

# **Book : The federal case of Eritrea with Ethiopia**

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AN ETHIOPIAN BLOW TO ERITREAN SOVEREIGNTY

THE ERITREANS DECLARE REVOLUTION (page 6)

On the 14th of November 1962 , the Ethiopian government announced the final incorporation Eritrea into the Ethiopian Empire using for a pretext a resolution which it claimed had been passed by the Eritrean Legislative Assembly. This Assembly had never represented the Eritrean people since it had been formed under the provisions of the unconstitutional British Declaration No. 121 and Emergency Law No. 1, 1955.

Celebrating the occasion, the Emperor of Ethiopia declared: «From now on there shall be only one nation, Ethiopia. The federation, imposed by circumstances, is gone to no return». By annexing Eritrea to Ethiopia, the Emperor did not only defy the United Nations Federal Resolution but also violated every promise and undertaking he had made to safeguard the federation.

The people of Eritrea strongly protest against the Ethiopian government's illegal measures which run against the wishes of the population. They urge the General Assembly of the United Nations to act without delay in accordance with the statements of the U.N. Commissioner to the effect that « If any of the provisions foreseen by the Resolution cannot be fulfilled, it will be for the General Assembly to consider the resultant situation”. They also urge prompt intervention on the basis of the views of the Panel of U.N. Legal Consultants that “If the Federal Act were violated, the General Assembly could be seized of the matter.

The people of Eritrea demand that the United Nations Organization grant them their legitimate right of self-determination through a U.N. supervised free plebescits. They have long been denied the exercise of this legitimate right.

The resort to violence by the peace-loving people of Eritrea came only after the failure of peaceful means to safeguard their freedom. The armed revolution which broke out early in September 1961 under the leadership of the Eritrean Liberation Front was the expression of the indignation of a people whose rights had been so horribly and flagrantly violated. In the

six years that have passed since, the Eritrean struggle has developed into a wide spread popular resistance movement that has reached every corner of the land. From hit and rim skirmishes, the fight has become a wide-scale liberation war embracing the entire territory.

Reports about the people's struggle and the Ethiopian atrocities and massacres have found their way outside Eritrea despite the iron curtain imposed round the country by the Ethiopian occupation authorities. The Chief Editor of the Swedish Magazine, Kvallsposten, Mr. Lars braw, described the situation in Eritrea as a «bloody reality.» He had seen 22 gallows in the public square of the city of Keren alone. An Italian journalist, Mr. Franco Prattico, writing in the Italian daily, Paese Sera, spoke of the massacres perpetrated by the Ethiopians against the Eritrean people;

« Our trip had practically ended the previous day amongst the ruins of recently burnt Eritrean villages. Here and there fires continued to rage. Unfortunately the sight has become all but unfamiliar; the supports of burnt down houses, huge carbonized circles - the hot remains of what once served as fences - burnt furniture in a sea of ashes, and a twisted sewing machine. The man who had served this land is now a fugitive in his very land; the plain itself, once of many a colourful hue, stands now naked and desolate extending to a depressing horizon.

In the village of Ad Sharbot, the Ethiopians have set fire to the village, opened fire on cattle and men alike. Those of the inhabitants who had managed to flee their homes could see, from a neighbouring hilltop the flame eating into their houses and possessions and hear the painful cries of those of their relations besieged by the raging fires. Thousands and thousands of old men, children and women crossed the most difficult and dangerous of terrains in order to find refuge in the Sudan from Ethiopia 's vindictive reprisal raids.

How I wish the world would consider how costly this forceful eviction has been to these poor people. And, assuming that they find refuge, one can imagine what kind of life awaits them deprived of land, livestock, work and above all, of the fathers, brothers and husbands who once supported them but now lay under the ashes of what once served as shelter and home».

The Flight of the refugees was also reported by the British Broadcasting Corporation which, on the morning of March the 8th, 1967, had this to announce

“The Sudanese Minister of Interior has announced that 20,000 Eritrean refugees have crossed into the eastern Sudanese province of Kassala where they have been offered all assistance possible. Their flight, the Minister declared, was the result of fierce fighting, in areas close to the Sudanese borders between, the Ethiopian army and Eritrean Liberation forces”.

The plight of the Eritrean people under Ethiopian domination was best expressed by Sheikh Karrar Saleh, a leading Eritrean refugee, who, speaking before the Sudanese Minister of Interior had this to say:

“ The Eritreans have undergone Italian domination, the war, the British rule, but never have they suffered the hardship they endure under Ethiopian rule today. They are deprived not only of security and work opportunities but also of their very means of living. Things moved to worse when campaigns against individuals turned into collective persecution which

affected the Eritreans in their possessions and livestock. They have come to witness their women raped, and their sons murdered.

They have on occasions been denied permission even to bury their dead. Ethiopia today uses aircraft and artillery in its genocide campaign against the Eritreans whose villages and farms are often burnt to the ground. Looting is wide-spread and stories of jewelry pulled off women's ears and noses are all too familiar. Many an Eritrea woman has gone hysterical on witnessing the murders of her child before her very eyes».

The Washington Post, in its issue of April 30th, had this to report:

« Ethiopian air force assault planes were dispatched to raze villages in Eritrea 's western lowlands and the Ethiopian Second Division began a systematic pacification campaign in the areas. The local population has been herded into a series of fortified villages to facilitate military control. Each village numbers about 3000 Peasants or nomads who refuse to join them are chased from their land under a sporadic scorched earth campaign”.

On the 11th of June 1967, large concentrations of Ethiopian troops surrounded the villages of Ailat and Gumhot in the Red Sea area. At three in the afternoon, the Ethiopians rounded up the men of the two villages herded thirty into a house, and then set it on fire. Both villages were burnt down along with nine others. At least 90 families were made homeless.

Enough has probably been said to show what a tragedy the Eritrean people live today. The tragic situation is the result of the United Nations Federal Resolution which linked the destiny of the freedom-loving people of Eritrea to that of the Ethiopian Empire. The resolution did not reflect the wishes of the Eritrean people who sought full independence. Neither did this resolution help “maintain peace and security in East Africa ” as its preamble had hoped. On the contrary, the complete absence of security in Eritrea today makes it incumbent upon the United Nations to consider its resolution in the interest of the peace and security it sought to maintain through the resolution.

We once again draw the attention of the World Organization to the constantly deteriorating situation in Eritrea.

In fact, failure on the part of the United Nations to intervene promptly is bound to make a Peaceful solution to the Eritrean tragedy yet more difficult. The peace-loving people of Eritrea need prompt and immediate assistance, the kind of assistance that derives from the human spirit upon which the Charter of the United Nations is founded.

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THE COMPLAINT OF THE  
ERITREAN PEOPLE AGAINST  
THE ETHIOPIAN GOVERNMENT  
PRESENTED TO THE UNITED NATIONS

(Picture of Eritreans standing, titled “Demonstration in Asmara  
condemning the U.N. Federal Resolution with Ethiopia (1950) )

## PART ONE

### THE RESOLUTION AT ITS INCEPTION

#### 1. LEGAL ASPECTS

#### 2. CONSTITUTIONAL ASPECTS

### FOREWORD

This complaint is presented to the General Assembly of the United Nations in the name of the Eritrean people. The subject of the complaint is the Resolution 390 A (V) adopted on 2 December 1950 by the General Assembly. The principles of this Resolution were incorporated in the Eritrean Constitution and the Federal Act, which were both accepted by the Eritrean Assembly, on 10 July 1952, then ratified and promulgated on 11 August 1952 and 11 September 1952 respectively by the Ethiopian Emperor, who gave a solemn pledge to faithfully implement the principles of the U.N. Resolution, as incorporated in the Eritrean Constitution and the Federal Act.

The basis principles of these instruments are:

1. Full autonomy for the Eritrean Government in all domestic affairs, with definite limitation of the respective jurisdiction of both the Eritrean and Federal Governments.
3. A democratic regime b Eritrea with all its requisites and safeguards: respect for human rights and fundamental liberties, and government of the people by the people.

Unfortunately these two basic principles have been completely ignored by the Ethiopian Government, acting in the guise of the so-called Federal Government. Eritrean autonomy has been replaced by actual annexation; democratic liberties were suppressed; the federal system was fundamentally deformed in its interpretation in order to suit the flagrant violations of the General Assembly's Resolution.

When the Eritrean people accepted the General Assembly's Resolution, and thereby renounced their initial claim for independence, they were assured by the United Nations' Commissioner that « If any of the provisions foreseen by the Resolution cannot be fulfilled, it will be for the General Assembly to consider the resultant situations. (1)

- (1) Explanation given by the Commissioner in his progress Report A/1959 P. 148.

The panel of legal Consultants, appointed by the U. N. Secretary-General to assist the Commissioner, declared that « If the Federal Act were violated, the General Assembly could be seized of the matter.» (1)

- (1) Final Report of the U.N. Commissioner in Eritrea.

Relying on these and similar assurances the Eritrean people have inevitably accepted the compromise solution of federation with Ethiopia. But during the last ten years they have suffered at the hands of the Ethiopian Government, masquerading as a Federal Government, more than they have endured during 70 years of colonial oppression.

The frustration of the Eritrean people is pushing them to the verge of a desperate resolution, Their patience has reached its breaking point. Mindful of the fact that the prolongation of the present state of affairs between the Eritrean people and the Ethiopian Government may jeopardize world peace, they decided to appeal to the United Nations,

The United Nations, having disposed of the destiny of a nation by the said Resolution and having reserved the right to verify its implementation, should at least inquire into the facts of this complaint, and find out whether its Resolution has been actually carried out or utterly abrogated. A commission of inquiry should be assigned to Eritrea to examine on the spot of the grievances of the Eritrean people.

This is a unique opportunity for the United Nations justify the trust of mankind in its humanitarian role, and to demonstrate that when a resolution is adopted by its General Assembly, and is freely accepted by the parties concerned, that resolution should be loyally carried out.

#### 1. The legal aspect as regards the fundamental principles of International Law

1. It may not be quite proper for us, Eritreans, to question now the legality of the General Assembly's Resolution.

We have accepted it in good faith. Ethiopia has accepted it in bad faith; the majority of the member States of the United Nations have voted for it. The Resolution has thereby acquitted a binding force on all parties concerned.

Nevertheless, if an impartial jurist were to examine objectively the purport and ruling of this Resolution, he would be bound to point out certain distinct deviations from the spirit of the United Nations Charter. Let us try to follow his objective analysis:

#### DEVIATION No. 1

2, The Four Powers who concluded the Treaty of Peace with Italy in 1947 have insured the renunciation by Italy for her former African possessions including Eritrea, an Italian Colony since 1890. Does this Italian renunciation automatically give the four victorious Powers the right to dispose, by themselves of the destiny of Eritrea without any previous plebiscite organized among the people of Eritrea? If we were in the 18th or even the 19th century the answer would have been in the affirmative. But after the creation of the United Nations and the adherence of all the civilized world to its charter which consecrated the inalienable right of every nation to self-determination, how could Four Powers alone decide the fate of a whole people? But this is exactly what the U.N. has implicitly admitted when it concurred with the provision of the Italian Treaty and allowed these same powers a delay of one year to dispose jointly of the former Italian colonies. It is true that the Four Powers were advised to take into consideration the wishes of the people of Eritrea and the interests of peace and security. But the decisive force was put in their hands. They were the sole arbiters of this issue. There was no appeal against their joint decision whatever it might be.

This is deviation No. 1 from the spirit of the Charter, and here are the pertinent related facts as stated in chapter 1 of the U.N. commissioner's Report (Dec. A/1952) P. 3.

«Under article 23.3 of the peace Treaty with Italy, bearing the date of 10 February 1947, the Government 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 right and title.

“The Four-Powers 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 come 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 to 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 to take appropriate measures for giving effect to it».

#### DEVIATION No. 2

3. We do not doubt that the United Nations was partly aware of the above-mentioned deviation from the spirit of the Charter, and was certainly relieved by the failure of the Four Powers to reach a joint decision.

The question of the disposal of the former Italian Colonies was accordingly referred to the General Assembly at its third regular session. A resolution submitted to the Assembly on the recommendation of the First Committee, provided that Eritrea - except for the Western Province - be incorporated with Ethiopia, again without consulting the people of Eritrea. Fortunately for the prestige of the United Nations this resolution was rejected by the General Assembly which decided to postpone further discussion of the question.

4. At the fourth regular session the General Assembly adopted resolution 289 (IV), establishing the United Nations' Commission for Eritrea to include representatives of Burma, Guatemala, Norway, Pakistan and the Union of South Africa. The resolution directed the commission «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 of Eritrea and to prepare a report for the General Assembly, together with such proposal, or proposals as it may seem appropriate for the solution of the problem of Eritrea».

The Commission, after holding plenary meetings in Eritrea from 14 February to 8 April 1950, and after obtaining information from the British Administering Power and from representatives of the population including minority groups, and after consulting the Governments of Egypt, Ethiopia, France, Italy and the United Kingdom, drafted its report and submitted it to the Secretary-General on the 8 June 1950 (Official Record of General Assembly, fifth session, supplement No. 8 A/1285).

The various members of the Commission held divergent views. Norway proposed incorporation of Eritrea with Ethiopia; Burma and the Union of South Africa proposed a federation “on tem compatible with the Self-respect and domestic autonomy of both countries; Guatemala and Pakistan recommended complete independence for Eritrea after a period of trusteeship (maximum 10 years) by the United Nations.

5, When the report was examined by the General Assembly the representatives of the United States submitted a draft resolution, sponsored by 13 other states (Bolivia, Brazil, Burma, Canada, Denmark, Ecuador, Greece, Liberia, Mexico, Panama, Paraguay, Peru, and Turkey). The General Assembly at its 316<sup>th</sup> meeting held on 2 December 1950, adopted this draft resolution by 46 votes to 10, with 4 absentees.

6. This draft resolution became Resolution 390 A(V) of 2 December 1950, the object of this complaint. We will prove later how the rulings of this Resolution (with all its deficiencies and loopholes) have been violated by the Ethiopian Government.

This Resolution has decided the fate of a people without prior consultation of their wishes through the mechanism of an organized plebiscite. In fact the Eritreans were confronted by a «fait accompli» : They were told either to accept the federation provided for in the Resolution, or the question will be referred back to the General Assembly. They were already aware of the divergent views inside the General Assembly, views ranging from annexation to Ethiopia, to trusteeship, to federation to a tiny minority recommending immediate independence. They could not be sure which of these divergent attitudes will prevail if the question was referred back to the General Assembly. They had to yield to the best of a bad bargain; they had to choose the lesser evil: federation.

Most of the findings of the United Nations' Commission established the fact that the majority of the people of Eritrea were opposed to the idea of annexation to Ethiopia. The Moslems who form more than half the population of Eritrea, were not the only group opposed to incorporation into Ethiopia. The same attitude was shared by many groups of Christians.

When this majority is faced with the choice of one of two alternatives: either to accept federation (real, not false federation as it turned out to be) with Ethiopia or to face an unknown destiny, which may be annexation, or partition, or the disastrous status quo, their choice is bound to be for the first alternative. Thus federation as proposed by the U.N. Resolution was indirectly dictated to them. (1) In such circumstances can it be fairly said that the Eritreans were absolutely free choice in the exercise of their right of self-determination?

(1) « ... Thus, the Resolution of 2 December 1950 had already been agreed to by the Four Powers who alone had the right to dispose of the Italian Colonies, and was adopted by a majority of the Member States of the United Nations (48 out of 60 including Ethiopia, The Resolution therefore cannot be altered by anybody concerned. If any of the provisions foreseen by the Resolution cannot be fulfilled, it will be for the General Assembly to consider the resultant situation. (From the Commissioner's statement, printed in his Progress Report (A-1952) p. 148

7. And here is a second, and more potent, ground for invalidating the Eritreans' consent to the Resolution.

The United Nations' Commissioner, when he presented and explained the Resolution to the Eritreans, laid stress on two basic principles underlying the Resolution: full autonomy of Eritrea within a real federal system, and a democratic regime for Eritrea.

The Eritreans rightly understood that the Federal Government will be distinct from both the Ethiopian and Eritrean Governments, as it is the dominant rule in all federal systems. But in the process of drafting the Eritrean Constitution the Federal Government was identified with the Ethiopian Government, vagueness and confusion prevailed in the wording of the Constitution to such an extent that, in the subsequent implementation the essence of federation was utterly obliterated, as we shall fully explain in the following section dealing with the Constitutional Aspect, and in Part II dealing with the subsequent implementation of the U.N. Resolution.

Also the democratic regime of Eritrea was overshadowed by the overriding role allotted to the Ethiopian Government, acting as Federal Government.

Thus the Eritrean people who were induced on the basis of these two fundamental principles, to accept the U.N. Resolution, and to renounce their claim for independence in favor of a real federation with Ethiopia, were brutally cheated out of their legitimate aspirations.

Does not this procedure constitute a gross breach of trust, vitiating their ear-did consent to the U.N. Resolution?

Whatever it may be, this procedure has imposed an unwarranted limitation on the right of self-determination, and to this extent, constitutes a regrettable deviation, from the spirit and principles of the U.N. Charter.

(pages 6-20)

## PART TWO

### THE RESOLUTION IN ITS IMPLEMENTATION

#### THE WRONG APPROACH

Page 36.

16. We have perhaps exhausted the patience of our readers when, in part I, we demonstrated at length the shortcomings of the U.N. Resolution, vague generalisations and its abrupt federal provisions, Notwithstanding all these defects, the Resolution, if loyally and correctly implemented, would have satisfied to a reasonable extent, the legitimate aspiration of the Eritrean people,

Unfortunately this implementation was left to the Ethiopian Government. It is hardly conceivable that Ethiopia, who was so eager to obtain the annexation of Eritrea - as is testified by her strenuous efforts in the discussions of the General Assembly - (1) shall be the best qualified authority to execute impartially a normal federal plan. Any solemn pledges she may have given to respect Eritrean autonomy and to implement the Federal Act could be conveniently set aside.

(1) Even before the adoption of the Resolution, the position of the Ethiopian Government was quite plain. We read in the extract from A-AC.34SR.43 (Summary Record of the 43rd Meeting) : Mr. Mendoza (Guatemala) - «As far as the future status of Eritrea was concerned, he knew that the official attitude of the Ethiopian Government was that it preferred unconditional union». Major General Theron (Union of South Africa): «It had been suggested that union should be on autonomous lines or even that there should be a federation, although he believed that the latter solution would be unacceptable to the Ethiopian Government.

17. However, this Ethiopian attitude is easily understandable. It is the average conduct of a state who had to relinquish its claim for the annexation of a neighbouring country in favor of a reciprocal federation on an equal footing. It is the attitude of the U.N. Commissioner which is hard to understand or to explain. In the face of adverse facts he continued to believe that his mission will be satisfactorily achieved as soon as the Eritrean Constitution drafted and ratified, and the Federal Act ratified, by the Eritrean Assembly and the Emperor of Ethiopia, The implementation of the Federal Act, the setting up of distinct federal institutions, he presumed, was no concern of his, We read in his Final Report in paragraph 510:

“ 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”.

In paragraph 489 we read:

“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 attitude of the Commissioner was bound to excite the apprehensions of the people of Eritrea. Their leaders held conversations with him, to which he referred in his Final Report (paragraph 762) in the following terms:

« Owing to some nervousness among certain sections of the population, the Commissioner issued a Press Release.

« 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».

It is very difficult to discover, in the terms of the U.N. Resolution, any such limitation on the mission of the U.N. Commissioner. He himself had admitted (paragraph 185 of Final Report) that “the Resolution adopted by the General Assembly, being relatively short, was only a general plan”.

It is plain logic to deduce that a «general plan» has to be worked out, on an equal level, in all its component parts, not only the part dealing with an Eritrean Constitution, but also the part dealing with the federal structure.

18. But even if we agree with the Commissioner and admit prima facie that «the Resolution laid no direct responsibility upon him with regard to federal matters,» the abnormal circumstances he encountered in carrying out his mission should have convinced him of the inadvisability of limiting the scope of his competence. The attitude of the Ethiopian Government, which we shall illustrate in the following Section, was a sufficient argument against entrusting to her care the creation and functioning of the Federal organs.

## SECTION 1

### THE ATTITUDE OF THE ETHIOPIAN GOVERNMENT DURING THE DRAFTING OF THE ERITREAN CONSTITUTION

The Two complementary targets of the U.N, Resolution,

19. There is no doubt that the implementation of the U.N. Resolution required the U.N. Commissioner to attend to the drafting of an Eritrean Constitution ensuring Eritrean autonomy and embodying the democratic pattern ordained by the General Assembly. But, side with this task, and as an elementary requisite for its success, the Commissioner should have initiated a primordial task - that of drafting a Federal Constitution.

In fact, a close scrutiny of the Resolution reveals its attempt to realise two equivalent and complementary aims: one was the establishment of a democratic government in Eritrea, the other was the establishment of a federal structure where Eritrea would be an autonomous member. The first aim was to be realised by a democratic Eritrean constitution, the second by implementing the Federal Act embodied in the text of the Resolution.

Moreover, all the discussions in the General Assembly, prior to the adoption of the Resolution, pointed clearly to the co-existence of these two distinct targets, but the U.N. Commissioner preferred to combine the two targets in one document, an Eritrean Constitution, with the deplorable result that the federal structure received the scantiest attention the solitary text of articles 3 and 7 of the Eritrean Constitution corresponding to paragraphs 1 and 5 of the Federal Act. As mentioned above, he considered “all federal matters outside the scope of his missions, and that it was up to the Ethiopian Government to implement the Federal Act. But the obstructive attitude which the Ethiopian Government kept up all the time he was engaged in drafting the Eritrean Constitution, should have impressed upon his conscience the imperative necessity of adopting a different procedure.

The object of this Section is to demonstrate the various phases of this biased attitude of the Ethiopian Government, which culminated in shattering both aims of the U.N. Resolution.

## THE ETHIOPIAN GOVERNMENT USURPS THE ROLE OF THE FEDERAL GOVERNMENT

20. Contrary to all expectations, to his own previous assertions, to the universally accepted theory of constitutional federalism, to the repeated references of the Federal Act to a distinct Federal Government, the Commissioner decided to identify the Ethiopian Government with the Federal Government: an absolutely irrational decision, which flagrantly violated all the avowed intentions of the General Assembly, and transformed the U.N. Resolution into a meaningless document. Can the Government of the State of New York be identified as the Government of the U.S.A.? But this is exactly the position taken by the U.N. Commissioner, contributing to a sham federation of Ethiopia and Eritrea,

This is his statement in paragraph 87 of his Final Report:

“With regard to the question of 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”,

The false logic of this statement is too shocking for words, How can the “respect” due to the Constitution and institutions of Ethiopia lead to the conclusion that the Ethiopian Government should inevitably be the Federal Government? How can the many references in the Resolution to the Federal Government be made to support his decision, and not to prove the reserve?

The disastrous consequences of this interpretation of «respect» to the Ethiopian Constitution were soon to follow on the same day that the Emperor ratified the Federal Act (11 September 1952), having already ratified the Eritrean Constitution (10 August 1952), he issued Order No. 6 of 1952 by which he commanded the application to Eritrea of the

Ethiopian Constitution (1). Laws and statutes which would be put into effect with other decrees called Federal Laws.

(1) This order was published in the Official Gazette of Ethiopia, the Negarit Gazeta, under the significant title «Federal Incorporation and Inclusion of the Territory of Eritrea within the Empire of Ethiopia».

(See «The Ethiopian Empire - Federation and Laws,» by Nathan Marein, Advocate General and General Advisor to the Imperial Ethiopian Government 1954, P. 48)

The author refers to this Order in the following terms: “The Ethiopian Constitution given by His Imperial Majesty in 1931 was also made applicable to Eritrea by Order No. 6-52”, (page 23).

21. This is an unprecedented episode in Constitutional History. Two divergent constitutions are made to apply to the same territory at the same time: The Ethiopian Constitution which is in a great measure an autocratic instrument (1) , and the Eritrean which on the other hand, thanks to the provisions of the U.N. Resolution, is a democratic instrument, Which of the two would prevail ? What about the autonomy of the Eritrean Government, guaranteed by the Eritrean Constitution and by the U.N. Resolution, The whole absurd procedure can have only one meaning: The Eritrean Constitution is thereby indirectly abrogated, Eritrean autonomy is demolished.

22. Foreseeing that the constitutionality of this Order will be judicially disputed, the Emperor shortly afterwards issued Decree No, 130 of 1952 which extended to Eritrea the jurisdiction of the Ethiopian Courts set up by Decree No, 2 of 1942, and assigned to them the powers and the designation of Federal Courts.

23. The consequences of these actions cannot be dealt with here. They will be fully noted in the following Section, We are now concerned only with the attitude of the Ethiopian Government as it was plainly revealed during the drafting of the Eritrean Constitution. Mention of the Ethiopian Order had to be made here, just to indicate the ultimate outcome of this Ethiopian Attitude.

(1) As examples of this autocratic tendency we may mention that the Ethiopian Constitution was a “grant” from the Emperor, dated July 16, 1931, “It provides for a legislature of two chambers: the Senate whose members are all appointed by the Emperor, and the Deputies who should be elected, but are actually chosen by dignitaries and local chiefs. If the Deputies or the Senators wish to introduce any legislation they must forward the draft bill to the Emperor, and until the Emperor allow the bill to be discussed, it cannot be discussed by the two chambers.

Legislation that has passed both chambers must be presented to the Emperor for confirmation, and the Emperor retains the right to veto indefinitely this legislation. Ministers are not responsible to the Parliament They are even prohibited to attend any meetings of the Chambers without first having obtained permission of the Emperor to do so”. (Ibid, P.19-21). It is reported that another Ethiopian Constitution is now in the making.

Representative of the Emperor in Eritrea.

24. This is a post not provided for in the Resolution or the Federal Act. But, in the process of drafting the Eritrean Constitution, the Ethiopian Minister for Foreign Affairs insisted on installing a Representative of the Emperor in Eritrea who, he claimed, should wield extensive

powers in the Government of Eritrea, The U.N. Commissioner fought against this Ethiopian invasion of Eritrean autonomy. The duel lasted for two years, at the end of which the Commissioner gave in, though not without imposing certain safeguards for Eritrean autonomy, These safe guards were, however, wiped out as soon as the Commissioner left Eritrea (See Section II,)

It is interesting to pursue the successive phases of this duel between the representative of the Ethiopian Government and the representative or the United Nations.

#### THE FIRST PHASE.

After a long dissertation by the Ethiopian Minister, where he deplored the broad measure of autonomy conceded to Eritrea especially in such matters as policing, the budget and tax collection, and the absence of safeguard for the respect of federal laws and decrees in Eritrea, he went on to assert that the viability of the Federation requires maintaining links between the Federal and Eritrean Governments. This was the first indication of his desire to create the post of Emperor's representative in Eritrea.

The U.N. Commissioner valiantly fought back. He said that he had a "distinct impression that their acceptance (the Eritreans) has been based in the existence of real autonomy, as contemplated in the Resolution, and he was far from sure that they would take the same if that autonomy were limited in any way". He went on to refute convincingly the arguments of the Ethiopian Minister: (1)

(1) Parag. 73 to 78 of the Commissioner's Final Report.

"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 these provisions must be considered together with paragraph 12 of the resolution, which provided that the Constitution of Eritrea should be based on democratic principle. 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."

"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, in its voicing the international responsibility of the federation, the Federal State was only justified in taking measures a posteriori in order to fulfil its international obligation."

"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".

“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”.

#### The Second Phase:

These argument and counter-argument went on, on both sides, till the meeting of October 25,1951. (1) In this meeting the Commissioner became more favorably inclined toward the proposal of the Ethiopian Minister of Foreign Affairs. He declared his qualified acceptance of the proposal, in paragraph 86 of his final report he states:

“ 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 in 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.”

(1)...Incidentally we may mention that it was in this fateful meeting that the Commissioner made his decision (referred to above) to the effect that the organs of the Ethiopian Government dealing with Federal affairs would constitute the Federal Government. (parag. 87 of his Final Report.)

“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 of the Constitution, for a representative of the Emperor in Eritrea with certain official functions the actual scope of those functions had not been finally determined. “

“ At the second meeting at Geneva, during a frank discussion, the divergence of views on functions which would 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 views that the Emperor’s

representative could be granted no power 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.”

The Third phase,

Finally the Ethiopian proposal was included in the Eritrean Constitution under Art. 10, a sure victory for Ethiopia's diligent obstructiveness. In justifying his new position, the Commissioner put forward these arguments:

- (a) Co-operating federal service in Eritrea. To support this argument he actually said “The appointment of co-ordinators for federal services in the member states, i.e., of true representative of the President, has often been considered in a federal State such as the U.S.A. The constitutional nature of such an appointment has never been called in question. (1) Moreover, the president of the United States takes precedence at official ceremonies of member states. “ (2)
- (b) Providing liaison with the Eritrean Government.
- (c) Receiving the petitions to the Emperor provided for in the Federal Act.

(1) But it has never been realized.

(2) Parag. 529 of Final Report.

However, to be fair in judging the Commissioner's new attitude it is better to reproduce the text of his statement:

“The problem was to give the Emperor's representative a 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, as the head of the Federation and the democratic institutions of Eritrea. On this, as on various other questions, the Federal Act contains no express provisions.” (parag, 527).

“In his capacity as sovereign of the Federation, the Emperor may constitutionally install a representative in Eritrea... such an appointment would be compatible with the provision of the Federal Act and would in no way encroach on Eritrean Jurisdiction.” (Parag. 529).

“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.” ( Parag.530).

- 25. The consequences of this imposed creation, how it has ultimately neutralized all the democratic safeguards of the Federal Act, and paralysed the autonomous functioning of the Eritrean Government, will be illustrated in the following Section. Suffice it is to say here that it imposed “Representative of the Emperor” has, in the succeeding years, gathered in his hands the reins of the so-called autonomous government of Eritrea.

(pages 36-49)

# **Book : The federal case of Eritrea with Ethiopia part 2**

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## **3. THE IMPERIAL FEDERAL COUNCIL. Page 49**

26. This is an institution provided for in the U.N. Resolution (paragraph 5), in the Federal Act (paragraph 5), and in the Eritrean Constitution (Article 7). The wordings of the text is the same in all three instruments.

The text says: “ 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. “These” common affairs referred to in paragraph 3 extend to defense, foreign affairs, currency and finance, foreign and interstate commerce and external and interstate communications, including ports.

27, Undoubtedly there is a certain degree of vagueness attaching to this text. What is the precise effect of this Council's advice? Will its “advice be binding on the Federal authorities? What sanctions will be applied when the “advice” is ignored? All these essential points are left hanging in the air.

However, in spite of this unfortunate vagueness, the text is nevertheless meant to create a soft of constitutional restraint on the powers of the Emperor, as sovereign head of the Federation,. That was certainly the unexpressed intention of the authors of the U.N. Resolution, although they were not fortunate in drafting the text; otherwise it would be devoid of any sense. Thus in accordance with this interpretation, it was understood that before taking any decision on “Federal matters”, whether it is a federal bill to be submitted to the federal legislature, or a federal executive measure to be applied to both Ethiopia and Eritrea, the Imperial Federal Council should be consulted; its “advice” will have its weight and, as a rule should be acted upon.

And since Eritrea and Ethiopia are two equal partners in the Federation, i.e. of an equal standing, the Resolution explicitly enjoined that the I.F.C. should be composed of an equal number of Ethiopian and Eritreans, in spite of the fact that the population of Ethiopia is almost seven times the population of Eritrea .

28. No doubt the Ethiopian Government was fully aware of the trend of this interpretation, and was therefore determined to nullify the effectiveness. If the Eritrean members on the Council were appointed by the Emperor, this will surely loosen the implied restraint on his

powers. So when the Eritrean Constitution was being drafted, the article concerning this Council was going to be included its text, the Ethiopian Government demanded that the Eritrean members on the Council should be appointed by the Emperor, without the intervention of any Eritrean authority. It argued that the Council is an “advisory” body, and that “it was a generally accepted rule an adviser, must be appointed by those whom he was to advise.”

29, The U.N. Commissioner replied that the Eritrean members were termed “representatives”, and 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 council not to be nominated by those whom they were to advise.”

However, in order to placate the Ethiopian Government, he agreed, that the Eritrean members “should be invested in office by the Emperor”. (1) What if the Emperor refused to invest them? This is a possibility involving a discretionary power that could be easily abused, and is anyhow, a sure gain for the Ethiopian Government.

30, We may observe here that the Resolution, when it referred to the participation of Eritreans in the Federal Legislature, ruled that this participation shall be in accordance with law and in the proportion that the population of Eritrea bears to the population of the Federation (paragraph 5).

As we shall see in the following paragraph, a separate Federal Legislature has not been realized, and even if it were, the Eritrean members will be outnumbered 1 to 10. This anti-federal rule, which nevertheless the Resolution expressly laid down, shows a contrario the importance the Resolution attached to the composition of the Imperial Federal Council of an equal number of Eritreans and Ethiopians, and explains why these Eritrean members should be true representatives of the Eritrean people and not mere appointees of the Emperor. That is why the Eritrean Assembly, when it examined the draft Constitution, insisted that these members, though selected by the Chief Executive of Eritrea (who himself is elected by the Eritrean Assembly) their selection should be ratified by the Eritrean Assembly.

(1) See paragraph 328 and 330 of the Commissioner’s Final Report.

#### 4, Participation of Eritreans in the Federal Organs.

31. Paragraph 5 of the Resolution (corresponding to paragraph 5 of the Federal Act) states: “The citizens of Eritrea shall participate in the Executive and Judicial branches, and shall be represented in the legislative branch of the Federal Government.”

How this participation is to take place was left to the Commissioner to elaborate in the process of implementation entrusted to him by the General Assembly, The Commissioner was determined to fulfil this part of his mission. In his second draft of the Eritrean Constitution (there was a third) he inserted an article dealing tentatively with this question (Article 9 parag. 2 and 3). But the Ethiopian Government was also determined to leave this question of Eritrean participation in Federal Organs out of the Constitution, to be settled later at her own direction, without the inconvenience of a binding written text.

32. The Ethiopian Government objected to article 9 (paragraph 2 and 3) and insisted that it should be deleted. It argued that since the Resolution (and the Federal Act) simply referred to a “law” to organize the participation of Eritreans in the Federal Government, there was no need to go any further, and that a “federal law”, to be promulgated later by the Emperor, would settle all the details of the question.

The fallacy of this argument is obvious, for according to normal constitutional theory, the basic principles of participation of citizens of a member state in the organs of a Federal Government, the general structure of such federal organs, should be provided for in the constitutional text, whilst the scope of the “federal law” would be the working out of the constitutional text in its various implications and in its full details.

The reason for this distinction is obvious. Such details could be altered from time to time by ordinary federal legislation but the framework of federal organs, the basic rules of Eritrean participation in such organs, should not be toyed with except by the process of constitutional amendment.

However, the Commissioner approved the unconstitutional argument of the Ethiopian Government. We quote here his own statement :

“ With regard to paragraphs 2 and 3 of article 9, the Ethiopian Government insisted 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 (paragraph 229 of Final Report).

“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.” (Paragraph 331),

“It was also agreed to delete any reference in the Constitution to the appointment of Eritreans to position in the legislative, executive and Judicial branches of the Federal Government.” (Parag, 394).

33. The final result of this attitude of Ethiopian Government and the acquiescence of the U.N. Commissioner may be summerized as follows:

1. The Eritrean Constitution contained no specific provisions for the participation of Eritreans in the Federal organs.
2. No Federal Constitution was formulated.
3. No Federal organs were established, except what was implied by the statement of the Commissioner to the effect that “ the organs of the Ethiopian government dealing with Federal affairs would constitute the Federal Government.”

We have already referred to the importance attached by the General Assembly to the process of implementing the Federal Act which constitutes the essence of the Resolution. We even quoted the detailed and concrete suggestions submitted by various delegations with regard to the general policy of such an implementation.

The delegations of Burma and the Union of South Africa insisted on the formulation of a federal constitution. The governmental structure shall consist of a federal government and the Government of Ethiopia and Eritrea , with the Emperor of Ethiopia as the Constitutional Head”. There shall be «an executive body, and a federal court.» The Federal legislative body shall be composed of two chambers; election to its first chamber shall be on the basis of proportional representation of the people as a whole,

election to the second chamber shall be on the basis of equal representation of the Ethiopian and Eritrean people;" the federal court shall be the final court of appeal with regard to constitutional matters; its members shall be appointed by the Emperor with approval of both chambers of the federal legislative body; all decisions of the federal court shall be final; ... the executive branch of the federal government shall be responsible to the federal legislative body" etc., etc,

34. All these essential requisites of any Federal plan were well known to the U.N. Commissioner, who, by ignoring the necessity of a separate Federal Constitution has, in fact, accentuated the vital importance of inserting all such requisites in the Eritrean Constitution. However, he was quite content to refer their formation to a "federal law", but where is the "federal legislative body" competent to enact this "federal law?"

Even if we conceive, somehow, the possibility of naming certain Service in the Ethiopian Executive as federal executive services, how can we designate the Ethiopian Parliament (Senate and Deputies) as a federal legislature? Moreover, how can we designate the Ethiopian Courts which apply Ethiopian Law and are constituted according Ethiopian Law, as the Federal Court competent to settle all constitutional disputes between the Federal Government on the one hand and the Ethiopian or Eritrean Government on the other?

But the resourceful Ethiopian Government knew how to solve this paradoxical situation. Has not the Commissioner decided that Ethiopian Organs dealing with federal affairs be considered as federal organs? Well, the Ethiopian Government interpreted this decision as follows: by Order No. 6 of 1952 it extended the application of Ethiopian Constitution and laws to Eritrea, and by proclamation No. 130 of 1952 known as "The Federal Judiciary Proclamation of Ethiopia "amended by Proclamation No. 2 of 1942 before the incorporation of Eritrea into the Empire have federal jurisdiction," (2)

35, Do these autocratic measures signify "federation" or "annexation?" Where are the solemn pledges given by the Ethiopian Government and the Ethiopian Emperor to implement loyally and faithfully the Federal Act and the U.N. Resolution?

We remember, during the debate at the General Assembly, on the occasion of the adoption of the Resolution, that many delegations who voted for the Resolution, expressed at the same time their grave anxiety with regard to the process of its implementation. We quote here, as an example, an extract from the statement of the representative of Chile : (3)

«The fact that we shall vote in favour of this proposal for federation does not mean that we renounce or recant our principles and our defence of those principles. We do maintain them and we feel just as strongly about the self-determination of peoples. We respect that principle, but at the same time, we feel that we must vote in favour of this resolution in order to augment and increase the moral support of that resolution when it is adopted by the General Assembly. We do hope, however, that in the drawing of a Constitution for Eritrea, in which the United Nations will have a certain responsibility there will be included safeguards for the people of Eritrea which will ensure respect for their rights and for their freedom.»

"We feel that the first stage of this problem has been solved., so far as the United Nation is concerned, because we have found a solution to it, but we do not feel that by this the entire problem has been solved. We still have the second stage, the way in which this solution is implemented in the practical light of facts. On the matter, I must say that my delegation was very moved by the declaration which has just been made by the representative of Ethiopia. We believe in and trust the good will and good faith of Ethiopia, and after this statement we

have just heard, we are full of hope regarding the fate of the people of Eritrea . At the same time, I wish to point out that with this hope we shall be waiting. We shall be watching events and awaiting the possibility that the people of Eritrea will be able to consolidate their autonomy with a full guarantee of their rights of Eritrea .”

- (1) See paragraph 21 of this Memorandum.
- (2) See: “The Ethiopian Empire”: Federation and laws’ by Nathan Marain, General Adviser to the Ethiopian Government, page 76.
- (3) Fifth Session, Agenda item 21 (d), 29<sup>th</sup> Sept. 1950 , A-P.V. 315.

#### 5. Terrorist Activities during Consultation in Eritrea

36. The terrorist activities were undertaken on a large scale during the Commissioner’s consultations with the people of Eritrea . These activities were directed exclusively against all leaders and all sections of the population of Eritrea who spoke in favour of Eritrea ’s independence.

Far from us to attribute to the Ethiopian Government any participation in the activities of the “Shifta” bands. We just lay down the facts, as they were often referred to in statements by the U.N. Commissioner, and as they were reported by delegations of the U.N. Commission for Eritrea . Here is an extract: (1)

“The Commission heard allegations to the effect that several Copts had been excommunicated because they did not hold the same political views as those of the Unionist Party. At nearly all the gatherings of the Unionist Party a large number of priests were seen with church emblems, and it was obvious that the clergy was using its influence over the laity. At some places priests and monks complained that they had been threatened or actually excommunicated by the Abuna of the Coptic Church for refusing to support the Unionist Party.»

«Terrorism, which has developed in Eritrea in the form of a system to support a particular policy, is another important factor leading to the grouping of the inhabitants into political parties. Some people who were opposed to the annexation of the territory of Eritrea have been subjected by the terrorists to attacks on their person and property. Others, out of fear, have been compelled to follow the parties which advocate annexation. Prominent leaders of political parties favouring independence have been attacked several times.

- (1) Report of the U.N. Commission of Eritrea, official Documents. Fifth Session, Supplement No.8 (A. 1285), page 191.

## SECTION II

### The Aftermath of Ethiopia 's Attitude Annexation in lieu of Federation

#### A. General Review:

37. The U.N. Commissioner regarded the mere ratification by the Emperor of the Eritrean Constitution and the Federal Act as a pretext for the termination of his mission. The hostile attitude displayed by Ethiopian Government during the drafting of the Constitution, of which we gave some examples in the last Section, did not convince him of the urgency of waiting to see that the U.N. Resolution was actually implemented.

The aftermath was soon to crop up. In the succeeding years Eritrea was turned into an Ethiopian colony, occupied by the Emperor's Armed Forces, and ruled by his Representative.

38. From the beginning it was thinly disguised fact that the Ethiopian Government and the Emperor strongly disapproved of the federal solution. All pledges given to the contrary were mere camouflage. Knowledge of this fact was shared by both the U.N. Commissioner and the British Chief Administrator.

As a further proof of the Emperor's intentions we may mention his procrastination in ratifying the U.N. Resolution. He ratified the Eritrean Constitution, which is a derivative of the Resolution, before ratifying the Resolution itself. His aim was to exercise pressure on the Commissioner, pending the ratification of the Resolution, in order to draft up the Constitution to the Emperor's guise. When the Eritrean Constitution was considered gratifying from his point of view, he later on ratified the Resolution.

Furthermore, the Emperor was only concerned with his egoistic interests. He appraised parag. 1 of the U.N. Resolution which ruled to put Eritrea under the Ethiopian Crown and neglected all other provisions. For instance he trampled upon the interpretation of the U.N. Resolution made by the U.N. Panel of Legal Consultants (see parag. 194-211 of Final Report) and flagrantly - breached paras. 2,3,4,5 of the Resolution. Likewise the U.N. Commissioner regarded the mere ratification of the Resolution by the Emperor of Ethiopia or the Ethiopian Parliament as an excuse for the termination of his mission without seeking the opinion of the Eritrean people and keeping the essence of the Resolution intact.

39. Added to the above discrepancies is the ratification by the U.N. General Assembly of the U.N. Commissioner's final report in the absence of any representative of the Eritrean Government or the political Parties of Eritrea. It is amazing that no queries were posed to the U.N. Commissioner about the hardships and snags that were put in the way of a perfect discharge of his duties. Moreover, if the Assembly had scrutinisingly studied the Commissioner's report it would have found it replete to the fill with contradictions.

40. In point of fact, all that has happened in Eritrea was a paradox. According to the U.N. Resolution, the Eritrean Government was set up, but its powers were usurped by the representative of the Ethiopian Emperor who exercised his authority through his Occupation Army; the Eritrean Constitution superficially proclaimed but practically the Ethiopian Constitution and statutes were in force. Hence the U.N. Resolution was a dead letter and the human rights of the Eritrean people were obliterated.

The Eritrean people, secure in the guarantees provided for them in the U.N. Resolution, and sure of being on equal footing with Ethiopians, believed they would be able to question, discuss and defend their interests but they were shocked by the oppressive attitude of the Ethiopian Government. The Ethiopian Government pursued a coercive policy towards Eritreans, and stringently barred them from getting in contact with the Emperor, who is the head of the Federation.

41. Consequently the Eritrean political parties, whose representatives at the U.N. approved the compromise settlement of the Eritrean case, provided in the U.N. Resolution (realised the sheer violation of the principles of this resolution, and the utter disrespect of the Eritrean Constitution by the Ethiopian Government. They therefore held a conference and cabled on 12-10-1953 to the U.N. Secretary-General their protest against Ethiopia 's abuse of the U.N. Resolution and requested him to take immediate measures to stop the Ethiopian Government's

masquerade. Unfortunately this request seems, so far, to have been ignored by the Secretary-General.

42. Also, they repeatedly cabled to H.M. the Emperor. He was kind enough to respond by diffusing terrorism, menace and diffidence in place of law, justice and security. As a matter of fact, there is at present in Eritrea an Ethiopian police state.

43. Under the impact of the impending danger, and under the pressure of public opinion, the Eritrean legislative assembly passed a resolution in its session No. 328 on 22-5-1954 «which was handed on 10-6-1954 to Mr. Albert Read, Director of the U.N. legislature Bureau, for passing over to the U.N. Secretary-General). This Resolution requested the Chief Executive to warn the Ethiopian Government to cease its abusive policy, otherwise he should refer the case to the U.N. But the Emperor's representative was struck by this unexpected attitude of the Assembly, the Government and the politicians of Eritrea and had to revert to his traditional policy of terrorism and repression and finally ousted the previous Government which was elected by the Eritrean people under the auspices of the U.N. Commissioner and the British Administration.

#### B. - Detailed Review of Ethiopia's Gradual Abrogation of the U.N. Resolution.

##### 1. - Action taken by the British Administrative Authority

###### a) APPROPRIATION BY ETHIOPIA OF EX - ITALIAN PROPERTY.

44. When the United Nations Commissioner was at Geneva, the United Nations General Assembly debated, in its session of 29-1-1952, the assignment of the possessions and properties of the ex-Italian Government in Eritrea, and according to the Treaty concluded between the allies and the Italian Government in Paris on 10-11-1947, it was decided that the Italian possessions and properties in Eritrea be assigned to Eritrea.

It is Clear that when the Treaty says Eritrea, it means the autonomous Eritrean Government, and not the Ethiopian Government which has arbitrarily appropriated these possessors.

The Eritrean Representative Assembly ratified the constitution on 10-7-1952. It was then signed by the United Nations Commissioner on 6-8-1952, then it was ratified by the Emperor on 11-8-1952, before he sanctioned the United Nations Resolution on 10-9-1952. On 15-8-1952, that is, before the Emperor ratified the Federal Act, and before the take-over of powers by the Eritrean Government, the British Administration handed over all property and possessions to the Ethiopian Government.

Loud protests were made by members of the Eritrean Assembly to the British Administrator of Eritrea to account for his illegitimate action of handing the possessions of Eritrea to the Ethiopian Delegation before the formation of the Eritrean Government and the Federal Government as provided in paragraphs 13 and 14 of the United Nations Resolution.

###### b) REFUSAL TO SET UP A PROVISIONAL CUSTOMS UNION.

45. Paragraphs, 9, 11, and 14 of the United Nations Resolution empowered the British Administrative Authority to continue its administration until 15-9-1952, to set up a Representative Assembly which would co-operate with the United Nations Commissioner in

drafting the text of the Constitution and to unify the customs of Eritrea and Ethiopia as a safeguard for the Eritrean Economy set up of the Federal Union.

But the British Administration in collusion with the Ethiopian government delayed the achievement of the important instructions of the United Nations of Provisional Union of customs with Ethiopia , and this in turn, had resulted in tremendous damage to the Eritrean Economy.

c) ELECTORAL LAW OF AN ERITREAN ASSEMBLY ENVISAGED TO RATIFY THE ERITREAN CONSTITUTION.

46. The British Administrative Authority succeeded in creating a parliament with a majority of pro-British and pro-Ethiopian members, i.e., members who advocated the division of Eritrea and putting one part of it under British Mandate, and the Unionist Party members who fostered the unconditional amalgamation of Eritrea with Ethiopia. Meanwhile all the Parties who demanded Eritrean independence and fought against colonialism were persecuted during the electoral campaign, and were consequently excluded from debating the Constitution.

d) EXTENSION OF THE DURATION OF THE ERITREAN ASSEMBLY.

47. Furthermore, the British Administration plotted with the Representative of Ethiopia to extend the duration of the Assembly for two more years. Thus they could shut out Eritrean Liberals.

It is to be recalled that the representative Assembly was elected for a provisional term during which it could discuss and ratify the Constitution. Following this, a new Assembly was to be elected for representing and governing the country.

To consummate their conspiracy, the British Authority plotted with the representative of Ethiopia in Eritrea to invest this provisional Representative Assembly with permanent representation of the Eritrean people, and extend the duration of its mandate from two to four years.

2. -- The transfer of power by the British Administrator. His departure, followed by departure of U-N. Commissioner, who submitted his final Report to the General Assembly.

(1) Mr. Tedla Bayro, was the Secretary-General of the Union party with Ethiopia . Before his appointment as Head of the Eritrean Executive he was President of the Eritrean Assembly. In this post he was replaced by Ali Moussa Rada, vice-president of the British sponsored political Party for the Partition of Eritrea.

48. On 11-9-1952 the Emperor ratified the United Nations Resolution. After 19-9-1952 the British Administration handed powers over to the Head of the Eritrean Executive (1) and to the Representative of the Emperor in Eritrea . The offices of the British Chief Administration were terminated as per Manifesto No.136 of 1952 which stated that the British Chief Administrator had discharged his duty by setting up the Eritrean Government and by transfer of the powers. He then left the country and was followed by the United Nations Commissioner who declared that his duties ended with the formation of the Eritrean Government as per paragraph 15 of the Resolution. As to the rest of the Resolution, the Eritrean Government, in collaboration with the Ethiopian Authorities, were to establish the Federal Government as referred to in paragraph 762 of the final report.

49. On 17-10-1952 the U.N. Commissioner submitted his final report to the U.N. Secretary-General. This report was approved by the U.N. General Assembly in its session on 12-12-1952. In this session neither the Eritrean people nor their Government were represented. Even party leaders who before pleaded the case of the Eritrean people at the U.N. did not attend that session. Only representatives of Ethiopia and Britain and the U.N. Commissioner were present.

If the General Assembly had carefully studied this final report, it would have discovered many contradictions. Consequently Eritrea entered into the noose of colonialism and was entangled in endless and inextricable problems arising from the absence of the Federal government which was supposed to be in charge of federal Affairs and settle disputes between the governments of Eritrea and Ethiopia as mentioned in paragraph 3, 4, and 5 of the U.N. Resolution. The Ethiopian Government imposed itself in place of the Federal Government, disregarding the U.N. Resolution and heedless of all pledges and undertakings given by the Emperor.

3. - Order No. 6 of 1952 and proclamation No. 130 of 1952

50. This is the gravest encroachment upon the autonomous jurisdiction of Eritrea. By the Order, the Emperor extended the application of the Ethiopian Constitution and the Ethiopian Laws to Eritrea. The Proclamation extended to Eritrea the jurisdiction of the Ethiopian Courts set up by Decree No. 2 of 1952, and assigned to them the powers and designation of Federal Courts. (1)

We have already commented on this autocratic legislation. It is manifest, without any comment, that it is completely contrary to the Eritrean Constitution, to the Federal Act and to the U.N. Resolution.

We add here that the people of Eritrea became panic stricken and bitterly desperate over the future of their country.

Economic activity was threatened, prices rose up continuously and a severe crisis ensued.

(1) The U.N. Commissioner stated in his Final Report para. 205) the opinion of the U.N. Panel of Legal Consultants with regard to the position of the Federal Judiciary, in the following terms :

« The Panel admitted that respect for the jurisdiction of both parties could only be effectively ensured by the establishment of the Federal Court independent of both the Federal and the Eritrean Governments and competent to settle dispute between them ».

51. At that time, from 15-9 to 30-11-1952 Mr. Baneth, the Crown Counselor in the United Kingdom was in Eritrea in order to form, with the collaboration of U.N. experts, the Eritrean Government. Mr. Baneth was delegated as adviser to the Eritrean Committee by the U.N. Commissioner and the British Administrative Authority. Mr. Baneth submitted a report to the Eritrean Government, recording the shocking intervention and absolute contradictions of the Ethiopian Government. In this report he requested the Eritrean Government to deal with the matter through the Imperial Federal Council of the Federation. According to paragraph 5 of U.N. Resolution, this Council is the only liaison between the Eritrean Government and the Emperor.

4. - The functioning of the Imperial Federal Council is paralyzed

52. The Imperial Federal Council had to be established. At last the Emperor nominated five Ethiopian members and the Eritrean Assembly nominated five Eritrean members to compose the Council. But the composition of a Council is one thing, and enabling it to function is another.

The Council met at Addis Ababa, but was unable to settle or even discuss any affairs of the Federation, all the Reports of Eritrean members were turned down owing to the fact that the Ethiopian members were not entitled to debate any matter. They were not even able to submit suggestions of Eritrean members to H.M. the Emperor, because the autocratic system of government does not allow any Ethiopian national to raise proposals to H.M. the Emperor or discuss acts issued by H.M. unless H.M. gives orders to that effect. In that particular case H.M. did not order discussing the Federal System.

The functions of the Federal Council were then centered in the hands of the Representative of the Emperor in Eritrea, who directed Federal affairs including the Eritrean Government.

53. The Eritrean members in the Federal Council spent four idle months in Ethiopia, then they returned to Eritrea where they submitted to the Eritrean Assembly a report about the reasons for this failure to fulfil their mission in Ethiopia.

The Representative of the Emperor in Eritrea regarded this report as an impeachment to the Ethiopian Government, and consequently released some of the members. Thus it became impossible for the Council either to meet or to function.

5. -- The appropriation by Ethiopia of Eritrea's share in the Customs revenue

54. In May 1953, a financial Committee was formed of the Eritrean Minister of Finance, the Controller-General appointed by the Eritrean Assembly and three other Eritrean representatives from the Eritrean Government, the deputy Ethiopian Minister of Finance and four other representatives nominated by the Ethiopian Government. This Committee was directed to study the Financial situation and to organise the customs and other federal affairs such as communications, telephone, telegraph, Post, ports, airfields and Eritrean properties handed over to the Ethiopian Government by the British Administration on 15-8-1952.

In this connection we would insert this incident as a clarification.

The financial year in Eritrea starts from the first day of July and end on the last day of June of the following year.

As the British Administrator had to hand over powers to the new Eritrean Government in September, he had to close up an interim Balance Sheet of Eritrea in September. The new Eritrean Government was faced with the question of funds provision in a short and pressing time. As a provisional solution provision the British Administration requested from the Ethiopian Government an advance of 681.000 pounds, (about 4.500.000 Ethiopian dollars) on their due share in the total income of the unified Eritrea-Ethiopia customs, pending final settlement at the end of the financial year.

5. When the Committee asked for verification of the customs revenue, in order to ascertain Eritrea's share, it was forbidden by the Ethiopian Government on the pretext that the sum of 4.500.000 Ethiopian Dollars constituted Eritrea's Portion in the customs dues.

The Eritrean people in vain protested against this despotic attitude of the Ethiopian Government.

They had to bear the onus of extra taxes, beside suffering from those of a shattered economy. Those burdensome extra taxes, were imposed in order to cover the shortage in Eritrea's share in the customs Revenue, and to meet the requirements of the budget.

■ Virtual abrogation of the provisions Of Eritrean Constitution concerning Human Rights and Fundamental Freedom.

a) SUPPRESSION OF LABOR UNIONS:

56. Under the impact of bitterly shattered economy, the soaring costs and the rapid fall of the standard of living, workers gave the cry, and their claims rose loud.

By virtue of Art. 33 of the Constitution, the General Union of Labor Syndicates was set up. Then the Union was dissolved and its services were wound up by virtue of the odd Ethiopian police laws. The eccentricity of these Ethiopian laws lies in not recognising the freedom of meeting, and freedom of expression before obtaining the approval of the Ethiopian Government. This procedure is a breach of paragraph 7 of U.N. Resolution and Art. 22 of the Eritrean Constitution.

b) SUPPRESSION OF FREEDOM OF THE PRESS

57. The Eritrean Press enjoyed during the ten year British Administration certain freedom. But this freedom was immediately suppressed after the set up of the Federation. The Ethiopian Government used all possible means for strangling freedom of the press. For instance, it brought newspapers and journalists to trial before Eritrean Courts. Four editors of «Voice of Eritrea», the organ of the Eritrean Democratic Front, were sued, but the Court acquitted them on 26-5-1953. But this Court decision did not satisfy the Ethiopian Government, which referred the case to the Supreme Court which again acquitted the «Voice of Eritrea» by its decision No. 901, handed down on 19-S-1953. This Court action was made according to paragraphs 22, 30 and 34 of the Eritrean Constitution and paragraph 7 of U.N. Resolution which basically decreed public liberties.

58. The Ethiopian Government was disappointed at the judgements passed by the Eritrean Courts. In order to get over this snage, the Ethiopian Government decided to refer Eritrean Press and newspaper men to Ethiopian Courts masquerading as «federal courts.» The Ethiopian Courts overrode the verdict passed by the Eritrean Courts and sentenced the «Voice of Eritrea» newspaper to a two-year suspension, and the imprisonment of its editors for periods ranging from three to six years, as per sentence No. 273 dated 8-12-1953. They Were accused of calling for the overthrow, of the Government and publishing what Ethiopia named «Secrets», when they stated that Eritrea was entitled to 5.150.000 Ethiopian dollars monthly, being her due share in the revenue of the customs, post telegraph, salt, taxes, etc., in accordance with paragraph 4 of U.N. Resolution.

59. By this procedure the Ethiopian Government suppressed public liberties and democratic freedoms guaranteed to the Eritrean people by U.N. Resolution and the Eritrean Constitution. The Ethiopian Government adopted repressive measures against all newspapers and pressmen who advocated the application of the political rights provided in U.N. Resolution. They were liable to imprisonment, confiscation and suspension. To this effect

the Ethiopian Government initiated decree No. 138 which contradicted paragraph 7 of the U.N. Resolution.

60. When the Ethiopian Government realized that the Eritrean judicature did not help her to undermine the U.N. Resolution and nullify the Eritrean Constitution, it resorted to the violation of Court judgements in order to shake the confidence of the Eritrean people in the integrity of their Justice Authorities which adopted the principles of the Federation in discharging their duties. For instance, in August 1953, the Ethiopian Court revoked a sentence passed by the Eritrean Courts in a local case, the «Damba Case». The Eritrean Attorney Authorities, the Eritrean Government and the Eritrean Justice Authorities protested against the interference of the Ethiopian Government. Yet in spite of the boycott of the Eritrean Government of the Ethiopian Court, this court passed its sentence in the absence of the Eritrean Government, in favor of the felonious party who was condemned by the Eritrean courts. The sentence ruled to fine the Eritrean Government Eth. \$ 2500 to be paid to the other party, as a penalty for the absence of the Eritrean Government this policy was pursued in order to barate the esteem of the Eritrean Government and diminish its significance to Ethiopia.

When the Eritrean Government refused to pay this penalty the Ethiopian, Authorities arbitrarily withdrew this sum from the account of the Eritrean Government in the Bank of Ethiopia

The Eritrean people became aware of the helplessness of their government when it came under the yoke of the Emperor's Representative and decried the repeated encroachments of the Ethiopian Government upon the Eritrean Executive, legislative and judicial authorities as well as Press and individuals. Moreover, Eritrean members in the Federal Council brought back from Ethiopia reports that the Ethiopian Government was lukewarm in complying with United Nations Resolution and setting up a federal Government.

61. In view of all these reasons, all the political parties that upheld the U.N. Resolution, held a public conference in October 1953 in order to discuss the situation.

The conference sent to the U.N. Secretary-General on 12-10 -1953 cable No. 58465. Then also dispatched to the Emperor cable No. 58466, of which a copy was sent to the Ethiopian foreign minister. In these cables they expressed their grave concern over the serious situation in Eritrea and deplored the inevitable fatal consequences. Moreover they requested the U.N. to delegate another spot commission for investigating the situation.

Unfortunately, both the Emperor and the U.N. turned a deaf ear to Eritrea 's petition. The situation deteriorated, and denunciation became formidable acute at the beginning of 1954 when the Emperor visited Eritrea for the second time in order to inaugurate a Church built in Massawa. There, he received an avalanche of petitions and complaints from all circles and organizations, soliciting that Ethiopia relax its grip on Eritrea in order to restore the political situation to its normal state, and to do away with the economic crisis which was the off shot of levying exorbitant taxes on Eritreans who are deprived of the rich resources of their country. It is to be recalled that these heavy taxes were grudgingly imposed in order to cover the shortage in revenue resulting from Ethiopia 's denial of Eritrea 's due share in the receipts of the Federal Government. But the Emperor could turn this incident to his profit. He exempted Eritrea from that year's taxes, which he alleged to have paid out of his pocket. But the Emperor did not amend Ethiopia 's policy of coercion towards Eritrea whether politically or economically. He did not even release Eritrea 's due share in customs revenue, etc... It is to be

noticed that the Eritrean people did not ask the Emperor either to exempt them from taxes or to pay for them, but they requested him to retribute only to them their rights.

(pages 49-75)

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