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Chairman: Mr. Manfred LACHS (Poland).

AGENDA ITEM 52

Arbitral procedure: comments of Governments on the draft on arbitral procedure prepared by the International Law Commission (A/2456, para. 57, A/2899 and Corr.1 and A/2899/Add.1 and 2, A/CN.4/92, A/C.6/L.369/Rev.1) (*concluded*)

CONSIDERATION OF DRAFT AMENDMENT SUBMITTED BY COLOMBIA, CUBA AND THE UNITED STATES OF AMERICA (A/C.6/L.369/Rev.1) AND AMENDMENTS THERE-TO (*concluded*)

1. Mr. TAMES (Netherlands) replied to the Ethiopian representative, who had asked (471st meeting) the authors of the revised amendments (A/C.6/L.370/Rev.1) to explain the meaning of the words "which is to be understood as a set of rules on arbitral procedure".
2. In drafting the text before the Committee, the International Law Commission had intended to recommend it to the General Assembly with a view to the eventual conclusion of a convention on arbitral procedure. The authors of the revised amendments had wished to make it clear that the General Assembly could not recommend the text as a basis for a convention. The Commission would be invited to consider the comments of Governments and the discussions in the Sixth Committee. He disagreed with the French representative who had said at the 471st meeting that the Commission would be left without directives. The operative paragraph 2 proposed in the revised amendments contained sufficiently precise indications, which would facilitate the Commission's work. The question of the final clauses was less urgent because the draft on arbitral procedure was to be referred back to the Commission.
3. The authors of the revised amendments had chosen the word "rules" for the sake of greater clarity and in order to avoid the arguments to which the use of another term might have given rise. The text seemed to be quite unambiguous; the authors had wished to recognize the legal character of the provisions of the draft on arbitral procedure and at the same time to specify that they could not be regarded as binding rules.
4. Mr. GABRE-EGZY (Ethiopia) said that he would take note of the Netherlands representative's statement. Since no binding rules were involved, the Ethiopian

delegation could accept the four-Power draft amendments and would not ask for a separate vote on the phrase "which is to be understood as a set of rules on arbitral procedure".

5. Mr. SURJOTJONDRO (Indonesia) still thought that in present circumstances the wording proposed in the revised draft resolution (A/C.6/L.369/Rev.1) was reasonable. He did not share the doubts of some delegations about operative paragraph 3 of the draft. In his opinion, the paragraph imposed no obligation on States, exercised no pressure on them and involved no additional expenses for the Organization. Governments were merely invited to take note of the draft on arbitral procedure, but retained full freedom of action.

6. On the other hand, the Indonesian delegation could not accept the six-Power amendment (A/C.6/L.371), which Colombia, Cuba and the United States had agreed to incorporate in their draft resolution (A/C.6/L.369/Rev.1). In present circumstances the United Nations should not concern itself directly with so controversial an enterprise as that proposed by the sponsors of the amendment. If the conference were to be held, it would inevitably be connected in the minds of Governments with the controversy that had divided the Sixth Committee. Moreover, the amendment reintroduced into the draft resolution certain elements that had previously been criticized, and it did not remove the difficulties to which the rules of arbitral procedure had given rise. In so important a sphere as arbitration, solutions approved by only a few Governments were scarcely valid.

7. The Indonesian delegation did not approve of the new operative paragraphs 2 and 3 proposed in the four-Power revised amendments (A/C.6/L.370/Rev.1). The Sixth Committee would not be consistent or logical if it were to refer the draft on arbitral procedure back to the International Law Commission, which considered the draft final. The draft on arbitral procedure was not a document which could be revised *ad infinitum*.

8. In conclusion, he associated himself with the delegations which had asked for separate votes on each paragraph of the draft resolution.

9. Mr. HSU (China) said that he would not vote for the revised amendments because, in his opinion, it would be embarrassing for the International Law Commission if the draft on arbitral procedure were referred back to it. It was true that the General Assembly was entitled to follow that procedure, and in certain cases it was even its duty to do so. If, for example, the Commission had submitted a draft on any subject which contained contradictions of principle, or if it had failed to observe its Statute in its work on the codification or development of international law, it would obviously be essential to refer it back, but no such reasons had been invoked in the present case. Of course, any draft of that kind could be improved; but the International Law Commission was not a drafting committee and a request that it should revise its text would impose on it an obligation which

did not fall within its terms of reference. The Commission had on one occasion declined the invitation of a United Nations organ which had requested it to draft a text without giving it power to examine its legal aspects. If, on the other hand, the Sixth Committee thought the draft on arbitral procedure unacceptable in substance, it should reject it and not refer it back to the Commission, which had adopted it by a large majority and which, even if composed of new members, would hardly be prepared to go back on its decision.

10. Mr. WALKER (Pakistan) said that his delegation was not quite satisfied either with the draft resolution (A/C.6/L.369/Rev.1), as complemented by the six-Power amendment (A/C.6/L.371), or with the four-Power amendments (A/C.6/L.370/Rev.1). The six-Power amendment would be attractive if it were certain that the accession of twenty States could be ensured, but since uncertainty seemed to prevail on that score, it appeared likely that the Committee would have to content itself with paragraph 3 of the draft resolution. That paragraph, although very much toned down, could not be regarded as a satisfactory solution. The four-Power amendments also left much to be desired, since it was not essential to refer the draft on arbitral procedure back to the International Law Commission. However, they had the advantage of providing possibilities of reaching agreement on a conference.

11. The Pakistan delegation would therefore vote for the amendments, which seemed on the whole acceptable.

12. Mr. CASTAÑEDA (Mexico) considered that the Netherlands representative's explanation on behalf of the four sponsors of the revised amendments (A/C.6/L.370/Rev.1) clearly established the competence of the International Law Commission, whose task would thus be facilitated.

13. Mr. MAURTUA (Peru) pointed out that the preamble to the joint draft resolution, together with the four-Power amendments, was incoherent and repetitive. It might be advisable to summarize the history of the question in a single paragraph, or to refer only to the statements made during the tenth session in paragraph 3.

14. Mr. LIANG (Secretary of the Committee) observed that paragraph 4, which had been added to the operative part of the joint draft resolution, would have financial implications; if it were decided to call a conference, the Secretary-General would submit a statement on the implications.

15. Mr. MOROZOV (Union of Soviet Socialist Republics) said that that aspect of the question, which he had not thought necessary to stress before, was very important. He asked how much it would cost to place the whole apparatus of the United Nations at the disposal of States which wished to call a conference against the will of the majority. Although financial considerations were not a substantive argument against calling a conference, they must be considered before any decision was taken.

16. He therefore asked the Secretary-General's representative to state approximately what expenditure would be entailed.

17. Mr. LIANG (Secretary of the Committee) replied that, when the General Assembly had decided, in 1953, to call a conference on statelessness, the Secretary-General had submitted a statement on the financial implications. If the conference on statelessness had been held at Headquarters, the expenses would not have exceeded

the normal budget; if a convention had been concluded, the text would have had to be published in the three working languages, perhaps even in the five official languages, at a cost of \$4,500. The cost of a conference on arbitral procedure would be much the same.

18. Mr. CANAL RIVAS (Colombia) considered it inadvisable, at that stage, to consider the financial implications of a conference which the Committee had not yet decided to call. The Secretary-General would study the problem if necessary and would report to the Fifth Committee, which was the only competent body in that respect. The Sixth Committee should confine itself to examining the legal aspects of the question.

19. Mr. RODIL MACHADO (Guatemala) disagreed with the Soviet representative, who had said (471st meeting) that the six-Power amendment (A/C.6/L.371) was absurd because it would allow a minority of twenty States to call a conference within the framework of an Organization comprising sixty Members. The purpose of the twenty-Power proposal was to set the machinery of convening a conference into motion; if the proposal were adopted, it would be because the majority of delegations had voted for it.

20. Mr. LOPEZ VILLAMIL (Honduras) pointed out that, throughout the debate, the Committee had confined itself to considering the draft on arbitral procedure as a whole. The fact that some of the provisions had been considered acceptable in their context should not obscure the many criticisms to which they were open. He wished to stress, as other delegations had done, that great importance should be attached to the remarks of various delegations about certain articles of which they did not really approve, but which they were prepared to accept because of their context. That was why he had welcomed the revised draft resolution, which stressed the need to take the comments of Governments into account.

21. The Honduran delegation had also welcomed the six-Power amendment. With regard to the considerable expense that a conference might entail, he pointed out that similar expenditure was provided for in the new operative paragraph 3 of the four-Power amendments (A/C.6/L.370/Rev.1, para. 2).

22. Whatever the Sixth Committee might decide, the Government of Honduras would maintain its position, which it had already made known. Like all the signatories of the American Treaty of Pacific Settlement (Pact of Bogotá), it attached the greatest importance to international arbitration; it considered that new life could be breathed into that practice only by calling a conference to give final form to the draft on arbitral procedure. To refer the draft back to the International Law Commission would serve no purpose, as that body had already made its position on the matter quite clear.

23. Mr. JAMIESON (Australia) supported the joint draft resolution (A/C.6/L.369/Rev.1), as it did not imply any judgement on the merits of the International Law Commission's text. On the other hand, by merely bringing the draft to the attention of States, the draft resolution did not go far enough. The draft on arbitral procedure should be given further consideration, in a renewed attempt to improve the text. It should not be regarded as final, or left in abeyance; neither should it be considered afresh at the General Assembly's thirteenth session. The time had come to refer the question to an international conference, where it would be easier to find a solution.

24. The Australian delegation would, therefore, vote for the revised draft resolution (A/C.6/L.369/Rev.1), as completed by the six-Power amendment (A/C.6/L.371), which the sponsors of the proposal had in fact accepted.

25. Mr. MOROZOV (Union of Soviet Socialist Republics) said that the Sixth Committee could not disregard the financial implications of the different measures which it had been called upon to recommend. The estimate submitted by the Secretary of the Committee regarding the cost of an international conference might easily prove too optimistic.

26. Some delegations apparently believed that the main reason for the Soviet Union's opposition to a conference was the number of States required to communicate their willingness to participate. That was not the case. The Soviet delegation supported the revised four-Power amendments (A/C.6/L.370/Rev.1), because they clearly reflected the belief that the International Law Commission's present draft was unsatisfactory and that it was therefore premature to take a decision about a conference.

27. Mr. CARPIO (Philippines) had already stated (469th meeting) that he could not fully support the revised draft resolution, because its adoption would lead to the shelving of the International Law Commission's draft; that would hardly be doing justice to the Commission's valuable work. He had been inclined to support the revised four-Power amendments (A/C.6/L.370/Rev.1), feeling that they would allow the International Law Commission to reconsider the question as a whole, to reconcile the different viewpoints and to submit an acceptable draft, without precluding the possibility of an international conference of plenipotentiaries.

28. The explanation given at the beginning of the meeting by the Netherlands representative, on behalf of the sponsors of the joint amendments, had shown that his previous interpretation had been incorrect. If the amendments were adopted, the International Law Commission's terms of reference would become so restricted that they could not be reconciled with the principle of progressive development of international law. That restriction was implicit in the words "to be understood as a set of rules on arbitral procedure". Such an expression was inconsistent with the spirit, conservative yet novel, of the present draft, and with the binding character of its provisions.

29. The Philippine delegation believed in the new principles, designed to prevent a State from evading the obligations it assumed on signing an arbitration agreement. That essential feature of the draft on arbitral procedure would disappear if the four-Power amendments were adopted. He would, therefore, be unable to vote in favour of those amendments.

30. Mr. LOPEZ VILLAMIL (Honduras) pointed out that the new paragraph 3 proposed in paragraph 2 of the revised amendments (A/C.6/L.370/Rev.1) and the six-Power amendment (A/C.6/L.371), which had become paragraph 4 of the revised draft resolution, both implied the same thing: any conference of plenipotentiaries must have before it an improved draft convention or else try to improve the present draft on its own account. Any other interpretation would be inadmissible.

31. Mr. MAURTUA (Peru) supported the Honduras representative and referred to articles 20 and 22 of the International Law Commission's Statute. As soon as

it was felt that the Commission had discharged its obligations under those articles, its task would be ended. If an international conference could not subsequently be convened because not enough States were prepared to participate, the question of arbitral procedure would be consigned to oblivion. It was therefore imperative to devise a draft convention which a large number of States could accept and which the conference could use as a basis.

32. The CHAIRMAN said that the revised four-Power amendment to the preamble of the revised joint draft resolution (A/C.6/L.370/Rev.1, para. 1) would be put to the vote paragraph by paragraph as requested.

The first paragraph proposed by the four Powers was approved by 33 votes to 13, with 5 abstentions.

The second paragraph proposed by the four Powers was approved by 23 votes to 19, with 8 abstentions.

33. The CHAIRMAN put to the vote the preamble of the draft resolution (A/C.6/L.369/Rev.1), as amended.

The preamble, as amended, was approved by 29 votes to 7, with 15 abstentions.

34. Mr. GALLEGOS (Ecuador) asked for the operative part to be put to the vote paragraph by paragraph.

35. The CHAIRMAN put to the vote operative paragraph 1 of the draft resolution (A/C.6/L.369/Rev.1).

Operative paragraph 1 was approved by 44 votes to 5, with 1 abstention.

36. At the request of Mr. CARPIO (Philippines), the CHAIRMAN put to the vote separately the words "which is to be understood as a set of rules on arbitral procedure", in the new operative paragraph 2 proposed by the four Powers (A/C.6/L.370/Rev.1, para. 2).

There were 20 votes in favour, 20 against and 7 abstentions. The words were deleted.

37. Mr. TABIBI (Afghanistan) requested that a vote be taken by roll-call on the new operative paragraph 2 proposed by the four Powers, as amended.

A vote was taken by roll-call.

The United States of America, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Uruguay, Yemen, Yugoslavia, Afghanistan, Burma, Byelorussian Soviet Socialist Republic, Costa Rica, Czechoslovakia, Ecuador, El Salvador, Ethiopia, Guatemala, India, Iran, Iraq, Israel, Luxembourg, Mexico, Netherlands, Pakistan, Peru, Philippines, Poland, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

Against: United States of America, Venezuela, Argentina, Australia, Belgium, Brazil, Canada, China, Colombia, Cuba, Denmark, Dominican Republic, France, Honduras, Indonesia, Liberia, New Zealand, Norway, Sweden, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland.

Abstaining: Bolivia, Chile, Egypt, Greece, Saudi Arabia.

The new operative paragraph 2 proposed by the four Powers, as amended, was approved by 26 votes to 22, with 5 abstentions.

38. The CHAIRMAN put to the vote the new operative paragraph 3 proposed by the four Powers (A/C.6/L.370/Rev.1, para. 2), excluding the words "for final consideration", which the sponsors had agreed to delete (471st meeting).

The new operative paragraph 3 proposed by the four Powers, as amended, was approved by 26 votes to 18, with 9 abstentions.

39. The CHAIRMAN said that, in view of the result of the vote, it would be unnecessary to put to the vote the other paragraphs of the revised joint draft resolution (A/C.6/L.369/Rev.1).

40. The CHAIRMAN put to the vote the draft resolution submitted by Colombia, Cuba and the United States of America (A/C.6/L.369/Rev.1) as a whole, as amended.

The draft resolution, as amended, was approved by 27 votes to 18, with 8 abstentions.

41. Mr. TARAZI (Syria) said that he had voted in favour of the revised amendments (A/C.6/L.370/Rev.1) because he felt that the International Law Commission should reconsider the draft on arbitral procedure in the light of the comments of Governments and the statements in the Sixth Committee. The draft resolution which the Sixth Committee had just approved would enable the International Law Commission to continue with its task and the Sixth Committee to give further consideration to the question of arbitral procedure.

42. Mr. RODIL MACHADO (Guatemala) said that his vote might appear inconsistent with his delegation's previously stated position. He recalled his statement at an earlier meeting (469th meeting). The Guatemalan delegation had initially felt that the revised draft resolution, with the four-Power amendments, would afford a satisfactory solution, provided that the words "which is to be understood as a set of rules on arbitral procedure" were deleted. As that suggestion had apparently

not met with the approval of the sponsors of the amendments, his delegation had supported the six-Power amendment (A/C.6/L.371). Since, however, the Sixth Committee had voted to delete the words in question, his delegation, wishing only to assist the development of international law, had finally felt able to support the four-Power amendments.

43. Mr. CARPIO (Philippines) pointed out that he had asked to speak on a point of order, while voting was in progress, in order to ascertain precisely what provisions had been put to the vote; he had wished to be in a position to correct his vote, if necessary. He had in fact voted as he had intended; nevertheless, rule 129 of the rules of procedure allowed a representative to raise a point of order in connexion with the actual conduct of the voting, which was all he had tried to do.

44. The CHAIRMAN said that under rule 129 the point of order must be in connexion with the actual conduct of the voting and could not refer to the actual questions on which the vote was being taken.

45. Mr. CARPIO (Philippines) pointed out that the provisions of rule 129 allowed a representative to inquire what provisions were being put to the vote, in order to be able, if he had made a mistake, to correct his vote in time.

46. The CHAIRMAN said that he had only meant to apply the rules of procedure; he could not call upon a representative after the count had already begun. The misunderstanding had not proved serious, but if an error of interpretation had been committed, he hoped that it would not occur again.

The meeting rose at 12.40 p.m.