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Quebec secession drive fails the legitimacy test

By Donald J. Kochan

Not since the American Civil War has there been a stronger statement of secessionist tendencies within North America than Monday's Quebec sovereignty referendum. Analysts expect the narrow loss by Quebec's secessionists will embolden them to try another effort at making the province independent of Canada.

It is clear, however, that the separatists' position is illegitimate under Canadian constitutional law and international law.

Two recent polls indicate that Quebecers do not believe that a narrow plurality could or should legitimate secession. Besides, referendums cannot be considered final statements of law. Canadian law places the supremacy of law in the hands of the national assembly as the true sovereign, not the people. The Parliament must approve the final version of any law for it to be legally binding.

Quebec's access to national politics makes it difficult to understand the separatists' claims of alienation. Canadian prime ministers, including current Prime Minister Jean Chretien, have been Quebecers for 36 of the past 47 years. The federal government has consistently accommodated Quebec's demands. Quebec has accepted tens of billions of dollars in regional wealth equalization payments from Ottawa and is responsible for \$150 billion of the national debt. The federal government even has promoted the French language outside Quebec to make the maintenance of relations more appealing.

Quebec has only responded with irresponsible handling of finances, greater demands and isolationist practices. Most notorious is their ban on bilingual commercial signs within the province. This act broke down the constitutional dialogue that was intended to find solutions to the rift between Canada and Quebec.

Quebec committed itself to the nation voluntarily in the Constitution Act of 1867 and is legally required to remain within Canada. Five international law experts were commissioned under Canadian Bill

150 to study the legitimacy of secession. In a May 1992 report, the panel agreed no constitutional right to secede exists.

The Canadian people must agree to allow Quebec to leave before it can become constitutionally legitimate. All recent polls indicate this type of support does not exist.

International law also prohibits a member community, such as Quebec, from seceding from its host country without that country's consent. And no exceptions to this rule in international law apply to Quebec. For example, self-determination — a category short of true independence — is available to minority groups faced with human rights abuses. That criteria is inapplicable to Quebec separatists.

Most experts agree that a unilateral declaration of independence is the only potentially legitimate means for gaining independence. International law normally accepts such a declaration if the new nation effectively controls the territory it claims and commands allegiance from the people it purports to govern.

These criteria are tough to satisfy. For instance, on the allegiance question, former Canadian Supreme Court Justice Willard Estey argues that about 90 percent of the province's residents would have to support a declaration for Canadian or international law to accept their claim.

If Quebec ever succeeds in seceding, its ability to sustain itself would depend on the extension of diplomatic ties and acceptance into organizations such as the North American Free Trade Agreement, the World Trade Organization and the United Nations. The U.S. and European governments could work to deny Quebec's entrance into these organizations.

If the separatists are ever successful, the United States and other countries need to make clear the illegality of secession through ostracism. The United States has a vested interest in it.

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