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Chairman: Mr. Humberto DIAZ CASANUEVA
(Chile).

Expression of sympathy to the Governments and peoples of Cuba, Haiti, Trinidad and Tobago, and Italy in connexion with the recent disasters

1. Mr. BARBER OROZCO (Cuba) associated himself with the delegations which had already expressed their solidarity and deep sympathy with the Government and people of Italy in connexion with the disaster which the latter had suffered. He took the occasion to thank the delegations which, publicly and privately, had expressed their condolences to his own delegation in connexion with the hurricane by which Cuba had just been struck.

2. Mr. MASUMBUKO (Burundi), Mrs. NGAFETH (Cameroun), Mrs. KONANTZ (Canada), Mrs. MANTZOULINOS (Greece), Mrs. ARIBOT (Guinea), Mr. SHERVANI (India), Miss AHY (Iran), Mr. SHIELDS (Ireland), Mr. NEJJARI (Morocco), Mr. Antonio PELAUNDE (Peru), Mr. DELGADO (Senegal) and Mr. ALONSO OLEA (Spain) expressed their sympathy to the Italian delegation in connexion with the disaster which the breaking of a dam had just caused in the north of Italy, and to the delegations of the three Caribbean countries which had recently been devastated by a hurricane.

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. 99-145; 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.1116/Rev.1, A/C.3/L.1117, A/C.3/L.1122-1125) (continued)

ARTICLE 9 (continued)

3. Mr. MASUMBUKO (Burundi) said that the sponsors of the nine-Power amendments (A/C.3/L.1090 and Add.1) adhered to that text in its existing form. The formula proposed constituted a declaration of intention, the main purpose of which was to prevent future calamities similar to those which the world had experienced during the Second World War; in the opinion of

its sponsors, it should not conflict with any democratic constitution.

4. Mr. PINHEIRO (Brazil) emphasized that the nine-Power amendments had in no way the effect of restricting freedom of expression and association, as some delegations had apparently feared. Brazil was proud to be a truly democratic country, which scrupulously respected the rights enshrined in its constitution. Clearly, however, the freedom of some could not be permitted to infringe the freedom of others. Moreover, the Italian representative had pointed out (1227th meeting) that restrictions placed by law on incitement to violence in no way prejudiced freedom of expression. At the same meeting, the representative of Israel had also demonstrated the soundness of the Brazilian position, by quoting a number of international and national instruments which provided for criminal penalties against racist propaganda. The Brazilian delegation was convinced that it was not enough to condemn the expression of ideas based on the theory of the superiority of one race over another; States must also be enabled to apply, in practice, the principles set forth in the draft Declaration.

5. Finally, he recognized that the United States sub-amendments (A/C.3/L.1116/Rev.1) were an improvement on the original text of article 9; however, they did not go as far as the nine-Power text.

6. Mr. MEANS (United States of America) thanked the Chilean representative who, although a sponsor of the nine-Power amendments, had stated (1227th meeting) that he was ready to support the United States sub-amendments.

7. He then apologized to the Lebanese representative for the fact that, owing to an oversight, the latter's suggestion had not been incorporated in the revised sub-amendments (A/C.3/L.1116/Rev.1). In fact, that suggestion had the full approval of the United States delegation, which had accordingly revised once more point 2 of its sub-amendments, so as to take account of the Lebanese (A/C.3/L.1123) and Tunisian (A/C.3/L.1122) sub-amendments, while expanding somewhat the scope of the text. The United States submitted to the Committee the following text:

"... should also be severely condemned and all appropriate steps, including as appropriate legislative measures, shall be taken against them in accordance with the spirit and letter of this Declaration".¹

8. The United States delegation could not accept the sub-amendment submitted by the United Arab Republic (A/C.3/L.1124), which in substance did not differ from the text of the nine-Power amendments.

9. Mr. ALBERTSSON (Iceland) was strongly opposed to any mention, in the draft Declaration, of fascism.

¹ Subsequently circulated as document A/C.3/L.1116/Rev.2.

or any other political ideology. It was not that Iceland approved of fascism; no fascist or neo-fascist organization existed in his country. But he considered that the term "fascism" could not be accurately defined, and he recalled that certain totalitarian régimes had often been accused of fascism. Moreover, Iceland was too deeply attached to freedom of association and expression to be able to agree that the declaration should contain provisions limiting the exercise of that right. If such provisions were incorporated, his delegation would be obliged to reconsider its position in regard to the draft Declaration as a whole.

10. Mr. SHERVANI (India) said that India attached prime importance to the principle of freedom of expression. It was out of respect for that principle that India has been unable to dissolve certain organizations on its own soil. The provisions of the penal code which the Israel representative had mentioned could be applied only if the expression of ideas became a menace to peace or might lead to violence.

11. His delegation accordingly approved of the United States sub-amendments, with the sub-amendments proposed by Tunisia and Lebanon. It would vote in favour of that text and, if it was rejected, would support the original text of article 9.

12. Mrs. MANTZOUKOS (Greece) thought it impossible to speak of criminal penalties in a declaration. A clause of that type could be incorporated only in a convention, binding upon the signatory Governments. In those circumstances, she could not accept point 1 of the nine-Power amendments. She could vote for that text only if it were modified according to the United States proposal, with account being taken of the Tunisian and Lebanese sub-amendments.

13. The sub-amendment submitted by the United Arab Republic was also not acceptable, since it introduced a juridical notion, "crime against society", which was not defined and could likewise be incorporated only in a convention.

14. Point 2 of the nine-Power amendments implied the possibility of repressive measures, and therefore of a limitation of certain fundamental principles such as freedom of association and freedom of expression. That was unacceptable to the Governments of countries whose constitutions proclaimed those rights. If article 9 of the draft Declaration was to include provisions of a juridical nature, Greece would have to reconsider its position with regard to the text as a whole.

15. Mr. IVANOV (Union of Soviet Socialist Republics) recalled that his delegation had associated itself with Brazil in submitting the nine-Power amendments, but had reserved the right to re-submit its own amendment (A/C.3/L.1067) in the event of the nine-Power amendments not being adopted.

16. Mr. Antonio BELAUNDE (Peru) was prepared to vote for the sub-amendments submitted by Tunisia and Lebanon; but he had some reservations with regard to the nine-Power amendments, which provided for criminal penalties for a certain kind of propaganda. Peruvian criminal law contained no provisions in that regard, and Peru set great store by respect for freedom of expression and of association.

17. The sub-amendment of the United Arab Republic had the same defect as the nine-Power amendments and might open the door to arbitrary action. Since the original text of article 9 was faulty in that it placed propaganda and incitement of hatred and violence on

the same level, he wondered whether it would not be possible to modify it on the basis of article 29 (2) of the Universal Declaration of Human Rights.

18. Mrs. ARIOT (Guinea) said that, in regard to the sub-amendment of the United Arab Republic, she did not share the view of the delegations which had just spoken. That text was an improvement on the nine-Power amendments, in that it gave a definition of the crime referred to. It was important that the text of article 9 should specifically provide for penalties against racist activities.

19. Mrs. NGAPETH (Cameroon) supported the nine-Power amendments in principle, but recognized that some parts of them could be changed. In particular, she thought that the words "punishable under criminal law" might be eliminated and replaced either by point 1 of the United States sub-amendments or, better still, by the text of the United Arab Republic. The remarkable efforts made by the United States Government to eliminate racial discrimination would be still more effective if the United Nations, of which that country was one of the founding Members, adopted a practical document which could strengthen its position.

20. Mr. NEJJARI (Morocco), while understanding the apprehension inspired in certain delegations by a wording which seemed to them liable to limit freedom of association and expression, regretted their intransigence in the matter. All freedom must have limits, or it would degenerate into licence. His delegation was ready to support the changes to the United States sub-amendments proposed by Lebanon and by Tunisia. The last proposal, while representing a compromise, would not rob the article of the meaning that the nine Powers had intended to give it, namely, that an end be put to all racist propaganda.

21. Mrs. KONANTZ (Canada) was pleased to see the Committee working in a spirit of compromise, for her delegation, which condemned racial discrimination without reserve, considered that it would be most deplorable if the text of the declaration could not be adopted unanimously. Lack of unanimity could, indeed, only encourage those who practised racial discrimination.

22. While understanding the motives of the delegations which wished to strengthen the text, she reminded the Committee that the text must maintain a certain balance if it were to be approved by all the Members of the General Assembly. She thought the original text of article 9 extremely satisfactory, for it permitted each State to define the activities to be condemned and the penalties that should be imposed. For the reasons already put forward by other delegations, the nine-Power amendments raised certain doubts in her mind, in particular because the wording would be difficult for her Government to accept. The United States sub-amendments were satisfactory, but she was unable to support the sub-amendments proposed by the United Arab Republic and Albania.

23. Miss WACHUKU (Nigeria) believed that the declaration should correspond to the wishes of the great majority of the delegations, if not of all, for it was in the interests of all countries that it should be adopted. Efforts should therefore be made to reach a compromise and, in that spirit, she suggested that, if the three sub-amendments presented by Tunisia, Lebanon and the United Arab Republic were incorporated in the United States sub-amendments, a text would be obtained on which there might be a large measure of agreement.

24. Miss AHY (Iran) also hoped that it would be possible to arrive at a text giving satisfaction to the great majority of members. Her delegation would be able to support the nine-Power amendments, if the words "punishable under criminal law" were replaced by the expression suggested by the United Arab Republic, or even by that proposed by the United States. As a compromise, she might be able to support the latter sub-amendment, as further amended by Tunisia and Lebanon.

25. The CHAIRMAN observed that the United States representative had already added to his sub-amendments, the further sub-amendments of Tunisia (A/C.3/L.1122) and Lebanon (A/C.3/L.1123).

26. Mr. RAZGALLAH (Tunisia), speaking on a point of order, objected to the form in which his sub-amendment had been incorporated in the United States sub-amendments. Not only was the wording unsatisfactory, but the intention of the Tunisian text, which was to maintain the spirit of the nine-Power amendments, had not been retained. He was therefore introducing a new sub-amendment (A/C.3/L.1125) to the latest revised version of the United States sub-amendments.

27. The CHAIRMAN, pointing out that it was the expression "should be punishable under criminal law" which seemed to be the main subject of controversy, asked the representative of Brazil if he would be prepared to replace it by "should be severely condemned".

28. Mr. PINHEIRO (Brazil) regretted that he was unable to accept that suggestion, which reintroduced point 1 of the sub-amendments of the United States, but offered, as a compromise, to omit the word "criminal".

29. Mr. SHIELDS (Ireland) said that, if the Irish delegation had so far refrained from taking part in the general discussion and presenting amendments, it was solely in order to expedite and facilitate the Committee's work. He recalled that his country had always condemned all violations of human rights wherever they might take place, and that no representative of Ireland could withhold his support from the cause of human rights and fundamental freedoms for all without distinction, without denying the past and the traditions of his country. Thus the Irish delegation was pleased that the Committee had accorded priority to the examination of a historic declaration, which was part of the universal struggle for human rights. Therefore, precisely because Ireland was resolutely in favour of fundamental freedoms for all without distinction, he must object strongly to amendments whose results might be to restrict freedom of opinion and association. It would indeed be dangerous and unwise to sacrifice some freedoms in an effort to safeguard others. His delegation would be guided by those considerations when voting on article 9 and the amendments to it.

30. Mr. ALONSO OLEA (Spain) noted that there was a fundamental divergence between the delegations which wished to condemn certain acts in purely moral terms and those which thought that such condemnation should be punishable under the law.

31. In fact, the nine-Power amendments contained two distinct ideas: they were aimed on the one hand at propaganda based on ideas or theories of racial superiority, and on the other hand at incitement to hatred and violence. Those were two different things,

and they called for different legal treatment. Many delegations, including his own, thought that the problem of propaganda was bound up with that of freedom of opinion and expression, and felt that the expression of an opinion could hardly be regarded as illegal or felonious. On the other hand, those delegations would not see any great difficulty in making incitement to hatred and, above all, to violence, punishable under the law. Acts of violence against persons and interference with the freedoms of others, whether or not motivated by racial considerations, constituted an offence in every country. Perhaps, therefore, the Committee could find a way out of its present impasse by drafting a text which, as the United States delegation proposed, severely condemned racist propaganda—which could be effectively condemned as being contrary to human dignity—but which provided for punishment under the law only in the case of incitement to hatred or violence.

32. Mr. GELDERS (Belgium) remarked that the difficulties in which the Committee found itself doubtless stemmed from the fact that different countries had divergent conceptions of freedom. He stressed that the best way out of the impasse might perhaps be to ask the sponsors of amendments to meet and draft a text likely to command unanimous approval.

33. The CHAIRMAN said that, while he was aware of his duty to remain impartial, he would like, in his own personal capacity and as former Chairman of the Working Group which had prepared the preliminary draft Declaration, to suggest the following combined text to the sponsors of amendments:

"All propaganda based on ideas or theories of the superiority of one race or group of persons of one colour or ethnic origin with a view to justifying or promoting racial discrimination in any form should be severely condemned. All incitement of hatred and violence against any race or group of persons of another colour or ethnic origin should be considered unlawful. All organizations engaged in such activities should also be severely condemned and all appropriate steps, including legislative measures, taken against them in accordance with the spirit and letter of this Declaration."

34. Mr. POLYANICHKO (Ukrainian Soviet Socialist Republic) said that he was ready to support the sub-amendments by the United Arab Republic and Tunisia to the revised United States sub-amendments. Where the last sentence of article 9 was concerned, however, if he had to choose between the United States text, as sub-amended by the United Arab Republic and Tunisia, and the nine-Power text, he would choose the latter. Since 1946 the General Assembly had repeatedly condemned racial discrimination, particularly in its resolution 1510 (XV), but in a historic document such as the present declaration, it was necessary to go further and to do more than simply condemn a phenomenon which lay at the root of some of the thorniest problems on the agendas of the various United Nations organs, in particular the Security Council. His delegation would accordingly vote for the nine-Power text, which had been conceived in a progressive spirit.

35. Mr. SARMIENTO CARUNCHO (Bolivia) said he would vote for the nine-Power text, for the second revised version of the United States sub-amendments, and for the Tunisian sub-amendment (A/C.3/L.1125). He congratulated the Brazilian delegation on its efforts to draft a text positively condemning racial discrimination in any form, wherever it existed. His delegation was vigorously opposed to racial discrimination and to

any attempt to resurrect the fascist and nazi organizations which had been condemned by history.

36. Mr. KHALIL (United Arab Republic) felt that, in a field such as that of racial discrimination, mere condemnation, no matter how sincere, was not enough. The General Assembly must express its disapproval in the most categorical and positive manner possible, and give it practical significance. His delegation was ready to support the present text of the nine-Power amendments, but in a spirit of compromise it had submitted a sub-amendment which it felt offered a reasonable solution.

37. Mr. DELGADO (Senegal) recalled that he had already stated his preference for the nine-Power text. However, he would be prepared to vote for the United Arab Republic and Tunisian sub-amendments in a spirit of compromise, on the understanding that if those two texts should be rejected, especially the first, he would not be able to vote for the United States sub-amendments. The activities of racist organizations were not to be tolerated in any circumstances, even

in the name of freedom of association. In conclusion, he drew attention to a mistake which had crept into the French translation of the amendment of the United Arab Republic: the word "délits" was not a good translation of the English term "crime" and should be replaced by "crimes".

38. Mr. PINHEIRO (Brazil) stressed the importance of the distinction made by the Spanish representative between racist propaganda and incitement to hatred. He proposed that the meeting should be suspended for a few minutes to allow the nine Powers to re-examine their text in the light of the Spanish representative's observations.

The meeting was suspended at 5.5 p.m. and resumed at 5.45 p.m.

39. The CHAIRMAN announced that the sponsors of amendments were continuing their efforts to draft a joint text which would be put before the Committee at its 1229th meeting.

The meeting rose at 5.50 p.m.