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HISTORICAL BACKGROUND, TERMS OF REFERENCE AND APPOINTMENT OF THE UNITED NATIONS COMMISSIONER IN ERITREA

SECTION 1. HISTORICAL BACKGROUND

1. Following the occupation of Eritrea by the Allied Armed Forces and in conformity with Article 10 of the Conditions of Armistice signed by Italy on 3 September 1943, with Article 23.2 of the Peace Treaty with Italy and with paragraph II of United Nations General Assembly resolution 390 A (V), Section A, Eritrea has been under United Kingdom administration since 1941.

2. Under Article 23.3, of the Peace Treaty with Italy, bearing the date of 10 February 1947, the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America and France were to determine jointly, within one year from the coming into force of the Treaty, the final disposal of Italy's territorial possessions in Africa, including Eritrea, to which Italy, under Article 23.1, renounced all rights and title.

3. The Four-Power Commission of Investigation for the former Italian Colonies stayed in Eritrea from 12 November 1947 to 3 January 1948. In view of the Council of Foreign Ministers not having reached any agreement upon the expiry of the period set out in Article 23.3, the following provision of Annex XI to the Peace Treaty came into effect:

"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."

4. The question of the disposal of the former Italian colonies was considered at the second part of the third regular session of the General Assembly by the First Committee, but the General Assembly rejected a resolution recommended by it providing, inter alia, that Eritrea, except for the Western Province, be incorporated into Ethiopia, and decided to postpone further consideration of the question. At the fourth regular session, the General Assembly adopted resolution 289 (IV), establishing the United Nations Commission for Eritrea to consist of representatives of Burma, Guatemala, Norway, Pakistan and the Union of South Africa, "to ascertain more fully the wishes and the best means of promoting the welfare of the inhabitants of Eritrea, to examine the question of the disposal, or proposals as it may deem appropriate for the solution of the problem of Eritrea".

5. The United Nations Commission for Eritrea held plenary, sub-commission and working group meetings in Eritrea from 14 February to 6 April 1950, and in conformity with its terms of reference, obtained information from the Administering Power and from representatives of the population of the territory including minority groups. The Commission also consulted the Governments of Egypt, Ethiopia, France, Italy and the United Kingdom and drafted its report in Geneva, where it sat between 25 April and 8 June 1950.

6. The report of the United Nations Commission for Eritrea (Official Records of the General Assembly, fifth session, Supplement No.8 (A/1285) included a "Memorandum submitted by the delegations of Burma, Norway and the Union of South Africa" and a "Memorandum submitted by the delegations of Guatemala and Pakistan". The various solutions advocated in the two memoranda were as follows:

(a) The delegations of Burma and the Union of South Africa

A federation of Eritrea and Ethiopia "on terms compatible with the selfrespect and domestic autonomy of both countries" and providing for a "joint responsibility and collective action in such fields as defence, external affairs, taxation, finance, inter-state commerce and communications. A customs union and a general rule of non-discrimination would also be pre-requisites."

(b) The delegation of Norway

Reunion of the whole territory of Eritrea to Ethiopia, it being understood that, in certain conditions and for certain purposes, the Western Province could provisionally and for a limited period of time be left under the present British Administration.

(c) The delegations of Guatemala and Pakistan

Direct trusteeship by the United Nations for a maximum period of ten years, at the end of which Eritrea should become completely independent. During the period of trusteeship there should be an Administrator appointed by the General Assembly and advised by a council composed of representatives of the United States of America, Ethiopia, Italy, a Moslem and a Latin-American country and representative of the Coptic Christians, of the Moslems and of the minorities; economic agreements to be concluded between Eritrea and Ethiopia, with a view to an eventual economic union; free zones in the ports of Massawa and Assab; the United Nations to send a mission of experts from the various specialized agencies, on the report of which appropriate steps should be taken to finance the programme suggested for the development of Eritrea; and finally a study by UNESCO of the advisability of establishing a university with its centre at Asmara.

7. Pursuant to section C, paragraph 4, of resolution 289 (IV), the Interim Committee of the General Assembly considered the report of the Commission for Eritrea during its 40th, 41st, 42nd and 44th meetings, and at the 45th meeting it concurred in the suggestion of the Chairman to incorporate in the report to the General Assembly a statement by the Chairman of the Interim Committee. In this statement (A/1388) Official Records of the General Assembly, fifth session, Supplement No. 14, p.2, the Chairman referred to confidential discussions with the representatives of the interested delegations, which had been initiated jointly by the representatives of the United Kingdom and United States of America, and in which the Chairman of the Interim Committee and Mr. Padilla Nervo (Mexico) had later participated. It was further stated that, although the resulting formula afforded " a useful basis for further discussion in the General Assembly," considerations " alien to the principles involved in the solution of this problem" did not permit those participating in the discussions to recommend the formula to the Interim Committee.

8. The reports of the United Nations Commission for Eritrea and the Interim Committee of the General Assembly were considered at the fifth regular session by the *Ad Hoc* Political Committee. A draft resolution sponsored by Bolivia, Brazil, Burma, Canada, Denmark, Ecuador, Greece, Liberia, Mexico, Panama, Paraguay, Peru, Turkey and the United States of America (A/AC.38/L.37 and Corr.1) was introduced by the representatives of the United States at the 48th meeting and approved by the *Ad Hoc* Political Committee at its 56th meeting, by 38 votes to 14, with 8 abstentions (A/1561). Further,

the *Ad Hoc* Political Committee at its 64th meeting approved, by 28 votes to 4, with 4 abstentions, a second draft resolution relating to the appointment of the United Nations Commissioner in Eritrea (A/1561/Add.1). The General Assembly, at its 316th meeting held on 2 December 1950, adopted the first resolution submitted by the *Ad Hoc* Political Committee in its report (A/1561), by 46 votes to 10, with 4 abstentions. Further the General Assembly, at the same meeting, adopted, with a drafting change, by 45 votes to 5, with 6 abstentions, the second draft resolution submitted by the *Ad Hoc* Political Committee in its additional report (A/1561/Add.1).

SECTION 2. RESOLUTION 390 A (V), OF 2 DECEMBER 1950

9. The text of resolution 390 A(V), of December 1950 reads as follows:

"*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 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 assures 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 al 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 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 get 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 freedom 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 Power 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, nagotiate 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 Power, the Government of Ethiopia, and the inhabitants of Eritrea prepare a draft of the Eritran 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 Power for the transfer of power to the appropriate authorities. The transfer of power shall make 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."

SECTION 3. APPOINTMENT OF THE UNITED NATIONS COMMISSIONER IN ERITREA

10. By virtue of resolution 390 B (V) of 2 December 1950, a Committee, established by the General Assembly to nominate a candidate or candidates for the office of the United Nations Commissioner in Eritrea, agreed to nominate the following candidates:

Mr. Victor Hoo (Assistant Secretary-General);
Justice Aung Khine (Burma);
Mr. Eduardo Anze Matienzo (Bolivia).

The General Assembly, at its 325th plenary meeting on 14 December 1950, elected by secret ballot Mr. Eduardo Anze Matienzo to the office of United Nations Commissioner in Eritrea.

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(1) The text of the resolution reads as follows:

The General Assembly, to assist it in making the appointment of the United Nations Commissioner in Eritrea,

"Decides that a Committee composed of the President of the General Assembly, two of the Vice-Presidents (Australia and Venezuela), the Chairman of the Fourth Committee and the Chairman of the **Ad Hoc** Political Committee shall nominate a candidate or, if no agreement can be reached, two or three candidates for the post of United Nations Commissioner in Eritrea."