



Fourteenth session
Agenda item 40

QUESTION OF THE FRONTIER BETWEEN THE TRUST TERRITORY OF
SOMALILAND UNDER ITALIAN ADMINISTRATION AND ETHIOPIA

Report of the Italian Government on the measures taken to
give effect to General Assembly resolution 1345 (XIII) of
13 December 1958

1. By resolution 1213 (XII) of 14 December 1957, unanimously adopted by the General Assembly of the United Nations, considering that it was in the common interest of Ethiopia and the Trust Territory of Somalia that there should be a final settlement of the question of the frontier between the two countries before the Territory became an independent sovereign State in 1960, and having regard to the urgency of the matter, expressed the opinion that a final settlement of the problem could be achieved most expeditiously by a procedure of arbitration. To this end, it recommended the parties to establish an Arbitration Tribunal consisting of three jurists, one appointed by Ethiopia, one by Italy and one by agreement between the jurists so appointed. The task of the Tribunal would be to delimit the frontier in accordance with the "terms of reference" to be agreed upon between the two Governments, with the assistance of an independent person to be appointed by agreement between them.

In the course of 1958, as reported by the Italian Government to the General Assembly of the United Nations in a document of 5 December 1958,^{1/} the parties reached an agreement on the establishment of the Tribunal, but failed to agree on the adoption of the terms of reference and on the appointment of the independent person.

^{1/} Official Records of the General Assembly, Thirteenth Session, Annexes,
agenda item 41, document A/4030.

Consequently, the General Assembly of the United Nations, on 13 December 1958, unanimously adopted resolution 1345 (XIII) by which, after reaffirming its resolution 1213 (XII), urged the parties to further intensify their efforts to implement the terms of resolution 1213 (XII). The General Assembly also recommended that the two Governments agree on the choice of the independent person within three months, and failing such agreement, invite His Majesty the King of Norway to nominate such independent person; and, finally, requested the Governments of Ethiopia and of Italy to report to the General Assembly at its fourteenth session on the measures taken by them to give effect to the resolution.

2. In compliance with the foregoing, the Italian Government has now the honour to report to the United Nations General Assembly on the steps it has taken to carry out the recommendations contained in resolution 1345 (XIII).

3. Within the time-limit set by resolution 1345 (XIII), the Ethiopian and Italian Governments exchanged proposals for the appointment of the independent person, but these proposals failed to produce a common choice. Consequently, on 12 March 1958, the Italian Government instructed its Ambassador to Addis Ababa to make arrangements with the Ethiopian Government on the procedure which could be properly followed to contact, jointly or separately, the Norwegian Government in order to ask His Majesty the King of Norway to appoint the independent person. As a result, on 2 April 1958, two notes of the same tenor were presented simultaneously to the Norwegian Ministry of Foreign Affairs by the Ethiopian and the Italian Ambassadors to Oslo. By a note dated 6 May 1959, the Norwegian Ministry of Foreign Affairs informed that His Majesty the King of Norway, acting upon the invitation of the parties, had appointed His Excellency Mr. Trygve Lie as the independent person entrusted with the task of performing the functions recommended by resolution 1213 (XII) of the General Assembly of the United Nations.

4. Mr. Trygve Lie invited delegations of both parties to meet him in Paris on 21 and 22 July. In the course of separate preliminary talks held on this occasion, he proposed that the two delegations convene in Oslo on 3 August to start negotiations on the terms of reference to be submitted to the Arbitration Tribunal. The two parties having accepted Mr. Lie's proposal, the Italian

delegation (which included three representatives of the Somali Government) and the Ethiopian delegation met in Oslo from 3 August to 13 August. In meetings held with the assistance of the independent person, the two delegations stated their positions in respect of the terms of reference.

5. To clarify the subsequent developments, it may be recalled that in the period of June-July 1958 the Italian and Ethiopian Governments had exchanged their drafts Compromis relating to the terms of reference for the Arbitration Tribunal,^{2/} but had failed to reach an agreement for the reasons set forth by each Party in its report to the General Assembly of the United Nations.^{3/}

6. In the course of the negotiations held in Oslo, the Ethiopian delegation took the view that the draft compromis presented in 1958 by its Government should be taken as the basis for the discussions. It reiterated, in so doing, the basic concept underlying its draft, namely that the task of the Tribunal should be confined to the interpretation of articles 1, 2, 3 and 4 of the Italo-Ethiopian Convention of 1908, thus ruling out all references to other relevant

international deeds. Further, the Ethiopian delegation maintained that the question of the frontier should be considered as one of a purely juridical nature. This position, it was maintained, was supported by a number of arguments such as: the wording of General Assembly resolution 392 (V) which recommended the procedures to be followed for the delimitation of the frontier of the Territory of Somalia; the letter of article 1 of the Trusteeship Agreement ("The boundaries of the Trust Territory shall be those delimited by international agreement"); the fact that resolution 1213 (XII) recommended a procedure of arbitration; and, finally, the fact that "the parties themselves have set out the existence of issues and differences which, by the operation of resolution 392 (V) and 1213 (XII), they have agreed to refer to arbitration by their terms of reference".

7. The position taken by the Italian delegation, at the Oslo negotiations, on the other hand, was that the terms of reference should not be negotiated solely on the basis of the draft Compromis proposed by the Ethiopian Government on

^{2/} Ibid., annexes VI and VII.

^{3/} Ibid., agenda item 41, documents A/4030 and A/4031.

28 July 1958, since the Italian Government had also presented, on 19 June 1958, a draft of its own. Clearly, the Italian draft could not be disregarded as long as the agreed course of the negotiations was to discuss the comparative merits of the two drafts. Otherwise new proposals should be brought forth. In the view of the Italian delegation it was not possible, furthermore, to confine the task of the Arbitration Tribunal to the differences that had arisen during the direct bilateral negotiations. In point of fact these negotiations had come to a close in this preliminary exploratory phase without reaching any practical conclusion, much less a formal agreement, and, looking at the matter from a broader point of view, it seemed clear that the essential goal to reach for all concerned was the attainment of a "final, just, equitable and friendly" solution of the problem of the frontier, as recommended by resolutions 755 (VIII) and 854 (IX) of the General Assembly of the United Nations. In the view of the Italian delegation, the contention that the Parties or the Tribunal should confine themselves to the legal interpretation of a document was not substantiated by the very wording of the resolutions. This wording rather seemed to bear witness to the necessity of granting the arbitrators adequate latitude of judgement. This latitude appeared indeed the prerequisite for a final decision that would in all respects achieve the purpose of the General Assembly resolution. On this particular point, the Italian delegation recalled some pertinent historical precedents relating to the demarcation of boundaries that authoritatively supported its views:

the Treaty of Lima of 1904, between Colombia and Peru (1); the arbitration agreement of 1885 between Great Britain and Russia (2); the treaty signed in 1938 by Bolivia and Paraguay (3); the treaty of arbitration concluded in 1908 by Norway and Sweden (4).

(1) In the case of the Treaty of Lima, entered into by Colombia and Peru in 1904, the agreement prescribed that: "the arbitrators shall determine the dividing line in accordance with the existing treaties and the modifications established by the present convention; but they may, leaving to one side strict law, adopt an equitable line in accordance with the necessities and convenience of the two countries".

(2) The arbitration agreement of 1885 between Great Britain and Russia reads as follows: "Il est estendu qu'en traçant cette frontière et en se conformant, autant que possible, à la description de cette ligne dans le présent Protocole, ainsi qu'aux points marqués sur les cartes ci-annexées, les dits Commissaires tiendront dûment compte des localités et des nécessités et du bien-être des populations locales".

(3) The treaty signed in 1938 by Bolivia and Paraguay, to solve the dispute concerning the territory of the Chaco Boreal, granted the arbitrators the power to decide: "in their capacity as arbitrators in equity acting ex aequo et bono".

(4) The treaty of arbitration concluded in 1908 by Norway and Sweden reads as follows: "In arriving at their decision the Commission will take into account ethnographical and historical principles and the state-political interests of each Party (military, strategic, economic and communicational) and the interests of the local population".

In this connexion the Italian delegation felt that the arbitrators should consider as applicable to the case under examinations all resolutions adopted by the General Assembly of the United Nations with regard to the question of the frontier, and not only some of them. As to the expression "by international agreement" appearing in the English texts of resolution 392 (V) and article 1 of the Trusteeship Agreement, the Italian delegation pointed out that the expression had to be interpreted in its general sense, and not, as was argued by the Ethiopian delegation, as a mere reference to the 1908 Convention. The fallacy of such an interpretation could easily be proven by comparing the English with the French text, which reads literally "par accords internationaux".

In practical reality, however, it could hardly be denied that several references to sections of the frontier still to be delimited could be found in a number of international agreements.

Furthermore, the Italian delegation felt unable to accept the Ethiopian argument according to which the juridical nature of the question was substantiated by resolution 1213 (XII) inasmuch as the latter had recommended that the Parties avail themselves of the procedure of arbitration, by passing the stage of mediation. The Ethiopian assumption appeared in contradiction with both the

official records of the debates on the frontier question in the Fourth Committee during the twelfth and thirteenth sessions and with the operative paragraph of resolution 1213 (XII) according to which the General Assembly, considering that the delimitation of the frontier was a matter of urgency, expressed the opinion "that a final settlement can be achieved most expeditiously by a procedure of arbitration".

It is in fact well known that, upon the failure of direct negotiations, the Italian delegate, in agreement with the representative of the Somali Government, proposed to the Fourth Committee to move on to the procedure of mediation provided by resolution 392 (V). The proposal, however, was rejected by the Ethiopian delegate. It became then necessary for the General Assembly, if it was to overcome the deadlock brought about by the Ethiopian opposition to the procedure of mediation, to recommend that the Parties avail themselves of the arbitration procedure.

Acquiescence to arbitration, prompted solely by the urgency of the matter as stressed by the General Assembly, should however not be construed as meaning that the Italian and Somali Governments were agreed that the Tribunal was to be granted only those limited powers which the Ethiopian Government appeared to envisage.

Furthermore, General Assembly resolution 392 (V), by envisaging a possible solution of the problem also through a procedure of mediation, clearly implied that the Tribunal should have recourse to principles of equity as well, in conformity with normally accepted arbitration procedure.

The Italian delegation finally pointed out that it served little purpose to protract a debate on the two draft Compromis presented in 1958, which the parties considered mutually unacceptable.

With a view to overcoming this difficulty, and as evidence of the goodwill of the Italian and Somali Governments, the Italian delegation submitted a second draft Compromis (annex 1). This new draft, which took into consideration, as far as possible, several points of substance and procedure of the Ethiopian Compromis of 1958, was fully in keeping with the suggestions made by Mr. Trygve Lie to the two delegations at the beginning of the negotiations.

Indeed the new text, which had been agreed upon by the Somali Government, included a specific mention of the Italo-Ethiopian Convention of 1908, a point to which the Ethiopian Government attributed particular importance. Moreover, article 11 of the new Italian draft - an essential one in so far as it established the provisions relating to the contents of the award - closely followed, in its substance and form, article 7 of the Ethiopian draft. Finally, the whole conception of the Italian proposal was based on the general principles and model rules on arbitration adopted by the General Assembly of the United Nations at its thirteenth session.

8. When the Italian draft was considered, the Ethiopian delegation let it be known - at the 12 August meeting - that it had, after consultations and upon instructions from its Government, to reject it.

Consequently, Mr. Trygve Lie, taking stock of the situation, expressed the view that, the negotiations appearing to have come to a standstill, the two delegations and the independent person could agree to adjourn and resume their proceedings in New York in the second half of October 1959.

Mr. Trygve Lie would devote the intervening period to reappraising all the new elements which had emerged in the course of the negotiations, and possibly to drafting, in his capacity as independent person, a compromis of his own. He would then submit it to the attention of the two Governments in order to ascertain whether they would be willing to take it as a basis for future discussions.

9. Mr. Lie then proceeded to elaborate a draft compromis (annex 2) which he presented to the Ethiopian and Italian Governments respectively on 15 and 22 October, on the occasion of his visit to Addis Ababa and Rome.

The Italian and Ethiopian Governments accepted the draft compromis proposed by Mr. Trygve Lie as a basis of discussion for the two delegations, whose meetings were scheduled to be resumed in New York on 2 November 1959.

10. Negotiations between the two delegations with the assistance of the independent person were held in New York between 2 and 20 November 1959.

During the plenary sessions and the separate meetings that each delegation had with Mr. Trygve Lie, the parties stated their positions with regard to the draft Compromis presented by the independent person, and submitted their amendments thereto.

The Italian delegation submitted ten amendments (annex 3); in turn, the Ethiopian delegation proposed eighteen amendments (annex 4). Subsequently the Italian delegation put forward its observations on the amendments proposed by the Ethiopian delegation (annex 5).

11. The Ethiopian delegation, commenting upon its own amendments, pointed out that in the course of the conversations held in Oslo the draft Compromis proposed in 1958 by its Government had not been discussed in detail, whereas the second draft presented by the Italian delegation had been the subject of detailed study. This circumstance, according to the Ethiopian delegation, had made it impossible to continue the Oslo negotiations. The Ethiopian delegation, after mentioning the difficulties encountered by its Government in accepting the draft Compromis proposed by the independent person, stressed that the Ethiopian amendments did not substantially alter the draft itself, with the only exception of its amendment to article IV 2, which ruled out all reference to "third-party treaties".

The Ethiopian delegation stated that it found itself in the necessity of rejecting all but two of the Italian amendments: those concerning article XIII B and article IX (the latter was, however, declared acceptable with certain reservations). The Ethiopian delegation rejected, in particular, the amendments referring to the use of the term "Somalia" (preamble); to article III; to article IV 2; to article VI A and to article VII, stating that they had been proposed with the intent of establishing a "new frontier".

The Ethiopian delegation declared in conclusion that in rejecting the Italian amendments it adhered strictly to the principles laid down in resolutions 392 (V), 1213 (XII) and 1345 (XIII) of the General Assembly.

21. As regards the Italian delegation, in submitting its amendments and in expressing its views on the Ethiopian proposals, it once again reaffirmed its position on the problem of the frontier, namely, that Italy had no direct interest in this issue, it being the exclusive concern of Ethiopia and Somalia, and that it appeared inappropriate and unfounded on the part of Ethiopia to hold Italy responsible for certain acts or initiatives which were solely motivated by its obligations as Administering Power. The Italian delegation also maintained that all resolutions adopted by the General Assembly on this matter had to be taken

into consideration and not only those mentioned by the Ethiopian delegation. It was recalled at this point that resolutions 755 (VIII) and 854 (IX) recommended explicitly "a final, just, equitable and friendly settlement of the question of the frontier".

The Italian delegation proceeded then to point out that both the draft presented by it in Oslo and the amendments which it submitted to the draft of the independent person had fully met Ethiopia's fundamental request: namely, that the reference to the 1908 Convention be included in the "terms of reference". The Ethiopian delegation, on its part, by the amendments it proposed to the second paragraph of the preamble, as well as to article III and to article IV 2-6 of Mr. Trygve Lie's draft, stated that it was unable to accept the essential elements of Italy and Somalia's position (reference to all relevant international agreements and to "acts of the United Nations"). These elements, however, had been included by the independent person in his draft, as a result of an objective and impartial evaluation of all aspects of the problem. Consequently, the Ethiopian claim that the Italian delegation had aimed at altering the substance of the draft Compromis submitted by the independent person appeared clearly unfounded.

These amendments had been drafted with the purpose of placing in a proper perspective the two fundamental points contained in Mr. Lie's draft, and which referred to the main rules applicable by the Tribunal, without altering the substance of the proposal contained therein.

In so doing the Italian delegation was aiming at a rearrangement and at a better balance of those basic provisions, in order to facilitate a satisfactory solution both to Ethiopia and Somalia.

As regards the objection raised by the Ethiopian delegation to the use of the term "Somalia" instead of that of "Trust Territory", the Italian delegation clarified that such a change had been introduced only in response to a specific wish expressed by the Somali Government and that, on the other hand, this expression had already been repeatedly used in a number of official documents of the United Nations.

The Italian delegation then submitted its views with regard to the Ethiopian amendments (see annex 5), stating that:

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- it would fully accept the amendments appended to the ninth and tenth preambular paragraphs of the draft of Mr. Trygve Lie, and to article VII;
- it would also accept the amendment proposed to the second preambular paragraph, supplementing it with the enumeration of all the resolutions adopted by the General Assembly in the matter;
- it would further accept amendments to articles I, III, IIIa, provided the Ethiopian delegation accepted the Italian amendment relating to the same articles;
- the Italian delegation finally expressed the view that the original text proposed by the independent person should be maintained with respect to articles IIIb, IIIc, IV 2, IV 3, IV 6, VIb, VIII and XIV of the draft Compromis.

Mr. Trygve Lie, after reviewing the new elements that had emerged in the course of the negotiations, expressed the opinion that, although the positions of the two Parties had drawn nearer, the progress made did not appear sufficient to lead to an agreement. He stated accordingly that he felt his mission had come to an end, and announced his intention to report on the conclusion of the negotiations to His Majesty the King of Norway. The contents of the report would also be brought to the attention of the Secretary-General of the United Nations.

It remained for the Parties, in compliance with resolution 1345 (XIII), to submit a report on the negotiations to the General Assembly of the United Nations. 13. The Italian Government regrets that, notwithstanding the assistance of so eminent a personality as Ambassador Trygve Lie, an agreement could not be reached between the two delegations.

The Italian Government feels, however, it has done all that was in its power, as Administering Authority, to carry out the procedures recommended by resolution 392 (V).

The Italian Government has always based its efforts on the principle that the spirit of resolution 392 (V), and of all the other resolutions subsequently approved by the United Nations General Assembly, was that of laying the foundations for a just and satisfactory solution of the problem of the border between Somalia

and Ethiopia and as a fundamental prerequisite for good neighbouring relations and mutual respect between the two countries. It believes it has thus faithfully accomplished the tasks deriving from the Trusteeship Agreement.

The Italian Government, interpreting the hopes of the Somali people, is confident that the General Assembly during its present session - which is the last before the end of the Trusteeship Agreement - will take into careful consideration the vital problem of the frontier of Somalia so that its people, upon the declaration of their independence, will be endowed with an internationally demarcated territory in which they may devote themselves entirely to the peaceful development of their economy and of their democratic institutions.

ANNEX 1

Draft Compromis presented by the Italian delegation

The Government of the Italian Republic, as the Power entrusted with the trust administration of Somaliland on the one side, and the Imperial Government of Ethiopia on the other side,

Recalling resolution 392 (V) of the General Assembly of the United Nations of 15 December 1950, and all subsequent resolutions adopted by it concerning the question of the frontier between Ethiopia and the Trust Territory of Somaliland;

Pursuant with resolution 1213 (XII) of 14 December 1957, with which the General Assembly of the United Nations recommended that said Governments should submit to an Arbitration Tribunal the question concerning the frontier between Ethiopia and the Territory of Somaliland, and that they should agree on the choice of an independent person to assist them in determining the terms of reference for the arbitration;

Pursuant with resolution 1375 (XIII) of 13 December 1958, which, reaffirming resolution 1213 (XII), recommended that the two Governments should invite His Majesty the King of Norway to nominate such an independent person;

Whereas His Majesty the King of Norway, on request of the two Governments, has accepted to make the nomination, and, to that effect, has appointed His Excellency Mr. Trygve Lie;

and Whereas the two above-mentioned Governments are desirous of settling the difference in the interest and for the welfare of the local populations in accordance with the principles of the United Nations:

ARTICLE 1

By the present Compromis said Governments establish an Arbitration Tribunal composed of:

Professor CASTREN	- President
Dr. F. BOLLA	- Member
Professor RADOJCOVIC	- Member

ARTICLE 2

The tasks of the Tribunal shall be:

- (a) To award on the question concerning the frontier between the Ethiopian Empire and the Territory of Somaliland under Italian Trust administration.
- (b) Consequently, to determine the boundary line between the Ethiopian Empire and the Territory of Somaliland.
- (c) To deliver its Award within six months from the beginning of proceedings.
- (d) To provide directly and with assistance of Experts to the actual marking, on the ground, of said boundary line.

ARTICLE 3

For the purposes of delivering its Award the Tribunal shall apply:

- (a) The Convention between Italy and Ethiopia of 16 May 1908 and all relevant international deeds or instruments concluded between the two countries;
- (b) International deeds and instruments concluded by each of the two Parties with third countries, which are relevant for the purpose of settling the difference.

In evaluating said deeds and instruments the Tribunal may avail itself of officially published international documentation.

The Parties hereto give furthermore to the Tribunal the power to decide ex aequo et bono, as if in the matter in question the Tribunal were legislator.

ARTICLE 4

The Tribunal shall give due consideration to any element of evidence produced by each of the two Parties.

The Tribunal shall rule as to admissibility of evidence and as to the probatory value of same.

The Tribunal shall have the power, at any stage of the proceedings, of ordering surveys and appraisals, and of ordering, when indispensable, visits to the terrain.

ARTICLE 5

The two Parties shall appoint to the Tribunal their respective Agents who shall act as intermediaries between the Parties and the Tribunal; each Party may provide for its Agent the assistance of Consultants or Experts.

The two Parties, through their respective Agents, Consultants or Experts, may submit to the Tribunal, in writing or verbally, any element they consider useful for the defence of their cause.

ARTICLE 6

The proceedings before the Tribunal comprise a written procedure and a discussion.

The written procedure consists of the submission by the Agent of each Party to the members of the Tribunal and to the other Party of Memoranda and counter-Memoranda and if necessary of rejoinders and counter-rejoinders. Each Party must attach to such papers the documents and pieces of evidence it has mentioned in its favour.

The Tribunal shall fix the terms within which such papers must be submitted.

The discussion consists in the verbal development before the Tribunal of the arguments of the two Parties.

ARTICLE 7

The verbal discussion is directed by the President.

After each sitting the minutes relating to it shall be prepared and shall be signed by the President and by the Secretary.

ARTICLE 8

The written procedure having been declared closed by the Tribunal, the Tribunal shall have the power of excluding from the case all acts and documents not yet produced and which either Party may wish to submit without the consent of the other Party. However, the Tribunal shall be free to take into consideration the acts and documents on which the Agent, Consultants or Experts may call the Tribunal's attention, provided they are communicated to the other Party. The latter shall be entitled to ask for an extension of the written procedure, in order to be enabled to submit a memorandum in reply.

The Tribunal may, moreover, ask the Parties to produce any act or document and to ask for any explanation it shall deem necessary. In case of a refusal the Tribunal shall take formal cognizance of it.

ARTICLE 9

After the written and verbal procedures have been declared to be closed the Tribunal, within the limits provided by Article 2, (c) shall deliberate on the question.

The proceedings and minutes of said deliberation shall be secret.

ARTICLE 10

All the Arbitrators must participate in the decision.

The Award of the Tribunal shall be adopted by majority.

The Award shall mention the names of the Arbitrators and shall be signed by the President and by the members of the Tribunal. The Arbitrators cannot abstain from voting.

The Award shall be considered as delivered as soon as it shall have been read at a public sitting before the Agents of the Parties, present or properly convened for this purpose.

The Award shall be communicated immediately to the Parties.

ARTICLE 11

The Award of the Arbitration Tribunal shall contain:

- (a) A detailed evaluation by the Tribunal of all evidence and arguments examined.
- (b) The precise and concrete geographical determination of each geographical point and reference points, together with an exact description of the line which shall be used for delimiting the frontier on the ground.
- (c) The enunciation of the detailed reasons on the basis of which the Tribunal has determined each geographical point and reference.
- (d) The geographical description on the map of the line resulting from the joining of said points and references.
- (e) The description of the modalities according to which the Tribunal, assisted by experts, will proceed to the marking on the ground of the above-mentioned line.
- (f) The names of the experts appointed by the Tribunal for marking on the ground, under the direction of the Tribunal, the above-mentioned line.

ARTICLE 12

The Tribunal's Award shall constitute the final settlement of the frontier question between Ethiopia and Somaliland.

The Award shall be binding for the two Parties from the moment it is delivered, it must be executed immediately in good faith.

ARTICLE 13

The language to be used for the written procedure shall be the English language.

ARTICLE 14

The Tribunal shall meet at following a formal calling of the meeting by the President within one month from the date of the present Compromis, and the proceedings shall start immediately.

ARTICLE 15

The two Parties shall be liable, in equal measure, for the expenses necessary for the functioning of the Tribunal, including allowances and fees due to the Arbitrators and Experts, which shall be fixed by the Tribunal, after consultation with the two Governments.

Each Party shall pay the fees due to its own Agents and Technical Advisers.

ARTICLE 16

The two Parties entrust to Mr. Trygve Lie the task of bringing officially to the knowledge of the Secretary-General of the United Nations the present Compromis.

ARTICLE 17

The present Compromis shall enter into force on the date on which it shall be signed.

In witness whereof the undersigned plenipotentiaries, being duly empowered, have signed the present Agreement.

Done in Oslo, in a single original, in the English language, on this day, of one thousand

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ANNEX 2

Draft Ccmprcmis presented by Mr. Trygve Lie

WHEREAS, the Convention of 16 May 1908 between Ethiopia and Italy, established a frontier (hereinafter denominated the "frontier") between Ethiopia and the Territory of Italian Somaliland, now known as the Trust Territory of Somaliland under Italian Administration (hereinafter denominated the "Trust Territory"); and

RECALLING resolution 392 (V) of the General Assembly of the United Nations of 15 December 1950, and all subsequent resolutions adopted by it concerning the delimitation of the frontier between Ethiopia and the Trust Territory of Somaliland;

WHEREAS, no delimitation on the ground of the frontier has been effected as required by the Convention; and

WHEREAS, it has been and is the desire of Ethiopia and of Italy, as the Administering Power of the Trust Territory, to establish a delimitation of the frontier on the ground before the Trust Territory shall attain its independence; and

WHEREAS, to this end, Ethiopia and Italy (hereinafter denominated "the High Contracting Parties"), had entered into negotiations in order to agree upon a delimitation of the frontier on the ground; and

WHEREAS, differences have arisen in the course of such negotiations, which, not having been resolved, have, so far, precluded the successful conclusion of such negotiations; and

WHEREAS, the High Contracting Parties are desirous of resolving these differences by a procedure of arbitration; and

WHEREAS, by its resolution 1213 (XII) of 14 December 1957, the General Assembly of the United Nations expressed the opinion that a final settlement can be achieved most expeditiously by a procedure of arbitration, and that they should agree on the choice of an independent person to assist them in determining the terms of reference for the arbitration;

PURSUANT with resolution 1345 (XIII) of 13 December 1958, which, reaffirming resolution 1213 (XII) recommended that the two Governments should invite His Majesty the King of Norway to nominate such an independent person;

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WHEREAS, His Majesty the King of Norway, on request of the two Governments, has accepted to make the nomination, and to that effect, has appointed Mr. Trygve Lie; and

WHEREAS, the two above-mentioned Governments are desirous of settling the difference in accordance with the principles of the United Nations;

NOW, THEREFORE, the High Contracting Parties have, to this end, agreed as follows:

Article I

The High Contracting Parties hereby establish an arbitration tribunal (hereinafter denominated the "Tribunal"), consisting of:

Professor Eric Castrén, Finland, President
Professor Milos Radojkovic, Yugoslavia, and
Dr. Plinio Bolla, Switzerland.

Article II

The two Parties shall appoint to the Tribunal their respective Agents who shall act as intermediaries between the Parties and the Tribunal; each Party may provide for its Agent the assistance of Consultants or Experts.

Article III

The tasks of the Tribunal shall be:

- (a) on the basis of the Convention of 16 May 1908 and in harmony with the principles of the United Nations, to ascertain through interpretation of all the language of the said convention what, as of 16 May 1908, was the frontier establishing the limits of sovereignty between Ethiopia and the territory now known as the Trust Territory;
- (b) to arrive at and deliver to the High Contracting Parties an award in writing which shall comply with all of the provisions of article V hereof;
- (c) the Tribunal shall undertake or perform no other duties, responsibilities, functions or activities except by written agreement concluded between the High Contracting Parties before the date fixed in article IX hereof.

Article IV

Each High Contracting Party may produce before the Tribunal:

1. evidence of facts or reputed facts which existed or were reputed to exist on or before 16 May 1908,
2. international deeds, treaties, agreements or protocols concluded on or before 16 May 1908, which are relevant for the interpretation of Art. I to IV of the said Convention of 16 May 1908,
3. evidence of facts which existed subsequent to 16 May 1908, to the extent that they directly clarify or demonstrate the facts which existed or were reputed to exist on or before 17 May 1908,
4. declarations, assertions, statements and representations of or published by the other High Contracting Party, made subsequent to 16 May 1908, purporting to represent the frontier as understood by it,
5. arguments exclusively directed to and concerned with evidence of facts, agreements, declarations, assertions, statements, representations and interpretations produced before or submitted to the Tribunal in accordance with the provisions of this article,
6. resolutions and acts of the United Nations concerning the question of the delimitation of the Somali-Ethiopian frontier.

No evidence or arguments of any nature whatsoever other than those produced before the Tribunal in accordance with the provisions of this article may be produced before or received by the Tribunal, except by written agreement concluded between the High Contracting Parties before the termination of proceedings before the Tribunal.

Article V

A. The award of the Tribunal shall contain:

1. a detailed evaluation of all evidence and arguments produced before or submitted to it;
2. a precise and positive geographical determination of each geographical point and reference point, together with an exact description of the line which shall serve for the delimitation of the frontier on the ground set forth in co-ordinates of latitude and longitude reduced to degrees, minutes and seconds;

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3. the enunciation of the detailed reasons on the basis of which the Tribunal has determined each geographical point and reference;

4. the geographical description on the map of the line resulting from the joining of said points and references;

5. the description of the modalities according to which the Tribunal, assisted by experts, will proceed to the marking on the ground of the above-mentioned line.

B. Any member of the Tribunal who disagrees in whole or in part with the line provided for in paragraph A - 4 of this article may prepare a dissenting opinion setting forth in detail the reasons for his disagreement with respect to said line, and the Tribunal shall communicate any such dissenting opinion to the High Contracting Parties in the manner specified in paragraph C of this article.

C. The Tribunal shall complete and communicate immediately its award to each of the High Contracting Parties in four copies each, simultaneously.

Article VI

A. For the purposes of this arbitration, the Amharic, Italian and English texts of the Convention, appended to this Compromis, shall be utilized by the Tribunal. The High Contracting Parties agree that the Amharic and Italian texts of the Convention shall be of equal force and validity before the Tribunal which shall, however, have the right to take also into consideration the English version appended to this Compromis.

B. For the purposes of articles III through VII of this Compromis, only the maps appended to this Compromis shall be utilized by the Tribunal.

Article VII

A. The Tribunal shall sit at ...

Article VIII

A. The presence of all three members of the Tribunal shall be required for the conduct of proceedings before it and for all of its deliberations.

B. The proceedings before the Tribunal shall be oral and may be conducted in either the English or French language. The Tribunal shall cause to be prepared authenticated translations into the other language and all evidence produced before it in one of the two languages. A verbatim record shall be maintained of all proceedings before the Tribunal, and authenticated copies shall be established of such verbatim records and of all documents produced as evidence before the Tribunal in accordance with the provisions of article IV hereof.

C. All proceedings before the Tribunal shall be public, except that each High Contracting Party may require that such proceedings be held confidential and be behind closed doors for a total not to exceed ten (10) hours for each such High Contracting Party. Each High Contracting Party may require that the confidential character of any evidence or arguments produced or submitted by it before the Tribunal shall be respected by the latter and shall be excluded from publication in the award or in any dissenting opinion.

D. Each High Contracting Party and each of the three members of the Tribunal may:

1. obtain during each day of proceedings one ten-minute suspension of session; and
2. obtain a total of not to exceed ten days of suspension of proceedings.

Article IX

The Tribunal shall deliver its award within ... months from the beginning of proceedings.

Article X

A. The deliberation of the three members of the Tribunal amongst themselves shall be secret pending the delivery of the award to the High Contracting Parties.

B. Decisions on all matters of substance and procedure shall be taken by majority vote of the three members of the Tribunal provided, however, that in the absence of a majority vote for the award of the Tribunal, the decision of the President, together with the line proposed by him to serve as the line required by paragraph A - 4 of article V hereof, shall pro tanto prevail.

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Article XI

A. Before receiving the respective statements, evidence or arguments of the High Contracting Parties, the Tribunal shall draw up Rules of Procedure consistent with the requirements and provisions of this Compromis.

B. The Rules of Procedure to be drawn up by the Tribunal pursuant to paragraph A of this article shall provide that both High Contracting Parties shall, on the same day, set forth before the Tribunal an initial statement of their case, which shall contain a full indication of all evidence invoked or intended to be invoked by them. The representative of Italy shall first present such initial statement. Such initial statement shall be made to the Tribunal not later than

Article XII

The Tribunal shall be supplied with such secretarial and other services as, in the opinion of the Tribunal, shall be requisite. The honoraria and all expenses of the arbitration shall be shared equally between the High Contracting Parties. The High Contracting Parties shall agree on the honoraria of the members of the Tribunal. All other expenses shall be certified by the President.

Article XIII

A. Each High Contracting Party and each member of the Tribunal may enter objections to the production of or to any evidence on the ground that it is not relevant, or on the ground that it is inconsistent with the requirements set out in article III and IV hereof, or with the Rules of Procedure established by the Tribunal pursuant to article XI hereof, or with the rules governing proceedings before the Tribunal as set forth herein. In the event that any objection shall be made alleging as basis the provisions of this paragraph A of this article, the proceedings of the Tribunal shall be suspended until a decision shall have been reached by the Tribunal with respect to such objection.

B. Anything in this Compromis to the contrary notwithstanding, all differences which arise involving the interpretation of this Compromis, whether between the High Contracting Parties, between the Tribunal and one or both of the High Contracting Parties, or between any two or more members of the

/...

Tribunal, shall be settled by the High Contracting Parties. Each High Contracting Party may enter objections, and each member of the Tribunal may manifest opposition to the taking by the Tribunal of action or to the exercise by it of functions exceeding its jurisdiction, functions or competence as established and determined by this Compromis, or to the admission by the Tribunal of evidence or arguments relating to matters which, according to either of the High Contracting Parties, are within its national jurisdiction as understood by that Party. If any objection is so made or any opposition so manifested, or if any other difference as described in the first sentence of this paragraph or otherwise, shall arise involving the interpretation of this Compromis, the Tribunal shall promptly suspend all proceedings and deliberations pending a decision reached in regard thereto by agreement between the High Contracting Parties.

Article XIV

The Tribunal's award shall constitute the final settlement of the frontier question between Ethiopia and Somaliland.

The award shall be binding for the two Parties from the moment it is delivered: it must be executed immediately in good faith.

Article XV

The present Compromis shall enter into force on the date on which it shall be signed.

Article XVI

IN WITNESS WHEREOF, the undersigned plenipotentiaries being duly empowered have hereunto subscribed their signatures and set their respective seals this day of 19 ...

.....

ANNEX 3

Italian amendments to the draft Compromis
presented by Mr. Trygve Lie

1. Replace the words "Trust Territory" with "Somalia".

2. First preambular paragraph.

Replace this preambular paragraph with the following:

"The Government of the Italian Republic, as the Power entrusted with the trust administration of the territory formerly known as Italian Somaliland (hereinafter denominated "Somalia") on the one side, and the Imperial Ethiopian Government on the other side;"

3. Third preambular paragraph.

Replace this preambular paragraph with the following:

"Whereas no delimitation of the frontier has been in so far effected by international agreement and in the interest of the relations of good neighbourhood and mutual respect between Ethiopia and Somalia";

4. Fifth preambular paragraph.

Delete the words "on the ground".

5. Article III

Replace Article III, sub-paragraph (a) with the following:

"(a) to delimit the frontier, in harmony with the principles of the United Nations, on the basis of treaties, agreements, including the Italo-Ethiopian Convention of 16th May, 1908, and its additional deed and of all other international deeds and protocols which are relevant for the purpose of such delimitation;"

6. Article IV, 2.

Delete the words "concluded on or before 16th May 1908", and replace the words "the interpretation of Article I to IV of the said Convention of 16th May 1908" with the words "the delimitation of the frontier".

7. Article VI, A.

Replace the words "and English texts of the Convention, appended to this Compromis", with the words "English and French texts of relevant international agreements", and delete the words "The High Contracting Parties agree that the Amharic and Italian texts of the Convention shall be of equal force and validity before the Tribunal which shall, however, have the right to take also into consideration the English version appended to this Compromis".

8. Article VII.

Add the words "Geneva and, before delivering its award, shall make a survey of the area concerned".

9. Article IX.

Add the words "within four months" and replace the words "months from the beginning of proceedings", with the words "from the date of its first meeting which shall take place within one month from the signature of the present Compromis".

10. Article XIII, B.

Delete the words "as understood by that Party" in the end of the second sentence.

ANNEX 4

Ethiopian amendments to the draft Compromis
presented by Mr. Trygve Lie

Second preambular paragraph:

Replace the words "all subsequent" with "the consequent".

Replace the word "concerning" with "for".

Sixth preambular paragraph:

Include the words "interpretation of the convention" between "differences of" and "have arisen".

Ninth preambular paragraph:

Replace the word Pursuant "with" with the word Pursuant "to"

Tenth preambular paragraph:

Replace the word "on" request of ... with the words "at the" request of ...

Add to the paragraph the words "as independent person to assist the parties in the negotiation of the terms of reference for arbitration as provided in United Nations resolutions 1213 (XII) and 1345 (XIII); and"

Article I.

Include the following words at the beginning of the article "For the purpose of delivering the award as provided in this Compromis" the High Contracting Parties hereby etc. ...

Article III.

Include the following words at the beginning of the article "In harmony with with the principles of the Charter and the Resolutions of the United Nations above-mentioned",

Article IIIa.

Replace the words "on the basis of" with the words "in conformity with".

Article IIIb.

Include the following words at the beginning of the sub-paragraph: "by juridical processes".

Replace the words "article V hereof" with "this Compromis".

Article IIIc.

Add to the sub-paragraph the words "nor shall it seek to resolve differences resolved during the negotiations".

Article IV.

Add to the first sentence the words "for the interpretation of the Convention, relevant".

Article IV,2.

Include the words "between the High Contracting Parties" between "protocols concluded" and "on or before 16 May 1908"

Article IV,3.

Add to the sub-paragraph the words "provided, however, that neither of the High Contracting Parties, nor the Tribunal may draw therefrom other than purely factual conclusions in terms of the facts which existed on or before 16 May 1908".

Article IV,6.

Delete Article IV,6, and replace it with the words "Each High Contracting Party may also produce before the Tribunal negotiations between the High Contracting Parties, their declarations at the United Nations and resolutions of the United Nations for the delimitation of the Somali-Ethiopian frontier".

In the last sentence of Article IV, include the words "de facto" after the words "no evidence or arguments".

Article VI,B.

Replace the words "articles III through VII" with "article V"

Article VII.

Add the following sentence to the article: "Upon prior agreement between the two parties, it may sit elsewhere".

Article VIII.

Add as sub-paragraph E the following:

"E. Only the persons referred to in Article II of this Compromis may appear before or be heard by the Tribunal".

Article XIV.

Replace in the second sentence the words "the two Parties" with "erga omnes".

ANNEX 5

Views expressed by the Italian delegation on the Ethiopian
amendments to the draft Compromis presented by
H.E. Mr. Trygve Lie

Second preambular paragraph:

Amendment accepted, with the understanding that the following further additions are introduced. The proposed text would read as follows:

"... and the consequent Resolutions adopted by it for the delimitation of the frontier between Ethiopia and the Trust Territory of Somaliland, that is: resolutions 755(VII), 854(IX), 947(X), 1068(XI), 1213(XII) and 1345(XIII)."

Sixth preambular paragraph:

The text proposed by the independent person is maintained. Amendment not accepted.

Ninth preambular paragraph:

Amendment accepted.

Tenth preambular paragraph:

Amendment accepted.

Article I.

Amendment accepted on condition that the words "and fulfilling the tasks provided for" are included between the words "award" and the words "in this compromis" in the Ethiopian Draft amendment, partially modifying it.

Article II.

Amendment accepted on the understanding that the text proposed for the second preambular paragraph is adopted.

Article IIIa.

Amendment accepted, on condition that the amendment proposed by the Italian delegation on the same paragraph is adopted.

Article IIIb.

The text proposed by the independent person is maintained. Amendment not accepted.

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Article IIIc.

The text proposed by the independent person is maintained. Amendment not accepted.

Article IV.

The text proposed by the independent person is maintained. Amendment not accepted.

Article IV, 2.

The text proposed by the independent person is maintained. Amendment not accepted.

Article IV, 3.

The text proposed by the independent person is maintained. Amendment not accepted.

Article IV, 6.

The text proposed by the independent person is maintained. Amendment not accepted.

Article VI, B.

The text proposed by the independent person is maintained. Amendment not accepted.

Article VII.

Amendment accepted.

Article VIII.

The text proposed by the independent person is maintained. Amendment not accepted.

Article XIV.

Some clarification of the proposed amendment would be greatly appreciated. Would the Contracting Parties impose recognition of the award on all other States?
