

United Nations
**GENERAL
ASSEMBLY**

FIFTEENTH SESSION

Official Records



**SPECIAL POLITICAL COMMITTEE, 184th
MEETING**

Wednesday, 26 October 1960,
at 3.45 p.m.

NEW YORK

CONTENTS

Agenda item 68:

The status of the German-speaking element in the Province of Bolzano (Bozen); implementation of the Paris agreement of 5 September 1946 (continued). 45

Chairman: Mr. Carlet R. AUGUSTE (Haiti).

AGENDA ITEM 68

The status of the German-speaking element in the Province of Bolzano (Bozen); implementation of the Paris agreement of 5 September 1946 (A/4395, 4530; A/SPC/44; A/SPC/L.45/Rev.1, A/SPC/L.46 and Corr.1, A/SPC/L.47, L.48, L.49) (continued)

1. Mr. O'BRIEN (Ireland), speaking on behalf of ten Powers (Ceylon, Cyprus, Denmark, Ecuador, Ghana, India, Iraq, Ireland, Jordan and Mexico), introduced a draft resolution (A/SPC/L.49) and two series of amendments, one (A/SPC/L.47) to the revised Austrian draft resolution (A/SPC/L.45/Rev.1), and the other (A/SPC/L.48) to the four-Power draft resolution (A/SPC/L.46 and Corr.1). He pointed out that the purpose of the draft resolution and of the amendments was essentially the same. The sponsors had been motivated by a desire to find the widest possible area of agreement, in the light of the various points of view that had been expressed during the discussion. Thus, the third preambular paragraph of the ten-Power draft resolution (A/SPC/L.49) quoted the actual terms of the Paris agreement.^{1/} The Committee would no doubt be unanimous in feeling that that clause of the agreement should be included in the resolution. In addition, operative paragraph 1 used the wording of Article 1, paragraph 1, of the Charter, when it said that the solution to be sought should be "in conformity with the principles of justice and international law". Lastly, operative paragraph 2 used a phrase from Article 33, paragraph 1 of the Charter when it referred to "other peaceful means of their own choice". The sponsors had felt that that was an acceptable formula: it left the door open to all possibilities; it did not require the Assembly to pass judgement on the substance of the question; and it did not prejudice the case of the parties. In addition, it urged the two countries to negotiate, as of course the four-Power draft resolution also did. The changes made by the ten-Power draft resolution were not intended to go against the spirit of the four-Power draft but to make it more comprehensive and a better basis for future negotiations. The new text would also encourage the two countries to show resourcefulness in finding

means for a settlement by reminding them of the terms of Article 33 of the Charter and of the various suggestions that had been made during the discussion.

2. Mr. JUNG (India) said that the sponsors of the ten-Power draft resolution had been chiefly concerned to round off its edges so that a larger number of delegations would be able to vote in favour of it. They had also taken into account some of the objections made by Italy to the Austrian draft resolution (A/SPC/L.45/Rev.1) and the objections of Austria to the four-Power draft resolution (A/SPC/L.46 and Corr.1). The Committee would not achieve its aim if it adopted a text which one of the two parties was unable to accept. The two countries had therefore been left free to determine the machinery for a settlement for themselves, the essential point being that they should resume negotiations. The sponsors of the new draft had made every effort to include in it all that was best in the previous drafts and to eliminate those points which were objectionable to one party or the other. He asked the Committee to give priority to the ten-Power draft resolution, which was even more conciliatory in spirit than the four-Power draft. The sponsors were not so presumptuous as to believe that it would be acceptable to all delegations, but they hoped that it would receive a large measure of support.

3. Mr. EL-FARRA (Jordan) wished to make clear one point which he regarded as particularly important. All that the Assembly could do was to make a recommendation and if that recommendation was not accepted by the two parties it might well not achieve any positive results. That was why operative paragraph 2 left the choice of methods to the parties concerned. The word "dispute" in the third preambular paragraph had been retained because it was used in the Charter and ought not therefore to raise any objection. Since the ten-Power draft resolution, like the two series of amendments, reflected a genuine desire to bring about the resumption of negotiations, he hoped that the Committee would give it priority in the voting.

4. Mr. SEIDENFADEN (Denmark) said that the Danish Government had had to cope with problems similar to those which were the subject of the present debate, since there was a German-speaking element in Denmark and a Danish-speaking element in Germany. Its long experience in the matter had convinced it that bilateral negotiations were the best solution, and as far as Denmark was concerned, the problem no longer raised insurmountable difficulties, partly because of the friendly relations created between the German and Danish Governments.

5. The Danish delegation had not previously taken part in the debate because it had sincerely hoped that the parties would succeed in finding a compromise solution. It noted that Austria had made every effort to meet the objections that had been raised by submitting a revised draft resolution which was not very different from the four-Power draft. On the other hand, the

^{1/} United Nations, *Treaty Series*, vol. 49 (1950), pp. 184-185.

ten-Power draft resolution was an attempt to reconcile those two texts and it would be very desirable if all delegations, including those of the two parties concerned, could vote in favour of it. The Committee should vote upon it first in order to simplify the discussion and make it possible to arrive speedily at a compromise solution.

6. Mr. ROSSIDES (Cyprus) also felt that the ten-Power draft resolution should be given priority. He emphasized that in making that suggestion, he had no intention of prejudicing the submission of other texts.

7. The CHAIRMAN proposed that the meeting be suspended in order to allow representatives to study the new texts in the various languages.

The meeting was suspended at 4.10 p.m. and resumed at 4.40 p.m.

8. Miss WILLIS (United States of America) recalled the position adopted by her delegation in the early stages of the discussion (177th meeting) and said that the four-Power draft resolution (A/SPC/L.46 and Corr.1) would help to open the way to an amicable solution, as practically all delegations desired. Despite the praiseworthy efforts of their sponsors, the new texts seemed to be less satisfactory in that respect. In view of the friendly relations which it enjoyed with both countries, the United States hoped that speedy progress would be made towards a solution. She thought that the Committee would be well advised to adopt the four-Power draft resolution, which the United States delegation would support whole-heartedly.

9. Mr. ASANTE (Ghana) said that in associating itself with the sponsors of the ten-Power draft resolution, the Ghanaian delegation had wished, first of all, to enable the countries concerned to resume negotiations, and secondly to see that the resolution adopted by the Committee did not give an advantage to either side. He thought that by referring to jurisdictional bodies, the four-Power draft resolution inclined somewhat towards the Italian argument. If the negotiations between the parties did not result in a solution, the matter would be sent to the International Court of Justice and it would perhaps never return to the General Assembly. The Ghanaian Government hoped that if the Assembly was not called upon to deal with the question again, it would mean that the two countries had come to a friendly settlement. Ghana was well acquainted with problems of that kind, for in nineteenth century Africa no heed had been paid to the interests of ethnic groups. Such problems could only be solved in a spirit of understanding between the countries directly concerned. He hoped that Austria and Italy would give favourable consideration to the ten-Power draft resolution.

10. Mr. SHAHA (Nepal) noted that the matter in dispute was the direct legacy of the secret treaties concluded at the end of the First World War, which in redrawing the frontiers had not taken into account the rights of minorities, as frequently happened after a war. Since the question related to the interpretation of a treaty, it undoubtedly came within the competence of the International Court of Justice. However, the interests of a minority a quarter of a million strong were at stake, and he felt that legal solutions could not satisfy minorities which were the victims of circumstances beyond their control.

11. He was grateful to the Austrian delegation for having taken into account in its revised draft resolution

(A/SPC/L.45/Rev.1) many of the objections raised to the original version. He also praised the spirit of conciliation which had motivated the four-Power draft resolution (A/SPC/L.46 and Corr.1), though he was afraid it did not command a very wide measure of support. The ten-Power draft, on the other hand, combined the constructive elements of the revised Austrian draft and the four-Power draft; it was constructive and it did not rule out the possibility of calling upon the International Court of Justice if the negotiations were not successful. He saw no reason why it should not be acceptable to the sponsors of the four-Power draft. The Austrian delegation ought also to be in a position to accept it because there was no explicit reference to the International Court of Justice. The last phrase of operative paragraph 1 of the ten-Power draft was taken out of Article 1, paragraph 1, of the Charter and it should therefore not raise any objections. The Nepalese delegation would vote in favour of the ten-Power draft resolution and supported the suggestion that it should be voted upon first; if that suggestion was not adopted, the Nepalese delegation would vote in favour of the ten-Power amendments (A/SPC/L.48) to the four-Power draft, and if necessary in favour of the ten-Power amendments (A/SPC/L.47) to the revised Austrian draft resolution.

12. Mr. MARTINO (Italy) said that, while he appreciated the friendly spirit which had prompted the sponsors of the ten-Power draft resolution, he considered that it did not represent a compromise between the Austrian and the Italian points of view, but was conciliatory towards the Austrian point of view only and did not take into account the arguments put forward by the Italian delegation during the debate.

13. Operative paragraph 1 of the ten-Power draft (A/SPC/L.46 and Corr.1) ignored the fact that negotiations had already taken place between the parties regarding the implementation of the Paris agreement; the word "conduct" should therefore be replaced by the word "resume". The paragraph also gave the impression that the Paris agreement had not been implemented. But the Paris agreement had indeed been implemented by the Italian Government and Parliament, the subject of the disagreement between Italy and Austria being the way in which it had been implemented. Furthermore the same paragraph gave as the goal of the negotiations "a solution in conformity with the principles of justice and international law", which suggested that the Committee felt that the implementation measures already taken were not in conformity with those principles. But that was not the question, and he regretted that some of the opinions expressed did not take into account the facts that he and the Italian Foreign Minister had tried to explain. Autonomy had already been given to the Province of Bolzano, but Austria considered that that autonomy did not sufficiently comply with the aims laid down in the Paris agreement. Italy believed that it did; thus the question was clearly a juridical one. He reiterated that the ten-Power draft resolution did not reconcile the two points of view and that he himself had not been consulted by the authors of the ten-Power draft.

14. The representative of Ireland had justified the wording of operative paragraph 2 as having been taken from Article 33 of the Charter, but the words "other peaceful means of their own choice", in the context of Article 33, excluded a judicial settlement. Neither Austria nor Italy intended to go to war over the

German-speaking element in the Province of Bolzano: the means envisaged had always been peaceful ones. Recourse to the International Court of Justice was a peaceful means expressly referred to in Article 36, paragraph 3, of the Charter; he was surprised that consideration for the Charter would stop at Article 33 and not extend to Article 36. Since the question dealt with the interpretation of an international agreement, it was a juridical one and the International Court of Justice was indeed competent to deal with it.

15. On the other hand, the Italian delegation was ready to accept paragraph 2 of the four-Power draft resolution whose wording contained nothing offensive to Austria. As for the ten-Power amendments to the four-Power draft resolution, the Italian delegation was prepared to accept the first amendment, but it could accept the second one only if the words "by other peaceful means of their own choice" were replaced by the words "by jurisdictional means".

16. Mr. O'BRIEN (Ireland) said that he was responsible for the drafting of the text and apologized for the misunderstanding regarding the words "by other peaceful means of their own choice". That wording was in no way intended to exclude judicial settlement. He hoped that the other co-sponsors of the ten-Power draft resolution would agree to embodying in operative paragraph 2 all the latter part of Article 33, paragraph 1, of the Charter. He trusted that that change would satisfy the Italian delegation and make it possible to reach an agreement.

17. Mr. AMADEO (Argentina) recalled that the 183rd meeting had been adjourned so that the various proposals before the Committee might be reconciled. The ten-Power draft resolution certainly reflected that aim; but the Italian representative's speech showed that in its present form the draft resolution did not really represent the conciliatory formula sought by all. Moreover, the delegations had not yet been able to study it adequately, and a vote would therefore be premature. The Argentine delegation accordingly proposed that the discussion should be adjourned until the next day. In the meantime it might be possible to work out a draft that could command unanimous support.

18. Mr. GARCIA ROBLES (Mexico) seconded the Argentine representative's proposal, which reflected his own delegation's attitude from the outset of the discussion. Although motions of adjournment ought to be voted upon immediately, he would like first, with the permission of the Argentine representative, to give some explanations as one of the co-sponsors of the various ten-Power texts.

19. Mr. AMADEO (Argentina) agreed willingly.

20. Mr. GARCIA ROBLES (Mexico) pointed out that his country was in an especially good position to view the dispute with the maximum of objectivity. Mexico had the friendliest of relations and the closest historical and cultural ties with Austria and Italy, despite the distance that separated them. The Mexican delegation's sole preoccupation had been to achieve unanimity within the Committee. Its chief aim therefore was to dispel certain misunderstandings.

21. In using the expression "by other peaceful means of their own choice" in operative paragraph 2 of the ten-Power draft resolution, the authors of the draft had been thinking of all means other than negotiation, in case the negotiations did not lead to satisfactory

results. In the authors' minds, the "other peaceful means" included both those enumerated in Article 33 of the Charter and those not enumerated there. The possibility of recourse to the International Court of Justice was thus implicit in the text. Nevertheless the Mexican delegation and doubtless and other co-sponsors of the ten-Power draft resolution would have no objection to inserting the enumeration proposed by the representative of Ireland. It should be noted that the first part of the paragraph in question, down to the words "should give favourable consideration to the possibility of", was taken word for word from the corresponding paragraph of the four-Power draft resolution, which seemed to meet with the approval of the Italian delegation.

22. Operative paragraph 1 of the ten-Power draft resolution partly reproduced the corresponding paragraph of the revised version of the Austrian draft resolution, with some important changes. However, if the Italian delegation found it hard to accept that text, the Mexican delegation would be prepared to study the possibility of replacing it by operative paragraph 1 of the four-Power draft resolution; but he could not for the moment commit his delegation on that point, still less the other co-sponsors.

23. The Italian representative had said he would prefer that operative paragraph 1 should invite Austria and Italy to "resume" rather than "conduct" negotiations. The document entitled "Alto Adige: documents presented to the Italian Parliament", published by the Italian Foreign Ministry, spoke not of negotiations but of "conversations". Moreover, the revised Austrian draft resolution used the expression "enter...into negotiations", which seemed to show that the Austrian Government did not consider that negotiations in the true sense of the term had yet taken place. For those two reasons, the authors of the ten-Power draft resolution had preferred to use the neutral expression "conduct negotiations".

24. On the whole the ten-Power draft resolution had more flexibility than the four-Power draft resolution, and that was an important attribute, in view of the results sought by the Committee. After all, a General Assembly recommendation possessed only moral force, which increased with the number of votes it commanded. Much that had been said in the Committee had shown that the four-Power draft would not obtain a large majority. Moreover, it was better to make a recommendation that provided for various peaceful means of settlement, including those preferred by the two parties. A number of different situations might subsequently arise. If the negotiations, which both parties wished to resume, did not lead to satisfactory results, Austria, for example, might agree to refer the matter to the International Court of Justice; the ten-Power draft resolution would have provided for that possibility. It could also happen in the course of the negotiations that on a specific point both Italy and Austria might wish to ask for an inquiry by an impartial person or to have recourse to conciliation or to good offices. According to the terms of the four-Power draft resolution the parties would be unable to have such recourse.

25. Mr. ITURRALDE CHINEL (Bolivia) supported the motion for adjournment presented by the Argentine representative; a draft might be worked out that could command a unanimous vote.

26. During the general debate [180th meeting] he had already expressed the view that if negotiations between the two parties failed, the controversy should be taken before the International Court of Justice. The Mexican representative had said that judicial settlement was clearly one of the peaceful means provided for in the ten-Power draft resolution. As, however, the International Court of Justice was not expressly mentioned, the Italian representative had felt that the peaceful means in question might be read as not including judicial settlement. In order to reconcile the two drafts, the Bolivian delegation proposed that in operative paragraph 2 of the ten-Power draft resolution the words "or by a decision of the International Court of Justice" should be added after the words

"peaceful means of their own choice". That addition would make it possible not to return the matter to the General Assembly even if negotiations and other peaceful means of settlement did not lead to satisfactory results. The decision of the International Court of Justice would be binding upon the two parties to the Paris agreement.

27. The CHAIRMAN, as requested by the representative of Argentina, proposed the adjournment of the meeting.

It was so decided.

The meeting rose at 5.45 p.m.