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European Union Integration and National Self-Determination

Mare Ushkovska

International Communities Organisation

Recent demands for secession in several EU member states bring the issue of self-determination to the forefront of the debate about the future of the European Union. This article explores the European Union's attitudes toward the international right to self-determination in the context of the rising salience of the greater political union between member states. The focus of the European project, in direct contrast to the glorification of nationhood, is on consensual decision-making rather than sovereignty, making self-determination obsolete in a reality of EU integration. This research finds that recognition of, or references to, the right to self-determination of peoples are absent from EU law sources. Official EU statements in the United Nations interpret the right to self-determination as the presence of a representative democracy and the ability to enjoy human rights within existing states. This interpretation implies that secession campaigns in EU countries are unfounded. The European Union demonstrates a strong preference for various forms of internal self-determination (extended autonomy of regions, minority rights, and language rights) as an approach to address the diversity of peoples and regions within its borders. But the European Union has no legislative competences in these areas and the enactment of such policies is dependent solely on the goodwill of individual member states. By analyzing past cases of recognition by the European Union of newly independent states in the wider European region, this article demonstrates that they have been inconsistent and arbitrary, dependent on the strategic interests of individual member states rather than clear normative criteria.

In this age of globalization and regional integration in Europe, when the growth of supranationalist identities seems to be on the rise, the age-old struggle for independent governance of individual ethno-linguistic groups remains. Yet self-determination of peoples, while widely analyzed from a theoretical and historical perspective, is rarely discussed in the extant literature on the European Union. Furthermore, political debates concerning the self-determination of peoples have long been side-lined with the rising salience of a deeper political union among European states. This article addresses in detail the European Union's attitudes toward self-determination, as part of the corpus of international human rights and in view of European integration processes. It also seeks to provide a clearer understanding of the European Union's position on the various ways in which national self-determination could take form on the political map of Europe.

The European Project

Sovereignty and Supranationalism

The European project, a peace project in its essence, was developed in the aftermath of the Second World War as a joint attempt among European states to begin a new chapter in which cooperation, solidarity, and partnership would replace the rivalry, nationalism, and prejudice that were believed to have led to two devastating wars on the continent in only thirty years. It

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was perceived that individual European states were not able to maintain peace and security and that nationalist rule should be replaced by a common path that involves forsaking sovereign exclusivity in policy making. For this reason, the European project was conceived in principle as antinational,¹ or, at the very least, supranational or postnational.² The Treaty on European Union in its article 1 states that the treaty “marks a new stage in the process of creating an ever closer union among the peoples of Europe.” Thus, the European project, which relies on a supranational framework, offers a direct contrast to the glorification of nationhood that characterized international politics in the late nineteenth and early twentieth centuries.

The conviction the European Union holds today, reminiscent of the Vienna system established by Metternich in the nineteenth century, is that long-term peace and prosperity require the existence of a larger multicultural polity, where national identities and interests take a step back in the name of a greater good. European Commission president Jean-Claude Juncker has been very vocal in his criticism of attempts to “deconstruct” the bloc into national subdivisions, claiming, “There is no future for Europe as single nations.”³ The European Union favors consolidation over fragmentation and sees “unity in diversity” as its *raison d’être*.

The European project is seen as incompatible, ideologically and systemically, with the pursuit of self-determination of peoples and with national sovereignty. Member states renounce a degree of their sovereignty when they join the European Union, because they agree to a consensual decision-making process on matters covered by the treaties. Even the decision to accede to the bloc is not an act of self-determination, since it requires the consent of all other member states (Treaty on European Union [TEU], art. 49). Some scholars would argue that it is paradoxical for regions or stateless nations in the European Union to seek to establish an independent state by calling on the right to self-determination, only to be able to later rejoin the European Union—a process in which they would substitute self-determination for co-determination—as new legal entities.⁴ One way in which European integration has led to the demystification of the concept of traditional national sovereignty is through undermining state competences in various domains, from monetary policy to immigration policy, and normalizing the existence of common regimes and the doctrine of shared sovereignty.⁵ Nicolas Levrat argues that because national projects are constrained by co-determination in the European Union, individual European peoples no longer exercise self-determination and the concept of self-determination in a supranational European polity becomes obsolete.⁶

Nevertheless, the project of the “ever closer Union” has never been without its many challengers. In the first stages of European unification, in the early 1950s, the ambitious idea of developing a common European defense community met with rejection by the French parliament because of the unwillingness of France to concede its national sovereignty in the area of defense.⁷ Decades later, the rejection of the so-called European Constitution by a definitive majority of citizens in the Netherlands and France was a symbolic line in the sand marking the extent to which nations were willing to see the European supranational entity override nation-states. Nonetheless, political leaders across the European Union pressed on with their vision and introduced the Lisbon Treaty—a revised and renamed version of the Constitutional Treaty—which national governments could ratify without the need for a public consultation in the form of a referendum. Yet, the unprecedented rise in support for Eurosceptic parties over the past years among some of its founding members, such as Italy and France, as well as numerous other large member states, such as Hungary, Austria, Poland, and the United Kingdom, is a clear indication of the crisis the European project is experiencing in its objective to supersede national decision-making authority. As plans are proposed for further delegation of sovereignty to EU institutions for the purpose of common

border control and immigration policy, member states begin to dig in their proverbial heels in resistance to the proposed loss of powers of member states to (self-)determine their own paths. The decision of the United Kingdom to leave the European Union, motivated by the value the British people place on sovereign powers, created a significant crack in the feasibility and durability of this postnational model of governance.

The Construct of a European Identity

The process of European integration, as spearheaded by the European Union since the second half of the twentieth century, has proven itself to be a process of transforming notions of states and nations, while at the same fostering a new polity.⁸ The project to construct a European identity follows a formula similar to how national identities are developed. If national identities rest on the common history and shared culture, customs, and values of a group of people, then European identity would be forged on the grounds of the common civilizational heritage (Christianity, Roman law, the Renaissance, democracy, etc.), mutual interests, and unifying value system of European states and their citizens. Furthermore, as collective identities are bolstered by the existence of a common enemy, or differentiation from the “other,” a European identity is reinforced when juxtaposed with the “rest of the world.” Thus, at various times during its development, the European project was presented in opposition to the Soviet Union, to emerging powers in the global east, or most recently to the United States, as it sought to become an “element of equilibrium” in a growing multipolar world.⁹ Finally, ideological identity and the political form are closely related,¹⁰ and states with their own sovereign institutions are best placed to enable the development of loyalty among their citizens toward that state as well as a national consciousness. Similarly, European institutions—those with democratic legitimacy and those without—are there to give a political form of the supranational European project and tend to inspire a sense of belonging among peoples that transcends national borders.

The concept of European identity first appeared officially in 1973, when the heads of state or government of the nine countries that constituted the European Community at the time held a summit in Copenhagen, where they produced the Declaration on European Identity, through which they affirmed their determination to introduce the concept of European identity into their common foreign relations. The broad (and somewhat vague) definition of European identity offered in the declaration involves the common heritage and interests, the degree of common action of member states “in relation to the rest of the world,” and the “dynamic nature of European unification.”¹¹ The original purpose of the declaration, directed toward third states, was to underscore the shared values that distinguished member states from other subjects of international law.¹² At the time no thought was given to creating a European identity that would sustain a supranational project or a sense of loyalty toward the European Community.¹³ The text of the declaration notably makes two references to the common European civilization of member states and goes on to specify two key elements of how the European identity is to be perceived. First, emphasis is placed on the common values and principles of member states: democratic governance, the rule of law, human rights, and social justice. Second, in foreign affairs, the member states should progress toward common positions so they speak with one voice, allowing the “distinct character of the European entity to be respected.”¹⁴ As time since has shown, the first element has become the pillar of European integration, the second its ultimate purpose.

In keeping with the 1861 statement by Massimo d’Azeglio, a leader of the Italian unification, “We have made Italy; now we must make Italians,”¹⁵ the European Union today seeks to seal the unification of the continent by making Europeans. Just as states need to create conditions by which all the people living within their territory identify with the state and feel a sense of belonging and loyalty, so must the European Union foster the European

identity. This is no small feat. Though the “European” denominator is at times used to distinguish the place of origin of citizens of European countries from those of other continents in interactions on an international level, there is as yet no European *demos* as a collective of which to speak. The European Union comprises twenty-eight individual nation-states and many more peoples with separate identities. The Treaty on European Union, however, commits, in its preamble (par. 11), to reinforcing the European identity and its independence and, in article 4(2), to respecting the national identities of member states. Since, legally, the European Union is a *sui generis* entity, it can only follow that the sense of community related to it will also be *sui generis*, rather than mimic national sentiments.¹⁶

Former European commissioner Olli Rehn believed that it would be ill-advised to pursue a plan whereby a superior and common European identity would seek to replace the existing national identities and the different political cultures of EU member states. The idea of eliminating all national sentiments is based merely on idealism, whereas reality suggests that such attempts would result in a pushback from nations, ultimately backfiring on the unification idea because it could create resentment among member states and resistance toward further integration. Instead, Rehn considered the nurturing of a dual identity as the preferable approach, with “the national identity being dominant for most people and the European identity being . . . supplementary and in accordance with the national identity,”¹⁷ in following with how European citizenship is supplemental to national citizenship. German chancellor Angela Merkel recently expressed the same view: “I think we should try to do two things at once: be European, but also regard our home countries as part of our identity. They don’t have to be opposites.”¹⁸

Developing a common European identity is important because it may be needed to bolster the legitimacy of the European Union. Acceptance of an EU identity is theoretically linked to the acceptance of the European Union not merely as an important decision-making actor in the global arena that supersedes the domains on member states but as a truly representative polity that works for the greater good of its citizens. It is a vital question of image for the European Union, as the European integration project moves forward because, as Hristina Runcheva Tasev puts it, “many scholars of democratic theory pre-suppose a shared identity to set the boundaries of legitimate government—and this is complicated for the political system like the EU.”¹⁹ As noted previously, the close connection between ideological identity and political form guides the European Union to invest in the continual construction of a consciousness of commonality between the citizens of member states and the strengthening of a European identity through the setting up of a variety of educational programs, formal and informal (such as those on European studies in many universities around the European Union), through the use of public diplomacy, and through modern media. This fostering of a shared sense of belonging between Europeans would help consolidate the European Union’s supranational institutions and further broaden their competences by building its democratic legitimacy, because, as Runcheva Tasev points out, “democracy is not merely an electoral matter”; it “also requires socio-cultural cohesion in an institutional context or a public sphere.”²⁰ There is as yet no analysis that shows the effect of European institutions on constructing a European identity.

EU Approaches to Addressing Diversity of Peoples and Regions

Minority Rights

According to estimates, roughly 10 percent of the 500 million citizens of the European Union belong to a national minority group. The wide range of statistical-data-collection practices with regard to minorities in individual member states, however, makes it difficult to obtain a

definitive figure.²¹ Empirical research on minority issues has been further hampered by the varying definitions of minorities, particularly ethnic minorities, between states. Many of these minorities are peoples who have a national state but for historical or other reasons find themselves living beyond the delineated boundaries of that state, usually in border regions of neighboring countries. Among these are the 1.2 million Hungarians in Romania and the large number of Russians living in the Baltic states. Other ethnic minorities can be naturalized immigrants and their descendants, among whom are the estimated 3 million people of Turkish origin living in Germany. Finally, there are the autochthonous groups who do not have an independent state of their own and who, despite their inhabiting a region of a larger state for many centuries, have preserved distinctive cultural traits. These groups are the focus of this research. For them, unlike for other minorities, no independent political entity exists in which they form a national majority. Nevertheless, perhaps not surprisingly, the legal corpus of the European Union contains no provisions that distinguish these peoples from other minority groups. Thus, the only way to gain insight into how the European Union addresses the diversity of peoples within its borders is to review the EU mechanisms, if any, for the protection of minorities in its broadest sense.

The most striking observation is that minorities were mentioned for the first time in primary EU law in the Lisbon Treaty. Before this treaty was signed, there was no legal basis for group rights of national minorities in member states, and any protection against discrimination had to be founded on general human rights instruments. In essence, this was the position often held by political entities centered on the civic form of identity—as in the European Union—that strong social and economic individual rights make group rights redundant. Avoiding topics of national minorities followed logically from the European Union's long-term objective of reducing nationalist discourse and keeping considerations of national differences to a minimum. At the same time, “respect for and protection of minorities” was one of the Copenhagen Criteria obligatory for all candidate states wishing to join the European Union.²² Consequently, minorities in candidate states were in a better legal position to seek group rights than those in EU member states. And though the European Parliament has attempted to draft charters on minority and group rights, none of them has ever been put to a vote.²³

Minorities did receive a mention in article 2 of the Lisbon Treaty, as well as in article 21 of the Charter of Fundamental Rights, which has full legal effect for both EU member states and EU institutions but only in the context of general nondiscrimination provisions. Nevertheless, the issue of competences regarding the implementation of these rights uncovers a lack of ability by the European Union to act. That is, in keeping with the subsidiarity principle, competences that are not explicitly conferred to the European Union remain in the remits of member states (TEU, art. 4(1)). Specifically, all the areas of exclusive EU competence are listed in article 3 of the Treaty on the Functioning of the European Union, and a closer inspection reveals that issues concerning language, culture, education, or regions are not among EU competences. Therefore, all claims regarding respect for minority rights remain solely declaratory because the European Union leaves legislation of minority rights to the discretion of member states. Once a state has acceded to the European Union, the union does not consider that state's collective minority issues as its competence by the treaties.

Yet, the mere fact that the European Union included, as one of the core values on which the union is founded, respect for “the rights of persons belonging to minorities” (TEU, art. 2) denotes support—though moral—for the promotion of minority rights within individual member states and the rationality of group rights for national minorities as one of the expressions of internal self-determination of peoples. The problem lies in the European Union's institutional inability to produce any compulsory legislation and top-down mechanisms for member states, which in turn allows states to push back on measures that

they may perceive as threatening their national interests. Consequently, it is not possible to discuss a unitary EU policy on minorities and their role in society or in the democratic structures on a national and on a supranational level.

Most, if not all, EU member states do recognize the need for attention to national minorities, in terms of their social inclusion, nondiscrimination against them, and protection of their culture, as can be seen by their positions in other intergovernmental organizations that deal with minority issues. When in 1992 the UN General Assembly passed the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, no EU member state opposed it. Every EU member state is at the same time a member of the Organization for Security and Co-operation in Europe and has agreed to the 1990 Copenhagen Document, a large portion of which is dedicated to minority rights. Yet, while almost all EU member states have become parties to the Council of Europe's Framework Convention for the Protection of National Minorities from 1995, a notable exception is France (where the collection of statistical data on race, ethnicity, and religion is banned by law),²⁴ which has not signed the convention, and Greece, Belgium, and Luxemburg, which have signed but not ratified it.

Language Rights

The European Charter for Regional and Minority Languages from 1992, established by the Council of Europe, has had a similar fate. France, Italy, and Malta have chosen not to ratify the charter, while Greece, Belgium, Bulgaria, Portugal, and the three Baltic states have refused even to sign it. The protection of linguistic diversity in the European Union suffered a serious setback when France stated that, if it ever decides to ratify the European Charter for Regional and Minority Languages, it will emphasize that it views the charter solely as an instrument to protect Europe's linguistic heritage in general terms and not as a tool that protects language minorities, such as those who speak the regional languages of Corsican, Breton, Alsatian, and others in France.²⁵ Ironically, article 1 of the charter states that the purpose of the charter with regard to regional and minority languages is defined in the following manner: languages that are "traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population" but are "different from the official language(s) of that State," not including "dialects of the official language(s) of the State or the languages of migrants."²⁶ The definition of the scope of languages that are spoken by a numerical minority but have a traditional link with a given territory, unlike languages of immigrant communities, clearly points to the languages of stateless nations and historic regions, such as Welsh, Scottish Gaelic, Breton, Occitan, Sorbian, Basque, and Galician, or autochthonous minorities, such as German in parts of Poland and Italy, though none of these languages is listed by name.

The position expressed by France, one of the largest EU member states, creates a roadblock to the linguistic rights of stateless nations, particularly as expressed in article 3(3) of the Treaty on European Union, which proclaims that the European Union "shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced." Although the treaty is vague on the scope of language rights, since this provision is in continuation of the same article that calls for the "rights of persons belonging to minorities," it would follow that respect for cultural and linguistic diversity would go beyond the twenty-four official EU languages and include the sixty regional and minority languages spoken around the European Union.²⁷ It has been suggested that one of the key reasons for France's lack of support for the promotion of the status of minority or regional languages stems from the perceived links between some of its regional languages with separatist movements, such as in Corsica.²⁸

Nevertheless, some contend that the opposite cause and effect relationship is true. By suppressing regional languages and ignoring the demand for wider recognition and preservation of the linguistic heritage of stateless nations, states may further exacerbate the divide between those peoples and their national majority and strengthen secessionist movements.²⁹ The noticeable rise of independence campaigns by several western European regions in recent years has brought to the attention of the European Union that stateless nations want to see their culture and languages included and respected in the European arena, on an equal footing with those of nations with sovereign states. It has also been argued that the European Union acts in a discriminatory manner by not allowing EU citizens who speak a language other than the twenty-four official EU languages to communicate with EU institutions in their own language.³⁰ This discrimination applies especially to languages such as Catalan, Basque, Welsh, and Scottish Gaelic, which have official status as regional languages in their states but are not official languages of the European Union or the treaties, a fact made that much more poignant when one considers that they have more native speakers than some official EU languages, such as Maltese and Irish.

As mentioned previously, however, the amount of policy adjustment the EU institutions can do in this respect, without the political will of member states, is severely limited because language policy falls under the subsidiarity principle in the European Union and is an exclusive competence of member states. Still, the European Union can and does support the measures taken by central and local governments toward protecting minority and regional languages, primarily by allocating funding for educational programs and multilingualism projects and research, as well as for media dissemination of minority and regional languages.³¹ The European Parliament has encouraged the promotion of these languages. In 2006, the European Parliament decided by a majority that native speakers of the regional languages with official status in Spain and the United Kingdom can communicate in writing with the Parliament and receive a response in their language.³² But these regional languages may not be used to speak in plenary sessions or committee meetings of the European Parliament, a privilege reserved for official EU languages. Similarly, the European Council agreed to allow for certain EU documents also to be translated into languages that have an official status in one of the member states, provided that member state agrees to cover the costs associated with the translation, as did Spain with regard to the Catalan, Basque, and Galician languages.³³

Regional Rights

Contemporary debates about self-determination in Europe, however, are not driven exclusively by cultural, linguistic, or ethnic perspectives. In many instances this cultural element is secondary. What emerges is a marked tendency to promote the relevance of territorial self-government of stateless nations, placing the focus on advancing the status of regions. Most self-determination movements in the European Union embrace the idea of civic regionalism so that the pursuit of self-rule is connected to territorial autonomy, yet without the exclusivity of the traditional concepts of nationalism.³⁴ Consequently, the postnational entity that the European Union strives to be seeks to manage the diversity of its member states, and the diversity of regions within those states, by changing certain key state paradigms, that is, (1) by modulating the role of national borders, and (2) by encouraging subnational forms of self-rule.

The transformation of how EU internal borders have been perceived since the introduction of the freedom of movement and residence of peoples with the Maastricht Treaty, especially under the Schengen agreements, has become an opportunity for mitigating the thorny issue of the relative discrepancy between political and ethnic borders of European

peoples. Empirical studies have demonstrated that a dualism often exists in identities among peoples in border regions of Europe, such that they identify sometimes with their state of citizenship and at other times with their ethnic group, or they retain at once a sense of national and regional belonging.³⁵ The removal of the functional significance of interstate boundaries that allows the peoples of the European Union to move freely across borders is believed to render irredentist movements pointless. Furthermore, it helps the narrative of a multilayered governance in the European Union, because the co-existence of national and supranational policy-making normalizes the idea of subnational governments, which would not be perceived as threats to state sovereignty. Thus, the concept of “permeable borders” is believed to help keep the territorial integrity of states intact while resolving potential frustrations of minorities and border regions.

To this effect, the principle of subsidiarity—according to which governmental functions should be performed at the lowest level of government possible and thus states should execute only those tasks that cannot be done at a local level—was promoted by the European Union and accepted, in general, by regions and stateless nations who saw in this principle an opportunity to gain greater regional powers. It is important to note, however, that greater power for the regions was not the originally intended goal of the European Union’s touted principle of subsidiarity, which aimed instead at reassuring national governments against fears that the European Union’s supranational institutions would weaken their competences. The regional and local aspects of subsidiarity were mentioned for the first time only with the Lisbon Treaty (TEU, art. 5(3)), and then only in reference to a member state’s choice of whether or not to act at a central level.

The concept of a “Europe of the Regions” emerged in the 1990s, when the forces of globalization and economic interdependence, on one hand, and the prospect of deeper European integration and stronger EU institutions, on the other hand, were seemingly diluting the relevance of the doctrine of the nation-state as the optimal political form. Individual states were seen to be too small to compete on the global market but at the same time too large to fully represent the local democratic will of their citizens. Thus, regions in European states were to be gradually included in the decision-making arrangements of the European Community as a third actor in its promoted “multi-layered” policy-making structure,³⁶ in an attempt to “reflect better the cultural and national divisions within Europe.”³⁷ This concept, of course, was focused not on cultural regions alone but on all regions equally.³⁸ Over the years, regions have opened their lobbying offices in Brussels as a demonstration of their new role as stakeholders in the European Union, bypassing states as the traditional link between the subnational and supranational governments and seeking unimpeded access to EU institutions. From a mere 15 regional offices in 1988, their number rose to more than 160 in 2002 and almost 200 in 2017.³⁹ Some analysts have suggested that one of the driving factors for an increased regional presence in Brussels is the element of linguistic and cultural identities that differ from those on the state level and the intention to gain support from the commission on points of discord with their central governments.⁴⁰

More than two decades have passed, however, and the concept of a Europe of the Regions has been discredited. While regions have made progress and have been given a place at the table in certain EU forums, time has shown that their presence has in many aspects remained symbolic and the European Union has remained a state-centric system. While the concept of state sovereignty has evolved to become more flexible and accommodating for a degree of shared competences with supranational and subnational governments, the predicted decline and replacement of the nation-state has not materialized. The abandonment of optimism related to the Europe of the Regions plan has two main causes. First, contrary to the expectation that regionalist separatist tendencies would be abandoned, many nationalist parties have seized on the political momentum to give a boost to their movements for greater

autonomy, or even to provide an argument for their ability to be independent. This response was due, in part, to the ill-defined Europe of the Regions plan, which was left open to subjective interpretations and uses. Regionalist parties in Scotland,⁴¹ Catalonia, and the Basque country saw an opportunity to correlate their quest for regional self-government with the greater cause of European integration⁴² and, consequently, to appeal to moderate voters. Rather than its leading to nation-states' becoming outdated, stateless nations, particularly in these prosperous regions, saw it as an opportunity to pursue their own nation-state projects.

Second, the idea of Europe of the Regions proved naively oblivious to the substantive role of national governments. As with minority issues, other than rhetorical encouragement, the European Union has no competences in regulating regional relations and status within member states. Each state has the sovereign freedom to determine the territorial delineation of its regions, the extent of regional competences, and whether or not it will decentralize certain powers to its regions. Any powers regions may have gained are due to internal political reforms by states and the goodwill of those states to enact such reforms. Underlining the paradox, Catalan independence leader Carles Puigdemont remarked that "a Europe of regions created by the state is like electrical cars created by oil companies."⁴³ Regional offices in Brussels are not part of any of the EU treaties and as such their role in the policy process remains informal; thus, the impact of regions on an EU level has been described in the literature as "marginal"⁴⁴ and "subterranean."⁴⁵ The aftermath of recent attempts by EU regions to proclaim independence has shown EU leadership backpedalling on the notion of powerful regions and returning to the concept of strong and unified states as the most appropriate and stable form of government.⁴⁶

Nowadays, the Committee of the Regions (CoR), a specialized EU agency established in 1994 that comprises 350 representatives from regional and local governments of all EU member states, is seen as the forum where substate actors can become involved in EU-level policy discussions. The purpose of the CoR is to give "regions and cities a formal say in EU law-making ensuring that the position and needs of regional and local authorities are respected."⁴⁷ Nevertheless, this agency has shortcomings when it comes to providing the necessary tools for stateless nations and autonomous regions to exercise requisite representation at a European level. First, the committee is set up as an advisory body only, open solely for submitting opinions and consultations that are nonbinding to the European Union's governing institutions, as determined in article 307 of the Treaty on the Functioning of the European Union.⁴⁸ Second, the CoR is not a setting where minorities, stateless or otherwise, can get representation as a group, unless a member of a minority happens to be elected as a local or regional official.⁴⁹ Even so, that representative would not be acting on behalf of a given minority or stateless nation but would instead be acting on behalf of the local authority by which they were appointed. Finally, the fact that the CoR represents all subnational entities on equal terms, combining large cultural regions with small administrative regions and even municipalities, has been a source of its ineffectiveness in truly filling in the democratic gap between cultural regions and EU policy-making, leading to disappointment and frustration by those regions.⁵⁰

The term "constitutional regions" has been used in the literature to describe the set of cultural and large federal regions within the European Union that distinguish themselves from other subnational entities by their legislative competences.⁵¹ These include the devolved administrations of Scotland and Wales of the United Kingdom, the autonomous Spanish communities, such as Catalonia and the Basque country, the Belgian provinces of Flanders and Waloon, and the German and Austrian Länder, which, unlike smaller administrative regions (particularly in new EU member states), also have a distinct historical or linguistic identity. Thus, constitutional regions have been dissatisfied with the existing channels of communication with the European Union, which stunt their influence by merging them with

small administrative regions, and they have been lobbying together for a greater recognition of their unique legal status in the European Union and their right to have a more prominent role in its decision-making structures, particularly the European Commission.⁵² Thus far, the most visible acquired right is the participation of regional ministers in the EU Council of Ministers in cases involving those regions, under the clauses of article 203 of the Maastricht Treaty, which set the foundation for a nonintermediary communication with large federal or cultural regions.⁵³ The participation of regional ministers in such meetings is dependent, however, on the domestic constitutional arrangement of individual member states. For example, in the United Kingdom and in Spain, the central government determines whether or not regional ministers attend EU Council meetings. In contrast, Germany's strong federal political model enables the *Länder* to participate by default, an arrangement similar to the one in Belgium.⁵⁴

Perhaps the best-known EU approach for assisting regions is the aptly named "regional policy," a set of financial resources available for the development of regions. In simple terms, EU's regional policy, also known as "structural funds," is effectively an instrument for delivering regional aid, with the goal of assisting poorer regions to catch up with economically stronger ones and achieve what is often referred to as economic, social, and territorial cohesion within the European Union. More than a third of the 2018 EU budget is dedicated to structural funds,⁵⁵ one of the many reasons structural funds receive a good deal of attention. They are promoted as the most palpable method through which regions have a connection to Brussels and as an independent means of funding from their national governments. Critics have charged, however, that the narrative around the funds is merely symbolic, because, in practice, regions have no direct access to money from Brussels since the sector is intergovernmental. The program, nevertheless, allows the European Union to get some credit for providing for regional needs, while regional leaders have the semblance of direct cooperation with central EU institutions.⁵⁶

It can be concluded that, when it comes to opportunities for regions to partake in their own right in the policy-making processes of the European Union and to address issues for which there exists a discrepancy between the regional position and interests and the position and interests of their central governments, there are mechanisms in place enabling them to do so, but only if beforehand they secure constitutional concessions from their respective states granting them the necessary status and competences to act. The European Union has in theory supported the idea of proactive regions with sufficient powers to demystify traditional notions of centralized states, because, for one thing, subnational identities are seen as complementary to the strengthening of European identity. For this reason, the European Union has, at the very least, never opposed devolution within its member states. Nevertheless, such internal self-determination battles are to be fought on national arenas, a domain in which the European Union has thus far not intervened. Finally, there appears to be disagreement among researchers about whether the European Union as a supranational entity has opened up new opportunities for regions to advance their self-government⁵⁷ or whether it has constrained them in their decision-making abilities.⁵⁸

European Union Attitude toward Self-Determination: Legal and Political Considerations

EU Law with Regard to Self-Determination of Peoples

The European Union, as a club of sovereign states, is organized in such a way that it represents the interests of those states through decision-making and voting mechanisms that allow individual member states and their governing institutions to act on behalf of the peoples that live in their territories as a collective. Paragraphs 6, 9, and 12 of the Preamble of the

Treaty on European Union refers to this system by which signatory states take on measures as representatives of “their peoples,” indicating an implied equality within the framework of the European Union between peoples and citizens. Examples in the literature support these changing perceptions of nations, arguing that in the era of globalization all people living within a state should identify with that state, setting aside the ethnic-centered understanding of “peoples”⁵⁹—a concept already embraced by several European states, implementing the civic form of nationalism. Nevertheless, following the classical line of thinking about nations, not all peoples in Europe have their own state; thus, it follows that only those European peoples who have had the historical opportunity to establish a national state are able to participate in the co-determination processes of the European Union.

There is no mention in the treaties of the European Union of a right to self-determination of those peoples or of self-determination in general. The question arises: Since general international law forms part of EU law and consequently is binding for EU member states and institutions, are specific references in EU law needed for the right to self-determination of peoples to be legally enforceable on EU territory, or is it a right stateless nations in Europe can exercise by extension?

The European Court of Justice made a valuable contribution to the debate on December 21, 2016, when, in its ruling concerning Western Sahara, it found that “the customary principle of self-determination referred to in particular in Article 1 of the Charter of the United Nations is . . . a principle of international law applicable to *all non-self-governing territories and to all peoples* who have not yet achieved independence. It is, moreover, a *legally enforceable right erga omnes* and one of the essential principles of international law” (italics added).⁶⁰ While it is clear that the court decision refers to Western Sahara’s frozen decolonization process and not a general EU context, in its ruling the court chose not to refer specifically to the context of decolonization but instead to stress that the right to self-determination applies to all people. Similarly, the court chose to quote article 1 of the UN Charter rather than one of the many UN resolutions that deal uniquely with the right to self-determination of peoples under colonial rule. This choice has led to some interpretations of the words of the court to mean that the right to self-determination is legally applicable to stateless nations in the European Union, such as the Flemish, Basques, Catalans, and Scots.⁶¹

The wording in the decision by the European Court of Justice is in line with the conclusions made in 2010 by the International Court of Justice in its advisory opinion on Kosovo’s unilateral declaration of independence. At the time, the international court rightly remarked:

[D]uring the second half of the twentieth century, the international law of self-determination developed in such a way as to create a right to independence for the peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation. . . . A great many new States have come into existence as a result of the exercise of this right. There were, however, also instances of declarations of independence outside this context. The practice of States in these latter cases does not point to the emergence in international law of a new rule prohibiting the making of a declaration of independence in such cases.⁶²

This conclusion, with the 2016 European Court of Justice ruling, makes it clear that the right to (external) self-determination of peoples, within or outside the context of remedial secession, is not specifically forbidden by international law and therefore not forbidden by EU law, which itself incorporates positive contemporary international law.⁶³

Nevertheless, a close examination of EU law sources reveals that self-determination as a concept, principle, or human right is absent from these texts. Certain European human rights instruments such as the Helsinki Final Act of 1975 and the Charter of Paris for a New Europe

of 1990 do feature references to self-determination. But as international treaties, they are political, rather than legal, documents and do not form part of European law. Although stemming from international law, the EU treaties effectively create a “new legal order”⁶⁴ for member states and their citizens that differs from public international law.⁶⁵ Thus, the theory suggests that, while EU law cannot prohibit self-determination of peoples, it does not explicitly support self-determination of peoples either.⁶⁶

A source from the European Commission has expressed the belief that the existence of conflicts between states and some of their regions is potentially the reason there is no EU regulation on self-determination of peoples.⁶⁷ Because of the political sensitivity of the issue, there should be a balance between EU law and international law. In this context, while the European Commission is aware that there are regional identities, they can be supported only in as much as they do not collide with the national identity of member states,⁶⁸ because respect for national identity, as well as the territorial integrity, of member states is enshrined in article 4(2) of the Treaty on European Union, even though the same article also discusses support for regional and local self-government.

EU Statements on Self-Determination to the United Nations

Because of the lack of any official legal documents referencing self-determination in the European Union, the union’s position on issues stemming from this principle of international law can be observed only from official EU statements made in the forums of the United Nations. In October 2001, for example, at a meeting of the Third Committee of the General Assembly, which deals with social, humanitarian, and cultural issues, a representative spoke on behalf of the European Union on the agenda item concerning the right to self-determination of peoples. There, the European Union took the opportunity to reaffirm the relevance of that right in the contemporary international context as an integral part of fundamental human rights, as exemplified by its inclusion in the UN Charter and the two International Covenants on Human Rights. It is clear from this statement that the European Union sees the right to self-determination as part of the broader family of universal human rights, because a significant portion of the statement focuses on calling for respect for democratic principles and liberties, which are perceived to be directly related to the invocation of peoples’ right to self-determination. In a 2001 speech before the United Nations, a representative from the EU delegation noted that “making this right a reality requires full observance of all human rights and fundamental freedoms on the part of States,” thus identifying human rights as a de-facto precondition to the enjoyment of the right to self-determination.⁶⁹ It was the delegation’s position that certain conditions need to be present in order for the right to self-determination to be applied, such as freedom of expression and freedom of assembly, but most important the right to vote, through which people can give a mandate to the representatives who best serve their interests. This interesting interpretation of self-determination as analogous to a democratic system was further reiterated in the statement that holding elections is not just a condition but an “expression of the right of peoples to self-determination” and “the process of democratization is an essential stage in the recognition of the right of peoples to self-determination.” In a similar statement to the United Nations in 2003, an EU representative concluded by saying that the “EU wishes to strongly reaffirm that the right to self-determination includes the opportunity for each individual to follow, support, and criticize actions of political institutions of their countries.”⁷⁰

While it stands to reason that the right to self-determination is related to other human rights, not least because of its inclusion in the International Covenants on Human Rights, the European Union appears to be equating this right to the presence of democracy in a society to an extent that eclipses the essence of what self-determination of peoples truly means. This simplification of self-determination to mean participation of citizens in the political processes

of states, or the expression of their political will through elected institutions, neglects the territorial aspects of the right to self-determination. It also overshadows the common article 1 of the International Covenants on Human Rights, according to which the right to self-determination of peoples means freedom to determine their political status in whatever form of social order that may be. By issuing these statements and tactically framing the matter of self-determination of peoples in this manner, the European Union sets out the basis for and limits the context in which it chooses to promote the implementation and respect of the right to self-determination internationally—by calling for the spread of democracy and rule of law around the world.

In later years, EU representatives argued this case even more directly in a discussion of the content of the UN resolution drafts on the right of peoples to self-determination. (These resolutions, for the most part, retain the same format and wording year after year and are adopted as a matter of procedure, without a vote, first in the Third Committee of the General Assembly and later in the General Assembly sessions.) In November 2005, the United Kingdom mission to the United Nations spoke on behalf of the European Union about the resolution titled “Universal Right of Peoples to Self-Determination” to “explain the basis upon which the EU has been able to join consensus . . . on the resolution.”⁷¹ More specifically, the statement underscored the areas in which the resolution did not fully correspond to the positions held by the European Union with respect to the right to self-determination and offered the general EU interpretation of that right within the broader context of human rights. The European Union referred to the right to self-determination as a “pillar” of the international order, intrinsically related to a democratic system that embraces the rule of law, stating that “respect for the right of self-determination requires the holding of free, regular and fair elections,”⁷² which in essence poses human rights as a precondition to the enjoyment of the right to self-determination. The European Union expressed its regret that there had been no opportunity to open a discussion on the text of the resolution so that it might better reflect the practice of self-determination, even though the text has remained almost entirely unchanged since 1980.⁷³ Furthermore, the European Union noted that the resolution text contained certain inaccuracies under international law that needed to be addressed, specifically objecting to the mention of the right to self-determination of peoples and nations in the third preambular clause of the resolution.⁷⁴ The EU position was that the right applies only to “peoples” and not to “nations” according to the International Covenants on Human Rights, which are a source of international law.

Perhaps the most important remark in the European Union’s statement that best clarifies the its stance on the topic of self-determination was in response to the first operative clause of the resolution draft, where the right to self-determination of all peoples is named as the basis for the promotion of other human rights,⁷⁵ to which the European Union objected: “Though as already mentioned the EU firmly believes that self-determination is closely associated with respect for all human rights, it is not correct to suggest that self-determination as such is a pre-condition for the enjoyment of other human rights.”⁷⁶ The same position, with negligible alterations, was expressed by EU representatives in 2006⁷⁷ and was repeated again in 2009.⁷⁸

It is the European Union’s opinion that self-determination of peoples is not a necessary condition for the presence and respect of other human rights and that human rights and liberties can be present even in the absence of self-determination. Furthermore, as previously noted, it can be inferred from all EU statements to the United Nations on the matter that the European Union views human rights as a precondition for self-determination, not the other way around. Conversely, going back to the instances where the European Union equated the enjoyment of self-determination with respect for civil liberties and holding free elections, a second conclusion could be that peoples who already enjoy a full range of human rights are by nature able to self-determine (by expressing their political will through voting). Thus, it

would follow that, to the European Union, seeking independence, or what is known as external self-determination, becomes redundant in a democracy because of the wide range of opportunities for internal self-determination.

EU Practice of Recognition of New Independent States

Because new demands for recognition of independence by stateless nations continue to proliferate within and outside EU borders, it has become more imperative than ever to develop a principled approach in addressing each of these claims, enabling due considerations for the rights of peoples concerned, as well as the individual circumstances of each case. But in the light of the lack of norms in EU law pertaining to the right to self-determination of peoples, we turn to earlier cases and look at the history of political decisions the European Union made when confronted by demands for recognition by newly independent states on the European continent in the past. A second wave of mass independence declarations in the twentieth century that occurred across Eastern, Central, and Southern Europe in the early 1990s, at the end of the Cold War, brought along a set of legal and moral uncertainties. The European Community needed to respond to the severity of these changes occurring in the global order. This was a turning point in history, where for the first time since the process of decolonization began, there had been multiple simultaneous demands for self-determination of peoples, requiring the European Community to come up with a (coordinated) response on the question of their recognition and, consequently, to usher an irreversible change to the international status quo.

Taking the example of the Yugoslav federation, as claims for independence and military clashes emerged in Slovenia and Croatia in the summer of 1991, the European Community's initial response was to try to preserve the existing, yet failing, federation, and thus uphold the political status quo. As Roland Rich points out, there was fear that the Yugoslav dissolution would set in motion many self-determination claims in the Soviet Union and destabilize this nuclear power.⁷⁹ Outside of the European Community, very few other international powers took interest in the developments.⁸⁰ Overall, the few ambiguous statements the European Community made on the topic indicate that they supported the preservation of the territorial integrity of Yugoslavia, in line with the accepted presumption in international politics that "favours the continuity and disfavors the extinction of an established State."⁸¹ But at the same time it was made clear that there was no plan to intervene should a secession come about.

In the end, as the disintegration of Yugoslavia appeared to be irreversible, the European Community took on a leading role in responding to the political and legal complications emerging from it. The foreign ministers of the European Community met in Brussels and issued a declaration containing common guidelines that set the normative basis for the recognition of the new states emerging in Eastern Europe.⁸² It was the first document of its kind setting out the legal framework for the position of the European Union toward more than a dozen new entities, many of whom made unilateral declarations of independence. At the same time, it represented an expansion on the Montevideo criteria for statehood and a defined list of conditions for recognition. The declaration contains several noteworthy elements. The first is the inclusion of self-determination in the text as one of the principles guiding the European Community in its response to the new historical realities in Eastern Europe. Until then, self-determination was understood almost exclusively as a tool in the decolonization process.

Second, the declaration added to the traditional Montevideo criteria. The four original criteria from the Montevideo Convention for an entity to be considered an independent state were for that state to have a permanent population, a defined territory, a government, and the

capacity to enter into relations with the other states. The Declaration of the European Council contains the additional requirement of a democratic governance for any new state wishing to be recognized as independent. Before the European Council declaration, having a political system different from a democracy had never been an obstacle, or a factor, in the recognition of new states. As Cedric Ryngaert and Sven Sobrie note, “the traditional legal framework had never concerned itself with the internal organisation of a would-be state, as this would have been considered an unlawful interference in this state’s internal affairs.”⁸³ The declaration adds another three criteria to the traditional legal framework: the new state should not have been created through the use of aggression, it should commit to respecting minority rights, and it should commit to disarmament and nuclear nonproliferation. With the declaration, the European Council had drafted what can be described as an exhaustive, detailed, and strict normative framework, according to which requests for recognition of new states would be evaluated, that represented an expansion of the body of international norms dealing with the question of statehood.

Furthermore, the European Council established the Arbitration Commission on Yugoslavia, which was assigned to evaluate each state’s adherence to the criteria. It was unclear at first what the mandate of this commission would be. The initial idea was that the commission would issue binding decisions on thorny issues concerning, for example, the right to self-determination, recognition, and state succession on the request of what they called “valid Yugoslavian authorities.” By supporting the work of the Arbitration Commission, the European Community. it appeared, at least initially, would pay as much attention to international law provisions as political considerations in the process of state recognition.⁸⁴ In the end, the commission’s role was to offer nonbinding legal opinions, which proved to be a valuable addition to the body of international law on the topic of self-determination of peoples through political independence.

Before the Arbitration Commission had a chance to issue any recommendations, however, Germany issued a statement announcing that it would recognize Slovenia and Croatia, because in the view of the German government these two states met the conditions set by the European Community.⁸⁵ Germany had been at odds with its European partners, previously stating it would recognize these two states, even if no one else did. From the beginning, the European Community had difficulty speaking with one voice and finding a common stance on this issue: While France was a strong proponent of preserving the integrity of the federation of Yugoslavia, states such as Germany and Belgium appeared somewhat open to the potential recognition of Slovenia and Croatia as independent states. What might be some of the reasons for such a foreign policy decision on Germany’s part? Many at the time argued that Germany was attempting to create its region of influence. Slovenia and Croatia were historically part of the Austro-Hungarian Empire and culturally connected to the German-speaking and Catholic part of Europe. In fact, German recognition of these two newly independent states came on a highly symbolic date—December 24, the day Roman Catholics celebrate Christmas Eve. Furthermore, many immigrant workers from Yugoslavia resided in Germany, most of which were of Croatian origin, and many of them had the right to vote and lobbied the government to recognize Croatia.⁸⁶

The Arbitration Commission shortly afterward found that only Slovenia and Macedonia fully satisfied the conditions for recognition, whereas Croatia and Bosnia and Herzegovina needed to take additional measures. Nevertheless, the recommendations of the Arbitration Commission were not legally binding and different interests took precedence. Thus, many Roman Catholic European states extended their recognition to Slovenia and Croatia but not to Macedonia, which is predominantly Orthodox, or Bosnia and Herzegovina, which is predominantly Muslim and Orthodox. Others sought to retain unity within the European

Community and consented to Germany's position, demonstrating the growing power and influence Germany had within the European Community.⁸⁷

David Raič has addressed these events by noting that EU states approached the situation by following political interests at the expense of international law: "It has been suggested that the recognition of the new States which were formed within the boundaries of the former Yugoslavia . . . must mainly be explained in terms of politics. In other words, the creation and recognition of these new States should be seen to have taken place mainly outside the domain of international law."⁸⁸ In the end, both Macedonia and Bosnia and Herzegovina were eventually recognized by the EU member states and accepted into the international community of states, though war-torn Bosnia and Herzegovina far sooner than Macedonia, despite Macedonia's being the one that met all the legal conditions, which gives further credence to the political character of European Union's practice of recognizing of new states.

The European Union made similar considerations in the case of Kosovo's unilateral declaration of independence. In a press release the day after Kosovo declared independence, the Council of the European Union stated that individual member states will make their own decisions on their relations with Kosovo in consideration of their "national practice and international law."⁸⁹ There was no detailed normative framework of criteria that Kosovo was required to meet before recognition, such as that which the European Community required of the other republics that emerged from the dissolution of Yugoslavia seventeen years earlier. Moreover, no assessment was made even of compliance with the Montevideo criteria, the third of which is having an effective government that operates independently from external control. Kosovo's not meeting this criterion, because of the continued and influential participation of the UN and EU missions in its governance, was one of the many problems.⁹⁰ In the end, member states chose to proceed solely with political expedience for guidance.

In their research on the international reactions following Kosovo's unilateral declaration of independence, Ryngaert and Sobrie found that scarcely any mention of international law was made in statements, with recognition of Kosovo widely justified by political parameters, such as "the need for stability, peace, and security in the region."⁹¹ In cases such as these where an entity is deficient in meeting some of the statehood criteria, the widespread recognition by most of the EU member states could be interpreted to have had a constitutive effect on the state of Kosovo.

Appeals to the international law aspects of territorial integrity and state sovereignty have been made primarily by those countries that opposed recognition of Kosovo, such as Spain, Romania, and Cyprus. But in saying so, I would be remiss not to note the grave fear in those countries of active secessionist movements within their own territory and, consequently, their determination to block setting any precedent of recognition to breakaway states. Even their statements on the legality of the new state were motivated by political interests, rather than considerations of international law. The EU member states that did recognize Kosovo were concerned at least about the danger of the possible interpretations and consequences of such a precedent to the established international order and therefore always emphasized that the recognition of Kosovo was a *sui generis* case. Ironically, in a press release, the EU Council insisted that the European Union continued to adhere "to the principles of the UN Charter and the Helsinki Final Act, *inter alia* the principles of sovereignty and territorial integrity and all UN Security Council resolutions" but went on to say that Kosovo does not represent a breach of those "principles and resolutions."⁹²

An examination of recognition history shows that the European Union has approached newly independent states in the wider European region with an eye to security-driven implications more so than concerns for international law or respect for human rights. As this review shows, examining the earlier practice of recognition of new states by the European Union does little to determine a pattern of specific requirements to be met by aspiring new

states, within or outside the European Union, which would render them entitled to EU recognition, since a “varying degree of attention [was] paid to international law depending on political considerations and strategic interests in each case.”⁹³ In the past, the European Union had chosen pragmatism over normative considerations, leaving the door open to uncertainty and political manhandling for all self-determination claims since.

Concluding Observations

EU law contains no provisions concerning self-determination of peoples, as a principle or a right. The absence of such provisions in the text of the EU Charter of Fundamental Rights is noticeable and is clearly due to the political sensitivity of the issue. But international law is an integral part of EU law, and, thus, it follows that self-determination is an indisputable right of all peoples that ought to be respected, even without its being emphasized in EU law. This view was confirmed in a ruling of the European Court of Justice in 2016, which describes self-determination as a legally enforceable right *erga omnes*. Nevertheless, though stemming from international law, the EU treaties effectively create a new legal order for member states and their citizens that is different from international public law. Thus, even though EU law cannot act contrary to international norms, there is no explicit support in it for the right to self-determination of peoples. The European Union is, after all, a club of states and, as such, protects the interests of these countries as sole representatives of all citizens on their territory. In addition, ideologically and systematically, the European project is considered incompatible with the aspiration for self-determination of peoples or national sovereignty. Actions that might highlight the differences between different peoples in Europe are discouraged because the European Union is a political entity that strives to build a civic and supranational identity among its citizens in support of the project for a European political union.

The European Union has made noticeable efforts to interpret the self-determination of peoples as respect for human rights and the existence of a democratic system. The European Union believes that nations that already enjoy a wide range of human rights are naturally able to self-determine by participating in elections and that demands for independence are unnecessary in democratic states because of the existence of a representative democracy and the wide range of opportunities for internal self-determination. The European Union tries to tackle the diversity of peoples within its borders through support and commitment to a certain degree of minority, linguistic, and regional rights. But when it comes to policies relating to minorities, languages, and regions, the European Union’s commitments are mainly declarative, since the principle of subsidiarity means that decisions and legislation on these issues are a discretionary right of individual member states. The problem lies in the European Union’s institutional inability to produce any mandatory top-down mechanisms for member states, which in turn allows countries to refuse the measures they consider a threat to their national project. There are striking differences between member states in whether and to what extent minority, linguistic, or regional rights of stateless nations are recognized, and any gains on these forms of internal self-determination have been due solely to the goodwill of some member states to enact such policies.

Past cases of recognition of newly independent states in the wider European region by EU member states have been inconsistent, arbitrary, and dependent on the strategic interests of individual member states. Thus, it becomes apparent that the European Union has no clear normative criteria governing state recognition. Nevertheless, EU practice also demonstrates that the European Union has recognized virtually every independence claim emerging in Europe in recent decades (with the exception perhaps of Republika Srpska and partially that of Kosovo). Furthermore, the European Union has had no qualms about welcoming Estonia, Latvia, Lithuania, Slovenia, and Croatia within its club, despite their being states all of which

at one time challenged the status quo of territorial borders and declared independence against the wishes of their parent state. As recent practice tells us, the European Union does recognize the outcomes of self-determination movements as a factual situation, once they have materialized into effective independent states.

Notes

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- ⁴⁸ Ulrike Barten, “The EU’s Lack of Commitment to Minority Protection,” *Journal on Ethnopolitics and Minority Issues in Europe* 15, no. 2 (2016): 108–109.
- ⁴⁹ *Ibid.*
- ⁵⁰ Keating, “European Integration,” 21.
- ⁵¹ Carolyn Moore, “A Europe of the Regions vs. the Regions in Europe: Reflections on Regional Engagement in Brussels” (paper presented at European Union Studies Association Annual Conference, Montreal, 2007).
- ⁵² *Ibid.*, 7–8.
- ⁵³ The Maastrich Treaty was replaced, in substance, by art. 16(20) and art. 16(9), of the Lisbon Treaty.
- ⁵⁴ Keating, “European Integration,” 20.
- ⁵⁵ “2018 EU Budget,” press release, European Commission, November 18, 2017, https://europa.eu/rapid/press-release_IP-17-4687_en.htm.
- ⁵⁶ Keating, “European Integration,” 21.
- ⁵⁷ Robert Harmsen and Thomas Wilson, “Introduction: Approaches to Europeanization,” in *Europeanization: Institution, Identities and Citizenship*, ed. Robert Harmsen and Thomas Wilson (Amsterdam: Editions Rodopi,

2000), 15–16. See also Gary Marks and Doug McAdam, “Social Movements and the Changing Structure of Political Opportunity in the European Union,” in Marks et al., *Governance in the European Union*.

⁵⁸ Frederik Fleurke and Rolf Willemsse, “The European Union and the Autonomy of Sub-National Authorities: Towards an Analysis of Constraints and Opportunities in Sub-National Decision-making,” *Regional & Federal Studies* 16, no. 1 (2006).

⁵⁹ Thomas Fleiner and Lidija Basta Fleiner, *Constitutional Democracy in a Multicultural and Globalised World* (Berlin: Springer, 2009), 286.

⁶⁰ Council of the European Union v. Front Polisario, European Court of Justice, case C-104/16, December 21, 2016.

⁶¹ Paul Mason, “Catalonia, Lombardy, Scotland . . . Why the Fight for Self-Determination Now?,” *Guardian*, October 23, 2017, <https://www.theguardian.com/commentisfree/2017/oct/23/we-need-to-understand-why-catalonia-lombardy-scotland-are-reposing-question-of-self-determination>. See also Levrat, “Right to National Self-Determination.”

⁶² International Court of Justice, *Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo*, Advisory Opinion. I.C.J. Reports, July 22, 2010.

⁶³ Glen Anderson, in “A Post-Millennial Inquiry into the United National Law on Self-Determination: A Right to Unilateral Non-Colonial Secession?,” *Vanderbilt Journal of Transnational Law* 49, no. 5 (2016), argues that the right to self-determination could develop gradually through customary law, for remedial secession to encompass cases of unilateral noncolonial declarations of independence even for moderate abuses of human rights, such as cultural or political discrimination.

⁶⁴ Van Gend en Loos v. Nederlandse Administratie der Belastingen, European Court of Justice, case 26/62, February 5, 1963.

⁶⁵ David Edward, “EU law and the Separation of Member States,” *Fordham International Law Journal* 36 (2013): 1162.

⁶⁶ *Ibid.*, 1165. See also Michael Keating, “European Integration.”

⁶⁷ Interviewee 1, interview by author, Brussels, March 27, 2018.

⁶⁸ *Ibid.*

⁶⁹ European Union Delegation to the United Nations, “EU Presidency Statement—The Right to Self-Determination” (speech, New York, October 31, 2001).

⁷⁰ European Union Delegation to the United Nations, “EU Presidency Statement—Right of Peoples to Self-Determination” (speech, New York, 2003).

⁷¹ UK Mission to the UN, “EU Presidency Statement—Explanation of Position: Universal Right of Peoples to Self-Determination” (speech, New York, November 21, 2005).

⁷² *Ibid.*

⁷³ Mission of Finland to the UN, “EU Presidency Explanation of Vote—Universal Realization of the Right of Peoples to Self Determination” (speech, New York, November 16, 2006).

⁷⁴ United Nations General Assembly, Resolution 60/145, “Universal Realization of the Right of Peoples to Self-Determination,” February 14, 2006, available at https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/60/145.

⁷⁵ *Ibid.*

⁷⁶ UK Mission to the UN, “EU Presidency Statement.”

⁷⁷ Mission of Finland to the UN, “EU Presidency Explanation of Vote.”

⁷⁸ European Union Delegation to the UN, “EU Explanation of Position—United Nations 3rd Committee: Self-determination” (speech, New York, November 12, 2009).

⁷⁹ Roland Rich, “Recognition of States: The Collapse of Yugoslavia and the Soviet Union,” *European Journal of International Law* 4 (1993): 38.

⁸⁰ The United States’ position on the matter was that recognition of states should be postponed until further notice. The United States was cautious about recognizing any of the emerging Balkan states, even though at the same time they recognized the secession of the Baltic states from the USSR.

⁸¹ James Crawford, *The Creation of States in International Law*, 2nd ed. (Oxford: Oxford University Press, 2007), 51.

⁸² European Community, “Declaration on Yugoslavia and on the Guidelines on the Recognition of New States,” *International Legal Materials* 31, no. 6 (1992).

⁸³ Cedric Ryngaert and Sven Sobrie, “Recognition of States: International Law or Realpolitik? The Practice of Recognition in the Wake of Kosovo, South Ossetia, and Abkhazia,” *Leiden Journal of International Law* 24 (2011): 475.

⁸⁴ Wilhelm Grewe, *The Epochs of International Law* (Berlin: Walter de Gruyter, 2000), 710.

⁸⁵ Stephen Kinzer, "Slovenia and Croatia Get Bonn's Nod," *New York Times*, December 24, 1991, <https://www.nytimes.com/1991/12/24/world/slovenia-and-croatia-get-bonn-s-nod.html>.

⁸⁶ Ibid.

⁸⁷ William Drozdiak, "12 West European Countries Recognize Croatia, Slovenia," *Washington Post*, January 16, 1992, <https://www.washingtonpost.com/archive/politics/1992/01/16/12-west-european-countries-recognize-croatia-slovenia/56869807-2131-4da8-8891-59df8c7d9838/>.

⁸⁸ David Raič, *Statehood and the Law of Self-Determination* (The Hague: Kluwer Law International, 2002), 3.

⁸⁹ Council of the European Union, press release regarding proceedings at the 2850th meeting on General Affairs (6946/08), February 18, 2008, 7,

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/gena/98818.pdf.

⁹⁰ Ralph Wilde, Andrew Cannon, and Elizabeth Wilmshurst, "Recognition of States: The Consequences of Recognition or Non-Recognition in UK and International Law," meeting summary, Chatham House, 4 February 4, 2010, 5.

⁹¹ Ryngaert and Sobrie, "Recognition of States," 480.

⁹² Council of the European Union, press release regarding proceedings at the 2850th meeting on General Affairs (6946/08), February 18, 2008, 7.

⁹³ Jessica Almqvist, "EU and the Recognition of New States," Working Paper Series 12, EUBorders, September 2017, https://www.researchgate.net/publication/319903887_EU_and_the_Recognition_of_New_States.