

Document:-  
**A/CN.4/L.171**

**Question of the inclusion in article 50 of a provision on the settlement of disputes: Working paper prepared by Mr. Abdullah El-Erian, Special Rapporteur**

Topic:  
**Representation of States in their relations with international organizations**

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23. The question was also referred to in connexion with part IV of the draft (Delegations of States to organs and conferences). Introducing at the 1078th meeting of the Commission the text prepared by the Drafting Committee for article 78 (which became article 108), the Chairman of the Drafting Committee stated that a reference would be made in the commentary to the possibility of an armed conflict; it would follow the same lines as the references in paragraph 1 of the commentary to article 48.<sup>26</sup>

24. In its report on its twenty-second session (1970), the Commission stated:

The Commission also briefly considered the desirability of dealing, in separate articles within the present group, with the possible effects of exceptional situations—such as absence of recognition, absence or severance of diplomatic relations or armed conflict—on permanent observer missions and on delegations to organs of international organizations and to conferences convened by international organizations. In view of the decision taken at the twenty-first session, the Commission decided to examine at its second reading the question of the possible effects of exceptional situations on the representation of States in international organizations in general and to postpone for the time being any decision in the context of parts III and IV.<sup>27</sup>

### III. CONCLUSIONS

25. From the foregoing account of the discussion in the Commission, the following conclusions may be drawn.

26. The Commission does not consider it appropriate to deal with exceptional situations such as armed conflict in connexion with the articles on facilities of departure and protection of premises and archives. It is keen to avoid the risk of implying that in case of armed conflict between the host State and the sending State, members of the permanent mission of the sending State would have to leave the territory of the host State. The mention of the case of armed conflict in article 45 of the Convention on Diplomatic Relations is based on the assumption that in bilateral relations, if a war breaks out between two States, diplomatic relations are usually severed and the diplomats of the sending State have to leave the receiving State. The position is quite different for members of permanent missions who are representatives of the sending State, not to the host State, but to the organization.

27. There is general agreement in the Commission on the desirability of dealing in one or more articles with the implications of the severance or absence of diplomatic or consular relations between the host State and the sending State as well as the question of recognition.

28. As regards armed conflict, the discussion reveals that opinion in the Commission is divided and that the attempt to deal with the effects of armed conflict in the present draft articles would raise complex problems owing to the great variety of situations which may arise in the context of multilateral diplomacy. Several

members tend to consider that the Commission should not depart from the course which it has previously taken when it decided not to include provisions on the effects of armed conflict in its drafts on the law of the sea and the law of treaties.

29. The Special Rapporteur, therefore, submits to the consideration of the Commission the following new articles:

[For the text of articles 49 *bis*, 77 *bis* and 116 *bis*, see *Yearbook of the International Law Commission*, 1971, vol. I, p. 84, 1099th meeting, para. 12.]

30. The Commission may also wish to consider the possibility of consolidating the three new articles and merging them in one article to be placed in the part containing general provisions.

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[Original text: English]  
[9 June 1971]

1. The discussion on the above-mentioned question at the 1100th, 1101st and 1102nd meetings of the Commission<sup>1</sup> arose from the reference in the commentary to article 50 that the Commission had "reserved the possibility of including at the end of the draft articles a provision concerning the settlement of disputes which might arise from the application of the articles".<sup>2</sup>

2. Some members suggested that article 50 be complemented by a provision for recourse to arbitration, judicial settlement or request for an advisory opinion of the International Court of Justice. References were made to similar provisions in the Convention on the Privileges and Immunities of the United Nations,<sup>3</sup> the Convention on the Privileges and Immunities of the Specialized Agencies,<sup>4</sup> the Headquarters Agreement of the United Nations,<sup>5</sup> the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas<sup>6</sup> and article 66 of the Vienna Convention on the Law of Treaties and the annex to that Convention.<sup>7</sup>

3. Other members were of the opinion that the question should be left to the General Assembly or the plenary conference.

4. A third group of members thought that article 50 did not go far enough and that it would be useful to

<sup>1</sup> See *Yearbook of the International Law Commission*, 1971, vol. I, pp. 89 *et seq.*

<sup>2</sup> *Ibid.*, 1969, vol. II, p. 222, document A/7610/Rev.1, chap. II, B.

<sup>3</sup> United Nations, *Treaty Series*, vol. I, p. 15.

<sup>4</sup> *Ibid.*, vol. 33, p. 261.

<sup>5</sup> *Ibid.*, vol. 11, p. 11.

<sup>6</sup> *Ibid.*, vol. 559, p. 285.

<sup>7</sup> *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), pp. 298 and 301 respectively.

<sup>26</sup> *Ibid.*, p. 203, 1078th meeting, para. 11.

<sup>27</sup> *Ibid.*, vol. II, p. 276, document A/8010/Rev.1, para. 22.

provide for a conciliation machinery to be utilized if the consultations envisaged in that article did not result in a satisfactory solution.

5. In preparing a text as requested by the Commission, the Special Rapporteur has taken into account the divergent views expressed in the Commission and the need to produce a provision which may reconcile these views. It is the submission of the Special Rapporteur that, given the multiplicity and variety of international organizations to which these articles would apply, it would be difficult to provide for a standing uniform machinery for a rigid procedure of settlement. He therefore thought that a solution could be sought through providing for the principle of submitting the question of an impartial procedure like conciliation, while leaving it to every organization to establish the conciliation machinery or any other related machinery which it may consider appropriate.

6. In the light of the above, the Special Rapporteur wishes to submit the following text:

[For the text of article 50, see *Yearbook of the International Law Commission, 1971*, vol. I, p. 222, 1119th meeting, para. 81.]

## DOCUMENT A/CN.4/L.173

### **Draft articles on observer delegations of States to organs and to conferences: working paper prepared by Mr. Abdullah El-Erian, Special Rapporteur**

[Original text: English]  
[14 June 1971]

#### **PART V. OBSERVER DELEGATIONS OF STATES TO ORGANS AND TO CONFERENCES**

##### **SECTION 1. OBSERVER DELEGATIONS IN GENERAL**

###### *Article 117. Use of terms*

For the purposes of the present part:

(a) An "organ" means a principal or subsidiary organ of an international organization and any commission, committee or sub-group of any such organ, in which States are members;

(b) A "conference" means a conference of States convened by or under the auspices of an international organization, other than a meeting of an organ;

(c) An "observer delegation to an organ" means the delegation designated by a State not member of the organ to represent it therein;

(d) An "observer delegation to a conference" means the delegation sent by a State not participating in the conference to represent it therein;

(e) An "observer delegation" means an observer delegation to an organ or to a conference;

(f) An "observer representative" means any person designated by a State not member of an organ or not

participating in a conference to represent it in that organ or at that conference.

###### *Article 118. Sending of observer delegations*

[For the text of article 118, see *Yearbook of the International Law Commission, 1971*, vol. I, p. 235, 1121st meeting, para. 66.]

###### *Article 119. Composition of the observer delegation*

An observer delegation to an organ or to a conference shall consist of one or more observer representatives of the sending State from among whom the sending State may appoint a head. It may also include diplomatic staff, administrative and technical staff and service staff.

###### *Article 120. Size of the observer delegation*

The size of an observer delegation to an organ or to a conference shall not exceed what is reasonable or normal, having regard to the functions of the organ, or, as the case may be, the tasks of the conference, as well as the needs of the particular delegation and the circumstances and conditions in the host State.

###### *Article 121. Appointment of the members of the observer delegation*

Subject to the provisions of articles 120 and 122, the sending State may freely appoint the members of its observer delegation to an organ or to a conference.

###### *Article 122. Nationality of the members of the observer delegation*

The observer representatives and members of the diplomatic staff of an observer delegation to an organ or to a conference should in principle be of the nationality of the sending State. They may not be appointed from among persons having the nationality of the host State, except with the consent of that State which may be withdrawn at any time.

###### *Article 123. Letters of appointment of observer representatives<sup>1</sup>*

1. The letters of appointment of an observer representative to an organ shall be issued either by the Head of State or by the Head of Government or by the Minister for Foreign Affairs or by another competent authority if that is allowed by the practice followed in the Organization, and shall be transmitted to the Organization.

2. The letters of appointment of an observer representative in the delegation to a conference shall be issued either by the Head of State or by the Head of Government or by the Minister for Foreign Affairs or by another competent authority if that is allowed in relation to the conference in question, and shall be transmitted to the conference.

<sup>1</sup> The Special Rapporteur is requesting the United Nations Secretariat to let him know whether in practice observer representatives submit letters of appointment or credentials and by what authorities of the sending State the documents in question are issued. He will review article 123 in the light of the information he will receive from the Secretariat.