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CONTENTS

	<u>Page</u>
Agenda item 39:	
Question of the frontier between the Trust Territory of Somaliland under Italian administration and Ethiopia: reports of the Governments of Ethiopia and of Italy (continued)	463

Chairman: Mr. Thanat KHOMAN (Thailand).

AGENDA ITEM 39

Question of the frontier between the Trust Territory of Somaliland under Italian administration and Ethiopia: reports of the Governments of Ethiopia and of Italy (A/3753 and Corr.1, A/3754 and Add.1) (continued)

1. Mr. DE CLEMENTI (Italy) observed that in his statement at the 734th meeting the representative of Ethiopia had aptly raised the question of the future procedure to be adopted in settling the question of the frontier. Before such a discussion was embarked on, it would undoubtedly be useful to hear the views of the Italian delegation on the matter. Before stating those views, however, he wished to clarify certain points in the Italian Government's report (A/3754 and Add.1) which had called forth comments from the Ethiopian delegation.

2. In the first place, the original text of the Italian report, which was in French, contained no reference to guaranteeing the frontier, but merely spoke of the possibility of ensuring the integrity of both Ethiopia and independent Somaliland by a common frontier. The use of the word "guaranteeing" in the English text (A/3754, sect.7) was clearly a mistranslation: there was a considerable difference in meaning between guaranteeing a frontier which already existed and ensuring the delineation of a boundary, as in the present case.

3. Secondly, the Ethiopian representative had severely criticized passages in the Italian report which referred to the compromise solution that had first been suggested during the negotiations held the previous year. The Ethiopian representative was well aware that confidential conversations had in effect taken place; they were referred to in the Italian report merely to demonstrate that sincere efforts at a conciliation had been made on both sides. Such recognition of the efforts made by the Ethiopian delegation ought to preclude any suspicion that the Italian delegation wished to take advantage of any situation referred to. Moreover, the proposal in question had originated with the Ethiopian delegation, although it disclaimed having taken the initiative at the recent negotiations, no doubt because in matters of that kind it was always difficult to determine exactly at what point the first step had been taken. In any case, a proposal that had not been accept-

ed could not be legally binding on any party. The same considerations applied to the statement in the Italian report that there was agreement regarding part of the frontier. Such a statement was merely factual, without legal implications, since obviously an agreement, in order to be valid, must imply agreement on all aspects of a question.

4. The fact remained that both the Ethiopian and Italian reports were in complete agreement on one point, namely that, despite all the goodwill shown on both sides and all the attempts at conciliation, the bilateral negotiations had not led to a valid agreement. The fact that that was the gist of both reports pointed to the necessity of taking the steps provided for in General Assembly resolution 392 (V): namely that, failing agreement by bilateral negotiations, the parties should submit to a procedure of mediation by the United Nations, or ultimately to a procedure of arbitration. In so far as the Italian delegation was concerned, such a procedure was entirely acceptable; indeed, the Government of Somalia regarded it as the only valid procedure. The Ethiopian delegation, on the other hand, appeared to envisage arbitration as the next step. In either case, the final decision would rest with the Fourth Committee. Before that decision was taken, however, the Italian delegation wished to submit certain considerations.

5. While agreeing entirely with the Ethiopian delegation that the arbitration tribunal would have to act on the basis of law, the Italian delegation could not accept the view that an arbitration verdict should be based on a specific international agreement, to the exclusion of other international agreements on the subject. According to normal practice, it was for the parties to supply the tribunal with all material relating to the question; it would then be the responsibility of the tribunal to decide which documents were pertinent and to assess their respective value. To restrict that dossier and single out one given agreement as valid would be an arrogation of the powers of the arbitration tribunal and a prejudgement in respect of the other international agreements on the frontier.

6. In examining the question of the boundaries of a Trust Territory, the United Nations had specific responsibilities which called for extreme caution. The Committee was not competent to express views on the legal implications of the matter. Its task would therefore be to suggest a procedure that would best safeguard the interests of the two parties concerned.

7. Ato Yilma DERESSA (Ethiopia) said that he felt it necessary to explain why his delegation was in complete disagreement with the Italian delegation's proposal that recourse should be had to mediation.

8. The bilateral negotiations conducted over the past two years had proved incontestably that the problem of the frontier was of an exclusively juridical nature. That

it was a juridical and not a political problem was evident from the fact that both sides were agreed that the frontier had been established by the Convention of 1908. In their reports, however, the Ethiopian and Italian Governments had made it clear that no effort had been spared to seek a settlement at the political level. Although both sides were agreed that sincere efforts had been made by each party, both had rejected, on juridical grounds, the compromise formula suggested by the other: the Italians because the formula allegedly had nothing to do with the 1908 Convention, and the Ethiopians because it reflected the exact juridical position of the party presenting it. It was clear, therefore, that the time for political discussion had passed, and it should indeed be a matter of satisfaction to the Committee that the two parties concerned had progressed to a stage at which one of the procedures recommended by the General Assembly, namely mediation, had become unnecessary. That circumstance confirmed the fact, recognized by both parties, that the problem was solely juridical.

9. Moreover, both sides had recognized that a certain measure of progress had been achieved on the juridical plane. Both had repeatedly recognized that the 1908 Convention alone governed the discussions, and that all other factors were to be excluded. The Italian Government, in its report to the General Assembly at the eleventh session (A/3463), had expressed agreement with Ethiopia regarding the complete validity of the 1908 Convention, and that document alone should constitute the basis of negotiations for delimiting the frontier. Thus, by definition and by agreement, there was no room for factors extraneous to the treaty, let

alone non-legal factors. The stage of mediation thus having been passed, the solution to the problem could only be sought by judicial methods.

10. At the previous meeting the representative of Italy had stressed the urgency of the question in view of the imminence of Somaliland's attainment of independence; yet at the same time he had made a proposal that would mean going back over the ground that had already been covered. Since Italy had referred to her position as irrevocable, there was nothing a mediator could do to alter that position. Nor would it be possible to go rapidly through the procedures of mediation and arbitration, as Mr. Omar had suggested (734th meeting). If it were a matter of gaining time and at the same time settling the question, the only possible course would be to omit a procedure the result of which could not be binding on the parties, and pass on to the decisive procedure of adjudication.

11. Mr. RIFAI (Syria) suggested that, in order to facilitate a solution that would ensure the continuation of harmonious relations between Somaliland and Ethiopia, a three-member committee might be appointed to mediate between the two parties. As an alternative, he would suggest that the Fourth Committee should be allowed time to consider the question in all its aspects.

12. The CHAIRMAN said that, as conversations were already taking place between the parties, he did not think there was any need to set up a formal committee to assist in finding a solution.

The meeting rose at 11.40 a.m.