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

1. Mr. CHAUMONT (France), speaking on a point of order, said that he believed he was expressing the general feeling of the Committee in drawing the Secretariat's attention to the unsuitability of the General Assembly hall for a meeting devoted to a procedural discussion. He protested against the decision obliging the Sixth Committee to hold two consecutive meetings in that hall.

2. Mr. LIANG (Secretary of the Committee) said that the Secretariat applied a rotation system. The Sixth Committee was being asked to hold two consecutive meetings in the General Assembly hall, as an exception, because the Special Political Committee had to meet twice on the same day and it would be inconvenient for it to change rooms.

3. The CHAIRMAN asked the Committee Secretary to inform the competent authorities of the Sixth Committee's wish that the rotation system should not be applied rigidly, and that the character of the debate being held by the Committee should be taken into consideration.

**AGENDA ITEM 57**

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

4. Mr. TUNCEL (Turkey) said that he had been surprised at the criticism of the Turkish draft resolution (A/C.6/L.423), voiced by the Australian representative at the previous meeting, as Australia had no experience of arbitral procedure. The words "at its eighteenth session at the earliest" in the operative part of that draft resolution were intended to enable the Secretary-General to submit his report only when he had received sufficient information from Governments regarding the application of the model rules. The main purpose of the Turkish draft resolution was to maintain the question of arbitral procedure on the agenda of the General Assembly for an indefinite time. The delegations which criticized that draft should not dwell on details, but should face up to their responsibilities under the Charter provisions mentioned therein.

5. With reference to the statement of the Brazilian representative (564th meeting, para. 35), he stressed

that operative paragraph 1 of the draft resolution submitted by Turkey should not be construed as a recommendation to Governments or as an expression of approval of the draft articles. Contrary to the opinion expressed by some delegations, he considered that paragraph 1 of the Turkish draft resolution did not have the same meaning as the corresponding paragraphs of the two other draft resolutions before the Committee (A/C.6/L.422 and A/C.6/L.424 and Add.1); it was wider in scope, for it took note of the contribution of the International Law Commission to the development of international law in the field of arbitral procedure, whereas the two others merely referred to chapter II of the Commission's report (A/3859). As Mr. Scelle had pointed out in the conclusion of his report (A/CN.4/113, para. 28), the Commission's draft was not the fruit of theoretical speculation; it was based on the texts of conventions which antedated it, and an effort had been made to incorporate into it the progress made by international arbitration in actual practice over the past half century. Mr. Scelle had added: "the Commission's draft may appear more shy than presumptuous". Accordingly, the Turkish draft resolution took into consideration both scientific opinion, in operative paragraph 1, and public opinion, in its preamble. Public opinion would find it difficult to understand a decision of the General Assembly refusing to examine the question of arbitral procedure even in the future, although it was one of the means of peaceful settlement mentioned in the Charter, and rejecting a draft which introduced substantial improvements into the machinery for settling disputes between States.

6. Contrary to the assertion of the USSR representative (564th meeting, para. 40), the Turkish draft resolution did not in any way imply an approval or a recommendation of the model rules. As the French representative had explained (*ibid.*, para. 20), the Turkish proposal had the merit of not stressing the questions on which opinions in the Committee had been divided. For its part, the Turkish delegation approved the model rules; but, wishing to take into account the opinion of the other delegations and to facilitate a constructive solution, it had submitted a draft resolution which did not contain even a suggestion of approval.

7. Some Governments might have occasion to use all or part of the model rules. The United Nations could not prevent them from doing so and had to take that fact into consideration; that was the justification for operative paragraph 2 of the draft resolution submitted by Turkey.

8. Mr. PEREZ PEROZO (Venezuela) said that the Venezuelan delegation had already voiced some serious criticism of the draft articles (A/3859, para. 22) and could therefore only support a draft resolution which did not recommend them in any way. Consequently,

his delegation could not support operative paragraph 3 of the Greek draft resolution (A/C.6/L.422).

9. Under the terms of operative paragraph 2 of the Turkish draft resolution (A/C.6/L.423), States could use the model rules in the form submitted by the International Law Commission; the wording admittedly did not express approval in the strict sense, but it might nevertheless be interpreted as implying a recommendation.

10. In those circumstances, the Venezuelan delegation preferred the joint draft resolution (A/C.6/L.424 and Add.1), which did not contain any recommendation either expressed or implied. In order, however, to take into account the suggestion of the representative of Brazil (564th meeting, para. 35), the text of operative paragraph 1 of the Turkish draft resolution could be inserted in operative paragraph 2 of the joint draft resolution; in that manner, the General Assembly would stress that entire responsibility for the draft must be borne by the International Law Commission and indicate that the text was not a final product but only an advancement.

11. The Venezuelan delegation, nevertheless, held the International Law Commission's work in great esteem and shared the views of the delegations which wanted to pay a tribute to the Commission. Furthermore, international law was constantly changing, and it was possible that the proposed model, which had been criticized so much, might one day prove satisfactory.

12. He was pessimistic about the fate which would befall the model rules under all three draft resolutions.

13. The Greek draft resolution took into consideration the comments and statements made in the Sixth Committee at the thirteenth session of the General Assembly. In reality, however, most of those statements had been very critical. It was thus difficult to believe that States would draw inspiration from draft articles which their representatives had so strongly criticized.

14. The Turkish draft resolution would bury the draft just as surely, if more slowly. It was illusory to imagine that a report of the Secretary-General, which was to be prepared at the earliest for the eighteenth session of the General Assembly, could revive the model rules. The Turkish draft resolution called on States to inform the Secretariat of the extent to which they used the model rules. The Charter, however, in Article 102, already required States to register with the Secretariat, for purposes of publication, the treaties to which they were party. There was thus a sufficient assurance that any treaties containing clauses drawn from the model rules would be brought to the Secretary-General's attention, but it was very unlikely that many States would have recourse to the rules.

15. The only faint hope of reviving the draft rules lay in the joint draft resolution, which showed that five countries at any rate—namely, the sponsors of that text—would assume at least a moral obligation to study the draft rules further. The Venezuelan delegation would accordingly vote in favour of the joint draft resolution.

16. Mr. NINCIC (Yugoslavia) pointed out that the three draft resolutions had many features in common. They differed in one point only, albeit an important one: the

decision to be taken on the draft articles. The majority, nevertheless, realized that they could neither be rejected outright nor endorsed in any form whatever, as there was insufficient agreement on the rules they contained and they had not been considered in detail. Everyone also agreed that the draft articles could be improved.

17. His delegation therefore thought that the two solutions proposed by Greece and the five Powers on the one hand and Turkey on the other should be amalgamated in a new draft resolution, under which the General Assembly would submit the model rules to the attention of States and invite those which might use them to inform the Secretary-General accordingly. The United Nations could then take a decision based on the reports received from Governments.

18. His delegation accordingly supported the French representative's suggestion (564th meeting, para. 22) that the sponsors of the draft resolutions should jointly try to prepare a new draft resolution likely to command virtually unanimous support in the Sixth Committee.

19. Mr. YASSEEN (Iraq) said that he agreed with most of the delegations, particularly that of Turkey, that the model rules proposed by the International Law Commission were of undeniable scientific value. However, his delegation could not regard them as satisfactory, because—*notwithstanding their potential usefulness at some more advanced phase of international life—they did not accord with existing reality and the wishes of States.* International law, unlike municipal law in which the legislator could impose on individuals whatever rules he enacted, depended primarily on the consent of States, and it would be futile to propose rules which States were not prepared to apply.

20. The Turkish draft resolution would halt the study of arbitral procedure for five years, although, if the attention of States was drawn to the model rules, some progress might be possible during that period.

21. With regard to the draft resolution it had co-sponsored (A/C.6/L.424 and Add.1), his delegation was prepared to accept the amendment, proposed by Brazil and Venezuela, whereby paragraph 1 of the Turkish draft resolution would be inserted in operative paragraph 2 (see para. 10 above).

22. Mr. ROSENNE (Israel) thought that the preambles of the three draft resolutions were unobjectionable so long as they confined themselves to a brief historical resumé of the debates on arbitral procedure. Some passages in those preambles, however, appeared to go further than that and were open to criticism. Thus, in the second preambular paragraph of the Greek draft resolution, it would be more advisable to say "could assist States" than "will help greatly to inspire States". Moreover, the fifth paragraph of the text seemed to be unnecessary, in view of the preceding paragraph. In the preamble to the Turkish draft resolution, on the other hand, the word "examined" appeared to be incorrect; there had been discussions, but no examination in the strict sense of the word.

23. It was satisfactory that the operative part of all the drafts took note of the International Law Commission's report. In his view, the wording used in paragraph 1 of the Greek draft resolution was the most appropriate. It was also apposite that the Committee

express its appreciation of the work accomplished by the International Law Commission. The main difference between the draft resolutions lay in the proposals for the future. In the view of his delegation, the passage "so that, in such cases and to such extent as they consider appropriate according to the circumstances, they may be guided by those rules and may use them" in paragraph 3 of the Greek draft resolution went too far and should be replaced by the words "for use as appropriate". With regard to the solutions proposed in the concluding passages of the operative parts of the other two draft resolutions, his delegation did not think that the question of arbitral procedure should be automatically re-examined by the General Assembly in the near future. If further examination should prove necessary in the light of experience, it should preferably be undertaken in the first instance by the International Law Commission after that body had completed the work on which it was now engaged. The use of the model rules would be greatly facilitated if the Secretary-General prepared and published a commentary containing, *inter alia*, the legislative history of the text and other appropriate material, and the sponsors of the various draft resolutions might well include a provision to that effect in their texts.

24. In conclusion, he said that his delegation preferred the draft resolution submitted by Greece, but hoped that it could be modified in the way he had indicated. It also supported the French and Yugoslav proposal that an attempt should be made to prepare a new draft resolution.

25. Mr. DOUC RASY (Cambodia) said that the simplest course, in a draft resolution, would be to place on record the division existing in the Sixth Committee and the Committee's desire not to recommend the draft transmitted by the International Law Commission for adoption by states, as some of its provisions had been the subject of strong criticism. In order to make it quite clear that the Committee had no intention of committing itself, the word "model" might be deleted and the text might refer only to "rules prepared by the International Law Commission". The Sixth Committee might nevertheless express its appreciation of some aspects of the International Law Commission's work. Thus, the Committee's position would be clearly stated.

26. Since, however, the effectiveness of procedural rules could only be tested in practice, the Committee might invite States to submit their comments on the matter.

27. In his delegation's view, there seemed to be no need to submit a new draft resolution. The Committee might reach agreement by deleting some ambiguities in the draft resolutions already before it, so that the text finally adopted by the General Assembly would not lend itself to more than one interpretation.

28. Mr. PERERA (Ceylon) said that the remarks he wished to make on the three draft resolutions would be without prejudice to the French representative's proposal (564th meeting, para. 22) that a drafting committee should be appointed to prepare a new text.

29. His delegation considered the Greek draft resolution unacceptable, because it went into the substance of the model rules although it had been agreed that the Committee, not having examined each article in detail, was in no position to do so. That criticism applied

particularly to the third preambular paragraph, which dealt with an extremely controversial point, and to the operative part, by which the General Assembly would recommend that States should make use of articles which had not been considered by the Committee.

30. If put to the vote, the draft resolution would undoubtedly be defeated, which would be discourteous to the members of the International Law Commission.

31. The draft resolution submitted by Turkey was acceptable in many respects. Some delegations, however, could not regard the International Law Commission's work as a contribution to the development of international law, and the use of the word "model" in operative paragraph 2 was open to criticism. Operative paragraph 3, on the other hand, was worth considering.

32. The joint draft resolution was the least controversial and the least likely to bring about the final interment of the rules proposed by the International Law Commission. So far as its operative part was concerned, the delegation of Ceylon formally proposed the following amendments: 1/ in operative paragraph 2 the deletion of the words "so as to make the reconsideration of the matter by the United Nations possible", and the addition of a new paragraph worded as follows:

"3. Requests the Secretary-General to submit to the General Assembly at the appropriate time whatever comments Governments may wish to make so as to enable the United Nations to reconsider the matter."

The new paragraph 3 would leave full freedom of action to States, which could then report to the United Nations on whatever decision they chose to adopt. The Organization would thus be in a position to compare the working of classical arbitration and of the proposed new method. In fact, even if that method was adopted only by a minority of States, their opinion on the subject would be valuable. At the same time, the new paragraph 3 would serve the purposes envisaged in operative paragraphs 2 and 3 of the Turkish draft resolution. And lastly, the Sixth Committee would thus save the work of the International Law Commission from ending in failure.

33. The delegation of Ceylon therefore hoped that the sponsors of the joint draft resolution would take its proposed amendment into consideration; if it was also acceptable to Greece and Turkey, the work of the drafting committee would be hastened.

34. Mr. ILLUECA (Panama) said that the difficulties confronting the Committee derived from the fact that Turkish draft resolution and the joint draft resolution did not confine themselves to taking note of the model rules prepared by the International Law Commission, but envisaged a new study of the matter after a certain period. Yet it was clear from the records of the International Law Commission's debates, especially the record of the 419th meeting,<sup>2/</sup> that several of the Commission's members, including the Special Rap-

1/ Subsequently distributed as document A/C.6/L.426.

2/ Yearbook of the International Law Commission, 1957, vol. I (United Nations publication, Sales No.: 1957.V.5, Vol.I), 419th meeting.



porteur himself, had advocated simply recommending that the General Assembly should take note of the draft. In those circumstances, a working group should have no difficulty—taking as a basis of discussion the operative part of the Greek draft resolution and some of the preambular paragraphs of the Turkish text—in devising a formula whereby the General Assembly would take note of the International Law Commission's technical contribution to the development of international law and express its appreciation of the work that that Commission had accomplished. If such a working group were set up, it could also consider the possibility of adopting a formula on the lines advocated by Mr. Padilla Nervo,<sup>3/</sup> commending the International Law Commission's draft to the continuing attention of Member States and of jurists of all nations.

35. Mr. RAHMAN KHAN (Pakistan) said that it was difficult to understand why, after being almost unanimous in paying a tribute to the work of the International Law Commission, delegations were now hesitating to adopt a resolution which would not confine itself to taking note of the model rules. In his delegation's opinion, taking note of the International Law Commission's draft would be the same as refusing to recognize the value of the Commission's work and desisting from all further efforts in the matter. The Pakistan delegation was among those which favoured the adoption of the International Law Commission's report, including the model rules, by a General Assembly resolution. It was prepared to modify that attitude, out of regard for the views of other delegations, but it hoped that the resolution to be adopted would at least draw the attention of Members States to the fact that they would be free to use the International Law Commission's rules as guidance.

36. Some delegations feared that the Greek draft resolution, especially the second preambular paragraph, constituted a form of approval of the International Law Commission's draft. In that connexion, he would stress that the fourth preambular paragraph of General Assembly resolution 989 (X) was worded in almost identical terms, and he personally did not infer from that wording any approval or recommendation of the draft. The same argument applied to operative paragraph 3, which implied no approval of the rules but merely stated that Member States could, if they so desired, be guided by them. The only provision of the Greek draft resolution which should be eliminated was the fifth preambular paragraph, which overlapped the preceding one.

37. The Pakistan delegation thought that each of the three draft resolutions contained features worthy of consideration, and that a drafting committee should

be able to combine them into a single text. He therefore supported the appointment of such a committee.

38. Mr. LACHS (Poland) said that he wished to dispel certain misunderstandings apparently caused by a false interpretation of the position of delegations which did not share the International Law Commission's views on arbitral procedure. Those delegations were as interested as others in the development of arbitration, but they believed that the method advocated by the International Law Commission would not assist that development along the right lines. While recognizing the juridical standing of the International Court of Justice and its importance in the United Nations structure, they regarded arbitration as a means of peaceful settlement of international disputes very different from judicial settlement. That certainly did not mean that they wished to put an end to the development of international law on the subject. They merely considered that the draft submitted by the International Law Commission did not offer the proper solution of the problem of arbitral procedure, and they hoped that other solutions would be sought.

39. The Polish delegation thought that the General Assembly could not recommend to Member States model rules which some of them were not prepared to accept for themselves.

40. The Greek draft resolution was unacceptable, because it at least implied approval of the model rules. Furthermore, the fifth preambular paragraph contained an interpretation which reflected the Greek delegation's own views but was not accepted by all the delegations. Finally, the General Assembly could not properly express its appreciation of the International Law Commission's work on a draft which was so controversial and which had evoked so much criticism. It would be more advisable, if the Committee so wished, to adopt a separate resolution in which the General Assembly would express its appreciation of the International Law Commission's activities during the last ten years.

41. The Turkish draft resolution assumed that States would inevitably use all or some of the model rules. It therefore went further than the Committee could possibly go without disregarding the trends which had become apparent in the general debate. By contrast, the joint draft resolution reflected those trends accurately.

42. The sponsors of the joint draft resolution accepted the amendments proposed by the delegation of Ceylon (see para. 32 above) and would consider the amendment presented by the representative of Venezuela (see para. 10 above).

The meeting rose at 1.5 p.m.

<sup>3/</sup> *Ibid.*, para. 40.