

THE UNITED NATIONS TRIBUNAL IN LIBYA,

Established by Resolution 388 (V), dated 15 December 1950, of the United Nations General Assembly,

Composed of Messrs. Faiz Yorukoglu, President; Hugo Wickström, Judge; Vicente Sánchez Gavito, Judge,

With regard to the Request for Interim Measures

In the case concerning the administration of certain properties of the State in Libya

between

The Government of Italy, represented by Mr. Fernando Valenzi,  
and

- 1) The Government of the United Kingdom of Great Britain and Northern Ireland, represented by Sir Harry Trusted,
- 2) The Government of the United Kingdom of Libya, represented by Mr. W. L. Dale,

DELIVERS THE FOLLOWING DECISION:

On 22 December 1951, the Agent of the Italian Government filed with the Tribunal a Memorial against the British Government and a Request for Interim Measures. In the Memorial, the Agent asks that his Government be reinstated in the administration of (a) its alienable patrimony in Tripolitania and Cyrenaica; (b) the buildings which it would like to use for its diplomatic and consular establishments in Libya; and (c) the buildings that it desires to dedicate to the educational needs of the Italian community in the said country. All of these properties are listed specifically in the annexes to the Memorial.

The Request for Interim Measures contains the petition that the Tribunal take such steps as it may deem appropriate in order to ensure the administration of the properties under reference.

On 24 December 1951, the independence of Libya was proclaimed.

The Tribunal decided, on 29 December 1951, that in view of the fact that the Libyan Government as well as the British Government had an interest in the pleadings presented by the Government of Italy, the Memorial and the Request for Interim Measures should be communicated to both the British and the Libyan Governments.

In the Answer of 7 January 1952 and in the Reply of 31 January 1952, the Libyan and Italian Agents, respectively, remarked on the Tribunal's ruling on the subject. The British Answer of 9 January 1952 and Counter Memorial of 31 January 1952 do not refer to the matter. The Tribunal considers that the Libyan and Italian Agents' remarks on this point do not constitute an exception to its ruling. Therefore, the Tribunal formally confirms the said ruling's implication, i.e., that the Libyan Government is to be considered as a co-defendant.

The aforesaid Answer of the Libyan Government questions the Tribunal's jurisdiction to entertain the said action and the said incident. The Libyan

---

<sup>1</sup> General list No. 1.

Agent's contentions on this point are that the Italian Government's claim is in essence a petition for equitable arrangements and that there is no dispute with respect to the listed properties neither between the Italian and the Libyan Governments nor, as far as he is aware, between the Italian and the British Governments. The Agent informs the Tribunal that negotiations have been proceeding between the Governments of Libya and of Italy, with a view to carrying out the terms of Resolution 388 (V) of 15 December 1950 and concludes that the Tribunal is without jurisdiction either to order an equitable arrangement or to decide the Italian Government's claim under the terms of Article X, paragraphs 1 (a) and 1 (b), because the existence of such negotiations makes it impossible to contend that there is a dispute between the parties.

On the matter of competence, the British Answer of 9 January 1952 and the Counter-Memorial of 31 January 1952 do not raise exceptions of any kind.

The Tribunal considers that the Libyan Agent has not established the validity of his contention to the effect that the Italian Government's claim is essentially a petition for amicable settlement. The Tribunal also considers that the circumstance that negotiations are being carried forth by the parties does not impede them from bringing before it one or several of the questions being discussed in such negotiations. Therefore, it believes that the action introduced by the Italian Government by means of its Memorial of 22 December 1951 falls within the scope of its jurisdiction, in view of the fact that its subject-matter is the transfer of the administration of properties comprised in the categories specified in Article 1, paragraphs 3 (a) and 5 of resolution 388 (V) and that the said Government has based its action on Article X, paragraph 1 (b) of Resolution 388 (V). Consequently, the Request for Interim Measures has been properly brought before the Tribunal, the said Request being incidental to the action introduced by means of the Memorial.

Having disposed of the exception of lack of jurisdiction and confirmed its ruling on the status of the Libyan Government, the Tribunal will examine the said incident of interim measures in the following paragraphs:

1. As has been stated above, the Italian Government, in its Request dated 22 December 1951, asks the Tribunal to take such measures as it may consider appropriate to ensure the administration of the properties listed in the annexes to the Memorial presented by that Government on the same date.

2. In the Request, the Italian Government proposes, as specific measures of protection, either that it be entrusted provisionally with the administration of the listed properties or that the said administration be given to a Government not involved in the case. Italy bases its Request on Article 26 of the Tribunal's Rules of Procedure.

3. Now, both Articles 25 and 26 of the Rules of Procedure were adopted in order to empower the Tribunal to protect jeopardized rights of the parties. The Tribunal's thoughts on the subject were that a possibility existed that the parties would legitimately fear that, unless certain of their rights were afforded judicial protection within a reasonably short period of time, the ultimate recognition by the Tribunal of such rights would lose, in practice, part if not all of its value. Interim measures, therefore, will be taken only in those cases in which the Tribunal is convinced that a right not as yet established by it, but susceptible of being so established, is actually in jeopardy.

4. The Agent of the Libyan Government has properly understood the nature of the procedure in question. In his Answer, he states that "a Court will

only grant interim protection if this is necessary to preserve the property, the subject of the claim, i.e., if failure to grant it may result in the claimant losing the fruits of his action if he is successful.”

5. The procedure is not foreign to the legal system of Italy. In fact, the *Nuovo Digesto Italiano* contains the following definition of *Atti Conservativi*, which adequately describes the procedure the Tribunal had in mind when it adopted Articles 25 and 26 of its Rules, to wit:

*Atti conservativi sono le misure dirette ad evitare il pericolo da cui è minacciato il soddisfacimento di un diritto, non ancora definitivamente accertato, ed a garantirne l'eventuale futuro soddisfacimento per il caso che se ne riconosca giudiziariamente l'esistenza.*

6. In the present case, the Request of the Italian Agent, with regard to the question of the danger it seeks to remedy, merely stated that, upon the termination of the British administration of Tripolitania and Cyrenaica, the listed properties were to be deprived of an administering agency. In this connection, the Libyan Government does not limit itself to state that the properties had been placed under its own administration, but goes on to say that the Custodians of Property in Cyrenaica and Tripolitania, under the British Administration, have been retained in their posts, together with their staffs, and that said officers will exercise their functions in accordance with the Control of Property legislation, under the direction of the Financial and Economic Adviser of the Libyan Government.

7. Although the Italian Agent objects to this arrangement, on the grounds that it constitutes a form of unilateral control (Reply of 31 January 1952), in the Tribunal's estimation it solves in a satisfactory manner the problem which the said Agent posed in his Request.

8. But in his Reply the Italian Agent sets forth an entirely new basis for his petition of interim measures. This runs counter to the underlying principle of Article 11, paragraph 3, of the Tribunal's Rules of Procedure according to which the parties in the replies and rejoinders may develop only the arguments set out in their memorials and counter-memorials. The Tribunal is willing to entertain it, nevertheless, in view of the special situation confronting the Italian Agent when he produced his Reply. He was, in fact, pleading a case which had substantially changed only two days after the presentation of the Request, i.e., when Libya achieved its independence and the administration of the listed properties was transferred to its Governments by the British authorities.

9. The Italian Agent contends, in his Reply, that this action on the part of the British authorities has restricted the right of his Government to have the transfer regulated by the agreements referred to in Article 1, paragraphs 3 (a) and 5, of Resolution 388 (V) and to choose the buildings which it would like to dedicate both to its diplomatic and consular establishments and to the educational services of the Italian community. He further contends that the Request for Interim Measures was meant to avoid a modification of the factual and legal status existing before the transfer of administration and that such a modification is detrimental to Italy's position in the negotiation of the agreements under reference (Reply, paragraph 7). On this basis, the Italian Agent asks that his Government's rights be restored to the situation obtaining prior to the transfer of administration.

10. It is the Tribunal's opinion that this alleged restriction of or damage to the rights of the Italian Government is not a matter which can be remedied by means of the procedure established by Article 26 of the Tribunal's Rules,

the characteristics of which have been set forth above. The Tribunal believes consequently, that the Request for Interim Measures presented by the Italian Government on 22 December 1951 should be rejected.

FOR THESE REASONS, THE TRIBUNAL DECIDES:

- I. The exception of lack of jurisdiction which the Libyan Agent raised in his Answer of 7 January 1952 is rejected;
- II. The request for Interim Measures, presented by the Italian Government on 22 December 1951, is likewise rejected.

The present decision has been drawn up in the English and French languages, the English text being authoritative.

Tripoli, Libya, this eighteenth day of February, nineteen hundred and fifty-two.

Hugo WICKSTRÖM

F. YORUKOĞLU

V. SÁNCHEZ GAVITO

---