CAN GREECE BE EXPELLED FROM THE EUROZONE? TOWARD A DEFAULT RULE ON EXPULSION FROM INTERNATIONAL ORGANIZATIONS

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Abstract

The ongoing European crisis has raised uncomfortable questions about the conditions under which treaty-based unions of nations like the EU or the EMU can legally expel a member—Greece being the most obvious candidate. The EU, for example, has rules governing the voluntary withdrawal of members, but says nothing about whether a member can be expelled. As a matter of international law, what does the silence mean? Put differently: What is the default rule regarding expulsions when a treaty says nothing about forced withdrawals? Is there an absolute bar on expulsion, as some have suggested? Conversely, is there an implicit right to expel? Or can material breaches of a treaty justify expulsion? And if fault is not required, must the expelled member state be compensated in some way?

1 Faculty, DUke Law School. For conversations about this topic, thanks to Patrick Bolton, Lee Buchheit, Paul Stephan and Roland Vaubel.

Introduction

The Greek sovereign debt crisis has resulted in three bailout packages, a dramatic restructuring of Greek debt, and multiple sets of Greek governments.[2] The saga is wearing the patience of the other members of the Euro area. In moments of frustration, some have argued that Greece should be expelled from the Eurozone, either because it has violated the sacrosanct "no bailout" clause by seeking relief from its EMU lenders or because it gained admittance to the Eurozone in the first place based on fraudulent numbers.[3] But many Greeks do not wish to leave, especially if they would have to also leave the EU as a result.[4]

The political struggle in turn raises a legal question about whether and under what circumstances international law permits a supranational or international organization (IO) to expel a member state.[5] The Lisbon Treaty is—like many other such treaties—silent on the matter of expulsion (although it does follow the general trend of permitting withdrawal[6]), so the crucial issue is what default rule applies in to these treaties or IOs.[7]

Many commentators have a strong response: In the absence of an

2 Greece's Debt Crisis Explained, N.Y. Times, Nov. 9, 2015, http://www.nytimes.com/interactive/2015/business/international/greece-debt-crisis-euro.html.

3 The question of expulsion in the EU context had come up earlier, in the context of the Irish rejection of the Lisbon Treaty in 2008. See Vincent Browne, Truth About the EU and Ireland After Lisbon, Politico, July 31, 2008. On the Greek matter, see, e.g., Leo Cendrowicz, Greek Debt Crisis: Alexis Tsipras Given Ultimatum – Push Through Cuts This Week Or Leave Euro, The Independent, July 12, 2015 (reporting the threat made to Greece that either it take on more austerity in July 2015 or take a "time out" from the Euro); Dalia Fahmy & Elisabeth Behrmann, Germans Tired of Greek Demands Want Country to Exit Euro, Bloomberg, March 15, 2015 (reporting that 52% of Germans polled wanted Greece to exit the Euro; with 80% of Germans polled taking the view that Greece "isn't behaving seriously towards its European partners"); Germans Call For Greece to Leave the Euro, After "No" Referandum Vote, Fortune, July 5, 2015; Jochen Bittner, It's Time for Greece to Leave the Euro, N.Y. Times, July 7, 2015.

4 E.g., Aggelos Skordas, New Opinion Polls Show that Greeks Want SYRIZA, Samaras, and the Euro, Greek Reporter, Jan 4, 2015.

5 Phoebus Athanassiou, Withdrawal and Expulsion from the EU and EMU: Some Reflections, European Central Bank Working Paper Series No. 10 (Dec. 2009) 35.

6 Article 50 provides that "[a]ny Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

7 On the withdrawal option that was put into place in 2009, under Article 50 of the TEU, see Phaedon Nicolaides, Withdrawal From the European Union: A Typology of Effects, 20 MJ: Maastricht J. Eur. & Comp. L. 2 (2013). Jacque Delors himself has argued that the relevant treaties should be revised, and that "[t]he new treaty should make it possible to kick a country out of the euro zone if a majority of 75 percent are in favour." Vicky Buffery, Delors Urges Giving EU Power to Eject Nations from Euro, Reuters (Oct. 18, 2011), http://www.reuters.com/article/eurozone-delors-idUSL5E7LI2KF20111018.

explicit agreement to the contrary, nothing can legally justify the expulsion of a member state from an IO. To do so, they say, would violate the sovereignty of the expelled nation or the relevant treaty. This appears to be the conventional wisdom about the prospect of expelling Greece from the Eurozone.

In a 2009 ECB Working Paper, Phoebus Athanassiou considered the possibility of expelling a member state from the EMU and concluded:

> [N]ot only is a collective right of expulsion not provided for in the text of the treaties, but, what is more, the legitimacy of its assertion or introduction would be highly questionable, both legally and conceptually.[8]

Echoing that sentiment, Annie Lowrey wrote in *Foreign Policy*:

> [The EU bylaws] provide no option for kicking a country out, no matter how much other member countries might want to. Even if Greece invaded France — and it would take as much for Brussels to contemplate expulsion — the European Commission, a body of ministers that initiates EU laws, would have to craft new legislation to do it.[9]

Similarly, Steve Peers, University of Essex Professor of EU Law and Human Rights, wrote:

> There's no reference in the Treaties to any power of a Member State to leave EMU once it joins, or of the EU institutions to remove that Member State from EMU, whether it agrees to that or not. A Member State can leave EMU by leaving the EU, but there's no Treaty power to throw a Member State out of the EU, or to suggest that any Member State might ever be under the obligation to leave. . . . The argument for a forced Grexit does not even have a fig leaf to hide its illegality.[10]

We disagree. The Lisbon Treaty does not specifically provide for expulsion, but nor does it prohibit it. And while a general presumption against expulsion may be sensible as a matter of law and policy, it is a mistake—legally and otherwise—to conclude that the *default rule* for IOs and treaties should be a flat prohibition on expulsion. The question, we argue, is

8 Athanassiou, supra note 5.

9 Annie Lowrey, Could Greece Get Kicked Out of the European Union? No, FP Explainer (Mar. 23, 2010), http://foreignpolicy.com/2010/03/23/could-greece-get-kicked-out-of-the-european-union/.

10 Steve Peers, Is Temporary Grexit Possible? EMU as Hotel California, July 11, 2015, EU Law Analysis Blog, http://eulawanalysis.blogspot.co.Uk/2015/07/is-temporary-grexit-legally-possible.html.

not whether expulsion should be permitted at all, but under what circumstances.

To admit the possibility of expulsion even when a treaty does not provide that option raises a host of other difficult questions. What about *de facto* versus *de jure* expulsion? Some IOs have, instead of expelling members, effectively excluded them from the organization by, for example, refusing to accept their representatives' credentials.[11] Analogous means might be available in the Greek context. Could, for example, Germany and the other Euro area nations essentially force a buy out by either "forgiving" the Greek debt or treating it like a gift conditioned on Greece's "voluntary" exit from the monetary union? Or could the ECB effectively force Greece to exit the EMU by denying it access to its facilties because of some action that Greece was taking that it deemed inappropriate (e.g., a debt restructuring)?

If de facto or de jure expulsion is possible in at least some circumstances, the key question is what conditions trigger its availability. Must the expelled party be at fault? If a fault-based inquiry is to be conducted, who would do this? The other member states? An international court, such as the ECJ? Some other international review body? Finally, there is enforcement. If IO members as a group want to push out a recalcitrant nation, there are likely to be few remedies available to the aggrieved state.

Our goal in this paper is not to offer definitive answers to these questions, but to suggest that considerations of both law and policy should permit expulsion in certain circumstances,[12] and to sketch out some of the considerations that might guide the use of such an extreme measure. The specific question of whether Greece could legally be expelled from the EMU is beyond the scope of our paper, nor do we have much to say about whether doing so would be a good policy decision.

I. Why Expulsion Should Be an Option

A. Inducing Cooperation in a World of Limited Sanctions

International organizations such as the United Nations, the IMF, or the EMU provide a mechanism for states to generate collective benefits—

11 South Africa Again Denied Seat by General Assembly, N.Y. Times, March 3, 1981.

12 Cf. Konstantinos D. Magliveras, Exclusion from Participation in International Organisations: The Theory and Practice Behind Member States' Expulsion and Suspension of Membership 259 (1999) ("Suspension and expulsion should be viewed as eventualities inherent in membership.").

such as security, financial stability, and the like—for their members and often for the wider world.[13] But the members states have individual interests that will on occasion differ from that of the collective. Members usually act cooperatively even when their self-interest differs from that of the group, whether because they fear reciprocal defections by other states, a breakdown of future cooperation, harm to their reputations as good global citizens, or simply because is the right thing to do.

Yet history demonstrates that members sometimes act in ways that violate cooperative commitments or even undermine the organization.[14] And since the members in question are sovereign, there are relatively few sanctioning mechanisms that other members can use to discipline them. One of the few sanctions available is denial of the benefits of the membership in the organization.[15] Under these circumstances, the threat of expulsion can provide three benefits: *first*, it penalizes (or preferably, deters) misbehavior; *second*, it allows the organization to start functioning again;[16] *and third*, it incentivizes the organization to create value for its members, making the loss of those benefits a more significant threat to a state being considered for expulsion.

Scholars have long been interested in the question of how members can and should respond to unsatisfactory performance by an organization.[17] We ask the opposite question: How can an organization—a collaborative enterprise—respond to unsatisfactory performance by a *member*? Members who believe that an IO is undeserving their interests—or that another member has breached its treaty obligations—often have an option to terminate the relationship by withdrawal.[18] Expulsion, in many ways, raises mirror image issues. The crisis in the EMU makes

13 Kenneth W. Abbott & Duncan Snidal, Why States Act through Formal International Organizations, 42 J. Conflict Res. 3 (1998).

14 An analogy here is to clubs, that generate benefits to their members. See Alessandra Cassella & Bruno Frey, Federalism and Clubs, 36 Eur. Econ. Rev. 639 (1992).

15 Cf. Christopher F. Brummer, Soft Law and the Global System: Rule Making in the 21st Century 159-161 (2015).

16 C.W. Jenks, Expulsion from the League of Nations, 16 Brit. Y.B. Int'l L. 155, 156 (1935) ("The [expulsion] clause was introduced . . . because it was thought that a state in breach of covenant might attempt to block systematically all League business by voting against every proposal under consideration.").

17 See, e.g., Albert O. Hirschman, Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States (1970).

18 See generally Laurence R. Helfer, Exiting Treaties, 91 Va. L. Rev. 157 (2005).

those questions particularly pressing.[19]

Like withdrawal, expulsion is an extreme remedy. So it makes sense to consider the kinds of extraordinary circumstances that might justify its use, including those in which a member is inflicting serious harms on the other members or their populations. In those extraordinary cases, expulsion may be the best way out of a terrible union.

There is no intuitive reason that such malfunctioning unions must continue. Indeed, some recent trends in international law seek to facilitate their break up by permitting regions or states to quit the relationship in extreme circumstances.[20] Such exits can improve overall welfare in the short run by ending the painful relationship, while deterring nations and organizations from inflicting harms on their regions and members in the first instance.

The same logic applies in the opposite direction. Holding aside the question of fault, the costs of a harmful political union are reciprocal—the union and its units all suffer from conflict. In the case of exit, those costs are thought to be the *fault* of the nation or organization, which is why the unit (region or member state) gets the withdrawal option. But that will not always be the case. Sometimes the harm is inflicted by a malefactor member (consider the USSR's invasion of Finland, when both were members of the League of Nations), and the organization should be the one with the option to terminate the relationship. It is not enough to say that doing so would violate the sovereignty or treaty rights of the expelled nation, when that nation has inflicted significant harms on other sovereigns. In such cases, we think, expulsion can be an appropriate remedy.

The right to expel misbehaving members gives the organization a key tool of influence and negotiation. This tool becomes all the more important if other tools are off the table or of limited utility, as is often the case when the sanctioned party is a sovereign state.[21] Just as the threat of exit

19 Boyko Blagoev, Expulsion of a Member State from the EU after Lisbon: Political Threat or Legal Reality?, 16 Tilburg L. Rev. 191, 192 (2011) ("[T]he glue may no longer be strong enough to hold all these countries together.").

20 See infra Section II.

21 In the EU and Euro contexts, Athanassiou recognizes this argument, but counters that the system contains adequate sanction mechanisms to discipline misbehaving members. See Athanassiou, supra note 4, at 36. The empirical question is whether the sactioning mechanisms already present in the EU/Euro contexts are so effective and tough that one can conclude that the implicit agreement was that there was no possibility of expulsion. We suspect not.

gives members a particular kind of bargaining chip vis-à-vis their organizations, the threat of expulsion does likewise for organizations vis-à-vis individual members—particularly when membership brings benefits and expulsion sends a negative signal to potential future partners of the misbehaving state.[22]

The expelling and expelled parties are not the only ones whose interests are at stake—it is also important to consider externalities and systemic costs. One might argue that the possibility of expulsion could reduce incentives for cooperation by reducing the value of forming an organization in the first place.[23] Organizations might also use the threat of abandonment to strike coercive or unfair bargains with members perceived to be underperforming.[24] Even contemplating the possibility of expulsion might corrode the commitment needed to make nations and organizations function properly.[25]

In practice, however, we suspect that political disincentives and reputational costs will be strong enough to prevent profligate use of expulsion, just as they often dissuade nations from withdrawing from treaties even where they have an unequivocal right to do so.[26] In fact, IOs that do have a treaty-based power to expel a breaching member have rarely chosen to

22 Cf. Helfer, Exiting, supra note 17, at 1583-84 (noting that sometimes "states pursue exit (and threats of exit) not to dissociate themselves from future cooperation with other nations, but … as a strategy to increase their voice within an intergovernmental organization or treaty-based negotiating forum"); Timothy Meyer, Power, Exit Costs, and Renegotiation in International Law, 51 Harv. Int'l L.J. 379, 382 (2010) ("A credible threat to exit an international agreement confers power on a state by allowing the state to demand a greater share of the gains from cooperation in exchange for participating.").

23 Carlos Vázquez, Withdrawing from International Custom: Terrible Food, Small Portions, 120 Yale L.J. Online 269, 270 (2011) (arguing, in the context of customary international law, that "[e]ach state's compliance is thus an investment . . . . the option of unilateral withdrawal would reduce the expected long-term payoff, which . . . would make states less likely to make the investment").

24 Cf. Meyer, supra note 21 (noting that in reaching international agreements, "ascendant" states will typically negotiate either for a higher share of benefits or easier exit).

25 Jerzy Makarczyk, Legal Basis for Suspension and Expulsion of a State from an International Organization, 25 German Yearbook Int'l L. 476, 477 (1982) ("[E]xpulsion of a member may cause damage to the organization as well, and even to the whole concept of organized international cooperation ….").

26 Rachel Brewster, Unpacking the State's Reputation, 50 Harv. Int'l L.J. 231 (2009); Meyer, supra note 21, at 394 ("Retaliation and reputational sanctions, though, remain available to curb unauthorized exit. In particular, unauthorized exit is a violation of a legal obligation that can result in a reduction of a state's reputation for complying with legal rules.").

exercise it.[27] In the vast majority of cases, the organization will prefer a negotiated solution or a lesser penalty over expulsion.

Consider the IMF, which needs to induce a high level of cooperation among members in order to function effectively, and explicitly has the power to expel members. Despite having to occasionally strong arm member nations into behaving appropriately, it has only once ever expelled a member—Czechoslavakia in 1954.[28] Yet the fact that expulsion has been used so rarely does not mean that it lacks value; the IMF's General Counsel explained in a recent speech that the power to threaten expulsion has been invaluable in inducing good behavior and avoiding the need to expel members more often.[29]

From the organization's perspective, the reasons for not over-using the power of expulsion are easy enough to perceive. Just as the expelled party would bear a reputational cost, so too would the organization,[30] thereby diminishing future opportunities for collaboration.[31] We saw this with Greece and the EMU in 2015 where many member countries, including some that wanted Greece to adopt the path of austerity, were worried that the use of threats of expulsion would impair the future of the Euro.[32] Another disincentive is the possibility that expulsion would free the expelled party from its preexisting legal obligations—an argument that Sohn has advanced against expelling breaching members from IOs.[33]

27 See Blagoev, supra note 18, at 192; Brummer, supra note 14.

28 Argentina provides a recent example of this, where its systematic misreporting of data brought forth a censure from the Board of the Fund, which in turn gave the country a certain period of time within which to remedy the problem or face further action, the end point of which would be expulsion. Argentina subsequently came into line. See Motion of Censure: The Fund Blows the Whistle, The Economist, Feb 9, 2013.

29 See Speech by IMF General Counsel, Sean Hagan, at UNC Chapel Hill Law School, Feb 2016, at https://vimeo.com/155031668.

30 Helfer, Exiting, supra note 17, at 1622 ("Three variables . . . stand out in assessing exits' distinctive reputational effects: (1) the frequency of denunciation and withdrawal; (2) the relationship between entering and exiting treaties; and (3) the risks of opportunism in light of the pervasive uncertainty of international affairs.").

31 Other disincentives to the overuse of expulsion include the desire to attract new treaty ratifications or IO members or to engage in collaborate with other IOs.

32 See, e.g., Stacy Meichtry & Anton Troianovski, Greek Crisis Puts French-German Ties to the Test, Wall St. J., July 14, 2015; Melissa Eddy, Germany's Tone Grows Sharper in Greek Crisis, N.Y. Times, July 16, 2015.

33 Louis B. Sohn, Expulsion or Forced Withdrawal from an International Organization, 77 Harv. L. Rev. 1381, 1388 (1964) (in the context of USSR invasion of Finland, "Colombia made what was to become a stock argument against expulsion—that to expel the U.S.S.R. would release it from the obligations imposed by the Covenant and thus make it easer for the Soviet Government to achieve its aims").

In general, however, we do not expect that occasional use of the expulsion power would deter the formation of IOs or the collaboration they make possible. In fact, the possibility of expulsion could *incentivize* the generation of new alliances and combinations by reducing the perceived costs of joining them in the first place, while increasing the value of agreements by providing a last-resort sanctioning mechanism.[34] If expulsion is not an option, then one bad actor could undermine the organization and its objectives, with the result that some highly productive collaborative relationships would never materialize.[35]

There is, however, at least one scenario in which expulsion might be off the table, and that is where the IO has specified as much. Explicit agreements regarding the availability or processes of expulsion should generally be followed. Our argument here is that the possibility to expel in exteme circumstances should be considered a default rule, not a mandatory one. In any event, many treaties and IOs say nothing about expulsion. In those cases, we think that the lack of an explicit expulsion provision should not preclude the option, any more than the lack of a prenuptial agreement precludes the possibility of divorce.

As a default rule, therefore, the key question is what rules should govern and limit its use. Just as we reject a bright line default rule against expulsion, so too we reject a regime in which it is an unrestricted option. Fortunately, we are not writing on a blank slate—international law and practice provide some relevant guidance.

B. Incomplete Treaties and De Facto Expulsions

It is tempting to think, especially in the context of a weak member of a treaty organization that is being threatened with expulsion, that a bright line rule against expulsion protects the interests of the weak nation. We

34 This point is made particularly effectively in Christian Fahrholz & Cezary Wójcik, The Eurozone Needs Exit Rules, CESIFO Working Paper No. 3845, 19-20 (June 2012) ("Paradoxically, 'exit rules' would decrease (and not increase!) the probability of an exit, or the breakup of the Eurozone. This is because, as suggested above, spelling out the 'exit rules' would give the EZ what it needs, i.e. enhanced market discipline, stronger enforcement power over the Eurozone, more internal discipline in the profligate countries and reduce market uncertainty.").

35 This same phenomenon has been observed in the context of treaties, where the existence of withdrawal rights may encourage agreement. Meyer, supra note 21, at 383 ("High exit costs therefore narrow the set of substantive rules that make an agreement today worth foregoing tomorrow's bargaining power. In extreme situations, high exit costs may preclude an agreement altogether."); see also Barbara Koremenos & Allison Nau, Exit, No Exit, 21 DUke J. of Comp. & Int'l L. 81 (2010).

do not think this is necessarily true, either in the case of Greece or in general, especially in the context of a incomplete treaty organization such as the EMU. In such scenarios, the alternative to transparent *de jure* expulsion may well be a *de facto* expulsion that may be surreptitious and comparatively more costly.[36]

IOs and treaties involving multiple parties and complex functions (managing the monetary policy of the Euro area, for example) are necessarily "incomplete," because it is impossible, ex ante, to envision and specify all of the actions that have to be taken by international bodies and their members. Incomplete agreements are not limited to international law—they arise, for example, in the context of firms seeking vertical or lateral integration. Scholars of incomplete agreements have shown that the parties delegate residual decision making authority to one side, to a subset of members, or to a third party—in this context, the ECB, which is itself controlled by some subset of the treaty members.[37] That third party, in turn, may have the means to deny the benefits and privileges of membership, resulting in an expulsion in all but name.

The alternative to *de jure* expulsion of a member is therefore not an open-armed embrace by the organization. A dissatisfied IO can do many things to deny organizational benefits or make life miserable for the unwanted partner.[38] Often an organization's rules permit it to impose such pain. At other times, pressure may be contrary to the letter or spirit of the IO—actions that could have serious reputational costs for the organization, but might also induce the targeted member to withdraw. Cumulatively, such actions can amount to something like a *de facto* expulsion, one for which the member state may have little or no remedy.

We have already seen something like this in the case of Greece. On multiple occasions in its sovereign debt crisis, Greece has considered the possibility of restructuring its debt long before the ECB and the more powerful members of the Euro area were willing to contemplate that possibility. Both in the early years of the crisis (2010-11, vis-à-vis Greece's

36 See Helfer, Exiting Treaties, supra note 17.

37 Among the classic works on this topic are Sandy Grossman & Oliver Hart, The Cost and Benefits of Ownership: A Theory of Vertical and Lateral Integration, 94 J. Pol. Econ. 691 (1986) and Philippe Aghion & Patrick Bolton, An "Incomplete Contracts" Approach to Financial Contracting, 59 Rev. Econ. Stud. 473 (1992).

38 Sohn, supra note 32, at 1419-20 ("[I]t would now seem that a regional organization, even in the absence of a provision on exclusion, can expel a member without Security Council authorization, at least if the decision is properly camouflaged [as merely a membership question].").

private sector debt) and in the latter portion (2015, vis-à-vis Greece's official sector debt), Greece was told that an attempt to restructure would result in denial of access to the ECB's support.[39] And denial of ECB support for the banking system would have forced Greece to exit the Euro and go back to the drachma. In effect, Greece was told it must either comply with the dictates of the ECB or face *de facto* expulsion.

Jean Claude Trichet, the head of the ECB in April 2011, suggested as much in his response to the prospect of extending the maturities of some of the Greek debt:

> The central bank's president inform[ed] the Greek prime minister in no uncertain terms that a decision to extend maturities would lead to the ECB pulling the plug on the support mechanism keeping the Greek banking system alive. The immediate effect of such a move would be to force Greece to leave the euro and print its own money to avoid the sudden death of its banks.[40]

The German finance minister's plan to induce Grexit in July 2015, at least as reported by *Der Spiegel*, was of the same basic form:

> The ministers agreed to formulate such strict conditions for a third aid package that the Greek government would never be able to accept them. As a means to push Greece out of the euro, Schäuble had devised a so-called trust fund, into which all revenues from the sale of Greek assets would flow. For Greek Prime Minister Alexis Tsipras, that would have been impertinent enough. But the conservative ministers wanted to go even further and demand that the fund be located in Luxembourg, a stipulation Tsipras could not possibly accept.[41]

In both cases, Greece capitulated to the threats of expulsion.

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39 On the 2010-11 events, Paul Blustein has written:
Much blame [for the failure to restructure the debt early] belongs with Trichet and his ECB colleagues, who threatened to cut off emergency aid to Greek banks if Athens tampered in the least with its debt obligations. The ECB's rigid stance stifled discussion of more far-reaching debt restructuring proposals, even though German officials were by then eager to make private lenders share some of the burden of the Greek rescue.
Paul Blustein, The Greek Crisis: Human Errors and Divine Forgiveness, Longtitude, Feb 20, 2015.
As for 2015, see Ian Traynor & Larry Elliott, Greece Given Days to Agree to Bailout Deal or Face Banking Collapse and Grexit, The Guardian, July 7, 2015.

40 See Yannis Palailogos, How Trichet Threatened to Cut Greece Off, Ekathimerini, Nov 3, 2014.

41 See A Government Divided: Schauble's Push for Grexit Puts Merkel on the Defensive, Spiegel Online, July 17, 2015.

European institutions have used similar measures to threaten expulsions in other contexts. The recent secession movements in Catalonia and Scotland provide ready examples. In both cases, high level European officials made statements to the effect that if these regions seceded, they would be expelled from the EU.[42] And, once expelled, reentry was not by any means assured; Spain, in particular, was expected to block Scottish reentry.[43] If expulsion from the EU was not permitted, one would not have thought that there would have been any value to making these threats. As Roland Vaubel has pointed out, however, there is nothing in the EU treaties that addresses the context of a regional secession (and in effect the question of whether the right to membership of the EU belongs to the people in a divisible fashion or to the government in an indivisible form).[44]

To reiterate our core claim—in the context of a highly incomplete treaty, where the right of residual decision making has to be delegated or allocated to a third party, formal *de jure* expulsion is not the only possibility. The *de facto* power to expel may well already exist, which means that an unwanted member may be largely shut out of participating in the organization and enjoying its benefits. The question is not *whether* expulsion is possible, but when it should be permitted and subject to what restrictions. In the following section, we begin to identify, in broad terms, the existing legal rules.

II. Background Principles of International Law

A. Expulsion from Treaty Organizations

Expulsion from treaties and IOs, both temporarily and permanently, has long been recognized as a remedy that can be imposed against a member state that materially breaches its obligations.[45] Sometimes expulsion is explicitly contemplated in an IO's constitutive documents; in other instances it can be inferred from background principles of international law.

42 See Roland Vaubel, Secession in the European Union, 33 Econ. Affairs 288 (2013); see also Government of Catalonia, Report: Paths for Catalonia's Integration Into the European Union (October 2014).

43 See Severin Carrell & Ashifa Kassam, Scottish Independence: Spain Blocks Alex Salmond's Hopes For EU Transition, The Guardian, Nov. 27, 2013.

44 Vaubel, supra note 41..

45 See generally Magliveras, supra note 11; Nagendra Singh, Termination of Membership of International Organizations (1958).

1. Expulsion Clauses

To a greater degree than national constitutions, treaty-based organizations—including institutions that aspire to universal membership—such as the League of Nations, the United Nations, and the IMF—have made explicit provision for the expulsion of member states.[46]

Given the awkwardness of making provision for exit at the formation stage and the difficulty of specifying ahead of time the conditions under which expulsion may occur, the fact that expulsion clauses are ever included in constitutive documents is somewhat striking.[47] The aversion to acknowledging exit and expulsion is evident in the views of Woodrow Wilson, architect of the League of Nations:

> [T]here can be no special, selfish economic combinations within the League and no employment of any form of economic boycott or exclusion except as the power of economic penalty by exclusion from the markets of the world may be vested in the League of Nations as a means of discipline and control.[48]

And yet the Covenant adopted by the League of the Nations in 1919 did ultimately contain an explicit provision, Article 16(4), which provided that a member could be "declared to be no longer a Member of the League" if it were to violate the League's covenants.[49] Wilson himself described Article 16(4) as permitting "expulsion from the League in certain extraordinary circumstances."[50]

In keeping with Wilson's discomfort with the prospect of expulsion,

46 Makarczyk, supra note 24, at 477 ("In a number of organizations the right to suspend or expel a member has been more or less precisely defined in the statutory provisions.").

47 Magliveras, supra note 11, ,at 65 ("The history of the international community after World War II has shown that states are usually disinclined to introduce expulsion clauses in constitutive instruments. However, at the same time, they have acknowledged the importance of expulsion as a means of 'punishing' those Members pursuing[] what is being perceived as[] unacceptable policies, even though the latter might not necessarily conflict with the constitutions.")..

48 Quoted in Magliveras, Magliveras, supra note 11, at 7.

49 Hans Kelsen, Sanctions in International Law under the Charter of the United Nations, 31 Iowa L.R. 499, 508 (1946).

50 Sohn, supra note 32, at 1381.

Article 16(4) seems to have been treated as a live provision,51 but one to be used sparingly.[52] In 1927, the Council issued a report confirming that the League could invoke 16(4) to expel a Member state for failing to pay its contributions and failing to show a willingness to remedy that failure in the immediate future.[53] But to our knowledge, 16(4) was applied only once, in 1939, when the USSR was expelled for the obviously serious offense of invading Finland.[54]

The League of Nations would itself be replaced by the United Nations following the war, but expulsion remained an explicit part of the organization's constitutive document. Article 6 of the U.N. Charter provides:

> A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

This Article was met with hesitation,[55] and has never officially been used,[56] though temporary expulsion was essentially accomplished when South Africa's credentials were rejected as a way of excluding it from the

51 Id. at 1393 (noting that "the expulsion provision was raised also in connection with the obligation to contribute to the expenses of the League of Nations, and the obligation 'to secure just treatment of the native inhabitants of territories' under the control of a member of the League.").

52 Id. at 1386 ("Neither in the Japanese aggression against China, nor in the case of the Italian aggression against China, nor in the case of the Italian aggression against Ethiopia, was there a formal attempt at expulsion.")

53 Magliveras, supra note 11,, at 15 (citing Doc.C.128.1927.V, 1927 LNOJ 381).

54 Id. at 22. Interestingly, the official Decision actually described the situation as if it were a withdrawal, saying that the USSR had "placed itself outside the League of Nations." Id. at 25 (quoting 1939 LNOJ 506). See also Leo Gross, Was the Soviet Union Expelled from the League of Nations?, 39 Am. J. Int'l L. 35, 42 (1945) ("Having regard to the circumstances attending the vote of the Council, it seems necessary to conclude that the Council's resolution of December 14, 1939, did not have the legal effect of terminating the membership of the USSR in the League of Nations.").

55 Inter-American Juridical Comm., Recommendation and Reports: Official Documents, 1942-1944, at 144 (1945) ("Provision should, no doubt, be made for the possibility of a state violating its obligations. But in such case the particular state should be disciplined, not expelled. Expulsion would only tend to create factions in the international community.").

56 This does not mean that nations have never invoked it. Magliveras, supra note 11, at 46 n.101 (noting that "it was Syria that on 22 December 1955 introduced a draft SC Resolution which, inter alia, called upon all Members to decide to expel Israel, UN-Doc.S/3519, 1955 YBUN 35; no vote was taken on it.").

General Assembly during the apartheid era.[57] (The rejection of credentials is one procedural way to achieve the a de facto exclusion without actually going through with a formal expulsion.[58])

The League of Nations and United Nations are the most significant examples of organizations with explicit expulsion clauses, because of their prominence and the fact that they were largely designed to be inclusive, universal, and dependent on a high degree of consensus for decisionmaking. But the constitutive instruments of various regional and subject-specific organizations contain expulsion clauses,[59] which have occasionally been exercised.[60] Article 8 of the Statute of the Council of Europe, for example, says that "[a]ny member which has seriously violated" the "principles of the rule of law and the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms" may be declared to not be a Member as from such date as the Committee of Ministers may determine.[61] Interestingly, given the identity of the players in the current crisis, the closest that the Council ever came to suspending or expelling a member was Greece, whose 1967-74 military regime was alleged to have committed serious human rights abuses.[62]

As noted above, one organization for which the ability to expel a misbehaving member has been seen as important is the IMF, whose Articles of Amendment explicitly provide for compelling a member to withdraw.[63] The IMF was put in place after World War II, in large part to protect against the "beggar thy neighbor" policies with respect to exchange rates and trade policy that many countries had followed in the prior era.[64] To perform that policing task—ensuring that the global exchange rate system worked in a fair and efficient manner—it was crucial that the IMF's teams

57 See generally Alden Abbott et al., The General Assembly, 29th Session: The Decredentialization of South Africa, 16 Harv. Int'l. L.J. 576 (1975); see also Magliveras, supra note 11, at 45-46 (noting that "the political balances in the Council prevented a recommendation for South Africa's expulsion").

58 Sohn, supra note 32, at 1422.

59 Magliveras, supra note 11, at 88-93 (describing suspension and expulsion from Common Market for Eastern and Southern Africa); Pact of the League of Arab States, March 22, 1945, art. 18, para. 2, 70 U.N.T.S. 259 (1950); Convention for European Economic Cooperation, April 16, 1948, art. 26, Cmd. No. 7796 (B.T.S. No. 59), at 18.

60 Makarczyk, supra note 24, at 485 (noting expulsion Czechoslovakia from the IMF).

61 Statute of the Council of Europe, May 5, 1949, art. 3 & 7, 87 U.N.T.S. 106, 108 (1951).

62 Magliveras, supra note 11, at 80-83.

63 Brummer, supra note 14, at 159 (categorizing the Fund as a "hard law" institution).

64 E.g. Morris Goldstein, The IMF as Global Umpire for Exchange Rate Policies, in C. Fred Bergsten and the World Economy 314 (date)

be able to obtain accurate information about individual nations to prevent cheating.[65] The IMF's primary tool to ensure cooperation was the threat of denying misbehaving members the benefits of membership.[66]

2. Default Rules: The Analogy to Withdrawal

Not all treaties or IOs explicitly provide for expulsion.[67] Some commentators read these silences as precluding expulsion, based on what they see as the "well-established principle of international law that where a constituent instrument is silent in respect of [expulsion], there is no inherent right vested in the organization [to expel]."[68] We think, to the contrary, that background rules of treaty interpretation provide support for a default rule that a member state can be expelled from an IO or treaty, at least in case of a material breach.[69]

To illustrate, we begin with an extreme but real historical example. If Article 16(4) had never been written, would the League of Nations have been legally required to keep the USSR as a member in 1939, despite having concluded that it had breached the Covenant by invading another member state? It seems implausible to argue that it would. Magliveras, in his treatise on the law of suspension and expulsion from international organizations, concludes that the Covenant's express expulsion clause "was not creating any new special regime but was declaratory of the majority view which, if applied by analogy, meant that breach of any Covenant provision entitled the other signatory parties to terminate it vis-à-vis the delinquent party, i.e. exclude it from the continuous operation of the Covenant."[70]

The ability to effectively expel a state that has materially breached an

65 See Hagan speech, supra note 28.

66 See id. Expulsion from the IMF occurs only after a couple of initial steps. First, the member's voting rights are suspended and then the ability to use the fund's resources is removed. See id. Over the years, these penalties have been applied to Sudan, Somalia and Zimbabwe. Only one member has been expelled, Czechoslavakia in 1954, for failing to adequately give the Fund information.

67 See, e.g., Brummer, supra note 14, at 159; Sohn, supra note 32, at 1417-19.

68 Singh, supra note 44, at 79. Singh was writing nearly 60 years ago, before even the Vienna Convention. Athanassiou, senior counsel at the ECB, has taken essentially the same position. See Athanassiou, supra note 4, at 31-36.

69 Makarczyk, supra note 24, at 487 ("The problem to be studied now can be formulated as follows: can the right to suspend or expel a member, in case the statute is silent, be implied in emergency situations? I do not think it possible to give a general answer to this question.").

70 Magliveras, supra note 11, at 17.

international law obligation was codified the Vienna Convention on the Law of Treaties.[71] Under Article 60 of the VCLT, a "material breach" of a multilateral treaty by one party—defined as "(a) a repudiation of the treaty not sanctioned by the present Convention; or (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty"[72]—entitles "the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either: (i) in the relations between themselves and the defaulting State, or (ii) as between all the parties."[73]

Unsurprisingly, it is difficult to say in the abstract what constitutes a "material" breach.[74] An example is when the Soviets unlawfully shot down a Korean airliner in 1983. That was deemed to be a material breach of a number of air services treaties specifying that treaty parties would ensure the safety of the aircrafts of the other treaty members.[75] But one can also imagine less extreme examples. Some have argued that Greece requiring a bailout from the EMU in violation of the "no bailout" clause of Article 125 of the Lisbon Treaty is a material breach, since that clause is deemed by many to be a core term.[76]

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71 Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331. Magliveras notes that if an international organization's "constitutive instrument contains suspension or expulsion clauses, the organization has been delegated the power to proceed accordingly; if not, Article 60 of the Vienna Convention could be applied." Magliveras, supra note 11, at 232-233; see also id. at 3 ("Since it is the minority of constitutive instruments which contain express suspension and/or expulsion clauses, this lacuna is addressed by arguing that the Vienna Convention on the Law of Treaties and the rules on permitted countermeasures could be invoked and applied by analogy in appropriate cases."); Chi Carmody, On Expelling Nigeria from the Commonwealth, 34 Canadian Y.B. Int'l L. 273, 284 (1996) ("The Vienna Convention has never been invoked to resolve a disputed expulsion, but a number of the convention's articles apply to such a situation.").

72 Vienna Convention, Article 60(3); see also Ian Brownlie, Principles of Public International Law 622 (7th ed. 2008).

73 Vienna Convention, Article 60(2)(a).

74 See Anthony Aust, Handbook of International Law 96 (2d ed. 2007) (pointing to UNSCR 1441 (2002)); see also Carmody, supra note 70, at 285 (describing wrongdoing sufficient to justify expulsion as "a material breach of a tenet that is central to the association's aims").

75 See Ghislaine Richard, KAL 007: The Legal Fallout, Annals of Air & Space L. 146, 150 (1983); Kevin Chamberlain, Collective Suspencion of Air Services, Int'l & Comp. L. Q. 616, 630 (1983).

76 For a discussion of the articulation of this view by Germany's finance minister, Wolfgang Schauble, and others, see Karl Whelan, "Alice in Schauble Land: Where Rules Mean What Wolfgang Schauble Says They Mean," July 17, 2015, at https://medium.com/bull-market/alice-in-sch%C3%A4uble-land-where-rules-mean-what-wolfgang-says-they-mean-f0f327fa8a6d#.yuqfjru8p

A material breach of IO constitutive instrument, Magliveras explains, "would lead either to the suspension of the malefactor state's membership rights or to its expulsion, or to the suspension of operations of the organisation in question or even to its dissolution."[77] In other words, expulsion of the recalcitrant member can be effectuated by the (admittedly cumbersome) process of a mass withdrawal followed immediately by reconstituting the organization without the breaching state.[78]

The VCLT and state practice also recognize exit rights without a prior material breach. For example, Article 56 specifies that states may withdraw if a right of withdrawal is implicit in the nature of the treaty or intended by the parties (although not codified in the text itself).[79] And Article 62 provides that a fundamental change of circumstances may trigger a withdrawal, even without a material breach by either party.[80]

When states negotiate treaties, they often include explicit exit provisions. As one of us has previously written, "[m]ost multilateral treaties contain broad and permissive withdrawal clauses that do not condition exit upon the consent of other state parties or review by international tribunals."[81] Because exit and expulsion are closely related, these clauses arguably provide further evidence that treaty law and practice support a norm of expulsion in cases of serious misbehavior—even if a treaty does not expressly provide for expulsion. The fact that exit provisions

77 Id. at 235.

78 Many of the discussions of how the Euro area should move to a "two-speed" system where northern European nations and southern ones would be operating under different rules are effectively this—expulsion by withdrawal and reconstitution. E.g., IESE Staff Discussion, Is a 2-Speed Euro the Solution for the Eurozone, 9/3/2015, http://blog.iese.edu/economics/2015/03/09/quick-question-is-a-2-speed-euro-the-solution-for-the-eurozone/ (quoting Professor Alfredo Pastor: "One imagines that a two-speed euro is a polite name for a eurozone without Greece. That is economically possible, and may even be good for Greece and the others. But how could one erase the feeling of failure in Greece and the bad feeling that will result from it?").

79 For a discussion of these provisions, see Phedon Nicolaides, Withdrawal From the European Union: A Typology of Effects, 20 MJ 2 (2013).

80 VCLT art. 62, para 1; For a discussion of these provisions, see Phedon Nicolaides, Withdrawal From the European Union: A Typology of Effects, 20 MJ 2 (2013).

81 Helfer, Exiting, supra note 17, at 67. See also Aust, supra note 73, at 279 ("Most multilateral treaties of unlimited duration will allow a party an unconditional right to withdraw.").

are rarely invoked[82] suggests that expulsion will similarly arise only in extreme circumstances.[83]

A critic might argue that the commonality of withdrawal positions suggests exactly the opposite: That expulsion provisions were considered and rejected and that means that expulsion is not permitted under any circumstances. The point is a fair one, and we have three preliminary responses.

First, while we concede that silence in a treaty's text likely means that the parties were not able to agree on the rules under which expulsion would be permitted, this also implies that they did not agree on a flat ban on expulsion. Failure to agree ahead of time on the specific conditions under which expulsion could occur might simply mean that this was a matter on which agreement could not be reached *and* on which the failure to agree was not a deal breaker.[84] Put differently, it may have been one of the matters on which the agreement was in effect to allow parties to work their differences out without predetermined rules and, if things could not be worked out, to refer any disputes to a third party such as a court.

Again, the analogy to incomplete contracts or collaborative contracts is helpful. As Gilson, Sabel and Scott ("GSS") have shown, it is difficult in collaborative ventures to specify all contingencies in a contract ahead of time.[85] What this means is that the parties have in effect agreed to work

82 Curtis A. Bradley & Mitu Gulati, Withdrawing from International Custom, 120 Yale L.J. 202, 246 (2010) ("Commentators have evinced few concerns … about excessive withdrawals from multilateral treaties."); Anna T. Katselas, Exit, Voice, and Loyalty in Investment Treaty Arbitration, 93. Neb. L. Rev. 313, 342 (2014) ("At least 180 states have executed BITs, and of those states, a small number appear to have embarked on the long and open road towards full, formal club resignation.")..

83 Helfer, Exiting, supra note 17, at 1601 ("[F]ew treaties—at least outside the trade context—can credibly threaten to impose monetary penalties or other sanctions."); Egon Schwelb, Withdrawal from the United Nations: The Indonesian Intermezzo, 61 Am. J. Int'l L. 661, 672 (1967) ("[T]he United Nations has no legal remedy to enforce its claims for continued membership of the state purporting to withdraw."); Rosendorff & Milner, at 834-35 (arguing that a nation exercising the escape clause of GATT is constrained by the fact that the escaping state compensate adversely affected members or else face retaliation).

84 For a discussion of the situations where parties have effectively "agreed to disagree", see Omri Ben-Shahar, Filling Gaps in Deliberately Incomplete Contracts, 2 Wisc. L. Rev. 389 (2005). Ben-Shahar's solution (a pro defendant default), while attractive, probably would not work in circumstances where the agreements in question give residual control rights to one side or the other (thereby making de jure and de facto expulsion much the same).

85 E.g., Ronald J. Gilson, Charles Sabel & Robert E. Scott, Braiding: The Interaction of Formal and Informal Contracting in Theory, Practice and Doctrine, 110 Colum. L. Rev. 1377 (2010).

out their differences without the need of formal rules—in the manner in which collaborators in cooperative venture would be expected to. But this does not rule out the possibility that some types of behavior could be determined at a later date to justify expulsion.[86]

Second, if the goal is to give parties the rules that they would have agreed to had they been able to foresee the circumstances at hand, it is worth considering the fact that we have not come across a single treaty that contains an explicit and categorical prohibition on expulsion. By contrast, empirical work that one of us has done on exiting treaties shows that there are many that explicitly allow for withdrawal under certain sets of conditions. Those two facts suggest that the default rule, in the case of silence, should not be a ban on all expulsions. No one, in the circumstances where they are able to come to agreement, ever seems to choose that rule.

Third, there are good reasons not to ban expulsion in perpetuity. Even if negotiators are willing to enter into agreements that preclude explusion or exit forever, no matter what the changes in circumstances or what kinds of misbehavior the other parties engage in, such agreements should be treated with somewhat more suspicion when they purport to bind future actors who face problems unforeseeable at the time of the agreement's creation.[87] Along those lines, note that older treaties are subject to withdrawal at higher rates.[88]

What, then, explains the lack of expulsion provisions? Perhaps the issue is simply that treaty partners to not wish to make provision in their constitutive documents for the same reason that couples do not like to discuss divorce on their wedding day. In either scenario, the failure to specify an exit option does not preclude exit.

III. Toward a Three Part Framework

Having argued that expulsion is sometimes desirable, and then that it is not always illegal, we now sketch—in general terms—a framework with which to evaluate it. Our thoughts are tentative. Every IO is unique in its legal arrangements, history, and political incentives. Nevertheless, it is

86 Id. at 1416-17 (discussing the Eli Lilly case).

87 We argue elsewhere that such agreements should be defeasible even within the national context. See Joseph Blocher & Mitu Gulati, Expulsion, __ L. & Contemp. Prob. __ (2016, forthcoming).

88 Helfer, Exiting Treaties, supra note 17.

possible to imagine three broad categories of cases that apply where an IO-creating treaty is silent on explusion.

First, take the well-behaving member state. The default rule for treaties that have no explicit provisions on explusion should be that such a state may not be expelled. We derive this from the premise that nations enter into collaborative relationships with the assumption that problems will almost always be worked out cooperatively. Expulsion is a last resort solution when it is clear that one or more of the parties are consistently undermining the cooperative venture. This perspective is also consistent with existing international law. As explained above,[89] members typically cannot be expelled from IOs unless they have engaged in material breaches of basic commitments or there has been a fundamental change in the core understandings underlying the organization.[90] Well-behaved members, even if they are otherwise undesirable, cannot be kicked out absent a radical change in the foundational understandings underlying the organization.

This does not, however, mean that treaty and IO memberships are frozen in place, only that the IO and the member state would have to agree on any changes. If an organization wanted to expel a well-behaved but undesirable member, it would have to do so by negotiating with the member. The member could hold out—its right to remain in the nation would be protected by a "property right" in the Calabresi/Melamed sense91—but a deal might be reached in some cases, particularly since the other states likely have the power to make membership undesirable. As discussed at the outset, some elite German intellectuals have wanted the EMU to extend similar treatment to Greece.[92] Such agreements would have to be monitored for fraud, threats of force and the like, the existence of which—in keeping with existing treaty law—would void the agreement. But in general, if a member state is not at fault for the deteriorating relationship, then it cannot be expelled against its will.

Second, on the opposite end of the spectrum, members that are misbehaving in the extreme—for example by declaring war on other mem-

89 See supra Section II.C.

90 Sohn, supra note 32, at 1400 (quoting 7 U.N. Conf. Int'l Org. Docs. 330-31 (1945)).

91 See Guido Calabresi & A. Douglas Melamed, Property Rules, Liability Rules and Inalienability: One View of the Cathedral, 85 Harv. L. Rev. 1089 (1972).

92 The obvious references here are to the "time out" and "gift" proposals of Wolfgang Schauble and Hans Werner Sinn in 2015 vis-à-vis Greece. See note 97, infra & 75, supra.

bers or actively working to undermine an IO—can be expelled at the option of remaining members. Such an extreme remedy is, we argue, implicit in all interstate cooperative ventures that involve establishing an organization to achieve shared objectives.[93]

Most of the time, in an association of nations with repeated dealings, nations will have sufficient built in incentives to cooperate. However, there will be rare cases where a particular member is undermining the organization's *raison d'etre*. It is in this narrow set of circumstances—where the minority member is essentially "oppressing" the organization as a whole—that the threat of expulsion—and, if need be, the removal of the offending state by the remaining members—can play an important role. It may be necessary, however, to provide the minority member with notice and an opportunity to cure its misconduct and access to a third-party decisionmaker to ensure that the process is not abusive or prextual.

Exactly what circumstances justify remedial expulsion will inevitably be dependent on context, subject to dispute, and near impossible to specify *ex ante*. But this is not an unfamiliar scenario in complex or relational contracting contexts where a full set of future contingencies cannot be specified ahead of time and vague concepts such as "good faith" and "reasonable efforts" are used ex post as gap fillers.

Harder questions arise in scenarios where the members arguably bargained for a perpetual union. As noted at the outset, some have argued that Greece cannot be expelled from the EU no matter what it does—even if it were to invade a fellow member.[94] But even if it were clear that expulsion were expressly forbidden by the terms of a constitutive treaty—and, to reiterate, we are aware of no such example— remedial expulsion might still be justifiable in extreme circumstances.

In the end, such arguments are probably unnecessary—in a situation that demanded it, a nation would simply engage in remedial expulsion, regardless of what the legal authorities say on the matter.[95] For example,

93 As the U.S. argued in defending the expulsion of Cuba from the OAS—an IO without an express exclusion clause—"no regional body can be forced to accept or maintain the presence of a government which the members of that regional body determine to be violating the very terms of the charter of that body." 46 Dep't St. Bull. 657, 689 (1962).

94 Lowrey, supra note 8 (rejecting possibility of EU expulsion "even if Greece invaded France").

95 Joseph H. Weiler, The Transformation of Europe, 100 Yale L.J. 2403, 2412 (1991) ("It takes no particular insight to suggest that should a Member State consider withdrawing from the [European Coal and Steel] Community, the legal argument will not be the critical or determining consideration.").

we suspect that Greece would be expelled if its domestic Central Bank were to start printing excessive amounts of Euros, in contravention of the clear constraints imposed by the ECB. At this point, expulsion would be regarded as a valid exercise of political—if not legal—power. We have tried to show that it would be both, and that the power to expel (like the power to withdraw) should be thought of as a *remedy* and not necessarily as something the parties must bargain for *ex ante*. In the language of relational or incomplete contracts, because the standard for expulsion is necessarily going to be a function of circumstances—whether or not an action constitutes misbehavior worthy of expulsion or an excusable action because of unforeseeable events—it may not be easy to specify in advance.

Third and finally, there is a middle category—one in which members are not actively undermining the organization, but are nonetheless falling significantly short of their obligations. In those scenarios, we suggest (even more tentatively) that the member *can* be expelled against its will, but that it is owed compensation as a result.

These scenarios could in principle be included in our broad default rule against involuntary expulsion of well-behaved members. But it is still worth considering the possibility of expulsion in situations short of the horrific malefactor regions above. After all, forbidding expulsion does not mean that the situation will necessarily be resolved peacefully within the existing union. Eliminating the exit or expulsion options *should* increase voice, but that does not mean that it *will*.

Once again, the Greek debt crisis provides a useful illustration. As noted, some have argued that a Greek default on its ECB debt or that debt owed to the other Eurozone nations would constitute a bailout, violating the sacrosanct "no bailout" clause of the Lisbon treaty, and that expulsion should be on the table as a remedy.[96] Others have argued that Greece can be expelled because the numbers it used to gain admittance into the Eurozone in the first place were fraudulent.[97] Implicit in both sets of arguments is a notion of fault, which, if sufficiently extreme, could push it into our category of remedial expulsion.

But not all of those urging Grexit have invoked fault-based arguments. A few commentators have suggested the equivalent of a forced buy out.

96 See supra note 2 and sources cited therein.

97 See, e.g., Steve Peers, The Law of Grexit: What Does EU Law Say About Leaving Economic and Monetary Union, 28 June 2015, http://eulawanalysis.blogspot.com/2015/06/the-law-of-grexit-what-does-eu-law-say.html.

The suggestion is that Germany and the other Euro area nations either "forgive" the Greek debt or treat it like a gift conditioned on Greece's "voluntary" exit from the monetary union.[98] Would this kind of compensation be permissible? Could it be given as an incentive for a "voluntary" Greek exit? If so, what kind of approval would Greece have to give? Could the sitting government make the decision on its own or would there need to be a referendum? What about approval from the populations of the other Euro area national governments, their legislatures and so on? And what if there were certain regions in Greece that did not wish to take the buyout and were willing to pay back their share of the Greek sovereign debt owed to the other Euro member states?

These are uncomfortable questions, and we do not have ready answers. But refusing to acknowledge them does not avoid the underlying problem. Our goal in this paper is far more modest—to describe a general proposition without fleshing out all of the details. But we are mindful of the latter's importance or difficulty. Rules would have to be developed regarding how serious or persistent an offense must be in order to trigger the right of remedial expulsion. In exercising it, nations and organizations should presumably be subject to a requirement of good faith vis-à-vis each other,[99] which would also need to be elaborated. It may be that a forum or a review process would have to be established to deter pretextual or abusive expulsions.[100] These are the kinds of challenges scholars and practitioners can and must confront, rather than dismissing expulsion as an option altogether.

98 Hans-Werner Sinn, Why Greece Should Leave the Eurozone, N.Y. Times, July 24, 2015, Hans-Werner Sinn, Why Grexit Could be Good For Greece, CNN Money, July 7, 2015.

99 Vienna Convention, art. 26 ("Every treaty in force is binding upon the parties to it and must be performed by them in good faith."); Gabcčíkovo-Nagymaros Project (Hung./Slovk.), 1997 I.C.J. 7, para. 142 (Sept. 25) (noting that this provision "obliges the Parties to apply [the treaty] in a reasonable way and in such a manner that its purpose can be realized").

100 Magliveras, supra note 11, at 2 (suggesting ICJ in the context of the UN, noting that "the majority of organizations lack juridicial mechanisms for settling such disputes in an authoritative, final, and binding manner"); id. at 39 ("The question which should be the proper organ to decide (a) whether a Member had breached the Principles and (b) whether the breach was perpetrated in a persistent fashion has not been addressed in the Charter. Indeed, with only a limited number of exceptions, constitutions of international organizations do not deal with this issue.").