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EU MEMBERSHIP AND AN INDEPENDENT BASQUE STATE

Lindsay Murphy*

I. INTRODUCTION

The process of establishing a union of European states began just over a half century ago.¹ The path to unity has presented a multitude of challenges that have been overcome, but many obstacles still remain on the road ahead.² One such obstacle is the rise of regionalism within certain European Union (EU) member states.³ Many of these regions have gained various levels of independence from their respective central governments.⁴ As a result of this independence, they have developed direct relations with other European regions and EU institutions, bypassing their central governments, and causing many to question the need for central governments at all.⁵ Spain, the UK, and Italy, EU countries where nationalist regions are demanding independence and the right to self-determination,⁶ are clear examples of this issue. As regions such as the Basque Country of Northern Spain, Scotland, and northern regions of Italy represented by the Northern League party seek

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¹ See generally THE EUROPEAN UNION: READINGS ON THE THEORY AND PRACTICE OF EUROPEAN INTEGRATION (Brent F. Nelsen & Alexander C-G. Stubb eds., 2d ed. 1998).

² *Id.*

³ John Newhouse, *Europe's Rising Regionalism*, FOREIGN AFF., Jan.-Feb. 1997, at 67.

⁴ *Id.*

⁵ *Id.*

⁶ Naomi Roht-Arriaza, The Committee on the Regions and the Role of Regional Governments in the European Union, 20 HASTINGS INT'L & COMP. L.REV. 413, 416 (1997); Lisbeth Kirk, Breakaway Regions to Lose EU Membership, Says Prodi, EUOBSERVER, Apr. 16, 2004, <http://euobserver.com> (search "Breakaway Regions;" then follow "Breakaway Regions" hyperlink).

their independence, they also assert their right to retain their status as European Union members once becoming independent states.⁷ Whether EU membership would carry over to newly independent regions is an obstacle that the EU treaties have yet to formally address.⁸ The purpose of this Comment is to consider the consequences of a nationalist region gaining independence from an existing EU member state. Specifically, it will explore the countervailing legal arguments of the Basque Country and the Spanish state regarding EU membership policy were the former one day to become an independent state.

Part II of this Comment will provide a brief background on the formation of the European Union and the criteria for admittance into the EU. It will consider the way in which the EU's overall goals of having stable institutions that guarantee democracy, rule of law, human rights, and the protection of minorities have shaped the entry criteria for candidate states.⁹ Such criteria include the requirements that states adopt the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms (commonly referred to as the European Convention on Human Rights),¹⁰ the United Nations International Covenant on Civil and Political Rights,¹¹ and the United Nations International Covenant on Economic, Social and Cultural Rights.¹² Part III will look specifically at the situation of the Basque Country in Northern Spain and its desire for independence. A historically isolated region, untouched by the successive invasions of the Iberian Peninsula over the centuries, the Basque Country has continually been regarded by many of its citizens as separate and apart from the Spanish state.¹³

⁷ Kirk, *supra* note 6.

⁸ *Id.*

⁹ Luis López Guerra, *The Challenges to Candidate States*, in CONSTITUTIONAL IMPLICATIONS OF ACCESSION TO THE EUROPEAN UNION 21, 23 (2002).

¹⁰ Convention for the Protection of Human Rights and Fundamental Freedoms (1950), available at <http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf>.

¹¹ International Covenant on Civil and Political Rights, G.A. Res. 2200A, U.N. GAOR, 3d Comm., 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (Dec. 16 1966), available at <http://www.ohchr.org/english/law/ccpr.htm>.

¹² International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A, U.N. GAOR, 3d Comm., 21st Sess., Supp. No. 16, at 48, U.N. Doc. A/6316 (Dec. 16 1966), available at <http://www.ohchr.org/english/law/cescr.htm>.

¹³ See generally Historia del Pais Vasco y del Euskara, <http://www.euskalnet.net/kondaira/esp/Euskara.html> (last visited Sept. 18, 2007).

Many Basques believe they have a right to self-determination.¹⁴ The Spanish government has adamantly and repeatedly refused the Basque claim to independence and, consequently, for close to forty years, has endured the political violence of the terrorist group ETA.¹⁵ Part IV will analyze the arguments for allowing EU membership to carry over to an independent Basque state and the consequences such would have on newly independent European states in general. It will focus on the ability of the Basque Country to fulfill the entry requirements mentioned in Part II (which are only a few of a much broader set of criteria). In light of the history of political violence in the Basque region, which is endorsed by the political groups seeking independence,¹⁶ and includes assassinations, kidnappings, and bombings against the Spanish state and Basque anti-separatists, this Comment will conclude in Part V that permitting EU membership to carry over to newly formed states, which have separated from existing member states, would directly conflict with the EU's principal aims of democracy, respect for human rights, and the protection of minorities. Therefore, in order to protect its stability as a democratic institution, the European Union should implement a policy requiring all newly independent states to reapply for EU membership.

II. BACKGROUND ON THE EUROPEAN UNION

A. *Formation*

The European Union is the product of a decades' long endeavor towards integration of the European states.¹⁷ Throughout this process, a consistent theme has been to create institutions and policies commonly shared and respected by all member states.¹⁸ Beginning in 1951 with the European Coal and Steel Community (ECSC), the organization of European states was intended originally as a means of soothing Franco-

¹⁴ See El Mundo Special Section on the Basque Country, http://www.elmundo.es/especiales/2002/10/nacional/pais_vasco/ordago.html (last visited Sept. 18, 2007).

¹⁵ *Id.*

¹⁶ El Mundo Special Section on ETA, <http://www.elmundo.es/eta/entorno/index.html> (last visited Sept. 18, 2007).

¹⁷ See generally THE EUROPEAN MOSAIC 16 (David Gowland, Basil O'Neill & Richard Dunphy eds., 2d. ed. 2000).

¹⁸ *Id.*

German relations after World War II and rebuilding the ravaged French and German economies.¹⁹ An invitation to join was extended to Italy, Belgium, Luxembourg, and the Netherlands, and all six parties gathered in Paris to sign the Treaty Establishing the European Coal and Steel Community (commonly referred to as the Treaty of Paris) in 1951.²⁰

By creating the ECSC, the signatory states' intentions were two-fold. Their immediate goal was to create a common coal and steel market, removing all trade barriers and instituting common policies with regard to these materials.²¹ The long-term goal envisioned by the Treaty of Paris signatories was to ensure peace and European unity.²² The Treaty's preamble stated that the signatories had "[R]esolved to substitute for age-old rivalries the merging of their essential interests; to create, by establishing an economic community, the basis for a broader and deeper community among peoples long divided by bloody conflicts."²³ The six member states ceded control over their coal and steel industries to four supranational institutions: the High Authority, the Assembly, the Council, and the European Court of Justice.²⁴ Each supranational institution jointly administered the ECSC.²⁵ While it was a small first step, and disappointing to many who had high aspirations of European unity, the creation of the ECSC began what would become a power union of European states.²⁶ According to David Gowland and Mark Cornwall, "[t]he idea of integrating first just one sector of the western European economy promised a 'spillover' effect leading to the integration of other sectors and ultimately to political integration."²⁷

Integration continued in 1957 with the signing of the Treaty Establishing the European Atomic Energy Community

¹⁹ DESMOND DINAN, *EVER CLOSER UNION?: AN INTRODUCTION TO EUROPEAN INTEGRATION* 25 (2d ed. 1999).

²⁰ Karen Davies, *Understanding European Union Law* 6 (2d ed. 2003).

²¹ *Id.*

²² *Id.*

²³ Treaty Establishing the European Coal and Steel Community, Preamble, Apr. 18 1951, available at http://www.unizar.es/euroconstitucion/library/historic%20documents/Paris/TRAITES_1951_CECA.pdf.

²⁴ DAVIES, *supra* note 20, at 6.

²⁵ DAVIES, *supra* note 20, at 6.

²⁶ See generally THE EUROPEAN MOSAIC, *supra* note 17.

²⁷ *Id.* at 16.

(Euratom Treaty).²⁸ The six ECSC countries now committed themselves to “the furtherance of atomic energy for peaceful purposes” by forming the European Atomic Energy Committee.²⁹ As a result of Euratom, the atomic energy industries of the six member states was now to be controlled by the Assembly and European Court of Justice, which also oversaw the administration of the coal and steel industries, as well as a separate High Authority and Council.³⁰

Simultaneous with the signing of the Euratom Treaty, the six member states also signed the Treaty Establishing the European Economic Community (commonly known as the Treaty of Rome).³¹ The purpose of the European Economic Community (EEC), or the European Community (EC) as it later came to be known, was to create a common market in which goods, capital, labor, and services flowed freely across the six member states.³² Like the ECSC and the European Atomic Energy Community, the EC was administered by four supranational institutions, the European Court of Justice and the Assembly, which were shared with the other two Communities, as well as a separate Commission and Council of Ministers.³³ The institutions governing each of these three communities were merged in 1965³⁴ through the Merger Treaty.³⁵ As a result, all three Communities would be administered by the same four governing institutions: the Council of Ministers, the Commission (formerly referred to as the High Authority), the European Parliament (formerly, the Assembly), and the European Court of Justice (ECJ).³⁶

²⁸ Treaty Establishing the European Atomic Energy Community (Euratom), Mar. 25, 1957, 298 U.N.T.S. 167 (1958), *available at* <http://www.ena.lu/mce.cfm>.

²⁹ DAVIES, *supra* note 20, at 6.

³⁰ *Id.* at 7.

³¹ Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 140, *available at* <http://www.hri.org/docs/Rome57/Rome57.txt>.

³² THE EUROPEAN MOSAIC, *supra* note 17, at 17.

³³ *Id.*

³⁴ DAVIES, *supra* note 20, at 7.

³⁵ Treaty Establishing a Single Council and a Single Commission of the European Communities and Annexed Documents, Apr. 8, 1965, 1967 J.O. (152) 1 [hereinafter Merger Treaty], *available at* http://aei.pitt.edu/5202/01/001670_1.pdf.

³⁶ DAVIES, *supra* note 20, at 7.

In the 1970s, European integration came to a virtual halt.³⁷ A leading authority on the European Union, Desmond Dinan, noted that in the 1970s the EC "struggled with unforeseen circumstances such as fluctuating superpower relations, apparent U.S. decline, growing German assertiveness, oscillating exchange rates, and widely uneven economic performance among the member states."³⁸ The next major development in the way of European unity did not come until 1986, with the signing of the Single European Act.³⁹ The Single European Act (SEA) served to jumpstart the integration process⁴⁰ by bringing increased efficiency to the EC's administrative institutions.⁴¹ The European Parliament was granted greater legislative power and the right to veto petitions for accession by new states;⁴² a Court of First Instance was established to lighten the load of the ECJ;⁴³ and the member states agreed to create and implement a single European market by 1992.⁴⁴ Also during this period, six additional countries joined the European Community, bringing the total number of member states to twelve by 1986.⁴⁵ In 1973, Britain, Denmark, and Ireland were the first to join the six original EC members.⁴⁶ Greece was admitted in 1981, followed by Spain and Portugal in 1986.⁴⁷

In fulfillment of their goal of creating a single market, the twelve states signed the Treaty on European Union, commonly referred to as the Maastricht Treaty, in 1992.⁴⁸ The Maastricht Treaty had two principal aims: (1) to further European integration and (2) to create an organization founded on the original

³⁷ *Id.* at 8.

³⁸ DINAN, *supra* note 19, at 57.

³⁹ Single European Act, Feb. 28, 1986, 1987 O.J. (L 169) 1, available at <http://www.unizar.es/euroconstitucion/library/historic%20documents/SEA/Single%20European%20Act.pdf>.

⁴⁰ DAVIES, *supra* note 20, at 8.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See DAVIES, *supra* note 20, at 16.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Treaty on European Union (Maastricht Treaty), Feb. 7, 1992, 1992 O.J. (C 191) 1 [hereinafter Maastricht Treaty], available at <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html#0001000001>.

European Communities.⁴⁹ This organization would be known as the European Union,⁵⁰ and it would strive:

- to promote economic and social progress which is balanced and sustainable, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of this Treaty;
- to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the eventual framing of a common defence policy, which might in time lead to a common defence;
- to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union;
- to develop close cooperation on justice and home affairs;
- to maintain in full the 'acquis communautaire' and build on it with a view to considering, through the procedure referred to in Article N(2), to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community.⁵¹

While the European Union has integrated the European signatory states, it was created as a primarily economic organization and does not presently have structures designed for the protection of human and civil rights.⁵² It is therefore dependent upon multinational agreements created outside the scope of the EU to protect and enforce the human rights of EU citizens. Consequently, an EU applicant state's accession to these treaties is imperative when deciding whether to grant EU membership status.⁵³

⁴⁹ DAVIES, *supra* note 20, at 9.

⁵⁰ *Id.*

⁵¹ Treaty on European Union, *supra* note 48, art. B; see also European Union website, http://europa.eu.int/eur-lex/en/treaties/dat/EU_treaty.html.

⁵² Tara C. Stevers, *Protecting Human Rights in the European Union: An Argument for Treaty Reform*, 20 FORDHAM INT'L L.J. 919, 952 (1997).

⁵³ UK Law Online, University of Leeds, The European Convention on Human Rights, England, <http://www.leeds.ac.uk/law/hamlyn/echr.htm> (last visited 9 Nov. 2007).

In this regard, the 1997 Treaty of Amsterdam⁵⁴ took integration a step further by promoting transparency in the governing process and by declaring as the foundation of the EU respect for fundamental rights, democracy, and rule of law.⁵⁵ It requires that the Union respect the human rights protected under the European Convention on Human Rights.⁵⁶ Any member state that breaches the rights guaranteed by the European Convention on Human Rights will face suspension of its rights as an EU member state.⁵⁷

In 2000, the Treaty of Nice⁵⁸ was signed with the aim of facilitating enlargement of the EU.⁵⁹ Qualified majority voting was extended to the Council, and the Court of First Instance was given the authority to make preliminary rulings on certain matters so as to lessen the burden on the ECJ.⁶⁰ The EP, the Commission, and the Committee of the Regions were granted permission for future increase pending EU expansion to up to twenty-seven member states.⁶¹

B. *Present Structure: Institutions and Sources of Law*

Five institutions share the task of governing the European Union.⁶² Legislative, executive, and judicial functions are distributed among these governing bodies, calling for their close interaction and cooperation.⁶³ The five EU governing bodies are the European Parliament (EP), the Council (not to be confused with the Council of Europe or the European Council), the

⁵⁴ Treaty of Amsterdam Amending The Treaty on European Union, The Treaties Establishing the European Communities and Certain Related Acts, Nov. 10, 1997, O.J. (C 340) 1, *available at* <http://eur.lex.europa.eu/en/treaties/dat/11997D.htm/11997D.html#0001010001>.

⁵⁵ DAVIES, *supra* note 20, at 11.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Treaty of Nice Amending the Treaty on European Union, the Treaties establishing the European Communities and Certain Related Acts, Feb. 26, 2001, 2001 O.J. (C 80) 1 *available at* http://europa.eu.int/eur-lex/lex/en/treaties/dat/12001C/htm/C_2001080EN.000101.html.

⁵⁹ DAVIES, *supra* note 20, at 14.

⁶⁰ *Id.* at 13.

⁶¹ *Id.*

⁶² *Id.* at 18.

⁶³ *Id.*

Commission, the European Court of Justice (ECJ), and the Court of Auditors (CoA).⁶⁴

i. *The European Parliament*

The European Parliament (formerly known as the Assembly) is composed of over seven hundred delegates who are directly elected in their respective states every five years.⁶⁵ Each member state has a fixed number of seats, which is proportionate to the state's population.⁶⁶ The major political parties of each EU member state are represented in the EP, and the elected representatives are grouped by political affiliation rather than by country.⁶⁷ Originally created with only a consultative role in the development of EU legislation, which may or may not have been taken into account by the other EU legislative bodies, the EP now has the right to veto certain types of legislation it deems inappropriate.⁶⁸ The EP is considered the "watchdog of Community interests and its role is to represent EU citizens as a whole."⁶⁹ It also has a significant budgetary role that it shares with three of the other governing institutions.⁷⁰ Finally, as part of a system of checks and balances, the EP has certain supervisory functions to oversee the other EU institutions.⁷¹

ii. *The Council of the European Union*

The Council of the European Union, also called the Council of Ministers, consists of one representative from each member state who has the authority to bind his country legally to EU agreements.⁷² The state representative in attendance at any given meeting depends on the nature of the discussions.⁷³ For example, a member state's transport minister will attend dis-

⁶⁴ *Id.*

⁶⁵ European Parliament Role of an MEP,, <http://www.europarl.europa.eu/members/public/staticDisplay.do?language=EN&id=150> (last visited Nov. 17, 2007).

⁶⁶ *Id.*

⁶⁷ DAVIES, *supra* note 20, at 18.

⁶⁸ *Id.* at 19.

⁶⁹ THE EUROPEAN MOSAIC, *supra* note 17, at 90.

⁷⁰ DAVIES, *supra* note 20, at 20.

⁷¹ *Id.* at 21.

⁷² *Id.* at 22.

⁷³ *Id.*

cussions on transportation, while its agriculture minister will be present at meetings involving agriculture.⁷⁴ Like the European Parliament, the Council of Ministers has legislative, budgetary, and supervisory functions.⁷⁵ However, unlike the EP, the role of the Council is to represent the *domestic* interests of each of the member states.⁷⁶ The Council's nature is at once supranational and intergovernmental:⁷⁷ the ministers must answer to their national parliaments while at the same time form part of the EU legislative body, passing laws on behalf of the whole of the European Union.⁷⁸

iii. *The Commission*

The Commission is comprised of one representative from each of the EU's twenty-seven member states.⁷⁹ Nominated by the governments of their respective states, Commissioners must be approved by the EP and take an oath promising to act only in the interests of the European Union.⁸⁰ Commission representatives may not accept instructions from their home states.⁸¹ The governments of each member state also appoint a President from among the Commissioners, subject to approval by the EP.⁸² In addition to presiding over Commission meetings, the President attends meetings of the Council and is responsible for representing the European Union at international summits.⁸³ The Commission primarily is charged with drafting the budget and initial legislation, which the EP and Council then review.⁸⁴

iv. *The European Court of Justice*

The European Court of Justice consists of one judge from each member state who serves for a term of three years.⁸⁵ The judges are "appointed by the common accord of member states,

⁷⁴ *Id.*

⁷⁵ DAVIES, *supra* note 20, at 24.

⁷⁶ *Id.* at 23.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ DAVIES, *supra* note 20, at 24.

⁸⁰ *Id.* at 26.

⁸¹ *Id.*

⁸² THE EUROPEAN MOSAIC, *supra* note 17, at 85.

⁸³ DAVIES, *supra* note 20, at 26.

⁸⁴ *Id.* at 27-28.

⁸⁵ *Id.* at 29.

but once appointed they are totally independent of governments or other institutions of the Community.”⁸⁶ The Court hears cases either brought by the Commission against EU member states for failure to fulfill its EU obligations or by institutions or individuals challenging the validity of EU laws.⁸⁷ It also interprets or rules on the validity of EU legislation at the request of the member states’ national courts.⁸⁸ In addition, the ECJ has the broad task of ensuring that EU law is observed.⁸⁹

v. *The Court of Auditors*

Finally, the Court of Auditors, despite its name, is not a court in the judicial sense.⁹⁰ Rather, it is responsible for monitoring the EU’s budget.⁹¹ Before any of the EU institutions can make expenditures from the EU treasury, they must first obtain the approval of the Court of Auditors.⁹²

vi. *Other Institutions*

The various EU treaties have created additional sub-institutions to supplement the five principal governing bodies. One such institution is the Committee of the Regions (CoR), which was established in 1994 with two principal objectives.⁹³ First, considering that three quarters of EU laws are implemented through local or regional governments, the CoR is meant to give a voice to local and regional leaders in the development of future EU laws.⁹⁴ Second, the CoR is intended to maintain a connection between the EU institutions and individual EU citizens by keeping the public informed of EU developments and ensuring that the EU governing bodies address the concerns of the citizens.⁹⁵ The Committee of the Regions is required to submit opinions to the Commission and Council regarding policies on education and youth, culture, public health, trans-European

⁸⁶ THE EUROPEAN MOSAIC, *supra* note 17, at 90.

⁸⁷ DAVIES, *supra* note 20, at 29.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* at 31.

⁹¹ *Id.*

⁹² *Id.*

⁹³ Committee of the Regions, <http://www.cor.europa.eu/en/presentation/Role.htm> (last visited Sept. 28, 2007).

⁹⁴ *Id.*

⁹⁵ *Id.*

transport networks, communications and energy, economic and social cohesion, employment, social policy, environment, and vocational training.⁹⁶ Representatives, or members as they are called, from each member state are appointed by the Council to serve a term of four years.⁹⁷ The member states may not mandate instructions for their representatives to follow, as the Community has an interest in the representatives performing their duties independently.⁹⁸ The CoR is headed by a President and a First-Vice President, who are elected by CoR members every two years.⁹⁹ Presently, the Committee of the Regions has 344 members and six internal commissions specializing in (1) territorial cohesion, (2) economic and social policy, (3) sustainable development, (4) culture education and research, (5) constitutional affairs and European governance, and (6) external relations and decentralized cooperation.¹⁰⁰

vii. *Sources of EU Law*

The primary source of European Union law are the treaties that have created the EU's basic committees and institutions, including the Treaty of Paris, the Euratom Treaty, the Treaty of Rome, the Maastricht Treaty, and the Treaty of Amsterdam.¹⁰¹ Secondary legislation encompasses regulations, directives, decisions, recommendations, and opinions delivered in concert by the European Parliament, Council, and Commission.¹⁰²

C. *Requirements for Ascension*

The criteria for gaining admittance into the EU are generally defined by the Copenhagen and Madrid European Councils.¹⁰³ The 1993 Copenhagen European Council set three

⁹⁶ Committee of the Regions, <http://www.cor.europa.eu/en/index.htm> (follow "Role" hyperlink; then follow "Fact Sheet on the Committee of the Regions" hyperlink).

⁹⁷ *Id.* (follow "Role" hyperlink; then follow link to "Members").

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* (follow "Role" hyperlink; then follow "Fact Sheet on the Committee of the Regions" hyperlink).

¹⁰¹ DAVIES, *supra* note 20, at 35-36.

¹⁰² *Id.* at 36.

¹⁰³ European Commission Website on Enlargement, http://ec.europa.eu/enlargement/enlargement_process/accession_process/criteria/index_en.htm (last visited Sept. 18, 2007).

broad requirements that candidate countries must meet: (1) “stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities;” (2) “the existence of a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union;” and (3) “the ability to take on the obligations of membership including adherence to the aims of political, economic & monetary union.”¹⁰⁴ In 1995, the Madrid European Council established the requirement that candidate states must enable their domestic administrative structures to be adjusted to adopt European Community legislation as domestic law.¹⁰⁵ While the specific terms that a candidate country must fulfill depend on the situation and status of the candidate country, certain terms, such as acceptance of the European and United Nations Conventions on Human Rights, are universal.

i. *The European Convention on Human Rights*

In keeping with the EU’s aim of promoting human rights, the European Convention for the Protection of Human Rights and Freedoms (“European Convention on Human Rights” or “ECHR”) has been adopted by all present EU members and acceptance of the Convention is strongly urged upon prospective member states.¹⁰⁶ The ECHR was a treaty established in 1950 by the Council of Europe and implemented in 1953.¹⁰⁷ The Council of Europe, an entity separate and distinct from the EU and its predecessors, was the first attempt at European unification following the end of World War II.¹⁰⁸ The idea for such an organization was born out of the 1948 Congress of Europe – a meeting where politicians and scholars representing sixteen European countries joined to discuss “the desirability of European unity and on the need to institutionalize that ideal by es-

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Declaration of the European Union on the Occasion of the 50th Anniversary of the Universal Declaration of Human Rights, Vienna, 10 December 1998, http://ec.europa.eu/comm/external_relations/human_rights/doc/50th_decl_98.htm; see also *UK Law Online*, *supra* note 53.

¹⁰⁷ BBC News, Human Rights: The European Convention, http://news.bbc.co.uk/2/hi/uk_news/948143.stm (last visited Sept. 18, 2007).

¹⁰⁸ DINAN, *supra* note 19, at 13.

tablishing an international organization with a parliamentary body."¹⁰⁹

Although the Council of Europe never gained the momentum to become a major driving force behind the unification of Europe, it did make significant strides in the area of human rights.¹¹⁰ In 1950, the Council of Europe members signed the European Convention on Human Rights,¹¹¹ thereby creating three institutions: the European Commission on Human Rights, the European Court of Human Rights, and the Committee of Ministers of the Council of Europe.¹¹² The aim of the Convention and its institutions was and is to protect human rights across Europe.¹¹³ It allows individual citizens to bring grievances against their home countries on an international level.¹¹⁴

The Commission on Human Rights is the institution charged with ensuring that the signatory states adhere to the terms of the Convention.¹¹⁵ It reviews the applications of parties petitioning review of their cases, looking specifically for errors of law or fact alleged of the domestic courts.¹¹⁶ The Commission aids petitioning parties in settling disputes, and in the event that a settlement cannot be reached, the Commission has the discretion to refer a case to the Court of Human Rights.¹¹⁷

The Court of Human Rights may only hear cases referred to it by the Commission on Human Rights or brought before it by signatory states to the Convention.¹¹⁸ A state petitioning review before the Court of Human Rights must first exhaust all remedies afforded to it by both its domestic courts and by the courts of the European Union.¹¹⁹ Jurisdiction is afforded to the Court over all issues relating to a signatory state's interpretation and application of the ECHR.¹²⁰

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Human Rights: The European Convention*, *supra* note 107.

¹¹² *Id.*

¹¹³ DINAN, *supra* note 19, at 13.

¹¹⁴ *Human Rights: The European Convention*, *supra* note 107.

¹¹⁵ Stevers, *supra* note 52, at 952.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 952-53.

¹¹⁸ *Id.* at 954.

¹¹⁹ Stevers, *supra* note 52, at 955.

¹²⁰ *Id.* at 956.

The Committee of Ministers is comprised of the Ministers of Foreign Affairs of all of the signatory states.¹²¹ Its job is to review reports drafted by the Commission on Human Rights regarding potential human rights abuses.¹²² If the abuses are not referred to the Court of Human Rights within three months of reviewing the report, the Committee of Ministers may then decide whether a violation has taken place.¹²³ The Committee's decisions are binding and enforceable on signatory states.¹²⁴

The aim of the signatories to the European Convention on Human Rights was to:

[R]eaffirm[] their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend.¹²⁵

Section I of the Convention sets forth the individual human rights that signatory states are obligated to respect. Included in this Section, and key for the purposes of this Comment, are the right to life,¹²⁶ the right to liberty and security,¹²⁷ freedom of thought, conscience and religion,¹²⁸ and freedom of expression.¹²⁹

ii. *The United Nations' Covenants on Human Rights*

The International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR) are both products of the UN's 1948 Universal Declaration of Human Rights.¹³⁰ Developed in response to the atrocious human rights abuses committed during

¹²¹ *Id.* at 957.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 10.

¹²⁶ *Id.*, § I, art.2.

¹²⁷ *Id.*, § I, art.5.

¹²⁸ *Id.*, § I, art.9.

¹²⁹ *Id.*, § I, art.10.

¹³⁰ Kitty Arambulo, *Drafting an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: Can an Ideal Become Reality?*, 2 U.C. DAVIS J. INT'L L. & POL'Y 111 (1996).

both World Wars, the Universal Declaration was intended to serve as a human rights standard that people in all UN member states could aim to achieve.¹³¹ Today, the Universal Declaration is a legally binding commitment by which all United Nations signatory states must abide.¹³² The ICESCR and the ICCPR were both adopted in 1966 and, together with the Universal Declaration, they form the International Bill on Human Rights.¹³³ The ICESCR and the ICCPR are enforced by the United Nations Committee on Economic, Social, and Cultural Rights and the United Nations Human Rights Committee.¹³⁴ They protect both individual and collective rights, including the right to life, liberty, and freedom of thought, as well as the right to self-determination, to a safe environment, and to peace.¹³⁵ Endorsement of these covenants is strongly urged upon applicants for EU membership.¹³⁶

The International Covenant on Economic, Social, and Cultural Rights guarantees that "[A]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."¹³⁷ It also provides that such rights be "exercised without discrimination of any kind as to race. . . political or other opinion, national or social origin. . . or other status."¹³⁸ In addition, the International Covenant on Civil and Political Rights declares that "[e]veryone shall have the right to freedom of thought, conscience and religion."¹³⁹ It also guarantees that all people "shall have the right to hold opinions without interference."¹⁴⁰ Finally, a significant protec-

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ Jeff Nicolai, *Operation Murumbatsvina: A Crime Against Humanity Under the Rome Statute?*, 21 AM. U. INT'L L. REV. 813 (2006).

¹³⁵ Philip C. Aka, *Analyzing U.S. Commitment to Socioeconomic Human Rights*, 39 AKRON L. REV. 417, 423-24 (2006).

¹³⁶ LÓPEZ GUERRA *supra* note 9, at 24-25.

¹³⁷ International Covenant on Economic, Social and Cultural Rights, *supra* note 12, at pt. I, art. 1, para. 1.

¹³⁸ *Id.* at pt. I, art 2, para. 2.

¹³⁹ International Covenant on Civil and Political Rights, *supra* note 11, at pt. III, art. 18, para.1.

¹⁴⁰ *Id.* at art. 19, para. 1.

tion provided by the ICCPR is found in Article 27, which states that:

[i]n those States in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community, with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.¹⁴¹

III. THE BASQUE COUNTRY

A. *Historical Background*

The Basque Country straddles the border between France and Spain and traditionally is comprised of seven provinces, three in France and four in Spain.¹⁴² The history of the Basque people dates back almost two thousand years,¹⁴³ and to this day, the origins of the Basque race and language, which has no connection to any other indo-European language, remain a mystery.¹⁴⁴ Although they never existed as a single political entity prior to their integration into Spain,¹⁴⁵ the Basque people have always maintained a unique identity.¹⁴⁶ Spain is a country of ethnically diverse regions and peoples.¹⁴⁷ It was subject to foreign invasions by groups such as the Romans, the Visigoths, and the Moors, each of which has left lasting imprints.¹⁴⁸ The Basques resisted the influence of these invaders.¹⁴⁹ While the last of the four ethnically Basque provinces on the Iberian Peninsula was incorporated into the Spanish Kingdom in 1512, the

Spanish-controlled Basque Country would maintain a high degree of autonomy for the next three and a half centuries.¹⁵⁰ The Basques were allowed to govern themselves under local Basque law and customs known as *fueros* in exchange for politi-

¹⁴¹ *Id.* at art. 27.

¹⁴² RICHARD HERR, *ESPAÑA CONTEMPORÁNEA* 18 (2004).

¹⁴³ MARK KURLANSKY, *THE BASQUE HISTORY OF THE WORLD* 19 (1999).

¹⁴⁴ *Id.* at 23.

¹⁴⁵ Foro Ermua, <http://www.foroermua.com/html/index.php> (follow "Historia" hyperlink) (last visited Sept. 18, 2007).

¹⁴⁶ KURLANSKY, *supra* note 143, at 19-26.

¹⁴⁷ See HERR, *supra* note 142, at 59-76.

¹⁴⁸ KURLANSKY, *supra* note 143 at 27-42.

¹⁴⁹ *Id.* at 30-38,

¹⁵⁰ See *id.* at 72, 158.

cal loyalty to the Spanish monarchy.¹⁵¹ In a move to strengthen and reaffirm the centralized government, the Basque Country was stripped of its *fueros* completely in 1876 and was fully integrated into the Kingdom of Spain.¹⁵² A Basque nationalist sentiment developed steadily thereafter,¹⁵³ and was enhanced by the threat posed to Basque language, culture, and customs from the industrialization and modernization of the region.¹⁵⁴ By the 1890s, the Basque Nationalist Party was formed with the aim of asserting the political rights of the Basque people.¹⁵⁵ However, with the victorious emergence of General Francisco Franco at the end of the Spanish Civil War in 1939, the Basque people, their language, their culture, and their history endured severe oppression in the name of Spanish unity and nationalism.¹⁵⁶

B. *The Basque Country and ETA*

Under the constitutional monarchy of present-day Spain, the Basque Country enjoys a wide degree of independence from the central government.¹⁵⁷ It has its own parliament, police force, and educational system, as well as taxing power in three of the four ethnically Basque provinces in Spain.¹⁵⁸ About sixty percent of Basque voters are Basque nationalists.¹⁵⁹ Represented by the majority-holding moderate Basque Nationalist Party (PNV), they oppose the Spanish Constitution of 1978, which enabled the creation of a Basque Autonomous Community,¹⁶⁰ and support a relationship with Spain more akin to that of the rule by *fueros* they lost in the late 19th century.¹⁶¹ To the

¹⁵¹ Regina Buono, *Delimiting Culture: Implications for Individual Rights in the Basque Country Today*, 39 TEX. INT'L L. J. 143, 145 (2003).

¹⁵² KURLANSKY, *supra* note 143, at 158.

¹⁵³ Buono, *supra* note 151, at 145.

¹⁵⁴ *Id.*

¹⁵⁵ KURLANSKY, *supra* note 143, at 161-176.

¹⁵⁶ *Id.* at 211.

¹⁵⁷ Buono, *supra* note 151, at 146.

¹⁵⁸ *Id.*

¹⁵⁹ Mark Kurlansky, *Unmask the Basques*, THE GLOBE AND MAIL (Canada), Jan. 3, 2003, available at <http://basque.unr.edu/02/2.1.p/KurlanskyPDF.pdf>.

¹⁶⁰ Constitución C.E. § 2 and Disposiciones transitorias, available at http://www.congreso.es/ingles/funciones/constitucion/const_espa_texto.pdf (English version) (last visited 5 Feb. 2007).

¹⁶¹ *Id.*

far left is the illegal *Batasuna* party.¹⁶² Supported by about fifteen percent of the Basque population, *Batasuna* was outlawed in 2003 by the Spanish government for alleged ties to the Basque militant organization, ETA.¹⁶³ ETA, the Basque acronym for *Euskuadi Ta Askatasuna* (meaning Basque Homeland and Freedom), emerged in 1959 in response to the Franco dictatorship's hard-line oppression of the Basque identity.¹⁶⁴ It is responsible for politically motivated assassinations, kidnappings, and bombings, which have resulted in more than 800 deaths over the span of four decades.¹⁶⁵ Influenced by Marxist-Leninist ideology, ETA and its supporters ultimately seek an independent Basque socialist state.¹⁶⁶ Historically, they have seen violence as the only means to achieving their political objective.¹⁶⁷

In July of 1997, ETA carried out one of its most infamous attacks against a young Basque citizen. Miguel Ángel Blanco was a twenty-nine year old town councilor representing the moderate conservative party, *Partido Popular*, in the Basque village of Ermua.¹⁶⁸ He was kidnapped on his way to work by members of ETA.¹⁶⁹ Miguel Ángel Blanco's kidnappers demanded in a communiqué to the Spanish government that ETA prisoners be relocated from jails across Spain to facilities within the Basque Country.¹⁷⁰ In keeping with its policy of non-negotiation with ETA, the Spanish government, controlled by the *Partido Popular* at the time, refused to concede to any of ETA's demands.¹⁷¹ Six million people took to the streets across Spain

¹⁶² El País Special Section on ETA, [http://www.elpais.es/articulo/elpporesp/20041014elpapunac_2/Tes/Historia/Evolución/ETA/\(II\)](http://www.elpais.es/articulo/elpporesp/20041014elpapunac_2/Tes/Historia/Evolución/ETA/(II)).

¹⁶³ Kurlansky, *supra* note 159.

¹⁶⁴ Buono, *supra* note 151, at 148.

¹⁶⁵ Kurlansky, *supra* note 159.

¹⁶⁶ KURLANSKY, *supra* note 143, at 240.

¹⁶⁷ *Id.*

¹⁶⁸ Libertad Digital Special Section on Miguel Ángel Blanco, <http://www.libertaddigital.com/suplementos/mab2/001.htm> (last visited 18 September 2007) (follow link to "Introducción").

¹⁶⁹ *Id.* (follow link to "El crimen").

¹⁷⁰ *Id.*

¹⁷¹ Expansión: Los 20 días que conmovieron España, "ETA asesina a Miguel Ángel Blanco," <http://www.expansion.com/especiales/20aniversario/20diasespana/blanco.html> (last visited Sept. 18, 2007).

to protest the actions of ETA.¹⁷² However, despite the immense opposition, ETA assassinated Blanco when the two-day deadline for the Spanish government to act had lapsed.¹⁷³

Javier García Gatzelu, also known as Txapote, was one of the suspects ultimately found guilty for the assassination of Blanco.¹⁷⁴ At trial, the physicians who conducted Blanco's autopsy indicated that he had been shot twice in the head at close range.¹⁷⁵ The first bullet had caused a mere bone fracture, suggesting that Blanco was conscious of having been shot.¹⁷⁶ While they possessed arms of greater caliber, Blanco's assassins used a small 22-millimeter pistol, which, despite being fired at close range, resulted in a prolonged and agonizing death.¹⁷⁷

Prompted by increasing domestic and international political pressure, ETA announced a cease-fire in March of 2006.¹⁷⁸ Its aim was to initialize a democratic process for independence.¹⁷⁹ However, the cease-fire agreement was brought into grave doubt when, on December 30, 2006, ETA placed a car bomb in a parking garage at Madrid's Barajas International Airport, killing two people.¹⁸⁰ The cease-fire was officially terminated in June of 2007, and ETA reinitiated its violent attacks with a car bomb that exploded outside a Civil Guard station on August 24, 2007.¹⁸¹

¹⁷² Libertad Digital Special Section on Miguel Ángel Blanco, *supra* note 168 (follow "El crimen" hyperlink).

¹⁷³ *Id.*

¹⁷⁴ Melchor Saiz-Pardo, *Miguel Ángel Blanco fue asesinado de rodillas, de espaldas y con dos tiros a "cañón tocante,"* LAS PROVINCIAS, June 21, 2006, available at <http://www.lasprovincias.es/valencia/pg060621/prensa/noticias/Espana/200606/21/VAL-ESP-146.html>.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *ETA anuncia un 'alto el fuego permanente,'* EL MUNDO (Madrid), Mar. 23, 2006, available at <http://www.elmundo.es/elmundo/2006/03/22/espana/1143026444.html>.

¹⁷⁹ *Id.*

¹⁸⁰ BBC News Europe, <http://news.bbc.co.uk/2/hi/europe/6245013.stm> (last visited Apr. 16, 2008).

¹⁸¹ *ETA reaparece con un coche bomba contra la Guardia Civil en Durango,* EL PAÍS (Madrid), Aug. 24, 2007, available at http://www.elpais.com/articulo/espana/ETA/reaparece/coche/bomba/Guardia/Civil/Durango/elpepuesp/20070824elpepunac_1/Tes.

IV. IMPLICATIONS OF ALLOWING EU MEMBERSHIP TO CARRY OVER TO AN INDEPENDENT BASQUE COUNTRY

According to international law scholar Stephen Tierney, regionalism, or as he terms it “sub-state nationalism,” such as that seen in the Basque Country, has become increasingly prevalent, even as State sovereignty is increasingly yielding to supranational institutions such as the European Union.¹⁸² In Mr. Tierney’s words,

As they observe external challenges to the nation-State, sub-state national societies situate their own constitutional aspiration within this environment. It is in this context that their core aims take on an increasingly international flavour. For example: the goal of enhanced constitutional autonomy for the society’s territorial space now makes reference not only to the State but also to membership of international organizations; the search for improved institutional representation for the society now targets not only the central State but also the international community; and the desire for general recognition of the society’s ‘national’ status similarly looks to both State and international actors for a response.¹⁸³

Presently, the European Union treaties are silent on whether EU membership may carry over automatically to states that have gained independence from one of the twenty-seven existing EU member states.¹⁸⁴ With the increasing prevalence of a European regionalism that rejects the exercise of control by central governments, but fully embraces the authority of the European Union,¹⁸⁵ it is in the interest of the EU as a whole to address the EU membership status of such regions.

In answer to an inquiry by a Welsh member of the European Parliament, EU Commission President Romano Prodi stated in April of 2004 that a “newly independent region would, by the fact of its independence, become a third country with respect to the Union and the treaties would, from the day of its

¹⁸² Stephen Tierney, *Reframing Sovereignty? Sub-state National Societies and Contemporary Challenges to the Nation-State*, 54 INT’L & COMP. L.Q. 161 (2005).

¹⁸³ *Id.* at 163.

¹⁸⁴ Jo E Murkens & Peter Jones, *See A Problem With Independence and the EU*, THE HERALD (Glasgow), Apr. 23, 2004, at 24; *Breakaway Regions to Lose EU Membership, Says Prodi*, *supra* note 7.

¹⁸⁵ *See* Newhouse, *supra* note 3.

independence, not apply anymore on its territory.”¹⁸⁶ Opponents of Prodi’s stance, however, claim that his comment was erroneous.¹⁸⁷ Leader of the Scottish Nationalist Party, John Swinney, implied that Prodi’s statement was made in his own political self-interest and that he “was playing to a domestic audience in his native Italy, where the Northern League once backed independence.”¹⁸⁸ Determining which position the EU should adopt must depend on which proves to be the most beneficial to the EU as a whole.

Proponents may offer two basic arguments for the Basque Country retaining EU membership without having to reapply. The first is that the Basque Country became an official EU member in 1986 as part of Spain, and since then it has, through Spain, complied fully with all obligations required of it as an EU member. Second, in terms of logistics, allowing EU membership to carry over would cause no significant financial strain on the EU budget, as all Basques were EU members under Spain, and it would save the EU institutions from the time consuming entry process. However, an independent Basque Country would, nevertheless, constitute a new state and bring with it all of the complications that a country applying for first-time entry brings.

1. *Capacity*

First, the EU Commission is currently operating at full capacity with a total of twenty-seven member states represented, the maximum permitted under the Treaty of Nice.¹⁸⁹ An increase in the number of seats in the Parliament, Commission, and Council would require approval by all existing member states.¹⁹⁰ Complications in ratifying the treaty would surely arise given the likelihood of Spain’s opposition to any EU expansion involving EU accession by the Basque Country. In the event that the Basque Country were permitted to carry over its membership, the proportion of representation accorded to each

¹⁸⁶ *Breakaway Regions to Lose EU Membership, Says Prodi*, *supra* note 7.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ DAVIES, *supra* note 20, at 13.

¹⁹⁰ *See Treaty on European Union*, *supra* note 48, at art. 49.

member state in certain EU institutions, such as the Committee of the Regions, would also have to be recalculated.

2. *Allocation of Funds*

Second, along with the introduction of a new member state would come the need to reallocate EU funds. With the admittance into the EU of an independent Basque Country, a portion of the funds presently allotted to Spain logically would have to be reallocated to the Basque Country. Budgetary decisions require the approval of the Council, the institution representing national interests.¹⁹¹ Spanish opposition to a reduction in its allocated funds would likely be strong. Under the terms of the Luxembourg Compromise, when an issue before the Council relates to "very important interests" of a member state, that state is entitled to a right of veto.¹⁹² Were Spain to veto a decision to reallocate a portion of its funds to the Basque Country, the EU would have to look for alternative means of financing Basque membership. This would present a financial burden for all EU member states.

3. *Legal Implications*

Allowing a carry over of membership would also raise problems of unfairness in the treatment of EU member states as well as create potential legal complications. While Spain and all other current EU member states were required to meet a series of criteria upon entry, the government heading a newly independent Basque state would have had to undergo no such process. Notably, the Basque government would not have to pledge its respect to the UN Human Rights Covenants or the European Convention on Human Rights. Thus, there could be no legal fallback to such documents in order to suspend or expel the Basques from the EU were human rights abuses to be committed in the Basque Country,¹⁹³ as it is difficult to reprimand a state for violating an agreement that it never formally made.

This third point becomes all the more worrisome when taking into account the record of human rights abuses committed

¹⁹¹ DAVIES, *supra* note 20, at 23.

¹⁹² *Id.* at 24.

¹⁹³ See Treaty Establishing the European Economic Community, *supra* note 31 (describing failure to comply with Treaty obligation).

in the Basque Country over the past forty years. The nationalist *Batasuna* party has been at the forefront of the violent struggle for Basque self-determination and independence.¹⁹⁴ It was outlawed in Spain for its ties to the terrorist organization ETA,¹⁹⁵ which is responsible for the deaths of more than 800 victims over four decades.¹⁹⁶ The group has gained infamy for extorting money, called the Revolutionary Tax, from Basque businesses to finance its terrorist operations.¹⁹⁷ ETA has burned down shops of business owners unwilling to pay.¹⁹⁸ It has kidnapped, attacked, and murdered hundreds of Basques and non-Basques deemed to be in opposition to the struggle for Basque independence.¹⁹⁹ Many Basque citizens who have openly protested ETA's violence have been forced out of the Basque Country for fear of being killed.²⁰⁰ ETA's relentless battle against innocent civilians, such as Miguel Ángel Blanco and countless others, who stand for democracy and against the violent imposition of ETA's ideology, exemplifies the organization's refusal to compromise or tolerate opposing opinions not only of outsiders, but among Basque citizens themselves. One Basque politician, Jaime Mayor Oreja, has noted that the trial of Blanco's assassins has demonstrated that ETA has no intention of asking for forgiveness or renouncing its political objectives.²⁰¹ Indeed, Txapote himself stated at trial "I only want to say that we are militants of ETA and that we are not going to stop until *Euskal Herria* [the Basque Country] is free."²⁰²

Foreseeably, an independent Basque state would be run, at least in part, by supporters of *Batasuna*—a party with an

¹⁹⁴ See BBC News, *Profile:Batasuna*, BBC NEWS, <http://news.bbc.co.uk/2/hi/europe/2211696.stm> (last visited August 27, 2007).

¹⁹⁵ El Mundo Special Section on the Basque Country, *supra* note 14 (follow link to "En Especial;" then follow link to "Proceso de Ilegalización").

¹⁹⁶ Kurlansky, *Unmask the Basques*, *supra* note 159.

¹⁹⁷ El Mundo Special Section on ETA, *supra* note 16 (follow "historia" hyperlink; then follow "la financiación" hyperlink).

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* (follow "Historia" hyperlink).

²⁰⁰ United Nations Educational, Scientific and Cultural Organization Website, *La Prensa en el País Vasco*, Apr. 23, 2003, http://portal.unesco.org/ci/en/ev.php-URL_ID=9329&URL_DO=DO_TOPIC&URL_SECTION=201.

²⁰¹ Libertad Digital Special Section on Miguel Ángel Blanco, *supra* note 168 (follow link to "Jaime Mayor Oreja").

²⁰² Miguel Ángel Blanco fue asesinado de rodillas, de espaldas y con dos tiros a "cañón tocante," *supra* note 174.

alarming record of human rights violations. This includes violations of key provisions in the European Convention on Human Rights, such as the guarantees of a right to life, liberty, freedom of thought, and expression,²⁰³ as well as in the UN Covenants on Human Rights, namely an individual's right to self-determination,²⁰⁴ to freely determine his political status,²⁰⁵ and to hold opinions without interference.²⁰⁶ Supporters of the *Batasuna* party, ETA, and other related organizations have blatantly disregarded the rights of their fellow citizens by condoning attacks on those who have spoken in opposition to the Nationalist cause.

As one of the regions that led the industrial revolution in Spain, the Basque Country has attracted non-Basque Spaniards to settle in the region in search of work for more than a century.²⁰⁷ Consequently, the Basque Country has a significant population of non-ethnic Basques who are opposed to the Basque initiative for independence.²⁰⁸ In the event that the Basque Country were to separate from Spain, non-ethnic Basques, whose families may have lived and worked in the Basque Country for generations, could face serious risk of persecution in a primarily ethnic Basque state. This raises alarm for the potential violation of article 27 of the International Covenant on Civil and Political Rights which states, "[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community, with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."²⁰⁹ Thus far, the European Union has been adamant in demanding guarantees from prospective member states against human rights abuses in those countries. Such is true with Turkey and its on-going negotia-

²⁰³ Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 10, at § I, arts. 2, 5, 9, 10.

²⁰⁴ International Covenant on Economic, Social and Cultural Rights, *supra* note 12, at pt. I, art. 1, para.1.

²⁰⁵ *Id.*

²⁰⁶ International Covenant on Civil and Political Rights, *supra* note 11, at pt. III, art. 19, para.1.

²⁰⁷ KURLANSKY, *supra* note 143, at 168-69.

²⁰⁸ *Id.*

²⁰⁹ International Covenant on Civil and Political Rights, *supra* note 11, at pt. III, art. 27.

tions with the EU to gain admittance,²¹⁰ as well as the newly admitted Bulgaria and Romania, who were compelled to implement numerous policies safeguarding human rights within their borders prior to accession.²¹¹ Thus, to remain consistent and faithful to its pledge to promote and protect the human rights of its citizens, the EU would have to deny the Basque Country the ability to retain its EU membership upon gaining independence.

V. EU POLICY SHOULD REQUIRE NEWLY INDEPENDENT STATES TO REAPPLY FOR MEMBERSHIP

The historical development of the European Union reflects a commitment across an array of nations to attain common institutions and policies that are respected and upheld by all. With the creation of the EU, its founding member states sought to promote unity and equality among not only the states themselves, but among all of their citizens as well. Such is evidenced on the one hand by the structural institutions of the EU, providing all member states with an equal degree of representation, and on the other hand by the EU's adoption of various international human rights agreements, which are required to be ratified by all entering states.

Allowing breakaway nations to retain their EU membership status without having to reapply would upset the balance among EU states and disrupt the progress the EU has made in creating an institution rooted in democracy and the rule of law. Each member's proportion of representation in the EU's governing institutions would require reallocation, as would the EU's budget, something that most current member states would likely oppose. Member states that have lost breakaway regions would undoubtedly resent these newly independent states. Dissension among the EU members would lead to difficulties in working together productively, thus frustrating the goal of a unified Europe. Furthermore, important controls designed to

²¹⁰ See Human Rights News, *Turkey: Curbs on Assembly Undermine EU Bid*, <http://hrw.org/english/docs/2004/04/28/turkey8501.htm> (last visited Nov. 13, 2007).

²¹¹ See Amnesty International, *Bulgaria and Romania: Amnesty International's Human Rights Concerns in the EU Accession Countries*, <http://web.amnesty.org/library/Index/ENGEUR020012005?open&of=ENG-2U2> (last visited Nov. 13, 2007).

promote the aim of attaining an “ever closer union”²¹² of states that guarantees the protection of important individual rights would be dangerously neglected. This could open the door to legal complications that could not be solved as readily as with member states that have undergone the full accession process. A sidestepping of the normal entry process could thus destroy the human rights guarantees that the EU strives to promote. Considering the disastrous implications of permitting an independent Basque Country to retain EU membership, it is in the best interest of the EU, its institutions, and its citizens to require breakaway nations to reapply for accession to the EU upon gaining independence from an EU member state.

²¹² See Treaty on European Union, *supra* note 48.