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U.S. POLICY TOWARD NATIONAL SELF-DETERMINATION MOVEMENTS

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SUBCOMMITTEE ON EUROPE, EURASIA, AND EMERGING THREATS

OF THE

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U.S. POLICY TOWARD NATIONAL SELF–DETERMINATION MOVEMENTS

TUESDAY, MARCH 15, 2016

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON EUROPE, EURASIA, AND EMERGING THREATS,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:44 p.m., in room 2200, Rayburn House Office Building, Hon. Dana Rohrabacher (chairman of the subcommittee) presiding.

Mr. ROHRABACHER. Good afternoon. This hearing of the European Subcommittee is called to order. Today we will discuss a topic that is dear to me, but quite often overlooked by too many policy experts, and that is, national self-determination, and its impact on what is going on in the world today. There have been many examples since the Second World War of self-determination movements, galvanizing local support, challenging their central authorities, and, of course, giving our State Department headaches in the process.

As advocates of democratic government and human rights, we cannot help but have sympathy with the grievances of many of these self-determination movements. They are often based on legitimate complaints, and aspire to change a political structure that they quite often had no voice in creating. Yet, these groups can be cooperated by hostile outside forces, and used violently against otherwise friendly governments.

The foreign policy of our government, perhaps for no better reason than for simplicity's sake, has opted to treat questions of self-determination as internal matters and existing borders as unchangeable. The word "stability" has been invoked more times than I can count.

During today's hearing, we will discuss another point of view, that self-determination movements represent a dynamic force in the history of the world that can be channeled into peaceful and legitimate political change, but we should not see—because of the fear that that is not the way it is—we should not see as tramping them down and suppressing them as our solution to that type of dynamic that is being created in a self-determination movement.

Border and other types of change, border change, and the creation of new states, these are things that will result in this type of dynamic, the self-determination that we see popping up in various parts of the world, but what is wrong with new governments?

What is wrong with new states? What is wrong with changing borders that have been created by monarchs back two centuries ago?

And after all, our country is a product of the self-determination movement. Some worry that self-determination movements will have a domino effect of changes and challenges to the existing world order that will lead to chaos, and I have no such fears. And acknowledging these movements and state the principles by which they should seek progress, by doing that, we affirm that there is value in the existing global standards, and we can demonstrate change within those global standards.

Alternatively, by ignoring these groups who are looking for their own self-identity and united by a national identity, even though it is subjugated by the boundaries of a country that is dominated by other people, by ignoring them, we push these ethnic patriots toward violence and insurrection.

In our recent history, we can see several examples where self-determination and finding peace were intermingled. We can see this in Kosovo's experience breaking away from Serbia. Had that been an election all along and there had been sort of a relationship established between Kosovo and Serbia, a lot of violence and people on both sides would have been better off. We have seen that with the splitup of the Czechs and the Slovaks, something that needed to happen. It happened, and it has been good for both of those people. We can see how Pakistan's refusal to recognize the rights of the Baloch people creates more conflict and more suffering.

In 2014, the referendum in Scotland allowed the people there to act in a peaceful way to express their wishes as to what their future would be, or where their sovereignty would be placed. And that was a strong example of how democracy can work.

I am watching now in the cases, for example, in Catalonia, to see if a peaceful and mutually agreeable process can be made to work there that satisfies, yes, the rights of self-determination and, yes, a Democratic and free government. A change there in Catalonia, through politics and ballots, is much preferable than violence or terrorism. In many cases, the continued stubbornness of a ruling ethnic majority fuels frustrations which leads not just to instability, but also to chaos, to hatred, and long-term hatred and violence.

We need to look at this powerful concept, self-determination. What role is it playing in our world today? What role is it playing in the various regions of the world? Whether it is in the Balkans, or whether it is in Spain.

We thank you, our witnesses, for appearing today, and without objection, all the members will have 5 legislative days to submit any additional written questions or extraneous materials for the record. And I now turn to our ranking member for his opening remarks, Mr. Meeks.

Mr. MEEKS. Thank you, Mr. Chairman. Thank you for your remarks and organizing today's subcommittee hearing on U.S. policy toward self-determination, a theoretical topic with practical relevance for current affairs.

You might recall, during our last hearing on the domestic situation in Turkey, we had an interesting discussion on the Kurdish question, and their future in the region. Whatever the resolution

to this timely question, the effects will reverberate throughout the Middle East and Europe. I look forward to examining some of the examples of self-determination movements, while keeping in mind—I think we have to still as we look at these things—international law and our foreign policy objectives.

Across the world, we see desperate groups clamoring for a voice, space, and basic human rights from their governments. In a world where global structures are based on the relationships between nation states and people, sometimes that can be overlooked. This poses the essential question: What are the nation states' responsibilities and obligations to each of its citizens?

In a best-case scenario, disparaged people work with the national government to negotiate special rights for even referenda on their relationship with the capitals. In this regard, I think of the upcoming U.K. and Scottish referenda. On the opposite end of the spectrum, the struggle for self-determination can also lead to conflict, confusion, and even intervention. And in this category, I think of Kosovo and Chechnya, two of Eurasia's most tumultuous examples.

However, questions of self-determination in my opinion are never just black and white. And as outsiders, we must exercise extreme caution when considering the best policy toward these movements. One would hope that the reconciliation processes are consistently peaceful and democratic. Unfortunately, we have seen, in many cases, that peaceful reconciliation is not always the ultimate outcome. Even here in the United States, we are ironing out questions of sovereignty when discussing issues such as Native American rights, or our relationship with Puerto Rico.

What rights to self-governance should the people have here in the United States, the people of Puerto Rico? The Native Americans? The Virgin Islands? What responsibility does the United States Government have toward them?

There is no simple answer to these questions, but, nevertheless, they lie at the heart of how one defines democracy and nation states.

As these tensions come to a head in Europe, governments and legislatures across the globe must address the universal conundrum of self-determination. Recognizing the delicacy and the complexity of self-determination, what I think I am going to do at this juncture, and at this hearing, I am going to leave it to the expert panelists, so that to listen to you and to hear your thoughts and for you to address this sensitive issue. And I think that you can do it from both an academic and policy perspective and historic perspective. So for me, you know, this is really going to be listening and questions on the run, but I am looking forward to the dialogue and conversation and listening to the experts and your opinion. This is a complex issue, no question.

Mr. ROHRABACHER. Thank you very much, Mr. Meeks. And, Mr. Weber, do you have anything to say for an opening statement?

Mr. WEBER. Mine is real short about self-determination. I think the people ought to decide. Let's go.

Mr. ROHRABACHER. It is very risky to ask a guy from Texas to talk about self-determination.

Mr. MEEKS. I started to say that.

Mr. WEBER. After all, my wife would not let me put on my pick-up truck bumper that "secede" bumper sticker.

Mr. ROHRABACHER. Got it. All right. We have our witnesses today. I want to thank them for being here. I would suggest if you could keep your testimony to 5 minutes, and your written testimony will be placed into the record, and then we can have some dialogue on this particular issue.

First of all, we have Dr. Paul Williams, who is the co-founder and president of Public International Law and Policy Group, a pro bono firm providing legal assistance to governments involved in peace negotiations or post-conflict situations. Dr. Williams has been involved in over 20 self-determination negotiations, working with either the parent state, or the self-determination movement. Dr. Williams has previously served in the Office of Legal Adviser at the Department of State. He holds a Ph.D. From Cambridge University and a J.D. From Stanford Law School.

Next, we have Dr. Jason Sorens. He is a lecturer of Government at Dartmouth College. He is an expert on secessionism and an author of a book on that topic, which was published in 2012. He has taught at Yale and the New York School, and has earned his doctorate from Yale University. We have with us also Ivan Vejvoda, a senior vice president for programs at the German Marshall Fund here in Washington, D.C. From 2010 to 2013, he was executive director of that organization's Balkan Trust for Democracy Program, so this really gives him an expertise for this discussion today. Before that, he was an adviser to the Serbian Government, and a long-time advocate of democracy in the region.

Thank you all for attending and to enlighten us with your knowledge and your experience. And, Dr. Williams, you may proceed.

STATEMENT OF PAUL R. WILLIAMS, PH.D., PRESIDENT AND CO-FOUNDER, PUBLIC INTERNATIONAL LAW AND POLICY GROUP

Mr. WILLIAMS. Good afternoon, and thank you, Chairman Rohrabacher, Ranking Member Meeks, and Congressman Weber, for inviting me here this afternoon to testify. It is a real honor. The committee has noted that with the growth of Democratic governance in Europe, questions of national self-determination have become increasingly prevalent. In response, the U.S. policy has generally emphasized stability and the status quo of existing borders. As the chairman noted, the committee has asked for assistance in examining whether long-term peace and stability might better be served in supporting national self-determination. The answer is yes, under a framework of earned sovereignty. In my remarks, I will briefly highlight the risks posed by the inherent conflict between status quo sovereignty and national self-determination in Europe and in Eurasia. I will then discuss the conflict resolution approach of earned sovereignty as a means for reducing those risks and as a pathway to heightened autonomy or independence. I will be summarizing my written statement, which goes into the approach of earned sovereignty in more detail.

National self-determination is a global phenomenon that tugs at the strings of a world order, as we know it, based on sovereignty and territorial integrity. National self-determination conflicts are

numerous, and they are widespread. Conservatively estimating, there are over 60 national self-determination conflicts around the globe, with over a dozen in Europe, and they afflict some of our most intense and strategic allies: United Kingdom, France, Spain, Armenia, Georgia, Ukraine.

Since 1990, half of the world's conflicts, hot conflicts, involve questions of national self-determination. As a consequence of the myopic approach of sovereignty, sovereignty, sovereignty, borders, borders, borders, these conflicts are deadly, they are destabilizing, and they are durable.

They are deadly. Since 1945, over 20 million individuals have died as a result of conflicts associated with national self-determination. They are deadly, in part, because they require the consent of the parent state as a legal fiction, so to speak. South Sudan received the consent of North Sudan for a peace agreement, after 2 million people were killed in that conflict.

They are durable. Only one-third of national sovereignty conflicts have been resolved in the past half century. The average length of a sovereignty-based conflict is 30 years, twice the length of the duration of a regular conflict. They are destabilizing, as the chairman mentioned in his remarks, creating large refugee populations, war economies, and sometimes giving rise to opportunistic terrorists.

One-third of the designated foreign terrorist organizations listed by the Department of Treasury have found their way to associate in areas where there are self-determination conflicts. This is the case because there is no globally accepted approach to dealing with national self-determination.

There is a gridlock between sovereignty first, promoted by states, and self-determination first, promoted by many these national self-determination movements. Neither one of those approaches promotes stability. Europe, despite its economic progress, is no exception. Europe, in fact, has avoided—Western Europe, in fact, has avoided creating a policy on national self-determination. The response to the Scottish referendum and the current response to Catalonia is simply incoherent and unhelpful.

The European Union has refused to answer the question of whether new states created out of member states are entitled to membership automatically, or whether they may have a veto-free path to membership. They have failed to answer the question of citizenship, or of a common currency. Europe is stuck in a very difficult conundrum. States like Belgium, Italy, France, Romania, Spain, Cyprus, are all opposed to recognizing new states within the European Union, because they suffer from their own self-determination movements. Yet, members of the European Union have recognized over 3 dozen new states in the last 20 years. So how can you recognize states outside of the European Union and not recognize those that seek a democratic path to independence or heightened autonomy within the European Union?

As the chairman noted, there have been a number of successes recently. These successes in Serbia, Montenegro, East Timor, Northern Ireland, Bougainville, Bosnia, Kosovo, the Sudan, and proposed agreements in Western Sahara, provide a path for a basis for what I called earned sovereignty. There are three essential elements of an earned sovereignty approach, and three optional ele-

ments. The idea, however, is to handcraft a multistage solution to each national self-determination conflict based, as Congressman Weber pointed out, on the will of the people.

The first three options would be: Shared sovereignty, either between the parent state and the sub-state entity, or, in cases like Kosovo, between the sub-state entity and the international community. Institution building. Oftentimes, new states fail or are afraid to have new states because they don't have the requisite institutions. You are a sub-state entity on Monday, you are a republic. On Tuesday, you are an independent state. You don't have the institutions. You are being set up for failure. And, a set date for determination of final status. In Serbia and Montenegro, it was 3 years. In Bougainville, it is window of 10 to 14 years.

There are three additional elements which can be added at will: Phased sovereignty. There is no reason a new state must assume all of the rights and obligations on the very first day. These rights and obligations can be phased in as stability requires. They can be conditioned. Sovereignty can be conditioned on human rights protection, minority rights protection, and democratic development, and sovereignty can even be constrained. Restrictions on territorial association, or other destabilizing activities, can be constraints that can be put on a new state.

To conclude, to promote long-term peace and stability, the United States should shift from a policy that solely emphasizes stability in the status quo of existing borders to one of earned sovereignty. This allows greater flexibility in managing the aspirations of national self-determination movements, and reduces the potential for violence and political and economic instability. Thank you.

[The prepared statement of Mr. Williams follows:]

Creating a Strategic Framework for Addressing the Conflict between Sovereignty and Self-Determination: Earned Sovereignty

Testimony of Dr. Paul Williams
Rebecca I. Grazier Professor of Law and International Relations
American University
President and Co-Founder, Public International Law and Policy Group

House Committee on Foreign Affairs
Subcommittee on Europe, Eurasia, and Emerging Threats

"U.S. Policy Toward National Self-Determination Movements"

March 15, 2016

Creating a Strategic Framework for Addressing Conflict between Sovereignty and Self-Determination: Earned Sovereignty

Good afternoon Chairman Dana Rohrabacher, Ranking Member Gregory Meeks, and members of the Sub-Committee. It is my honor to testify before you today.

The Committee has noted that with the growth of democratic governance in Europe, questions of national self-determination have become increasingly prevalent. In response, U.S. policy has generally emphasized stability and the status quo of existing borders. The Committee has asked for assistance in examining whether long term peace and stability might be better served in supporting national self-determination.

In my remarks, I will highlight the risks posed by the inherent conflict between status quo sovereignty and national self-determination in Europe and Eurasia. I will then discuss the conflict resolution approach of earned sovereignty as a means for reducing those risks.[1]

In order to understand whether long term peace and stability in Europe and Eurasia might be better served by supporting national self-determination, it is important to understand the complex nature and intractability of conflicts associated with national self-determination.

These conflicts, by their very nature, pull at the strings of the current world order. They are numerous and widespread, including throughout Europe and Eurasia. They can be deadly, durable and destabilizing. There is no agreement among the international community as to how to resolve these conflicts, other than, as the Committee has noted, to emphasize stability and the status quo of existing borders. Despite the economic and political success of the European Union, we may be entering a period of enhanced activity among national self-determination movements. The emerging conflict resolution approach of earned sovereignty provides a path forward to resolving many of these sovereignty-based conflicts.

Numerous and Widespread

National self-determination movements are a global phenomena that perpetually tug at the strings of a world order based on the principles of sovereignty and territorial integrity.[2]

National self-determination movements are numerous and widespread, including throughout Europe and Eurasia. Currently, there are over sixty national self-determination movements seeking independence or increased autonomy.[3] Overall, the states subjected to the pull of self-determination represent a wide range of geographic locations, geopolitical contexts and economic development. In Europe and Eurasia there are currently over 20 active national self-determination movements,[4] with at least 8 potentially poised to seek independence. These conflicts afflict some of America's closest and most important allies such as the United Kingdom, France, Italy and Spain. They also afflict some of America's newest and most vulnerable allies such as Armenia, Georgia and Ukraine.

Despite the near constant reaffirmation of state sovereignty and territorial integrity within the international community, in the last twenty-five years, over three-dozen new states have been created as the result of national self-determination movements. To provide a historical perspective, in 1945 there were only 55 nation states, while today there are 195. Many other national self-determination movements have attained increased autonomy and self-governance and have chosen to remain within their parent state.

Deadly, Durable and Destabilizing

Since 1990, almost half of the world's conflicts have been related to self-determination movements that seek greater autonomy or statehood.[5] Although these conflicts often appear as contained within a particular territory, such crises are intimately connected to regional and global dynamics,[6] and often give rise to the commission of mass human rights violations, population displacement, and terrorism. For instance, nearly one-third of the Designated Foreign Terrorist Organizations identified by the United States Department of State are associated with self-determination movements.[7] At their core, these conflicts are deadly, durable and destabilizing.

The predominate approaches to dealing with national self-determination, which emphasizes stability and the status quo of existing borders, creates a dynamic where parties are encouraged to fight their way to independence. Unaddressed self-determination movements yield a considerable death toll. It is estimated that from 1945 to 2014, over 20 million people around the world have died in the fight to gain independence.[8]

The twenty-year war of separation between North and South Sudan left more than two million dead, and displaced millions of others from their homes.[9] Similarly, the three-year Nigerian Biafran war for secession resulted in an estimated one million casualties, with some calculations doubling or even tripling that number.[10] In Sri Lanka, the Tamil population's efforts to secure self-determination led to over 75,000 deaths.[11] The Chechen wars for independence resulted in over 160,000 casualties.[12] In a single day, Saddam Hussein's government killed 5,000 people in the Kurdish-controlled town of Halabja through the use of gas and nerve agents in an effort to suppress Kurdish moves for self-determination.[13] Additionally, in just four years, the wars of secession in the territory of the former Yugoslavia left between 150,000 and 200,000 people dead.[14]

In addition to the devastating human toll these conflicts exact, these crises are dangerously durable. A study of sovereignty-based conflicts over nearly half a century found that only twenty-four of the seventy-two active conflicts had been resolved.[15] Furthermore, conflicts associated with national self-determination demonstrate greater longevity than other internal conflicts, with the average length of such conflicts being nearly thirty years.[16] By way of example, the self-determination aspirations of the Oromo in Ethiopia have persisted since before the 1974 fall of the imperialist regime.[17] Just last week the American-Oromo diaspora were demonstrating in front of the White House for greater US engagement in resolving the conflict. The conflicts in Europe and Eurasia are no exception, with many of them frozen or simmering for decades.

As sovereignty-based conflicts persist and worsen, they have a destabilizing effect not merely internally but also regionally and even globally. The havoc these conflicts inflict generates a number of destabilizing outcomes, such as large refugee populations, the establishment of war economies, and terrorist safe havens that cause additional fighting and deaths. Further, human rights violations may emerge when self-determination movements threaten regimes. The war crimes committed to quell Kosovo's bid for self-rule in the late 1990's underscore the violence that may materialize as a reaction to national self-determination movements. These war crimes ultimately can drive refugee flows, economic disruption, and greater instability throughout the region.[18]

Conflicts relating to self-determination often result in forced displacement, which further destabilizes regions. The Nagorno-Karabakh conflict between Armenia and Azerbaijan resulted in nearly one million refugees over the course of ten years. Refugee flows, rather than being a mere externality of conflict, may actually catalyze conflict within and between states. Large influxes of refugees have been linked to destabilizing effects in the host state, such as environmental degradation and scarcity, radicalization, civil war spillover, and interstate tension and conflict.[19]

This destabilizing impact on the host state is exacerbated by resource scarcity. Refugees flee to states that may lack the capacity and infrastructure to host them and tend to remain displaced for long periods of time; the world's refugees are displaced, on average, 17 years.[20] Further, armed opposition groups within the refugee populations may seek out alliances with sympathetic local groups in the host state, thereby intensifying underlying internal strife and conflict.[21]

In politically fragile states or regions, the very specter of national self-determination can itself be destabilizing. The South Yemen independence movement was a key conflict driver in the recent destabilization of Yemen, and helped to perpetuate Yemen's descent into the current hybrid civil/international conflict.[22]

Moreover, groups seeking to destabilize the status quo may take up the cause of self-determination to establish greater legitimacy and shore up support among their desired constituency. Although these groups may seek alternative ends entirely distinct from self-determination, the groups may nonetheless co-opt self-determination into their other destabilizing activities. For instance, the Congolese Resistance Patriots in the North Kivu province have claimed separatist goals for the ethnic Mai Mai population in the region as a way to generate local support.[23] Once activated, it is often difficult to contain the pull of the desire for self-determination.[24]

Extremist groups who carry out ethnic- or religious-based violence may seek to exploit the allure of self-determination. Although they are known primarily for kidnappings and bombings, Nigeria's Boko Haram also espouses aims of establishing an Islamic state within Nigeria. Their activities against the Nigerian government have caused great instability and cost over 5,000 lives.[25] Similarly, the extremist organization known as the Islamic State has waged a destabilizing and deadly war in Iraq and Syria with the aim of creating its own state.[26] The group has engaged in countless human rights violations, from forced marriages to mass killings of civilians, including children.[27] These crimes are committed under the partial mantra of self-determination for the Sunni populations in Iraq and Syria, and do receive some local support on this basis.[28]

No Agreed Upon Approach to Resolving Sovereignty-Based Conflicts

There is no agreement among the international community as to how to resolve these conflicts, other than, as the Committee has noted, to emphasize stability and the status quo of existing borders. When self-determination is discussed in the international community, it is examined through the lens of two approaches.

Traditionally, sovereignty-based conflicts are addressed in one of two ways, the "sovereignty first" approach,[29] or the "self-determination first" approach.[30] The predominant approach of "sovereignty first" is typically used by states wishing to preserve sovereignty and territorial integrity. In this approach, sovereignty is regarded as the foundation of statehood and a cornerstone of international law. The "self-determination first" approach is most often used by national self-determination movements. This approach relies on the belief that all dependent peoples are entitled to exercise self-government and live free of persecution.

When used exclusively, neither approach has utility beyond providing a legal or political shield that states and national self-determination movements use to justify their actions or inactions. Both of these traditional approaches are inadequate because they fail to provide a path for the peaceful resolution of the conflict. Instead of providing a starting point to solve conflicts, these opposing approaches often create an ideological impasse that is difficult to navigate towards a peaceful resolution.

In order to successfully navigate self-determination movements, the international community must develop a strategic framework to guide the methods by which self-determination is realized – either internally or externally. The failure to develop a comprehensive strategic framework promotes a nebulous understanding of how to manage self-determination movements. The adherence to the status quo fosters an atmosphere of apprehension, instability and uncertainty at the mere mention of potential independence; it is within this atmosphere that conflict and violence is bred.

Recent instances of state practice provide some hope that states beset by sovereignty-based conflicts are ready to move from the sovereignty-first approach and consider more flexible responses to achieve greater self-determination. For example, when the British faced the Scottish independence movement, they chose a proactive approach, accepting the call for a referendum, and ultimately aiming to make unification attractive by offering devolution max, full fiscal autonomy, during the final days of the campaign.[31] Similarly, in Canada, the Supreme Court determined that Quebec did indeed have the legal right to enter into independence negotiations, although it could not seek independence unilaterally. The Canadian government then negotiated a referendum, which, like the Scottish referendum, ended with the population deciding to remain unified.[32]

Further illustrations of proactive state practice regarding self-determination are seen in Serbia and Montenegro and Bougainville. In Serbia and Montenegro, the international community worked closely with the parties to broker a three-year treaty that allowed for both parties to deescalate tensions and build institutions in preparation for possible independence. Montenegro's commitment to peace and stability was rewarded with recognition from the EU and the United States as well as the broader international community.

Europe is No Exception

Despite the economic and political success of the European Union, we may be entering a period of enhanced activity among European national self-determination movements. The very existence of the EU was partly intended to quell self-determination movements by ushering in an era of post-sovereignty, based on economic prosperity and regional integration. However, Europe nevertheless faces increasing calls for self-determination and independence by national self-determination movements.[33]

The EU unfortunately has failed to develop a coherent policy in response to self-determination movements both within and outside its borders. For a brief period of time in the early 1990s, the EU attempted to develop such a policy. During the breakup of the former Yugoslavia, the European Community established the Badinter Arbitration Commission to determine the merit of claims for independence. The Commission's first opinion determined that Yugoslavia was "in the process of dissolution,"[34] prompting the EU to adopt two declarations, one of which was a common recognition policy intended to assist member states in deciding whether to recognize states emerging from the breakup of Yugoslavia. The policy indicated the willingness of EU member states to recognize emerging states provided that they demonstrated that they possessed a "democratic basis, had accepted the appropriate international obligations and had committed themselves in good faith to a peaceful process and to negotiations."[35]

The failure of member states to act in concert and abide by the common recognition policy ultimately forced many member states into recognizing states that they believed had not met the requisite qualifications enumerated in the policy. Specifically, Germany's unconditional recognition of Slovenia and Croatia prompted many member states to recognize these states over the EU's own objections for the sake of maintaining a common policy.[36] The common policy dissolved with respect to Kosovo, and today 23 of the 28 member states recognize Kosovo. Despite the non-recognition by five EU member states, Kosovo and the EU are putting the final touches on a Stabilization and Association Agreement.

More recently, Europe has avoided developing a common, or even coherent, policy on recognition, particularly for self-determination movements within the EU's borders. In the case of Cyprus for instance, the EU's failure to deal with Northern Cyprus has created a half-member EU state in which all Cypriots are EU citizens, but EU laws and regulations govern only half the country.

The continent's phobia of self-determination and its lack of any cohesive approach to newly independent states leaves it ill-prepared to address emerging self-determination movements within the EU, which will strain the very foundation of Europe.[37] Nowhere was this more evident than in the European Commission's initial refusal to officially comment on the status of an independent Scotland, followed by inconsistent comments and signals that then affected Spain.[38] For example, Commission President Jose Manuel Barosso declared in February 2014 that it would be "very difficult, if not impossible" for Scotland to join the EU.[39] However, the Commission failed to clarify these statements during the lead up to the independence referendum.[40]

This lack of transparency led to significant speculation and posturing on both sides of the issue. With no clear signal from the Commission, Spain was free to threaten that it would block Scottish membership in the EU. On the other hand, the leadership of the Scottish referendum promised that accession could be fast-tracked in as little as eighteen months. The United Kingdom remained silent. With their EU membership still uncertain, the Scots ultimately voted against independence on September 18, 2014, by a margin of 10.6 percent.[41] By failing to establish a strategic framework for managing calls for independence, the EU is ignoring a continually relevant issue that has the potential to breed further uncertainty and instability in the region.

Once the Scottish referendum was put to rest, the EU immediately faced another self-determination crisis—this time in Catalonia. On November 9, 2014, almost 2 million Catalonian voters turned out to participate in a non-binding referendum for independence. Eighty percent of those who voted favored independence from Spain.[42] The referendum was approved by the Catalonian Parliament on September 27, 2014, and was originally slated to be a binding vote similar to the one held in Scotland. In the run up to the referendum, Catalonian regional Premier Atur Mas set forth a legal basis for a binding referendum.[43] The Spanish Prime Minister, Rajoy, however, vowed to use the Spanish courts to block what he considered an unconstitutional vote.[44] Within two days of the announcement of the referendum date, the Spanish government filed a request for the Constitutional Court to declare the referendum illegal.[45]

Interestingly, despite the potentially destabilizing impact of this ongoing dispute within Spain, the domestic legal debate may be largely irrelevant to the EU. If Catalonians eventually choose independence, they will seek international recognition as an independent state based on the will of the people, not on provisions of the Spanish constitution. As the International Court of Justice (ICJ) noted when reviewing the legality of Kosovo's declaration of independence, there is no international legal bar against a sub-state entity declaring independence.

Without a coherent and cohesive approach to these movements, the EU has placed itself in an impossible and precarious position. If the EU were to consider recognizing Catalonia, this action could encourage further referenda in Belgium, Cyprus, Slovakia, Romania, and possibly Italy, which are all grappling with their own self-determination movements, raising opposition from these members.

However, if the EU denies recognition to Catalonia, this may generate a frozen economic conflict in the core of Europe that would drain political capital and economic resources from an economically fragile Spain. This frozen economic conflict will also create a "state," with the Euro as its currency and seven million Catalonians that could retain their EU citizenship while living outside the EU. Furthermore,

in many European states, non-recognition would be perceived as anti-democratic. Such a move would be extremely difficult to justify, given that nearly three-dozen states have achieved recognition by EU member states in the past twenty-five years.

Earned Sovereignty

Earned sovereignty, as developed in recent state practice, entails the conditional and progressive devolution of sovereign powers and authority from a state to a sub-state entity under international supervision. The foundation for earned sovereignty can be found in peace agreements concerning Serbia and Montenegro, East Timor, Northern Ireland, Bougainville, Bosnia, Kosovo, and the Sudan, as well as the proposed agreements introduced in Israel/Palestine and the Western Sahara.

Earned sovereignty most naturally develops within a peace process as a multistage approach that determines the final political status of the sub-state entity. As an emerging conflict resolution approach, earned sovereignty is defined by three core elements: shared sovereignty, institution building, and a determination of final status. Earned sovereignty may also encompass three additional elements: phased sovereignty, conditional sovereignty, and constrained sovereignty. These elements allow for the modification or development of the approach as necessary to meet the needs of the parties. This increased flexibility helps to address the political fragilities of peace processes and the historical diversity of different conflicts, while further enhancing earned sovereignty's applicability to the circumstances of a particular conflict.

The emergence of earned sovereignty has occurred within the larger political debate concerning the most appropriate means for resolving sovereignty-based conflicts. On both sides of the debate are states, sub-states, diplomats, and policy analysts who prefer either sovereignty or self-determination as the guiding principle for resolving sovereignty-based conflicts. Those who prefer an approach that prioritizes sovereignty are likely to perceive earned sovereignty as potentially destabilizing to the current international order because it may promote the separation of sub-state entities from their parent states. Those who prefer an approach based on the primacy of the right of self-determination are likely to perceive earned sovereignty as a means for raising the bar for independence. In fact, earned sovereignty seeks to bridge these two approaches by providing a mechanism whereby some sub-state entities may be guided through a process of transition to statehood or heightened autonomy in such a way so as not to undermine the legitimate interests of parent states and of the international community.

Given that the earned sovereignty approach generally requires the consent of the parent state and national self-determination movement that are parties to a conflict, the political concerns of each party shape the precise dimensions of the approach. For instance, concerns may relate to the protection of majority group members who might become a minority within a new state. They may also relate to the impact that heightened autonomy or independence may have on the democratic and economic reform process in the parent state. These concerns may affect the mechanisms employed during the process, as well as the length of the process.

Core Elements

Earned sovereignty encompasses three core elements and three optional elements. The core elements include shared sovereignty, institution-building, and final status determination, while the optional elements include phased sovereignty, conditional sovereignty, and constrained sovereignty.

Shared Sovereignty

The first stage, shared sovereignty, allows parties to deescalate tensions and begin the conflict resolution process. During this stage, the national self-determination movements and any associated sub-state entity are afforded some level of autonomous self-governance. This minimizes the conflict that may arise from outright independence. For example, the Bougainville Peace Agreement between Bougainville and Papua New Guinea provided for "an autonomous Bougainville Government operating under a home-grown Bougainville Constitution with a right to assume increasing control over a wide range of powers…" for ten-to-fifteen years before a referendum of independence.[46]

Shared sovereignty may also build confidence and promote institutional reconciliation between the involved parties. In Northern Ireland, shared sovereignty provided an avenue for the involved parties to establish a working relationship with one another.[47] Shared sovereignty may also normalize the post-conflict environment, and provide the national self-determination movements with viable institutions for stable governance.

New states may share authority with either a central authority or an international organization. Serbia and Montenegro, Northern Ireland, Bougainville, and the Western Sahara utilized a form of shared sovereignty wherein the new states shared authority with a central authority. Demonstrating another option for shared sovereignty, after Kosovo unilaterally declared independence, it shared authority with the United Nations Interim Mission in Kosovo (UNMIK), as did Bosnia with the Office of the High Representative.

Shared sovereignty is sensitive to the concerned conflict's internal dynamics. As such, the timeframe differs in each situation. Usually, the relevant peace agreement or constitutions provide a specified time period for shared sovereignty. This time period was only two years in East Timor and three years in Serbia and Montenegro, while the Bougainville Peace Agreement called for a 10-15-year period.

In the case of national self-determination movements in Europe, the sub-state entity could simultaneously share sovereignty with the parent state as well as the EU.

Institution Building

Functioning democratic institutions may be the most effective guarantee to prevent renewed conflict in the long-term. As such, earned sovereignty incorporates an institution-building phase, wherein the involved parties promote the development of democratic institutions within the concerned state. In the short-term, institution-building allows for increased capacity in preparation for the assumption of sovereign authority. It also ensures that the functions necessary to establish an autonomous entity or future independent state are present.

This process usually begins in the shared sovereignty phase, and involves international and domestic actors. This international involvement underscores the international community's growing responsibilities in both overseeing and directly engaging in peacemaking activities. The level of international involvement within this phase varies, and may encompass disarmament and demobilization, capacity building, promotion and monitoring of elections, human rights monitoring and transitional justice, refugee return, and the related settlement of land disputes.

In certain instances, levels of international engagement may be quite robust. In Kosovo and East Timor, the international community created the foundation for nearly all political and security institutions to facilitate each sub-state entity's operations as an independent state.

In contrast, where the sub-state entity does not need new administrative institutions, the international community's engagement may be more limited. For example, Northern Ireland already had its own administrative apparatus. Therefore, the Good Friday Agreement only provided for the international community to assist in creating a parliamentary body and oversight mechanisms that facilitated political stability during shared sovereignty.[48]

Moreover, national self-determination movements need not wait until the parties agree to shared sovereignty to create self-government institutions. With EU and U.S. support, the Montenegrin government established a Foreign Ministry with unofficial diplomatic offices abroad, a Ministry of Finance, and a Central Bank. The parties established these institutions prior to signing the Union Treaty, and they remained active afterward.

Final Status Determination

The third stage of earned sovereignty is a final status evaluation, allowing the parties to determine how the sub-state entity's autonomy will manifest, if at all. Final status need not be independence, and may range from substantial autonomy to full independence. As in the above-described stages, the final status determination entails international involvement, specifically through international recognition or support.

Usually, the final status determination is made through referendum or structured negotiations. Typically, a referendum is scheduled to occur after a period of shared sovereignty and institution-building. With Serbia and Montenegro, the agreement provided for Montenegro to separate and become independent via referendum after three years.[49] Similarly, the Bougainville Peace Agreement provides for Bougainville to vote for independence via referendum after ten-to-fifteen years.[50]

The final status determination may also be determined through a negotiated settlement, often with international mediation, between the parent state and the national self-determination movement. Final status determination in these instances may or may not involve a non-binding referendum. The Rambouillet Agreement called for an international conference that would consider the will of the people to determine Kosovo's final status.[51]

Similar to earned sovereignty's other elements, the final status determination is responsive to the underlying conflict's particularities, and again anticipates a significant role for international actors.

Optional Elements

In addition to its three core elements, earned sovereignty includes three optional elements: phased sovereignty, conditional sovereignty, and constrained sovereignty.

Phased Sovereignty

Phased sovereignty provides for the gradual accumulation of sovereign authority by the national self-determination movement. Phased sovereignty may be employed when the involved parties are not able to achieve even preliminary power sharing agreements. This may be the case when the parties' adversarial claims do not provide for a seamless devolution of powers. Beginning in the shared sovereignty phase, phased sovereignty provides for the measured devolution of sovereign functions and authority from the parent state or international community to the sub-state entity.

Consistent with the rest of the earned sovereignty approach, phased sovereignty's timeline and nature may be tailored to the particulars of the underlying situation. The timing and extent of the

devolution of authority and functions may correlate with the sub-state's level of institutional capacity. This process may also or alternatively be conditioned on the fulfillment of certain benchmarks, including democratic reform and the protection of human rights.

Kosovo's experience with phased sovereignty may be particularly illustrative of this element. Following Resolution 1244, the United Nations endorsed a Provisional Constitutional Framework for Kosovo, under which the U.N. Mission in Kosovo (UNMIK) and Kosovar entities jointly exercised most functions of an independent state, including foreign relations.[52] After several years within this arrangement, UNMIK gradually transferred local and central government powers to Kosovar municipal authorities and government institutions. The timeline for this transfer corresponded with Kosovo's developing institutional capacity, as well as the progress made toward Kosovo's final status.

Similarly, the Good Friday Agreement elucidates how power devolution may be conditioned on certain benchmarks. The Good Friday Agreement provided for the United Kingdom to devolve power in a manner responsive to the Irish Republican Army (IRA)'s progress in fulfilling its requirements to demobilize and decommission its weapons.[53] The Agreement even permitted the United Kingdom Parliament to reverse devolution if the IRA failed to satisfy its obligations.

Conditional Sovereignty

Conditional sovereignty prescribes benchmarks that the sub-state entity must meet before the final independence determination occurs. These benchmarks should be fair to both the parent and sub-state entity, and may include protection of human and minority rights, disarmament and demobilization, development of democratic institutions, institution of the rule of law, and promotion of regional stability.

Conditional sovereignty is rooted in the European approach of earned recognition in response to the requests for recognition from the successor states of the former Soviet Union and former Yugoslavia.[54] Earned recognition required states seeking European Community recognition to fulfill certain detailed criteria.

The conditions on which a final status is determined will necessarily vary with the particularities of the underlying situation. In Kosovo, the United Nations utilized a "standards before status" approach, which prescribed a number of criteria for Kosovo to fulfill prior to undertaking final status negotiations. These conditions specifically addressed concerns related to Kosovo's human rights protections and refugee populations.[55] Furthermore, as noted above, the Good Friday Agreement conditioned the devolution of authority on Northern Ireland's demonstrated commitment to demilitarization and demobilization processes.[56]

However, not all phased arrangements provide for conditional sovereignty. Both Western Sahara's Baker Peace Plan and the Machakos Protocol for Sudan established specific dates for the devolution of sovereign authority and functions. These agreements also provided specific dates for a final status determination without conditions.[57]

Constrained Sovereignty

Constrained sovereignty provides a role for the international community in limiting a new state's sovereign authority and state functions. This may be implemented when a new state remains incapable of independently exercising effective authority, even after a lengthy period of institution building. Constrained sovereignty may also be implemented when the new state's existence itself creates or threatens to create regional destabilization.

Examples of constrained sovereignty may include prolonged international administrative and/or military presence, as well as limits on a state's right to pursue territorial association with other states.

In the case of Bosnia-Herzegovina, the international community undertook to create a strong international presence in Bosnia's government to ensure the Republica Srpska did not pursue secession. The Accords created a de-facto trusteeship between Bosnia and the international community. The Bosnian government shared functions with a High Representative, an international, tasked with overseeing the implementation of the civilian components of the Accords. Furthermore, a NATO-led force simultaneously implemented the Accords' military aspects.[58]

Conclusion

In order to promote long term peace and stability it is imperative that when addressing national self-determination, the United States shift from a policy that solely emphasizes stability and the status quo of existing borders to one of earned sovereignty. Utilizing the approach of earned sovereignty will allow the United States and its allies greater flexibility in managing the aspirations of national self-determination movements in a way that reduces the potential for violence and political and economic instability.

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[1] Concepts in this testimony are further developed in the following articles: Paul R. Williams, Abigail J. Avoryie & Carlie J. Armstrong, *Earned Sovereignty Revisited: Creating a Strategic Framework for Managing Self-Determination Based Conflicts*, 21 ILSA J. INT'L & COMP. L. 425 (2014-2015); Paul R. Williams and Francesca Pecci, *Earned Sovereignty: Bridging the Gap Between Sovereignty and Self-Determination*, 40 STANFORD J. INT'L L. 347 (2004); Paul R. Williams and Karen Heymann, *Earned Sovereignty: An Emerging Conflict Resolution Approach*, 10 ILSA J. INT'L AND COMP. L. 437 (2004); Paul R. Williams and Jim Hooper, *Earned Sovereignty: The Political Dimension*, 31 DENVER J. INT'L LAW & POL'Y 355 (2003); Paul R. Williams, *Earned Sovereignty: The Road to Resolving the Conflict Over Kosovo's Final Status*, 31 DENVER J. INT'L L. & POL'Y 387 (2003); Paul R. Williams, Michael P. Scharf, & James R. Hooper, *Resolving Sovereignty-Based Conflicts: The Emerging Approach of Earned Sovereignty*, 31 DENVER J. INT'L L. & POL'Y 349 (2003). These concepts also appear in Paul R. Williams and Roushani Mansoor, *How the Voters of Catalonia May Change Europe*, ATLANTIC COUNCIL (Jan. 16, 2014), *available at* http://www.atlanticcouncil.org/blogs/new-atlanticist/how-the-voters-of-catalonia-may-change-europe.

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[5] *See* Monica Duffy Toft, *Self-Determination, Secession, and Civil War, Terrorism and Political Violence*, 24:4 THEORETICAL & EMPIRICAL PROGRESS IN RESEARCH ON POLITICAL VIOLENCE 581, 581–82 (July 31, 2012).

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[11] *Modern Conflicts: Conflict Profile: Sri Lanka*, POLITICAL ECON. RESEARCH INST., *available at* http://www.peri.umass.edu/fileadmin/pdf/dpe/modern_conflicts/Srilanka.pdf (last visited Mar. 13, 2016).

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Mr. ROHRABACHER. Thank you very much. We will discuss that. Mr. Sorens.

STATEMENT OF JASON SORENS, PH.D., LECTURER, DEPARTMENT OF GOVERNMENT, DARTMOUTH COLLEGE

Mr. SORENS. Thank you, Mr. Chairman, and members of the committee. It is a pleasure to testify for you today, and I will be summarizing my written remarks.

National self-determination movements seek greater self-government for a national minority, typically, including the right to vote on forming a new independent state. Like other states, the U.S. Government faces decisions about whether to recognize declarations of independence, to enter into diplomatic relations with new states, and to engage in diplomacy with other states about self-determination movements with their borders.

In my testimony, I will first describe the current state of self-determination movements around the world, then summarize what scholars have learned about the relationship between self-determination claims and violence. I will conclude by assessing the validity of claims advocating the creation of new states or changes to national borders.

The current state of self-determination movements. Self-determination movements generally take one of two forms: Political parties and armed groups. In Western liberal democracies secessionist political parties are common. Armed self-determination movements are typically found in a developing world, and you can see this in figure 1 of the written testimony.

Developing countries usually forbid self-determination movements from organizing as political parties. Western liberal democracies typically allow secessionist parties to organize, but not all of them allow secession. Britain, Canada, Belgium, and Denmark are examples of countries that have allowed some sort of legal path to independence under some circumstances for at least some part of their country. On the other side of the spectrum, you have got France, Spain, and Italy, which have constitutions defining their countries as indivisible, thus ruling out self-determination.

Majority support for independence in a population is rare. In all the high-income democracies of Europe, North America, and the Pacific Rim, there is only one region in which a party or group of parties advocating independence in the short run has actually won an absolute majority of votes, and that is Scotland, and that happened even before the referendum of 2014, which, of course, was lost for the independence side.

Using data from the Minorities At Risk Project, I looked at ethnic minorities around the world, and I found that only 38 percent of them have any secessionist organization of any kind, no matter how small.

The causes of self-determination conflicts. Popular demand for independence comes from a combination of a distinctive cultural identity, territorial coherence, and either political or economic benefits from independence. Having just one of those elements is not enough. You need all of them. That is why the vast majority of minority nations around the world don't have secessionist movements.

One worry about allowing secessionist movements is the problem of contagion. But secessionism, according to the best research, does not appear to be contagious across national borders. It does have a tendency to spread within a country, which is why central governments often try to crack down on the first movement that emerges. Because there is usually no legal framework for regulating secession, secessionism is strongly statistically associated with violent conflict.

In general, separatist civil wars last longer than other kinds of wars, implying that the warring parties cannot find negotiated settlements even when the conflicts are stalemated. I find in my own research that providing a legal path to independence is associated with less ethno nationalist rebellion. The United Kingdom, Canada, Denmark, and Belgium have had much less secessionist violence than France, Italy and Spain. Clauses permitting secession were also crucial to peace agreements ending the conflicts in Northern Ireland, South Sudan, and Bougainville, part of Papua New Guinea. The European Union's Treaty of Lisbon also explicitly guarantees member states a right to withdraw from that union.

A legal path to independence can promote peace by constraining secessionists in central governments to pursue their aims through electoral and legislative means. Central governments often cannot commit to respecting a negotiated regional autonomy compromise without also conceding a right to secede. The South Sudanese and Bougainville secessionists would probably not have agreed to any peace deal without a referendum guarantee.

If every country recognized some sort of right to national self-determination, only a few would exercise such a right. Moreover, the overall level of global violence would likely decline by replacing intrastate conflicts with a smaller number of interstate conflicts. Intrastate conflicts are far more common that interstate conflicts, and you can see that in figure 2 of the written testimony. Civil conflicts have killed seven times more people than interstate conflicts since World War II. They last much longer than interstate wars, and civil wars are more common in bigger countries.

So all these findings suggest that reducing the average size of states over the long run and increasing the number of independent states would actually reduce deaths from violent conflict.

There are good reasons for the U.S. Government to avoid assertively internationalizing other countries' self-determination conflicts which can look like meddling in other countries' internal affairs. Nevertheless, once a declaration of independence is issued, the U.S. Government has no choice but to respond. In such an event, the U.S. Government might wish to consider not only the interests of the host state, but also the interests of the seceding state and the effect of secession on regional stability. On average, replacing a state-to-nation relationship with a state-to-state relationship reduces violence. Thank you.

[The prepared statement of Mr. Sorens follows:]

Hearing: U.S. Policy Toward National Self-Determination Movements

Jason Sorens*

March 15, 2016
House Committee on Foreign Affairs

1 Introduction

National self-determination movements seek greater self-government for a national minority, typically including the right to vote on forming a new independent state. Recent examples of successful self-determination movements include South Sudan, Kosovo, Montenegro, and East Timor. Ongoing self-determination claims are found in Scotland, Catalonia, the Faroe Islands, Kashmir, Tamil Eelam, Somaliland, Western Sahara, West Papua, Tibet, Mindanao, and many other places. Like other states, the U.S. government faces decisions about whether to recognize declarations of independence, to enter into diplomatic relations with new states, and to engage in diplomacy with other states about self-determination movements within their borders.

In my testimony, I will first describe the current state of self-determination movements around the world, then summarize what scholars have learned about the relationship between self-determination conflicts and violence. I will conclude by assessing the validity of claims advocating the creation of new states or changes to national borders.

2 The Current State of Self-Determination Movements

Self-determination movements generally take one of two forms: political parties and armed groups. Currently, secessionist political parties that seek at least a vote on independence are found in Belgium (Flanders), Canada (Quebec), Denmark (Faroe Islands and Greenland), Finland (Åland), France (Brittany and Corsica), Germany (Bavaria), Italy (Veneto and Sardinia), Spain (Catalonia,

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the Baleares, the Basque Country, Navarre, Canary Islands, and Galicia), the UK (Scotland and Wales), and the United States (Alaska and Puerto Rico). In addition, *irredentist* parties, which seek to move territory from one country to another, are present in the UK (Northern Ireland) and Italy (South Tyrol).

Armed self-determination movements are typically found in the developing world. Figure 1 shows where intrastate armed conflicts on territorial issues (generally, self-determination) occurred during the 2011-2014 period. These conflicts require at least 25 battle deaths in a single year to be counted.

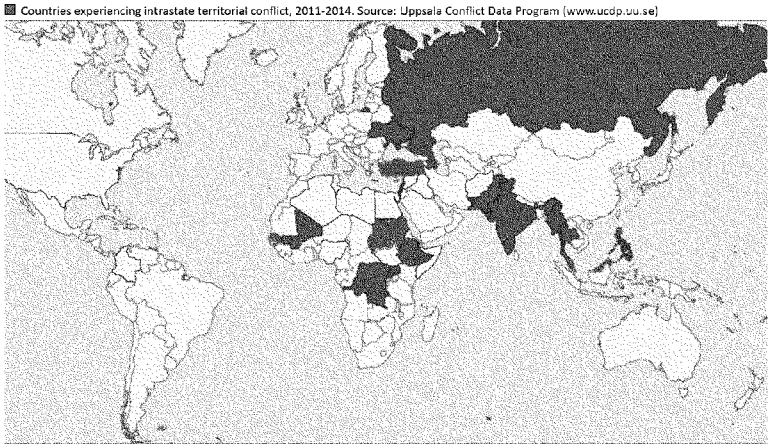

Figure 1: Map of Recent Intrastate Territorial Conflict

Developing countries usually forbid self-determination movements from organizing as political parties. For instance, Turkey, India, Pakistan, Sri Lanka, and Russia make advocacy for the self-determination of a particular region a criminal offense – an act that would be protected by the First Amendment in the United States.

Western, liberal democracies typically allow secessionist parties to organize and contest elections, but they do not all allow for secession. The Canadian Supreme Court has ruled that Quebec secession is negotiable if the province votes by "a clear majority on a clear question" for independence. The United Kingdom negotiated the terms of an independence referendum for Scotland and agreed to be bound by the result. The Danish government concedes a right to independence for Greenland and the Faroe Islands, and breakup is routinely discussed as a legal option for Belgium. St. Kitts and Nevis and Liechtenstein have constitutional clauses protecting the right of secession. On the other hand, France, Spain, and Italy all have constitutions explicitly defining their countries as indivisible, thus proscribing secession.

Majority support for independence in a population is rare. As of this writing,

in all the high-income democracies of Europe, North America, and the Pacific Rim, there is only one region in which parties clearly favoring short-run independence have won an absolute majority of votes in any recent election: Scotland. Furthermore, in Scotland, many voters voted for the Scottish National Party (SNP) without favoring independence, and support for independence has been below 50 percent in polls since that election, including the September 18, 2014 referendum itself. Using data from the Minorities at Risk project, I found that as of 2003, 107 ethnonational minorities, 38 percent of the total number in the data set, had a secessionist organization of any size (Sorens 2012, p. 56). In a recent article, I estimated the percentage of the population supporting independence in every state of India, finding figures no higher than 20 percent anywhere (Sorens 2014, p. 264).

3 The Causes of Self-Determination Conflicts

Popular demand for independence comes from a combination of a distinctive cultural identity, territorial contiguity, and either political or economic benefits of independence (Sorens 2005, Hale 2008, Sorens 2012). Having just one of these elements is not enough, which is why the vast majority of minority nations around the world do not have any secessionist movement at all.

One worry about allowing secessionist movements is so-called "contagion" across regions or countries, but secessionism does not in fact seem to be contagious across countries, although it does have a tendency to spread *within* a country (Ayres & Saideman 2000, Sorens 2012), which is why governments often crack down on them (Walter 2006).

At the individual level, there is some evidence that voter support for independence is rational, that is, related in the expected way to the expected benefits of independence (Howe 1998). However, there is a difficult-to-resolve debate about the extent to which independence support is caused by voters' assessments of the benefits of independence, or if instead independence support causes those estimates of benefits through a process of rationalization (Mendelsohn 2003).

Secessionism is strongly associated with violent conflict (Toft 2003). In general, separatist civil wars last longer than other kinds of wars, implying that the warring parties cannot find negotiated settlements even when the conflicts are stalemated (Fearon 2004, Sorens 2012).

I find that providing a legal path to independence is associated with less ethnonationalist rebellion (Sorens 2012). The United Kingdom, Canada, Denmark, and Belgium have had much less secessionist violence than France, Spain, and Italy – and secessionist violence has gone away in Puerto Rico since the U.S. government informally recognized their right to independence. Clauses permitting secession were also crucial to peace agreements ending the conflicts in Northern Ireland, South Sudan, and Bougainville (part of Papua New Guinea). The European Union's Treaty of Lisbon explicitly recognizes member states' right to secede from the Union, because no country would want to join a union they could never leave.

4 Implications for U.S. Policy

A legal path to independence can promote peace by constraining secessionists and central governments to pursue their aims through electoral and legislative means. On the one hand, secessionists have no excuse for resorting to violent tactics; to do so would be to admit failure to persuade a majority of the people they claim to represent, while imposing costs of violence on the very people they purport to represent and from whom they would have to recruit. On the other hand, central governments often cannot commit to respecting a negotiated regional autonomy compromise without also conceding a right to secede. The South Sudanese and Bougainvillean secessionists would probably not have agreed to a peace deal without a referendum guarantee. These conflicts lasted 22 and nine years, respectively. Authoritarian and especially nationalistic central governments will face both desire and opportunity to renege on previously negotiated autonomy arrangements; only a right to secede may be sufficient to deter them and thereby induce secessionist rebels to lay down arms in the first place. I also find that central governments permitting a legal path to independence are more likely to decentralize to ethnic minority regions and have *never* recentralized power in the post-World War II era (Sorens 2012).

If every country recognized its minority nations' right to secede, only a few would apparently exercise such a right. Moreover, the overall level of global violence would likely decline by replacing intrastate conflicts with interstate conflicts. Intrastate conflicts are far more common than interstate conflicts (see Figure 2). Since World War 2, civil conflicts have killed seven times more people than interstate conflicts (Collier & Sambanis 2005, *Data on Armed Conflict* 2013). Civil wars last much longer than interstate wars (Fearon 2004). Civil wars are also more likely to happen in more populous countries (Fearon & Laitin 2003). These findings suggest that a global increase in the number of independent states and a decrease in their average size would reduce the number of civil conflicts, increase the number of interstate conflicts, and decrease the total number of conflict deaths.

There are good reasons for the U.S. government to avoid assertively internationalizing other countries' self-determination conflicts, which can look like meddling in other countries' internal affairs. The U.S. arguably erred in refusing to negotiate a democratically authorized partition of Kosovo; as a result, an independent Kosovo lacks broad recognition from other states and is having trouble entering international institutions. Nevertheless, once a declaration of independence is issued, the U.S. government has no choice but to respond. In such an event, the U.S. government might wish to consider not only the interests of the host state, but also the interests of the seceding state and the effect of secession on regional stability. On average, replacing a state-to-nation relationship with a state-to-state relationship reduces violence.

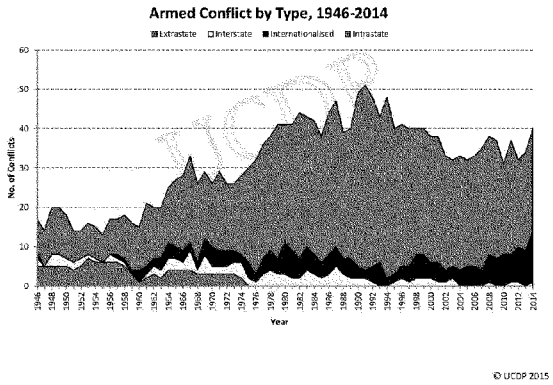

Figure 2: Types of Conflicts Over Time

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Mr. ROHRABACHER. Thank you very much. You may proceed.

STATEMENT OF MR. IVAN VEJVODA, SENIOR VICE PRESIDENT FOR PROGRAMS, GERMAN MARSHALL FUND OF THE UNITED STATES

Mr. VEJVODA. Thank you, Chairman Rohrabacher, Ranking Member Meeks, and Congressman Weber. It is a real honor to be here today. I am not a specialist on self-determination. As I said to one of our co-panelists, I lived it, through the breakdown of the country I was born into, called Yugoslavia that no longer exists, and that today constitutes seven countries, one of the 36 that came out of what happened after the fall of the Berlin Wall. I think much has been said. As a former Professor of Political Science, I taught Transitions to Democracy, and, obviously, this was a key part of what happened in former Communist Europe as countries sought to seek their path toward democracy and a stable future. You, yourself, alluded to the Czechoslovak-Velvet divorce, which was led by the elites, and a very peaceful and successful example.

I would like to stress, first of all, when we talk about Europe, the soothing role of the European Union. The existence of a community of nations that after World War II decided that it wasn't really good to go to war every 20 years, and to seek institutions that would be shock absorbers to any friction or conflict that might appear, and it has not been said without reason that the European Union is probably the most successful peace project that the world has seen. And we see that effect with all the travails that Europe is confronting today. And Spain has been mentioned as one of them, the Scottish referendum, the pending Brexit on June 23, that is a sort of self-determination.

Does the United Kingdom want to stay part of a family that it chose to join in 1973, and now maybe wants to leave? And what would be the ripple effects that it would have on a country like Ireland, for example, or the contagion effect that was spoken? But as we see, it is mostly a domestic issue.

No one is immune to this issue, whether a Democratic policy or a non-Democratic policy. And I think Northern Ireland is an example. It took the mediation of Senator George Mitchell to achieve the Good Friday Agreement in 1998. But we saw then that Richard Haass, Dr. Richard Haass, and Dr. Meghan O'Sullivan had to be expedited to Northern Ireland in 2014 to try and put the final stitches on that. And after 3 or 4 months and a final round of 15 hours of negotiation, they did not achieve that final stitch on the agreement.

What I want to say by that is there are no ancient hatreds. There are no prejudices. And thus, we have to look, as several have said already, at each specific situation that is grounded in historical cultural identity issues.

And so, the fact that we have the European Union has been in this case between Serbia and Kosovo a very important element. It gives a framework in which countries that want to join a bigger family, by choice, voluntarily, of their own account know that it is only by a peaceful and democratic way that they must resolve these issues.

There is nothing easy in a compromise. That is what Bernard Crick has called the high price of peace. Maximos' positions have to be abandoned and coming to a middle where no one will be completely happy with the result, but when they reach the compromise, knowing that it can create stability and lasting peace. And that is probably the most difficult thing.

As you mentioned, Chairman, I was a Senior Foreign Policy Adviser to Prime Minister Zoran Djindjic who sought to solve the Kosovo issue as expeditiously as he could by advocating a possible direct negotiation with Hashim Thaci then, in the beginning of 2003, where the north of Kosovo would be able to, itself, have self-determination and possibly independence, and at the same moment, recognizing the full independence of Kosovoand, as you said, Serbia needed to put this issue behind itself as quickly as possible. The rest is history. He was assassinated, and then we went into a protracted period, and now the mediation of the European Union is having that soothing effect as we go forward, and I believe it will be achieved. But as colleagues have said, these processes take a very long time.

I would just like to, finally, make a point about the frozen conflicts, that countries such as Russia use a frozen conflict to keep leverage on international politics, and to allow or disallow a solution. The frozen conflicts that have been alluded to in Transnistria, and Abkhazia, and South Ossetia, Nagorno-Karabakh, are ones that have gone maybe on too long, and maybe we would like to see more leadership from the European Union in seeking a resolution to these conflicts. Thank you.

[The prepared statement of Mr. Vejvoda follows:]

United States Congress

House of Representatives

Committee on Foreign Affairs

Subcommittee on Europe, Eurasia and Emerging Threats

Hearing:

U.S. Policy Toward National Self-Determination Movements

March 15, 2016

Washington D.C.

TESTIMONY

IVAN VEJVODA

Senior Vice President / Programs

The German Marshall Fund of the United States

Mr. Chairman, thank you for the invitation to come and testify before you today. It is an honor to be here before this Subcommittee of the House of Representatives of the U.S. Congress. I am here to offer my personal views on the question of self-determination.

Introduction

The democratic revolutions at the end of the 18th and beginning of 19th Century and then the rise of nationalism in Europe in the 19th Century created among other a dynamic of creation of states and later dissolution of empires: Ottoman, Austrian and later Russian/Soviet. Some nations arose before they became states ("belated nations").

The choice between self-determination and national sovereignty arose on countless occasions in modern history. In each example of a drive toward self-determination or that of retention of full territorial sovereignty there are shared traits but also clear specificities. Each case thus needs to be viewed in its specific historical, geopolitical and domestic political context. The question of democratic legitimacy is key to these considerations.

Principles and views have been laid down on these issues over the past hundred years. Whether it is for example President Woodrow Wilson's view presented in his speech on February 1918: "National aspirations must be respected; people may now be dominated and governed only by their own consent. Self-determination is not a mere phrase; it is an imperative principle of action. . . . ". Or later in 1941 in the Atlantic Charter, or in the United Nations Charter (June 1945) stipulating that relations between nations should be based on 'respect for the principle of equal rights and self-determination of peoples' (Chapter I, Article 1). The post-World War II movement for decolonization and independence from imperial powers ushered in a period where many nations declared independence and became members of the international community.

Europe

Last week the Minister of Foreign Affairs of Denmark Kristian Jensen speaking here in Washington DC at the German Marshall Fund of the United States said: "Borders can only be moved by pen and ballot". He was answering a question about Russia's annexation of the Crimean peninsula. He reiterated a position that accepts changes of borders only if those involved in a territorial dispute are able to find a negotiated, peaceful, mutually acceptable way of solving a dispute.

There have been such disputes, however arduous and sometimes initially violent, that have ended in direct or mediated negotiations leading to a settlement. There are also those that have gone on for years and have not found solutions. Cyprus is a case in point. And after more than 40 years we might be witnessing the resolution of one of Europe's longest recent disputes.

Wars have most often been those that have changed nations' borders. Victors have been those drawing the new borders while the defeated had to live with the consequences often dreaming of revenge, carrying grievances or wanting to "correct" wrongs that had been done to them. The Cold War in Europe created a protracted period during which there was a relative, but not complete lull in such territorial disputes, disputes of minorities within nation states seeking special status, varying degrees of autonomy, special rights, and greater degrees of federalism or confederalism.

Europe is a crucible of countless variations of solutions to such disputes between majorities and minorities. Some of the territories have gone backwards and forwards between nations as a result of wars. Others have found negotiated settlements within existing nation-states without change of borders.

To mention but some, each with their own specificities: Schleswig-Holstein (1920), Carinthia (1920), Alsace (1945) Faroe Islands (1948); Saarland (1956); South Tyrol (1971), the Canton of Jura (1978), Northern Island (1998), Basque country, Catalonia, Cyprus (2016 ?)

After the end of Communism

The fall of the Berlin Wall led to the dissolution of three communist federations. Two of these were countries that had appeared on the map of Europe after World War I and the signing of Treaty of

Versailles in 1918: Czechoslovakia and Yugoslavia (initially called the Kingdom of Serbs, Croats and Slovenes).

Czechoslovakia (that had been invaded by Warsaw Pact countries in 1968) went through a peaceful separation (Velvet divorce) in 1993 that was driven by the political leaderships of the Czech and Slovaks.

Yugoslavia dissolved during the 1990s in a violent conflict out of which 7 states appeared.

The Soviet Union was dissolved in December 1991 out of which 15 countries appeared, including Russia. Eleven of these signed the Alma-Ata Protocol establishing the Community of Independent States (the Baltic States who had regained their lost independence and Georgia did not join).

The dissolution of the Soviet Union led to a four "frozen conflicts" that to this day remain unresolved despite the continued efforts and negotiations.

Transnistria broke away from Moldova in 1992.

Nagorno-Karabakh, after an ethnic conflict 1991-1994, remains disputed between Armenia and Azerbaijan,

Abkhazia after a 1992-1994 war with Georgia, of which it was part, remained disputed territory. Then after the invasion of Georgia by Russia, Abkhazia was recognized as an independent state by Russia, and declared by the Parliament of Georgia Russian occupied territory.

South Ossetia after the 1991-1992 war became a "frozen conflict" and after 2008 recognized by Russia and three other countries as independent, but as occupied territory for Georgia.

In addition Russia violated of international law, and the Helsinki Final Act (1975) of which it was an initiator and signatory, in invading and annexing Crimea, and then heavily supporting separatists in the Donbas region. This has created potentially another "frozen conflict", unless there is a fulfillment of the Minsk Agreements. Here also questions of autonomy, federalism, are part and parcel of the dispute and possible solution.

It should also be noted that reunification of Germany in 1990 when Eastern Germany (German Democratic Republic) was re-incorporated into the Federal Republic was a peaceful change of borders, territory by consent.

The role of the European Union in settling territorial disputes

European nations after World War II approached their future with the intent of avoiding violent conflict that had plagued the previous century of their history.

The political peace project that is the EU at its origin has been the broad framework within which the disputes over territory have or have not found solutions. Whatever the case may be the EU has been a mechanism whereby its institutions have played to a greater or lesser extent the role of shock

absorbers. In the case of the South Tyrol and Northern Ireland with the concerted efforts of the parties involved, no matter how difficult and emotional, no matter how much violence preceded, in the end have painstakingly found reasonably viable solutions.

The EU has likewise been a fundamental inspiration and guiding hand in the resolution of disputes in the Balkans after the war that led to the dissolution of Yugoslavia.

With other institutions such as the UN, OSCE, Council of Europe, NATO, the European Union, its 28 member states, and half-billion citizens constitute an example of soft-power that has brought to the negotiating table Belgrade-Pristina in an historical endeavor to resolve the issue of Kosovo, or rather and more precisely to normalize relationships between Serbia and Kosovo.

This is a clear example of an engaged process of reconciliation and normalization under European auspices.

The April 13, 2013 agreement signed by the Prime Ministers of Serbia and Kosovo was a key step forward in deepening the foundations of peace, stability and security in the region. The dialogue had been initiated in March 2011.

With the expected pauses and momentary steps forward and backward both sides show political determination and willingness, in the spirit of the European peace project, to achieve normalization. The historical example of Franco-German reconciliation after 1945 is the blueprint.

The process will be long and arduous, but no more no less than for example that in Northern Ireland or the South Tyrol. This is a typical example of one of the many European examples mentioned.

Much remains to be done and outstanding issues need to be resolved but the process is in engaged in a European reconciliation spirit, where only peaceful means are the way of a stable and peaceful

It is interesting to note that although recognized by 111 countries members of the UN, Kosovo has not been recognized by five EU member states (Cyprus, Greece, Slovakia, Spain, Romania) each for reasons of its own internal situation.

Even with all of its current enormous challenges the EU remains the main source of inspiration for reform and reconciliation.

Where the EU and the international community including the US have not been successful is in resolving the dispute between Greece and Macedonia. This is an egregious failure. It has caused instability and has slowed down the process of peace and stabilization in the Balkans region. This example shows that it requires the full dedication of the sides in question to pay "the high price of peace", that is to realize that compromise is the only way forward and that compromise demands sacrifices for the greater good of peace and stability.

The Challenges ahead for the European Union

The referendum in the United Kingdom on June 23 this year on remaining within the EU or exiting (Brexit) can be seen as a sort of referendum on self-determination. It raises a whole set of questions about the future of Europe, the future of the UK. Will it provoke a new referendum in Scotland and a possible dissolution of the UK? What effects will this have on Ireland if the UK leaves? What are the knock-on effects for other countries that are grappling with the sentiment that "Brussels" is perceived by parts of populations as being overbearing, causing perceived loss of sovereignty? Many are saying that to leave the EU would be a leap in the dark, and that it would deep unforeseen effects on the economy, business and security issues.

The EU was created on purpose as a framework in which there was a pooling of parts of sovereignty while remaining an intergovernmental institution, not a federal one. Countries voluntarily joined knowing what the agreed rules were, benefitting from joining a single market, a free travel area (Schengen) and being an economy of $17 trillion. But a sense of democratic deficit, perceived and or real lack of democratic legitimacy has led among other to the current tumults and turbulence. The crisis of the Eurozone monetary area, the huge pressure caused by the refugee/migration crisis all this constituted a "perfect storm" of challenges that has led to the rise of right and left wing populism. Mainstream parties are losing ground and voters are disgruntled with their political elites.

Spain is also a country to be observed. While for a long time it was the Basque country in where separatists waged a campaign of terror with the desire for independence it is Catalonia that is today the part of Spain that in everyones's focus. The last elections results in Catalonia show that that there is a rising tide by parts of Catalan political elites and society to seek independence. Questions arise whether the demands for greater self-government will be granted by the central government in Madrid or not. And even if these demands were met would that assuage those seeking independence It is the young who have swollen the ranks of those who wish to see an independent Catalonia. And then there always is the question: if it does secede, which will not happen tomorrow by any measure – will the EU accept it as a new member and under what rules of the road. Many an open question.

Conclusion

Outside of Europe recent examples of self-determination after long struggles have been: Eritrea (1991-3 from Ethiopia); East Timor (2002 from Indonesia); South Sudan (2011 from Sudan). In a recent reportage by National Public Radio on South Sudan the reporter opined on the first five years of independence: "Short and sad". In each of these cases the aftermath of independence has been to a greater or lesser degree fraught with difficulties, whether through continued ethnic strife, authoritarian rule, systemic corruption, economic and social poverty. The international community has not had staying power in supporting these fledgling states, in providing the necessary development aid and guiding hand in establishing beginnings of rule of law and democratic institutions. It seems, to put it starkly, that it is the case that many are there to see through the moment of independence through a referendum and then these countries are left to their own devices.

National states are not always the only possible way forward, nor necessarily the best. But if they are to comprise diverse ethnicities for example they must find institutional mechanisms to satisfy the demands for equal representation, that states at times are not ready to grant, and then demands for secession, self-determination arise.

There are numerous nations who do not have states. Many have declared independence but have not achieved statehood. Separatist movements abound and do not relent. Very often stateless nations' drive for self-determination is caught in a web of geopolitics where national sovereignty and territorial integrity prevail.

The world will be permanently confronted with the choice between self-determination and national sovereignty and current historical circumstances, realpolitik or its absence, the *rapports des forces* between those concerned will determine the outcome. Might will sometimes be right, although clearly this is not conducive to stable, acceptable solutions.

A democratic, rules based approach in which the parties are capable of finding a peaceful solution is always the one to be sought.

There are examples where high emotional stakes, strong identity politics, heated debates have led to referenda where the democratic polities have accepted peacefully the results and continued to live in the previous institutional framework that had been contested.

The referendum on the possible secession of Quebec from Canada in October 1995 produced the following result: 50.58% voted for Quebec to remain part of Canada while 49.42% voted for secession. The difference was 1.16%. That night everyone accepted the result and Canada remained as it was.

In Scottish referendum of September 2014 55.3% of the voters refused the idea of an independent Scotland while 44.7% wished to exit the United Kingdom.

I will end with the following two quotes:

The Hungarian historian Istvan Bibo wrote in 1946:

The peoples of Central and Eastern Europe must be prevented form constantly upsetting the tranquility of Europe, with their territorial disputes… this means that in every area where some kind of consensus is yet feasible – not a mere political agreement, but a clarification of principles – we should implement this with all our force within the framework of the present peace construct, because unsettled territorial issues represent a grave threat.

The British philosopher Isaiah Berlin wrote in 1990:

The first public obligation is to avoid the extremes of suffering… The best that can be done as a general rule is to maintain a precarious equilibrium that will prevent the occurrence of desperate situations, of intolerable choices – that is the first requirement for a decent society to which we can always aspire in the limited range of our knowledge and even of our imperfect understanding of individuals and societies. A certain humility in these matters is very necessary.

Mr. ROHRABACHER. Thank you all very much for your testimony. I think today we are launching a dialogue on an issue that has just been ignored, although it has had dramatic impact on our world, but they don't want us to talk about it because to set any new standard on this frightens people. It just frightens us all that chaos is going to break out if we have a new international concept of what is right and wrong in the way to proceed with these issues of sovereignty, and the issues of self-determination and freedom and democracy, et cetera.

Let me note that we—first of all, the first thing that got me involved in this issue was the fact that when I was first elected to Congress, the issue was whether or not Serbia was going to permit Kosovo to be an independent entity, or, at that time, by the way, I might note that Serbia also was claiming that they had to be the government of Croatia and the other countries as well.

Let's just put this in perspective. The Serbians, however, felt that because they had recognized national heritage treasures within Kosovo, that that meant that they had a right to keep that part of their jurisdiction under their jurisdiction, even though the majority of people, clearly, the majority of people, did not want to be part of Serbia. And that brought that home to me, and that was a, I think had, and I think I mentioned this in the opening remarks, had we basically had a situation where the Serbs at that time would have said, okay, you are going to be independent, but we are going to have a free trade zone among all these and open borders, and you would have had basically the same situation as a sovereign country, but not having people feel that they were being subjugated to one particular area of that country.

Let's get back to what my friend from Texas said earlier. Are we really talking about the majority has a right to determine what the government is in that part, in that area of any country, or anyplace in the world where they hold a majority?

And, by the way, let me preface it by saying we are not talking about little enclaves of people spread throughout a country. We are talking about someplace on the periphery of a country. Do those people have a right, whether it is in Catalonia, or whether it is in Kosovo or wherever it is, or how about Biafra? Do these people or a majority of people in that area say they want to be independent and have their own country from the country that now governs them with a majority of a different type of people in another part of the country, is that their right to have their government? Because the majority, does the majority decide? And just real quickly, we will go down the list. Dr. Williams.

Mr. WILLIAMS. Yes. The international law is seldom helpful in these instances, but in your particular question it is helpful. There are two answers: One, the International Court of Justice has said that an entity where a majority of the people decide that they would like to be independent, has a right to declare independence. It left unaddressed the question of whether or not there was an obligation of the international community to recognize them, but at least it gets you halfway there. The other way in which international law is helpful is it answers your question about who these people are that you need a majority determination from. It is pretty

clear that there has to be a political identity, cultural identity, a history of association.

A lot of the groups that you have been speaking about, as well the Armenians, and Nagorno-Karabakhs, the Catalonians, the Kosovars, they have that identity as a people, and you meld that with modern democratic norms, modern human rights norms, and they do have a right to seek independence, and then it has to be managed in a way that it doesn't destabilize. But the fear of destabilization is not a reason to deny them their democratic right to determine their own political future.

Mr. ROHRABACHER. When you say "democratic right," are we just talking about what international law as it seems to be played out today, or are we talking about a theory of natural rights that our Founding Fathers——

Mr. WILLIAMS. I think it is more the theory of international. As an international lawyer, I can sort of put international law aside a little and not feel too guilty, but it is the natural law. It is the democratic norms and principles that drive this country and, quite frankly, that drive the self-determination movements around the globe, that willingness to determine your own political future, which international laws reflects, but that is not where the right comes from. It comes from this national right.

Mr. ROHRABACHER. I think that started within the course of human events. But Dr. Sorens.

Mr. SORENS. Yes. I mean, you could take it back to John Locke's second treatise, right, that influenced our Declaration of Independence, the idea that government is legitimate only when it enjoys the consent of the governed. If you take that view, then if the majority of people in a territory prefer a different government to the one that is currently ruling them, then letting them have that government increases the number of people living under a government that is legitimate to them.

So that seems like, on balance, a reason to allow them to secede. But there are some other considerations we should bear in mind. So if a majority wants to secede in order to oppress a minority within its borders, that would be a reason not to let them secede, even if they get majority support. In some situations, you could do even better by allowing some negotiation over the borders of a new state. I think Kosovo is a good example here. The vast majority of people living in Kosovo wanted to become independent, but there was a small minority of ethnic Serbs that were very much opposed to that.

If you could have had a situation where you negotiated Kosovo independence recognized by Serbia and a small part of Kosovo returned to Serbia if its inhabitants so desired, then, I think, things would have turned out better for Kosovo. Right now they are struggling to get recognized by other countries that don't want to set a precedent. Spain is one country that hasn't recognized Kosovo, at least the last time I checked.

That has made it hard for Kosovo to join international organizations. So sometimes we can do better than simply saying whatever the majority decides goes. It is a good starting point, but we might want to negotiate from that starting point to try to protect the rights of everybody involved.

Mr. ROHRABACHER. Mr. Vejvoda.

Mr. VEJVODA. Just dovetailing on that, I mean, one could use also Tocqueville's expression of the tyranny of the majority which he used in a political sense, but it applies here. You know, if there is this recognition that you want to be independent, but as Dr. Sorens just said, but there are minorities within majorities, you know, there was this half-flippant remark as all this started to unravel which said, Why should I be a minority in your country when you can be a minority in mine? And I think we have exactly seen that in several of these cases.

I think, you know, it is really about the democratic legitimacy, about the consent of the government, and whether people feel that those who govern them really are doing a rather good, or a rather bad job. I would take the example of Quebec in 1995, when the Canadians and the Quebecers went for the vote. The difference in that referendum was stunning. It was 1.16 percent. And people went quietly home and accepted the result that Quebec had voted to stay in Canada.

That doesn't mean that they won't do it again or the Scots won't do it again. I think it is the general atmosphere and the policy. We talked about many of the elements that determine this default position that it is about state sovereignty, and everybody wants to be on the side of let's not rock the boat. But we see in cases like these, it does create heightened emotions. But if people understand the rules of the game, they will go home, even if there is a 1-percent difference.

Mr. ROHRABACHER. Thank you. And I am going to yield to my ranking member in a moment, but let me just note that the Czechs and the Slovaks managed to pull this off very quickly, and we had with us President Klaus, who told us that the reason he was successful in doing that with so few bumps and so little suffering in both sides and the reorganizing the economies, et cetera, was that he did it very quickly, very, very quickly, and everybody recognized it very, very quickly. And unlike what happened where we determined that the people in Kosovo, by a vast majority, did not want to be a part of Serbia, yes, we helped them free themselves by violence, force and violence. We, in fact, bombed Serbia in order to prevent their armed suppression of the Kosovars' self-determination. But then, once we declared Kosovo, and it was recognized now as independent, we basically strung it out. They still are not really a fully recognized government. And for self-determination to work, it can't be just philosophically correct, but we have got to have the courage and that principle of consent of the governed, that we act as a people and a government immediately on it, rather than letting something string out, which will then just keep the issue—it is just like tearing the scab off the wound every other day.

So with that said, also perhaps we need an OSCE mandate that they would now be responsible, not only for observing elections in developing countries, or countries where there is conflicts, but instead, also, to be the entity that goes in to ensure that a vote on self-determination is a legitimate and fair vote. That would be something—would be something we could discuss as time goes on.

And finally, one last point for, in terms of the United States. I have quite often, I actually take my own tweets; I tweet it out and

sometimes right before I go to bed I will have a lot of fun debating people all over the world. You would be surprised. All these people say what about—because I happen to believe that the Baloch in Pakistan have a right to their self-determination. And these Indians say what about Kashmir? What about Kashmir? Yeah, I think they do, too. Yeah, if you believe in a principle, it is right for both peoples. And it was especially true when they say what about Texas? I kid you not. I get this. And I always say—or San Diego.

One of the reasons why I believe that we have to control our borders to make sure that the people coming into this country are regulated to the point that they are absorbed into our society, is that we don't end up in areas of our country where a vast majority of the people, who come from someplace else, now have a different point of view as to what our country should be, and live on the periphery and maybe want to be part of Mexico.

But I will say that if we permit people into our country and permit them here legally, they have rights just like we do. That is why we have to control our borders. And if the majority of people in San Diego end up being people who would prefer that they live in Mexico, I'm sorry, they have a right to vote on it, and it is adios, San Diego.

And this is, of course, a surprise that people are tweeting me on this. But I do believe that our Founding Fathers actually had something special that they tapped into when they talked about rights that are granted. You call them natural law. They are granted by God. These are things that I believe they have universal application, and that we shouldn't be at all hesitant or apologetic about trying to use that as our standard on how we move forward.

Mr. Meeks, you may proceed.

Mr. MEEKS. Thank you, Mr. Chairman. And as I said, there is a lot of theoretical questions I think also, and I don't know if there is one box that fits all. I mean, sitting here and listening and going back and forth, if there was one principle, we probably wouldn't be here today, because we would be two different countries, the North and the South, would not be one unit. And people died in the United States in a Civil War, because half the country wanted to be governed a different way than the other half of the country.

And, so, if we just had one principle, then the confederacy should have been allowed to leave, and we would not be here today as the United States of America, wouldn't be. And, so, there are ramifications all over the world to just say, We are going to let one little minority group do a little—I can just recall, from my own lifetime, we had it in the African American community, back during the civil rights struggle, where some would say, Hey, we didn't want to be part of the United States anymore. We wanted our own little state. We all come together because we were mostly one area and said let us create our own little country.

So how do you define a people, number one? Because people of the United States are citizens of the United States, no matter what your background, your ethnicity, et cetera. So what are the people? I just look at another. You can go to Rwanda where the Tutsis and the Hutus, they are still one country. But it would be easy to say separate and make two. And who, then, recognizes what? And that is the reason why we do have some of our international organiza-

tions, because what is important about being a country to one degree is being recognized by another. And then coming together where you do have the lack of democracy and/or ethnic cleansing where there is a majority that is just going—so that is when we are supposed to come together in a unified humanitarian caucus and say we are not going to allow this to happen in certain areas where that is happening. That is part of what you, and I think that is part of, and then protect one another, that is part of what NATO was all about. So it is not easy. It is not just as simple as saying the people will decide because it depends upon who the people are, right? And I can see some context going both ways. I don't know.

So, Mr. Vejvoda, you lived it in the former Yugoslavia and Kosovar self-determination movement, and the fight now for Kosovo to try to get—what do you see? What do you envision? And are there any lessons that we can learn from the Kosovo experience since you lived it?

Mr. VEJVODA. Let me start by quoting Isaiah Berlin, whom I quote at the end of the written testimony, who tried to give a definition of what good government was, and he put it very simply. He said: "To avoid the extremes of suffering." I think that is exactly the opposite of what happened in my country. Someone called Slobodan Milosevic created the extremes of suffering with other leaders. He wasn't the only culprit.

And I think, obviously, when I was asked, you know, why my country disappeared in front of me, big lesson for a social scientist like myself, that the evil of history can always return, and we have to be vigilant to these kinds of populists and other movements, leaders that offer so-called simple snake-oil solutions to very complex problems. The answer was simple. We were not a democracy. We were a Communist system, and we didn't have institutions, and that is why I talk about the European Union as having, up until today, created at least institutions that are what democratic institutions are supposed to be: A framework where you resolve conflict. A conflict will remain with us, as Machiavelli said, forever. And it is a question of how we deal with it, and what are the mechanisms by which we resolve them?

So the experience one draws from the case of the former Yugoslavia, it is exactly that. It is the need to move out of the authoritarian dictatorial regime, and to move toward the creation of stabilization of institutions. That is why Dr. Williams' earned sovereignty, I think, is a very important one, because he gives all the elements of what is needed.

Preparing for this, I looked at the recent self-determination referenda that we talked about, you look at Eritrea, you look at South Sudan, you look at East Timor, they all went through processes of a diverse kind. I asked the question, who is caring for them the day after? There was an NPR story last week on South Sudan, the reporter said short and sad 5 years. And I think we need to be cognizant. That is why the earned sovereignty is so important. People need to be there the day after, not just in the lead-up to that moment where the people decide, and I think that is key and that is maybe the biggest lesson.

Mr. ROHRABACHER. Mr. Weber.

Mr. WEBER. Were you through, Mr. Meeks?

Mr. MEEKS. Yes, I know we got votes coming up.

Mr. WEBER. There they are. Gosh, I don't know where to start, guys. You all have brought up so many interesting concepts. One of you said that—I think it was you, Dr. Sorens—is that right—that self-determination, there is two paths, and I basically understand that to be the ballot box or military, militarily. You said there is a contagion, but that contagion doesn't usually cross borders. What about the Arab Spring?

Mr. SORENS. So democratic contagion can definitely go across borders. So we saw that back, as far as Europe 1848. But secessionism is fundamentally different because it only happens when a particular group has particular grievances or fears about the situation it is in. So we don't see this kind of thing, even if you look at——

Mr. WEBER. So you don't equate secessionism with democratization necessarily——

Mr. SORENS. I think they are fundamentally different processes. And any time, even if we look at Eastern Europe, it doesn't look as if people are looking at Yugoslavia and saying, oh, we need to do that.

Mr. WEBER. Let me interrupt you for a minute because we have to go to votes. Secession doesn't equate to democratization, but yet, if self-determination, somebody is tired of the old ruling order, the avant garde, call it whatever you want, and they want self-determination, isn't that democracy?

Mr. SORENS. You could say that it——

Mr. WEBER. So secession is a means to an end of democracy?

Mr. SORENS. It can be. It could be that the motivating principle of democracy might be a reason to recognize secession happening. So someone isn't trying to secede normally in order to get democracy. It is normally you are trying to secede in order to get out from under the thumb of a regime that you feel is alien or hostile to your interests. So democracy might be a reason for us to say, okay, the majority has decided we are going to recognize you, but that is not what is driving these secessionist movements to happen.

Mr. WEBER. You also said that if every country recognized the people's right to self-determination or secession, I guess, then few would exercise it, which I thought was interesting. Why do you say that?

Mr. SORENS. It is. It is surprising. Most people say, one of the first objections they have to this is, oh, you are going to get 10,000 new states, and it is just going to be unmanageable, but all the evidence suggests that even in the developing world, most people fear big changes to the status quo. So, you only get strong support for independence when there is a history of discrimination or violence or other things that make people fearful to stay in that arrangement. Even India, I looked at data in India, every Indian state, trying to figure out the proportion that wanted to secede, the highest was in Kashmir, and it is only about 20 percent.

Mr. WEBER. Let me jump over to your comments about Italy. You said the Italy constitution defines the country as indivisible. We would argue that our Pledge of Allegiance has that same phrase basically in it, but then you said the constitution had the phrase—it defined, rather, the country as indivisible, thus ruling out self-

determination. But, in point of fact, hasn't the majority of people who voted for that constitution self-determined that they wanted to make the statement that they are indivisible?

Mr. SORENS. It is sort of a philosophical question, but you could wonder, do the majority of Italian people have the right to decide for, say, Sardinians? Well, if Sardinians don't want that——

Mr. WEBER. I would argue that they do until the constitution is changed.

Mr. SORENS. We could wonder what the best constitutional form should be, should the constitution have this? That is sort of the debate.

Mr. WEBER. That is where self-determination comes in.

Mr. SORENS. Yeah. So we can say maybe the constitution should recognize self-determination. As long as it doesn't, yeah, you got to follow the constitution, but maybe the constitution should be amended.

Mr. WEBER. The problem with people voting is that they are people voting. I yield back.

Mr. ROHRABACHER. Thank you very much. In a couple minutes here, we are going to have to adjourn. We have a vote on, but let me just note, one point my dear friend and colleague made about, well, if the South would have seceded, we would have had them as principle, if the South wouldn't have been preventing such a large chunk of their population not to have any rights, had all the slaves been citizens and been able to vote, yes, all of those people would then, in my mind, that would have justified their vote.

Mr. WEBER. But aren't those contradictory terms, Mr. Chairman?

Mr. ROHRABACHER. So, anyway, I do believe that is their right. And the other thing is, let me just note, we have a lot of these—there are countries all over the world right now, people, whether it is in Biafra—and there is bloodshed going on right now for people in Biafra—feel that they should be independent. We didn't back them up. I remember years ago when I was a kid, they had that same concept, the Baloch, people of Baloch, the Kosovars, I think this has not turned out the way it should have, because we have not had the courage of our conviction, but we had a little bit, enough to get involved but not enough to solve the issue of Sudan and the rest of this.

Let me just note one issue that we will discuss in another hearing, which is, the most complicating factor to me, is that they are movements of populations by tyrants into people's area and the people there become overwhelmed because Stalin moves a bunch of people into Crimea or wherever, and it muddies up this issue.

But thank you very much for sharing with us, starting this dialogue on an issue that has been ignored, and today, I declare that an open issue for discussion of self-determination, but the end of this hearing.

[Whereupon, at 3:42 p.m., the subcommittee was adjourned.]

APPENDIX

Material Submitted for the Record

SUBCOMMITTEE HEARING NOTICE
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515-6128

Subcommittee on Europe, Eurasia, and Emerging Threats
Dana Rohrabacher (R-CA), Chairman

March 8, 2016

TO: MEMBERS OF THE COMMITTEE ON FOREIGN AFFAIRS

You are respectfully requested to attend an OPEN hearing of the Committee on Foreign Affairs, to be held by the Subcommittee on Europe, Eurasia, and Emerging Threats in Room 2200 of the Rayburn House Office Building (and available on the Committee website at http://www.ForeignAffairs.house.gov):

DATE: Tuesday, March 15, 2016

TIME: 2:30 p.m.

SUBJECT: U.S. Policy Toward National Self-Determination Movements

WITNESSES: Paul R. Williams, Ph.D.
President and Co-Founder
Public International Law and Policy Group

Jason Sorens, Ph.D.
Lecturer
Department of Government
Dartmouth College

Mr. Ivan Vejvoda
Senior Vice President, Programs
German Marshall Fund of the United States

By Direction of the Chairman

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202/225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee.

COMMITTEE ON FOREIGN AFFAIRS

MINUTES OF SUBCOMMITTEE ON *Europe, Eurasia, and Emerging Threats* HEARING

Day *Tuesday* **Date** *March 15, 2016* **Room** *2200 Rayburn*

Starting Time *2:44pm* **Ending Time** *3:42pm*

Recesses [*0*] (____to ____) (____to ____) (____to ____) (____to ____) (____to ____) (____to ____)

Presiding Member(s)

Rep. Rohrabacher

Check all of the following that apply:

Open Session [✓]
Executive (closed) Session [ ]
Televised [ ]

Electronically Recorded (taped) [ ]
Stenographic Record [✓]

TITLE OF HEARING:

U.S. Policy Toward National Self-Determination Movements

SUBCOMMITTEE MEMBERS PRESENT:

Rep. Meeks, Rep. Weber

NON-SUBCOMMITTEE MEMBERS PRESENT: *(Mark with an * if they are not members of full committee.)*

N/A

HEARING WITNESSES: Same as meeting notice attached? Yes [✓] **No** [ ]
(If "no", please list below and include title, agency, department, or organization.)

STATEMENTS FOR THE RECORD: *(List any statements submitted for the record.)*

Attached.

TIME SCHEDULED TO RECONVENE _____
or
TIME ADJOURNED *3:42pm*

Subcommittee Staff Director

Statement for the Record
Rep. Lois Frankel

Thank you, Chairman Rohrabacher and Ranking Member Meeks for holding this hearing. I recently returned from a Congressional delegation visit to Gibraltar, and wanted to share with you what I learned about Gibraltar's unique perspective on its self-determination.

Today's witnesses will focus on movements in which sovereignty conflicts with territorial integrity. There is no such issue in Gibraltar. Gibraltarians have expressed their self-determination by voting in two referenda overwhelmingly to remain a British overseas territory. Their desire to remain British comes from Gibraltar's deep historic links with the British Crown, Parliament, and People.

Today's witnesses will also note that sovereignty-based conflicts can be destructive and destabilizing. Gibraltar, however, is a good neighbor. It is a modern, progressive, and economically strong territory offering its neighbors good will and jobs.

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