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Chairman: Mr. Francisco CUEVAS CANCINO (Mexico).

Tribute to the memory of His Highness Abdulla Al-Salem Al-Sabah, Amir of the State of Kuwait

On the proposal of the Chairman, the members of the Committee observed a minute's silence in tribute to the memory of His Highness Abdulla Al-Salem Al-Sabah, Amir of the State of Kuwait.

1. Mr. LAMPTEY (Ghana), on behalf of the Afro-Asian group of delegations, Mr. ZULOAGA (Venezuela), on behalf of the Latin American delegations, Miss WILLIS (United States of America), on behalf of the Western Group of delegations and others, Mr. BECK (Hungary), on behalf of the delegations of the Socialist countries, Mr. LAZAREVIC (Yugoslavia) and Mr. Sharaf (Jordan) expressed their condolences to the Government and delegation of Kuwait on the untimely passing away of His Highness Abdulla Al-Salem Al-Sabah, Amir of the State of Kuwait.

2. Mr. KHANACHET (Kuwait) thanked the members of the Committee for their expressions of sympathy, which his delegation would convey to the people and Government of Kuwait.

AGENDA ITEM 58

Draft International Convention on the Elimination of All Forms of Racial Discrimination (continued) (A/5803, chap. IX, sect. I; A/5921; E/3873, chap. II and annexes I and III; A/C.3/L.1237, L.1239, L.1241, L.1249, L.1262, L.1272, L.1291, L.1292, L.1297)

ARTICLES ON MEASURES OF IMPLEMENTATION
(continued)

Articles VIII and VIII (bis) (concluded)

3. Mr. BELTRAMINO (Argentina), speaking in explanation of his delegation's vote at the previous meet-

ing on articles VIII and VIII (bis), said that, while his delegation was not entirely satisfied with the revised text, it had voted in favour of those articles both because they represented a compromise arrived at after lengthy consultations and also because they would establish effective machinery for the implementation of the Convention. He hoped that in discussions on subsequent articles, delegations would show the same spirit of co-operation and understanding as they had shown in connexion with articles VIII and VIII (bis).

4. His delegation considered that the Convention, in addition to providing for reports from States Parties to the committee should establish the right of individuals to submit petitions to that body. He hoped that the Third Committee would adopt appropriate articles to make that possible.

5. Mr. SY (Senegal) said that his delegation had voted in favour of articles VIII and VIII (bis) as a whole since, in general, it approved the revised text. However, it had voted against article VIII, paragraph 5, sub-paragraph (b) because it considered that, in filling casual vacancies, the election procedure set forth in article VIII, paragraph 1, should be followed and that States Parties should be consulted. That, however, was a point of secondary importance and his delegation would unreservedly support those articles of the Convention.

6. Mr. LAMPTEY (Ghana) said that his delegation had voted against the Venezuelan oral amendment to article VIII, paragraph 1, as it had been under the impression that the amendment had been to insert the words "on the Elimination of Racial Discrimination" after the words "the Committee" in the parenthesis in that paragraph. If his delegation had properly understood the amendment, it would have supported it.

7. Mrs. MBOIJANA (Uganda) said that, although her delegation had supported the revised text as a whole, it had voted in favour of the second Tanzanian amendment to paragraph 1 of article VIII, because it considered the word "members" more appropriate. It had also supported the Tanzanian amendment to paragraph 6, because it felt that the expenses of the proposed committee should be borne by the United Nations. It had opposed the Iraqi amendment to paragraph 6, because it felt that the developing countries might suffer unduly from such a provision. Her own country might have difficulty in meeting its contribution to the expenses of the committee.

8. Mr. SHARAF (Jordan) said that his delegation had voted in favour of the revised text as submitted since it felt that that text reflected the general views of the Committee on the question of reporting.

9. Mr. TEKLE (Ethiopia) said that his delegation had voted in favour of the revised text as a whole, but had abstained on the Iraqi amendment to article VIII, paragraph 6. It considered that if the proposed committee was to report to the General Assembly, its expenses should be borne by the United Nations. It had also abstained in the vote on the Tanzanian oral amendment to delete the word "general" in both sentences of article VIII (bis), paragraph 2, since it would have preferred to replace "general" by "specific".

10. Miss KING (Jamaica) said that her delegation had supported the revised text as a whole. It had thought that, initially at least, the United Nations should be responsible for the expenses of the committee. However, since that was no longer possible it favoured the idea that each State Party should make an equal contribution to the financing of the committee.

Article IX

11. The CHAIRMAN invited the Committee to consider article IX of the text submitted by Ghana, Mauritania and the Philippines (A/C.3/L.1291).

12. In reply to a question put by Mr. KIRWAN (Ireland), Mr. WALDRON-RAMSEY (United Republic of Tanzania) proposed that in article IX, paragraph 4, the word "normally" should be added before the words "be held at United Nations Headquarters"; that amendment was designed to enable the committee to hold its meetings away from Headquarters in the event of unusual circumstances. Article XI, paragraph 4, contained a similar provision. His delegation could not agree with those who held that the function of the proposed committee would merely be to receive reports and transmit them to the General Assembly; if that were to be the case, there would be no point in having such a committee.

13. Mr. ZULOAGA (Venezuela) supported that view. He too considered that the proposed committee should not be precluded from meeting away from United Nations Headquarters if extraordinary circumstances made that advisable.

14. Mr. LAMPTEY (Ghana), speaking on behalf of the co-sponsors of document A/C.3/L.1291, said that the question raised by the Tanzanian amendment was primarily financial. If the committee met away from Headquarters, that would involve additional expenditure. Moreover, since the committee was intended to be simply a reporting body there would be no reason for it to hold meetings outside Headquarters.

15. In reply to a question put by Mr. SAKSENA (India), Mr. DAS (Secretary of the Committee) said that the financial implications of the Tanzanian amendment would depend on whether a decision was taken to hold meetings away from Headquarters. As had been stated in document A/C.3/L.1292, paragraph 3 (d), with reference to the proposed conciliation commissions, such expenses could not be estimated in advance.

16. Mr. SAKSENA (India) said that his delegation would support the Tanzanian amendment since it did

not seem likely to involve any extraordinary expenditure, and would give the committee greater latitude.

17. The CHAIRMAN invited the Committee to vote on article IX (A/C.3/L.1291) and the amendment thereto.

The Tanzanian oral amendment to insert the word "normally" before the words "be held at United Nations Headquarters" in paragraph 4 was adopted by 38 votes to 10, with 33 abstentions.

Paragraph 4, as amended, was adopted by 83 votes to none, with 2 abstentions.

Article IX as a whole, as amended, was adopted unanimously.

Article X

18. The CHAIRMAN invited the Committee to consider article X of the text submitted by Ghana, Mauritania and the Philippines (A/C.3/L.1291).

19. Mr. GARCIA (Philippines), speaking on behalf of the sponsors, said that two changes should be made in the text of the proposed article X: in the second sentence of paragraph 1, the words "States Parties" should be replaced by the words "State Party", and in paragraph 2 the words "constituted in accordance with paragraph 1 of article VIII" should be deleted, since they were superfluous.

20. Mr. SAKSENA (India) said that the words "explanations or" in the third sentence of paragraph 1 were inappropriate and should preferably be deleted. In the same sentence, the words "any remedy" were unsatisfactory because they implied a presupposition that the complaint was justified. It would therefore be advisable to replace those words by the words "the remedy, if any,". Paragraph 3 was imprecise and might be revised or reworded to remove ambiguity. In the first place it did not specify how the committee was to ascertain that available remedies had been invoked and exhausted. Again, whether remedies referred to there were remedies elsewhere mentioned in the draft Convention or "domestic" remedies. Secondly, it was not clear whether the phrase "in conformity with the generally recognized principles of international law" referred to the act of "ascertaining" or to the principle of invoking the remedies. He wondered whether it would not be appropriate to borrow the wording of article 41 of the draft Covenant on Civil and Political Rights, which contained similar provisions but in simple and precise words. He would welcome clarification on those points from the sponsors.

21. Mr. ZULOAGA (Venezuela) expressed surprise that the Indian representative should be dissatisfied with the words "generally recognized principles of international law" in paragraph 3. In his view the words were perfectly clear and satisfactory.

22. Mrs. CABRERA (Mexico), referring to paragraph 1, suggested that in the second sentence the word "complaint" should be replaced by the word "communication". In the third sentence the words "shall submit" should be replaced by "may submit".

23. Miss KING (Jamaica) asked whether the expression "available remedies" in paragraph 3 referred

to domestic remedies only or included other remedies. Paragraph 5 gave a general authorization to States Parties to send representatives to take part in the proceedings of the proposed committee. Since it might on some occasions be preferable for the committee to hold closed meetings, it might be advisable to find more flexible wording that would leave the committee some latitude in the matter.

24. Mr. WALDRON-RAMSEY (United Republic of Tanzania) agreed with the Indian representative that it would be advisable to use, in paragraph 1, neutral wording which would not appear to prejudice the case. He suggested that the last part of the third sentence should be amended to read "...written statements with reference to the matter and any action that may have been taken by that State".

25. Paragraph 3 was highly ambiguous. As the Jamaican representative had said, it was not clear whether the words "available remedies" referred to domestic remedies only or included other remedies. The words "in conformity with the generally recognized principles of international law" could be taken as referring either to the action of the committee or to the application of the remedies. Furthermore, as the Indian representative had pointed out, those words could give rise to varying interpretations, for the principle of non-interference in domestic jurisdiction was generally recognized in international law, yet it would have to be infringed if it was to be ascertained that all available domestic remedies had been exhausted. His delegation felt that in cases of racial discrimination, which were an offence against humanity, such infringement was justified, but not all countries shared that view. Paragraph 3 in its present form would be an escape clause for any signatory which did not wish to apply the Convention in good faith. He therefore proposed the deletion of the paragraph.

26. Mr. LAMPTEY (Ghana), referring to the amendment to paragraph 1 suggested by the Mexican representative, said that the word "complaint" was preferable, since the "communication" would be submitted by a State Party which was, in fact, complaining that another State Party was not giving effect to the provisions of the Convention. Similarly, the "written statements" referred to in the third sentence would, by definition, be explanations. The sponsors had deliberately used those words because they were strong and accurate. With regard to the "available remedies" mentioned in paragraph 3, the sponsors had not specified that they should be domestic remedies because the two States concerned might employ other remedies, such as bilateral negotiations. If, however, the Committee preferred to insert the word "domestic" between "available" and "remedies", the sponsors would accept that amendment.

27. Mr. CAPOTORTI (Italy) agreed with the Ghanaian representative that it would be more accurate to use the word "complaint" in the second sentence of paragraph 1. The Committee should not be afraid of using vigorous wording.

28. With reference to the Ghanaian representative's last remark, he agreed that it would be advisable to insert the word "domestic" before the word

"remedies" in paragraph 3. States should be left as free as possible to deal with a case through domestic procedures, for it was a recognized international principle that all domestic remedies should be exhausted before a matter was referred to an international body. The Ghanaian representative had explained that the sponsors had omitted the word "domestic" because the States concerned might employ other remedies, such as bilateral negotiations, but there was a danger that the receiving State might use such procedures as a pretext to postpone consideration of a case by the Committee.

29. Paragraph 3 also gave rise to a problem in connexion with the method of ascertaining that all available domestic resources had been exhausted. The proposed committee could not deal directly with the question at that stage of the procedure; it would be difficult for the complaining State to undertake the task and it would be in the interest of the other State to deny that such remedies had been exhausted. Since the question was closely linked to the functioning of the conciliation mechanism, the sponsors might consider dealing with that point in article XI.

30. Mr. COMBAL (France) said that it was normal and desirable to specify that the committee should deal with matters referred to it only after all available domestic remedies had been invoked and exhausted, but that principle should not be allowed to provide the receiving State with a pretext for procrastination. The sponsors might therefore consider using the formula employed in article 41 of the draft Covenant on Civil and Political Rights, which reads, "Normally, the Committee shall deal with a matter referred to it only if available domestic remedies have been invoked and exhausted in the case. This shall not be the rule where the application of the remedies is unreasonably prolonged". That formula could be used either in article X or in article XI, but it should be clear that it applied to all the activities of the committee and of any conciliation commission that might be appointed.

31. Mr. COCHAUX (Belgium) supported the French representative's suggestion.

32. Mrs. BEN-ITO (Israel), referring to paragraph 3, agreed with the Indian and Italian representatives that it was necessary to clarify the method of ascertaining that all available remedies had been invoked and exhausted. In her view, it would be advisable to place the burden of proof on the receiving State. The sponsors might therefore consider adding at the end of the paragraph a sentence on the following lines: "It will be presumed that all available domestic remedies have been exhausted unless the receiving State proves to the satisfaction of the committee that domestic remedies exist which have not yet been used."

33. Mr. NETTEL (Austria) said that the last sentence of paragraph 5 seemed superfluous and should be deleted. It concerned a procedural matter and the question of the committee's procedure was adequately covered in article IX, paragraph 1.

34. Mr. CHKHIKVADZE (Union of Soviet Socialist Republics) said that although, generally speaking, his delegation supported the three-Power text of

article X, it supported the amendment to paragraph 1 which had been suggested by the representative of Mexico; the word "complaint" had a specific juridical meaning, and certain procedures for dealing with complaints existed in all national legislations; moreover, the word "communication" was used in paragraph 2. Unless paragraph 3 was to be deleted entirely, the reference to generally recognized principles of international law should be retained.

35. Mr. OSPINA (Colombia), referring to the remarks of the representatives of Italy and France, said that it would be relatively simple to give clarity and precision to paragraph 3 by making certain changes in the text. For instance, the word "sólo" in the Spanish text, might be deleted and the words "a su juicio" inserted between "cuando" and "haya". He proposed that the words "on the basis of the reply" should be inserted after "ascertained".

36. Mr. CAPOTORTI (Italy) observed that the first change suggested by the representative of Colombia would be difficult to incorporate in the French text unless the paragraph was completely redrafted.

37. The CHAIRMAN suggested that the mere deletion of the word "sólo" would bring the Spanish text into line with the other language versions.

The deletion of the word "sólo" in the Spanish text was approved.

38. Mr. INCE (Trinidad and Tobago) said he could not agree with the Mexican suggestion that the words "shall submit" in paragraph 1 should be replaced by "may submit", since there must be an obligation on the receiving State to make a report. Recalling that some delegations had opposed the use of the word "experts" in article VIII, he pointed out that if the Committee was to ascertain that all available remedies had been exhausted it would have to be composed of experts familiar with international law and with the domestic law and legal systems of certain countries. However, he believed that only the State itself could decide whether its domestic remedies had been exhausted, and he would welcome some explanation of how an external committee could investigate the question. The reference in paragraph 3 to generally recognized principles of international law seemed unexceptionable, but he would point out to the Venezuelan representative that several countries had their own definition of those principles, as a result of which international law was currently in a state of disarray.

39. Mr. MACDONALD (Canada) observed that the doubts expressed by a number of delegations with respect to paragraph 3 could be met quite simply by the insertion of the word "domestic" before the word "remedies"; that would make clear exactly what, in the view of many delegations, was prescribed by the generally recognized principles of international law, and would obviate the possibility of any State's attempting to claim, as a pretext for continued discrimination, that it was pursuing remedies other than domestic ones.

40. Miss TABBARA (Lebanon) said that her delegation supported, in principle, the text of article X as proposed in document A/C.3/L.1291. It had no

objection, however, to the replacement of the word "complaint" by "communication" and the deletion of the words "explanations or" in paragraph 1, which did not affect the substance and might make the text more generally acceptable. The phrase "the remedy, if any" would also be appropriate, but she could not agree to the use of the words "may submit", which gave too much latitude to the receiving State.

41. She agreed with preceding speakers that paragraph 3 was not clear and that the simplest solution would be the insertion of the word "domestic", although she had no objection to the formula used in article 41 of the draft Covenant on Civil and Political Rights, if that was preferred by the Committee.

42. Mr. VAN BOVEN (Netherlands) said he believed that the words "in conformity with the generally recognized principles of international law" in paragraph 3 were meant to refer to the two exceptions to the rule that available remedies must be exhausted before a case was taken to the international level. The exceptions in question were cases where numerous precedents showed that no redress was to be expected from the available remedies or where, as mentioned by the representative of France, application of the remedies was unreasonably prolonged. A similar clause had been included in the Protocol to the Convention against Discrimination in Education, so that it was already accepted phraseology. However, if some delegations felt that its use might lead to misunderstanding and difficulties, the last part of the paragraph, beginning with the words "in conformity with...", might be replaced by "or are likely to be ineffective". He wished to make it clear that that was merely a suggestion, and that the existing text was perfectly satisfactory to the Netherlands delegation.

43. Mr. GARCIA (Philippines) announced that the sponsors of the text contained in document A/C.3/L.1291 had agreed to replace the word "complaint" by "communication" and the words "any remedy" by "the remedy, if any" in paragraph 1, and to insert the word "domestic" before the word "remedies" in paragraph 3.

44. Mr. WALDRON-RAMSEY (United Republic of Tanzania) said that his delegation was strongly opposed to the inclusion of the word "domestic", which represented a deliberate attempt to provide a State which had violated the Convention with unlimited opportunities for frustrating the true purpose of the instrument by continuing indefinitely to argue that all domestic remedies had not yet been exhausted. He believed that that point had been taken into consideration by the sponsors in drafting the text, and the phrase "all available remedies", although open to many interpretations, was preferable. Unless paragraph 3 was deleted entirely, the only acceptable formulation was that suggested by the representative of Israel, which placed the onus of proving that some remedies remained to be exhausted on the State of which complaint was made.

45. Miss AGUTA (Nigeria) agreed that the word "communication" was more appropriate than "complaint" in paragraph 1, since a State submitting information concerning racial discrimination within

another State was not itself the injured party. She agreed with the representative of Lebanon that the use of the words "may submit" would give too much latitude to the receiving State, which must be required to answer any allegation of non-observance.

46. In the view of her delegation, paragraph 2 was quite unsuitable in its present form and should be replaced, after further negotiation, by a new text. Paragraph 3 might be amended to read simply: "The Committee shall deal with a matter referred to it in accordance with paragraph 2 of the present article only as a last resort, in conformity with the generally recognized principles of international law." Paragraph 4 seemed acceptable, but the words "while the matter is under consideration" in paragraph 5 might require further thought.

47. Mr. VERRET (Haiti) welcomed the changes in paragraph 1 which had been accepted by the sponsors, and suggested that the words "from the receiving State" should be inserted after the word "ascertained" in paragraph 3.

48. Mr. SY (Senegal) said that he did not agree with the Tanzanian representative's objection to the insertion of the word "domestic" in paragraph 3, since that addition removed all ambiguity concerning the generally recognized principles of international law involved and would prevent a proliferation of complaints at the international level. To suggest that States Parties to the Convention might use delaying tactics called into question their good faith in acceding to the Convention. With respect to the Haitian suggestion, he believed that the burden of proof that available remedies had been exhausted should rest on the complainant; the committee could only take note of the allegation and compare it with the information on legislative, judicial, administrative or other measures submitted by the State of which complaint was made under the terms of article VIII (bis).

49. Mrs. GROTEWOLD (Guatemala) agreed with the changes in paragraph 1 suggested by the representative of Mexico and with the views expressed by the representative of France concerning paragraph 3. She hoped that the sponsors of the text would bear in mind the suggestion made by the representative of Israel.

50. Miss FAROUK (Tunisia) said that her delegation had a particular interest in paragraph 1, because it was based on the Tunisian amendment (A/C.3/L.1273) to article 11 of the original Philippines text. In the second sentence of that text, however, the words "the opinion of the complaining State" had been used, and her delegation would prefer that phrase to the word "communication" which had now been accepted by the sponsors of document A/C.3/L.1291.

51. Mr. LAMPTEY (Ghana) explained that the sponsors had not used the words "the complaining State" because it had been pointed out, during the informal consultations leading up to the drafting of the text, that the proposed committee would not be a judicial body. With respect to paragraph 3, the sponsors could not, from a juridical point of view, accept

the thesis that a matter could be taken to the international level without an assurance that domestic remedies had been exhausted. They had agreed to delete the last sentence of paragraph 5, as suggested by the representative of Austria.

52. As the sponsors had now accepted a number of suggestions by other delegations, he believed that the Committee should proceed to vote on article X.

53. Mrs. BEN-ITO (Israel) said that she would not submit her suggestion concerning paragraph 3 as a formal amendment, because she had not had time to draft it precisely. However, she urged the sponsors to give the matter further attention before pressing for a vote. The proposed committee would be saved much time and trouble if the manner of proving that available remedies had been exhausted was laid down in the Convention itself, and although the committee would not be a judicial body, it would have to reach conclusions and make recommendations.

54. Mr. BELTRAMINO (Argentina) observed that, in the discussion of paragraph 3, the broader aspects were being overlooked. Everyone agreed that domestic remedies should be exhausted before a case was taken to the international level, but it should be borne in mind that one State might bring a complaint against another, not with respect to the treatment of individuals or groups of individuals, but concerning failure to comply with certain provisions of the Convention which could be rectified by the adoption of new legislation. He therefore agreed with the representative of Israel that further thought should be given to paragraph 3 before it was put to the vote.

55. Mr. KOCHMAN (Mauritania) observed that there should be no difficulty in determining what domestic remedies were available in a given State, since the committee would have before it the report on measures adopted to give effect to the provisions of the Convention, submitted under the terms of article VIII (bis).

56. Mr. WALDRON-RAMSEY (United Republic of Tanzania) suggested that, in view of the appeals for further consideration of article X, paragraph 3, made by the representatives of Israel and Argentina, that paragraph should not be put to the vote at the current meeting.

57. The CHAIRMAN said that, as many delegations saw a need to expedite the proceedings, he believed that the Committee should now vote on article X of the text submitted by Ghana, Mauritania, and the Philippines (A/C.3/L.1291), as revised by the sponsors, and on the oral amendments thereto.

The Tanzanian amendment to paragraph 1 was rejected by 34 votes to 7, with 43 abstentions.

The Tanzanian proposal to delete paragraph 3 was rejected by 70 votes to 2, with 12 abstentions.

The Colombian amendment to paragraph 3 was rejected by 24 votes to 13, with 45 abstentions.

58. Mr. WALDRON-RAMSEY (United Republic of Tanzania) requested a separate vote on the word "domestic" in paragraph 3, as orally revised by the sponsors.

The word "domestic" was adopted by 61 votes to 2, with 16 abstentions.

Paragraph 3, as revised by the sponsors, was adopted by 72 votes to none, with 13 abstentions.

Article X, as a whole, as revised by the sponsors, was adopted by 83 votes to none, with 2 abstentions.

The meeting rose at 6.20 p.m.