

**WITHDRAWAL OF A MEMBER STATE FROM  
AN INTERNATIONAL ORGANIZATION  
DESPITE THE LACK OF A LEGAL BASIS**

**WYSTĄPIENIE PAŃSTWA CZŁONKOWSKIEGO  
Z ORGANIZACJI MIĘDZYNARODOWEJ  
POMIMO BRAKU PODSTAWY PRAWNEJ**

Dr. Sabina Kubas

University of Rzeszów

e-mail: skubas@ur.edu.pl; <https://orcid.org/0000-0002-6581-7105>

**Abstract**

The possibility of withdrawing from an international organization is the right to sever the membership. It takes place on the basis of the provisions contained in the founding act. As a rule, these regulations are foreseen in the membership chapter and contain specific stages, the transition of which becomes necessary in order for effective withdrawal. However, these are not uniform regulations, because among the many statutes of international organizations there are also those that in their provisions do not contain any regulations that would refer in any way to the possible occurrence. A question then arises as to how a state that wants to leave the organization should do so and what effects its actions will bring.

**Keywords:** international organization, state, public international law, international agreement

**Abstrakt**

Możliwość wystąpienia państwa z organizacji międzynarodowej to prawo do zerwania więzi członkowskiej. Odbyna się to na podstawie przepisów zawartych w akcie założycielskim. Z reguły regulacje te przewidziane są w rozdziale o członkostwie i zawierają określone etapy, których przejście staje się konieczne w celu skutecznego wycofania się. Nie są to jednak unormowania jednolite, gdyż wśród wielu statutów organizacji międzynarodowych są też takie, które w swoich

postanowieniach nie zawierają regulacji, które w jakikolwiek sposób odnosiłyby się do możliwego wystąpienia. Powstaje wtedy pytanie, w jaki sposób państwo, które chce opuścić organizację, powinno to zrobić i jakie efekty przyniosą jego działania.

**Słowa kluczowe:** organizacja międzynarodowa, państwo, prawo międzynarodowe publiczne, umowa międzynarodowa

## Introduction

The voluntary membership of states in international organizations is reflected in the right of member states to leave the organization, freeing themselves from the obligations imposed and restrictions on the freedom of action [Wiśniewska 2006, 54].

The founding agreement as the basic document creating an international organization, which in its content contains legal norms relating to the conditions of accession, does not always regulate the possibility of withdrawing from it. These are not obligatory regulations without which the organization could not be established and function. It is only up to the will of the founding states to introduce the withdrawal clause, and only they have an impact on the shape of the provisions on this subject [Galewska 2013, 172].

The problem of the state's right to withdraw from an agreement, which is nothing *expressis verbis* regarding expiry, including withdrawal, is recognized in the doctrine as one of the "most difficult problems of treaty law." It is related to the *pacta sunt servanda* principle of treaty relations, which concerns the freedom of states to exercise their fundamental right *ius contrahendi*. The need to consider the issue of having the right to withdraw from an international organization in a situation where its statute is silent on this subject is explained in two theoretical positions. In the first of them, the founding agreement of an international organization is treated on an equal footing with other international agreements. Therefore, the contracting state cannot unilaterally free itself from its obligations. Withdrawal from the contract is possible when he allows it, in accordance with the procedure prescribed therein, or if all others agree to it. Otherwise, if each state could at any time evade the performance of its obligations by notifying the withdrawal from the contract, it would violate

the *pacta sunt servanda* principle, which is the binding force of international agreements [Wiśniewska 2006, 21-22].

The second position justifying the explanation of the possibility of a state withdrawing from an organization, the statute of which is silent on this subject, is to indicate the diversity of international agreements and the application of the principles of treaty law to them. Founding agreements are often modified during their implementation by modifying them as a result of decisions taken by a majority of the Member States' votes. By participating in an organization, the state may experience its evolution to such an extent that further membership could run counter to its interests. It is against the principle of state sovereignty to claim that a member entity must remain in the organization due to the absence of a withdrawal clause. Anything not expressly stated in the founding act as a state obligation falls under the exclusive competence of the state. The absence of a clause in the statute of the organization means that the state is entitled to such action by virtue of its sovereignty, and it may be limited only on the basis of explicit provisions introduced voluntarily by states into the founding act [ibid., 27-28].

The aim of this study is to present, on the comparative law level, the procedure of a member state's withdrawal from international organizations in the absence of a legal basis contained in the founding act. In this study, the analytical-legal and legal-comparative methods were used, which allowed for an appropriate interpretation of the statutory provisions and drawing conclusions about their application.

### **1. The practice of countries withdrawing from international organizations despite the lack of a withdrawal clause**

The lack of legal regulations on the possibility of leaving the structures of the United Nations did not prevent Indonesia from taking such a step. It notified the UN Secretary General of its intention on January 20, 1965, justifying its intention to elect Malaysia to the UN Security Council. Indonesia did not describe its speech as a permanent decision, emphasizing that it was taking place at this stage and in the present circumstances, and it did not mean that it would cease cooperation with the United

Nations [Kończal 2015, 99].<sup>1</sup> Indonesia's intention was to continue its efforts to implement the principles of the UN Charter, but remain outside the organization itself.<sup>2</sup> On September 19, 1966, the new Indonesian government notified the United Nations that it had decided to fully cooperate with the organization.<sup>3</sup> However, this was not considered an accession to the organization, but a restoration of membership status. Therefore, the procedure for admitting the country to the UN was not followed [Barcik and Srogosz 2017, 524].

Until 1954, the United Nations Educational, Culture and Science Organization did not include in its founding act provisions enabling the withdrawal of a member state, and yet such a practice took place. The founding states did not recognize any withdrawals. They believed that withdrawal was impossible, unless the constitution expressly provided for it, and consequently states were obliged to implement all rights and obligations of members. This view led to many difficulties because the organization had not developed any means to compel states to cooperate. Despite the views thus constructed, three countries decided to leave UNESCO structures. These were Hungary, Poland and Czechoslovakia, which left it at the end of 1952 and the beginning of 1953. As a result of such actions, UNESCO decided to include a withdrawal clause in its statutory provisions. However, before these steps were formally taken, Hungary (June 1, 1954), Poland (June 18, 1954) and Czechoslovakia (August 9, 1954) decided to resume cooperation with this organization [Schermers and Blokker 2003, 103].

The implementation of the statutory provisions of the WHO, which has not introduced withdrawal standards, gives rise to many interesting cases in which Member States try to influence the organization. The first concerns the situation of a member who has formally reserved the right to appear when submitting the accession document. Currently, this right is exercised by the United States, which, by presenting the Secretary-General of the United Nations in 1948 with a document of recognition, formally reserved the right to withdraw from membership one year in advance. In the absence of a specific provision in the WHO's founding act, the UN

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<sup>1</sup> See also: Pączek 2018, 119.

<sup>2</sup> UN Doc. S/6157 1965.

<sup>3</sup> UN Doc. A/6419 and S/7498 1966.

Secretary General stated that he was unable to establish whether the United States became a party to it as a result of the reservation made. The Health Assembly included, in accordance with Article 75 of the WHO Constitution,<sup>4</sup> settling all questions concerning the interpretation and application of its provisions. It considered the matter and, in the absence of objections, decided to accept the United States as a full member. Whether another state could claim this right is a question that can be considered. The Indian delegate underlined at the first Assembly in 1946 that, since no member state should enjoy a more privileged position than the other, the Assembly should provide a general interpretation that any member may terminate membership with one year's notice. No comments were made on this request and the right of withdrawal remained an unresolved issue for years [Burci and Vignes 2004, 29].

The second of the cases in which it seems possible to withdraw under the WHO statute concerns changes to the constitution. The 1946 conference transcript contains a declaration safeguarding the position of a member state that may not be able to accept a constitutional amendment. During the ongoing debates, the Indian delegation submitted a text that amendments should only be binding on those members who had ratified them. This application was later withdrawn provided that a statement that "a member is not obliged to remain in the organization if his rights and obligations as such have been changed by a constitutional amendment with which he has disagreed and cannot accept" will be read plenary session. There were no objections to this formally registered declaration and there appears to be a reasonable opportunity to withdraw. However, it should be remembered that the constitution is completely silent on the question of speaking. It was not until 1949 that the first three member states sent the Director General a notice to leave the organization. In the telegram, he replied that he could not consider such a notification a withdrawal because the WHO constitution did not provide for such a provision. He referred the matter to the Management Board and the latter in turn

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<sup>4</sup> Constitution of the World Health Organization, the Agreement concluded by the Governments represented at the International Conference on Health and the Protocol concerning the International Office of Public Hygiene of 22 July 1946, Journal of Laws of 1948, No. 61, item 477 as amended.

to the Assembly. In the debates that arose, neither the implicit recognition by the previous Assembly of the right to request as requested by the United States nor the declaration made by India during the talks related to the admission of the United States was mentioned. It was felt within the Assembly that its actions should be directed towards reconsidering the decisions of the Member States concerned and ignoring the constitutional problems arising from such withdrawals [ibid., 30].

The lack of a clause to withdraw from an international organization has also been practiced under the treaties that shape the European Community. The first legal act that regulated this procedure was the Constitutional Treaty,<sup>5</sup> rejected in referenda by Belgium and France. The relevant withdrawal provisions have been transferred to the Lisbon Treaty,<sup>6</sup> which entered into force on 1 December 2009 [Ekstowicz 2011, 96]. In this case, attention should be paid to the issue of the emergence of Greenland, which left the structures of the EC on February 1, 1985. This is a special case, because the European regulations at that time did not provide for a withdrawal clause, and yet the withdrawal had real effects [Kobza 2018, 9]. In a referendum in 1982, a majority of Greenlanders voted in favor. The main problem was the lack of acceptance for the common fisheries policy. These events meant that since 1985 Greenland has the status of an associated overseas territory, and its relations with the European Union are governed by separate agreements [Tomala 2014, 118]. The most important regulations include the fishing agreement of 1985, which, *inter alia*, determines the fees for making fisheries available to fishermen from the European Union countries, and on the other hand, allows for duty-free import of fish products to the European Union market.<sup>7</sup>

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<sup>5</sup> Constitutional Treaty of 29 October 2004, Official Journal of the European Union, C series of 16 December 2004, No 310, item 1.

<sup>6</sup> Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community of 13 December 2007, Official Journal of the European Union, C series of 17 December 2007, No 306, item 01.

<sup>7</sup> Agreement on fisheries between the European Economic Community of the one part and the Government of Denmark and the Local Government of Greenland of the other part of 1 February 1985, Official Journal of the European Union, L series of 1985, No. 29, item 9 as amended.

The only Member State that decided to leave the European Union after the introduction of the withdrawal clause in 2009 is the United Kingdom. It notified its intention to the European Council on March 29, 2017, following a referendum in which voters were in favor of speaking out [Łazowski 2019, 72]. On January 21, 2020, the President of the European Council Charles Michel and the President of the European Commission Ursula von der Leyen signed an agreement in Brussels on the withdrawal of Great Britain from the European Union. On the same day in London, the document was signed by Prime Minister Boris Johnson. Eight days later, the European Parliament approved the agreement in plenary. On 30 January 2020, the Council adopted, by written procedure, a decision to conclude the “Brexit” agreement on behalf of the European Union, which entered into force on 31 January 2020 at midnight.<sup>8</sup>

As the above-mentioned practice of applying the occurrence clause shows, only the actual state of affairs makes it possible to understand it empirically. The time limits specified in the regulations are not always confirmed in practice. Nevertheless, a correct interpretation of the course of the withdrawal procedure is possible only when the legal norms are broadly systematized, and the entities that are authorized to implement them do it in accordance with the intention of the authors of the founding act.

## **2. Views of representatives of the literature on the withdrawal of a member state from an international organization despite the lack of a legal basis**

Summing up, some theoreticians of public international law and the law of international organizations (e.g. H. Kelsen, G. Schwarzenberger) believe that the founding act of an international organization is the same as other international agreements. Consequently, according to the fundamental principles of international treaty law, no state may unilaterally withdraw from the organization and thus evade the performance of its obligations

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<sup>8</sup> Press release on the adoption of the decision to conclude the Withdrawal Agreement by the Council of 30 January 2020, available at: <https://www.consilium.europa.eu/en/press/press-releases/2020/01/30/brexit-council-adopts-decision-to-conclude-the-withdrawal-agreement/> [accessed: 02.02.2020].

except by agreement and with the consent of the other Member States [Doliwa-Klepacki 1997, 100].

There is also a second group of views (W. Morawiecki, L. Ehrlich), which constitute the vast majority and assume that from the point of view of the applicability of the principles of treaty law, one should distinguish between international bilateral agreements, international multilateral agreements and founding agreements of international organizations. Contrary to the former, the founding agreements are relatively frequently modified during their implementation, and many of them may be amended by a majority of the votes of the member states. By joining the founding agreement, the state is not able to predict the direction in which the evolution of obligations resulting from its provisions may go. At the same time, it is possible to develop these obligations without changing the founding agreement as a result of the interpretation of its provisions by the competent organs of the organization. In this situation, the state cannot be demanded to participate in an organization the activities of which have evolved and are contrary to its interests. Thus, where the founding agreement of an international organization does not say anything about the possibility of withdrawal, it is presumed that, by virtue of their sovereignty, the Member States have the right to withdraw from the organization. However, they cannot do so if they have agreed to include in the founding agreement provisions prohibiting them from occurring within a specified period or only after meeting the conditions set out in it [ibid., 100].

### **Summary**

The omission of legal regulations concerning the withdrawal of a member state from an international organization creates a legal loophole which undoubtedly benefits states. On the one hand, they have full freedom to leave an international organization in terms of the procedure and formal issues, but on the other hand, they do not have the appropriate legal awareness that would allow them to prepare for each stage of breaking the membership, which was regulated in the founding act. It should be pointed out that it would be appropriate to address the issue of state membership in international organizations uniformly. The issues of membership acquisition and its termination should have a common denominator in terms



of the possibility of breaking the membership ties, as well as carrying out the necessary procedure.

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