TERMINATION OF MEMBERSHIP IN THE UNITED NATIONS

The continuous state of international tension which has now persisted for a considerable number of years and which is inevitably reflected in the relations among states has also, on many occasions, been felt in the forum of the United Nations. The misuse of the veto, the non-compliance with the recommendations of the General Assembly, and occasionally, a significant non-participation by a member-state in the work of the various bodies of the United Nations so as to indicate its disapproval of the United Nations transacting matters not to its liking, have often given cause to speculation whether a member-state which is dissatisfied with the course of policy adopted by the Organization could withdraw from membership in the United Nations and whether a member-state which does not conform to the standard of conduct expected of a member could be expelled from the Organization.

Withdrawal and Expulsion

The correct view seems to be that membership in the United Nations may be terminated by withdrawal or expulsion.[1] But whereas an express provision as to expulsion has been embodied in the Charter [2] the right of a member to withdraw from the Organization, though presupposed, has not been expressly guaranteed. The omission of any provision in the Charter for withdrawal from the Organization of the United Nations is significant as the Covenant of its predecessor, the League of Nations, carried an express provision to that effect. It stipulated that a member might withdraw after two years' notice of

1. L. M. Goodrich and E. Hambro: *Charter of the United Nations,* Boston, World Peace Foundation, 1949; Leland M. Goodrich: *The United Nations,* New York, Crowell, 1959; C. Wilfred Jenks: *Some Constitutional Problems of International Organizations,* B.Y.I.L. XXII, 1945, p. 11; Hans Kelsen: *Withdrawal from the United Nations,* The Western Political Quarterly, vol. I, 1948, p. 29; R. B. Russell: *A History of the United Nations Charter,* Washington D.C., Brookings Institution, 1958; Nagendra Singh: *Termination of Membership of International Organizations,* London, Stevens, 1958.

2. Charter of the United Nations, Article 6, Yearbook of the United Nations 1946-47, New York, 1947, p. 832.

its intention so to do had been given,[3] and similar provisions have been embodied in the constitutions of several other international organizations. This is so, in particular, in the Constitution of the Food and Agriculture Organization of the United Nations,[4] in the International Civil Aviation Convention,[5] in the Agreement of the International Monetary Fund,[6]

3. Covenant of the League of Nations, Article I, paragraph 3 reads: "Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal." U.S. For. Rel.: Paris Peace Conference 1919, XIII, 72 *ff.*

4. Article XIX of the Constitution of the Food and Agriculture Organization of the United Nations reads: "Any Member nation may give notice of withdrawal from the Organization at any time after the expiration of four years from the date of its acceptance of this Constitution. Such notice shall take effect one year after the date of its communication to the Director-General of the Organization subject to the Member nation's having at that time paid its annual contribution for each year of its membership including the financial year following the date of such notice." Yearbook of the United Nations 1946-47, New York, 1947, p. 697.

5. Article 95 of the Convention on International Civil Aviation reads " a. Any contracting State may give notice of denunciation of this Convention three years after its coming into effect by notification addressed to the Government of the United States of America, which shall at once inform each of the contracting States. b. Denunciation shall take effect one year from the date of receipt of the notification and shall operate only as regards the State effecting the denunciation." Yearbook of the United Nations 1946-47, New York, 1947, p. 740.

6. Article XV of the Articles of Agreement of the International Monetary Fund reads: "Section 1. Right of members to withdraw. — Any member may withdraw from the Fund at any time by transmitting a notice in writing to the Fund at its principal office. Withdrawal shall become effective on the date such notice is received. Section 2. Compulsory withdrawal. — (a) If a member fails to fulfil any obligations under this Agreement, the Fund may declare the member ineligible to use the resources of the Fund. Nothing in this section shall be deemed to limit the provisions of Article IV, Section 6; Article V, Section 5; or Article VI, Section 1. (b) If, after the expiration of a reasonable period the member persists in its failure to fulfil any of its obligations under this Agreement, or a difference between a member and the Fund under Article IV, Section 6, continues, that member may be required to withdraw from membership in the Fund by a decision of the Board of Governors carried by a majority of the governors representing a majority of the total voting power. (c) Regulations shall be adopted to ensure that before action is taken against any member under (a) or (b) above, the member shall be informed in reasonable time of the complaint against it and given an adequate opportunity for stating its case, both orally and in writing. Section 3. Settlement of accounts with members after withdrawing. — When a member withdraws from the Fund, normal transactions of the Fund in its currency shall cease and settlement of all accounts between it and the Fund shall be made with reasonable despatch by agreement between it and the Fund. If agreement is not reached promptly, the provisions of Schedule D shall apply to the settlement of accounts." Yearbook of the United Nations 1946-47, New York, 1947, p. 782.

and in the Agreement of the International Bank for Reconstruction and Development. [7]

The Dumbarton Oaks Proposals for the Establishment of a General International Organization did not contain any provision with respect to withdrawal from the Organization.[8] At the United Nations Conference on International Organization in San Francisco,[9] the possibility of withdrawal was discussed at length in a special subcommittee appointed to report on the problem,[10] and all delegates agreed that failing an express stipulation to the contrary, members would necessarily have the right to withdraw. As universal membership was not to be the policy of the Organization, the Uruguayan proposal prohibiting withdrawal from the Organization was dropped.[11] Two main arguments were made against the inclusion of such a provision. First, it has been suggested that it might have been difficult for many delegations to obtain ratification of the Charter in their respective countries if membership was to be made permanent,[12] and second, it has been asserted that in consequence of articles 108 and 109 of the Charter, which relate to amendments, all members of the Organization with the exception of the permanent members of the Security Council would be bound by amendments of the Charter in which they had not concurred and which they were unable to accept.[13]

Some delegates claimed that since membership in the Organization was voluntary, members should be entitled to renounce their membership,[14] and also that the right of withdrawal was necessary to protect the sovereignty of member-states.[15] Similar arguments were made for the inclusion of an express provision giving members the right to withdraw

7. Article VI, Section 1, of the Articles of Agreement of the International Bank for Reconstruction and Development reads: "Any member may withdraw from the Bank at any time by transmitting a notice in writing to the Bank at its principal office. Withdrawal shall become effective on the date such notice is received." Yearbook of the United Nations 1946-47, New York, 1947, p. 762.

8. The subject of withdrawal was not mentioned in the Dumbarton Oaks Proposals, and the omission of any reference to withdrawal was recognized as deliberate on the part of the Sponsoring Governments. — United Nations Conference on International Organization Documents, vol. 7, pp. 121-122.

9. The Conference was held in San Francisco, California from April 25 to June 26, 1945.

10. UNCIO Documents, vol. 7, p. 86.

11. *Ibid*., pp. 86 and 92.

12. *Ibid*., p. 263.

13. *Ibid*., p. 444.

14. *Ibid*., p. 264.

15. *Ibid*., pp. 263-264.

from the Organization. Although the Commission dealing with the right of withdrawal[16] has not recommended any express stipulation to that effect, the Rapporteur in his commentary stated that the absence of such a clause was not intended to impair the right of members to withdraw which every state possessed on the basis of sovereign equality of states.[17]

The argument that members should be free to leave the Organization in the event of an amendment of the Charter being made in which they have not concurred seems to be well founded and does not require further clarification, but the argument that irrespective of any provision in the Charter as to withdrawal the right of withdrawal was necessary to protect the sovereignty of member-states, and the statement that every state possessed the said right on the basis of sovereign equality of states seem to raise an important question worth more detailed examination.

Sovereignty and Equality of States to Justify the Right of Members to Withdraw from the Organization

The term "sovereignty" was well known in France as early as in the sixteenth century and was connotative of a power which had no other authority above itself. Bodin[18] made an extensive use of this term in his writings in the endeavour to justify the policy of centralization pursued by the French kings, and defined it as "the absolute and perpetual power within a state" restricted only by commandments of God and the law of nature. The term "sovereign equality" is obviously meant to combine the ideas of sovereignty and of equality of states, the idea of equality of states being in turn implied in or being the consequence of sovereignty.[19]

The doctrine of equality of states[20] has a long history and may be traced from the early seventeenth century. Prior to the Peace of Westphalia in 1648, the Holy Roman Empire claimed to be some sort

16. Commission I, Committee 1/2, The United Nations Conference on International Organization, San Francisco, California, 1945.

17. UNCIO Documents, vol. 6, p. 206.

18. Jean Bodin: *Les Six Livres De La République,* livre I, c.8, Paris, 1577.

19. Hans Kelsen: *The Principle of Sovereign Equality of States as a Basis for International Organization,* Yale Law Journal, vol. 53, 1944, p. 207.

20. Edwin De Witt Dickinson: *The Equality of States in International Law,* Cambridge, Harvard University Press, 1920; Hans Kelsen: *The Principle of Sovereign Equality of States as a Basis for International Organization,* Yale Law Journal, vol. 53, 1944, p. 207; A. V. W. Thomas and A. J. Thomas Jr.: *Equality of States in International Law — Fact or Fiction?,* Virginia Law Review, vol. 37, p. 791; H. Weinschel: *The Doctrine of the Equality of States and its Recent Modifications,* A.J.I.L., vol. 45, p. 417.

of a superstate pursuant to the mediaeval doctrine that all temporal power in Christendom was given to the Roman Emperor, yet, the claim has never been recognized outside the sphere of influence of the Holy Roman Empire,[21] and in the middle of the seventeenth century the idea of a universal community of states was abandoned. The Treaty of Peace of Westphalia in 1648 acknowledged that the relations among all states forming part of the Holy Roman Empire would have to be governed by the principles of sovereignty and equality, the full sovereignty and equality of Christian powers outside the framework of the Holy Roman Empire having been acknowledged long before.[22]

The doctrine of equality of states appears also in the works of Pufendorf and Vattel. Vattel built on the ideas of equality and the ideas of rights of man as expounded by Hobbes,[23] who taught that by the law of nature men had equal capacity to do one another harm and concluded that they must therefore have equal rights as well. Pufendorf,[24] the leading writer of the Naturalist School, applied Hobbes' assertion that all men have equal rights to states. He affirmed that by the law of nature all states have equal rights, any divergencies in wealth, power, or territory notwithstanding. Vattel,[25] who is regarded as representing the views of the "Grotians," agreed with the Naturalists that by the law of nature all men were equal having the same rights and obligations, and taught that nations being entities formed by or composed of men must therefore be equal and have the same rights and obligations. States, he asserted, are sovereign and equal and have the same rights and duties regardless of their wealth, size, or strength.[26]

It is evident that both Pufendorf and Vattel refer to what is now termed legal equality, i.e. equality of states before International Law which is derived from their international personality as contrasted with political equality of the states.[27] It is beyond question that politically states are in many respects not equal. They differ in the number of their population, in size, wealth, power and influence and

21. J. Goebel Jr.: *The Equality of States: A Study in the History of Law,* New York, Columbia University Press, 1923, pp. 57-58.

22. Oppenheim-Lauterpacht: *International Law,* 8th ed., Longmans, 1955, vol. I, p. 879, Note 1.

23. The English Works of Thomas Hobbes of Malmesbury (Sir William Molesworth ed.), London, 1839-45.

24. Samuel Pufendorf, (1632-1694): *De Jure Naturae et Gentium,* (1672), l.VIII, c.4., paras. 17-19, (Knochian ed.) Francfort et Leipzig; and Humphrey Milford ed. London and Oxford, Clarendon Press, 1934.

25. Emmerich de Vattel (1714-1767).

26. Emmerich de Vattel: *The Law of Nations,* translated by Fenwick, Washington, Carnegie Institution of Washington, 1916. p. 7.

27. Oppenheim-Lauterpacht, *op. cit.*, p. 263.

may consequently be characterized as great, medium, or small powers. Political differences between states have always been appreciated and the hegemony of the great powers is an established reality.

Because the character of a great power is not derived from any legal rule but exclusively from the position of influence and power, changes inevitably take place. So, whereas in the eighteenth and in the early nineteenth century, Austria, France, Great Britain, Portugal, Prussia, Spain, Sweden and Russia were considered great powers, and immediately before the outbreak of the First World War, Austria-Hungary, France, Germany, Great Britain, Italy, Japan, Russia and the United States of America held the status of a great power, at the end of the Second World War only Great Britain, Soviet Russia and the United States of America would be so considered, although both France and China were able to secure permanent seats on the Security Council of the United Nations in addition to the three great powers first mentioned.

Hand in hand with the political and economic supremacy went the law making power. The great powers established rules of international conduct which were accepted by all other states. To mention only the most important: the Final Act of the Congress of Vienna of 1815; the Treaty of Paris of 1856; the Treaties of London of 1831, 1839 and of 1867; the Treaty of Berlin of 1878; and the General Act of the Congo Conference held in Berlin in 1885 may be cited. The Hague Conventions of 1899 and 1907, the General Act for the Pacific Settlement of International Disputes of 1928, the General Treaty for the Renunciation of War of 1928, and also both the Organizations of the League of Nations established in 1919, and of the United Nations established in 1945, came into being due to the initiative of the great powers. Yet, as far as legal equality of states is concerned, the position has not been substantially affected by the political and economic hegemony of the great powers, and consequently, all sovereign states are considered equal as international persons.[28]

The Covenant of the League of Nations Imposed a Limitation upon the Doctrine of Equality of States

The first attempt to impose limitations upon the doctrine of legal equality was made in the Covenant of the League of Nations.[29] Under

28. Equality before international law has the following four consequences. (1) Whenever a question arises which is settled by consent, every state has a right to a vote, but, unless it has been agreed otherwise, to one vote only. (2) The vote of the weakest and smallest state has as much weight as the vote of the largest and most powerful state. (3) No state can claim jurisdiction over another. (4) The courts of one state do not, as a rule, question the validity or legality of the official acts of another sovereign state insofar as those acts purport to take effect within the sphere of the latter state's own jurisdiction.

29. The application of the doctrine of equality of states within the framework of the League of Nations is discussed by Herbert Weinschel in his article: *The Doctrine of the Equality of States and its Recent Modifications,* A.J.I.L., vol. 45, pp. 423-427.

the provisions of the Covenant the political hegemony of the great powers was accorded legal sanction. This was accomplished by the allotment of permanent seats on the Council of the League of Nations to the great powers,[30] and further, by three important exceptions from the principle of equality of voting power in the Assembly of the League, namely, first: in the case of a dispute being referred for settlement to the Assembly of the League, the report which was to be made by the Assembly required the concurrence of the representatives of all members represented on the Council and that of the majority of all other members of the League with the exclusion of the parties to the dispute;[31] second: any amendments of the Covenant took effect only upon ratification by all members represented on the Council and by the majority of members whose representatives composed the Assembly;[32] and third: the Council of the League could by unanimous vote expel from the Organization a member guilty of violation of any provision contained in the League's Covenant.[33]

In all other respects the principle of legal equality of states was preserved in the League of Nations, and consequently, unanimity of decision was required to carry a resolution in all important matters.[34] Decisions of the Council of the League were only recommendatory and were not binding upon members.[35] As far as amendments of the League's Covenant were concerned, the Covenant provided that any member-state which had signified its dissent from an amendment would not be bound by it but that, as a consequence of the dissent, it would forfeit its membership in the Organization.[36] On the whole, it may be said that while there was no equality of representation in the Council of the League of Nations, legal equality of members was really not impaired because they were not bound by decisions in which they did not participate or, in other words, they were not bound without their own consent.[37]

30. Covenant of the League of Nations, Article 4(1), (2); U.S.For. Rel.: Paris Peace Conference 1919, XIII, 72 *ff.*
31. *Ibid.*, Article 15(10).
32. *Ibid.*, Article 26(1).
33. *Ibid.*, Article 16(4) reads: "Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon."
34. *Ibid.*, Article 5(1) reads: "Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting."
35. *Ibid.*, Articles 15(4) and (6), and Article 16(2).
36. *Ibid.*, Article 26(2).
37. H. Weinschel, *op. cit.*, p. 426.

The Charter of the United Nations Restricted the Sovereignty of Members

A more significant limitation of the doctrine of legal equality of states was made in the Charter of the United Nations.[38] There, the principle of unanimity of decision was abandoned in all the organs of the Organization and was replaced by a majority — or a qualified majority vote. Pursuant to the provisions of the Charter, only the five expressly enumerated permanent members of the Security Council may be said to have retained their legal equality.[39] Since the concurrence of all permanent members of the Security Council is required in all decisions other than decisions on matters of procedure,[40] it is apparent that the ascertainment and the enforcement of obligations of pacific settlement of disputes and those of international law generally is legally possible only as against member-states not permanently represented on the Security Council.[41] Furthermore, with regard to the provisions of the Charter as to amendments,[42] only members not permanently represented on the Security Council are bound by amendments of the Charter of the United Nations unless they elect to withdraw from the Organization.[43]

The term "sovereign equality," which is used in the Charter,[44] was first introduced in the Moscow Declaration in 1943,[45] and appears again in the Dumbarton Oaks Proposals for the Establishment of a General

38. The principle of sovereign equality of states within the Charter of the United Nations is discussed in detail by Herbert Weinschel, *op. cit.*, pp. 427-442.

39. Charter of the United Nations, Article 23(1), Yearbook of the United Nations 1946-47, New York, 1947, p. 834,

40. *Ibid.*, Articles 27(2) and (3), Yearbook of the United Nations 1946-47, New York, 1947, p. 834.

41. Oppenheim-Lauterpacht, *op. cit.*, pp. 279-280.

42. Charter of the United Nations, Articles 108 and 109(2), Yearbook of the United Nations 1946-47, New York, 1947, pp. 842-843.

43. Oppenheim-Lauterpacht, *op. cit.*, p. 280.

44. Charter of the United Nations, Article 2(1), Yearbook of the United Nations 1946-47, New York, 1947, p. 831.

45. The Moscow Declaration on General Security of October 30, 1943, Article 4 reads: "The Governments of the United States of America, the United Kingdom, the Soviet Union and China — jointly declare: 4. That they recognize the necessity of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving States, and open to membership by all such States, large and small, for the maintenance of international peace and security." Yearbook of the United Nations 1946-47, New York, 1947, p. 3.

International Organization.[46] Yet, when the Dumbarton Oaks Proposals were submitted for general discussion at the United Nations Conference on International Organization in San Francisco in 1945, the delegates were quick to realize that the principle of "sovereign equality" contained therein did not secure legal equality to members with the exception of those permanently represented on the Security Council. As a result, it was pointed out at the conference that member-states of the new world organization would not receive equal treatment in the Organization, and that therefore the words "sovereign equality" appearing in paragraph 1 of Chapter II of the Proposals were somehow ironic, and it was suggested that either the word "sovereign" be deleted, or the whole phrase "sovereign equality" be replaced by the term of "juridical equality" or some similar term[47] as it was apparent that the provisions of the Charter were inconsistent with the concept of sovereignty of states.[48] None the less, the proposed text of the paragraph was finally approved without any substantial amendment to read: "The Organization is based on the principle of the sovereign equality of all its Members."[49]

In presenting the final text, the Rapporteur of Committee I/1 stated that the Committee voted to use the term "sovereign equality" on the assumption that it included, *inter alia,* the elements of judicial equality and full sovereignty.[50] Yet, for the reasons mentioned above, it may be assumed that the provisions of the Charter are nevertheless inconsistent with the principle of equality before the law and that of equal protection of the law.[51] As to the term of "full sovereignty," there is not much that could be said for the strict observance of the principle in the Charter as the requirement of unanimity of decision, which is a logical consequence of state sovereignty, has been abandoned by the Organization. On the whole, the term "sovereignty equality" seems to be legally vague and unrealistic.[52]

46. Dumbarton Oaks Proposals for the Establishment of a General International Organization, Chapter II, paragraph 1, reads: "The Organization is based on the principle of the sovereign equality of all peace-loving states." Yearbook of the United Nations 1946-47, New York, 1947, p. 4.

47. The Peruvian delegate proposed to modify the text of paragraph 1, Chapter II, of the Dumbarton Oaks Proposals to read: "The Organization is based on the respect for the personality, sovereignty, independence, juridical equality and territorial integrity of States, and the faithful fulfilment of International Treaties." UNCIO Documents, vol. 6, p. 304.

48. UNCIO Documents, vol. 6, p. 310.

49. Charter of the United Nations, Article 2(1), Yearbook of the United Nations 1946-47, New York, 1947, p. 831.

50. UNCIO Documents, vol. 6, p. 457.

51. L. M. Goodrich and E. Hambro, *op.cit.*, pp. 28-29; A. V. W. Thomas and A. J. Thomas Jr., *op. cit.*, p. 818.

52. A. V. W. Thomas and A. J. Thomas Jr., *op.cit.*, p. 818.

The San Francisco Conference and the Right of Members to Withdraw from the United Nations

The Dumbarton Oaks Proposals made it quite clear that one of the essential objects of the new United Nations Organization, as it was to be established by the Charter, was to restrict the sovereignty of members with the exception of those permanently represented on the Security Council in spite of the wording of paragraph 1 of Chapter II of the Proposals which proclaimed "sovereignty equality" of all members as a principle of the Organization. [53] Consequently, the question whether members had the right to withdraw from the Organization became of first rate importance. As the various delegates demanded a detailed examination of the problem, a special subcommittee was set up within the framework of Committee I/2 to deal with the matter. After extensive discussion of the problem in the subcommittee, it unanimously recommended to Committee I/2 to approve the following statement which was thereafter adopted by that Committee as representing its view on the question of withdrawal :

> The Commission adopts the opinion of the inviting powers that the faculty of withdrawal of the members should neither be provided for nor regulated. Should the Organization fulfil its function in the spirit of the Charter, it would be inadmissible that its authority could be weakened by some members deserting the ideal which inspired them when they signed the Charter, or even mocked by aggressor or would-be aggressor states.
>
> It is obvious, however, that withdrawal or some other form of dissolution of the Organization would become inevitable if, deceiving the hopes of humanity, the Organization was revealed to be unable to maintain peace or could do so only at the expense of law and justice. On account of this risk, inherent to all human enterprises, the Committee abstains from inserting in the Charter a formal clause forbidding withdrawals.[54]

The situation was, however, complicated by the emergence of the problem of amendments to the Charter. [55] In consequence of the approval of the text of paragraph 3, Chapter XI of the Dumbarton Oaks Proposals in Committee I/2,[56] which operated as a limitation of sovereignty of all members not permanently represented on the Security Council in that they were to be bound by any alterations of the Charter which were both

53. Hans Kelsen, *Withdrawal from the United Nations,* The Western Political Quarterly, vol. I, 1948, p. 33.

54. UNCIO Documents, vol. 7, pp. 87-88.

55. *Ibid.*, pp. 241-244.

56. The final text of paragraph 3, Chapter XI of the Proposals as approved by Committee I/2 reads: "Any alterations of the Charter recommended by a two thirds vote of the Conference shall take effect when ratified in accordance with their respective constitutional processes by two thirds of the members of the Organization, including all the permanent members of the Security Council." UNCIO Documents, vol. 7, p. 244. The text of paragraph 3, Chapter XI of the Proposals was embodied in Article 109(2) of the Charter.

accepted and ratified by a two-thirds majority of members including therein all the permanent members of the Security Council, and conversely that no amendments of the Charter were to be made against the veto of a permanent member of the Security Council, several delegates moved for a more specific regulation of the right to withdraw from the Organization and for the formal inclusion of that right in the text of the Charter.

The delegate of Ecuador insisted on the incorporation in the Charter of an express provision concerning withdrawal notwithstanding that a withdrawal clause would have necessarily resulted in the weakening of the Charter. He proposed the following clause on withdrawal for insertion in the Charter :

> Nothing in this Charter should preclude the right of a member to withdraw from the Organization if its rights and obligations as such were changed by Charter amendment in which it has not concurred and which it finds itself unable to accept, or if an amendment duly accepted by the necessary majority in the Assembly or in a general conference fails to secure the ratification necessary to bring such amendment into effect.[57]

The submission made by Ecuador was supported by Peru, the Soviet Union, the Ukranian and the Byelorussian Soviet Socialist Republics, Venezuela, Turkey, Haiti and Greece.

The delegate of Peru thought that a reference to withdrawal in the Committee's report only would be insufficient and suggested that the inclusion of a clause on withdrawal would facilitate ratification of the Charter in many countries and added that the success of the Organization depended on the psychological atmosphere in which the nations would work together.[58] The delegate of the Soviet Union declared that as the principle of withdrawal was generally accepted, he could see no reason why a veiled reference to it should be made in the Committee's report in place of a frank statement in the Charter itself. As both the admission to and the withdrawal from the Organization should be voluntary, any attempt to retain forcibly a state within the Organization would compromise the voluntary principle upon which the Organization was based.[59] The delegate of the Ukranian Soviet Socialist Republic stated that since the Committee had removed obstacles to amendments of the Charter, the right of withdrawal was necessary to protect the sovereignty of states, and suggested that should certain members become aggressors, he would welcome their withdrawal from the Organization.[60] The delegate of the Byelorussian Soviet

57. UNCIO Documents, vol. 7, p. 262.

58. *Ibid*., p. 263.

59. *Ibid*., p. 264.

60. *Ibid*., pp. 263-264.

Socialist Republic declared that, in view of the Committee's previous decision at the special conference for the revision of the Charter,[61] he desired that the right of withdrawal be specially mentioned in the Charter.[62] The delegates of Venezuela[63] and Turkey[64] thought that the acceptance of the proposal made by Ecuador would strengthen the Organization. If reference to withdrawal appeared only in the Committee's report, regulation of withdrawal would be difficult, but if such reference were contained in the Charter itself, withdrawal could be regulated by the General Assembly. Haiti suggested that the withdrawal clause proposed by Ecuador should be incorporated in the text of the Charter but that it should be disassociated from the clauses dealing with amendments.[65] The delegation of Greece was of the opinion that from the legal point of view there was little between the insertion of a clause on withdrawal in the Charter itself and the declaration with respect to withdrawal in the Committee's report, and pointed out that it was illogical to believe that an express reference to withdrawal in the Charter itself would be more likely to lead to an international movement for withdrawal from the Organization than the explicit mention of withdrawal in the Committee's report, and added that the withdrawal of the sponsoring powers would obviously result in a great danger to the existence of the Organization.[66]

The above Ecuadoran proposal was, however, opposed by Belgium, Canada, Australia, the United Kingdom, China, Denmark, the United States of America and France, while Uruguay explained that it was opposed to both withdrawal and expulsion from the Organization and favoured compulsory universal membership in the Organization.[67]

The delegate of Belgium acknowledged the necessity of withdrawal in extraordinary circumstances and stated that the inclusion of a commentary on withdrawal in the Committee's report would afford sufficient evidence of the intentions of the several signatories to the Charter.[68] The delegate of Canada indicated that he did not favour the right of withdrawal being mentioned in the Charter.[69] His view was shared by the delegate of Australia who thought that withdrawal for

61. *Ibid*., pp. 241-244.
62. *Ibid*., p. 265.
63. *Ibid*., p. 264.
64. *Ibid*., p. 264.
65. *Ibid*., p. 265.
66. *Ibid*., pp. 266 and 274.
67. *Ibid*., p. 266.
68. *Ibid*., p. 263.
69. *Ibid*., p. 274.

frivolous reasons should not be permitted and suggested that the right to withdraw from the Organization should be restricted to cases mentioned in the Ecuadoran proposal.[70] The United Kingdom expressed the view that withdrawal was a faculty, not a right, and stated that the inclusion of a specific reference to withdrawal in the Charter itself would not affect any of the rights which states already possessed.[71] The delegate of China declared that while everyone agreed that there should be a door left open by which states might withdraw, there was no need to build an impressive portal for this purpose.[72] Denmark was opposed to the mentioning of withdrawal in the Charter and pointed out that nations must yield certain aspects of their sovereignty.[73] The delegate of the United States of America said that if it was felt desirable to make a statement on the subject of withdrawal, such statement should be incorporated in the Committee's report only and should make it clear that states were not being invited to leave at will and that a withdrawing member would be expected to give substantial reasons for its action.[74] France stated that since there was general agreement that the right of withdrawal existed, and since an express statement to that effect would be included in the Committee's report, there was no need to include any provision for withdrawal in the Charter.[75]

The delegate of Canada then invited the Committee to vote on a motion: " There should be mention of the right of withdrawal in the Charter,"[76] and the delegate of Egypt proposed that the Committee should vote on the principle of withdrawal first, and if the vote were affirmative, then on the form which the provision for withdrawal should take.[77] When a vote was taken on the Canadian motion, the proposal that provision for withdrawal from the Organization should be included in the Charter was rejected by a vote of nineteen in favour and

70. *Ibid*., p. 263.

71. *Ibid*., p. 264.

72. *Ibid*., pp. 264-265.

73. *Ibid*., *p.* 265.

74. *Ibid*., p. 265; as to the American point of view see: United States Congress, Senate Committee on Foreign Relations. Hearing before the Committee on Foreign Relations, United States Senate, 79th Congress, First Session, on the Charter of the United Nations for the Maintenance of International Peace and Security submitted by the President of the United States on July 2, 1945, Washington D.C., Government Printing Office, 1945; and also Howard Newcomb Morse: *The New Secession,* South Dakota Bar Journal, vol. XXI, No. 3, 1953. p. 14.

75. UNCIO Documents, vol. 7, p. 265.

76. *Ibid*., p. 274.

77. *Ibid*., pp. 264 and 266.

twenty-four against.[78] The Committee then adopted a Declaration or Commentary on withdrawal from the Organization to be incorporated in the Committee's report which reads as follows :

> The Committee adopts the view that the Charter should not make express provision either to permit or to prohibit withdrawal from the Organization. The Committee deems that the highest duty of the nations which will become Members is to continue their co-operation within the Organization for the preservation of international peace and security. If, however, a Member because of exceptional circumstances feels constrained to withdraw, and leave the burden of maintaining international peace and security on the other Members, it is not the purpose of the Organization to compel that Member to continue its co-operation in the Organization.
>
> It is obvious, however, that withdrawals or some other forms of dissolution of the Organization would become inevitable if, deceiving the hopes of humanity, the Organization was revealed to be unable to maintain peace or could do so only at the expense of law and justice.
>
> Nor would it be the purpose of the Organization to compel a Member to remain in the Organization if its rights and obligations as such were changed by Charter amendment in which it has not concurred and which it finds itself unable to accept, or if an amendment duly accepted by the necessary majority in the Assembly or in a general conference fails to secure the ratification necessary to bring such amendment into effect.
>
> It is for these considerations that the Committee has decided to abstain from recommending insertion in the Charter of a formal clause specifically forbidding or permitting withdrawal.[79]

The delegate of the Soviet Union abstained from voting on the above Commentary on withdrawal. Later, however, the Soviet Union officially objected to its formulation insofar it stated that a withdrawing member would — "leave the burden of maintaining international peace and security on the other members," because, in its opinion, it condemned beforehand the action of the leaving member.[80] None the less, the report was approved by the Conference.

Members Preserved the Right to Withdraw from the Organization

The Commentary on withdrawal makes it quite clear that the representatives of all the nations assembled at the San Francisco Conference considered co-operation within the Organization of the United Nations "the highest duty" of its members. The chief purpose of the Organization, for the attainment of which the co-operation of all members was requested, was the preservation of international peace and security.[81] But the delegates made it equally clear that if a

78. *Ibid*., p. 266.

79. *Ibid*., p. 267.

80. UNCIO Documents, vol. 1, p. 619,

81. Charter of the United Nations, Article 1(1), Yearbook of the United Nations 1946-47, New York, 1947, p. 831.

member-state, because of exceptional circumstances, elected to withdraw from the Organization, it was not the purpose of the Organization to compel such member-state to continue its co-operation in the Organization.

The above Commentary on withdrawal expressly mentions the following circumstances which, in the opinion of the delegations of all states represented at the Conference would justify withdrawal: inability of the Organization to maintain peace or maintaining it only at the expense of law and justice; change of rights and obligations of members by Charter amendment in which the withdrawing member has not concurred and which it finds itself unable to accept; and failure to secure the ratification of an amendment duly accepted by the necessary majority in the Assembly or in a General Conference. No doubt, the various grounds of justification referred to in the Commentary are mentioned by way of illustration only, and it is anticipated that a member-state could justify its withdrawal on any other good ground.

The question arises, however, whether the Commentary on withdrawal could be considered a generally accepted reservation to the provisions of the Charter. Kelsen answers the question in the negative.[82] He is of the opinion that the Commentary on withdrawal, as incorporated in the report of Commission I, is legally of no significance. According to Kelsen, in order to make it an authentic interpretation of the Charter, it would have been necessary to incorporate the principles expounded in the Commentary into the very text of the Charter. An alternative would have been to make these principles the substance of another treaty concluded by all states which were contracting parties to the Charter, or to have them incorporated in an additional protocol to be formulated as a reservation attached to the signature or to the ratification of the Charter. Kelsen holds that the Charter of the United Nations is an international treaty which was concluded for the purpose of setting up an everlasting condition of things, and, as it did not provide for the possibility of unilateral withdrawal, it could not be denounced by a contracting party.

Professors Goodrich and Hambro, on the other hand, assert that as the Commentary on withdrawal, which was adopted by the San Francisco Conference, was not incorporated in the text of the Charter, it was doubtful whether it was binding on members to the same extent as the provisions of the Charter itself. They are of the opinion, however, that the manner in which the Commentary was adopted by the Conference would provide a sufficient justification for its being considered a generally accepted reservation having the same binding force as the Charter itself.[83]

82. Hans Kelsen, *op. cit.*, pp. 33-34; and the same author: *Law of the United Nations,* London, Stevens, 1951, p. 122 at p. 127.

83. L. M. Goodrich and E. Hambro, *op. cit.*, p. 144.

Judge Lauterpacht holds that although the Charter itself does not expressly mention the right of withdrawal, in the absence of an express prohibition to that effect, members of the United Nations must be deemed to have preserved the right to sever what is, in law, a contractual relation of indefinite duration imposing upon states far-reaching restrictions of their sovereignty. Moreover, the relevant Committee of the San Francisco Conference put on record the view, which was eventually accepted by all participating states, that nothing mentioned in the Charter could deprive members of their right to withdraw from the Organization. It is probable, Judge Lauterpacht concludes, that any limitations upon the exercise of that right are of a political and moral rather than of a legal nature.[84]

With due respect to the above mentioned authoritative statements it is submitted that the United Nations Charter, being an international treaty having for its chief object the establishment of an international organization,[85] is an international treaty *sui generis* and can be denounced by a contracting party on the ground that no state can be bound in perpetuity to continue its membership in any international organization, and that a reservation to that effect must be implied. The several states which at the San Francisco Conference voted for the inclusion of the right to withdraw from the Organization in the text of the Charter were obviously fully justified in demanding that the right to withdraw from the Organization be expressly guaranteed by an appropriate provision in the Charter itself. But having ultimately elected to dispense with an express stipulation in order to emphasize their conviction that their continuing membership in the Organization was desirable in the interest of international peace and security, that particular action cannot be taken as a renunciation of their right to withdraw from the Organization. It is submitted, that in order to

84. Oppenheim-Lauterpacht, *op. cit.*, p. 411.

85. Charter of the United Nations, Preamble, Yearbook of the United Nations 1946-47, New York, 1947, p. 831.

In this connection it is interesting to note that the Protocol of Signature of the Statute of the Permanent Court of International Justice and the Statute itself did not contain any express provision for withdrawal. As the United States of America attached to its proposed adherence to the Protocol a reservation to the effect that the United States may at any time withdraw its adherence to the Protocol, the other signatories to the Protocol called a conference in order to consider the merits of the American reservation. In the debate which ensued, the Czechoslovak delegate, Mr. Stefan Osusky, declared that irrespective of the absence of an express stipulation in the Statute of the right to withdraw therefrom, the Statute was an international convention, and every international convention of the same type as the Statute of the Court implied the right of denunciation, even if no formal provision were made for it. Minutes of the Conference of States Signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice, held at Geneva, 1–23 September, 1926. League of Nations, 1926, v. 26, p. 13.

provide for compulsory membership in the United Nations, an express provision containing an unequivocal statement by member-states renouncing their undisputed right to withdraw from the Organization, would have to be inserted in the Charter. No such provision having been made, it is impossible to assume that members have tacitly renounced any of their legal rights, and a term bearing that meaning cannot readily be implied. Consequently, the argument that a term to that effect could be supplied by interpretation is difficult to follow.

On the other hand, it is quite plain that the Commentary on withdrawal, not having been incorporated in the Charter itself, has not, and was not intended by the Conference to have any legally binding force, but is, and was meant to be purely recommendatory in character, evidencing thus the views on withdrawal held by the participating states at the time of its making. The Commentary therefore could not have given members the right to withdraw from the Organization, and the fact that members do have this right is unconnected with anything declared in the Commentary but is based on the fundamental rights of sovereign states.

It may therefore be assumed that every member of the Organization of the United Nations may leave the Organization at will. A withdrawing member is, however, morally bound to justify its action. But even if no satisfactory explanation for withdrawal is given and the withdrawal is regarded as unjustified by the remaining members, no action against the withdrawing member can be taken by the Organization so long as the withdrawing member is not responsible for a threat to, or a violation of international peace and security. But any measures taken by the United Nations would be directed to the maintenance, or to the restoration of international peace and security only, and would not be prompted by the desire to compel a member to continue its membership in the Organization.[86]

Suspension and Expulsion

The San Francisco Conference considered also provisions with respect to suspension and expulsion of members from the Organization. These provisions were contained in the Dumbarton Oaks Proposals and were submitted to the Conference by the Sponsoring Powers. Pursuant to the tenor of these Proposals, the Organization was envisaged to have the power to suspend any member-state, against which a preventive or an enforcement action would be taken, from the exercise of its rights

86. L. M. Goodrich and E. Hambro, *op. cit.*, p. 145.

and privileges of membership, and to expel any member-state which would persistently violate the principles contained in the Charter.[87]

Committee I/2, where the matter of suspension and expulsion was assigned for study, referred it to a special subcommittee created for that purpose.[88] There the matter was examined and the majority of the delegates favoured the deletion of any provision for expulsion on the ground that expulsion would not only deprive a country of its rights and privileges derived from membership in the United Nations but would also relieve it of its obligations to the Organization, which was undesirable. A mere suspension, on the other hand, would deprive a country of the advantages and benefits of membership only but would in no way affect its obligations under the Charter, so that the country would still be required to honour its obligations to the Organization.[89] Belgium then submitted a draft of a new paragraph designed to replace the provision for expulsion, and the proposal was promptly approved by the subcommittee.[90]

When the matter reached Committee I/2, it voted, however, by nineteen to sixteen in favour of the retention in the Charter of a reference to expulsion. But as the motion failed to obtain the prescribed two thirds majority, the Committee adopted the Belgian draft on suspension as recommended by the special subcommittee.[91] The Soviet Union objected to this on the ground that the prescribed voting rules had not been observed and the Steering Committee referred the matter to Committee I/2 for reconsideration.[92] There the debate on expulsion

87. Paragraph 3, Chapter III of the Dumbarton Oaks Proposals reads as follows: "The General Assembly should, upon recommendation of the Security Council, be empowered to suspend from the exercise of any rights or privileges of membership any member of the Organization against which preventive or enforcement action shall have been taken by the Security Council. The exercise of the rights and privileges thus suspended may be restored by decision of the Security Council. The General Assembly should be empowered, upon recommendation of the Security Council, to expel from the Organization any member of the Organization which persistently violates the principles contained in the Charter." UNCIO Documents, vol. 7, p. 120.

88. UNCIO Documents, vol. 7, p. 99.

89. *Ibid*., p. 99.

90. The new paragraph proposed by Belgium reads: "The Organization may at any time suspend from the exercise of the rights or privileges of membership any member of the Organization against which preventive or enforcement action shall have been taken by the Security Council, or which shall have violated the principles of the Charter in a grave or persistent fashion. The exercise of these rights and privileges may be restored in accordance with the procedure laid down in Chapter..... para....." UNCIO Documents, vol. 7, p. 101.

91. UNCIO Documents, vol. 7, p. 115.

92. *Ibid*., pp. 115 and 194.

was reopened and the matter, framed this time as a proposal to omit any reference to expulsion in the Charter, was narrowly defeated.[93] But as the required two thirds majority had not even then been reached, the matter was placed again before the Committee and the delegates were invited to vote on a motion now framed: "The Organization may expel any member which has persistently violated the principles contained in the Charter."[94] In order to overcome the deadlock, the delegations adopted the Belgian suggestion and refrained from voting against the motion,[95] and the motion was subsequently carried by twenty-three votes against three, with fourteen abstentions.[96] The Committee proceeded immediately to a vote on the question of suspension which was thus raised and the original provision,[97] which followed closely the text contained in the Dumbarton Oaks Proposals,[98] was unanimously adopted.[99]

As a result, the Charter of the United Nations expressly provided for the expulsion of members[1] following thus the relevant provisions of the Covenant of the League of Nations.[2] Pursuant to the provisions

93. *Ibid*., pp. 193-196.

94. *Ibid*., p. 277; Charter of the United Nations, Article 6, Yearbook of the United Nations 1946-47, New York, 1947, p. 832.

95. UNCIO Documents, vol. 7, p. 277.

96. *Ibid*., p. 278.

97. UNCIO Documents, vol. 7, p. 191; the new paragraph proposed by Belgium is cited in footnote 90, above; see also Charter of the United Nations, Article 5, Yearbook of the United Nations 1946-47, New York, 1947, p. 832.

98. UNCIO Documents, vol. 7, p. 120; Paragraph 3, Chapter III of the Dumbarton Oaks Proposals is cited in footnote 87, above.

99. UNCIO Documents, vol. 7, p. 279. The San Francisco Conference adopted also a provision on suspension penalizing a member for the non-payment of its financial contribution. Having considered several proposals, the Conference finally adopted a formulation depriving the offending member of its voting privileges; UNCIO Documents, vol. 8, p. 419. Charter of the United Nations, Article 19: "A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member." Yearbook of the United Nations 1946-47, New York, 1947, p. 833.

1. Charter of the United Nations, Article 6 reads: "A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council." Yearbook of the United Nations 1946-47, New York, 1947, p. 832.

2. Covenant of the League of Nations, Article 16, paragraph 4 reads: " Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon." U.S.For.Rel.: Paris Peace Conference 1919, XIII 72 *ff*.

of Article 6 of the Charter, a member of the United Nations which has persistently violated the principles contained in the Charter may be expelled from the Organization.[3]

It may however, be anticipated that the Organization would consider expulsion of a member only in the clearest cases of violation of the principles of the Charter, and only as a last resort after all efforts to induce the offending member to conform to the principles of the Charter had failed.[4] Consistently with the purpose of the Organization of the United Nations to be a centre for harmonizing the actions of nations[5] in the maintenance of international peace and security,[6] development of friendly relations among nations,[7] and the achievement of international co-operation,[8] it is to be hoped that contrary to the experience with the League of Nations,[9] the United Nations will not find it necessary to expel any of its members, and also that there will be no nation which would make use of its right and withdraw from the Organization.[10]

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3. Charter of the United Nations, Article 2, Yearbook of the United Nations 1946-47, New York, 1947, pp. 831-832.

4. Being an important question, the decision to expel a member must be carried by a two thirds majority of members present and voting in the General Assembly (Charter of the United Nations, Article 18(2), Yearbook of the United Nations 1946-47, New York, 1947, p. 833), and by an affirmative vote of seven members including the concurring votes of the permanent members in the Security Council (Charter of the United Nations, Article 27(3), Yearbook of the United Nations 1946-47, New York, 1947, p. 834).

5. Charter of the United Nations, Article 1(4), Yearbook of the United Nations 1946-47, New York, 1947, p. 831.

6. *Ibid.,* Article 1(1).

7. *Ibid.,* Article 1(2).

8. *Ibid.,* Article 1(3).

9. The Soviet Union was the only member expelled from the League of Nations. See Resolution of the Assembly of the League of Nations and the decision of the Council of the League of Nations of December 14, 1939. League of Nations, The Appeal of the Finnish Government to the League of Nations. A Summary Based Upon the Official Documentation. Special Supplement to the Monthly Summary, December 1939, pp. 60-69.

10. Three great powers gave notice of their intention to withdraw from the League of Nations: Japan on March 27, 1933; Germany on October 19, 1933; and Italy on December 11, 1937. In addition, several other states gave similar notices. Paraguay on February 19, 1937; El Salvador on July 26, 1937; Chile on May 14, 1938; Venezuela on July 11, 1938; Peru on April 8, 1939; Hungary on April 11, 1939; Spain on May 8, 1939.

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