UNILATERAL WITHDRAWAL FROM AN INTERNATIONAL ORGANIZATION*

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I

EVERY public international organization[1] is based on a treaty or convention entered into by the States which establish it. While from the aspect of its content the instrument is the organization's Constitution,[2] formally it is a treaty like any other treaty.[3] It is, therefore, essential that the founders of an international organization, when drafting the document, consider whether to permit or forbid withdrawal from it.[4] Examination of the Constitutions of the existing international organizations—and their number is now quite impressive[5]—shows that most of them contain an express provision in this matter; except for a few cases,[6] the provision permits

[1] 'Public international organizations' or 'inter-governmental organizations' are organizations established by States, in contradistinction to 'private international organizations' or 'international non-governmental organizations', which are established by individuals or private societies and associations from different countries. In the first *Report on the Law of Treaties*, submitted by the Special Rapporteur, Sir Gerald Fitzmaurice, to the International Law Commission, the term 'international organization' is defined as 'a collectivity of States established by treaty, with a constitution and common organs, having a personality distinct from that of its Member-States, and being a subject of international law with treaty-making capacity'. See *I.L.C. Yearbook* (1956–II), p. 108.

[2] The draft proposal of Article 3 in the first *Report on the Law of Treaties*, submitted by Sir Humphrey Waldock to the International Law Commission, states *inter alia* that in an instrument establishing an international organization or agency 'the constitution and functions of the organization or agency' are prescribed. See U.N. Doc.A/CN.4/144, 26 March 1962, p. 27.

[3] In its advisory opinion on conditions of admission of a State to membership in the United Nations, the International Court of Justice defined the Charter as 'a multilateral treaty' whose interpretation 'falls within the normal exercise of . . . [the Court's] judicial powers'. See *Admission of a State to the United Nations* (Charter, Art. 4), *I.C.J. Reports*, 1948, at p. 61.

[4] According to the *Dictionnaire de la terminologie du droit international* (Paris, 1960), p. 544, the term 'withdrawal' (*retrait*) is generally used by the commentators only with respect to the United Nations, while the term 'denunciation' (*dénonciation*) is used with respect to treaties establishing other organizations. We do not know the grounds for this distinction. In any case, of the twelve Specialized Agencies whose Constitutions provide for withdrawal, only two—the International Civil Aviation Organization and the International Telecommunication Union—use the term 'denunciation', while 'withdrawal' is used by the remaining ten.

[5] Peaslee (*International Governmental Organizations, Constitutional Documents* (2nd revised ed., 1961), 2 vols.) gives the texts of the Constitutions of no fewer than 171 international organizations.

[6] The European Economic Community (Article 240 of the Treaty) and the European Atomic Energy Community (Article 208)—both established in 1957— are examples of organizations set up for an indefinite period without providing for the right of withdrawal. However, withdrawal may be permitted even in an organization expressly established for an indefinite period. This, for instance, is true with respect to the Organization of American States (the Bogota Constitution of 1948—Article 112) and the Security Treaty between the United States of America, Australia and New Zealand (the ANZUS Treaty of 1951—Article 10).

withdrawal and lays down its conditions. As to the two comprehensive international organizations which have emerged since the end of the First World War—the League of Nations and the United Nations—it may be noted that, while under the Covenant member States were expressly given the right to withdraw, no similar provision is to be found in the Charter. At the same time it is true—and we shall return to this point—that, after it was decided at San Francisco in 1945 not to mention the possibility of withdrawal in the Charter itself, owing to a reluctance 'to talk about divorce on the wedding day', the Conference saw fit to adopt an interpretative declaration authorizing withdrawal in certain circumstances. As for the thirteen Specialized Agencies created after the Second World War and belonging to the 'Family of the United Nations', the World Health Organization is today the only one whose Constitution does not provide for the right of withdrawal. In all the others—including U.N.E.S.C.O. since its Constitution was amended in 1954—withdrawal is allowed under specified conditions.

The question whether a right to withdraw from an international organization exists was raised for the first time in connexion with the Charter, since some students of international law denied the legal validity of the interpretative declaration. The issue was thus mooted whether withdrawal is permitted despite the absence of an express provision, or whether it is forbidden precisely because of the silence of the Charter. Conflicting opinions on the point were advanced in the legal literature, and we shall have occasion to refer to the arguments put forward by their proponents. But the controversy has not been confined to the realm of theory. In 1949 and 1950 several member States informed the World Health Organization that they were withdrawing from it, and in 1952 some of the same States took a similar step in U.N.E.S.C.O. Since the Constitution of neither organization provided for withdrawal (with U.N.E.S.C.O. the notification was given before amendment of its Constitution), both organizations were required to decide whether the notifications were valid or not.

II

The present article deals with the question whether a member State is entitled to withdraw from international organizations established for an indefinite period[1] and whose Constitutions neither allow nor prohibit

[1] No one contests that withdrawal is forbidden from an international organization established for a given period, unless it has been expressly or implicitly permitted. Where the intention is that the organization shall be of long duration, it is generally set up for an extended and specified period of time, with withdrawal not being permitted within this period. Thus, a term of fifty years was laid down for the European Coal and Steel Community, 1951 (Article 97 of the Treaty), and for the Western European Union (Treaty of Economic, Social and Cultural Collaboration and Collective Self-defence, Brussels, 1948, as amended on 23 October 1954, Article 12); a term of twenty years was fixed for the North Atlantic Treaty Organization, 1949 (Article 13), the

withdrawal.[1] It is only with such organizations that we are concerned, not with those established for a definite period. The answer may also serve as an answer to another question, namely, whether a constitutional provision permitting withdrawal is declaratory or constitutive in nature, i.e. whether it merely confirms a right which exists in any case (or lays down conditions for its exercise), or in itself creates the right. It may be added that, when we speak of the right of withdrawal under a Constitution, we mean, as will appear later on, not only a right granted in express terms, but also an implied right.

A few observations to define the topic more precisely may be called for. First, we are interested here in the question of the existence or non-existence of a right to withdraw, without any reliance on a rule of general international law which might constitute a justification for the withdrawal from a treaty, such as the *rebus sic stantibus* clause, or the principle of necessity; and we are not called upon to examine whether and under what limitations this clause and this principle are recognized in international law. In a memorandum prepared in 1949 by the Federal Political Department of the Swiss Government dealing with the right to withdraw, it is stressed with good reason that

'il faut éviter de confondre la question . . . [of unilateral withdrawal] avec celle de l'application de la clause *rebus sic stantibus*. Cette dernière suppose . . . que sont réalisées certaines conditions qui autorisent un État à dénoncer unilatéralement un traité, en dehors des délais prévus par celui-ci et même en dehors de toute clause de dénonciation.

'Treaty of Alliance, Political Co-operation and Mutual Assistance between Greece, Turkey and Yugoslavia, 1954 (Article 13), and the Treaty of Friendship, Co-operation and Mutual Assistance, Warsaw, 1955 (Article 11).

[1] The question of the right to withdraw from an international organization is part of the more general question concerning the denunciation of a 'general' or 'collective' treaty. These terms are used in contradistinction to a 'multilateral' or 'multipartite' treaty, and the decisive factor in the case of a 'general' or 'collective' treaty is not necessarily the number of States which have adhered to it, but its very nature as a law-making instrument, aspiring to universality or to the largest application possible. Examples of this type are normative treaties, such as the Treaty for the Renunciation of War (Kellogg–Briand Pact), 1928, and the Geneva Red Cross Conventions of 1949, as well as 'institutional' treaties, i.e. those establishing international organizations. In this article, we have considered it advisable to limit the discussion to institutional treaties, since in the examination of this type of treaty authors frequently rely on arguments which have no bearing on normative treaties.

The Institute of International Law has been considering for a number of years the problem of the modification and termination of collective treaties, and the question will be taken up at the next Session of the Institute in September 1963. In neither his preliminary nor his final report did the Rapporteur, Professor Giraud, find it necessary, for the purposes of his report, to make a distinction between normative and institutional treaties. See *Annuaire de l'Institut de Droit International* (1961–I), pp. 5–228.

It should be pointed out in addition that, inasmuch as the International Law Commission, at its Session of May–July 1963, formulated draft articles on the termination of treaties, and since the draft articles were submitted to the various governments for an expression of opinion, the Institute of International Law preferred not to discuss the Report of Professor Giraud at its Session of September 1963. It was therefore decided to request the Committee which had dealt with the subject to keep abreast of developments in this matter and, if necessary, to submit a further report.

Ces conditions peuvent se produire ou ne pas se produire. . . . La question de savoir si des traités qui ne contiennent pas de clause de dénonciation peuvent quand même être dénoncés *en tout temps* relève directement du droit des gens.'[1]

Secondly, a distinction must be made between the withdrawal of a State from an international organization and its refraining from participation in the organization's work. Just as a State can decide to absent itself from a particular meeting or session, it can decide to abstain from taking part in the organization's activities, without specifying any date for resuming participation. Thus, Argentina did not take any part in the work of the League of Nations for twelve consecutive years; and, as it never ceased being considered a member, it could in 1933 return without the need for any formal action.[2] Similarly, the representatives of the U.S.S.R. in 1950 absented themselves for more than six months from the meetings of all the organs of the United Nations (the only organ in which a citizen of the U.S.S.R. continued to participate—although not as a representative of the State—was the International Court of Justice). We thus see that refraining from participation in the work of an international organization—even for an extended period—does not constitute, formally, withdrawal from it.[3]

Thirdly, it is not the object of this article to take up the question whether it is desirable to permit withdrawal from an international organization and, if so, under what conditions. This question, which is in the realm of 'legal policy' (*Rechtspolitik*), does not come within the scope of our subject.

We shall start our exposition by considering the discussions on withdrawal held during the drafting of the Constitutions of some international organizations, and the debates on the withdrawal notifications in the World Health Organization and U.N.E.S.C.O. We shall then proceed to a clarification of the problem from the theoretical point of view.

[1] 'Thèses du département politique fédéral du 19 mai 1949 concernant la soumission des traités internationaux au referendum facultatif', *Annuaire suisse de droit international*, 7 (1950), pp. 206–7. The distinction between withdrawal relying on the *clausula rebus sic stantibus* and withdrawal based on a provision permitting it was brought out by M. Bartoš, the representative of Yugoslavia, at one of the meetings of the Conference on the Law of the Sea, held in Geneva in 1958. This distinction was stressed by Bartoš when the Conference discussed whether to include a provision permitting withdrawal in the four conventions drafted by it. See *United Nations, Conference on the Law of the Sea, Official Records* (Geneva, 1958), vol. 2, Plenary Meetings, p. 19.

[2] Bolivia and Peru, too, abstained for seven years from participating in the work of the League of Nations, resuming full collaboration in 1929.

[3] In his *Report on Participation of All States in the League of Nations*, submitted in 1937 to the Special Committee set up to study the application of the principles of the Covenant, the Rapporteur, Viscount Cranborne, rightly pointed out the great importance to be attached to active membership in an international organization, as opposed to membership existing only on paper. But he, too, admitted that from a legal point of view a member State which refuses to take part in the League's work continues to be a member. See *Société des Nations, Rapport du comité spécial pour la mise en œuvre des principes du pacte* (Geneva, 1938), pp. 41 et seq.

III

According to Article 1, para. 3, of the Covenant, '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'. It is significant that the Paris Peace Conference decided to include this Article only in the final stages of the drafting of the Covenant, at the penultimate meeting of the Commission on the League of Nations, on 26 March 1919. Indeed, not one of the numerous drafts or proposals for the League Constitution, prepared by statesmen and jurists of the Allied Powers (the Phillimore Plan,[1] the Draft of Colonel House,[2] the Smuts Plan,[3] the Cecil Plan,[4] Wilson's four Drafts,[5] the British Draft Convention,[6] the Italian Draft Scheme,[7] the Text of Hurst and Miller,[8] and others), contained any provision regarding withdrawal, nor is there any reference to this in the deliberations of the Commission before 26 March. Wilson himself believed that most of the participants in the Peace Conference were of the view that withdrawal was permitted, even in the absence of any express provision in the Covenant.[9] And during his visit to the United States while the Conference was in progress, he expressed this opinion before the Senate Committee on Foreign Relations.[10] However, upon his return to Paris on 14 March 1919, he became aware of the fact that this was far from being the general attitude, and that it was even meeting with strong opposition. Already in his consultation with Lord Robert Cecil on 18 March the latter challenged his assumption,[11] since Cecil considered that the denunciation of a treaty is illegal under international law, unless expressly provided for.[12] David Hunter Miller, the legal adviser of the United States Delegation to the Conference, who was present at the discussion and whose opinion Wilson requested, agreed with Cecil, emphasizing that

> 'except under the doctrine of changed conditions, which was known as the doctrine of *rebus sic stantibus*, . . . [his] opinion was that a State did not have the right to withdraw from a treaty; that the doctrine of changed conditions had been used as a ground for any violation of a treaty; that in modern times treaties had usually been drawn to continue for a certain period, with a clause permitting denunciation thereafter. . . .'[13]

In these circumstances, President Wilson considered it advisable to propose, at the Peace Conference, the inclusion of a provision in the Covenant expressly permitting withdrawal from the League. He frankly declared that he personally did not concede withdrawal from the League and denied the existence of a 'moral right' to withdraw. He went so far as to say

[1] Hunter Miller, *The Drafting of the Covenant* (New York, 1928), vol. 2, pp. 3–6.
[2] Ibid., pp. 7–11. [3] Ibid., pp. 23–60. [4] Ibid., pp. 61–64.
[5] Ibid., pp. 12–15, 65–93, 98–105, 145–54. [6] Ibid., pp. 106–16.
[7] Ibid., pp. 246–55. [8] Ibid., pp. 658–67. [9] Ibid., vol. 1, p. 293.
[10] Ibid., pp. 296, 346. [11] Ibid., p. 293. [12] Ibid., p. 346. [13] Ibid., p. 293.

that '. . . any State which did so would so become an outlaw'. Nevertheless, he regarded it as his duty to guarantee, in the Covenant, the right to withdraw, for otherwise there would be difficulty in inducing the United States Senate to give its approval to the League Constitution, which might make it impossible to start the League.[1] It was following this proposal that the Peace Conference incorporated Article 1, para. 3, in the Covenant.

The Covenant contained a further provision which permitted withdrawal —and in this case even automatic withdrawal without any condition. Article 26 provided that a State would cease to be a member if it signified its dissent from any amendment to the Covenant; and in the same Article it was laid down that amendments would take effect when ratified by all the member States represented in the Council and by a majority of the members of the League. This provision was adopted at the Peace Conference at the insistence of a number of States, particularly Switzerland and the Netherlands. They felt that, since the Covenant could be amended by a majority vote and did not require unanimity, it would be an infringement of the sovereignty of a member if it were bound by an amendment to which it did not consent and which might even impose new obligations upon it.[2] They, therefore, demanded that States opposed to an amendment be entitled to withdraw, and from the way in which the demand was presented it would appear that they sought the grant of a right rather than the endorsement of an existing right.

From the discussions which took place on the two withdrawal provisions in the Covenant, as recorded in the summary minutes of David Hunter Miller, it may be concluded that the drafters of the Covenant proceeded from the assumption that for withdrawal to be possible it must be expressly stated.

IV

The question whether a party to a treaty may denounce it, without such right being explicitly provided for in the treaty, arose at the Conference

[1] Hunter Miller. *The Drafting of the Covenant* (New York, 1928), vol. 1, pp. 344–7; vol. 2, pp. 358–9, 534–7. It is difficult to understand what President Wilson had in mind when he observed at that meeting that at the previous meetings of the Commission he *alone* had been anti-secessionist (ibid., vol. 1, p. 346; vol. 2, p. 359). First, how can that observation be reconciled with his statement that he believed that there was a right of withdrawal even without provision therefor, and that he had informed the Senate Committee on Foreign Relations to that effect? Secondly, it cannot be said that he was 'alone', since France's opposition to the recognition of the right of withdrawal is well known. This opposition was so outspoken that at a meeting of the United States Delegation on 18 March 1919 it was decided not to insist on the demand for a withdrawal provision in the Covenant, the members of the Delegation being convinced that France would not agree to it (ibid., vol. 1, p. 297).

[2] Ibid., vol. 1, pp. 205, 293, 305; vol. 2. pp. 620, 632. In this context, the representatives of Brazil and Portugal argued that according to the Constitutions of their countries no treaty could be accepted before ratification by their legislative bodies; without a provision permitting withdrawal in case the Covenant should be amended, they would, therefore, be precluded from joining the League. See ibid., vol. 1, p. 497; vol. 2, pp. 386–7, 700.

which was convened by the League of Nations in Geneva in 1926 to discuss the five reservations on whose acceptance the United States made conditional its accession to the Statute of the Permanent Court of International Justice and to the Protocol of Signature of the Statute, of 16 December 1920. As the Statute of the Court included no provision concerning withdrawal, the United States, when negotiating its accession, saw fit to put forward a reservation specifying 'that the United States may at any time withdraw its adherence to the said Protocol'. It was to this end that the first sentence of the fourth reservation was drafted.[1] There is no evidence to show whether the intention of the United States Government was to assure itself of a right which it did not regard as existing without the reservation, or—*ex abundanti cautela*—to reiterate the existence of a right which it had in any case. In a memorandum transmitted by him to Senator Lenroot, about nine months before the Conference, Assistant Secretary of State Olds pointed out that 'the authorities generally on the subject of withdrawal from international engagements of indefinite duration, where no specific provision is made for denunciation, appear to be rather unsatisfactory . . .'. He, therefore, believed that

'to avoid the possibility of future misunderstanding, and particularly to strengthen the regard which should be had for international agreements, an appropriate reservation should be incorporated in the resolution by which the United States adheres to the Statute of the Permanent Court of International Justice recognizing and reserving the right of the United States to withdraw from the Court'.[2]

At the Conference itself opinions were divided on the matter. The representatives of some States did not regard the United States reservation as a demand for a special privilege. The representative of Czechoslovakia, for instance, stressed that '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'.[3] The representative of Switzerland, too, argued that 'the Statute was an international Convention of the collective type and could be denounced. As long as there were no provisions to the contrary, a State might withdraw at will. . .'.[4] The representatives of other States were of a contrary opinion. The most outspoken opposition came from the representative of Norway, who rejected it as 'a dangerous theory, which would tend to make the privileges conferred by conventions of this nature practically valueless'.[5] The representative of Belgium also took exception

[1] For the text of the reservation, see *Minutes of the Conference of States Signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice* (Geneva, 1926), p. 68.

[2] Hackworth, *Digest of International Law* (Washington, 1943), vol. 5, p. 299.

[3] *Minutes of the Conference of States Signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice* (Geneva, 1926), pp. 13, 14.

[4] Ibid., p. 15. This was also the view of the Canadian Representative (ibid., p. 13).

[5] Ibid., p. 17.

to the theory, as the 'principle . . . [involved] would clearly have serious effects on the present international organization of the world'.[1] The President of the Conference, the representative of the Netherlands, indeed thought it necessary, in this context, to recall the London Protocol of 17 January 1871, in which the Great Powers declared 'that it is an essential principle of the Law of Nations that no Power can liberate itself from the engagements of a Treaty, . . . unless with the consent of the Contracting Powers by means of an amicable arrangement'.[2] It should be noted that even the representatives who expounded this view evinced no opposition to the acceptance of the United States reservation; but, unlike the others, they regarded it as a far-reaching concession to the United States and the grant of a 'privilege'.[3]

Since we are dealing here with the Permanent Court of International Justice, it may be worth mentioning the case of a unilateral denunciation by a State of its declaration under Article 36, para. 2, of the Court's Statute, known as the 'Optional Clause', whereby a State may declare its acceptance of the compulsory jurisdiction of the Court. This was the case of Paraguay, which in 1933 adhered to the Optional Clause for an indefinite period and without reservation, and in 1938 notified the Secretary-General of the League of Nations that it was withdrawing its declaration of acceptance. In the absence of any provision in the Statute permitting unilateral denunciation, the Secretary-General felt obliged to transmit the notification of withdrawal to all the States then bound by the Optional Clause.[4] Six of them (Belgium, Bolivia, Brazil, Czechoslovakia, the Netherlands and Sweden) refused to take note of Paraguay's notification and, in their replies to the Secretary-General, entered formal reservations thereon.[5] It is significant that, notwithstanding this notification of withdrawal, Paraguay was included in the list of States bound by the compulsory jurisdiction clause both in the *Report of the Permanent Court of International Justice for 1939–1945*, and in the first thirteen issues of the *Yearbook of the International Court of Justice*.[6] It is only in the last two issues of the *Yearbook*—for 1960–1 and 1961–2—that Paraguay's name no longer appears. The Registry of the Court did not indicate the reasons which led to this omission. True, beginning with 1956–7, the *Yearbook* points out that 'the inclusion or omission of a declaration [accepting the compulsory jurisdiction of the Court in pursuance

[1] *Minutes of the Conference of States Signatories of the Protocol of Signature of the Statute of the Permanent Court of International Justice* (Geneva, 1926), p. 18.

[2] Ibid., p. 15. [3] Ibid., p. 17. [4] *P.C.I.J.*, Series E, No. 14, pp. 50–53.

[5] Ibid., Series E, No. 15, pp. 220–1.

[6] In the first *Yearbook of the International Court of Justice*, it is stated that Paraguay's membership 'is deemed to be still in force' (issue for 1946–7, p. 111, n. 1); the twelve following issues of the *Yearbook* mention Paraguay's denunciation of the Optional Clause and the fact that formal reservations thereon were received from a number of States, and refer to Report No. 15 of the Permanent Court of International Justice in which the replies of these States were summed up. See, e.g., ibid. (1959–60), p. 249, n. 2.

of Article 36, para. 2] made by any State should not be regarded as an indication of a view entertained by the Registry or, *a fortiori*, by the Court, regarding the nature, scope or validity of the instrument in question'.[1] But the fact remains that Paraguay's name, after having been included for many years, was suddenly omitted from the list.[2]

V

The proposals for the establishment of a General International Organization drafted by the four Great Powers—the United States, the U.S.S.R., Great Britain and China—at Dumbarton Oaks in August and October 1944, passed over the question of withdrawal in complete silence. There is not much information as to the significance of this silence, and in so far as explanations have been advanced, they reveal contrary views. The British Commentary on the Dumbarton Oaks Proposals, submitted to Parliament in November 1944, observes that 'States would have no right of withdrawing voluntarily; the intention is that membership of the Organization shall be permanent'.[3] The same interpretation was put forward on two occasions at the San Francisco Conference. Summarizing the conclusions of the Sub-committee appointed to clarify the question of membership, the Chairman of Committee I/2 pointed out that the Sub-committee was of the opinion that 'the Dumbarton Oaks Proposals deliberately omitted provisions for withdrawal in order to avoid the weakness of the League Covenant . . .'.[4] And a week later the representatives of a number of States, at one of the meetings of the same Committee, suggested that the omission of

[1] See ibid. (1956–7), p. 207.

[2] It may be noted that the *Annual Reports of the Secretary-General* to the Assembly (in the chapter dealing with the Court, including matters pertaining to the Optional Clause) are also silent on the change of attitude which took place.

For the sake of completeness it should be recalled that, immediately after the outbreak of the Second World War, notices were transmitted to the Secretary-General of the League of Nations by Great Britain, France, Canada, South Africa, Australia, New Zealand and India stating that, in view of the fundamental change in international life—the general collapse of the League's machinery for the preservation of peace and the complete break-down of the Covenant—which had taken place since their acceptance of the Optional Clause, they would not regard the Clause as 'covering disputes arising out of events occurring during the present hostilities' (*P.C.I.J.*, Series E, No. 16, pp. 332–44). These communications, which constituted a unilateral limitation of the scope of the application of the Optional Clause, were transmitted by the Secretary-General to all parties to the Statute. In their replies, ten States (Belgium, Brazil, Denmark, Estonia, the Netherlands, Norway, Peru, Siam, Sweden and Switzerland) announced their formal reservations (ibid.). In his discussion of the communications, Lauterpacht writes: 'In general, unilateral termination of the obligations of the Optional Clause must be regarded as subject to conditions governing the termination of treaties. A radical change of circumstances may clearly constitute a condition of this nature.' See Oppenheim, *International Law* (7th ed. by Lauterpacht, 1952), vol. 2, p. 61, n. 2.

[3] Cmd. 6571 (1944), p. 6.

[4] *Documents of the United Nations Conference on International Organization, San Francisco, 1945* (hereafter quoted as *U.N.C.I.O. Documents*) (London–New York, 1945), vol. 7, p. 37, Doc. 314, I/2/17.

a specific reference to withdrawal in the Dumbarton Oaks Proposals was deliberate and for the purpose of excluding such a possibility.[1] On the other hand, another interpretation was also advanced in the course of the deliberations. Thus, the representative of the United States expressed the opinion that 'although omission was deliberate, its purpose was to permit the consideration of each proposed case of withdrawal in the light of the circumstances existing at the time . . .'.[2]

It may be of interest here to examine briefly the discussions concerning withdrawal which took place in the State Department of the United States, between 1942 and the Dumbarton Oaks Conversations of 1944. This may cast some light on the United States attitude and its wavering uncertainty.[3]

Experts of the State Department, who in the winter of 1942–3 began discussions on the Constitution of the future international organization, were in favour of establishing the organization as a universal one, with automatic and permanent membership, and with no right of secession.[4] However, in the Staff Charter prepared by State Department officials in the summer of 1943, the principle of automatic membership was discarded, although that of universal membership was retained. And keeping in mind the stand taken by the Senate during the drafting of the League Covenant, in the matter of withdrawal, the Staff Charter allowed withdrawal when a State felt that changed circumstances made the obligations of membership too onerous. It also provided that membership should be for a period of ten years, that it should continue for successive periods of ten years, and that withdrawal should be permitted only at the end of each decade.[5] At a later stage, in the spring of 1944, an Informal Political Agenda Group in the State Department proposed that no specific provision on withdrawal be included. In making the proposal, the Agenda Group did not ignore the possibility that the Senate might object to the Constitution of an organization which declared membership to be permanent. But they considered the right of withdrawal to be inherent in sovereignty, and felt it undesirable to stress this matter when establishing the new organization.[6] On the eve of the Dumbarton Oaks Conversations, another group of experts—the American Group—favoured the inclusion of a clause permitting withdrawal, in the belief that this would make the Constitution of the organization more acceptable to the Senate.[7] The suggestion did not, however, win the support of Secretary of State Hull, and on 24 August 1945, President

[1] *U.N.C.I.O. Documents*, vol. 7, p. 73, Doc. 501, I/2/30. [2] Ibid.

[3] This review of the discussions which took place in the State Department is not based on the official documents, which have not yet been published, but on a study by Ruth B. Russell, *A History of the United Nations Charter, the Role of the United States, 1940–45* (Washington, 1959), who had access to the working files of the offices directly concerned with the preparatory work and the negotiations on the drafting of the Charter.

[4] Ibid., p. 350. [5] Ibid., p. 363.

[6] Ibid., pp. 354–5. [7] Ibid., p. 397.

Roosevelt endorsed Hull's position.[1] Consequently, the United States representatives came to Dumbarton Oaks with a proposal not to include a provision on withdrawal in the Constitution of the organization, and this was accepted by the other three Powers. 'From the earlier discussion of American views', writes Ruth Russell, 'it is clear that the United States did not interpret this position to mean that a sovereign state could not withdraw, but that the possibility should be played down by omitting reference to it'.[2] This assertion, with such a degree of certainty—even a more qualified statement in that direction—is hardly warranted by the deliberations, as Ruth Russell herself describes them.[3]

VI

While the discussions at the San Francisco Conference concerning withdrawal were protracted and penetrating, they centred mainly on the question whether withdrawal should be permitted and, if so, whether this should be stated in the Charter itself or whether an interpretative statement would suffice, in which the intention of the participants in the Conference would be made clear. The Sub-committee of Committee I/2, already mentioned, whose members included the U.S.S.R. and Great Britain, was of the opinion that withdrawal ought to be impossible.[4] A second Sub-committee appointed later (on 21 May 1945), in which the four Great Powers were represented, reached a diametrically opposed conclusion. This Sub-committee neither accepted Uruguay's proposal to prohibit withdrawal altogether, nor yet agreed to permit it explicitly. Its suggestion was to resort to an interpretative declaration in which it would be stated, *inter alia*, 'it is obvious . . . 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'.[5] At its meeting of 23 May 1945, Committee I/2 approved the proposed text of the interpretative declaration. But on 17 June it reconsidered the question of withdrawal, since in the meantime Sub-committee I/2/E had recommended that no amendment should come into force without the ratification of all five permanent members

[1] Ibid., p. 398.

[2] Ibid., p. 438.

[3] It is of interest to note here the opinion of Dr. Pasvolsky, who at the San Francisco Conference was Special Assistant to the Secretary of State for International Organization and Security Affairs: 'It was my view from the beginning . . . that under the original Dumbarton Oaks proposals, where there was no provision either to allow withdrawal or to veto withdrawal, it followed, as a matter of law, that there was a right of withdrawal, the reason being that the agreement was not of a type which in any sense merged the Member States into a new government or under which they give up any of their independence. . . . So it was and is my view that . . . there is a general right of withdrawal.' Quoted from Kelsen, *The Law of the United Nations, A Critical Analysis of its Fundamental Problems* (London, 1950), p. 129, n. 1.

[4] *U.N.C.I.O. Documents*, vol. 7, p. 37, Doc. 314, I/2/17.

[5] Ibid., pp. 87–88, Doc. 529, I/2/33.

of the Security Council; as the small States strongly opposed this rule, they insisted that if the Conference approved it, broader terms should be used concerning the conditions under which withdrawal would be admissible.[1] Summing up the three views expressed during the discussions, the representative of Peru defined them as follows: withdrawal is 'illegal and impossible;[2] legal and always free; and limited . . .'.[3] After Committee I/2 reaffirmed its previous decision to pass over in silence, in the Charter, the matter of withdrawal, it was agreed to revise the text of the interpretative declaration to include, *inter alia*, the following statement:

'The Committee deems that the highest duty of the nations which will become Members is to continue their cooperation 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 cooperation in the Organization.'[4]

The new text also declared that,

'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 . . . fails to secure the ratification necessary to bring such amendment into effect.'[5]

The revised text was approved by Commission I, and later by the plenum of the Conference at its meeting of 25 June 1945. The head of the Soviet delegation took exception to certain expressions used in the declaration.[6]

As already noted, the San Francisco Conference dealt solely with the question whether withdrawal should be permitted and, if so, in what form; it did not go into the question whether withdrawal would be possible even without provision therefor in the Charter and without an interpretative statement on the subject. Nevertheless, in the course of the discussions, some representatives commented on this subject in passing. Thus, the representative of the United States pointed out that 'in an organization of sovereign states it was clear that all members would possess the faculty of withdrawal'. He contrasted 'such an organization with a federal union, the members of which did not have the faculty to withdraw'. He demanded

[1] *U.N.C.I.O. Documents*, vol. 7, pp. 230, 573, Docs. 1022, I/2/69 and WD 344, I/2/E/2.

[2] It is noteworthy that, in their comments on the Dumbarton Oaks Proposals, Brazil, Ecuador and Uruguay suggested that a specific provision for withdrawal be included in the Constitution of the United Nations. See ibid., vol. 4, p. 41, Doc. 2, G/7 (a); p. 324, Doc. G/7 (e); p. 544, Doc. G/7 (P).

[3] Ibid., vol. 7, p. 266, Doc. 1043, I/2/70.

[4] Ibid., p. 267, Doc. 1086, I/2/77.

[5] Ibid.

[6] See ibid., vol. 1, pp. 619–20, Doc. 1210, P/20. It is a mistake to interpret the criticism by Mr. Gromyko as a reservation on the right of withdrawal as such; for at San Francisco it was the U.S.S.R. that headed the States which were not satisfied with a statement on the right of withdrawal in an interpretative declaration but insisted that the right be granted in the Charter itself.

that 'the Charter should state what rights the Organization possessed', and stressed that 'it need not state what rights the members possessed'.[1] The British representative observed that 'the power to withdraw was implicit in the Charter as it stood and that the mention of the point in the Committee's report will be sufficient to underline it'.[2] The representative of China held that 'the faculty of withdrawal was inherent',[3] and according to the Soviet representative the right of withdrawal 'is an expression of State sovereignty'.[4] In the Report submitted to the Conference by Commission I, the Rapporteur emphasized that the non-inclusion of any reference to withdrawal in the Charter was 'not intended to impair the right of withdrawal, which each State possesses on the basis of the principle of the sovereign equality of the members'. 'The Commission', the Report continued, 'would deplore any reckless or wanton exercise of the right of withdrawal but recognises that, under certain exceptional circumstances, a State may feel itself compelled to exercise this right'.[5]

It is not always an easy matter to get at the real significance of statements made at the San Francisco Conference, since the minutes of the debates have been published in a severely abridged form. This much is certain, however: on the basic question with which we are concerned, opinions were divided. And it is noteworthy that even some of those States which spoke of an inherent right to withdraw, in fact envisaged cases of withdrawal which might be justified by the *clausula rebus sic stantibus*. Thus, the British representative supported the opinion of the representative of Belgium, who stated his opposition to a general principle of withdrawal but acknowledged its necessity in extraordinary circumstances, believing that it 'would be based on the principle of *rebus sic stantibus*'.[6] As we have already observed, however, to assert the existence of a right to withdrawal, while relying on the *rebus sic stantibus* clause, is actually to deny its existence.

[1] Ibid., vol. 7, p. 265, Doc. 1086, I/2/77.

[2] Ibid., vol. 6, p. 123, Doc. 1167, I/10. Another British representative said on a different occasion that 'withdrawal was a faculty, not a right' and that 'the inclusion of a specific reference in the Charter to withdrawal would not affect the rights which already belonged to a State'. See ibid., vol. 7, p. 264, Doc. 1086, I/2/77.

[3] Ibid., pp. 264, 271.

[4] Ibid., vol. 1, pp. 619–20, Doc. 1210, P/20.

[5] Ibid., vol. 6, p. 249, Doc. 1179, I/9.

[6] Ibid., pp. 263, 264, Doc. 1086, I/2/77. In his *Report to the President on the Results of the San Francisco Conference*, the Chairman of the United States Delegation, Secretary of State Stettinius, concluded his remarks on withdrawal as follows: 'The League Covenant recognized withdrawal as an absolute right which any Member could exercise for any reason, or even without reason. Under the present Charter, withdrawal is permissible but it will have to be justified.' (Washington, 1945), p. 49.

In their explanations to the Senate Committee on Foreign Relations, Dr. Pasvolsky and Mr. Hackworth, Legal Adviser to the United States Delegation, defined the interpretative declaration as granting an absolute right of withdrawal, which would be permissible in any circumstances. For a criticism of these explanations and of the inconsistencies to which they lead, see Kelsen, op. cit., pp. 129–33.

It may be of interest to note the comment recently made by Professor Henri Rolin, who served as Chairman of Commission I, on the attitude taken by the San Francisco Conference in the matter of withdrawal. In his opinion, the Conference clearly refused to interpret the absence of any clause relating to withdrawal as an implied admission of the right of secession.[1]

VII

The Technical Preparatory Committee which prepared a draft Constitution for the World Health Organization put emphasis on the universal character of the Organization's activities; and, since the Charter of the United Nations itself contained no clause on withdrawal, it agreed to omit from its draft any mention of such a possibility.[2] The International Health Conference held in 1946 for the final drafting of the Constitution approved the stand of the Committee. However, since the Constitution provided that an amendment could be adopted by a two-thirds majority, and did not require unanimity, the Conference saw fit to formulate a declaratory statement concerning withdrawal in the case of amendment. This was that 'a member is not bound to remain in the Organization if its rights and obligations as such were changed by an amendment of the Constitution in which it has not concurred and which it finds itself unable to accept'.[3] The view prevailed that without such a statement—as the representative of Norway remarked—some members of the Organization might be 'bound by decisions of other States against their will'.[4]

When the United States took up the question of its joining W.H.O., the two Houses of Congress thought it advisable to say expressly in Section 4 of their Joint Resolution of 7 July 1947 that their recommendation to accept the Constitution was based on 'the understanding that, in the absence of any provision . . . for withdrawal from the Organization, the United States reserves its right to withdraw . . . on a one-year notice . . .'.[5] The

[1] See *Annuaire de l'Institut de Droit International* (1961–I), p. 273.

[2] *World Health Organization, Official Records* (hereafter cited as *W.H.O., Official Records*), No. 1, Minutes of the Technical Preparatory Committee (New York, 1947), p. 26.

[3] Ibid., No. 2, Proceedings and Final Acts of the International Health Conference held . . . from 19 June to 22 July 1946 (New York, 1948), p. 74.

[4] Ibid.

[5] See *Department of State Bulletin*, 19 (1948), No. 470, p. 310. From the discussions which preceded the adoption of the Joint Resolution, it may be gathered that the initiative to include a reservation with regard to withdrawal was based on a misconception. What the proponents of the reservation intended was to avoid the imposition of new obligations on the United States through the amendment of the W.H.O. Constitution—which amendment did not require unanimity. The State Department thought it necessary to draw the attention of the two Congressional Committees dealing with foreign affairs to the 'declaratory statement' of W.H.O., dated 17 July 1946, permitting withdrawal in the case of amendment. The State Department even expressed apprehension that the inclusion of such a reservation in the Resolution might render difficult the admission of the United States to the Organization; it therefore advised against the reservation. But neither Committee of Congress saw fit to act on the lines suggested by the State Department (ibid., pp. 310–11).

instrument accepting membership in W.H.O., including the said Joint Resolution, was communicated by the President of the United States to the Secretary-General of the United Nations. This faced the Secretary-General with the question whether the clause relating to withdrawal constituted an exception to the obligations imposed by the W.H.O. Constitution or, to put it differently, whether the clause would have the effect of conferring upon the United States a right not granted by the Constitution. Oscar Schachter, one of the chief legal advisers of the United Nations, states that the Secretariat came to the conclusion that Section 4 must be regarded as a reservation. 'It is an accepted rule of international law', he says, 'that unilateral withdrawal is not permissible in the absence of a provision allowing—either expressly or by implication—for such withdrawal. The only exception (which is by no means universally accepted) would be the principle of *rebus sic stantibus*. . . .'[1] In these circumstances, the Secretary-General did not consider himself authorized to accept the United States communication and to decide on his own whether the instrument was valid. In order not to delay settlement of the question, and so as to have it taken up at the First World Health Assembly, which was about to meet, the Secretary-General decided not to transmit the United States communication to all the members of the W.H.O., which would have been the proper procedure with regard to reservations, but instead submitted it directly to the Assembly. In so doing, he relied on Article 75 of the W.H.O. Constitution, which empowers the Assembly to settle any question or dispute concerning the interpretation or application of the Constitution.

In its Resolution of 2 July 1948, the World Health Assembly unanimously recognized the validity of the United States acceptance of the Constitution, although it was perfectly aware of the fact—as is evident from the proceedings—that in giving its consent to Section 4 of the Joint Resolution it was granting the United States a right which the other members would not share. But all the participants in the Assembly agreed to this exception, as they preferred to take a realistic approach rather than consider the matter from a strictly legal point of view, which would only render a solution more difficult. The representative of India, it is true, suggested that the Assembly should lay down as a principle of general application the right of a member to withdraw,[2] but he was not supported by the representatives of any of the other fifty-two delegations, and his suggestion was not even put to a vote. Of particular interest is the attitude adopted by the Soviet representative towards the United States reservation.

[1] Schachter, 'The Development of International Law through the Legal Opinions of the United Nations Secretariat', this *Year Book*, 25 (1948), at p. 123.

[2] *W.H.O., Official Records*, No. 13, First World Health Assembly (Geneva, 1948), p. 78.

He expressed his 'great regret' that the United States Congress had attached conditions to the acceptance of the W.H.O. Constitution; regarded the reservation as 'a case without precedent' which should not be imitated; stressed that Article 81 did not permit reservations; and asserted that there could be no reason based on medical grounds which could justify such a reservation.[1]

It may be concluded that according to the interpretation given to the W.H.O. Constitution—by the Government of the United States, the Secretary-General of the United Nations, and the First World Health Assembly itself—unilateral withdrawal was not permitted unless authorized by a specific reservation.

VIII

On 12 February 1949 the Union of Soviet Socialist Republics informed W.H.O. that, since it was dissatisfied with certain aspects of the Organization's work, it no longer considered itself a member. Similar communications were sent by the Ukrainian Soviet S.R. and the Byelorussian Soviet S.R. on 14 and 17 February.[2] In his reply to the Soviet Union's cable of notification, the Director-General stressed, *inter alia*, that 'because [the] Constitution of W.H.O. makes no . . . provision [for withdrawal], . . . [he] cannot accept . . . [the] communication as a withdrawal from the Organization'.[3] The Executive Board approved the action taken by the Director-General, and decided to place the question on the agenda of the Second Assembly.[4] On the recommendation of the Committee on Constitutional Matters, the Assembly on 25 June 1949 fully endorsed the steps taken by the Executive Board and the Director-General; expressed its deep regret at the absence of the representatives of the three members in question; and invited them to reconsider their intention and resume active participation.[5]

In the period between November 1949 and August 1950, W.H.O. received further notifications of withdrawal—from Bulgaria, Roumania, Albania, Czechoslovakia, Hungary and Poland.[6] The Third and Fourth

[1] *W.H.O., Official Records*, No. 13, First World Health Assembly (Geneva, 1948), p. 79.

[2] The communications of the three States notified their withdrawal, and not an 'intention to withdraw', as Mr. Singh erroneously puts it. See Singh, *Termination of Membership of International Organisations* (London, 1958), p. 88.

[3] *W.H.O., Official Records*, No. 17, Report of the Executive Council, 3rd Session (Geneva, 1949), p. 52.

[4] Ibid., p. 19.

[5] Ibid., No. 21, Second World Health Assembly, Decisions and Resolutions (Geneva, 1949), p. 52.

[6] *The First Ten Years of the World Health Organization* (Geneva, 1958), p. 80. It might be mentioned here that in May 1950 the Chinese Government notified its withdrawal from W.H.O., adding that, despite its withdrawal, it would continue to adhere to the purposes and principles of the Organization and to co-operate with the Organization and the member States in the field of health. Two years later China resumed full participation, and the Assembly of 1953 agreed for the time being to accept a token payment on account of the arrears for the period of its

Assemblies of 1950 and 1951 took note of the said communications, and adopted resolutions stating that the Organization would always welcome the resumption by these members of full co-operation in the Organization's work, adding that it was not considered that any further action at that stage was desirable.[1] An appeal for renewed participation was made in 1954 by the Seventh Assembly.[2]

In July 1955 the representative of the Soviet Union declared at a meeting of the Economic and Social Council that W.H.O. was doing useful work and that 'the Soviet Union was joining W.H.O.'.[3] This announcement, and similar statements which soon followed from the other States which had given notification of withdrawal, put a basic constitutional problem before the Organization, which it was called upon to solve.

It should be noted that, during all the years from the time of the withdrawal notifications by the nine States in 1949–50 until their return to active participation (Bulgaria, Albania and Poland—in January 1957; the U.S.S.R. in April 1957; and the other five States at later dates), W.H.O. continued to regard them as members: it invited them to all meetings and Sessions, and dispatched all documents and publications, &c., to them. The Organization even classified them in a special category known as 'inactive members',[4] and every year drafted two budgets—one listing only income actually anticipated, and the other including also the contributions of the inactive members, even though it was known in advance that they would not be forthcoming.

The discussions on the conditions for the return of the States which had expressed a desire to do so revolved primarily round the question whether they should be required to settle their arrears of contributions for the period in which they did not consider themselves as members. The question was first taken up by the Executive Board in January 1956 (with the participation of a U.S.S.R. observer), and later in the same year at the plenary Session of the Assembly (with the participation of a Polish observer). After protracted discussions the Assembly agreed on 11 May 1956 to accept a token payment of 5 per cent. in full settlement of the members' financial obligations for the years in which 'they have not been actively

absence, and to make further arrangements when China's financial situation had improved. See ibid., p. 81; Bertrand, 'La Situation des "membres inactifs" de l'O.M.S.', *Annuaire français de droit international*, 2 (1956), pp. 606, n. 9, 609–10.

[1] *The First Ten Years of the World Health Organization*, p. 80.

[2] Ibid.

[3] *U.N., Economic and Social Council*, 20th Session, 869th meeting, 18 July 1955, p. 31.

[4] In the opinion of Professor Dahm, W.H.O. had no right to describe the status of the States which had notified it of their withdrawal as that of 'inactive members', since 'the Constitution does not provide for membership of this kind'; *Völkerrecht* (Stuttgart, 1961), vol. 2, p. 20. This criticism does not seem to be well founded, for resort to the term 'inactive members' was not designed to create a new type of member, but merely to confirm the fact of their non-participation in the Organization's work—a fact that could hardly be ignored—and the term was coined for administrative convenience only.

participating in the work of the Organization', and that such payments might be made in equal annual instalments over a period of up to ten years.[1] Ostensibly, this was merely a practical arrangement, but actually it was much more than that: it constituted the taking of a clear position on a fundamental legal question.

IX

In the course of the debates on the matter of withdrawal, both in the Executive Board and in the Assembly, there was a definite inclination— as was the case in the discussion of the United States reservation in 1948— towards avoiding resort to legal arguments and controversies, which could only jeopardize the reaching of a settlement.[2] There was a strong desire to have the Soviet Union and the other eight States resume active participation, and this led to a readiness to make important concessions. But these applied only to the amount[3] which the States would be required to pay, and not to the existence of the legal obligation to pay the arrears in full. For any concession on this point might be interpreted as a recognition of the right of unilateral withdrawal, which the Organization was plainly not prepared to admit.

This approach found expression in the very terms used in all the debates—and this apparently not without intention—in defining the act of the return of the States which had previously announced their withdrawal.

[1] *W.H.O., Official Records*, No. 71, Ninth World Health Assembly, Resolutions and Decisions (Geneva, 1956), pp. 19–20.

[2] This tendency was also evident in the discussions of the Committee on Constitutional Matters of the Assembly of 1949, which had been requested by the Assembly to consider the three withdrawal notifications received by them. The representative of Ceylon suggested that the International Court of Justice be asked for an advisory opinion as to the existence of a right of withdrawal, but this proposal won no support at all. The representatives of three States (Australia, the Netherlands and the Philippines) expressly objected to the proposal, and the representative of Ceylon withdrew it. See ibid., No. 21, pp. 304–7. The same tendency manifested itself in the Assembly's decision to delete from the draft resolution before it the paragraph declaring that the W.H.O. Constitution contained no provision permitting withdrawal. This, however, did not prevent the Assembly from retaining in the draft the paragraph fully approving the statements made by the Executive Board and the Director-General that, because the Constitution did not provide for withdrawal, the withdrawal notifications were not valid (ibid., p. 307).

A further expression of that tendency is to be found in the following comment by the representative of India, when submitting the draft resolution to the plenum of the Assembly on behalf of the Committee on Constitutional Matters: 'Whether the letters constitute withdrawal or not is something which must be decided by legal experts and I do not think it is necessary for this Assembly to go into the intricacies of the law' (ibid., p. 114). It may also be pointed out that, in the debates which took place in the Committee on Constitutional Matters, the Director-General stressed that 'opinion was divided on whether formal legal withdrawal from the Organization were possible' (ibid., p. 303); the representative of Switzerland argued that 'any Member of the Organization had the right to withdraw from it' (ibid., p. 306); while the representative of Ethiopia was of the opinion that 'if withdrawals were allowed to continue without protest, it might have bad effects on the Organization, as in the case of the League of Nations' (ibid., p. 307).

[3] The arrears of contributions had in the meantime grown to substantial sums. The debt of the U.S.S.R., for example, amounted to over $3,000,000. See Hoyt, *The Unanimity Rule in the Revision of Treaties* (The Hague, 1959), p. 71.

In his statement in the Economic and Social Council the representative of the U.S.S.R. declared that Russia 'was joining W.H.O.'.[1] But already in the Organization's first reaction, the Assistant Director-General dissociated himself from this formula when he stated 'that he was very pleased to hear that the Union of Soviet Socialist Republics wished to *resume its participation* in W.H.O. . . .'.[2] At the meetings of the Executive Board in January–February 1956, the speakers took pains not to use terms which might imply a recognition of the legal validity of the withdrawal notifications. The representative of Pakistan was the only one who spoke of 'rejoining';[3] and his proposal, too, referred to 'the request of the Government of the U.S.S.R. to rejoin the Organization . . .'.[4] But even he withdrew this formulation and agreed to substitute the words: 'the return of the U.S.S.R. to full participation in the work of W.H.O.'.[5] He did so after a remark by the representative of Argentina that it would be 'inappropriate to speak of the Soviet Union Government "rejoining" the Organization which it had never left. The Government was merely resuming its activities.'[6] Similarly, at the Assembly of 1956, the great majority of the speakers[7] used expressions such as 'taking an active part again in our work' and 'resumption of active participation'. And in the resolution adopted by the Assembly as one applicable to all inactive members, past and future,[8] it was stated, *inter alia*: 'desiring to find ways and means of enabling those Members who have not been actively participating in the work of the Organization rapidly to resume the exercise of their rights and to fulfil their obligations . . .'.[9] When the representatives of Norway, in the Special Committee appointed by the Assembly to consider the conditions for return, asked whether it would not be 'advisable to refer throughout to "former members" or "countries" instead of "members"', the Director-General replied that 'at no time had the U.S.S.R. representative, with whom he had discussed that matter, raised the legal question of membership'.[10] It is significant that the U.S.S.R. representative himself at the meetings of the Executive Board (unlike the case in the Economic and Social Council) no longer spoke of 'rejoining W.H.O.', but instead made use of the following expressions: 'to renew its membership',[11] 'to resume active participation',[12] 'to

[1] *U.N., Economic and Social Council*, 20th Session, 869th meeting, 18 July 1955, p. 31.
[2] Ibid., p. 34. Author's italics.
[3] *W.H.O., Executive Board*, 17th Session, Minutes (Geneva, March 1956), p. 226.
[4] Ibid., p. 227.
[5] Ibid., p. 229. The representative of Pakistan even stressed at the Assembly that 'under the Constitution it [the U.S.S.R.] continued to be a member of W.H.O.' (*W.H.O., Official Records*, No. 71, p. 154).
[6] Ibid., p. 227.
[7] See, for example, the statements of the representatives of France and India, ibid., pp. 68, 101.
[8] Ibid., p. 160.
[9] Ibid., p. 19.
[10] Ibid., p. 163.
[11] *W.H.O., Executive Board*, 17th Session (Geneva, March 1956), p. 223.
[12] Ibid.

take part again in W.H.O.'s work',[1] and 'to participate actively again in the work of the Organization'.[2] Similarly, the representative of Poland, at the Assembly, defined the States which had announced their withdrawal as 'inactive members'[3] and their decision itself as a 'decision to cease active participation'.[4]

Accordingly, the United Kingdom representative would appear to have been correct in asserting, at one of the meetings of the Special Committee, 'that successive Health Assemblies had consistently taken the view that withdrawal from participation in the Organization's activities did not mean termination of membership'.[5]

Strangely enough, not once throughout the long negotiations did the Soviet Union, Poland or any other State rely on the Assembly's resolution of 1948 endorsing the United States reservation on withdrawal. It may be recalled that the United Nations Secretary-General presented the reservation to W.H.O. as a question of the interpretation of the W.H.O. Constitution. As Schachter says in the article already cited, the Secretary-General even assumed that the 1948 resolution was to be considered, not as signifying 'consent' by the parties, but rather as an interpretation by the competent organ laying down that the right of withdrawal from the Organization was not inconsistent with the terms of the Constitution, so that all the member States would be allowed to invoke it.[6] But regardless of the significance to be attached to the resolution of W.H.O. on the United States reservation, there is no doubt that, when confronted with the withdrawal notifications of the U.S.S.R. and the other eight States, the Organization was unequivocal in denying their validity.[7]

[1] *W.H.O., Executive Board*, 17th Session (Geneva, March 1956), p. 223.

[2] Ibid., p. 318.

[3] *W.H.O., Official Records*, No. 71, p. 158.

[4] Ibid., p. 157.

[5] Ibid., p. 154. It is not clear on what ground Professor Bindschedler asserts that the U.S.S.R. and the other Eastern European States withdrew from W.H.O., for the Organization did not recognize the validity of their withdrawal notifications. See *Rechtsfragen der europäischen Einigung, ein Beitrag zu der Lehre von den Staatenverbindungen* (1954), p. 41.

[6] Schachter, op. cit., pp. 125–6.

[7] In the 8th edition of Oppenheim's *International Law* (vol. 1, p. 978), Lauterpacht points out that W.H.O. was 'intended to be a universal organization and [that] the provisions of its Constitution concerning membership have been framed with this end in view'. He also stresses that Article 3 of the Constitution declares specifically that membership in W.H.O. 'shall be open to all States'. The expression 'shall be open' is undoubtedly much stronger than 'is open'—the formula employed in the Constitutions of many international organizations, notably in the Charter itself. But it would be wrong, we think, to conclude from Lauterpacht's remarks that it was the wording of Article 3 that prevented W.H.O. from recognizing the right of withdrawal, and that some other wording might have led the Organization to adopt a different stand. First of all, not once in the course of the discussions was Article 3 even mentioned to justify the position taken by W.H.O. Secondly, the expression 'shall be open' cannot be regarded as incompatible with the grant of the right to withdraw, since the use of the same expression in the Constitutions of other international organizations—e.g. the International Bank for Reconstruction and Development (Article 2 (1) (*b*)) and the International Monetary Fund (Article 2 (2))—did not prevent them from expressly allowing withdrawal.

X

As noted, until 1954 the Constitution of U.N.E.S.C.O. did not provide for withdrawal. True, the draft proposals prepared by the Conference of the Allied Ministers of Education contained a clause entitling any member to withdraw after two years' notice of intention to do so, provided that its financial obligations were fulfilled;[1] but the Second Commission of the Conference held in London in 1945, which agreed on the final text of the Constitution, decided to delete the clause. It was understood, however, following a suggestion of the Colombian and Mexican representatives, that 'some agreement on the method of withdrawal should be reached outside the Constitution in agreement with the United Nations Organization'.[2] No further action was taken in the matter.

On 5 November 1952 Poland informed the Acting Director-General of U.N.E.S.C.O. of its withdrawal, and on 31 December 1952 and 29 January 1953 Hungary and Czechoslovakia transmitted similar communications. Since the General Conference of U.N.E.S.C.O. was in session in Paris at the time of the receipt of Poland's notification, the question was put on its agenda. The General Committee of the Conference—after the matter had been thrashed out in a Sub-committee—recommended the adoption of a position similar to that taken by W.H.O. in the same circumstances. In a draft resolution submitted to the General Conference, the universal character of the purposes and functions of the Organization was stressed, and the Government of Poland was invited to reconsider its decision and resume its full collaboration in the Organization's activities. The representative of China was the only one to take exception to the draft, suggesting either that the communication be treated 'with silent contempt' or that the withdrawal be accepted.[3] On 11 December 1952 the Draft Resolution was approved by the General Conference.[4] Similar resolutions on the notifications of Hungary and Czechoslovakia were adopted, on the recommendation of the Executive Board, at the 2nd Extraordinary General Conference held in Paris in July 1953.[5]

When the three States decided, in the second half of 1954, to return to U.N.E.S.C.O., the same question arose which W.H.O. was called upon to solve two years later, i.e. whether they should be required to pay their arrears of contributions for the period in which they did not regard themselves as members. Since all three of the States had been in arrears for years

[1] *U.N.E.S.C.O., Records of the General Conference*, Extraordinary Session, Paris, 1953, p. 7, Doc. 2 XC/6.

[2] Ibid.

[3] Ibid., 7th Session, Paris, 1952, Proceedings, p. 260.

[4] Ibid., Resolutions, p. 11. See the discussions on the resolution in the plenum, ibid., Proceedings, pp. 260–1; and in the General Committee, ibid., pp. 311, 315.

[5] Ibid., 2nd Extraordinary Session, Paris, 1953, Resolutions and Proceedings, pp. 22–23, 66–67.

preceding their withdrawal notifications—Poland's debt, for instance, was for a period of six years—the Organization had to deal with these arrears too. After protracted negotiations, a compromise was reached whereby Czechoslovakia would pay its arrears over a period of nine years, Hungary over ten years and Poland over twelve years. They were also permitted to pay 60 per cent. of the instalment for 1955–6 in local currency.[1] Hungary was the only one of the three which consented to pay its contribution also for 1953, when it had not participated in the Organization's work, while Poland and Czechoslovakia contested the demand for payment for the period in which they had not taken part in U.N.E.S.C.O.'s activities.[2] However, as was pointed out in the *Report of the Administrative Commission to the General Conference*, the Contributions Committee disregarded the objection of the two States. Without reference to the legal points, and in accordance with the Financial Regulations, it credited the payment made by Poland in 1954 'first against the Working Capital Fund and secondly against the 1953 debt, although it . . . [was] clearly the intention of the Government of Poland that 1953 should be left in suspense'.[3] As to Czechoslovakia, the *Report* states that its payment in 1954 should be credited in the same manner.[4]

We thus see that U.N.E.S.C.O. in 1954, like W.H.O. two years later, refused to recognize that the three States had ceased to be members,[5] and to release them from the payment of their arrears for the period of their non-participation. Here, too, a practical arrangement was preferred to a legal formulation of the Organization's stand, out of the clear desire to facilitate the return of the States to active collaboration.

As a result of the notifications of withdrawal by the three States, the attention of U.N.E.S.C.O. was drawn to the absence of a withdrawal provision in its Constitution, and at its 2nd Extraordinary Conference, in 1953, a resolution was adopted in the matter. After expressing the hope that 'U.N.E.S.C.O. will continue to adhere to the principle of universality of membership', the General Conference recognized that 'withdrawals may at times become inevitable, involving certain serious financial problems in

[1] For the text of the resolution, see *U.N.E.S.C.O., Records of the General Conference*, 8th Session, Montevideo, 1954, Resolutions, pp. 59–60.

[2] Ibid., Proceedings, p. 56.

[3] *W.H.O., Official Records*, No. 68, Executive Board, 7th Session, Resolutions, Annexes (Geneva, 1956), pp. 68–69. We have cited this text from a W.H.O. publication, since the relevant U.N.E.S.C.O. document was unavailable to us.

[4] Ibid.

[5] Under the Swiss Constitution, as amended in 1921, eight Cantons or 30,000 citizens are entitled to demand a referendum on the ratification of any treaty concluded for an indefinite period or for more than fifteen years. The Swiss Government, when adhering to W.H.O. and U.N.E.S.C.O., arrived at the conclusion that this provision did not apply to these two Organizations, since it was of the opinion that the right of withdrawal existed under their Constitutions in accordance with the rules of general international law. See 'Thèses du Département politique fédéral. . .,' *Annuaire suisse de droit international*, 7 (1950), pp. 209–10.

drawing up the biennial budget of the Organization', and requested the Director-General and the Executive Board to consider the problem and, 'if appropriate, to draft amendments to the Constitution to provide' for withdrawal.[1] This resolution was sponsored by the United States, and from the arguments advanced by its representative it may be inferred that the United States did not consider withdrawal to be permissible unless provision was made for it in the Constitution.[2] He pointed out that the Organization 'cannot indefinitely . . . maintain the fiction of membership of States, which have *in fact*[3] withdrawn and which have ignored their responsibilities'.[4] He argued further that a withdrawal provision would actually encourage States to return to the Organization, since they would not be required to pay up their full assessment for the period in which they did not participate.[5] At the General Conference of 1954 it was decided to amend the Constitution by adding paragraph 6 to Article II, authorizing members to withdraw.[6]

XI

We have dealt with the preparatory work in the drafting of the Constitutions of some international organizations in so far as the question of withdrawal is concerned, and have examined the discussions which took

[1] *U.N.E.S.C.O., Records of the General Conference*, 2nd Extraordinary Session, Paris, 1953, Resolutions and Proceedings, p. 23.

[2] The *Memorandum on Constitutional and Legal Questions, Legal and Financial Aspects of Withdrawal*, prepared by the Director-General at the request of the Executive Board, refers to the resolution adopted at the London Conference of 1945, pointing to the need for 'some agreement on the method of withdrawal'. From this resolution it was inferred in the Memorandum that 'the situation with regard to withdrawal from the United Nations and from U.N.E.S.C.O. is somewhat similar, in that the constituent conferences of both organizations considered the possibility of withdrawal, thought that it should not be debarred, but preferred not to insert any provision for withdrawal in the Constitution' (*U.N.E.S.C.O.*, Doc. 8 C/ADM/6, 30 August 1954, p. 4). It is strange that the author of the Memorandum completely ignored the fact that at San Francisco a special interpretative declaration on withdrawal was agreed on, while no similar declaration was adopted at the Conference which drafted the final text of the W.H.O. Constitution.

[3] Author's italics.

[4] *U.N.E.S.C.O., Records of the General Conference*, 2nd Extraordinary Session, Paris, 1953, Resolutions and Proceedings, p. 67.

[5] Ibid., p. 69.

[6] Ibid., 8th Session, Montevideo, 1954, Resolutions, p. 12. It may be noted that two alternative drafts were submitted to the Conference. According to the first, withdrawal was permitted by a unilateral act—a notice addressed to the Director-General—while the second made withdrawal conditional on the consent of the General Conference by a two-thirds majority. For the texts of the two drafts see *U.N.E.S.C.O.*, Doc. 8 C/ADM/6, 30 August 1954, p. 2. The Administrative Commission decided that the first alternative was worthy of discussion, and accordingly only that draft was considered by both the Legal Committee and the plenum. See *U.N.E.S.C.O., Records of the General Conference*, 8th Session, Montevideo, 1954, Proceedings, pp. 198, 203, 610–11, 892–3.

It is apparently by mistake that the 1954 amendment on withdrawal was not included in the text of the U.N.E.S.C.O. Constitution as given in the revised second edition of Peaslee's collection of constitutional documents published in 1961. Cf. Peaslee, op. cit., vol. 2, pp. 1802–9. Similarly, Professor Menzel is in error when he states that the U.N.E.S.C.O. Constitution leaves the question of withdrawal unsettled. See Menzel, 'Spezialorganisationen der Vereinten Nationen', in Strupp–Schlochauer's *Wörterbuch des Völkerrechts* (2nd ed., Berlin, 1962), vol 3, p. 290.

place in W.H.O. and U.N.E.S.C.O. when they were actually confronted with withdrawal notifications. We have seen that different concepts were advocated and conflicting views advanced. Of primary importance in this connexion is undoubtedly the fact that neither Organization hesitated to interpret the silence of their Constitutions as a prohibition of withdrawal. And if we turn from international gatherings to the exponents of legal theory, we find that here, too, the question of withdrawal has given rise to serious controversy. Those who assert the existence of a right to withdraw from an international organization, even in the absence of a provision permitting it, base their thesis on various arguments, often relied upon cumulatively.

There are authors who regard the right to withdraw from an international organization as an inherent one, implied in any treaty creating an international organization, and deriving from the principle of 'sovereign independence'[1] or 'sovereignty'[2] of States. It cannot be denied that all international organizations have been established on the basis of voluntary membership, and to this day no international organization has emerged to which adherence is compulsory.[3] Sovereignty is thus given full

[1] Singh, op. cit., p. 19.

[2] Ibid., pp. 27, 76, 81, 85; Laurent, 'Les Organisations internationales. Principes communs aux différentes organisations internationales', *Juris-classeur de droit international, Fascicule 112* (Paris, 1958), p. 6; *International Law*, U.S.S.R. Academy of Sciences, Law Institute (Moscow, 1957), p. 328 (Russian); Bobrov and Malinin, *United Nations Organization* (Leningrad, 1960), p. 16 (Russian).

The same trend of thought is expressed in the *Report* of Professor Giraud submitted to the Institute of International Law. He asserts and reiterates—without resorting to the term 'sovereignty'—that 'si personne n'est obligé d'entrer dans le système de la convention, ceux qui ont consenti à y entrer doivent avoir le droit d'en sortir', *Annuaire de l'Institut de Droit International* (1961–I), p. 20; and, 'logiquement, si les États ne sont pas obligés d'entrer, ils ne doivent pas être empêchés de sortir', ibid., p. 74. For the full defence of his thesis, see ibid., pp. 70–75, 174–83. The Rapporteur's opinion was opposed by almost all the members of the Committee, namely: Sir Gerald Fitzmaurice (ibid., pp. 235–8), Mr. Jenks (ibid., pp. 249–52), Judge Morelli (ibid., p. 266), Professor Rolin (ibid., pp. 272–4) and Professor Rousseau (ibid., pp. 280–1). 'Nor can I agree', writes Sir Gerald Fitzmaurice, 'with the view that because countries are free to become or not to become parties to general conventions, so equally should they be free at any moment to terminate their participation, even in the absence of provision for this in the convention. Indeed, I would draw the opposite conclusion. It is precisely because countries are under no compulsion to become parties to general conventions and are free *not* to do so, that if they *do* so, then they cannot free themselves from their obligations unless the treaty contains a provision enabling them to do so upon giving certain notice, or is of such a character that such a right must be deemed to be implied' (ibid., pp. 236–7). The only member of the Committee who agreed with the Rapporteur was the President of the International Court of Justice, Mr. Winiarski (ibid., p. 289).

In view of the differences of opinion, two alternative proposals are being submitted to the next Session of the Institute. According to one of them, a State, in the absence of an express or implicit right of denunciation, cannot be released from its obligations under a collective treaty, except with the consent of the other parties or under the rules of general international law. According to the second, withdrawal is permitted if no intention of the parties to the contrary is expressed in the treaty, and the denunciation takes effect only after the expiration of a reasonable lapse of time (ibid., p. 293).

[3] The only case in which the obligation to join an international organization was imposed is that of the mandated territories whose emancipation was, under a resolution of the Council of

expression in the right of any State to join a particular organization, or not. But once a State decides to enter an organization it is no longer free,[1] and its own wishes are no longer decisive. In the absence of a withdrawal provision in the Constitution, there is, therefore, no legal foundation for acknowledging the right to withdraw at will, or, as it has been put on occasion, 'on any ground whether reasonable or unreasonable',[2] or 'for any reason, or without reason'.[3]

Other authors deduce the existence of a withdrawal right from the principles of 'democracy' and 'equality'.[4] But it is really difficult to detect any infringement of these principles, if the silence of a Constitution on the matter of withdrawal is regarded as prohibiting *all* members from withdrawing, no distinction being made between one member and another.[5]

Some jurists have attempted to base the right to withdraw on the concept of residuary jurisdiction,[6] arguing that those rights not specifically relinquished by a State when it accepts the Constitution of an international organization are reserved to it; therefore, if withdrawal is not expressly forbidden, it is permitted. It appears to us to be erroneous to apply rules of law which have crystallized in connexion with federal States to international organizations of the type now in existence, and to speak of 'residuary jurisdiction of the member State[s]'[7] of an organization. The Constitutions of the League of Nations, the United Nations, the Specialized Agencies and the other international organizations established along the same lines never envisaged a division of powers between the member States and the organization itself in the sense of 'residuary jurisdiction'. Any analogy with the rules governing the relations between the constituent States and the federal State seems to us, therefore, to be without legal foundation.

the League of Nations of 1932, made conditional on their becoming members of the League. See Feinberg, 'L'Admission de nouveaux membres à la Société des Nations et à l'Organisation des Nations Unies', *Recueil des cours*, 80 (1952), p. 307.

[1] Cf. the contrary opinion of Professor Borel in *Annuaire de l'Institut de Droit International* (1921), p. 77. A contrary opinion may perhaps be inferred also from the remarks of Professor Bourquin; it may well be, however, that he merely intended to justify the need for a right of withdrawal, without taking any stand as to whether withdrawal is permitted if not provided for in the Constitution. See Bourquin, 'Règles générales du droit de la paix', *Recueil des cours*, 35 (1931), p. 100. On the other hand, Professor Potter rightly points out that when a State joins an international organization which has been established for an indefinite period and whose Constitution contains no withdrawal provision—so that withdrawal is forbidden—no loss of sovereignty is involved. In defence of his view, Potter draws attention to the rule of *rebus sic stantibus* which enables a State to withdraw if circumstances have fundamentally changed. See *An Introduction to the Study of International Organization* (5th ed., New York, 1948), pp. 192–4. And see Kelsen's criticism of the conception of a natural right of withdrawal, op. cit., pp. 125–7.

[2] Singh, op. cit., p. 90.

[3] See above, p. 201, n. 6.

[4] Singh, op. cit., pp. 30, 81.

[5] See Kelsen's criticism of the basing of the right of withdrawal on the principle of democracy, op. cit., pp. 125–7.

[6] Singh, op. cit., pp. 27, 175.

[7] Ibid., p. 175.

There would appear to be greater weight in the argument seeking to apply here the rules pertaining to a Confederation of States. Those who advance this argument are of the opinion that every international organization is, in effect, built on federal principles,[1] so that if withdrawal is permitted from a Confederation of States it must also be permitted from an international organization.[2] But this argument is based on a premiss which requires proof; for many students deny the existence of a right to withdraw even from a Confederation of States. According to Jellinek, 'withdrawal from a Confederation is a breach of treaty . . .'.[3] 'The question'—says Professor Kunz in his exhaustive study *Die Staatenverbindungen*—

'whether the Members of a Confederation are entitled to withdraw is a favourite topic of legal theory. Positive law indicates that, in general, Confederations have been established . . . "forever"; that with the exception of the Confederate States (1861–1865) nowhere is the right of withdrawal expressly granted; and in some cases . . . [it] is even explicitly forbidden by positive law. . . . Where a treaty does not include any provision [regarding withdrawal] the *general rules of international law* must be applied.'[4]

No less categorical is the position of de Louter:

'La confédération repose sur un traité et est donc dissoluble comme tout autre traité. Chaque modification aussi bien que la dissolution exige le consentement de tous les membres. Tant qu'elle existe, aucun des membres ne peut en sortir de sa propre autorité. . . . Ce n'est que par la volonté commune ou sous la contrainte de la force des circonstances que la confédération peut être dissoute.'[5]

[1] See the penetrating exposition of Professor Scelle on the 'federative phenomenon' in *Précis de droit des gens. Principes et systématique* (Paris, 1932), Part 1, pp. 187 et seq.

[2] Singh, op. cit., p. 9.

[3] See Georg Jellinek, *Allgemeine Staatslehre* (2nd ed., Berlin, 1905), p. 748. The same view is expressed in the third edition of the book, published in 1929 by Professor Walter Jellinek.

[4] Kunz, 'Die Staatenverbindungen', *Handbuch des Völkerrechts* (Stuttgart, 1929), vol. 2, Part 4, pp. 468–9.

[5] De Louter, *Le Droit international public positif* (Oxford, 1920), vol. 1, p. 207. Among those who deny the existence of a right to withdraw from a confederation of States mention should also be made of: Verdross, *Völkerrecht* (4th ed., in collaboration with Zemanek, Vienna, 1959), p. 279; Redslob, *Théorie de la Société des Nations* (Paris, 1927), pp. 24–25; Kelsen, *Allgemeine Staatslehre* (Berlin, 1925), pp. 224–5. It may be noted that, in his *General Theory of Law and State* (Cambridge, 1945), p. 323, Kelsen points out that the 'member States of an international community, especially of a confederacy of States, can normally leave the community, withdrawing from the union, whereas for the component States of a federal State, no such possibility legally exists'. It is not clear why Kelsen here takes a stand at variance with that tenaciously defended by him in all his previous works, as well as in his commentary on the Charter, published in 1950. See Kelsen, *The Law of the United Nations*, pp. 122–35.

One of the authors who maintain that there is a right of withdrawal from a confederation is Moore; see his *Digest of International Law* (Washington, 1906), vol. 1, p. 23. The same view is implied in the remarks of Professor Cavaré, in *Le Droit international public positif* (2nd ed., Paris, 1961), vol. 1, p. 643. Alexandrenko, in *Federalism—a Critical Analysis of the Bourgeois Federations and of the Bourgeois Theories of Federalism* (published in Russian in Kiev in 1962 by the Academy of Sciences of the Ukrainian S.S.R.), points out that in the legal literature of the Soviet Union the view has been expressed that, unlike the position in a bourgeois federal State, 'the members of a bourgeois Confederation may denounce the treaty at any time and leave the union . . .' (p. 47). He adds that 'there is no reason to challenge this assertion . . .' (ibid.). On this question, see also Kunz, op. cit., pp. 447, 452.

XII

From all that has been said, it follows that there exists no right to withdraw from an international organization, neither implied in the principle of sovereignty or equality nor based on the rules of a Federal State or a Confederation of States. This right exists only if it has been recognized, and such recognition need not be expressly accorded in the Constitution, although this of course is the best way to avoid differences of opinion. In other words, the right to withdraw may also be granted implicitly, i.e. it may be inferred from the contents of the treaty, from the preparatory work in its drafting, &c. 'There is nothing juridically impossible', says Lord McNair, 'in the existence of an implied term giving a party [to a treaty] the right to terminate it unilaterally by denunciation. It is a question of the intention of the parties which can be inferred from the terms of the treaty, the circumstances in which it was concluded....'[1] Brierly, too, is of the opinion that the intention of the parties is decisive, in the absence of an express provision on withdrawal.

'There is', he says, 'certainly no general right of denunciation of a treaty of indefinite duration: there are many such treaties in which the obvious intention of the parties is to establish a permanent state of things, for example, the Pact of Paris [of 1928]; but there are some which, from ... the circumstances in which they were concluded, we may fairly presume were intended to be susceptible of denunciation even though they contain no express term to that effect....'[2]

Moreover, when interpreting a treaty establishing an international organization, in the light of the circumstances in which it was concluded and the intention of the parties, there are no grounds for deviating from the accepted rules of international law on the interpretation of treaties. One may not base the interpretation of an 'institutional' treaty on the assumption that a right of withdrawal exists *a priori*. On the contrary, it must be proved in each particular case that, although withdrawal was not provided for in the instrument itself, the intention of the parties was to permit it.[3] An instance of the right to withdraw from an international organization, despite the absence of a provision therefor in its Constitution, is, as we have seen, the United Nations Organization; here the intention of the parties found expression in a special interpretative declaration adopted at San Francisco.[4]

[1] Lord McNair, *The Law of Treaties* (Oxford, 1961), p. 511.

[2] Brierly, *The Law of Nations, An Introduction to the International Law of Peace* (6th ed., by Sir Humphrey Waldock, Oxford, 1963), p. 331.

[3] See Bindschedler, op. cit., p. 41.

[4] A few authors have denied the legal validity of the interpretative declaration (see, in particular, Kelsen, *The Law of the United Nations*, pp. 122 et seq.), but this view has not been accepted—and rightly so—by most of the authorities. See, for example, Guggenheim, *Traité de droit international public* (Geneva, 1953), vol. 1, pp. 262–3; Verdross, op. cit., p. 434; Rousseau, *Droit international public* (Paris, 1953), pp. 194–5; Cavaré, op. cit., vol. 1, p. 643.

Some of the authors who deny that there is a presumption in favour of unilateral withdrawal from an international organization are inclined to admit the existence of such a presumption with respect to organizations whose Constitutions may be amended by a majority and do not require a unanimous vote. They argue that it would be untenable to compel a State to continue its membership in an organization after changes in the Constitution have been made without its consent, changes which may even impose on it new obligations.[1] We believe that there is nothing in 'customary [international] law'[2] to warrant this presumption even with regard to such organizations, and in support of this view it may be observed that a State which freely joins an international organization and accepts its authority certainly knows its Constitution and the obligations which it imposes. There is, therefore, no reason for releasing it from its elementary duty of honouring the rule of *pacta sunt servanda*.[3]

Up to now we have dealt with an implied right of withdrawal, inferred from the intention of the parties, which intention must be proved. There are treaties, however, which may be terminated by unilateral denunciation, since a right of withdrawal must be derived, in the words of Lord McNair[4] and Brierly,[5] from 'the nature of the subject-matter'. The late Judge Lauterpacht described such treaties as 'apparently not intended to set up an everlasting condition of things';[6] and Sir Gerald Fitzmaurice spoke of treaties 'in respect of which, *ex natura*, a faculty of unilateral termination or withdrawal must be deemed to exist . . . if the contrary is not indicated'.[7] Brierly gives *modus vivendi* as an 'obvious illustration' of this type of treaty, while he is more cautious with regard to treaties of alliance and of commerce, mentioning that they can 'probably' serve as examples.[8] Lauterpacht and Fitzmaurice, on the other hand, include commercial treaties and

[1] See, for example, Dahm, op. cit., p. 19; Bindschedler, 'Internationale Organisation (Grundfragen)', in Strupp–Schlochauer's *Wörterbuch des Völkerrechts* (Berlin, 1962), vol. 2, p. 72; 'Thèses du département politique fédéral. . .', *Annuaire suisse de droit international*, 7 (1950), pp. 208–10.

In this connexion some writers distinguish between fundamental changes and those of less significance, and they suggest that the existence of a right to withdraw should be assumed only in the event of fundamental changes. See, for example, *Annuaire de l'Institut de Droit International* (1961–I), p. 278.

[2] Bindschedler, 'Internationale Organisation', in Strupp–Schlochauer's *Wörterbuch des Völkerrechts* (1962), vol. 2, p. 72. It is somewhat surprising that Singh, although he is one of the ardent proponents of the view that there is a natural right to withdraw from an international organization, contests the validity of this presumption. See Singh, op. cit., pp. 102 et seq.

[3] It should be noted that the Committee of the Institute of International Law which, as already mentioned, deals with the termination of collective treaties, recommends that the Institute refrain from examining the questions relating to the amendment of Constitutions of international organizations. See *Annuaire de l'Institut de Droit International* (1961–I), p. 294.

[4] See Lord McNair, op. cit., p. 511. In the matter of the termination of political and commercial treaties, see also ibid., pp. 501–5, 513.

[5] Brierly, op. cit., p. 331.

[6] Oppenheim, op. cit. (8th ed., by Lauterpacht), vol. 1, p. 938.

[7] *I.L.C. Yearbook* (1957–II), p. 22. See also ibid., pp. 30, 38–39.

[8] Brierly, op. cit., p. 331.

treaties of alliance in the same category without any such caution.[1] The question thus arises whether a treaty establishing an international organization falls within the class of treaties from which, by their very nature, unilateral withdrawal is possible. It would seem that there is no reason to consider a treaty establishing an international organization as one permitting withdrawal *ex natura*. It is significant that not one of the four above authorities, when giving examples of treaties of the type under discussion, makes any reference to international organizations. Indeed, international organizations such as the League of Nations, the United Nations[2] and the Specialized Agencies are not set up for a limited period,[3] but aspire to be permanent and universal,[4] such aspiration being not only a political principle designed to guide the organization in its activities, but also a directive for the legal interpretation of the Constitution, an interpretation which must have universality as its goal. And if the Constitution of an organization which, by its very nature and purpose, is meant to embrace, insofar as possible, all the States of the world, is silent on the question of withdrawal, it would be only reasonable to interpret this silence in a manner consistent with the aim of universality.[5]

Finally, there is one more argument which those who recognize the right of withdrawal sometimes advance in support of their thesis. An international organization, they assert, cannot impose membership on a State,[6]

[1] Oppenheim, op. cit. (8th ed., by Lauterpacht), vol. 1, p. 938; *I.L.C. Yearbook* (1957–II), p. 22.

[2] In examining the question of withdrawal from the United Nations, Lauterpacht asserts that 'although the Charter itself does not expressly mention the right of withdrawal, in the absence of an express prohibition to this effect the 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'. See Oppenheim, op. cit. (8th ed., by Lauterpacht), vol. 1, p. 411. It is not clear, however, why there should be a right of unilateral denunciation of an institutional treaty imposing far-reaching limitations on the sovereignty of a State, while this right is not recognized with respect to a normative treaty, which may also impose substantial restrictions of sovereignty.

[3] 'The omission', says Schachter, 'of the usual clause permitting denunciation or withdrawal was evidently due, not to an oversight, but to a general policy which favoured universality and deprecated unilateral action'; op. cit., pp. 123–4. In this context, it is worth noting the radical view of Professor Rolin, who considers the grant of the right to withdraw from the United Nations—which more and more appears as the legal expression of the Society of States—as an act incompatible with public international order. Rolin even suggested to the Institute of International Law that it expressly recommend the omission of a withdrawal clause in treaties establishing international organizations. See *Annuaire de l'Institut de Droit International* (1961–I), pp. 272–3. For a contrary view, cf. Professor Giraud (ibid., pp. 181 et seq.). On the question whether it is desirable to grant the right of withdrawal, see also Jenks, 'Les Instruments internationaux à caractère collectif', *Recueil des cours*, 69 (1939), pp. 521 et seq.

[4] In his lecture at The Hague Academy of International Law, the present writer attempted to define the concept of universality and to show that it may be given three different meanings: absolute and compulsory universality; absolute universality; and relative universality. See Feinberg, loc. cit., pp. 301–20.

[5] Ibid., p. 319.

[6] See, for example, Flory, 'L'Organisation des Nations-Unies', *Juris-classeur de droit international, Fascicule 120* (Paris, 1958), p. 27.

and therefore a right of withdrawal must obviously be recognized. However, this contention, too, is far from convincing, since it confuses formal membership in an organization with participation in its activities. Certainly, no international organization can compel a member State to take an active part in its work, but there is nothing to prevent it from ignoring a notification of withdrawal which lacks a legal basis and from continuing to regard the State as a member.[1] The cases of the World Health Organization and U.N.E.S.C.O. are ample proof of this assertion.

We have examined the question of withdrawal from an international organization in the light of the practice of the two institutions actually called upon to take a stand on the validity of withdrawal notifications, as well as from the theoretical point of view. Our investigation leads to the conclusion that there exists no presumption in favour of the right of unilateral withdrawal, and that withdrawal is therefore permitted only if it is expressly provided for or can be inferred by implication.

XIII

As this article was being concluded, the *Report of the International Law Commission on the Work of its Fifteenth Session* (May–July 1963) was published. At this Session a stand was taken on the question of unilateral denunciation or withdrawal. In fact, among the 'Draft Articles on the Law of Treaties' (in Part II, Section III: Termination of Treaties), adopted by the Commission, a special article—Article 39—was devoted to 'treaties containing no provisions regarding their termination'. It reads as follows:

'A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless it appears from the character of the treaty and from the circumstances of its conclusion or the statements of the parties that the parties intended to admit the possibility of a denunciation or withdrawal. In the latter case, a party may denounce or withdraw from the treaty upon giving to the other parties or to the depositary not less than twelve months' notice to that effect.'[2]

As may be seen from the wording of the Article, as well as from the Commentary which follows it, the Commission is of the opinion that, where a treaty is silent on the question of denunciation or withdrawal, denunciation or withdrawal is prohibited unless the intention of permitting this can be inferred from all the relevant circumstances. The Commission did not recognize the existence of a special type of treaty, from whose very nature the right of denunciation or withdrawal may be deduced, but re-

[1] See P.J.N.B., 'Termination of Membership in the League of Nations', this *Year Book*, 16 (1935), p. 154.

[2] *U.N., Report of the International Law Commission covering the Work of its Fifteenth Session, 6 May–12 July 1963* (New York, 1963), p. 13.

quired that, in addition to the special character of the treaty, other circumstances must be present. As the Commission puts it in its Commentary: '. . . the character of the treaty is only one of the elements to be taken into account and a right of denunciation or withdrawal will not be implied unless it appears from the general circumstances of the case, including the statements of the parties, that the parties intended to allow the possibility of unilateral denunciation or withdrawal'.[1] In using the expression 'statements of the parties', the Commission had in view, as the Commentary makes clear, not only statements forming part of the *travaux préparatoires* of the treaty, but also 'subsequent statements' or 'subsequent conduct'.[2]

Article 48 of the Commission's draft lays down that the provision of Part II, Section III, which includes Article 39, shall also apply to treaties which are constituent instruments of international organizations, 'subject to the established rules of the organization concerned'.[3] According to the Commentary, the words 'established rules' refer not only to the constituent instrument or instruments of the organization but also to 'the customary rules developed in its practice'.[4]

The conclusions we have reached in this article are thus in accord with those arrived at by the International Law Commission. The negative position adopted by the Commission as to the existence of a special category of treaty whose very character would justify the recognition of the right of unilateral denunciation or withdrawal does not, in our opinion, pertain to 'institutional' treaties, since these—as we tried to show above—should not be considered treaties with regard to which the existence of a right, *ex natura*, of denunciation or withdrawal can be argued. Even if some jurists should lean to the view that the rule suggested by the Commission may be relevant to some 'institutional' treaties, this rule in no way affects our conclusions. Nor is the qualification in Article 48 concerning the 'established rules of the organization concerned' in conflict with these conclusions, since the 'rules' developed in practice—i.e. by the World Health Organization and U.N.E.S.C.O.—actually deny the existence of an inherent right of unilateral withdrawal from an international organization.

[1] Ibid., p. 14. [2] Ibid. [3] Ibid., p. 25. [4] Ibid.