ON (IN)ADMISSIBILITY OF UNILATERAL WITHDRAWAL FROM THE UNITED NATIONS

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1. INTRODUCTION

At the beginning of 2017, Mike Rogers, the US Representative for Alabama, a member of the Republican Party, called for the United States to withdraw from the United Nations[1] by introducing a bill to the House of Representatives entitled the American Sovereignty Restoration Act of 2017[2]. It requires that: "The President shall terminate all membership by the United States in the United Nations, and in any organ, specialised agency, commission, or other formally affiliated body of the United Nations". The termination of membership has to result in the withdrawal of the United Nations Headquarters from New York, termination of the United States' participation in the UN peacekeeping operations as well as the withdrawal of any privileges or immunities that the UN officers are entitled to in the United States.

Although the bill has little chances for being passed (at least in the form proposed by M. Rogers), it does not change the fact that the United Nations Organisation's activity has been recently criticised by American authorities and part of the public.[3]

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1 Eight other members of the Republican Party supported the Bill, including Andy Biggs (Arizona), John J. Duncan Jr. (Tennessee), Matt Gaetz (Florida), Walter B. Jones (North Carolina), Raul R. Labrador (Idaho), Thomas Massie (Kentucky), Alexander X. Mooney (West Virginia) and Jason Smith (Missouri). More information on the bill is available at: https://www.congress.gov/bill/115th-congress/house-bill/193.

2 A bill to end membership of the United States in the United Nations – American Sovereignty Restoration Act of 2017, 3 January 2017. Doc. H.R. 193 – 115th Congress (2017–2018). The full text of the bill is available on the US Congress website: https://www.congress.gov/bill/115th-congress/house-bill/193/text [accessed on 13/11/2017].

3 For more on the issue, see J. Czaja, *Świat ONZ – upadek czy nowe szanse?* Krakowskie Studia Międzynarodowe No. 1, 2005, p. 23 ff.

President Donald J. Trump has also expressed his critical view in one of the social media stating that: "The United Nations has such great potential but right now it is just a club for people to get together, talk and have a good time (…)".[4] However, President Trump presented his opinions in a more measured tone during the 72nd Session of the United Nations General Assembly in New York. He emphasised that, instead of striving to achieve the objectives laid down in the Charter of the United Nations, too often the focus of this organisation has been on bureaucracy and process. In his opinion, it is a source of embarrassment that some governments with egregious human rights records sit on the UN Human Rights Council. He reminded that the US is one of 193 countries in the UN, and yet it pays 22% of the entire budget of the Organisation. He stated that it was an unfair cost burden but he also admitted that if the UN could actually accomplish all of its goals, especially the goal of peace, this investment would easily be well worth it.[5]

At the same time, it is worth mentioning that also the Philippines' President, Rodrigo Duterte, who threatened to withdraw his country from the UN, was strongly critical of this organisation. One of the reasons was the 2016 criticism by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions used by Panama authorities in order to fight against illegal drug trafficking in the country.[6]

The above examples raise a very important question about the conformity of a member state's withdrawal from the UN with international law. Undoubtedly, this step would have to lead to the termination of the Charter of the United Nations as an act constituting the Organisation. Unlike in case of the Covenant of the League of Nations,[7] the provisions of the Charter do not include provisions concerning a possibility of a unilateral withdrawal but envisage only expulsion of a state or suspension of its membership. In such a situation, the resolution of the research problem requires reference to the principles of the Law of Treaties and identification of adequate customary norms applicable in the assessment of admissibility of withdrawal from the UN. Thus, using the contents of the Vienna Convention on the Law of Treaties of 1969, it is necessary to establish whether it is admissible to withdraw from an agreement constituting a membership alliance in a situation when the agreement alone does not lay down such a possibility.

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[4] https://twitter.com/realdonaldtrump/status/813500123053490176?lang=en [accessed on 13/11/2017].

[5] The White House, *Remarks by President Trump to the 72nd session of the United Nations General Assembly*, 19 September 2017. The full text of the address is available at: https://www.whitehouse.gov/the-press-office/2017/09/19/remarks-president-trump-72nd-session-united-nations-general-assembly [accessed on 13/11/2017].

[6] E. McKirdy, *Philippines President Rodrigo Duterte insults UN, threatens to leave over criticism*, CNN, 21 August 2016, http://edition.cnn.com/2016/08/21/asia/philippines-duterte-threatens-to-leave-un/ [accessed on 13/11/2017].

[7] The Covenant of the League of Nations stipulated that any Member of the League may, after two years' notice of its intention to do so, withdraw from the League, provided that all its obligations shall have been fulfilled at the time of its withdrawal. Compare, Article 1 para. 3 Covenant, [in:] K. Kocot, K. Wolfke, *Wybór dokumentów do nauki prawa międzynarodowego*, Wrocław–Warsaw 1976, p. 47.

2. WITHDRAWAL FROM THE UNITED NATIONS: AN UNPRECEDENTED SITUATION?

In order to indicate examples of countries illustrating the discussed issue, in general, only one case of Indonesia may provide material for the assessment. In 1965, the state decided to withdraw from the Organisation and substantiated the decision by its disapproval of the choice of Malaysia to be a non-permanent member of the Security Council. In the letter addressed to the Secretary General,[8] the Minister of Foreign Affairs of Indonesia informed that "(…) Indonesia has taken a decision to withdraw from the United Nations and also from specialised agencies such as FAO, UNICEF and UNESCO". He also assured that his country "still upholds the lofty principles of international co-operation enshrined in the United Nations Charter" emphasising that it can do this within as well as outside the UN organisational structure.

The Secretary General referred the letter to the Security Council and the General Assembly as the bodies with treaty authorisation to take decisions concerning membership. None of the bodies, however, decided to initiate formal proceedings. Having consulted Member States, the Secretary General informed Indonesian authorities that he acknowledges their decision and expressed a hope for resuming full participation in the nearest future. The real administrative activities undertaken in connection with the Indonesian motion consisted in the removal of the country's flag, badges and other symbols from the UN building and rooms. Indonesia stopped being listed as a Member State and the General Assembly did not take its contribution to the UN 1965–1967 budget into account.[9] The President of the 21st Session of the General Assembly assumed that since Indonesia declared its will to "resume" its membership in the Organisation, it means it treats its latest absence as temporary cessation of co-operation and not an official withdrawal from the Organisation. Thus, he did not see any reasons for initiating formal accession proceedings. As no Member opposed to such interpretation, the President of the General Assembly authorised the Secretary General to take administrative steps necessary to resume Indonesia's full membership in the UN. In addition, he stated that Indonesia should meet in full its budgetary obligations.[10]

Contrary to appearances, the issue of Indonesia's membership in the UN in the discussed period is not so unambiguous. The letter of 1965 suggested a real decision on withdrawal from the UN and not just the cessation of co-operation. As the Indonesian Minister of Foreign Affairs emphasised: "my government's decision is certainly revolutionary and unprecedented. It has been taken for the benefit of the United Nations, which, in our opinion, should be reprimanded from

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[8] See, Letter dated 20 January 1965 from the First Deputy Prime Minister and Minister for Foreign Affairs of Indonesia addressed to the United Nations Secretary General, [in:] International Legal Materials Vol. 4, No. 2, 1965, pp. 364–366.

[9] See, United Nations Juridical Yearbook 1966, part II, chapter VI: Selected legal opinions of the Secretariat of the United Nations and related inter-governmental organizations, pp. 222–223.

[10] Official Records of the General Assembly, Twenty-first Session, 1420th Plenary Meeting, 28 September 1966, UN Doc. A/PV.1420, p. 2.

time to time".[11] It is also worth reminding that as a result of the letter, Indonesia was deleted from the list of the UN Member States and administrative steps were taken in order to permanently conclude the co-operation with the country. Such measures are not applied in case a given Member State decides to temporarily cease its co-operation with the Organisation. Moreover, the governments of the United Kingdom[12] and Italy[13], which were the only ones that answered the letter of 1965, treated and assessed the situation in terms of withdrawal from the UN and not a temporary cessation of co-operation. Of course, this does not change the fact that the new Indonesian authorities spoke about the resumption of the membership and the UN accepted this classification. As a result, the question about admissibility of withdrawal from the UN has not been answered.

3. WITHDRAWAL FROM A TREATY THAT DOES NOT STIPULATE SUCH A POSSIBILITY

Due to the fact that the Indonesian case does not make it possible to confirm or deny that the unilateral termination of membership in the UN is in conformity with international law, it is necessary to consider the general rules of the Law of Treaties. Article 56 of the Vienna Convention on the Law of Treaties of 1969[14] stipulates that a treaty that contains no provision regarding termination of or withdrawal from it is not subject to termination or withdrawal. It may be otherwise only in two cases: if it is established that the parties intended to admit the possibility of termination or withdrawal, or if the possibility may be implied by the nature of the treaty.

The conclusion resulting from Article 56 VCLT that termination of a treaty that does not contain provisions regarding such a possibility is inadmissible is perceived as a permanent element of customary international law.[15] As a result, it is justified to apply the above-mentioned construction also when assessing the admissibility of the unilateral termination of the Charter of the United Nations and thus the withdrawal from the Organisation. Although the limited framework of the article does not make it possible to conduct a more thorough discussion whether the conclusion drawn from Article 56 VCLT is right, it should be mentioned that it finds support in the states' practice as well as *opinio iuris* of the period of negotiating the Vienna Convention on the Law of

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[11] Compare, footnote 6.

[12] See, Letter of 8 March 1965 from the United Kingdom, UN Doc. A/5919 (S/6229), Yearbook of the United Nations 1964, p. 191.

[13] See, Note verbale of 13 May 1965 from Italy, UN Doc. A/5914 (S/6356), Yearbook of the United Nations 1965, p. 237.

[14] The Convention was adopted in Vienna on 22 May 1969 and open for signing on 23 May 1969; it entered into force on 27 January 1980; hereinafter: VCLT. The text of the Convention in A. Przyborowska-Klimczak (selection and edition), *Prawo międzynarodowe publiczne. Wybór dokumentów*, Lublin 2008, pp. 43–65.

[15] Thus, e.g. see A. Wyrozumska, *Withdrawal from the Union*, [in:] H.J. Blanke, S. Mangiamelli (ed.), *The European Union after Lisbon: Constitutional basis, economic order and external action*, Heidelberg–Dordrecht–London–New York 2012, p. 345; L.R. Helfer, *Terminating treaties*, [in:] D.B. Hollis (ed.), *The Oxford guide to treaties*, Oxford 2012, p. 637 ff.

Treaties. Frankly, there were cases that might seem to illustrate a different opinion but when analysed in detail, they proved to confirm the above-mentioned conclusion. States taking a decision to terminate a treaty that does not have provisions clearly stipulating such a possibility in practice always referred to the *rebus sic stantibus* clause or serious violation of a treaty by the other party. They did not draw the admissibility of their action from the implied right to free themselves from treaty obligations, which must be *implicite* contained in every concluded international agreement.[16]

3.1. PARTIES' INTENTION REVEALED IN THE COURSE OF NEGOTIATING A TREATY

The presumption of inadmissibility of termination of a treaty that contains no denunciation clause is conditional in nature because, as it has already been mentioned, it may be challenged by indication that the parties intended to admit the possibility of termination of a treaty. The preparatory work on the Charter of the United Nations shows that the issue of establishing the UN membership was considered in the context of the universal nature of the Organisation to be created. The main arguments that finally played a decisive role in non-containing a provision stipulating termination in the Charter of the United Nations were the following: non-conformity of such a clause with the universal nature of the Organisation, fears that states will attempt to extort some activities from the Organisation under the threat of withdrawal from it and the fact that withdrawal might be a means of escape from obligations resulting from membership.[17] The final report by the Committee I/2, which worked on the development of Chapter II of the Charter of the United Nations, contained the following commentary: "If a Member State, because of extraordinary circumstances, feels obliged to withdraw and leave the burden of keeping international peace and security to other Members, it is not the intention of the Organisation to force such a Member State to continue co-operation. It is obvious that the possibility of withdrawal from the Organisation or other forms of termination of co-operation might seem to be unavoidable if the Organisation, against the expectations of mankind, proved to be unable to keep international peace or might do it at the expense of law and justice. It would also be hard to expect a Member State to remain in the Organisation if its rights and obligations were changed as a result of amendments to the Charter, which were passed without its participation or it disapproves of, or in case an amendment passed in a proper way and adopted by the required majority of the General Assembly or a Review Conference was not ratified by the necessary number of Members to enter into force".[18]

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[16] For more on the issue together with a review of states' practice, see Th. Christakis, *Article 56*, [in:] O. Coten, P. Klein (ed.), *The Vienna Conventions on the law of treaties: A commentary*, Vol. 1, Oxford 2011, pp. 1261–1266.

[17] A. Kleczkowska, *Karta Narodów Zjednoczonych jako światowa konstytucja – uwagi z perspektywy zakazu użycia siły*, Studia Prawnicze No. 3 (207), 2016, p. 14.

[18] Report of the Rapporteur of Committee I/2 on Chapter III, Membership, UNCIO Doc. 1178, 1/2/76 (2), p. 5.

The opinions of the doctrine on the legal nature of the cited commentary are varied. Some authors recognise it as authentic interpretation of states' stands concerning admissibility of withdrawal from the UN, while others reject such a perspective. However, there are no formal contraindications to classify the document as *travaux préparatoires* and refer to the conclusions of the Committee I/2 in order to get to know the real intentions of the authors of the Charter of the United Nations. Assessing the issue from this perspective, one sees that the parties considered, and even wanted to admit, a possibility of giving up membership in the Organisation, however, they decided it was justified only in three strictly determined situations.[19]

However, the circumstances that give grounds for admissibility of denouncing the Charter of the United Nations and, as a result, withdrawing from the Organisation were described in the way that may raise some objections. Performing a critical review of them, H. Kelsen drew attention to a few ambiguities in this context. Firstly, if termination of membership may be justified by the UN inability to keep international peace and security, there is a question what criteria should decide on the classification and who should perform evaluation. The treaty bodies will not take such a decision and letting a state interested in withdrawal from the Organisation to decide may be interpreted as encouragement to undertake unilateral activities. Secondly, withdrawal from the UN was to be justified by entry into force of amendments to the Charter of the United Nations that a given state does not approve of. This stand, however, is in flagrant conflict with the content of Articles 108 and 109 of the Charter of the United Nations, which stipulate that if an amendment or a review has been adopted by a vote of two-thirds of the Member States and ratified in accordance with their respective processes, they shall come into force for all Members.[20] Finally, the third circumstance results from the former. It concerns a situation when the passed amendment to or adopted review of the Charter will not enter into force because of insufficient number of ratifications. However, the problem is that the commentary of the Committee I/2 does not suggest that the possibility of withdrawal from membership is limited to the states that have accepted changes. Thus, theoretically, any other state would have the right

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[19] F. Livingstone, *Withdrawal from the United Nations: Indonesia*, American Journal of International Law Vol. 14, No. 2, 1965, pp. 640–641.

[20] Article 108 of the Charter stipulates that "Amendments to the present 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 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". On the other hand, Article 109 para. 2 lays down that "Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two-thirds of the Members of the United Nations including all permanent members of the Security Council". For full text of the quoted provisions, see [in:] A. Przyborowska-Klimczak (ed.), *Prawo międzynarodowe…*, pp. 29–30. It is worth mentioning that foundation acts of some organisations admit withdrawal from membership in case amendments are made to their statutes, which a given country does not accept. Such a solution was adopted in the Pact of the League of the Arab States (Article 20) and the International Atomic Energy Agency Statute (Article 18).

to refer to the above-mentioned condition. It is also hard to determine how much time must pass in order to recognise that the ratification process has finished because the Charter of the United Nations does not determine any specific time limit.[21]

The emphasis put on the "extraordinary" nature of circumstances justifying a unilateral act of withdrawal from the UN demands that we consider whether it is possible to equalise between the situation described by the Committee I/2 and those that are contained in the *rebus sic stantibus* clause. A positive answer would mean that the Committee did not decide anything that would result from the already existing norms of the customary law of treaties. Despite the fact that the occurrence of circumstances listed in the commentary was envisaged by the parties at the moment of concluding the Treaty (which should eliminate grounds for discussing the application of the *rebus sic stantibus* clause), those circumstances do not seem to be so extraordinary that they should justify admissibility of termination of the Charter of the United Nations with the use of the above-mentioned clause. The UN turned out to be helpless in various cases of violation of or threat to the world peace and there is nothing extraordinary in it. The latest events in the Crimea and Eastern Ukraine are the best examples of that. Moreover, the process of negotiating the Charter of the United Nations does not let Member States make membership in the structure dependent on the Organisation's ability to keep international peace and security. The UN's helplessness in case of violation of the Charter of the United Nations by one party always gives an aggrieved state an opportunity to refer to this violation and cause the termination or cessation of the application of the Charter between all or some parties. The consideration of amendments to the Charter or its review is even more controversial from the point of view of the potential application of the *rebus sic stantibus* clause. If it is assumed that a change will not enter into force, the *status quo* is maintained. On the other hand, if the changes negotiated enter into force, it is nothing that the parties admit at the moment of concluding a treaty.

If the temporary absence of Indonesia from the UN is treated as an example of real loss of membership and the comments already made are used to assess the case, it will be obvious that there was none of the three conditions indicated by the Committee I/2. The election of a given state to be a non-permanent member of the Security Council is absolutely not such a condition.[22] In such circumstances, nobody should be surprised by the stand of the United Kingdom, which very clearly stated that "the election of a non-permanent member of the Security Council (…) does not constitute such an extraordinary circumstance that Indonesian authorities should be allowed to withdraw from the Organisation".[23]

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[21] H. Kelsen, *Withdrawal from the United Nations*, The Western Political Quarterly Vol. 1, No. 1, 1948, pp. 30–31.

[22] J.G. Kim, J.M. Howell, *Conflict of international obligations and state interests*, The Hague 1972, p. 99.

[23] Compare, Letter of 8 March 1965 from United Kingdom…, p. 191.

3.2. NATURE OF A TREATY AS JUSTIFICATION FOR ADMISSIBILITY OF ITS TERMINATION

In accordance with VCLT, the presumption of impossibility of terminating an international agreement that contains no denunciation clause may also be refuted by reference to the nature of a treaty. Some authors are of the opinion that just organisations' statutes, beside alliances and trade agreements, constitute examples of agreements the nature of which makes it possible to presume the right to terminate them. On the other hand, fixed-term agreements, agreements codifying international law and border treaties do not have such a status.[24]

However, there were some doubts raised in the doctrine about the customary nature of a norm allowing the use of the nature of a treaty as the only reason for terminating it.[25] Th. Christakis reminds that a relevant provision was added to Article 56 para. 1 VCLT just at the last moment thanks to the amendment proposed by the United Kingdom during the codification conference. The proposal was finally passed by a very slim majority of votes (26 countries voted for the change, 25 voted against and 37 abstained).[26] On the other hand, the project negotiated in 1966 by the International Law Commission assumed that only a diverse intention of the parties could constitute a reason for termination of a treaty. In its commentary to the then Article 53, the Commission noticed that the nature of a treaty is one of the elements that may prove to be useful for determining the parties' intention.[27]

Without prejudging the question of the customary nature of a norm prescribing the consideration of a nature of a treaty as a possible reason for its termination, it would be erroneous to completely dismiss such a possibility. Thus, if we assume that the Charter of the United Nations, due to its status and the content of its norms, constitutes a type of "global constitution" *de iure*, the nature of this document might be an obstacle to admissibility of its termination.[28] This hypothesis, however, should be subject to deepened consideration concerning international legal consequences of the constitutional nature of some agreements because, as C. Mik emphasises, the possibility of terminating an international agreement does not necessarily negate its constitutional dimension.[29] In this situation, a look at the legal nature of the Charter of the United Nations as any other foundation act of an international organisation

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[24] M. Frankowska, *Prawo traktatów,* Warsaw 1997, p. 164.

[25] Thus, e.g. see M. Akehurst, *Withdrawal from international organizations,* Current Legal Problems Vol. 32, 1979, p. 149.

[26] Th. Christakis, *Article 56…*, p. 1256.

[27] See, International Law Commission, *Draft Articles on the Law of Treaties with commentaries (1966)*; the text adopted by the International Law Commission at its eighteenth session, in 1966, and submitted to the General Assembly as a part of the Commission's report, [in:] Yearbook of the International Law Commission Vol. II, 1966, p. 251.

[28] See, A. Kleczkowska, *Karta Narodów…*, pp. 17–18.

[29] C. Mik, *Konwencja wiedeńska o prawie traktatów z 1969 r. wobec konstytucjonalizacji traktatów*, [in:] Z. Galicki, T. Kamiński, K. Myszona-Kostrzewa (ed.), *40 lat minęło – praktyka i perspektywy Konwencji wiedeńskiej o prawie traktatów,* Warsaw 2009, p. 107.

that does not contain any provisions regulating the issue of withdrawing from membership seems to be a much better solution.[30]

Most arguments justifying admissibility of withdrawal from an international organisation the foundation act of which does not stipulate such a possibility directly or indirectly refer to the idea of states' sovereignty.[31] L. Oppenheim stated that: "although the Charter does not directly mention the right to terminate it, in the face of the lack of a clear ban, the United Nations Member States maintain the possibility of breaking off what, in the light of law, constitutes a contractual relationship for unspecified period and imposing far-reaching limitations of sovereignty on the states".[32] According to the above-mentioned opinion, the nature of treaties constituting international organisations is against questioning admissibility of withdrawing from organisations created for unspecified time and regaining competences a state is entitled to. Thus, if a state joining such a structure voluntarily limits its sovereign rights, it can regain these rights at any time by deciding to give up its membership.

J. Menkes and A. Wasilkowski draw attention to a certain collision between a ban on presuming whatsoever limitation to a state's sovereignty (limitation to exercising it) and the *pacta sunt servanda* principle, which bans states' unilateral exemption from obligations of a treaty or the change of its provisions.[33] Of course, it is necessary to agree with the stand that no international organisation has the power to prevent a member state from withdrawing from it.[34] At the same time, it is not important whether the foundation act admits such a possibility, clearly bans it or, as it occurs in the discussed case, does not contain adequate provisions. One should not confuse a state's omnipotence in this area with the lawfulness of undertaken steps and their legal justification. A state's sovereignty will not make these activities legal if they are illegal without such justification. As H. Kelsen noticed in this context: "if sovereignty is interpreted as an indispensable right to withdraw from an organisation founded based on a treaty concluded between states, it means that a sovereign state will be bound by this treaty for as long as it recognises it as beneficial".[35] The way of understanding sovereignty indicated above marginalises the special rank of the *pacta sunt servanda* principle, which is fundamental for international law, and many others that constitute the foundations of stability and predictability of treaty relations. To some extent, it also depreciates many years of the International Law Commission's work on the codification of the Law of Treaties because not the norms of that law but an ordinary political interest would decide about admissibility of termination of a foundation act and withdrawal from an international organisation.

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[30] Similarly, N. Feinberg, *Unilateral withdrawal from an international organization,* British Yearbook of International Law Vol. 39, 1963, p. 189 ff.

[31] Thus, e.g. see L. Antonowicz, *Podręcznik prawa międzynarodowego,* Warsaw 2013, p. 195.

[32] L. Oppenheim, *International law*, London 1948, pp. 373–374, quotation after A. Wyrozumska, *Withdrawal*…, p. 346.

[33] J. Menkes, A. Wasilkowski, *Organizacje międzynarodowe. Prawo instytucjonalne*, Warsaw 2006, p. 110.

[34] E. Schwelb, *Withdrawal from the United Nations: The Indonesian intermezzo*, American Journal of International Law Vol. 61, No. 3, 1967, p. 672.

[35] H. Kelsen, *The law of the United Nations: A critical analysis of its fundamental problems*, New Jersey 2000, p. 126.

4. CONCLUSIONS

The comments and observations presented in the article make it possible to state that a voluntary withdrawal from the United Nations does not seem possible at the moment, at least in the way that is in compliance with the norms of international law. Giving up membership in the Organisation may occur in some extraordinary cases, which, in the light of general rules of the Law of Treaties, in a way force a state to take such a decision. The change of circumstances existing at the time of concluding a treaty is an example. On the other hand, the principle stipulating that it is inadmissible if a treaty does not lay down a possibility of terminating it or withdrawing from it has established grounds in international law. A different statement requires a proof that parties really intended to admit a treaty termination or that the right to terminate is contained in the nature of the treaty concluded between states.

The Charter of the United Nations is an international agreement the authors of which did not decide to include a denunciation clause in its content. Undoubtedly, they were fully aware of the existence of such a clause in the Covenant of the League of Nations and the later consequences of that.[36] The Committee I/2, the work of which in a way illustrates the intentions of the parties to the Charter of the United Nations, in fact did not negate the possibility of withdrawing from the UN, but limited it to a few extraordinary situations. A question should be asked in this context whether these situations are really so extraordinary and whether the possible reference to them is in compliance with the wording, the subject matter and the aim of the Charter of the United Nations. Also the justification for admissibility of withdrawal from the Organisation by referring to the nature of the foundation act seems to be controversial. It is important that for the support of this hypothesis, it is not necessary to use arguments from the justification for the constitutional nature of the Charter and, as a result, prejudge the status it has.

Finally, it is worth emphasising that states that see withdrawal from the UN as a means of escape from any treaty obligations base their belief on too optimistic assumptions. Many norms of the Charter of the United Nations illustrate the binding customary law and have *erga omnes* consequences. Some even are *iuris cogentis* norms in nature.[37] Thus, it is not possible to act in a way that does not conform to their content without incurring international legal consequences. By means of withdrawing from the UN, a given state might really free itself only from formal legal membership links, including financial obligations (however, not necessarily those overdue). However, in the long term, such motivation, which is proved by termination of membership in other international organisations, generally turned out to be politically unprofitable.

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[36] For more on the issue, see K.D. Magliveras, *The withdrawal from the League of Nations revisited*, Dickinson Journal of International Law Vol. 10, No. 1, 1991, pp. 25–71.

[37] R.St.J. Macdonald, *The Charter of the United Nations as a World Constitution*, [in:] M.N. Schmitt (ed.), *International law across the spectrum of conflict. Essays in honour of Professor L.C. Green on the occasion of his eightieth birthday,* Newport 2000, p. 264.

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ON (IN)ADMISSIBILITY OF UNILATERAL WITHDRAWAL FROM THE UNITED NATIONS

Summary

This article aims to answer the question of the admissibility of withdrawal from the United Nations Organization. Since the Charter of the United Nations as a foundation act of the Organization does not contain any specific provisions in this regard, the author decides to refer to the general law of treaties and, based on it, to conduct a relevant analysis. Therefore, availing himself of the provisions of the Vienna Convention on the Law of Treaties, the author aims to demonstrate and characterize possible conditions which under customary international law allow the possibility of a unilateral withdrawal from a treaty. In the first place, the author refers to the intentions of the parties to the Charter of the United Nations at the time of its drafting and then to the nature of the treaty itself. As a result of the analysis, he comes to the conclusion that neither the intentions of the parties, nor the nature of the Charter of the United Nations can provide reasonable grounds for acknowledging the possibility of withdrawal from the UN as compliant with international law.

Keywords: withdrawal from the UN, Charter of the United Nations, Law of Treaties, Indonesia, preparatory work, nature of a treaty, *rebus sic stantibus* clause

PRAWNA (NIE)DOPUSZCZALNOŚĆ DOBROWOLNEGO WYSTĄPIENIA Z ORGANIZACJI NARODÓW ZJEDNOCZONYCH

Streszczenie

Przedmiotem niniejszego artykułu jest próba odpowiedzi na pytanie o legalność wystąpienia z Organizacji Narodów Zjednoczonych. W związku z tym, że Karta Narodów Zjednoczonych, jako akt założycielski Organizacji, nie zawiera odpowiednich postanowień w tym zakresie, autor postanawia odwołać się do ogólnych reguł prawa traktatów i na tej podstawie dokonać stosownej analizy. Posiłkując się regulacjami Konwencji wiedeńskiej o prawie traktatów, przybliża i charakteryzuje te przesłanki, które na gruncie prawa zwyczajowego pozwalają domniemywać istnienie możliwości jednostronnego wypowiedzenia umowy międzynarodowej. Autor odnosi się w pierwszej kolejności do intencji towarzyszących stronom Karty Narodów Zjednoczonych w momencie jej opracowywania, a następnie do natury wspomnianego traktatu. W następstwie poczynionych ustaleń dochodzi do wniosku, że ani zamiar stron wyrażony w trakcie prac przygotowawczych, ani natura Karty Narodów Zjednoczonych nie dają wystarczających podstaw do uznania, że akt wystąpienia z ONZ pozostaje w zgodzie z normami prawa międzynarodowego.

Słowa kluczowe: wystąpienie z ONZ, Karta Narodów Zjednoczonych, prawo traktatów, Indonezja, prace przygotowawcze, natura umowy międzynarodowej, klauzula *rebus sic stantibus*

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