a position on the legal problems directly facing the Commissioner, it must examine the questions of international law raised by the United Nations resolution, which was closely connected with the questions of constitutional law.

197. Round table discussions were held, with the Commissioner present, and by 25 December 1951 the Panel had reached full agreement. Its views, which in many ways confirmed the correctness of the Commissioner's interpretation of his terms of reference, are summarized in the paragraphs which follow.

198. The first question considered by the Panel was whether the resolution of the United Nations General Assembly created legal obligations for the Members of the United Nations and, in particular, for the States concerned. The following are among the conclusions reached by the Panel:

(1.) The General Assembly's recommendation is binding upon the four Great Powers which are parties to the Treaty of Peace with Italy, since in that Treaty they agreed to accept the recommendation;

(2.) The Governments which voted for the resolution had a political and moral duty to comply with it; if they failed to comply, they would be going back on their decision and jeopardizing the conduct of international affairs. Yet they are not legally bound by the mere fact of their vote, since for the Members of the United Nations as such, the General Assembly's resolution only formulates a recommendation;

(3.) If Ethiopia refused to ratify the Federal Act or the Constitution adopted by the Eritrean Assembly, the whole question of the disposal of Eritrea would have to come before the General Assembly again. Hence the importance of the duty, previously mentioned in paragraph 20 (1)b of this report, of consulting the Government of Ethiopia when preparing the draft Constitution.

199. The Panel then endeavoured to define the duties of the Commissioner under the resolution.

200. The Panel considered the question of the force to be attributed to the preamble to the resolution. It found that the preamble contained both (a) statements of principle which could be referred to in determining the sense and scope of the resolution and (b) formal rules having the same force as the provisions in the body of the resolution, although they were not reproduced or amplified therein. These formal rules are set out and discussed in chapter II, section 4 B of this report, which explains how they have been introduced into the Constitution.

201. With regard to the application of the General Assembly's resolution after the entry into force of the Federal Act and the Constitution of Eritrea, the Panel expressed the following view: It is true that once the Federal Act and the Eritrean Constitution have come into force the mission entrusted to the General Assembly under the Peace Treaty with Italy will have been fulfilled and the future of Eritrea must be regarded as settled; but it does not follow that the United Nations will no longer have any right to deal with the question

<sup>44</sup> See above paragraphs 81, 82 and 85 to 90 inclusive.

of Eritrea. The Federal Act and the Eritrean Constitution will still be based on the resolution of the United Nations and that international instrument will retain its full force. That being so, if it were necessary either to amend or to interpret the Federal Act, only the General Assembly, as the author of that instrument, would be competent to take a decision. Similarly, if the Federal Act were violated, the General Assembly could be seized of the matter.

202. The question of the identity of the Empire of Ethiopia in relation to the establishment of a Federal Government was examined, and the Panel's opinion was that at the international level the Federation would not create any new legal entity replacing Ethiopia or existing in conjunction with Ethiopia.

203. The Panel studied the provisions of the Federal Act concerning the Federal Government and agreed that the legal interpretation of the "sovereignty" of the Ethiopian Crown must not entail any change in the respective jurisdictions of the Federation and of Eritrea as laid down in paragraphs 2 and 3 of the resolution.

204. The term "sovereignty", while affirming the formal unity of the Federation, also means that acts by the Federal Government can be performed in the name of the Emperor. It does not prejudice the scope of the Emperor's powers in federal matters, which will be fixed by federal law in conformity with the Federal Act. The Federal Government will clearly be able to maintain Federal services in Eritrea.

205. The Panel considered that the provision in paragraph 3 of the resolution according to which "the Federal Government shall have the power to maintain the integrity of the Federation" did not mean that respect for the respective jurisdictions of the Federation and of Eritrea was a question to be decided by the Federal Government alone; for if it were interpreted as having that meaning there would no longer be a true federation. The Panel admitted that respect for the jurisdiction of both parties could only be effectively ensured by the establishment of a federal court independent of both the Federal and the Eritrean Governments and competent to settle disputes between them. Members agreed, however, that the provision would enable the Federal Government to take the necessary measures to maintain the integrity of the Federation in case of any situation in Eritrea involving disorder, revolution or secession. Nevertheless, such intervention would only be justified if the Eritrean Government were unable or unwilling to deal with any such situation.

206. On examining the provisions of the Federal Act concerning human rights and fundamental liberties, the Panel found that since, under paragraph 12 of the resolution, the Commissioner is bound to include the provisions of paragraph 7 in the Constitution, the rules stated in that paragraph would have double force: they would be part not only of the constitutional law of the Federation but also of the constitutional law of Eritrea. It was considered, moreover, that since these rules are included in the Federal Act, it would not be possible to change them merely by amending the Constitution. They could be changed by constitutional amendment only if the Federal Act were amended first.

207. With regard to the human rights enumerated in paragraph 7 of the Federal Act, the Panel had no doubt that the list was not restrictive and that the

Commissioner could formulate, in the draft Constitution, human rights other than those prescribed in the General Assembly's resolution.

208. The question whether the Constitution could include provisions safeguarding the institutions, traditions, religions and languages of the inhabitants of Eritrea was considered.

209. It was observed that although such safeguards did not come within the scope of human rights, the two ideas were closely related. Since it had already been agreed that certain provisions in the preamble, including that concerning safeguards for institutions, traditions, religions and languages, must be regarded as having the same force as the recommendations contained in the body of the resolution, the Panel considered that this provision could only be implemented if the various sections of the Eritrean population were granted special rights. This system would differ from a régime for the protection of minorities, however, in having a wider scope, since it would be established for the benefit of all sections of the Eritrean population.

210. A special study was also made of the basic principles of the Constitution of Eritrea, namely, Eritrean autonomy and democracy. As regards democratic principles in particular, the resolution provides that the Constitution shall be based on these principles, but does not define them. Nor did any discussion on the subject arise during the preparatory work. It is universally recognized, however, that democracy is based on two foundations: respect for human rights and fundamental liberties and government of the people by the people.

211. Finally, the Panel took the view that if the Eritrean Government wished to obtain technical assistance in matters placed under Eritrean jurisdiction by the Federal Act, it must apply to the Federal Government, which would forward the application to the United Nations or to the specialized agencies.

## **Section 2. Communication to the Government of Ethiopia of the general principles stated by the First Panel of Legal Consultants**

212. In January 1952 the Commissioner, pursuing his cordial relations with the Government of Ethiopia, communicated the report of the Panel to that country's delegation to the sixth regular session of the General Assembly, for the information of the Ethiopian Government, explaining that the purpose of the report was to assist him in drafting the Constitution.

213. In March 1952, the Ethiopian Minister for Foreign Affairs sent to the Commissioner at Asmara a memorandum on the subject, the gist of which is as follows:

214. In commenting on the report of the Panel of Legal Consultants, the Minister for Foreign Affairs remarked that inasmuch as the report had been made on a consultative basis for the sole personal use of the United Nations Commissioner, the Ethiopian Government, whilst in disagreement on many aspects of the report, would make its views known in regard thereto without formulating express reservations. If, however, any official status or publicity were to be given to the report, then the Ethiopian Government would be obliged to express formal reservations and to request that equal publicity be given to its views.

215. In particular, doubts were expressed as to whether the legal consultants had any competence to advise upon matters other than those concerning, exclusively, problems of constitutional law in so far as the Eritrean Constitution was concerned or to advise upon matters of exclusive federal jurisdiction.

216. Further remarks were made in regard to constitutional law precedents cited or ignored by the legal consultants. Finally, the Minister for Foreign Affairs expressed the most formal exception to the apparent attempt on the part of the legal consultants to turn the problem of the amendment of the Constitution of Eritrea or of the Federal Act into an occasion for presenting a highly biased argument for subjecting Ethiopia to a perpetual servitude of the United Nations over one of the Members of that organization. The fact that the legal consultants had cited jurisprudence of the Permanent Court of International Justice, solely in the matter of Mandates, lent strength to that conclusion.

217. The Minister for Foreign Affairs pointed out that the United Nations resolution of 2 December 1950 did not constitute an offer of a contract by which Ethiopia agreed to compromise her sovereignty contrary to the provisions of that resolution requiring respect for "the Constitution, institutions, traditions and the international status and identity of the Empire of Ethiopia". It was a recommendation to be carried out by the four great Powers if the members of the Federation agreed to accept such a solution. This is evidenced by the fact that, by virtue of the Treaty of Peace with Italy, it was a recommendation only to the four great Powers, who alone were authorized to take action in the matter, and by the further fact that the recommendation, by its express terms, would have no effect unless formally adopted and ratified by both parties to the Federation in conformity with the principle of self-determination. The four great Powers would have no continuing jurisdiction over Eritrea once they had executed the United Nations resolution and, indeed, following the entry into force of the Federation, the British Administration was to withdraw completely from the territory and the British Government was to retain no vestige of control there. If such was the case, the United Nations which, by the Treaty of Peace, could make only a recommendation to the four great Powers, could have no greater power or continuing jurisdiction than the four great Powers themselves.

218. On the other hand, the express requirement that the recommendation be adopted and approved by both parties to the Federation is a direct application of the principle of self-determination. To assert that these parties to the Federation may not, by agreement, effect any necessary amendment to the Federal Act or the Eritrean Constitution, but must accept at all times the veto of the United Nations, would be a violation of that same principle. No settlement or adjustment of a settlement can have any moral or legal value unless freely arrived at by the parties directly concerned. This view as to the power of amendment by the two parties to the Federation was clearly expressed by the delegations of the United States of America and of Turkey, both sponsoring delegations for the draft resolution, at the time of presenting the same to the United Nations. This fact had been conveniently left aside by the legal consultants.

219. Finally, the Minister for Foreign Affairs pointed out that any servitude over or infringement of the sovereignty of a Member of the United Nations would require clear and specific language to that effect. In the present case, quite on the contrary, any attempt to foist a servitude upon a Member of the United Nations was directly contrary to the specific language of the resolution of 2 December 1950, providing for the respect of "the Constitution, institutions, traditions and the international status and identity of the Empire of Ethiopia".

220. The Minister for Foreign Affairs declared that it was self-evident that the mere adoption of a recommendation by the United Nations concerning a Member thereof, or its territory, could not constitute a perpetual servitude over such Member. Were that to be the case, then the various resolutions of the United Nations, recommending solutions for certain disputes involving Members of the United Nations or providing technical assistance to Members thereof, would similarly constitute perpetual jurisdiction over such Members.

221. The Minister for Foreign Affairs made it clear that the foregoing discussion related not to Eritrea alone, but to the broader questions of principle concerning national sovereignty, independence and freedom of self-determination, and that his remarks on these questions did not signify that the Imperial Ethiopian Government or the Federal Government would intend to seek to bring about changes in the Federation, the Federal Act or the Constitution of Eritrea once they have been ratified by His Imperial Majesty.

222. Since the rest of the memorandum cited above related to the views of the Panel as reflected in certain draft articles of the Constitution, it can be conveniently dealt with later, in the section on consultations with the Ethiopian Government<sup>45</sup> on the basis of the Commissioner's preliminary draft and third draft Constitution.

### **Section 3. Preparation of a provisional draft Constitution in consultation with the Second Panel of Legal Consultants (January-February 1952)<sup>46</sup>**

223. At the opening of the meeting of the Second Panel of Legal Consultants, which was to collaborate in preparing the actual text of the draft Constitution, the Commissioner drew the Panel's attention to the main characteristics of the population for which that text was intended.

224. In the first place, the population had not as yet had any opportunity for self-government and it consequently lacked the experience which could only be gained through familiarity with free institutions. The relative inexperience of the Eritreans therefore imposed on those drafting the Constitution a need for clarity and simplicity which was all the greater because the complex and subtle nature of the federal system was calculated to confuse more mature citizens.

225. The Commissioner called the Panel's attention to the need both to draw on existing traditions and to be progressive, by drafting a text which, while not

<sup>45</sup> See chapter II, section 4, B below.

<sup>46</sup> All quotations and article numbers in this section refer to the first draft Constitution (text adopted at first reading; see document A/AC.44/L.20).

of undue length, would have an educative value. This implied that besides containing precise and concrete rules, the Constitution would also state certain principles.

226. Secondly, as all the bodies which had visited Eritrea had had occasion to observe, the population was a mixed one from three points of view: ethnic, religious and linguistic. The United Nations had, however, adopted a plan by which the different groups, including the foreign communities, would form a single political unit. Hence the Constitution should make it easier for them to live together in peace and concord and should carefully avoid any ground for strife between the different sections of the population, particularly in religious matters.

227. Finally, in the interests of the new Federation itself, Eritrea had to be able to exercise self-government in a manner in keeping with the intentions of the General Assembly. It also had to be decided to what extent a solution which faithfully interpreted the resolution of 2 December 1950 could take into account the legitimate desires and concerns of the Government of Ethiopia, which was so intimately associated with the new venture and to a large degree responsible for ensuring its success.

#### A. PREAMBLE TO THE DRAFT CONSTITUTION

228. Religious fervour being an attribute common to all elements of the Eritrean population, the Preamble to the draft Constitution included an invocation to the Deity. Since, however, the various sections of the population were of different faiths, the invocation was drafted in general terms and, furthermore, an appeal was made for the "brotherly collaboration"<sup>47</sup> of all religious and ethnic groups.

229. The Preamble also acknowledged the careful and impartial study and mature consideration given to the question of Eritrea by the United Nations, and recalled the fact that the establishment of a Federation was based on a resolution of the General Assembly. It concluded by indicating the conditions (a democratic régime, respect for the rights of all sections of the population, and the collaboration of the foreign communities in economic development) under which the political and economic association of Eritrea and Ethiopia under the sovereignty of the Ethiopian Crown was to be brought about.

#### B. ADOPTION AND RATIFICATION OF THE FEDERAL ACT

230. Paragraph 12 of resolution 390 A (V) specifies that the Constitution shall contain "provisions adopting and ratifying the Federal Act on behalf of the people of Eritrea". In view of the categorical nature of the Assembly's provision, all that remained to be decided was whether it was sufficient simply to provide in the Constitution for the adoption and ratification of the Federal Act, thereby naturally implying the obligation to observe the Act, or whether it would be better to draft a special paragraph embodying a specific undertaking (article 1).

#### C. STATUS OF ERITREA

231. The main idea underlying this chapter of the Constitution might be described as reciprocity of rights

<sup>47</sup> Paragraph 6 of the Preamble.

and duties. The draft, while reproducing the provisions of the Federal Act concerning the existence and powers of Eritrea as an autonomous unit (articles 3 and 4), with certain clearly defined frontiers (article 2), also enunciated the obligation on the part of the Eritrean people scrupulously to observe the provisions of the Act (article 1, paragraph 2), to refrain from hampering the free movement of persons and goods within the Federation (article 7), to bear its share of Federal expenses (article 8, paragraph 1) and, to that end, to assess and levy federal taxes (article 8, paragraph 2).

232. A list (not meant to be exhaustive) of matters coming within the jurisdiction of Eritrea was likewise included in the draft, it being felt that to put Eritrean autonomy in more tangible form, so to speak, might allay apprehension and prevent misunderstanding (article 5).

#### D. REPRESENTATION OF THE EMPEROR IN ERITREA

233. The right of the Emperor to have a representative in Eritrea was stated in article 9 of the draft.

234. The draft drew a clear distinction between the two types of function which such a dignitary might perform.

235. The first category—honorary functions of a formal nature—was covered by article 10 (Rank of the Emperor's representative), article 11 (Oath of members of the Executive), and article 12 (Opening of sessions of the Assembly) while article 13 (Negotiations with the Eritrean Government), was obviously inspired by the opinion of the first Panel that the provision of a representative of the Emperor might facilitate the settlement of questions of common interest to the Federation and to Eritrea.

#### E. THE DEMOCRATIC RÉGIME IN ERITREA

236. Articles 14 and 15 (Principles of democratic government and Respect for human rights) on the one hand, and article 17 (Rule of law) on the other, were complementary. The first two might indeed appear to constitute an adequate translation into the Constitution of the provisions concerning the principles of democratic government contained in the resolution (paragraph 12), human rights and fundamental freedoms being dealt with in greater detail in the following chapter.

237. Article 17, however, figured as an extra safeguard and might be said to illustrate the negative aspect of those same rights and principles. Clearly, if public authorities and officials exceed their powers or arrogate certain functions to themselves and commit unlawful acts, the government ceases to be democratic, becomes an arbitrary power and human rights are jeopardized. Nonetheless, the Panel thought it preferable to be explicit. The purpose, then, of article 17 was to illustrate more clearly an essential aspect of democratic government and to serve as a useful warning.

238. Finally, article 16, concerning elections, provided a striking illustration of the Panel's concern not to offend against local custom but rather to make use of it so far as was compatible with the principles of democratic government as laid down in the resolution. While retaining the possibility of indirect election, in accordance with tribal and district tradition, it stated clearly that democracy cannot exist without free and fair elections.

## F. HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

239. The drafting of this section involved a two-fold task:

(1) To reproduce literally the rules set forth in paragraph 7 of the resolution; and

(2) To include complementary provisions.

240. The draft began by stating that, since the provisions of paragraph 7 formed an "integral part" of the Constitution of Eritrea (article 18, paragraph 1), they should be reproduced, word for word, in the draft Constitution (article 18, paragraph 2).

241. In order to amplify the text of the resolution in the light of the facts of the situation in Eritrea, the following provisions were included in the draft:

(1) *Persons before the law*

Concrete aspects of the principle of respect for the individual as a legal entity, irrespective of his membership of any group (article 19).

(2) *Prohibition of certain punishments*

Article 20 regarding physical cruelty repeated article 5 of the Universal Declaration of Human Rights.

(3) *Right to freedom of movement*

Article 21 repeated article 13, paragraph 1, of the same Declaration.

(4) *Freedom of conscience and religion, non-discrimination, recognition of religious institutions as persons before the law, and religious instruction*

In a country such as Eritrea where the population was deeply religious, without the peaceful co-existence of the various faiths there could be no civil harmony. It was therefore necessary to accord the different faiths and religious orders both solid protection and legal status (articles 23 and 24) and, since the social structure of Eritrea was characterized by a great variety of religious beliefs, to respect the freedom of conscience of all citizens (articles 22 and 25).

(5) *Freedom to express opinions*

This article (26) was largely based on article 19 of the Universal Declaration of Human Rights. Though it employed the very comprehensive expression "by any means whatever", it nevertheless aptly developed to some extent the phrase "right to freedom of opinion and expression" used in paragraph 7 (d) of the resolution (section A).

(6) *Education*

In this article (27), like that relating to the electoral system, the over-riding consideration clearly was the need to accommodate modern ideals (compulsory free education) with local realities and to ensure that progress was reasonable and gradual.

(7) *Freedom of association*

The various Eritrean parties owed their formation to constitutional, or even international, debate (on the future of Eritrea) and, for this very reason, their interests did not lie in social questions. However, the intrinsic importance of the question appeared to justify the inclusion of a special article (article 28).

(8) *Duties of individuals*

It has long been a question whether the Declaration of Human Rights should not have as a counterpart a

"Declaration of Duties". Article 29 was drafted with this idea in view, an idea already expressed in article 29 of the Declaration of Human Rights.

## G. SPECIAL RIGHTS OF THE VARIOUS POPULATION GROUPS IN ERITREA

242. The draft concerning special rights was based on the following considerations:

(1) It had to be accepted as established that certain provisions in the preamble to the resolution had the same force as those contained in the body of the resolution. This applied, for instance, to the clause in the preamble relating to respect for the institutions, traditions, religions and languages of the inhabitants, which was not reproduced in the operative part of the resolution;

(2) That clause had therefore to be respected;<sup>48</sup>

(3) Since responsibility for safeguarding these institutions was to lie with the Eritrean Government, the best means of ensuring such respect was to include the necessary guarantees in the Constitution.

243. The following provisions were made in the light of the above considerations:

(1) *Personal status*

(a) As this question was not one of those covered by the draft resolution on economic and financial provisions relating to Eritrea submitted to the General Assembly by the United Kingdom delegation, it was felt all the more essential to include some reference to it.<sup>49</sup>

(b) The idea which the Panel had in mind in drafting article 30, as indeed in drafting article 27, was to ensure respect for personal status, as part of a freedom which all groups of the population were accustomed to enjoy, without, however, prejudicing any possible future development. The article was, after all, in no way an innovation in Eritrea and offered no legal ground whatsoever for the establishment of courts exempt from the jurisdiction of the Eritrean Government.

(2) *Rights in rem*

It was agreed that the possibility of development with time must not be ruled out. The draftsmen of article 31 considered, however, that, if the various groups of the population were really to enjoy the protection envisaged in the preamble to the resolution, it was just as important to protect the systems established by custom or law in the sphere of rights *in rem* as to protect personal status.

(3) *Respect for acquired rights in regard to inheritance*

This article was based on the paragraph relating to the economic development of Eritrea in the preamble to the resolution. It was a question of framing provisions to correspond to those in the United Kingdom draft resolution, the principles of which were embodied in General Assembly resolution 530 (VI) of 29 January 1952 on economic and financial provisions relating to Eritrea (article 32).

(4) *Languages*

(a) Any solution of this thorny problem, which had given rise to serious controversy during the con-

<sup>48</sup> A/AC.44/SC.1/R.1.

<sup>49</sup> See General Assembly resolution 530 (VI) of 29 January 1952.

sultations with the inhabitants, had to take into account the following factors: (a) the social need to preserve peace and unity in Eritrea; (b) the legal need to adhere to the text of the resolution; (c) the practical need to respect established custom, and; (d) the administrative need to avoid complicating unduly the organization and running of the public services.

(b) From the social point of view, it seemed necessary, in view of the differences of opinion among the population revealed by the consultations, to allow for the possibility of reconciling the opposing viewpoints at a later stage. Since the solution of the whole Eritrean question was itself a compromise, it must also be possible, with goodwill on all sides, to meet each individual difficulty half-way. It was therefore decided simply to state the problem of the official or subsidiary language or languages in paragraph 3 of article 33 and to leave it to the Eritrean Assembly to settle the matter.

## H. SPECIFIC PROVISIONS

### (1) *Eritrean citizenship*

244. The qualifications required for citizenship were not the same as those for the right to vote. Citizenship, unlike the right to vote, did not depend on age or sex, while under certain conditions, nationals of the Federation who were not Eritrean citizens could become electors.

### (2) *Emblems of Eritrea*

245. This question, as the Commissioner had had ample opportunity to observe, was an extremely controversial one. With a view to a possible compromise between the views of the Government of Ethiopia and those of the differing groups of the population, it was agreed to refer the question to the future Eritrean Assembly (article 35).

### (3) *Ratification of the Federal Act—Promulgation of the Constitution—Transfer of power*

246. As it had been the constant concern of the Panel to avoid dealing with federal matters in the draft Constitution, the latter did not touch on the question of the ratification of the Federal Act.

247. It was also considered in keeping with the spirit of the resolution for the Constitution to be promulgated by the Administering Authority once the conditions laid down in section A, paragraph 1 of the resolution had been fulfilled.

248. Moreover, in view of the practical difficulties which the British Administration would experience in transferring power to a legally constituted authority and of the absence of any stipulation in resolution 390 A (V) that ratification of the Constitution (paragraph 13) and the transfer of power (paragraph 14) must be simultaneous, the draftsmen included a provision regarding the period between the entry into force of the Constitution and completion of the transfer of power.

### (4) *Additional laws giving effect to the Constitution*

249. The Commissioner, who was anxious to help the Eritrean Assembly, was prepared to lend his assistance in drafting organic laws complementary to the Constitution. The Panel, moreover, noted that the enactment of organic laws to give effect to a constitution was a general and useful practice and one, indeed, which could hardly be dispensed with.

250. This procedure made it possible to produce a shorter draft Constitution and to leave the application of the general principles enunciated in the Constitution to laws which could be amended without resort to the process of constitutional revision.

### (5) *Maintenance of legislation when the Constitution comes into force*

251. The drafting of article 38 was made easier by the existence of numerous constitutional precedents for the maintenance in force of the laws and regulations in existence at the time of entry into force of a constitution (paragraph 1) and by the fact that the absolute necessity to ensure continuity of the legal and administrative machinery could be adequately met by such action. Cases of conflict between the Constitution and laws and regulations enacted prior to it were covered by paragraph 2.

### (6) *Retention of officials in office*

252. The Panel considered it just as essential to preserve the continuity of the administrative and judicial services as to ensure the uninterrupted working of the legal machinery (article 39).

### (7) *Term of the Constituent Assembly*

253. Article 40 was inspired by political considerations and by concern to avoid any pretext for strife or even partisan agitation among Eritreans or, indeed, any issue which might distract them from more urgent tasks.

### (8) *The electorate*

254. While article 41 followed the normal practice in federal constitutions by giving Ethiopians resident in Eritrea the right to vote (sub-paragraph (a)) and was designed to draw the younger generation into political life (by the relatively low minimum age for eligibility laid down in sub-paragraph (c)), the question of disability was left to be defined by law (sub-paragraph (d)) in order to avoid any abuse by judges for political motives.

255. This article was drafted with the idea that a number of additional provisions, such as the prohibition of dual voting, would be included in a later electoral law.

256. Finally, if the political balance between the main groups of the population was to be maintained, it did not seem possible, at that stage of development, to include in the Constitution a provision concerning votes for women.

### (9) *An Assembly representative of the Eritrean people*

257. The text treats the powers of the Assembly (article 61) and its essential function of representing the Eritrean people as a whole (article 42) as two distinct questions.

### (10) *Number of representatives*

258. It was left to the Representative Assembly to decide on the number of representatives, and the draft article does no more than suggest the limits within which the number should be kept (article 43).

### (11) *Constituencies*

259. The Panel, in its draft, came down on the side of a system of constituencies each returning one representative, as this would ensure some representation of



the minorities, and was, moreover, the one chosen by the British Administration in the draft proclamation on the election of the Representative Assembly. In this, as in other matters, the authors of the draft were anxious not to enter into any premature detail regarding the size of the various constituencies (article 44).

(12) *Eligibility*

260. While it seemed legitimate to expect candidates to have resided a certain time in Eritrea, it was thought that it would be going too far for article 45 also to require residence in the constituency itself. The Panel had before it some tentative definitions of certain cases of ineligibility and gave them serious study. Nevertheless, the task of defining the grounds for disqualification was finally left to the law.

(13) *The two voting systems*

261. Article 16, as already pointed out, had been drafted in such a manner that it did not rule out the possibility of holding indirect elections. In this connexion, two equally sound points of view were put forward by members of the Panel. On the one hand, the indirect system, quite apart from the advantage it has, in any country, of enabling the citizens to choose well-known public figures as their representatives, would seem best suited to the idiosyncrasies of the Eritrean social structure. It was therefore theoretically possible to contemplate the adoption of the indirect system throughout the country.

262. On the other hand, it could be argued that, as a matter of principle, direct elections constituted a fuller application of the doctrine of the sovereignty of the people.

263. The real source of this duality of opinion was the subtlety of the resolution itself, which called for a Constitution based on "the principles of democratic government" (paragraph 12) and at the same time desired that the Federation "assure to the inhabitants of Eritrea the fullest respect and safeguards for their institutions and traditions". Article 46 accordingly provided that, for the time being, either system of voting might be used.

(14) *Election by direct ballot and election by indirect ballot*

264. The Panel had no difficulty in reaching agreement on this formula (article 47).

(15) *Electoral High Commission*

265. While providing for the High Commission and its representatives to be assisted in the various constituencies by persons representing the people, the draft specified that such local committees, on which the various political parties would be represented, would serve in an advisory capacity only, the representatives themselves acting under the impartial authority of the High Commission itself (article 48).

(16) *Disputed elections to the Legislature*

266. The risk of possible partiality by the majority party was diminished by the requirement of a set, though not too high, majority. The possibility of appeal to the High Court (in the definitive text the Supreme Court) provided an additional safeguard (article 49).

(17) *Term of the Assembly*

267. The article was drafted in the desire to avoid fostering election fever by too frequent elections. On

the other hand, it was thought that the replacement of half the members every two years, for example, would make it easier to train newly elected members in parliamentary traditions. The provision of two alternatives in paragraph 1 of article 50 reflected these somewhat conflicting considerations.

(18) *Regular sessions*

268. It was thought preferable to provide for two regular sessions each year and to specify that one of them should be devoted exclusively to considering the budget (article 51).

(19) *Special sessions*

269. The view adopted was that special sessions should always be summoned by the same authority, in this case the Chief Executive. Nevertheless, article 52, paragraph 2, gave members of the Assembly an opportunity of convoking a special session.

(20) *General powers of the Assembly*

270. In this article the panel considered the possibility of defining and distinguishing between laws and regulations. It was finally decided, however, so to arrange matters that the distinction would emerge clearly from the wording of the relevant articles. It was felt essential that the principle functions of the Assembly should be listed in an article of a general nature (article 61).

(21) *Approval of legislation by the Chief Executive*

271. Although some reservations were expressed during the drafting of this text, it was finally agreed that the Chief Executive would be in the best position to know whether a bill was in suitable form or not (article 63).

(22) *Examination and adoption of the budget by the Assembly*

272. The fact had to be taken into account that, in practice, delays in adopting the budget are always possible. As an incentive to the Government to abide by the time limit, the procedure agreed on stipulated that the revised draft budget would be deemed to be adopted if the Assembly had not voted it before the beginning of the fiscal year (article 65, paragraph 4).

273. An earlier version of paragraph 3 of Article 65 provided that, on submission of the revised draft budget, the general debate on the budget could be reopened in the Assembly. The Panel, however, realizing the need to avoid the possibility of a protracted second debate entailing a general discussion as well as a detailed examination of the budget, stipulated that the second debate should cover only separate chapters of the budget and not the budget as a whole. It was essential to prevent the smooth working of the administration being jeopardized by delay in voting the budget.

(23) *Form of the budget*

274. In view of the importance, from the point of view of discussion in the Assembly, of a regular form for presentation of the budget, the draft provided for the form of the budget to be regulated by a special law (article 66).

(24) *Supplementary estimates*

275. In order to avoid the need for the Chief Executive either to summon the Assembly to a special session or to seek authority from the officers of the Assembly, the Panel agreed that the budget should include a fund

which the Chief Executive would have the right to use for unforeseen emergency expenditure on condition that he sought the Assembly's approval *a posteriori*. It also agreed that the amount of the fund should be fixed at a certain percentage of the budget (article 68).

(25) *Supervision of the Executive by the Assembly*

276. The purpose of this article was to provide legal authority for oral questioning of the Government in order to allow the Assembly an opportunity of expressing its views on government policy (article 71).

(26) *Appointment of the Chief Executive*

277. The decision that the Chief Executive should be elected by the Assembly was all the more readily adopted because it was in accordance with the wishes of the population, the great majority of whom had advocated this procedure during the official consultations (article 73, paragraph 1).

278. The decision regarding the term of office of the Chief Executive was left to the Assembly (article 73, paragraph 4).

(27) *Secretaries of Executive Departments*

279. Since the number of Secretaries of Executive Departments could not be determined until the form of the future administration had been settled, article 74, paragraph 3, provided for the former to be prescribed by law.

280. Paragraph 1 of the same article embodied an essential feature of the semi-presidential system of government, by making the Secretaries assistants of the Chief Executive, who would have power to appoint and dismiss them.

(28) *Incompatibility*

281. The draft provided that members of the Assembly who might become Chief Executive or Secretary of an Executive Department would thereby be excluded from exercising the functions of a representative and would be replaced in the Assembly by their alternates (article 75) and appropriate provisions concerning alternates were included (articles 4, 47, 49, 50 and 60).

(29) *Deputy Chief Executive*

282. The duty of acting as deputy for the Chief Executive was entrusted to the President of the Assembly (article 76).

(30) *Council of the Executive*

283. It was thought advisable that the Chief Executive should consider government policy with his Secretaries and seek their advice, though retaining the power to take decisions (article 79).

(31) *Removal from office of the Chief Executive*

284. The extensive powers conferred upon the Chief Executive made it all the more necessary to provide for his penal responsibility. In applying this principle in the draft, however, care was taken to avoid anything which might resemble political responsibility or even allow the Assembly to place any improper interpretation on article 80 that would amount to *de facto* amendment of the clauses establishing the semi-presidential system of the Constitution.

(32) *Enumeration of powers of the Chief Executive*

285. During the discussion, attention centred, in the first place, on the police powers of the Chief Executive

and his function of summoning sessions of the Assembly. It was also considered that the Assembly should retain the right to make certain appointments and to receive, each year, a message from the Chief Executive giving an account of his conduct of affairs and of the general situation in Eritrea. Finally, it was decided that official documents issued by the Chief Executive must be countersigned by the Secretary of the executive department concerned (article 81).

(33) *Power of the Chief Executive to issue Orders when the Assembly is not in session*

286. Here, it was necessary to avoid giving the Chief Executive unconditional powers to amend legislation by Order between sessions of the Assembly: that would have been encroaching on the Assembly's sphere of competence in a manner contrary to democratic principles. On the other hand the Executive could not be left powerless in the intervals between sessions of the Assembly. In addition to certain other limitations, therefore, the draft made such Orders subject to approval by the Assembly (article 82).

(34) *Suspension, in time of emergency, of certain constitutional provisions*

287. The text, which subordinated action by the Chief Executive to prior authorization by the Assembly (article 83), was prompted both by the need to meet exceptional situations and by the caution born of respect for democratic principles.

(35) *Suppression of brigandage*

288. When this article was being drafted, the Commissioner recalled the harm done to Eritrea, especially in the economic sphere, by the brigandage which had been rife in the country until recently. This made it necessary to provide the Government with the means of preventing any recurrence of such incidents. It was therefore laid down that the Chief Executive, after proclaiming a state of alarm, should adopt the special measures needed to remedy the situation. He would, however, be required to report on such measures to the Assembly, which would thus exercise *a posteriori* supervision in all cases (article 84).

36. *Advisory Council of Eritrea*

289. One of the paragraphs of the preamble refers to the economic development of Eritrea. This fact, together with the Commissioner's own local observation of Eritrea's needs in the field of modern technology, explains the text of article 85.

(37) *Conditions of appointment of officials*

290. The provisional text of article 86 was drafted with the sole aim of ensuring that the civil service of the new autonomous unit would function satisfactorily. The authors of the draft were fully aware that this article, perhaps more than any other, would benefit from consideration in close consultation with the Administering Power and the Ethiopian Government.

(38) *Local communities*

291. This article was drafted with particular concern for the preservation of existing institutions. The very marked desire of the inhabitants of the various regions and localities to manage their local affairs had to be taken into account. It was considered inopportune, however, to lay any stress on decentralization, since the very spirit of the resolution was that all Eritreans, with-

out distinction as to religion, language or ethnic origin, should live together in one and the same political unit. In other words, even though the Eritrean population was heterogeneous from other points of view, its political institutions were the one element which all sections of the population would have in common. Hence these common institutions must make it possible for all those conscious of their civic responsibilities gradually to unite, or at least to associate more closely, in a spirit of tolerance, goodwill and devotion to the higher interests of the country (article 88).

(39) *Qualifications required of judges*

292. The object of this provision was to invest the office of judge with high dignity (article 90, paragraph 1).

(40) *Compliance with the resolution of the United Nations*

293. Here arose a fundamental problem which, in spite of study by the first Panel of Legal Consultants, still remained a delicate one. The chief concern of the draftsmen was to call the attention of Eritreans to the special situation arising, first, from the fact that the Constitution was to be put into effect by virtue of a resolution of the United Nations General Assembly and, secondly, from the fact that Eritrea was to be part of a federation having the Federal Act as its charter.

294. Consequently, some of the provisions of the Constitution, namely, those necessary to ensure observance of the principles and rules laid down in the resolution and those reproducing the provisions of the Federal Act (article 95), were *sui generis*.

(41) *Amendments<sup>50</sup> to the Constitution*

295. The procedure employed to prevent any unjustified amendment of the Constitution, the text of which the General Assembly had been careful to surround with safeguards of every sort, was essentially of two kinds. First, the submission of amendments was made subject to strict conditions with regard both to their origin and to the period which must elapse before their discussion in the Assembly could begin (article 96). Secondly, precautions were taken to ensure that only amendments which really reflected the earnest desire of a large section of Eritrean opinion could be adopted (article 97).

#### I. CONCLUSION

296. Thus, wherever no principles, rules or machinery essential to the democratic system were at stake, established traditions were respected in the draft. The authors sought to accomplish their task by leaving the way open for development through gradual and orderly progress, rather than by abruptly introducing ideas and practices foreign to Eritrea. It is important, however, to stress that the Panel of Legal Consultants reached unanimous agreement on all the articles of the draft Constitution, which points to the legal soundness of the solutions adopted.

<sup>50</sup> In the French text the term "amendment" was later substituted for that of "revision".

### Section 4. Submission of the third draft to the Administering Authority and the Ethiopian Government for their comments: consultations (March-April 1952)

#### A. CONSULTATIONS WITH THE ADMINISTERING AUTHORITY

297. In accordance with the previously established practice of an informal exchange of information between the Commissioner and the Administering Authority, the British Administration was kept fully informed by the Commissioner of the progress made in drafting the Constitution at Geneva.

298. The first and second drafts of the Constitution were communicated to the British Administration informally; the third draft,<sup>51</sup> which formed the agreed basis for consultations, was then officially transmitted to the British Administration on 13 March 1952.

299. The Commissioner held consultations concurrently with the Administering Power and with the Ethiopian Government, in March and April 1952, during the visit of the Ethiopian Minister for Foreign Affairs to Asmara. The Commissioner was in constant and close consultation with the British Administration, but the conversations were so informal and so frequent that no official records were kept.

300. At the beginning of April 1952, the British Administration suggested certain changes in the provisional draft, asking the Commissioner to consider them before the official version of the Constitution was produced for submission to the Assembly.

301. A number of the British proposals put forward during the Commissioner's consultations with the Administering Authority in London and with the British Administration in Asmara may be described as drafting amendments. Some of the comments made, however, involved important issues which will be dealt with in the following paragraphs.

302. In the first place it was suggested, in connexion with the budget, that there should be an Auditor-General independent of the Executive. The post existed in Ethiopia, and was a customary and necessary one in most governments.

303. The second point concerned article 83 (1) — Status of Officials — which provided that the general status of administrative officials should be fixed by a special law. The British Administration considered that provision should also be made for a civil service commission, as free from political influence as possible, to protect civil servants from the vagaries of political control.

304. Both these proposals were adopted by the Commissioner and embodied in the final draft of the Constitution.

305. Thirdly, the British Administration expressed its concern that the independence of the judiciary should be better protected from political influence. The judiciary should also be completely independent of the Executive. After informal conversations with the Administration, the Commissioner decided to add to the article concerning the qualifications and oath required of judges, a paragraph proclaiming the independence of the judi-

<sup>51</sup> All quotations and article numbers in this section refer to the third draft of the Constitution. See document A/AC.44/L.21.

ciary; for the appointment of judges, he suggested procedure comprising successive action by a special committee, the President of the Assembly and the Chief Executive. Agreement was reached on that formula, which was incorporated in the draft Constitution submitted to the Assembly (article 89).

306. The fourth point concerned the setting up of an Executive Committee. In December 1951, the British Administration sent to the Commissioner, informally, a copy of a note putting forward tentative views on procedure for establishing a "period of grace" for the setting up of an Eritrean Government separate from the Administration and for the transfer of power by the British Administration in conformity with the provisions of the resolution.

307. The various interested parties having studied the note, a series of discussions, to which the Commissioner was invited, took place in London in February 1952, when the matter was further considered.

308. The basis for discussion was a Foreign Office draft containing a proposal to set up a provisional government in Eritrea, with which the Administering Authority could transact business prior to the date of transfer of power; it was pointed out in the draft that, to make the scheme effective, the Constitution should provide for the establishment of such a government. The Foreign Office believed that since the Ethiopian Government had already declared itself in agreement, this requirement could be met by the insertion in the Constitution of an appropriate transitional provision. It was recognized that the consent of the Commissioner and of the Eritrean Assembly were required. If the Commissioner agreed that the suggestion was feasible, Foreign Office officials would draft a transitional clause for his consideration; their view was that, legally, the procedure was perfectly sound.

309. The Commissioner replied that he doubted the legality of the scheme proposed, for under the provisions of paragraph 13 of the resolution, the establishment of a legally constituted Eritrean government required fulfilment of all the conditions laid down in that paragraph. If one of the conditions were not fulfilled, neither the Government of Eritrea nor the Federal Government could be established. Indeed, he found it difficult to envisage the coexistence of two legal governments in Eritrea before the transfer of power, one of them being the British Administration, which would have full powers until 15 September 1952, and the other a provisional government deriving its status from the Eritrean Constitution and possessing legal capacity to enter into undertakings with the British Administration. He also asked what would happen if, after the scheme had been put into effect, one of the conditions laid down in paragraph 13 of the resolution were not fulfilled. The Commissioner added that the draft Constitution would contain transitional provisions under which officials of the British Administration who wished to remain after the transfer of power could only be dismissed subject to three months' notice. He felt that such constitutional guarantees would be more reliable than contracts with a provisional government established on a doubtful legal basis.

310. Although the Commissioner's first impression was that the disadvantages of the scheme outweighed the advantages, he undertook to discuss the draft at Geneva with his legal consultants, bearing in mind,

particularly, paragraph 9 of the resolution, according to which "There shall be a transition period . . . during which the Eritrean Government will be organized". He also offered to send one of his legal consultants to London to discuss the matter further. Finally, it was agreed that an appropriate constitutional clause embodying the proposals of the United Kingdom Government should be drafted and submitted to the Commissioner for consideration.

311. Early in March 1952, on his return to Asmara, the Commissioner sent a letter to the Administering Authority for transmission to the Foreign Office, in which he stated that he would be happy to co-operate in any action which might be taken to establish a form of executive commission, composed of members of the Eritrean Assembly, with appropriate powers. He was also prepared to draft an article for inclusion in the draft Constitution, to the effect that all arrangements and all commitments negotiated between the British Administration and such a commission would be legally valid after the Constitution entered into effect. He considered that such a procedure would enable the British Administration to negotiate with a duly empowered Eritrean body whose acts would be approved and recognized as legally valid by the Eritrean Assembly, the Commissioner and the Emperor of Ethiopia.

312. In March 1952 the Foreign Office, in accordance with the undertaking it had given in London, telegraphed the text <sup>52</sup> of the proposed draft article of the Constitution, under which a provisional government might be set up.

313. Shortly after the proposed draft article had been received, the Commissioner's legal adviser went to London to discuss the whole question with Foreign Office officials. Agreement was reached and a memorandum<sup>53</sup> dated 18 March 1952 was drawn up jointly by the two legal advisers, in which they recorded their agreement on the method by which the practical difficulties of the transitional period could be overcome, while complying with the United Nations resolution.

314. The main points of the agreement were that the term "provisional government" was perhaps inappropriate and that, since such a body would derive its powers solely from the Administering Authority, it should rather be called an executive or administrative commission.

315. The Commission would be constituted by a proclamation by the Chief Administrator, which would be formally approved in draft by the Eritrean Assembly and informally approved both by the Commissioner and by the Emperor of Ethiopia. The proclamation would cease to have effect on the entry into force of the Constitution and, in any case, not later than 15 September 1952. The proposed draft article was worded as follows:

"Any undertaking regularly concluded by the Executive Commission (or Administrative Commission) before the date of the coming into force of this Constitution shall remain valid (bind the Government of Eritrea) after that date."

316. The British Administration and the Government of Ethiopia being in agreement, the Commissioner

<sup>52</sup> A/AC.44/L.22.

<sup>53</sup> A/AC.44/L.23.

included this text in the final draft of the Constitution submitted to the Representative Assembly, accepting the proposal of the British Administration that the body to be set up should be termed the "Executive Committee".

317. The British Administration kept the Commissioner informed of its plans for setting up the Executive Committee, and on 9 June 1952, sent him a copy of the draft proclamation for his informal approval. In its letter, the British Administration referred to the agreement<sup>54</sup> reached by the legal advisers in London, paragraph 5 of which provided that all powers conferred by the Administering Power should be conferred on the Chairman, pointing out that that principle had been incorporated in the draft. The British Administration, nevertheless, wondered what purpose the Executive Committee could serve other than that of electing its Chairman, if the latter had sole power to take decisions. It pointed out, moreover, that the draft article of the Constitution validated only undertakings concluded by the Executive Committee and suggested that some such phrase as "on behalf of and with the concurrence of the Executive Committee" be added to the article of the draft proclamation dealing with the powers of the new body.

318. In his reply, the Commissioner explained that he had co-operated in establishing the Committee in order to help the British Administration carry out its task and to ensure that any such temporary body would be compatible with the resolution and would not be in conflict with the principles of the draft Constitution. While expressing the wish that the proclamation should conform to the Legal Advisers' agreement as closely as possible, he said that he considered it his duty to leave the Administering Authority to make whatever arrangements it considered most appropriate.

319. On the conclusion of the consultations summarized above, the Commissioner, when transmitting copies of the final draft<sup>55</sup> to the Administering Authority on 25 April 1952, stated that he had been glad to adopt almost all the proposals of the British Administration and felt that they had improved the draft Constitution in many respects.

#### B. CONSULTATIONS WITH THE GOVERNMENT OF ETHIOPIA

320. During his visit to London in mid-February 1952, the Commissioner handed the provisional draft to the Constitution to the Ethiopian Ambassador, for transmission to his Government. Copies of the subsequent revised text (third draft) were also transmitted to the Government of Ethiopia.

321. The Ethiopian Minister for Foreign Affairs stayed at Asmara in late March and early April 1952, in order to discuss federal matters with the British Administration. During this visit, he and the Commissioner continued their consultations on the draft Constitution at informal meetings and by an exchange of memoranda.<sup>56</sup>

322. The Minister for Foreign Affairs handed the Commissioner two memoranda, the first of which contained comments on the report of the first Panel of Legal Consultants concerning the interpretation of the

<sup>54</sup> See paragraph 313 above.

<sup>55</sup> A/AC.44/L.7.

<sup>56</sup> A/AC.44/SC.1/R.2.

United Nations resolution. The Minister stated that these comments had been submitted in consequence of a statement by the Commissioner to the effect that the views of the Panel had been faithfully reflected in the Constitution.<sup>57</sup> In so far as they concern the draft Constitution, these comments are discussed below. The second memorandum contained comments dealing more particularly with various articles.

323. In submitting the memoranda, the Minister for Foreign Affairs emphasized that they should be regarded as the continuation of the latest exchange of views in Geneva between the Commissioner and the acting head of the Ethiopian delegation to the sixth regular session of the General Assembly, which, again, had followed on the discussions held in Asmara with the Minister for Foreign Affairs and later with the Vice-Minister for Foreign Affairs, in 1951. He added that those discussions had done much to clarify the problems at issue.

324. The Commissioner's written reply to the memoranda of the Minister for Foreign Affairs dealt in detail, article by article, with the comments of the Ethiopian Government. In order to illustrate the differences still outstanding and the subsequent degree of agreement reached, both on the principles and on the text of the draft Constitution, the comments of the Government of Ethiopia and the Commissioner's replies are set out together in the paragraphs which follow, but only in so far as they concern questions of substance, since it was thought unnecessary to include details of form and drafting.

#### PREAMBLE TO THE DRAFT CONSTITUTION

325. The Government of Ethiopia considered that an invocation to the Deity was unnecessary and inappropriate, since Moslems, Christians and pagans were much at variance in their conceptions of God. Moreover, since the resolution was only a recommendation, it was hardly correct to state that the United Nations had constituted Eritrea as an autonomous unit. Lastly, a reference to foreigners in the preamble to a Constitution for the people of Eritrea seemed out of place.

326. The Commissioner believed that the invocation to the Deity would reflect popular feeling in a country where the idea of a secular State was unknown. He preferred to leave it to the Representative Assembly to decide whether the invocation should be omitted. It was also for the Assembly to draft the text which it might wish to insert with regard to the United Nations. He agreed to delete the reference to the importance of assuring the continuing collaboration of the foreign communities in the economic development of Eritrea.

#### PART I OF THE DRAFT CONSTITUTION: GENERAL

##### *Chapter I. Status of Eritrea*

*Article 5. Matters coming within the jurisdiction of Eritrea*

*Article 6. Delegation of jurisdiction by the Federal Government*

*Article 7. Free movement of goods and persons*

327. The Government of Ethiopia considered that in view of the difficulty of defining the jurisdiction of the member Government of the Federation exactly, it would be in the interests of both parties to delete all

<sup>57</sup> Chapter II, section 2, paragraph 219.

these three articles. The Commissioner agreed to the deletion of articles 6 and 7, but preferred to retain article 5, considering that it gave Eritreans a clear enumeration of the principal matters within the jurisdiction of their Government.

*Article 9. Representation of Eritrea in the Imperial Federal Council and in the Federal Legislation*

328. The Government of Ethiopia maintained that the article was not in conformity with the Federal Act. It would be an advisory body, and it was a generally accepted rule that an adviser must be appointed by those whom he was to advise. Hence, although the Federal Government might not object to the Eritrean authorities selecting the Eritrean representatives on the Council, their names must certainly be submitted to the Crown, for it was by the Crown that they must be accepted as advisers and invested in office.

329. With regard to paragraphs 2 and 3 of article 9, the Government of Ethiopia maintained that the election and recruitment of Eritreans to serve in the legislature and in the executive and judicial branches of the Federal Government must be in conformity with federal law, and that both paragraphs should therefore be deleted from the draft Constitution.

330. The Commissioner did not dispute the first point regarding the status of the Imperial Federal Council, but observed that the Eritrean members were termed "representatives", and that if they were nominated by the Emperor they would not represent Eritrea. He pointed out that it was quite usual in democratic countries for advisory councils not to be nominated by those whom they were to advise, and maintained that it would be perfectly normal practice for the Eritrean Executive to nominate the Eritrean representatives. It was subsequently laid down, in the revised text, that they should be invested in office by the Emperor.

331. The Commissioner agreed to the deletion of paragraphs 2 and 3, it being understood that the Federal law must make provision for effective representation of Eritrea in the Federal legislature.

*Chapter II. Representation of the Emperor in Eritrea  
Articles 10 - 14 inclusive*

332. The Government of Ethiopia repeated and amplified the arguments advanced at former consultations concerning the prerogatives of the Emperor's Representative, and stressed that it had always been careful not to go beyond universally acknowledged constitutional precedents, claiming only the most modest prerogatives for the Crown.

333. In the first place, the Government of Ethiopia recalled that during the negotiations it had frequently referred to the powers of the Governor-General of Canada as representative of the Crown, saying that it would be reasonable to follow that precedent by adopting some — though not all — of those prerogatives for the representative of the Crown in Eritrea. Canada was a Member of the United Nations and if her Governor-General was granted such prerogatives, what objection could there be to following the precedent in the case of Eritrea which, for purposes of foreign affairs, was to become an integral part of a State enjoying long-standing international recognition? There could surely be no objection to giving the Representative of the

Crown the prerogatives recognized in the British Dominions. For if prerogatives of that kind were granted to the Governor-General of Canada, for instance, which was a Member of the United Nations, there was all the more reason for following the precedent in Eritrea which had no independent international status. The Government of Ethiopia cited the "normal constitutional prerogatives of the Crown", such as opening and closing sessions of the Assembly, the speech from the throne, formal investiture, swearing-in before the representative of the crown, promulgation and calling for reconsideration of laws.

334. The Commissioner replied that he had frequently explained his views on the subject and that, with regard to fundamental principles at least, they had not changed.

(1) In his opinion, it could not be denied that under the terms of the resolution of the United Nations General Assembly, the future régime must be based both on the principle of the autonomy of Eritrea as a member of a Federation and on the principles of democratic government. The Government of Ethiopia had cited the precedent of the British Commonwealth, in which the Crown enjoyed important formal prerogatives; it was said that in the draft Constitution, the Commissioner had not granted those prerogatives to the Representative of the Emperor of Ethiopia.

(2) In the first place, since his task was to draft a constitution for a member of a federation, the Commissioner had considered typical federations such as Canada, the United States of America and Switzerland, rather than the British Commonwealth, which was unique of its kind. He did not, however, rule out consideration of examples from the British Commonwealth, whose constitutional principles were the same as those of its individual members which formed separate federal unions, such as Canada and Australia.

(3) He had not thought fit to adopt the British model, however, since he felt that the system formed a complete whole, from which it was impossible to borrow certain features while rejecting others which were inseparable from them. A special feature of the British constitutional system was a parliamentary régime, with a King who reigned but did not govern. It was true that the King appointed the Prime Minister, while in the Dominions the Governor-General, representing the King, did the same. But the Prime Minister could not remain in power for one moment without the confidence of Parliament, so that the King was bound to call upon the leader of the party which had obtained a majority at the elections.

(4) The Commissioner had judged it advisable to reject the parliamentary system; for in view of the country's need for a stable and efficient government he thought that that system, which was difficult to apply, was unsuited to Eritrea.

(5) The Government of Ethiopia suggested that the draft Constitution was based on parliamentary concepts. In varying degrees, of course, all democratic régimes had certain features in common: but the fundamental principles of the parliamentary system had been deliberately excluded from the draft Constitution.

(6) The Commissioner thought that the Government of Ethiopia had always held the view that the Eritrean Constitution should not establish a parliamentary régime. That being so, it could hardly claim for

the representative of the Emperor certain formal prerogatives which, in any but a parliamentary system, would be a denial of autonomy.

(7) The system of the British Commonwealth was not merely based on legal machinery and procedure, but was characterised by historical traditions, customs and certain circumstances which made it unique and inimitable. The King, who was represented with the governments of each member of the Commonwealth, was at the head of a system that was democratic in all its parts. It was now well understood and recognized that there would never be any interference by the Crown in the affairs of any member of the Commonwealth.

*Article 12. Taking the oath before the Emperor's Representative*

335. The Commissioner said that while he did not think it possible to follow the precedents of the United Kingdom and France cited by the Government of Ethiopia and give the Emperor's Representative the right to nominate the Chief Executive, he could agree to a purely formal investiture which would not give the Emperor any power to reject a candidate duly elected by the Assembly. He accordingly proposed an alternative text, which was accepted by the Minister for Foreign Affairs.

*New Article. Right of the Emperor's Representative to make comments on draft legislation submitted to the Assembly*

336. In order to meet the desire of the Government of Ethiopia that the Emperor's Representative should have the right to call for reconsideration of Eritrean draft legislation involving federal or international responsibility, the Commissioner stated that he was prepared to insert a new article in the Constitution conferring that right upon the Emperor's Representative. The new draft article was accepted by the Minister for Foreign Affairs.

*New Article. Promulgation of legislation*

337. The Government of Ethiopia had also asked that the Representative of the Crown should have the right to promulgate laws. In proposing the new articles to meet that request, the Commissioner said that it was necessary to establish clearly in the text that the right of promulgation was a formality which did not in any way entitle the Emperor's Representative to obstruct the enactment of a law, and that it was not a disguised right of veto.

*Article 14. Relations with the Eritrean Government*

338. In order to meet the wishes of the Government of Ethiopia, the Commissioner proposed that the draft article be replaced by a new text providing that the Representative of the Emperor would discuss with the Eritrean Government all matters of common interest to the Federation and to Eritrea, with a view to their settlement.

*Chapter III. The democratic régime in Eritrea*  
*Articles 15 to 18*

339. The Minister for Foreign Affairs suggested that the wording of these articles was too general to convey

any precise meaning; since precision was desirable in so important a matter, it would be better to delete such formulas from the text.

340. The Commissioner did not, however, feel able to make any changes in the general rules and principles laid down which, in his view, were undisputed elements of modern democratic rights.

341. Moreover, since it was not on the Commissioner's initiative or of his free choice that the Constitution was based on the principles of democratic government, but in execution of an imperative mandate from the General Assembly (resolution 390 A (V), paragraph 12) he would be obliged to make it clear, in the chapter on amendment of the Constitution, that the article embodying those principles could not be amended.

*Chapter IV. Human rights and fundamental freedoms*

*Section I. Provisions taken from the Federal Act*  
*Article 22*

342. The Minister for Foreign Affairs repeated his Government's previous view that matters which were the exclusive concern of the Federal Government, such as deportation, commutation of sentences and appeal to the Sovereign of the Federation, should not be dealt with in the Constitution of a member of a Federation.

343. The Commissioner replied that neither he nor his legal consultants had had the least doubt of the effect of paragraph 12 of the resolution, which stipulated that "The Constitution of Eritrea . . . shall include the guarantees contained in paragraph 7 of the Federal Act, . . ." In view of that provision, he felt bound to reproduce the guarantees contained in paragraph 7 without any change. He saw every advantage in proclaiming all the human rights listed in the Federal Act, and considered that, in practice, there would be no derogation of the Emperor's prerogatives. In the circumstances, he could not agree to amend the article.

*Section II. Other provisions*

*Articles 23 to 34 inclusive*

344. In his comments on the human rights added, in this section, to those already proclaimed in the Federal Act, the Minister for Foreign Affairs declared that there could be no possible disagreement between the Government of Ethiopia and the Commissioner on the subject of Human Rights, since his Government was fully prepared to agree to the widest possible guarantees of human rights being given in the Constitution of Eritrea. He wished to point out, however, in the interests of the Eritreans themselves, that the text, as drafted, might lead to abuses.

*Article 24. Prohibition of torture and certain punishments*

345. The Commissioner could not accept the suggestion that, since torture was rare in the Middle East, the article was unnecessary.

*Article 25. Right to freedom of movement*

346. The Minister for Foreign Affairs pointed out that unlimited freedom of movement was not granted in any country in the world. The Commissioner recognized the truth of this observation and amended the article accordingly.

*Article 28. Recognition of religious institutions as persons before the law*

347. The Minister for Foreign Affairs objected to the provision which would give foreign religious societies the right to acquire real estate — a right which, he pointed out, was not conceded even to private persons of foreign nationality.

348. The Commissioner met the objection at that stage by adding the words “consistent with common law” to the relevant clause of the article.

*New Article. Rights of federal nationals who are not Eritrean citizens*

349. It was suggested that the “equal privileges and immunities” clause, prescribing basic equality of all nationals of a federation who are citizens of its various members, should be included in the draft; such a clause, it was pointed out, was found in all federal constitutions. The Commissioner agreed to add an article conferring such rights, on a basis of reciprocity, on nationals of the Federation.

350. Finally, in reply to various other comments, the Commissioner drew attention to article 33 *bis* (Corrigendum 3), which reproduced the final sub-paragraph of paragraph 7 of the Federal Act: “The respect for the rights and freedoms of others and the requirements of public order and the general welfare alone will justify any limitations to the above rights”. In order to make the effect of that provision clearer, he proposed adding a second paragraph to the article, worded as follows: “In applying the aforementioned provision, the enjoyment of fundamental rights and freedoms may be regulated by law provided that such regulation does not impede their normal enjoyment”.

*Chapter V. Special rights of the various population groups in Eritrea*

*Article 35. Personal status*

351. The Minister for Foreign Affairs considered that article 35, together with articles 36, 84 and 89, laid the foundation for extraterritoriality in Eritrea. Far-reaching problems which had been regarded as definitely settled by agreement with both the Commissioner and the British Administration would thus be raised again. Since the purpose of the article was to ensure respect for customary rights and since such rights could, at any time, be abolished by law, it was suggested that it would be highly desirable to delete the words “and for the special legislation . . .”

352. The Minister also stated that the term “domestic law”, used in paragraph 2, did not correspond to any well established concept of private international law. It might be simpler to overcome these difficulties by omitting the article and relying on the provisions of paragraph 6 of the Federal Act; “The rights and interests of foreign nationals resident in Eritrea shall be guaranteed in accordance with the provisions of paragraph 7”.

353. The Commissioner replied that it was his duty to retain a system which would ensure to foreign residents in Eritrea, particularly Italians, certain rights which were most valuable to them. The intention of the resolution was to guarantee the enjoyment of those rights and they must be recognized in the Constitution, though without the slightest derogation of territorial sovereignty or any prejudice to Eritrean interests.

354. The Commissioner based his views on two points in the preamble to the resolution: (a) the importance of assuring the continuing collaboration of the foreign communities in the economic development of Eritrea; and (b) the desire that the association should assure to the inhabitants of Eritrea the fullest respect and safeguards for their institutions, traditions, religions and languages. Without discriminating against them, it was impossible to deprive two classes of inhabitants — aliens or federal nationals of foreign origin — possessing their own institutions and traditions, of a right granted to the Native inhabitants of the country.

355. He recalled that the Native inhabitants of Eritrea had a personal status established by custom, whereas the status of the inhabitants of foreign origin was, for the most part, established by law. That being so, to provide for the maintenance of custom, but not of legislation, would be an indirect and concealed means of depriving the inhabitants of foreign origin of a right recognized by the resolution. Furthermore, recognition of the special personal status of the inhabitants of Eritrea could not be regarded as creating a privilege for any group and, in any case, their personal status was not a matter that came within the jurisdiction of the Federation.

356. In conclusion, the Commissioner suggested combining the two paragraphs of article 35, retaining the term “special legislation” for both nationals of the Federation and foreign nationals and omitting any reference to the “domestic law” of aliens. He also retained the term “legislation” in article 36.

PART II OF THE DRAFT CONSTITUTION: THE ASSEMBLY

*Chapter I. Composition and election of the Assembly*

*Article 41. Constituencies*

357. The Minister for Foreign Affairs suggested that the question of the electoral constituencies should be approached on a geographical basis, but not necessarily on the basis of present administrative divisions; the Commissioner redrafted paragraph 2 accordingly.

*Article 42. Eligibility*

358. It was suggested that candidates should be eligible only in the constituency where they resided.

359. The Commissioner accepted the suggestion, and added a phrase to sub-paragraph (b) to the effect that members of the electorate, to be eligible for election, must have resided in the constituency for two years during the last ten years.

*Articles 41, 44, 46, 47, 57 and 72*

360. The Commissioner agreed, in order to meet the objections raised by the Government of Ethiopia, to delete all mention of the “alternate” system from the above-mentioned articles.

*Chapter II. Sessions and meetings*

*Article 49. Special sessions*

361. Taking into account the amendments to article 13 already accepted, giving the representative of the Emperor the right to open and close sessions of the Assembly, the Commissioner stated that this prerogative could also be exercised for special sessions.

*Article 50. Quorum*

362. It was suggested that a quorum of only two-fifths might be detrimental to one or other of the two



large religious groups. The Commissioner accordingly agreed to raise the quorum to one-half.

### Chapter III. Status of Members of the Assembly

#### Article 53. Incompatibility of membership of the Assembly with the holding of any other public office

363. The Minister for Foreign Affairs thought that the text of the article reversed the usual practice whereby a government official becoming a candidate for the legislature had first to resign from his post. Moreover, his Government felt that to include federal officials in the article would be inappropriate.

364. The Commissioner agreed to redraft the article to meet the first point, but insisted that it was necessary to include federal officials in the provision, since they could not be allowed to become members of the Eritrean legislature while under the authority of the Federal Government.

#### Article 54. Swearing-in of members

365. The Commissioner accepted the proposal that article 54, as well as articles 74 and 75, should be redrafted in order to take adequately into the account the loyalty due to the Federation.

### Chapter IV. Powers of the Assembly

#### Article 58. General powers of the Assembly together with articles 60, 68, 70, 71 and 78

366. The Government of Ethiopia, in drawing the Commissioner's attention to the above-mentioned articles, criticized under three heads the system of government provided for in the draft Constitution prepared by the Commissioner. In the first place, the Commissioner had combined the presidential and parliamentary systems of government. Secondly, the Chief Executive would neither be responsible to the people, as was the President of the United States of America, nor could he be removed from office by the Assembly (except by impeachment). He would not be responsible even to the Sovereign. Thirdly, since the parliamentary system had been followed to some extent, the Crown should have the same prerogatives as in the British Commonwealth.

367. The Commissioner replied in considerable detail, giving the following main reasons for proposing the establishment of a semi-presidential form of government: first, the system he had suggested had none of the essential features of the parliamentary systems, for, since the Executive was not politically responsible to the Assembly, the Assembly could not, by a vote of no confidence, bring about the resignation of the Executive, and the Executive could not dissolve the Assembly. Members of the Assembly could submit questions to the Government, and a debate could be held by the Assembly on the Government's policy, in which the Government could reply to criticism. It was a form of supervision by the Assembly, a modern formula provided for under the presidential régime, which he had adopted because it conformed to democratic principles, being a system of free discussion which made for harmonious co-operation between the two bodies.

368. He had three reasons for preferring that the Chief Executive be elected by the legislature rather than by the people. In view of their political inexperience and racial and religious differences, direct election

by the Eritrean people might provoke political strife and lead to a state of anarchy in the country. Election of the Chief Executive at the opening of each new legislature had been provided for so that he might enjoy the continued confidence of the Assembly.

369. With regard to the powers given to the Chief Executive, the Commissioner had always maintained that if he was to perform his functions satisfactorily the Chief Executive must have stable authority. The Government of Ethiopia had always agreed to that principle.

### Section III. Election and supervision of the Executive

#### Article 67. Election of the Chief Executive

370. The Minister for Foreign Affairs thought that election of the Chief Executive by the Assembly entailed the risk of arousing interminable discussion and disputes between the various groups in Eritrea.

371. The Commissioner replied that he had already given reasons why any procedure other than that of election would threaten the very basis of autonomy.

### PART III OF THE DRAFT CONSTITUTION: THE EXECUTIVE

#### Article 71. Appointment of Secretaries of Executive Departments

372. Here again the Government of Ethiopia criticized what it called the attempt "to couple two régimes, namely the presidential and the parliamentary systems". If the Chief Executive were to be elected by the Assembly, it would be logical for Secretaries of Executive Departments to be elected in the same manner. There was a risk that the Chief Executive, according to whether he were Christian or Moslem, might choose only persons of his own religion as Heads of Departments. The desirability of the solution suggested by the Administering Authority,<sup>58</sup> i.e., a neutral head of the government who would be above party disputes, was pointed out.

373. The Commissioner could not accept the first proposal, for he was convinced that if the Government's policy were to be thwarted by the collective decisions of a government council, in which all members were equal, the Eritrean Executive would lack the necessary authority and efficiency. Under the system proposed by the Government of Ethiopia, the decisions of the Chief Executive would depend on the agreement of colleagues not appointed by him. Moreover, the Government's authority would be weakened and its responsibility seriously reduced. He agreed that it was possible that the Chief Executive might appoint only Christians or only Moslems, but thought that, if he was a man of good judgment wishing to spare Eritrea internal disturbances, he would not fail to ensure representation in the Government of the main religious and social groups of the country.

#### Article 77. Removal from office of the Chief Executive

374. The Minister for Foreign Affairs stated that the Eritrean Government had no competence to determine what constituted an "infringement" of the integrity of the Federation, and thought that the term was so broad that it might lead to great abuse.

375. The Commissioner agreed to delete the phrase, believing that this would not weaken the effect of the article.

<sup>58</sup> A/AC.44/SR.71.

*Article 80. Suspension in time of emergency of certain constitutional provisions*

376. The Minister for Foreign Affairs objected to this article, recalling that the Commissioner had already admitted<sup>59</sup> that in matters of Human Rights there was joint jurisdiction between the Federal and the Eritrean Governments. He considered, therefore, that there should be no suspension of human rights by the Eritrean Executive without the consent of the Federal Government.

377. It did not seem to the Commissioner that the wording of that article, which recognized the jurisdiction of Eritrea in this matter, in any way restricted the jurisdiction of the Federal Government in the field of Human Rights dealt with in paragraph 7 of the Federal Act.

PART IV OF THE DRAFT CONSTITUTION :  
THE ADVISORY COUNCIL OF ERITREA

*Article 85. Advisory Council of Eritrea*

378. The Minister for Foreign Affairs mentioned the reasons already given for the opposition of his Government to this article. He added that the impression should not be created that an attempt was being made to supersede the many traditional institutions which flourished in Eritrea. Moreover, he felt that such problems of an administrative nature should be left to the discretion of the future Eritrean Government, instead of being solved by constitutional provisions.

379. The Commissioner replied that, in his view, the setting up of an Advisory Council would not run counter to any of the existing traditional institutions of Eritrea. Nevertheless, since the composition and organization of the council might well give rise to considerable discussion, on second thoughts he thought it preferable to omit those details from the Constitution. He proposed, therefore, to delete the second paragraph and to add a provision to the effect that the composition and organization of the Advisory Council should be determined by law.

PART V OF THE DRAFT CONSTITUTION :  
THE JUDICATURE

*Article 89. Composition of the Supreme Court*

380. The Minister for Foreign Affairs considered that nine judges was too large a number for Eritrea. He also suggested that the provision that judges should represent the "various systems of law in force in Eritrea" would perpetuate a régime of extraterritoriality. Only customary law should be applied, as he had already stated in his comments on articles 35 and 36. Moreover, the provision would crystallize the systems of law in force at the time of the adoption of the Constitution.

381. The Commissioner agreed to leave the number of judges open. In order to meet the point concerning the various systems of law in force in Eritrea, he also proposed to add the following sentences to article 86:

"Judicial power shall be exercised by a Supreme Court and by other courts which will apply the various systems of law in force in Eritrea at the time of the entry into force of the Constitution. The organization of these courts shall be established by law."

<sup>59</sup> A/AC.44/SR.74.

*Article 91. Other courts*

382. Since it was clear that the objections of the Minister for Foreign Affairs did not relate to the substance of the article, but only to its inclusion in the Constitution, the Commissioner agreed to delete it.

PART VI OF THE DRAFT CONSTITUTION :  
AMENDMENT OF THE CONSTITUTION

*Article 92. Compliance with the resolution of the United Nations*

383. The Minister for Foreign Affairs pointed out that according to paragraph 12 of the resolution, the Constitution of Eritrea was subject to, and must be consistent with, the Federal Act. He proposed an alternative draft of the whole article to embody his point.

384. The Commissioner felt that the chief thing was to endorse the fact that article 15 was based on the principles of democratic government and could not therefore be amended if the vital provision of paragraph 12 of the resolution were to be safeguarded.

385. He thought that he could meet the Ethiopian Government's point by redrafting paragraph 2 of article 92.

*Article 94. Conditions governing the adoption of amendments*

386. The Minister for Foreign Affairs considered that, if the draft Constitution itself could be adopted by a two-thirds majority, the same majority should suffice for amendments to it. Furthermore, he suggested that since the Constitution could not enter into force until it had been ratified by the Emperor, the same provision should apply to amendments.

387. The Commissioner could not accept the first point, since he believed that the revision of the Constitution was a serious matter. After careful consideration, however, he agreed to the second point, and proposed the addition of a third paragraph providing for ratification by the Emperor of any amendments to the Constitution.

PART VII OF THE DRAFT CONSTITUTION :  
TRANSITIONAL PROVISIONS

*Article 95. Entry into force of the Constitution*

388. The Minister for Foreign Affairs suggested that fundamental changes in the draft would be necessary, for the entry into force of the Constitution was dependent, not on its promulgation but on its ratification, and on ratification of the Federal Act, by the Emperor, following approval of the Constitution by the Commissioner and its adoption by the Assembly, as laid down in paragraph 13 of the resolution. In fact, he observed, nowhere in the resolution was there any mention of the formality of promulgation by the Administering Power.

389. The Commissioner agreed to adopt the suggestion of the Government of Ethiopia by following the exact wording of paragraph 13 of the resolution.

*Article 96. Additional laws giving effect to the Constitution*

390. The Commissioner also agreed to amend article 96 in order to bring it into line with the amendments to the previous article, by which the formality of promulgation was omitted.

*Article 98. Respect for obligations contracted on behalf of Eritrea*

391. The Minister for Foreign Affairs feared that the drafting of the article was at fault, and might perpetuate obligations of any kind contracted by the Administering Power regardless of a time-limit.

392. The Commissioner, in reply, recalled that provisions of this type are often found in treaties which provide for the transfer of a territory from one sovereignty to another. In the case in point the obligations undertaken clearly referred to Eritrea alone. Since those obligations remained valid they continued unchanged.

CONCLUSIONS. CHIEF RESULTS OF THE CONSULTATIONS WITH THE ETHIOPIAN GOVERNMENT

393. The main amendments to the draft Constitution resulting from the consultations described above are summarized below:

*Status of Eritrea*

394. The Minister for Foreign Affairs agreed that since the Eritrean members of the Imperial Federal Council would be representatives of Eritrea, they should, as such, be appointed by the Chief Executive, while the Commissioner accepted the proposal of the Government of Ethiopia that they should be formally invested in office by the Emperor. It was also agreed to delete any reference in the Constitution to the appointment of Eritreans to positions in the legislative, executive and judicial branches of the Federal Government.

395. An article was added to the draft conferring certain rights, on the basis of reciprocity, on nationals of the Federation who were not Eritrean citizens.

*Representation of the Emperor in Eritrea*

396. The Commissioner, in agreeing that the Representative of the Emperor should have certain additional formal prerogatives such as investing the Chief Executive in office, opening and closing sessions of the Assembly, delivering the speech from the throne, requesting reconsideration of draft legislation, promulgating laws and discussing matters of common interest with the Eritrean Government, did not depart in any way from the principle he had maintained throughout the consultations. Although he was prepared to accord the Emperor's Representative all the formal prerogatives necessary to uphold the prestige and authority of the Emperor as sovereign head of the Federation, he could in no circumstances grant him the right to intervene in the functions of the Eritrean Executive.

*Human rights.*

397. The Commissioner made the following change in this chapter: he moved the last sub-paragraph 7 of the resolution ("The respect for the rights and freedoms of others and the requirements of public order and the general welfare alone will justify any limitations to the above rights") to the end of the chapter on Human Rights and Fundamental Freedoms, specifying that the above-mentioned provision applied to the

whole of that chapter. The Commissioner also added a paragraph stipulating that if, in applying this provision, the enjoyment of fundamental rights and freedoms might be regulated by law, such regulation could not impede their normal enjoyment.

*Special rights of the various population groups*

398. The Commissioner maintained his opinion that it was his duty, in drafting the Constitution, to protect the right of foreign nationals to respect for the special legislation applicable to them.

*The Assembly*

399. In the oath to be taken by the Chief Executive, by members of the Assembly and by Secretaries of Executive Departments, a formula acknowledging respect for the Federation was inserted.

*The Executive*

400. The Commissioner could not agree to the appointment of the Chief Executive otherwise than by election by the Assembly. Furthermore, he maintained his opinion that the Chief Executive should select or appoint the Heads of the Executive Departments.

*The Advisory Council of Eritrea*

401. The proposal that no such council should be established was not accepted by the Commissioner.

*Amendment of the Constitution*

402. It was agreed that amendments to the Constitution must be ratified by the Emperor.

*End of the consultations*

403. Further informal discussions followed after the exchange of memoranda, and by the time the Minister for Foreign Affairs of Ethiopia left for Addis Ababa on 10 April 1952 the Commissioner was able to state in a Press release that he and the Minister had made a comprehensive and detailed examination of the various problems of mutual interest presented by the proposals relating to the Constitution under study. As the outcome of these consultations, which had been marked by a spirit of cordiality and mutual understanding, very good progress had been made towards the implementation of the United Nations resolution. Full agreement had in fact been reached on all the points in the draft Constitution.

404. The Commissioner proceeded to prepare a final draft text<sup>60</sup> on the basis of the results of his consultations with the Administering Power and the Government of Ethiopia. On 25 April 1952, he transmitted copies to the Government of Ethiopia in a letter in which he drew attention to further minor changes which he had made since his conversations with the Minister for Foreign Affairs, and stated that he had been able to accept to a great extent the suggestions of the Government of Ethiopia.

405. Subsequently, on 28 April 1952, the Commissioner had an informal meeting with the Ethiopian Liaison Officer at which he explained the changes he had made in the text subsequent to the agreement reached with the Minister for Foreign Affairs.

<sup>60</sup> A/AC.44/L.7.

### Chapter III

## CONVENING BY THE ADMINISTERING AUTHORITY OF A REPRESENTATIVE ASSEMBLY OF ERITREANS CHOSEN BY THE PEOPLE

### Section 1. Arrangements for the elections

406. One of the tasks which the British Administration was required to carry out in consultation with the United Nations Commissioner was to "make arrangements for and convoke a representative assembly of Eritreans chosen by the people" (resolution 390 (V), paragraph 11).

407. In accordance with its mandate, the British Administration, by Proclamation No. 121, dated 28 January 1952, adopted the procedure which, taking into account local conditions—social, geographical and political—as well as the time and means available to the officials responsible for the arrangements, it considered most appropriate. In a letter to the British Administration dated 4 February 1952, the Commissioner stated that the proclamation "shows great experience of the problem and a deep knowledge of the traditions of the country".

408. Direct elections, in a single stage, by secret ballot, were held in the towns of Asmara and Massawa only. In all other constituencies the elections were carried out in two stages, in the following way:

(1) The various districts (settled population) or tribes (nomads) elected delegates to the electoral colleges. Generally speaking, this first stage was conducted in accordance with local custom;

(2) At the second stage, the electoral college elected the members of the Assembly by secret ballot.

409. The participation of Eritreans in the primary stage in the case of indirect elections was governed, however, not by custom, but by rules established for the purpose. The qualifications required, the same as in the case of the direct elections, were as follows:

A person shall be qualified to vote if he:

1. Is an inhabitant of Eritrea; and
2. Is not a person who possesses foreign nationality and who is not descended from a parent or grandparent wholly of blood indigenous to Eritrea; and
3. Is a male; and
4. Is not less than 21 years of age; and
5. Has been ordinarily resident in the constituency for a period of not less than one year; and
6. Is of sound mind; and
7. Is not serving a term of imprisonment.

410. With regard to eligibility for election to the Assembly, the first three conditions laid down for the electorate were repeated in Proclamation No. 121; certain other requirements, such as those of age (30 instead of 21 years) and residence (not less than two

years in the constituency during the last ten years), were raised; conditions were added which disqualified undischarged bankrupts or persons whose property was subject to certain measures or who were party to a subsisting contract with the Administration (unless they had disclosed the existence and nature of such contract); as regards officials employed by the Administration, they could apply for a leave of absence without pay for the purpose of furthering their candidature.

### Section 2. Election and composition of the Eritrean Assembly

411. The various Eritrean parties had been founded and, prior to the United Nations resolution of 2 December 1950, had pursued their activities along the lines of the different solutions proposed for the future of Eritrea.

412. As soon as he arrived in Eritrea, the Commissioner was obliged to emphasize the fact that from the day on which the United Nations General Assembly had adopted the recommendation regarding Federation the problem had completely changed in character. The various parties, in their replies to the Commissioner's questions on the Constitution were, no doubt, still able to attempt to steer the Federation towards a pattern differing as little as possible from their previous ideas. The very fact, however, that during the official consultations with the Commissioner the political parties were under the necessity of stating their views on the basic aspects of the Constitution gave the electorate, in full knowledge of the facts, freedom of choice among the views of the candidates from the different parties. It seems certain, moreover, that the actual influence of the political parties as such was considerably stronger in the direct than in the indirect ballot constituencies, for in the latter a number of traditional considerations played a part.

413. It seems clear that, although the way in which the Administration had divided up the territory into electoral constituencies aroused some protests, mainly from the Moslems, in most cases it was impossible to please everyone. For instance, whereas the towns in the Western Province which asked to be represented in the Assembly had far too small a population—less than 9,000 in Keren and less than 6,000 in Agordat and Tessenei, the proportion having been fixed at one representative for about 15,000 people—the complaints about tribal grouping in the constituencies generally arose because the population had different views on the subject of division. In those circumstances, any concession to one point of view would have aroused discontent among those of the opposite opinion.

414. In other cases, the claims of the Moslems raised a question of principle. In point of fact the Moslems

who are geographically dispersed throughout the Hamasien and Serae divisions—unlike the Christians of the Western Province who are centred in the “Abyssinian districts”—could not have voluntarily accepted a representative except on the basis of religion, which would have been anomalous in the system of territorial constituencies adopted.

415. Taking into account the fact that there were two ballots, the direct elections on 25 and 26 March 1952, and the second stage of the indirect elections on 26 March 1952, produced, in so far as it has been possible to determine precisely the political complexion of those elected, the following results:

Unionists and Liberal Unionists.....	32
Democratic and Independent Front (Moslem League and other parties of the Front).....	18
Moslem League of the Western Province.....	14
National Party .....	1
Independent Moslem League.....	1
	66
	66

416. In addition, a representative from the Democratic Front and a member of the Moslem League of the Western Province were elected by second ballot (indirect election) on 12 May 1952, thus amending the foregoing figures to nineteen for the Democratic Front and fifteen for the Moslem League of the Western Province.

### Section 3. Preliminary proceedings of the Assembly

417. At the first meeting of the Eritrean Assembly, which was inaugurated with due ceremony on 28 April 1952, the Chief Administrator in his opening address, stated that the convocation of the Assembly by the British Administration marked the beginning of democratic institutions in Eritrea as well as a step towards the Federation of Eritrea and Ethiopia under the sovereignty of the Ethiopian Crown. He referred to the sympathy with which the Government of the United Kingdom and the British people were following this process of development and trusted that the Assembly would discharge its task speedily so that the transfer of power could take place not later than 15 September 1952.

418. The Commissioner then made a statement in which he paid tribute to the successful holding of the elections rendered possible by the co-operative spirit displayed by the Eritrean people and the organizing ability of the British Administration. That comment was equally true of the indirect elections, but the way in which the population had adapted itself to the entirely new method of direct and secret ballot was naturally even more remarkable than the normal working of the traditional tribal and district meetings.

419. Contrasting the atmosphere of peace and brotherly feeling with the unhappy days of banditry and tribal feuds, the Commissioner exhorted the members to prove themselves worthy of the sense of responsibility and patriotism already shown by their electors.

420. He stated that the draft Constitution he would shortly be submitting to the Assembly was based

strictly on the principles of the resolution, the interests of the parties concerned and the wishes of the Eritrean people. Nevertheless, since the General Assembly had adopted a compromise solution, party strife in the Assembly would be all the more dangerous, for it might destroy the balance set up by the resolution of 2 December 1950.

421. In conclusion, the Commissioner stressed the fact that Eritrea was fortunate in acquiring at the same time autonomy and a Constitution based on democratic principles. He pointed out, however, that the belief of the people in their institutions was an indispensable factor for the success of an undertaking in which, in accordance with his mandate from the General Assembly, he would do his utmost to co-operate.

422. Finally, the Representative of the Emperor of Ethiopia, bringing to the Assembly the good wishes of the Emperor, emphasized the importance and urgency of the task to be carried out. There had been a long period of waiting before it had been possible, thanks to the efforts of Ethiopia, the United Kingdom, the United States and many other Members of the United Nations, to bring about a settlement of the Eritrean question, on the basis of the aspirations of the inhabitants of Eritrea and the principle of close association with Ethiopia.

423. The Emperor was convinced of the sincerity and perspicacity with which the Commissioner had applied himself to drafting a Constitution, and of the need for the Assembly to succeed quickly in its task, since the future of the population, as well as peace and security in East Africa, depended upon it. The Emperor therefore exhorted the members of the Assembly to set aside all party strife, and assured Eritreans that he would regard them as his sons just as he did their Ethiopian brothers.

424. On 29 April 1952,<sup>61</sup> by secret ballot, the Assembly elected Ato Tedla Bairu as President—by 49 votes to 11, with 2 abstentions, and 4 spoiled papers—and Sheikh Ali Mohamed Mussa Redai as Vice-President by 48 votes to 17 with one abstention.

425. The two who were elected had, in common, youth—both being under 40 years of age—and a knowledge of languages; they also represented different religions, the President being a Christian and the Vice-President a Moslem. A spirit of mutual tolerance among Eritreans was thus evident, which augured well for the subsequent work of the Assembly.

426. The Assembly had before it draft Standing Orders drawn up by the British Administration. The draft, while stating that the proceedings of the Assembly would be conducted in English, Arabic and Tigrinya (article 9) made provision in the same article for members to speak in Italian if they wished, in which case the speech would be interpreted into the other languages of the Assembly. The latter provision was rejected by the Assembly which, on 30 April 1952,<sup>62</sup> adopted the draft Standing Orders without further amendment by 56 votes to none, with 9 abstentions.

<sup>61</sup> A/AC.44/R.112.

<sup>62</sup> A/AC.44/R.114.

## Chapter IV

### SUBMISSION OF THE DRAFT CONSTITUTION TO THE ERITREAN ASSEMBLY. DISCUSSIONS. ADOPTION OF THE AMENDED TEXT

#### Section I. Submission of the draft to the Eritrean Assembly

427. The Commissioner, on 3 May 1952, submitted to the Assembly the draft Constitution which he had prepared in consultation with the Administering Authority, the Government of Ethiopia and the inhabitants of Eritrea.<sup>63</sup>

428. In the statement<sup>64</sup> which he made on that occasion, the Commissioner, recalling the consultations held by him, referred once again to the importance of equal respect for the two fundamental principles of the resolution—Eritrean autonomy and the sovereignty of the Ethiopian Crown—which reflected and endeavoured to reconcile the two dominant tendencies of the population.

429. The Commissioner pointed out the advantages of having a representative of the Emperor in Eritrea and made it clear that in no way would it imply intervention of any kind in the local government of the autonomous unit of Eritrea.

430. Having drawn attention to the principles of Eritrean autonomy, democratic government and respect for human rights embodied in the draft Constitution, the Commissioner also made it clear that the supplementary safeguards for the various population groups based on the preamble to the resolution, did not imply any form of extraterritorial rights. But the technical and scientific knowledge of foreign nationals made their co-operation, on the basis of respect for Eritrean authority on the one side and guarantees granted to aliens on the other, a necessary condition for the economic development of Eritrea.

431. There was all the more reason, then, why Eritrean Christians and Moslems should co-operate in a fraternal spirit both in the central government and in the local communities.

432. The Commissioner then described the "semi-presidential" form of government, in which the Chief Executive, elected by the Assembly—the Assembly itself having been elected by the people—would not be politically responsible to it and would himself appoint the secretaries of executive departments. Precautions of every kind had been taken against the abuse of power by the Chief Executive; an electoral High Commission would be responsible for the proper conduct of the elections, while a civil service commission would protect officials from arbitrary action, an annual budget would be approved according to democratic principles and the Assembly would elect an Auditor-General.

435. Finally, the Commissioner enumerated the provisions for safeguarding the independence of the judic-

ary, and for furthering the economic and social development of the country by the establishment of an Advisory Council of Eritrea.

#### Section 2. General survey of the discussions in the Assembly

434. The Assembly, meeting at the Palace, Asmara, during the course of forty meetings between 12 May and 10 July 1952, considered and adopted the Constitution of Eritrea.

437. In its deliberations the Assembly was assisted by officials provided by the British Administration.

436. On 14 May 1952,<sup>65</sup> the Assembly adopted unanimously by roll call, article 1 of the draft Constitution concerning the adoption and ratification of the Federal Act. Likewise, article 23 containing the provisions reproduced from the Federal Act with regard to human rights and fundamental liberties, was adopted by acclamation, the representatives all standing. A large number of other articles were also adopted without amendment and in some cases without discussion. The following analysis is mainly intended to show and explain the changes made in the draft by the Eritrean Assembly, in some cases at the suggestion of the Commissioner himself. It accordingly represents only one aspect of the members' work, though that aspect may be regarded as an essential one, because a small number of controversial questions actually took up a large part of the time devoted by the Assembly to its historic task.

#### Section 3. Detailed analysis of the discussions in the Assembly on the draft Constitution. Amendments made to the draft

437. In order to bring out more clearly the nature of the discussions in the Assembly, by comparing them with the official consultations with the inhabitants of Eritrea, analysed in detail in chapter I, section 2 D of this report, the main problems raised by the draft Constitution have been divided into the three following categories:

##### A PROBLEMS THE SOLUTION OF WHICH, IN SPITE OF APPARENT DIFFERENCES OF OPINION, DID NOT GIVE RISE TO SERIOUS DIFFICULTIES IN THE ASSEMBLY

438. All these problems relate to the Assembly. The apparent preference of a certain section of the population—for the most part Moslems—for the establishment of two Assemblies was reflected in an amendment, designed to set up, in addition to a chamber of forty elected members, another chamber composed of experts and men of experience, numbering thirty. Nevertheless, although the question was discussed fully at two meet-

<sup>63</sup> Document A/AC.44/L.7 is the text used for all quotations and numbering of articles in this section

<sup>64</sup> A/AC.44/L.9

<sup>65</sup> A/AC.44/R.57.

ings on 24<sup>66</sup> and 26<sup>67</sup> May 1952, it was decided by a significantly heavy vote (60 votes to 1, with 5 abstentions) in favour of a single chamber (article 41).

439. So far as this part of the Constitution is concerned, the only points to be noted—except for articles 59 and 60 which are connected with the question of powers of the Emperor's representative—are the following:

(1). The Assembly approved the suggestion of the Commissioner with regard to the term of the Assembly proposed in the draft Constitution (4 years) (article 49).

(2). The Assembly tightened up the arrangements for the sessions, the following precautions being added:

(a) The date of the regular session would be specified by law;

(b) The Chief Executive, before fixing the closing date of the regular session would consult the President of the Assembly (article 50).

(3). The Assembly decided that a written request by one-third of its members (instead of an absolute majority) would be sufficient for the Chief Executive to convene a special session (article 51).

(4). The Assembly raised the quorum from one-half to two-thirds of its members (article 52).

#### B. QUESTIONS NOT DEALT WITH, OR MERELY TOUCHED ON DURING TUE CONSULTATIONS, BUT WHICH GAVE RISE TO IMPORTANT DISCUSSIONS IN THE ASSEMBLY<sup>68</sup>

##### 1. Status of Eritrea

440. There were such lengthy discussions on 15 May 1952<sup>69</sup> on certain articles of this chapter that the Commissioner felt it necessary to suggest the following amendments to the draft Constitution:

(a) *Matters coming within the jurisdiction of Eritrea*

The Commissioner proposed that a sub-paragraph (b) worded as follows be added to paragraph 2 of the article: "(b) the organization of the public services". The article as amended was adopted by the Assembly with no opposing votes and with one abstention (article 5).

(b) *Contribution by Eritrea to the expenses of the Federal Government. Assessment and levying of federal taxes*

The Commissioner proposed that a third paragraph relating to customs duties be added to the article, reproducing a provision included in paragraph 4 of resolution 390 A (V). The new paragraph, together with the rest of the article, was adopted by 62 votes to one (article 6).

(c) *Representation of Eritrea in the Imperial Federal Council*

At the Commissioner's suggestion, a second paragraph relating to the participation of Eritreans in the Federal

<sup>66</sup> A/AC.44/R.69.

<sup>67</sup> A/AC.44/R.70

<sup>68</sup> The questions of languages, which had provoked so much controversy during the consultations, actually belongs to the third category (controversial questions common to both the consultations and the proceedings of the Assembly). It will, however, be examined with the rest of the chapter dealing with special rights, the whole of which was submitted to the same committee for examination.

<sup>69</sup> A/AC.44/R.58 and 59.

Government was added to the article, reproducing a provision included in paragraph 5 of the resolution.

Finally, the Commissioner also felt it necessary during the debate to suggest that the appointment by the Chief Executive of the Eritrean representatives in the Imperial Federal Council be submitted to the Assembly for approval.

The whole article as amended was adopted with no opposing votes (article 7).

##### 2. Nationality (and rights of federal nationals), citizenship and the electorate

(a) *Eritrean citizenship*

441. The article concerning Eritrean citizenship had been drafted by the Commissioner as follows:

"Persons possessing Federal nationality who fall within one of the following categories shall be citizens of Eritrea:

"(a) Persons who have acquired Federal nationality in Eritrea under the Federal Act (section A, paragraph 6 of the General Assembly resolution 390 A (V));

"(b) Persons born in Eritrea;

"(c) Persons granted Eritrean citizenship in accordance with the law."

442. After a lengthy debate in the Assembly on 19<sup>70</sup> and 20<sup>71</sup> May 1952, the article was amended and adopted as follows:

"Persons who have acquired Federal nationality in Eritrea under the Federal Act (section A, paragraph 6 of the General Assembly resolution 390 A (V)) and have been granted Eritrean citizenship in accordance with the laws of Eritrea shall be citizens of Eritrea" (article 20).

(b) *Rights of federal nationals who are not Eritrean citizens*

443. The article was submitted in the following form in the draft Constitution:

"1. On the basis of reciprocity, nationals of the Federation who are not Eritrean citizens shall enjoy in Eritrea the same rights as Eritrean citizens.

"2. Such nationals shall enjoy political rights provided that they satisfy the conditions concerning franchise laid down in article 21 and the conditions concerning eligibility for election laid down in article 44. They may be members of the Executive subject to article 70, paragraph 2."

Following the discussions on 20<sup>72</sup> and 21<sup>73</sup> May 1952, the article was amended as follows:

"1. On the basis of reciprocity, Federal nationals who are not Eritrean citizens shall enjoy the same rights as Eritreans.

"2. Federal nationals shall enjoy political rights in accordance with the Eritrean Constitution and laws on the basis of reciprocity" (article 8).

(c) *The electorate*

444. On 21 May 1952,<sup>74</sup> the article dealing with the electorate was adopted with the following amendment:

<sup>70</sup> A/AC.44/R.61 and 62.

<sup>71</sup> A/AC.44/R.63.

<sup>72</sup> A/AC.44/R.63 and 64.

<sup>73</sup> A/AC.44/R.65.

<sup>74</sup> A/AC.44/R.66.

the words "The electorate shall consist of those persons possessing Federal nationality" were replaced by "The electorate shall consist of those persons possessing Eritrean citizenship" (article 21).

445. The Assembly had thus shown a general tendency to leave it to the Eritrean representatives to decide the conditions of future participation in the political life of the autonomous unit.

### 3. *Special rights of the various population groups of Eritrea*

446. The Assembly, at its meeting on 24 May 1952,<sup>75</sup> decided to postpone consideration of the article relating to personal status, already discussed at the previous meeting,<sup>76</sup> and also the other articles included in that chapter.

447. It was not until 7 June 1952<sup>77</sup> that the Assembly reverted to the chapter, and, although the articles on personal status and non-discrimination with respect to rights acquired were adopted without change during that meeting, consideration of the articles dealing with property rights and the official languages of Eritrea was again postponed (articles 37 and 39).

448. The Assembly, having on 9 June 1952<sup>78</sup> yet again postponed the discussion on property rights, the Commissioner proposed on 10 June 1952,<sup>79</sup> that the article relating to non-discrimination with respect to rights acquired be deleted, the problem being dealt with, together with property rights, in a single article reading as follows:

"Property rights and rights of real nature established by custom or law and exercised in Eritrea by the tribes, the various population groups and by natural or legal persons, shall not be impaired by any law of a discriminatory nature."

449. The Assembly, having re-opened the discussion on the question of non-discrimination, finally decided at the same meeting to adopt the text proposed by the Commissioner instead of the two draft articles (articles 38 and 39). One of the most serious difficulties encountered during the proceedings of the Assembly was thus resolved without opposition.

450. In order to allay certain misgivings which still existed, the Commissioner explained on 10 July 1952,<sup>80</sup> during the voting, chapter by chapter, on the Constitution, that property rights on State lands would be covered by the new article. This later amended text was adopted by the Assembly during its vote on part I, chapter V.

451. On 11 June 1952,<sup>81</sup> the Assembly considered the article concerning the languages of Eritrea which, it will be recalled, had given rise to controversy during the consultations.

452. The question was again discussed, likewise at length and without result, during the meeting on 14 June 1952.<sup>82</sup> The Commissioner, finding himself once more in the position of having to help the Assembly

<sup>75</sup> A/AC.44/R.69.

<sup>76</sup> A/AC.44/R.68.

<sup>77</sup> A/AC.44/R.81.

<sup>78</sup> A/AC.44/R.83.

<sup>79</sup> A/AC.44/R.85.

<sup>80</sup> A/AC.44/R.141.

<sup>81</sup> A/AC.44/R.87.

<sup>82</sup> A/AC.44/R.89.

to solve a delicate problem, suggested withdrawing the text which he had purposely drafted in broad terms and replacing it by the following:

"1. Tigrinya and Arabic shall be the official languages of Eritrea.

"2. In accordance with established practice in Eritrea, the languages spoken and written by the various population groups shall be permitted to be used in dealings with the public authorities, as well as for religious or educational purposes and for all forms of expression of ideas" (article 40).

453. Here again the debate, adjourned until the following meeting on 16 June 1952,<sup>83</sup> ended with the adoption of the amended text which the Commissioner, in an endeavour to interpret the various views of members, had substituted for the original text.

### 4. *Communities with local authority*

454. At the meeting on 19 June 1952,<sup>84</sup> the Commissioner submitted to the Assembly a new text of the corresponding article in which paragraph 2 had been amended as follows:

#### *Original draft*

"2. Municipalities shall retain their own organization for the management of their affairs."

#### *Revised text submitted at the meeting*

"2. Municipalities shall be accorded the management of their own affairs."

455. The alternative text was intended to assuage the strong local feeling evinced in the Assembly, especially among the Moslem members, of which there was further proof when the Assembly amended paragraph 3, making the appointment of local government officials from persons of the local community itself compulsory instead of by "preference" (article 85).

## C. CONTROVERSIAL QUESTIONS COMMON TO BOTH THE CONSULTATIONS AND THE PROCEEDINGS OF THE ASSEMBLY

### 1. *The Executive*

456. The very principle of a semi-presidential system gave rise to certain misunderstandings which the Commissioner was obliged to dispel. For instance, when a member of the Assembly suggested that the appointment of secretaries of executive departments should be approved by the Assembly, the Commissioner had to state flatly that such a provision would partake of a parliamentary régime.

457. After the misconceptions had been removed, however, the Assembly soon came round to the Commissioner's view and, in fact, in that chapter only the text concerning the election of the Chief Executive raised certain difficulties. The discussion on the article, which opened on 3 June 1952<sup>85</sup> and was continued on the following day, gave the Commissioner the opportunity to note certain tendencies displayed by the Assembly, and in particular its feeling that a larger majority was required. He accordingly submitted an amendment consisting mainly of a stipulation for a two-thirds majority and provision for giving it practical effect. The amended

<sup>83</sup> A/AC.44/R.91.

<sup>84</sup> A/AC.44/R.119 and R.121.

<sup>85</sup> A/AC.44/R.77 and R.79.



text was adopted at the same meeting without opposition and with only one abstention (article 70).

## 2. Representation of the Emperor in Eritrea

458. As a result of the work of a committee set up by the Assembly on 21 May 1952,<sup>86</sup> the members of which had been designated on 29 May 1952,<sup>87</sup> and which presented a final, unanimous report on 2 July 1952,<sup>88</sup> proposing either the deletion—in the case of only one article—or the amendment or adoption of the Commissioner's text, the following changes were made in the draft Constitution.

### (a) Comments on draft legislation and request for reconsideration

459. On 2 July 1952,<sup>89</sup> the Assembly amended article 13 of the draft Constitution. While maintaining the right of the Emperor's representative to request reconsideration of draft legislation already voted by the Assembly—as in the cases already provided for by the draft Constitution—the Assembly deleted the provision concerning possible comments by the Emperor's representative on draft legislation submitted to the Assembly (at the same meeting for article 13 and at the meeting on 3 July 1952 for article 59).<sup>90</sup>

### (b) Relations with the Eritrean Government

460. At the meeting on 2 July 1952,<sup>91</sup> the Assembly decided to delete article 15 of the draft Constitution under which the Emperor's representative would discuss with the Eritrean Government all matters of common interest to the Federation and to Eritrea. On this point also the Assembly displayed its tendency to assert the autonomy of Eritrea.

## 3. Symbols of the Federation and of Eritrea

461. Following the report of the same committee that had considered the question of the powers of the Emperor's representative, the Assembly, on 2 July 1952,<sup>92</sup> adopted the article relating to the symbols of Eritrea in the following form:

"1. The Federal flag shall be respected in Eritrea.

"2. There shall be a flag, seal and arms of Eritrea, details of which shall be decided upon by law" (article 22).

## D. GENERAL CHARACTER OF THE DISCUSSIONS. ESTABLISHMENT OF THE EXECUTIVE COMMITTEE. THE ERITREAN ASSEMBLY BECOMES THE ASSEMBLY OF ERITREA FOR A TERM OF FOUR YEARS

462. The committee, three meetings of which the Commissioner had attended in order to give any explanations required, thus ended its work by establishing texts approved by the Commissioner and acceptable to the Assembly. The difficulties encountered, however, were so serious that it may be useful to recall briefly the circumstances in which they were finally overcome.

463. When the interim report<sup>93</sup> of the committee was submitted and it became obvious that there was persistent disagreement on some of the articles under consid-

eration, the Commissioner felt obliged to appeal<sup>93</sup> to the sense of responsibility of the members of the committee. At the meeting on 1 July 1952, he spoke of the difficult situation facing him on his arrival in Eritrea, and reminded his hearers that he had placed all his expert knowledge and that of highly qualified consultants at the disposal of the Eritreans. For their part, until then, the members of the Assembly had worked in a spirit of helpful compromise. Why then should that goodwill seem to be lacking when it came to part I, chapter II of the draft Constitution? The circumstance was all the more regrettable since the rights of all were protected by the Constitution, and the Emperor of Ethiopia, in whom the United Nations had shown full confidence, had by his acceptance of the resolution, given proof of his respect for the autonomy of Eritrea. Recalling that no consideration had ever prevented him from accepting in a democratic spirit all reasonable amendments, the Commissioner urged the members of the committee and of the Assembly not only to produce an agreed text, but to look to the future in the same spirit of confidence and optimism.

464. The committee, after hearing the Commissioner's appeal, and receiving the thanks of the President of the Assembly, who urged it not to go back on the agreement already reached, made a further effort which, as already noted, resulted in the submission to the Assembly on the afternoon of the following day of its final report.

465. In addition, the following two further points should be mentioned. First, the Assembly adopted provisions relating to the Executive Committee<sup>94</sup> which had already been the subject of consultations between the British Administration and the Commissioner. On 9 July 1952, when the debate on "Part VII—Transitional Provisions", was opened in the Eritrean Assembly, a letter<sup>95</sup> from the British Administration was read out, transmitting for the information of members a copy of the draft Proclamation which the Chief Administrator proposed to enact as soon as the Assembly had adopted the article concerning respect for obligations contracted by the Executive Committee. The letter explained the reasons for the establishment of the Committee and outlined its main duties; it stated that a General Notice specifying the responsibilities of the Committee would be published simultaneously with the Proclamation, and added that it was the intention of the Chief Administrator to request the Assembly, as soon as the Proclamation was enacted, to elect ten members for the Executive Committee and to nominate the Chairman.

466. The Chief Administrator, supported by the Commissioner, addressed the Assembly on the same day and gave a commentary on the articles, stating that he would hold himself at the disposal of the Assembly in order to furnish any further explanation required.<sup>96</sup>

467. The three relevant articles were debated and a new text was adopted, on a proposal by the President, combining articles 97 and 98 relating to respect for obligations contracted "on behalf of Eritrea" and "by the Executive Committee", respectively with certain minor amendments. The wording was as follows:

<sup>93</sup> A/AC.44/R.127, pages 1-3.

<sup>94</sup> See chapter II, paras. 306 to 318.

<sup>95</sup> A/AC.44/R.140, appendix A.

<sup>96</sup> A/AC.44/R.140, appendix B.

<sup>86</sup> A/AC.44/R.65.

<sup>87</sup> A/AC.44/R.73.

<sup>88</sup> A/AC.44/R.129 and 130.

<sup>89</sup> A/AC.44/R.130.

<sup>90</sup> A/AC.44/R.131.

<sup>91</sup> A/AC.44/R.129 and 130.

<sup>92</sup> A/AC.44/R.127 and R.128.

*“Respect for obligations contracted on behalf of Eritrea*

“1. Obligations of any kind regularly contracted by the authorities administering Eritrea up to the date on which the Constitution enters into force shall remain valid for the Government of Eritrea and must be respected provided that such obligations relate to matters within the jurisdiction of Eritrea.

“2. As from the date of the entry into force of the Constitution any undertaking regularly concluded by the Executive Committee established by the Administering Authority, before the date of the entry into force of the Constitution shall remain valid and must be respected.

“3. The provisions contained in paragraph 1 above shall not apply to obligations terminated by the Peace Treaty with Italy of 10 February 1947 or by the resolution adopted by the United Nations General Assembly on 29 January 1952.”

468. Article 98 was adopted without change.

469. The Proclamation was published by the Chief Administrator on 11 July 1952, and on 16 July 1952 the Assembly elected the Chairman and the ten members of the Executive Committee, submitting at the same time a request to the Chief Administrator to the effect that two officials of the Administration, one Moslem and one Christian, be appointed as advisers to the Committee. A General Notice empowering the Executive Committee to undertake certain of the responsibilities of the Chief Administrator was published on 18 July 1952. The Executive Committee was convened for a preliminary meeting with the Chief Administrator and his advisers on 23 July 1952, in order to draw up a programme of work and to discuss an agenda, and it continued to act until 15 September 1952, the date of the transfer of power.

470. In the second place, the Eritrean Assembly also had before it a proposal from the Commissioner that it should exercise the powers of the Assembly as provided in the Constitution for a period of one or two years. The Commissioner's proposal was prompted by the following considerations: the inadvisability of holding new elections, with the accompanying campaign, so short a time after the election of the Representative Assembly, the experience acquired by the members of the Assembly through their work on the Constitution, and, finally, the dignity conferred on those same members by their participation in that historic task. The Commissioner stated, however, at the meeting on 9 July 1952,<sup>97</sup> that the question was a political one and that it was for the members of the Assembly, who were better acquainted than he with the elements of the problem and the feeling of the population, to take

<sup>97</sup> A/AC.44/R.139.

a decision on the sole grounds of the public weal. At the same meeting, it was decided by 51 votes to 6 with 4 abstentions, that the term of the Eritrean Assembly should be extended for a period of four years (article 102).

#### **Section 4. Adoption of the Constitution by the Assembly**

471. At its meeting on 10 July 1952,<sup>98</sup> the Assembly adopted the Preamble and each chapter of the Constitution, as amended, almost without dissent. The whole Constitution, as amended, was then adopted unanimously, all the members standing.

472. The United Nations Commissioner, in a statement to the Assembly, congratulated it on the historic task which it had accomplished with tact and mutual understanding. Far from destroying the balance of the draft Constitution, the amendments which had been made had, on the contrary, improved it by reconciling the different points of view and varying interests.

473. Thus, the United Nations, far from imposing a solution, had to the broadest extent considered the wishes of the Eritrean people.

474. The Constitution, in addition to laying down fundamental principles of government, was the expression of ideals inspired by the United Nations Charter and the Universal Declaration of Human Rights. If the leaders of Eritrea remained faithful to those ideals, it was possible to view the future with that same optimism from which he himself had never departed and which up to the present had been fully justified by events.

475. The Commissioner ended his statement by congratulating the President, the Vice-President and the Clerk of the Assembly.

476. The President of the Assembly, replying to the Commissioner, said that Eritreans had now shown that they were capable of self-government. In warm terms he thanked the United Nations—in particular, Ethiopia and the United Kingdom—the Commissioner, who had shown himself to be a true friend of the Eritrean people, the secretariat of the United Nations Commissioner, the British Administration and, especially, the Clerk of the Assembly and the members.

477. Finally, on 15 July 1952, the Commissioner informed the Assembly that he had received a telegram from the Secretary-General of the United Nations congratulating the President and Vice-President of the Assembly on the way in which they had conducted the proceedings, and the members on their exemplary sense of civic responsibility. The President asked the Commissioner to convey to the Secretary-General the Assembly's deep appreciation of his message.

<sup>98</sup> A/AC.44/R.141.

## Chapter V

### APPROVAL OF THE CONSTITUTION BY THE COMMISSIONER—RATIFICATION OF THE CONSTITUTION AND OF THE FEDERAL ACT BY THE EMPEROR OF ETHIOPIA

478. Paragraph 13 of the United Nations resolution establishes a link between the Federal Act and the Eritrean Constitution so far as their entry into effect is concerned. The conditions which had to be complied with were:

- (1) The Constitution had to be:
  - (a) Adopted by the Eritrean Assembly;
  - (b) Approved by the United Nations Commissioner; and
  - (c) Ratified by the Emperor of Ethiopia.
- (2) In the case of the Federal Act, there was only one condition, that of ratification by the Emperor of Ethiopia.

When all those conditions had been fulfilled, both the Federal Act and the Constitution of Eritrea would enter into effect simultaneously.

#### Section I. Approval and ratification of the Constitution

479. The order of events was that after the Eritrean Assembly had adopted the Constitution unanimously, on 10 July 1952,<sup>99</sup> the Commissioner signed the Instrument of Approval on 6 August 1952,<sup>100</sup> of which the text is given below:

*The United Nations Commissioner in Eritrea*

*Whereas* by virtue of paragraph 13 of the resolution 390 A (V) (section A) of the General Assembly of the United Nations, the Federal Act and the Constitution of Eritrea shall enter into effect following ratification of the Federal Act by the Emperor of Ethiopia, and following approval by the Commissioner, adoption by the Eritrean Assembly and ratification by the Emperor of Ethiopia of the Constitution of Eritrea.

*Having received notice* that through the work of the Representative Assembly of Eritrea the Constitution of Eritrea attached hereto was adopted on 10 July 1952:

*Approves* the said Constitution.

Asmara, 6 August 1952

Eduardo ANZE MATIENZO  
*United Nations Commissioner*

By the United Nations Commissioner

The Principal Secretary

(signed) A. J. LUCAS

The text of the Instrument of Approval, together with the text of the Eritrean Constitution, were deposited in the Archives of the United Nations.

<sup>99</sup> A/AC.44/R.141.

<sup>100</sup> A/AC.44/L.11.

480. Copies of the Instrument of Approval were sent to the President of the Representative Assembly of Eritrea, to the Minister for Foreign Affairs of Ethiopia and to the Chief Administrator of the British Administration, Eritrea.

481. The Commissioner was invited to attend the ceremony of ratification of the Eritrean Constitution by the Emperor of Ethiopia on 11 August 1952, the Chief Administrator, British Administration, the President and Vice-President of the Representative Assembly of Eritrea also being present.

482. After an address by the Minister for Foreign Affairs of Ethiopia in which he formally apprised the Emperor that the conditions required for ratification of the Eritrean Constitution had been complied with, the Emperor set the Imperial Seal to the "Instrument of Ratification of the Eritrean Constitution"<sup>101</sup> by the Emperor of Ethiopia," of which the text is given below:

TEXT OF THE INSTRUMENT OF RATIFICATION OF THE  
ERITREAN CONSTITUTION

(Imperial Seal)

CONQUERING LION OF THE TRIBE OF JUDAH  
HAILE SELASSIE I

ELECT OF GOD, EMPEROR OF ETHIOPIA

*To all to whom these presents shall come, greeting:*

*Be it known that:*

*Whereas*, on 10 July 1952, the Eritrean Assembly established in accordance with the provisions of resolution 390 (V) adopted at the Fifth Session of the General Assembly of the United Nations on 2 December 1950, duly adopted the Constitution for Eritrea prepared and discussed in accordance with the provisions of said resolution; and,

*Whereas*, in accordance with the provisions of said resolution, the United Nations Commissioner in Eritrea has, on 6 August 1952, approved the said Constitution for Eritrea as so adopted by the Eritrean Assembly; and,

*Whereas* paragraph 13 of the aforesaid resolution provides that the Federal Act and the Constitution of Eritrea shall enter into effect following ratification of the Federal Act by the Emperor of Ethiopia, and following approval by the Commissioner, adoption by the Eritrean Assembly and ratification by the Emperor of Ethiopia of the Eritrean Constitution;

*Now therefore* We Haile Sellassie I, Elect of God, Emperor of Ethiopia, after having duly considered the aforesaid text of the aforesaid Constitution as approved by the United Nations Commissioner in Eritrea and adopted by the Eritrean Assembly, do hereby, as Crown

<sup>101</sup> A/AC.44/L.12.

and Sovereign of the Empire of Ethiopia, as now and as hereinafter constituted following the entry into effect of the Federation as provided by paragraph 13 of the aforesaid resolution, do hereby approve, adopt and ratify said Constitution and do hereby command of all Our loyal subjects in Eritrea full respect of and obedience to the same.

*In witness whereof* We have caused the Seal of Our Empire of Ethiopia to be hereunto affixed and have hereunto subscribed Our Signature.

*Given* at Our Imperial Court at Addis Ababa, on this the Eleventh Day of the Month of August in the Year of Grace One Thousand Nine Hundred and Fifty-two, and of Our Reign the Twenty Third.

HAILE SELASSIE I, EMPEROR

Certified correct translation:

(Signed) AKLILOU

*Minister for Foreign Affairs*

483. Addresses by the United Nations Commissioner, the Chief Administrator of the British Administration and the President of the Eritrean Assembly of Eritrea followed,<sup>102</sup> in which the importance of the ceremony and its constitutional and political implications were referred to.

484. The main points brought out by the Commissioner were as follows:

485. The ratification of the Constitution by the Emperor not only complied with the wishes of the United Nations, as expressed in the recommendation in paragraph 13 of the resolution, but it also had great political significance, for it was the foundation of the legal existence of the autonomous unit of Eritrea federated with Ethiopia under the sovereignty of the Ethiopian Crown.

486. The ratification was also important in that it marked the peaceful settlement by the United Nations of a problem bound up with the wishes and welfare of a people, the rights and claims of Ethiopia and the interests of peace and security in East Africa.

487. The contribution of the Commissioner had been made in a democratic spirit, prompted by the desire to understand the needs of the population. A United Nations "home" had been opened in Eritrea in order to explain to the Eritreans that the resolution had been inspired by the confidence of the United Nations both in the high prestige of the Emperor and in the sense of responsibility of which Eritreans would surely give proof. The two cornerstones of the Federation must be the authority of the Ethiopian Crown and the autonomy of Eritrea.

488. It was with deep satisfaction that he could declare, on the occasion of the ceremony of ratification of the Constitution, that the confidence with which he had embarked upon his task had been fully justified. The Emperor had never failed to give proof of his affection for the Eritrean people and his respect for the Federation. The Government of Ethiopia had always been guided in its work by the wholehearted acceptance of the United Nations resolution. The Eritrean people had accepted with sincerity and in confidence the recommendation of the General Assembly. They had put an end to their internal strife, and in order to follow their

destiny in a spirit of patriotism had united under the protection of the United Nations flag. The members of the Eritrean Assembly of Eritrea had understood the feelings of the Eritrean people and had discussed the draft Constitution with a keen sense of responsibility and in a remarkable spirit of conciliation.

489. The Commissioner then expressed his confidence in the peaceful future of the Federation which would be ensured by the integrity with which, he felt certain, the Government of Ethiopia would respect the autonomy of Eritrea and would create the necessary organs to establish the Federal Act and to implement it by appropriate legislation. The Commissioner assured the Emperor of his admiration for the manner in which his affection for the Eritrean people had enabled the United Nations to reach an agreement and had facilitated the carrying out of the resolution. He also paid tribute to the British Administration and to the United Kingdom Government whose active collaboration had enabled him to accomplish his task and who should share the credit due equally with the United Nations. The Government of Italy and the foreign communities in Eritrea should also be congratulated on their moderation, and their desire to contribute to the progress of Eritrea in accordance with the wishes expressed in the resolution. The Eritrean Assembly and the Eritrean people likewise deserved praise for their confidence in the United Nations and the patriotic and conciliatory spirit they had displayed.

490. Thus all interests had been reconciled under the high authority of the Emperor, and that picture of the situation justifying confidence in the future, deserved to be made known at the next regular session of the United Nations General Assembly.

491. In his reply, the Emperor expressed his appreciation of the way in which the British Administration had discharged its responsibilities, and paid tribute to the statesmanship, perseverance and faith displayed by the Commissioner. He had noted with satisfaction the dignified and competent manner in which the Eritrean Assembly had accomplished its task, and he congratulated the President and Vice-President on their conduct of the proceedings. Finally, the Emperor invoked the blessing of God upon his sons in Eritrea for whom the Constitution and the Federation would henceforth chart the course.

492. The three acts relating to the Eritrean Constitution were thus accomplished. But, as noted above, the ratification of the Federal Act was still necessary before the Constitution and the Federal Act could enter into effect.

## Section 2. Ratification of the Federal Act

493. Ratification took place in Addis Ababa on 11 September 1952, at a solemn ceremony at the Menelik Palace in the capital of the Federation. Following an announcement by the Minister for Foreign Affairs that "the instrument of ratification of the Federal Act, as well as the instrument proclaiming the establishment of the Federation of Eritrea with Ethiopia . . ." awaited the Imperial signature, the Emperor set his seal to the Federal Act in a document, the contents of which are as follows:

<sup>102</sup> *Ibid.*

TEXT OF THE FEDERAL ACT RATIFIED  
11 SEPTEMBER 1952

(Imperial Seal)

CONQUERING LION OF THE TRIBE OF JUDAH  
HAILE SELASSIE I

ELECT OF GOD, EMPEROR OF ETHIOPIA

*To all to whom these presents shall come, greeting:*

*Be it known that:*

Whereas, on 2 December 1950, Our Delegation to the United Nations by its affirmative vote given under Our Order, approved the resolution 390 (V) on Eritrea of the General Assembly of the United Nations, Fifth Session, which resolution was duly adopted on that date by the requisite two-thirds majority of the Members of the United Nations present and voting; and

Whereas paragraphs 1 to 7 inclusive of part A of said resolution read as follows:

"1. Eritrea shall constitute an autonomous unit federated with Ethiopia under the sovereignty of the Ethiopian Crown.

"2. The Eritrean Government shall possess legislative, executive and judicial powers in the field of domestic affairs.

"3. The jurisdiction of the Federal Government shall extend to the following matters: defence, foreign affairs, currency and finance, foreign and interstate commerce and external and interstate communications, including ports. The Federal Government shall have the power to maintain the integrity of the Federation, and shall have the right to impose uniform taxes throughout the Federation to meet the expenses of federal functions and services, it being understood that the assessment and the collection of such taxes in Eritrea are to be delegated to the Eritrean Government, and provided that Eritrea shall bear only its just and equitable share of these expenses. The jurisdiction of the Eritrean Government shall extend to all matters not vested in the Federal Government, including the power to maintain the internal police, to levy taxes to meet the expenses of domestic functions and services, and to adopt its own budget.

"4. The area of the Federation shall constitute a single area for customs purposes, and there shall be no barriers to the free movement of goods and persons within the area. Customs duties on goods entering or leaving the Federation which have their final destination or origin in Eritrea shall be assigned to Eritrea.

"5. An Imperial Federal Council composed of equal numbers of Ethiopian and Eritrean representatives shall meet at least once a year and shall advise upon the common affairs of the Federation referred to in paragraph 3 above. The Citizens of Eritrea shall participate in the Executive and Judicial branches, and shall be represented in the legislative branch of the Federal Government, in accordance with law and in the proportion that the population of Eritrea bears to the population of the Federation.

"6. A single nationality shall prevail throughout the Federation:

"(a) All inhabitants of Eritrea, except persons possessing foreign nationality, shall be nationals of the Federation;

"(b) All inhabitants born in Eritrea and having at least one indigenous parent or grandparent shall also be nationals of the Federation. Such persons, if in possession of a foreign nationality, shall, within six months of the coming into force of the Eritrean Constitution, be free to opt to renounce the nationality of the Federation and retain such foreign nationality. In the event that they do not so opt, they shall thereupon lose such foreign nationality;

"(c) The qualifications of persons acquiring the nationality of the Federation under sub-paragraph (a) and (b) above for exercising their rights as citizens of Eritrea shall be determined by the Constitution and laws of Eritrea;

"(d) All persons possessing foreign nationality who have resided in Eritrea for ten years prior to the date of the adoption of the present resolution shall have the right, without further requirements of residence, to apply for the nationality of the Federation in accordance with federal laws. Such persons who do not thus acquire the nationality of the Federation shall be permitted to reside in and engage in peaceful and lawful pursuits in Eritrea;

"The rights and interests of foreign nationals resident in Eritrea shall be guaranteed in accordance with the provisions of paragraph 7.

"7. The Federal Government, as well as Eritrea, shall ensure to residents in Eritrea, without distinction of nationality, race, sex, language or religion, the enjoyment of human rights and fundamental liberties, including the following:

"(a) The right to equality before the law. No discrimination shall be made against foreign enterprises in existence in Eritrea engaged in industrial, commercial, agricultural, artisan, educational or charitable activities, nor against banking institutions and insurance companies operating in Eritrea;

"(b) The right to life, liberty and security of person;

"(c) The right to own and dispose of property. No one shall be deprived of property, including contractual rights, without due process of law and without payment of just and effective compensation;

"(d) The right to freedom of opinion and expression and the right of adopting and practising any creed or religion;

"(e) The right to education;

"(f) The right to freedom of peaceful assembly and association;

"(g) The right to inviolability of correspondence and domicile, subject to the requirements of the law;

"(h) The right to exercise any profession subject to the requirements of the law;

"(i) No one shall be subject to arrest or detention without an order of a competent authority, except in case of flagrant and serious violation of the law in force. No one shall be deported except in accordance with the law;

“(j) The right to a fair and equitable trial, the right of appeal to the Emperor for commutation of death sentences;

“(k) Retroactivity of penal law shall be excluded.

“The respect for the rights and freedoms of others and the requirements of public order and the general welfare alone will justify any limitations to the above rights”; and

Whereas paragraph 8 of part A of said resolution provides that the foregoing paragraphs 1 to 7 inclusive of said resolution shall constitute the Federal Act which shall be submitted to the Emperor of Ethiopia for ratification; and

Whereas, as provided by paragraph 13 of part A of said resolution, Our ratifications of the Federal Act and of the Constitution of Eritrea are the essential conditions for the entry into force of the same and for the entry into force of the Federation of Eritrea with Ethiopia; and

Whereas, on 11 August 1952, by instrument issued over Our Imperial Subscription and Seal, We did approve, adopt, and ratify the Constitution of Eritrea; and

Whereas said Constitution as so approved, adopted and ratified contains provisions adopting and ratifying the Federal Act on behalf of the people of Eritrea;

Now therefore We, Haile Sellassie I, Elect of God, Emperor of Ethiopia, as Crown and Sovereign of the Empire of Ethiopia as constituted prior to the present action by Ourselves of Ratification of the Federal Act as above-recited and quoted, and as henceforth and from this date constituted by the action and fact of the present ratification of said Federal Act, do hereby approve, adopt, and ratify said Federal Act and by such action and fact do hereby declare, in full force and effect, the Federation of Eritrea with Ethiopia under the Sovereignty of the Ethiopian Crown as represented by Ourselves; and We do further command of all Our faithful subjects throughout the Empire of Ethiopia as henceforth and from this day constituted, full respect of and obedience to said Federal Act, as now placed by Ourselves into full force and effect and to all federal laws issued pursuant thereto.

In witness whereof We have caused the seal of Our Empire of Ethiopia to be hereunto affixed and have hereunto subscribed Our Signature.

Given at Our Imperial Court at Addis Abeba, on this Eleventh Day of the Month of September in the Year of Our Lord One Thousand Nine Hundred and Fifty-two, and of our Reign the Twenty-third.

HAILE SELASSIE I, EMPEROR

Certified correct translation:

(Signed) AKLILOU  
Minister for Foreign Affairs

494. The Emperor then went out on the balcony of the Palace where he addressed the crowd. Giving thanks for the happy end to twelve years of struggle, he thanked in particular the United Kingdom Government which had constantly assisted him, and also paid tribute to the United States of America which, supported by France and many other States Members of the United Nations, has lent its assistance to Ethiopia during the

search for the solution which had been reached that day. In acknowledging the action of the United Nations, he observed that the wishes of the peoples of the Federation had been fully recognized by the two Commissions of Inquiry, as well as by the Commissioner who, as a sincere friend of Ethiopia and Eritrea, had carried out his task in a high-minded and objective spirit.

495. During seven years, from the moment that he had issued his first statement on the Eritrean question, the Emperor and his Government had defended the principles which had now been accepted, rejecting all offers incompatible with respect for the sacred principle of the self-determination of peoples. The Government of Ethiopia had asked that that right be respected in the case of Libya and Somaliland. With regard to Eritrea, however, it had claimed not only liberation from foreign domination, but independence in the sense of rejoining its homeland.

496. Not only had the inhabitants of Eritrea accepted union with Ethiopia in the form of Federation, but the Emperor, in ratifying the Federal Act, had endorsed it on behalf of his country. The solution was therefore one of free consent expressed by the peoples themselves. Its force and its validity had sprung from the mutual consent of the peoples involved. Moreover, the right of self-determination was being expressed in yet another sense. Not only would Eritreans constitute and participate in their local government but they, Christians and Moslems alike, would receive the fruits of self-determination and freedom through the fullest participation in all branches and at all levels of the Imperial Ethiopian Government. In fact, at the present time, and for many years past, Eritreans were to be found in significant numbers throughout the branches of the Government of Ethiopia. Such an unprecedented situation had justified a statement by the representative of Cuba, three years previously, that even outright union of Eritrea with Ethiopia would not constitute annexation.

497. In order that such participation might be assured to Eritreans of whatever faith or background, the necessary texts already drawn up by the Emperor gave them posts in all the organs of the Federal Government and in the new services resulting from the application of the Federal Act. For instance decrees had been signed for the designation of ministers for federal affairs, for the appointment of Eritreans as members of the Imperial Senate and as judges of Federal Courts including the Supreme Federal Court. The Imperial Parliament, in which Eritrean senators and deputies would sit, had been convoked by an Order. So that Eritreans should be assured of the fullest freedom of choice, it had been decided that they themselves should elect their representatives to the Ethiopian Chamber of Deputies. Other Orders would establish the Federal judiciary, certain existing legislation in Eritrea being adopted to cover vital matters of federal legislation.

498. The Emperor stated that he was fully aware that in its recommendation, the United Nations had recognized the progress achieved by Ethiopia since its liberation. The necessary sacrifices would be made for Eritrea, and all its inhabitants—Eritrean citizens and foreigners alike—would share in the progress and the mutual benefits deriving from the association of the two territories.

499. That association would give the Federation access to the sea. The Ethiopian Empire, now grown larger, would not lose sight of its international responsibilities and would contribute to the furtherance of the ideal and to the fulfilment of the principles of collective security embodied in the Charter of the United Nations. Ethiopia had an unalterable devotion to that ideal which would continue to inform and guide its policy.

500. The Doyen of the Diplomatic Corps congratulated the Emperor on that occasion which had considerable political and historical significance. The Federation which would come into being on the ratification of the Federal Act was a great human achievement doing honour to those who had conceived it and to those who had carried it out. The free and willing union of two brotherly peoples, in these troubled times, was a striking example of peaceful co-operation and conciliation.

501. The Eritrean Chief Executive followed with an address in which he pointed out that the Federation of Eritrea and Ethiopia marked the end of sixty-seven years of struggle. The natural ties of ethnology and history would thus be re-established, thereby recognizing a natural state of affairs. The Eritrean people knew and appreciated all that the Emperor had done for them and offered him their loyalty.

502. Conflicting political trends had ceased to exist among the Eritrean people. They were now united in their acceptance of Federation with Ethiopia.

503. Both the letter and the spirit of the United Nations resolution, which made provision for the Federation, had been put into effect by Eritrea. The ratification of the Eritrean Constitution and the Federal Act by the Emperor was an historic event which gave the Eritrean people faith in their future.

504. The Emperor then thanked the Doyen of the Diplomatic Corps and the Eritrean Chief Executive.

505. The final legal act for the establishment of the Federation was thus formally completed. Further, during the ceremony, the Emperor gave proof of the integrity with which Ethiopia intended to observe the clauses of the United Nations resolution, when, in his declaration to the people of Ethiopia, he announced the establishment of federal organs, supplementing the Federal Act, and the full participation of Eritreans in the Federal Government. That was the reply full of promise for the future, given by the sovereign head of the Federation, to the passage in the Commissioner's speech on 11 August 1952, in which he had expressed his confidence in the integrity with which the Government of Ethiopia would, he felt sure, respect the autonomy of Eritrea and establish the organs required to implement the Federal Act.

## Chapter VI

### CHARACTERISTIC FEATURES AND LEGAL BASIS OF THE ERITREAN CONSTITUTION OF 10 JULY 1952

#### Section 1. Provisions of the Eritrean Constitution deriving from the establishment of the Federation

##### A. APPROVAL AND RATIFICATION OF THE FEDERAL ACT

506. Since Eritrea forms part of a Federation, the legal basis of the Eritrean Constitution must first be considered within the framework of that Federation.

507. Under the terms of paragraph 12 of the resolution of the General Assembly of the United Nations, the Constitution of Eritrea must contain provisions adopting and ratifying the Federal Act on behalf of the people of Eritrea. Under the terms of paragraph 8 of the resolution, the Federal Act must also be submitted to the Emperor of Ethiopia for ratification. Thus the two parties are invited to adhere to the Federation of their own free will.

508. The conditions laid down in the resolution have been duly fulfilled, since the Assembly, by unanimously adopting article 1 of the Eritrean Constitution—by which the Federal Act is adopted and ratified—has confirmed the adherence to the principle of federation noted by the Commissioner during his consultations throughout the country.

##### B. STATUS OF ERITREA

509. The Federal Act establishes the main elements of the Federal Constitution. These are as follows:

(1) The organs of the Federation, which comprise the Emperor of Ethiopia, the Imperial Federal Council, and the Federal executive, legislative and judicial branches (paragraphs 1 and 5);

(2) The respective jurisdictions of the Federation and of Eritrea (paragraphs 2, 3 and 4);

(3) The nationality of the Federation (paragraph 6).

510. Implementation measures are clearly essential to complete the structure of the Federation. They must provide, in particular, for the appointment of the Imperial Federal Council and the establishment of the Federal executive and legislative branches. Just before the transfer of powers, the Federal Government was represented solely by the Emperor of Ethiopia, who is the sovereign of the Federation. It was the duty of the Emperor to enact the constitutional and other laws required to supplement the main foundations and establish the Federal institutions in accordance with the provisions of the Federal Act.<sup>103</sup>

511. In view of their importance for Eritrea, the provisions of the Federal Act establishing federal institu-

<sup>103</sup> These implementation measures have been initiated. They were announced by the Emperor in his speech on the ratification of the Federal Act, *cf.* chapter V, paragraph 497.

tions, defining the jurisdiction of Eritrea and determining its financial obligations and rights have been incorporated in the Constitution.

512. Thus the constitutional status of Eritrea within the Federation is restated in articles 3, 4 and 5 of the Constitution which reproduce paragraphs 1, 2 and 3 of the Federal Act almost word for word.

513. The list of matters within the jurisdiction of Eritrea given in article 5, paragraph 2 of the Constitution, is not exhaustive. It is clearly stated in paragraph 1 of that article that the jurisdiction of Eritrea extends to all matters not reserved to the Federal Government.

514. Article 6 of the Constitution reproduces the provisions of paragraphs 3 and 4 of the Federal Act. It is obvious that the effect of these provisions can in no way be modified by their incorporation in the Constitution of Eritrea. Article 6 of the Constitution should be interpreted in the same way as the corresponding provisions of the Federal Act.

515. Nevertheless the Federation certainly does not possess a unilateral power of decision as regards the application of these provisions and the matter was raised during the discussions of the Representative Assembly. Any difficulties which may arise in this connexion will have to be settled by a federal tribunal appointed for the purpose by the Federal Government and consisting of both Ethiopian and Eritrean judges.

516. Finally, the provisions of paragraph 5 of the Federal Act are incorporated in article 7 of the Constitution. Article 7, paragraph 2, merely reproduces the second part of paragraph 5 of the Federal Act. Paragraph 1 of this article supplements the first part of paragraph 5 by stipulating that Eritrean representatives in the Imperial Federal Council shall be appointed by the Chief Executive with the approval of the Assembly. The supplementary provision does not encroach upon federal powers. It is natural for the Eritrean representatives in the Imperial Federal Council to be appointed by a procedure fixed by Eritrean law.<sup>104</sup>

517. It is not unusual for provisions laid down in the Constitution of a Federal State to be incorporated in the Constitution of a member State. Many examples are to be found in the constitutions of the member States of the American Union.<sup>105</sup>

<sup>104</sup> A/AC.44/SC.1/R.1, page 26.

<sup>105</sup> Thus, article VI, 2 of the Federal Constitution is reproduced in whole or in part in the constitutions of Arizona (II,3), California (I,3), Georgia (XII,1), Idaho (I,3), Maryland (2), New Mexico (I,1), Oklahoma (I,1), South Dakota (VII,27), Utah (I,3), West Virginia (I,1), Washington State (I,2), Wyoming (I,2). Amendment X to the Federal Constitution is reproduced in the constitutions of Maryland (3), New Hampshire (I,7), and West Virginia. The provisions of amendment XIV (I) to the Federal Constitution are to be found in the constitutions of nearly all the States.



518. During its discussions, the Representative Assembly even considered the possibility of including all the provision of the Federal Act in the Constitution.<sup>106</sup> All the provisions of the Federal Act, in fact, are to be found in the Constitution whether the actual wording of the Federal Act has been reproduced or its substance retained. Under one form or another these provisions are therefor binding on Eritrea, Ethiopia and the Federation simultaneously.

#### C. FEDERAL NATIONALITY AND ERITREAN CITIZENSHIP

519. Article 8 of the Constitution refers to the provisions of paragraph 6 of the Federal Act concerning nationality in the Federation. It recognizes the existence of a single nationality throughout the Federation. The regulations of nationality rights is clearly a function of the Federal legislature.

520. Article 8 of the Constitution also refers to the Eritrean citizenship expressly mentioned in paragraph 6 (c) of the Federal Act. It leaves the conditions for acquiring Eritrean citizenship to be fixed by law.

521. Federations frequently recognize citizenship of their member States, apart from the nationality of the Federation. This is true for instance of Switzerland<sup>107</sup>. Conditions for the acquisition of such citizenship are laid down sometimes in the Constitution, sometimes by law and sometimes by the Constitution and the laws giving effect to it.<sup>108</sup> In the organic law which amplifies clauses of the Constitution relating to the election of the Assembly, Eritrean citizens are defined as follows: "Any person who has acquired Federal nationality in Eritrea under the provisions of paragraph 6 of the Federal Act or who has acquired Eritrean citizenship under any other law for the time being in force".

522. Article 9 of the Constitution of Eritrea provides that on the basis of reciprocity, Federal nationals who are not Eritrean citizens shall enjoy the same rights as Eritreans. The two paragraphs of article 9 are complementary, not contradictory. The exercise of political rights in Eritrea by nationals of the Federation and by Eritreans is governed by the Constitution and the laws in force.

523. The equality of rights thus accorded in Eritrea to nationals of the Federation is subject to the grant, in Ethiopia, of the same privileges to nationals of the Federation who are not Ethiopian citizens. This is the sense of the reciprocity clause.

524. Similar provisions are to be found in most Federal Constitutions.<sup>109</sup> The only difference is that the reciprocity clause is not included; it is not required, since the provisions of a federal constitution are equally applicable to all member groups, and reciprocity is thus compulsory. But since the Constitution of Eritrea is not law in the other part of the Federation, it is under-

<sup>106</sup> A/AC.44/R.56, page 3.

<sup>107</sup> Constitution of Switzerland, Article 43 of paragraph 1.

<sup>108</sup> The Constitution of the Canton of Appenzell, Switzerland, provides at the end of article 4 that "Detailed provisions for acquiring the status of citizen of the Canton shall be fixed by law". Cf. Constitution of Geneva, articles 18-20.

<sup>109</sup> Article IV, section 2, paragraph 1 of the United States Constitution provides that: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States". Article 43 of the Constitution of Switzerland provides that: "A Swiss national having an established domicile shall, in the place of such domicile, enjoy full rights as a citizen of the Canton and as a burghess of the commune". Article 45 guarantees the right to establish domicile.

standable that the reciprocity clause in article 9 had to be included. It guards against any violation of equality of rights to the detriment of Eritrean citizens. Moreover in the absence of any provision in the Federal Act, the provisions of article 9 could not have been unilaterally enacted as Federal law without the agreement of Eritrea. This agreement is given by the Constitution.

525. The reciprocity clause establishes equality of treatment of nationals of the Federation, whether they are resident in Eritrea or in Ethiopia. It does not require persons possessing federal nationality to be guaranteed the same rights in both parts of the Federation. It provides that equality of treatment shall be reciprocal and this is sufficient.<sup>110</sup>

#### D. REPRESENTATION OF THE EMPEROR OF ETHIOPIA IN ERITREA

526. Article 10 of the Constitution provides that there shall be a representative in Eritrea of the Emperor of Ethiopia. The legal justification and effect of such representation must now be considered.

527. The problem was to give the Emperor's Representative constitutional status by including this office in the Eritrean constitutional system without impairing the autonomy of Eritrea, and thus to establish a link between the Crown, at the head of the Federation, and the democratic institutions of Eritrea. On this, as on various other questions, the Federal Act contains no express provision. The Federation it establishes is, however, a monarchy under the sovereignty of the Ethiopian Crown.

528. In federal monarchies, the Sovereign and the Crown are the symbol of federation. They are represented in the different parts of the federation.<sup>111</sup>

529. In his capacity as Sovereign of the Federation, the Emperor may constitutionally instal a representative in Eritrea with the duty of co-ordinating<sup>112</sup> Federal services in that country, providing liaison with the Eritrean Government and receiving the petitions to the Emperor provided for in paragraph 7 (j) of the Federal Act. Such an appointment would be compatible with the provisions of the Federal Act and would in no way encroach on Eritrean jurisdiction.

530. Thus, there was no legal reason why provisions concerning the representation of the Emperor should not be included in the Eritrean Constitution, provided that the autonomy of Eritrea and the democratic character of its institutions were not directly or indirectly impaired. It will be observed that as regards Eritrean

<sup>110</sup> This is the interpretation placed upon article IV, section 2, paragraph 1 of the Constitution by the Supreme Court of the United States. (See W. W. Willoughby, *The Constitutional Law of the United States*, New York, 1929, Vol. I, section 160, page 287.)

<sup>111</sup> This is true of the Federal States of the Commonwealth (Canada and Australia). There are representatives of the Crown in the Provinces of Canada and in the member states: Constitution of Canada (British North American Act of 1867 and subsequent amendments), articles 58 to 60; Constitution of the Commonwealth of Australia, (article 110) and Constitutions of the various member states.

<sup>112</sup> The appointment of co-ordinators for federal services in the member states, i.e., of true representatives of the President, has often been considered in a republican federal State such as the United States of America. The constitutional nature of such an appointment has never been called in question. Moreover, the President of the United States takes precedence at official ceremonies of member states.

affairs the functions assigned to the Emperor's Representative by the articles of chapter II are purely formal.

531. Article 10 does not prescribe the procedure for appointing the Emperor's Representative. This appointment rests with the Emperor; but the usual practice would be for the Imperial Government unofficially to consult the Chief of the Eritrean Executive.<sup>113</sup>

532. Articles 12 and 72 of the Constitution concerning the investiture and swearing-in of the Chief Executive, article 73 concerning the swearing-in of Secretaries of Executive Departments, article 13 concerning the speech from the throne and the opening and closing of sessions of the Assembly and articles 15 and 58 concerning the promulgation of legislation assign only formal duties to the Emperor's Representative.

533. The Emperor's Representative invests the Chief Executive, but plays no part in his appointment. The Chief Executive is elected by the Assembly, and it is the duty of the President of the Assembly to proclaim the election of the candidate obtaining the necessary number of votes, in accordance with article 68 of the Constitution. The President of the Assembly will officially inform the Emperor's Representative of the name of the candidate elected. The Emperor's Representative is obliged to carry out the investiture but has no right to supervise or investigate the election of the Chief Executive. Under the terms of article 12 of the Constitution, the investiture is a mere formality. It marks the formal assumption of office by the Chief Executive.

534. The same legal interpretation should be placed upon the swearing-in prescribed in articles 12, 72 and 73 of the Constitution. The wording of the oath is prescribed in the Eritrean Constitution. The oath is sworn to the Assembly before the Emperor's Representative. The latter cannot, by his abstention, prevent the Chief Executive or the Secretaries of Executive Departments from taking office.

535. The speech from the throne provided for in article 13 of the Constitution enables the Emperor, through his Representative, to deal with affairs of common interest to the Federation and to Eritrea. The speech may not deal with the domestic affairs or internal policy of Eritrea and may not be followed by any discussion or vote of the Assembly, whether favourable or unfavourable. The speech does not bind the Chief Executive or the Eritrean Assembly in any way.<sup>114</sup>

536. Promulgation by the Emperor's Representative, as provided in article 15 and article 58, paragraphs 4 and 5, of legislation adopted by the Assembly, is a mere formality. The Emperor's Representative is required to promulgate such legislation within the time limits prescribed in the above-mentioned provisions.

537. In order that a law may not be prevented from coming into effect by failure to promulgate, the Constitution provides (article 58, paragraph 6) that if it is not promulgated within the time limit laid down, a law shall come into effect after publication by the Chief Executive.<sup>115</sup>

<sup>113</sup> With regard to the States of the Commonwealth, the Imperial Conference of 1930 (Cmd. 3717, HMSO, London, 1930) stated that: "The parties interested in the appointment of a Governor-General of a Dominion are His Majesty the King, whose representative he is, and the Dominion concerned".

<sup>114</sup> It would be in conformity with parliamentary practice for the speech from the throne to be communicated in advance to the President of the Assembly and to the Chief Executive.

538. Article 14 and article 58, paragraphs 2 and 3 of the Constitution give the Emperor's Representative the right to request that legislation adopted by the Assembly be reconsidered.

539. This provision does not give the Emperor's Representative the power to intervene in the domestic affairs of Eritrea. It establishes a political procedure for settling conflicts of jurisdiction which may arise between the Federation and Eritrea.

540. The Constitution of Eritrea provides certain safeguards for this procedure. A request for reconsideration is only admissible if it relates to a law which "encroaches upon Federal jurisdiction, or involves the international responsibility of the Federation". The reasons for the request must be stated and it must be transmitted to the Chief Executive within twenty days after the voting of the law by the Assembly.

541. During its second debate, the Assembly must consider whether the law complained of is in conformity with the Federal Act or not. It merely verifies the constitutionality of the law adopted, taking the observations of the Emperor's Representative into consideration.

542. This procedure is clearly incomplete and limited. It only applies to Eritrean and not to Federal laws. It does not necessarily result in a final decision on the constitutionality of the law complained of, for the Assembly can nevertheless proceed to adopt the law alleged to be unconstitutional by a two-thirds majority vote.

543. The existence of the Imperial Federal Council will allow the representatives of Eritrea to express their opinion on federal laws which they might regard as encroaching on Eritrean jurisdiction.

544. The existence of this procedure does not, however, remove the need to establish appeal procedure with the necessary safeguards.

545. These safeguards can only be provided by the setting up of an impartial Supreme Court with powers to settle conflicts of jurisdiction between the Federation and Eritrea in the final instance.<sup>116</sup>

<sup>115</sup> It is the duty of the Chief Executive to publish any laws not promulgated by the Emperor's Representative within the constitutional time limit. Failure to discharge this duty would be a serious violation of the Constitution coming within the scope of article 75 concerning removal from office of the Chief Executive.

<sup>116</sup> Report of the Panel of Legal Consultants, A/AC.44/SC.1/R.1. Generally speaking, comparative constitutional law shows that the constitutionality of laws is tested both by court procedure and by political machinery. The President of the United States of America who, under article I, section 7, paragraph 2 of the Constitution, has power to ask for reconsideration of laws adopted by Congress, makes frequent use of this power to return, for reconsideration, laws he considers to be unconstitutional. President Taft's message to Congress on 28 February 1913, alleging the unconstitutional nature of the Webb-Kenyon Act concerning the transportation of spirituous liquors in inter-State commerce, clearly showed up the effect of this political safeguard as compared with judicial safeguards. (W. W. Willoughby, *The Constitutional Law of the United States*, Vol. 2, page 974). Under article 36, paragraph 2 of the Constitution, the President of the French Republic, acting on the advice of the President of the Council, may ask Parliament to reconsider a law. This procedure also enables him to request the Assemblies to reconsider laws regarded as unconstitutional (Message of 1 August, 1949, *J.O.R.F. Deb. Parl. Ass. Nat.*, 14 October 1949). Under the Constitution of the USSR, the constitutionality of laws of the Federated Republics is tested by political procedure; authority for this purpose is vested in the Supreme Soviet of the Union by article 14 (d) of the Constitution of 1936.

E. RATIFICATION BY THE EMPEROR OF ETHIOPIA OF AMENDMENTS WHICH MIGHT BE MADE TO THE CONSTITUTION

546. Article 93, paragraph 3 of the Constitution provides that any amendments thereto will enter into effect after ratification by the Emperor of Ethiopia. The resolution of the United Nations General Assembly provides (paragraph 13) that the Constitution of Eritrea shall enter into effect following ratification of the Federal Act and the Constitution by the Emperor of Ethiopia. The Constitution follows up this provision by giving permanence to the intervention of the Sovereign of the Federation.

547. From a strictly legal standpoint the intervention of the Emperor of Ethiopia appeared essential. The Constitution could not enter into force without ratification by the Emperor. His ratification was given to a particular text and any modification or amendment of that text must therefore be ratified by him. This is the application of a traditional principle of law, namely the principle of the converse act or identity of procedure.<sup>117</sup> Against this principle of the converse act it could, however, be objected that ratification by the Emperor of Ethiopia is not prescribed in the Federal Act. Such ratification is required by the General Assembly's resolution, together with approval by the United Nations Commissioner, as a condition for the entry into force of the new Constitution. It is not prescribed for the future.

548. The main legal basis of article 93, paragraph 3, of the Constitution is to be found in the practice of Federal States. The Constitutions of the member States are directly or indirectly subject to examination by the federal State. The purpose of such examination is to ensure that local constitutions respect the principles laid down in the Federal Constitution.<sup>118</sup>

549. Thus the provision contained in article 93, paragraph 3, might appear in the Federal Constitutional Laws enacted to implement the Federal Act. In order to avoid any difficulty of interpretation, however, it

<sup>117</sup> The same legal principle was applied by the Panel of Legal Consultants when considering amendment of the Federal Act. The principle is defined by Professor Ch. Rousseau as follows: "Rules of law, whether derived from treaties or laws, remain legally binding so long as they have not been duly abrogated by the procedure used for their formulation" (*Principes généraux du Droit international public*, Vol. I, No. 234).

<sup>118</sup> Article 6 of the Federal Constitution of Switzerland provides that: "The Cantons must request the Confederation to guarantee their Constitutions".

The Constitution of the USSR provides as follows:

"Article 14. The jurisdiction of the Union of Soviet Socialist Republics, as represented by its higher organs of State power and organs of State administration, embraces: (d) Control over the observance of the Constitution of the USSR and ensuring conformity of the Constitutions of the Republics of the Union with the Constitution of the USSR.

"Article 16. Each Republic of the Union has its own Constitution, which takes account of the specific features of the Republic and is drawn up in full conformity with the Constitution of the USSR."

Article IV, section 4, of the Constitution of the United States of America provides that:

"The United States shall guarantee to every State in this Union a Republican Form of Government".

The Constitution of Libya contains the following provision:

"Article 177. Each province shall formulate its own Organic Law provided that its provisions are not contrary to the provisions of this Constitution."

All these provisions are designed to ensure conformity of the Constitutions of member States with the Federal Constitution.

seemed advisable to insert this provision in the Constitution as well. The Assembly supported this view unanimously, except for four abstentions.<sup>119</sup>

550. Ratification of amendments to the Constitution by the Emperor of Ethiopia is all the more necessary because paragraph 7 of the Federal Act requires the Federal Government to ensure respect for human rights and fundamental liberties in Eritrea. The Federal Government must therefore be in a position to prevent suppression or restriction of these rights and freedoms by the Eritrean Constitution.

551. The purpose of federal ratification, however, defines its scope. Refusal of ratification will only be possible in respect of amendments at variance with the provisions of the Federal Act, and in such a case ratification must be refused.

**Section 2. Provisions of the Eritrean Constitution concerning human rights and fundamental freedoms**

552. Paragraph 7 of the Federal Act contains a declaration of the human rights and fundamental freedoms established in Eritrea. These rights and freedoms must be guaranteed by the Federal Government.

553. These guarantees appear in paragraph 7 in a twofold form. First, the general principle of respect for human rights and fundamental freedoms is laid down. Secondly, these rights and freedoms are enumerated in a non-restrictive list. Article 22 of the Constitution reproduces paragraph 7 of the Federal Act in full and the succeeding articles explain and amplify its provisions.

554. In principle, these provisions concerning fundamental rights and freedoms guaranteed by the Federal Act and the Eritrean Constitution, have the force of imperative legal rules with immediate effect, applicable by the Supreme Court. By way of exception certain provisions of paragraph 7 of the Federal Act and chapter IV of the Eritrean Constitution must be put into effect by legislation before they can be applied. Examples are paragraph 7 (e) of the Federal Act, articles 22 (e) and 31, paragraph 1, of the Constitution concerning the right to education and freedom to teach and article 33, paragraph 1 of the Constitution concerning the protection of working conditions.<sup>120</sup> It will be for the judicial branch to recognize any such exceptional cases.

555. The fundamental rights and freedoms directly guaranteed by the Constitution may be amplified and defined by ordinary laws. The final sub-paragraph of paragraph 7 of the Federal Act lays down that no limitations may be applied to these rights unless they are justified by respect for the rights and freedoms of others or by the requirements of public order and the general welfare. This provision is reproduced in article 34 of the Constitution, which stipulates, in a second paragraph, that the law may in no case impede the normal enjoyment of fundamental rights and liberties. Finally, article 77 of the Constitution prohibits legislation by the Chief Executive in this field, in which the Assembly has sole competence.

<sup>119</sup> A/AC.44/R.136, page 2.

<sup>120</sup> Such provisions may be compared with certain constitutional texts in force which are recognized as guiding principles in social policy: Constitution of Ireland, article 45; Constitution of India, part IV.

556. Thus the Constitution provides for the protections of rights and freedoms. In case the other organs of the State, the Assembly and the Executive, should fail in their duties, it gives the Supreme Court the means of exercising effective control over legislation concerning these rights. For it affirms that liberty is the rule; any restrictive provision of the law must be justified, must come within the scope of the exceptions expressly prescribed and may not suppress the rights guaranteed. The judicial branch is therefore made the guardian of individual rights and fundamental freedom. It can only perform this task if it is completely independent, as prescribed in article 86, paragraph 3, of the Constitution. The function thus assigned to the judicial branch is in conformity with constitutional practice in many modern States.<sup>121</sup>

557. It will also be the duty of the Federal Government to ensure that Eritrean laws respect human rights and fundamental freedoms. This duty is expressly laid upon it by paragraph 7 of the Federal Act. Among the means by which the Federal Government may discharge this duty is the power given to the Emperor's Representative to request reconsideration of Eritrean laws.<sup>122</sup>

558. If the Federal Government should fail to provide the guarantees prescribed in paragraph 7, the Federation may be held responsible internationally.

559. The content and sources of the rights and freedoms guaranteed have already been analysed. It is sufficient to point out that the Universal Declaration of Human Rights is the direct source of the corresponding articles of the Federal Act and the Eritrean Constitution.<sup>123</sup>

560. From a legal standpoint, it is necessary to consider what persons enjoy these rights and freedoms. Paragraph 7 of the Federal Act begins as follows: "The Federal Government, as well as Eritrea, shall ensure to residents in Eritrea..."<sup>124</sup> In principal Human Rights are guaranteed to all persons in Eritrea. In certain respects, however, the status of persons who reside in Eritrea differs from that of those who are merely transients. Certain restrictions may be applied to the latter in keeping with a practice which is widespread in democratic States especially as regards public freedoms.

561. Article 36 of the Constitution provides that nationals of the Federation as well as foreign nationals shall have the right to respect for their personal status. This provision was particularly necessary in a country embracing communities with wide social and religious differences. It applies the principles laid down in the last paragraph of the preamble to the United Nations General Assembly's resolution and guarantees respect

<sup>121</sup> Examples are provided by the United States of America, Eire, Canada, Australia, India, many South American Republics, Italy and Switzerland (Cantonal legislation). Moreover, in countries where it is left mainly to the ordinary law to define the scope of liberties, the judicial branch always plays an important part in protecting individual liberties against arbitrary regulations and acts of the executive authorities.

<sup>122</sup> Articles 14 and 58 of the Constitution.

<sup>123</sup> See Chapter IV, section 3 of this report.

<sup>124</sup> The French translation states: "à toutes les personnes qui résident en Erythrie".

for the traditions and religions of the inhabitants.<sup>125</sup> Moreover, article 36 of the Eritrean Constitution permits the development of personal status.

562. With regard to foreign nationals, the terms of the article imply that their own national law will be applied to their personal status. This rule is recognized by the private international law of many modern States and is traditionally accepted in Ethiopia.<sup>126</sup>

### Section 3. Provisions of the Eritrean Constitution embodying the principles of democratic government

563. The United Nations General Assembly's resolution instructs the Commissioner that "the Constitution of Eritrea shall be based on the principles of democratic government" (paragraph 12).

564. The classical forms of democratic government are direct government, semi-direct government and representative government. The first two forms obviously had to be rejected in Eritrea as far as the central government is concerned. Representative democracy requires all political institutions to be directly or indirectly based on election by the people, i.e., on the franchise. It requires that the franchise shall not be limited for reasons of birth, means or education. These fundamental requirements may be satisfied, from a legal standpoint, by a wide variety of political systems, the commonest of which are the parliamentary system, the presidential and directorial systems and the intermediate types partaking of both these systems.<sup>127</sup>

565. In the present instance, the choice was suggested by the social structure of the country. The aim was to establish stable government institutions exercising mutual restraint on one another and based on a free vote. A parliamentary system without deep historical roots dangerously weakens the executive power. A presidential system in a new democracy might facilitate autocratic schemes. The Constitution adopted in Eritrea endeavours, as far as legal technique permits, to avoid both these dangers. It establishes a what may be called a semi-presidential system.

566. The Eritrean Constitution creates a strong Executive having wide powers, but elected for a fixed term by the Assembly. It strengthens the electorate, and hence the Assembly, by entrusting the supervision of electoral rolls and proceedings to an organ independent of the Executive, namely the Electoral High Commission. It limits the powers of the Executive by placing the Civil Service and the corps of public officials under the authority of an independent Civil Service Commission.

567. The analysis of the provisions of the Constitution concerning government organs and functions will

<sup>125</sup> The Declaration of Constitutional Principles adopted by the United Nations General Assembly for Somaliland lays down a similar rule. Article 9, paragraph 1 guarantees to the inhabitants: "The preservation of their personal and successional status with due regard to its evolutionary development." (A/1294) Similarly, article 192 of the Constitution of Libya provides that: "The State shall guarantee respect for the systems of personal status of non-Moslems." (A/C.32/Council/R.174).

<sup>126</sup> M. Marein, General Adviser to the Imperial Ethiopian Government: *The Judicial System and the Laws of Ethiopia* (Rotterdam, 1951) pp. 113-114, 116-117, 119-121.

<sup>127</sup> English writers use the terms parliamentary (or executive) government and non-parliamentary (or fixed) government.

show how the desired balance between the powers has been achieved.

#### A. THE ELECTORATE

568. Under the Eritrean Constitution the composition and organization of the electorate and electoral proceedings are outside the control of the Executive.

569. The composition of the electorate is based on the principle of universal suffrage. Under the terms of article 20 of the Constitution all men are entitled to vote provided that they possess Eritrean citizenship, have attained the age of twenty-one years and are under no legal disability.<sup>128</sup> The only limitation of the principle of universal suffrage is the exclusion of women from the electorate, but this merely means that it is not yet possible in Eritrea to achieve the common ideal proclaimed by the Universal Declaration of Human Rights.

570. The independence of the electorate and the effectiveness of its action depend to a large extent on a complete and accurate census of all voters.

571. In order to ensure that the electoral rolls are accurately drawn up, the Constitution establishes, in article 45, an Electoral High Commission consisting of three persons appointed by the Supreme Court. This method of appointment ensures its independence and impartiality, thus providing the electorate with all the desirable guarantees; the High Commission is responsible not only for compiling the electoral rolls, but also for supervising all electoral proceedings and for preventing or putting a stop to irregularities.

572. The whole machinery of the electoral system is described in chapter VII on the organic laws, in the analysis of the Electoral Act.<sup>129</sup>

#### B. REPRESENTATIVE ORGANS

573. The Constitution establishes two organs representing the Eritrean people at different stages, the Assembly and the Chief Executive. The Assembly, which is elected by the electorate, in turn elects the Chief Executive.

##### (1) *The Assembly*

574. The Constitution establishes a uni-cameral system (article 39). There are many reasons for this choice.<sup>130</sup> On financial grounds it was necessary to avoid overloading the political structure of a country with limited resources. It was advisable to take account of the number of qualified persons available to perform parliamentary, governmental and administrative duties.<sup>131</sup>

575. Articles 42, 53-55 and 70 define the status of members of the Assembly.

576. In accordance with a traditional constitutional rule, eligibility to the Assembly presupposes firstly qualification for being registered as a member of the

<sup>128</sup> The Commissioner, in collaboration with the British Administration, has prepared a draft electoral law which defines such disabilities. See chapter VII, section 3 C (b) below.

<sup>129</sup> The draft Organic Law jointly prepared by the Commissioner and the British Administration laid down conditions for establishing and revising the electoral rolls, the rules applicable to electoral proceedings and the legislative, administrative and judicial powers of the Electoral High Commission.

<sup>130</sup> See above, chapter I, section 2, C and D, 2, (d) (1).

<sup>131</sup> A/AC.44/R.69 page 3 and R.70.

electorate. Such qualification is sufficient without inscription on an electoral roll. In other words the Constitution requires possession of the right to vote but not its exercise. In addition to possession of the right to vote there are other conditions (article 42). The age for eligibility is fixed at 30 years; officials of the Eritrean or Federal Government are not eligible unless they have resigned at the time of presenting their candidature; candidates for election to the Assembly must prove that they have been resident in Eritrea for three years and have resided in their constituency for two years during the last ten years. Members of the Assembly are eligible for re-election (article 47, paragraph 2).

577. The incompatibility of the office of a public official with membership of the Assembly is especially important in Eritrea, where it is necessary to protect from political influences the new corps of officials on whose integrity and efficiency the sound administration of the autonomous unit will depend.

578. The meaning of the term "official" will have to be accurately defined by law. The Constitution refers, in principle, to persons having the status of public official and coming under the authority of the Civil Service Commission provided for in article 82.<sup>132</sup>

579. The Chief Executive and the Secretaries of Executive Departments are also officials of the Eritrean Government. They are ineligible unless they have resigned at the time of presenting their candidature. Ineligibility of the Chief Executive and the Secretaries of Executive Departments and the incompatibility of their functions with membership of the Assembly also follow from articles 69 (1), 70 and 75 of the Constitution. The Chief Executive and Secretaries of Executive Departments are not responsible to the Assembly. Hence parliamentary status and discipline could not be applied to them. Their functions are therefore incompatible with membership of the Assembly.

580. Again, other grounds of incompatibility may be established by law.

581. The Constitution confers on members of the Assembly those immunities (irresponsibility and inviolability) that are essential to the free exercise of their functions (article 54). It ensures their material independence by according them a remuneration fixed by law (article 55).

582. The Constitution fixes the term of office of the Assembly at four years (article 47, paragraph 1). But the Assembly does not sit continuously during that period. The provisions governing its sessions are laid down in the Constitution (articles 48, 49, paragraph 4, and 78, paragraph 3).

583. In accordance with regular constitutional practice, the Assembly is granted wide powers of self-organization. These powers it exercises in adopting its own rules of procedure (article 51). The Constitution merely stipulates that a quorum shall comprise two-thirds of the members of the Assembly (article 50). It provides for the election of officers at the opening of the first regular session of each year (article 52) and grants such officers the right, when the Assembly

<sup>132</sup> This principle is followed in the organic law drafted jointly by the Commissioner and the British Administration. See chapter VII, section 3 G below.

is not in session, to raise the immunity of members of the Assembly (article 54, paragraph 2, second subparagraph).

584. Article 60, paragraph 1, refers to a Finance Committee. In addition, the Constitution implicitly contemplates the creation of other committees by empowering the Chief Executive, whose right of access to the Assembly is recognized, to be represented in the Assembly and its Committees by the Secretaries of Executive Departments (article 76, paragraph 7). These provisions, in conjunction with the Chief Executive's right to intervene during debates and again before the closure, limit the Assembly's powers of self-organization.

## (2) *The Chief Executive*

585. The executive power is vested in a single person, the Chief Executive (article 67). The Constitution rules out the collegial or directorial system. Such is the contemporary tendency. Even in parliamentary governments the reins of government are left more and more in the hands of the Prime Minister or the President of the Council. His ministers are associates, not equals.

586. The Chief Executive is assisted by Secretaries of Executive Departments.

587. The appointment of the Chief Executive rests with the Assembly. He is appointed by election at the opening of each new legislature (article 68, paragraph 3). The intention in making the duration of the legislature and the term of office of the Chief Executive identical was to establish a constant link of mutual confidence between the two powers.

588. Eritrean citizens having attained the age of thirty-five years and in possession of their political rights are eligible for the office of Chief Executive (article 68, paragraph 2).<sup>133</sup> Members of the Assembly, public officials and judges are eligible. But in the event of a candidate who performs one of these functions being elected to the office of Chief Executive he must choose between his new and his former post, the office of Chief Executive being incompatible with any other public office or legislative function.

589. The election procedure is governed by article 68, paragraph 1 of the Constitution. Election is by secret ballot, a two-thirds majority of the votes cast being required. Votes must be cast by at least two-thirds of the members of the Assembly in office, that is to say, the constitutional quorum (article 50). If no candidate obtains the required majority at the first ballot, another ballot is held among all the candidates, except the candidate receiving the least number of votes, and so on until a candidate obtains the required majority.

590. It should be pointed out that the Constitution does not forbid the introduction of new candidates after each ballot. But if any such new candidate receives the least number of votes he is eliminated from the next ballot. No candidate thus eliminated can stand again, at least not in the next ballot.<sup>134</sup>

<sup>133</sup> The Chief Executive is eligible for re-election (article 68, paragraph 5).

<sup>134</sup> This question should be carefully settled, within the framework of the constitutional provisions, in the Assembly's rules of procedure.

591. The Constitution provides no solution should this procedure fail after several ballots. The Chief Executive can be elected only by a two-thirds majority; a simple majority was regarded as insufficient by the constituent Assembly, which has thus made it necessary for future Eritrean Assemblies to display a spirit of conciliation and compromise.<sup>135</sup> But if no candidate obtains the constitutional majority the Chief Executive in office will retain his post provisionally.

592. Should the office of Chief Executive fall vacant during the term of office of a legislature a new election is held by the same procedure. This election must be held within fifteen days of the office falling vacant (article 68, paragraph 4, and article 75, paragraph 3).

593. The designation of an acting Chief Executive lies with the Chief Executive in office, who designates one of the Secretaries of Executive Departments to act for him if he is temporarily prevented from discharging his duties or if his post falls vacant, until such time as a new Chief Executive is elected (article 71). The Chief Executive has practically a free choice. He has merely to give the person he selects a post as Secretary of an Executive Department, if he does not already hold one. But it is essential that such designation should take place as soon as the Chief Executive has been elected. Furthermore, the Chief Executive may modify his choice at any time during his period of office.<sup>136</sup>

594. The Chief Executive may cease to hold his office for various reasons.

595. The Chief Executive's term of office normally comes to an end on the election of a new Chief Executive, which takes place, in accordance with the Constitution, at the opening of each new legislature (article 66, paragraph 3). It may also be terminated during the legislature by the death, resignation or removal from office of the Chief Executive. The exceptional procedure governing removal from office is described in detail in article 75 of the Constitution. It is based on the classic traditional provisions with regard to *disqualification*. The Assembly may only decide to impeach the Chief Executive before the Supreme Court by a two-thirds majority of its members.

596. On the other hand, the Assembly may in no case dismiss the Chief Executive. The latter is not responsible to the Assembly. He is independent of the Assembly throughout the whole of his term of office. In other words, in relation to the Assembly he is in the same position as members of the Assembly in relation to the electorate. The Chief Executive represents the Assembly as the latter represents the electorate. This situation is characteristic of a non-parliamentary system.

<sup>135</sup> This system is not exceptional. It is found in parliamentary constitutions. The appointment of the President of the Council in France requires an absolute majority of the members comprising the Assembly (article 45 of the French Constitution). A similar system is applied, under the Italian Constitution, for the election of the President of the Republic (article 83). The Basic Law of Western Germany for the election of the Chancellor (article 63) and the Korean Constitution for the election of the President of the Republic (article 53) provide that a simple majority shall finally suffice, if no candidate would otherwise be elected.

<sup>136</sup> The acting Chief Executive, on assuming office after the resignation or death of the Chief Executive, must also designate an acting Chief Executive.

597. The Constitution defines the organizational principles of the Executive. It leaves to the law the task of applying these principles.<sup>137</sup>

598. The Secretaries of Executive Departments are appointed and dismissed by the Chief Executive. They assist, and are responsible to, him (article 69). They may be periodically convened in council by the Chief Executive. This council has no power of decision (article 74).

### C. LEGISLATIVE FUNCTIONS AND CONSTITUENT POWER

#### (1) *Functions of the Assembly*

599. The Assembly votes the laws (article 56). It constitutes the supreme legislative authority. The procedure for the drafting and adoption of laws is laid down in the Assembly's rules of procedure (article 57, paragraph 2). Nevertheless, the Constitution provides that the initiative in submitting laws lies with the individual members of the Assembly and the Chief Executive (article 57, paragraph 1).

600. The laws adopted by the Assembly are immediately transmitted by the President of the Assembly to the Chief Executive. The date on which a law is voted is of considerable importance, since it initiates a period of twenty days within which the Emperor's Representative may, on the grounds already stated, request reconsideration of the law and the Chief Executive himself may also request reconsideration (article 58, paragraphs 3 and 4). This right conferred on the Chief Executive is met with in other Constitutions.<sup>138</sup>

601. Where no request for reconsideration has been submitted before the expiry of this time-limit of twenty days, the law must be promulgated and published in accordance with the procedure set forth in article 58, paragraphs 4, 5 and 6, and article 76, paragraph 5. The same applies where, after reconsideration has been requested, the law has been adopted by the Assembly by a two-thirds majority.

602. The law which has been promulgated and published may be challenged as unconstitutional before the Supreme Court (article 90, paragraph 3). Should the law conflict with the Constitution, the latter shall prevail.

603. Among the legislative functions of the Assembly, special mention must be made of its competence in budgetary matters. The Constitution of Eritrea lays down principles and rules governing the drafting and adoption of the budget, its implementation and the supervision of its implementation. Provision is made for laws to be enacted embodying those principles and rules.<sup>139</sup>

604. In accordance with a practice constantly encountered in comparative budgetary law, the budget is drafted

by the government (article 59). The Chief Executive's draft budget is examined by the Assembly Finance Committee, a general debate on it being held in the Assembly, at the beginning of the second regular session (article 60, paragraphs 1 and 2). Following this general debate, the Chief Executive must submit to the Assembly a revised draft budget including any suggestions made by it which he may see fit to incorporate. It thus rests with the Assembly to adopt suggested amendments to the budget, in the form of resolutions, during the debate. At this stage in the debate, the Assembly may propose to the Chief Executive that the expenditure estimates in the draft budget be either reduced or increased, subject in the latter case to the stipulation regarding the balancing of income and expenditure contained in article 60, paragraph 3, which will be considered later.

605. During the second phase, the Assembly takes a decision on the various items of the revised budget (article 60, paragraph 3). In other words, it votes appropriations for each Executive Department in turn.

606. It may reduce the expenditure estimates, except those included in the budget to cover national debt payments.

607. It may not increase the expenditure estimates in the draft budget without the consent of the Chief Executive and unless it votes an equivalent increase in the revenue estimates. On this particular point, then, the right of amendment of members of the Assembly is limited. The expenditure estimates submitted by the Executive represent a maximum, and the Assembly is thus invited to play the role of moderator in public expenditure (article 60, paragraph 3 (a)). Similar provisions are to be found in a number of Constitutions.<sup>140</sup>

608. The budget must be adopted before the beginning of the financial year; otherwise, the Constitution stipulates that the draft budget, amended by the Chief Executive, "shall be deemed to be adopted" (article 60, paragraph 4). The object of this provision is to prevent governmental action being paralysed for lack of funds through delay by the Assembly in voting the budget. It is thus incumbent on the Assembly to carry out its examination of the budget promptly enough to forestall adoption of the Chief Executive's draft budget by tacit consent.<sup>141</sup>

609. When the delay in adopting the budget is due to the failure of the Chief Executive to observe the time-limit laid down in the Constitution<sup>142</sup> for submission of the draft budget, adoption by tacit consent is ruled out. In such a case, if the budget has not been adopted before the beginning of the financial year, the Chief Executive must request the Assembly to grant him, by extension of the previous budget, provisional appropriations for a limited period (e.g., one month).

<sup>140</sup> Western Germany (article 113); Bavaria (article 78); Rhineland-Palatinate (article 118); France (article 17); Ireland (article 17, para 2); the Sarre (article 110).

<sup>141</sup> A number of Constitutions provide for an analogous system, in the same eventuality, in the form of a prolongation of the previous year's budget; Western Germany (article 11); Bavaria (article 78(4)); Rhineland-Palatinate (article 116, last paragraph); Saxony (article 81); Denmark (article 47, second paragraph); the Sarre (article 107).

<sup>142</sup> The draft budget must be submitted to the Assembly at least one month before the opening of the second regular session of the Assembly (article 59, para. 1), and the revised draft budget within ten days following the closure of the debate in the Assembly.

<sup>137</sup> Thus article 69, paragraph 4, leaves the number and the functions of Secretaries of Executive Departments to be prescribed by law. The Commissioner has prepared a draft law on this point in conjunction with the British Administration. See chapter VII, section 3 B below.

<sup>138</sup> For example, in varying forms, in the Constitutions of Czechoslovakia (articles 58 and 59), Finland (article 19), France (article 36), Iceland (article 26), Italy (article 74), Norway (articles 78 and 79) and the United States of America (article 7, section F).

<sup>139</sup> The organic law on the Budget drafted jointly by the Commissioner and the British Administration is examined in chapter VII, section 3 D of this report.

610. The estimates for the expenses of the Assembly must be included in the budget. In accordance with parliamentary usage, proposals for such expenditure must be drafted by a committee of the Assembly and handed by the President of that body to the Chief Executive for inclusion in his draft budget.<sup>143</sup>

611. The Executive is responsible for implementation of the budget. Taxes may be levied only under the conditions fixed by the Assembly. Appropriations may not be exceeded or diverted from the purpose assigned to them in the budget law (article 61).

612. To enable the Executive to meet urgent expenditure, the Constitution authorizes the Assembly to include in the budget a special credit not to exceed 10 per cent of the total expenditure estimates authorized by the budget law (article 63).

613. In case of emergency, entailing commitments in excess of this special credit, it would be possible for the Chief Executive to submit a supplementary draft budget to the Assembly.

614. In addition to the control exercised by the Executive's finance and accounting services, a check on the implementation of the budget is kept by an Auditor-General elected by the Assembly (article 64 of the Constitution).

615. Final approval of the accounts for each financial year is given by the Assembly on the basis of a report submitted by the Chief Executive with the assistance of the Auditor-General (article 64, paragraphs 1 and 3).

616. Apart from its functions in the sphere of ordinary legislation, the Assembly has constituent power, since this is not vested in an *ad hoc* body, such as an Assembly elected for the purpose. The Constitution confers on the Eritrean Legislative Assembly the power to amend the Constitution, but the manner in which this action can be taken differs from ordinary legislative procedure.

617. The initiative as regards amendments to the Constitution lies with the Chief Executive and the members of the Assembly. A proposed amendment emanating from the members of the Assembly is inadmissible unless submitted by at least one quarter of the actual number of members (article 92, paragraph 1).

618. The proposed amendment cannot be discussed by the Assembly until twenty days at least after it has been submitted. This time allowed for reflection is designed to obviate the adoption of any amendment under pressure of extraneous circumstances.

619. Amendment procedure varies according to the majority obtained by the proposal in the Assembly.

620. If the Assembly adopts the proposal by a majority of three-quarters of the members in office, this decision is final and the proposed amendment is approved.

621. If an amendment is approved by an absolute majority of the members in office or by a majority of two-thirds of the members present and voting, it must be debated again.

<sup>143</sup> The rules of procedure of the Assembly will have to lay down the conditions under which this section of the budget must be drafted.

622. This second debate can only take place after the next legislature has been elected. Thus the amendment is indirectly put to the electorate.<sup>144</sup>

623. The maximum period that may elapse between the two debates is slightly over four years if the amendment is first adopted at the beginning of a legislative period, and the minimum period a few months if it is first adopted at the end of a legislative period.

624. The majorities required are the same for the second vote as for the first (article 93, paragraph 2).

625. A similar revision procedure is to be found in many Constitutions. In view of the fact that a single Assembly has power to carry out revision, the conditions laid down in the Eritrean Constitution are not excessive.<sup>145</sup> The Eritrean Assembly did not by any means consider the revision procedure laid down in the Commissioner's Draft to be too inflexible, but would have preferred to see amendment of the Constitution made more difficult.

626. In exercising its power to revise the Constitution, the Assembly may not amend the Federal Act. This restriction is stated in article 91, paragraph 1.

<sup>144</sup> In some Constitutions it is expressly provided that Assemblies undertaking to amend the Constitution must be re-elected. After the elections, a final decision on the proposed revision is taken. (Constitution of Belgium, article 131; Constitution of the Netherlands, article 204; Constitution of Denmark, article 94; Constitution of Norway, article 119; Constitution of Colombia, article 190). The Constitution of Honduras lays down procedure similar to that adopted for Eritrea in this instance (article 200).

<sup>145</sup> The basic law in Western Germany requires a two-thirds majority of both Assemblies for revision (article 79); the Constitution of Bavaria requires a two-thirds majority of the members of the Diet and a public referendum (article 75); the Constitutions of the Rhineland-Palatinate (article 129) and of Saxony (article 96) require either a two-thirds majority of the members of the Assembly or a public referendum; the Constitution of France requires, first, the adoption of a resolution by an absolute majority of the members of the National Assembly, then the adoption of a bill to revise the Constitution either by a two-thirds majority of the National Assembly, or by a three-fifths majority of both Assemblies or by a simple majority, in which case revision must be approved by a public referendum (article 90); the Italian Constitution requires a two-thirds majority of the members in office in both Chambers, failing which there may be a referendum; the Hungarian Constitution requires a two-thirds majority of the National Assembly (article 15-III); the Constitution of Norway requires a two-thirds majority of the Storting (article 119); the "Little Constitution" of Poland requires a majority of two-thirds of the statutory number of deputies; the Constitution of the Sarre requires a majority of three-quarters of the statutory number of members of the Assembly (article 103); the Constitution of Czechoslovakia requires a majority of three-fifths of the total number of deputies (article 54, paragraph 2); the Constitution of Turkey requires that a proposal for revision be submitted by at least one-third of the members of the Assembly and adopted by two-thirds of the members (article 102); the Constitution of the USSR requires a two-thirds majority vote in each Chamber of the Supreme Soviet. In the member States of the American Union a simple majority of members in each Chamber is sometimes required for the adoption of amendments (23 States); sometimes a majority of two-thirds is required (18 States) and sometimes a majority of three-fifths (7 States); in some States the amendment must be adopted again by a second legislature (14 States). Subject to approval by the States in certain cases, the Constitution of India requires a two-thirds majority in both Houses of Parliament, comprising at least half the members (article 368); the Constitution of Ceylon requires a majority of two-thirds of the members of the House of Representatives (article 29, paragraph 4). In most South American States more than a simple majority is also required for revision of the Constitution (*cf.* Bolivia, article 174; Brazil, article 217; Chile, article 108; Cuba, articles 285-286; El Salvador, article 171; Guatemala, article 206; Honduras, article 200; Mexico, article 135; Paraguay, article 94; Uruguay, article 281; Venezuela, article 248).



627. Moreover, article 16 of the Constitution may not be amended (article 91, paragraph 2). This provision gives the authority of constitutional law to the rule laid down in the United Nations resolution (paragraph 12): "the Constitution of Eritrea shall be based on the principles of democratic government".

#### (2) Powers of the Chief Executive

628. The Constitution confers wide powers on the Chief Executive in the matter of legislation and issuing of regulations.<sup>146</sup> In the first place, the Chief Executive is empowered to issue the regulations required to implement the laws (article 76, paragraphs 2 and 8). Secondly, the Chief Executive is authorized to fill in any gaps in the laws in force (article 77). This power can be exercised only in the interval between sessions of the Assembly. The Chief Executive must submit any orders thus issued to the Assembly, which may repeal them. Such orders may not relate to any of the matters dealt with in chapter IV of part I of the Constitution, and must be compatible with the Constitution and the laws in force.

629. Finally, articles 78 and 79 of the Constitution endow the Chief Executive with emergency legislative powers, subject to supervision by the Assembly.

#### D. POWERS OF THE EXECUTIVE

630. The Constitution makes the Chief Executive responsible for the direction of the administrative departments and public services (article 76). He also possesses power of decision, within the limits set by the Constitution and the laws of the Assembly.

631. However, to prevent the Chief Executive from having unlimited powers, the Civil Service is placed under the authority of an independent Commission (article 82). This Commission is under the chairmanship of the Chief Executive or his representative, but its composition and the conditions under which it is to function are determined by law. The Civil Service Commission is responsible for the appointment, promotion, transfer and discharge of officials and for taking disciplinary action. Such a system, which tends to discourage favouritism and the creation of a group of hangers-on, has been adopted by the legislation of a number of countries.<sup>147</sup>

632. Moreover, although the Assembly may not interfere in the exercise of executive functions, it enjoys the right of supervision under the Constitution. In accordance with article 66, it may submit questions orally or in writing and ask for a debate on the Government's policy.

633. In a semi-presidential system such as that adopted for the Constitution of Eritrea, relations between the Executive and the Assembly should naturally be strictly defined. Failure to include provisions to that end, or the introduction of different provisions, would have transformed the semi-presidential system into a parliamentary one. The limited intercourse provided for under article 66 of the Constitution is, however, sufficient to keep the Chief Executive in touch with public opinion and to enable the pressure of the latter to be adequately felt.

<sup>146</sup> The extension of the powers of the Executive with regard to legislation and issuing of regulations is a characteristic feature of the contemporary period.

<sup>147</sup> For instance, in the United States of America, the Republic of India and Ceylon.

#### Section 4. The Judiciary

634. Article 85 of the Constitution of Eritrea provides that judicial power shall be exercised by a Supreme Court and by other courts which will apply the various systems of law in force in Eritrea. Article 86 provides that the judiciary shall be completely independent and free from all political influence and from any pressure or intervention on the part of the Assembly or the Executive.

635. The judges are appointed by the Chief Executive on the recommendation of the President of the Assembly to whom a list of at least three candidates for appointment must be supplied by a Committee composed of the President of the Supreme Court and two judges chosen by the members of the Supreme Court and of the court or courts immediately inferior thereto. The judges are appointed for a period of seven years, which term may be renewed.

636. It was left to the law to establish the status of the judges and the organization of the courts. A description of the measures taken in this law to ensure the independence of the judiciary, in accordance with the provisions of the Constitution, is given in chapter VII of this report.

637. Apart from its jurisdiction as a court of last resort, the Supreme Court has exclusive jurisdiction in the following matters forming an integral part of the Constitution on which action may be required to ensure the observance and application of its provisions:

(1) Disputes concerning the constitutionality of laws and orders;

(2) Conflicts of jurisdiction between Eritrean courts;

(3) Actions based on administrative acts brought against the Government of Eritrea or the public services, unless special courts have been established by law to try such cases;

(4) Criminal and disciplinary responsibility of judges; and

(5) Trial of the Chief Executive when impeached by the Assembly under article 75 of the Constitution.

#### Section 5. The Advisory Council of Eritrea

638. The Advisory Council of Eritrea, established by article 84 of the Constitution, is an institution designed to enable the necessary plans to be drawn up for economic and social progress in Eritrea, and to endow the country with the technical, economic, administrative and social resources commensurate with its new status.

639. By the very establishment of this Advisory Council, the Constitution of Eritrea stresses the importance of such problems for the country's future.<sup>148</sup>

640. It lays the foundations and formulates the guiding principles of an essential institution which it will be the task of the Assembly and the Chief Executive to organize, maintain and develop.

641. An organic law<sup>149</sup> has been drawn up by the Commissioner, in collaboration with the British Administration, to develop the principles laid down by

<sup>148</sup> The Advisory Council of Eritrea may be compared to the economic councils set up, either under the constitution or by law, in many countries during the last thirty years. The Advisory Council of Eritrea, like these economic councils, is not a political organ but a technical adviser to the public authorities.

<sup>149</sup> A/AC.44/L.16.

the Constitution and to indicate the manner in which the Advisory Council shall function. The main features of this law are described in chapter VII, section 3 of this report.

### **Section 6. Transitional provisions**

642. Article 96 of the Constitution stipulates that the laws and regulations in force shall remain in force so long as they have not been repealed or amended—provided they do not conflict with the Constitution. A similar provision is to be found in a number of other constitutions. It embodies an indisputable principle of law.<sup>150</sup>

<sup>150</sup> Cf. The Constitution of Ireland (article 73); Constitution of Korea (article 100); Draft Constitution of Israel (article 77), Constitution of Libya (article 210)

643. Article 99 extends the term of office of the Assembly responsible for adopting the Constitution of Eritrea. The Commissioner had proposed that the extension should not exceed two years. The Assembly, however, was of the opinion that this period would not be sufficient to enable it to establish the constitutional institutions and to examine and adopt the essential organic laws. It decided that, in view of Eritrea's special position, a period of at least four years would be necessary.

644. The other transitional provisions (articles 97 and 98) concern the Administering Authority in Eritrea, their object being to facilitate the transfer of the power vested in that Authority under paragraph 14 of the resolution of the United Nations General Assembly.

## Chapter VII

### ORGANIC LAWS COMPLEMENTARY TO THE CONSTITUTION

#### Section 1. General

645. A number of articles of the Eritrean Constitution refer to laws<sup>151</sup> which, according to article 56 of the Constitution, must be voted by the Eritrean Assembly.

646. The Commissioner wished the Constitution to be brief. It therefore laid down only general principles, while the development of those principles was left to the law.

647. Some of these laws were both important and urgent, for they were to govern the organization and functioning of the Eritrean Administration within the framework of the Constitution. Certain others, though of less urgency, were so closely linked to the Constitution that they, too, were in the nature of organic laws.

648. The organic laws are as follows:

- (1) The Administration of Justice Proclamation;
- (2) The Eritrean Functions of Government Act;
- (3) The Eritrean Electoral Act;
- (4) The Eritrean Budget Act;
- (5) The Eritrean Audit Act;
- (6) The Eritrean Advisory Council Act;
- (7) The Eritrean Civil Service Act.

649. The Commissioner always attached particular importance to the drafting of these laws. He decided against incorporating them in the Constitution only in order to avoid an excessive amount of detail and consequent prolongation of the debates in the Assembly. Moreover, although the resolution, if narrowly interpreted, did not require the Commissioner to take any action in the matter once the Constitution was adopted, he considered that he should himself take part in drafting these laws, not only because they would assist the new Eritrean Administration but also, as already explained, because they were so closely connected with the Constitution.

650. The laws are, in fact, the outcome of constant and very close collaboration between the Commissioner and the Administering Authority, which did a great deal of

<sup>151</sup> Article 7 (Law on the Participation of Eritreans in the Federal Government), article 8 (Eritrean Citizenship Law), article 9 (Law on the Rights of Federal Nationals who are not Eritrean Citizens), article 21 (Law on the Flag, Seal and Arms of Eritrea), article 34(2) (Law regulating the enjoyment of human rights and fundamental freedoms), article 40(2) (Law on the Number of Members of the Assembly), articles 41(2), 42(c), 43(2 and 3), 45(4), 48(2) (Eritrean Electoral Act), article 55(1) (Law on the Remuneration of Members of the Assembly), article 61 (Authorization of Taxation and Expenditure Law), article 62 (Budget Law), article 64(4) (Audit Act), article 69(4) (Eritrean Functions of Government Act), article 78 (2 and 4) (Law on the Limitation in time of emergency of certain constitutional provisions), article 81 (Civil Service Act), article 83(3) (Local Communities Law), article 84(3) (Advisory Council Act), articles 85, 86(4) and 89 (Administration of Justice Act).

the drafting. The law on the administration of justice was issued as a proclamation by the British Administration, but drafts of the other six laws were submitted jointly by the Commissioner and the Administration, following an exchange of letters, first to a Committee of the Eritrean Assembly and then to the Assembly itself.

#### Section 2. Statement by the Commissioner to the Eritrean Assembly

651. On 4 September 1952, the Commissioner had an opportunity of addressing the Eritrean Assembly in general terms on the subject of the organic laws.

652. He emphasized the following points:

(1) It had not been easy to define the legal status of the organic laws. The opinion had been expressed that since they were complementary to the Constitution, they should have been submitted to the Emperor for ratification with the Constitution. The Commissioner considered, however, that the organic laws were not of the same fundamental importance as the Constitution since, like any other law, they could be amended by a simple majority vote of the Assembly and the procedure prescribed for amendment of the Constitution had not been made applicable to them.

(2) The Constitution made numerous references to the law. The Commissioner had accordingly prepared the first draft organic laws, which were a necessary complement to the Constitution. He had done so in order to co-operate in establishing the Government and Administration of Eritrea.

(3) It was not possible, however, for the Commissioner to go into the details of the administrative problems raised by the final drafting of the laws. The British Administration had therefore been called upon to assist and the first drafts had been communicated to it. After examining the drafts, the Administration had amended or even redrafted them. They had been returned to the Commissioner in their new form and after a further exchange of views the texts had been approved by both parties.

(4) In order to acknowledge the full value of this collaboration, the Commissioner had proposed that the draft laws should be submitted jointly, first to the Committee which was to examine them and then to the Eritrean Assembly. No doubt could be cast on the great value of these drafts for the future of Eritrea.

(5) Doubts had been expressed regarding the legal capacity of the Assembly to approve the organic laws before the transfer of power. It must be noted, however, that article 95 of the Constitution provided that those laws should enter into effect simultaneously with the Constitution. Thus in order to comply with that article it was necessary to vote the laws before the Constitution entered into effect. The Assembly was faced with an

important task, for it was called upon to complete the constitutional system of the autonomous unit by strengthening the legal foundations on which it rested.

653. After this meeting, the organic laws were transmitted by the Administration to the Executive Committee for consideration before they were submitted to the Eritrean Assembly. Before the transfer of power took place the Assembly adopted the bill on the functions of the Eritrean Government.

### **Section 3. Analysis of the organic laws complementary to the Constitution**

#### **A. THE ADMINISTRATION OF JUSTICE PROCLAMATION ISSUED BY THE BRITISH ADMINISTRATION, ERITREA**

654. This Proclamation carried into effect, *inter alia*, the following objects:

(1) The integration into one system of courts of the medley of courts which had grown up following, first, the superimposition of the Italian judicial procedure, codes and system of courts upon the indigenous customary and Mohammedan systems, and secondly, the supervening British Military and, later, Civil Administrations; and the adaptation of the new system to the conditions which would prevail after the entry into effect of the Constitution.

(2) The establishment of the Judiciary as a separate organ of government, independent of the Executive, under the supervision and administrative control of the President of the Supreme Court, and through him directly and solely responsible, by the machinery of an annual report, to the Chief Executive for the administration of justice in Eritrea and the performance of its functions;

(3) The recognition of the Judiciary as the guardian of the Constitution and its inherent powers as such guardian to protect and enforce the rights granted to individuals and other juridical persons by the provisions of the Constitution;

(4) The implementation of the provisions of article 36 of the Constitution that federal and foreign nationals shall have the right to respect for their customs and their own legislation governing personal status and legal capacity, the law of the family and the law of succession;

(5) The certainty of the law by means of comprehensive provisions for the ascertainment *in limine* of the law, whether customary, Mohammedan or statutory, to be administered in any civil suit or proceeding.

#### **B. THE ERITREAN FUNCTIONS OF GOVERNMENT ACT**

655. This law implements the following provisions of the Constitution:

(1) Article 69 which provides for the appointment by the Chief Executive of secretaries of the executive departments and for their number and functions to be prescribed by law.

(2) Article 74, which provides for the summoning of a Council of Secretaries advisory to the Chief Executive on questions of policy.

(3) Article 66 which provides for the submission of questions to the Executive by members of the Assembly.

656. Under the law as passed and adopted by the Assembly, four executive departments of the Eritrean Government, in addition to the Office of the Chief Executive, were established; namely, the Department of the Interior, the Finance Department, the Department for Economic Affairs, and the Department for Social Services.

657. The different subjects and functions of government are appropriately allocated amongst the Office of the Chief Executive and the four executive departments, and the necessary elasticity to cover development and changing conditions is provided by giving the Chief Executive power to establish one or more additional departments and to transfer a subject or function of government from one department to another.

658. Further provision is made for the case where the post of Chief Executive falls vacant or where he is temporarily prevented from discharging his duties and for the remuneration, rules of conduct, responsibilities and vacation of office by the Secretaries.

659. An Executive Council composed of the Chief Executive and the Secretaries is established under the Presidency of and subordinate and advisory to the Chief Executive, and provision is made for the conduct of its proceedings.

660. Lastly, it is provided that the Chief Executive or the Secretary instructed by him shall attend in person to answer questions submitted by members of the Assembly and that the intervention on behalf of the Executive in any debate held on the policy of the Executive may be made by the Chief Executive and by one or more Secretaries.

#### **C. THE ERITREAN ELECTORAL ACT**

661. Articles 20, 40 - 43 inclusive and 45 of the Constitution provide respectively that the electoral disabilities of Eritrean citizens, the number of the members of the Assembly, the boundaries of the constituencies, the disqualifications for membership of the Assembly, the system of voting in each constituency, the establishment of electoral rolls, and the implementation of article 45 establishing the Electoral High Commission, shall be prescribed by law.

662. The law as passed by and adopted by the Assembly is based upon articles 39 to 47 inclusive of the Constitution and follows to a substantial extent the provisions of the Proclamation issued by the Administering Authority in respect of the election of the Eritrean Representative Assembly. It constitutes a comprehensive Electoral Code.

663. Under article 45 of the Constitution the responsibility for the proper conduct and for the supervision of all electoral proceedings (including the compiling of electoral rolls) is confided to an Electoral High Commission of three persons appointed by the Supreme Court. The Electoral High Commission is directed to appoint a representative in each constituency, from among the electors of that constituency, who in turn is assisted by an Advisory Election Committee chosen by him from among the electors of the constituency and every candidate is entitled to be represented on the Advisory Election Committee during the election period.

664. The law provides that every Eritrean citizen of not less than 30 years of age shall be eligible for membership to the Electoral High Commission unless he is one of the following persons:

(1) The Chief Executive;

(2) A Secretary of an Executive Department of the Eritrean Government or a member of the Eritrean Representative Assembly;

(3) A member of the Federal legislature or of the Imperial Federal Council or a minister or other official or employee of the Federal Government;

(4) A member of the Federal or Eritrean armed or police forces;

(5) A person who at any time has been sentenced to a term of imprisonment and has not been granted a pardon;

(6) A person who at any time has been convicted of a corrupt practice or any abetment thereof in respect of any election to the Assembly or other public body;

(7) An undischarged bankrupt or person whose property is subject to a composition or arrangement with creditors;

(8) Any person of unsound mind;

(9) An illiterate.

665. The electoral representative of the Electoral High Commission in each constituency and every member of an Advisory Election Committee must possess similar qualifications and also be a qualified voter.

666. A qualified voter is defined as an Eritrean citizen who possesses the qualifications laid down in subparagraphs (a), (b) and (d) of article 20 of the Constitution, who is neither of unsound mind nor serving a term of imprisonment and whose name, in a constituency where an electoral roll has been established, is entered in the electoral roll.

667. For the purposes of this law, an Eritrean citizen is defined as meaning any person who has acquired Federal nationality in Eritrea under the provisions of paragraph 6 of the Federal Act or who has acquired Eritrean citizenship under any other law.

668. Detailed provisions are included governing the appointment, duties and responsibilities of the Electoral High Commissioner, the electoral representatives and the Advisory Election Committees, and the Electoral High Commission is given power to make regulations in regard to certain electoral matters.

669. The Administering Authority in defining sixty-eight constituencies for the election of the Eritrean Representative Assembly had been concerned to ensure, so far as possible, that, whilst being approximately equal in population, they should produce a fair representation of the different elements of the electorate, and the law continues both the number and definition of the constituencies prescribed in the Proclamation. At the same time it directs the Electoral High Commission, upon their nomination, and thereafter after each general election, to inquire into the division of the Territory into constituencies and to report to the President of the Assembly the result of their inquiries and, in particular, whether the division correctly and sufficiently establishes constituencies approximately equal in population and is made in such a manner as to produce a fair representation of the different elements of the electorate or whether any modification in the number of constituencies or in the manner of the division of the territory into constituencies or in the definition of any constituency should be made for the better carrying out of those objects.

670. In a territory populated partly by sedentary agriculturists and partly by nomadic tribes it is not possible to define the constituencies by sole reference to territorial boundaries and the definition of the different constituencies is therefore partly by reference to territorial boundaries and partly by reference to a particular tribe or tribes. Where any constituency or part of a constituency is defined by reference to a tribe, it is provided that the residential qualification required by article 20 of the Constitution shall be satisfied if the member of the tribe in question has been resident during the year preceding the election in the administrative division which includes the constituency in question and that in the case of the member of a nomadic tribe such ordinary residence shall include any period in which such member in the course of customary tribal migration shall have resided outside the territorial limits of such administrative division.

671. The following persons are disqualified from membership of the Assembly:

(1) Members of the Judiciary;

(2) The Auditor-General;

(3) Undischarged bankrupts or persons whose property is subject to a composition or arrangement with creditors;

(4) Persons who have within the past seven years been sentenced to a term of imprisonment, whether the sentence was suspended or not, for a period of not less than two years;

(5) Persons who have within the past seven years been convicted of a corrupt practice or any abetment thereof at any general election or by-election to the Assembly or other public body;

(6) Persons of unsound mind.

672. As provided in article 43 of the Constitution, two voting systems, direct ballot in one stage and indirect ballot in two stages, are permissible and the law specifies the systems to be adopted in each constituency established thereunder.

673. In constituencies where the voting is by direct ballot, each qualified person is entitled to have his name entered upon the electoral roll and such entry entitles him to vote. All voting by direct ballot is personal, single and secret.

674. In constituencies where the voting system is by indirect ballot, the constituency is divided into electoral units in accordance with the directions of the Electoral High Commission and the number of delegates to the Electoral College is prescribed by the Electoral High Commission in such a manner as to secure, as far as possible, that each delegate shall represent an approximately equal number of qualified voters. The primary election in each such electoral unit is held in accordance with local custom. Where no such local custom exists, the Electoral High Commission may direct that the primary election be conducted by direct ballot. The qualification of a delegate to the Electoral College is that he should be a qualified voter in the electoral unit in question. The secondary elections in the Electoral College are conducted by direct ballot. The electoral representative in each constituency in which the voting system is by indirect ballot is required to report to the Electoral High Commission the nature of the customary method of election, if any, in each electoral unit in his constituency.

675. The law provides that the Electoral High Commission shall within certain limits fix the dates of both general elections and by-elections and that after the holding of the primary elections at a general election the same date shall be fixed for the holding throughout Eritrea of elections in constituencies where the voting is by direct ballot and for the holding of the secondary elections in constituencies where the voting is by indirect ballot.

676. Candidates, whose qualifications are laid down by article 42 of the Constitution, are at liberty to conduct their campaigns for election freely and openly, but the Electoral High Commission is given power to prescribe, without discrimination, a general limit to the amount of expenditure to be made by or on behalf of a candidate in the conduct of his campaign and to prescribe the manner in which any such expenditure is to be ascertained, recorded and reported to them. Where the expenditure made by any candidate or on his behalf in the conduct of his campaign for election exceeds the prescribed amount, his election is invalidated.

677. The electoral representative in each constituency is generally responsible for the conduct of the election. In constituencies where the voting system is by indirect ballot, he is required to nominate a member of the Advisory Election Committee to supervise the primary election of delegates in every electoral unit, and such member is required to submit a report to the electoral representative certifying that the primary election was freely and fairly conducted either in accordance with local custom or the law governing election by direct ballot and that the delegates to the Electoral College are properly qualified.

678. Any person qualified to take part in any election may submit a verbal or written complaint against the conduct of the election to the electoral representative direct or through the member of the Advisory Election Committee supervising a primary election. In the case of primary elections, the electoral representative, after considering the report of the member of the Advisory Election Committee supervising the election and any complaints against the conduct of the election, is required to confirm or invalidate the election in each electoral unit of the delegate to the Electoral College and, in the latter event, to arrange for the holding of a further primary election. The electoral representative is directed to forward to the Electoral High Commission any complaint received by him in respect of any election.

679. The law contains detailed provisions for the proper conduct and supervision of polling stations which are designed to secure a free and secret ballot.

680. Immediately after the result of the election in each constituency has been declared by the electoral representative, he is directed to forward a certified list of the votes cast for each candidate to the Electoral High Commission and, if any discrepancy or irregularity has occurred which, in his opinion, might have affected the result of the election, a full report to that effect and such a report is deemed to constitute a challenge to the election of the candidate declared to have been elected.

681. The Electoral High Commission, in its turn, is directed to forward to the Clerk of the Assembly the name of the candidate declared to have been elected in each constituency together with:

(1) A copy of the certified lists of votes recorded for each candidate;

(2) A copy of every report by an electoral representative constituting a challenge to the election of any candidate; and,

(3) A copy of any challenge to the election of any candidate submitted by a qualified voter.

682. In order to complete the picture, it is necessary to recall the provisions of article 46 of the Constitution which provides that, in the case of challenge, the election of the member in question shall be confirmed either by a two-thirds majority of a quorum of not less than one-half of the members of the Assembly in office or, failing such majority, by a decision, upon appeal by the member, of the Supreme Court.

683. Finally, the law contains a comprehensive list of corrupt electoral practices each one of which is punishable with imprisonment for a term of one year or with a fine or both fine and imprisonment.

#### D. THE ERITREAN BUDGET ACT

684. Article 62 of the Constitution provides that a law shall be enacted governing the form in which the budget shall be submitted and voted on each year and, in accordance with accepted standards of procedure, the Eritrean Budget Law lays down that estimates of the total revenue and expenditure of the Government of Eritrea, properly classified under appropriate and separate chapters, heads and items, shall be presented in such a manner as to show clearly the estimated amount to be derived from each source of revenue and to be expended under each head of expenditure.

685. Under the procedure laid down by the law, the Financial Secretary, upon the basis of estimates of revenue and expenditure submitted to him by the secretaries of the executive department of government, prepares and submits to the Chief Executive a preliminary draft Budget, which, as amended and then adopted by the Chief Executive forms the draft Budget to be submitted by him, in the first instance, to the Finance Committee for their examination and report and then to the Assembly.

686. Following any amendments incorporated in the draft Budget by the Chief Executive as a result of the initial debate thereon in the Assembly and its re-submission as the revised draft Budget, the Assembly first votes upon the estimates of expenditure other than the following matters which constitute excepted expenditure and are paid under the authority of the Budget Law itself, namely:

(1) The salary payable to members of the judiciary;

(2) The salaries payable to the Civil Service Commission;

(3) The salary payable to the Auditor-General.

687. The Assembly may vote only upon the total amount of the estimated expenditure by each executive department or other organ or service of government and may not increase the amount of any draft estimate of expenditure unless the Chief Executive consents thereto and the amount of the increase is balanced by a corresponding estimate of revenue, but it may either adopt or refuse to adopt any draft estimate or it may vote a lesser amount.

688. The Assembly then considers the estimates of revenue and, where any alteration in the tax laws is involved, first votes the necessary legislation and then the relevant chapter of revenue.

689. The total allocations of expenditure voted by the Assembly must not exceed the total of the approved estimates of revenue unless the difference is covered by a proposal, approved by the Assembly, for a transfer from reserve or the raising of a loan or grant-in-aid.

690. Provided that the revised draft Budget is duly presented to the Assembly, the Budget enters into force at the commencement of the financial year whether it has been adopted by the Assembly or not and in the latter case the revised draft Budget is deemed to have been adopted.

691. The control of financial legislation is vested in the Chief Executive and, save with his consent, no member of the Assembly may introduce any draft legislation or move any amendment to any draft legislation, having the object or effect of imposing or increasing any tax, or imposing any change upon any government reserve.

692. Provision is also made for the following matters:

(1) The attendance of the Secretary of the executive department concerned and of the Financial Secretary during the consideration of the draft Budget by the Finance Committee and by the Assembly, and during the voting of the revised draft Budget;

(2) Secrecy in the case of the imposition of new or altered taxation and the bringing into force of such taxation so as to prevent evasion;

(3) Supplementary estimates of expenditure where it is impracticable, inappropriate or inexpedient for the Chief Executive to have recourse to the credit for urgent expenditure voted by the Assembly;

(4) The control by the Assembly of government reserves; and,

(5) The possibility of covering any amount by which the actual expenditure exceeds the estimated revenue either, with the approval of the Assembly, by a supplementary estimate of revenue or by a transfer from reserve or by a loan or grant-in-aid.

693. Not later than eighteen months after the close of the financial year, the Chief Executive is required to present the final accounts for that year to the Assembly and the corresponding report by the Auditor-General under the Eritrean Audit Act is required to be submitted to the Assembly at the same time. The Assembly may pass such resolution in respect of the final accounts as it shall think fit but cannot thereby affect any revenue received or expenditure made thereunder.

#### E. THE ERITREAN AUDIT ACT

694. Article 64 of the Constitution provides that an Auditor-General, independent of the Executive, shall be elected by the Assembly, whose principal duties are to examine the public accounts and report thereon to the Assembly, and that the method of his election and the matters within his competence shall be established by law.

695. Only candidates nominated by the President of the Assembly on the recommendation of the Finance Committee are eligible for election by the Assembly as

Auditor-General and no person who during the previous two years has been a member of the Assembly is so eligible.

696. The law provides that the Auditor-General shall serve either under a special contract for a period of not less than three years or permanently until he attains the age of 60 and in either case upon the terms and conditions approved by the Assembly at the time of his appointment. He may, however, be removed from office at any time by a resolution passed by a two-thirds majority of the Assembly.

697. In order to further ensure and reinforce the independence of the Auditor-General, the law establishes the Audit Department as a separate and independent department of the Government of Eritrea which, through the Auditor-General, is directly and solely responsible to the Assembly for the performance of its functions and duties, and it is provided that when the draft budget and the revised draft budget are respectively submitted to the Finance Committee and the Assembly, a statement from the Auditor-General shall be annexed thereto stating either that he agrees with the provision made for the Audit Department or what alternative provision he desires the Assembly to approve.

698. The law lays down that matters of financial policy shall not be within the province of the Auditor-General and that the Financial Secretary and the Finance Department are responsible for the general supervision and control of the establishment and keeping of the public accounts, but that it shall be the duty of the Auditor-General in his report to the Assembly upon the annual accounts or, in case of urgency, in a special report to the President of the Assembly, to call attention to any losses or excessive financial burdens which threaten or may threaten the financial resources or stability of the Government of Eritrea.

699. The Auditor-General is directed to examine and check all public accounts in such detail as he may consider necessary to satisfy himself that:

(1) All payments are properly supported by vouchers or other proofs of payment;

(2) All expenditure and all sums debited to the accounts have been authorized by competent authority, have been charged to the correct account, are properly chargeable to Government and are either within the limits provided in the budget or other relevant and approved estimate of expenditure or authorized by the Chief Executive as a payment out of the credit for urgent expenditure;

(3) All monies have been applied for the purposes for which they were granted;

(4) All entries relating to the receipt and issue of stores are correct and properly supported by an efficient system of vouchers;

(5) All income has been brought into account and that adequate explanations are forthcoming for outstanding arrears;

(6) All sums received or receivable by officials or other persons on behalf of the Government of Eritrea from whatsoever source derived, have been properly accounted for and correctly credited in the accounts;

(7) All sums credited in the accounts have been authorized by a competent authority;

(8) All immovable property of the Government has been properly recorded.

700. He is directed, thereafter, to audit the financial accounts of the whole Government in such a manner as to be in a position to certify on the Annual General Account that the accounts have been examined in accordance with the provisions of the law, that he has obtained all the information and explanations that he has required, and that in his opinion the General Account is correct. He may, however, make such qualifications in his certificate as he may deem necessary.

701. After the Auditor-General has given his certificate on the Annual General Account, the Financial Secretary is required to publish the Account in the *Eritrean Gazette* in such abridged form as the Auditor-General may agree and the Auditor-General is required to draw up and present his report thereon to the Assembly, and he is given the right to appear before the Finance Committee to give such further explanation of his report as he may consider necessary.

702. Provision is also made in the law in respect of the following matters:

(1) The audit of the accounts of municipalities and other public bodies;

(2) Free access by the Audit Department to all books, vouchers, and other documents;

(3) Powers of disallowance and surcharge; and,

(4) The issue by the Auditor-General with the approval of the Assembly of regulations for the enforcement of the law and the proper inspection and audit of the public accounts.

#### F. THE ERITREAN ADVISORY COUNCIL ACT

703. Article 84 of the Eritrean Constitution establishes an Advisory Council of Eritrea and provides that the function of the Council shall be to assist the Chief Executive and the Assembly, with a view to achieving economic and social progress in Eritrea. The Constitution further provides that to this end the Council may draw up plans for the development of the country's resources and for the improvement of public health and hygiene; put forward proposals concerning finance and the budget and the organization of the Administration and the public services; give advice on draft laws submitted to the Assembly; and, on the request of the Chief Executive or of the Assembly, prepare drafts of laws, regulations or orders. Finally, article 84 provides that the composition and organization of the Council shall be fixed by law.

704. Owing to a conjunction of political, geographical and natural circumstances, Eritrea is at present a poor and undeveloped country with a lop-sided economy and a dearth of resources both in natural products and in trained and educated human material. To remedy these defects and to balance both her economy and her budget, she needs and for many years to come will need the help and advice of foreign experts. The purpose of article 84 of the Constitution is to provide a body which, without interfering in the internal politics of the territory, will possess such authority, permanence, knowledge and readiness of access as to enable the Executive and the Legislature in Eritrea to co-operate in a continuous effort to surmount the existing social and economic difficulties of the country.

705. The law establishes a Council of nine members, of whom, in view of the nature of its functions, the Financial Adviser to and the Senior Law Officer of the Eritrean Government are *ex-officio* members and five members are appointed by the Chief Executive and comprise experts on economic affairs, agricultural affairs, social welfare and labour relations, education and public health chosen from the Technical Assistance Administration of the United Nations or such other appropriate sources as the Chief Executive may arrange.

706. The necessary degree of collaboration with the Assembly, on the one hand, is achieved:

(1) By the appointment by the President of the Assembly of two members of the Assembly to be members of the Council;

(2) By enabling ten members of the Assembly by resolution to request the advice of the Council upon a particular subject; and

(3) By providing that copies of all reports, plans and proposals submitted by the Council to the Chief Executive, including a copy of the annual report of the Council, should be delivered to the President of the Assembly for transmission to the Assembly.

707. A balance is struck between the two necessities of preserving the authority of the Chief Executive and of endowing the Council with a proper degree of independence by providing that the Council shall hold special and ordinary meetings. Special meetings of the Council are convened by the Chief Executive at which he will preside and be assisted by his Secretaries of executive departments as *ad hoc* members of the Council. The agenda of a special meeting is laid down by the Chief Executive and will ordinarily include:

(1) A review of the work of the Advisory Council and reports received therefrom since the previous special meeting;

(2) Consideration of draft legislation to be laid before the next session of the Assembly;

(3) The determination of the future matters upon which the Chief Executive will require the advice of and a report from the Council;

(4) Consideration of any matters which the Council of its own motion may wish to lay before the Chief Executive.

708. Ordinary meetings of the Council are held under the Chairmanship of a member elected by the members of the Council and at such meetings the Council determines its own agenda and procedure.

709. In order to make the best use both of its own members' particular knowledge and of locally instructed opinion, provision is made for the Council to work through sub-committees which will ordinarily be under the Chairmanship of the expert concerned with powers to co-opt as members of the sub-committee one or more members of the public possessing special knowledge of the subject under consideration.

710. Finally, the Council is empowered in fulfilment of any of its functions under sub-paragraphs (a) and (b) of paragraph 2 of article 84 of the Constitution to act upon its own motion as well as upon a request of the Chief Executive.



## G. THE ERITREAN CIVIL SERVICE ACT

711. Article 82 of the Constitution provides that a Civil Service Commission shall be created under the Chairmanship of the Chief Executive, which shall be responsible for the appointment, promotion, transfer and discharge of officials, and the taking of disciplinary action against them, and that the composition of the Commission, the procedure for the appointment of its members and the conditions under which it shall function shall be determined by law.

712. This organic law establishes a Civil Service Commission composed of:

- (1) The Chief Executive or his representative who shall be Chairman of the Commission;
- (2) The Financial Secretary;
- (3) The Auditor-General;
- (4) The Senior Law Officer of the Government; and
- (5) Two officials who shall be appointed by the Civil Service Association and, pending the formation of such Association, by the senior official of the Government. One such official shall be appointed from amongst the officials in divisions A and B of the Civil Service and the other from amongst the officials in division C thereof.

713. It also provides that it shall have the following powers and duties:

- (1) They shall exercise general control over and supervision of the Civil Service;
- (2) They shall in particular be responsible for and shall make all appointments, promotions, transfers and discharges of officials;

(3) They shall be responsible for taking disciplinary action against officials; and

(4) Such other powers and duties relating to the Civil Service or to the terms and conditions of service of or the performance of their duties by officials as are vested in them by the Act or as may from time to time be prescribed.

714. The constitution of the Commission ensures that the purpose of article 82 of the Constitution, namely that the Civil Service shall be given a reasonable measure of independence of the Executive, is carried into effect, but at the same time respects the authority of the Executive in the matter.

715. The Commission is given a wide power to make personnel regulations governing the terms and conditions of service of the officials and for the proper administration of and the carrying out of their functions by the Civil Service including procedure by which disciplinary action is to be taken against them, and provision is made that any regulation imposing a specific financial obligation upon the Government requires the consent of the Financial Secretary.

716. Officials are required to enter into contracts of service with the Government and, except in so far as the personnel regulations are inconsistent with any provisions of the official's contract, those regulations are deemed to form part of his contract.

717. Provisions are made governing the suspension and dismissal of officials and for the case where criminal proceedings are instituted against an official.

718. Any official aggrieved by any decision relating to disciplinary action taken under the provisions of any regulation made under the law is entitled to appeal to the Commission.

## Chapter VIII

### CONSULTATIONS WITH REGARD TO THE ORGANIZATION OF AN ERITREAN ADMINISTRATION AND TO A TEMPORARY CUSTOMS UNION

719. The manner in which the Commissioner carries out his main duties under paragraphs 12 and 13 of the resolution of the United Nations General Assembly has been described in the previous chapters. The discharge of these duties entailed (a) the personal exercise of his powers, e.g., advice and assistance given to the Eritrean Assembly in its consideration of the Constitution, as provided in paragraph 12, or the approval of the Constitution as provided in paragraph 13, and (b) functions performed in consultation with the Administering Power, the Government of Ethiopia and the inhabitants of Eritrea, in preparing a draft of the Eritrean Constitution as laid down in paragraph 12.

720. The present chapter deals with the Commissioner's functions in so far as he was called upon to give advice. These functions were laid down in paragraph 11 of the resolution.

721. The two following sections, therefore, deal with the Commissioner's functions in respect of the organization of an Eritrean Administration and the possible negotiation of a temporary custom union. For reasons of convenience, and also because the adoption of a Constitution depended on the convening of a representative assembly of Eritreans chosen by the people, as provided in paragraph 11 of the resolution, that question has already been dealt with in sections 1 and 2 of chapter IV of this report, which is one of the chapters relating to the Constitution.

#### Section 1. Organization of the future Eritrean Administration by the Administering Authority

##### A. INTRODUCTION

722. The Administering Authority faithfully carried out its mandate, first by consulting the Commissioner with regard to its basic plans and subsequently by keeping him regularly informed of the action taken to put the plans into effect and of the progress made in so doing.

723. A full account of such action during 1951 was given in the Commissioner's Progress Report for that year,<sup>152</sup> and he does not consider it necessary to repeat these details since the Administering Authority will deal with the matter when reporting at length on its mandate. A summary of the principal events will, however, be given in the paragraphs which follow.

##### B. INITIAL PLAN

724. In March 1951, the British Administration transmitted to the Commissioner a survey of the existing Eritrean Civil Service, together with a number of observations on matters such as a definition of the term

"Eritrean", educational resources available to Eritreans, and the type of posts which Eritreans were then qualified to fill. It informed the Commissioner that a preliminary scheme for training Eritreans for various types of posts in the Administration had been drawn up and that a committee had been appointed to put the scheme into practical form.

725. In its letter, the British Administration referred to a verbal agreement with the Commissioner to the effect that before drafting the Constitution he should know what officials were available in Eritrea and be informed of the views of the Administering Authority, based on ten years' experience of administering the territory.

726. It was added that the first fact to emerge from a study of the capabilities of Eritreans for induction into the Administration was that there were no Eritreans qualified, by European standards, as judges, civil or mechanical engineers, doctors, finance officers, accountants, advocates, draughtsmen, works managers, agriculturists, veterinary surgeons, postal managers, telephone and telegraph engineers, port managers and engineers, railway managers and engineers, airport managers, etc. Steps would be taken to increase the share of the Eritreans in the administration of the country, but it could not be assumed that any of them would be qualified for the higher technical posts by 15 September 1952.

727. The Commissioner, in his reply to the Chief Administrator, offered a number of comments, of which the following are of particular interest.

728. In the first place, the Commissioner agreed that the existing administrative system should be simplified. As many as possible of the inhabitants of Eritrea with administrative capacity and technical knowledge should be employed, regardless of their nationality. In that connexion, he took the view that persons coming under paragraph 6(b) of the resolution should be considered as Eritreans until they had decided whether they wished to renounce the nationality of the Federation in favour of a foreign nationality. Moreover, the Commissioner thought that certain technical or specialized posts might be filled by foreigners, provided that the sovereignty of the Eritrean Government was protected.

729. The Commissioner undertook to supply the Administration, in due course, with a draft of the articles of the Constitution relating to the future Eritrean Administration.

##### C. INVITATION TO ERITREANS TO REGISTER FOR EMPLOYMENT

730. On 14 April 1951, the Commissioner was notified by the British Administration of a plan (publicly announced on 25 April 1951) under which Eritreans

<sup>152</sup> A/1959 and Add.1

who had reached certain educational standards, or artisans and craftsmen with a reasonable knowledge of a trade, were invited to register their names for future employment with the Administration. At the same time, a selection committee, consisting of the Director of Education and two Eritreans of high standing (one Christian and one Moslem), was set up to examine the applications and to select those persons who appeared suitable either for immediate appointment or for a course of training.

731. Unfortunately, there was little response to the Administration's announcement, mainly, it is thought, because the educational standards required were too high.

732. After receiving a deputation of inhabitants of various districts of the Hamasien Division, who had asked for a hearing concerning the induction of Eritreans into the Administration, the Commissioner sent a communication to the British Administration on 1 May 1951, drawing attention to the fact that the persons concerned had asked for revision of the educational standards required under the provisions of the Public Notice of 25 April 1951 concerning registration for future employment.

733. The British Administration replied that it must ensure that applicants were at least possible material for training and that it was reluctant to consider those below the established standards until an effort had been made to find qualified candidates. A further Notice was, however, published by the Administration on 22 May 1951, modifying the standard of education required in the original Notice.

#### D. PLAN FOR REORGANIZATION OF THE ADMINISTRATION

734. Exchanges of view took place from time to time between the British Administration and the Commissioner, with regard to the plans of the Administration for reorganization on an interim basis during the transition period, by separating the departments dealing with the domestic affairs of Eritrea from those dealing with the affairs of the British Administration and affairs which would become federal responsibility after the transfer of power.

735. In August 1951, the Commissioner submitted to the British Administration those parts of the draft Constitution which related to the organization of the future Eritrean Administration. In acknowledging receipt, the Chief Administrator stated that, in his opinion, the principles of the draft were not in conflict with his own interim and limited objectives of organizing an administration to facilitate the final implementation of the Eritrean Constitution.

736. Another comment by the Commissioner concerned the plan for training staff under British officials in the Administration. It was planned that there should be a trial period during which British staff would hold the senior posts, with Eritreans working with them as principal secretaries and secretaries; this would be followed by a period during which Eritreans would be appointed to the senior posts, with British staff as their advisers. The Commissioner urged the Administration to make the first period as short as possible and the second period as long as possible, in order that Eritreans might hold responsible positions at the earliest possible date.

737. The British Administration agreed that this was desirable, but stated that everything would depend on how soon Eritreans could prove their fitness for responsibility; it added that the overriding consideration was the responsibility of the Administering Power for conducting the affairs of Eritrea efficiently during the transition period.

#### E. PERSONS OF MIXED BLOOD COMING WITHIN THE SCOPE OF PARAGRAPH 6 (b) OF THE RESOLUTION

738. The resolution of the United Nations General Assembly provides that: "All inhabitants born in Eritrea and having at least one indigenous parent or grandparent shall be nationals of the Federation. Such persons, if in possession of a foreign nationality, shall, within six months of the coming into force of the Eritrean Constitution, be free to opt to renounce the nationality of the Federation and retain such foreign nationality. In the event that they do not so opt, they shall thereupon lose such foreign nationality."

739. It has been mentioned above that the Commissioner, in giving his views on the initial plan for reorganization of the Administration and the induction of Eritreans into it, pointed out that the persons in question must not be considered as foreigners having to acquire Federal nationality, but as Eritreans who could renounce that nationality should they wish to retain their foreign nationality. In his view, such an interpretation of the resolution would induce qualified persons in that category, who had been appointed to posts in the Administration, to remain Federal nationals.

740. On 3 August 1951, the British Administration sent a letter to the Commissioner, in which it stated that persons of mixed blood coming under paragraph 6 (b) of the resolution, who had no claim to foreign nationality, would be regarded as Eritreans for all purposes, while those possessing foreign nationality who gave an undertaking in writing that they did not intend to renounce federal nationality and retain their foreign nationality would be regarded as Eritreans for induction purposes. The Commissioner was invited to comment.

741. The Commissioner replied that he preferred to consider all inhabitants of Eritrea who possessed no foreign nationality as having the status of "pre-nationals". Persons of mixed blood, like those with indigenous parents, should be regarded as Eritreans for all purposes. Furthermore, he did not think that persons of mixed blood possessing foreign nationality need be required to give a formal undertaking not to renounce federal nationality in order to be eligible for induction into the Administration.

742. Secondly, the Commissioner thought that the requirement of a formal undertaking would serve to deter persons of mixed blood from seeking induction. They might well ask why a written undertaking was required of them and not of other persons who were not yet nationals. There was some justification for the view that these persons of mixed blood would, legally, become nationals of the Federation upon the adoption and ratification of the Federal Act and the Eritrean Constitution. Whatever the final conclusion on that point, the Commissioner believed that most of the persons of mixed blood employed in the Administration would willingly renounce their foreign nationality in order to retain their positions.

743. Finally, the Commissioner stated emphatically that no obstacle should be put in the way of foreign nationals applying for posts in the Eritrean Administration, since the country needed the help of competent and experienced men who offered to serve it.

744. In a letter dated 17 August 1951, the Administration stated that it could "now agree that there is no necessity to call for an undertaking from any half-castes or foreigners qualified to take federal nationality after the Federation is effective, regarding their nationality rights". The British Administration would regard them as eligible for employment or continued employment in the Administration without requiring them to make any declaration regarding their nationality.

#### F. RESULTS OF REGISTRATION FOR EMPLOYMENT AND EXAMINATIONS

745. During 1952, the Administration sent the Commissioner regular reports on progress in the induction of Eritreans.

746. In January 1952, it reported that 780 Eritreans had registered with the Labour Office in response to the Press notice of April 1951, and that 506 of them had been placed with various departments.

747. In April 1952, the Commissioner was informed of the full results of the examinations held between August 1951 and the end of March 1952. Out of a total of 1,140 Eritreans (865 Christians and 275 Moslems) who had sat for the examinations in English and Italian, 149 Christians and 40 Moslems had been successful and had been given government employment. They were receiving further training to fit them for departmental duties.

748. In the examinations held in Tigrinya and Arabic, 61 candidates out of 124 had passed in the former language, and 12 out of 99 in the latter. Each successful candidate had received a certificate for presentation when applying for suitable vacancies as they occurred, though no guarantee of employment had been given to those who passed the examinations in the vernacular, owing to the difficulty of assimilating them into an Administration which was being conducted in English and Italian during the transition period.

749. The speed of assimilation of Eritreans then increased considerably, and in July 1952 the Commissioner was notified that the total intake of Eritreans between 1 July 1951 and 31 May 1952 had amounted to 1,486. During the same period, a total of 688 Italians and 24 employees other than Eritreans or Italians, had left the Administration.

#### G. TECHNICAL TRAINING OF ERITREANS

750. The British Administration also informed the Commissioner of the satisfactory results obtained in the schemes for technical training in the various branches of the Administration; these included wireless telegraphy, transport, repair and maintenance of telephones and other equipment in the Posts and Telecommunications Department, mechanics in the Railway Department and training for electricians, masons, plumbers and carpenters in the Department of Public Works.

751. With regard to the training of the Police Force, the results had been so good that several stations were already in charge of Eritreans, and some senior Eri-

trean inspectors were understudying British senior inspectors and prosecuting in important cases before the British Courts. Furthermore, the Police Field Force Wireless Service was entirely manned by Eritrean staff.

752. In assessing the progress made, it is important to take account of the comments of the British Administration on the difficulties experienced.

753. In the first place, during the transitional period the recruitment of personnel proficient only in Arabic and Tigrinya presented difficulties. Secondly, although the principle adopted in recruiting was to keep an even balance between Moslems and Christians and every effort was made to do so, the lower level of education among Moslems inevitably gave the Christians an advantage. Thirdly, the rate of progress in setting up an Eritrean administration depended on the available number of trained officials and the material suitable for training. It should also be noted that the British Administration actively explored the possibility of appointing to the Eritrean Administration some trained Eritreans who were in Ethiopia, many of whom were in government service there and might be willing to transfer to Eritrea.

#### H. SECRETARIAT FOR ERITREAN AFFAIRS

754. During 1952, the Administration took steps to organize a secretariat for Eritrean affairs, with the dual purpose of separating British and federal affairs from those of purely Eritrean concern, and of forming a division which would become the nucleus and training centre of the future Eritrean Administration. The reorganization plan was published in the Press and put into effect on 8 April 1952. Although only a few Eritreans were appointed to senior posts in the Bureau in the early days, it was stated that as Eritreans became proficient they would gradually be appointed to fill the posts manned by British officials.<sup>153</sup>

#### Section 2. Temporary customs union with Ethiopia

755. It is provided, at the end of paragraph 7 of the resolution of the United Nations General Assembly that the Administering Authority "... may, in agreement with the Commissioner, negotiate on behalf of the Eritreans a temporary customs union with Ethiopia to be put into effect as soon as practicable".

756. It is provided in paragraph 4 of the resolution that, when the transfer of power has taken place: "The area of the Federation shall constitute a single area for customs purposes, and there shall be no barriers to the free movement of goods and persons within the area".

757. By virtue of the provision contained in paragraph 11, the resolution makes the negotiation of a temporary customs union with Ethiopia, during the transitional period, an optional act and gives the Administering Authority discretion to decide whether a temporary customs union shall be negotiated. On this question the Commissioner, in his detailed examination of the resolution,<sup>154</sup> dated 20 June 1951, took the following position:

<sup>153</sup> The latest information concerning the organization of the Eritrean Administration will be found in the Report of the Administering Authority (see document A/2233).

<sup>154</sup> A/1959/Annex 9, paragraph 7.

758. "With regard to the question of a temporary customs union, the Commissioner is required to agree to the negotiation by the Administering Authority, on behalf of the Eritreans, of such a temporary customs union with Ethiopia. On the other hand, should the Administering Authority not initiate negotiations in this matter, I do not consider that the Commissioner is called upon to approve or disapprove its action."

759. The British Administration, in a letter dated 6 July 1951, informed the Ethiopian Minister for Foreign Affairs that the Administering Authority did not propose to initiate negotiations with the Imperial Ethiopian Government for a temporary customs union between Eritrea and Ethiopia. The conclusion reached by the Administering Authority, was that the benefit

which Eritrea might derive from a temporary customs union would be far outweighed by the disadvantages. Moreover, while Eritrea and Ethiopia remained under their own separate governments, each with widely differing economic, financial and currency systems, the practical difficulties of establishing a temporary customs union were so great as to be almost insuperable. In order to give effect to paragraph 4 of the resolution, however, the Administering Authority was prepared to discuss with the Government of Ethiopia the preparatory action necessary to ensure the smooth transition of the existing Eritrean customs organization into the federal system on the date of inception of the Federation. A copy of the letter of 6 July 1951 was formally transmitted to the Commissioner for his information.

## Chapter IX

### THE TRANSFER OF POWER

760. Paragraph 15 of the resolution of the United Nations General Assembly states that: "The United Nations Commissioner shall maintain his headquarters in Eritrea until the transfer of power has been completed", and upon completion "he shall so report to the General Assembly".

761. The opinions expressed during the discussions by several delegations and the traditions of the United Nations General Assembly, born of the experience of previous missions, showed that in the matter of the transfer of power the Commissioner was to be regarded more or less as an "observer".

762. Owing to some nervousness among certain sections of the population during the transition period, on 27 August 1952 the Commissioner issued a Press release covering the following main points:

(1) The transfer of services had been the subject of discussions between the Commissioner and the Chief Administrator, the Eritrean authorities and members of the representative Assembly, and Ethiopian and Italian officials;

(2) During these conversations, the Commissioner had made clear that the terms of the resolution laid upon him no direct responsibility with regard to federal matters or the transfer of power;

(3) Nevertheless, in so far as the application of paragraph 15 of the resolution was concerned, it was his duty, in his capacity as United Nations observer, to report to the General Assembly on the whole operation;

(4) The Federation, in the form recommended by the General Assembly and accepted by the Eritrean population, struck a balance between the Federal Government and the autonomous unit of Eritrea. It was the duty of all the interested parties to co-operate in a spirit of mutual understanding in setting up this equilibrium, the possibility of which was clearly brought out by paragraphs 3 and 5 of the United Nations resolution in which the division of responsibility between the Federal Government and the Government of Eritrea was precisely defined, and which also provided for Eritrean participation in the setting up of an Imperial Federal Council and in the Federal Government;

(5) Recent conversations which the Commissioner had had gave evidence that all parties were equally animated by a spirit of goodwill.

763. This Press release undoubtedly had a soothing effect on those sections of opinion which were the most apprehensive, and the feeling of confidence was strengthened by the statement made by the Chief Administrator to the Eritrean Assembly on 4 September 1952.

764. The following are the main points of this statement:

(1) The British Administration was bound by the resolutions of 2 December 1950 and 29 January 1952, and had to take steps to set up the Federation and create federal services.

(2) It was the duty of the Administering Authority to decide which among the present public services in Eritrea should become federal and which should remain Eritrean. Although this decision lay with the United Kingdom Government, the United Nations Commissioner and the Government of Ethiopia had been consulted.

(3) The resolution of 29 January 1952 provided for the transfer of State property, with certain exceptions, by the British Administration to Eritrea, "Eritrea" being defined in the resolution as being either the Federal Government or the Government of Eritrea, according to the nature of the jurisdiction and responsibilities vested in the respective governments by the resolution of 2 December 1950.

(4) The provisions for the transfer made due allowance for the legitimate needs of the Federal and Eritrean authorities. The transfer was merely the transmission of a right of occupation and possession and of an administrative responsibility; there was no implication of right of ownership properly so called. That was a matter to be settled between the Federal Government and the Government of Eritrea after the setting up of the Federation.

(5) The Chief Administrator then gave particulars of the services already transferred to the Federal Authorities and emphasized the fact that the admission of the autonomous unit into a Federation with a sovereign State which was a Member of the United Nations had brought considerable benefit to Eritrea, and that in return the Federal Government was entitled to enjoy every facility in Eritrea to enable it to cope with the responsibilities devolving upon it under the resolution of 2 December 1950.

765. Moreover, the statement of the Emperor of Ethiopia on Eritrean participation in the machinery of federal government, made at the time of ratification of the Federal Act,<sup>155</sup> strengthened the favourable psychological effect already produced by the assurances of the Commissioner and Chief Administrator.

766. The ceremony of the transfer of power, held at 4.45 p.m. on 15 September 1952 at Government House, thus took place in an atmosphere of confidence.

767. After the signing of the Termination of Powers Proclamation by the Chief Administrator, copies were presented to the Emperor's representatives, to the Chief Executive of the Government of Eritrea and to the United Nations Commissioner.

768. After this ceremony, the Chief Administrator thanked all those who had assisted him in his work, and

<sup>155</sup> Chapter V of the present report, paragraph 497.

especially the United Nations Commissioner. He also offered his best wishes to the successors of the British Administration in Eritrea.

769. The following is the text of the Proclamation:<sup>156</sup>

TERMINATION OF POWERS PROCLAMATION (No. 136, 1952) BY THE BRITISH ADMINISTRATION, ERITREA

*Whereas* by a resolution of the General Assembly of the United Nations dated 2 December, 1950, Eritrea shall constitute an autonomous unit federated with Ethiopia under the sovereignty of the Ethiopian Crown as therein provided:

*And whereas* the Federal Act has been ratified by the Emperor of Ethiopia and the Eritrean Constitution has been approved by the United Nations Commissioner adopted by the Eritrean Assembly and ratified by the Emperor of Ethiopia:

*And whereas* it is provided by the Eritrean (Termination of Administration) Order, 1952, that the Authority of Her Majesty in Eritrea shall determine as from such date as shall for the purpose of enabling the Federal Act and the Constitution of Eritrea to enter into effect be proclaimed therein by the Chief Administrator:

*And whereas* by the said resolution of 2 December, 1950, it is provided that the jurisdiction of the Federal Government in Eritrea shall extend to certain matters and that the jurisdiction of Eritrean Government shall extend to all other matters:

*And whereas* by the said resolution of 2 December, 1950, it is provided that the Administering Power shall make arrangements for the transfer of power to the appropriate authorities:

*And whereas* by a resolution of the United Nations dated 29 January, 1952, it is provided that Eritrea (which term for the purposes of the resolution is to be interpreted in conformity with paragraph 3 of the said resolution of 2 December, 1950), shall receive without payment certain movable and immovable property located in Eritrea owned by the Italian State either in its own name or in the name of the Italian Administration in Eritrea and that such property shall be transferred to Eritrea not later than the effective date of the final transfer of power from the Administering Power to the appropriate Authorities:

*Now therefore*, I, Duncan Cameron CUMMING, Companion of the Most Honourable Order of the Bath,

<sup>156</sup> As regards the plans drawn up for the transfer dealt with in the resolution, see the Administering Authority's Report (document A/2233).

Commander of Most Excellent Order of the British Empire, Chief Administrator of Eritrea, hereby proclaim as follows:

1. To the intent that Eritrea shall become an autonomous unit in the manner provided in the Resolution of the United Nations dated 2 December, 1950, and in order that the Federal Act and the Constitution of Eritrea shall enter into effect the authority of Her Majesty in Eritrea shall determine.

2. The powers and jurisdiction of the Administering Power are hereby transferred to the Federal Government and the Eritrean Government.

3. The property set out in the first Schedule hereto is hereby transferred to the Federal Government and the property set out in the Second Schedule hereto is hereby transferred to the Eritrean Government.

4. This Proclamation may be cited as the Termination of Powers Proclamation, 1952, and shall come into force at midnight on 15/16 September, 1952.

770. Thanks to the spirit of collaboration shown by the interested parties directly responsible, the Commissioner was thus able not only to take cognizance of the transfer of power but also, through the information with which he had been spontaneously provided, to testify to the faithful application, both of the spirit and of the letter of the resolution.

771. In concluding this chapter, mention must be made of the telegram sent by the Secretary-General of the United Nations to the Commissioner on the occasion of the transfer of power, which reads as follows:

"Please express to representatives of United Kingdom as Administering Power and to appropriate Federal and Eritrean Authorities my deep gratification on occasion transfer of power in Eritrea in compliance decisions of General Assembly within specified time limits stop This historic step has been made possible by the co-operation and high sense of responsibility of all the parties concerned working with the United Nations towards a common objective stop Please extend my congratulations to the Eritrean people on this achievement which your own devoted service in Eritrea has so greatly contributed to bring about stop

Trygve LIE

Secretary-General"

772. The Commissioner communicated the contents of this message to the Chief Administrator, to the Emperor's Representative, and to the Chief Executive of the Government of Eritrea.

## ***Chapter X***

### **SUBMISSION OF THE ERITREAN CONSTITUTION TO THE GENERAL ASSEMBLY**

773. With the completion of the transfer of power, the Commissioner, acting under paragraph 15 of the resolution, submits to the General Assembly the text of the Eritrean Constitution. The document as approved by the Commissioner, adopted by the Eritrean Assembly and ratified by the Emperor of Ethiopia, constitutes annex II of the present report.



## CONCLUSIONS

774. With the ratification of the Federal Act by the Emperor of Ethiopia on 11 September 1952, and the promulgation of the Termination of Powers Proclamation by the Administering Power on 15 September 1952, the General Assembly's resolution of 2 December 1950 was put into effect and the task entrusted to the Commissioner completed.

775. The foundations of the Federation of Ethiopia and of the autonomous unit of Eritrea have thus been laid. So far as Eritrea is concerned, the Constitution approved by the Commissioner, adopted by the Assembly and ratified by the Emperor, completes the structure. That Constitution, together with the organic laws passed by the Eritrean Assembly, faithfully reflects not only the letter, but also the spirit of the resolution; so far as any document can, it gives Eritrea a fair and promising start in its existence as an autonomous unit within the Federation. Much more than a mere document will be required, however, to ensure life and continuity for the institutions thus created. The Federation and Eritrea will have to learn to live side by side, each respecting the proper sphere of activity and jurisdiction of the other. As the first Panel of Legal Consultants pointed out, "the régime prescribed in the General Assembly's resolution . . . can only operate

satisfactorily if Ethiopia accepts it freely and without any unexpressed reservation, and intends to apply it in good faith".

776. My conversations with His Majesty the Emperor of Ethiopia have convinced me that such good faith exists and that it is the Emperor's sincere desire that the Federal Act should be implemented in accordance with both the letter and spirit of the resolution.

777. On the Eritrean side, the discussions I held with the people from the outset, and the spirit in which the Eritrean Representative Assembly adopted the Constitution have convinced me that there is a genuine readiness for full co-operation with the federal authorities and a real respect for the unity of the Federation under the sovereignty of the Emperor.

778. The procedure for setting up the necessary organs of the Federal Government is laid down in the resolution, except for the means whereby, if mediation fails, conflicts of jurisdiction can be satisfactorily settled by a tribunal whose impartiality is manifest in its proceedings and composition. For this purpose, a joint act by the two legislatures will be required; it is to be hoped that, with the goodwill of both parties, this final guarantee of faithful implementation of the resolution will soon be provided.

## ANNEXES

### 1. Text of resolution 390 A (V) adopted on 2 December 1950 by the General Assembly of the United Nations

390 (V). ERITREA: REPORT OF THE UNITED NATIONS COMMISSION FOR ERITREA; REPORT OF THE INTERIM COMMITTEE OF THE GENERAL ASSEMBLY ON THE REPORT OF THE UNITED NATIONS COMMISSION FOR ERITREA

#### A

*Whereas* by paragraph 3 of Annex XI to the Treaty of Peace with Italy, 1947, the Powers concerned have agreed to accept the recommendation of the General Assembly on the disposal of the former Italian colonies in Africa and to take appropriate measures for giving effect to it,

*Whereas* by paragraph 2 of the aforesaid Annex XI such disposal is to be made in the light of the wishes and welfare of the inhabitants and the interests of peace and security, taking into consideration the views of interested governments,

*Now therefore*

*The General Assembly*, in the light of the reports<sup>157</sup> of the United Nations Commission for Eritrea and of the Interim Committee, and

*Taking into consideration*

(a) The wishes and welfare of the inhabitants of Eritrea, including the views of the various racial, religious and political groups of the provinces of the territory and the capacity of the people for self-government,

(b) The interests of peace and security in East Africa,

(c) The rights and claims of Ethiopia based on geographical, historical, ethnic or economic reasons, including in particular Ethiopia's legitimate need for adequate access to the sea,

*Taking into account* the importance of assuring the continuing collaboration of the foreign communities in the economic development of Eritrea,

*Recognizing* that the disposal of Eritrea should be based on its close political and economic association with Ethiopia, and

*Desiring* that this association assure to the inhabitants of Eritrea the fullest respect and safeguards for their institutions, traditions, religions and languages, as well as the widest possible measure of self-government, while at the same time respecting the Constitution, institutions, traditions and the international status and identity of the Empire of Ethiopia,

*A. Recommends that:*

1. Eritrea shall constitute an autonomous unit federated with Ethiopia under the sovereignty of the Ethiopian Crown.

2. The Eritrean Government shall possess legislative, executive and judicial powers in the field of domestic affairs.

3. The jurisdiction of the Federal Government shall extend to the following matters: defence, foreign affairs, currency and finance, foreign and interstate commerce and external and interstate communications, including ports. The Federal Government shall have the power to maintain the integrity of the Federation, and shall have the right to impose uniform taxes throughout the Federation to meet the expenses of federal functions and services, it being understood that the assessment and the collection of such taxes in Eritrea are to be delegated to the Eritrean Government, and provided that Eritrea shall bear only its just and equitable share of these expenses. The jurisdiction of the Eritrean Government shall extend to all matters not vested in the Federal Government, including the power to maintain the internal police, to levy taxes to meet the expenses of domestic functions and services, and to adopt its own budget.

4. The area of the Federation shall constitute a single area for customs purposes, and there shall be no barriers to the free movement of goods and persons within the area. Customs duties on goods entering or leaving the Federation which have their final destination or origin in Eritrea shall be assigned to Eritrea.

5. An Imperial Federal Council composed of equal numbers of Ethiopian and Eritrean representatives shall meet at least once a year and shall advise upon the common affairs of the Federation referred to in paragraph 3 above. The citizens of Eritrea shall participate in the executive and judicial branches, and shall be represented in the legislative branch, of the Federal Government, in accordance with law and in the proportion that the population of Eritrea bears to the population of the Federation.

6. A single nationality shall prevail throughout the Federation:

(a) All inhabitants of Eritrea, except persons possessing foreign nationality, shall be nationals of the Federation;

(b) All inhabitants born in Eritrea and having at least one indigenous parent or grandparent shall also be nationals of the Federation. Such persons, if in possession of a foreign nationality, shall, within six months of the coming into force of the Eritrean Constitution, be free to opt to renounce the nationality of the Federation and retain such foreign nationality. In the event that they do not so opt, they shall thereupon lose such foreign nationality;

<sup>157</sup> See *Official Records of the General Assembly, Fifth Session, Supplements, Nos. 8 and 14.*

(c) The qualifications of persons acquiring the nationality of the Federation under sub-paragraphs (a) and (b) above for exercising their rights as citizens of Eritrea shall be determined by the Constitution and laws of Eritrea;

(d) All persons possessing foreign nationality who have resided in Eritrea for ten years prior to the date of the adoption of the present resolution shall have the right, without further requirements of residence, to apply for the nationality of the Federation in accordance with federal laws. Such persons who do not thus acquire the nationality of the Federation shall be permitted to reside in and engage in peaceful and lawful pursuits in Eritrea;

The rights and interests of foreign nationals resident in Eritrea shall be guaranteed in accordance with the provisions of paragraph 7.

7. The Federal Government, as well as Eritrea, shall ensure to residents in Eritrea, without distinction of nationality, race, sex, language or religion, the enjoyment of human rights and fundamental liberties, including the following:

(a) The right to equality before the law. No discrimination shall be made against foreign enterprises in existence in Eritrea engaged in industrial, commercial, agricultural, artisan, educational or charitable activities, nor against banking institutions and insurance companies operating in Eritrea;

(b) The right to life, liberty and security of person;

(c) The right to own and dispose of property. No one shall be deprived of property, including contractual rights, without due process of law and without payment of just and effective compensation;

(d) The right to freedom of opinion and expression and the right of adopting and practising any creed or religion;

(e) The right to education;

(f) The right to freedom of peaceful assembly and association;

(g) The right to inviolability of correspondence and domicile, subject to the requirements of the law;

(h) The right to exercise any profession subject to the requirements of the law;

(i) No one shall be subject to arrest or detention without an order of a competent authority, except in case of flagrant and serious violation of the law in force. No one shall be deported except in accordance with the law;

(j) The right to a fair and equitable trial, the right of petition to the Emperor and the right of appeal to the Emperor for commutation of death sentences;

(k) Retroactivity of penal law shall be excluded;

The respect for the rights and freedoms of others and the requirements of public order and the general welfare alone will justify any limitations to the above rights.

8. Paragraphs 1 to 7 inclusive of the present resolution shall constitute the Federal Act which shall be submitted to the Emperor of Ethiopia for ratification.

9. There shall be a transition period which shall not extend beyond 15 September 1952, during which the

Eritrean Government will be organized and the Eritrean Constitution prepared and put into effect.

10. There shall be a United Nations Commissioner in Eritrea appointed by the General Assembly. The Commissioner will be assisted by experts appointed by the Secretary-General of the United Nations.

11. During the transition period, the present Administering Authority shall continue to conduct the affairs of Eritrea. It shall, in consultation with the United Nations Commissioner, prepare as rapidly as possible the organization of an Eritrean administration, induct Eritreans into all levels of the administration, and make arrangements for and convoke a representative assembly of Eritreans chosen by the people. It may, in agreement with the Commissioner, negotiate on behalf of the Eritreans a temporary customs union with Ethiopia to be put into effect as soon as practicable.

12. The United Nations Commissioner shall, in consultation with the Administering Authority, the Government of Ethiopia, and the inhabitants of Eritrea, prepare a draft of the Eritrean Constitution to be submitted to the Eritrean Assembly and shall advise and assist the Eritrean Assembly in its consideration of the Constitution. The Constitution of Eritrea shall be based on the principles of democratic government, shall include the guarantees contained in paragraph 7 of the Federal Act, shall be consistent with the provisions of the Federal Act and shall contain provisions adopting and ratifying the Federal Act on behalf of the people of Eritrea.

13. The Federal Act and the Constitution of Eritrea shall enter into effect following ratification of the Federal Act by the Emperor of Ethiopia, and following approval by the Commissioner, adoption by the Eritrean Assembly and ratification by the Emperor of Ethiopia of the Eritrean Constitution.

14. Arrangements shall be made by the Government of the United Kingdom of Great Britain and Northern Ireland as the Administering Authority for the transfer of power to the appropriate authorities. The transfer of power shall take place as soon as the Eritrean Constitution and the Federal Act enter into effect, in accordance with the provisions of paragraph 13 above.

15. The United Nations Commissioner shall maintain his headquarters in Eritrea until the transfer of power has been completed, and shall make appropriate reports to the General Assembly of the United Nations concerning the discharge of his functions. The Commissioner may consult with the Interim Committee of the General Assembly with respect to the discharge of his functions in the light of developments and within the terms of the present resolution. When the transfer of authority has been completed, he shall so report to the General Assembly and submit to it the text of the Eritrean Constitution;

B. *Authorizes* the Secretary-General, in accordance with established practice:

1. To arrange for the payment of an appropriate remuneration to the United Nations Commissioner;

2. To provide the United Nations Commissioner with such experts, staff and facilities as the Secretary-General may consider necessary to carry out the terms of the present resolution.

## II. Constitution of Eritrea

(TEXT OF THE CONSTITUTION AS ADOPTED BY THE ERITREAN ASSEMBLY ON 10 JULY 1952)

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## PREAMBLE

*In the name of Almighty God,*

Trusting that He may grant Eritrea peace, concord and prosperity,

And that the Federation of Eritrea and Ethiopia may be harmonious and fruitful,

*We, the Eritrean Assembly,* acting on behalf of the Eritrean people,

*Grateful* to the United Nations for recommending that Eritrea shall constitute an autonomous unit federated with Ethiopia under the sovereignty of the Ethiopian Crown and that its Constitution be based on the principles of democratic government,

*Desirous* of satisfying the wishes and ensuring the welfare of the inhabitants of Eritrea by close and economic association with Ethiopia and by respecting the rights and safeguarding the institutions, traditions, religions and languages of all the elements of the population.

*Resolved* to prevent any discrimination and to ensure, under a régime of freedom and equality, the brotherly collaboration of the various races and religions in Eritrea, and to promote economic and social progress,

Trusting fully in God, the Master of the Universe.

Do hereby adopt this Constitution as the Constitution of Eritrea.

## PART I. GENERAL

### Article 1

#### Adoption and ratification of the Federal Act

1. The Eritrean people, through their representatives, hereby adopt and ratify the Federal Act approved on 2 December 1950 by the General Assembly of the United Nations.

2. They undertake to observe faithfully the provisions of the said Act.

## CHAPTER I. STATUS OF ERITREA

### Article 2

#### Territory of Eritrea

The territory of Eritrea, including the islands, is that of the former Italian colony of Eritrea.

### Article 3

#### Autonomy and federation

Eritrea shall constitute an autonomous unit federated with Ethiopia under the sovereignty of the Ethiopian Crown.

### Article 4

#### Legislative, executive and judicial powers

The Government of Eritrea shall exercise legislative, executive and judicial powers with respect to matters within its jurisdiction.

### Article 5

#### Matters coming within the jurisdiction of Eritrea

1. The jurisdiction of the Government of Eritrea shall extend to all matters not vested in the Federal Government by the Federal Act.

2. This jurisdiction shall include:

(a) The various branches of law (criminal law, civil law, commercial law, etc.);

(b) The organization of the public services;

(c) Internal police;

(d) Health;

(e) Education;

(f) Public assistance and social security;

(g) Protection of labour;

(h) Exploitation of natural resources and regulation of industry, internal commerce, trades and professions;

(i) Agriculture;

(j) Internal communications;

(k) The public utility services which are peculiar to Eritrea;

(l) The Eritrean budget and the establishment and collection of taxes designed to meet the expenses of Eritrean public functions and services.

### Article 6

#### Contribution by Eritrea to the expenses of the Federal Government

1. Eritrea shall bear its just and equitable share of the expenses of Federal functions and services.

#### Assessment and levying of Federal taxes

2. The Government of Eritrea shall assess and levy in Eritrea, by delegation from the Federal Government, such taxes as are established to that end for the benefit of the whole of the Federation.

#### Revenue from customs duties

3. Within the revenue which accrues to Eritrea shall be included the customs duties on goods entering or leaving the Federation which have their final destination or origin in Eritrea, in accordance with the provisions of paragraph 4 of the resolution of 2 December 1950 of the General Assembly of the United Nations.

### Article 7

#### Representation of Eritrea in the Imperial Federal Council

1. The Eritrean representatives in the Imperial Federal Council, composed of equal numbers of Ethiopians and Eritreans, shall be appointed by the Chief Executive with the approval of the Assembly. They shall be formally invested in office by the Emperor.

#### Participation of Eritreans in the Federal Government

2. Eritreans shall participate in the executive and judicial branches and shall be represented in the legislative branch, of the Federal Government, in accordance with law and in the proportion that the population of Eritrea bears to the population of the Federation.

### Article 8

#### Eritrean citizenship

Persons who have acquired Federal nationality in Eritrea under the Federal Act (Section A, paragraph 6 of the General Assembly Resolution 390 A (V)) and have been granted Eritrean citizenship in accordance with the laws of Eritrea shall be citizens of Eritrea.

### *Article 9*

#### **Rights of Federal nationals who are not Eritrean citizens**

1. On the basis of reciprocity, Federal nationals who are not Eritrean citizens shall enjoy the same rights as Eritreans.
2. Federal nationals shall enjoy political rights in accordance with the Eritrean Constitution and laws on the basis of reciprocity.

## CHAPTER II. REPRESENTATION OF THE EMPEROR IN ERITREA

### *Article 10*

#### **The Emperor has a representative in Eritrea**

There shall be a representative in Eritrea of His Imperial Majesty, the Emperor of Ethiopia, Sovereign of the Federation.

### *Article 11*

#### **Rank of the Representative of the Emperor**

The Representative of the Emperor shall, on all occasions, have the place of precedence at official ceremonies in Eritrea.

### *Article 12*

#### **Administering of the oath of office to the Chief Executive before the Representative of the Emperor. Formal investment of the Chief Executive in office**

The Chief Executive, elected by the Assembly in accordance with Article 68, shall take the oath of office in accordance with the provisions of Article 72. The Representative of the Emperor, having noted that the Chief Executive has been elected by the Assembly, shall formally invest him in office in the name of the Emperor, Sovereign of the Federation.

### *Article 13*

#### **Opening and closing of sessions of the Assembly**

At the opening and closing of sessions of the Assembly, the Representative of the Emperor may deliver the speech from the throne in which he will deal with affairs of common interest to the Federation and to Eritrea.

### *Article 14*

#### **Transmission of legislation to the representative of the Emperor**

1. When draft legislation has been voted by the Assembly, the Chief Executive will transmit it immediately to the Representative of the Emperor.
2. If the Representative of the Emperor considers that draft legislation voted by the Assembly encroaches upon Federal jurisdiction, or that it involves the international responsibility of the Federation, he may transmit a request to the Chief Executive within twenty days after the vote by the Assembly for reconsideration of the draft legislation by the Assembly, indicating his reasons for doing so.

### *Article 15*

#### **Promulgation of legislation**

The Representative of the Emperor will promulgate legislation in the manner laid down in Article 58.

## CHAPTER III. DEMOCRATIC GOVERNMENT IN ERITREA

### *Article 16*

#### **The principles of democratic government**

The Constitution of Eritrea is based on the principles of democratic government.

### *Article 17*

#### **Respect for human rights**

The Constitution guarantees to all persons the enjoyment of human rights and fundamental freedoms.

### *Article 18*

#### **Organs of government are provided for by the people and shall act in the interests of the people**

1. All organs of government are provided for by the people. They are chosen by means of periodic, free and fair elections, directly and indirectly.
2. The organs of government shall act in the interests of the people.

### *Article 19*

#### **Rule of law**

1. The organs of government and public officials shall have no further powers than those conferred on them by the Constitution and by the laws and regulations which give effect thereto.
2. Neither a group of the people nor an individual shall arbitrarily assume the exercise of any political power or of administrative functions.
3. Public officials shall perform their duties in strict conformity with the law and solely in the public interest.
4. Public officials shall be personally answerable for any unlawful acts or abuses they may commit.

### *Article 20*

#### **Franchise**

The electorate shall consist of those persons possessing Eritrean citizenship who:

- (a) Are of male sex;
- (b) Have attained the age of twenty-one years;
- (c) Are under no legal disability as defined by the law; and
- (d) Have been resident for one year preceding the election in the constituency where they shall vote.

### *Article 21*

#### **Federal flag**

1. The Federal flag shall be respected in Eritrea.

#### **Flag, seal and arms of Eritrea**

2. There shall be a flag, seal and arms of Eritrea, details of which shall be decided upon by law.

## CHAPTER IV. HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

### *Section. I. Provisions reproduced from the Federal Act*

### *Article 22*

#### **Provisions reproduced from the Federal Act**



The following provisions of paragraph 7 of the Federal Act shall be an integral part of the Constitution of Eritrea:

"The Federal Government, as well as Eritrea, shall ensure to residents in Eritrea, without distinction of nationality, race, sex, language or religion, the enjoyment of human rights and fundamental liberties, including the following:

"(a) The right to equality before the law. No discrimination shall be made against foreign enterprises in existence in Eritrea engaged in industrial, commercial, agricultural, artisan, educational or charitable activities nor against banking institutions and insurance companies operating in Eritrea;

"(b) The right to life, liberty and security of person;

"(c) The right to own and dispose of property. No one shall be deprived of property, including contractual rights, without due process of law and without payment of just and effective compensation;

"(d) The right to freedom of opinion and expression and the right of adopting and practising any creed or religion;

"(e) The right to education;

"(f) The right to freedom of peaceful assembly and association;

"(g) The right to inviolability of correspondence and domicile subject to the requirements of the law;

"(h) The right to exercise any profession subject to the requirements of the law;

"(i) No one shall be subject to arrest or detention without an order of a competent authority, except in case of flagrant and serious violation of the law in force. No one shall be deported except in accordance with the law;

"(j) The right to a fair and equitable trial, the right of petition to the Emperor and the right of appeal to the Emperor for commutation of death sentences;

"(k) Retroactivity of penal law shall be excluded."

## *Section II. Other provisions*

### *Article 23*

#### **Freedom and equality before the law. Everyone is a person before the law**

All persons are born free and are equal before the law without distinction of nationality, race, sex or religion and, as such shall enjoy civil rights and shall be subject to duties and obligations.

### *Article 24*

#### **Prohibition of torture and certain punishments**

No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

### *Article 25*

#### **Right to freedom of movement**

Everyone resident in Eritrea has the right to freedom of movement and to the choice of place of residence in Eritrea subject to the provisions of Article 34.

### *Article 26*

#### **Freedom of conscience and religion**

The right to freedom of conscience and religion shall include the right of everyone, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

### *Article 27*

#### **No discrimination to the detriment of any religion**

No economic, financial or political measure of a discriminatory nature shall be taken to the detriment of any religion practised in Eritrea.

### *Article 28*

#### **Recognition of religious bodies as persons before the law**

Religious bodies of all kinds and religious orders shall be recognized as possessing juristic personality.

Consequently, any religious denomination or any group of citizens belonging to such denomination shall be entitled:

(a) To establish and maintain institutions for religious, educational and charitable purposes;

(b) To conduct its own affairs in matters of religion;

(c) To possess and acquire movable and immovable property;

(d) To administer its property and to enter into contracts.

### *Article 29*

#### **Religious instruction and worship in public schools**

No pupil attending a public school shall be required to take part in any religious instruction at such school or attend any religious service at such school.

### *Article 30*

#### **Freedom to express opinions**

Everyone resident in Eritrea shall have the right to express his opinion through any medium whatever (Press, speech, etc.) and to learn the opinions expressed by others.

### *Article 31*

#### **Right to education and freedom to teach**

1. Everyone resident in Eritrea shall have the right to education. The Government shall make every effort to establish schools and to train teachers.

2. The Government shall encourage private persons and private associations and institutions, regardless of race, nationality, religion, sex or language, to open schools, provided that they give proof of the required standards of morality and competence.

3. The instruction in the schools shall conform to the spirit of the Constitution.

### *Article 32*

#### **Associations and companies**

1. Everyone resident in Eritrea shall have the right to form associations or companies for lawful purposes.

2. Companies or associations shall enjoy fundamental freedoms in so far as their nature permits.
3. Such companies or associations shall be regarded as persons before the law.

*Article 33*

**Protection of working conditions**

1. Everyone resident in Eritrea, regardless of nationality, race sex, or religion, shall have the right to opportunity of work, to equal pay for equal work, to regular holidays with pay, to payment of dependency allowances, to compensation for illness and accidents incurred through work and to a decent and healthy standard of life.

**Trade unions**

2. Everyone resident in Eritrea shall have the right to form and to join trade unions for the protection of his interests.

*Article 34*

**Control by law of the enjoyment of human rights and fundamental freedoms**

1. The provisions in the last sub-paragraph of paragraph 7 of the Federal Act apply to the whole of Chapter IV of Part I of the Constitution. This sub-paragraph reads as follows:

“The respect for the rights and freedoms of others and the requirements of public order and the general welfare alone will justify any limitations to the above rights.”

2. In applying the aforementioned provisions, the enjoyment of human rights and fundamental freedoms may be regulated by law provided that such regulation does not impede their normal enjoyment.

*Article 35*

**Duties of individuals**

Everyone shall have the duty to respect the Constitution and the laws, and to serve the community.

CHAPTER V. SPECIAL RIGHTS OF THE VARIOUS POPULATION GROUPS IN ERITREA

*Article 36*

**Personal status**

Nationals of the Federation, including those covered by sub-paragraphs (b) and (d) of paragraph 6 of the Federal Act, as well as foreign nationals, shall have the right to respect for their customs and their own legislation governing personal status and legal capacity, the law of the family and the law of succession.

*Article 37*

**Property rights**

Property rights and rights of real nature, including those on State lands, established by custom or law and exercised in Eritrea by the tribes, the various population groups and by natural or legal persons, shall not be impaired by any law of a discriminatory nature.

*Article 38*

**Languages**

1. Tigrinya and Arabic shall be the official languages of Eritrea.

2. In accordance with established practice in Eritrea, the languages spoken and written by the various population groups shall be permitted to be used in dealing with the public authorities, as well as for religious or educational purposes and for all forms of expression of ideas.

PART II. THE ASSEMBLY

CHAPTER I. COMPOSITION AND ELECTION OF THE ASSEMBLY

*Article 39*

**Creation of an Assembly representing the Eritrean people**

1. Legislative power shall be exercised by an Assembly representing the Eritrean people.
2. Members of the Assembly shall represent the Eritrean people as a whole, and not only the constituency in which they are elected.

*Article 40*

**Number of members of the Assembly**

1. The Assembly shall be composed of not less than fifty and not more than seventy members.
2. Within the limits prescribed in the preceding paragraph, the number of members shall be fixed by law.

*Article 41*

**Constituencies**

1. The territory of Eritrea shall be divided into electoral constituencies, each electing one representative.
2. These constituencies shall be established in such a way that they will be approximately equal in population. The boundaries of the constituencies shall be fixed by law.

*Article 42*

**Eligibility**

All members of the electorate shall be eligible for election to the Assembly provided that:

- (a) They have reached the age of thirty;
- (b) They have been resident in Eritrea for three years and have been resided in the constituency for two years during the last ten years;
- (c) They are not disqualified for any reason laid down by law; and
- (d) They are not officials of the Eritrean or Federal Governments, unless they have resigned at the time of presenting their candidature.

*Article 43*

**The two voting systems**

1. The members of the Assembly shall be elected either by direct or indirect ballot.
2. The system of voting to be used in any given constituency shall be laid down by law.
3. Voting by direct ballot shall be personal, equal and secret.

For this purpose, a roll of qualified voters shall be drawn up, and revised from time to time.

The system for establishing electoral rolls shall be fixed by law.

4. The first stage of voting by indirect ballot shall be conducted in accordance with local custom. At the second stage, voting shall be personal, equal and secret.

#### *Article 44*

##### **Election by direct ballot and election at second stage in the case of indirect ballot**

1. If a candidate for the Assembly obtains an absolute majority of the votes cast he shall be declared elected.
2. If no candidate obtains an absolute majority, as defined in paragraph 1, a second ballot shall be held, and the candidate who then obtains the greatest number of votes shall be declared elected.

#### *Article 45*

##### **Electoral High Commission**

1. An electoral High Commission consisting of three persons appointed by the Supreme Court established under Article 85 shall be responsible for supervising all electoral proceedings (including the compiling of electoral rolls), and for preventing or putting a stop to irregularities.
2. The High Commission shall appoint, in each constituency, from among the electors of that constituency, a representative to act under its authority.
3. The said representative shall be assisted by an advisory election committee, consisting of members chosen by him from among the electors of that constituency.

As soon as an election period has been declared open in accordance with the law every candidate shall be entitled to be represented on the committee.

4. The implementation of the present article shall be prescribed by law.

#### *Article 46*

##### **Disputed elections to the Assembly**

1. At the opening of the session following an election, the Assembly shall confirm its members. All members whose elections are unchallenged shall be confirmed simultaneously.
2. In any case where an election is challenged, the Assembly shall decide, by a two-thirds majority of the members present, whether the challenged election is valid, provided that such two-thirds majority shall be not less than one half of the members of the Assembly in office.
3. In the event of a member's election not being confirmed, he may, within three days following the adoption of the decision by the Assembly, appeal to the Supreme Court established under Article 85, but shall not take his seat until the Supreme Court has given its decision.

#### *Article 47*

##### **Term of the Assembly**

1. The Assembly shall be elected for a term of four years.
2. Members shall be eligible for re-election.
3. If there is a vacancy during the term of an Assembly, a by-election shall take place. No by-election can, however, take place within six months of the election of a new Assembly.

## CHAPTER II. SESSIONS AND MEETINGS

### *Article 48*

#### **Regular sessions**

1. The Assembly shall hold two regular sessions each year.
2. The Assembly shall meet in regular session on a date to be specified by law.

This session shall continue for at least one month.

3. The opening date of the second regular session shall be fixed by the Chief Executive after consulting the President of the Assembly.

This second session shall be devoted primarily to voting the budget and the Assembly shall consider no other matter until the budget has been voted. The session shall not close until the budget has been voted as prescribed in Article 60.

4. The closing date of regular sessions shall be fixed by the Chief Executive after consulting the President of the Assembly.
5. With the consent of the President of the Assembly, the Chief Executive may suspend a session for a period not exceeding twenty days.

### *Article 49*

#### **Special sessions**

1. The Chief Executive may convene the Assembly to a special session.
2. The Chief Executive shall convene the Assembly to a special session whenever a written request is submitted by not less than one-third of the members.
3. When the Assembly is convened to a special session by the Chief Executive on his own initiative, only the questions set forth in the notice convening the Assembly shall be discussed. The Chief Executive shall fix the closing date of the session.
4. When the Assembly is convened to a special session at the request of not less than one-third of its members, it shall determine its own agenda. The Chief Executive shall fix the closing date of the session in agreement with the President of the Assembly.

### *Article 50*

#### **Quorum**

Two thirds of the members of the Assembly shall compose a quorum.

### *Article 51*

#### **Rules of procedure**

The Assembly shall adopt its own rules of procedure.

### *Article 52*

#### **Officers of the Assembly**

The Assembly shall elect its officers at the opening of the first regular session of each year or at the beginning of a new Legislature. The officers shall consist of a President, a Vice-President and, if the Assembly so desires, other officers.

*Article 53*

**Swearing-in of members**

Before taking up their duties, members of the Assembly who have not served in the previous Legislature shall take, in accordance with the faith and the customary practice of the individual concerned, the following oath before the President of the Assembly:

"I undertake before Almighty God" (or an invocation conforming to the faith and the customary practice of the member of the Assembly concerned) "to respect the Federation under the sovereignty of the Imperial Crown, loyally to serve Eritrea, to defend its Constitution and its laws, to seek no personal advantage from my office, and to perform all my duties conscientiously."

*Article 54*

**Parliamentary immunity**

1. Members of the Assembly shall not be liable to prosecution for opinions expressed or votes cast by them in the performance of their duties.
2. Members of the Assembly shall not be arrested or prosecuted without the authorization of the Assembly; save that in case of flagrant delict they may be arrested, but the prosecution, even in this case, shall be authorized by the Assembly.

When the Assembly is not in session, such authorization may be given by its officers. The Assembly may subsequently decide that proceedings shall be discontinued.

*Article 55*

**Remuneration of members of the Assembly**

1. Members of the Assembly shall receive a remuneration fixed by law.
2. No increase of remuneration shall take effect until the term of office of the Assembly voting it has expired.

*Article 56*

**General powers of the Assembly**

The Assembly shall vote the laws and the budget, elect the Chief Executive and supervise the activities of the Executive.

*Section I. Legislative functions*

*Article 57*

**Drafting and adoption of legislation**

1. Draft legislation may be introduced into the Assembly by members of the Assembly or submitted to the Assembly by the Chief Executive.
2. Such legislation shall be considered, discussed and put to the vote as provided in the Assembly's rules of procedure.

*Article 58*

**Request for a reconsideration**

1. Draft legislation adopted by the Assembly shall be immediately transmitted by the President of the Assembly to the Chief Executive.

**Approval of legislation by the Chief Executive**

2. The Chief Executive will transmit it as soon as received to the Representative of the Emperor who may request, in accordance with the provisions of Article 14, that it be reconsidered by the Assembly.

**Publication**

3. If the Representative of the Emperor, exercising the prerogatives for which provision is made under Article 14, has transmitted a request to the Chief Executive for reconsideration, giving his reasons for doing so, the Assembly must take a further vote. The draft legislation must obtain a two-thirds majority vote to be adopted.

4. If the draft legislation has been adopted after reconsideration, as provided in the preceding paragraph, or if the Representative of the Emperor has not exercised his prerogatives under Article 14, the Chief Executive must within twenty days after the vote taken by the Assembly, either approve the draft legislation and transmit it to the Representative of the Emperor for promulgation within five days of its receipt, or return it to the Assembly with his comments.

5. If the Chief Executive shall have returned the draft legislation to the Assembly, the Assembly shall reconsider the draft legislation and take a further vote on it. If the draft legislation is then adopted by a two-thirds majority, the Chief Executive shall transmit it to the Representative of the Emperor for promulgation within five days of its receipt.

6. All draft legislation adopted in accordance with the provisions of this article but not promulgated within the time limit laid down in paragraphs 4 and 5 of this Article, shall come into effect after publication by the Chief Executive.

*Section II. Budget*

*Article 59*

**Submission of the draft budget by the Chief Executive**

1. At least one month before the opening of the second regular session of the Assembly, the Chief Executive shall submit a draft budget for the next financial year.
2. The draft budget shall cover the whole of the revenue and expenditures of the Government of Eritrea for the next financial year.

*Article 60*

**Examination and adoption of the budget by the Assembly**

1. During the month preceding the second regular session of the Assembly, the Assembly Finance Committee shall examine the draft budget submitted by the Executive and report to the Assembly.
2. A general debate on the draft budget shall be held at the beginning of the second regular session of the Assembly.

Within ten days following the closure of the debate, the Executive shall submit a revised draft budget including the amendments it may decide to make to its first draft as a result of the observations made by the Assembly.

3. The Assembly shall then proceed to examine the various items of the budget:

(a) It shall first adopt the expenditure estimates, with or without amendments, only the total estimate for each Executive Department being put to the vote.

The Assembly may not increase the estimates proposed in the draft budget unless increase is balanced by corresponding estimates of revenue and has received the consent of the Executive.

(b) The Assembly shall then adopt, with or without amendments, the revenue estimates chapter by chapter, each of which shall be put to the vote separately.

4. The complete budget shall be adopted before the beginning of the financial year; otherwise, the amended draft budget submitted by the Executive as provided in paragraph 2 above shall be deemed to be adopted, provided the Executive has itself observed the time-limit laid down in Article 59 and in the present article.

#### *Article 61*

**All taxation and expenditure must be authorized by law**

No tax shall be levied and no expenditure shall be incurred unless authorized by law.

#### *Article 62*

**Form of the budget**

A law shall be enacted governing the form in which the budget is to be submitted and voted on each year.

#### *Article 63*

**Credit for urgent expenditure**

1. When voting the budget, the Assembly shall include a credit for urgent expenditure.

2. The amount of this credit shall not exceed 10 per cent of the expenditure estimates.

3. At the beginning of the following session of the Assembly, the Chief Executive shall report on the use he has made of this credit. The Assembly shall take a vote on this report.

#### *Article 64*

**Accounts for past financial years**

1. Within eighteen months following the close of each financial year, the Executive shall submit the accounts for that financial year to the Assembly for approval.

2. An Auditor-General, independent of the Executive, shall be elected by the Assembly.

3. The principal function of the Auditor-General shall be to examine the annual accounts, and to make a report to the Assembly containing his observations on them at the time of their presentation to the Assembly.

4. The method of election and the matters within the competence of the Auditor-General shall be established by law.

### *Section III. Election and supervision of the Executive*

#### *Article 65*

**Election of the Chief Executive**

The Assembly shall elect the Chief Executive as provided in Article 68.

#### *Article 66*

**Supervision of the Executive by the Assembly**

1. Members of the Assembly may submit questions in writing or short questions orally to the Executive, which shall reply.

2. At the request of ten members of the Assembly, a debate may be held on the Executive's policy.

The Executive shall be entitled to intervene both in the course of the debate and before its closure.

## PART III. THE EXECUTIVE

### CHAPTER I. COMPOSITION AND APPOINTMENT

#### *Article 67*

**Composition of the Executive**

The Executive shall consist of a Chief Executive assisted by Secretaries of Executive Departments.

#### *Article 68*

**Election of the Chief Executive**

1. The Chief Executive shall be elected by the Assembly by secret ballot; if a candidate obtains two thirds of the votes cast he shall be declared elected. If no candidate obtains the requisite number of votes the candidate receiving the least number of votes shall be removed from the list and the Assembly shall vote again on the remainder repeating the process if necessary until a candidate obtains the required number of votes.

2. Only Eritrean citizens having attained the age of thirty-five years and in possession of their political rights shall be eligible for the office of the Chief Executive.

3. The Assembly shall elect a Chief Executive at the opening of each new legislature.

4. In case of death or resignation of the Chief Executive, the Assembly shall elect a successor within fifteen days. If the Assembly is not in session, the President of the Assembly shall convene it to a special session.

The newly elected Chief Executive shall remain in office until the expiry of his predecessor's term.

5. The Chief Executive shall be eligible for re-election.

#### *Article 69*

**Appointment of Secretaries of Executive Departments**

1. The Chief Executive shall have power to appoint and dismiss Secretaries of Executive Departments, who shall be responsible to him.

2. Only persons qualified to be members of the Eritrean electorate shall be eligible to hold office as Secretaries of Executive Departments.

3. The Chief Executive shall select the Secretaries of Executive Departments in such a way as to ensure as far as possible a fair representation in his council of the principal groups of the population and the various geographical areas of the territory.

4. The number and the functions of Secretaries of Executive Departments shall be prescribed by law.

#### *Article 70*

**Incompatibility**

The office of the Chief Executive or of Secretary of an Executive Department is incompatible with the holding of any other administrative or judicial office.

### Article 71

#### Acting Chief Executive

The Chief Executive, on being elected, shall designate one of the Secretaries of Executive Departments to act for him if he is temporarily prevented from discharging his duties or, if his post fall vacant, until such time as a new Chief Executive is elected.

### Article 72

#### Swearing-in of the Chief Executive

Before taking up his duties, the Chief Executive shall, according to his faith and customary practice, take the following oath in the Assembly before the Representative of the Emperor:

"I undertake before Almighty God" (or an invocation conforming to the faith and the customary practice of the Chief Executive) "to respect the Federation under the sovereignty of the Imperial Crown, loyally to serve Eritrea, to defend its Constitution and its laws, to seek the welfare of the Eritrean people in the unity of its inhabitants bound together by ties of brotherhood, whatever their race, religion or language, and to seek no personal advantage from office."

### Article 73

#### Swearing-in of Secretaries of Executive Departments

Before taking up their duties, Secretaries of Executive Departments shall, according to their faith and their customary practices, take the following oath publicly in the Assembly before the Representative of the Emperor:

"I undertake before Almighty God" (or an invocation conforming to the faith and customary practice of the individual concerned) "loyally to respect the Federation under the sovereignty of the Imperial Crown, loyally to serve Eritrea, to respect its Constitution and its laws, to seek no personal advantage from my office and to perform all my duties conscientiously."

### Article 74

#### Council of the Executive

The Chief Executive shall from time to time summon a council of the Secretaries of Executive Departments. This Council shall advise the Chief Executive on matters of general policy and on any questions he may submit to it.

### Article 75

#### Removal from office of the Chief Executive

1. The Chief Executive shall not be answerable for any act performed by him in the course of his duties except for a grave violation of the Constitution. He shall be answerable for failure to dismiss any Secretary of an Executive Department committing a grave violation of the Constitution.
2. In such circumstances, the Chief Executive may be impeached by a two-thirds majority of the members of the Assembly in office, and tried by the Supreme Court established under Article 85.
3. If the Supreme Court finds the charge to be proved, it shall order the removal from office of the Chief Executive. It may, furthermore, disqualify him from performing any executive function or legislative duty.

4. Removal from office shall be without prejudice to any proceedings which may be instituted if the acts committed by the Chief Executive constitute offences under criminal law.

## CHAPTER II. POWERS OF THE EXECUTIVE

### Article 76

#### Enumeration of powers

1. The Chief Executive shall ensure that the Constitution and the laws are enforced. He shall have responsibility for the direction of the Executive and Administrative Departments and public services. He shall be Chairman of the Civil Service Commission for which provision is made in Article 82, and shall make appointments in accordance with the Constitution and the laws.
2. He shall be responsible for the internal police of Eritrea and, to this end, he shall issue regulations conforming to the Constitution and the laws to ensure the maintenance of public order and security.
3. He shall convene the sessions of the Assembly as provided in Articles 48 and 49 of the Constitution.
4. Each year, at the opening of the first regular session, he shall give an account to the Assembly of his conduct of affairs and report on the general situation of Eritrea.
5. He shall have the power to propose legislation. He may request the Assembly to reconsider draft legislation. He shall publish the laws after their promulgation or under the provisions of Article 58.
6. He shall submit to the Assembly a draft annual budget and the accounts for the preceding financial year, as provided in Articles 59, 60 and 64.
7. He shall have access to and the right of addressing the Assembly. He may be represented in the Assembly and its Committees by the Secretaries of Executive Departments.
8. He shall issue the regulations required to implement the laws.
9. He shall issue orders as provided in Article 77.
10. He may temporarily limit certain provisions of the Constitution as provided in Article 78.
11. He shall take the necessary measures for the suppression of brigandage, as provided in Article 79.
12. Official documents issued by the Chief Executive must be counter-signed by the Secretaries of the Executive Departments concerned.

### Article 77

#### Power of the Chief Executive to issue orders when the Assembly is not in session

1. In the interval between sessions of the Assembly, the Chief Executive shall have authority to issue, when necessary, orders governing any matter within the jurisdiction of the Government of Eritrea except matters dealt with in Chapter IV of Part I of the Constitution, provided that such orders are compatible with the Constitution and the laws in force.
2. Such orders shall be submitted to the Assembly which must approve or repeal them within a period of two months from the opening of the session following their promulgation.

3. Failing a decision by the Assembly within the above-mentioned period, orders issued by the Chief Executive shall be deemed to be confirmed.

#### *Article 78*

##### **Limitation in time of emergency of certain constitutional provisions**

1. In the event of a serious emergency which endangers public order and security, the Assembly may, on the proposal of the Chief Executive, adopt a law authorizing him to impose, under the conditions provided for in Article 34, temporary limitations on the rights set forth in Chapter IV of Part I of this Constitution.

2. The authorization thus given by law shall be valid for a maximum period of two months. If necessary, it may be renewed under the same conditions.

3. During the interval between sessions, the Chief Executive may, if it is urgently necessary, issue an order prescribing the measures referred to in paragraph 1.

In such cases, a special session of the Assembly shall be convened, as soon as possible and, at the latest, within twenty days following the promulgation of the order, to adopt a law approving, amending or repealing the said order.

#### *Article 79*

##### **Suppression of brigandage**

1. If public order and the security of persons and property in Eritrea are threatened by organized brigandage, the Chief Executive shall, after making a proclamation to the people, adopt the exceptional measures necessary to suppress such brigandage.

2. The Chief Executive shall inform the Assembly of the measures he has taken.

### CHAPTER III. THE ADMINISTRATION

#### *Article 80*

##### **Conditions of appointment of officials**

Officials shall be chosen for their ability and character; considerations of race, sex, religion or political opinion shall not influence the choice either to their advantage or to their disadvantage.

#### *Article 81*

##### **Status of officials**

1. The general status of administrative officials shall be fixed by law.

2. The special status of the various categories of administrative officials shall be fixed by regulations.

#### *Article 82*

##### **Civil Service Commission**

1. A Civil Service Commission, under the chairmanship of the Chief Executive or his representative, shall be created.

2. This Commission shall be responsible for the appointment, promotion, transfer and discharge of officials, and for taking disciplinary action against them.

3. The composition of this Commission, the procedure for the appointment of its members, and the conditions under which it will function will be determined by law.

#### *Article 83*

##### **Local communities**

1. The Constitution recognizes the existence of local communities.

2. Municipalities shall be accorded the management of their own affairs.

3. Officials responsible for the administration of village and tribal communities shall be selected from persons of those local communities.

4. The conditions for the application of the preceding provisions may be determined by law.

### PART IV. THE ADVISORY COUNCIL OF ERITREA

#### *Article 84*

##### **Advisory Council of Eritrea**

1. An Advisory Council of Eritrea is hereby established.

2. The function of the Council shall be to assist the Chief Executive and the Assembly, with a view to achieving economic and social progress in Eritrea. To this end it may:

(a) Draw up plans for the development of the country's resources and for the improvement of public health and hygiene;

(b) Put forward proposals concerning finance and the budget and the organization of the administration and the public services;

(c) Give advice on draft laws submitted to the Assembly;

(d) On the request of the Chief Executive or of the Assembly, prepare drafts of laws, regulations or orders.

3. The composition and organization of the Council shall be fixed by law.

### PART V. THE JUDICIARY

#### SOLE CHAPTER

#### *Article 85*

##### **Judicial power**

Judicial power shall be exercised by a Supreme Court and by other courts which will apply the various systems of law in force in Eritrea. The organization of these courts shall be established by law.

#### *Article 86*

##### **Qualifications required of judges**

1. Judges shall be chosen from persons of the highest moral reputation and known to be well versed in the customs and legislation peculiar to the various systems of law which they are required to apply.

##### **Oath**

2. Before taking up office, judges shall, according to their faith and their customary practice, take the following oath:

"I swear before Almighty God" (or an invocation conforming to the faith and the customary practice of the judge concerned) "to be a faithful guardian of the law and to administer it impartially and independently in order to ensure that justice shall reign supreme in Eritrea."

### **Independence of the judiciary**

3. The judiciary shall be independent and must be free from all political influence. The Assembly and the Executive shall not give orders or injunctions to the judges, nor shall they bring any pressure to bear on them.

### **Status of judges**

4. The status of judges shall be established by law.

### *Article 87*

### **Appointment of judges**

1. Judges shall be appointed by the Chief Executive on the recommendation of the President of the Assembly who shall be supplied with a list of candidates by a Committee composed of the President of the Supreme Court and two judges chosen by the members of the Supreme Court and of the court or courts immediately inferior thereto.

2. The President of the Assembly shall recommend to the Chief Executive two candidates for each appointment.

3. The list of candidates drawn up by the committee provided for in paragraph 1 must include at least three names for each appointment.

### *Article 88*

### **Responsibility of judges**

The Supreme Court provided for in Article 85 shall have jurisdiction in respect of criminal or disciplinary responsibility of judges for acts in connexion with the discharge of their duties.

### *Article 89*

### **Composition of the Supreme Court**

1. The Supreme Court shall consist of not less than three and not more than seven judges. On the proposal of the Court, the number of judges may be decreased or increased by law.

2. Judges shall be appointed for a period of seven years, which period may be renewed.

### *Article 90*

### **Jurisdiction of the Supreme Court**

The Supreme Court shall have jurisdiction in the following matters:

(1) As a court of last resort with respect to appeals from final judgments on points of law, and also to the extent provided by law with respect to appeals both on questions of law and fact.

(2) Conflicts of jurisdiction between courts.

In the event of a question involving conflicting jurisdiction, proceedings shall be suspended and the issue shall be presented to the Supreme Court, which shall determine the competent jurisdiction.

(3) Disputes concerning the constitutionality of laws and orders.

If the constitutionality of a law or order is challenged before a Court, proceedings shall be suspended and the issue shall be presented to the Supreme Court, which shall decide whether such act is constitutional.

(4) Actions based on administrative acts brought against the Government of Eritrea or other public

bodies, unless courts have been established by law to try such cases.

(5) Criminal and disciplinary responsibility of judges as provided in Article 88.

(6) Responsibility of the Chief Executive as provided in Article 75.

## PART VI. AMENDMENT OF THE CONSTITUTION

### SOLE CHAPTER

### *Article 91*

### **Compliance with the Federal Act and the principles of democratic government**

1. The Assembly may not, by means of an amendment, introduce into the Constitution any provision which would not be in conformity with the Federal Act.

2. Article 16 of the Constitution, by the terms of which the Constitution of Eritrea is based on the principles of democratic government, shall not be amended.

### *Article 92*

### **Amendments to the Constitution**

1. Any amendment to the Constitution must be submitted in writing either by the Chief Executive or by a number of members of the Assembly equal to one quarter of the actual number of members.

2. A period of twenty days must elapse between the submission of an amendment and the opening of the Assembly's discussion thereon.

### *Article 93*

### **Conditions governing the adoption of amendments**

1. If an amendment is approved by a majority of three quarters of the members of the Assembly in office, the amendment shall be declared adopted.

2. If an amendment is approved by two successive legislatures by a majority of two thirds of the members present and voting or by a majority of the members in office, the amendment shall be declared adopted.

### **Entry into effect of amendments**

3. Any amendments to the Constitution adopted by the Assembly according to the provisions of the foregoing paragraphs will enter into effect after ratification by the Emperor, Sovereign of the Federation.

## PART VII. TRANSITIONAL PROVISIONS

### *Article 94*

### **Entry into force of the Constitution**

1. This Constitution shall enter into effect following ratification of the Federal Act by the Emperor of Ethiopia, and following approval by the United Nations Commissioner, adoption by the Eritrean Assembly and ratification by the Emperor of Ethiopia of the Eritrean Constitution.

2. The Administering Authority shall continue to conduct the affairs of Eritrea until the transfer of power to the Government of Eritrea has taken place.



*Article 95*

**Laws giving effect to the Constitution**

1. Any laws giving effect to the present Constitution, adopted by the Eritrean Assembly convened by the Administering Authority, shall enter into effect simultaneously with the Constitution.
2. Such laws shall conform strictly to the principles and provisions of the Constitution.

*Article 96*

**Legislation remaining in force when the Constitution comes into effect**

1. Laws and regulations which were in force on 1 April 1941, and have not since been repealed by the Administering Authority and the laws and regulations enacted by that Authority, shall remain in force so long as they have not been repealed and to the extent that they have not been amended.
2. In the event of conflict between such laws and regulations and this Constitution, the Constitution shall prevail in accordance with Article 90 (3).

*Article 97*

**Respect for obligations contracted on behalf of Eritrea**

1. Obligations of any kind regularly contracted by the authorities administering Eritrea up to the date on

which the Constitution enters into force shall remain valid for the Government of Eritrea and must be respected provided that such obligations relate to matters within the jurisdiction of Eritrea.

2. As from the date of the entry into force of the Constitution any undertaking regularly concluded by the Executive Committee established by the Administering Authority before the date of the entry into force of the Constitution shall remain valid and must be respected.

3. The provisions contained in paragraph 1 shall not apply to obligations terminated by the Peace Treaty with Italy of 10 February 1947 or by the Resolution adopted by the United Nations General Assembly on 29 January 1952.

*Article 98*

**Retention of officials in office**

Administrative officials and judicial officials whether Federal nationals or not, holding office when the Constitution enters into force, shall continue in office. They may be dismissed only on three months' notice.

*Article 99*

**Term of the first Assembly**

The Assembly responsible for adopting the Constitution shall exercise the powers of the Assembly as provided in the Constitution for a period of four years after the Constitution enters into force.

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