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Chairman: Mr. Humberto DIAZ CASANUEVA (Chile).

Expression of sympathy to the Government and people of Italy in connexion with the recent catastrophe in the Piave Valley

1. The CHAIRMAN asked the Italian delegation to convey the Committee's deepest sympathy to the Italian Government and people in connexion with the flood disaster caused by the bursting of the Vaiont Dam in northern Italy.
2. Mr. SPERDUTI (Italy) thanked the Chairman and said that he would convey the Committee's message to the Government and people of his country.

AGENDA ITEM 43

Draft Declaration on the Elimination of All Forms of Racial Discrimination (A/5459, A/5503, chap. X, sect. II; E/3743, paras. 89-145; A/C.3/L.1067, A/C.3/L.1076-1077, A/C.3/L.1085-1086, A/C.3/L.1090 and Add.1, A/C.3/L.1111-1113 and Add.1, A/C.3/L.1114/Rev.1, A/C.3/L.1116 and Rev.1, A/C.3/L.1117) (continued)

ARTICLE 9 (continued)

3. Mrs. REFSLUND THOMSEN (Denmark) said that her delegation, which had been prepared to accept the original drafting of article 9, opposed the nine-Power amendments (A/C.3/L.1090 and Add.1), for the same reason that had led it to reject the amendments of the Soviet Union (A/C.3/L.1067) and Czechoslovakia (A/C.3/L.1069) to that article: the amendments conflicted with the principles of freedom of association and expression as practised in a democratic society. In reply to those delegations which said they could not understand objections to providing in criminal law for the punishment of incitement to racial hatred and violence, she observed that the criminal law of Denmark did in fact prescribe punishment for persons who, by disseminating false rumours or accusations, persecuted or incited to hatred against religious or racial groups, and also for persons who incited to violence against such groups. However, the nine-Power amendments went much further. Point 1, against

which her delegation would have to vote, contained so sweeping a statement that it clearly imperilled the principles to which she had referred. She could vote for point 2 only if the United States sub-amendment to it (A/C.3/L.1116) was adopted. She would oppose the Albanian sub-amendment (A/C.3/L.1117). If the nine-Power amendments and the Albanian sub-amendment were adopted, her delegation would be forced, against its will and despite its well-known opposition to all forms of discrimination, to reconsider its position on the draft Declaration as a whole.

4. Mr. RAZGALLAH (Tunisia) stated that his delegation was deeply attached to the principle of freedom of thought, expression and association. Nevertheless, it also recognized the principle that freedom ended where it encroached on the freedom of others. The punishment of abuse of freedom was accepted throughout the world, and certainly the phenomenon of racial discrimination with which the Committee was dealing was such an abuse. His delegation was most anxious, however, to see the maximum support given to article 9 and to the declaration as a whole, and it would therefore support any reasonable compromise that might be reached on the article.

5. Mr. GOODHART (United Kingdom) associated himself with the remarks of the Danish representative. Most countries already had laws making incitement to hatred and violence a criminal offence. The nine-Power amendments, however, went so far that they might easily be interpreted as an endorsement of the persecution of unpopular minority pressure groups. To give an example, according to the nine-Power amendments, members of the Black Muslim organization, a United States minority group which preached against the white population, would have to be prosecuted under the criminal law. That sort of action would hardly advance the cause which the Committee was trying to defend.

6. Mr. DELGADO (Senegal) said that his delegation had been prepared to accept the nine-Power amendments, which introduced two important elements: punishment under the criminal law of the dissemination of racist propaganda and prohibition of organizations engaged in racist activities. Like the Tunisian representative, he believed that freedom of association was not absolute but that it must be curtailed when it disturbed public order, as indeed it generally was. In most countries, the organizations of the kind the Committee was discussing were already banned, and rightly so in view of the great harm they had always done and would continue to do if given the chance. Freedom of the individual ended where the freedom of society began. That applied to freedom of expression and association as much as it did to all the other rights which national and international legislation had, in the light of experience, subjected to restrictions.

7. His delegation trusted, however, that wider agreement could be reached on the present issue, and it

would support a compromise formula provided that the basic spirit of the nine-Power amendments was not sacrificed.

8. The CHAIRMAN drew attention to the revised United States sub-amendments (A/C.3/L.1116/Rev.1) to the nine-Power amendments, which had just been circulated.

9. Mr. YAPOU (Israel) stressed the extreme importance of article 9. His delegation had found the original text weak when compared with the magnitude of the problem and the very tragic experiences of the present century. He was therefore prepared to accept the nine-Power amendments.

10. It had been objected that the Soviet amendment might open the way to arbitrary interpretations. On the other hand, some thought it sufficient to have incitement to hatred and violence "severely condemned". Yet in many cases the Committee had gone further: it had, for instance, adopted an article calling for the rescission of laws. In the present case, a number of delegations were urging restraint. The Israel delegation, however, believed that article 9 required the strongest possible wording. The enormous harm done by organizations preaching racial hatred was well enough known not to require further comment.

11. Some countries were faced with difficulties of a legal and constitutional nature. But if a declaration had any meaning at all it was that it laid down certain goals towards which the international community should advance. Where the law was not already in keeping with the principles enunciated, it could be gradually brought into conformity with them.

12. There was no question of imposing any form of censorship or any restrictions on the free expression of ideas. The very point was that under the cover of expression of ideas, actions of the most hideous nature were urged and provoked. And, experience had shown that calls for action could be countered only by action.

13. He understood the point of view that the final elimination of racial discrimination could be achieved only through education, and that in some cases legislation might infringe rights and freedoms. That was not, however, a new issue either nationally or internationally. Restrictions of freedom had been accepted at both levels. Article 29 (2) of the Universal Declaration of Human Rights recognized limitations connected with "the rights and freedoms of others" and with "morality, public order and the general welfare in a democratic society". The same article in its third paragraph, forbade the exercise of rights "contrary to the purposes and principles of the United Nations". Article 30 condemned activities "aimed at the destruction of any of the rights and freedoms set forth herein". Those limitations had been accepted by all the countries represented in the Committee. Furthermore, the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome, on 4 November 1950,^{1/} stated that restrictions for the protection of the rights and freedoms of others might be "prescribed by law". Article 2 of the draft Convention on Freedom of Information—an article already adopted by the Committee—provided for legal restrictions in respect of the "systematic dissemination... of expressions inciting to war or to national, racial or religious hatred" (A/4636, annex). Article 26 of the

draft Covenant on Civil and Political Rights (A/5000, annex) stated: "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law." Article 19 of the same instrument recognized restrictions on freedom of expression connected with "the rights or reputations of others", "public order" and "public health or morals".

14. The concept of restrictions reasonably adopted and enforced had also been widely accepted in national laws. The Indian penal code, as amended in 1961, provided a penalty of up to three years' imprisonment for attempts to promote feelings of enmity or hatred between different religious, racial or language groups. The Norwegian penal code, as amended in 1961, prescribed punishment of persons who publicly insult or provoke hatred or contempt of a race on account of its creed, extraction or origin. The Netherlands penal code prescribed punishment of anyone deliberately and publicly expressing himself either in speech or in writing in a manner offensive to a group of the population. By decision of the Federal Council of Switzerland, in 1948, the Federal Attorney was instructed to impound literature and articles of a character hostile to religion and democratic institutions.

15. In view of those precedents he believed that the wording in the nine-Power amendments was entirely reasonable, and he strongly urged the delegations that had voiced objections to it to reconsider their position.

16. Mr. MONOD (France) said that, under the nine-Power amendments, a person writing a book or pamphlet or expressing his opinion at a meeting might be liable to punishment for the propagation of objectionable ideas. Such far-reaching restrictions on the freedom of thought and opinion conflicted with the very foundation of that conception of human rights which his country had been among the first to proclaim. They also conflicted with the Universal Declaration of Human Rights, which the United Nations had adopted, and with the draft Covenant on Civil and Political Rights, on which the Third Committee had worked so hard. His delegation had hoped that article 9, as originally drafted, would be generally acceptable. The unanimous adoption of the draft Declaration was eminently desirable, because it would give the text its full moral significance. His delegation could not support the nine-Power amendments.

17. Mr. GILCHRIST (Australia) thought that the nine-Power amendments and the Albanian sub-amendment would go far in restricting freedom of speech and association. Racial propaganda was best combated by open discussion, which was liable to expose the intellectual bankruptcy of the advocates of discrimination. In an effort to obtain unanimity, his delegation was prepared to support the nine-Power amendments as amended by the United States (A/C.3/L.1116/Rev.1). If the Albanian sub-amendment, or the nine-Power amendments in their present form were to be adopted, his delegation might have to reconsider its position on the draft Declaration as a whole.

18. Mr. ELUCHANS (Chile) thought that nothing in the nine-Power amendments, which his delegation was co-sponsoring, conflicted with fundamental freedoms. If it was agreed that racial discrimination was unlawful, incitement to racial hatred and any organization engaging in it must clearly be unlawful too. He was not aware that the punishment of incitement to homicide,

^{1/} United Nations, Treaty Series, vol. 213 (1955), No. 12889.

or of the publication of pornographic matter had ever been criticized as interfering with human freedoms. The law of his country allowed full freedom of expression, but all freedoms were restricted in that they were subject to accepted morality and public order.

19. His delegation, although unable to change its position on the substance of the principles involved, was prepared to support the drafting changes proposed in the United States sub-amendments. It recognized that the declaration should be so worded as not to conflict with the legal system of any State.

20. Mrs. LEFLEROVA (Czechoslovakia) remarked that contemporary experience had shown the dangerous consequences of incitement to racial hatred. Whole communities had been subjected to terror and violence. It was inadmissible that freedom of expression and association should be abused to destroy the freedom of ethnic groups. Article 2 of the draft Convention on Freedom of Information permitted restrictions on the freedom of expression on similar grounds.

21. Mr. BAROODY (Saudi Arabia) said that article 9 had been very skilfully drafted by the Commission on Human Rights: it condemned discrimination without interfering with the freedom of expression and association. He could not support the nine-Power amendments, which widened the scope of the article unduly. It was difficult to draw the line between propaganda and a sincere expression of opinion, and the adoption of the amendments might lead to interference with such activities as ethnological research, or comparative studies of cultures. Moreover, it was not for the Committee to propose, without legal advice, what action should be regarded as punishable under national criminal law. It might be wise to postpone the vote on the draft Declaration until certain articles in the draft Convention on Freedom of Information had been agreed on.

22. Mr. RAZGALLAH (Tunisia) proposed that the words "including legislative measures" should be inserted between the words "appropriate steps" and "shall be taken" in the revised United States sub-amendments.

23. Miss TABBARA (Lebanon) said that her delegation desired the strongest declaration capable of commanding unanimous support in the Committee. She had suggested informally to the United States delegation that the words "in conformity with the letter and spirit of this Declaration" should be added at the end of point 2 of the United States sub-amendments, and had understood that that was acceptable to the sponsor. She also fully supported the Tunisian proposal.

24. Mr. MEANS (United States of America) apologized to the Lebanese representative for the inadvertent omission of those words from the revised text of the amendment. The latter had been submitted in a spirit of compromise and after long and serious conversations with the sponsors of the nine-Power amendments, because his delegation believed that the draft Declaration, if it was to be effective, should be acceptable to all Member States and, in particular, that it should not make more difficult the task of those countries which were taking steps against racial discrimination. He could not comment on the Tunisian oral amendment until he had given it careful study.

25. Mr. KHALIL (United Arab Republic) remarked that his delegation had not spoken on the nine-Power

amendments because its support for that text was already well known. However, in a spirit of compromise, he suggested as an amendment to point 1 of the United States sub-amendments, that the words "should be punishable under criminal law" should be replaced by "shall be considered a crime against society and therefore unlawful".

26. Mr. SPERDUTI (Italy) said that his delegation attached the greatest importance to the principles enunciated in article 9, as drafted by the Commission on Human Rights; the elimination of all propaganda and incitement of the kind mentioned was essential to the achievement of the objectives of the draft Declaration.

27. He regretted, however, that he could not support the nine-Power amendments, not because he shared the fears of some delegations that any restriction of such propaganda and incitement by law would infringe freedom of speech, but because the point at which the exercise of that freedom became an offence had not yet been precisely defined. The Committee's present purpose was to draft a declaration of moral principles which should serve as a guide to the United Nations, international organizations, States and individuals, and the problem of putting those principles into effect, including the question of what legislative action was necessary, should be the subject of thorough consideration at a later stage. References to such instruments as those cited by the Israel representative showed that members of the Committee were mistakenly concerning themselves with matters of implementation.

28. His delegation would therefore prefer the original text of article 9, but it would support the revised United States sub-amendments as being compatible with the spirit and scope of the draft Declaration.

29. Mr. IVANOV (Union of Soviet Socialist Republics) recalled that the delegations of the USSR and Czechoslovakia had withdrawn their earlier amendments (A/C.3/L.1067 and A/C.3/L.1069 respectively) in order to take account of views expressed during the debate, and had joined in co-sponsoring the nine-Power amendments which had originally been submitted by Brazil. The purpose of the latter was to ensure the adoption of measures, including legislative measures, which would make racist propaganda impossible. Such a proposal involved no violation of the principles to which a number of delegations had referred; thirty years previously when Hitler had been making violently racist speeches, many naive persons had expressed similar views concerning freedom of speech and freedom of association, thus helping what was then a small organization to expand until it had poisoned the minds and destroyed democratic freedoms. In South Africa also, the leaders or originally small groups were now placing under arrest all those who opposed their racial theories. Progressive leaders in many countries had spoken against racism, but events had shown that words were not enough; nor was education alone sufficient. He urged all delegations to give the subject very serious thought and not to allow persons suffering from racial discrimination to be denied their rights. His delegation was prepared, in a spirit of conciliation to consult further with other delegations and to revert to the matter at the 1228th meeting.

30. Mrs. KUME (Japan) endorsed the principle that persons disseminating propaganda or forming organizations of the kind referred to in article 9 should not

be punished for that reason alone, however detestable their ideas might be to the majority. She could not, therefore, support the nine-Power amendments, but found the revised United States sub-amendments quite acceptable.

31. Mr. SHERVANI (India), supported by Mrs. ARIBOT (Guinea), proposed that the time allowed to

speakers to explain their votes at the 1228th meeting should be limited to five minutes.

It was so decided.

The meeting rose at 1 p.m.