WITHDRAWAL FROM THE UNITED NATIONS

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Membership in the United Nations may be terminated against the will of the member by expulsion in conformity with Article 6 of the Charter of the United Nations. Can it be terminated voluntarily by withdrawal from the Organization?

In contradistinction to the Covenant of the League of Nations, the Charter does not contain provisions for withdrawal, nor is it possible to find such clauses in the Dumbarton Oaks Proposals. At the United Nations Conference an International Organization, subcommittee of Committee I/2, was of the opinion that the Dumbarton Oaks Proposals deliberately omitted provisions for withdrawal in order to avoid the weakness of the League's Covenant.[1] The Dumbarton Oaks Proposals, it was asserted, intended to establish a really permanent organization. It was argued, among other things, that the possibility of withdrawal would give recalcitrant members the opportunity of securing concessions from the Organization by threatening to leave it.[2] When the question was brought up in Committee I/2 whether withdrawal should be expressly provided for in the Charter, nineteen states voted affirmatively, and twenty-two states voted negatively. Finally, the Committee agreed that no withdrawal clause should be inserted in the Charter but that its idea could be expressed by the following text, which it decided by thirty-eight votes to insert in the report:

> The Committee adopts the view that the Charter should not make express provision either to permit or to prohibit withdrawal from the Organization. The Committee deems that the highest duty of the nations which will become Members is to continue their 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.—It is obvious, particularly, that withdrawals or some other forms of dissolution of the Organization would become inevitable if, deceiving the hopes of humanity, the Organization was revealed to be unable to maintain peace or could do so only

[1] United Nations Conference on International Organization (Hereinafter quoted UNCIO), Summary Report of Sixth Meeting of Committee I/2, May 14, 1945, Doc. 314, p. 2.

[2] UNCIO, Report of the Rapporteur of Committee I/2 on Chapter III, Membership, June 24, 1945, Doc. 1178, p. 4.

> at the expense of law and justice.—Nor would a Member be bound to remain in the Organization if its rights and obligations as such were changed by Charter amendment in which it has not concurred and which it finds itself unable to accept, or if an amendment duly accepted by the necessary majority in the Assembly or in a general conference fails to secure the ratification necessary to bring such amendment into effect.—It is for these considerations that the Committee has decided to abstain from recommending insertion in the Charter of a formal clause specifically forbidding or permitting withdrawal.[3]

According to this commentary which was included in the report of Commission I to the plenary session of the Conference, any Member has the right to withdraw from the Organization "because of exceptional circumstances." Who, however, is competent to decide the question as to whether "exceptional circumstances" exist? Since the Charter does not confer this competence upon a special organ any Member is authorized to decide this question for itself. That means that any Member has—according to the commentary given by Committee I/2—the right to withdraw from the Organization whenever it deems it necessary to withdraw. It is true that the commentary tries to explain somehow the vague term "exceptional circumstance" by illustrating its meaning by some examples. Thus, the first case cited for such exceptional circumstances would arise if "the Organization was revealed to be unable to maintain peace or could do so only at the expense of law and justice." Again, the question may be asked as to who is competent to decide that the Organization was unable to maintain peace; and again the answer is that any Member has the right to decide this question for itself. The second example of "exceptional circumstances" is that a Member's "rights and obligations as such were changed by Charter amendment in which it has not concurred." This opinion, however, is in open contradiction to Articles 108 and 109 of the Charter, according to which amendments to the Charter shall come into force "for all Members of the United Nations" when they have been adopted by a vote of two-thirds of the members of the General Assembly or recommended by a two-thirds vote of the General Conference, and ratified in accordance with their respective constitutional processes by two-thirds of the Members of the United Nations, including all the permanent members of the Security Council. The amendment is binding not only upon the Members which have voted for it or recommended it and ratified it, but also upon all the other Members. A Member has no better right to withdraw because it is unable to accept the amendment than to withdraw because it does no longer accept any provision of the original Charter. That a Member withdraws from the Organization means—if not expressed in this figurative

[3] **Ibid.**, p. 5.

term—that a state terminates, in relation to itself, by a unilateral act the binding force of a treaty. According to the text of the Charter, there is no difference between the binding force of the provisions of the original Charter and the binding force of the provisions of an amendment duly accepted in accordance with Article 108 or Article 109.

It is difficult to understand the third example, which refers to a case when "an amendment duly accepted by the necessary majority in the Assembly or in the General Conference fails to secure the ratification necessary to bring such amendment into effect." If the amendment does not come into effect, the legal situation is unchanged. A Member which votes for or recommends an amendment because it considers it desirable may wish to withdraw if the amendment fails to secure the necessary ratification;[4] but the commentary of Committee I/2 does not restrict the right of withdrawal to Members which voted for, or recommended the amendment and ratified it. After an amendment adopted by the General Assembly in conformity with Article 108, or recommended by the General Conference in conformity with Article 109 has failed to secure the ratifications necessary to bring such amendment into effect, every Member has—according to the wording of the interpretation given by Committee I/2—the right to withdraw. The question is only as to when this right comes into existence. Since the Charter does not prescribe a certain period of time within which an amendment is to be ratified, and since it does not exclude the possibility of ratifying an amendment even years after its acceptance by the General Assembly or the General Conference, it is hardly possible to fix a certain time when an amendment has failed to secure the necessary ratifications.

The commentary of Committee I/2, according to which any Member of the Organization has the right to withdraw by a unilateral act, is not quite consistent with the Principles of the Charter. For the purpose of such withdrawal is to get rid of the obligations imposed upon the Member by the Charter, especially those imposed by an amendment in which the Member has not concurred. This purpose, however, cannot be reached by withdrawal since, according to Article 2, Section 6, non-Members are under the obligations established by the Charter, or by an amendment to the Charter, just as are Members. If the Security Council considers withdrawal of a Member to be a threat to the peace, it may, according to Article 39, recommend to the Member to refrain from withdrawing, and, in case of noncompliance with this recommendation, take enforcement measures; or the Security Council may take enforcement measures without previous recommendations, and, by doing so, it may compel the state to remain a Member.

[4] In this sense the commentary of Committee I/2 has been interpreted in the **Hearings** before the **Senate Committee on Foreign Relations**, p. 240. To the question of a Senator: "If the United States proposed an amendment which was vital and it was not adopted, would that be grounds for withdrawal?", the representatives of the Department of State answered in the affirmative. For the complete reference see **infra**, page 37, note 9.

Hence, the statement of the commentary that "it is not the purpose of the Organization to compel that Member to continue its cooperation in the Organization," is incompatible with the possibilities established by the wording of Article 39 of the Charter.

When, on June 25, 1945, the report of Commission I embodying the commentary of Committee I/2 was presented at the Ninth Plenary Session of the Conference, the delegate of the Soviet Union dissented by declaring that:

> The opinion of the Soviet Delegation is that it is wrong to condemn beforehand the grounds on which any state might find it necessary to exercise its right of withdrawal from the Organization. Such right is an expression of state sovereignty and should not be reviled, in advance, by the International Organization. May I cite as an example of unconditional acknowledgment of this right of sovereign states Article 17 of the Constitution of U.S.S.R., which reads as follows: "To every Union Republic is reserved the right freely to secede from U.S.S.R." It is common knowledge that this right is a most striking manifestation of democracy on which the organization of the Soviet State is founded. The U.S.S.R. is formed on the basis of voluntary accession. It would be still less justifiable to condemn in advance the reasons for a state's withdrawing from the International Organization, which is also founded on voluntarily participation of sovereign states. To deny or to revile such a right would be a violation of principles of democracy and sovereignty[5]

According to the view of the delegate of the Soviet Union, the right of withdrawal is a consequence of the principle of democracy as well as of the principle of sovereignty. This opinion, however, was not shared by Committee I/2, which, in its commentary, did not deduce the right of withdrawal from the sovereignty of the Members. The commentary speaks only of withdrawal under "exceptional circumstances." But the Rapporteur of Commission I in its meeting held on June 23, 1945, introduced the commentary by saying:

> The Commission does not recommend any text on withdrawal for inclusion in the Charter. However, the absence of such a clause is not intended to impair the right of withdrawal, which each state possesses on the basis of sovereign equality of the members.[6]

The principle of "equality" of Members is in no way impaired if all the Members, large and small, do not have the right to withdraw from the Organization by a unilateral act. The same is true with respect to the principle of democracy in so far as the principle of democracy in the rela-

[5]UNCIO, **Verbatim Minutes of the Ninth Plenary Session, June 25, 1945, Doc. 1210 P/20, p. 9.**
[6]UNCIO, **Verbatim Minutes of the Fifth Meeting of Commission I, Doc. 1187, p. 5.**

tionship among states is identical with that of equality. Only if the concept of democracy is identified with anarchy (liberalism), that is to say, if freedom alone is supposed to be the basic principle of democracy, is such an interpretation possible. If Soviet Russia is a democracy, this democracy's basic principle is certainly not freedom, but—perhaps—equality.

The statement of the delegate of the Soviet Union that the right of withdrawal is the expression of the Member's sovereignty is not confirmed by his reference to Article 17 of the Constitution of the U.S.S.R. The fact that the Constitution of the U.S.S.R. contains an express provision conferring upon the members the right to secede is an argument against the doctrine that this right is an expression of sovereignty. If it were, no express provision conferring such right would be necessary. The insertion of Article 17 into the Constitution of the U.S.S.R. shows that the authors of the Constitution were of the correct opinion that such an express provision is necessary in order to give the members the right to secede. This right is not a consequence of their sovereignty; the members have it because it is conferred upon them by the Constitution to which they are subjected as parts of a state. In Committee I/2 of the San Francisco Conference, the delegate of the Soviet Union declared to be in favor of a "frank statement in the Charter" concerning the right of withdrawal.[7] Such a statement would have been superfluous if the right of withdrawal is a consequence of sovereignty and if the Members, with regard to their status as "states," and in spite of their submission to the Charter, are considered as "sovereign."

If sovereignty implies an inalienable right of withdrawing from the organization established by an international treaty to which a state is the contracting party, then sovereignty means that a sovereign state is bound by a treaty to which it is a party only as long as it pleases. Sovereignty, in this unrestricted sense of the term, is incompatible with any idea of international law binding upon the states. If the concept of unrestricted sovereignty, as advanced by the delegate of the Soviet Union, were really at the basis of the Charter, none of its provisions would have binding force upon the contracting parties. It can hardly be denied that it is an essential function of the international organization established by the Charter to restrict the "sovereignty" of the Members and, thus, to eliminate the idea of an unrestricted sovereignty, in spite of the wording of Article 2, Section 1, which proclaims "sovereign equality" of the Members as a principle of the Organization.

The commentary on withdrawal included in the report of Commission I is of no legal importance. In order to get legal effect, that is to say, in order to have the character of an authentic interpretation of the Charter, it would have been necessary to insert the principles, expounded in the commentary,

[7] UNCIO, **Summary Report of the Twenty-eighth Meeting of Committee 1/2, June 19, 1945, Doc. 1086, p. 3.**

into the text of the Charter, or to make them the substance of another treaty concluded by all the states which were contracting parties to the Charter, especially of a so-called additional protocol, to be formulated as a reservation attached to the signature or to the ratification. None of these procedures was adopted.[7a] At the plenary session, during which the report of Commission I was presented to the conference, the leaders of the delegations were invited to vote on the Charter, the Statute of the International Court of Justice, and the Interim Arrangements. They were not invited to vote on the report of Commission I embodying the commentary on withdrawal. Besides, one Member of the Conference declared expressly its dissent. The agencies competent to apply and to interpret the Charter will not be bound by the commentary embodied in the report of Commission I. Hence, they will answer the question as to the right of withdrawal according to existing international law.

It is a generally accepted opinion that an international treaty which is concluded with the purpose of setting up an everlasting condition of things cannot be denounced by a contracting party if this treaty does not provide for the possibility of unilateral withdrawal. The only exception to this rule admitted by some writers (but not by all) is the application of the *clausula rebus sic stantibus*. The question as to whether this *clausula* is a part of positive international law is much discussed. If this question is answered in the affirmative, the meaning of the *clausula* is supposed to be only that "a vital change of circumstances may be of such kind as to justify a party in demanding to be released from the obligations of an unnotifiable treaty."[8] "Vital change of circumstances" means that the obligations stipulated in the treaty imperil the existence of the party which demands to be released. When a state is of the opinion that a vital change of circumstances has occurred, it must first request the other party or parties to abrogate the treaty. If such abrogation, together with the suggestion to submit the case to an international court, is refused, the state may declare itself to be no longer bound by the treaty. In case a Member of the United Nations should intend to withdraw from the Organization because of a vital change of circumstances, it must request from the Organization to be released from membership, and if this request is refused, the dispute should be submitted to the principal judicial organ of the Organization, the International Court of Justice. But there is no provision in the Charter which authorizes the

7a. As to the attempt to consider the right of withdrawal from the Organization as a multilateral reservation known to all the signatories before the exchange of ratifications, it should be noted that neither in the discussions of the San Francisco Conference nor in the text of the Charter was an agreement expressed to the effect that the States participating in the Conference were allowed to sign or ratify the Charter with reservations. Since the Charter is a treaty open to accession, a reservation, in order to be valid for subsequent Members, would have to be attached to the accession. None of the States which were admitted to the United Nations under Article 4 of the Charter joined the Organization with a reservation concerning the right of withdrawal.

[8]Oppenheim, Lassa F. L., **International Law**, Vol. I (Fifth Edition), New York, 1937, pp. 738 ff.

Security Council or the General Assembly to release a state from membership, and the International Court of Justice has no jurisdiction in a dispute between the Organization and a Member. The Member that wishes to withdraw has to address its request to all the other Members of the Organization; and the Member is allowed to exercise its right of withdrawal only after it has waited a reasonable period of time for an answer, unless the other Members suggest that the case be submitted to the decision of an international tribunal. This tribunal may be the International Court of Justice if the dispute is presented as a dispute between states, not as a dispute between the Organization as such and its Members. In case the tribunal does not decide that a vital change of circumstances has occurred, no right of withdrawal exists.

This analysis shows that the *clausula rebus sic stantibus* does not confer upon the Members the right of withdrawal as an expression of their "sovereignty"; nor does it confer the right to withdraw under "exceptional circumstances" as referred to in the commentary of Committee I/2. "Exceptional circumstances" are not at all identical with "vital change of circumstances." The fact, it is to be noted especially, that an amendment has been made without the consent of a Member, or the fact that an amendment voted for by a Member has not been made, cannot be interpreted to constitute a vital change of circumstances of such a kind as to justify that a party be released from membership. For the change involved by these facts has been foreseen by the Charter whose function it is to establish a legal stability in spite of such changes.

The commentary of Committee I/2 refers only to the withdrawal of "Members" from the Organization, the term "Members" meaning members of the community constituted by the Charter in the narrower sense of the term, namely the states represented in the General Assembly. There exists, however, an international organization constituted by the Charter in the wider sense of the term, comprising as an integral part the Statute of the International Court of Justice. This is the total community of the United Nations, which is composed of two partial communities: the United Nations in a narrower sense, and the judicial community constituted by the Statute of the Court. A state may be a member of the judicial community of the United Nations (in the wider sense of the term) without being a member of the United Nations (in the narrower sense of the term). The problem of withdrawal may arise also for states which are only members of the judicial community. It has been completely ignored in the discussions on withdrawal at the San Francisco Conference. The answer to the question as to whether states which are members of the judicial community of the United Nations, but which are not "Members of the United Nations," may withdraw from the judicial community depends, in the first place, on the

contents of the conditions determined, under Article 93, section 2, of the Charter, by the General Assembly upon recommendation of the Security Council, as well as on the conditions laid down under Article 35, section 2, of the Statute by the Security Council. Those "conditions" may, or may not confer upon the state becoming a member of the judicial community the right of withdrawal from the community. If the condition referred to in Article 93, section 2, of the Charter and Article 35, section 2, of the Statute do not confer the right of withdrawal from the judicial community upon the states which are only members of this community, no such right exists, since neither the Charter nor the Statute stipulate such a right. However, if the interpretation of Committee I/2 is accepted, the principles laid down in this commentary may, by analogy, be applied also to the withdrawal from the judicial community constituted by the Statute.

According to Article 93, section 1, the "Members of the United Nations" are *ipso facto* parties to the Statute and hence members of the judicial community. Any such state is a member of two communities: of the United Nations as constituted by the Charter in the narrower sense of the term, and of the judicial community constituted by the Statute. Provided the "Members of the United Nations" have the right of withdrawal in conformity with the commentary of Committee I/2, may this right be exercised only with respect to membership in the total community, or also with respect to each of the partial communities of which the total community is comprised? Is it possible to withdraw as a "Member of the United Nations," but not, at the same time, as a member of the judicial community, and *vice versa?* With respect to the League of Nations and the judicial community constituted by the Protocol of December 16, 1920, the same question was to be answered in the affirmative, at least in so far as withdrawal from the League was possible without withdrawal from the judicial community. If withdrawal from the judicial community was possible at all, it was certainly possible without withdrawal from the League. But neither the Protocol nor the adjoined Statute provided for the possibility of withdrawal. The mutual independence of membership in the two communities was the consequence of the fact that the Statute of the Permanent Court of International Justice was not an integral part of the Covenant, and that the League was an international community different from the one constituted by the Statute. However, the Statute of the International Court of Justice, although an integral part of the Charter, is nevertheless a relatively independent instrument. It is subject to an amendment procedure not identical with that of the Charter. It is especially the fact that membership in the community constituted by the Statute is possible without membership in the "United Nations" which makes the interpretation possible that a Member of the United Nations may withdraw from the judicial community only, or may

withdraw from the United Nations (in the narrower sense) while remaining, at the same time, a party to the Statute of the International Court of Justice. That a state may become a party to the Statute after having withdrawn from the United Nations Organization cannot be doubted. If the right of withdrawal is considered to be the consequence of the Member's sovereignty, it is hardly possible to deny that a state may restrict the exercise of this right to any extent it likes. The "extraordinary circumstances" referred to in the commentary of Committee I/2 may concern only the United Nations in the narrower sense, not the judicial community and *vice versa.* This is particularly true of the two examples of extraordinary circumstances mentioned in the Commentary. The "Organization" may be unable to maintain peace, but the Court may work satisfactorily; or the Court may become an instrument of power politics instead of law and justice, while the "Organization" in the narrower sense may maintain peace in a satisfactory way. The amendment, whose acceptance or nonacceptance—according to the commentary—may be a cause of withdrawal, may be either an amendment to the Charter in the narrower sense, or an amendment to the Statute, a fact which has been ignored by the commentary. If the states, "Members of the United Nations" and, at the same time, members of the judicial community constituted by the Statute of the International Court of Justice, have a right of withdrawal at all, this right may be exercised separately with respect to each of the two partial communities.

When the ratification of the United Nations' Charter was considered before the U.S. Senate Committee on Foreign Relations, the problem of withdrawal from the Organization was discussed at length. One of the chief official advisors of the United States Delegation to the San Francisco Conference, Mr. Dulles, declared, when testifying before the Senate Committee, that:

> It was my view from the beginning, and I so advised the United States delegation, 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. That being so, the arrangement was in the nature of a joint adventure, you might say, and not one whereby the member states lost their independence of action in any respect by merging it and creating a new government, as was done under the Constitution of the United States. So it was and is my view that, quite apart from any interpretation, there is a general right of withdrawal.[9]

[9] United States Congress-Senate Committee on Foreign Relations. **Hearings before the Committee on Foreign Relations, United States Senate, 79th Congress, First Session, on the Charter of the United Nations for the Maintenance of International Peace and Security,** submitted by the President of the United States on July 2, 1945. Washington, D.C., Government Printing Office, 1945, p. 647.

It appears that Mr. Dulles' statement is in open contradiction to the opinion expressed during the San Francisco Conference by the subcommittee of Commission I/2. It is also noteworthy that Mr. Dulles, while not using the term "sovereignty" in his testimony, expressed the same opinion as the delegate from the Soviet Union, namely, that the right of withdrawal is an expression of the Members' sovereignty.

During the Senate hearings, the representative of the Department of State, Mr. Leo Pasvolsky, read the text of the commentary of Committee I/2. Then, Senator George stated: "The implication is that a Member-Nation would not have the absolute right of withdrawal because he must make application justifying the request for withdrawal; is that right?" In reply to this question Mr. Pasvolsky, calling attention of the Committee to Article 2, section 6 of the Charter of the United Nations, said: "There flows from that the proposition that withdrawing from the Organization does not relieve a state of the obligation to live up to its responsibilities stated in paragraph 6. The right of withdrawal of course remains, Senator George, but it has to be justified before the community of nations." As may be seen, Mr. Pasvolsky confirmed Senator George's interpretation that the commentary of Committee I/2 does not admit an "absolute right of withdrawal" since a Member "must make application justifying the request for withdrawal." Then, Senator Vandenberg reminded the Committee: "Was not the unlimited right of withdrawal omitted, among other reasons, because in the experience of the League of Nations that was the escape clause which prospective aggressors always embraced"; whereupon Mr. Pasvolsky answered: "This is absolutely true," confirming Senator Vandenberg's statement that "the unlimited right of withdrawal" was "omitted."[10]

To the question of Senator LaFollette "What would be the procedure, and who would determine whether the right to withdraw had been justified?" Mr. Pasvolsky answered: "It would be like any other procedure in the relationship between a Member state and the Organization." Although this answer did not specify the procedure, it admitted that a certain procedure must be followed to effectuate withdrawal. Then, Senator LaFollette asked: "Would it be decided by the Security Council or how would it be decided? What body would pass on it? Assume some nation made application to withdraw; who would determine whether the reasons given were justified or not?" Mr. Pasvolsky's answer to this question was: "You see, there is no sanction in the Organization to hold a state as a Member. There is a power in the Organization to say whether or not the reasons which are advanced by the state are good and sufficient reasons."[11] Finally, Mr. Pasvolsky declared: "The question of mechanics, as to which body would

[10]**Ibid.**, p. 232 ff.

[11]This interpretation means that the Organization is given the power to decide whether a Member has or has not, in a concrete case, the right of withdrawal.

handle that particular question and in what way, was not discussed. That was left for future determination. But I did want to call attention to the fact that in all matters relating to membership, the two organs act concurrently." At that moment, the Chairman of the Committee, Senator Connally, intervened and propounded an opinion in direct opposition to the one until now advocated by Mr. Pasvolsky. This part of the Hearings is so important that it shall be quoted at length.

"The Chairman. Let me ask you a question right there: Is it not true that there is no application required if a nation desires to withdraw? Moreover, there is no specific procedure to be followed. The theory of the whole withdrawal proposal, as I understand it, was that the nation affected would have to be the judge of the circumstances which it claimed had altered its position, and the penalty would be simply a mobilization of world opinion as to whether its cause was a just one or an unjust one.

"Mr. Pasvolsky. That is quite right.

"The Chairman. And that there was no compulsive power to keep a nation within the League if it desired to withdraw?

"Mr. Pasvolsky. That is right.

"The Chairman. It was simply a question of leaving the world to judge whether they had adequate causes for withdrawal. They were the ones, however, to determine whether or not their circumstances had so changed as to make withdrawal justifiable.

"Mr. Pasvolsky. That is right."

Later, Senator Tunnell asked: "In the absence of a surrender of the right of withdrawal, would not a sovereign state retain that right?"

"Mr. Pasvolsky. That is right.

"The Chairman. That was the theory we proceeded upon, was it not?

"Mr. Pasvolsky. That is right.

"The Chairman. We proceeded upon that theory in drafting this report of the committee.

"Mr. Pasvolsky. That is right.

"The Chairman. I sat in with the committee when that report was prepared.

"Senator George. Then, Doctor, is it your answer that the Member state has an absolute right to withdraw?

"Mr. Pasvolsky. Yes, Senator.

"Senator George. Absolute?

"Mr. Pasvolsky. Yes.

"Senator George. Unqualified?

"Mr. Pasvolsky. Yes. But it is on notice that it will have to justify it.

"Senator George. You mean that it might incur the displeasure of the peace-minded people of the earth?

"Mr. Pasvolsky. Yes, Senator."

At this point of the discussion the representative of the Department of State admitted an absolute right of withdrawal as a consequence of the Members' sovereignty.

Next the effect of Article 39 of the Charter on the right of withdrawal was discussed. Senator Millikin asked: "If the Security Council found that a projected withdrawal threatened the peace and security of the world, what would happen so far as the nation is concerned that wanted to withdraw; would it be compelled to stay in or would it be allowed to withdraw and suffer penalties that any other nation might suffer if it threatened the peace and security of the world?", whereupon Mr. Pasvolsky answered: "That would depend upon the decision of the Security Council." This interpretation, it should be noted, means that the Security Council has the power to compel the state to remain a Member, or to allow it to withdraw and take enforcement action against it as a non-member; which is the only correct interpretation of Article 39. The consequence of this interpretation is, of course, that with reference to Article 39, there cannot be an absolute right of withdrawal. This was exactly the conclusion drawn by Senator Millikin, who said: "May it be fairly inferred from what you have said that there is no such thing as a unilateral withdrawal without action by the Security Council?" And later: "And it follows from that that the Security Council could bring coercive measures to stop the withdrawal?" The astonishing answer to this question was:

"Mr. Pasvolsky. No; it could not bring coercive measures to stop the withdrawal. What it could do is to say that, 'Since you are no longer a Member and since some action of yours threatens the peace, you have got to put a stop to that action.' That it has a right to do irrespective of whether a state is one which used to be a Member and withdraws or never was a Member, so long as it is a non-Member.

"Senator Millikin. In other words, the probable decree of the Security Council would be to come back into the Organization?

"Mr. Pasvolsky. Not necessarily."[12]

Not necessarily; but possibly. Later, Mr. Pasvolsky declared: "I cannot imagine that a sanction of forcing a state against its will, contrary to the official interpretation which I have just read, would be a measure adopted by the Security Council." But he admitted that "if the fact of withdrawal itself, in the opinion of the Security Council, resulted in a threat to peace," it would be treated "like any other incident that threatened the peace without respect to membership or whether the state came back in or whether it did not." This answer means that the Security Council may make any recommendation whatever, especially a recommendation to refrain from withdrawal, or that it may take enforcement measures against

[12]Ibid., p. 234 ff.

the Member with the effect to compel the Member to remain within the Organization. Finally, Senator Barkley asked: "No resolution or action that the Council or the Assembly could take could prevent the Member's withdrawal?" Mr. Pasvolsky answered: "That would be my view."[13]

Another witness before the Senate Committee on Foreign Relations, Mr. Green H. Hackworth—at that time the legal advisor of the Department of State, and now judge of the International Court of Justice— also testified on the question of withdrawal. He expressed the opinion that any Member of the United Nations has the right to withdraw for certain reasons. His first statement was this:

> I think that the very fact that the matter was discussed and it was decided not to incorporate a provision in the Charter with respect to withdrawal, and the further fact that the working committee, and later, the full Commission, approved a statement that it was not the purpose of the Organization to compel Members to continue in cooperation with it, shows that the Conference recognized that a state should have the right to withdraw from the Charter. I do not think that there is any question about the authority of a State to withdraw under the circumstances indicated.

According to this statement the Members would have a right to withdraw *under certain circumstances.* But finally Mr. Hackworth declared: "I do not think that this provision (the commentary of Committee I/2) places *any* [Italics supplied] inhibition upon a state with respect to withdrawal.[14]

In reply to the question as to the legal effect of the commentary on withdrawal inserted in the Report of the Rapporteur of Committee I/2, Mr. Hackworth made the following statement:

> I say that for the reason that very frequently when treaties are entered into the parties interpret their provisions in separate documents. Sometimes they place their interpretations in protocol, annexed to the treaty. At other times they make them in other ways, as by exchange of notes and so forth. So that here you have, it seems to me, something that would stand on substantially an equal footing with the Charter itself, because that question was raised and was discussed and it was decided not to include anything in the Charter; but they agreed upon this formula which was approved by the working committee and by the Commission. I do not think that there is any question that any court of law would regard that as a legal interpretation of the right of the parties to withdraw.

Then Senator Austin asked: "Whether it has not occurred to the judge that unless some state in the process of advising ratification of this treaty

[13] **Ibid.**, p. 326 ff.
[14] **Ibid.**, p. 347 ff.

expressly dissents to that provision, that provision is a part of their agreement." Thereupon Mr. Hackworth answered: "I think that is a correct statement."[15]

The fact that the working committee, and later the full Commission, approved the commentary on withdrawal is not equivalent to an international treaty on this subject. This is particularly true since the delegate of the Soviet Union formally expressed his dissent from the commentary, and since the United Nations Conference on International Organization as such did not vote on this subject. If "the Conference recognized that a state should have a right to withdraw from the Charter," it is difficult to understand why a clear provision was not inserted in the Charter, as had been suggested by the delegate of the Soviet Union. Such a provision would have been all the more necessary as there was evidently no agreement of opinions with respect to the legal effect of the silence of the Charter concerning the question of withdrawal. It is, perhaps, of interest to note in this connection the question of Senator Barkley addressed to Mr. Dulles, during the Hearing before the Senate Foreign Relations Committee. "Might I suggest," so asked Senator Barkley, "that what you attempted to do was that, whereas you did not prevent withdrawal, you did not wish to put in language that would encourage withdrawal without sufficient reason?" Thereupon Mr. Dulles answered: "That is correct."[16] If the rule concerning withdrawal formulated by the commentary is not an encouragement there was no reason not to insert this rule in the Charter.

In his work, *Digest of International Law,* vol. V (1943), p. 299, Mr. Hackworth when dealing with the problem of withdrawal from a treaty, quotes the following passage from a memorandum transmitted by Assistant Secretary Olds to Senator Lenroot in connection with the question as to whether or not withdrawal from the Permanent Court of International Justice would be legally permissible:

> ... There is no implied right in any one party to a treaty to withdraw at will in the absence of specific provision for such withdrawal by denunciation or otherwise or unless another party to the treaty has violated it so substantially as to justify its termination. While there can be no question that the United States would have the power to withdraw from the Permanent Court at any time, still distinction between the power to take such action and the propriety thereof can be clearly drawn. I feel, therefore, 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 recognizing and reserving the right of the United States to withdraw from the Court.

[15]Ibid., p. 347.
[16]Ibid., p. 647.

In support of this statement, Mr. Hackworth quotes also the following passage from J. L. Brierly, *Law of Nations* (2nd ed., 1936), p. 201:

> ... There is 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—but there are some which we may fairly presume were intended to be susceptible of denunciation, even though they contain no express term to that effect. A *modus vivendi* is an obvious illustration: treaties of alliance and of commerce are probably in the same case.

There can be little doubt, that according to the opinion expressed in these passages and especially in the statement quoted from Brierly's *Law of Nations,* a right of withdrawal from the United Nations would require an express provision in the Charter. The Charter of the United Nations does certainly intend to establish a no less permanent state of things than the Pact of Paris which does not contain a provision of withdrawal. There is probably no expert in international law who would admit that any contracting party to the Pact of Paris has a right of withdrawal. But to the question of Senator Milliken: "I do not believe that there has been anything that you have said which conflicts with it [i.e. the right of withdrawal] in any way," Mr. Hackworth answered: "No, nothing at all."[17] This answer would be correct only if the commentary on withdrawal inserted in the Report of the Rapporteur were an authentic interpretation of the Charter. This, however, is not the case.

[17] Ibid., p. 348.