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BREXIT IN THE LIGHT OF THE INTERNATIONAL LAW ON TREATIES

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Abstract: The European Union presents a unique organism. It is international organization *sui generis*, characterized as supranational. Specific relations and ties bound states united in the European Union, thus posing an intriguing question – is a withdrawal from the EU an option at all. The Treaty of Lisbon has identified for the first time the option of termination of the membership status. After Brexit, the withdrawal clause has come under attention and in the near future, it will be applied. Compliance with the withdrawal clause is a long-term process. It supposes negotiating period and conclusion of a new international treaty. As first ever in the history of the EU, it will for sure generate precedents, and be an important reservoir of experience, for all potential future cases. Nevertheless, the main focus of this paper is on resolving the relation between general international law and EU law. The importance of this relation can emerge in the situation if there is no arrangement between the EU and Great Britain on elements of the termination of the member status.

Key words: international law on treaties, international customary law, EU law, negotiations, accession, withdrawal.

INTRODUCTION

As the first state ever leaving the EU, Great Britain has entered the period of uncertainty.[2] After several decades of participating and creating a completely new form of cooperation among states, Britain is faced with many questions and also

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[2] Greenland presents the first example of the withdrawal, yet with some very specific elements that disable this example to constitute a precedent. Greenland decided to leave the then European Communities on the referendum held in 1982, voting for exit by 53% and to remain by 47%. However, since Greenland was not an independent state, member of the EC, but part of Denmark, member state of the EC, referendum could not be considered as the legal basis for the EC withdrawal. The outcome of the referendum was found in the reduction of the territorial

many potentially complicate discussions that may arise during the time. The period of uncertainty is also appearing for the EU itself and other EU member states, as well as for other non-EU member states and international organizations that are in the multiple legal relations with the EU and with the GB (Nicolaides, 2013).

Thus, analyses and interpretations of various modalities of the withdrawal are of the utmost importance. At the moment it is debatable what corpus of norms governs the termination of the membership status in the EU; is it an *acquis* or international law, or both of them?

Legal stability is one of the essential elements of every legal system. Its function, *inter alia*, is to provide an applicable legal formula for each and every situation that appears in relations. Examination of the withdrawal modalities should help us understand the rights and obligations of each side in the process, as well as a procedural mechanism that is triggered. Rules on withdrawal as they are stipulated in the Lisbon Treaty are rather new and they cannot be applied routinely (Zečević, 2015).[3] It is worth mentioning, in the addition to these introductory notes, that the issue of withdrawal and legal analysis of the Article 50 of the Treaty on the European Union did not attract a significant legal theoretical examination either (Hillion, 2015). It has become an interesting issue since the Britain has started formalizing its referendum (Kulpa, 2016). In such a combination – of a rather young legal norm, theoretically non-examined sufficiently, it becomes more understandable why such attention has been attracted to the elaboration of the forthcoming legal procedure of the withdrawal.

At the moment, a well-known fact is that Great Britain has undertaken the referendum on the issue of its status in the EU, which resulted in the prevailing opinion for exit from the EU.[4] From the purely legal side, it is also well known that Britain's referendum is not self-executive, thus it is not providing an immediate legal effect. Referendum provides the Government with the information on the public opinion of Britons about the membership in the EU and obliges the Government to undertake all necessary steps to fulfill the will of its citizens.[5]

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jurisdiction of the Treaties through a Treaty change ratified by all Member States of the EC. Such an arrangement is exception, grounded on specific Greenland status of former colony, geographically distanced from Europe.

[3] The Treaty of Lisbon was signed by the EU member states on 13 December 2007 and entered into force on 1 December 2009.

[4] The referendum was held on 23rd June 2016, opting for leave or remain in the EU. The outcome was 51,89 % to leave, while 48.11 % voted to remain in the EU. It should be remembered that Great Britain held a referendum in 1975 on whether it should stay in the European Economic Community. Britain proved its euro-skeptic position also in avoiding the monetary union and rejecting to accept the euro as a common currency.

[5] There is the ongoing debate in Great Britain on who has the power within the GB to trigger Article 50 of the Treaty on the European Union. There are four groups of opinions – power is on the

During several previous months, since the referendum, the focus was placed on the elaboration of the legal basis and proper method of terminating Britain`s membership in the European Union. The most usual approach was that legal formula for the withdrawal should be found in the Treaty on the EU and its Article 50.

Terminating the status of a member in an international organization is governed by its main founding documents, but yet again founding treaty for an international organization is an international treaty, and it is governed by the corpus of international public law on treaties. Consequently, the syllogism for Britain's withdrawal from the EU should be perceived in a wider range of international norms.

ARTICLE 50 OF THE TREATY ON EUROPEAN UNION

Termination of a membership status, whether in international treaties or international organizations, is quite a delicate topic for the international law (Milisavljević, 2008). The main logic of every entity, legal system as well, is to provide existence and stability. The League of Nations presents a helpful example, providing the conclusion that easy exit mechanism is not proven as a quality solution, neither for the organization itself nor for the goals that it is supposed to achieve.

Post Second World War approach was generally built on that experience, discouraging options for an easy termination of the membership status. Such an approach was incorporated within the UN Charter. The same can be stated for the EU (Athanassiou, 2009).

Founding legal acts of the EEC and later of the EU did not incorporate an exit clause. The Treaty of Maastricht from 1992, although characterized as a turning point from the EEC to the EU, did not invoke the exit clause (Baroncelli, Spagnolo and Talani, 2008). Prior to the naissance of the Lisbon Treaty, withdrawal issue was considered as the notion of general International Public Law, already prescribed in the Vienna Convention on the Law of Treaties and in the customary international law.[6]

Government on the basis on its "prerogative powers"; Government is to trigger the Article 50 after the authorization of the Parliament; Government has the power itself to trigger Article 50 on the statutory basis; power is on the Parliament based on the constitutional convention. For further reading on diversity of thoughts, following web-sites could be advised: https://public lawforeveryone.com/2016/06/26/brexit-can-the-eu-force-the-uk-to-trigger-the-two-year-brexit-process/;http://jackofkent.com/2016/06/where-we-are-now-with-article-50-decision-notify-and-devolution-issues/; https://ukconstitutionallaw.org/2016/06/27/nick-barber-tom-hickman-and-jeff-king-pulling-the-article-50-trigger-parliaments-indispensable-role/; https://ukconstitutional law.org/2016/06/29/adam-tucker-triggering-brexit-a-decision-for-the-government-but-under-parliamentary-scrutiny/; https://ukconstitutionallaw.org/2016/07/01/alison-l-young-brexit-article-50-and-the-joys-of-a-flexible-evolving-un-codified-constitution/

[6] With the purpose of clarification it could be mentioned that Treaty of Maastricht from 1992, also known as the Treaty on the European Union (TEU) and the Treaty of Rome from 1958, also

Generally, exit modalities were developed in the Vienna Convention on International Law on Treaties, allowing even unilateral exit from a treaty. This possibility is firmly embodied in the well-known principle *rebus sic stantibus*. The Vienna Convention approach was considered suitable for the application in the EU as well. Notwithstanding rightness of such approach, it should be stressed that international law on treaties is prescribed in a general manner, covering a wide variety of various treaties. One of a kind is an international treaty as a founding legal act for an international organization. Yet, quite another is a kind of an international treaty as a founding legal act for an international organization that is *sui generis* (Klabers, 2016).

It is helpful for the upcoming analysis to clarify that the Lisbon Treaty, by its legal nature, is the international treaty, concluded and finalized according to the International Public Law (Ziegler, 2016; Wyrozumska, 2013). Although the relation between international public law and the law of the European Union is very requiring topic in itself and certainly cannot be elaborated within this paper, it is nevertheless necessary to mention just several most important standpoints. From the purely theoretical standpoint, the relation between the international law and the EU law can be considered in theoretical terms of the relationship between international law and national law, i.e. in the frames of two major doctrines of monism and dualism (Wessel, 2012). From the point of the normative framework, a tripartite relation exists between international law – EU law – national law of the EU member states. The Lisbon Treaty in Article 3 (5) establishes compatibility of the EU law with the international law, elaborating the manifestation of "the relation with the wider world".[7] From the point of the law applied it should be underlined that the Court of Justice of the European Union strongly supports the direct application of the international law, both treaty and customary (Simović, 2012; Ziegler, 2016).[8] The same applies to the methods of the interpretation.

known as the Treaty on the Functioning of the European Union (TFEU) were modified and collected within the Treaty of Lisbon from 2007. The Treaty of Lisbon, also known as the Reform Treaty, is the first EU treaty defining withdrawal of a member state. Yet, the title and the abbreviation TEU is still in use, marking the Treaty on the European Union as amended by the Reform Treaty. Article 50 TEU as it is usually marked is the article of the Treaty of Lisbon and not of the Treaty of Maastricht.

[7] Treaty on the European Union, Article 3 (5): "In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter."

[8] Cases that are usually considered as turning point in direct application of the international law before the EU courts are Opel Austria GmbH v. Council of the European Union, Judgment of 22 January 1997; Racke GmbH & Co. v Hauptzollamt Mainz, Judgment of 16 June 1998. For further reading on the jurisprudence of Court of Justice of the European Union see: Allan Rosas,

On the other side, the Lisbon Treaty is the founding treaty of a very specific international organization (Simović, 2008). During the process of the creation of a constitution for Europe, main tendency was to organize a closer Union with more firm structure. Although it was a specific organization from the very beginning, the organization was going through the developing process from *sui generis* organization towards the supranational organization. This should be inevitably remembered when applying and interpreting the Treaty of Lisbon.

The wording of the withdrawal from the EU as stipulated in the Article 50 (1) provides the general possibility for a member state to exit the EU. It is formulated in a manner with no restrictions whatsoever to the free will of a member state not to prolong its membership status. It reads: `Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements. An additional element to the open-exit approach is to be found in addressing to the accordance with constitutional requirements. That could be understood twofold: 1) a manner of expressing the will to exit and 2) triggering power to start the procedure of exit.

Stipulation of the first paragraph shows a discrepancy between the EU accession procedure and exit procedure (Hillion, 2012).While other international organizations propose easy entering into the organization and difficult withdrawal, rules for membership in the EU are constructed oppositely. An applicant state to the membership in the EU is required to adapt its national legal system to the EU communitarian law for the admission (Todić, 2014). Thus, even in the process of the accession a new member state should thoroughly adapt its legal system to the EU legal system. Consequently, it can be even more intriguing why the first step of the withdrawal procedure is stipulated in terms of national, i.e. constitutional regime rather than the EU law. Reference to act "according" to its law is notorious for a state, for it is expected for a state to act in accordance with its law.

Sequel of the Article 50 imposes several requirements. Withdrawal, although decided by the free will of a member state, is not unilateral. On the contrary, it is an issue negotiated and précised within the new international treaty. Such a treaty covers arrangements for the withdrawal and the framework for the future relationship of ex-member state and the Union. Fields of the treaty and the procedure for its adoption, nevertheless, can prove to be very complicated, even non-reachable in some aspects.

In paragraph 2, further formal procedural steps of the withdrawal are described. Paragraph 2 reads as follows:

EgilsLevits, Yves Bot (eds.), The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case Law, Springer, 2013; Jan Wouters, Dries Van Eeckhoutte, Giving Effect to Customary International Law through European Community Law, Institute for International Law, Faculty of Law, Leuven, 2001.

"2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament."

The approach of both Article 50, paragraph 2 of the Treaty on the EU and Article 218, paragraph 3 of the Treaty on the Functioning of the EU is predominantly procedural. It basically stipulates jurisdiction of the EU organs (Šabič, Cerjak, 2012).

It is worth mentioning Article 218:

3. The Commission, or the High Representative of the Union for Foreign Affairs and Security Policy where the agreement envisaged relates exclusively or principally to the common foreign and security policy, shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team.

The rest of the TEU Article 50 is also dedicated to the procedural matters. It stipulates that treaties will cease to apply to the withdrawing State from the date of entry into force of the withdrawal agreement. If the withdrawing state and the EU could not reach an agreement within the period of two years, following solutions could be applied – termination of the membership as notified *ex nunc*or the extension of the negotiating process if unanimously decided by the European Council. Other procedural elements cover composition of the European Council, the voting majority, as well as the procedure of rejoining.

The procedure itself cannot be characterized as complicated or simple by the procedural arrangement only. While there are no substantive requirements in the Article 50, they are nevertheless embedded in the withdrawal procedure.

If we try once again to compare the accession and withdrawing procedure in pursuit for a constant, we will realize easily that in the process of accession there are two parties with the same aim, while in the process of the withdrawal two parties do not necessarily share the same goal and harmonized standpoints. Thus, if the procedure of the accession was considered as complicated and requiring, procedure of withdrawing can turn into even more complicated and even hostile.

The technique of the withdrawal defining is, as already cleared, in the form of a treaty. One of the presumptions of the international law on treaties is that, when negotiating, parties should be in the same position or at least to hold similar negotiating power. Since Brexit, it has been argued that the withdrawal provision

advantages the EU and that a withdrawing state is not in the same position, since it should face 27 states on the other side (Kulpa, 2016). Previously, paragraph 3 was read oppositely. One of the interpretations was that negotiation is obliged as a process, not as an outcome. The wording of the Article 50 (3) does not require negotiation to be successful and finalized, since the withdrawing state can nevertheless cease to be a member after two years of unsuccessful negotiations (Hillion, 2015).

When opting for the interpretation – *pro* prevailing withdrawing states position or *pro* prevailing influence of the EU, it should be kept in mind that negotiations could be extended unilaterally by the EU.

Elaboration of the Article 50 turned to be strikingly different before and after Brexit. While the pure theoretical analysis does not focus on the exact example or case, interpretation of the norm in the context of concrete case does have the optic of that very specific case. This is exactly how Brexit influenced the interpretation of the Article 50. Brexit has emerged in a very difficult period for the EU. Europe, already struck by the economic crisis, has been suffering under the enormous migrant crisis. In circumstances like that, leaving the EU could be understood as a hostile gesture and as such provide negotiations that are not friendly. At the moment when this paper is created, there is no yet an outcome; on the contrary, the negotiations did not yet start. There are just comments from various actors in the forthcoming process that do show tension.

The process of negotiations could turn to be very difficult. Although Article 50 in paragraph 3 stipulates that "Treaties shall cease to apply" the rest of the huge *acquis* stays already embedded into the national legal system of the withdrawing state. As such, it still can provoke rights and duties in all areas of cooperation between the EU states. A huge amount of legislation in combination with different subject matters and jurisdictional aspects (for example, whether an issue is in an exclusive EU jurisdiction, whether it is in the field of relation with non-EU states etc.) makes it impossible to formulate one formula and apply it identically in all potential situations. A withdrawing state would find itself obliged to replace EU law with its own, new legislation and to isolate itself as well from the effects of the already existing EU law. The same can be stated for the agreements between EU and non-EU states. After terminating its status, a withdrawing state should arrange and regulate its relations and cooperation with non-EU states from the beginning. All these issues should be defined in the withdrawing treaties. It is of the utmost importance for both sides to precise in what time frame withdrawing state should exclude its national legal system from the effects of the *acquis*.

Although substantial aspects of negotiation are not précised in the Article 50, areas that should be negotiated could be classified into two general categories: (1) issues concerning directly individuals and (2) issues concerning a withdrawing state

and the EU (Reider, 2013). Issues concerning individuals should generally be negotiated in the light of the main European values – free movement of persons, with all other aspects attached to it. One of the most important and far-reaching aspects of the free movement of persons is free movement of workers and employment law issues. Issues concerning the withdrawing state that could prove to be the most difficult are in the sphere of trade and the access to the EU market (Loo, Blockmans, 2016). For the EU itself, on the other hand, one of the most important issues would be financial aspect of the withdrawal and especially – potential financial arrangements approved only for the EU states that the withdrawing state would have a legal basis to continue absorbing, special loan agreements shaped exclusively for the EU states and lack of the income as the consequence of one member-less. The question of damages for the other states that may be provoked by the termination of the membership status is yet another financial-trade issue that may occur as complicated and difficult to solve during the process of negotiations (Wyrozumska, 2013; Loo et al., 2016).

Other consequences for the EU would be a slightly different composition of organs, less diversity in staff and state officials (Nicolaides, 2013).[9] These consequences are a direct and inevitable outcome of the termination of the membership status. There is yet another aspect that should be cleared through the withdrawing negotiations and formulated directly in the treaty. It concerns the jurisdiction of the Court of Justice of the European Union in all inter-temporal cases. There is a wide range of possible cases where legal relation has been created in terms of the EU law and where a legal consequence emerges after cessation of membership status, causing damage. Another aspect would be recognition and enforcement of the Courts decisions after the cessation.

REDIRECTION TOWARDS INTERNATIONAL LAW

The real complication may arise if a withdrawing member state and EU organs, i.e. other member states cannot reach the agreement on the termination of the membership status. What has the law to offer in that situation? Treaty on the European Union is the source of law that should be primarily applied, but if its application is blocked, international law could provide redirection.

As cleared earlier in this paper, the EU law must be coordinated with the international law. In other words, the EU is obliged to comply with the International

[9] For example Article 28(a) of the EU Staff Regulations stipulates that 'An official may be appointed only on condition that: he is a national of one of the Member States of the Union, unless an exception is authorised by the appointing authority, and enjoys his full rights as a citizen;' The same applies to contractual staff. According to the Staff Regulations, an official may be required to resign where he ceases to fulfil the conditions laid down in Article 28(a), which includes the nationality requirement (Article 49 of the Staff Regulation).

Law (Martines, 2014; Klabbers, 2015). Specifically, Treaty on the European Union, by its legal nature the international treaty, it is governed by international law, i.e. treaties and customs as the main sources (Ziegler, 2016). Thus, international law could offer the proper legal mechanism if by any chance Treaty on the EU is inapplicable (Lang, 2014).

International law on treaties is governed mostly by the Vienna Convention on Law of Treaties from 1969. If we go quickly through its Section 3 Termination and Suspension of the operation of treaties, the first model that is offered is the model grounded on the consent of the parties. The first version of this model is (a) withdrawal as précised in the very treaty; or, (b) if not précised in the treaty, reached by consent between parties (Article 54).

If we apply this rule to the present Brexit case, it is quite clear that the Vienna Convention Article 54 (a) is satisfied with the Article 50 of the Treaty on the European Union. The question is what happens if Article 50 is not applicable, meaning that parties, through the negotiation process, cannot reach the agreement?

A way out for the party, not willing to be the party anymore, can be found within the wording of the Article 62. A fundamental change of circumstances or better known in its Latin version *rebus sic stantibus*, as stipulated in the mentioned article, is not just another treaty norm. It is the general principle of law and it is also embedded in the corpus of common law (Garner, 1927). From the point of international law, it is with no doubt a norm of the customary international law and as such, it can be applied within and by the EU.

Rebus sic stantibus is not a provisory phrase. Its meaning is defined in literature in many different styles and with various adjectives (Shaw and Fournet, 2011). It is usually described as total, vital, essential, substantial change of circumstances since the entry of a treaty. It is a change that conflicts party-status to a treaty with the rights and welfare of the people (Garner, 1927).

Yet, there is not one and overwhelmingly accepted understanding of what exactly can be considered under fundamental change despite all offered descriptions and adjectives.

In the Brexit case, if we suppose that negotiations are deadlocked, it would be legally acceptable to turn to the Vienna Convention and to consider the referendum result as a fundamental change of circumstances. At the very beginning of this syllogism, let us underline once again that before the Lisbon Treaty withdrawal issue was considered as an issue regulated by the international law on treaties. The first conclusion would be with no doubt that Vienna Convention could be applied. Another aspect would be in the assessment on whether a referendum can be considered as a fundamental change of circumstances. Classical international law interpretation of the meaning of fundamental change given by Garner relies on the influence that change provokes on the rights and welfare of the people (Garner,

1927). If we apply that test to Brexit, it would for sure fulfill offered criteria (Herbst, 2005; Hofmeister, 2010).

For the purpose of yet another précising of the meaning of the fundamental change of circumstances, it should be stressed that the International Court of Justice has chosen the restrictive approach. In the Case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), in the Judgment from 1997, the International Court of Justice confirmed that "the stability of treaty relations requires that the plea of fundamental change of circumstances be applied only in exceptional cases" (paragraph 104). The Convention itself presents combined approach to the stipulation of *rebus sic stantibus* (Shaw and Fournet, 2011). It reads in its first paragraph - A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless: (a) The existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and (b) The effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

The opinion of the legal community of scholars that is presently discussing Brexit phenomena differs in various directions. There are firm standpoints that the Vienna Convention cannot be applied at all, toward opinions that the Vienna Convention can be applied, but not *rebus sic stantibus* clause, finalizing with the conclusion that application of the Vienna Convention and especially Article 62 would be *deus ex machina* (Armstrong, 2016; Georgopoulos, 2016; Odermatt, 2016; Gehring, 2016).

If we try to apply Article 62 to the present Brexit case, it would become obvious that it would be necessary to go through the process of interpretation (Viliger, 2011). Article 62 is not the type of a norm that can be just applied; it needs to be interpreted. From the previous analysis, it is clear that pure and simple linguistic interpretation is not sufficient. Means of interpretation should encompass *ratio* and *telos* of the referendum, or *ratio* and *telos* of arguments on which the referendum outcome was grounded. Thus, we can consider referendum as it is, as a specific procedural mean of expressing the will. On the other hand, we can consider the reasons that led to the outcome of the referendum as it is. Certainly, both aspects considered – substantive and procedural, form one whole when elaborating the potential for fundamental change. The most important difference between them is that the referendum outcome is clear and need no more elaboration. It is the prime method of expressing the will, where the international law must always rely on the free will of its subjects. It presents the will of the majority, modified compared to the primary expressed will at the moment of accession and as such could be (should be) considered as a fundamental change of circumstances for Great Britain. If we turn to the elaboration of the ground for the referendum outcome, dozens of them

could be offered. Probably, the most important fundamental change that occurred in the EU itself is a shift from primarily economic to primarily political organization. Another similarly important fundamental change within the EU is an expansion of EU members that unexpectedly led to a development of a deeply unbalanced Union rather than balanced one, what was the fundamental aim for the very founding of the Union. If we try to advocate different approach and state that Vienna Conventions Article 62 asks that the change of circumstances could not be foreseen by the parties, it is quite clear that Great Britain knew about the shift of the organization's character as well as for its extension. On the other hand, we can argue that those changes did constitute 'the essential basis' for the referendum outcome and as such essentially changed the will towards the membership status in the EU.

In the period that is to come, we will get the whole relationship between Great Britain and EU solved. In that sense, Brexit would be an excellent example and experience, probably capable of creating even a precedent in terms of withdrawal from the EU. Obviously, the essential collision in this case at the very end would be – loyalty to the treaty arrangement or loyalty to its own people.

CONCLUSION

The conclusion in terms of law, i.e. answering the question - what the law has to offer regarding the withdrawal from the EU, is clear and simple. Withdrawal from the EU is primarily defined within the Article 50 of the Treaty on the European Union. If the Treaty is inapplicable and serves as the means of blocking termination of member status, international law on treaties could be applied.

On the other hand, the conclusion on whether Brexit referendum could be treated as the fundamental change of circumstances for the membership status of Great Britain would be subjected to the interpretation process. Period of negotiations that is to come will certainly give directions how to value referendum in this very specific case.

Yet another conclusion that can be drawn is that redirecting the way-out from the EU by means of international law would be an extreme measure. If international law is needed, it would mean that relations between Great Britain and the EU are very hostile and tense. It would, by the very mechanism of *rebus sic stantibus* clause application, withdraw Great Britain completely from the Union, breaking all ties and relations, obligations and legal structure. At the end, it is not a scenario that would be appropriate for any side in this legal relationship.

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Tijana ŠURLAN

BREXIT U SVETLU MEĐUNARODNOG UGOVORNOG PRAVA

Apstrakt: Evropska Unija je specifična međunarodna je organizacaija*, sui generis* karaktera. Takođe, određuje se i kao supranacionalna organizacija. Države Evropske Unije međusobom povezane su u odnosima i vezama tako specifičnim i jakim da se postavlja pitanje da li je istupanje iz EU uopšte opcija. Po prvi put, istupanje iz EU predviđeno je Lisabonskim ugovorom. Međutim, tek posle Brexita klauzula o istupanju izazvala je pažnju i podstakla analizu. Ono što je sada sasvim jasno je da je proces primene i usaglašavanja sa odredbom Lisabonskog ugovora o istupanju iz EU dugotrajan proces. On podrazumeva proces pregovaranja i zaključenje novog međunarodnog ugovora. S obzirom na to da je istupanje Velike Britanije prvo istupanje iz EU, ono će sigurno kreirati precedent za sledeće

potencijalne slučajeve. S druge strane, s obzirom na dugotrajnost, delikatnost i potencijalni sukob interesa EU i Velike Britanije postavlja se pitanje da li u slučaju nemogućnosti rešenja odnosa po odredbi Lisabonskog ugovora, postoji neko drugo pravno pravilo koje bi bilo primenjivo. Fokus ovog rada usmeren je upravo na ovog pitanje i na iznalaženje opravdanosti pozivanja na međunarodno pravo o ugovorima.

Ključne reči: međunarodno ugovorno pravo, međunarodno običajno pravo, pravo Evropske unije, pregovarenje, pristupanje, istupanje.

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