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NOTES

THE NEW SECESSION

(- - A Study of the Legal Right of the United States to Withdraw from the United Nations - -)

HOWARD NEWCOMB MORSE*

There are a great many secessionists in America today, but they do not advocate the secession of one or more states from the United States; rather, they advocate the secession of the United States from the United Nations organization. Ninety-one years after the secession of the State of South Carolina from the United States, strangely enough the majority of the large number of American citizens favoring the new secession seem to be found not south of the Ohio river but in the Midwest.

By and large, the legal arguments which could be used to justify the secession of the Southern states in the last century are just as applicable to the new secession in this century.¹

In the Charter of the United Nations signed at the United Nations Conference on International Organization in San Francisco on June 26, 1945, the secession of a state from the United Nations organization was neither expressly nor impliedly prohibited. The Charter of the United Nations impliedly grants the right of secession therefrom, for the voluntary termination of membership is a natural consequence of the voluntary commencement of membership and the right of a state to secede from the United Nations is a natural consequence of the right of the United Nations under Article VI to expel a state.

Since the Charter of the United Nations includes no unamendable provision (such as our Constitution of the United States contains, i.e., no state, without its consent, can be deprived of its equal suffrage in the United States Senate),² a member state of the United Nations should not have to be bound by an amendment to the charter which such member state had neither voted for nor ratified.

The right of the new secession is attested to beyond a reasonable doubt and to a moral certainty by the declaration of interpretation in the Report of Committed I/2 as approved by Commission I and the Conference in plenary session which states that:

* Member of the bars of the Supreme Courts of Georgia and the United States. American Association of Law Libraries, in a recent letter, stated that a count in the author index of legal periodicals from August, 1946, to date reveals that Mr. Morse's name "leads the list of American authors of legal periodical literature insofar as volume of published material is concerned."

¹ Morse, Howard Newcomb, *The Doctrines of Nullification and Secession—A Historical Study*,

² The S.C. Law Quarterly 245 (1950).

² U.S. Const., Art. V.

"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."³

In their book entitled *Charter of the United Nations - - Commentary and Documents* Professor Leland M. Goodrich and Professor Edvard Hambro wrote as follows:

"...the manner in which this declaration was adopted would seem to justify its being considered a generally accepted reservation with the same binding force as the charter itself."⁴

It is interesting to observe that in the foregoing book by Professors Goodrich and Hambro and in the testimony of three United States representatives—John Foster Dulles, one of the chief official advisors of the United States delegation to the San Francisco Conference, Green H. Hackworth, at that time the legal advisor of the Department of State and now judge of the International Court of Justice, and Leo Pasvolsky, the representative of the Department of State—before the United States Senate Committee on Foreign Relations the word "secession" was studiously avoided and the word "withdrawal," lacking the historical connotations of the other, was used.

Professors Goodrich and Hambro wrote as follows:

"Thus, it became more and more clear that the right of withdrawal must be accepted in one form or another. . . . Each member retains the power to withdraw at will."⁵

Mr. Dulles testified as follows:

"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."

³ U.N.C.I.O., Summary Report of Twenty-Eighth Meeting of Committee 1/2, June 17, 1945, Doc. 1086, 1/2/77 (Documents, VII, pp. 262-267).

⁴ Goodrich, Professor Leland M. and Professor Edvard Hambro, *Charter of the United Nations—Commentary and Documents*, World Peace Foundation, Boston, p. 144 (1949).

⁵ *Supra*, pp. 143, 145.

Mr. Hackworth testified as follows:

"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."

Mr. Pasvolsky testified as follows:

"The Chairman (Senator Connally). 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."

A cursory consideration of the right of secession of the United States from the United Nations might lead one to believe that a complication would result from the fact that the United Nations maintains its headquarters in the United States. However, this situation presents no problem as the following analogy will illustrate.

The embassy or legation in the United States of a foreign power is indeed considered in contemplation of the law as part of the sovereign jurisdiction of the homeland of the represented foreign power. But should the United States sever diplomatic relations with such foreign power, the foregoing condition ceases to exist.

Should the United States secede from the United Nations the idea of the employment of force by the other member nations to frustrate such action is remote for both legal and practical reasons. Professors Goodrich and Hambro in their book wrote that: "If the action is thought to be unjustified by the remaining members, no action will or can be taken to prevent it."⁶ The United States, unlike the Confederate States ninety-one years ago, is the dominant military power in the world today and, therefore, in a position to make good such secession and to uphold its legal right.

AMENDING THE U.S. CONSTITUTION; TWO MORE PROBLEMS

(1) ARE THEIR REJECTIONS BINDING?

By

FRANCIS L. DAILY*

(*Editor's Note*—Whether or not the suggested limitation of federal taxation of income becomes part of the Constitution might well be decided by answers to two vital questions of Constitutional law. In the October issue of this volume, 57 Dick. L. Rev. 86 Frank E. Packard discussed the first, i.e., whether the states could rescind resolutions memorializing Congress to propose such an amendment. The author here considers the second problem, i.e., whether state legislatures are bound by their prior rejections of the resolution.)

Probably almost everyone by now has heard of the movement to amend the Constitution of the United States so as to limit federal income tax rates to a maximum of twenty-five per cent in peacetime, by causing state legislatures to adopt resolutions memorializing the Congress to call a convention for the purpose of proposing such an amendment.

⁶ Goodrich, Professor Leland M. and Professor Edvard Hambro, *Charter of the United Nations—Commentary and Documents*, World Peace Foundation, Boston, p. 145 (1949).

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