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Chairman: Mr. Jorge CASTAÑEDA (Mexico).**Point of order concerning meeting arrangements**

1. Mr. MOROZOV (Union of Soviet Socialist Republics), speaking on a point of order, said that at the twelfth session of the General Assembly the Sixth Committee had sat more frequently in the General Assembly hall than any of the other Main Committees, and that it had been the only Committee required to sit there since the opening of the current session. The Secretary-General's attention should be drawn to the matter in order that the Committee might not be the subject of special treatment which compelled it to work under difficult conditions.

AGENDA ITEM 57

Question of arbitral procedure (A/3859, chap. II, A/3863; A/C.6/L.422 and Rev.1, A/C.6/L.423 and Rev.1, A/C.6/L.424 and Add.1) (continued)

2. The CHAIRMAN announced that revised texts of the draft resolutions presented by Greece and by Turkey would be distributed during the meeting. In order to save time, he proposed that the Committee should take an immediate decision on the proposal by France (564th meeting, para. 20) to appoint a working group for the purpose of preparing a joint text based on the various drafts and amendments submitted. It would not be a drafting committee, as agreement had not yet been reached on the substance, nor would it be a sub-committee acting on the Committee's instructions and taking decisions by a majority vote. It would be a group of delegations formally appointed to attempt to reach an agreement. The group could consist either of the sponsors of the draft resolutions and amendments or of delegations representing the two main trends which had emerged in the general debate.

3. Mr. CHAUMONT (France) considered that the working group should consist solely of delegations which had presented draft resolutions or amendments. There was no need to appoint a representative group since any agreement between the sponsors of the draft resolutions would secure the agreement of the Committee. Furthermore, the risk of provoking a further debate should be avoided.

4. The working group should not have too much difficulty in preparing a joint text as there had been a rapprochement between the various positions. If, how-

ever, the group should find it impossible to reach agreement, the Committee would then vote on the various proposals which had been presented.

5. Mr. MOROZOV (Union of Soviet Socialist Republics) said he was not as optimistic as the French representative. He feared that the appointment of a working group would prove a waste of time, as neither the Greek nor the Turkish delegation had shown any inclination to meet the position of the sponsors of the joint draft resolution, which appeared to have the support of a large number of delegations.

6. He agreed that the Committee should immediately decide whether to appoint a working group, although he doubted its usefulness. Before voting, he wished to hear the views of the sponsors of the various drafts.

7. Mr. TUNCEL (Turkey) said he was sure that a working group consisting of the sponsors of the three draft resolutions and the amendments would prove useful. He believed that if both sides made concessions, and not one side only, as the USSR representative appeared to assume, it would be possible to reach an agreement.

8. Mr. EUSTATHIADES (Greece) agreed entirely with the USSR representative that it would be useless to appoint a working group, at least at the present stage of the debate. In its revised draft resolution (A/C.6/L.422/Rev.1), the Greek delegation had taken into account as far as possible, and more than would have been possible in a working group, the views which had been expressed in the Committee and the ideas contained in the joint draft resolution (A/C.6/L.424 and Add.1).

9. The CHAIRMAN said that since the author of one of the draft resolutions opposed the appointment of a working group, further discussion of the matter was pointless. He suggested that the debate should be resumed on the various proposals.

It was so decided.

10. Mr. LIMA (El Salvador) said that, in his view, any resolution adopted by the Committee on the question under discussion should indicate that the draft rules prepared by the International Law Commission included important elements with respect to the progressive development of international law on arbitral procedure. That fact had been recognized by the General Assembly twice over, in its resolutions 797 (VIII) and 989 (X), and failure of the Sixth Committee to mention it would be a step backward from the earlier discussions of the International Law Commission's work on arbitral procedure.

11. Furthermore, any draft resolution which the Committee adopted should at least express appreciation to the International Law Commission. The Polish representative had explained (565th meeting, para. 40) why the General Assembly could not express its appreciation of the International Law Commission's work. How-

ever, if the Polish delegation and the other sponsors of the joint draft resolution accepted the Venezuelan amendment (A/C.6/L.425), which stated that the set of rules was a "valuable contribution of the International Law Commission", it would be inconsistent to refuse to include some expression of appreciation in the resolution.

12. Of the three draft resolutions before the Committee, the joint draft resolution (A/C.6/L.424 and Add.1) was the only one which contained neither an expression of appreciation to the International Law Commission nor any reference to the important elements contained in the Commission's draft. He therefore could not support it.

13. All the draft resolutions merely took note of the model rules, whereas a large majority of the Committee's members had been in favour of going somewhat further, were it only to recognize that the rules were a valuable piece of technical work done by eminent jurists.

14. The original Greek draft resolution (A/C.6/L.422) commended the rules to the attention of Member States so that they might be guided by them to such extent as they considered appropriate. He did not agree with those delegations which had criticized that passage on the ground that it contained an implicit approval of the content of the rules. A shortcoming of the draft resolution was, however, that it did not call for further consideration of the matter by the United Nations.

15. The other two draft resolutions both aimed to keep the question of arbitral procedure under study. They differed only as regards the method to be employed. He preferred the Turkish draft (A/C.6/L.423) because, although it did not in any way compel Member States to use the model rules, it subjected them, as it were, to the test of time. However, the majority appeared to favour the joint draft resolution which invited Governments to give the draft rules further study in the light of the discussion in the Sixth Committee during the thirteenth session of the General Assembly. It was inappropriate to recommend that Governments should undertake studies, and it would be preferable to consider establishing a special body to study the question or to frame a recommendation by which the General Assembly, without itself approving the rules drawn up by the International Law Commission, would invite Member States to apply them if they so desired. There was no reason to ask Governments to take into account only the discussion during the current session. For the purpose of the study, the debates at the previous sessions at which the question of arbitral procedure had been discussed would be just as useful as the recent discussion. A phrase such as "in particular during the thirteenth session of the General Assembly" might be used.

16. Lastly, the Committee should not adopt a resolution which made no reference to the question of convening an international conference of plenipotentiaries to conclude a convention on arbitral procedure, as contemplated in General Assembly resolution 989 (X). If most delegations considered it inadvisable to convene such a conference in the prevailing circumstances, the fact should be mentioned in the resolution.

17. The debate had revealed points of similarity between the three draft resolutions, which had not

been immediately apparent. It would be difficult to vote on the drafts as they stood, as some of their provisions were so worded that certain delegations would have to vote against the draft resolutions as a whole. Although the Greek delegation considered that a working group would not be able to find a satisfactory solution, he himself believed that such a group could do useful work if it were asked not to find a compromise solution, but to prepare texts having at least some paragraphs with a uniform wording. He urged the authors of the different proposals to come together, informally if need be, in order to prepare texts on which the members of the Committee could more readily vote.

18. Mr. MOROZOV (Union of Soviet Socialist Republics) felt that the difficulties referred to by the Salvadorian representative might be overcome if, in accordance with established practice, the Committee began by deciding on the order in which the different draft resolutions were to be put to the vote. One of them might obtain a majority.

19. The draft resolutions reflected the two main trends which had emerged during the discussion: some delegations wished to approve the International Law Commission's draft articles as a whole, while others wished to avoid adopting that text.

20. There was no important difference between the Greek draft resolution in its revised form (A/C.6/L.422/Rev.1) and the original Greek text. The changes were purely formal, and should be recognized as such. The essential provision of the original proposal (A/C.6/L.422), contained in operative paragraph 3, had commended the rules to the attention of Member States so that they might be guided by them. That idea recurred in the revised draft resolution. Whatever the Greek representative might say, the purpose of the new text, as of the old, was to commend the text of the articles to Governments, a course which was contrary to the wishes of the majority. Hence the revised Greek draft resolution was unacceptable.

21. Much the same could be said about the revised Turkish draft resolution (A/C.6/L.423/Rev.1). Like the original proposal, it provided in operative paragraph 2 that States should use the rules drawn up by the International Law Commission. However, some of those rules had been proved to conflict with the Charter. To adopt the Turkish text would be tantamount to approving the use by States of rules which contravened the Statute of the International Court of Justice. Hence the revised Turkish draft resolution was likewise unacceptable.

22. It had been said that the Greek and Turkish draft resolutions had some points in common with the joint draft resolution. The resemblances, however, were superficial, and merely matters of form. The important provisions were radically different. Furthermore, all the acceptable features of the Greek and Turkish drafts had already been embodied in the joint text; the latter should therefore command majority support.

23. That text was, of course, open to amendment, and the USSR delegation was prepared to support amendments which did not rule out the possibility, provided by the joint draft resolution, of reopening the discussion on arbitral procedure; for it would be wrong to close the door to the further development of arbitral law.

24. In the meanwhile he shared the majority view and, subject to possible amendments, would vote for the joint draft resolution.

25. Mr. PARRA VELASCO (Ecuador) warmly supported the Greek draft resolution. It was evident that the Greek delegation had refrained from making stronger recommendations, as the International Law Commission's work deserved, only from a desire to find common ground.

26. Although the Ecuadorian delegation supported the Greek proposal, it was not blind to the merits of the joint draft resolution or those of the Turkish draft which indeed was very close to the Greek text.

27. With a few minor changes, the Greek draft could be the basis for an Assembly resolution. The original Greek text (A/C.6/L.422) had been criticized for recognizing that the draft on arbitral procedure contained "important elements". That fact, however, had been acknowledged by the great majority of delegations, including even those which had criticized the draft. The General Assembly itself, in its resolutions 797 (VIII) and 989 (X), had recognized that the draft prepared by the International Law Commission included certain important elements with respect to the progressive development of international law. The revised draft, as had been repeatedly pointed out, was virtually the same as the original one. That being so, he did not see how the existence of those important elements could now be denied, unless a new reason for so doing could be put forward.

28. The Brazilian representative had found the draft articles unacceptable on the ground that they would place unduly heavy responsibilities on States. That view did not appear to coincide with the opinion of such eminent Brazilian jurists as Mr. Accioly and Mr. Ruy Barbosa.

29. According to the French representative, it would be wrong for the Committee to adopt the draft articles (561st meeting, para. 28), or even to say that they contained important elements, because it had not examined them article by article; but the members of the Committee had now discussed the question sufficiently to be able to pass judgement on the value of the International Law Commission's draft.

30. He did not think that any draft resolution could consign to oblivion a text which was in harmony with the whole world's aspirations for peace and justice.

31. The CHAIRMAN suggested that for the remainder of the discussion on the draft resolutions the time limit on speeches should be ten minutes.

It was so decided.

32. Mr. EVANS (United Kingdom), analysing the draft resolutions before the Committee, said that his delegation would have been prepared to support the Greek draft resolution in its original form (A/C.6/L.422).

33. With regard to the Turkish draft (A/C.6/L.423), he favoured the idea implicit in the operative part that the model rules should be tried out by States in practice. He also felt, however, that there should be an express provision drawing the model rules to the attention of States. He doubted the necessity of an express provision for a review of the question, but if it was decided to include such a provision, the wording of the Greek draft resolution appeared more suitable.

34. The joint draft resolution (A/C.6/L.424 and Add. 1), representing the view of those delegations which had been most critical of the model rules, did not even mention the fact that the model rules were worthy of consideration by States in drawing up arbitral agreements; it thus failed to do adequate justice to the work of the International Law Commission. Furthermore, the first preambular paragraph implied that arbitration was the only means for the peaceful settlement of disputes, whereas the Charter also mentioned other procedures which were sometimes more suitable. In that respect the corresponding preambular paragraphs of the Turkish draft and the revised Greek draft resolution (A/C.6/L.422/Rev.1) were more happily worded. The last preambular paragraph was also unsatisfactory. As the French representative had already observed, it would be illogical for the General Assembly to base its conclusions solely on the observations of Governments on an earlier draft; it should also take into consideration the discussions in the Sixth Committee and the explanations given in chapter II of the International Law Commission's report (A/3859).

35. As regards the operative part of the joint draft resolution, it was not enough to ask States to study the draft rules; if there was to be a review of the matter, it should be based not only on theoretical studies but also on the practical experience of States.

36. The Greek delegation was to be congratulated on the conciliatory spirit shown in its revised draft resolution. The preamble was wholly satisfactory; it contained the correct considerations on which the operative part should be based. Operative paragraph 1 called for no comment. Paragraph 2 expressed appreciation of the International Law Commission's work on arbitral procedure; it was fitting that that should be done, since the value of the Commission's work had been recognized by practically all delegations in varying degrees. Paragraph 3 was also expressed in satisfactory terms; it was implicit in the Turkish draft resolution that Governments might use the Commission's draft articles as they considered appropriate, and that was not excluded by the joint draft resolution. Hence all delegations should be able to accept the paragraph without difficulty. Lastly, paragraph 4 was a concession to the sponsors of the joint text, but its phrasing was superior to that used in the five-Power proposal; it recognized that review of the matter should be based not merely on theoretical study but also on the practical experience of States.

37. He would therefore support the revised Greek draft resolution.

38. Mr. DABBAGH (Saudi Arabia) said that he had so far refrained from participating in the general discussion not for lack of interest in arbitral procedure, to which his Government had often had recourse, but because he had been waiting for the emergence of the different trends of opinion on the draft rules proposed by the International Law Commission.

39. While he recognized that the Commission had made a contribution to the progressive development of international law, he felt, for reasons already given by other delegations, that the draft articles of the International Law Commission could not be commended to States as model rules.

40. Failing agreement on a new joint draft resolution, he would support the text in document A/C.6/L.424

and Add.1 if its sponsors accepted the amendments proposed by Ceylon (A/C.6/L.426).

41. Mr. KHAN (India) said that, despite the importance which the Indian Government attached to arbitration, he could support neither the Greek nor the Turkish draft resolution. Both texts, the one explicitly, the other implicitly, conferred approval on the model rules proposed by the International Law Commission. However, the debate had made it clear that those rules ran counter to the traditional concept of arbitration by introducing an element of compulsion likely to prejudice the settlement of disputes. The revised Greek text did not differ appreciably from the original draft except in that it invited Governments to send the Secretary-General their comments. Furthermore, some delegations had felt that the model rules could not be approved unless they were first discussed article by article.

42. The Indian delegation felt that, in the circumstances, the only acceptable text was the joint draft resolution. It would therefore support that proposal in the firm conviction that the will of the parties must prevail at every important stage in arbitral procedure—for example, with regard to the arbitrability of the dispute and the choice of arbitrators—and that arbitral procedure must be flexible, must remain separated and distinct from judicial procedure, and must not involve the President of the International Court of Justice.

43. However, he proposed that the words "if appropriate" should be added at the end of the first preambular paragraph of the joint draft resolution; that would go some way to meeting the objection of the United Kingdom representative.

44. The Indian delegation reserved its right to make a further statement if necessary.

45. The CHAIRMAN invited the sponsors of the joint draft resolution to state whether they accepted the amendments proposed by Ceylon and Venezuela; if so they might put a revised proposal before the Committee.

46. Mr. ADAMIYAT (Iran), speaking on behalf of the five sponsors of the draft resolution, replied that they accepted the amendments proposed by Ceylon (A/C.6/L.426).

47. They were also prepared to replace the first preambular paragraph of their text by the second preambular paragraph of the Turkish draft resolution (A/C.6/L.423).

48. On the other hand, they had some reservations regarding the wording of the Venezuelan amendment (A/C.6/L.425).

49. The five Powers intended to present a revised draft resolution.

The meeting rose at 1 p.m.