September 2007

EU Membership and an Independent Basque State

Lindsay Murphy

Follow this and additional works at: http://digitalcommons.pace.edu/pilr

Recommended Citation
Lindsay Murphy, EU Membership and an Independent Basque State, 19 Pace Int'l L. Rev. 321 (2007)
Available at: http://digitalcommons.pace.edu/pilr/vol19/iss2/7

This Article is brought to you for free and open access by the School of Law at DigitalCommons@Pace. It has been accepted for inclusion in Pace International Law Review by an authorized administrator of DigitalCommons@Pace. For more information, please contact cpitton@law.pace.edu.
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

* J.D. candidate, Pace University School of Law, 2008; M.A. New York University, 2005; B.A. Tufts University, 2004. Lindsay would like to thank her parents for their endless support and encouragement, the 2007 and 2008 Pace International Law Review Editorial Boards, and all the PILR members who devoted their time to editing this article.


² Id.


⁴ Id.

⁵ Id.

their independence, they also assert their right to retain their status as European Union members once becoming independent states. Whether EU membership would carry over to newly independent regions is an obstacle that the EU treaties have yet to formally address. 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. 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), the United Nations International Covenant on Civil and Political Rights, and the United Nations International Covenant on Economic, Social and Cultural Rights. 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.

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).
Many Basques believe they have a right to self-determination.\textsuperscript{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.\textsuperscript{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,\textsuperscript{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.\textsuperscript{17} Throughout this process, a consistent theme has been to create institutions and policies commonly shared and respected by all member states.\textsuperscript{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-

\textsuperscript{15} Id.
\textsuperscript{17} See generally THE EUROPEAN MOSAIC 16 (David Gowland, Basil O'Neill & Richard Dunphy eds., 2d. ed. 2000).
\textsuperscript{18} Id.
German relations after World War II and rebuilding the ravaged French and German economies. 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.

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. The long-term goal envisioned by the Treaty of Paris signatories was to ensure peace and European unity. 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." 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. Each supranational institution jointly administered the ECSC. 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. 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."

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).
21 Id.
22 Id.
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.
AN INDEPENDENT BASQUE STATE

(Euratom Treaty). The six ECSC countries now committed themselves to "the furtherance of atomic energy for peaceful purposes" by forming the European Atomic Energy Committee. 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.

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). 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. 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. The institutions governing each of these three communities were merged in 1965 through the Merger Treaty. 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).
In the 1970s, European integration came to a virtual halt.\textsuperscript{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.”\textsuperscript{38} The next major development in the way of European unity did not come until 1986, with the signing of the Single European Act.\textsuperscript{39} The Single European Act (SEA) served to jumpstart the integration process\textsuperscript{40} by bringing increased efficiency to the EC’s administrative institutions.\textsuperscript{41} The European Parliament was granted greater legislative power and the right to veto petitions for accession by new states;\textsuperscript{42} a Court of First Instance was established to lighten the load of the ECJ;\textsuperscript{43} and the member states agreed to create and implement a single European market by 1992.\textsuperscript{44} Also during this period, six additional countries joined the European Community, bringing the total number of member states to twelve by 1986.\textsuperscript{45} In 1973, Britain, Denmark, and Ireland were the first to join the six original EC members.\textsuperscript{46} Greece was admitted in 1981, followed by Spain and Portugal in 1986.\textsuperscript{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.\textsuperscript{48} The Maastricht Treaty had two principal aims: (1) to further European integration and (2) to create an organization founded on the original

\textsuperscript{37} Id. at 8.
\textsuperscript{38} Dinan, supra note 19, at 57.
\textsuperscript{40} Davies, supra note 20, at 8.
\textsuperscript{41} Id.
\textsuperscript{42} Id.
\textsuperscript{43} Id.
\textsuperscript{44} Id.
\textsuperscript{45} See Davies, supra note 20, at 16.
\textsuperscript{46} Id.
\textsuperscript{47} Id.
European Communities.\textsuperscript{49} This organization would be known as the European Union,\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{53}

\textsuperscript{49} Davies, supra note 20, at 9.

\textsuperscript{50} Id.


In this regard, the 1997 Treaty of Amsterdam\textsuperscript{54} 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.\textsuperscript{55} It requires that the Union respect the human rights protected under the European Convention on Human Rights.\textsuperscript{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.\textsuperscript{57}

In 2000, the Treaty of Nice\textsuperscript{58} was signed with the aim of facilitating enlargement of the EU.\textsuperscript{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.\textsuperscript{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.\textsuperscript{61}

B. Present Structure: Institutions and Sources of Law

Five institutions share the task of governing the European Union.\textsuperscript{62} Legislative, executive, and judicial functions are distributed among these governing bodies, calling for their close interaction and cooperation.\textsuperscript{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

\begin{itemize}
  \item \textsuperscript{55} Davies, supra note 20, at 11.
  \item \textsuperscript{56} Id.
  \item \textsuperscript{57} Id.
  \item \textsuperscript{59} Davies, supra note 20, at 14.
  \item \textsuperscript{60} Id. at 13.
  \item \textsuperscript{61} Id.
  \item \textsuperscript{62} Id. at 18.
  \item \textsuperscript{63} Id.
\end{itemize}
Commission, the European Court of Justice (ECJ), and the Court of Auditors (CoA).\textsuperscript{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.\textsuperscript{65} Each member state has a fixed number of seats, which is proportionate to the state's population.\textsuperscript{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.\textsuperscript{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.\textsuperscript{68} The EP is considered the "watchdog of Community interests and its role is to represent EU citizens as a whole."\textsuperscript{69} It also has a significant budgetary role that it shares with three of the other governing institutions.\textsuperscript{70} Finally, as part of a system of checks and balances, the EP has certain supervisory functions to oversee the other EU institutions.\textsuperscript{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.\textsuperscript{72} The state representative in attendance at any given meeting depends on the nature of the discussions.\textsuperscript{73} For example, a member state's transport minister will attend dis-

\textsuperscript{64} Id.
\textsuperscript{66} Id.
\textsuperscript{67} Davies, supra note 20, at 18.
\textsuperscript{68} Id. at 19.
\textsuperscript{69} The European Mosaic, supra note 17, at 90.
\textsuperscript{70} Davies, supra note 20, at 20.
\textsuperscript{71} Id. at 21.
\textsuperscript{72} Id. at 22.
\textsuperscript{73} Id.
cussions on transportation, while its agriculture minister will be present at meetings involving agriculture.\textsuperscript{74} Like the European Parliament, the Council of Ministers has legislative, budgetary, and supervisory functions.\textsuperscript{75} However, unlike the EP, the role of the Council is to represent the \textit{domestic} interests of each of the member states.\textsuperscript{76} The Council's nature is at once supranational and intergovernmental:\textsuperscript{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.\textsuperscript{78}

\textbf{iii. The Commission}

The Commission is comprised of one representative from each of the EU's twenty-seven member states.\textsuperscript{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.\textsuperscript{80} Commission representatives may not accept instructions from their home states.\textsuperscript{81} The governments of each member state also appoint a President from among the Commissioners, subject to approval by the EP.\textsuperscript{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.\textsuperscript{83} The Commission primarily is charged with drafting the budget and initial legislation, which the EP and Council then review.\textsuperscript{84}

\textbf{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.\textsuperscript{85} The judges are "appointed by the common accord of member states,

\begin{thebibliography}{9}
\bibitem{b1} Id.
\bibitem{b2} DAVIES, \textit{supra} note 20, at 24.
\bibitem{b3} Id. at 23.
\bibitem{b4} Id.
\bibitem{b5} Id. at 24.
\bibitem{b6} DAVIES, \textit{supra} note 20, at 24.
\bibitem{b7} Id. at 26.
\bibitem{b8} Id.
\bibitem{b9} THE EUROPEAN MOSAIC, \textit{supra} note 17, at 85.
\bibitem{b10} DAVIES, \textit{supra} note 20, at 26.
\bibitem{b11} Id. at 27-28.
\bibitem{b12} Id. at 29.
\end{thebibliography}
but once appointed they are totally independent of governments or other institutions of the Community."\textsuperscript{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.\textsuperscript{87} It also interprets or rules on the validity of EU legislation at the request of the member states' national courts.\textsuperscript{88} In addition, the ECJ has the broad task of ensuring that EU law is observed.\textsuperscript{89}

\textbf{v. The Court of Auditors}

Finally, the Court of Auditors, despite its name, is not a court in the judicial sense.\textsuperscript{90} Rather, it is responsible for monitoring the EU's budget.\textsuperscript{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.\textsuperscript{92}

\textbf{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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

\begin{footnotes}
\textsuperscript{86} \textit{The European Mosaic}, supra note 17, at 90.
\textsuperscript{87} \textit{Davies}, supra note 20, at 29.
\textsuperscript{88} \textit{Id.}
\textsuperscript{89} \textit{Id.}
\textsuperscript{90} \textit{Id.} at 31.
\textsuperscript{91} \textit{Id.}
\textsuperscript{92} \textit{Id.}
\textsuperscript{94} \textit{Id.}
\textsuperscript{95} \textit{Id.}
\end{footnotes}
transport networks, communications and energy, economic and social cohesion, employment, social policy, environment, and vocational training.\textsuperscript{96} Representatives, or members as they are called, from each member state are appointed by the Council to serve a term of four years.\textsuperscript{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.\textsuperscript{98} The CoR is headed by a President and a First-Vice President, who are elected by CoR members every two years.\textsuperscript{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.\textsuperscript{100}

vii. \textit{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.\textsuperscript{101} Secondary legislation encompasses regulations, directives, decisions, recommendations, and opinions delivered in concert by the European Parliament, Council, and Commission.\textsuperscript{102}

C. \textit{Requirements for Ascension}

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

\begin{itemize}
  \item \textsuperscript{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).
  \item \textsuperscript{97} Id. (follow “Role” hyperlink; then follow link to “Members”).
  \item \textsuperscript{98} Id.
  \item \textsuperscript{99} Id.
  \item \textsuperscript{100} Id. (follow “Role” hyperlink; then follow “Fact Sheet on the Committee of the Regions” hyperlink).
  \item \textsuperscript{101} \textsc{Davies}, supra note 20, at 35-36.
  \item \textsuperscript{102} Id. at 36.
\end{itemize}
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." 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. 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. The ECHR was a treaty established in 1950 by the Council of Europe and implemented in 1953. 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. 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.
108 DINAN, supra note 19, at 13.
tablishing an international organization with a parliamentary body."\textsuperscript{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.\textsuperscript{110} In 1950, the Council of Europe members signed the European Convention on Human Rights,\textsuperscript{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.\textsuperscript{112} The aim of the Convention and its institutions was and is to protect human rights across Europe.\textsuperscript{113} It allows individual citizens to bring grievances against their home countries on an international level.\textsuperscript{114}

The Commission on Human Rights is the institution charged with ensuring that the signatory states adhere to the terms of the Convention.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{119} Jurisdiction is afforded to the Court over all issues relating to a signatory state's interpretation and application of the ECHR.\textsuperscript{120}

\begin{itemize}
\item \textsuperscript{109} \textit{Id.}
\item \textsuperscript{110} \textit{Id.}
\item \textsuperscript{111} \textit{Human Rights: The European Convention, supra note 107.}
\item \textsuperscript{112} \textit{Id.}
\item \textsuperscript{113} DINAN, supra note 19, at 13.
\item \textsuperscript{114} \textit{Human Rights: The European Convention, supra note 107.}
\item \textsuperscript{115} Stevers, supra note 52, at 952.
\item \textsuperscript{116} \textit{Id.}
\item \textsuperscript{117} \textit{Id.} at 952-53.
\item \textsuperscript{118} \textit{Id.} at 954.
\item \textsuperscript{119} Stevers, supra note 52, at 955.
\item \textsuperscript{120} \textit{Id.} at 956.
\end{itemize}
The Committee of Ministers is comprised of the Ministers of Foreign Affairs of all of the signatory states. Its job is to review reports drafted by the Commission on Human Rights regarding potential human rights abuses. 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. The Committee's decisions are binding and enforceable on signatory states.

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.

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, the right to liberty and security, freedom of thought, conscience and religion, and freedom of expression.

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. Developed in response to the atrocious human rights abuses committed during

---

121 Id. at 957.
122 Id.
123 Id.
124 Id.
126 Id., § I, art.2.
127 Id., § I, art.5.
128 Id., § I, art.9.
129 Id., § I, art.10.
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. The Universal Declaration is a legally binding commitment by which all United Nations signatory states must abide. The ICESCR and the ICCPR were both adopted in 1966 and, together with the Universal Declaration, they form the International Bill on Human Rights. 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. 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. Endorsement of these covenants is strongly urged upon applicants for EU membership.

The International Covenant on Economic, Social, and Cultural Rights guarantees that “All 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.” 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.” 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.” It also guarantees that all people “shall have the right to hold opinions without interference.” Finally, a significant prote-

131 Id.
132 Id.
133 Id.
136 López Guerra supra note 9, at 24-25.
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.
144 Id. at 23.
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. 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. A Basque nationalist sentiment developed steadily thereafter, and was enhanced by the threat posed to Basque language, culture, and customs from the industrialization and modernization of the region. By the 1890s, the Basque Nationalist Party was formed with the aim of asserting the political rights of the Basque people. 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.

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. 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. About sixty percent of Basque voters are Basque nationalists. 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, and support a relationship with Spain more akin to that of the rule by *fueros* they lost in the late 19th century. To the

---

152 Kurlansky, *supra* note 143, at 158.
154 Id.
156 Id. at 211.
157 Buono, *supra* note 151, at 146.
158 Id.
161 Id.
far left is the illegal Batasuna party. 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. 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. It is responsible for politically motivated assassinations, kidnappings, and bombings, which have resulted in more than 800 deaths over the span of four decades. Influenced by Marxist-Leninist ideology, ETA and its supporters ultimately seek an independent Basque socialist state. Historically, they have seen violence as the only means to achieving their political objective.

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. He was kidnapped on his way to work by members of ETA. 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. 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. Six million people took to the streets across Spain

---

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

Javier García Gatzelu, also know as Txapote, was one of the suspects ultimately found guilty for the assassination of Blanco. At trial, the physicians who conducted Blanco's autopsy indicated that he had been shot twice in the head at close range. The first bullet had caused a mere bone fracture, suggesting that Blanco was conscious of having been shot. 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.

Prompted by increasing domestic and international political pressure, ETA announced a cease-fire in March of 2006. Its aim was to initialize a democratic process for independence. 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. 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.

172 Libertad Digital Special Section on Miguel Ángel Blanco, supra note 168 (follow "El crimen " hyperlink).
173 Id.
175 Id.
176 Id.
177 Id.
179 Id.
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. 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.

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. 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, 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

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."\textsuperscript{186} Opponents of Prodi's stance, however, claim that his comment was erroneous.\textsuperscript{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."\textsuperscript{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.\textsuperscript{189} An increase in the number of seats in the Parliament, Commission, and Council would require approval by all existing member states.\textsuperscript{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

\textsuperscript{186} Breakaway Regions to Lose EU Membership, Says Prodi, supra note 7.
\textsuperscript{187} Id.
\textsuperscript{188} Id.
\textsuperscript{189} Davies, supra note 20, at 13.
\textsuperscript{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.\textsuperscript{194} It was outlawed in Spain for its ties to the terrorist organization ETA,\textsuperscript{195} which is responsible for the deaths of more than 800 victims over four decades.\textsuperscript{196} The group has gained infamy for extorting money, called the Revolutionary Tax, from Basque businesses to finance its terrorist operations.\textsuperscript{197} ETA has burned down shops of business owners unwilling to pay.\textsuperscript{198} It has kidnapped, attacked, and murdered hundreds of Basques and non-Basques deemed to be in opposition to the struggle for Basque independence.\textsuperscript{199} Many Basque citizens who have openly protested ETA’s violence have been forced out of the Basque Country for fear of being killed.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{202}

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

\textsuperscript{195} El Mundo Special Section on the Basque Country, supra note 14 (follow link to “En Especial;” then follow link to “Proceso de Ilegalización”).
\textsuperscript{196} Kurlansky, Unmask the Basques, supra note 159.
\textsuperscript{197} El Mundo Special Section on ETA, supra note 16 (follow “historia” hyperlink; then follow “la financiación” hyperlink).
\textsuperscript{198} Id.
\textsuperscript{199} Id. (follow “Historia” hyperlink).
\textsuperscript{201} Libertad Digital Special Section on Miguel Ángel Blanco, supra note 168 (follow link to “Jaime Mayor Oreja ”).
\textsuperscript{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, as well as in the UN Covenants on Human Rights, namely an individual’s right to self-determination, to freely determine his political status, and to hold opinions without interference. 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. Consequently, the Basque Country has a significant population of non-ethnic Basques who are opposed to the Basque initiative for independence. 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.” 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-

---

205 Id.
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,\textsuperscript{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.\textsuperscript{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.

\section{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. Dissention 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

\begin{itemize}
\end{itemize}
promote the aim of attaining an “ever closer union”\textsuperscript{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.

\textsuperscript{212} See Treaty on European Union, supra note 48.