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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 and Corr.1) (continued)

1. Mr. GSCHNITZER (Austria) exercising his right of reply, recalled the Italian representative's statement (176th meeting) that the South Tyrolean population had increased more rapidly than that of Italians living in the South Tyrol. However, in the "Landtag" elections of November 1956, the Italian parties had received 32.8 more votes than in 1948, against 16 per cent more for the Südtiroler Volkspartei, the only party of the South Tyroleans. In the 1958 parliamentary elections, the Italian parties had received 31.5 per cent more votes than in 1948, against 20.5 per cent more for the Volkspartei.

2. The Italian representative had also said that the problem would not have arisen if the Paris agreement of 5 September 1946 had not been signed,^{1/} because about 200,000 South Tyroleans would not be in the country. However, in 1945 the 200,000 had been there, since most of those who had opted to leave had not left by then. The Italian representative's statement implied that Italy would have had to expel the people after 1945. After 1945 the Italian authorities had tried to proceed with the resettlement, but they had been stopped by the Allies, who were then occupying the South Tyrol.

3. South Tyrol had no real autonomy. Its three main resources, agriculture, commerce and the tourist trade, were not under the jurisdiction of the Province. Under Article 73 of its Statute, the South Tyroleans could prevent the voting of the budget, but the Italian Minister of the Interior had repeatedly overruled their objections and approved the budget voted by the Italian majority.

4. His own words, cited as evidence of the intolerance of the South Tyroleans, had been quoted out of context. If the problem of South Tyrol could be solved by means of mixed marriages, as the Italian Minister Andreotti had written, then the South Tyroleans would be completely absorbed, and would no longer exist as a separate ethnic group. Their opposition to mixed marriages was therefore quite understandable.

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

5. Mr. MARTINO (Italy) said that he had to correct the statements made by the representative of Austria. First, the Austrian representative's figures for the increase in population were incorrect. The true figures were those given in the Italian memorandum.^{2/} Second, what he had said at the previous meeting was not that the 200,000 German-speaking inhabitants whose Italian citizenship had been restored had been out of Italy, but that they had been reinstated because of the implementation of the agreement. Otherwise they would be foreigners living in Italy, enjoying the same freedom as other foreigners.

6. Further, the International Court of Justice could decide whether the Province of Bolzano had more or less autonomy than other autonomous regions of Italy. He wondered why Austria had refused to submit the question to the Court's objective judgement. With regard to racial intolerance, he noted that the Austrian representative had not denied making the Alpbach speech criticized by Italy on that score. Further evidence of intolerance was that both the extremists of the Südtiroler Volkspartei and the Austrian Government itself, had objected to the industrialization of the Province—though the world was crying out for industrial development—arguing that industries had been created to denationalize the Province and to oppress its German-speaking inhabitants. The extremists' intention was to turn that area into a kind of national park, as for the preservation of wild life.

7. Mr. SANZ BRIZ (Spain) said that his delegation, like that of the United States, was against continuing the debate on the item. A question involving minorities was likely to give rise to discussions which would not help solve the problem, since it concerned the legal structure of the State. The two countries should resume direct negotiations or place the matter before a competent international legal body.

8. Mr. MASSOUD-ANSARI (Iran) said that the spirit of friendship and co-operation which had apparently prevailed throughout the previous negotiations between Austria and Italy encouraged the hope that with the help of the United Nations a satisfactory solution of the problem could be found. The difficulty seemed to lie largely in the fact that while the Italian Government wished to confine itself strictly to the juridical question of the implementation of the Paris agreement of 5 September 1946, the Austrian Government regarded the problem as a political one having its origin in events occurring many years prior to that date. Whatever the merits of the Austrian position might be, however, the wording of the item as it appeared on the agenda obliged the Committee to limit itself to the juridical aspects of the problem namely, the implementation of the Paris agreement. That being the case, it might be argued that the problem should be referred to the International Court of Justice without further con-

^{2/} Transmitted to Members of the General Assembly by the Secretary-General with document A/SPC/44.

sideration by the General Assembly. Article 36 of the Statute of the Court indicated that any legal dispute concerning the interpretation of a treaty was within the Court's competence. In the interests of peace and good-neighbourly relations between the two countries, however, his delegation felt that the Assembly too could make a contribution by appealing to the Governments concerned to resume direct negotiations. He also noted that under rule 28 of the Security Council's rules of procedure the Council might appoint a rapporteur to maintain contact with the parties to a dispute and try to bring about a "rapprochement" between them. In the present instance, a rapporteur might perhaps be appointed to try to reconcile the views of the Austrian and Italian Governments within the framework of the Paris agreement.

9. Mr. CALERO RODRIGUEZ (Brazil) said that his delegation was in agreement with the conclusions reached by the Argentine representative in his statement [177th meeting]. He hoped that the debate would continue in that spirit and thus help to avoid merely increasing existing tension. In its memorandum^{3/} the Austrian Government had stated that the dispute arose from Italy's refusal to bring about a just settlement based on democratic principles by which the Austrian minority in Italy was conceded a true autonomy. The first question was whether Austria was entitled to raise the question of granting autonomy to a minority group in Italy. His delegation would hesitate to give an affirmative reply were it not for the existence of the Paris agreement of 1946, for minorities, even when their status was the result of boundary revisions or forced resettlement, were not as a rule entitled to special political or economic rights or privileges. But since in the Paris agreement Italy had undertaken to give the German-speaking population of the area in question certain specific rights, including the right to exercise autonomous legislative and executive regional powers, Italy had assumed an international obligation towards Austria, and Austria was entitled to insist that it should be fulfilled. The crux of the question was, therefore, whether Italy had implemented the provisions of the agreement. In the words of Article 36, paragraph 2 c of the Statute of the International Court of Justice, it must be determined whether a fact existed which, if established, would constitute a breach of an international obligation. There was no doubt in his mind that the Committee was faced with a legal question which, in the absence of agreement between the parties concerned, should be submitted to the principal judicial organ of the United Nations for adjudication. He hoped that the Austrian delegation would reconsider its position in the matter, for he not only was confident that the Court could solve the problem, but he considered it to be the only body which could properly take a decision if the parties did not succeed in reconciling their conflicting views. Indeed, it was his understanding that certain high representative bodies in Austria itself had favoured submitting the question to the International Court of Justice.

10. In the light of the foregoing, his delegation would be obliged to vote against the Austrian draft resolution (A/SPC/L.45 and Corr.1). The steps called for in operative paragraphs 1 and 2 would constitute an unauthorized interpretation of the international obligations assumed by Italy.

11. Mr. HSUEH (China) observed that references to the Austro-Hungarian monarchy, the Peace Conference of 1919 of Saint-Germain-en-Laye and events which had occurred during the period of the Fascist and Nazi régimes were no doubt useful in establishing the historical background of the present issue, but it seemed to him that the events which had occurred since the end of the Second World War had a more direct and immediate bearing on the question.

12. In listening to the statements made by the delegations of Austria and Italy, he noted that fortunately there were a number of points on which they agreed as to both the substance of the issue and the outlook for a settlement. With regard to the substance of the issue, there was agreement on three points, namely that the area in question was a part of the territory of Italy as confirmed by the Treaty of Peace with Italy, signed at Paris on 10 February 1947 and the State Treaty of Vienna of 1955;^{4/} that there was in the area a considerable German-speaking element which wished to preserve a way of life distinct from that of the rest of the population of Italy; and that an agreement existed between the two countries which assured the German-speaking element of complete equality of rights with the Italian-speaking inhabitants and the exercise of autonomous legislative and executive regional powers. In the view of his delegation, those were the three fundamental considerations by which efforts to settle the dispute should be guided. It was to be noted that in the current discussion Austria had not disputed Italy's sovereignty over the area or seriously invoked the principle of self-determination for its German-speaking inhabitants. Hence it was recognized that Italy alone, as the sovereign Power, had the responsibility to protect and promote their interests. Italy had not denied the special position enjoyed by the German-speaking inhabitants but had recognized and undertaken to preserve their distinct ethnic character. There was no evidence to show that Italy was now pursuing a policy designed to change their way of life or that it intended to do so in the future. Finally, both parties had based their arguments on the Paris agreement. It was true that there was no mention of the agreement in the Austrian draft resolution—a regrettable omission which, together with certain other features of the text, created the impression that Austria was seeking to revise the agreement. Nevertheless, the Austrian Foreign Minister had repeatedly referred to the agreement in his statement and indicated that if certain conditions were met his Government would be in a position to declare that the provisions of the agreement had been carried out.

13. With regard to the outlook for a settlement, a careful examination of the statements of both parties showed that they seemed to be pursuing the same general aims. The Austrian Foreign Minister had said that there was no reason why the German-speaking element could not live in amity with the Italians and serve as a bridge between the two countries, while the Italian Foreign Minister had referred to the fruitful meeting of the two cultures and harmonious relations among the inhabitants of the area. He had gained the impression from their statements that there was a spirit of goodwill on both sides and that the problem was not insurmountable. The General Assembly should not try to render a judgement but should seek to en-

^{3/} Transmitted to Members of the General Assembly by the Secretary-General with document A/4530.

^{4/} State Treaty for the re-establishment of an independent and democratic Austria, signed on 15 May 1955.

courage that spirit and help the two parties to clarify their positions. Having heard the views expressed in the Assembly, the parties should resume their efforts to reach a settlement through bilateral negotiations.

14. For those reasons he hoped that the Austrian draft resolution [A/SPC/L.45 and Corr.1], which included a number of controversial points and was unacceptable to his delegation in its present form, would not be put to the vote.

15. Mr. GHAZI (Afghanistan) said that Afghanistan enjoyed cordial relations with both parties to the dispute and earnestly hoped that their political differences could be solved by resumed negotiations. The Committee should urge the two parties to resume direct negotiations for the purpose of arriving at a peaceful settlement in the best interests of the people in the area concerned. Austria had a natural interest in the people of South Tyrol, who had been separated from their kinsmen in Austria by political arrangements of the kind which had produced tragic consequences in other parts of the world.

16. Without going into the details of the dispute, he would merely stress that if direct negotiations were resumed, due regard should be paid to the legitimate ethnic and cultural rights and the political aspirations of the peoples concerned. If no agreement could be achieved, the people themselves should be allowed to determine their own fate. He hoped, however, that a settlement could be arrived at through the efforts of the United Nations, thus establishing a basis for the solution of other international problems of a similar nature.

17. His delegation had given careful study to the draft resolution (A/SPC/L.45 and Corr.1) proposed by Austria. It did not feel that in its present form it was conducive to the settlement of the dispute through such other peaceful means as still existed. It would have preferred a draft resolution that recognized the legitimate interests of Austria in the matter, took full cognizance of the rights of the people of South Tyrol, and urged the resumption of negotiations. Effective protection should also be provided for the welfare of the people of the Province of Bolzano where the South Tyroleans constituted a majority of the population, on the basis of the consent of their rightful representatives, in accordance with the principles of the Charter. Lastly, the draft resolution should call upon the two parties to submit a report on their negotiations to the General Assembly at its sixteenth session.

18. Mr. PALAR (Indonesia) said that many of the previous speakers had argued that when two parties to a bilateral agreement such as the Paris agreement disagreed on its interpretation and implementation, the case should be considered on its juridical merits by the International Court of Justice and dealt with as a

juridical problem. The Indonesian delegation felt that there were certain types of agreements to which that general principle was not applicable. He had in mind cases in which a dynamic and politically explosive situation was, as it were, frozen by an international agreement into a juridical formula. Many such agreements, determining the status of colonies, had in fact been blown to pieces after the Second World War. Those cases had been solved as political rather than legal problems, with the United Nations assisting both sides towards a settlement. If the International Court of Justice had been asked to intervene, it would only have been able to give its findings on the basis of the existing agreements, which were precisely what had to be discarded before a solution could be found. He did not contend that a colonial problem was at issue in the matter before the Committee. However, there was a potentially explosive situation wrapped up in a political formula. History had shown that agreements which were based on the right of conquest, as was in essence the case of the Paris agreement, often became sources of subsequent tension and needed revision if difficulties were to be avoided. However, neither of the parties to the Paris agreement desired its revision. Both adhered to and upheld the terms of the agreement, and they disagreed only on its interpretation and implementation.

19. On the face of it, it might appear logical to allow the International Court of Justice to determine which interpretation was correct. But, even if the legal problem was decided, the situation would remain virtually unchanged, for Italy, which had agreed in advance to accept the Court's decision, claimed that it was already implementing the letter and the spirit of the agreement to the fullest possible degree, while if Austria was found to be in the wrong, the situation of the South Tyroleans would be as it was at present. Thus the political problem would remain and would continue to threaten relations between Austria and Italy. The matter had therefore been rightly included in the General Assembly's agenda as a political problem, and it was the Assembly's duty to assist the parties to find the right solution. The best means of doing so would be through further negotiations, preferably under the sponsorship or with the assistance of the United Nations. That did not mean that the draft resolution proposed by Austria (A/SPC/L.45 and Corr.1) was acceptable to the Indonesian delegation as it stood. He whole-heartedly supported the recommendation that the two parties should resume their negotiations and report the results of those negotiations to the General Assembly, but he had a number of reservations in regard to several of the other paragraphs. If necessary, he would elaborate on them at a later stage.

The meeting rose at 4.30 p.m.